THE CONSTITUTION (AMENDMENT) BILL, 1999
(Insertion of New Article 16A)

DR. Y. RADHAKR1SHNA MURTY (Andhra Pradesh): Sir, I move for leave to introduce a Bill further to amend the Consitution of India.

The question was put and the motion was adopted.

DR. Y. RADHAKRISHNA MURTY: Sir, I introduce the Bill.

THE CONSTITUTION (AMENDMENT) BILL, 1996

(To Amend Articles 124, 217 etc.)

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Continued

THE VICE-CHAIRMAN (SHRI JOHN. F. FERNANDES): Now, we take up further consideration of the Constitution (Amendment) Bill, 1996, moved by Shri V.N. Gadgil on the 16ih December, 1998.

Shri Kapil Sibal to continue.

SHRI KAPIL SIBAL (Bihar): Sir, it is my privilege today to rise to continue with the discussion on *the* Constitution (Amendment) Bill, 1996, moved by Shri V.N. Gadgil. This is a subject close to my heart, because I think, the time has come for the Government to have a fresh look at the process of appointments to the superior judiciary. It is a welcome suggestion that this power of appointment be vested in a judicial commission. I think, it is important at this point of time to indicate as to why there is a need for a judicial commission.

As you are aware, under Article 124 of the Constitution of India, appointments to the Supreme Court of India are to be made by the President in consultation with the judges of the Supreme Court of India and to the High Courts in the States, as the President may deem necessary for the purpose. Now I know that there is no country in the world — apart from, I think, Trinidad and Tobago — where the power of appointment is not with the executive. This is very important. It may be true that in 1993 when the Supreme Court of India reviewed S.P. Gupta's case and in the advocates on Records Association case, they came to the conclusion that this power should be taken away from the executive and should be vested in themselves. I have the greatest respect for the judiciary. But I must say that to an ordinary person reading the Constitution in the context of the Constituent Assembly debates, it seems clear that this power must remain with the executive and cannot be vested in the judiciary itself because it will, in fact, dislodge the very delicated balance of power and the very theory of separation of powers which forms the basis of our Constitution. I would, therefore, at this point in time just indicate to you various Constitutions of the world and the process of appointment to the higher judiciary in those Constitutions. Sir, in the Australian Constitution, for example, Federal Judges are appointed under section 72 by the Governor-General in Council. This entire matter is a matter involving the Federal Ministry and the recommendations are made by the Attorney General in Australia; and the formal ratification of the appointments is made by the Federal Executive Council. So, the entire process is vested in the executive. In Canada too, the Governor-General appoints the Judges to the superior district and country courts in each province; and the High Court Judges are also appointed by the Governor-General. Of course, the Federal Judges themselves are appointed by the Cabinet on the recommendations of the Minister of Justice. So, as you see even in Canada where there is a separation of power, they have a somewhat federal structure. The power of appointment continues with the executive. In the United Kingdom, again appointments are made by the Queen on the- recommendation of the Lord Chancellor. The Lord Chancellor personally reviews the field of choice in detail in close consultation with certian

senior members of the judiciary. So, there is a free discussion, a free debate, a free choice, but all with the executive. The over-riding consideration, of course, is to maintain the quality of the Bench and independence of the judicial system. Sir, the Lord Chancellor staff consists of a permanent Secretary of the Judicial Appointments Group and that Judicial Appointments Group is headed by the Deputy Secretary and he has two Assistant Solicitors and Senior Legal Assistants to help him. The reason is that the executive ultimately has to look at the entire judiciary in the country, the persons available and it is to make a choice and that choice again is left to the executive in the Great Britain. In the United States, the process is even more open. The Supreme Court Judges, the Court of Appeal Judges and the District Court Judges are nominated by the President. And that nomination is confirmed by the United States' Senate. Sir, as you are aware, there is a Senate Judiciary Committee and when nominations are sent to the Senate Judiciary Committee, there is an open public debate and by virtue of that open public debate, the merits and the demerits of the candidates are discussed in public. I do not think, maybe it is not advisable, that we, in India, should adopt such an open procedure. But we also should not have an entirely closed procedure. Sir, we have always known to strike a balance, a mature balance, a wise balance. Therefore, it is time to start thinking about the judiciary. It is time to strike that balance. It is time to tell the Supreme Court, "You don't have an exclusive right over the appointments of Judges". On this, I do not think there will be a debate. I think that all parties would agree to this procedure. In fact, in the United States, the names of individual candidates are recommended by the Senators themselves. So, the legislators individually are vitally involved in the process of appointment. That, I think, is a very, very healthy process by which appointments should be made to the higher judiciary. Of course, the only country in the world which has a Judicial Commission or something like a Commission — it is not called a Judicial Commission, but it is a Judicial and Legal Services Commission — is Trinidad and Tobago. And the Chief Justice is appointed by the President there after consultation with the Prime Minister and the Leader of the Opposition. But the Judges are appointed and promoted by the President on the advice of the Judicial and Legal Services Commission. So, there is a bifurcation. The Chief Justice is appointed by the Prime Minister or the Executive and as fas as the other Judges of the superior courts or the Supreme Court are concerned, they are appointed on the aid and advice....

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): I am sorry to interrupt. We have only 29 minutes left for this Bill. I have eight speakers. So I think every Member should take five minutes each.

SHRI M. VENKAIAH NAIDU (Karnataka): Sir, you may extend the time.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): Yes, I will give him more time. But I am trying to make it brief.

SHRI KAPIL SIBAL: Sir, I thought this was an oppoutunity where we could all... *(Interruptions).*

SHRI R. MARGABANDU (Tamil Nadu): Some more time should be given to this Bill to discuss it threadbare.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): It is for the House to decide. I have a sheet before me which says that the time left for this Bill is 29 minutes. The time already taken is one hour 21 minutes. I do not want to interrupt you, Mr. Kapil Sibal. You have taken seven minutes. Therefore, I wanted to remind you. Please continue.

SHRI KAPIL SIBAL: Thank you very much.

Sir, I would like to go back to the genesis of this problem because I think the Government, in fact, has been making vital statements on the judiciary. Unfortunately, we do not have a mention of this in the Presidential Address. But I am sure that the Government is, in fact, committed to bringing to the House a Bill relating to the setting up of a Judicial Commission. But, Sir, let me go back a little. Let me now indicate to you as to why the Supreme Court thought it necessary to vest this very, very important, significant, power of appointment to the higher judiciary itself. I would recall the words of Chief Justice Chandrachud, who was the Chief Justice of this country for eight years. He has said that the system of appointment of Judges to the superior judiciary is outmoded and should be given a decent burial. That was the opinion of our ex-Chief Justice. He, therefore, suggested that there should be a collegium and if there is a collegium, then the appointment process will be far more credible and acc-petable. And a single individual in the narrow confines and secrecy of the Chamber should not be appointing Judges. This is very significant, and what is happening today? I would like to place before you a larger issue. you see, in Government, when a process of appointment moves, that process itself is public. When ultimately you have to appoint somebody in the Government office, the file moves from the Under Secretary, it goes to the Deputy Secretary, it goes to the Joint Secretary, it goes to the Secretary, and then it goes to the Minister concerned, and by that time, everybody knows whose names are on the list. So, that is inherent in the process of public procedure, and because of that, the merits and demerits of a candidate are always put on record because there is somebody or the other always for or against the candidate. So, there is a material collected in the process which is inherently public, which makes the entire process far more objective. Now, let us compare this procedure with what we have today. Now, in the Judiciary, if you have to make an appointment say to the Supreme Court of India, then what happens is that the names are never revealed. The Judges confabulate among themselves. Now, Judges are also human beings. They are not super human beings. They have their own failings, just as we have. Therefore, they have their likes and dislikes, and the file never moves up. The file is retained by the superior Judiciary in their Chamber, and therefore, the process never becomes public. Of course, at a certain point in time, the Government is also consulted. But ultimately, in accordance with the 1993 judgement, the primacy is still with the Chief Justice, and now, of course, with the collegium of first five Judges. So, the whole procedure then is confined within the narrow confines of the Chamber. We, a democracy, cannot accept it. As a country which is wedded to the rule of law, as a country which is wedded to the concept of transparency and peoples' power, we cannot accept this procedure on a matter of principle. I will remind this House that in the 121st Law Commission Report, there was a chapter which stated that there should be a new forum for judicial appointments, and the 121st Law Commission Report said that if the structure is accepted, there will have to be an amendment to the Constitution, amendment of article 124, amendment of artcle 217, and the Law Commission also recommended a new dispensation, "in consultation with a National Judicial Service Commission." Now, Sir, I will recall the words of Ambedkar when the Draft Constitution was being debated, and he said: "It seems to me, in the circumstances in which we live today, where **the** sense of responsibility has grown in the same extent which we find in the United States, it would be dangerous to leave the appointments to be made by the President, without any kind of reservation or limitation, what is to say, merely on the advice of the Executive of the day. Similarly, it seems to me that to make every appointment which the Executive wishes to make, subject to the concurrence of

the Legislature, is also not a suitable procedure." The point I am making is that Ambedkar also suggested that there should be a balance. Let not one wing of the State have the absolute power, and that is why, article 124 was very carefully drafted and the concept of consultation was included. In other words, let the process be in which the Judiciary is consulted. But the ultimate power of appointment has to be with the Executive. That is consistent with the system of checks and Balances. But, of course, as I indicated to you, that even though the power of appointment is solely with the Executive in most of the countries in the world, there has been a movement in the past to move a little away and to make that process a little more transparent, and in that context, I will indicate that, recently, in the United Kingdom opinions were expressed that there should be an advisory body to assist the Lord Chancellor. So, even though in England we have an Executive system which processes appointments yet they are thinking in terms of an advisory body. The National Judicial Commission, in this context, should be such an advisory body, but advisory to the executive, and not to the Judiciary. In fact, in 1972, a Justice Subcommittee was set up in England and it was suggested that while the Lord Chancellor should retain control over the appointment machinery, he should be helped in the task by an advisory appointment committee. This is now the movement away in democratic countries, away from exclusive Executive control towards utlimate control by the Executive, but on the advice. And this is consistent with the principle of accountability. Let the Executive have the exclusive power. Sir, in the United States, again, there is a movement which seeks to reform the said system, and the President of the United States has now established a Circuit Judges Nominating Commission to recommend the names of the best qualified persons for appointment to the United States Court of Appeal. Again, Sir, you see a movement away; some amount of accountability, some amount of giving up of power, so that the process is more transparent.

Sir, the Chief Justice of Australia was also very dissatisfied with the system of appointment and selection of judges to the higher judiciary and, therefore, he also suggested, and in July, 1997, set up a Judicial Appointments Committee to be composed of judges, lawyers, laymen likely to be knowledgeable in the achievements of possible appointes. The Royal Commission of Australia, chaired by Justice Beattle recommended: "The Judicial Commission should consider all judicial appointments, including appointments of high court judges." Sir, the reason as to why I am giving you these examples is that you had the classic case of exclusive power with the Executive and, then, over years of experience, the attempts being made by those countries to take away that power, to some extent, by investing the power of recommendation in some other advisory body. Sir, that, I think, is a very-very sound principle on the basis of which appointments should be made to the higher judiciary. But, what I am really worried about is the manner in which the Judiciary extracted this power and vested it in itself, and I will quote to you, Sir, a judgement—the judgement in which the *S.P. Gupta's* case was set aside. This is what the Judge said—I quote from a majority judgement: '"Regrettably, there are some intractable problems concerned with judicial administration, starting from the initial stage of selection of candidates to man the Supreme Court and the High Courts leading to the present malaise. Therefore, it has become inevitable that effective steps have to be taken to improve or retrive the situation." So, the interpretation of the Constitution was based on the fact that the Judiciary thought that there was a malaise in the the system of appointments. Now that is not a matter of interpretation, Sir. If you find that the system is not working well, what you do is, you move an amendment to change the system; you change the

law. You don't interpret the law in such a way that its effect is that of an amendment to the Constitution. Sir, I will just read to you the plain words of Article 124. Article 124 says: "Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and sea! after consultation with such of the Judges of the Supreme Court and of the High courts in the States, as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five year." What is the meaning of the word 'consultation'? In the English language, it is a word which has a very simple, ordinary meaning, that I consult you, I seek your views. That is all that I do. Since you are the person who has some knowlegde of the persons that I wish to select, I write to you and say, "Sir, these are the persons that I wish to select. What are your views on this?" And the appropriate authority,—whoever—I have sent the letter to—the Chief Justice, will then give his views and send his views back to the Executive.

That is the process of consultation. That is the plain, clear language used in 124(2). There can be no ambiguity on that. But then, what have the judges held in the 1993 decision? The judges held that the word 'consultation' is 'consent' and 'concurrence'.

SHRI SANGH PRIYA GUATAM (Uttar Pradesh): Please repeat it.

SHRI KAPIL SIBAL: The judges held that the word 'consultation' in Article 124(2) is 'concurrence'. It is 'consent of the judiciary'.

SHRI R. MARGABANDU: How this judgement right when, through this amendment in the Constitution instead of removing, the word 'consultation', 'consent' is added?

SHRI KAPIL SIBAL: I am wondering how it is still the law of this country, since 1993. This is what we have been woundcring. That is why I think, today's debate is very, very important for all of us because we must restore the primacy of the executive—through a process of consultation, certainly—through another machinery so that the power of appointment is back with the executive. But the reasons why I purposely quoted the majority judgement is that it gives you the reason as to why the Constitution was interpreted in a different manner. It says that there was a malaise in the the system of appointment. It says that they had to improve and retrieve the situation. In order to improve and retrieve the situation, they took over the power of appointment. I am sorry, Sir, as a matter of law, that is not acceptable.

Now Sir, I will go to the other point. I just want to point out what the Supreme Court had said on 'consultation', since an hon. Member has raised that issue. This is what the Supreme Court had said on 'consultation'. They said, 'In common parlance—they have set-out all the dictionary meanings of the word 'consultation', and then ultimately came to the conclusion... though in common parlance, it means; to advice, to seek an opinon, but in the context of the Constitution, it docs not mean that. In the context of the Constitutional, seheme it does not mean that. Why? And the basis is, who better knows the persons who are going to be appointed in the superior judiciary except the judges. *(Interruptions).*

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): SHRI Mar-gabandu please sit down.

