

RAJYA SABHA [3 December, 1999]

The question was put and the motion was adopted.

SHRI GURUDAS DAS GUPTA : Sir, I introduce the Bill.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Now, we will take up further consideration of the Constitution (Amendment) Bill, 1996.

**THE CONSTITUTION (AMENDMENT) BILL, 1996 (to amend
articles 124, 217, etc.) Contd.**

SHRI SANATAN BISI (Orissa): Thank you, Sir, for giving me an opportunity to speak on this Bill. The last President's Address was on 25th October, 1999. The present Government is committed for suitable reforms in judicial system as well as updating the Constitution. Since this is also part of that process, I support the Bill, but, at the same time, I would say that so far as appointments are concerned, it should be transparent, and the grounds of selection should be proper. I would also like to point out that it is very necessary to associate the executive and the legislature in the process of selection of judges of Supreme Court and High Courts. It is, therefore, proposed that the Minister of Law and Justice, Government of India and a senior Member of Parliament, with a legal background nominated by the Speaker of Lok Sabha should be Members of the National Judicial Commission. I would again like to emphasise that the selection procedure should be very transparent and the grounds for selection should be proper. Therefore, Sir, as the enactment is very necessary, I support the Bill, and the Government should appoint the Commission as early as possible.

SHRI FALI S. NARIMAN (Nominated) : Sir, I support the Bill as it is framed because the Bar Association of India, which I also represent and of which I am the President, had a seminar a short while ago, where this question came up for consideration, and while it is true that the 9-judge bench in what is known as the second judges' case, has quite categorically held that the selection, not the appointment, but the selection of judges for the higher judiciary should be vested in a Committee consisting of five of the senior-most Judges of the Supreme Court. While it is not at all detracting from the eminence of these individuals, I feel, Sir, that the importance of a

feedback machinery is extremely important for purposes of considering who shall and who shall not be appointed judges of the higher judiciary, namely, the High Courts and Supreme Court. But, one of the most important clauses in this Bill which I would like to request, ultimately, the Government to consider later on, would be clause 4 of proposed Article 307A because it only says, "subject to the provisions of any law made by Parliament, the procedure to be followed by the National Judicial Commission in the transaction of its business shall be such, as the President may, in consultation with the Chief Justice of India, by regulations determine". This, in my respectful and humble submission, is the linchpin of the Bill. If the procedure is not proper, if it is not transparent, if it does not ensure that persons who are otherwise suitable for appointment will not be overlooked, then I submit that this Bill, howsoever laudable in intent, will ultimately fail. Therefore, it is all very well for us to say that the time has come for a National Judicial Commission to go into this question. But, since this is the very first instance where it is being moved, and, at the moment, it is only for consideration, Sir, great attention should be paid to each and every word of this Constitutional amendment, more than that of any other because, on the one hand, we have to see that the independence of the judiciary remains and it is safeguarded, and on the other, the Commission is not used or permitted to be used or is capable of being used as an instrument whereby this independence which has been secured for so many years gets lost. This is point number one. The second thing I want to say is that, at the same time, the process of appointment should be more transparent and remains transparent; and with the high dignitaries that are involved, time has to be taken for these high dignitaries, to individually assess the merits or demerits of candidates, who may or may not be eligible for this appointment. Sir, this is a very, very important part of the Constitution because the ultimate interpreters of the Constitution are the Courts; the High Court, initially, and then the Apex Court. One cannot permit any room for suspicion that anything is being engineered in order to provide for the appointee of some particular political party, which may or may not be in power. Sir, at the moment, we are in a regime of minority Governments, but we cannot forget the past, and we have to use our best efforts, in my respectful submission, to see this Bill, is very carefully vetted in order to see that all interests are safeguarded.

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My point is that we have to make our best efforts to see not only that all interests are safeguarded but also that all the persons who are actually appointed to this Commission are persons of eminence and also that they find the time to devote to this very very important task. It is one thing for a Commission to be set up. One member may decide on issues, and others may concur. That is not to be mandate of this Commission. This Commission has to consist of members, each and every one of whom has an input into this with an idea that we are going to maintain the independence of the higher judiciary. That, Sir, is what should inspire the mover of this Bill and all members in this House.

At the moment, this is all that I have to contribute to this important and useful measure.

Thank you.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Thank you, Mr. Nariman. Your point is well taken.

It was said that the best work in a Committee of three is done when one is absent, another is ill and only one remains. That could not be the case in this matter.

