

out the issue with the people who have been on strike. This is not the way that the Government should function.

Therefore, I only want to give a word of advice to the Government that instead of taking a policy of confrontation, let them enter into a meaningful dialogue with the striking employees so that the health system does not collapse. Already thousands of people are really in distress, particularly, the people who don't have money to go to five-star health resorts and five-star nursing homes. They are the real sufferers. It is the poor people who are the real sufferers. Therefore, the Government has a moral, legal and statutory responsibility. The Government should perform that statutory responsibility by taking a conciliatory and responsive move instead of harping upon hard measures.

SHRI JIBON ROY (West Bengal): Mr. Vice-Chairman, Sir, I associate myself with the Special Mention made by my colleagues. I would request the Central Government to initiate negotiations with the striking employees. The Government should call a meeting and negotiate with the leaders of the group 'C' and 'D' employees and settle the dispute.

SHRI V.P. DURAISAMY (Tamil Nadu): Mr. Chairman, Sir, I thank you very much for giving me an opportunity to associate myself with the Special Mention made by my senior colleagues. The strike by the group 'C' and 'D' employees in Government hospitals and dispensaries has created an immense hardship to the common people as well as to the poor people. These people cannot afford to step into the private hospitals where the fee is very high. This strike has affected patients who are to undergo operations. The Government should have taken steps in advance to avert the strike by the group 'C' and 'D' employees.

Recently, we have witnessed the strike by nurses which affected the poor people. The attitude of the Government of India

towards these employees is not satisfactory. In any case, the Government of India is going to accept the demands of the employees. Why should they delay in accepting their genuine demands? When the poor people are facing hardship in getting medical care, is it not the duty of the Government of India to fulfil its social obligation?

I urge upon the Government to invite the leaders of the group 'C' and 'D' employees for a dialogue and settle their demands amicably. The demands raised by these employees appear to be genuine. For example, washing allowance, patient care allowance. These things need to be considered sympathetically. When the employees have given an advance notice to go on strike, why has the Government not invited leaders of the employees for a discussion?

The Health Minister has already failed in dealing with the nurses strike. It is the second time that the employees who are manning essential services have gone on strike. We have witnessed the strike by nurses, the strike by the postal employees and now the strike by the employees of the group 'C' and 'D' working in Government hospitals and dispensaries. The attitude of the Government in meeting the demands of the employees is slack.

I urge upon this Government to invite leaders of the group 'C' and 'D' employees and settle the dispute amicably. This matter should be given high priority as the poor people are facing immense hardship.

Thank you.

Remarks of Minister on Appointment of Supreme Court Judges

SHRI VAYALAR RAVI (Kerala): Mr. Chairman Sir, with your permission, I wish to draw the attention of the House to certain remarks made by the hon. Minister Mr. Ram Jethmalani. I have no quarrel with him as advocate Mr. Ram Jethmalani. But, definitely, I will take

exception to the remarks made by him as a Minister. Sir, the question is not about the mode of appointment of Judges or the National Judicial Commission finding place on the National Agenda. I do not have any quarrel there. I would like to quote what he has said about certain recommendations of the Chief Justice of

India, M.M. Punchhi: ".....are not the best persons for the job. I do not want to get into the names, nor do I wish to tell you what the allegations are. But certainly, there is a good bit to be said that they are not the best persons who have been selected."

Sir, it means he is questioning the wisdom of the Chief Justice of India. He is also making an allegation that the names the Chief Justice recommended are not fit to become Judges of the Supreme Court. This is a very serious allegation not only against the Chief Justice of India but also against the names that have been recommended by the Chief Justice.

In this connection, I would like to draw the attention of the House to one of the names which I know. I do not want to give the name. But he is the Chief Justice of a High Court. He belongs to a Scheduled Caste. And I know, by this seniority, he will be the Chief Justice of India in a given time. His name is returned. This is the crux of the problem. I can give you one example. The Chief Justice of Punjab and Haryana was belonging to a backward community from Kerala. His name was recommended in March last. But it was just kept till his retirement in June. You could cleverly avoid a person belonging to a backward community in the Supreme Court. What does it show? The five names recommended by the Chief Justice came here and were returned with the remarks that they were most incompetent. I do not want to put the question whether it was done, so because one was from the Scheduled Caste. I do not want to put that question. But I do want that the Government must look into the matter.