श्री बालकवि बैरागी (मध्य प्रदेश) : गौतम जी, जब तक आप शपथ नहीं लोगे तब तक नेशनल ऐजेंडा नहीं होगा । ...(Interruption)...

SHRI KAPIL SIBAL: If the judges know who is best in the judicial system, then the primacy must be with the judiciary; it cannot be with the executive. Sir, that really is the logic of the 1993 judgement. Having said that, what is the kind of Judicial Commission that we want? In the Private Member's Bill...

SHRI SANGH PRIYA GAUTAM: It will help the Government because it is in the National Agenda to set-up a judicial commission, *(interruptions).*

THE VICE-CHAIRMAN (SHRI JOHN F. FERN ANDES): Shri Kapil Sibal is an hon. Member and if the Government wants advice, then it can hire him. *(interruptions)*

SHRI KAPIL SIBAL: We don't have much time. I am just giving the gist of the Supreme Courts judgement and the basis on which it overturned the law, so that we can quickly appreciate the points that we have to deal with. That's all. We can go into this matter for days till kingdom come, but I don't think that is necessary. As you know, Sir, coming back to Article 124, when the appointment is made by the President, that is an excercise of executive power because the President of India, in the excercise of his executive power, only acts on the aid and advice of the Council of Ministers. And that executive power under the Constitution is vested in Article 74, that there shall be a Council of Ministers, with the Prime Minister as the head, to aid and advice the President, who shall in the excercise of his functions, act in accordance with such advice. Therefore, Sir, when the President, under Article 124, appoints members of the superior judiciary, he acts on the aid and advice of the Council of Ministers.

3.00 P.M.

That aid and advice is under article 74 of the Constitution. Now the Judges have not even looked at this issue. The Judges do not ever deal with this very important Constitutional matter. As you know, today the situation is that if the Council of Ministers send an advice to the President, the President can return it only once. When it is sent back the President has to agree because the President is the Executive Head of our country. He does not have any power of his own except the ones that are provided in the Constitution itself, which he has to exercise in his discretion. Other than that, he has no independent powers. So, the President acts on the aid and advice of the Council of Ministers under article 74. So, when the power is to be exercised under article 124, it is really the Council of Ministers who are exercising the power under article 74. Therefore, when that happens, the President has to accept the advice. Where does the judiciary come in here? Where does the Chief Justice of India come in except in the context of consultation, which is provided in article 124 itself? You cannot say that the President, instead of acting on the aid and advice of the Council of Ministers, will be compelled to act on the recommendations of the judiciary. All that the President can do is to refer back and still he has to accept. With the present interpretation of article 124 what is meant is that the President shall appoint members of the higher judiciary on the recommendation of the judiciary who may consult the executive. It is the reverse. It is just the reverse of article 124.

Coming back to the issue as to what should be our National Judicial Commission, I think that is really a fundamental issue. As you know, Sir, there was originally a Bill moved, or was to be moved. I think, in the Lok Sabha by the late Dinesh Goswami ji, who also contemplated the setting up of a National Judicial Commission. He was the Law Minister at that point of time. Unfortunately, that could not happen. A part of Mr. Gadgil's Private Member's Bill is really what was sought to be moved by the late Dinesh Goswami ji. But what Mr. Gadgil seeks to do here is not to take the power back and to give it to the executive, but to allow the judiciary to retain that power and, therefore, to some extent, I would suggest that the Government should bring about a comprehensive Bill to set up a National Judicial Commission not dealing with just appointment of Judges but with some other things like transfer,

investigation, etc., to which I will come a little later. At present what is suggested is this. He says that for the portion beginning with the words "after consultation with such of the Judges of the supreme Court" and ending with the words "Provided further", the words "or the recommendation of the National Judicial Commission and shall hold office until he attains the age sixty-five years" should be added and substituted. What is suggested is that instead of consultation with such of the Judges of the Supreme Court the President should appoint Judges on the recommendation of the National Judicial Commission provided that where the recommendation of the National Judicial Commission is not accepted, the reasons thereof shall be recorded in writing. Now, what is the constitution of this National Judicial Commission? Mr. Gadgil says, it will consist of the Chief Justice of India, two Judges of the Supreme Court next to the Chief Justice of India, a senior Member of Parliament with legal background to be nominated by the Speaker of the Lok Sabha and the Union Minister of Law and Justice. If this is the constitution of the National Judicial Commission, the executive will always be in a minority. The Chief Justice of India and two senior Judges of the Supreme Court in order of seniority, means three members from the judiciary. The others are a senior Member of Parliament and the Union Minister of Law and Justice. The senior Member of Parliament may not necessarily belong to the ruling party.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): He need not be from the Rajya Sabha.

SHRI KAPIL SIBAL: Yes, he need not be from the Rajya Sabha.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): And not from Rajya Sabha.

SHRI KAPIL SIBAL: Not from Rajya Sabha.

SHRI R. MARGABANDU: Persons belonging to the legal profession, just like lawyers. There is no representation.

SHRI KAPIL SIBAL: But it says a senior Member of Parliament with a legal background. One will assume that a senior member of Parliament. ..*(interruptions).*

SHRI R. MARGABANDU: When the Law Minister is there, there is no need for any other member. Let there be another member, either from the Bar Council or from the legal profession.

SHRI KAPIL SIBAL: I would give my suggestion in a while.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): Mr. Margabandu, a Law Minister need not be a Member of Parliament for six months. Then, Parliament will not be represented.

SHRI KAPIL SIBAL: But, Sir, a senior Member of Parliament, who is at present sitting in the treasury benches, would be an ideal person for nomination in this category. The point that I was making, ultimately, was this. We are left with the recommendation of the Judicial Commission, which is nominated by the judiciary. What is it that we are trying to do? This is nothing more than outtressing what the Supreme Court had done in the 1993 judgement. This has not improved the situation or undone the legal wrong which was committed by the Supreme Court in interpreting the Constitution in the manner that it did. So, I suggest, Sir, that the constitution of the National Judicial Commission should be broadbased. I would also suggest that you should have the Prime Minister, or his nominee; the Law Minister, the Chief Justice of India, or his nominee; one of the judges of the Supreme Court of India, one Chief Justice of a High Court; either of the presiding Officers, probably the Speaker of the Lok Sabha. This should be the kind of composition. Then; a member of the legal profession, the Chairman of the Bar Council, or, any other entity named by the Speaker. We

can have all this, but it must be broadbased. It must reflect the diverse character of the Indian Society. It must reflect the various interests necessary to be taken into account in the appointment of judges, which is the multifarious character of the Indian society. It must be there. It could not be anything else. Otherwise, we will continue to have a debate that you have appointed one judge from that category, another judge from that category. We do not want that. But, Sir, this is not enough. The National Judicial Commission, by itself, is not enough, even if you have all these people. There must be a full-fledged Secretariats. There must be a fuli-time office which will look at the performance of the said Commission. I do not mean, critically, no. Just for data-building. For example, if a judge of a High Court renders a judgement, a copy of that judgement should automatically come to a data bank which must be included in the National Judicial Commission so that, at any point of time, if you are going to consider a particular judge for appointment to the Supreme Court, all his judgements will be part of your databank. The judgements that he renders in the High Court are public knowledge any-way, it should be in the computer so that if at any point of time you want to look at it, you have all his judgements right in front of you. By reading those judgements you will come to know what his attitudes are, you will know his command over language and you will know how quickly he renders his Judgement, at this point of time, other than knowing the man, we know nothing else about him. We do not want to know the man. Parliament does not want to know the man. Parliament wants to know the man is represented in cold print. Because that is how we will assess how good or bad he is. Therefore, Sir, this Judicial Commission should be a broadbased body. It must have a permanent Secretariat where there must be a permanent data bank in respect of each judge. Then, an assessment should be made, that assessment should be made on the basis of discussion, I do not mean an open-ended discussion, like in the Senate hearing. No, I do not mean that. I think that will make a mockery of the judicial system in the country. I certainly do mean a closed-door discussion.

When I say a close door discussion, we have the Standing Committees of Parliament, we have the Joint Select Committees of Parliament. We call people from outside. An eminent person may want to say something about a Judge. We should not prevent him. The hearing should be behind closed doors in the sense that it should be secret. It should not be made public. But there should be hearings because the fate of this country cannot be handed over to men who are appointed to high offices without any criticle analysis. We cannot afford that. This country cannot afford that any more. I think that is very important. Similarly, there must be a procedure adopted for the purpose of appointment to High Courts. I think the quality of appointment to the High Courts is far more important. The reason is, the High Court Judges come to the Supreme Court. That is the recruiting field. That is from where the candidates come. Either they come from the Bar or they come by virtue of promotion. That is where the critical analysis has to take place. If the quality of Judges at the High Court level is good, naturally, the Judges of the Supreme Court Judges will also be good. Unfortunately, what is happening in this country? I say this with some amount of sadness. I was investigating into some appointments made in the last five or ten years to various High Courts. What did I find? These are stark facts. Either he is somebody's junior or he is a junior of somebody's brother or he is somebody's son or he is belonging to a particular community. That does not augur well for the judiciary. It saddens me to say that. The Government must conduct an inquiry into this matter. They should look at the High Courts and find

out who are the persons who have been appointed as Judges in the last ten years. If you look at the link, it will point to a particular direction. Now the problem is if we say anything outside this House, that is a contempt of the court. I can say this here today. But I do not say this outside. I am purposely saying it here today because I think, the time has come for us really to look at this very seriously. This is not some kind of an exclusive club belonging to a particular community or class of people. We have to break this club. Actually, that is wrong. The reason is the process. The reason for this problem is the process because it is an exclusive process; because it is a closed door process, because it is in the secrecy of the chamber; because it is based on who knows whom. You are bound to have this kind of results. So we must get rid of this process.

Let me come to another topic which is also very important.

SHRI R. MARGABANDU: Sir, may I make a request? Sir, on this subject several Members would like to express their views. Now only one hour and forty-five minutes are left. Let us confine ourselves to the particular subject so that all the Members get an opportunity to speak on this subject. Let there be some time limit.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): There was a request from the Government side that we should continue with this. Mr. Sibal is making very constructive suggestions. There is no shortage of time before this House. Therefore, we can extend the time. If not today, we can discuss it some other day. Mr. Sibal is making very good suggestions. If the Government has no objection, he should be permitted.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI M. THAMBI DURAI): Mr. Vice-Chairman, Sir, I have received a lot of representations and questions from the hon. Members of this House and of Lok Sabha regarding appointment of Judges. Sir, the hon. Members are showing so much interest in this subject. They have expressed their worries also. If they want to say something regarding the appointment of Judges, I have no objection. If the House wants, we can extend the time. They can express their views. The Government is committed to constitute this kind of a Judicial Commission. This is there in our National Agenda also. I have no objection to listening to the views of Members. If the House feels, you can extend the time.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): It all depends on how many Members want to speak. I don't think that every Member will make a longer speech than that of Mr. Sibal's. He is making a relevant speech. As he rightly mentioned, this is the right forum for us to open a national debate. You cannot make this debate outside the House. I think that it is very appropriate....

SHRI M. THAMBI DURAI: Also, there is some kind of a wrong opinion about the Executive and also about Members. We are not like that. Therefore, we can express our views clearly.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): I think that Mr. Sibal is making a very valid point. It is very informative to every Member, the Government and to the country. Let us see how much time he will take.

SHRI KAPIL SIBAL: I will take another ten minutes...

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): Yes, Mr. Singhvi, do you want to say something on this? *(Interruptions)*

SHRI B. P. SINGHAL (Uttar Pradesh): Will you extend it till next Friday?

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): We cannot decide it now. Let us see how many more Members want to speak.

DR. L. M. SINGHVI (Rajasthan): I think that it will be appropriate to extend the time, and that while you extend the time, you may kindly indicate that it can be taken up on another day. Otherwise, the constraint of time will inhibits others who wish to speak. I think, therefore, that it will be proper for the House to agree to a longer time frame for this discussion, particularly, in view of what the hon. Minister has said and what many hon. Members have said, and because of the momentous importance of this debate.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): Mr. Singhvi, I have got eight names before me. Two hon. Members are absent. It all depends on how many more Members would want to speak after Mr. Sibal takes his seat. Only then can I decide how much longer time is required. Mr. Sibal, please Continue.

SHRI KAPIL SIBAL: Sir, I would suggest that we should rename this Judicial Commission. It should be a judicial commission for appointment, transfer and removal of judges...

THE VICE-CHAIRMAN SHRI JOHN F. FERNANDES): Are you going to usurp the power of impeachment by Parliament?

SHRI KAPIL SIBAL: No, I am no, usurping any power. I am only saying that Parliamentary process regarding the removal of. a judge of the Supreme Court or a High Court is a cumbersome, unwieldy and ineffective process. It has been demonstrated at least once in the history of this country, and I pray to God that it never happens again... *(Interruptions)*

THE MINISTER OF HUMAN RESOURCE DEVELOPMENT (DR. MURLI MANOHAR JOSHI): You were pleading then.

SHRI KAPIL SIBAL: It was a harrowing experience from all points of view.

SHRI SANGH PRIYA GAUTAM: We listened to your arguments.

SHRI KAPIL SIBAL: Sir, this is a ! very serious point that I am making because what is really important is to protect the judiciary as well. And I am saying it in that context. I don't think that when a number of Members of Parliament make an allegation against a judge, we should immediately start the process. No. The reason why I want a judicial commission on this is that there must be a very thoughtful, focussed approach on the issue. There must be collection of evidence, not based on just allegations, and there should not be people roaming around corridors getting signatures. That is not they way judges of a superior judiciary should be impeached. I am saying it for the protection of the judiciary. Judiciary, since independence, has devised no procedure to deal with an errant judge. We have been requesting the judiciary time and again to have such a procedure. But they have not devised any procedure in the last 50 years, and I dare say that they are not going to devise any because it deals with their own families. It is very difficult to punish members of their own families. Therefore, it is necessary to have some other body consistent with the provisions of the Constitution. The ultimate power of removal has to be with Parliament. There is no doubt about it. But, certainly, a judicial commission should be able to look into the matter. If there is a complaint by a judge against another judge, the person making the complaint should be prosecuted both under the laws of defamation and under the laws of contempt. There must be a law passed by which if he makes a complaint to the National Judicial Commission, he must be protected. If, however, after inquiry, — it must be a closed-door inquiry — the Judicial Commission comes to the conclusion that, in fact, that complaint is frivolous, then the protection must be lifted, and he must be prosecuted both for defamation and contempt. This protection is only an interim protection.

