[श्री देवदत्त कुमार कीकाभाई पटेल]

इसमे जो स्वास्थ्य के साथ सीधा सम्बन्ध है, इस अधिनियम का जो उद्देश्य हे, उससे उसकी पूर्ति हो सके।

जहा तक इस विधेयक को पारित करने का प्रश्न है, मै समझता हूं, इसमे कोई आपत्ति नही है और मै इस अधिनियम के अन्तर्गत जो सशोधन है, उसका अनुमोदन करता हू ।

DR. (MRS) MANGLADEVI TALWAR (Rajasthan) . I just wanted to say that food adulteration, as you know, is a very important s ibject from the health point of view and nowadays even atta and condiments which used to be prepared at home are sold in the market There are big merchants who are dealing in these and these powdered articles are adulterated with very harmful things. I would suggest to the Minister that the classification of food articles may be done properly and greater vigilance should be exercised especially in regard to powdered articles because adulteration is not otherwise easily detected.

DR. DEBIPRASAD CHATTOPADHYAYA Sir, I have nothing to add except to point out that in section 14 A of the original Act there is provision for saving small sellers from the sins committed by the big manufacturers, etc On the necessity of greater vigilance etc there are no two opinions.

MR DEPUTY CHAIRMAN : The question is

"That the Bill be passed "

The motion was adopted.

THE CONTEMPT OF COURTS BILL, 1968

MR DEPUTY CHAIRMAN . Shri Gokhale.

SHRI BHUPESH GUPTA (West Bengal): Sir, I have a suggestion to make Government have brought forward a number of amendments and some of them are of subs- This measure was discussed initially in this House and then went to the Select Committee. The Select Committee had long deliberations I was a member along with some other colleagues. It is agreed that it should be passed in the form in which it has come We did not press very many amendments there Now Government is sponsoring its own amendments Some of them were rejected by the Select Committee. For instance amendment No. 3 in the list of amendments had been discussed in the Select Committee. And, Sir, it was rejected by the Select Committee and now the Government wants the majority--perhaps they have it here—to be used for pushing this thing Sir, is it the proper way of functioning by a Select Committee? I can understand a Private Member doing this when they have failed But the Government should not do it. I can tell you, Sir, Mr Chavan presided . .sorry, Mr. Bhargava was the Chairman and Mr. Chavan was there and he pressed for something which he lost. When he lost, he said, "I accept the defeat". I thought he had very strong views. For example, he did not like the definition in the Bill But he lost it and he was in a minority. Then, the next day, he gracefully said, "I have lost. But I stand by the majority decision of the Committee and that is my decision also." Sir, that spirit is sought to be broken here and violated and defiled by an amendment which has been brought in with a view to negating some of the good work which was done after the long deliberations in the Select Committee. I would, therefore, ask Mr. Gokhale to consider this matter and not to press us for this kind of thing and I hope he will have this much of generosity in this matter, after what he has done, like Mr. Chavan.

MR. DEPUTY CHAIRMAN . All right, Mr. Bhupesh Gupta Yes, Mr. Gokhale.

THE MINISTER OF LAW AND JUSTICE/**विधि और न्याय मत्री** (SHRI H. R. GOKHALE). Sir, I beg to move.

"That the Bill to define and limit the powers of certain courts in punishing contempts of courts and to regulate the procedure in relation thereto, as reported by the Joint Committee of the Houses, be taken into consideration."

Sir, I will deal with the points raised by Shri Bhupesh Gupta a little later It is not a matter of pleasure for us to make alterations in the Report of the Joint Committee and when I deal with the amendments I will put before the House the reasons which, I think, are very strong reasons

SHRI BHUPESH GUPTA Sir, that we have discussed

(Interruptions)

SHRI H. R GOKHALE I will explain and I am sure I will be able to presuade you also

SHRI BHUPESH GUPTA Why should you persuade? You rely on your Secretary? I krow you have got a Secretary in your Department who violates the Government decision In Chandigarh he was canvassing opinion against the Constitution (Amendment) Bill.

MR DEPUTY CHAIRMAN Mr Bhupesh Gupta, please do not intervene now

SHRI BHUPESH GUPTA Sir, I have got to Sir, improper things should not be done I am not blaming him I know, Sir it was very much opposed by the Secretary of the Ministry and everybody knows, Sir, that Mr Gae was opposed to the nationalisation of the sugaar industry and his opinion was negated by the Attorney-General Every body knows it. Sir, he is going to introduce the Constitution (Amendment) Bill—the Constitution (25th Amendment) Bill—only this month and Mr Gae was in Chandigarh in a seminar and he spoke against the Bill and to this also I will be coming

Sir, Mr Gae was speaking against it I am sure if Mr Gokhale had been there—I am sorry, he was not there he would not have agreed with us on this matter Now, I am asking the Minister, "Please do not go by your Secretaries all the time" I shall come to this point when I speak Now, Sir, we have got a letter from Shri Satya Pal Dang, a former Minister of Punjab, complaining against the manner in which

(Interruptions)

MR DEPUTY CHAIRMAN Please sit down, Mr Bhupesh Gupta Yes, Mr. Minister

SHRI H R GOKHALE Sir, I am very sorry that my friend was anticipating something before hearing what I was going to say. I have great respect for what Mr Bhupesh Gupta says and I have stated the position as it was at the time of the meeting of the Joint Committee And it was after giving some consideration that I thought that these amendments should be brought before the House These amendments are not amendments moved at the instance of any Secretary—much less at the instance of Mr Gae He has nothing to do with these I felt that there would be some serious constitutional difficulty if some of the amendments were not moved, and I will point out that serious constitutional difficulty Otherwise, the danger is that the whole clause to which amendment is moved might be struck down as unconstitutional If I am able to persuade the House that the amendments are necessary, them I am sure the House will agree to the moving of the amendments, which are justified

I was given to understand that at the Joint Committee session the then Home Minister, who was attending the Joint Committee unfortunately, I was not there at that time—made it clear that he reserved the right to move an amendment later on

SHRI BHUPESH GUPTA No .

SHRI H R GOKHALE Anyhow, we are doing with a very serious matter relating to contempt of court

SHRI BHUPESH GUPTA Where is his note of dissent

MR DEPUTY CHAIRMAN Don't interrupt, Mr Bhupesh Gupta

SHRI BHUPESH GUPTA He appended a note of dissent to the Select Committee's report Therefore, what is the use of trying to influence some members ? We were deeply impressed by Mr Chavan He took his defeat sportingly He appended a note of dissent to the majority report The Government was actually a party to that report

MR DEPUTY CHAIRMAN Please sit down

SHRI BHUPESH GUPTA If Mr. Gokhale is trying to influence some members it would be bad

SHRI H R GOKHALE . Sir the Bill is there mainly because we felt that the existing law with regard to contempt of court was uncertain, undefined and unsatisfactory. It is a very serious and important matter, because any law relating to contempt of court touches upon two very vital rights of the citizens. One is the right to personal liberty, and the other is the right to freedom of expression. It was, therefore, thought at an earlier stage that the whole position with regard to the law of contempt should be examined by an expert committee. And, as far back as in 1961, a committee with the then Additional Solicitor-General, Mr. Sanyal, as the Chairman, was appointed. That committee made a comprehensive examination of the law and problems relating to contempt of court in the light of the position obtaining in our country and in the light of the position obtaining in other countries. The recommendations which the committee made took due note of the right to freedom of speech and personal liberty, the various provisions in the Constitution and the need for safeguarding the status and dignity of the court and the interests of administration of justice The recommendations were generally accepted by the Government Before accepting these recommendations, the considered views of various State Governments, Union Territories, the Supreme Court and other courts, the Judicial Commissioners, etc were taken into consideration. A Bill known as the 'Contempt of Courts Bill, 1968' to give effect to the accepted recommendations of the committee was introduced in the Rajya Sabha on 27th February, 1968. The Rajya Sabha considered it, and considering the importance of the matter decided to refer it to a joint Committee of Parliament, who examined it in detail and also called witnesses, including eminent lawyers, who gave oral evidence before the committee They finalised their report and submitted it to the Houses of the Parliament on the 23rd February, 1970.

Almost all the amendments proposed by the Joint Committee are acceptable to the Government, excepting a few, which, I think, touch upon the constitutionality of the respective provisions which are sought to be amended One is to include an express provision that the presiding officer may also be liable to be charged with contempt of another court or of his own court in the same manner and in accordance with the same procedure as any other individual. That was one of the proposals made in the Joint Committee.

Then I come to the power of a judge of a superior court to punish for contempt committed in cases where the alleged contempter desires that the case should be tried by another judge an abolition of the concept of contempt in relation to the imminent proceedings.

These are three matters in respect of which amendments are before the House.

I may incidentally mention that when I examine the Bill now, I find that there is going to be serious difficulty in the implementation of clause 19 of the present Bill also.

There is no amendment yet given to the House but I am examining the matter and I shall bring to the notice of the House the difficulty. It does not touch the question of principle it touches the question of the right of appeal of the citizen. The intention is that everyone who is convicted of contempt of court should have the right of appeal, as of right, to the higher court. Some technical difficulty was felt in the way in which the clause is now drafted. To set right that difficulty it may be necessary in the course of the debate to bring to the notice of the House a minor amendment to amend Clause 19 also.

SHRI AKBAR ALI KHAN (Andhra Pradesh) It will be only a verbal amendment ?

SHRI H. R GOKHALE No, no, I will give a written amendment and circulate it. There is a slight alteration in the manner of drafting the Clause which raised some difficulty to a section of the litigants whose cases came up before the Judicial Commissioners and deprived them of the right of appeal, as of right, to the Supreme Court. But what is desired is that even those who are convicted by the Judicial Commissioners for contempt of court should have the same right of appeal to the Supreme Court as the others who are convicted by the High Courts. So a minor amendment is suggested there In the interests of the administration of justice and the smooth working of the courts these amendments

have been found to be necessary and they will be moved when the proper occasion for moving them comes. I will deal with the various amendments when I move these amendments and I will explain to the House that in some cases, if these amendments are not moved, the very constitutional validity of the existing Clause can be called into question and the whole Clause can be struck down. The other amendments, according to me, are vital and necessary in principle, such as subjecting the Judges themselves to proceedings for contempt if the Judges say something in the course of the performance of their duties in court. The suggested Clause provides for hauling them up also for contempt. This, in my submission, is something which has never been found anywhere in the world.

SHRI BHUPESH GUPTA : How do you know? Have you gone to all the courts in the world ?

SHRI H. R. GOKHALE : Well, I know it and when I say it, I say it with confidence. Mr. Bhupesh Gupta, you are welcome to point out to me whether such a thing exists.

SHRI BHUPESH GUPTA : The Judges are sacked by the Executive when they misbehave. They would be sacked by the Executive as is the case in many countries. But we cannot do so. Even in Parliament we have to move a Resolution and to get it passed it has to have the support of two-thirds majority and so many other things. Therefore, let us not go into this subject.

SHRI H. R. GOKHALE : I am talking of one thing...

SHRI BHUPESH GUPTA : We are also a little knowledgeable persons. I know, Mr. Gokhale, you are an ex-Judge, but we are not ignorant people. We know there are Constitutions in the world according to which Judges can be sacked straightway by the Governments there...

