

[डा० भाई महावीर]

साथ यदि विचार किया जाता या दो मिनट भी उनकी तरफ ध्यान देने की कोशिश की जाती तो यह धरना उठ गया होता। उनको आश्वासन दिया जा सकता था। हुआ यह है कि उनके पे स्केल्स 180 रु० से 280 रु० तक हैं और दूसरे अध्यापक जिनके पे स्केल्स 160 रु० से लेकर 280 रु० तक थे उनके पे स्केल्स पिछले तीन वर्षों में तीन बार रिवाइज हो चुके हैं, लेकिन यह एक ऐसा उपेक्षित वर्ग है जिसका पे स्केल्स वहीं 180 रु० से लेकर 280 रु० तक पड़ा हुआ है। पहले दूसरे लोग इंडस्ट्रियल ट्रेनिंग इंस्ट्रुक्टर्स बनने की कोशिश करते थे। अब जो वहाँ पड़े हुये हैं वे अपना माथा ठोंकते हैं कि कहाँ बेकार में फँस गये। इतना ही नहीं, जब वे सर्विस के लिए कोई ट्रेनिंग ले रहे होते हैं तो उस समय उसके लिये कुछ अलाउंस की उनकी माँग है। उनकी पमर्निसी की माँग है कि उनको स्थायी किया जाये। जब कुछ इम्तहानों में इंविजिलेशन वे लोग करते हैं तो उसके लिये उनकी अलाउंस की माँग है। यह सब जगह दिया जाता है। इसमें उनकी कोई निराली माँग नहीं है। परन्तु पिछले 15 दिनों से सर्दी के बावजूद वहाँ की जो संस्थाएँ हैं, वे बन्द हैं और खाडिलकर साहब के दरवाजे पर न्याय की आशा ले कर वे लोग बैठे हुए हैं, लेकिन उनको न्याय नहीं मिल रहा है। वैसे खाडिलकर साहब ने उनके प्रति सहानुभूति प्रगट की है।

उनके एक डेपुटेशन की बात भी उन्होंने सुनी है, लेकिन वह कहते हैं कि हम क्या करें। फाइनेंस की तरफ से एक दीवार बाँध दी गयी है और वह हमें उसके आगे नहीं चलने देते। उन्होंने यह सुझाव दिया कि अभी और कुछ नहीं तो यह कर दीजिए कि जैसे दिल्ली के अध्यापकों को बंगला देश का सवाल हल होने के बाद डेफेंड पेमेंट पर पैसा दिया जायेगा उसी तरह से आश्वासन दे कर उनका मामला निपटा दिया जाये, लेकिन वह करना भी वित्त मंत्री ने स्वीकार नहीं किया। महोदय, मैं समझता हूँ कि अध्यापकों

और टेक्निकल अध्यापकों को इस तरह से मजबूर करना कि वे इस तरह की किसी प्रत्यक्ष कार्यवाही पर उतारू हों, यह हमारे लिए दुर्भाग्य की बात है, और फिर जब यह लोग इस तरह की कार्यवाही पर उतर आये हैं तो उनकी बात न सुनना और भी बड़ा दुर्भाग्य है। और हफ्तों ऐसे चलता रहे यह उचित नहीं होगा। वह कानून को अपने हाथों में लें यह स्थिति पैदा नहीं होने देनी चाहिए। इसलिए मैं आग्रह करूंगा सरकार से कि वह इस पर सुविचारित वक्तव्य दे।

श्री अकबर अली खान (आन्ध्र प्रदेश) : कानून को हाथ में लें इसको आप इन्करेज तो न कीजिए।

डा० भाई महावीर : कानून को वे अपने हाथ में लें इसको मैं इन्करेज नहीं करता, ऐसा मैंने कहा भी नहीं। मैंने कहा कि आप इसके लिए उनको इन्करेज न करें। आप शान्ति से उनकी बात सुन कर जो कुछ हो सकता है, उस को करने का आश्वासन उनको दें और मैं समझता हूँ कि हमारे मंत्री श्री ओम मेहता जी कुछ थोड़ा-सा ध्यान इस ओर दे सकें और वित्त मंत्री जी का ध्यान इस ओर दिला सकें तो वह सरकार तक यह बात पहुंचा सकेंगे और उनका धरना टलवाने का कुछ यत्न किया जायेगा। उनकी भूख हड़ताल 48-आवर्स रिले स्ट्राइक चल रही है, आते जाते लोग वहाँ रोके जाते हैं, इसको वे ठीक करवायें, इसी में सरकार की शोभा है।

THE CONTEMPT OF COURTS BILL, 1968—contd.

MR. DEPUTY CHAIRMAN : Yes, Mr. Gokhale.

THE MINISTER OF LAW AND JUSTICE/
विधि तथा न्याय मंत्री (SHRI H. R. GOKHALE) : Mr Deputy Chairman, Sir, the other day I had started my reply. But I could not complete it because the time of the day was over.

Sir, I have heard with attention and care

the comments of the hon. Members on the provisions of the Bill and, broadly speaking the comments can be divided into two parts. One is the comments pertaining to the provisions of the Bill as they are and the other related to the comments on the amendments which the Government intends to move at the appropriate time to the existing clauses of the Bill.

Sir, at the present stage, when I am replying to the motion for consideration, I would prefer to confine myself to the first part, because when the amendments will be moved and discussions will take place thereon I will have the opportunity to answer the points relating to the amendments and to save duplication of arguments with regard to the same question, I think, Sir, the House will agree that at this stage I reply to the broad points pertaining to the Bill which have been raised.

SHRI AKBAR ALI KHAN (Andhra Pradesh) That is the right procedure also.

SHRI H. R. GOKHALE : Sir, the impression which I gathered from the debate was that the scope and ambit and the real purpose of a law relating to contempt has been misunderstood to mean, as it were, that it is only for the protection of the judges. From the comments which were made, it appeared that the Members felt that it was really to protect the judges from a scandalous attack or a scurrilous attack that the Law of Contempt is made. That is not the correct position. The basic principle underlying the law relating to contempt is in addition to protecting a judge, to protect the accused, also, to protect the litigant, in a civil proceeding, because the idea is that while the trial in a criminal case is going on, if external and outside attacks are made, if comments are made, they are likely to interfere with the independent and impartial trial in the criminal proceedings and they are likely to affect the proceedings in a civil court also. Therefore, what must not be forgotten is that the idea is not only to protect the judges, but it is also to protect a citizen who has been either subjected to a criminal trial or who is a party to a civil proceeding. I am emphasising this, because the various provisions of the Bill are intended, from this major point of view, to show that when

something is being adjudicated in a court of law, if external comments, either oral or written, are allowed, they are bound to prejudice the effective handling of adjudication in a court of law.

Therefore, I think it is not fair to regard that this Bill is necessary only for the protection of judges. I do not wish to underestimate the need for protecting the judges also. It is considered that it is necessary to protect a judge who is in charge of the determination of the adjudication. If his mind is influenced by comments—and not necessarily all comments are fair, they can be fair and unfair both—to prevent unfair comments affecting the conduct of adjudication it is also to be taken care to see that the judge's mind is not affected. Therefore, there is no doubt about the object of protecting the judge is much as the object of protecting the accused. If a judge is scandalised, if he is attacked, if he is brought under a sort of mental terror that if he takes a particular view this is what is being said about him, it will no doubt hamper the independent exercise of his judgment either in a criminal trial or in a civil proceeding. Therefore while I agree that there might have been a few instances here and there where judges lost their sense of proportion in making remarks or in using their power in judicial capacity, such exceptions do not become a rule.

SHRI A. D. MANI (Madhya Pradesh) I would like the hon. Minister to forward the proceedings of this House to the Chief Justice of India. Let a code of conduct be drawn . . .

SHRI BHUPATI SHGUPTA (West Bengal) : In Punjab this was pointed before the Select Committee that very bad language was used by the judges against the lawyers . . .

SHRI H. R. GOKHALE I will answer that point.

SHRI A. D. MANI If you accept that proposition, kindly help us.

SHRI H. R. GOKHALE What I wish to say is that a code of conduct apart from being laid down by the Chief Justice, is laid down by judicial pronouncements themselves.

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The Supreme Court has repeatedly stated this in their judgments. In England, the foremost authority on this is Lord Denning

There cannot be a greater liberal judge in the matter of contempt. He has always laid down a code of conduct for judges . . .

SHRI BHUPESH GUPTA Let it apply to our judges also, who have no hesitation in becoming Bank Governors after retirement.

SHRI H. R. GOKHALE It is applied to our judges also. Our Supreme Court has . .

SHRI BHUPESH GUPTA But they do not bother. I have had this experience during these 15 years and I know how sometimes these judges or magistrates behave arrogantly. They treat lawyers as if they are people waiting on their pleasures and mercies . . .

MR. DEPUTY CHAIRMAN . Let there be no interruptions.

SHRI A. D. MANI He supports. If you also kindly support yourself.

MR. DEPUTY CHAIRMAN . There should be no interruptions.

SHRI A. D. MANI . What we want is that we want to be helped with the establishment of correct procedures in court of law.

This is a matter for the Chief Justice to decide. We have got experience. We sometimes find that lawyers are being abused by judges . . .

MR. DEPUTY CHAIRMAN No interruptions, please.

SHRI BHUPESH GUPTA Sir, it is said in the capital about you that you left legal profession because you did not like the behaviour of some of the judges . . .

(Interruptions)

SHRI H. R. GOKHALE . But, Sir, my complaint is that really the control of such behaviour should come from the organized bar. What has happened today? I have

been a member of the Bar for 30 years. I have got the guts to tell a judge that he is not within his right to say certain things. It is because sometimes we want certain things from the judge we become servile to him. It is unfortunate. Therefore, it is a two-sided affair, it is not a one-sided affair. I wish to make it clear—and I am again saying—that certain standard of judicial demeanour and judicial behaviour is expected of all judges. The code of conduct is already found in a number of cases decided—not only by Lord Denning, I only gave it as an instance—by the Indian High Courts and the Indian Supreme Court—and I was only pointing out to one instance where an Indian Judge of a subordinate court was himself found guilty of ‘contempt’ and punished for such behaviour. If authorities are required, I will show them. Therefore, it is not as if the present law is absolutely impervious to such a situation. It is always present to the mind of judicial thinking today that such instances may here and there occur. They do occur and they have always been looked down upon with great disfavour. But I think it is necessary that we must take a balanced view of the whole picture. You cannot judge the whole judiciary by the conduct of a few Judges. As regards that I think everyone agrees. While we do not want the Judges to behave this way—I entirely agree with that—we also want that, by and large, the judiciary as a whole should not be condemned for this purpose. Therefore, I was saying that, while it is necessary to protect the Judges from scandalous attacks—that is one object of the Bill, no doubt—that is not the sole and the more important object. The more important object is to protect the accused in a criminal trial and the litigant in a civil case because the whole object is this. While you publish something in writing or you speak something on the public platform or you do something in any other way to bring the trial under attack or under comments while the trial is in progress, what is affected is the adjudication itself and the effect on the purpose of the adjudication is more on the Judge if the mind of the Judge is terrorised by something said about him unduly. Of course a statement of truth can never amount to contempt for example, and it has always been held that if an allegation which can be established as truth is made, then no Judge can take recourse to immunity under the

law. If he likes, he can go to the court of law with charges of defamation against the person concerned and he would be like any other litigant in a trial for defamation. Therefore, what I am impressing on the Members now is to remember this. Let us not confine the objects of the Bill only to something which sort of creates a privileged class and wants to protect the Judges only. It is to protect the litigant and as much to protect the accused in a criminal trial that such extraneous criticism, while the trial is going on, should not be made, because it is something which is detrimental to the dispensation of justice. That is the basis of the law relating to contempt. Please do not look at it from this point that here is a Judge who wants his dignity and privilege to be maintained and that is the only purpose of a legislation of this type. Therefore I have incidentally mentioned all this. I will deal with it in detail later on.