It should be only an interim protection so that no frivolous complaint is lodged against any member of the superior judiciary. That is very important for the protection of the judiciary. But, at the same time, if there is a serious complaint based on evidence, then it does not mean that you could take proceedings of defamation and contempt against the person. Then, he will be fully protected. So, once such a complaint is made, then this National Judicial Commission should have the wherewithal, the administrative machinery, to go into the matter, and once it goes into the matter and comes to some kind of *prima facie* conclusion after collecting evidence, it must then privately call the concerned judge. This should not be made public because we must not make a public spectacle of removing judges of the Supreme Court and the High Courts, because these are very serious constitutional matters. In that process, Sir, he must be asked, "This is what we have against you. Do you have anything to say"? **But,** the judge may give a very satisfactory explanation — which should also be private, which should also not be revealed to anybody — and if the Judicial Commission is satisfied with that explanation, then, in that event, the matter should be dropped and nobody in the public will come to know of it. If, however, the explanation is not satisfactory, he can be advised that he should resign from office, or, if he does not do so, then there should be a power to prosecute that particular person. This has to be the framework within which the process of removal must be set up under our Constitution. The ultimate power of removal, of course, will be with the Parliament, because even after the Judicial Commission renders a finding, it then has to to be formally placed. But considering the kind of galaxy of people, who will constitute this Commission, the Parliament will never have **a** debate on it and we won't have a public spectacle of it.

So, Sir, I have been thinking about this for **a** long period of time and I have been waiting for this opportunity to explain my views on the subject. It is very important to have this procedure because the time has come when—if the other wings of State are accountable, if the Legislature and every Member of Parliament is accountable to the people of India, if the Executive if accountable to Parliament, then, surely, the judiciary should be accountable to somebody. The Constitution makers never envisaged that one wing of the State will be unaccountable or not accountable to anybody. That is not the scheme of our Constitution. And if this very harsh, very laborious, very difficult provision of impeachment is not workable, then that accountability has to be brought about through the process of amendment, and this is my suggestion.

The other thing, of course, is that this Judicial Commission will also deal with the question of transfers, and in the same transparent, objective fashion as I have suggested in the other two contexts.

But, more important than that, what is the state of the country, as far as judiciary is concerned? In FERRA Board alone—and I am talking of 25th of August, 1998—there are 4,630 cases which are pending. It is just in the FERRA Board alone. I will give you the 1996 figures of various High Courts. There is a backlog in the Allahabad High Court of 7.88 lakh cases. These figures would have grown since 1996. I am talking of December, 1996 or the beginning of 1997. So, in these two years these figures would have grown further. Then, the backlog in the Madras High Court was of 303 lakh cases, in Calcutta of 2.56 lakh cases, in Bombay of 2.26 lakh cases, in Kerala of two lakh cases, in Karnataka of 2.63 lakh cases, in Punjab of 1.6 lakh eases and in Andhra Pradesh of 1.5 lakh cases. In the lower courts, the figure is 2.8 crores. Where are we going? Can you imagine just the enormity of the problem and how are we not even dealing with it? There is nobody to deal with it. The judiciary doesn't have the administrative machinery, the wherewithal and the cohesive machinery to deal with it. We have

to come up with an answer and the quicker we come up with an answer, the better it is for our country. Now, that answer can only be provided if you set up an expert body. If you have the National Judicial Commission, you can have an expert body under that Commission to monitor the process of litigation going on in various parts of the country. Now, for that, you need a machinery, Sir. So, what I am suggesting to you is that this is a way out to set up a National Judicial Commission, to be able to give it all these powers.

I am very happy that Mr. Gadgil has brought this as a Private Member's Bill because these are the issues that can be debated. I am sure when every hon. Member renders his opinion, gives his views, then, all this will be taken into account by the Government and a comprehensive legislation will be brought forward, consistent with the Constitution and, more importantly, consistent with the independence of the judiciary. We must not forget that an independent judiciary is the only safeguard to democracy. Therefore, that independence cannot possibly be negotiated. That must be the trend. That is the scheme of things under our Constitution.

So, consistent with that, let us work together, let us bring about a comprehensive legislation and sec if we can solve these various problems.

श्री ओंकार सिंह लखावत (राजस्थान): महोदय, आज एक बहुत महत्वपूर्ण विषय पर चर्चा हो रही है । मैं गाडगिल साहब को इस बात के लिए धन्यवाद देता हूं कि उन्होनें एक बहूत ही सामयिक विषय पर यह संशोधन विधेयक संसद के सामने रखा है । संविधान के अनुच्छेद 124. 217 और 222 में संशोधन के नाते एक राष्ट्रीय न्यायिक आयोग के गठन, उनके अधिकार और उसके बाद नियुक्तियों के बारे में इस संशोधन के द्वारा जो एक बहुत बड़ी समस्या देश अनेक वर्षों से देख रहा है, उसके निदान के नाते यह संशोधन विधेयक हमारे सामने प्रस्तुत किया गया है ।

श्रीमन्, मैं यहां एक निवेदन करना चाहता हूं कि इस सारी समस्या की मूल जड़ के अंदर यदि कोई बात है तो

यह बात यह है कि हिन्दूस्तान की न्यायपालिका अपने आप यह निर्णय लेने लगी है कि हम इंडिपेंडेंट है, परन्तु भारत के सविंधान में यह कहीं पर नहीं लिखा है कि न्यायपालिका इंडिपेंडेट होगी । यह इंडिपेंडेंट शब्द कहां से आया ? इसका सृजन कहां से हो गया ? इसकी उत्पत्ति कहां से हो गई ? इसकी व्याख्या क्यों की गई ? यदि हम इसके मूल में जांएगे कि पचास साल के अंदर यह एक नई समस्या देश के सामने आकर क्यों खड़ी हो गई और क्यों राष्ट्रीय आयोग की मांग इस संशोधन के द्वारा आप करने जा रहें हैं ? इसके लिए आवश्यक यह है कि संविधान जब बनाया गया और संविधान में न्यायाधीशों की नियुक्ति के बारे में प्रावधान किया गया तो यहां पर संविधान सभा मे ही बहस हुई और आप 1999 में इस भारत के संसद में जो बहस हो रही है, संभवत: लगभग वैसी ही वैसी बहस पचास साल पहले भी हुई थी । उस समय की बहस में भाग लेते हुए डा0 अम्बेडकर साहब ने कहा था कि न्यायपालिका को संसद द्वारा बनाए गए कानून को परिर्वत्न करने का अधिकार नही है और भारत के संविधान में इस बात की व्यवस्था नहीं है कि न्यायपालिका इंडिपेंडेंट हो । न्यायपालिका निष्पक्ष होनी चाहिए, यह बात समझ में आ सकती है और संविधान की मंशा है कि न्यायपालिका निष्पक्ष हो, इमपार्सियल हो. परन्तु इंडिपेंडेंट होगी, यह डेमोक्रेटिक सिस्टम में और एक लोक-कल्याणकारी सरकार में बिल्कुल नहीं हो सकता ।

श्रीमन् भारत की संसद में जब एक लोक-कल्याणकारी सरकार अपनी नीति के द्वारा न्याय देना चाहती है , कानून बनाना चाहती है तो न्यायापालिका एक तरफ खडे होकर यह नहीं कह सकती कि मैं इंडिपेडेंट हूं और इसलिए मैं अपना फैसला करूंगी, मैं आपके फैसले को मानने के लिए तैयार नहीं हूं या मैं भारत के संसद के द्वारा बनाए हुए कानून या भारत के संसद के प्रति जवाबदेह नहीं हूं । ऐसा संसदीय लोकतंत्र की प्रणाली के अंदर संभव नहीं है । इसलिए मेरा विनम्र निवदेन यह है कि जब संसद में बहस हो रही है तो खुलकर इस बात पर भी बहस होनी चाहिए कि न्यापालिका भारत के संसद के प्रति जवाबदेह क्यों नहीं हैं ? न्यायपालिका का काम तो कानून के अनुसार अपनी व्याख्या करना है, निर्णय देना है । ससंद के यदि कोई अधिकार नहीं है कि यह खराब है या अच्छा है ।

श्रीमन् मैं बड़े आदर के साथ, बहुत सम्मान के साथ यह निवेदन करना चाहता हूं कि अगर राष्ट्रीय आयोग

बनाने की बात हुई है तो व्यवहार और आचरण के कारण से ही ऐसी परिस्थिति उत्पन्न हुई है । मैं बताना चाहूंगा कि जब चौथा संविधान संशोधन पेश हुआ था, तो तत्कालीन प्रधानमंत्री पंडित जवाहर लाल नेहरू ने बहुत स्पष्ट शब्दों में कहा था –

> "The judiciary don't decide about high political, social or economic or other questions. It is for the Parliament to decide. In interpreting a law of Parliament they may indirectly decide on social and economic and like matters, but the ultimate authority to lay down what political or social or economic law we should have, is the Parliament and Parliament alone. It is not the function of the judiciary to do that."

आज क्या हो रहा है ? आज क्या न्यायपालिका कार्य पालिका का काम नहीं कर रही है ? मैं क्षमा चाहता हूं, कहना चाहता हूं कि डाक्टरों को हड़ताल में समझौता हम करेंगे, ट्रांसफर हम करेंगे, ऐप्लाइंटमेंट किसकी होगी यह तय हम करेंग, क्षमा कीजिएगा, आजकल तो विधायिक का काम भी न्यायपालिका ने करना प्रारम्भ कर दिया है । मैं वकील होने के नाते भी कहना चाहता हूं, मेरा यह अनुभव है, कि दंड प्रक्रिया संहिता में कहीं यह प्रावधान नहीं है कि जो नॉन कंपाउंडेवल अपराध होगा, उसमें कंपाउंड कर दीजिए । पर हिन्दूस्तान की न्यायपालिका के निर्णयों की एक झड़ी मिल सकती है जिसमें ऐसे समझौते होंगे जिसमें दंड प्रक्रिया संहिता में हिन्दूस्तान की संसद ने कानून पारित नहीं किया । श्रीमन्, मैं हाल ही के एक ऐसे निर्णय की और सदन का ध्यान आकर्षित करना चाहता हूं । हिन्दूस्तान की संसद ने कहीं यह नहीं कहा, उन्होनें दंड प्रक्रिया संहिता की धारा 468 में एक बात कहीं कि किस-किस प्रकरण में कितनी मियाद होगी, उसको पेश करने के बारे में पर हिन्दूस्तान की न्यायपालिका ने यह कह दिया कि इतना समय हो गया, मुकदमें को समाप्त कर दीजिए । कहीं से होगा यह ? किसने अधिकार दिया । न्यायपालिका को कानून बनाने का ?इसलिए मैं निवेदन करना चाहता हूं कि महाभियोग, मेरे माननीय विद्वान मित्र हिन्दूस्तान की इस संसद में पैरवी कर चुके हैं, एक प्रकरण के अंदर, महाभियोग में क्या होता है, वे भी जानतें हैं, हिन्दस्तान की 100 करोड़ जनता की जानती है और भारत की ससंद भी जानती है, इसलिए मैं इस बात से सहमत हूं कि राष्ट्रीय न्यायिक आयोग बनाया जाए जो बहुआयामी होना चाहिए । केवल नियुक्ति के सबंध में नहीं बल्कि न्यायापालिका के ऊपर, उसको निगरानी रखने का भी अधिकार होना चाहिए, जिस तरह से आपके यहां पर प्रैस परिषद बनी हुई है । उनको हटाने का अधिकार लो अंतिम रूप से नहीं होगा, वह तो संसद करेगी, परन्तु वह सैसर कर सकती है, वह निन्दा कर सकती है. वह प्रताड़ना दे सकती है और जैसे कि पहले प्रिवी कांउसिल को पावर थी कि यदि गर्वनर जनरल किसी मैटर को प्रिवी कांउसिल को भेजते और प्रिवी कांउसिल जांच करने के बाद यदि यह सिफारिश करती थी कि जज को हटाया जाना चाहिए, तो उसको हटाया जा सकता था । यदि आज राष्ट्रीय न्यायिक आयोग बना जाए और यदि वह किसी न्यायाधीश के बारे में जाचं कर ले- उसके आचरण के बारे में, व्यवहार के बारे में, न्यूनता के बारे में और यदि वह सिफारिश करता है कि इस न्यायाधीश को हटाया जाना चाहिए तो मेरा एक निवेदन है कि एक संशोधन और आना चाहिए कि उसको भारतीय संसद बहुमत से हटा सके,उसके लिए दो तिहाई बहुमत की आवश्यकता नहीं है । जब तक हम इस प्रकार की व्यवस्था नहीं करेंगे तो फिर यह बात करके चलना कि हिन्दूस्तान की 100 करोड़ जनता ने जिसको चुनकर भेजा, उसकी क्रियान्वति होनी चाहिए । अनुसूचित जाति के ऊपर होने वाले अत्याचार को रोकने के लिए हमने एक शैड्यूल्ड कास्ट, शैड्यूल्ड ट्राइब्स प्रिवेशन आफ क्रूएसिटी एक्ट बनाया। हमने कहा कि 6 महीने के अंदर फैसले होने चाहिए, अनुसूचित जाति के लोगों को सुलभ और जल्दी न्याय मिलना चाहिए, लेकिन मुझे यह कहते हुए खेद है कि अनके वर्ष बीत जाने के बावजूद मुकदमें का निस्तारण तो दूर, उस पर चार्ज तक नहीं लगता । भारत की संसद ने कानून पास किया कि आर्थिक अपराधों के अदंर, विशिष्ट प्रकार के अपराधों में एक समी प्रोसिजर से ट्रायल होना चाहिए, पर क्षमा कीजिए 95 परसेंट मुकदमों में समरी ट्रायल नहीं होता । किसकी फुर्सत है ? हम इकॉनामी की बात करतें हैं, न्याय पालिका के पास आजकल सोशियल रिफार्म पर निर्णय देने और जनहित की याचिका पर फैसला करने के अलावा और फुर्सत नहीं है । इसलिए मैं मानकर चलता हूं कि भारतीय संसद को इस बात का काग्रिजेंस लेना चाहिए कि आखिर इस न्याय पालिका से, हमने जिन कानूनों को बनाया है, उनकी मंशा की पूर्ति होती है या नहीं, यदि नहीं होती है तो किसके पास हम जाएं ? हिन्दूस्तान की जनता का विश्वास उठेगा तो किससे उठेगा ? यदि बहुमत से हिन्दूस्तान की सरकर की

जा सकता है तो बहुमत से एक न्यायाधीश क्यों नहीं जा सकता, क्या दिक्कत की बात है, क्या परेशानी की बात हैं ? सिब्बल साहब ने जिस तरह से आंकड़े यहां प्रस्तुत किएं हैं, मैं आपसे एक निवेदन करना चाहता हूं कि हिन्दूस्तान की जनता का न्याय पालिका और न्याय से जो विश्वास हटता जा रहा है उसका मूल कारण यह है कि जितना समय हमको नियमित अपने मुकदमों के निस्तारण में देना चाहिए, उतना हम बिल्कुल नहीं देते हैं। उन कार्यों के लिए देतें हैं जिनकी अखबार में खबर छपती हो, फ्रंट पेज पर आती हो, दूरदर्श और मीडिया जिसका प्रसाराण करते हों । मुझे क्षमा कीजिएगा, मैं बहुत वेदना के साथ, इस न्यायिक परिवार का सदस्य होने के नाते, अपने मन की वेदना आज इस संसद में रखना चाहता हूं। यह सब क्यों हुआ ? सिब्बल साहब ने बहुत शिष्ट भाषा में कहां, ऐपाईटमेंट किसकी होती है, ऐपाइंटमेंट कौन करते हैं । जो बाहर से ऐपाइंटमेंट होतें हैं, उनकी पूरी लिस्ट उठाकर देख लें, उनके होने वाले फैसलों को उठाकर देख लें, क्या उससे लोग प्रभावित नहीं होंते ?