THE MINISTER OF STATE IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI O. RAJAGOPAL): At the outset, I would like to express my gratitude to the hon. Members who have participated in the debate.

SHRI H. HANUMANTHAPPA (Karnataka): Mantriji, where is the senior Minister?

SHRI O. RAJAGOPAL: He is not here.

SHRI H. HANUMANTHAPPA: We want to hear his answers to the queries.

SHRI O. RAJAGOPAL: Shri Gadgilji, commending the Constitution (Amendment) Bill for the setting up of a National Judicial Commission to make recommendations for judicial appointments and transfer of judges, had referred to the system of appointments in countries like the USA, Canada, the UK and Australia.

The main thrust of the present Bill is the setting up of a National Judicial Commission to make recommendations for judicial appointments. In this debate, many eminent legal luminaries have taken part, including Shri Narimanji. Twenty-two hon. Members have taken part in this debate. We value the views expressed in the House during the discussion. We have also noted that a fresh look at the process of appointments to the Judiciary has been advocated. It has also been suggested that the power of appointment should be vested in the Judicial Commission and the justification for its constitution has been spelt out in detail.

What is heartening is that there is a near-consensus in the House on the introduction of the process of appointments, which accommodates the views of the judiciary, the legislature and the executive. In other words, the process of consultation should ensure that the quality and independence of the judiciary is guarded zealously.

As I said, the sum total of the debate reflects the concern of the legislature which manifests the public opinion. Hon. Members have suggested a judicious balance between the executive, the legislative and the judiciary. No one can dispute this as the functioning as also the vibrancy of a democracy is based on the theory of checks and balances.

The matter regarding transfer of judges has also been referred to. Some Members have even suggested that there should be a code of conduct for the judiciary. The need for representation of the Scheduled Castes, Scheduled Tribes and other weaker sections in judicial appointments has also been touched upon by Members. The late Ish Dutt Yadav who had taken part in the debate and who is no more with us now, had also raised the question of the performance of the judiciary.

While it would not be feasible or possible to deal with the observations of the Members of the House in detail, I shall take up the more important points of the debate.

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Permit me to deal with the larger issue of the process of appointment. It is not just the question of appointment, but also fairness of the judiciary. I have the highest respect for the judiciary in the country. I am not emotive about this issue. Shri Sibal has referred to the 121st Report of the Law Commission regarding "A New Forum for Judicial Appointments", which had recommended the constitution of a National Judicial Service Commission to make recommendations for appointment of Judges in the High Courts and the Supreme Court etc.

The desirability or necessity of a National Judicial Commission has been debated since the report of the Law Commission was submitted. Even a Constitution Amendment Bill was introduced in Parliament, but was not pursued after the Lok Sabha was dissolved in 1991.

The House had an occasion to listen with rapt attention the suggestions made, views expressed by the Hon. Members. I value the suggestions and views that they have been given with regard to the National Judicial Commission. The Government also attaches significance to the setting up of the National Judicial Commission and some groundwork that is being done towards this, as we have included this as one of the trmes of the National Agenda for Governance of the N.D.A. We would like to set up a National Judicial Commission to make recommendations for judicial appointments in the Supreme Court and the High Courts as also in regard to transfer of judges, besides drawing up a code of ethics for the judiciary. It is felt that the establishment of such a Commission will result in the appointment and transfer of Judges without delay and will also obviate the criticism of arbitrariness in such appointments and transfers.

As I said, the Government does propose to constitute a National Judicial Commission for the appointment of the Chief Justice of India, Judges of the Supreme Court, the Chief Justices and Judges of High Courts and transfer of Chief Justices and Judges of High Courts. The proposed Commission will also draw up a code of ethics for the judiciary.

As soon as a decision is taken, I will come before Parliament with a suitable proposal for legislation and at that time we would have detailed discussions about the composition of the Commission, on what grounds its recommendations can be rejected and what procedure should it follow or whether the proeedure in the form of guidelines should be laid down by

Parliament. This involves an amendment to the Constitution and, therefore, we have to be circumspect as an era of statesmanship in the Legislature, the Judiciary and the Executive has to be ushered in.

Before I conclude, permit me to recall what Justice V.R. Krishna Iyer, had said. He observed: "the judiciary is too important an institution to be left solely to the Bench and the Bar."

We are also reminded of Harold Laski, who said: "When we know how a nation State dispenses justice, we know with some exactness the moral character to which it can pretend."

At an appropriate time, I would tap the wisdom of Shri Gadgil and other Hon. Members, but for the present, I would request the Hon. Member to withdraw his Bill. I assure the House that various suggestions made during the debate on his Bill would be borne in mind while arriving at a decision on the National Judicial Commission.