SHRI H. R. GOKHALE : I am talking of one thing; my friend is talking of another. I have never said anything about the Parliament or the Executive saying anything. The whole question is whether a Judge, in the due performance of his duties, of his judicial functions while sitting in court, for what he says—I am yet to know—whether for such utterances he can himself be hauled up for contempt. The administration of justice will become impossible if at every moment of their functioning in court they are under the threat of being subject to applications for contempt of court. The working of the court will become impossible. Every day the courts will be flooded with umpteen applications against the Judges themselves and what I said was that in the limited knowledge which I have relating to this law I have not come across in any other country a provision that Judges speak something in the due performance of their duties and they themselves are hauled up for contempt. This, in my opinion, is a provision which is very dangerous to the independence of the Judiciary. I agree that Judges also must behave in a responsible manner and should not speak irresponsible things while performing duties as a Judge. But can you subjeet them to this threat that for the utterances they make while hearing a case an application can be made against them in the same court for haulting them up for court ?

SHRI BHUPESH GUPTA : Which Clause you are talking about ?

SHRI H. R. GOKHALE : Therefore, this is a matter in which I feel a reconsideration of one of the Clauses in the Bill is necessary and I have recommended it. I will move the amendment when the occasion comes. The same provision is with regard to another amendment which I have to move, because I can understand the basic reason for saying that imminent proceedings should not be the basis for prosecution for contempt. Now, in principle I have no objection to this. I see the difficulty particularly felt by the journalists because they do not know when proceedings become imminent. You can define precisely when proceedings are pending, but it is very difficult to define precisely when they become imminent. The law as it is today is that Judges have the inherent power as courts of record and Judges of the High Court and Judges of the Supreme Court have the power to punish for contempt. There is the Constitutional provision in Article 129 pertaining to the Supreme Court, and a corresponding provision is also there pertaining to the High Courts. Therefore, I will repeat that I agree with the difficulty felt by the Members of the

[Shri H R Gokhale]

Committee why they thought that there should be no contempt only in respect of imminent proceedings. If I was free, if I was not bound down by the constitutional provision, I would have readily agreed in principle, particularly for the protection of journalists and said that imminent proceeding should be excluded The difficulty which I am feeling today is that in the face of the constitutional provisions existing today, as courts of record the Supreme Court and High Court have been given the power to punish for contempt What a court of record is is not defined anywhere That is accepted and known in common law in England, it is accepted and known in law in India What the inherent powers of a court of law are what a court of record is, is also not a matter of codification It is accepted everywhere else , it is accepted here in India by courts When article 129 says that powers of the Supreme Court and the powers of the High Court as a court of record to punish for contempt will not be taken away, it means that as a court of record they have the powers to punish for imminent proceedings also If you exclude imminent proceedings you are infringing on the constitutional provisions of article 129 and the corresponding provisions with regard to High Courts If I did not have this difficulty I would have said in principle I agree that the possible threat of journalists being hauled up should not be there and we should exclude imminent proceedings But, as the Constitution today is I am afraid, if we do not do this the whole clause which is now proposed will be struck down by the Supreme Court as violating article 129 and the corresponding articles pertaining to the High Courts That is the only reason why, out of sheer necessity, that the amendment has been moved

I do not want to elaborate on this , I will deal with the amendments when the occasion for discussing this amendment will come, and I hope to satisfy the House including my friend Mr Bhupesh Gupta And I am quite sure that if he shows me a way out I will keep an open mind up to the last and consider whether it is still possible to get out of this difficulty , I only wish to be helped I have looked into it very carefully and, as far as I can see, so long as the Constitution is not amended it is not possible to do so and I stand subject to correction If I get any concrete help in the direction in which intentions exist in the minds of so many Members, particularly those who have been advocating, rightly the cause of journalists, I will be glad

With these introductory remarks I commend to the House the Bill as recommended by the Joint Committee of Parliament to be taken into consideration subject to the amendments which I will move later on

The Question was proposed

SHRI M RUTHNASWAMY (Tamil Nadu) Mr Deputy Chairman, Sir, this Bill is to be welcomed because it aims at defining what contempt of court is In regard to this matter we must bear in mind that the balance between the dignity, the reputation and the independence of courts of law and the right of the citizen to freedom of expression should be preserved The balance between these important social values, namely, the dignity, reputation and independence of our courts of law and the freedom of expression --one of the guaranteed rights which a citizen enjoys---these two social values should be well balanced This Bill attempts to keep this balance, to maintain this balance But there are a few points in which the definition falls short of one's expectations Thus, in clause 2, Sub-clause (1), any court may be affected That is to say, proceedings in any court in any part of the country may be called into question Now, Sir our country is a vast country and courts and centres of criticisms may be devided by huge distance Thus the criticism of a court in Manipur made in the city of Madras may not affect, even when proceedings are going on, the dignity or the reputation or the independence of that court because even if the criticism is reported, it will take a long time before national newspapers reach such a distant place as Manipur The well-known principle affecting these cases of Contempt of Court we find in various decisions of the United States' Courts The doctrine of clear and present danger as enunciated by Mr Justice Black in a U S A case Bridges vs California 194, was that the contempt must be clear and the consequence of this contempt must be near That is to say, the court in question must be affected directly and immediately by any such criticism

And then again in the same clause, sub-clause (c) (iii) it is mentioned 'interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner" I think that this phrase "in any manner" is rather vague Already in sub clause (c) (i) & (ii), the manner in which these criticisms may be published is well described and defined In any manner" might lead to abuse of the law of contempt of court A sarcastic smile or an ironic sign or gesture for instance made in court may be treated as an offence to the court Mr Justice Holmes in another case has led to a different conception, that is to say, he said that the nearness of the criticism of a court is so near that the reputation of the court may be called into question About the nearness', another decision in a court of the United States given by Mr Justice Douglas in 1941 is that the nearness is a geographical nearness , that is to say, the centre of the criticism and the court affected should be near each other so that the

3 P M reputation of the court is directly affected Then, Sir in clause 3 under the Explanation it is said that when the charge-sheet or the challan is filed immediately the law of the contempt of Court would come into action, that is to say, before the court has been acquainted with the change on the mere filing of a challan or a charge-sheet an offender may come within the clutches of the court The Bill Sir on the whole goes as far as it can in defining contempt of court and therefore it is a step forward On this matter Judges in India should be less sensitive than they generally are to public criticism After all they occupy a very high and dignified position and they must conduct themselves with the dignity that is consonant with such a high position They cannot be as sensitive as *prima donnas* or film stars There is another case in which Mr Justice Douglas said that the misbehaviour must be serious and the degree of involvement must be very high That is the offender must commit a very serious offence and not a mere mild criticism, not a mere passing remark There should be a deliberate attempt at bringing the court into contempt If these principles are observed both by the Judges and by the critics of the Judges I think we should have gone a long way forward in defining the concept of contempt of court and in protecting our Judges from unreasonable and malicious criticism.

SHRI D P SINGH (Bihar) Mr Deputy Chairman, Sir, I welcome this Bill and its salient features It is a great relief that some safeguard today has been provided and the area of uncertainty which was there all these years reduced An innocent person willing to help the society might have trespassed into a field which is unknown and yet he was likely to have been trapped and punished for it Of the same calibre, Mr Deputy Chairman, I must point out at this stage, is the vagueness in the privileges of Parliament In spite of 20 years that have lapsed after the Constitution, in spite of the provision in articles 194 and 105 of the Constitution dealing with the powers and privileges of Parliament and the State Legislatures so far the privileges have not been codified Again and again we have had criticism in the press and elsewhere that the privileges are so uncertain as to keep a citizen in doubt as what to speak and what not to speak for fear that he might encroach on the forbidden field and land himself in an awkward situation Similarly in the field of contempt of court it has been a very very dangerous situation and so far as in the common law no effort was made to define what contempt is This time a negative attempt has been made Apart from confining to the generalisation in various decisions it has not been clarified what is contempt Through various provisions of course, care has been taken to point out what is not punishable as contempt Even so that has provided some relief But I must point out at this stage that here today we have the protection of the freedom of speech guaranteed in article 19(1) of the Constitution whereby people can speak what they like and talk what they like

[THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) in the Chair]

In spite of the fact that freedom of speech has been guaranteed in article 19 (1), it is a strange situation that has arisen from the decisions of the High Court and the Supreme Court in this respect Now, the position is this It is competent for Parliament to change the entire judicial system but it is not competent for a citizen to canvass for this change The moment you do it, the essential preliminary is that you have to tell what are the evils obtaining today, what are the disastrous results obtaining in the courts How are you going to remedy it. What has happened in this court or in the other court?

SHRI BHUPESH GUPTA : A High Court Judge touched the feet of the Home Minister to become a Supreme Court Judge. I had seen it with my own eyes.

SHRI D.P. SINGH . That may be your privilege

SHRI BHUPESH GUPTA . I saw it with my own eyes Shri Govind Balabh Pant's feet were touched by a High Court Judge. I was sitting even in the same room. I was shocked to find a High Court Judge coming and touching his feet.

SHRI A.D MANI (Madhya Pradesh) : If it is true, you must reveal the name.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) · Order, order please. you should not interrupt.

SHRI A. D MANI . He has raised a very important point

SHRI BHUPESH GUPTA . Suppose I published it in my journal, I would have been guilty of contempt of court.

SHRI D. P SINGH The learned Law Minister is here and he is aware of the decision The decision came in the Namboodiripad case There what was put forward was that justice was not available to a person in the courts today, that it was balanced against the poor and loaded in favour of the rich. Where the evidence is balanced, instinctively the Judge is prone to believe or favour the pot-bellied. This was the statement, and in support of the statement what was canvassed for was this · "I belong to a very important party I have the right to advocate and say that the courts as constituted today are not in a position to deliver the goods " Article 19 (1) was there right in the face Still it was said : Nobody denies your right to change it, but you cannot talk about it This was the decision of the High Court and this was confirmed by the Supreme Court We say that in a situation like this something must be done to remove the anomaly and remove the awkward situation. In the law of contempt as has been obtaining all these years, there are various provisions which have been extremely awkward There is a provision like an unqualified apology. Again and again people have said I have not committed any wrong I did not intend to insult you If my statement inadvertently leads to that conclusion, here are my apologies. In normal life nobody would have any objection to such a thing, but repeatedly in courts the decision has been that if it is a qualified apology, it shall never be accepted and a qualified apology is a contempt I am happy that this awkward situation obtaining in the law today has been sought to be remedied In clause 12 here it is specifically provided that even if a conditional apology is made in answer to a charge of contempt, then the proceedings have got to be dropped. Similarly, the provision in clause 13 says that no technical contempt shall be punishable but a contempt of a substantial nature. Section 96 of the Indian Penal Code says that a trifling offence shall not be tried and punished That has been incorporated, and it is a very healthy step Provision in regard to the immunity from punishment in cases where the details of a proceeding held *in camera*, details of a proceeding when the judge is holding court in the chambers, does not bar its publication—that has been suitably provided in clause 7, and it is in keeping with Mirajkar's case—the nine-judge decision of the Supreme Court—and it is a very healthy feature in this.

Coming to clause 16, we reserve also our comment when the learned Law Minister brings forward an amendment.