संपूर्ण न्यायपालिका के अंदर जिस प्रकार का ऐपाइंटमेंट का प्रोसीजर बनाया गया, उस प्रोसीजर के अंदर हम निष्पक्ष न्यायाधीश की उम्मीद करके चलें, योग्यता के साथ नियुक्ति की उम्मीद करके चलें, यह संभव नहीं है । इसलिए मैं यह बात कह रहा हूं कि एक राष्ट्रीय न्यायिक आयोग बनाना चाहिए।

उपसभाध्यक्ष महोदय, मैं संक्षेप में कुछ बातें और कहकर अपनी बात समाप्त करना चाहूंगा। यह बात केवल यहां नहीं हैं । ये कहतें हैं कि कार्यपालिका एपाइंट क्यों करे न्यायापालिका सब जगह एपाइंट करती है। अमरीका में ब्रिटेन में, वहां भी यह होता है । वहां तो सीनेट का एप्रूवल होता है । ऐसा नहीं है कि और देशों के अंदर नहीं होता है पर यह बात भी सही है कि वहां जो एपाइंटमेंट्स होतें हैं, वे पोलिटिकल होते हैं । परन्तु फिर भी उनका जो डिसीजन है, वह ज्यादा इफैक्टिव हैं, ज्यादा जल्दी होने वाला है, आम जनता पर ज्यादा इम्पैक्ट छोड़ने वाला है। परन्तु हमारे यहां इस प्रकार की प्रथा नहीं हैं और इसलिए राजनीतिक अच्छे नहीं हैं, वह अच्छी नहीं है, ठीक केवल जुडिशियरी है, बाकी हिन्दूस्तान ठीक नहीं, इसलिए चाहे जिस पर स्ट्रिगर पास कर दिया, जाए यह ठीक नहीं है।

उपसभाध्यक्ष महोदय, अब समय की आवश्यकता है कि अगर हम जनकल्याणकारी सरकार को चलाना चाहते हैं, जो कानून हमने संसद में पास किएं हैं, उनको लागू करना चाहतें हैं, उनका कार्यान्वयन करना चाहतें हैं, उसी रूप में कार्यान्वयन करना चाहतें हैं जिसके लिए हमने वह कानून बनाया है तो फिर लागू करने वाली और फैसला करने वाली एजेंसी को सोचना पड़ेगा और उसके लिए व्यवस्था करनी पड़ेगी। भारत की संसद की इच्छा क्या है ? उसने कानून किस बात के लिए बनाया है ? इसलिए आवश्यक है कि हम उनकी नियुक्ति के लिए एक राष्ट्रीय आयोग बनांए उनकी सेवाओं के बारे में बनाएं, उनके ट्रांसफर के बारे में बनाएं और आवश्यक पड़े तो उन पर लगने वाले आरोपों के लिए भी बनांए । इस मसले पर कोई पहली बार संसद में बहस नहीं हो रही है । हमारे यहां सयू कमेटी बनी। उससे भी कहा कि होना चाहिए, क्यों नहीं होना चाहिए।

महोदय, मैं एक बात और आपसे निवदेन करूंगा कि यह बात आज जो हो रही है कि इन कंसलटेशन आफॅ वजेज आफॅ दि सुप्रीम कोर्ट, मुझे क्षमा कीजिएगा यह कंसलटेशन को जो कंसेट बनाने का काम किया गया है और इसे जिस तहर से परिभाषित किया गया है, यह निश्चित रूप से भारतीय संविधान की इच्छा के विपरीत हैं । ये भारतीय संविधान की इच्छा के विपरीत है । ये भारतीय संविधान के अनुच्छेदों के विपरीत है। कहीं कंसेट नहीं है। यदि सुप्रीम कोर्ट के जजों का कनसेट चाहिए तो सुप्रीम कोर्ट के जजों का एपाइंटमेंट वे स्वंय करने वालें हैं। फिर भारत के राष्ट्रपति के केवल दस्ताखत होंगे और सील होगी वरना एपांइटमेंट तो सुप्रीम कोर्ट वाले स्वंय करने वालें हैं। कंसलटेशन, परामर्श का मतलब यह नहीं हैं कि केवल मात्र उनकी सहमति से होगा। यह परिभाषा उन्होनें अपने आप कर ली क्योकि वह ज्यादा माकूल थी, उनको ज्यादा सुहाती थी, उनके अनुकूल थी। इसलिए वैसी परिभाषा हो गई। इसलिए आज वह परिभाषा बिल्कुल ठीक नहीं है।

उपसभाध्यक्ष महोदय, माननीय गाड़गिल जी ने जो बात कही है कि इसके अंदर संशोधन होना चाहिए, वह हो वरना न्यायपालिका का तो बीटो हो जाएगा। इसके बाद में डा0 अम्बेड़कर ने आखिर में एक बात और कहीं हैं । संविधान सभा ने पूछा कि क्या होगा अगर मान लीजिए सुप्रीम कोर्ट के चीफ-जस्टिस ने कह दिय कि मैं सहमत नहीं हूं। उन्होनें कहा कि

> "After all the Chief Justice is a man with all the failings, all the sentiments and all the prejudices which we as common people have. No veto power to the Chief Justice or the Judges."

यह बात कही डा0 अम्बेडकर ने और इसलिए श्रीमन् मैं आपसे निंबंध विनम्र निवेदन करना चाहूंगा कि इसमें एक प्रावधान और हो जाए और वह यह जो कि सुप्रीम कोर्ट के जज एपांइट होने के बाद वे सरकार से संबंधित किसी भी काम में न लगाए जाएं। क्या स्थिति आकर खड़ी होगी यदि हमने यह कहना शुरू कर दिया कि सुप्रीम कोर्ट का जज एपाइंट होगा, उसके बाद वह आयोग का मैंम्बर बन जाएगा, उसके बाद वह कहीं लाभ के पद पर आकर बैठ जाएगा, मुझे क्षमा कीजिएगा, उसके बाद हम निष्पक्ष न्यायपालिका की बात करतें हैं ? रिटायरमेंट से 6 महीने पहले यह न्याय का निस्तारण नहीं बल्कि अपनी अगली पोस्टिंग के लिए समय निकालकर इधर-उधर चक्कर लगाने का काम करेंगे । इसलिए मैं चाहता हूं कि इस अमेंडमेंट में शर्ते तय हो जानी चाहिए कि सुप्रीम कोर्ट का जज सेवा-निवृत्ति के बाद केवल जांच-आयोग अगर ज्यूडिशियल प्रोप हो, उसके अलावा कहीं भी नियुक्त नहीं किया जाएगा। मैं क्षमा चाहते हुए कहना चाहूंगा कि भारत की ससंद में वह नहीं आएंगे, किसी राजनीतिक दल के सदस्य नहीं बनेंगे। इतने ऊंचे पद रह लिए उसके बाद कहीं पर रहने की आवश्यकता नही हैं। निष्क्षता के बाद पक्ष और और नापक्ष में आने की जरूरत नहीं है, यह भी पाबंदी होनी चाहिए । परन्तु हम चाहें कि निष्पक्ष न्यायपालिका बन करके हमारे बीच आए और उसके द्वारा हम किसी तरह की बात करना चाहे और इसलिए मैं आप सबसे एक बहुत ही माकूल जो हमारे यहां पर संशोधन विधयेक लाए हैं मैं उसका समर्थन करता हूं कि और मैं चाहता हूं कि सरकार इसके ऊपर अपनी अनुकूल राय बनाए और निश्चित रूप से समय की आवश्यकता को समझते हुए यह सारा ढांचा ढह न जाए उससे पहले निश्चित रूप से प्रभावी आयोग बने। आपने मुझे समय दिया उसके लिए बहुत-बहुत धन्यवाद।

श्री ईश दत्त यादव (उत्तर प्रदेश) : माननीय उपसभाध्यक्ष जी,श्री बी0न0 गाडीगील साहब को मैं धन्यवाद दूंगा कि इन्होनें सरकार का ध्यान आकृष्ट किया कि आपने अपने नेशनल एजेंडा में नेशनल ज्यूडिशियल कमीशन बनाने के लिए कहा । सरकार को इस पर गंभीरता से सोचना चाहिए और नीयत भी बनानी चाहिए। मुझे प्रसन्नता है कि विधि मंत्री ध्यान से सुन रहें हैं। लेकिन वी0न0 गाडगौल साहब ने जो विधेयक प्रस्तुत किया है उसकी आत्मा का मैं पूरा समर्थन करता हूं लेकिन उसका जो शरीरिक ढांचा है उससे मैं सहमत नहीं हूं। जैसा कि श्री कपिल सिम्बल साहब ने कहा, मैं इनके तर्कों से पूरी तरह से सहमत हूं। मान्यवर उपसभाध्यक्ष जी, नेशनल ज्यूडिशियल कमीशन बनाने की अत्यंत आवश्यकता है, क्योंकि जनतांत्रिक – डेमोक्रेटिक कंट्री दो के माध्यम से चलता है। एक संविधान और दूसरा न्याय-पालिका। संविधान के अनुसार देश चल रहा है या नहीं, जनतंत्र चल रहा है या नहीं इसको देखने का काम न्यायापालिका को हैं, इसको कार्यान्वित कराने का काम न्यायापालिका का है, व्यवस्था देने का काम न्यायपालिका का है, व्यक्ति व्यक्ति में विवाद हो जाए, दो राज्यों में विवाद हो जाए, किसी कानूनी व्यवस्था की आवश्यकता पड़े तो सब के लिए स्वतंत्र और निष्पक्ष न्यायापालिका की आवश्यकता होती है। मान्यवर, नेशनल ज्यूडिशियल कमीशन बनाने का मैं बहुत समर्थक हूं और चाहिए कि अति शीघ्र यह बनाया जाए । लेकिन इस देश में जो न्यायापालिका प्रणाली है, श्री कपिल सिब्बल साहब ने भी संकेत किया है। मैं उस और आपके माध्यम से इस सदन का और सरकार का ध्यान दिलाना चाहता हूं और इस पर गंभीरता से विचार करना चाहिए कि क्या इस देश मे सस्ता और शीघ्र न्याय मिल रहा है ? क्या गरीब आदमी पैसे के अभाव में न्याय से वचिंत रहें जा रहें हैं ? क्या हाई कोर्ट और सुप्रीम कोर्ट में उस साल से लेकर 15-20 साल के मुकदमें पेडिंग नहीं है ?

श्री बालकवि बैरागी : 35 साल से हैं।

श्री ईश दत्त यादव : बैरागी जी यह कह रहें हैं कि 35 साल से मुकदमें पैडिंग हैं। 35 साल पुराने मुकदमें क्या इस देश में विचाराधीन नहीं है। आज एक आदमी अपना विवाद कोर्ट में वापिस करता है। वह मर जाता है उसका बेटा मर जाता है, उसका ग्रांडसन उस मुकदमें को लड़ रहा है और न्याय नहीं मिल रहा है।

डा0 मुरली मनोहर जोशी: इसमें तो कुछ वकीलों का भी सहयोग है, वैसे आप क्षमा करें। मैनें एक बार यह सुना था कि एक बड़े वकील का पुत्र भी वकील बना और उसने आकार कहा कि जब उसने पहली बार अदालत में प्रेक्टिस की, पिताजी, यह केस जो दस साल से लटका था मैनें आज हल कर दिया। तो पिताजी ने उसको एक झापड़ लगाया और कहा कि अभी यह केस इस साल और चल सकता था।

श्री ईश दत्त यादव : यह चिलमा करने से आपकी सरकार चलने वाली नहीं है।

डा0 मुरली मनोहर जोशी : यह तो हमारे बल पर चलेगी।

श्री ईश दत्त यादव : मान्यवर, मैं निवेदल कर रहा था कि यह तथ्य है इस पर गंभीरता से विचार करना होगा। न्याय इनको क्यों नहीं मिल पा रहा है ? सस्ता न्याय क्यों नहीं मिल पा रहा है ? शीघ्र न्याय क्यों नहीं मिल पा रहा है ? इसमें ज्यूडिशियरी की भी गलती है और आपकी सरकार ही इसके लिए दोषी है। मेरे पास आंकड़े नहीं हैं। लेकिन एक हाई कोर्ट का मेरे पास एक आंकड़ा, इलाहाबाद हाई कोर्ट का। इलाहाबाद हाई कोर्ट में संभवतः 70 स्थान हैं जजों के। 35 जज इलाहाबाद हाई कोर्ट में काम कर रहें थे। इस देश का सबसे बड़ा हाई कोर्ट, सबसे बड़े प्रदेश का । मैं आपको धन्यवाद देना चाहता हूं उसमें भी आपने कंजूसी की। 70 की जगह 35 जज काम कर रहें थे और मानव संसाधन विकास मंत्री डा0 मुरली मनोहर जोशी को आईडियोलाजी से उनकी पार्टी से मैं सहमत नहीं हूं। लेकिन व्यक्तिगत तौर पर मैं उनका प्रशंसक हूं क्योंकि पूरी इमरजेंसी में हम और वे, दोनों एक साथ नैनी जैल में बंद थे इसलिए मैं इनके प्रशंसकों में से हूं, इनकी पार्टी का प्रशसंक नहीं हूं। तो मान्यवर, मैं कह रहा था कि आज इलाहाबाद हाई कोर्ट में अकेले 20 स्थान रिक्त हैं। सुप्रीम कोर्ट का मैं नहीं जानता लेकिन देश के जितने उच्च न्यायालय है, सभी में जगहें खाली पड़ी हैं। मैं जानना चाहता हूं कि कानून मंत्री जी से कि आपको कठिनाई क्या है ? आप क्यों नहीं अपाईंटमेंट कर रहें हैं इन जजों का ?