SHRI BHUPESH GUPTA: The cause of the litigant and the cause of the criminal I can understand if it were so but, originally, when the law was evolved, there was the jury system—also in England there was the jury system—and the guiding concept behind this law was that nothing should be done to prejudice the mind of the jurors, and so on. It was not intended as if the Judge's mind could be influenced by a criticism in the paper, or a public criticism. The idea was to seek protection against attempt to influence the mind of the jurors. Now that we have given up more or less the jury system, why should you proceed on the assumption that the minds of the Judges can be influenced by a comment here and there in a newspaper, or by any public criticism?

SHRI H. R. GOKHALE: This is what the hon. Member had mentioned also in the course of his earlier remarks. But you cannot determine the scope and ambit of the law by its origin only because the fact remains that while the jury system has been abolished in many matters even in England and in fact in India much earlier the law relating to contempt has been made applicable as much to the Judge who determines, as to the jury. That is the basic idea relating to the law of contempt. And what is the idea? Why do you want not to

influence the juror? Because you want the juror to determine impassionately the matter which comes before him. That is the basic idea. Is it not as much basic that the Judge should do so? Therefore, the fact that jurors have gone—although not everywhere but in some places in respect of some matters—and the Judges have remained does not alter the basic concept of contempt. The basic contempt is, let the judiciary, while the trial is going on, determine a case without fear or favour. That is the basis, and the fact that the jury does not exist now is no reason, in my respectful answer to my hon. friend, to say that the basic reason for the law of contempt has gone away.

May I, incidentally, refer to some of the amendments, as I have said earlier that I will deal with the amendments later on? I have considered all the suggestions very carefully, and when the amendments will be moved I will deal with them later on. Many Members suggested that if the Constitution comes in the way, you amend the Constitution. It is an easy thing to say "You amend the Constitution". Not that we have not the power to amend the Constitution; we have the power to amend the Constitution.

My friend, Mr. Singh, who is a very experienced advocate, for example, in the course of his speech has said—and Mr. Bhupesh Gupta also suggested—that what is coming in your way is article 129 or article 265 and so, you amend the Constitution. But today the position is that we have legislation which this House is considering. Naturally, our anxiety today is to see that the legislation is within the framework of the Constitution as it is today. I am not suggesting that at a proper time and if strong and good reasons exist an amendment cannot be considered or should not be considered, but it is a very serious proposition because, when you say that courts of record are the High Court and the Supreme Court in India, and when you say as courts of record they have the power to punish for contempt, it is a constitutional provision made in all seriousness not because some handful of persons who are sitting in the judiciary were to be given the power to be used at their whim and at their discretion. For that there is the other control. But it is for the

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purpose that when you want an independent judiciary in a federal structure to function as an independent judiciary, it is necessary that you should import the principle that as a court of record it should be in a position to control the proceedings before itself so that an impartial adjudication can take place. Much wider considerations arise when you talk of amending the Constitution but, today at least, the question cannot arise because today, at any rate, we are considering a legislation which has got to be within the framework of the Constitution itself, as it is.

Then, it was also pointed out by the hon. Member, Mr. Jagdish Prasad Mathur, about the separation of the Judiciary and the Executive. With all respect, I do not know how it is pertinent to the legislation which is under consideration today. On the principle there is no difference of opinion at all, that there should be separation of the Judiciary and the Executive. In most places it has been achieved, either by legislation or by Executive orders, and I have no hesitation in saying that so far as the principle goes I am entirely in agreement with the hon. Member, Mr. Jagdish Prasad Mathur, that wherever it has not been completed it should be completed as early as possible.

Then it was Mr. Chandrasekharan, I believe, who pointed out that in clause 1 you say that the law relating to contempt is made applicable only to the Supreme Court so far as Jammu and Kashmir is concerned, and why not to the High Court. I can understand the argument; it is a rational argument. But today, again, we go to the Constitution, and we have got entry 14 in the Concurrent List of the Constitution. As everyone knows, the Concurrent List does not apply to Jammu and Kashmir. So long as that is the position, entry 14 is a matter in respect of which we cannot legislate today. Therefore, to the extent today we could legislate in relation to the Supreme Court, we have legislated. In respect of the High Courts, entry 14 is beyond the purview and the competence of Parliament as long as entry 14 is in the Concurrent List and, I am afraid, it is a matter which we cannot help at this stage.

Then, my friend, Mr. Mani, who has a long experience as journalist, has rightly pointed out some cases in which I think he himself was concerned at an earlier stage. I have looked up those cases also.

SHRI BHUPESH GUPTA: In that he succeeded.

SHRI H. R. GOKHALE: If I remember aright, in that case he has succeeded.

SHRI A. D. MANI: I succeeded.

SHRI H. R. GOKHALE: That is a different matter. But the question is, why not include the labour courts—that is what I have understood. The answer which I gave impromptu on that day was that it is not included, and now I will elaborate it by saying that it is not included for two reasons. One reason is that this law pertains to the powers of the High Court and the Supreme Court only in relation to contempt. Therefore, it does not confer any power on any court subordinate to the High Courts and the Supreme Court to punish anybody for contempt. Therefore, the labour courts are not taken in. The second is that, assuming you go by the basic definition of concept of what a court is, which I mentioned earlier, it has been well established in law that various forums exist for adjudication in every democratic country—you may have the Income Tax Appellate Tribunal, you may have the Revenue Tribunal, you may have the Foreign Exchange Tribunal, you may have the Labour Court, the Industrial Court, the Labour Appellate Tribunal and various kinds of tribunals which are not strictly judicial but are described as performing Quasi-judicial functions. They might have been described as courts, it is called an Industrial Court, yet it is not a court. It does not make a court.

SHRI PITAMBER DAS (Uttar Pradesh): What about the Eastern Court and the Western Court?

SHRI H. R. GOKHALE: That is a very good example. That supports my point. The description of the authority as Court is neither here nor there. A particular forum may have all the paraphernalia of a court, but it does not become a court. For

example, the Labour Court has got the Quasi-judicial powers, but it is not a court

SHRI A. D. MANI. Can you give me a citation?

SHRI H. R. GOKHALE. I think I can give you. It came under the Industrial Disputes Act—1950, Supreme Court, p. 188. Therefore, Mr. Mani need not have any anxiety.

SHRI A. D. MANI. I want to raise one point. As far as this Bill is concerned, Sir, the definition is very scanty. Why don't you define the 'Court' because I think I have mentioned in the case of judicial enquiry that it was a court?

SHRI H. R. GOKHALE. It is not necessary because this law is only confined to the Supreme Court and the High Courts. The law itself says that it refers to the contempt of court of the Supreme Court and the High Courts only. Therefore, that definition may be suitable elsewhere and not in this legislation.

SHRI A. D. MANI: Sir, the point is about the Labour Court and the Court of Conciliation.

MR DEPUTY CHAIRMAN. Mr. Mani, he has already given you the reply.

SHRI H. R. GOKHALE. The Industrial Disputes Act deals specifically with industrial adjudication. That is a special law pertaining to . . .

SHRI AKBAR ALI KHAN: I think the difficulty of Mr. Mani is that as the High Court has got the right to punish for the contempt of court, can a lower court also exercise . . .

SHRI A. D. MANI: I would like to put one question.

MR DEPUTY CHAIRMAN. How long do you want to continue the discussion?

SHRI A. D. MANI. The Labour Court issues summons to the offenders and if he does not attend the court, is it not a contempt of court?

SHRI H. R. GOKHALE: Not under this Act.

SHRI PITAMBER DAS. It may not be punishable as the contempt of court, but certainly it is punishable.

SHRI H. R. GOKHALE. If you look at section 11 of the Industrial Disputes Act, by an amendment made sometime in 1950, clause 8 was added to section 11, by which every Labour Court, Tribunal or National Tribunal shall be deemed to be Civil Court for the purpose of sections 480, 482 and 484 of the Cr. P. C. Thus these Courts have powers to punish under these provisions and not under the provisions of the contempt of court. Therefore, I need not go into further details with regard to this matter. I can say that I have considered the comments of the hon. Member and I think the anxiety expressed by him is perhaps misplaced.

These were the points raised during the discussion and I think I have replied to all of them.

MR DEPUTY CHAIRMAN: Now I will put the motion.

The question is

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

The motion was adopted

MR DEPUTY CHAIRMAN. We shall now take up clause by clause consideration of the Bill.

Clause 2 (Definitions)

SHRI BHUPESH GUPTA: Sir, I move:

7 "That at page 2, line 4 for the word "the", the word "wilful" be substituted.

Sir, the first amendment here is that the word 'wilful' be substituted. In this clause you are defining "civil contempt". The

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hon. Member, Mr. Sinha pointed out that this definition is of a negative nature. I agree that the definition is of a negative nature and it is unfortunate that we could not define it in a positive way, mentioning clearly as to what exactly constitutes the 'contempt'. We could not define it in more clear and categorical terms because the Government was still living in the past and resisting all the time even our effort to provide a definition of the kind that we have drafted here. In fact, they did not want to define it altogether. However, the majority prevailed in the Select Committee and something in the nature of a definition at least you are having. This will be some what a guidance. But in the case of civil contempt, the definition is like this "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court. The word 'wilful' is very significant. It relates not only to the contempt but something which has been done deliberately with a view to interfering with the administration of justice or otherwise prejudicing the interests of party before a court of law, litigation and so on. When it comes however to defining criminal contempt, well, the word 'wilful' is dropped. Now it is defined like this:

"criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever . . .

Then it goes on defining in this manner in the language of the British law:

"... which scandalises or tends to scandalise, or lowers the authority of, any court;"

Now the word 'wilful' is dropped but it says scandalises; I do not know what it means. Do the Judges run away with somebody else's wife and is that mentioned in the court of law? What is this scandalising?

SHRI AKBAR ALI KHAN As you frequently do in this House?

SHRI BHUPESH GUPTA: No; I do not do that part of it; that is left to you. It says here scandalises or tends to scandalise, lowers or tends to lower the authority of the court: let me deal with this first. One does not know what is meant by 'scandalises'. We hear of so many scandals. The Mundhra scandal, the Dalmia scandal, the Goenka's scandal, the Birla's scandal and so on. Sometimes Ministers get involved in scandals of an amorous and non-amorous nature, both. We have been aware of such scandals but how does this thing come in here I cannot understand. Suppose I make a strong criticism of the court why should I be said to have scandalised the court?

SHRI N. G. GORAY (Maharashtra) : Is there no legal meaning for that word?

SHRI BHUPESH GUPTA: I do not know, where is the legal meaning? The General Clauses Act does not define 'scandal'. It is an expression typically Anglo-Saxon borrowed from the British courts. The Judges themselves were looking very funny wearing long gowns and wigs and looking like monkeys and that itself was a scandal.

But you must not say anything which reduces the mystification that is created. That is how it was done and how it was defined as scandal. Suppose I make a strong criticism. Does it amount to a scandal?

SHRI PITAMBER DAS Depending on the language that you use

SHRI BHUPESH GUPTA: Mr. Mani runs away with somebody's wife. It is a scandal.

SHRI A. D. MANI: Why do you drag me in this?

SHRI BHUPESH GUPTA: No wife will run away with you . . .

SHRI AKBAR ALI KHAN. Mr. Bhupesh Gupta is a very knowledgeable person.

SHRI BHUPESH GUPTA: Just for illustration I said it. Mr. Mani need not be upset because no wife will run away with him. Therefore, there is no question of any scandal.

involved in his matter. Suppose I say this. It is not as if there are some wives to run away with Mr. Mani. Nothing of the kind.

SHRI DEV DUTT PURI (Haryana) Money could be an important inducement for wives to run away.

