MESSAGE FROM THE HOUSE OF THE PEOPLE

THE PUBLIC ACCOUNTS COMMITTEE FOR 1954-55

SECRETARY: Sir, I have to report to the Council the following message received from the House of the People, signed by the Secretary to the House:

"I am directed to inform the Council of States that the following motion has been passed in the House of the People, at its sitting held on Monday, the 10th May, 1954, and to request that the concurrence of the Council of States in the said motion and further that the names of the Members of the Council of States so nominated be communicated to this House: —

'That this House recommends to the Council of States that they do agree to nominate seven members from the Council to associate with the Public Accounts Committee of this House for the year 1954-55 and to communicate to this House the names of the Members so nominated by the Council]'."

SHRI B. C. GHOSE (West Bengal): In this connection we would like to know, Sir, what is the position with regard to the point raised by Mr. Sundarayya yesterday?

MR. CHAIRMAN: I have mentioned the matter to the Speaker of the House.

PAPERS LAID ON THE TABLE

REPORT OP THE TRAINING AND EMPLOYMENT SERVICES ORGANISATION COMMITTEE

REPORT OF THE NATIONAL TRADES CERTIFICATION INVESTIGATION COMMITTEE

MINISTRY OF WORKS, HOUSING AND SUPPLY NOTIFICATION NO. 2521-EII/54

THE DEPUTY MINISTER FOR LABOUR (SHRI ABID ALI) : I beg to lay on the Table a copy of each of the following Reports: —

(i) Report of the Training and Em-31 CSD ployment Services Organisation Committee. [Placed in the Library, see No. S-159/54.]

(ii) Report of the National Trades Certification Investigation Committee. [Placed in the Library, *see* No. S-160/ 54.]

On behalf of my hon. colleague, Sardar Swaran Singh, I beg to lay on the Table a copy of the Ministry of Works, Housing and Supply Notification No. 2521-EII/54, dated the 31st March 1954, under sub-section (2) of section 17 of the Requisitioning and Acquisition of Immovable Property Act, 1952. [Placed in the Library, see No. S-165/54.]

THE HIGH COURT JUDGES (CONDITIONS OF SERVICE) BILL, 1954 — *continued*

SHRI H. C. MATHUR (Rajasthan): Mr. Chairman, I will take no more time of the House in emphasising the obvious, that there should be uniformity of terms and conditions and particularly, the salary of the High Court Judges in Part A and Part B States should be uniform. I do wish to stress that it is impossible for us to reconcile ourselves to the absurd and anomalous position which has been created by the thoughtless integration of some territories with the Part B States. Sir, it is one thing to have uniform scales of salaries and terms and conditions for the High Court Judges in all these States but it is entirely different to have these anomalies within the same State itself. As I pointed out, Sir, at present we have a very absurd position in these Part B States where the High Court Judges are drawing salaries lower than the District Magistrates, and this position can no more be tolerated. Such a thing, Sir, had never happened in the past; in no State, nowhere, at no time, and I think it is such a senseless thing that it cannot be tolerated any more and I wish particularly to invite the attention of the hon. the Home Minister to see that this anomalous position is not permitted any further in these

[Shri H. C. Mathur.] Part B States. To obviate this difficulty and many others I very strongly suggest that we should have an all-India judicial service for more reasons than one. If we had such a service, then the anomalies which I am pointing out today would not have been possible at all. And apart from it what we find is that many Members here had suggested and argued at length that we should have the transfer of the High Court Judges, that we should have the transfer of **the** District and Session Judges. If we had an all-India service that will solve all these problems automatically. After all. High Court Judges are human beings and, Sir, in the changed circumstances in which we are living, it is only necessary that now, instead of having it as an exception, we have it as a rule that the Judges are transferred from one place to another. That is necessary for increased efficiency. That is necessary for better mental and moral integrations which is necessary for many other reasons. Sir, the present may not be the time when I can go into the details and make out a strong case in this House for establishing an all-India judicial service but I do wish to emphasize that if Part B States and all the judicial services have got to be more efficient and if people are to have more confidence in the judicial service, which we all so much desire, it would be only in the interest of the country that we have an all-India judicial service.

Sir, another point which I would like to stress is about the recruitment of the Judges, I mean the selection of the Judges. I have with great care read what the hon. the Home Minister stated in this House and in the other House. He stated. Sir. that the present method and procedure of selection is almost the best that could possibly be. He wanted us to believe that it starts with the Chief Judge of a State. He takes the initiative and then his proposal is discussed possibly with the Chief Minister of that State. And then the recommendation comes through the Chief Justice of India and is finally submitted before the Pre* sident by the Home Ministry here. Sir, I do not propose to go beyond the Constitution and though there are certain friends who have very strongly suggested the elimination of the State Governments and the Home Ministry, I think that would not be feasible. I quite understand that, but I do wish to stress that we must maintain conventions and traditions which are healthy. We must lay down a convention and tradition that invariably the recommendation made by the Chief Judge of a State shall be accepted in the matter of selection of puisne judges. What happens at present is not so. I have got complete instances within my knowledge where it has not happened like that. It is expedient for the Chief Judge of a State to consult the Chief Minister and only such names can be considered which have the concurrence not only of the Chief Judge but also of the Chief Minister. Only such names are considered which have the concurrence of both of them. It would be an entirely different matter if it was open to the President to consider separately the views of the Chief Judge of a State and the views of the Chief Minister of the State and then come to his own conclusion, but what happens is that no name can be considered until and unless it has the definite concurrence of the Chief Minister of the State. I would like to emphasize this point, because the Chief Minister of a State has not got that power even in the appointment of the executive officers. All the important executive officers are appointed through the Public Service Commission—an absolutely independent body. The Chief Minister of a State has got no say whatsoever in the matter of appointment of important executive officers. The question of posting is entirely different; I am only talking about their selection. While we are so anxious that we should have a very independent judiciary, while we have recognised that in a democratic set-up, to sustain democracy, we must attach all the sanctity to the judiciary, it is for that purpose we have made all these provisions in our Constitution to see that the i

above influence. It is entirely one thing that no action can be taken against the judges after they are appointed, but it is all the more important that the selection should take place in a still more independent manner. If you do not appoint judges having calibre and character then it becomes very difficult and the protec- i tion which the Constitution gives to | them will not be of much avail. So it is very necessary that in the selection of our judges we must take every pre- i caution and see that we establish very sound traditions and very sound conventions. That is why I very strongly urge that in the appointment of the judges, in the selection of the judges, the Executive should not have that much say and that much influence. Of course, the channel must be there.

SHRI RAJAGOPAL NAIDU (Madras): They should act as Post Offices.

SHRI H. C. MATHUR: Yes, they must act as Post Offices. Certainly, the President must take into consideration if there are any exceptional circumstances. If there are certain facts brought to the notice of the President, certainly the Home Minister has the right to comment upon that and then the President can certainly take all the factors into consideration. When I talk of the President, I do realise that it is the Home Minister really who will have to take all that into consideration.

Sir, in the past it was not the Home Minister whose opinion was invited in the matter of the appointment of the judges. It was the opinion of the Law Minister that was invited. Why I wish again to repeat this point is that the appointment of the judges should have absolutely nothing to do with the Home Minister. The Home I Minister may be an excellent man; | he may be a very honest man; he | may be wanting to uphold good traditions but nobody can tear himself from the background. The Home Minister is essentially an Executive Head and he has got his big head I tilled with so many executive problems that it is impossible almost to expect, him to divorce himself from all those considerations. That is why I again wish to stress that at the Central Government level it should be only the Law Ministry that should have anything to do with the selection of the judges and we must make a tradition and convention that the recommendations of the Chief Judge and the Chief Justice of India will be accepted. I know of a particular case in which the recommendation of the Chief Justice of India and even the views of the President were brushed aside because the Joint Secretary was interested otherwise.

MR. CHAIRMAN: Dr. Katju.

DR. SHRIMATI SEETA PARMANAND (Madhya Pradesh): Sir, I had given my name yesterday for speaking.

MR. CHAIRMAN: I know. I will ask you to speak at the third reading because we have not got the time now.

THE MINISTER FOR HOME AFFAIRS AND STATES (DR. K. N. KATJU) : Mr. Chairman, what I apprehended has happened. The discussion has travelled far out of the purview of this Bill. Not that I regret it; I welcome this opportunity of correcting many misapprehensions. I only regret that those misapprehensions have occurred particularly on the part of hon. Members who are great exponents of law themselves.