There are certain difficulties that are likely to arise as a result of the definition given under article 215, which is the power of the High Court, and article 129, which is the power of the Supreme Court, to punish for contempt, and it is based on the fact that they are described as 'courts of record '

Unfortunately, many of these troubles that are obtaining in this country are there beacuse we have copied things *in toto* from other countries, from the West particularly, and we have legislated by reference. Unfortunately we are made liable on the basis of what the law in England is, on the basis of something to which my own people have not given their thought or applied their mind Likewise for punishing for breach of privilege, as you know, Sir, one has to go to the law of England and find out what are the privileges there. Similarly, in a matter like this, what is the attribute of a court of record, whether it is expanding, or whether it is contracting or whether it has the same meaning or whether it has changed its context and so on because, if we are forced to that situation where on the basis of a connotation of a court of record we have to punish for impending trials, then the request to the Law Minister would be to make a comprehensive amendment of the Constitution itself so that this anomaly may be removed. If you

do provide for a situation beyond the stage of a pending litigation, that is bound to come in for serious attack Even the law that you cannot speak about a pending litigation comes from the 12th century law that obtained in England. There were the grand jurors, there are the jurors Everyone had the right to be tried by 12 countrymen. If you talk anything their minds would be prejudiced since all the decisions were on the basis of what those 12 jurors or countrymen thought about it. Then, naturally, you keep their minds free, and they used to decide in three or four days But here is a matter where you will see that if we are appointing eminent judges, if we are appointing judges who have experience for a long time at the bar, who are expected to have detachment, then the fact that they read in the newspaper one version or another, normally should not be taken to pollute their minds The idea was, as obtained from the law of England, that you are polluting the foundation of justice and therefore punishable. On that analogy, the decisions have gone to such extremes that one shudders to think as to how for we are depending on the law of England or what other countries will lead us to There was the case of the Chief Minister of West Bengal Mr. P C Sen had to go to the court. There was great scarcity of milk in West Bengal and the Milk Ordinance was promulgated whereby the preparation of sweets was forbidden Somebody took in his head to challenge that ordinance. Now the Chief Minister addressed his people on the All India Radio, Calcutta and tried to explain the position, that the children would not get milk, that the military men would not get milk and, therefore, this was not the time for the people to prepare sweets. The result was that the jurisdiction of the Contempt of Court was invoked against him and he was punished His punishment was upheld by the Supreme Court. That was all owing to the law that if you speak on the All India Radio about a pending proceeding the Judges are likely to hear, at least some of them, and their mind will get disturbed and they may not give correct judgment. So that is the logic of a pending matter. Now part of the evil has been sought to be removed and as for the rest, I am glad the learned Law Minister has said that he will keep his mind open and give further thought to it because that imbalance has got to be corrected and set right to give some relief.

Sir, two or three more provisions need mention in this context Clause 15 speaks of a motion *suo motu* or at the instance of the Advocate General, or if a citizen wants to move the court for a proceeding under the Contempt of Court Act, then prior sanction has to be taken from the Advocate General That is intended to keep some check on unscrupulous or vexatious kind of proceeding and that, to my mind, is a very healthy feature. Sir, by and large, the provisions are intended to relax and give relief in situations which were very oppressive during the last 25-30 years particularly. Everybody knows the case of Mr Young Everybody knows how the Contempt of Court Act and its interpretation was carried to the extreme end where somebody was put in jail by Mr Young because the former did not behave well Mr Young ordered, "You will not come out". And ultimately that man died It is as a result of this the Contempt of Court thing came for the first time. He was transferred Similarly, in England they used to put people in prison because they would not behave well I am glad all these things are being tried to be rectified and relief is being sought to be given

SHRI PITAMBER DAS (Uttar Pradesh) : I would like to know one thing. We had just been listening that anything said for and against a particular case outside is punishable for contempt of court When the lawyers argue a case for and against, I would like to know why they are not punished under the Contempt of Court Act

SHRI D. P SINGH I might inform the hon'ble Member that they are punished. There is the case of Mohd. Sherif

श्री जगदीश प्रसाद माथुर (राजस्थान) : उपसभाध्यक्ष महोदय मे समझता हू कि कटेम्प्ट आफ कोर्ट विधेयक के सम्बन्ध मे हमको कटेम्प्ट और क्रिटिसिज्म मे कुछ अन्तर करना चाहिए। जहा तक क्रिटिसिज्म का प्रश्न ह, एक जनतत्रीय समाज के अन्दर जहा प्रत्येक अपने उत्तरदायित्व को समझे, इस प्रकार की मान्यता लेकर चलते है, वहा हमको कन्टेम्प्ट और क्रिटिसिज्म के अदर भेद रखना चाहिए क्योंकि अगर हम आज की परिस्थिति म कुछ अतर कर सके तो हम एक कदम आगे बढेगे, इसलिए भी कि जो कानून अपने देश मे कटेम्प्ट आफ कोर्ट का है, अग्रेजो के समय उसका उपयोग अपने देश के कई नेताओ के विरुद्ध भी किया गया । केवल इतना ही नही कि उन्होने कोर्ट का कन्टेम्प्ट किया लेकिन जब

[श्री जगदीश प्रसाद माथुर]

उन्होंने क्रिटिसाइज भी किया तो उनको उसका फल भुगतना पडा । आज अगर सिविल कन्टेम्प्ट और क्रिमिनल कटेम्प्ट के स्ट्रिक्ट सेन्स के अतर्गत भी चले तो मुझे लगता है कि हमारी जो फ्रीडम आफ स्पीच या जो लिखने की स्वतत्रता है, उसको भी हम पूरी तरह मे इस देश के अदर नही निभा सके । जैसा पीताम्बर दास जी ने कहा, जिस समय डिस्ट्रिक्ट जज या हाईकोर्ट जज का फैसला होता ह, इस कानून के मुताबिक जब तक कि या तो उसकी अपील की मियाद खत्म नही होती तब तक कोई आदमी जजमेंट के सबध मे नही लिख सकता लेकिन आदमी लिख जाता है और उसको छाप देता है और अगर कोई वकील अपील करता है तो उसमे सारी बाते कहता है—द लर्नेड जज हेज अर्ड आन् दिस पौइट—उन्होने यह गलती की है, उन्होने यह डेसीजन गल्त ढग से लिया ह, अब अगर उसी समय किसी समाचारपत्र मे ये सारी की सारी बाते छप जाए कि अमुक-अमुक केस के अदर अमुक जज ने जो निर्णय दिया है वह इन-इन दृष्टियो से बिलकुल गलत है, और वह कहेगे डयूरिंग द पेन्डेन्सी आफ द ट्रायल—क्योंकि हाईकोर्ट के अदर उसने अपील की है, सुप्रीम कोर्ट मे उसने अपील की है—तो ये सारी बाते इसी काल के दौरान एक वकील अपनी अपील के अन्दर लिखकर, नीचे के जज ने जो कुछ भी निर्णय किया ह उस सारे को क्रिटिसाइज करते हुए कि अमुक-अमुक मुद्दो के अदर इस लर्नेड जज ने गलतिया की है, उनका निर्णय ठीक नही है, वह समझ नही सके—केवल द लर्नेड जज यह एक लिखने की बात होती है, तो इसी दौरान जैसा कि धारा 3 मे लिखा है—

> " In the case of a civil or criminal proceeding, shall be deemed to continue to be pending until it is heard and finally decided, that is to say, in a case where an appeal or revision is competent, until the appeal or revision is heard and finally decided or, where no appeal or revision is preferred, until the period of limitation prescribed for such appeal or revision has expired;"

फाइनल डसीजन किसी कैस का, इसका मतलब यह हुआ कि जो केस नीचे से चला है, सिविल जज के यहा से चला वह अगर सुप्रीम कोर्ट तक जाता है तो उस केस का निर्णय होने मे कितना समय लगेगा ? और उसके बीच मे जो विभिन्न निर्णय हुए उनके सबध मे छोटी अदालत ने क्या गलतिया की उसको लिखने के उपरान्त छप गया तो च कि उसका फाइनल डिसीजन ऊपर सुप्रीम कोर्ट तक जाकर होगा, और उस बीच मे यदि किसी प्रकार की उसकी आलोचना नही की जा सकती, तो अगर इसकी आलोचना के सबध मे कोई अपना मत व्यक्त करे तो क्या होगा ? मै जजेज की स्वतन्त्रता, जुडीशरी की इडिपेडेस का हामी हू लेकिन जहा हमने जुडीशरी को बिलकुल इडिपेडेट करने की माग की ह, वहा मै सोचता हू कि अगर इस सबध मे कुछ ऐसी बात लिखी गई, कोई आलोचना की गई, तो उसको इस रूप मे लिया जाय कि वह जुडीशरी को इटरफेयर करने की बात करते है, तो इसका नीचे के तबके मे अच्छा असर नही होता है । खास तौर मे जो सिविल कटेम्प्ट की बात है, किसी ने भी अगर कोई शब्द भी कहा, जैसे कि अदालत के अदर मैने ऐसे केसेज भी देखे है कि मजिस्ट्रेट ने फैसला दे दिया और किसी ने कह दिया कि मेरे साथ अन्याय हो रहा है तो इतनी सी बात का लेकर मजिस्ट्रेट कहता है क्यो तुमने हमे इस प्रकार से कहा है, हमारे आदेश का विरोध किया है—क्योंकि कानून मे लिखा ह शब्द डिस्ओबेज—यद्यपि उस व्यक्ति ने अपनी अनुभूति से ऐसा कहा होगा । तो जजेज को भी इतना टची नही होना चाहिए । लेकिन आज कई रूप मे कटेम्प्ट आफ कोर्ट की प्रोसीडिग्ज जारी हो जाती है । कई बार तो अगर कोई वकील जज से स्पष्ट रूप से मतभेद रखता ह तो उसके खिलाफ भी कन्टेम्प्ट का केस चालू हो जाता है ।

हमारे यहा पर जो कोर्टस है उनमे ज्यूडिशरी का सैपरेशन जरूरी है । लेकिन आज भी जो एडमिनिस्ट्रेशन मैटर्स है या बहुत से ऐसे कानून जो हम बनाते है आज भी इन कानूनो द्वारा एडमिनिस्ट्रेशन कोर्ट्स मे एस० डी० एम० या कलेक्टरो के कोर्ट मे या जहा पर एडमिनिस्ट्रेटर निर्णय देते है वहा पर स्पष्ट रूप मे हम इन्टरफियरेन्स की बात कहते है । आज भी पोलिटिकल

इटरफियरेन्स होता है, जजमेंट बदले जाते है। और जज तथा मजिस्ट्रेटो को दबाया जाता है इसलिए सेपरेशन आफ दि ज्यडिशरी बहुत आवश्यक है। लेकिन जहा पर इस तरह के एडमिनिस्ट्रेटिव आफिसर हो, जो ज्यूडिशियल मैटर्स पर बैठते है अगर उनके सम्बन्ध मे किसी प्रकार यह बात मालूम हो जाय कि वे किसी केस के सम्बन्ध मे अमुक-अमुक मत्री के दबाव मे काम कर रहे है और किसी के खिलाफ निर्णय दे रहे है तो यह उचित बात नही है। अगर कोई एस० डी० एम० जो ज्यूडिशियल आफिसर के नाते काम करता है अगर वह किसी तरह मे किसी निर्णय के सम्बन्ध मे हस्तक्षेप करता है और खिलाफ निर्णय देता है, तो ऐसे मौके पर हम कौन सा चैक लगाने की व्यवस्था कर रहे है जिससे कानून का दुरुपयोग न हो। इसलिए मै यह कहना चाहता हू कि इस दृष्टि से हम कौन सा चैक लगाने की व्यवस्था कर रहे है जिससे आम नागरिक को उसके मुकदमे के खिलाफ किसी एडमिनिस्ट्रेटर द्वारा गलत निर्णय न दिया जा सके या फिर किसी दबाव मे आकर निर्णय न दिय जा सके। हमे इसके बारे मे विचार करना चाहिये कि इस तरह की चीज के बारे मे कोई चैक हो सकता है और जब तक कम्पलीट सैपरेशन आफ दी ज्यूडिशरी नही होगी तब तक हमारे कानूनो का दुरुपयोग होने की सम्भावना बनी रहेगी।