SHRI BHUPESH GUPTA Now, if I say Mr. Mani is writing reactionary editorials supporting privy purses or supporting vested interests, it is a strong condemnation of a person, but it does not amount to a scandal. Suppose I say the Judges uphold vested interests, Judges forget the interests of the common man in considering certain propositions before them and think that the vested interests should be protected, I at once become guilty of scandalising the court. This is the anomaly in it. The word 'scandalising' is so elastic in its definition, in its connotation and in its meaning that one does not know where one would land even if it is a very legitimate and well justified criticism of the judges. This is the position. Then, it is not only scandalous, but it says tends to be scandalous. My intention is not material because the word 'wilfully' has been dropped. It is for the Judge to say it, even though he may be a very scandalous person. It is for the Judge to say whether he feels that there has been a tendency to scandalise the court or the Judge, and it is not for him to probe whether I intended to do so. Even a statement made in good faith absolutely and in utter public interest may be interpreted as a statement amounting to scandalising or tending to scandalise the court and thereby invite the operation of this law. Why should it be done? I cannot understand why you cannot give up this kind of definition. You are educated people. We are not so much educated. They are supposed to be very educated and Mr. Gokhale personally undoubtedly is. He has been a Judge himself. I do not know whether he was a Judge of scandal or something else, but certainly why should he accept this? I cannot understand for the life of me why an eminent man, a knowledgeable and learned ex-Judge like Mr. Gokhale should not say goodbye to this kind of fatuous definition. It is a fantastic expression in a legalistic document as is being produced here. I do not understand it and I say that this should go.

MR. DEPUTY CHAIRMAN: You have

made your point clear.

SHRI BHUPESH GUPTA: Has he accepted it? It is not clear to him. The test is whether it has been accepted. If it is not accepted, I have failed. I have not convinced him.

THE MINISTER OF STATE IN THE DEPARTMENT OF PARLIAMENTARY AFFAIRS AND IN THE MINISTRY OF SHIPPING AND TRANSPORT (SHRI OM MEHTA) You have not heard the Minister's reply. How do you know it?

SHRI BHUPESH GUPTA So long as I have not succeeded, we live in the realm of lack of clarity. Then it says, 'lowers the authority of the court'. It will be interpreted that it lowers the authority of the court. We have seen from experience that these expressions are interpreted at will there being no guiding principles in interpretation. Some of our Judges are so ignorant of the English language that they do not know even how to spell the word and yet they would proceed to interpret it because they are in a high position to lay down interpretations and so on. That is the position. Now, suppose I go to a court of law and I argue with the Judges on certain points of procedure or even on certain points of law because I am also expected to know the law. I am supposed to know the law even if I may be damned ignorant about it. Why should the Judges try to say that I am trying to undermine the authority of the court? And this is what is happening.

SHRI PITAMBER DAS He will realise how it is necessary for them to know the spelling. It is for their stenographers to spell rightly.

SHRI BHUPESH GUPTA Now, the interpretation is not left to the stenotypists. That is my answer. Interpretation is not, unfortunately, left to the stenotypist. If the interpretation had been with the stenographer, I could have understood it. There is a kind of sensitiveness developed in our courts of law. You take seriously the question of sensitiveness. It is somewhat acquired by nature, it is mostly acquired from the British system and British tradition.

SHRI A. D. MANI: Inherited, not only acquired.

SHRI BHUPESH GUPTA: Then it is inherited also, but basically it has been acquired. Now, look at the jurisprudence of our old days. We are not a country uncivilised, without a system of law, without legal learning, without legal wisdom. Our system of law is studied all over the world, our jurisprudence and law are studied all over the world. Do you get the impression by reading our literature and law that our judges in the ancient days were as sensitive or vindictive as the judges of today? They were interpreting things in a human manner keeping in view the larger interests of the society in which they were living. Therefore, this again is wrong.

Then, "which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice." Now, what is the interference? Is it mentioned? Psychological interference or physical interference? I can understand some protection being given to the courts of law had it been physical interference. Suppose I get up and beat a judge or shout constantly to obstruct the proceedings, and so on, or do something of a violent nature, I can understand protection being given. But why 'interference' should be left unqualified here, I do not know. That, again, will be classically interpreted by our judges in our courts of law to haul up the people on charges of committing contempt and the courts are supreme in this matter.

Therefore, I do not see as to why the word 'wilful' should be deleted in spite of the suggestion that we made in the Select Committee even when we are retaining all these expressions. I would therefore ask the hon. Minister, Mr. Gokhale, to accept the suggestion about 'wilful'. Why should he not? 'Intent' should not be a relevant factor here. Suppose I do a thing, I go to the court of law and tell him, "I had done it but I did not mean it in any manner." But you are not doing it. In civil cases it is so, in criminal cases it is not so. It is a contradictory position that you take. There is no principle involved. It will become oppressive as far as the common citizens are concerned having regard to the sensitiveness of our judges to hold down to (Time bell rings) Why are you ringing the bell?)

MR. DEPUTY CHAIRMAN: You have

put your point of view. Please sit down. We have got only half an-hour to conclude the Bill.

SHRI BHUPESH GUPTA: Not half-an-hour. We can save time on other Bills.

Therefore, I say this thing. I know that Mr. Gokhale will summon his legal experience to answer my point. But I request him to answer as a layman, common man, not as one who has dropped from the pedestal of a judge to the floor of the House.

The question was proposed

SHRI G.A. APPAN (Tamil Nadu): Sir, . . .

MR. DEPUTY CHAIRMAN: Amendment only.

SHRI G. A. APPAN: Only regarding the amendment, because there is a difference between the hon. Minister and the hon. Member Mr. Bhupesh. With due regard to the eloquence and the qualification of the hon. Member as a barrister, I have to submit that these words 'scandalous' and 'scandal' are appropriately worded here with sufficient meaning and import to carry the importance of these expressions.

Suppose somebody or some report says that the Judge is a dirty fellow, a corrupt fellow or that he is unscrupulous or that somebody abuses the hon. Judges, it amounts to scandalising. Therefore, it covers the intention or the motive. So those words can be there. But those words cannot find place in this important legislation. I have seen cases not only in respect of Judges but even in respect of officers who hold positions and even in respect of managements who are honest, honourable, just and fair in respect of whom people with vested interests can put all these things. So it will be a very good protection that these words are there and incorporated very judiciously, with a judicious mind, with a correct mind. I request my hon'ble friend, Mr. Bhupesh Gupta, not to press this amendment that these words do not find a place. He should not stick to the idea that these words are deleted.

SHRI BHUPESH GUPTA: May I say that I am not enlightened by your speech? Rather I have been scandalised. If I were a

court of law I would commit him for contempt of court.

SHRI G. A. APPAN. I do not think I meant any illwill against you

SHRI M. N. KAUL (Nominated). I want to say a few words on the question raised by Mr Bhupesh Gupta. We should view it in the light of the Namboodiripad case which went up to the Supreme Court. My impression is that the present legislation affirms the view of the Supreme Court. Mr Namboodiripad had said that our present judicial system and processes were such that they tend to favour vested interests. That is to say, they tend to perpetuate vested interests. He made a speech in which he analysed and said that the whole judicial process in India was such that the Judges protected vested interests. When the case went before the High Court there was a majority judgment and a minority judgment. The majority judgment was against Mr Namboodiripad. Then the matter went up to the Supreme Court and the Supreme Court affirmed the majority judgment. That is to say, they held that Mr Namboodiripad was guilty of contempt in saying what he said.

The words used are "scandalises" or "tends to scandalise" or "lowers" or "tends to lower" the authority of any court. This phrase has a historical background in the British law. It goes back to the famous Wilmot case. It was in Wilmot case that this expression was first used, scandalising the court. The basic concept of scandalising the court is that you may scandalise the court independently of a pending case. That is the basic concept. The court as such can be scandalised even though there may not be a pending case, civil or criminal. That concept of the Wilmot case has been accepted in our present legislation. That is to say, if general observations are made independently of any case which scandalise the court, that is to say, lower court in the eyes of the people then that can be treated as contempt of court.

My object in making these observations is that Parliament should be conscious as to what it is doing. It is affirming the Supreme Court decision and it is giving a power to the Supreme Court and the High Court which

is as wide as it has ever been, and we are not in any way limiting the existing power.

SHRI H. R. GOKHALE. Mr Deputy Chairman, the definitions of "civil contempt" and "criminal contempt" as they are in the Bill are on the basis of the report of the Joint Committee. It is true that in the Joint Committee probably Mr Bhupesh Gupta may have taken a different view. What we are really doing is to give effect to the majority view of the Joint Committee. That is one thing. The other thing is that a distinction between civil and criminal contempt has been made on the basis of the distinction which is found in the law as it exists to-day. It might appear to be a little tedious again to refer to the Constitutional provision, but the fact remains that we have to bear with the Constitutional provision as long as the Constitutional provision is not altered. And the Constitutional provision expressly preserves all the rights of the High Court or the Supreme Court as a court of record. Now, I do not think it can be disputed, so far as the law to-day is concerned, that in criminal matters the High Court and the Supreme Court have the right to punish for contempt even though the contempt may not be wilful. I have on hand an observation of the Supreme Court and it pertains to a speech on the Radio and it came up before the Supreme Court.

"That question in all cases of comment on pending proceedings is not whether the publication does interfere but whether it tends to interfere with the due course of justice. The question is not so much of the intention of the contemner as whether it is calculated to interfere with the administration of justice."

These are the judicial observations indicating what the powers are of a court of record in respect of criminal contempt and, therefore, to the extent to which we are bound down by the Constitutional provision, we have to make a distinction between civil contempt and criminal contempt, which is the existing distinction in law pertaining to the powers of a court of record. So, I am afraid I am not in a position to accept the amendment.

SHRI BHUPESH GUPTA. Suppose you insert the word "wilful", do you violate any provisions of the law?

SHRI H R GOKHALE Of course, we do That is the whole point If I were left to myself, probably I would have conceded your point But to-day all the powers of a court of record for punishing contempt are protected by an express provision, in fact, there are two separate provisions, one pertaining to the High Court and one pertaining to the Supreme Court As I said in my introductory speech, what a court of record is, is not a matter of definition anywhere That is an expression taken from the well-understood meaning of the phrase all over the world It has been interpreted by courts in India and in England several times Therefore, as I said, it cannot be disputed that the existing position is that the courts of record have the power to punish for criminal contempt whether the contempt is wilful or not And that is why I referred to the judgment The point is not whether in fact it interferes, the point is whether it tends to interfere That is the decision of the Supreme Court giving interpretation to the power of a court of record in respect of a criminal contempt We have introduced the word "wilful" in civil contempt Here we were free to do it and we did it But in the other case, we cannot Otherwise, I would have agreed So, I am afraid I cannot agree to this amendment now.

MR DEPUTY CHAIRMAN The question is

7 "That at page 2, line 4 for the word "the", the word 'wilful' be substituted "

The motion was negatived

MR DEPUTY CHAIRMAN. The question is.

"That clause 2 stand part of the Bill."

The motion was adopted

Clause 2 was added to the Bill

Clause 3—(Innocent publication and distribution of matter not contempt)

SHRI H R GOKHALE Sir, I beg to move.

3 "That at page 2, for lines 22 to 24, the following be substituted, namely.

of justice in connection with—

(a) any criminal proceeding pending or imminent at the time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending or, as the case may be, imminent,

(b) any civil proceeding pending at the time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending "

4 "That at page 2, for lines 26 to 30, the following be substituted, namely

"(2) Notwithstanding anything contained in any law for the time being in force, a person shall not be guilty of contempt of court on the ground that he has published any such matter as is mentioned in sub-section (1) in connection with any civil proceeding imminent at the time of publication, merely because the proceeding was imminent "

In my introductory speech, I had given some reasons as to why I was almost compelled by the existing legal position to insist on these two amendments being moved Fortunately Mr Tilak is here to-day The other day perhaps he was not here I have read his memorandum carefully which was sent to me He had, in fact, met me earlier and discussed it with me earlier I see the hardship which can be caused if we include contempt arising in cases where proceedings are "imminent" and not actually pending I am not saying that there is no point of view which is plausible to say that "imminent" proceedings should have been excluded But again we come back to the same thing what are the powers of a court of record in respect of punishment for "imminent" proceedings to-day? The position is that just as you can do it in respect of pending proceedings, you can also do it in respect of proceedings which are imminent But that too is again confined to criminal contempt and not civil contempt even in the amendments which are moved today Where it was possible, for

example, in the case of civil contempt, it was not obligatory in view of the existing provision with regard to the powers of the court of record. But where we are bound down by the existing Constitutional limitations, we have to include it.