मान्यवर, मैं दूसरा निवेदन कंरूगा कि जो ज्यूडिशियरी को अधिकार दे दिया गया है जजों के अपाईटमेंट का, कपिल सिब्बल साहब ठीक बयान कर रहे थे। कि उनका कंसल्टेशन एक तरह से बाध्यता हो जाता है। संविधान में व्यवस्था है कि

"There will be a Council of Ministers to aid and advise the President of India."

भारत के राष्ट्रपति को कोई दूसरा व्यक्ति राय नहीं दे सकता।

Only the Council of Ministers can aid and advice the President of India.

ये जज कहां से आ गए एडवाईस देने के लिए ? हम कहां से देने लगेंगे ये एडवाईस ? टीचर्स एसोसिएशन्स कहां से एडवाईस देने लगेगी ? बीड़ी मजदूर संघ कहां से एडवाईस देने लगेगा। सब एडवाईस देंगे तो जनतंत्र नहीं चल पाएगा। इसलिए मैं कपिल सिब्बल जी का समर्थन कर रहा हूं कि केवल एक्जीक्टयूटिव को यह पावर रहनी चाहिए और ज्यूडिशियरी को पावर नहीं रहनी चाहिए।

तीसरा निवेदन मैं यह करूंगा कि संविधान लोकल जिस्टस की बात लिखी गई है, सामाजिक न्याय की बात लिखी गई है। आज हाई कोर्ट और सुप्रीम कोर्ट में क्या सभी वर्गो की प्रतिनिधित्व है ? आज देश में अगर संविधान में व्यवस्था की गई और सरकार ने यह कहा कि रिज़र्वेशन होना चाहिए, किन लोगों का रिजर्वेशन होना चाहिए ? जो समाज में दलित है, अपेक्षित है, उनका रिज़र्वेशन होना चाहिए , किन लोगों का रिज़र्वेशन होना चाहिए ? जो समाज में दलित है, अपेक्षित है, उनका रिज़र्वेशन होना चाहिए हर जगह। विधायिका में होना चाहिए, कार्यपालिका मे होना चाहिए तो न्यायपालिका को इनसे क्यों वंचित किया ? इस पर भी सरकार को गंभीरता से विचार करना पड़ेगा कि जो पिछड़े वर्ग के लोग हैं, अनुसूचित जाति के लोग है, जनजाति के लोग हैं, जो समाज के कमजोर वर्ग कें हैं, हम नहीं कहते कि अयोग्य लोगों को आप चुनाव करिए। इनमें भी योग्य लोग हैं लेकिन अगर इनको वचिंत करते रहेंगे आप और इनको रिज़र्वेशन नहीं देंगे तो न्यायापालिका का सही और सुंदर, स्वस्थ स्वरूप नहीं बन सकेगा। इसलिए इस पर भी विचार करना चाहिए । नेशनल कमीशन आप बनाइए, मैं इसका समर्थन करता हूं अपनी ओर से अपने दल की और से। यह बहुत आवश्यक है इस देश के लिए लेकिन सामाजिक न्याय देने की भी व्यवस्था आपको करनी पड़ेगी।

चौथी बात जो मैं मान्यवर, आपके माध्यम से निवेदन करना चाहता हूं, मैंने शुरू में कहा था कि वी0एन0 गाडगिल साहब इस देश के बड़े नेताओं में से हैं। इन्होनें सरकार का ध्यान आकृष्ट किया और इस विधयेक की आत्मा जो हैं, यह बहुत सही है, इसका मैं समर्थन कर रहा हूं लेकिन जो व्यवस्था आप चाहतें हैं, उस व्यवस्था से मैं सहमत नहीं हूं। कपिल सिब्ल साहब ठीक कह रहे थे कि अभी तो वैसे उनको अधिकार कंसल्टेशन का है और इस बिल के माध्यम से आप पूरा का पूरा अधिकार ज्यूडिशियरी को दें देंगे । मेजारिडी उनकी हो जाएगी। न जाने कैसे आपने सोच लिया इसको ? तीन जज रहेंगे, सुप्रीम कोर्ट के चीफ जस्टिस और दो जज और और रहेंगे, लीमिनिस्टर रहेगा और उपसभाध्यक्ष जी, आपने सही तरीके से संकेत किया था कि राज्य सभा को इन्होनें वंचित कर दिया, केवल लोक सभा से एक आदमी नॉनिनेट किया जाएगा । मैं यह निवेदन कर रहा था कि ऐसा जुडिशियल नेशनल कमीशन बनाया जाए जो पावरफुल कमीशन हो। जो जजिज की अपाईटमेंट मं मदद करें, उनकी कार्य-प्रणाली की देखरेख करे और यह भी देखरेख करे कि इस देश के लोगों को सामाजिक न्याय मिल रहा है, सस्ता न्याय मिल रहा है, शीघ्र न्याय मिल रहा है या नहीं। इसलिए मेरा सुझाव है कि यह

कमीशन ऐसा बनान जाए जिसमें देश के प्रधान मंत्री हो, नेता विपक्ष हों, चाहे वह बार काउंसिल आफॅ इंडिया से ले या चाहे कहीं से भी आप लें। उसमें बार काउंसिल का प्रतिनिधि होना चाहिए और संसद का भी प्रतिनिधि होना चाहिए। इस तरह से जो कमीशन बनेगा वह एक स्वतंत्र कमीशन होगा. जिसके जरिए से जजिज के बारे में जो अनुंशंसा की जाएगी वह अनुशंसा निष्पक्ष हो सकती है । मैं जुडिशियरी को क्रिटिसाइज नहीं कर रहा हूं, लेकिन आज जिस तरह न्याय मिल रहा है क्या पूरे देश के लोगो की न्यायपालिका के ऊपर अंगुली नहीं उठ रही है ?

हम दुनिया के सबसे बड़े जनतंत्र है। डेमोक्रेसी में हमारा यकीन है । लेकिन आज कॉमनसैन से लेकर विद्वान तक सब लोगों की न्यायपालिका में आस्था घट रही है। मिश्रा जी चीफ जस्टिस आफ इंडिया रहें हैं, वे बैठे हुए हूं। मैं एक दो उदाहरण देकर अपनी बात समाप्त करना चाहता हूं। जहां जजिज चाहेंगे वहां तुरन्त फैसला और जहां नहीं चाहेंगें वहां अतं तक फैसला नहीं होगा । मैं एक उदाहरण देना चाहता हूं। मैं किसी एक पार्टी को इस मसले पर क्रिटीसाइज नहीं करना चाहता हूं। उत्तर-प्रदेश में कुछ लोगों ने दल-बदल किया । वे बहुजन समाज पार्टी बनाई। उस पार्टी के नेता के स्पीकर के यहां एंटी डिफेशन एक्ट के अंतर्गत एक प्रार्थना-पत्र दिया कि दल-बदल करने वाले मैम्बर्स को सदन की सदस्यता से वंचित कर दिया जाए जिसका एंटी डिफेक्शन एक्ट में प्रावीजन है । वहां के स्पीकर साहब ने, मैं उनकी कोई आलोचना नहीं कर रहा हूं, उन्होनें उसका निर्णय करने में बहुत विलम्ब किया कि उनको योग्य करार दिया जाए या अयोग्य करार दिया जाए। इसमें उन्होनें चार-पांच महीने का समय ले लिया। जब सुप्रीम कोर्ट में मामला आया तो उस समय जो चीफ जस्टिस आफॅ इंडिया थे उन्होनें फर्स्ट हेयरिंग में पहले ही दिन बहुत नाराजगी स्पीकर के लिए जाहिर की। यू0पी0 के स्पीकर के लिए उन्होनें कहा कि स्पीकर साहब ने इतना समय क्यों ले लिया ? चार पन्ने का एंटी डिफेक्शन एक्ट है इसमें ज्यादा टाइम लेने का क्या जरूरत हैं ? वे नाराज हो गए । यह सब अखबारों में हमने पढ़ा और हमें लगा कि बहुत जल्दी कोई फैसला इसका हो जाएगा। चीफ जस्टिस साहब ने बैंच बनाकर हेयरिंग की और चीफ जस्टिस साहब रिटायर हो गए और आज तक उसका फैसला नहीं हुआ। इस पर गंभीरता से विचार करना पड़ेगा। एक तरफ वे स्पीकर को ड्रॉट रहें है कि व्हाई यू हेव टेकन फोर मंथूर्स । उन्होनें पूरी हेबरिंग की, पूरी न्यायायिक प्रक्रिया का प्रयोग किया और किसी महीने की 31 तारीख शायद जुलाई महीने की डेट थी चीफ जस्टिस साहब के रिटायरमेंट की, हिन्दूस्तान के सारे लोग आशा लगाए हुए थे कि वे कोई जजमेंट देंगे। अगर उनको डिस-मेंम्बर करतें हैं तो शायद उत्तर प्रदेश की राजनीति पर कोई प्रभाव पड़ेगा । उत्तर प्रदेश के दिग्गज लोग, राज्यपाल साहब, मुख्य मंत्री साहब सब लोगों दिल्ली में आकर के बैठ गए कि आज जजमेंट होगा और इस जजमेंट से उत्तर जजमेंट नहीं हुआ। वे अन-डिसाइडिड केस छोड़कर रिटायर हो गए और आज तक कोई नई बैंच नहीं बनी है, क्या न्याय मिलेगा इस देश को इस संसद ने चार पेज, पांच पेज का एंटी डिफेक्शन एक्ट बनाया और अगर-एक तिहाई से कम लोग दल बदल करतें हैं तो वे किसी भी सदन के सदस्य नहीं हो सकेंगे।

DR. L.M. SINGHVI: Mr. Vice-Chairman, I am on a point of order. This matter is sub-judice. ...*(Interruptions)*... and the coments on judges are not proper.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): One minute. I will deal with it. ...*(Interruptions)*... Hon. Members, please.

DR. L.M. SINGHVI: With the greatest respect for the hon. Member, may I say that this matter is sub-judice. It is perhaps most appropriate not to discuss the judgement and the judges because the matter still remains sub-judice. In any case, it would be appropriate not to make any comments on judges. ... *(In terruptions)*...

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): One minute. I am giving a ruling.

SHRI KAPIL SIBAL: Sir, I am on a point of order.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): A point of order on this point of order.

SHRI KAPIL SIBAL: Yes, Sir, exactly.

The hon. Member happens to be a counsel in that case, and he should not have stood up and raised the point of order.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): Well, Mr. Sibal, he is an hon. Member of this House. He has every right.

DR. L.M. SINGHVI: That is not the point. The point is that we should not discuss judges in the house. The case in sub-judice. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): I know you are an hon. Member of this House. Dr. Singhvi, I have said that.

The hon. Member has only mentioned about that case. I don't think he has gone into the merit or the demerit of that case. The Bench has not been constituted. Now we are discussing only the Tenth Schedule. You can restrict yourself to the Tenth Schedule without going into the merit or the demerit of the case which is pending with the honourable Court.

श्री ईश दत्त यादव : माननीय उपसभाध्यक्ष जी, मैं न्यायपालिका का बहुत सम्मान करता हूं । मुझे आपको व्यवस्था शिरोपार्य हैं । सिंघवी जी को मैं जानता हूं । वे कानून के जानकार है । लेकिन मैनें तो मैरिट और डी-मैरिट की बात नहीं कही । क्या निर्णय करना चाहिए और क्या नही करना चाहिए ऐसा मैनें नहीं कहा । मैं तो इस विषय पर बोल रहा हूं कि इस देश में लोगों को शीघ्र न्याय नहीं मिल रहा है । ऐसी अवस्था में अगर पांच पृष्ठ का कोई कानून बनाया गया है, एंटी डिफेक्शन ऐक्ट, तो उसका प्रयोग ठीक से हो रहा है या नहीं, इस पर सरकार और पूरे सदन को सोचना चाहिए । अब मैं दूसरा उदाहरण देना चाहता हूं । कहीं-कहीं सरकारों को बर्खास्त कर दिया गया । श्री मुलायम सिंह जी सरकार को उत्तर प्रदेश में बर्खास्त किया गया । पता चला कि सुप्रीम कोर्ट में एक कांस्ट्यिूशनल बेंच बन गई हैं । लेकिन क्या यह कांस्टिट्यूशनल बेंच आज तक बनी हैं ? चार साल हो गए । सिंघवी साहब, मैं इसमें मैरिट की बात नहीं करता है । फैसला क्या हो यह न्यायालय के अधिकार में हैं, मेरे अधिकार में नहीं है । मैं इसके मैरिट पर नहीं जा रहा हूं । उत्तर प्रदेश में जो हुआ, मैं नहीं कहता कि वह सही हुआ या क्या हुआ, कांस्टिट्यूशन के मुताबिक हुआ या कांस्टिट्यूशन के खिलाफ हुआ । कल्याण सिंए जी मुख्य मंत्री थे । लेकिन वहां एक दो दिन के लिए जगदम्बी पाल जी मुख्य मंत्री हो गए । मेरे पास सही जानकारी नहीं, अखबार वाली जानकारी है, पेपर में मैंने पढ़ा था कि वहां ।*

SHRI SINGH PRIYA GAUTAM: He should not criticise the judgement.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): This should not go on record. Please continue.