Can you keep the Supreme Court as a separate entity which will not allow any person an eminent Judge or a Chief Justice of a High Court to become the Chief Justice because he belongs to a Scheduled Caste? This is the problem. I do not have any quarrel with the other views of Mr. Ram Jethmalani, I am only saying that *mala fide* intentions are there in returning the names. The intentions are not good. I want the Government to look into it. (*Interruption*),

श्री नरेन्द्र मोहन (उत्तर प्रदेश): सर, बार बार यह जातिवाद के आधार पर बात उठाई जा रही है। यह जातिवाद के आधार पर बात करना, यह बात मेरी समझ में नहीं आई। ...**(व्यवधान)**... नहीं, यह प्रश्न नहीं है, प्रश्न यह है कि आप जातिवाद के आधार पर बात कर रहे हैं। जातिवाद के आधार पर बात मत करिए। ...**(व्यवधान)**... आप जेठमलानी के स्टेटमेंट पर बात कर सकते हैं, लेकिन यह कहना कि जातिवाद के आधार पर सब कुछ हो रहा है, यह उचित नहीं है। ...**(व्यवधान)**...

श्री मोहम्मद सलिम (पश्चिम बंगाल): जातिवाद की बात नहीं है, यह सच्चाई है। ...**(व्यवधान)**... आप जो कह रहे हैं, इसी से पता चलता है कि आपके दिमाग में क्या रहा है। ...**(व्यवधान)**...

شری محمد سلیم: جاتی واد کی بات نہیں ہے۔۔۔ "مداخلت"۔۔۔ آپ جو کہہ رہے ہیں اسی سے پتہ چلتا ہے کہ آپ کے دماغ میں کیا رہا ہے۔۔۔ "مداخلت"۔۔۔

SHRI VAYALAR RAVI: I am only analysing what Mr. Ram Jethmalani, the Minister, has said. I am placing before the House certain facts. Let the Law Minister come and tell this House that Vayalar Ravi is wrong. I am prepared to apologise if I am wrong. I know the facts.

†[]Transliteration in Arabic Script

I know what has happened in the case of one of the names. A public comment is made that the Chief Justice of a High Court is not competent to become a Judge in the Supreme Court and later the Chief Justice of India. In such matters, to make such public comments, is in a very, very bad taste and it is not acceptable to this House or anybody in the country.

In this background, I wish to say that the Government must look into the facts. It is not enough to say that it was Mr. Jethmalani's personal opinion. Yes, the advocate Mr. Jethmalani is having some opinion. But the Minister Mr. Jethmalani shall not speak in isolation. I have a statement before me. It is a statement from the Home Minister of the country. He has said that the credibility of the judiciary is being eroded. Two Ministers have come out against the judiciary. Aspersions have been cast on the recommendations of the Chief Justice of India by the remark that some Judges are not good. I believe this is not in good taste. Especially, barring people belonging to the downtrodden sections of the society from entering the Supreme Court, denying to the poorest of the poor entry into the Supreme Court, is most objectionable. I want the Government to come forward with a clean image. Please come forward and tell us what you have done. Thank you.

श्री संघ प्रिय गौतम (उत्तर प्रदेश) : सभापति जी, श्री वायालार रवि साहब जो अभी कह रहे थे, मैं अपने आपको उनसे संबद्ध करता हूँ। यह सुप्रीम कोर्ट के लोग शैड्यूल्ड कास्ट के लोगों को प्रिवेंट कर रहे हैं जज बनने से सुप्रीम कोर्ट का। नियम बदले जाने चाहिए।

श्री संजय निरुपम (महाराष्ट्र) : सभापति महोदय, माननीय सदस्य श्री वायालार रवि जी ने जो विषय उठाया है, उससे मैं अपने आपको संबद्ध करता हूँ, मैं उस विषय से जुड़े कुछ बुनियादी प्रश्नों की ओर सदन का ध्यान आकर्षित करना चाहता हूँ।

महोदय, सवाल जाति का नहीं है, न्याय पालिका में घुसे भ्रष्टाचार का है। जब भी न्याय पालिका के ऊपर आरोप लगाया जाता है और कहा जाता है कि कुछ जजिज़ या कुछ ज्यूडिशरी भ्रष्ट हो गई है, कुछ हद तक