The questions were proposed

SHRI J. S. TILAK (Maharashtra). I rise to oppose the amendments moved by the hon. Minister to clause 3. By these amendments, I find that the government is practically undoing what the Joint Committee had done . . .

MR. DEPUTY CHAIRMAN: He has explained the Constitutional difficulty.

SHRI BHUPESH GUPTA. Why should that be accepted?

SHRI J. S. TILAK. He said that although he has all the sympathy, there is some Constitutional difficulty. He said that he cannot give protection to journalists in the face of the Constitutional provision existing today as regards courts of record. The Supreme Court and High Courts have been given power to punish for contempt with regard to imminent proceedings, he says. I rather fail to understand that particularly in the case of imminent proceedings. If he feels so, he should have at least incorporated a suitable definition of 'imminent proceedings' so that what is imminent from the legal point of view will not remain in doubt. He has also not done that. If that is not done, then the journalists will not have freedom of expression and every time they will come into trouble.

SHRI A. D. MANI. As a fellow journalist, I am also opposed to the amendments, particularly (b), moved by the hon. Minister. Where was the necessity of altering the clause? It refers to civil or criminal proceedings. The minor shade of difference it seeks to make is that in the case of criminal proceedings, whether pending or imminent, the benefit of the clause applies. We run into lot of difficulties with regard to this matter. When the Princes went up in appeal against the Constitutional amendment to the Supreme Court, my sub-editors came and asked me:

"Are we to comment on it?" I said: "Comment." It had not gone to the Supreme Court. Why has he altered the clause as already been drafted by the Joint Committee? There should be some justification. Why is it that in the case of civil proceedings, the word 'imminent' has been dropped? Unless he makes a convincing case, I will not be able to accept his amendment.

SHRI BHUPESH GUPTA. First of all, I am extremely sorry that this matter was discussed threadbare in the Select Committee and after discussion we came to the conclusion that the word 'imminent' should not be included and that cases should be confined only to those which are pending. But now I find the government is using the opportunity to get it passed by its majority here and that too taking advantage of the fact that many in the Opposition are today absent. I think this itself is a strange thing. If you had made it a point of prestige, then, Sir, you should have given us notice that such and such a day will be allotted as you have given in the case of the Constitution (Amendment) Bill and on that day this particular thing will be debated and voted upon in this House. Now, Sir, instead of doing that, suddenly you bring in something here and everybody knows at least in this House, that it cannot be passed, because all those on this side of the House and many in the Congress Party oppose the kind of amendment which is being proposed by the hon. Minister. Well, Sir, the Congress Party may turn to their Whip, because the 'whipping boy' is there and he is always there. But, Sir, we would not return to this position and even if we had a chance of mobilising our strength by proper notice, this could have been defeated. Therefore, it is clearly going, in the first instance, against what appears to be the intention of this House and this is the originating House so far as this Bill is concerned. So, Sir, it is not a fair thing. Suppose you also have such things sometimes with regard to the Government when, Sir, such things should not be done? What will happen? So, Sir, it is unfair and I would request the hon. Minister of Parliamentary Affairs, because he has to maintain a certain standard of relationship with the Opposition, that having gone through the Select Committee, he should not try to rig the voting in this manner in this House in order to get something passed.

[SHRI Bhupesh Gupta]

which was thumpingly rejected in the Select Committee by the members belonging to all parties.

Sir, I must tell you—I am going to speak at length on this thing and, therefore, do not ring the bell now—that when this matter was discussed it was the bureaucrats who started pressing it. All the same, the officials were at it and we have overcome the resistance of the officials, at least paralysed it. Otherwise, it could not have been passed. Even the Minister ultimately agreed, “Let it be so.” After all, we thought it was done and done with good grace and what we thought was good business is now brought in to pollute the entire Bill, to make nonsense of the provisions of the Bill, which definitely make certain improvements on the existing law. Sir, the other day—I think it was last Thursday—the hon. Minister, Mr. Gokhale, assured us that overnight he will think over this matter so that his reply could be given on Monday. This is the result of your thought? You got Friday, Saturday and Sunday and you never consulted any one of us. Well, we thought that you would give consideration to it. Why didn’t you hear our views? Are only the officials everything that matter with you and are not we anything? Sir, this is contempt of Parliament. You wanted time to consider it and we agreed to giving you the time. But Mr. Gokhale did not consult the Leader of the Opposition, the leaders of the various other parties and even the partymen, his own party men, who had played a very important role in shaping this very important measure. It is the result of the collective efforts of all the political parties represented here in this Parliament including those belonging to the ruling party. Well, Sir, Mr. Gokhale—I do not know if he had consulted his party colleagues within the Congress Party and it is for him to say—never consulted any one of us with a view to understanding whether it should remain or even if it should remain, whether some more accommodation could be given. Nothing of that kind was done! Sir, this is bureaucracy ruling in the name of parliamentary system and parliamentary business. It is quite clear that it is due to the bureaucrats. Now, therefore, Sir, I strongly object to this manner and this methodology which amounts to the degradation of the parliamentary system in many respects and

this should not be done in this House in this manner, and least of all it is expected from a person like my friend, SHRI Gokhale. I hope even now he will take it back or defer it for further discussion. Sir, now I come to the merits of it . . .

SHRIMATI YASHODA REDDY: (Andhra Pradesh) I would like to say one word. Sir, in this House I would like to agree with Mr. Bhupesh Gupta and bring to your notice one instance which has happened earlier.

Sir, whenever a Joint Select Committee meets, of all the parties, it is supposed to be even above the Parliamentary jurisdiction. It is an independent body of members of Parliament, and usually the Government takes cognizance of what we pass there by majority. Sir, with great humility, I would like to bring to the notice of the Government, when, I was in Lok Sabha—and Mr. Bhupesh Gupta will bear me out—about the age of the Judges of the Supreme Court the Select Committee had voted down the Government amendment. Later, Mr. Satya Narain Sinha tried to bring it to the Lok Sabha, because we had majority there. But may I bring to the notice of the House, Sir, that the great Prime Minister, Mr. Jawaharlal Nehru, said: “This cannot be done. How can you bring an amendment which has been lost in the Select Committee by majority? You have lost it there and you should accept the Select Committee’s suggestion.” Sir, I am not going into the merits, but this is a point which, I think, the Government should take notice of.

SHRI H. R. GOKHALE: As I said in the beginning, it is not as though the arguments against this amendment are not plausible. I think if I were left to myself, I would not have brought it. But if it is the consensus of the House that we should withdraw this amendment . . . (Interruptions)

SHRI BHUPESH GUPTA: Sir, I would appeal . . .

SHRI AWADHESHWAR PRASAD SINHA (Bihar). Sir, on a point of Order. The Select Committee cannot override the right of the House for anything. The House is free to move any amendment . . .

MR. DEPUTY CHAIRMAN: Let there be no controversy . . .

SHRI A. D. MANI: We feel very strongly about it.

SHRI A. P. JAIN (Uttar Pradesh): I have risen to support what Mr. Bhupesh Gupta has stated in the House. I was a member of the Select Committee, and we made every effort to bring a sort of consensus. If I remember correctly, there was a consensus on this point . . .

MR. DEPUTY CHAIRMAN: If the Minister is prepared to withdraw it . . .

SHRI H. R. GOKHALE: I said that myself, that if the consensus is like that, then let it go . . .

SHRI A. P. JAIN: Let me finish . . .

MR. DEPUTY CHAIRMAN: If he agrees to withdraw, why do you press it?

SHRI H. R. GOKHALE: My constitutional difficulty is already on the record. I don't insist, if every body wants it.

The amendments (Nos. 3 and 4) were, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 3 stand part of the Bill."

*The motion was adopted,
Clause 3 was added to the Bill.*

MR. DEPUTY CHAIRMAN: We will continue after lunch. The House stands adjourned till 2-00 p.m.

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

The House reassembled after lunch at two of the clock, MR. DEPUTY CHAIRMAN in the Chair.

Clause 4—Fair and accurate report of judicial proceeding not contempt

SHRI BHUPESH GUPTA: Sir, I move—

8. "That at page 3, line 20, for the word 'accurate', the word a 'correct' be substituted."

This amendment is simple, I will not take much time because I want the word "correct" to be substituted for the word "accurate". I think, for the purposes of this Bill, the word "correct" is enough. Why should we use the word "accurate"? Now, when reporting a case or something it is difficult to maintain the rule of accuracy. So long as it is correct substantially, there should not be any complaint on this score. Therefore I have suggested the word "correct". It was discussed but, unfortunately, it was not accepted. Therefore, I have moved this amendment.

The question was proposed.

SHRI H. R. GOKHALE: I oppose the amendment. I would not be able to accept this amendment because I think "fair and accurate" are the expressions which have been used all along and case law has been built on it. It only means that it should be as fair and accurate as it can be. It does not mean verbatim proceedings.

MR. DEPUTY CHAIRMAN: The question is:

"That at page 3, line 20, for the word 'accurate' the word 'correct' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is—

"That clause 4 stand part of the Bill."

The motion was adopted

Clause 4 was added to the Bill

Clause 5 was added to the Bill

Clause 6—Complaint against presiding officers of subordinate courts when not contempt,

SHRI H. R. GOKHALE: Sir, I move—

"That at page 3, lines 26—28, for the words 'made by him in good faith concerning

[Shri H. R. Gokhale]

the presiding officer of any court to a higher court (not being the Supreme Court) to which it is subordinate', the following be substituted, namely,—

'made by him in good faith concerning the presiding officer of any subordinate court to—

- (a) any other subordinate court, or
- (b) the High Court,

to which it is subordinate

Explanation—In this section, 'subordinate court' means any court subordinate to a High Court'."

Now this amendment does not materially alter the position at all. In order to make the position more clear and to give a little elegance in drafting this amendment is made. Otherwise it makes no difference.

The question was proposed.

MR. DEPUTY CHAIRMAN. The question is:

13. "That at page 3, lines 26-28, for the words 'made by him in good faith concerning the presiding officer of any court to a higher court (not being the Supreme Court) to which it is subordinate', the following be substituted, namely,—

'made by him in good faith concerning the presiding officer of any subordinate court to—

- (a) any other subordinate court, or
- (b) the High Court,

to which it is subordinate.

Explanation.—In this section 'subordinate court' means any court subordinate to a High Court'."

The motion was adopted

MR. DEPUTY CHAIRMAN: The question is:

"That clause 6, as amended, stand part of the Bill"

The motion was adopted

Clause 6 amended was added to the Bill

Clause 7 was added to the Bill

Clause 8 was added to the Bill

Clause 9 (Act not to imply enlargement of scope of contempt)

SHRI H. R. GOKHALE: Sir, I move:

14. "That at page 4, line 16, for the words 'any publication', the words 'any disobedience, breach, publication or other act', be substituted"

Sir, I move this amendment because there was a slight lacuna in the original clause.

The question was proposed.

SHRI BHUPLSH GUPTA Do you intend any mischief here? If you do not, then I believe you

SHRI H. R. GOKHALE It is only to make the whole thing complete because the present provision refers only to publication whereas the definition of civil contempt covers not only publication but any disobedience, etc. It is only to bring it in conformity with the definition that it is moved.