For instance, my hon. friend who spoke just now dwelt at length upon the metjhod of appointment of judges and this subject was also touched upon yesterday. Now, what is the position? Leaving aside the appointment of the Chief Justice of the High Court, the initiative lies in the hands of the Chief Justice and he sends his opinion to the local Chief Minister. He has taken various names into consideration: he knows everybody in the Bar. He knows the judge and he discusses the merits of the individual to be selected and then he makes up his mind and sends a name. Speaking

[Dr. K. N. Katju.] from experience—because before I became the accursed Home Minister, I was also in another Office somewhere—a difference between the Chief Minister and the Chief Justice almost never occurs. It may occur once in a way, but everybody knows that the Chief Justice has superior knowledge, knows every single member of the Bar, knows every single District and Sessions Judge and therefore his opinion prevails. But the Chief Minister may have his own sources of information. I do not want to discuss about judges on the floor of this House because it is grossly improper, but we must never forget that even Chief Justices are human beings. Supposing the Chief Minister comes to know that the gentleman who has been recommended is unfortunately not in good health, he is suffering from dyspepsia and may not be able to apply himself fully to the requirements of his office, the Chief Minister says to the Chief Justice, "Well, have you considered this particular aspect? His brain may be first class, but what about his body?" and the Chief Justice may reconsider the case from that point of view. In another case of which I am aware, the Chief Justice unknowingly had recommended a name. Information came to me here that that particular gentleman had appeared in a litigation in a private dispute.

And some private caustic comments had been made on him by another judge in the course of that litigation. I naturally enquired: "What do you say? Do you know anything about that"? The Chief Justice at once drew back and said "I am very sorry, I don't know. This recommendation may, therefore, be withdrawn." So, that is the time when the Chief Minister just exchanges ideas with the Chief Justice. Somebody says, "What about the Governor?" The Governors are mouthpieces of the Chief Ministers. I don't see anything in this. When our Constitution was introduced, at that time Sardar Patel was here; he said that on this matter the President should be informed of the opinion of the Governor, not merely as a constitutional head of the State, which means as a mouthpiece of the Government, but the President would like to have the individual opinion of the Governor as to the suitability of this particular individual. When the case comes here, either they agree in a uni-manner—the Chief Justice initiates and the Chief Minuter and the Governor agree with him and that case comes here; or, if they are unable to straighten out their differences, then, all those papers come here. We have given directions that "before you send up the papers here, if either the Chief Minister and the Governor, or the Chief Justice and the Governor are unable to agree with each other, are unable to look at the matter from a different angle, please intimate each other of the different views and let them have a full discussion".

All these papers come here. What happens? The poor Home Minister does not come into the picture at all. The Chief Justice of India is concerned with this. As you are aware, Sir, the Chief Justice goes about, has intimate touch with the members of the local Bar as they appear before him in the Supreme Court, he has intimate touch with the Chief Justices of the different States, goes through all these papers and gives his opinion.

Then, in the ordinary course, the papers have to be submitted to the President. The Home Minister sends up the papers with his comments and they go to the President through the Prime Minister. I tell you that no better and, I submit, no more appropriate procedure can be devised for the appointment of a Judge of the High Court by human ingenuity than what our Constitution-makers have devised.

I have now been in office for two and a half years, and I know that I have inherited all sorts of heritage about the Home Minister and all that. But, so far as we are concerned, our intense anxiety is to recruit to the Bench an almost ideal individual. The question of political considerations does not even arise, does not even

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cross our minds. I do not know what my hon. friends there would do if they were to become Home Ministers one day. I wish they become, because there seems to be some sort of suspicion in their minds about all this; I resent all these things, that the Home Minister may be this or may be that. Believe me, Sir, when I say that the dignity of the office, the independence of the office, the fairness with which these judicial duties should be performed, did not arise out of the method of appointment. These are entirely due to the security of tenure. You don't mind how you may be appointed, but once you get into the sacred brotherhood of Judges, which has got its traditions—centuries-old traditions—of judicial independence, even a weak man, a faltering man once he gets into the charmed circle, feels elevated and feels: 'I must not lower the traditions of this high office'. How has all this been brought about? Because of security of office, not being subject to anybody. You know, Sir, that under the Constitution, a Judge can only be removed by an address presented to the President by both the Houses of Parliament, not by a fair majority of votes, but, I imagine, by an absolute majority of votes, and two-thirds of the people attending; and even Parliament cannot ask for his removal. It must be preceded by an enquiry by a Tribunal appointed to investigate into the matter and only on two grounds, namely, incapacity or misbehaviour. I do not speak about the British procedure as if it is something sacrosanct. We will have to take our local conditions into consideration.

SHRI K. S. HEGDE (Madras): Our procedure is far superior to theirs.

DR. K. N. KATJU: In England, you are aware, Sir, that the Lord Chancellor fills two offices; he is the head of the Judiciary, and he is hedged in with a political appointment. He comes in and goes out with the Cabinet whether it is Conservative, Liberal or Labour. There the procedure is that the Lord Chancellor recommends, the Prime Minister agrees and advice is given to the King and then the Judge is there. To suggest that appointments to that office should be made .....

DR. SHRIMATI SEETA PARMANAND: Then, why should the Law Minister be in charge of this?

DR. K. N. KATJU: I am most reluctant to answer ladies who do not know anything about this. For the time being, I would respectfully suggest that the proper sphere for them would be to advise women and children and do some social activity.

DR. SHRIMATI SEETA PARMANAND: I question that.

DR. K. N. KATJU: I pay the greatest tribute to them. I was saying, Sir, that when an appointment is made by the President—the President does no wrong—, the House must hold somebody responsible; if an appointment is made on which or about which a case may be made out of gross favouritism or improper method of doing it, a vote of no-confidence wiJl be either against the Cabinet as a whole or an individual Minister. If you have somebody else, either the Chief Justice of the Local Court or the Chief Justice of the Supreme Court, you can't do this. No vote of confidence can be discussed in this House against the Chief Justice. I mean to say that on this one important matter, the President is to be advised not by the Ministry responsible to Parliament but by some other agency which is not responsible to Parliament.

The judiciary is not responsible to the executive; nor is it responsible to Parliament. A Judge can only be dismissed if he—this is a condition precedent—is found by a Tribunal appointed in due compliance with the law, that he is guilty of either misbehaviour or incapacity. If he is not then, he is above the authority of Parliament. So, sometimes I fail to understand how the minds of hon. Members work, with due respect to them, in so

[Dr. K. N. **Katju.]** far as the relation between the judiciary and the executive is concerned.

My hon. friend,—he comes from Orissa—Mr. ivlahanty, referred to a payment in 1946—that a sum of Rs. 10,000 was paid to a particular Judge as fees for some arbitration. As soon as this matter came to light what did we do? At that time there was no resti.ction; a Judge could be asked to do services outside his sphere of office. Today the rule is—this was enunciated later and is now in force— this was enunciated some two and a half years ago, in January 1952—"The Government have also decided that no payment of honoraria or other remuneration should be made to a Judge for performing additional functions outside his normal duties whether judicial or non-judicial". It goes on to say: "In the event, however, of a Judge being called upon to perform a special work, for example, the Membership or Chairmanship of a Commission, reasonable out-of-pocket expenses should be paid. This, of course, would not be described as remuneration". What happened was this. Supposing in Bengal a Judge is appointed as Chairman of a Committee whose function is to go forty miles out of Calcutta to make some local enquiries. He travels in his own motor car every day. Then, he may be paid some out-of-pocket allowances for petrol, etc., say, Rs. 10 or 15 per day. Besides this, not a single penny can be paid now. Further, in order that the dignity of a Judge should not be impaired, we have suggested that he should not be appointed as an arbitrator in any dispute—civil, criminal, private or otherwise. Why? Because, as we know, Sir, when he acts as an arbitrator and delivers an award—experience has shown that the man who loses always tries to contest and suggests all sorts of irregularities and improprieties. Even the Law Courts may say that there had been technical corruption, judicial corruption or moral corruption.

Now, Sir, I am anxious that when a 'nan is a Judge of a High Court, his conduct should not be brought into question before any judge, munsifl or magistrate, except in the Appellate Court, in a case which he decides. And that is why we have forbidden it.

Now, my hon. friend has brought forward an amendment saying **that** leave should only be given by the President. Supposing a Judge is lying ill and suffering from typhoid; he applies for two weeks' leave: is he to ring up the President? It has been in practice for the last 100 years that in the matter of leave you go to the nearest authority and get your leave from him. The rules are there. There is no question of favour or otherwise. I really do not know what has struck my hon. friend when he says it. In accordance with the rules that are laid down at great length in this Act, should he not go to the Governor, but should consult the President? The leave, Sir, given is as a matter of course. You consult the Accountant General who says how much leave is due to you; you apply for it and get it. So, Sir, that also indicates as if there is some sort of a perpetual war on the part of the Ministry and the executive willy-nilly to control the judiciary, something which really does not exist. And I do say with confidence, having experience of both the spheres, that at no stage is any attempt made by the Ministry concerned to influence the judiciary in the slightest degree. You can take it from me. My hon. friend, Mr. Mahanty, although he comes from Orissa, was speaking on behalf of Rajasthan. He said that in one State there was a Deputy Leader of the Opposition who was appointed as a Judge by the Ministry. Why? Because they wanted to queer the pitch for the opposition. He did not know the facts. Mr. Mathur did not put up that case. He comes from Rajasthan.