श्री ईश दत्त यादव : ठीक है सर ।

मैं जो निवेदन करने के लिए खड़ा हुआ हूं उस पर गंभीरता से विचार करना पडेगा । इसमें कोई दलगत भावना नहीं होनी चाहिए । इस राष्ट्र को मजबूत करने के लिए इस जनतंत्र को मजबूत करने के लिए अगर हमारी मजबूत न्यायापालिका नहीं है, निष्पक्ष न्यायापालिका नहीं है तो हमारा यह जनतंत्र खतरें में पड़ जाएगा । अगर निर्णय नहीं हो पायेंगे तो संविधान में मौलिक अधिकारों की जो व्यवस्था, उन व्यवस्थाओं की उपेक्षा होती रहेगी । अगर ऐसा होगा तो उनकी देखरेख और उनकी निगरानी कौन करेगा ? संविधान की रक्षा करने वाली न्यायपालिका, अच्छी नयायपालिका और मजबूत न्यायापालिका बनाने के लिए जरूरी होगा कि जो न्यायधीशों की नियुक्ति की प्रक्रिया है, उस प्रक्रिया में संशोधन हो और इसके लिए एक नेशनल जूडिशियल कमीशन बनान होगा ।

4.00.P.M.

सरकार को इसी शीघ्र करना चाहिए और इस नेशनल ज्यूडिशयल कमीशन में ऐसे लोगों का समावेश हो, ऐसे लोगों का प्रतिनिधित्व हो जिनमें दलगत भावना न रहें, जाति की भावना न रहे, धर्म की भावना न रहे और क्षेत्रीयता की भावना न रहे । कभी-कभी क्षेत्रीयता की भावना जज़ेज की अप्वाइंटमेंट में आ जाती है । मान्यवर, आपने समय दिया, मैं ह्रदय से आभार प्रकट कर रहा हूं और इन शब्दों के साथ ...(**व्यवधान**)...

श्री संघ प्रिय गौतम : इस बिल का समर्थन करता हूं । ...(**व्यवधान**)...

श्री ईश दत्त यादव : उनकी बिल की आत्मा का मैनें समर्थन कर दिया है लेकिन शरीर उसका जर्जर है और जर्जन शरीर से काम नहीं चलने वाला है । इसलिए मैं चाहता हूं कि इस पर गंभीरता से विचार करके सरकार एक नेशनल ज्यूडिशियल कमीशन बनाए । बहुत-बहुत धन्यवाद ।

SHRI R. MARGABANDU: From the discussion that has gone on in the House as well as outside, it has become very clear that the functioning of the judiciary in the matter of appointment of judges as well as in the disposal of cases has been unsatisfactory. This has been narrated by Shri Kapil Sibal also.

Sir, article 124 of the Constitution deals with the appointment of Supreme Court Judges, Article 270 deals with the appointment of High Court Judges and Article 233 deals with the appointments to the subordinate judiciary. Sir, under the monarchy system, a monarch can nominate his heir. After 1993, the position has become like this. A judge can nominate a particular person as his heir. Now, the entire power is vested in the Supreme Court itself. Forget for a moment that Parliament, the Executive and the Judiciary are the three limbs. Though independence is their prerogative and judiciary is the master in its own sphere, it should not be independent in its functioning. It must have an interdependence on the Government as well as on Parliament. By virtue of this, recently in has been spelt out by the President of India that there should be a representation for the unprovided category of the weaker sections of the society viz. the backward classes and the Scheduled Castes and Scheduled Tribes. Now, who will decide as to who will occupy the position, who will become the judge? Who is to decide that? Who is to decide that from amongst the weaker sections judges are to be appointed. It is only the higher caste people, the privileged community, who have to think of it. They want to dominate the entire nation. They want to usurp the power of the Parliament also.

Recently a trend had come about that only the judiciary is the master in regard to the laws for the nation, by passing the Parliamentary proceedings. How has that position come about? Under Articles 124 and 270 the power of consultation is there, but it has not been amended. But, in 1993—I am compelled to say that—with some ulterior motive the Supreme Court has interpreted that 'by consent' means they arc supreme and no one can question that. Can that position be allowed to remain. Sir? As a matter of fact, this position, whether it is a consultation or a consent had been the subject-matter of discussion in the Supreme Court in 1977 and 1982. It has been clearly held that it is only a consultation and not a consent. But they have taken that power, interpreting it in such a way that 'consultation' only means 'consent'. In this way, the Judiciary wants to say that it has no trust in the Executive or the Parliament. They say if the power is given to the Executive and the Parliament, then politics will come in. Now, we are able to say, it has been pointed out, that politics and communalism have come in the way of appointment of Judges by giving the prerogative power to the Chief Justice. So that has to be taken away. By this process, the President of the nation has become a helpless spectator and a mere signatory to the warrant of appointment. the Parliament and the Law Minister are powerless, helpless and ineffective They do not have any say in this matter. Whatever they say, whatever the Supreme Court says is the order. Not even this Parliament, not even the Law Ministry, not any body, can have a say. The position of the Law Ministry is like a postman. Is it not conferred with some power to have a say in the matter of appointment? What is the power and what is the function of the Law Ministry at the Centre or the state? No power at all. Does it mean that the Executive and this Parliament have no power at all? who has given this power to the Supreme Court?

Now, as I nave already said, the weaker sections of the people were not taken care of in the Judiciary at all. That i' why this suggestion has emerged that a National Judicial Commission should be formed. How it should be formed has been spoken to. I would just say

something about that. That should be an independent body. Let there be a representative of the Judiciary. Let there be the Chief Justice of the Supreme court and one more Judge in that. There may be one more nomination by the President. The Law Minister may be there. And there should be one representative from the profession. A representative of the legal profession must be there. There are duly elected bodies constituted under the Bar Council Act, under the Advocates Act. There is an All India Bar Council And, in the States, there are State Bar Councils also. They are the representatives of advocates. Let the Commission be broad-based. Persons from all walks of life may constitute that Commission and they can think together. Let not the power be given to one man. It does not happen any where in the world. It is only in India that the power of appointment of Judges is given to the Chief Justice. Not in any other country in the whole of the world is that power given to ...*(Interruptions).*

SHRI VAYALAR RAVI (KERALA): They have taken that power. It is not given *(Interruptions).*

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): Mr. Margabandhu, there are so many amendments to your speech.

Therefore, I want to know whether the areas covered by the Joint Statement issued after the second meeting at the Foreign Secretary level on 23rd June, 1997 are covered by this agreement. I want to know that. This is the first point.

The second point is this. Before our Prime Minister proceeded to Pakistan, there was a Press report that the three service Chiefs of Pakistan would call on the Prime Minister, Shri A.B. Vajpayee, on 19th February, the first day of his stay there. But in this statement there is no mention regarding the meeting with the Service Chiefs of Pakistan. We want to know whether our Prime Minister had met the Service Chiefs of Pakistan. If he had met them, what was the interaction that took place; What was the outcome of their talks? When we meet the Service Chiefs of other countries, we may have to extend a reciprocal response to them. Suppose the Pakistan Prime Minister comes here. We have to allow our Service Chiefs to have talks with the Pakistan Prime Minister. I would like toknow whether it would be a healthy practice for a democracy. That point has to be taken into account. Therefore, I want to know whether the Prime Minister had met the Service Chiefs of Pakistan. if so, what was the outcome of that meeting?

Regarding WTO, I want to say this. After this meeting, the Foreign Secretary of Pakistan met the Press in Pakistan and issued some statements. In that reported statement he had mentioned only about the defence issues and, particularly, Jammu and Kashmir and not any other issues. What he had said was that a Foreign Secretary level meeting was going to be held in the month of March or April. In that meeting only Jammu and Kashmir and defence issues that is actually agitating our mind is the most favoured nation status. We have already given the most favoured nation status to Pakistan. But as far as India is concerned, it is still under the consideration of Pakistan. Why did not they give the same status to us when our Prime Minister had gone to Pakistan? Why do they want to keep it in abeyance? Why do not they come to some conclusion? It is a little bit agitating our mind. 1 would like to know when this issue is going to be taken up.

The Jamaat-e-Islami of Pakistan has actually announced some "crush India march". It has its own effect on Jammu and Kashmir. When we went to Pakistan to have some cordial talks to further the cordial relations, twenty of our people had been murdered. I am not saying that it was an act of Pakistan. But it was-not a good augury for us. Therefore, how are we going to contain this thing? When we want to contain this thing, the Pakistan Government will also expect the same reciprocal response from us. Therefore, the atrocities on the minorities in India

should be stopped for maintaining cordial relations.

Firstly, I want to know the outcome of the meeting that the Prime Minister had with the Service Chiefs of Pakistan. Secondly, I want to know about the most favoured nation status.

श्री सभापति : श्री नरेश यादव ।

श्री नरेश यादव : धन्यवाद, सभापति महोदय । मैं आप का बहुत आभारी हूं । पहले मैं एक स्पष्टीकरण दें दूं कि मुझे टेबिल से बताया गया कि आप का नम्बर...

श्री सभापति : यह कहने की बात नहीं है । ...(**व्यवधान**)... देखिए, मेरे पास 20-21 नाम हैं और हम हरेक पार्टी से एक नाम बुला रहें हैं । ...(**व्यवधान**)...

श्री नरेश यादव : महोदय, यह भारत पाकिस्तान का बहुत ही नाजुक मामला है ...

श्री सभापति : मैं ने आप का नाम बुलाया था । अब आप क्लैरिफिकेशन मांगिए, बस ।

श्री नरेश यादव : मैं क्लैरिफिकेशन ही मांगता हूं । श्रीमन्, आप अभिभावक है, आप संरक्षक है और आप की अनुमति से ही हम बोल सकतें हैं । हमारे सभी आदरणीय साथी कम-से-कम 15-20 मिनिट बोले, आप हमें 5िमनट नहीं देंगे ? ...(**व्यवधान**)...आप समय नहीं देंगे तो कौन देगा"

श्री सभापति : मैं ने तो आप को बुलाया है ।

श्री नरेश यादव : श्रीमन्, मैं आप से परमीशन लेकर बाहर गया था । आप ने परीमीशन दी, मैं आप का बहुत-बहुत आभारी हूं ।

SHRI R. MARGABANDU: A Government order has been passed by the Central Government regarding the particular proceeding....*(Interruptions)*...

SHRI S. VIDUTHALAI VIRUMBI (Tamil Nadu): It is *ultra-vires* the Constitution.

SHRI N. THALAVAI SUNDARAM (Tamil Nadu): You are not able to understand the Act. ...*(Interruptions)*...

SHRI V.P. DURAISAMY: Sir, please give a ruling *(Interruptions)*

SHRI S. VIDUTHALAI VIRUMBI: Sir, I am on a point of order.

SHRI R. MARGABANDU: There is no point of order. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): Mr. Virumbi, what is your point of order? ...*(Interruptions)*... Mr. Margabandu, please sit down. ...*(Interruptions)*... What is your point of order, Mr. Virumbi?

SHRI S. VIDUTHALAI VIRUMBI: Sir, the hon. Member has said that I did not understand the Act. the hon. Member from that side said so. ...*(Interruptions)*... Sir, I want to tell you that, yesterday, in this august House, Shri Dilip Singh Judev. ... *(Interruptions)*...

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): One minute. ...*(Interruptions)*... Mr. Virumbi, Is there any point of order on this matter? Please tell me that. ...*(Interruptions)*... One minute. ...*(Interruptions)*... Mr. Margabandu, let him speak. I have to hear his point of order. I have permitted him. Mr. Virumbi, please be very brief. ... *(Interruptions)*...

SHRI S. VIDUTHALAI VIRUMBI: The appointment by the Executive is *ultra vires* the Constitution. What he said is "I did not understand it". That is why I say, yesterday, regarding this issue there was a question and the Minister had replied to it. ...*(Interruptions)*... Yesterday, the hon. Minister, Mr. Kadambur M.R. Janarthanan, said — I am quoting his reply, Sir: "As per the provisions of the Prevention of Corruption Act, 1988, both the Central Government and the State Governments can appoint Special Judges to try offences specified in the Act." ...*(Interruptions)*... Let me complete it. "The State Government can establish Special Courts.....

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): Please don't read anything. Now, you come to the relevant point.

SHRI S. VIDUTHALAI VIRUMBI: Sir, I am coming to the point.

THE VICE-CHAIRMAN (SHRI OHN F. FERNANDES): Whatever Mr. Margabandu said, is it a matter which is *sub-judice? (Interruptions)*

SHRI S. VIDUTHALAI VIRUMBI: "The State Government can establish Special Courts as per the provisions... *"(Interruptions)...*

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): No, no; please don't read that. Please don't read what he said yesterday in the House. Can you come to the point? ...*(Interruptions)...*

SHRI S. VIDUTHALAI VIRUMBI: Sir, I am on a point of order. ...*(Interruptions)...* Sir, the Executive does not have any power to appoint.... *(Interruptions)...*

SHRI V.P. DURAISAMY: Sir, please give your ruling.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): One minute. Let me hear. I am giving my ruling, please.

SHRI S. VIDUTHALAI VIRUMBI: Sir, the group of cases is different from.... *(Interruptions)...*

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): What is your point? What objection you have on this point of order, please tell me. ... *(Interruptions)...*

SHRI S. VIDUTHALAI VIRUMBI: Sir, once a group of cases are taken up by the Special Courts appointed by the State Governments, it is none of the business of the Central Government to intervene in the matter. ... *(Interruptions)...*

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): Mr. Virumbi, you are just making a clarification. It is only an administrative clarification. There is no point of order. Please take your seat. ...*(Interruptions)* Please take your seat. ...*(Interruptions)...*

SHRI S. VIDUTHALAI VIRUMBI: Sir, the matter is *sub-judice.*

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): No, no; you have made a comment on the case in question. The matter cannot be *sub-judice.* ...*(Interruptions)...* If he is just referring to the matter, if he is referring to the Government Order, I don't think it is *sub judice.* Please continue, Mr. Margabandu. ...*(Interruptions)...* it is not *sub judice.* Please continue. ...*(Interruptions)...*

SHRI V.P. DURAISAMY: Sir, I am on a point of clarification.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): There is no point of clarification. Please sit down. I have given my ruling. ...*(Interruptions)...* Please take your seat, Mr. Duraisamy.