SHRI BHUPESH GUPTA I am believing you.

MR. DEPUTY CHAIRMAN. The question is.

14. "That at page 4, line 16, for the words 'any publication', the words 'any disobedience, breach, publication or other act', be substituted"

The motion was adopted

MR. DEPUTY CHAIRMAN. The question is

"That clause 9, as amended, stand part of the Bill."

The motion was adopted.

Clause 9 as amended, was added to the Bill.

Clauses 10 and 11 were added to the Bill.

Clause 12—Punishment for Contempt of Court

SHRI BHUPESH GUPTA Sir, I move:

10. "That at page 4, lines 32—34, for the words 'with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both', the words 'with fine which may extend to five hundred rupees' be substituted "

11. "That at page 4, for lines 38 and 39, the following be substituted:—

'Explanation—An apology, even if it is qualified or conditional, shall be accepted?'

Sir, these are my amendments and, anyway, I shall voice my opinion on these amendments. It is a penal provision. There is a provision for simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both. This is the present proposal. I say, eliminate imprisonment altogether—simple or rigorous—and provide for fine. In fact, I would not like anything, but provide for something because you must insist on your pound of flesh. But the fine should not be, in any case, more than Rs 500. In fact it should be much less.

The other amendment is No. 11. When it is a question of apology, I say, an apology, even if it is qualified or conditional, shall be accepted. Now I will have to give one or two arguments. Contempt of court is not an offence of a kind for which a man need be sent to jail. If it is a question of ensuring the proper administration of justice, then, of course, it is enough to call the man to the court and say "You have committed an offence" and if it is of such a nature that a conviction is called for, then punish him, for that a fine should be enough, a token fine really. That is why my amendment.

In some cases judges have acted vindictively in sending people to jail. In some cases, when the judges are not vindictive, people are not sent to jail, they are just warned or given a sentence of fine and so on—nothing else. But in some cases, simply because the trying judge, whoever it is, has taken a dislike to the accused for something he may or may not have done, he is sent to jail. This should not happen. In this connection, as I said, we do not need any contempt law in the country at all. Why do you need it? I have here a Privy Council case, 1899, Appeal Cases, 560, Privy Council, *McLeod v St. Aubin*. In England, committal for such contempts have become obsolete. This is what the Judges said. This is what the Privy Council held. In small colonies consisting of coloured people, it may still be necessary. This law is necessary for the coloured people, for dealing with coloured people in appropriate cases. But the persons sitting on the benches of our 'Privy Council' are themselves coloured people and, therefore, why do you need a law which was originally intended for the coloured people? My friend, Mr Chandra Shekhar, should particularly support my cause. He is a would-be contemtor, being a leader of the piper like me. He will join my company very soon. But I have given you the protection. I know that under the law that you are passing, you would have better protection than I had. For a little caption or something which I did not know—even now I do not know—our paper was punished. Therefore, I say that this should not be there. Why penalise? What do you say Mr Gokhale to this thing? That is the judgment of your 'Privy Council'. Every time you are quoting English laws. I know you can quote more English judgments than Indian judgments, although some of them are not worth knowing. Why then go by this? I think we should make a change. Therefore, this is my suggestion.

The other thing in regard to this suggestion is about the acceptance of an apology. Kindly note it. Even if it is qualified and conditional it should be accepted. Suppose, Sir, I utter a word against you or say something in this very House or say something or write something outside, and you want to punish me, but then I come and tell you that I did not at all intend to do

[Shri Bhupesh Gupta]

so or say something in connection with the conduct of the House; I did not intend to harm or show disrespect or discourtesy to you; I am really sorry, I apologise. Why should you not accept that apology? We accept in this House. Surely, we are far superior to the Supreme Court or the High Court or all the other Courts put together in the sphere of public life as the guardians of public morale etc.

If we here can accept an unconditional apology from any Member or even outsider, why should it not be obligatory on the part of the courts of law to accept an apology when the person says, I have not done it, I did not mean it but if you think it is so, then I apologise? Now this is important. Do you expect all the editors, all the newspapermen, all the critics of the courts to know the niceties and details of the law of contempt in the country and about the procedural matters? If they do not know, and if they in good faith say something, if that hurts a certain Judge or offends against certain law and if he comes before the court and says, I am very sorry, I did not know, it was not intended, anyway, I apologise, well, it would be a kind of conditional apology but even so what is wrong in it? He is apologising for something which is wrong, in this case he did not know he was doing a wrong thing but it has been pointed out to him that he had done a wrong thing and so his apology becomes effective and operative. Why even then he should be sentenced and punished, I cannot understand at all. Therefore, Sir, in such cases there should not be any conviction, leave alone sentence. This I am proposing here; otherwise it is very very bad. I can tell you from experience one thing. How many of our people commit contempt of court? How many cases are there all over the country involving contempt of court? We are not a society of contemnors, on the other hand we show some undue respect for the courts of law. If anything we should be guilty of showing under respect for the courts of law. When the courts do not deserve to be respected we show respect; it is not as if we have become a pack of contemnors or would-be contemnors against the Judges whose touchiness has to be served by an Act of

Parliament. Why do you want this kind of thing that will indirectly insinuate that this kind of offence is a very common occurrence in our country when we know this is a very rare offence really? Therefore I do not see as to why the Government should not accept this amendment. I think Mr Gokhale will agree, being not a vindictive man, by temperament he is not vindictive, by look he is even less vindictive. He can understand this. If anybody offends him and if he comes to him and apologises that he did not want to offend him, he was misguided by some, he did not understand certain things involved in that and therefore he would like to be excused and pardoned, would he deny him? Why then do you want this kind of thing? I feel that our Judges are becoming too much touchy. You know they are completely isolated from the masses, from the thinking of the people, from the worries of the common man, from what goes on in the hearts and souls of millions of our people. They still go subjectively by what they think in their own minds, by what happens in their own families and so on. They should not be in a privileged position like this not to accept a conditional apology when there is an apology.

The questions were proposed

SHRI A. D. MANI, Sir, . . .

MR. DEPUTY CHAIRMAN: No, no.

SHRI A. D. MANI: . . . I want to say a few words on this amendment.

MR. DEPUTY CHAIRMAN: It is not necessary that you should speak on every amendment.

SHRI A. D. MANI: I want to make a suggestion. I am concerned with this very much. I am an old newspaperman, I have been an Editor for 36 years. I would like to say that I am in favour of the Explanation in clause 12 because very often we take an alternative plea in regard to contempt of court. First we say this is not contempt of court at all and then we and we also add a plea that if the court holds it as a contempt of court we unreservedly apologise. Now I agree that the apology must be

bona fide In this connection I may draw the attention of the hon. Minister to the sentence imposed in a case which came up before the Supreme Court last week when the Supreme Court said that the sentence was being retained and the person demanding apology should not be vindictive.

Regarding fine I want the hon. Minister to accept an amendment on the floor of the House with the permission of the House as provided in the rules. We are talking of an egalitarian society and you say the fine will be Rs. 2000/-. How many of us can produce that amount? Let us ask ourselves. Two thousand rupees is a substantial amount. When you are talking of a socialist society and not a capitalist society don't talk in terms of money, talk in terms of punishment. Even one day's imprisonment should do. So I would like to suggest to the hon. Minister, if the Chair would permit me I would move an amendment that the fine shall be Rs. 1000. Even a thousand rupees is very difficult but 2,000 is much, too much. Let us not carry the old British heritage of imposing savage punishments. The Minister is very fair-minded; let us consider this point. After all the laws and amendments that you are going to bring forward to the Constitution, how many can have Rs. 2000 with them? I want him to consider this and, Sir, if you permit me, I would move an amendment on the floor here

AN HON MEMBER: It is a good suggestion.

SHRI H. R. GOKHALE: I am not able to accept the two amendments of Mr. Bhupesh Gupta. The first amendment takes away the power of the court to impose a sentence and gives power only to impose a fine. Now I will have to repeat the same argument that this will be clearly in violation of articles 215 and 129. We cannot do it. Secondly there will be a very incongruous position. Under section 228 of the Indian Penal Code even ordinary courts have the power to impose a sentence of imprisonment up to six months but by this the High Court and the Supreme Court will lose this power. This is a very incongruous position. I do not think I can accept that.

The other amendment is that an apology must be accepted. Let me make it plain that this Explanation was accepted and made part of the Bill on the recommendation of the Joint Committee, majority recommendation. Now, this is an enabling provision. It enables the court to accept an apology. Till today the position is that if it is not an unqualified apology, the courts used to say. It is not an unqualified and unconditional apology. It has no meaning. Now, the court can accept a qualified apology also depending on the circumstances of the case. To say that every apology must be accepted only means that it is not a deterrent. It would mean that you can commit contempt. Ultimately you come to the court and apologise and the court is bound to accept it. That takes away completely the rigour of the law for which it is meant. Therefore, I am not in a position to accept this amendment.

With regard to the oral suggestion of reducing the fine, my friend, Mr. Mani, will realise that this is the maximum fine, up to Rs. 2,000. Even when it was up to Rs. 500 it was not imposed. The amount of Rs. 2,000 is a fine which will be imposed in exceptional and rare cases, where the court thinks that the contempt is contumacious or malicious and that the maximum fine should be given. Just as there is the sentence up to six months, it does not mean that a sentence of six months is going to be given in every case. In most cases it is till the rising of the court or none at all. Therefore, I think the provision is all right.

MR. DEPUTY CHAIRMAN: The question is;

10. "That at page 4, lines 32-34, for the words 'with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both', the words 'with fine which may extend to five hundred rupees' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is;

11. "That at page 4, for lines 38 and 39, the following be substituted:

'Explanation—An apology, even if, it is qualified or conditional, shall be accepted.'

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 12 stand part of the Bill."

The motion was adopted.

Clause 12 was added to the Bill.

Clause 13—Contempts not punishable in certain cases.

SHRI BHUPESH GUPTA: Sir, I move:

12. "That at page 5, line 32, for the words 'shall impose a sentence', the words 'shall convict any person' be substituted."

It means that 'notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence. . .' Now, I want to say: 'no court shall convict any person. . .'. Even though you have forgotten law like me, sentence and conviction are not the same thing. I want that the conviction should not be given here. That is my suggestion. I think it is proper and I do not wish to say anything more.

The question was proposed.

SHRI H. R. GOKHALE: This negatives the definition. If tending to interfere with the course of justice is omitted then you find that you do not have even the power to convict, leave aside the sentence, you render the definition nugatory. The idea is that if a contempt offence is proved, then the court may impose a sentence. It does not mean that the court will impose a sentence. It may administer a warning. It has been done. The courts have said: We do not impose the sentence, but we administer a warning, where it is contempt of a very insignificant nature.

MR. DEPUTY CHAIRMAN: The question is:

12. "That at page 5, line 32, for the words 'shall impose a sentence', the words 'shall convict any person' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 13 stand part of the Bill."

The motion was adopted.

Clause 13 was added the Bill.

Clause 14—Procedure where contempt is in the face of the Supreme Court or a High Court.

SHRI H. R. GOKHALE: Sir, I move:

5. "That at page 6, line 7, for the words 'the Court shall cause,' the words—

"and the Court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause' be substituted."

This is again to bring the clauses in line with the constitutional provisions. Now, we are in agreement with the general principle underlying the original clause. The principle is that if a person has committed contempt in the face of a court, normally it may be desirable that some other person should try it. But to say that in no case contempt committed in the face of a court shall be triable by the same Judge will violate the Constitution. We have had a decision very recently by the Supreme Court, I think, not earlier than two or three months back, in respect of a person. Contempt proceedings had been started by Mr. C. K. Daphary and others. The position has been reiterated that the power to impose a sentence for contempt in the face of the court is a power of the court as a court of record.

SHRI SYED AHMAD: It is the Allahabad advocate's case.