I request the Hon. Member to withdraw his Bill.

SHRI V.N. GADGIL (Maharashtra) : Mr. Vice-Chairman, Sir, I am very proud of the fact that this Bill has created History. More than a dozen Members have participated in the debate. The discussion went on for four to five days. That shows the interest this House has taken on this Bill. I have some satisfaction in what I did, by introducing the Bill. The Bill has satisfied the House. Sir, I would not like to say anything further except two things. I am very grateful to the Hon. Members who have participated in the discussion, cutting across party lines. All of them have supported it unanimously. As the Hon. Minister said, there is a consensus on this Bill. I want to mention only two things. In my humble view, apart from anything else, the National Judicial Commission is necessary. One, for changing the social composition of the judiciary. Unless you have a Judicial Commission, social composition will not change. Second, if some justice is to be done to the persons, who are of good merit and who do not get an opportunity to join the judiciary, only a Judicial Commission can do that.

I have a great respect for the judiciary. I had practised in the High Courts and Supreme Court for the last 25 years. Therefore, I hold them in great respect. Judges are also human beings. They do commit errors. If

you go through the autobiographies of various Judges, you will be surprised over what you read. Judiciary is an institution which still retains credibility and confidence. Therefore, I don't want to say much. I found some interesting examples. It has been said by the Judiciary that if Parliament is involved or if the Executive is involved, political considerations will come in. There is already politics by the Judiciary. Some of the autobiographies mention that some appointments in a High Court have been made as a result of the recommendation made by a doctor who had treated the judges. In another autobiography, I found that so and so judge's son had been appointed; and so and so judge's son-in-law had been appointed. Therefore, there is politics in the Judiciary also. I hold the institution in great respect. I don't want to say anything further.

In view of the assurance given by the hon. Minister to bring forward a Government Bill on this matter, I seek the leave of the House to withdraw my Bill.

THE VICE -CHAIRMAN (SHRI ADHIK SHIRODKAR) : Mr. Gadgil was an eminent Barrister-at-Law practising in Maharashtra. I have seen him. Today, the last speaker is an eminent jurist himself. By sheer coincidence, an ordinary lawyer is chairing this discussion.

SHRI H. HANUMANTHAPPA : Mr. Vice-Chairman, Sir, the entire House is unanimous on this Bill. The Government admits that sufficient material has come in. Then, why are they adamant? Why should only Government Bills be passed and not Private Members' Bills? Why should the Member withdraw his Bill? I find that all Members, including eminent jurists have welcomed this Bill. In his reply, the Minister himself conceded that there is a necessity for such a Bill. Then why are they adamant? Why should only Government Bills be passed and not Private Members' Bills? Let us pass this Bill.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR) : There was a polite request from the hon. Minister to the Mover of the Bill. There was a gracious reply by the Mover.

3.00 P.M.

SHRI H. HANUMANTHAPPA :When there is quality, when there is a need for such type of a Bill, when several Members, including legal luminaries, have welcomed it, why shouldn't the Government accept his Bill? ..(*Interruptions*)... The Minister himself said that it is a good Bill ; and all the Members have welcomed it. Then, he can take note of it, under the rules. Why couldn't he accept the Bill?

SHRI SANGH PRIYA GAUTAM (Uttar Pradesh): Mr.Hanumanthappa, some amendments have also come. We will have another opportunity to discuss it more elaborately. Therefore, I request you not to insist on it.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): The question is . Does the hon. Member have the leave of the House to withdraw his Bill?

The Bill was, by leave, withdrawn.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Hon. Member, Mr. Eduardo Faleiro, was not here when he was called since we sat a few minutes earlier. Does he have the leave of the House to move his Bill? Yes. Now, Mr. Eduardo Faleiro.

**THE CONSTITUTION (SCHEDULED TRIBES ORDERS)
(AMENDMENT) BILL, 1999**

SHRI EDUARDO FALEIRO (Goa): I am a new Member. I thought it was 3 o'clock. In the other House, it is 3 o'clock. I thank you very much for this indulgence.

Sir, I beg to move for leave to introduce a Bill further to amend the Constitution (Scheduled Tribe), 1950 so as to provide for the inclusion of Gawda, Kumbi, Velip and Dhangar Communities in the list of Scheduled Tribes specified in relation to the State of Goa.

The question was put and the motion was adopted.

SHRI EDUARDO FALEIRO: Sir, I introduce the Bill.