SHRI R. MARGABANDU: It is a matter between the Central Government and the State Government. The Central Government has the power to direct the State Governments. ...*(Interruptions)...* When the matter has gone to the High Court of Chennai, the High Court of Chennai....(Interruptions)...Sir, what is this? ... *(Interruptions)...*

SHRI V.P. DURAISAMY: Sir, I am on a point of clarification. ...*(Interruptions)...*Sir, this is not the way to interrupt. I have got every right to seek a clarification. ...*(Interruptions)...*Nobody can interrupt when a Member is on a point of clarification.... *(Interruptions)...*

SHRI S. VIDUTHALAI VIRUMBI: Sir, this matter cannot be debated. ...*(Interruptions)...* Sir, this matter cannot be debated. Sir, a matter which is *sub-judice* cannot be debated. ... *(Interruptions)...*

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): Mr. Virumbi, please take your seat. ...*(Interruptions)...I* am on my legs. Please take your seats. ...*(Interruptions)...1* am on my legs. Please take your seats. Please take your seats. ...*(Interruptions)..Mr.* Virumbi, please take your seat. ...*(Interruptions)...*

have given my ruling. ... *(Interruptions)*... One minute. ...*(Interruptions)*...Mr. Duraisamy, please sit down. I have heard you. ...*(Interruptions)*... Now, please take your seat, Mr. Duraisamy. ...*(Interruptions)*... One minute. ...*(Interruptions)*...

If the hon. Member refers to an order from the Central Government to the State Government and if the matter is before the Court, then I think that can be mentioned. But if you are going to cast aspersions and discuss that matter which is *sub-judice* that should not be permitted. If the hon. Member is only making a reference to that matter, I think that should be permitted. *(Interruptions).* One minute. What the hon. member is referring about yesterday is a different matter. Now we are talking about the judiciary in our country and why we should have a National Judicial Commission. To have this Commission, the hon. Member has to put up his case before the House. And that is what the hon. Member is doing. If what he is saying is within the judicial purview and the merit of the case, then I will not permit that. *(Interruptions)* No, no. *(Interruptions).* I have given My ruling; don't challenge it. *(Interruptions).* Mr. Virumbi, I have heard you. *(Interruptions).*

SHRI S. VIDUTHALAI VIRUMBI: What I said was that the High Court has given a judgement... *(Interruptions)* on this issue. They declined to give any opinion on this issue. When the Supreme Court is seized of this, and when the High Court itself declined this, then how can the legislature take up the matter which has already been decided by the High Court? *(Interruptions).*

THE VICE-CHAIRMAN (SHRI JOHN. F. FERNANDES): That is what I have said.

SHRI S. VIDUTHALAI VIRUMBI: I feel that if this new thing happens, it will create a wrong precedent for future. It will become a bad precedent for future.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): I have said that I cannot stop a Member from mentioning the matter in the House. If the hon. Member goes into the merits and demerits of the case and criticizes the judiciary that becomes wrong. That should not go on record. *(Interruptions).* One minute. *(Interruptions).* We are not discussing the merits of the case. But the hon. Member can certainly mention the matter here because the debate is on a National Judicial Commission. We are not discussing judiciary. We are discussing a law which is proposed before the Parliament. *(Interruptions)* No, no. *(Interruptions).* I am not permitting you. *(Interruptions)* No, no. *(Interruptions).*

SHRI V.P. DURAISAMY: You please go through the record. *(Interruptions).*

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): I have mentioned that if a matter which is *sub-judice* is discussed, it will not go on record. I have given my ruling. *(Interruptions).*

SHRI S. VIDUTHALAI VIRUMBI: Actually, this is a matter which is *sub-judice* before the Supreme Court.

THE VICE-CHAIRMAN (SHRI JOHN. F. FERNANDES): I have mentioned that if anything which is *sub-judice* has been raised by the hon. Member, that will not go on record. That is what I have said. *(Interruptions).* But You cannot stop the hon. Member from referring to the orders. *(Interruptions).* Now, please, Mr. Margabandu... *(Interruptions).*

SHRI S. VIDUTHALAI VIRUMBI: Thank you for the observation made. That is all that I wanted. Thank you.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): Now the matter is settled.

SHRI R. MARGABANDU: I am on a point of accountability; accountability of the judge. He takes office by taking an oath. When one is appointed as a judge, one must be faithful to the oath which

one has taken. The Central Government —I am on a point, let them not disturb, after hearing my argument, let them have their say... *(Interruptions).*

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): You don't refer to that. You address the Chair.

SHRI R. MARGABANDU: I am not going into the merit of the case. I am on a legal procedure. Now the Central Government passes a Government Order, of course under Section 4(2) of the Prevention of Corruption Act. Under Section 4(2) of the Prevention of Corruption Act,-only under this prevention of corruptions Act 1988, the power is given to the Central Government because the State Government has not power under Section 4(2)— the Central Government can pass an order or it can pass an order stating, directing that some special judges can hear certain types of cases. That is the order that has been passed by the Central Government, that they are bound.

It is not that the judiciary is above the Central Government. Are not the judges bound by the Government Order? When that Government Order is shown to them and there is a retort by the Sessions judge, the subordinate judiciary says that it is not worth the paper on which it has been written. Such is the remark. He says, "I am not bound; I am not bound." Just hear... *(Interruptions).*

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): Mr. Dipanker Mukherjee, he is making a very important point.

SHRI R. MARGABANDU: He says, "I am not bound by the Government order. I am bound by the directions of the Chief Justice." I would like to know whether that type of accountability can be accepted. Where will it lead to when the judiciary is not obeying the order of the Central Government? *(Interruptions).*

Sir, do you agree? *(Interruptions).*

SHRI V.P. DURAISAMY: It should be expunged.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): I cannot expunge it. It is not that I agree or I don't agree. It is a factual statement by an hon. Member. It is a fact. We have to accept it.

SHRI R. MARGABANDU: Under Section 4(ii) only the Central Government has got the power to pass an order in pursuance of it under this Act alone. That has been the past experience and the judge did not accept it. Then, Sir, under that order, the Central Government has specified certain judges. Under Section 3(i) of the prevention of Corruption Act, both the State and the Central Government has got the powers to appoint special judges. Now, the State Government has appointed some special judges by virtue of the Government order. Some special judges have been designated in five towns. There is a conflict between the State Government and the Central Government. The State Government appointed some judges... *(Interruptions).*

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): Mr. Margabandu, please, we know the matter. Whatever you have stated is public knowledge. Now, what suggestion you want to make in regard to the National Judicial Commission? Please come to that point.

SHRI R. MARGABANDU: Sir, I am coming to that point. When there is a conflict between the Central Government and the State Government under Article 254 of the Constitution, the decision taken by the Central Government will prevail. That is the exact position.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): Now, one minute, Mr. Margabandu... *(Interruptions).* I have understood it. Mr. Margabandu...*(Interruptions),* please one minute. Now can you give a suggestion? You do not bring in here the conflict between the State Government and the Central Government. Here, can you give

a suggestion for the National Judicial Commission, as to how the Central Government...*{Interruptions).* I have not permitted it. Mr. Virumbi, he is not speaking on that point. He is not going into the details of that point. I have given the ruling.

SHRI S. VIDUTHALAI VIRUMBI: Sir, it is the privilege of a Member, otherwise, I will walk out.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): On what point?...*(Interruption).* Is it on the same point?

SHRI S. VIDUTHALAI VIRUMBI: Sir, he is accusing the State Government. The State Government has not appoint the judges.

SHRI R. MARGABANDU: Did I accuse the State Government? I tell you, Sir, the judges are actually selected by the High Court. This is what I am saying Sir,... *(Interruptions).*

SHRI S. VIDUTHALAI VIRUMBI: Sir, the judges are selected in consultation with the High Court. Allotment of cases to several courts is also made in consultation with the High Court...*(Interruptions).* The decision was taken by the High Court and published in the Gazette. But here, the decision was taken by the executive, and published in the Gazette...*(Interruptions).*

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): Mr. Virumbi, you do not have a point of order. Mr. Virumbi, one minute. ..*(Interruptions).* Can I speak now. Mr. Virumbi, please sit down.

SHRI S. VIDUTHALAI VIRUMBI: There the decision was taken by the judiciary, published in the Gazette. Here, the decision was taken by the Government. It was a totally executive decision. He is misleading the House.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): Mr. Virumbi, I am on my *legs...(Interruptions).* Mr. Virumbi, you do not have a point of order. I have told the hon. Member to come to the point of the debate now. We should not go into the nitty-gritty of the conflict between the Central and the State Government. I have advised the member to come to the subject.

SHRI R. MARGABANDU: I am coming to the subject.

SHRI S. VIDUTHALAI VIRUMBI: Sir, whatever he is saying, is wrong.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): I don't think that whatever he has said is unparliamentary. If he' has said something wrong, you have corrected him.

SHRI R. MARGABANDU: Sir, I am speaking about the Constitution. Under Article 254, I say, which order will prevail. If there is a conflict between the State Government and the Central Government.. .*(Interruptions).*

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): Mr. Margabandu, one minute. Now the conflict is between the judiciary and the executive; and not between the Central and the State Government. Please come to that point... Mr. Margabandu, come to the topic. *(Interruptions).*

SHRI S. VIDUTHALAI VIRUMBI: No orders can be issued against the letter and spirit of the Constitution. *(Interruptions).* The Constitution is supreme. *(Interruptions).* Sir, no order can be issued by the Central Government against the letter and spirit of the Constitution. *(Interruptions).*

SHRI R. MARGABANDU: Sir, I now come to article 365. It says:

> "Where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in

accordance with the provisions of this Constitution."

SHRI S. VIDUTHALAI VIRUMBI: Sir, no State Government... .*(Interruptions).*

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): Mr. Margabandu, please come to the point. Don't go into the details of the case. The matter is *sub-judice. (Interruptions).*

SHRI S. VIDUTHALAI VIRUMBI: Sir, the Central Government cannot issue orders.... *(Interruptions).*

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): Mr. Virumbi, please listen to him. *(Interruptions).* Mr. Margabandu, don't go into that controversy. That matter is *sub-judice.* Please come to the point.

SHRI S. VIDUTHALAI VIRUMBI: If any decision is taken which is against the letter and spirit of the Constitution, do you think that the State Government is bound to act on that?

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): Mr. Virumbi, he is not going into the details. I have given my ruling.

SHRI KAPIL SIBAL: Sir, I would like to request my colleagues to yield for a minute. I would like to make one request to the hon. Members of this House. We are discussing a subject of vital importance. I think the country would benefit from this very important debate if all of us focus on the real issue. My request to all the Members of this House is, let us forget party politics for a while. Let us concentrate on the real issue. Let us give back to the executive the power of appointment of judges which it well deserves. Let us not talk about any other issue. This is my request to all of you.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): Mr. Sibal, I have also given a similar advice to him. Mr. Margabandu, come to the point.

SHRI R. MARGABANDU: Sir, with due respect to all, I come to the point of accountability of the judiciary. The 1993 judgement gave this power. They are not accountable to anybody. They act themselves. That is judicial activism. If we have to make them accountable, this National Judicial Commission is necessary. There should be an independent body which should go into all these cases.

So far as impeachment is concerned, I am not entering into this arena of Parliament impeaching the judges. We all know what happens to an impeachment motion, if it comes before the Parliament. This is not an effective method. If a judge does something wrong, he should be punished in an effective manner. As Shri Kapil Sibal has said, if there is a complaint against a judge, that complaint should be heard by an independent body and that independent body should give its findings. Those findings will have to be accepted. My suggestion is a panel of three retired Supreme Court judges should be constituted. If there is any complaint against any judge, that complaint can be placed before that panel. Let them make a discreet inquiry or an indoor inquiry.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): Mr. Margabandu, are you referring to a disciplinary committee in addition to the National Judicial Commission?

SHRI R. MARGABANDU: Sir, let there be a Committee to deal with the delinquent judges. Let that Committee go into that matter.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): Alleged delinquent judges!

SHRI R. MARGABANDU: Therefore, the judiciary must be made accountable; otherwise, it will act in its own way. Therefore, the power taken by the Supreme Court in regard to the appointment of judges should be taken into consideration by the Parliament. The

Parliament should see to it that that power is vested with some independent body like a National Judicial Commission consisting of persons of various walks of life so that they can take an impartial decision on the appointment of judges. And only then can reservation for weaker sections, which is also the deep concern of the President of India, be implemented in real sense. The Judicial Commission should be formed in this way. I once again appeal to the House, let there be a unanimous resolution passed by this House; the Rajya Sabha, being the Council of States, has the power to pass a resolution to that effect. The National Judicial Commission should be formed based on the Resolution of this House so that all these things can be worked out. With these words, I conclude.

SHRI VAYALAR RAVI: Mr. Vice-Chairman, Sir, I support this Bill. I congratulate Shri Gadgil for bringing this Bill on such a vital important aspect of our Constitution and of our society. Sir, the aspect regarding appointment of judges is very clearly spelt out in our Constitution. This has been ably described by my friend and colleague, Shri Kapil Sibal. Still, I feel that I have to quote that provision for the sake of one argument. Article 124(2) says and I quote:

> "Every Judge of the Supreme Court be appointed by the President by warrant under his hand and seal after consultation with such of the Judges" of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years."

My point is regarding the words 'after consultation'. I don't want to go into the details which the hon. Member has already explained. But, supposing, it was given 'in conultation' then there would have been a continuous process in coming to an agreement. But it is not so. The word has been deliberately used because the authority of appointment must be with the Executive. That is the purpose, I believe, why this word has been used. Now, the Constitutional position has changed. In 1993, a judgement was given on a public interest litigation filed by the supreme Court Advocates-on-Record Association. That is a very important association which filed the Public interest Litigation. This is an association working within the premises of the Supreme Court. They are part and parcel of the Supreme Court. A PIL was filed, and the case was heard with rocket-speed. The Bench misappropriated—I use the word rightly—the authority of the Executive, and they took on themselves the power of appointment of judges. They said, "We are the best judges for judging the judges."

SHRI M. THAMBI DURAI: Those judges are appointed by the executive.

SHRI VAYALAR RAVI: Here, I say that such position obtains nowhere else in the world, as Shri Kapil Sibal also has expressed. I don't want to go into the details. Why is it that it is there here along? It is a very basic question because they are taking away the power of the Executive. The Bench interpreted Article 124 (2) in such a fashion that there is no value for that provision of the Constitution. They nullified the provision of the Constitution. Here, I want to raise a basic question:—hon. legal luminaries are sitting here—Does the Constitution provide any authority to the Supreme Court to amend the Constitution itself? Do they have any power to nullify the provisions of the Constitution? I believe, within my knowledge, there is no right at all. That right is with this House, with Parliament. Parliament has the right to amend the Constitution. Nobody else in this country has this right. But the Supreme Court says that it can amend the Constitution....