SHRI S. MAHANTY (Orissa): He can repeat it, Sir.

DR. K. N. KATJU: Now about Jagan Nath Puri, that particular individual was recommended in the first instance by the Chief Justice of that Court as

being the most competent man of the Bar. The recommendation proceeded from the Chief Court, and it was agreed to, I think, by the Chief Minister after some difficulty.

SHRI H. C. MATHUR: What was that difficulty?

DR. K. N. KATJU: NOW, Sir, I do ask hon. Members, in the name of everything that is holy, not to discuss the Judges on the floor of this House.

SHRI H. C. MATHUR: I particularly avoided it.

MR. CHAIRMAN: Yes, yes; he is also avoiding it.

DR. K. N. KATJU: Then, Sir, some suggestions were made for transfer of Judges from one court to another. Well, I confess that I was rather in clined to that view myself. But my ardour has become now a little cooler for several reasons. Number one is that you get the language problem. As the House knows, the devotion for regional languages is increasing in in tensity. I do not know what will happen.....

SHRI K. S. HEGDE: The proceedings of the High Courts are all in English.

DR. K. N. KATJU: I should not be surprised if in every regional High Court there was an insistence that proceedings should be conducted in the regional language.

SHRI RAJAGOPAL NAIDU: What about the Supreme Court?

DR. K. N. KATJU: I am talking of the High Courts.

SHRI K. S. HEGDE: Even in the High Courts the language is English.

DR. K. N. KATJU: Now let us carry on a regular discussion. What I was saying was this. Supposing I live here. And you send me to Madras. Some counsel starts arguing in Tamil. What am I to do? Or supposing somebody says "I am not engaging a *vakil;* I am going to argue in person." And the litigant starts arguments in Tamil; the Judges understand Tamil.

SHRI K. S. HEGDE: In some High Courts many people do not know the language of the client.

DR. K. N. KATJU: Mr. Hegde is concentrating on today. I am concentrating on tomorrow. That is the difference. If you see things ten years back, they were all English people.

DR. SHRIMATI SEETA PARMANAND : When will the tomorrow come?

DR. K. N. KATJU: Now therefore the question remains that there is this language difficulty. The second difficulty is more important. I do not want that there should be a one-way traffic. I do not want the Calcutta Judges, the Bombay Judges and the Madras Judges to say "We are all superior beings; we should not be sent to Orissa, Assam or Punjab." I do not want them to say "Oh, we are the inheritors of the great traditions of Lord Jenkins, and so on and so forth." I want that it should be a two-way traffic.

SHRI H. C. MATHUR: It is exactly what is.....

DR. K. N. KATJU: Do you want to interrupt me? Is it a point of order to be raised?

And the third thing is that the Judge would not go. You send him to Madras, but he likes to remain at home; he has got to consider his family, his children, his grand-children; he cannot take them. The President has recognised it. That is why there is the compensatory allowance provided. Now some complaints were brought here that in this Bill there was no such thing as compensatory allowance. It would have been irrelevant. There are two objections. Th<* Constitution says that the salary should be Rs. 3,500. It is a direct condition. Do you want me to circumvent it by transferring every single Judge from one court to another and giving him Rs. 400 extra, because

[Dr. K. N. Katju.] the compensatory allowance is in the neighbourhood of 10 per cent.? If I were to accept my hon. friend's suggestion and transfer every Judge after three years from one court to another, then the result would be that this Rs. 3,500 would be cancelled, and in every High Court, Judges coming from different States would be getting something in the neighbourhood of Rs. 4,000.

Then, Sir, in the flight of their fancy they say "What about the sons, the sons-in-law, the cousins or the caste people who are going to benefit?" My hon. friends probably were not aware that, I believe, in every High Court a rule has been made that no son can appear before his father. But even with the rule, you know, Sir, what happens. You are familiar with Calcutta. What used to be done by Sir Gurudas Banerjee?

DR. SHRIMATI SEETA PARMANAND: What about brothers and nephews?

DR. K. N. KATJU: ..... and caste fellows and political.....*(Interrup tion).* Sir, that shows how the m:nd works. Please, it is not necessary to conduct cases when one's friends and relatives.....*(Interruption).*

MR. CHAIRMAN: Yes, yes.

DR. K. N. KATJU: So, I shall leave it there. As I said, these are matters which must be left to the good sense of the people concerned.

SHRI H. P. SAKSENA (Uttar Pradesh) : You are talking about Sir Gurudas Banerjee. We would like to know the full story.

DR. K. N. KATJU: He had a son-in-law who was a Judge of the greatest eminence and afterwards rose to the position of acting Chief Justice of the Calcutta High Court, Shri Manmatha-nath Mukerjee. As soon as he came to occupy a seat on the Bench, he told the Chief Justice, "I do not want a single case of my son-in-law put before me". But it once happened—I learnt about it when I was in Calcutta—Shri Manmathanath Mukerjee had been engaged long before and suddenly by the Registrar's order, the case was put up before Justice Gurudas Banerjee overnight. When he saw the case he immediately dictated an order that he did not want to hear the case, and the case went off. That is the tradition which has been built up in the different courts. The sphere of relationship in India is so wide and so large that it is not a question of merely sons and sons-in-law, but cousins, nephews, etc.—goodness knows what.

SHRI K. S. HEGDE: Come down to some of the High Courts and see what is happening.

DR. K. N. KATJU: I have been to High Courts. If I am dishonest and if the litigant is dishonest—supposing I am serving on the Madras Bench—the litigant may go to my son in Allahabad and say, "Will you kindly do me a little favour for Rs. 5,000 or give me written opinion." The terms may be settled there. What am I to do? These are matters which cannot be provided for by legislation.

Then, my hon. friend Dr. Kunzru—he is not here now—said that now there was more of hobnobbing between the executive and the judi ciary. I do not know what he meant. I have seen no Judges coming any where here. He referred—other hon. Members also have done it—to the appointment of retired Judges to the chairmanship or membership of various tribunals. That is entirely in the hands of Parliament, because in every Act which has been passed here.....

SHRI S. MAHANTY: What about Governorships?

DR. K. N. KATJU: ..... relating to Industrial Tribunal, Labour Tribunal, etc., the condition is that sitting Judges or retired Judges or those who are qualified to be appointed as Judges

should be appointed to those tribunals. If it is the intention of Parliament that there should be no retired Judges appointed to these tribunals, say so. Repeal those Acts. I have not seen any private Member here bringing in such a Bill.....

DR. SHRIMATI SEETA PARMANAND: We know the fate of Private Members' Bills.

DR. K. N. KATJU: ..... saying that retired Judges should not be appointed. It is very curious, Sir, that not a dog barks or a sparrow twitters without a universal demand for a judicial enquiry and that judicial enquiry should be presided over by a High Court Judge.

SHRI RAJAGOPAL NAIDU: Not by a retired High Court Judge.

DR. K. N. KATJU: If you have such immense confidence in them, why should it cease when they retire? If they retire, do they cease to be human beings? Have they become devils? Either they are good or bad. If you have confidence in them and so you require them to be appointed as chairmen of judicial enquiries, is it necessary that they should forfeit your confidence the moment they become sixty and retire? The moment a retired Judge is appointed as Chairman of, say, the Industrial Tribunal, my hon. friend says that he has all along been in the pocket of the Chief Minister or the Prime Minister, and he has always been delivering judgments in the High Court for the past so many years in order to please the executive and so on and so forth. Let there be some consistency about it. It is no use your contradicting yourself every fifth minute. Either your Judges are a sound lot or they are an unsound lot. If they are a sound lot—it is a question of temperament—if they are good people, independent people, fair-minded people, men of integrity, men who are true to their oath of office, then they ought to be trusted. No one has given any illustration from the judicial reports of how a Judge has been misbehaving or currying favour with the executive. It is all in the air. It is perfectly within the competence of anyone to say, "I am a man of the world. I know what is happening. It does happen, it has happened and it is going *%p* happen." Lastly, Sir .....

MR. CHAIRMAN: How many times are you saying 'lastly'? You have already said it three times.