भ्रष्ट हो गई है, जो कुछ अजीब सा रिएक्शन होता है। हमारे देश में न्याय पालिका का इतना संवेदनशील बना दिया गया है कि कोई भी व्यक्ति, वह होम मिनिस्टर हो या कोई भी व्यक्ति हो, अगर न्याय पालिका में घुसे भ्रष्टाचार पर कोई टिप्पणी करता है तो उसे पूरी तरह से न्याय पालिका विरोधी बता दिया जाता है। मैं इस संदर्भ में इतना कहना चाहता हूँ कि इतनी संवेदनशीलता अख्तियार करने की भी जरूरत नहीं है। न्याय पालिका में भ्रष्टाचार है और यह एक ओपन फैक्ट है, इससे इन्कार नहीं किया जा सकता है। भ्रष्टाचार हर जगह है, भ्रष्टाचार कहां नहीं है, विधायिका हो, कार्य पालिका हो, न्याय पालिका हो, प्रेस हो, एडमिनिस्ट्रेशन हो, हर जगह भ्रष्टाचार है और भ्रष्टाचार को हम स्वीकार करते हैं, उसके खिलाफ हम अभियान चलाते हैं, उसके खत्म करने की हम बात करते हैं। इसलिए जब न्याय पालिका में भ्रष्टाचार की बात आती है तो उस पर अतिरिक्त ढंग से, अतिशयोक्तिपूर्ण ढंग से हमें रिएक्ट नहीं करना चाहिए। सवाल सिर्फ इतना है।

महोदय, हमारे यहां जनतंत्र के चार खंभे हैं—कार्य पालिका, विधायिका, न्याय पालिका (व्यावधान).... महोदय, वह सरासर अन्याय है।

श्री सभापति : आप इसी सब्जेक्ट पर बोल रहे हैं?

श्री संजय निरुपम : जी, मैं इसी सब्जेक्ट पर बोल रहा हूँ।

श्री सभापति : आप एक मिनट में अपनी बात खत्म कीजिए।

श्री संजय निरुपम : महोदय, मुझे बोलने ही नहीं दिया जा रहा, एक-दो मिनट का सवाल कहां उठता है। (व्यवधान)....

SHRI BRAHMAKUMAR BHATT (GUJARAT): I do not know whether any Member while associating himself with the sentiments expressed on a mention like this, can also disassociate himself. He is not associating himself with the sentiments expressed by the hon. Member. He is disassociating himself with the sentiments expressed by the hon. Member. Can he do so? (Interruptions)

श्री सभापति : आप इसी सब्जेक्ट पर बोलिए, लम्बा, वीसिन देने की बात नहीं है।

श्री संजय निरुपम : महोदय मैं कह रहा हूँ कि इस विषय से जुड़े हुए कुछ बुनियादी प्रश्न हैं, उन प्रश्नों की ओर सदन को ध्यान आकर्षित करना पड़ेगा।

श्री सभापति : इस वक्त सिर्फ इसी चीज पर कहिए, बाकी डिस्कशन लॉ मिनिस्ट्री में होगा।

श्री संजय निरुपम : महोदय, हर प्रश्न को एक सतही नजर से नहीं देखा जा सकता, उसके कुछ बुनियादी प्रश्न होते हैं और उनकी ओर मैं सदन का ध्यान आकर्षित करना चाहता हूँ। मेरा कहना सिर्फ इतना है कि जनतंत्र के चार खंभे होते हैं और चारों खंभों का अपना समान दर्जा है वह चाहे कार्य पालिका हो, न्याय पालिका हो, विधायिका हो या प्रेस हो। हम कार्य पालिका की आलोचना करते हैं, प्रेस की आलोचना करते हैं, विधायिका की आलोचना करते हैं। खुद दिल्ली के एक चीफ मैट्रोपोलिटन मजिस्ट्रेट ने इस पार्लियमेंट के बारे में एक अपशब्द का इस्तेमाल किया था और कहा था कि सदन में आज जिस तरह के सदस्य आ रहे हैं, वह बहुत अच्छा नहीं है। कैसे-कैसे शब्दों का इस्तेमाल है, मैं यहां उन्हें नहीं कहना चाहता हूँ लेकिन...(व्यवधान)...

श्री मोहम्मद सलीम : इस पर बहस हुई है, वह एकसंपन्न हो गया है, (व्यवधान)...

{شری محمد سلیم: اس پر بحث ہوئی ہے۔ وہ ایکس پی نیچ ہو گیا ہے۔۔۔ ”مداخلت“۔۔۔}

SHRI RAJUBHAI A. PARMAR (GUJARAT): He is going out of the subject. (Interruptions)

MR. CHAIRMAN: Let me hear him.

SHRI JOHN F. FERNANDES: That remark was expunged.