इस सम्बन्ध मे मै यह भी निवेदन करना चाहता हूं कि जब देश मे लिखने की स्वतन्त्रता की दृष्टि से इस बात पर सोचना हू और जब किसी अखबार मे किसी केस के दखल के बारे मे खबर प्रकाशित होती है तो यह देखने मे आता है कि जो हमारे प्रेस है, प्रेस की जो स्वतत्रता है, उसमें कमी आई है क्योकि अखबार-वालो के खिलाफ कई बार बहुत बडी मात्रा मे कंटैम्ट आफ कोर्ट के सम्बन्ध मे केस विभिन्न अदालतो मे मिलते है। जहाँ तक प्रचार का सवाल है, जनता को जानकारी देने का सवाल है, अगर किसी जज के खिलाफ या किसी एडमिनिस्ट्रेटिव आफिसर के खिलाफ पब्लिक मीटिंग मे बोलते है या किसी तरह की बाते अखबारो मे प्रकाशित होती है, तो ऐसी हालत मे अखबारो के खिलाफ कटैम्ट आफ कोर्ट होना है। सरकार के पास इस तरह की कोई व्यवस्था नही है कि वह किसी तरह का रिप्रेजेन्टेशन कर सकते है। Representation in any form or by visible representation की व्यवस्था होनी चाहिये। अगर हमको यह लगे कि जज किसी मुकदमे मे जानबूझ कर गलत निर्णय दे रहा है और उसके खिलाफ कोई बात कही जाती है या लिखी जाती है तो वह कटैम्ट आफ कोर्ट मे आ जाता है। इसलिए मै चाहता हू कि माननीय मत्रीजी इस तरह का प्रयत्न करेगे कि आज की बदली हुई परिस्थिति मे जनता की जो आकाक्षाए है वे पूरी हो और उन्हे ठीक तरह से न्याय मिले। माननीय मत्रीजी पहिले सरकारी सर्विस मे रह चुके है लेकिन अब वे अपने पुराने बैकग्राउन्ड को बदल कर नई कॉग्रेस की प्रगतिशील समाजवादी व्यवस्था के अन्दर आ गये है। उन्हे तो पुराना अनुभव होगा जब वे अफसर रहे होगे जबकि उन्होने अग्रेजो के समय नोकरी प्रारम्भ की होगी। और बाद मे बिलकुल शुद्ध जूडीशियल माइन्ड से उन्होने काम किया, लेकिन अब वे जनता मे आए है और जो हमारी कठिनाइया है न्यायालयो की मनमानी के कारण मे, उनमे जो भ्रष्टाचार है वह रुके, उसके खिलाफ भी हम बोल सके, कह सके इस तरह की बातो पर अगर इस नए कानून के द्वारा प्रतिबन्ध आता है तो मै मत्री महोदय से निवेदन करूगा कि उनको अब जनता के प्रतिनिधि के नाते और समाज मे जो परिवर्तन लाना चाहते है और जनतत्री समाज का सही रूप मे निर्माण कर सके इस नाते से जो कुछ खामिया रही है उन पर वे विचार करे।

SHRI K. CHANDRASEKHARAN (Kerala): Mr. Vice-Chairman, Sir, it is good that after a very long time, after the publication of the Sanyal Committee Report, for the first time in this country, we are attempting to give a sound definition to the legal term "contempt of courts."

Sir, I should think that it was after a forme Chief Minister of Kerala was convicted fo

[Shri K Chandrasekharan]

contempt of court by a majority judgment of the full bench of the Kerala High Court with Mr Justice Mathew, now in the Supreme Court, dissenting and its confirmation by the Supreme Court that the matter was sufficiently focussed before the public eye that the term "contempt of courts needs to be defined In that particular case, Sir, a former Chief Minister of Kerala had bitterly very bitterly, criticised the judicial system that was in existence in this country and the role the judges appointed by nomination had played and were playing and had attempted to make a comparison with what prevailed in the Soviet Russia and in some other countries in the world, based on what he termed, Sir as the Marxist philosophy of the role of the judicial courts In the decision of the Supreme Court, the then Chief Justice of the Supreme Court had attempted to correct the Marxist leader as to what exactly, in that hon Judge's view, the Marxist philosophy was Whatever that be, Sir, such a criticism is possibly now outside the purview of contempt of court by virtue of the definition now contained in this Bill

Sir, I have often wondered whether contempt of courts need not after all be punishable under the ordinary law of defamation I am not trying to pose a particular view But, Sir, I am only asking why, if there is no contempt of the executive wing of the Government except through the law of defamation, there should be a special provision for contempt of the legislatures and Parliament on the one side and contempt of courts on the other I find, Sir, in one of the dissenting notes appended to the report of the Select Committee, this aspect was touched rather in detail But I do not want to enter into this controversy at present, in view of the fact that the hon Law Minister stated that our High Courts and the Supreme Court are courts of records by virtue of the definition contained in the clauses of the Constitution. And therefore there is an inherent power—may be borrowed from the English judicial system—by virtue of the very large definition of the term "court of record" for punishing contempt of court And if that power is there, certainly, Sir, the 'contempt of court' should be defined by the statute

Dealing with some of the amendments that the hon Law Minister proposed to move, it was stated in the beginning itself that these amendments are thought necessary in view of the constitutional provisions I take that cue from that, and pose to the hon Law Minister as to whether the definition of 'contempt of court' itself contained in this Bill is not likely to be struck down by the High Courts and the Supreme Court, in view of the fact that the High Courts and the Supreme Courts are 'courts of records' and, therefore, as courts of records enshrined by the words of the Constitution, the provisions in regard to definition of 'contempt of court' may constitute an inroad into those powers, so long as the words of the Constitution are not amended

May I, therefore, very seriously suggest to the hon Law Minister, in consonance with the views already expressed by the hon Member who followed my learned friend, Prof Ruthnaswamy, that it is necessary to think in terms of amending the Constitution itself I say this particularly because of one other reason also

The hon Law Minister was pleased to state that left to himself he would not like to move some of these amendments, for he would prefer to agree with what had been suggested by the select committee, particularly in regard to the criminal proceedings being not only pending but also being imminent in so far as contempt of court charge is concerned I submit, Sir, that although this House should have greater say at the time when these amendments are moved, it is really necessary to consider particularly this amendment relating to criminal proceedings on a different basis than civil proceedings, in so far as civil proceedings would be treated as pending for the purposes of contempt of court, whether criminal proceedings which are imminent also and against which there may be certain words expressed, may turn out to be contempt of court, whether that difference now sought to be made in this amendment proposed to be moved, would not altogether be got rid of by an amendment of the Constitution

Sir, we need not fear amendment of the Constitution There are persons who express in this country that a large numbers of amendments have been moved during the years gone by and that we are attempting too much of constitutional amendments That is not at all correct In spite of the fact that economic

conditions and political conditions in this country have changed to a very large extent during the past two decades, we have not amended the Constitution to the extent that is necessary It is the stark reality that we have to face The hon Dr B R Ambedkar and the hon Jawaharlal Nehru, the then Prime Minister, moving Article 368 as it stands as a draft Article at that time with a different number had said that the Constitution was flexible and the Constitution had been deliberately kept flexible so that there could be amendments to the Constitution and the Constitution might be brought in consonance with the changes that are necessary for both administration, legislation, and the other wing of the Constitution, the performance of judicial functions I would submit therefore, Sir, that, instead of amending the Select Committee Report, instead of if I may say so, putting a bad law just for purposes of putting the legislation in tune with a bad provision in the Constitution, is it not necessary that we think of enacting a good law as contained in the Select Committee Report and make the Constitution in tune with the good law ?

Then, Sir, the amendments that are proposed to be moved are of a very vital nature and, if I may say so, considerations of propriety demand that, if such amendments are really to be pressed, even after the discussion that we would have had and the hon Minister would have replied, if the hon Minister was still to feel that these amendments have to be pursued, I would particularly suggest to the hon. Minister to reconsider the entire issue and consider whether this Bill, as reported by the Select Committee, should not go back to the Select Committee to reconsider these aspects that the hon Minister is now putting forward

Sir, three other aspects more, and I shall be done with it. I shall deal with a small aspect

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) When the House is seized of the situation why should it go back to the Select Committee ?

SHRI A D MANI You can move an amendment to that effect

SHRI K CHANDRASEKHARAN I know all those technical procedures but certainly, when we are having a general discussion at this consideration stage, I think it relevant and proper, Sir to submit this, and I am not elaborating upon that aspect with more words than what I have already spoken

Now, Sir, this Bill, as per its Clause 1, is not to apply to the State of Jammu and Kashmir I have yet to learn from the hon Minister, as to whether there is any particular reason, as to whether there is any law on the subject already in Jammu and Kashmir and whether that is the reason why it is not being extended Sir it was just an hour or so back that we extended the Prevention of Food Adulteration Act by a small amendment, to the State of Jammu and Kashmir As you know, Sir, every time we meet, there are at least one or two legislations by way of Amending Bills merely for the purpose of extending the parent enactments to Jammu and Kashmir I do not know why at this stage itself this Bill should not be extended to the State of Jammu and Kashmir

Sir, another very vital thing that I want to impress on this House is that the distinctions that were sought to be made in regard to contempt of court made by a publication in the press, that were very much there in the original Bill that was introduced in this House, were to a large extent modified and reduced by the work of the Select Committee The amendments now being moved by the hon. Minister would create difficulties so far as press publications are concerned In respect of an impending criminal proceeding a person in the locality or a person who is concerned with it would certainly know about it And knowledge can be imputed to him that he had stated so knowing full well that the matter will be brought into court the next day or the coming week But if he is a very important person—a political leader—and he says that in the course of the public speech in a particular locality and that is taken by the press for publication, the press, so far as it is concerned, —the working journalists, I mean the correspondent who reports, much less the journalist in charge who edits the same and practically publishes the same—had no knowledge of that and yet, the provisions would make the press liable for contempt of court for publication of a matter which is a criminal matter and which is likely to come to court so that it would be called an imminently impending criminal proceeding May I submit that this difficulty that would be caused to the press should be removed ?

I find from the Select Committee's Report that one of the witnesses that had been examined by the Select Committee was Mr. Karanjia

[Shri K. Chandrasekharan.]

Editor of the Blitz. I think the largest number of contempt of court cases had been charged against Mr. Karanjia, and in the Kerala High Court I myself had, once or twice, the opportunity to defend Mr. Karanjia in contempt of court cases in regard to publications that appeared in the Blitz and I personally found it rather difficult in view of the case law that existed and in view of his previous convictions, to defend him and get him out.

SHRI PITAMBER DAS : You could not get concessions for old customers !

SHRI K. CHANDRASEKHARAN : And it was only on account of the fact that the learned Judges were prepared at some stage or other, to accept an apology that was tendered that even Mr. Karanjia could get out without a sentence of imprisonment being imposed upon him. I heard the hon. Member, Mr. Mani, at the lunch table this noon saying that he too had been involved in a number of contempt of court cases.

SHRI A. D. MANI : Three or four times.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : Is it only in contempt of court cases or other cases also ?

SHRI K. CHANDRASEKHARAN : Contempt of court cases in regard to publications made in the Hitavada of which he is the Managing Editor.

These publications in the press, particularly in the form of statements made by political leaders and about murders and arson and other offences of a criminal nature on account of political difficulties and on account of political reasons are on the increase, and these are likely to be publicised. And for each item of publication if the press is to be drawn into cases of contempt of court, it will be a very bad thing so far as the fourth estate is concerned. I would therefore suggest to the hon. Law Minister to consider this aspect of the case; I have no doubt that he must have considered these aspects of the case also because these aspects are highlighted largely in the amendments made by the Select Committee and in the dissenting notes attached to the Select Committee Report.