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): They can interpret the Constitution.

SHRI VAYALAR RAVI: They can nterpret any law. They can say that an enactment by Parliament is *ultra vires.* It is an inherent right of the judiciary. I believe that judicial review must continue. If there is no judicial review, we will also go in a wrong way. There should be checks and counter-checks. The basic question is that the Parliament has to deliberate whether the judiciary can have the right to amend the Constitution or nullify the. Constitution. Sir, I have no surprise. We are living in an era of coalition politics. So long as the Lok Sabha doesn't have three hundred Members from the ruling party, this situation will continue. I don't want to go further on that. It is a pity that because of political ' instability and coalition politics, insted of strengthening the Constitution, instead of strengthening the political system in this country, the judiciary has taken a different route which creates further confusion in the constitutional functioning of the state. This is my worry, Sir. I have no quarrel with the judiciary. I am only wondering that the same Bench, which delivered this judgement, had been appointed by the previous system! For the last 43 years, a system continued and we have had a experience of having eminent personalities in the Supreme Court and the High Courts. Very valuable judgements have come. Yes, there may have been controversies. Even the basic-structure theory has been enunciated by the Bench. I may differ; that is a different matter. But certainly, a valuable contribution to the strengthening of democracy had come from the judiciary. We value and respect the judiciary for the contributions it has made. Then, how could this particular Bench say that the old system was very bad? In a nutshell,

> that is what they meant by saying, "All appointments are made by you with malice" and so on. I can't even imagine this. What has happened now? It is a very important point that I am making, Sir. One Chief Justice has made it very clear. He says that merit is the only criterion. But I will come to that later.

I remember, when I was in the Lok Sabha in the '70s, three judges of the Supreme Court had resigned. I don't want to name them. The reason they had given was, "The executive had not considered our merit. We are senior. Seniority should be the criterion. So, we are quitting". I don't know what kind of changes have been made now. Somebody says it is the merit which is the main consideration. In those days, they said, 'We are seniors. And even if we are senior by six months, we should be made the Chief Justice". I am not accusing anybody. Look at the judges that have come. So, I am making a very important point in this connection. The power of the Parliament has been taken away. But what is the reason behind this judgment of 1993? That is the point I am making. What is the reason? The reason, I suspect, was that certain things happened where the federal structure of the Indian Constitution had not been maintained. Our country has different cultures, different languages, different religions and different castes. It is a complex society. This complex society has its own character. But we are one nation. We are Indians. We live in a federal structure. So, the federal character of the Constitution has to be maintained. It has not only to be maintained in the Government and the Parliament, but it has to be maintained in the judiciary also.

In this connection, an eminent personality of this country, the First Citizen of India, made a speech recently while inaugurating a seminar on judicial reforms. He said:—

> "In our vast country, with its immensity of diversities, it is a matter of importance that in the judiciary all the major regions and sections of society are represented to the extent possible, consistent with the requirement of merit and high standards maintained by the judiciary. The argument is not that the judiciary should follow some sort of proportional representation. The administration of law and justice is

intimately linked to the social philosophy of the judiciary and the social philosophy cannot be entirely separate from the social origins of those who dispense justice."

"It has been said that those who live differntly, think differently." It is the crux of the matter. It has been pointed out by the President of the country, and he had enough reasons. Sir, if I go further down, he says,

"Though our judiciary has displayed the rare quality of standing apart and above the divisions of our society, we must not expect them to be super-human. In any case, it is an old maxim that it is not enough to do justice, but that it must be seen to be done. Hence the validity of the agrument, which has been accepted in our social policy and in our pragmatic practice that all major sections of society must find a place in the judicial system of the country."

Sir, this is the point. Unfortunately, this dictum, this philosophy, is being ignored. This one thing is worrying me, Sir. The faith in democracy is the faith in the institutions, the faith in the system. If one section or one region is ignored, naturally, it will create resentment. They will lose faith. So, in this connection, I only want to say that in regard to appointment of judges, I am for a Judicial Commission. The hon. Minister knows the point. Recently, there was a move to appoint some judges. The file went to the President for his seal of approval and what happened? It is very important. This is what I read in the Press reports; and I quote it here. As provided in the Constitution, the file went to the President for this seal of approval. It has been reported in the Press. I am quoting from the noting in the file. If I am wrong, the Minister can correct me. I will withdraw it, if I am
wrong. Let me quote it first.

SHRI M. THAMBI DURAI: Mr. Vice-Chairman, Sir, whatever has appeared in the Press must not be taken up here because this is a secret document between the Chief Justice of India and the President. If we take it further, it will lead to controversies. Therefore, I request that this kind of things which have appeared in the Press must not be taken as important because...

...*(Interruptions)*..... because it has already led to some controversy. How certain things are leaking out whether it is correct or not, I don't want to ascertain here. That is why I am requesting the hon. Member....

SHRI VAYALAR RAVI: I have stopped there.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): I think, Mr.

Ravi, it is only a Press report. We should not attribute it to Rashtrapatiji, and it should not go on record. It is only a reported version, and it should not go on the record of the House ... *(Interruptions)*...

SHRI VAYALAR RAVI: Sir, if you feel it improper, you can expunge it.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): I think, it should not go on record. It has just appeared in the Press.

SHRI VAYALAR RAVI: I admit it, but there is a certain fact. The fact is that, as you know it very well, one Chief Justice of one of the High Courts has not attained the age of 55. Sir, as per my knowlege, it has never happened earlier that a condition of age is being put for selecting a judge of the Supreme Court. For the first time, an age bar of 55 years has been imposed. As per this condition, only those judges who are above 55 should be selected. Why? Sir, the Constitution very clearly says that a ten years' experience is enough. You know the provisions of the Constitution. When the Constitution save that a judge of a High Court with 10 years' experience can become a judge of the Supreme Court, then what is the need for putting a

condition that he must attain the age of 55 years?

We need an explanation on this. It was applicable only to one judge and that is why I am raising this point here. Only one judge, a Chief Justice of one of the High Courts.* This is the point.When the powers are misappropriated by the judiciary under 124(2), then what happens? Societal thinking,which is reflected by the Parliament and the executive is gone. When the executive takes a decision, that will take into account every social factor. That will take into account all the reasons for what they do because they are answerable to the people. Every one of us is answerable to the people. That is why we take into consideration the society, the national system and the spirit of the Constitution.

SHRI M. THAMBI DURAI: Hon. Vice-Chairman, Sir, the hon. Member has mentioned about the age factor in the consideration of appointment of the Supreme Court judges. When he was discussing this matter, he mentioned that because* he was not considered for that post. I do not think it is a correct thing. I do not know what factors made them to consider his name or not to consider his name. Therefore, I do not think it is correct to mention here that because of that thing, they did not consider him.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): Mr. Ravi, what is the information? Is it reported in the press? How did you get the information?

SHRI VAYALAR RAVI: That is reported.

THE VICE-CHAIRMAN (SHRI JOHN. F. FERNANDES): About the age, 55 years?

SHRI VAYALAR RAVI: Yes. *(Interruptions)*

*Expunged,as ordered by the Chair.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): If this is in the press and if it is not a communication between the President and ...*(Interruptions)*...

SHRI M. THAMBI DURAI: He said that because * he was not taken. *(Interruption)*

SHRI VAYALAR RAVI: I repeat, Sir. The Constitutional provision speaks...

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): I am on a different point. Whatever you mentioned here, has it been reported in the press?

SHRI VAYALAR RAVI: Yes, it is. It is an unwritten consensus among the judges to recommend only the names of persons who attain the age of 55 years. It has appeared in the press. *(Interruption)*

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): Mr. Minister, I follow now. Mr. Ravi, the motive you attribute * should not go on record. *(Interruption)*

SHRI VAYALAR RAVI: Let me repeat what I said and then you can decide. *(Interruption)*

SHRI T.N. CHATURVEDI: You mentioned the age factor. *(Interruption)*

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): That is what I have said. *(Interruption*

SHRI VAYALAR RAVI: The age factor is here in the Constitution, under 124 (3a).

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): Mr. Ravi, one minute. You know, the hon. Minister has raised a valid point. You have said that they have put the age limit and then you further said that since * this has been done. You cannot substantiate that. Then that should not go on record. If you substantiate it, it is well and good.

SHRI VAYALAR RAVI: With all responsibility, I say that it affected only one judge who is eligible now. That is the

point I made. It affected one judge who is eligible to come to the Supreme Court.

SHRI M. THAMBI DURAI: We do not know his eligibility. The committee has to decide. He said he was not considered because * * *

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): Mr. Minister, you are right. I think, he was not permitted earlier also by the Chairman and that should not go on record. *(Interruption)* Mr. Ravi, you are attributing a certain motive and that should not go on record. You cannot substantiate it.

SHRI VAYALAR RAVI: I am only making a statement of fact. Is it not a fact that it affected a Chief Justice of a High Court?

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): I know; Mr. Minister, that will not go on record; that has not been substantiated.

SHRI VAYALAR RAVI: It is substantiated, Sir. I stand by my argument. You can delete it, but I stand by my argument.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): No, Mr. Ravi, you are attributing motives to the judiciary. The part, * * * should not go on record. *(Interruption)*

SHRI VAYALAR RAVI: I need an explanation from the hon. Minister as to why the age limit has not been fixed by the Constitution. If provides certain conditions.

SHRI M. THAMBI DURAI: I will convey this thing to the Committee to the appointing authorities, or the judges who are dealing with it. I will convey your feelings, but the other part which you have said,* * * * * * * ...*(Interruption)* 1 do not know.

SHRI VAYALAR RAVI: I only said, Sir, it can go on record. It affected one of the judges. There are so many judges who are below that age. ...*(Interruptions)*...

SHRI M. THAMBI DURAI: I do not think so. ...*(Interruptions)*...

SHRI VAYALAR RAVI: The person whom I am mentioning here is more than 50 years of age.

SHRI T.N. CHATURVEDI: Normally we do not mention the individuals. ...*(Interruptions)* ...

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): That has been expunged. ...*(Interruptions)*... Let him not debate on this point further. You continue, Mr. Ravi.

SHRI VAYALAR RAVI: It is true that ...*(Interruptions)*...

SHRI H.K. JAVARE GOWDA (Karnataka): If it is a fact, it should go on record. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): No, please. ...*(Interruptions)*... When the Chair gives a ruling, no Member should defy it. I have given a ruling that that matter will not go on record, that is, * ...*(Interruptions)*... It should not go on record. ... *(Interruptions)*

SHRI VAYALAR RAVI: The point which I am making is that social conditions of India have to be taken into consideration. Sir, certain decisions have created this misunderstanding because certain Judges of High Courts could not become Judges of the Supreme Court.

SHRI M. THAMBI DURAI: They can become the Chief Justices there. ...*(Interruptions)*... They can become Judges of

*Expunged as ordered by the Chair. the Supreme Court in future.

SHRI VAYALAR RAVI: But, they cannot become the Chief Justice of India. ...*(Interruptions)*... This is the point ' which I am making. The delay is not because of merit or non-merit. The speculation is as to who will be the Chief Justice of India. This is the point. I wish that one day this country must have a Chief Justice who belongs to a Scheduled Caste.

SHRI M. THAMBI DURAI: That is all right. ...*(Interruptions)*...

SHRI VAYALAR RAVI: But, the point I am making is with regard to denial of this right now. ...*(Interruptions)*... The point that I am emphasising is that any person can become the Chief Justice of India. Now the question is as to who should be the Chief Justice of India. This is the point. When somebody joins Government service he calculates when he would be Secretary, etc. It is human nature. Nobody is super-human. The point I am making is with regard to the social aspect of the country. There are many competent people in different regions. All these points can be considered by a judicial commission. If a judicial commission comes into existence, it will take all these aspects into consideration. The point that I am arguang is that this judicial commission will be a most important body because it will be considering all these things. Its compositions, etc. is a different matter. It can be discussed later. The point which I am making is that we cannot react to whatever the judiciary does. We get all the abuses. Even a Session Judge abuses Member of Parliament. The facility of railway passes to ex-MPs has been cancelled. I fully appreciate your ruling that we should not react to whatever they do. I agree. But, there are certain facts and realities which have to be expressed here on the floor of the House. Otherwise, as pointed out by Shri Kapil Sibal, there will be a case of -contempt of court. This is one of the major weapons which it has been using freely. Even the people can be sent to jail. You all know this. One fine morning the judiciary orders that the Army should arrest so and so person. This is an aberration. They were not debating this kind of a thing. They should understand that sometimes they also do wrong things. The officers are scared because they fear that they will be sent to jail. Sir, they say you do this and you do that because we have article 226. This article has been amended. But, even today many interpretation can be given to public interest litigation. As put by Mr. Oeve Gowda, it is more of a political nature curtailing the powers of the executive and the Parliament. A time has come when we should discuss all these matters in detail. We should not feel shy of certain facts. While concluding, I appeal that the proposed judicial commission must take into consideration the social, and regional factors especially relating to women and SCs and STs. I can assure you that there are enough competent people in this country who can be made Judges of the Supreme Court and who later can become the Chief Justice of India. I request that we should not stand in their way.

5.00 P.M.

THE VICE-CHAIRMAN (SHRI JOHN F. FERNANDES): I have got several names here. We will continue the discussion next Friday.

MESSAGES FROM THE LOK SABHA

(I) Re: Committee on Public Accounts. (II) Re: Committee on Public Undertakings.

(Ill) Re: Committee on the Welfare of Scheduled Castes and Scheduled Tribes.

SECRETARY-GENERAL: Sir, I have to report to the House the following messages received from the Lok Sabha, signed by the Secretary-General of the Lok Sabha:—'

J

"I am directed to inform you that Lok Sabha, at its sitting held on Friday, the 26th February, 1999, adopted the following motion:—

"That this House do recommend to Rajya Sabha that Rajya Sabha do agree to nominate seven members from Rajya Sabha to associate with the Committee on Public Accounts of the House for the term beginning on the 1st May, 1999 and ending on the 30th April, 2000 and