SHRI SANJAY NIRUPAM: How can you expunge that remark? This is a fact. A verdict was given by the Chief Metropolitan Magistrate. (Interruptions) तो मैं कहना चाहता हूँ....

श्री सभापति : देखिए, इस सबजेक्ट को लम्बा मत खींचिए।

श्री संजय निरुपम : सर, मुझे बोलने नहीं दिया जा रहा है, मैं क्या करूँ। सर, मेरी समस्या को समझिए।

श्री सभापति : आप डिबेट नहीं कीजिए।

श्री संजय निरुपम : मैं डिबेट नहीं कर रहा हूँ।

श्री सभापति : देखिए, यह सवाल सिर्फ एक मिनिस्टर के बयान के ऊपर है, उसको लम्बा ले जाने की कोई बात नहीं है। उसी को आपने एसोसिएट करना था, वह बात आपने कह ली है। अब उसको लम्बा मत खींचिए।

श्री संजय निरुपम : सर, मैं वही करने जा रहा हूँ।

श्री सभापति : उसका रीज़न मत दीजिए, वह रीज़न बाद में देखा जाएगा। इस वक्त इतनी ही बात है। मिस्टर कुलदीप नायर।

श्री संजय निरुपम : सर, मुझे अपनी बात तो पूरी कर लेने दीजिए। मेरा आपसे सिर्फ इतना ही निवेदन है कि जब न्याय पालिका के ऊपर भ्रष्टाचार के आरोप लगाते हैं (व्यवधान)... यह फैक्ट है, इससे आप कैसे इंकार कर सकते हैं।

श्री सभापति : देखिए मैंने कह दिया, अब आप मत उठिए, बस...(व्यवधान)...

SHRI SANJAY NIRUPAM: Sir, it is a fact* It is a hundred per cent pure fact. How can you deny that?{interruptions}.... How can you deny that? {interruptions}....

SHRI KHAN GHUFRAN ZAHIDI: (UTTAR PRADESH) Sir, this should be expunged.

MR.. CHAIRMAN: Kuldip Nayyar {interruptions}.... Kuldip Nayyar {interruptions}....

SHRI SANJAY NIRUPAM: It is a fact ...{interruptions}....

SHRI MD-. SALIM: Sir, this should be expunged.

MR. CHAIRMAN. All that will be expunged. That is all right.{interruptions}.... Kuldip Nayyar{interruptions}.... Kuldip Nayyar{interruptions}.... Kuldip Nayyar.

SHRI KULDIP NAYYAR (NOMINATED); Thank you very much, Sir. I fully support Mr. Ravi on this point

†[]Transliteration in Arabic Script

that if a person be being rejected or if his appointment is being delayed only because he is from a Scheduled Caste or from a Scheduled Tribe, it is a very reprehensible thing; it should be criticised. I think Mr. Jethmalani did not have such persons in view when he made the statement. That is my impression. See what has happened. While making recommendations, the Chief Justice has not consulted the number two and number three judges, which is mandatory.

SHRI VAYALAR RAVI: Who said it?

SHRI KULDIP NAYYAR: I am just giving the information(interrptions).... I am giving you the information (interrptions)....

AN HON. MEMBER: Let the Government say this(interrptions)....

MR. CHAIRMAN: Let us understand. We have sent a message to Mr. Jethmalani. I hope he will come. That I already sent when we admitted it. Let him speak. Let us understand that this is not unparliamentary; I cannot prevent him.

SHRI KULDIP NAYYAR: That is mandatory(interrptions)....

SHRI PRANAB MUKHERJEE (West Bengal): Sir, I want to make a submission.

MR. CHAIRMAN: What is it?

SHRI PRANAB MUKHERJEE: Sir, most respectfully I am saying that unless you take your seat, I can't make a submission. Sir, the point to which the hon. Member has referred is a very sensitive area. Whether the Chief Justice has consulted his number one and number two judges, we do not know.

MR. CHAIRMAN: I agree with you (interrptions).... I agree with you. I think the point Mr. Vayalar Ravi has raised is a very relevant point. You cannot quote the Chief Justice for what he has done or not done. Government

has to say, he has to say; we have no authority to say. Please don't quote him.

SHRI KULDIP NAYYAR: Sir, I am supporting Mr. Ravi. I am not opposing him. But what I am trying to say is(interrptions)....

MR. CHAIRMAN: Please don't quote him,, "don't refer to him, to what he has said.

SHRI KULDIP NAYYAR: While making nominations or recommendations to the Government, the Chief Justice should see that such people against whom there are charges of corruption are not included(interrptions)....