DR. K. N. KATJU: Then I would not say, 'lastly'. I would say 'finally' that there are two matters about Part B States. Reference has been made to the rules which we have finalised and published in 1953. I am considering the matter and we hope to bring in a Bill soon. The second point is about whether the heirs of deceased Judges would be entitled to get any pension.

SHRI H. C. MATHUR: The more important questions about Part B States have been neglected, *e.g.* uniformity of salary, etc.

MR. CHAIRMAN: He said that he would bring in a Bill.

DR. K. N. KATJU: If this Act is passed and a Judge would be entitled to a pension of Rs. 5,000, then the fact that today he is dead would be an immaterial fact. His heirs would be entitled to get it. I do not think there is any doubt about it.

MR. CHAIRMAN: The question is:

> "That the Bill to regulate certain conditions of service of the Judges of High Courts in Part A States, as passed by the House of the People, be taken into consideration."

The motion was adopted.

MR. CHAIRMAN: We will now take up the clause by clause consideration of the Bill. There are no amendments to clauses 2 and 3.

Clauses 2 and 3 were added to the Bill.

MR. CHAIRMAN: The motion is:

"That clause 4 stand part of the Bill."

There is one amendment.

• SHRI K. S. HEGDE: Sir, I move:

"That at page 3, lines 9 to 15 be deleted."

MR. CHAIRMAN: The clause and the amendment are now open for discussion.

SHRI K. S. HEGDE: Sir, I have given notice of an amendment that sub-clause (2) (a) (ii) of clause 4 be deleted. The clause relates to the provision of holidays for Judges who are put on other duties. The hon. the Home Minister has expressed his sentiments both as regards the position of the Judges and also the majesty of the law. Possibly he shares my viewpoint in full—I and people of my way of thinking have ourselves borrowed from jurists like him the high ideals that we entertain about our judiciary—and it is from this point of view, I am suggesting that, so far as the Judges of the High Courts are concerned, we should not put them on duties other than judicial work or quasi-judicial work. What is happening now is that in the stress of time and by accidents of the situation, Judges are put on duties which are not judicial or quasi-judicial. Take, for instance, an eminent Judge like Justice Wanchu. He was put on a particular work. Later on there was the case of Justice Misra. They are very eminent men, they did their work and presented their reports, and you know what happened after their reports. There was bitter criticism from the public, from one side or the other; even motives were questioned; charges were levelled, and if this kind of thing is allowed to happen, the prestige of the Judges will suffer. I may not subscribe to the view that a judge is a super-human being but a judge must certainly be a superior human being, and for that purpose we I must create an atmosphere wherein | their integrity cannot be either directly or indirectly questioned. What exactly the Government has been compelled to do is oftentimes to put the wrong man on the job and a judge is not the man who should be put on a purely administrative job and if this clause is available there, the Government is likely to be tempted by the pressure of events—I don't mean to say, to do any favour to anybody—to appoint one or the other to discharge certain functions and in this case there is also facility for the particular gentleman. If he loses 29 days of his holidays, he will get 58 days later on and that way, it might be a little tempting also for him to work so that he will accumulate leave for a rainy day. My main objection so far as this clause is concerned is, in principle I oppose the idea of a judge being asked to discharge any functions other than purely judicial or what may be called quasi-judicial functions. The hon. Home Minister might say, what are we going to do when he is discharging certain quasi-judicial cases? After all, the time that is likely to be taken in a quasi-judicial work will not be much and even if a judge loses 4 or 5 days' holidays, I don't think they will bargain and say "For my 5 days being lost, you must give 10 days' holidays." These petty dealers' mentality may not come in when we are considering the question of the utilization of the time of a High Court Judge. Apart from that I was quite distressed on reading the phraseology of this particular clause. The hon. Home Minister remarked also: "when the Judge is being detained". Sir, words have their own meanings and in referring to certain personalities we have developed certain conventions in using certain phraseology. I might invite the attention of the hon. Home Minister to the phraseology that is used by the Constitution itself which says:

> "The time spent by a judge on duty as a judge or in the performance of such other functions as may at the request of the President of India, etc."

Sir, when the Constitution referred to a judge, a most respectful expression was used. The expression that was used was "when he was requested to perform certain other functions". What do we say here? We say:

> "by reason of his having been detained for the performance of duties not connected with the High Court, cannot enjoy any vacation which he would otherwise have been entitled to enjoy had he not been so detained."

I was really shocked when I read that word. The justification seems to be that under the orders issued in 1937 the then Government of India did utilize the word 'detained'. You will remember even at that time it should have been inappropriate but at that time a judge had no independence of status at all. He was at the mercy of the Government. It might have been correct more or less to say that a judge was detained by the Government because after all he was an 'yes-man' of the Government to a large extent. At least in law he had to depend on the executive. But at a time like this, to use the expression 'detained' would be, to say the least, highly inappropritate and it would not be in keeping with the dignity in which we are holding the Judges. With great respect, I would request the hon. Home Minister to see whether he could not delete the whole of this clause. If he cannot do it, at least he may recast it in such a manner that it may raise up the status of the personalities about whom we are dealing in this clause.

DR. K. N. KATJU: Sir, I am unable, with great regret, either.....

MR. CHAIRMAN: To accept or recast.

DR. K. N. KATJU: Yes, to accept the amendment as a whole or the suggestion about the word 'detain'. That word has a long history. No one has taken any objection to it because the meaning is quite clear. 'Detain' is that you are unable to do your judicial work or enjoy the holidays. Sir, English is not our mother-tongue and therefore we should not go into these small words. So far as the other matter is concerned, what is the motive behind this? My hon. friend is a lawyer. The judges will do this or that; while he was a judge, he will earn these 7 days extra. The demand is enormous on every side. Take the Andhra Committee. They said: 'Give us a judge.' When it came to the question of Bellary, they said: 'Give us a judge'. For every single matter, the demand is: 'Give us a judge'. Let there be no demand for a judicial enquiry, then the matter would not arise. I hope my hon. friend will not press his amendment.

10 A.M.

SHRI K. S. HEGDE: If hon. Dr. Katju wants to detain the judge, I have no objection to withdrawing my amendment.

The * amendment was, by leave, withdrawn.

MR. CHAIRMAN: The question is:

> "That clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

Clauses 5 to 12 were added to the Bill.

MR. CHAIRMAN: Clause 13.

SHRI K. S. HEGDE: Sir, I move:

> "That at page 4 line 40, for the words 'Governor of the State' the words 'President of India' be substituted."

MR. CHAIRMAN: Amendment moved:

> "That at page 4, line 40, for the words 'Governor of the State' the words 'President of India' be substituted."

Mr. Hedge, you can make a short speech.

*For text of amendment *vide* I col. 6185 *supra.*

SHRI K. S. HEGDE: Dr. Katju, in his speech, said that so far as leave is concerned it is such a small matter and there is a possibility of a judge falling ill and it would not be appropriate to compel him to come up to the President for getting his leave. If it is such a small matter, then all these elaborate provisions would not be needed. If you read this Bill, it gives us the impression whether the High Court Judges will have at least some of the holidays whenever they act as High Court Judges. You would find and it may not be also correct to say: "After all they are governed by the rules. We will see what leave is to their credit and grant them leave." Would you kindly see clause 7 which provides for special disability leave? Clause 8 provides for extraordinary leave. There are such types of leave which certainly cannot be ignored as being trivial. My point of view is, a High Court Judge is appointed by the President. The High Court Judge could be only removed by an extraordinary process. It would not be desirable to have any intimate connection between the High Court Judge and the Ministry at a particular place. While I do share the opinion of the hon. Home Minister that it would not be correct to say that our executive has been interfering with the judiciary or has been attempting to interfere with the judiciary, what we are providing for is to see that no occasion arises when some influence could be brought to bear on the judiciary. Merely if you have to believe in human beings and trust in their impartiality, then this legislation would not be necessary at all. You are providing as much as possible to see that the executive has no occasion to interfere with the judiciary. Now, I may invite the hon. Home Minister's attention to what has been happening in some States. There have been frictions between the Ministry and the High Court and very sarcastic criticisms have been passed by several High Court Judges against the Ministry or individual Ministers. In fact I may even bring to his notice that contempt notices have been issued by the High Court Judges to individual ministers. Just imagine a case wnere a contempt notice is issued by a High Court Judge to a Home Minister or Law Minister who in turn will have to deal with the leave application. Suppose the Judge wants to go on a European tour and he has applied for 6 months' leave and meanwhile an application against the Home Minister or the Law Minister is pending; it will be an extraordinary thing happening. If only the hon. Home Minister examines recent records, he will find that there are some cases of that type. That is why I said it would be desirable if this matter of leave comes to the President. After all, now-a-days the distance is reduced ajnd he cannot put it as a great objection and as such it would be quite easy for the matter to be dealt with by the President and it will be appropriate also.