Then, Sir, another thing that I would like to highlight is the necessity to put in the word "wilful" so far as the Contempt of Courts Bill is concerned. Many stray words are spoken many stray things are written, and I should think that from the very point of view of the sanctity of the courts as such, such minor things should not be contempt of court. I would, therefore, very seriously suggest that only wilful contempt of court should be made punishable under the law. Lastly, Sir, with regard to the sentences, I would like to say a few words. The punishment clause provides for imposing the sentence for imprisonment. The sentence of imprisonment according to me should not be imposed in the case of first offenders and the discretion to impose a sentence of imprisonment, not a mandatory sentence of imprisonment, may be in respect of only persons who commit repeated offences. I submit, Sir, that these might kindly be considered at the time when further provisions of the Bill and further stages of the Bill are gone into by this august House. Thank you.

SHRI K.P. MALLIKARJUNUDU (Andhra Pradesh) : Mr. Vice-Chairman, Sir, I welcome this measure and I congratulate the Law Minister for bringing forward this measure. Sir, you know the concept of 'Contempt of Court' owes its origin to the common law of England. According to the common law of England, there are Courts of Record which are vested with the power of punishing persons for contempt of court. It is stated that Courts of Record are the courts where permanent records are to be maintained, and these Courts are given the power of punishing for the contempt of court. I should think that it is a good legal principle which would help in the administration of justice. While we are living in a free world and we value freedom of expression very much, it is necessary, in my opinion, to have reasonable restrictions on this freedom of expression. But at the same time, I know that while administering this law of freedom, surely many difficulties have to be surmounted. Therefore, before this Bill is brought forward, there was the contempt of law as adumbrated by courts of law. So far as I know, there are four enactments which mention about this contempt of court. One is the Constitution of India. The second is the Contempt of Court Act passed in the year 1952. The third is the Criminal Procedure Code and the fourth is the Indian Penal Code. To my knowledge these are four enactments wherein we find something about the law of contempt of court and its procedure. Sir, as has already been stated, Articles 129 and 215 deal with Courts of Record. According to Article 129, the Supreme Court is a Court of Record while according to Article 215, High Courts are the

Courts of Record and by virtue of their being Courts of Record, they are given power explicitly by the Constitution to punish for the contempt of court Again there is the existing Act of 1952 which is so small that it contains nothing definite about the contempt of court No definition has been given there I think its definition is very necessary, otherwise the courts will be free to interpret the words 'contempt of court' as they like and in my opinion it is not fair that the courts should be given that power, because they are the institutions affected by this contempt of court I am glad that this has now been done in this Bill Sir, according to this Bill, the contempt is divided into two parts, *i e* Civil contempt and criminal contempt. That is the classification according to the nature of the contempt, but we find according to the procedure that there are two kinds of contempt.

There are contempts committed in the face of the courts and there are contempts committed outside the courts, the only difference being that the procedure in regard to the former class of cases is summary while the procedure in the other class of cases is not summary but regular Sir, in the Criminal Procedure Code we find sections 480 to 487 They deal with cases of contempts of court which are committed in the presence of the court and the law provides for a summary disposal of those cases But in other cases where they constitute an offence under the Indian Penal Code sections 175, 178, 179, 180 and 228 and Chapters X and XI they are triable by a court of law, they are not subject to this summary procedure at all So this Bill enunciates these two classifications of contempt, namely, criminal contempt and civil contempt on the one hand and the contempt committed in the view of the courts and contempt committed outside. I am glad this has been done, this is an acceptable classification

Then I have certain doubts For example there is the clause 13 which I think is redundant and superfluous I should think it is enough if these words are included in the definition itself While clause 2 defines what is contempt of court clause 13 says that certain contempts are not punishable by saying that it is only punishable when it substantially interferes or tends substantially to interfere with the due course of justice I would ask the Law Minister if it is not enough if this is emmbodied in the definition itself Suppose in sub-clause (c) (iii) of clause 2 we say substantially interferes or tends substantially to interfere with due course of justice then this clause 13 becomes superfluous and I think our purpose will be served Why should you define centempt and make it an offence and at the same time say in another section that in certain circumstances it is not punishable ? Is it not better to include these words in the definition itself and remove clause 13 ?

I found one thing while I read through the provisions of this Bill I do not know how far it is proper but I saw in the English law that not only contempt of courts but contempt of Judges is also punishable That is omitted in this Bill Is it necessary or not ? That is a question which according to me, should be considered by the House Is it enough if contempt of court is made punishable ? Suppose it is not contempt of court, but it is contempt of the Judge Does it really interfere with the course of justice ?

4 P M

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) In relation to the case

SHRI K P MALLIKARJUNUDU In relation to the case It is not a case where the court as such comes under contempt It is a case where the Judge, acting in a court of law, comes under contempt That is why in the English law there is a provision for these two types of contempt, *viz* ,contempt against Judges and contempt against courts I request the hon Minister to examine this question and see whether it is necessary to make this distinction and whether it is conducive to the proper administration of justice or not With these few words, I would like to support the Bill The law of contempt is long overdue and I congratulate the Law Minister for having brought forward this measure even at this late hour.

SHRI BHUPESH GUPTA Mr Vice-Chairman, Sir, we are very happy that at long last, with the co-operation of the Minister of State for Parliamentary Affairs, we are in a position to undertake passing of this measure which was left in cold storage for quite some time now There has been always hesitation on the part of the authorities to revise drastically the law of contempt of court, even though the press and the public have been demanding such radical changes in the law as it obtains now. Now, we have got a Bill which certainly marks, if I may say so, some improvement on the existing law. I wish it were much better than what it is today, but this is all that we could do due to hesitancy in the Joint Committee on the part of some people who are congenitally

[Shri Bhupesh Gupta.]

conservative in measures like this I start with what we on behalf of two or three parties, have said in the Minute of Dissent I will read out :—

"In the course of the deliberation of the Select Committee we came up against the wall of stiff bureaucratic resistance to any radical change in the original Bill. It was a hard job for many of us to make the bureaucrats including the Legislative counsel see our points in favour of such changes Somehow or the other they could not bring themselves to understand what was happening in public life outside or even in the minds of many members of the Joint Select Committee. Here was an exhibition of reactive commitment Our work would have been easier and better accomplished if the officials had fallen in line with the thinking of the majority of the Members of the Committee, who had to put up a stiff fight and had to win every inch of the ground. The experience has all the more convinced us that top bureaucrats must not be allowed to influence deliberations in a Select Committee in the name of giving "expert" opinion etc

We must also add a word of our profound appreciation to the evidence given before the Joint Select Committee by several eminent jurists and journalists as well as the representatives of the Working Journalists Federation."

I mention this because it has some practical impact In the Joint Select Committee what we decide is the principle, what we decide is the policy underlying the legislative measure The officials who come there should help us in implementing the decisions and the policies rather than trying to sell their own out-moded, moribund and conservative views to hinder advancement and progress I think the Ministers in particular should in future be careful to ensure that in the Select Committee it is none of the business of the officials to influenec the policy decisions. Certainly, if we go wrong on technical questions, they should help us and that help will be certainly welcome, and we would like to have their help on that because they understand technical things better than we do perhaps in some matters. But we should not countenance a situation when in the name of giving advice to the Minister or the Select Committee Officers are not members of the Select Committee—there is an attempt to push their wares, their stock That should not be done. Sir, I say this thing especially because I am speaking about a matter now sponsored by the Law Ministry I have personal regard for the Law Minister, I have nothing against him Therefore, he should not take it amiss. I was a little shocked when I learned that the Secretary of the Law Ministry of the Government of India went to Chandigarh to address a seminar in which he made a speech against part (c) of the Constitution (25th Amendment) Bill That was very improper for him to have done

SHRI A D MANI Who was he ?

SHRI BHUPESH GUPTA : Mr Gae.

It was reported in the Tribune dated the 8th November, 1971. According to our report, such matter has been brought to the notice of the Law Minister himself by some people. Anyway, I need not read, it, it will take time. What he said was-"without the constitutional validity, all these provisions"—Which I have referred to. Although the Bill has been sponsored by the Ministry, if such things were to be said, let them be said on the floor of the House. When Parliament is considering the Bill, is it permissible and open to the Law Secretary to go and address a seminar and then say, " . without the constitutional validity . ", that "the matter was under consideration and changes might take place". Is it permissible, I should like to know. This should be made very clear If that is so, then every Secretary can go. When we are discussing matters here, concurrently they can give expression and address people at seminars or even issue public statements saying that certain measures under the consideration of Parliament are not likely to be upheld by the Supreme Court or are not valied according to the Constitution and so on Strange things are happening. Nobody pulls him up. And the same Law Secretary, Mr. Gae, publicly expressed opinion against the nationalisation of the sugar industry. He said that, although he knew that the members of the ruling party were pressing for the nationalisation of the sugar industry, although a decision had been taken. Even so he, gave opinion that the nationalisation of the sugar industry would not be right, would be wrong in law and would violate the Constitution. That matter was referred to the Attorney-General later and the Attorney-General gave the opinion, "No Parliament is competent to nationalise the sugar industry "

I am saying this thing not because I have got any personal grudge against this gentleman, I do not know him personally anyway But if parliamentary principles are to be upheld then your Secretary should not make such kinds of speeches, which amounts to canvassing opinion against the accepted policy of the Government, against a Bill of the Government which is before the House. I should like to know what steps the Law Minister is taking I do not know whether there is contempt of the Law Minister. If there was a law of contempt of the Law Minister, then your Law Secretary was guilty of committing that contempt of the Law Minister at Chandigarh when he questioned the Legal wisdom and the decision of the Law Minister who had introduced in the other House the Constitution (25th Amendment) Bill

So, Sir, this matter should be looked into.

As far as the Bill is concerned, as I said, by and large we support it. But some observations I should like to make in this connection We want a break with the past. At the time of the Non-co-operation Movement Shri Motilal Nehru appeared in a contempt of court case. I think he appeared in the Calcutta High Court at that time He said, "My Lord,—Judges were addressed as My Lord Even now they are addressed as such—prestige of the court is one thing and the vanity of the Judges is another We respect the prestige." One Judge said "No, where the prestige of the court ends the vanity of the Judge begins." Now at least some remedy has been proposed here in this Bill. The British developed this system of contempt of court in the name of administration of justice in order to equip the court to oppress the people No wonder it was the greatest offence No wonder even Mahatma Gandhi was punished for contempt of court Many eminent men in our public life were held up under this Act Shri Bal Gangadhar Tilak and others had to bear the brunt of this heinous law, namely the Contempt of Court. This is something which was borrowed from England by the British with a view to carrying on their colonial rule, oppression, intimidation of the public and the prostitution of justice That was done. And yet 25 years after independence we have to bear with the legacy of the British rule. Why should we have such a thing? Why should we do not away with such a thing, this kind of Law? I cannot understand They developed the thesis of scandalising the court who could scandalise the court? Anything that emanated as a result of criticism of the court As I said, the questioning of the wisdom of the court even in certain matters was taken up as an act of scandalising the court and punishable under the guise of the offence under the Contempt of Court Act. That is what happened Yet, we know the Judges who sat on the Benches at that time were themselves the greatest criminals in many respects They had no respect for our culture. They had no respect for the dignity of the nation They had no respect for the honour of our people. They had no respect whatsoever for the urges and aspirations of a people held under subjugation by brutal terror of a monstrous, imperialist regime. Yet these were the people who developed the edifice of what has come to be known as the law of contempt in this country This should be demolished. If ever were a buldozer required to destroy a system of pernicious, heinous law, that should be the bull dozer to be used against that atrocious and outregeous system of law of contempt created by an element which ruled our country for two centuries to our utter shame and dishonour. It should have been demolished by a more drastic measure than what we have got today.