SHRI H. R. GOKHALE : Under article 129, notwithstanding any law made by Parliament, the Supreme Court has all the powers of a court of record, including the power to punish for contempt of itself. But still, in order that we should not violate the Constitution and that yet to a certain extent, it should serve the purpose of the clause, we have said in an enabling provision that the court can always say that we do not want to try. This is an enabling provision and I think it should remain.

The question was proposed.

MR. DEPUTY CHAIRMAN: The question is:

5. "That at page 6, line 7, for the words 'the Court shall cause', the words—

'and the Court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed it shall cause' be substituted".

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 14, as amended, stand part of the Bill".

The motion was adopted.

Clause 14, as amended, was added to the Bill.

Clause 15 was added to the Bill.

Clause 16

MR. DEPUTY CHAIRMAN: There is one amendment No. 6 by Mr. Gokhale. But it is a negative amendment. You cannot move it. You have to get the clause rejected.

SHRI H. R. GOKHALE: I would like to have the clause rejected without moving the amendment. Sir, if you look at clause 16, in my submission it is a very dangerous clause because it provides for trying the judges for contempt. Now, it reads:

"(1) Subject to the provisions of any law for the time being in force, a judge, magistrate or other person acting judicially shall also be liable for contempt of his own court or of any other court in the same manner as any other individual is liable and the provisions of this Act shall, so far as may be, apply accordingly."

meaning thereby that even observations falling from the lips of the judges acting judicially may be the source of umpteen applications every day in the court. As far as I know, this has not been found anywhere. This is the first time that it is coming and I would think that the judges should not be threatened with contempt proceedings every day for what they do judicially. And as Members know, even in Parliament . . .

SHRI BHUPESH GUPTA: Sir, how are you allowing this amendment?

MR. DEPUTY CHAIRMAN: I have not allowed it.

SHRI BHUPESH GUPTA: Then why is he allowed to speak?

MR. DEPUTY CHAIRMAN: He is only speaking why it has to be deleted.

SHRI BHUPESH GUPTA: You should not allow him. The question is, is he opposing it so that he is making a speech? On a point of order. Government in the Second Reading does not introduce a clause of the Bill. Government therefore is not entitled to speak. If we have spoken on a clause of the Bill making certain suggestions and criticisms, the hon. Minister can get up in reply, and nothing beyond that. If you have this sort of practice, then, even if an amendment is not there coming from the Government side, they may say we would like to speak. The amendment you have not allowed, this particular clause 16 is his clause, not the Select Committee's. Since we are not opposing it, the question of his speech does not arise. Sir, do not allow violation of the procedure for convenience's sake. Obviously, the Law Minister has not been able to draft his amendment properly and let him suffer on that score and gracefully take it. Therefore, it would be con-

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trary to the rule if you allow the Minister to speak on an amendment before it has been objected to or it has been sought to be amended by other Members of the House. The Minister has no *locus standi* to speak on it unless we have spoken on it and thereby asked for a speech from him.

SHRI CHANDRA SHEKHAR (Uttar Pradesh): Apart from the speech, under what rule can it be deleted without any amendment? And it cannot be deleted. There is no practice. And if the hon. Minister wants, he can move another amendment.

MR. DEPUTY CHAIRMAN: If the House desires, it can be deleted. If the House rejects it, it means that it has been deleted.

MR. DEPUTY CHAIRMAN: If you want that there should be no discussion on this clause, then I will have to put the clause . . .

SHRI BHUPESH GUPTA: No discussion.

MR. DEPUTY CHAIRMAN: The clause may be rejected or accepted by the House.

SHRI A. D. MANI: I want to express my views. I am supporting the clause and I must express my views.

MR. DEPUTY CHAIRMAN: I think then he should reply to the point.

SHRI A. D. MANI: I want to draw the attention of the hon'ble Minister to two cases . . .

SHRI CHANDRA SHEKHAR: I want to understand one point. Suppose we defeat this clause. What will happen to the subsequent clause? Will its number be changed?

MR. DEPUTY CHAIRMAN: Yes, you will have to change the numbers.

SHRI CHANDRA SHEKHAR: Then that will mean an amendment.

MR. DEPUTY CHAIRMAN: That will be consequential.

SHRI CHANDRA SHEKHAR: Even when a minor word is changed it is an amendment every time.

SHRI A. D. MANI: Sir, I would like to say that the hon'ble Minister is setting up a very bad precedent. I have got very great respect for him . . .

SHRI PITAMBER DAS: Sir, I rise on a point of order.

MR. DEPUTY CHAIRMAN: Mr. Mani, please take your seat. He is on a point of order.

SHRI PITAMBER DAS: I have a point of order. It is this. How can Mr. Mani be allowed to speak on a thing which ought not to have been originally allowed?

MR. DEPUTY CHAIRMAN: On any clause any Member can speak.

SHRI PITAMBER DAS: Any Member can speak, but he wants to draw the attention of the Minister.

MR. DEPUTY CHAIRMAN: In his speech he can do so.

SHRI A. D. MANI: I can do so. How can he prevent me?

SHRI DEV DATT PURI: The clause has not been moved. What is Mr. Mani speaking on?

MR. DEPUTY CHAIRMAN: Since I said that the clause stand part of the Bill, it is open for discussion.

SHRI DEV DATT PURI: Who is the mover of that?

MR. DEPUTY CHAIRMAN: Nobody. Only the Chair has to say that?

SHRI BHUPESH GUPTA: When the Bill was moved the clause was also moved.

SHRI A. D. MANI: I want to draw the attention of the Minister to the fact that there were two celebrated cases, the case of Allahabad High Court in what is known as the "Foot-Rule case". When the cases

were put up on his table, he struck them by one foot rule. Those which fell on one side were dismissed and the others which fell on the other side were allowed. This case went before an enquiry committee. The hon'ble Minister also knows about a Judge of the Supreme Court who behaved in an unjudicial manner. Therefore, I want the clause to be incorporated in the Bill.

SHRI BHUPESH GUPTA . Since you have allowed speeches on this clause, which is an excellent clause by any standard, I should like to extend my whole-hearted support, and also I wish to take the House into confidence because these are matters which do not decide according to narrow ideological considerations or party affiliations.

In the Select Committee we discussed it and I think there was disagreement on this matter. As far as I remember, everybody felt—I think Mr. Mohan Kumaramangalam was one of those who came to give evidence before the Select Committee, others also came—Will the Minister stop gossiping? And they all decided that the Judges should also be liable to be charged with contempt of court. Why not? Judges can be guilty of violating traffic rules. Judges can be guilty of and charged with any other offence that they commit outside. Then they should be guilty also of committing offences relating to the contempt of court? That was discussed in the Select Committee. A tendency has grown in the country today on the part of the Judges to treat lawyers in a cavalier manner, they insult the lawyers before them, say things which should not be uttered by Judges.

Sir, instances were brought to the notice of the Joint Select Committee not only by laymen but by members of the legal profession, including some eminent lawyers. Sir, before that Committee many eminent lawyers appeared; and we are grateful to them. Then after considering all these things, this provision was made. Why should Mr. Gokhale now want it to be negatived? There is no amendment really to it before the House. Now if I were a believer in God, I would say, "I pray that he would not oppose it." I hope he would not oppose this clause which he has moved. When he

asked us to consider the Bill, he did not say "minus this particular clause." He moved that the Bill be taken into consideration; he did not mention "excluding clause 16 which I am not moving."

SHRI H. R. GOKHALE . If there is any technical difficulty and it cannot be done now, it is another matter. But my view is that this provision in law is not sustainable. It should not be there. If necessary, I would bring another Bill to amend it.

SHRI BHUPESH GUPTA : All right, later on we will see. The Rajya Sabha is a permanent body. If the Supreme Court comes in the way, we can get it amended.

SHRI AKBAR ALI KHAN . The working of the judiciary will really become difficult. Let us try to get over the difficulty.

SHRI CHANDRA SHEKHAR . If we are going to discuss this clause, then I would also like to say something. The judiciary is also making the life of others difficult. This impression should not be created that judges are super-human beings. Everyday judges are passing remarks, while delivering judgments, out of their scope, about legislatures, about politicians, about brother judges. They are saying everything and they take themselves to be super-human. This impression should not be created in the country that the judges cannot commit any mistake. I do not agree that there should be every facility for judges to utter whatever they like.

SHRI DEV DATT PURI . Sir, I would respectfully submit that this House has been advised by the Law Minister that he would probably have to bring another piece of legislation to put into effect what can be done now simply by negativing the clause that we have before us. It could save us a lot of time.

MR. DEPUTY CHAIRMAN : It is for the House to consider it.

SHRI DEV DATT PURI : Just one minute, Sir.

MR. DEPUTY CHAIRMAN : After the Minister has replied, there should not be any further discussion on it now.

SHRI DEV DATT PURI : I am urging the House to take a certain course of action. I appeal to the House, this would create a lot of difficulties; this would put our entire judicial system under a strain to which we should not subject our judiciary

So, I would respectfully urge the House to take the advice of the Law Minister and negative this clause.

SHRI BHUPESH GUPTA : No we will not.

SHRI PITAMBER DAS : I also would like to express myself on this. I perfectly agree that the clause should be retained as advised by the Joint Committee

MR DEPUTY CHAIRMAN . All right. I will now put the clause to vote. The question is:

That clause 16 stand part of the Bill

Those in favour will please say "Aye"

SOME HON. MEMBERS : Aye.

MR DEPUTY CHAIRMAN . Those against will please say "No."

SOME HON. MEMBERS : No.

MR DEPUTY CHAIRMAN . I think the Noes have it . . .

SHRI BHUPESH GUPTA : The Ayes have it.

MR. DEPUTY CHAIRMAN : Are you pressing for a division?

SHRI BHUPESH GUPTA : Well, if the Government wants to do it, then we will have it.

MR DEPUTY CHAIRMAN . All right, let there be a division; let the lobbies be cleared

SHRI BHUPESH GUPTA : We do not ask for a division. We are supporting the clause brought by the Government. It is the Government which is dividing the House. If Mr. Gokhale's intention is to divide the House, let him say so.

SHRI H. R. GOKHALE : It is for you to say.

SHRI BHUPESH GUPTA . You have given a disruptive advice to divide the House on a clause which you yourself brought before the House. In the Joint Committee there was a lot of discussion and an agreement was arrived at. Why are you changing it radically now? Why are you coming in the way of what we arrived at, as Shrimati Yashoda Reddy has rightly pointed out, by discussion and common consent?

MR. DEPUTY CHAIRMAN . I have ordered a division. There should be no speech now.

SHRI H. R. GOKHALE . Let him not press division. We will bring an amending Bill afterwards

MR DEPUTY CHAIRMAN ; So far as this clause is concerned, there is no opposition.

SHRI BHUPESH GUPTA . So, it remains.

SHRI H. R. GOKHALE . For the time being it remains

SHRI PITAMBER DAS : When you bring the amending Bill, we will consider it

MR DEPUTY CHAIRMAN . In view of the clarification made by the hon. Minister, I think I will just put this clause again before the House. There need be no division. The question is.

"That clause 16 stand part of the Bill."

The mot on was adopted.

Clause 16 was added to the Bill

Clauses 17 and 18 were added to the Bill

Clause 19—Appeals

SHRI H. R. GOKHALE : Sir, I move.

15 "That at page 8, after line 6, the following proviso be inserted, namely.

'Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court'."

This amendment only remedies an anomaly. This is the first time that care is taken to see that appeals are provided against decisions of Judges in respect of contempt of court as of right. As you know, clause 18 provides that such appeals shall be heard by a Bench not less than two Judges. Clause 19 only says that the right of appeal should be available to decisions given by the Judicial Commissioner's Court.

The question was proposed.

MR. DEPUTY CHAIRMAN : The question is:

15. "That at page 8, after line 6, the following proviso be inserted, namely:

'Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court'."