DR. K. N. KATJU: Sir, I am unable to accept the amendment. I would ask the hon. friend to substitute for the State Home Minister the Union Home Minister and supposing a notice of contempt proceedings is issued against me and then a judge applies for leave, he will be faced with the same dilemma. Therefore there is really nothing in this objection.

SHRI K. S. HEGDE: I beg leave to withdraw the amendment.

The "amendment was, by leave, withdrawn.

MR. CHAIRMAN: The question is:

"That clause 13 stand part of the Bill."

The motion was adopted.

Clause 13 was added to the Bill.

Clauses 14 to 25 were added to the Bill.

MR. CHAIRMAN: Now, we come to the First Schedule. There are four amendments given notice of.

SHRI KISHEN CHAND (Hyderabad) : Sir, I move:

"That at page 8, line 7, for the figure '20,000' the figure '15,000' be substituted."

*for text of amendment *vide* col. 6186 supra.

"That at page 8, line 8, for the figure '16.000' the figure '12,000' be substituted."

"That at page 8, lines 24-25, for the words 'notwithstanding anything contained in the foregoing prcrvisions' the words 'provided the Judge has completed five years of service' be substituted."

KAZI KARIMUDDIN (Madhya Pradesh): Sir, I do not move my amendment.

MR. CHAIRMAN: And so there are only three amendments. These three amendments and the Schedule are now for discussion. Please make your observations as brief as possible. We are running against time. Yes, Mr. Kishen Chand.

DR. SHRIMATI SEETA PARMANAND: Sir, I would like to speak.

MR. CHAIRMAN: On this Bill?

DR. SHRIMATI SEETA PARMANAND: Yes.

MR. CHAIRMAN: We will give you time.

SHRI KISHEN CHAND: Mr. Chairman, my first two amendments want to restrict the maximum pension payable to the Chief Justice and other Judges of the High Court. On page 8, you will find, Sir, that the maximum pension for the Chief Justice has been fixed at Rs. 20,000 per annum, and that for the other Judges at Rs. 16,000. Now, as the hon. Home Minister is aware, nearly a year ago a Bill was brought in for the purpose of fixing the terms of service of the Comptroller and Auditor-General of India—a post which is held to be at par with that of High Court Judges in salary, service conditions etc. The salary, service conditions, etc., of this post are guaranteed by the Constitution and there the maximum pension has been fixed at Rs. 12,000. The Comptroller and Auditor-General is debarred from seeking any employment after retirement either under a private employer or under the Government. He is debarred in the same manner as the High Court Judges are debarred. So I do not see any reason for fixing a higher scale of pension for the Chief Justice and other Judges of the High Court. This will be setting up a bad precedent and on the basis of this a distinction will be created between the High Court Judges and the Auditor-General. The difference in the maximum pensions is substantial. Therefore, I would say that the maximum in the case of the Judges also should be Rs. 12,000 on the basis of the maximum guaranteed to **the** Auditor-General and Comptroller.

My last amendment is to item 9 in which the minimum qualifying service has been laid down for earning a pension of Rs. 6,000 by a High Court Judge. During the discussion on the first reading of this Bill, I pointed out that it is possible that Judges may be appointed at the age of 58 and they may serve the High Court only for a period of two years. I do not see any reason why this appointment should not be made earlier. There is nothing charming at the age of 58, that a leading advocate is suddenly found to be so important or indispensable that he must be raised to the bench. Further, even if he is a leading advocate, **for** adjusting himself for pronouncing judgments in the High Court, he would require at least a period of one or one and a half year. Therefore, if a Judge is appointed at the age of 58, by the time he becomes an eminent Judge, he is about to retire. Thus for hardly any benefit to the High Court and to the country, we will be bound to pay a pension of Rs. **6,000** to him for the rest of his life. Therefore, I have submitted that a minimum qualifying service period of 7 years be fixed. If any concession is to be shown, I have suggested that at least 5 years of completed service should be substituted for the words "notwithstanding anything contained in the foregoing provisions". The words that I have suggested should be put in so that we get the benefit of their service for at least five years.

[Shri Kishen Chand.]

Here I may also point out that if the judge after retirement lives for another 30 years or so, he will be getting nearly Rs. 2 lakhs while during the whole of his service he would have got only about Rs. 70,000 to Rs. 80,000 as salary. Generally the pension granted should not exceed the salary drawn but here it will be more than double.

DR. K. N. KATJU: Sir, I am unable to accept any of these amendments and the reasons have already been provided by Dr. Kunzru when he pleaded for an increase in the pension rather than a decrease. The figures that have been put down in the Bill have been put down after very mature consideration.

SHRI KISHEN CHAND: What about the Comptroller and Auditor-General?

DR. K. N. KATJU: We are dealing with the Judges of the High Court and not with the Comptroller and Auditor-General.

So far as restrictions about practice are concerned, this matter is under consideration and the House may have to deal with it when amendment of the Constitution comes up. Restriction on practice in the High Court where the Judge might have worked stands on one basis and that on practice in the Supreme Court or in any other court stands I on another basis. But so far as pen- i sion is concerned, very many judges \ before they accept the appointment I have very good practice. They serve | for 7 years or 12 years and to reduce ! their pension—and it is the maximum I pension, the House will remember— ' will be very unfair.

So far as the third amendment is concerned, I have stated in the other House when I moved for considera- | tion of the Bill that as a matter of i practicable guidance we have now said that we will not appoint any one | who cannot put in at least five years service, barring very exceptional | cases, bo what the hon. Member has in view will be served by an executive order.

For these reasons, Sir, I oppose the amendments.

Mr. CHAIRMAN: Do you press them?

SHRI KISHEN CHAND: Yes, Sir.

MR. CHAIRMAN: The question is:

"That at page 8, line 7, for the figure '20,000' the figure '15,000' be substituted."

The motion was negatived.

MR. CHAIRMAN: The question is:

"That at page 8, line 8, for the figure '16,000' the figure '12,000' be substituted."

The motion was negatived.

MR. CHAIRMAN: The question is:

"That at page 8, lines 24-25, for the words 'notwithstanding anything contained in the foregoing provisions' the words 'provided the Judge has completed five years of service' be substituted."

The motion was negatived.

MR. CHAIRMAN: The question is:

"That the First Schedule stand part of the Bill."

The motion was adopted.

The First Schedule was added to the Bill.

MR. CHAIRMAN: There are no I amendments suggested to the Second i Schedule.

The Second Schedule was added to the Bill.

MR. CHAIRMAN: There are no [1] amendments to Clause 1 of the Bill.

Clause 1 was added to the Bill.

MR. CHAIRMAN: There is one | amendment to the Enacting Formula.

DR. K. N. KATJU: Yes, Sir, I move:

"That at page 1, line 1, for the existing Enacting Formula, the following be substituted, namely: —

'Be it enacted by Parliament in the Fifth Year of the Republic of India as follows:—'."

This is just to say that the Bill will be deemed to have been passed in the 5th year of the Republic of India.

MR. CHAIRMAN: It is a formal amendment.

The question is:

"That at page 1, line 1, for the existing Enacting Formula, the following be substituted, namely: —

'Be it enacted by Parliament in the Fifth Year of the Republic of India as follows:—'."

The motion was adopted.

MR. 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.

DR. K. N. KATJU: Sir, I move:

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

MR. CHAIRMAN: Yes, Dr. Seeta Parmanand. Take care, we have exceeded our time and I do not want you to take more than three minutes.

DR. SHRIMATI SEETA PARMANAND: Yes, Sir, but I have to speak on the Bill. I will not take long.

MR. CHAIRMAN: Yes, not more than three minutes.

DR. SHRIMATI SEETA PARMANAND: Most of the points have been answered by the hon. Home Minister but you will please excuse me if I take a little time.

MR. UHA1KMAJN: JNO, no.

DR. SHRIMATI SEETA PARMANAND: Sir, I rise to support the Bill, but I do so half-heartedly and why I support it only half-heartedly,] will show presently. But before I do that, it is necessary for me to say a few words on the remarks that fell from the hon. Home Minister. It seems that it is becoming a growing practice with Ministers to make certain observations with regard to women, and if this practice is allowed to go unchallenged, the time would come when it would not be possible for women Members to sit in this House.

[MR. DEPUTY CHAIRMAN in the Chair.]

I would like to ask the hon. Minister again as to why he should have said, in a disparaging manner, that women should look after children. May I ask him a question as to why the hon. Minister, leaving aside his legitimate duty at the Bar, has taken to politics? Does he, in that case, challenge the right of women to choose the profession they like? He realises very well, Sir, as we all do, that women have got equal rights and I think it is very unfortunate that any remark of a disparaging nature should fall from the lips of a Member and particularly from a Minister of the Government. Sir, I do hope that the hon. Minister will either express his regret or withdraw such remarks so that we would feel assured that other Members would not follow his example and make it rather unpleasant for women Members to continue in this House.