You talk of radicalism and yet you bring halting measures. Sir, it is bound to be so. Mr. Gokhale, as a jurist, knows his subject. He has been a Judge. Whether it was a right decision or a wrong decision in his life, I cannot say, but at the other end of the life, well, he has chosen to be a Minister of the Congress Government.

I presum that salvation is sought in the Ministry of the Congress Government rather than in the portals of the High Court or the Supreme Court. Anyway, Mr. Gokhale should know things better. I need not tell him about the origin of the law of contempt in our country. So, Sir, it should go. Why should the judges not be criticised? Are they angels? Why should they not be subject to criticism? I can criticise the President of India as I like. I can criticise the Vice-President of India I can criticise, of course, very easily the Vice-Chairman of the House. But I cannot easily criticise any judge, without having the fear of the spectre of the law of contempt of court. Yet, some of the judges deserve to be strongly criticised and kept under surveillance all the time. That is not interference with justice. That is promotion of justice. To uphold the ethics of the judges by public vigilance and public criticism should be regarded in any

[Shri Bhupesh Gupta]

dynamic society not as something amounting to contempt of court but as something amounting to fostering the courts of the land to healthy life and developing them in a better way. That is how it should be viewed The judges can do anything they like They can use any languages they like They can behave in any manner they like But we cannot say anything about them They are above the reach of the common, even Members of Parliament or for that matter, even the Prime Minister of the country Why should it be so? I stand for the independence of judiciary But independence of judiciary should not amount to corruption in the judicial system, conservatism in the judicial system hindrance in the judicial system that obstruct social progress Independence of judiciary should not mean licence to flout the opinion of the nation, the will of the nation as has been done in some cases recently, even in the Supreme Court of the country, which necessitated amendments to the Constitution of the country. Independence of judiciary should not mean the serving of the vested interests and the monopoly capital and listening to the arguments only of the highly paid lawyers, Palkhiwala and the like Independence of judiciary should imply a batter, comprehensive human understanding of what is going on in our social life, what the worries are of the common man, the man in the street the man in the hovel the man in the slum, the man in the gutter, the man who is hungry and starving You should understand their anxieties and sorrow. But you exercise your independence in a manner prejudicial to the bulk of the community, in the interest of a small number of people. That is what you have been doing Yet, if I challenge this thing, I am supposed to be guilty of committing contempt of court Please do not ring the bell But our judges after retirement become directors of so many companies A Chief Justice of the Supreme Court after retirement became a director of so many companies That is not contempt of court . (*Time-bell rings*)

SHRI A P CHATTERJEE (West Bengal) . He has asked you not to ring the bell

SHRI BHUPESH GUPTA Kindly do not ring the bell, What is the use of ringing the bell ? You should do what will be respected properly

Now, Chief Justice B P Sinha after retirement, became a director of so many companies I am shocked when I see a former Chief Justice of the Supreme Court going from a meeting of one board of directors to a meeting of another board of directors.

SHRI K P SUBRAMANIA MENON (Kerala) He was place-man of the Tatas.

SHRI BHUPESH GUPTA Anyway,, this is what is happening Is it not contempt of court? Are you not putting the courts into disrepute by conduct of this kind? But it is permitted Under our bourgeois system, under the capitalist system of law, it is permitted A judge can do anything after his retirement Yet, if I say, "According to our information, this judge is going to be a director of, say, the Birla Company" two days before his retirement or one day before his retirement I commit contempt of court.

And he does not commit anything Where is the remedy? So, I say this thing has to be modified Judges should be subject to criticism My friend Shri Gokhale is asking, How can you bind them? We can bind them. Parliament can determine what shall be the powers of the Judges Kindly refer to article 215 of the Constitution Do not be frightened by the Constitution We in Parliament have power to amend it Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself Well, define 'contempt'. This Consititutional provision does not say that the law should be what he thinks. Parliament can say what constitutes contempt even in respect of 215 and bind the hands of the Judges so that they cannot have their own way I know that in some cases the judges want to hold up people for contempt if the accused look at them angrily That should not be the case. Therefore, we can settle this question If Shri Gokhale thinks that there is some Constitutional difficulty, I want to tell him that he has the power, only he should have the mind You can change it. There is no difficulty whatsoever.

Now I shall give you some of my experiences. You know the famous Blitz case in the Nagpur High Court The man who convicted the editor of Blitz was himself acting as the lawyer of the person who brought the case in another context before he came to the Bench Such things are happening

About my own case I may tell you I am also an editor of a paper In that sense I am a journalist of sort

SHRI A D MANI I have also suffered

SHRI BHUPESH GUPTA There is no sensible editor who has not come under the contempt of court beginning from Bala Gangadhar Tilak .

SHRI A D MANI And ending with A D Mani !

SHRI BHUPESH GUPTA So, I am an editor of a paper which is our Party organ You are a reader of that paper I know

AN HON MEMBER How do you know that ?

SHRI BHUPESH GUPTA There a caption an innocent caption was given about a court case

SHRI PITAMBER DAS : Parliament should not be made a forum for advertising any paper

SHRI BHUPESH GUPTA If I mention that paper, my fear is that you will speak against the paper and my paper will not sell So, I am taking a risk Still I say that a caption was there. It was nothing You know our reporter takes it down, not in shorthand Then he gives a report It was nothing But a hullabaloo was raised Shri Chagla was engaged by them I told Shri Chagla "You are paid Rs 10,000 If you are prepared to share it with me, I can commit contempt every day, I have no objection" Rs 3,000 per day was paid to him That too in connection with a caption, just to challenge that caption in a court of law Shri Chagla was mobilised by those people And the case went on We know where the money was coming from Actually, the income of the person who started the case against was Rs 1,500 Where did he get Rs 3,000 to pay to the lawyer every day? It remains a mystery But it is not a mystery Everybody knew that the money was coming from the American Embassy It was known in the Supreme Court American Embassy retained lawyers in the Supreme Court for conducting a particular case against me They did it There are many other instances Shri Namboodiripad made certain remarks about courts You can discuss it ideologically or politically, if you like And, Sir, it became a contempt of the court Why can't I criticise the bourgeoisie system? Why can't I criticise the class system ? Why can't I criticise the system that is serving the class interests, the interests of the big monopolists, the exploiting class? Why should I, on that account, be held responsible on a charge of contempt of court? I cannot understand this, Sir Therefore, Sir, I say that this law needs drastic changes In fact, our judges should be subjected to criticism In this connection I would like to have Parliament's jurisdiction, only Parliament's jurisdiction, not executive jurisdiction, extended in this respect, because the courts should not be above the will of the people Therefore, Sir I say that the hon Minister should consider the suggestion of mine It may sound a little radical It is this that the judges should be appointed on the basis of a panel approved by Parliament Out of that panel the judges should be appointed by the President.

THE VICE CHAIRMAN (SHRI AKBAR ALI KHAN) Then, in that case, party considerations will arise

SHRI BHUPESH GUPTA Even now it comes Even now party considerations arise. I will tell you what happens Now, there is the Chief Minister's recommendation

SHRI K CHANDRASEKHARAN Sir, with your permission, may I ask him one question? A Minister is a party politician But the Moment he begins to function as a Minister, he is above party politics and he crosses the line of party politics

SHRI BHUPESH GUPTA Sir, since this question has been raised I will tell you how judges are now being appointed They are appointed on the recommendation of the High Court Chief Justice, the Home Ministry the Home Minister etc and the Home Minister is the key figure here Sir, I told you that instance which I will never forget in life I will not tell his name because I do not want to harm him Sir, one day I went to Shri Pant's house You know, Sir, he was very affectionate towards me and so, he asked me to sit by his side.

SOME HON MEMBERS Which Pant ?

SHRI BHUPESH GUPTA Shri Govind Ballabh Pant He asked me to sit by his side Being a huge figure himself he used to lie in a huge sofa like this and he asked me to sit by him and discuss. Suddenly a gentleman appeared in the room

SHRI A P CHATTERJEE . Where did you sit ? On his head or at his feet?

SHRI BHUPESH GUPTA I do not know where I sat Surely I did not sit on his head and I do not sit on the head of a person, such an elderly person like him. That may be the Marxist way of treating people. Anyway, Sir, I will come to the point Suddenly, there appeared a person in the room and he started talking to him after touching his feet.

SHRI PITAMBER DAS . Probably out of respect

SHRI BHUPESH GUPTA Out of respect or something else or whatever it is. I then came to know that he was a judge from a High Court I asked Pantji who he was He told me that he was from such and such a High Court. Now, Sir, there was a saying at that time Now, my friend, Shri Mahavir Tyagi, is not here. He used to tell that there was a person whom he called the "touch feeter", who used to touch Pantji's feet-that is Tyagiji's English It is his own English. For example, once Netaji said, "You cannot have the cheek in the tongue." It is just like that Anyway, Sir, the question is one of canvassing for appointment and everybody knows that the Chief Ministers and the Union Home Ministers are very important figures in this respect Therefore, if you bring in Parliament when the panel is discussed, we shall say what we feel about each man .

SHRI A D MANI Sir, I want to put a question to him Would you like, Mr Bhupesh Gupta when the panel is framed to take the recommendations of the Chief Justice? Sir, Mr Bhupesh Gupta is a very good politician and he is a great speaker But he need be a great jurist How do you know who is a jurist and who is a lawyer?

SHRI A P CHATTERJEE Sir, Mr Mani should know that every judge need not be a great lawyer. (*Interruptions*)

SHRI BHUPESH GUPTA A judge should be knowledgeable But do I need to be a jurist to understad that so and so is a good judge? Besides, consult your Surpeme Court judges, if you like Bring in a panel of names here We shall discuss it We shall go into the merits and demerits of each case , and go into the question which of the judges is connected with big business, matrimonially connected or otherwise. So, Sir, I am making this suggestion It should be considered

When it comes to the amendments, my first suggestion will be that apology should be accepted, whether it is qualified or unqualified It is not as if you are asking tooth for tooth If a person has committed an offence but he apologizes, the matter should end there should not be any imprisonment maximum Rs 500, and nothing more.

SHRI PITAMBER DAS I would like to know from Mr Bhupesh Gupta · If the apology is more contemptuous than the contempt, even then has it also got to be accepted?

SHRI BHUPESH GUPTA Well, Sir, then it is not an apology. Suppose my friend asks me to apologize, I have called him some name Suppose I apologize to him, saying, 'You are not only that but you are other things also, but if you are hurt I will apologize,' surely that is not apology, But let us not take absurd examples Some people feel that they have done something wrong inadvertantly and they say that they did not intend to do that, and they give some reasons for that, and add that if still it is maintained as contempt of court they apologize, that should be accepted

Sir, we find that in the case of civil contempt there is the expression 'wilful disobedience', but in the case of criminal centempt the word 'wilful' is deleted I think the word 'wilful' should be inserted here. Unless it is wilful it should not be brought within the scope of the offence

Finally, Sir, one does not know whether a case is imminent or not The whole area is thrown open for the judges to interpret. Therefore, Sir, I say that the amendment proposed by him should not be pressed He can discuss here I am ready to discuss it with him for finding some solution This also should be seriously considered

I also say that the judges should certainly be responsible for their actions. If they can punish the Prime Minister for contempt of court, a judge should also be liable to such punishment if in the name of running the court he is guilty of coutrageous behaviour and so on.