The motion was adopted.

MR. DEPUTY CHAIRMAN : The question is:

"That clause 19, as amended, stand part of the Bill."

The motion was adopted.

Clause 19 as amended, was added to the Bill."

Clause 20 was added to the Bill.

Clause 21—Act not to apply to Nyaya Panchayats of other village courts

MR. DEPUTY CHAIRMAN : Is Shri Mani pressing his amendment?

SHRI A. D. MANI : No, Sir.

MR. DEPUTY CHAIRMAN : The question is:

That clause 21 stand part of the Bill,"

The motion was adopted.

Clause 21 was added to the Bill.

Clauses 22 to 24 were added to the Bill

Clause 1—Short title and extent

SHRI H. R. GOKHALE : Sir, I move:

2. "That at page 1, line 3, for the figures '1970', the figures '1971' be substituted."

This is a formal amendment changing the year in figures.

The question was proposed.

MR. DEPUTY CHAIRMAN : The question is:

2. "That at page 1, line 3, for the figures '1970' the figures '1971' be substituted."

The motion was adopted.

MR. DEPUTY CHAIRMAN : The question is:

"That clause 1, as amended, stand part of the Bill."

The motion was adopted.

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

Enacting Formula

SHRI H. R. GOKHALE : Sir, I move:

1. "That at page 1, line 1, for the word 'Twenty-first' the word 'Twenty-second' be substituted."

This is again a formal amendment changing the year in words.

The question was proposed.

MR. DEPUTY CHAIRMAN : The question is:

1. "That at page 1, line 1, for the word 'Twenty-first' the word 'Twenty-second' be substituted."

The motion was adopted.

[Mr. Deputy Chairman]

MR. DEPUTY CHAIRMAN The question is

"That the Enacting Formula, as amended, stand part of the Bill"

The motion was adopted

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

The Title was added to the Bill

SHRI H. R. GOKHALE : Sir, I move

"That the Bill, as amended, be passed."

The question was proposed

SHRI PITAMBER DAS : Mr. Deputy Chairman, Sir, I want to take this opportunity for expressing myself on some of the points that have been raised during the course of the debate.

Sir, I have often heard it said that the judges, while administering justice, do not show due regard for the mandate of the electorate or the political climate of the country or for the aspirations of the people. Many a time suggestions are made that the judges, while administering justice should have due regard for all these things. Sir, I want to submit that the duty of the judges is to settle disputes, adjudicate upon claims, establish rights and administer justice according to the law as it stands and according to the Constitution which the people of this country have given unto themselves. So far as the question of the mandate of the electorate is concerned, it is meant for those who are elected. But the judges are not elected. Members who come to the Legislatures on a mandate, it is for them to enact laws and frame rules according to the mandate of the electorate or the political climate of the country. After that is done and after the rules are framed and the laws are passed then, it is the duty of the judges to administer justice according to those laws or rules. Therefore, instead of asking the judges to show due regard for the mandate of the electorate or the political climate of the country or the aspirations of the people, the politicians should show due regard for them and frame the laws accordingly. It will be a very bad principle if the judges start taking care of those things.

Secondly Sir, it has often been said that the judges should not be very touchy and that they are not super men. I entirely agree that they should not be touchy and that they are not super-men. But, at the same time, it does not necessarily mean that they can be criticised like common men. According to Constitution the State structure is based on three pillars. Legislature, Administration and Judiciary. These three pillars have to discharge their own functions and, therefore, they are provided with their own protections and they enjoy their own privileges. For instance, the legislatures have their own privileges. Those persons who say that the judges should not have these privileges are themselves over-zealous about their own privileges. In order to enable these three agencies to function smoothly and efficiently, some protection is needed. The legislatures have their own privileges, so also the administration. For an ordinary assault, the punishment that is provided in the case of public officers or public servants, whatever names they are called by, is a special one. If they are assaulted, a special punishment is there. Why, after all? Just to enable them to discharge their functions smoothly and efficiently. It is very necessary. Similarly, for the judges to function smoothly and to administer justice evenly it is necessary that they must have some protection and some privileges. I am happy that this Bill provides as to what would not be contempt, the area of uncertainty, thus, has greatly been reduced. Sir, talking about the judges that they are trying to protect vested interests, I do not think, looks very nice. After all, the judges are there to do justice. They are not to protect anybody's interests. Therefore, attributing such motives to them certainly brings the judiciary into contempt. Therefore, Sir, we should maintain the status of these three pillars and it is only then that the State structure can remain standing firmly.

Finally, Sir, I would like to suggest that the right of fair criticism should not wait until the case is finally decided, because when a case goes in appeal, it takes several years for the case to be finally decided. And if fair comments have to wait till that period, then by the time the case is finally settled people start losing all interest

in the case itself. Therefore, when the case is settled, even in the initial stage fair comment should ordinarily be allowed.

With these remarks, Sir, I welcome the measure as it is, and I wish it to work satisfactorily.

MR DEPUTY CHAIRMAN Mr. Villan.

SHRI THILLAI VILLAIAN (Tamil Nadu) Sir, I wanted to participate in the main discussion itself but, unfortunately, I was not present. I am taking this opportunity to express certain views regarding this Bill.

Sir, first of all, I want to say that I welcome this Bill for one reason. Before passing this Bill, we were left in a position to search for a black cat in a dark room because there is no definition, correct definition, for 'contempt of court'. Without definition we were left, the courts were left, the judges were left, to inquire into cases of contempt of court. Now, we have been given a definition. My hon friend, Mr Mani, has stated that the definition is scanty, it is not full. I would say that it is better to have something than nothing. Therefore, Sir, I welcome this Bill on this sole ground that it has provided a definition for the contempt.

Sir, the courts of justice are the last bulwark of a State. Without this, there will be no confidence in the authority of the State. In the 18th century itself, Justice Wilmet has stated

"Whenever man's allegiance to the law is so fundamentally shaken, it is the most fatal and the most dangerous obstruction of justice and, in my opinion, calls for rapid and immediate action than any other obstruction whatsoever, not for the sake of the judges as private individuals, but as they are the channels by which the king's justice is conveyed to the people."

The very same view is continued and persisted in our days, in the days of a democratic Government. So, Sir, I want to say that any disrespect to the seat of justice is an affront to the dignity and

majesty of law. So both the erring judge and erring contemner are danger to purity and sanctity of the seat of justice.

To err is human, we all know. Judges are also human. Therefore, they are liable to err. Criticism of their decision may not be contempt, but when it touches the improper motive passing the limit of allegation of error, contempt will come.

Here I respectfully submit that it is very difficult to define "contempt". So many legal luminaries have been attempting to give a correct definition of this term "contempt of court" for centuries together. Oswald attempts to give a correct definition and he considers 'contempt' to be constituted by any conduct that tends to bring the authority and administration and law into disrespect or disregard or to interfere with or prejudice parties or their witnesses during litigation. Halsbury attempts to give a definition and he defines 'contempt' as consisting of words spoken or written which obstruct or tend to obstruct the administration of justice. Black Odgers comes with another definition that contempt is to publish words which tend to bring the administration of the justice into contempt, to prejudice any fair trial of any cause or matter which is the subject of civil or criminal proceeding or in any way to obstruct the cause of justice. Then Blackstone has also clarified it in his celebrated commentaries in the same way. Then Lord Hurdwick says contempt is scandalising the court itself, abusing parties who are concerned in the causes in the presence of court, prejudicing the public against persons before the cause is heard. The American view regarding this is this. He whose conduct tends to bring the authority and administration of the law into disrespect or disregard, interferes with or prejudices parties or their witnesses during a litigation or otherwise tends to impede, embarrass or obstruct the court in discharge of its duties. In Common Law also it is enough if the conduct tends to obstruct the administration of justice, an effort to thwart justice or to interfere with its orderly administration.

Therefore, Sir, taking all these definitions into our consideration in this Bill a correct definition of our own has been given.

[Shri Thillai Villalan]

For this only reason I welcome this Bill and congratulate the Minister for having brought this Bill atleast at this last stage.

SHRI BHUPESH GUPTA : In this final stage naturally I rise to support this Bill. The Joint Select Committee gave its report on February 20, 1970, and today is November 22, 1971. Almost two years have passed since the report came to us. There was some attempt to put it in cold storage and not allow it to come to the House. But, ultimately, due to our perseverance and also due to the co-operation of the Minister of State for Parliamentary Affairs we have succeeded in getting this law passed in this House. It has not yet become the law but we are almost on the point of passing it. I think we can all congratulate ourselves on the tasks that we have performed in the Joint Select Committee and here in revising the law of contempt and putting before the nation a saner, a more sober and a more realistic law. As I said before, I for one would not like to have a law of contempt at all, it is not necessary, but since my views are not shared by others, naturally we have to come to a common agreement that the law should be like this, not what it was before, or is now even today. So, Sir, we worked, I may tell you, in the Joint Select Committee in a co-operative spirit. Obviously, this report would not have come had the Congress Party not been willing to accommodate others and we were not willing

to accommodate the Congress Party. As 3 P.M. you know, at that time the situation in Parliament was entirely different. The Congress was in minority in both the Houses. But we did not make it a point to thrust only our point of view and get things done. We, on the other hand, sought the co-operation and accommodation of all in order to arrive at a common consensus representing more or less, what should be regarded as the will of the people. Nobody can say what exactly is the will of the people. Altogether, we wanted to provide something which would approximate to the sentiments and view of the people in this matter. That is how the law has come to you. I hope Mr. Gokhale who has also, I must say, conducted himself admirably well in

this House, would stand by us and uphold the banner of this House in the other House to which he belongs when the Bill goes there. I know he is a very forthright and honest man. Having accepted what we said here, and now that the Bill is going from this House to the other House, he will be charged in a moral way with the responsibility of upholding what we are passing here with his co-operation as he is passing with our co-operation. I think that approach should be there. I say that in such matters party politics should not be readily brought in. In such legislations, I think, we should try to work, more or less, as if we did not belong to any party as such in the narrow sense of the term but work for the common good, for setting things right for overcoming the legacies of the British and all the dismal past, and I think we have done it well. Now we can tell our countrymen, our journalists, our politicians, men of public opinion, lawyers, teachers and students all over the country that "Here is a new law of contempt which definitely marks a remarkable improvement on the past one while it, according to some of them maintains the so-called dignity of the judges, at the same time it enlarges the freedom and scope of right thinking and right comment on the part of the common citizen." We have in this law, I think, to an extent blended the opposite viewpoints in this matter in order to arrive at something which will be in the common interest of the common people without impinging in any way on the rights and dignity of the courts of law.

Sir, much has been said about courts of law. I have been an accused all my life. I do not understand, and I hope you will sympathise.

MR. DEPUTY CHAIRMAN: You are a number one criminal or what?

SHRI BHUPESH GUPTA: That only you can say, Sir.

Having been an accused all my life, I have been accused here by the Government, by Morarji Desai all the time.

SHRI PITAMBER DAS : Thank God, only an accused and not a convict.

SHRI BHUPESH GUPTA . He says I have not been a convict. Then shall I go and commit some crime to go to Bihar jail as a convict to please my esteemed friend, Mr Pitamber Das, for whom my love is untiring and my affection unboundened? But I do not think he wants it.

Now, one point only here in this connection, and that is, something is being said about the dignity of the court, the beauty and the majesty of the court. Are our courts film-stars that we should talk about their beauty? Is our court a royal institution that we must talk about its majesty? Is our court a divine institution in a man-made world that we should mystify it as if it is something divine and sublime beyond the reach of man who lives on this planet and as if the court rules somewhere outside in the heavens? Nothing of the kind. Courts are, as such, a creation of man. Courts are as much a product of society, functioning in given conditions, in given social environs, amidst conflicts that torment the society as we all do function. Therefore, they are liable to commit mistakes and errors; they are, liable to show the prejudices and feelings which others share. It happens.