SHRI H. P. SAKSENA: Is it derogatory for women to look after children?

MR. DEPUTY CHAIRMAN: Order, order.

DR. SHRIMATI SEETA PARMANAND: It is not deragatory but it is derogatory to ask them not to come to this House and, particularly, it is derogatory to tell them not to take part in professions that they like.

MR.' DEPUTY CHAIRMAN: All these are extraneous to the third reading of the Bill, Madam.

DR. SHRIMATI SEETA PARMA NAND: But as such remarks have been made, I have really to point out that it has become .....

MR. DEPUTY CHAIRMAN: There is no relevancy on the third reading of the Bill.

DR. SHRIMATI SEETA PARMA NAND: I will take an opportunity to speak on this point later on because when male Members interrupt he does not say .....

MR. DEPUTY CHAIRMAN: There will be many other occasions.

DR. SHRIMATI SEETA PARMANAND: It is irrelevant to question whether the Members who participate in the debate are all practising lawyers. Otherwise, it would have been necessary for High Court Judges to come and speak on most of the points raised here with regard to the conditions of their service.

MR. DEPUTY CHAIRMAN:: Three minutes are over.

DR. SHRIMATI SEETA PARMANAND: As I said, Sir, I am extending half-hearted support to this Bill naturally because, Sir, I feel there are very many questions which are left out in the conditions of service of High Court Judges. It would have been better if Government had brought forward a comprehensive measure; for example, Sir, the age at which they should be selected from the Bar, the proportion of the number of Judges from services and the Bar, etc., have been left out.

MR. DEPUTY CHAIRMAN: That is all fixed by the Constitution.

DR. SHRIMATI SEETA PARMANAND: It is not, **Sir. The Home** Minister replied to some extent **about** the question of the transfer ot Judges to different States and the main diffi culty that he raised was about pro vincialism coming in the way. I would argue that point. Well, Sir, he replied.....

MR. DEPUTY CHAIRMAN: It is not relevant. You should remember that even with regard to transfer of Judges, there is a provision in the Constitution. Anyway, it is not relevant at this stage of the Bill.

DR. SHRIMATI SEETA PARMANAND: I am replying to this point.

MR. DEPUTY CHAIRMAN: You need not reply to all these points in the third reading stage. I am afraid there is no time. You have exceeded your time. I am guided by the Business Advisory Committee.

DR. SHRIMATI SEETA PARMANAND: I will only finish this particular point, even though I have many others. I would only finish this particular point because if it is left unfinished it will have no meaning.

In the interests of the country, Sir, this cry of provincialism, that is, people from one State not being sent to another, should be curbed. I am sorry you would not allow me more time.

MR. DEPUTY CHAIRMAN: I have no time to allow. Mr. Akbar **Ali** Khan, only three minutes.

SHRI AKBAR ALI KHAN (Hyderabad) : Sir, I have not much to say after the convincing rejoinder of the **hon.** Minister.

MR. DEPUTY CHAIRMAN: Then why stand up at all?

SHRI AKBAR ALI KHAN: There are one or two things and one is a clarification about sub-clause (3) of clause 23, that is, the giving of retrospective effect to this legislation. Generally speaking, Sir, it is not the policy to give retrospective effect to legislation and it has not been put before

this House as to what are those pressing circumstances on the basis of which the hon. Minister desires that we should give retrospective effect to this legislation.

The other thing is a matter regarding the difference in the pay and privileges of High Court Judges of the Part A and Part B States. It is a matter that deserves consideration. I do hope that at the earliest moment this matter will be given due consideration as has been pressed by the hon. Mr. Mathur.

DR. K. N. KATJU: I only want to say one word, Mr. Deputy Chairman, one sentence. I am not conscious, in spite of a very vigorous search in my heart, of having said or suggested or insinuated anything improper or derogatory or irregular against any Member of this House, male or female. But I do not want to cause offence or hurt to anyone and so, without this being due, I offer my apologies to Mrs. Seeta Parmanand.

DR. SHRIMATI SEETA PARMANAND: It is not Mrs. Parmanand; it is the women Members.

DR. K. N. KATJU: I am dealing with Mrs. Parmanand. Nobody has taken any offence. You seem to be extraordinarily touchy, Mrs. Parmanand. That is the truth of the matter.

DR. SHRIMATI SEETA PARMANAND: They have no time to take exception.

MR. DEPUTY CHAIRMAN: She is speaking for all the Members.

SHRI H. P. SAKSENA: That is another offensive remark.

MR. DEPUTY CHAIRMAN: The question is:

> "That the Bill to regulate certain conditions of service of the Judges of High Courts in Part A States, as amended, be passed."

The motion was adopted. 31

C.S.D.

THE COMPANIES BILL, 1953.

THE DEPUTY MINISTER FOR FINANCE (SHRI M. C. SHAH): Sir, I beg to move: ,

> "That this Council concurs in the recommendation of the House of the People that the Council do join in the Joint Committee of the Houses on the Bill to consolidate and amend the law relating to companies and certain other associations and resolves that the following Members of the Council of States be nominated to serve on the said Joint Committee:—
>
> 1. Dr. P. Subbarayan
> 2. Shri Shriyans Prasad Jain
> 3. Shri S. P. Dave
> 4. Dr. R. P. Dube
> 5. Shri B. K. P. Sinha
> 6. Dr. N. Dutt
> 7. Shri R. S. Doogar
> 8. Shri J, R. Kapoor
> 9. Shri S. C. Karayalar
> 10. Shri Amolakh Chand
> 11. Shri M. C. Shah
> 12. Shri V. K. Dhage 13. Prof. G. Ranga
> 14. Shri S. Bftnerjee 15. Shri B. C. Ghose, and 16. Dr. P. V. Kane."

Sir, hon. Members are aware that the House of the People adopted this motion for the reference of the Bill to a Joint Select Committee a few days ago and I now seek the approval of the Council to the recommendations of that House.

Sir, from the Statement of Objects and Reasons, hon. Members would have seen that the Bill now before this Council is not only an amending Bill but it is also a consolidating measure. It is this fact which, more than any other, accounts for its size. With its 612 clauses and twelve schedules, the Bill is one of the largest

[Shri M. C. Shah.]

legislative measures brought to be placed on the Statute Book in recent years. This is the first opportunity, Sir, which has occurred since 1913 to consolidate the Indian Companies Act and so, advantage has been taken this time of this opportunity to revise and overhaul the present Act comprehensively. In that process, several sections of the present Act were split up into a large number of shorter clauses and the arrangement of matter in the different parts of the Act were also altered. This has resulted in a document which is not only voluminous but, on the face of it, bears little resemblance to the former Indian Companies Act with which many of my hon. friends have been familiar for many years past. The question had been asked if it were not possible to condense the Bill appreciably, a fictitious appearance of compactness would no doubt have been imparted to the Bill by incorporating some of its clauses into a smaller number of such longer clauses but hon. Members will agree that this would not necessarily mean an improvement. When the hon. Members have had an opportunity of studying the provisions of this Bill, I am sure they will agree with me that in its present form, the Bill makes much better reading than the present Companies Act and is, altogether, a much more lucid and logical document. The Company law is, Sir, as you know by its very nature, very complicated. For, it deals with the conflicting rights and obligations of different groups of people whose interests do not necessarily coincide, but which have, nevertheless, to be balanced and reconciled within the framework of the legal institution which goes by the name of 'joint stock company'. It is not easy to reduce, into simple terms, the complicated nexus of relationships between the different interests concerned in the promotion, formation, management and liquidation of a company. No modern system of company law, anywhere in the world, has been able to resolve these complexities into a set of simple provisions, readily intelligible to the man in the street. I need, however, hardly add that the hon. Finance Minister and I are equally anxious thafthe Bill should be made as compact as it may be practicable to make it; and in due course we shall welcome suggestions from hon. Members as to how the Bill could be improved, without prejudice to its essential provisions.

While on this subject of drafting, I would like to say a word about a complaint of plagiarism which has been made against us. It has been said by some critics that the Bill is only a copy of some provisions of the English Companies Act, 1948. In course of his reply to the debate in the House of the People, the hon. Finance Minister refuted this allegation and pointed out numerous clauses which did not have their counterpart in the English Companies Act. To take only one example, the series of clauses dealing with managing agents contain provisions which have been prompted exclusively by our experieiice in this country, and were not in any way borrowed from the English Companies Act. Apart from this fact, hon. Members will recognise that the institution of joint stock companies, like much else in our present-day economic and political set-up in this country, has its origin in our historical connection with the West, particularly with the U.K. That is why our law relating to companies has always been based on the corresponding English Company Law. In any case, I do not see how the fact that we have accepted some of the provisions of the English Companies Act. 1948, is relevant to a consideration of the merits of the Bill.