So these are some of the preliminary observations that I have made. I have much to say later in the course of the amendments, and

I do hope, Sir, the Bill will not deteriorate but improve as a result of the deliberations In fact, we do not need any law of contempt at all Our people do not need any law of contempt at all What we need is more criticism, more vigilance as far as the judiciary is concerned, by the public We should not discourage this thing by this kind of law But still if you must have the law, let us strike the best of the bargain and make the law as good as it can be Sir, it is absolutely unnecessary to have a law of contempt in this country

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) Mr Chatterjee

SHRI A P CHATTERJEE Sir I may begin by saying that our discussion of this Bill is really proceeding in what I call an unreal atmosphere, because what has been stated by the hon Law Minister, when he introduced the Bill, is that he is going to move certain amendments Now, if he really moves the amendments, what are those amendments actually? Unless we see them

SHRI H R GOKHALE We have circulated them

SHRI A P CHATTERJEE Anyway, Sir, the atmosphere may be real, not unreal Now, Sir, even in this real atmosphere I will make certain comments as far as this Bill as reported by the Select Committee is concerned Before I make certain general observations I will make some comments upon some of the Clauses which seem to be a little anomalous or rather unreasonable For example, Sir, I cannot but comment upon Clause 5 of the Bill. The hon the law Minister would say that Cause 5 says this

"A person shall not be guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided "

श्री नागेश्वर प्रसाद शाही (उत्तर प्रदेश) श्रीमन्, आन् ए पौइन्ट आफ आर्डर । बिल के ऊपर लगभग एक घटे से बहस चल रही है और अभी ससाधनो की प्रतिलिपि हम लोगो मे बाटी जा रही है, आपके सामने बट रही है। यह तमाशा कब तक चलेगा ?

उपसभाध्यक्ष (श्री अकबर अली खान) वह कायदे के तहत हो सकता है तो होगा वरना नही ।

श्री नागेश्वर प्रसाद शाही आपकी रूलिंग क्या है ? क्या यह कायदे के तहत मे है ?

श्री जगदीश प्रसाद माथुर आपने इजाजत दी है क्या ?

श्री नागेश्वर प्रसाद शाही विधेयक पर विचार जब समाप्त होने जा रहा है तब आप प्रतिलिपि बटवा रहे है ।

श्री जगदीश प्रसाद माथुर आपने इजाजत दी कि नही ।

THE VICE CHAIRMAN (SHRI AKBAR ALI KHAN) The general practice is that up to the last minute, if there is something important, and the Chair and the House agree, it is distributed

श्री नागेश्वर प्रसाद शाही अब तो विचार समाप्त होने जा रहा है । आपको हाउस से पूछना चाहिए था ।

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) When the Minister opened the debate he mentioned the fact that he is putting in this amendment. You now continue, Mr. Chatterjee

SHRI A P CHATTERJEE Now, Sir, I was referring to Clause 5 of the Bill. Clause 5 of the Bill says that a person shall not be guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided Now, I do not know whether it is necessary at all in view of Clause 3, because Clause 3 says that the contempt will be on pending proceedings And pending proceedings have already been defined. Actually, what is meant by pending proceedings is already there in Clause 3 This is one of the structural defects of the Bill if I may call it so.

Then, Sir, there are certain other anomalies of the Bill which I think are more serious For example I do not find the definition of the

[Shri A P Chatterjee]

word 'court' I think that is absolutely necessary for this reason that there have arisen cases in the various High Courts I do not know whether in the Supreme Court this has come up or not but in the High Courts such cases have arisen wherein the question has been raised whether a particular Tribunal or a particular forum is a court or not and whether there is contempt of that Tribunal or not Now this has given rise to conflicting decisions also Now, if really we are wanting to codify the law of contempt then this also should have been made clear, namely, what is meant by 'court', what is the definition of the word 'court' I think that that has not been done here, and that is a very serious lacuna in my opinion I do not know whether the Law Minister will see that this lacuna is removed, or not

Next, Sir, I may also comment as far as clause 16 is concerned Now Clause 16 says that any judge, magistrate or other person shall also be liable for contempt of his own court Now, that is good so far as it goes But look at Clause 15 Clause 15 says that in the case of a criminal contempt, other than a contempt referred to in section 14, a certain procedure has to be followed in order to bring it to the attention of the court itself

Either the court can issue a rule for contempt on its own motion or on a motion by the Advocate General or the motion of any other person with the consent of the Advocate General The whole point is if a Judge, for example, commits contempt of his own court then what is the procedure ? How can it be brought to the notice of a court, and to which court? As far as clause 16 is concerned, though it says that judge or a magistrate can also be sued for contempt of his own court, no procedure is laid down I think that will create very great difficulties and serious anomalies

SHRI BHUPESH GUPTA Suppose, a magisterate commits an offence outside normally it does not go to a lower court It goes to some other court Supposing a judge or a magistrate commits a contempt of court, these things should be taken by the complainant to some other court

SHRI A P CHATTERJEE But as far as the magistrate or any subordinate judge is concerned the proceedings are usually taken to the High Court itself unless, of course, the magistrate or the lower subordinate judiciary decides under the particular provision of the IPC that it was committed in the face of the court Under the IPC the subordinate judiciary can proceed against that particular person, but if it is to be under the Contempt of Courts Act then, usually the magistrate or the subordinate judge refers it to the High Court for taking action under the Contempt of Courts Act as it then was But the question is, supposing a High Court Judge commits contempt of his own court, what shall we do? Clause 16 says it is contempt of court A court does not consits of the Judge alone, it consits of the Bench as well as the bar and the litigants A courts is a colloective body and a judge is only a part of that collective body If a High Court Judge commits a contempt of his own court, what shall be the procedure? It is not laid down I think it is a very serious lacuna as far as the Bill is concerned

Then I will also point out another thing in regard to clause 14, sub-clause (3) and (4) I think Mr Mohan Kumaramangalam, as he then was an advocate, gave evidence before this Committee and he strenuously argued, if I remember a right, that as far as the question of contempt of court is concerned, a person accused of contempt of court cannot be put on the same level as a criminal and, "if he is not on the same level as a criminal, then you cannot put it in this fashion that pending the determination of the charge the court may direct that the person charged with contempt of court shall be detained in such custody as it may specify Of course the proviso has been put in by the Select Committee perhaps after this evidence of Mr Mohan Kumaramangalam, that the court may discharge him after executing a bond with a surety, that is to say, on personal recognizance bond But then, why is it left to the discretion of the court? After all a person accused of contempt of court is not a criminal, he will not escape, he will not flee away from the country Is contempt of court such an offence that a person will flee away from the justice of the court ? A provision should have been made that if a person is charged under clause 14, the man concerned must be let out on bail

Now as far as sub-clause (3) of clause 3 is concerned, it says that

"A person shall not be guilty of contempt of court on the ground that he has distributed a publication ."

But then this benefit will not apply to a particular person if the publication is a book or a paper printed otherwise than in conformity with the Press and Registration of Books Act, 1968 or if it is a newspaper which is not in conformity with the rules contained in section 5 of the said Act I do not understand this kind of provision As a matter of fact, if a leaflet is issued and if it is written by an author, I do not understand what is meant by the words, "if it is not published in conformity with the rules contained in the Act." Well, then the person who writes that leaflet will not get the benefit of this sub-clause (3) of clause 3, even if he at the time of distribution of the leaflet had no reasonable grounds to believe that it contained or was likely to contain any such matter I think, this is an anomaly and the hon Law Minister will look into this

These are certain objections regarding individual clauses in the Bill, but my objection to the Bill is a little more fundamental My objection is this that for all these years we have been tried for contempt of court and the contempt which has been defined in this Bill, that definition does not go very far It is very vague and wide The definition itself is exactly on the same lines on which the courts have been awarding punishment for the contempt of courts For example look at the wording of clause 2(c)(ii)& (iii). It is mentioned

> "(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings, or
>
> (iii) interferes or tends to interfere with, or obstructs or tend to sobstruct, the administration of justice in any other manner"

Criminal contempt has been defined in this way I am saying this because actually that is the criterion on which the courts have been punishing a person for their supposed offences for contempt of court They are putting the contempt of court on this level and this difinition of contempt of court is so vague and wide that you can not any person whom you want to Sir, I need not point out or draw your attention to the statement made by Mr E M S Namboodripad on the question of the judiciary He also gave evidence before the Joint Select Committee and what he said is this in short that as far as the judiciary is concerned he thought that the judiciary or the judicial administration is an administration which has class bias. That is a brief summary of what he said He said that as far as judiciary is concerned, it is part of the State structure and the State structure itself reflects the class interests of a particular class and if it reflects the class interests of that class, then the judiciary also must be clearly with that bias So, Sir, if we put the same thing once again, then I think that this definition is no definition at all Rather it puts the old idea on a more solid base

In this connection, I may say that as far as this question is concerned, this question has been gone into by certain jurists and I can point out that if the Joint Select Committee or the persons who drafted the Bill had looked into the concept that was sought to be given to the words "contempt of court" by the jurists in England from which they are drawing inspiration, had they done so, at least they could have given a little better and concrete form to the definition I am reading from the book "Contempt of Court" by Oswald, at page 48—where it is said on the basis of the decision given in the case in *re* Bahama Islands that

> "General criticisms on the conduct of judge, not calculated to obstruct or interfere with the course of justice or the due administration of the law in any particular case, even though libellous, do not constitute a comtempt of court."

That was decided in England as early as 1893 Now, Sir, what I am saying is this That should have been the definition of contempt of court That should have been put in If it is a general criticism, may be a general criticism of the judicial administration itself, if it does not refer to the decision in any particular case if it does not concern any particular proceeding, then it will not be contempt of court as the House of Lords in England has decided Instead of that we find a definition which will put the entire thing again in the hands of the Judges The Supreme Court for example has punished and convicted Mr E M S Namboodripad for that particular statement which he made about the class character of the judiciary Therefore I say that this Contempt of Courts Bill is very defective and ineffective (*Time-bell rings*) Sir I am finishing I am not going to put up with this bell ringing any longer, it rather jars on my nerves The Law Minister was not here and therefore I am repeating it The House of Lords in 1883 in the case in *re* Bahama Islands—this is quoted by Oswald in his book Contempt of

[Shri A. P Chatterjee]

Court—has said "General criticisms on the conduct of a Judge not calculated to obstruct or interfere with the course of justice or the due administration of the law do not constitute contempt of court" I think that should have been the definition of contempt of court. That is to say, if a particular criticism does not refer to any particular proceeding pending in any court of law, if it does not refer to any particular case, if it does not affect any decision in a particular case between two parties, then it should not be regarded as contempt of court. You know the Supreme Court has considered as contempt of court even such a statement as that made by Mr Namboodiripad where he said that the judiciary as part of the State structure is biassed with class prejudice I think that kind of general criticism should have been kept out of contempt of court I would therefore appeal to the Law Minister to see that this is done He has brought in amendments and it does not prevent him from bringing other amendments too. In view of this decision of the House of Lords by which the Advocates of the Bar swear, general criticism on the conduct of a Judge without reference to any particular proceeding may be kept out of the mischief of contempt of court either in the Supreme Court or in the High Court.

SHRI A. D. MANI Sir, I would like to take 15 minutes and I would make only four points. I have had a good deal of experience of the Contempt of Courts Act

SHRI PITAMBER DAS : Shall we continue after Mr Mani's speech also ?

THE MINISTER OF STATE IN THE DEPARTMENT OF PARLIAMENTARY AFFAIRS AND IN THE MINISTRY OF SHIPPING AND TRANSPORT/ संसदीय कार्य विभाग तथा नौवहन और परिवहन मंत्रालय में राज्य मंत्री (SHRI OM MEHTA) Yes.