श्री शीलभद्र याजी (बिहार) : खत्म करो अब । हम लोग भी है ।

SHRI BHUPESH GUPTA Now kindly understand that point. After all, your child may lead to some such thing. I am not so much incorrigible as you are but your children might become. That is why I speak. We shall all be out some time. Therefore, it is not so. Let us frankly admit that our courts have got to be corrected, just as we correct ourselves through Question Hour, through discussions, debate, through mutual criticisms and even through condemnation. Why should the court be free from public scrutiny, public vigilance, public surveillance at least in this respect so that the people can also say what they feel about them? Why should there be touchiness about the court, I do not understand. People who administer justice should be men of guts, men of learning, men of knowledge, they should be men with sympathies for the people. They should

know how to administer justice not in the abstract, not in heavens but in this society on earth. Sir, here we need judges and courts for negating some of the bad things, giving justice to the common man, to the suffering and toiling masses and that you can never do unless you have the sympathies towards them and unless you think that monumental social injustice is being done as a result of this society which is full with the exploiters at the top, the monopolists, the big landlords, the profiteers, the hoarders and other criminals.

Sir, you cannot serve even-handed justice if you do not know where the dividing line is. Will you give justice . . .

MR DEPUTY CHAIRMAN Please conclude

SHRI BHUPESH GUPTA . You shall not give justice in the hands of those who do not know the elements of justice. Justice means social justice. It must have a social content. Justice must be respectful, it must seek to undo something which is wrong and do something which is needed for the society. I regret, our courts have not been brought themselves to understand that spirit or the tradition. Therefore, we think that every point, when we pass such laws, should be made clear. We shall remind our judges and our courts of law that we are not satisfied with the manner in which they comprehend law, interpret law, understand law, act by law and administer law. We have liked them to understand law from that point of view. A common man who has been seeking justice all the time has been denied this all their life. We should tell them this and that should be our approach. Therefore, I think the Contempt of Court Bill will at least remedy one thing. We will be in a position to criticise, to comment better than before. The Damocles's sword shall not always hang over our heads. Once again I congratulate . . .

MR DEPUTY CHAIRMAN Please conclude

Time bell rings

SHRI BHUPESH GUPTA Sir, you ring the bell because that is your good habit, that is your good music. Only this music you understand. But we understand other

[Shri Bhupesh Gupta]
 music also I say that co-operation is one thing and I must say finally that all of us should extend our helping hand for this. I was deeply impressed by the courage of Shrimati Yashoda Reddy, when she got up and said about what happened in the Joint Select Committee although she has gone on the other side now and I do not want that she should have always been on this side. I am glad that Shri Chandra Shekhar also spoke and Shri A. P. Jain also spoke. We speak in the voice in which we worked in the Joint Select Committee, but since Shri Gokhale is a stranger, not being a Member of the House, I must say, let it be recorded—I am an old Parliamentarian—that the Minister has tried to accommodate a Member in this manner.

It is a good tradition he has created. He could have easily got this Bill passed.

SHRI PITAMBER DAS. That is because he has got a Judge's background.

SHRI BHUPESH GUPTA: I do not know whether the background of the Judges is good or bad but our association seems to have proved useful to him. Let me make this point. This is how a Minister should function. Why should they be rigid? Why should they

MR. DEPUTY CHAIRMAN: Would you now conclude?

SHRI BHUPESH GUPTA: Let me say a word or two about him. Why are you grudging this generosity?

MR. DEPUTY CHAIRMAN: It is enough; how much time can you take?

SHRI BHUPESH GUPTA: Let me tell you. It is a good thing for him. As I said he could have got this passed easily because at the pressing of the bell all the Congress members came running to rally round the banner of the Congress Party, no matter whether it is for good or for evil. Even so they were very sorry I must say Mr. Gokhale has done in this matter just what a Law Minister should have done. He has gone on record. I liked him when he said, I go on record putting my views in this

manner I appreciate it; he has put it on record. If we are wrong we shall correct ourselves. We will have no hesitation in extending full support to him. Let it go to the court of law. I appreciate the manner in which he reacted to our suggestion. Here is an example which can be well emulated by other Members of the Government. I hope the Leader of the House will kindly make it known as to how a Minister having functioned in this manner won credit from the Opposition.

SHRI DEV DUTT PURI : Sir, . . .

(Some other hon. Members also stood up)

MR. DEPUTY CHAIRMAN . I think we have had enough discussion.

SHRIMATI YASHODA REDDY : The Leader himself was responsible for the Minister accepting....

SHRI BHUPESH GUPTA : I forgot; I must congratulate the Leader of the House. I am told by Shrimati Yashoda Reddy who knows the Leader more than the led, that he was helpful in this matter.

MR. DEPUTY CHAIRMAN : All right; Mr. Puri.

SHRI A. D. MANI : Sir Mr. D. P. Singh is a lawyer; he may also be given a chance.

MR. DEPUTY CHAIRMAN : I know that, Mr. Mani. You need not tell me that.

SHRI DEV DATT PURI : Sir, I must express my anguish and my unhappiness at the Bill as it is sought to be passed with clause 16 in it. Clause 16 has two parts. Firstly a Judge, Magistrate or other person acting judicially is also liable for contempt of his own court. It sounds a bit ridiculous. Just imagine this provision that we are making; we are seeking to establish contempt against a Judge in his own court and contempt means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court. We are seeking to convict a court of disobedience of an undertaking given to the court. And criminal contempt means the publication of any matter or the doing of any other act whatsoever which scandalises or tends to

scandalise, or lowers or tends to lower the authority of any court. I think we are doing something which is utterly ludicrous and I am extremely unhappy that we are passing this Bill with clause 16 in it.

SHRI SASANKASEKHAR SANYAL (West Bengal) : Mr. Deputy Chairman, Sir, I wish instead of amending this Bill the hon. Minister had found his way to repeal the existing Act. He could have waited for five years to watch how things went on in a climate of free criticism. I came to the Patna High Court to hear the arguments of the great lawyer, patriot and politician, Pandit Motilal Nehru, in the Searchlight Contempt case

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He gave up his practice. He got the special permission of the Working Committee and he was specially requisitioned for arguing the case. His words, which are now ringing in my ears, were: "My Lords, prestige of the court is one thing and the vanity of the Judge is quite another." So, all along the Judges have confused their personal susceptibilities and vanity with the prestige of the court. Although this Bill has tried to reduce the area of uncertainty, as my friend Pitamber Dasji thinks it to be, the area of uncertainty is there. Their clumsy sensitiveness will, get the upper hand and in the Republic where everybody has to give and take in the knocks of criticism, the Judges will still be kept like ladies in a glass house inviolate and inviolable as if their modesty is going to be outraged by every criticism in the press or on the platform. I take the cue from Pitamber Dasji. The judiciary, the administration and the Legislature are the three organs through which the Constitution works. The administration is run on the ordinary law of the land. We have not yet defined by enactment the privileges of the Members of the Legislature and Parliament. The articles provide that we can have our own statutory enactment regarding our privileges and contempt, but for the last twenty-two years or more we have been going on without any enactment regarding contempt or privileges so far as the Legislatures and Parliament are concerned. Why not let the law of the land take its own course with the courts also? That is the humble proposition which I want to put forward. My good friend,

Mr. Bhupesh Gupta, has abandoned his former stand of giving a free criticism of the Government and now he is welcoming and co-operating with the Government. I am prepared to co-operate with the Government, but I cannot welcome this Bill. What about the press? There are so many enactments which control and regulate the press. The newspapers have got to criticise sometimes the Judges. The charge has been advanced. . .

SHRI BHUPESH GUPTA : It is welcome from the view of the past.

SHRI SASANKASEKHAR SANYAL : Sir, you know that in West Bengal Burdwan is an area which is now devastated by atrocities. About 150 persons have been jailed and they are not bailed out. They do not know what the courts are going to do. In this climate a committed judiciary is a peril. The Government will probably put the case in the hands of a magistrate who is in a committed judiciary. They do not know any of the Judges. Unless the press as vigilant sentinels guarding the liberty of the subjects, are given the liberty of criticising a particular magistrate saying that such and such person should not try the case, the liberty of the Republic will come to nought. I have been a lawyer nearly fifty years. I am respected in courts very much. On two occasions I was pursued for contempt of court and simultaneously I filed an application before the Judges themselves challenging them that they had also committed contempt. Ultimately the whole thing was compromised, no case against me and no case against the Judges. In spite of what Mr. Puri says, clause 16 is a good provision. I leave this matter with these observations. Take away the law as it is. Watch the climate. Have a commission or have a committee. Find out how the courts have been injured or defamed and then come forward with legislation. It should not be a legislation for dealing with the systems, but a legislation which will go into the root of the whole matter.

SHRI H. R. GOKHALE : Mr. Deputy Chairman, I have nothing more to say as I have already replied in detail in the course of the debate. I have risen only to thank all the hon. Members of the House for the

[H. R. Gokhale]

useful comments that they have made during the discussion and for the extensive support that they have given to the Bill.

MR. DEPUTY CHAIRMAN : The question is :

"That the Bill, as amended, be passed."

The motion was adopted.

RESOLUTION REGARDING CONTINUANCE OF PRESIDENT'S PROCLAMATION IN RESPECT OF THE STATE OF MYSORE FOR FURTHER SIX MONTHS WITH EFFECT FROM 25TH NOVEMBER, 1971

THE DEPUTY MINISTER IN THE MINISTRY OF HOME AFFAIRS/
गृह मंत्रालय में उपमंत्री (SHRI F. H. MOHSIN) : Mr. Deputy Chairman, Sir, I move :

"That this House approves the continuance in force of the Proclamation issued by the President on the 27th March, 1971, under article 356 of the Constitution, in relation to the State of Mysore, for a further period of six months with effect from the 25th November, 1971."

Sir, the House will recall the circumstances in which the Proclamation under article 356 of the Constitution had to be issued in relation to the State of Mysore on the 27th March, 1971. It was approved by the other House on the 24th May, 1971 and by this House on the 25th May, 1971. In accordance with clause (4) of article 356, the Proclamation will remain in force till the 24th November, 1971. The other House has on the 18th November, 1971 accorded its approval to the continuance of the Proclamation for a further period of six months.

I may briefly mention the circumstances under which it has become necessary to seek further extension of the Proclamation. It will be possible to revoke the Proclamation only after the elections are held to the Legislative Assembly and that may, as has already been announced by the Election Commission, perhaps be in the month of

February. The House will agree that it will be appropriate to hold the elections in Mysore at the time when elections are held to the other State Legislatures in 1972. Therefore, the revocation of the Proclamation in relation to Mysore will be possible only after February, next year.

I have therefore come before this House with the request that a further extension of the Proclamation will be approved by this House without any objection.

The question was proposed.

DR. K. NAGAPPA AIVA (Mysore) : Mr. Deputy Chairman, Sir, I support the Resolution. I am happy that the hon. Minister, Mr. Mohsin, coming from Mysore, is moving the Resolution. I also feel that with the time extended for another six months, the Central Government is going to rule Mysore State for one year. There were certain advantages and disadvantages also in the President's rule. But when we have a Governor of vast experience, it is possible for the Central Government to make up their mind to see that the administration improves rather than deteriorates. At the outset, I must make an appeal to the Government that the moral of the Police Department should be maintained. What I am saying is, the law and order position has been throughout good in Mysore State, and Mysore State has been known for tranquillity and peace. And I want that to improve. My fear is that the Governor, in spite of having certain advantages that he need not be influenced or pressurised by politicians, sometimes it so happens that some people try to pressurise him and in this connection, I must say that certain people in our State have already started functioning as if they are the Chief Ministers.

As a rule political pressures, whichever party they may belong to, try to have influence over the persons who rule and they want to have their own way. Therefore, I submit that all the departments must see that there is no interference by the people, particularly politicians in the police administration.