I do not think I need repeat the circumstances in which the present Bill came into being. In the Statement of Objects and Reasons as well as in the Finance Minister's opening speech in the other House, which the hon. Members may have read, the different stages through which the consideration of this subject proceeded during the last eight years have been enumerated. I would only remind hon. Members that as early as 1949,

the then Ministry of Commerce cir-culated a memorandum containing j proposals for the reform of the Indian i Companies Act, not only to all chambers of commerce and trade associations, but to many other organised bodies and learned societies and also to all such individuals as had specifically asked for copies of it. Nearly 350 copies of this memorandum were distributed all over the country. Again when the Company Law Committee was set up, it visited all the principal centres of trade and industry, heard representatives of the mercantile community, the workers, the shareholders, the chartered accountants and all other recognized associations which were anxious to appear before the Committee. Further, the report of the Company Law Committee was given wide publicity in this country in March 1952, and it was before the general public for nearly a year and a half, when the present Bill was introduced in the House of the People on 2nd September 1953. The Bill was then published in the *Gazette of India* and copies of it were made available to all those who were interested in the subject or who were anxious to express any views on it. In view of these facts, I do not think that it can be reasonably argued that the general public, much less that section of it which is interested in company law, or in the working of joint stock companies, has not had adequate opportunities for considering the proposals *[* contained in it.

Sir, I do not think it is necessary to trouble the hon. Members with a ; detailed recital of the provisions of the Bill. I am sure they are all familiar i with them. In any case, I do not \ think that much useful purpose is likely to be served at this stage by summarising these provisions. It would be for the members of the Select Committee, at the appropriate stage, to go into these details, and the Council will also have an opportunity to go over the same ground again. At this | stage, therefore, all that I propose to do is *po* elucidate, very briefly, the j principal objects underlying our pro- ; posais. These were summarised by the Company Law Committee in paragraph 16 of its report, and I can do no better than repeat what the Committee has stated. In Chapter II of its report, the Committee explained the nature and scope of the enquiry entrusted to it. I would particularly draw the attention of the hon. Members to this Chapter in the Committee's report, for it contains a short but succinct exposition of the philosophy underlying the Committee's approach to the problem of company law reform, and its recommendations on this subject. In its view, the problem of company law reform was to consider the extent to which it was possible to revise the structure and methods of the corporate form of business management in this country, so that not only would the conflicting interests of promoters, investors and the management be integrated into a coherent relationship within the structure of a company, but the activities of the company itself would be fitted into a pattern, where the private interests of the parties concerned in its formation and management would not run counter to the social purpose which it must ultimately subserve. In specific terms, the Committee visualised that this objective implied suitable changes in company law which would ensure that—

(i) the efficiency of company management was increased;

(ii) the initiative and efficiency of the managerial elements was reconciled with the *bona fide* rights of shareholders;

(iii) the interests of creditors, labour and other partners in production and distribution were adequately protected; and

(iv) the activities of companies were carried on in a manner which not only furthered the development of trade and industry in this country but also helped the ultimate objects of our social policy. The operative provisions of the Bill now before us attempt to secure these objects by introducing

[Shri M. C. Shah.] suitable changes in the present law relating to the following items:

(i) the manner in which companies are promoted and formed—with particular reference to the law about prospectuses, minimum subscription and allotment of shares;

(ii) the nature and scope of the control exercised by shareholders on the management of a company;

(iii) the powers and functions of directors and the control exercised by them over the companies and their managing agents;

(iv) the terms of appointment and conditions of service of managing agents and their powers and functions *vis-a-vis* the directors of a company and the general body of shareholders;

(v) the powers of investigation and inspection conferred on Government in cases of mismanagement of the affairs of a company;

(vi) the manner in which company accounts are kept and audited;

(vii) the position of minority shareholders and the protection to be accorded to them;

Cviii) the rights of shareholders and creditors in winding up.

For reasons which I have already explained. I do not propose to enter into the detailed provisions of the Bill on these subjects. I would merely refer to the clauses in the Bill which deal with them.

Clauses 50 to 59 read with Schedule II of the Bill deal with prospectuses and the terms and conditions on which companies may be floated. It is these provisions which regulate the activities of company promoters and attempt to safeguard the interests of investors by imposing suitable obligations on the former. Clauses 63 to 69 deal with allotment of shares and clause 70 attempts to regulate the commission to be paid to the promoters and underwriters. The effect of all these provisions is to require company promoters and the first directors of a company to comply with specified conditions before-they can allot shares to the public and thereby obtain risk capital from them for investment in new companies floated by them. It is hardly necessary to add that while the object underlying these provisions is to protect the innocent members of the public who may have funds to invest, no legislative enactment, however well conceived can by itself provide effective safeguards against human credulousness and gullibility.

Clauses 79 to 82 of the Bill deal with the capital structure of companies and provides that in future a company will have only two types of share capital namely preference and equity share capital. Preference shareholders would have voting rights only when the stipulated interest on their shares falls in arrears or when their interest in the company is otherwise likely to be directly .or indirectly affected.

Clauses 139 to 189 deal with the working of companies and company meetings. The general effect of the changes in law introduced by these clauses is to enable the shareholders to influence decisions in company meetings more effectively than they can at present, and to participate in such meetings with a better chance of holding their own against unscrupulous managements. Shareholders are also given the right to call upon the managements to circulate their views to the general body of shareholders for consideration at general meetings and also to inspect proxies at any time after they have been lodged with a company and before the end of the general meeting. Indeed, the provisions of the Bill on this point are an appreciable advance on those in the present Company Law as well as in the English Law. Provision is also made in these clauses for recording faithfully the minutes of company meeting, and it is now prescribed that these minutes should contain a fair summary of the proceedings of such meetings and in particular of all

material questions asked or comments made.

Clauses 236 to 306 of the Bill deal with directors and their powers and duties. The object of the provisions contained in these clauses is to facilitate the constitution of independent boards of directors and the selection as directors of active individuals who can be expected to devote sufficient time and thought to the working of companies. This latter objective explains the provisions of the Bill relating to the age of directors and the number of directorships which a person can hold—provisions which have been widely commented upon but which would still seem to require further careful objective consideration. Directors are also empowered to exercise more effective control on managing agents, while some of the other provisions under this head are designed to prevent the misuse by directors of the powers which they now exercise on behalf of their companies.

Clauses 307 to 359 of the Bill deal with managing agents, the terms and conditions of their appointment, their remuneration and their powers and duties in regard to loans, contracts, sales and purchases. The object of these clauses is to prevent abuses and malpractices by managing agents and to ensure that, in the exercise of their duties, managing agents act not only under the general control and supervision of directors, but in vital matters also give due consideration of the views of shareholders. Hon. Members will recollect that in course of his speech in the other House, the hon. the Finance Minister briefly elucidated the Government's general attitude towards the managing agency system. The Company Law Committee was unanimously of the view that, although many managing agents have in the past, and more particularly since the end of World War II, abused their powers and indulged in malpractices, yet the system, as such, is still capable of being used as an instrument for good and of producing beneficent results, provided it is purged of the evils which had entered into it. The main reason why the Company Law Committee recommended continued reliance on the managing agency system was the absence of a properly organised capital market in this country, consisting of suitable institutions capable of discharging those functions relating to the promotion and formation of a company which are now performed in this country, by and large, by managing agents and their friends. In Government's view, there is considerable force in this argument, and it would, therefore, be an act of prudence to mend and not to end this system, till at any rate, a • properly organised capital market, consisting of the specialised machinery and services needed for new issues and the financial institutions required for canalising the flow of savings into corporate investment have been organised and developed in this country. I shall revert to the subject a little later but would venture to suggest that important as this issue is, it should not unduly engross the mind of the hon. Members and divert their attention from the other important provisions of the Bill.

Clauses 219 to 230 of the Bill deal with the important question of the investigation and inspection of the affairs of a company. The object of these clauses is not merely to enlarge the powers of the Central Government, but also to give added powers to the shareholders provided they join in the requisite number to apply to a court of law. Attention may be drawn in this context to the new principles which have been embodied in clauses 367 to 377 of the Bill on the analogy of the analogous provisions in section 210 of the English Companies Act. Under these clauses it will now be open not merely to a requisite number of shareholders but also to the Central Government to apply to a Court for redress in cases where a company acts in a manner prejudicial to its interests or in a manner which is oppressive to any part of its members. Hon. Members

[Shri M. C. Shah.] will remember that some of these provisions were anticipated in the Indian Companies (Amendment) Act, 1951. The Bill now amplifies the relative provisions in the earlier Act.