SHRI A. D. MANI . Sir, I myself have contributed two cases to the Contempt of Court case law. One is D. P. Mishra and A. D Mani *vs* Hawkins and Powell which is a celebrated case and another is the chookidan case in Rajwade vs A D. Mani I have also faced some prosecutions for contempt of court.

Sir, I welcome this Bill. But a large number of us do not know what is an offending matter. Here it says any matter which tends to interfere with or tends to obstruct. Now I would like the Law Minister to write to the Chief Justice of India and the Chief Justices of the various High Courts to make the judgments available for inspection of the members of the press because we are the people concerned about this matter I would like to mention that even in Nagpur High Court when he was High Court Judge there we had difficulty in getting access to judgments Unless we know what judgments have been delivered, how can we keep abreast of the decisions given by courts from time to time ?

The second point which I would like to make is that the Bill makes provision for accurate and fair reporting. Many of us can be correct. To be accurate means you must be literally accurate. That means that there must be a verbatim reproduction of the judgment, which is very difficult for a newspaperman to do I would like him to accept an amendment from this side of the House which has been moved by Mr. Bhupesh Gupta, namely, correct proceedings This can be understood, but not accurate proceedings

The third point I would like to make is that the hon. Minister, when he thinks about contempt of court, should also bear in mind how Judges behave in courts of law. I was present in the Supreme Court when Mr Setalvad was the Attorney-General many years ago One Judge told an advocate "Shut up your trap". I know the name also. Mr. Setalvad was there.

SHRI H R GOKHALE : Name

SHRI A D. MANI Mr Bhagawati said : "Shut up your trap". The lawyer said : "If this is your case. . ." Then, he said : "What do you mean by if this is your case ? You say I am prejudiced" The man was thrown out of court I would like to mention another case. Mr Gokhale was a Judge of the Nagpur High Court. At that time there was a Judge. One of the parties arrived late because he could not get a rickshaw to come over. He said that he was sorry. He said : "You are a cad." This was said in a court of law

SHRI H. R. GOKHALE : Why do you not tell his name ?

SHRI A. D. MANI . I would write to you. I do not want to scandalise the Judge here. I want you to take up the matter with the Chief Justice of Bombay. That man is known to be using such language to a large number of people and he has been continued for ten years. We must have some defence against Judges also. Sir, you yourself have been a lawyer. I was present when the Supreme Court was housed in this building. When a case was being argued, the Chief Justice, a very big man, a very eminent person—I do not want to mention his name-asked the Attorney-General : What case have you got ? Is that the way to talk to lawyers ? Is that the way to assure litigants that they are getting a fair deal ? These gentlemen are protected by the contempt of court law. We have also got to be protected against contempt by Judges We must also have some kind of law.

SHRI SHEEL BHADRA YAJEE (Bihar) : Chandni Chowk.

SHRI A. D. MANI : Somebody said This is not Chandni Chowk. I would very respectfully suggest to the hon. Minister to forward the proceedings to the Chief Justice Mr. Sikri and ask him to draw up a code of conduct for Judges. Judges are treating lawyers shabbily in courts of law and they say : You are wasting my time. That has been said many times—is it not ? When the case is being argued they say : You are wasting my time Is that the way to make a man feel that he is getting a fair deal ?

The fourth point I would like to make is that labour courts should also be excluded from the purview of this Bill. The labour courts have been called conciliation courts by one of the colleagues of Mr. Gokhale, Mr Justice Abhyankar. He does not call them labour courts, but calls them conciliation courts. In a labour Court lawyers are not allowed to appeal in order that there may be a dialogue between the employer and the employee, so that both of them can settle matters not by arguing points of law but by mutual understanding. I want the Minister to make a surprise visit to the labour courts, to see the intimacy with which employers' representatives and the workers' representatives meet the Judge in the Chamber before the court begins. Now, if this is the way in which the labour courts or conciliation courts work, there is full justification for excluding labour courts. In clause 21 Nyaya Panchayats and other village courts have been omitted

SHRI H R GOKHALE : There is a misapprehension I am sorry, I do not want to interrupt you. There are many forums which are called courts, but it is a well-established principle that every forum which is called a court is not a court.

5 P. M

A court may have all the trappings and paraphernalia of a court. In fact, a labour court has been held not to be a court. Therefore, for the purposes of contempt, a labour court will not be included even under the existing law

SHRI A D MANI : I want you to put it down because I will also give one other case of Nagpur.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) . He has conceded that

SHRI A D. MANI : I want to make it clear because if you want to keep the spirit of conciliation, you must specifically put it. You cannot apply it to a village court or a *Nyaya Panchayat* You have moved so many amendments. Remove the labour courts also because you bring in a formal.. .

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : You need not labour that point

SHRI A D MANI . He accepts that ? I am very happy, Sir, that he accepts

There is punishment of Rs 2000 fine which has been prescribed in the Bill which is totally unnecessary. The contempt of court law is to maintain the majesty of the courts of law We do not want the courts to be scandalised. We do not want to fleece money from the people for defying the judges. A conviction for contempt of court is in itself enough to lower him in the estimation of the public. When a judge has got the power to put me in custody and keep me imprisoned for one or two days, then it is sufficient punishment for me. I was surprised that Mr Bhupesh Gupta was asking for Rs 500 fine. I do not want Rs 500 fine

SHRI BHUPESH GUPTA : I said, not more than Rs. 500.

SHRI A. D. MANI : I do not want even Rs. 500. Even one day's imprisonment is a conviction, it is a stigma on me.

SHRI BHUPESH GUPTA : I do not want any contempt of court law at all.

SHRI A. D. MANI : The other point that I would like to make is this. I would like the hon. Minister to listen to this point too. I would like him to bear in mind that when contempt is committed in the presence of the court itself and this has been provided for in the Bill—and an aggrieved party wants it to be heard by some other judge and the court is satisfied that he has a case, you should give him an opportunity of his case being heard. But in that case, the judge must be examined as a witness. I do not want these written statements of judges to be considered as a part of evidence. When a judge behaves in a way which lowers the dignity of a court of law and one of the litigants files an application for contempt of court against him, he should come like an ordinary citizen. When the President of India was there for 17 or 18 hours and was cross-examined in the Supreme Court, how are these judges more supreme than the President ? (*Interruptions*) This is what they say on record. I want the Minister to tell us that here is no bar whatever to a judge being examined as a witness by the litigant. When a man is called 'cad' in a court of law and the other man denies it, that is not sufficient. He must put up as a witness and be asked whether he has said that. You must allow him to be examined. I want the British theory of the supremacy of the judiciary and the special esteem that the judiciary enjoys in the eyes of the public to remain. I do not want to revert to the American system where the people elect the judges. But the judges must also feel themselves as humble people. I was very happy to hear from the lips of Chief Justice, Mr. Hidayatullah, himself that when he was called to the court in that attempted stabbing case, the magistrate offered him a chair. He refused the chair. He said, "I have come as a witness. I will take my witness stand." I am not casting any reflection on other persons who are offered chair on account of old age or infirmities. But that as done by the Chief Justice. I would like the hon. Minister, therefore, to tell us, when replying to the debate, whether it is the intention of the Bill that where a judge is accused of contempt of court by his own behaviour, he will also be examined as a witness.(*Time-bell rings*).

Sir, finally I would conclude by saying that I do not agree with my friend, Mr. Arun Prakash Chatterjee, who is a lawyer of reputation in Calcutta, that the definition of contempt of court is unsatisfactory. It is very clear that when Judges are interfered with the due course of judicial proceedings and if a man goes on shouting or he goes on saying "What kind of a Judge you are and so on", it is scandalous. This is well understood. But how to bring it to that shape is very difficult to understand at this stage.

Sir, the judiciary is under attack in this country because of certain judgments delivered by the Supreme Court which do not respect the feelings of the people. I am sure the people also want to respect the Supreme Court. How the Supreme Court should be reformed is a different matter. But we should not encourage the politician to undermine the judiciary. That privilege belongs to the Members of Parliament to obstruct the proceedings of the House because we are representatives of the people; we are not lawyers or Judges. But we cannot give this privilege to people who appear in courts of law.

I, therefore, feel that this definition is very well drawn up.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : Thank you.

SHRI A. D. MANI : I would like to mention to the Minister that after a Bill has been reported by the Joint Select Committee I have never seen a sheaf of amendments being given by the Minister.

SHRI M. N. KAUL (Nominated) : To improve the Bill further.

SHRI K. CHANDRASEKHARAN : To improve it, but not to negative it.

SHRI A. D. MANI : The only thing is there are amendments which seek to water down the Joint Committee's recommendations. When the time of voting comes I would mention to the Minister that once the Joint Committee has exercised its wisdom, he should honour the report of the Committee in spirit and not bring amendments to the various clauses which water down the amendments.

SHRI BHUPESH GUPTA : I agree. Let them withdraw all the amendments.

SHRI A D. MANI I am not asking you. I am only asking him .

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) Minister

SHRI H R GOKHALE· Mr Vice-Chairman, Sir, since the time is very short I will begin my reply on Monday. Kindly allow me to complete it on Monday. There are various points made and some of them are important points .

SHRI BHUPESH GUPTA On a point of order. Therefore, the discussion is not concluded. Reply tomorrow because the Members have gone away.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) He has begun.

SHRI BHUPESH GUPTA : He has got up already If he could get up he can sit down also. Simple thing. All right if he wants to reply tomorrow, some Members would like to speak. They should be allowed to do so

SHRI OM MEHTA · They can speak in the third reading *(Interruption)*.

SHRI BHUPESH GUPTA : Now you cannot call him It is past Five

THE VICE CHAIRMAN (SHRI AKBAR ALI KHAN) He had already started by saying that as there are many points he would take time and therefore, he should be permitted to speak on Monday. I permitted him

SHRI BHUPESH GUPTA Mr. Vice-Chairman, he has not replied He just got up

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) All right If you want you can say a few words

SHRI BHUPESH GUPTA : No, I do not want. Then you take the permission of the House to sit longer It is already 5 o'clock The time is 6 o'clock from Monday, not from today. He has not said anything. He wanted your advice. You have given the right advice I fully sympathise with you; I fully sympathise with him Therefore, kindly say "The House stands adjourned till tomorrow." That is enough

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) · He has started his reply. .

SHRI BHUPESH GUPTA: On a point of order, Sir How has he started ? He has not started If he has started, let him continue.

SHRI K. CHANDRASEKHARAN · Let him continue and finish

SHRI BHUPESH GUPTA · If you have started, finish your speech You cannot have it both ways

(Interruption)

SHRI H R GOKHALE : I said I would complete my reply on Monday for one simple reason that many points, some of them of importance, have been made in the course of this debate—some of the important points have been made by Mr. Bhupesh Gupta himself—and I thought that if the reply has got to be a genuine reply, it would be proper that the Minister who replies should deal with all those points. Therefore, I suggested that I may complete my reply on Monday

SHRI BHUPESH GUPTA · That is why I also said that since he thinks my points to be important, his thought process should begin with my points .

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : He has paid you full compliments, that your points are so material that he would deal with them Now you better sit down

SHRI BHUPESH GUPTA · Compliments are all right, but if some people want to speak on Monday, why should they not be allowed ?

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) They can speak on amendments and in the third reading There is no worry about that.

SHRI BHUPESH GUPTA : All right. He has said he would consider this thing. I will see on Monday whether he has a constructive mind or a destructive mind.

SHRI H. R. GOKHALE : I said I will consider the important points.

SHRI OM MEHTA : Sir, he will complete his reply on Monday.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) : The Minister will complete his reply on Monday.

The House stands adjourned till 11 A. M. tomorrow.

The House then adjourned at thirteen minutes past five of the clock till eleven of the clock on Friday, the 19th November, 1971.

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