MR. CHAIRMAN: That is all.

SHRI KULDIP NAYYAR: So, some of the names(interrptions)....

SHRI PRANAB MUKHERJEE: Sir, it is the conduct of the Chief Justice which is being(interrptions)....

SHRI KULDIP NAYYAR: Some of the persons against whom, there are charges, there are inquiries, (interrptions)....

MR. CHAIRMAN: I think, you are going beyond that(interrptions).... You are going- beyond that.

SHRI KULDIP NAYYAR: But I support Mr. Ravi(interrptions)....

SHRI KAPIL SIBAL: Sir, he cannot raise that matter(interrptions)....

MR. CHAIRMAN: Please sit down(interrptions).... Mr. Nayyar, please sit down(interrptions).... Yes, yes, you are right, Mr. Sibal.

SHRI KULDIP NAYYAR: So, the best thing is that we should really have a National Judicial Commission so that neither the Government nor the Judiciary should be there. There should be some independent body.

MR. CHAIRMAN: That is allright. Md. Salim.

श्री मोहम्मद सलीम : महोदय, वायालार रवि जी ने जो बात रखी है, मैं अपने को उसके साथ सम्बद्ध करता

†[]Transliteration in Arabic Script

اسلئے سرکار فوراً یہاں آکر اس بارے میں ایک
اسٹیٹمنٹ دینا چاہئے

SHRI SANATAN BISI (Orissa): Sir, I associate myself with the points raised by Shri Ravi. That is number one. The second point is this. I want to submit that Shri L.K. Advani, the Home Minister, stated in a like manner at a public function that there was absence of rule of law. Why I say so, Sir, is that the Minister was himself involved in a case. There is prosecution case against him. (interruptions)....

MR. CHAIRMAN: It is not relevant to this..... (interruptions).... It is not relevant to this case (interruptions).... It is not relevant to this case. (interruptions).... This is specifically related to a statement of the hon. Minister. Please confine to that the nothing else.

SHRI SANATAN BISI: For that purpose I say that there is a maxim and I quote—

"No man can be a judge in his own cause."

Sir, no man can be a judge in his own cause. This is my submission.

SHRI KAPIL SIBAL (Bihar): Sir, I fully associate myself with the points raised by the hon. Member of this House. I just want to make the legal position clear. Under the nine-Judge Bench judgement of the Supreme Court, the Chief Justice of India, when he makes appointments, is required to consult the number one and the number two puisne Judges of the Supreme Court. Thereafter, the recommendations—I am talking about the appointments to the Supreme Court alone—are sent to the government and the Government gives its response to the recommendations. It is not the case of the Government that they are substandard. That is the point of clarification we want, whether the recommendations made by the Chief Justice of

India along with his colleagues are substandard. This is the allegation of Mr. Jethmaiani. The Government must make it clear on the floor of the House as to whether it has objected to those recommendations on the ground that they are substandard. That must be clarified on the floor of the House. My opinion is—I cannot say anything more about it that there is correspondence in terms of the judgement of the Supreme Court. The recommendations by the Chief Justice of India in consultation with two other Judges are the recommendations of the judiciary. The Supreme Court Chief Justice does not alone decide this matter. It is done in consultation with two other judges. Therefore, if the Government says that the recommendations of the three hon. Judges are substandard, it means that there is something behind it and the Government must clarify that.

SHRI JANARDHANA POOJARY (Karnataka) : Sir, the hon. Minister of Government of India yesterday made a statement in the Lok Sabha defending his statement. These Judges who are being recommended are sitting Judges of the High Courts. We have to keep it in mind. To say that they are of substandard quality is nothing but casting aspersions on the judiciary. The Government, the Minister, should come before the House and say that they don't qualify, they are not up to the standard, they are of substandard quality and because of these reasons he has made this statement. Sir, you may kindly note that it has been reported in the Press that the Prime Minister's office had disowned the statement of the Minister who is part of the Government. Now here is a Minister who has got the audacity to say, "I am not agreeing with the Government". He says, "I am not in agreement with the Government. It is my view even before I took charge as Minister." If he is not agreeing with the Government, If it is his personal view, he should resign and he should go out from the Government. He cannot say, "It is my view", This is my submission.