Clauses 195 to 218 deal with the presentation of company accounts, the audit of these accounts and the positions of company auditors. The standard form of balance sheet appended to the present Indian Companies Act has been greatly enlarged so as to require the disclosure of many items in company accounts which are now not shown in them. A list of the items which have to be disclosed in the profit and loss account has also been drawn up. Hitherto the practice of company auditors as regards the presentation of company accounts has varied enormously. The provisions of the new Bill are expected to standardise this practice, and to facilitate better appraisal of the financial position of a company than is possible at present from its balance sheet and profit and loss account. Clauses 209 to 218 deal with auditors, their powers and duties. It is hoped that these provisions will go far to ensure the independence of company auditors.

On the subject of the administration of company law, the hon. the Finance Minister has already indicated our tentative decision in the matter. The Central Government has already resumed its powers which it had delegated to State Governments. The nucleus of a Central Organisation functioning under the Department of Economic Affairs has been already set up. The establishment of regional offices has also been sanctioned and it is proposed to strengthen the offices of the Registrars of Companies wherever the volume and the nature of their work requires reinforcement of their staff strength. The regional offices are not merely expected to be a link between the Central Organisation and State Registrars, but also to serve as a link between the latter and the State Governments concerned. These Governments have hitherto been responsible for the administration of the Companies Act as agents of the Central Government. Although following the Company Law Committee's recommendations, we have now taken over the administration of the Companies Act, we are anxious that our field staff should act in close co-operation with the State Governments and benefit, to the maximum extent possible, by their local knowledge and experience. We have also accepted in principle the recommendation of the Company Law Committee that the Central Organisation for the administration of the Companies Act should be entrusted with the other related activities, *e.g.,* capital issue control work, regulation of stock exchanges, etc. Control of capital issues has now been brought within the responsibilities of this organisation, and when a Central Act for the regulation of stock exchanges is passed in the near future, the question of transferring the responsibility to this Organisation will also be taken up. We have not, so far, acted upon the recommendation of the Company Law Committee that the Central Organisation should be placed on a statutory footing, largely because we are anxious to watch for some time the results of the centralisation of the administration of the Companies Act. Hon. Members will appreciate that, even if a statutory authority is set up, it will be necessary for Government to reserve to itself some of the powers now conferred on the Central Government in the present Bill. It will, therefore, be easier for Government to arrive at a final decision on this particular recommendation of the Company Law Committee, if we have some experience of the working of this Central Organisation for some time. As the Finance Minister observed, we shall, however, welcome the views of the Select Committee in due course on this and other recommendations of the Company Law Committee.

Hon. Members will forgive me if I have not gone into greater details on some of the provisions of the Bill now before this Council. As I explained a little earlier, even if I had the time to do so, it would have hardly served

any useful purpose. In order to appreciate the bearing of the major changes introduced in the Bill, one has got to study very closely its detailed provisions and to evaluate the proposals contained in them in the light of the experience of the working of joint stock companies in the past, and the potentialities of this form of organisation for the future. Throughout its report, the members of the Company Law Committee took great pains to emphasize these two aspects of its recommendations. If the hon. Members will bear with me for a few moments, I shall quote the Committee's concluding words. "Our proposals", the Committee observed, "attempt to secure the fullest practical measure of disclosure, of information relating to the activities of companies, and the imposition of such restrictions on these activities as we have considered necessary in the present state of company practice in this country. Some of these restrictions will, no doubt, appear irksome to business which is conducted in an efficient and honest manner but reforms in all fields of group activity must necessarily be based on average behaviour. It is part of the social discipline of our times that institutions no less than individuals, which are in advance of the average standard, have to submit themselves as much to the rigours of the law as those that are below that standard. Nevertheless, we have taken all possible care to see that our recommendations do not impose any unreasonable burden on legitimate business. In arriving at our recommendations we have constantly borne in mind the twin objects underlying them, *viz.*, the need for eliminating abuses and harmful practices on the one hand and for providing sufficient flexibility in the law on the other hand". It is in the light of these general principles that I would now invite the hon. Members to consider the proposals contained in the Companies Bill.

It is equally pertinent to remember that no reform of company law, which does not take into account the present institutional set-up in the economic field, can lay any claim to constructive thinking. If in our anxiety to eradicate known and estab lished evils in company management we try to sweep away such of the existing institutions as have been built up over the years, we may be hard put to it to fill up the vacuum caused by their sudden disappearance. While in course of time we shall no doubt succeed in building up new institutions to take the place of the old, during the period of transition while the vacuum still exists, we shall have needlessly hamstrung our efforts to promote the development of trade and industry in the private sector. The way of prudence would, therefore, seem to lie in reforming existing institutions, while this process of building up new ones proceeds apace.

In view of some current comments on the existing institutional set-up in the private sector of our economy, I venture to make this observation, in all humility for the consideration of my hon. friends in this Council.

Sir, there is another point which I would like to make before I resume my seat. In the course of my speech, I have on several occasions referred to Government's tentative views on several provisions of the Bill. In course of his opening speech in the House of the People, as well as in his reply to the debate in that House, the hon. the Finance Minister obp^rved that, by its very nature, the limits of consultation and discussion on a subject so wide in scope and so pervasive in its incidence as company law reform which embraces the entire organised sector of private economy can never be exhausted, and that our officers and we ourselves were still engaged in discussions on some of the provisions contained in this Bill. If as a result of these further studies, it is considered necessary at a later stage to suggest some minor changes in some of the provisions of the Bill, we shall bring forward appropriate amendments for the consideration of the Select Committee in due course. These changes, if any, will not affect the principles underlying the Bill but

[Shri M. C. Shah.] relate only to the details of some of its provisions.

There is, however, one particular clause to which I should like to draw attention in this connection. Hon. Members will remember that clause 575 of the Bill containing a saving provision for companies in which Government has a predominant interest. We have given some further thought to this provision in the light of recent discussions on the appropriate form of organisation for Government undertakings and the nature of control to be exercised by Parliament over them. It is in our minds to amplify this clause, and to replace it by a short chapter in which we shall set out those provisions of the Bill, which will not apply to such companies or will apply only with such modifications in the relevant provisions as may be prescribed. As soon as a formal decision in the matter has been taken, we shall place our views before the Select Committee. We considered that this was a better method of dealing with this subject than to rely on the power to issue notifications from time to time conferred on the Central Government under the terms of clause 575, as drafted at present and I feel sure that the members of the Select Committee will duly approve of this line of action. Sir, I now move.

MR. DEPUTY CHAIRMAN: Motion moved:

"That this Council concurs in the recommendation of the House of the People that the Council do join in the Joint Committee of the Houses on the Bill to consolidate and amend the law relating to companies and certain other associations and resolves that the following Members of the Council of States be nominated to serve on the said Joint Committee: —

1. Dr. P. Subbarayan
2. Shri Shriyans Prasad Jain
3. Shri S. P. Dave
4. Dr. R. P. Duhe
5. Shri B. K. P. Sinha
6. Dr. N. Dutt
7. Shri R. S. Doogar
8. Shri J. R. Kapoor
9. Shri S. C. Karayalar
10. Shri Amolakh Chand
11. Shri M. C. Shah
12. Shri V. K. Dhage
13. Prof. G. Ranga
14. Shri S. Banerjee
15. Shri B. C. Ghose, and
16. Dr. P. V. Kane."

(Shri Kishen Chand rose to speak.)

MR. DEPUTY CHAIRMAN: Just a minute. Before I call upon Mr. Kishen Chand to speak, there has been an omission in the items of programme. A Statement had to be laid on the Table of the House by Mrs. Lakshmi Menon. I call upon her to lay the Statement on the Table.

PAPER LAID ON THE TABLE

AGREEMENT BETWEEN INDIA AND CHINA ON TRADE AND INTERCOURSE

THE PARLIAMENTARY SECRETARY TO THE PRIME MINISTER (SHRIMATI LAKSHMI MENON): Sir, I beg to lay on the Table a copy of the Agreement between the Republic of India and the People's Republic of China on Trade and Intercourse between Tibet Region of China and India. *[See* Appendix VII, Annex-ure No. 310.]

THE COMPANIES BILL, 1953— continued

MR. DEPUTY CHAIRMAN: Yes, Mr. Kishen Chand.

SHRI KISHEN CHAND (Hyderabad) : Mr. Deputy Chairman, we are considering a very important Bill dealing with the industrialisation of our country. And when this Bill is referred to a Select Committee, the