SHRI S.R. BOMMAI (Karnataka): Sir, when we discuss about the judiciary we have to be very cautious because it is an independent institution under the Constitution. Till the nine—judge Bench judgement was pronounced, there used to be consultation between the Executive and the Supreme Court. Both the Executive and the Judiciary mutually consented. Before the judgement there was a different meaning given to "mutual consent". The Government played an active role. Sir, in the entire world, in the entire democratic world, there is no system where the judiciary appoints the judges itself and the judiciary transfers the Judges itself. There are checks and balances. In the United States before a judge takes oath he will have to appear before a committee of the Congress. The committee is entitled to ask any question. Here is a different question. It is an independent matter to have a Judicial Commission. What the hon. Minister, Mr. Jethmalani, had stated, he stated it in his individual capacity. It is a very difficult situation. When you are a Minister you have two capacities! This creates a confusion. He has already come. I would like to have a clarification on the questions raised by Raviji and I support him.

SHRI GURUDAS DAS GUPTA (West Bengal): Sir, the issue is not that a sub-standard appointment or recommendation has been made. That is not the issue. If I assume for argument's sake that it is sub-standard, Is it normal or is it responsible on the part of a member of the Government to give a vent to his opinion publicly which maligns the judiciary. That is the issue. There is not other issue. Shri Ram Jethmalani is quite free to give his opinion. The Government is also free to give its opinion. But should that be made public? Should that be made a public controversy? Should that make his position vulnerable? Should that malign the image of the Government? Should that create a situation where people are free to feel that this Government is after maligning the judiciary. This was

the background, and it is -in this background- that repeated statements have been made by members of different parties and different political organisations which are supporting the Government that the judiciary has no role to play so far as the construction of Ram Mandir is concerned, it is a judicial problem. When the matter was pending in a court of law, the House demanded that the opinion of the judiciary should be respected. It is how....

प्रो. विजय कुमार मल्होत्रा: आप कितनी बार राम मंदिर का... (व्यवधान)... यह कोई तरीका नहीं है। जब भी कुछ बात होती है, राम मंदिर का बोल देते हैं। ... (व्यवधान)...

MR. CHAIRMAN: Mr. gupta, you confine your self to the issue. (*Interruptions*).

SHRI GURUDAS DAS GUPTA: My point is (*Interruptions*). Disrespect is being shown to the judiciary. (*Interruptions*).

श्री संजय निरुपम: यह राम मंदिर का सवाल नहीं है, राम मंदिर का कोई मुद्दा नहीं है।... (व्यवधान)...

SHRI GURUDAS DAS GUPTA: My short point is ... (*Interruptions*). What is this Sir?

Sir, Shri Jethmalani knows law more than me. It is for him to tell the country how law is to be respected. There can be no respect for law without respecting the Judiciary. My short point is this. Disrespect for the Judiciary has been a phenomenon, not only with Shri Jethmalani, but also with many other people and many members of different political parties which are supporting the Government I had quoted the question of Ram Mandir ... (*Interruptions*).

MR. CHAIRMAN: Don't enter into that (*Interruptions*).

SHRI GURUDAS DAS GUPTA: No, Sir.... (*Interruptions*).

प्रो. विजय कुमार मल्होत्रा: क्या कुछ मैसेर्स दिन में दस बार स्पेशल मेशन पर बोलेंगे? और कुछ नहीं

बोलेंगे और जितनी देर चाहे बोलेंगे। आखिर इसका कोई ... (व्यवधान)...

SHRI GURUDAS DAS GUPTA: It is specifically about ... (interruptions).

MR. CHAIRMAN: Please speak on the subject.

SHRI GURUDAS DAS GUPTA: Sir, I am coming to that. It is a question of disrespect to the judiciary. It has been done deliberately on a number of occasions. It is being done to frighten the judiciary. It is being done to get a make-to-order judgement. Therefore, I cannot believe that Shri Jethmalani, an eminent lawyer, can violate the normal conventional practice in the country. Therefore, there is a definite intention to malign the judiciary and to get something out of that. That is my point.

MR. CHAIRMAN: That is all right. Shri Pranab Mukherjee.

SHRI PRANAB MUKHERJEE: Sir. I would like to confine myself to the observations made by Shri Ram Jethmalani. He is an eminent lawyer and jurist. There is no doubt about it. so far as legal matters are concerned, we take him as one of the authorities. I am not going into the legal matters. My point is very simple. I would like to know whether a member of the Government or a Minister can air his personal view publicly. This is not the first occasion when it has been done. This is the second occasion. The other day, the whole House got agitated when he made some remarks in regard to reservation of Scheduled Castes and Scheduled Tribes. The Prime Minister had to say on the floor of the House that it was his personal view.

In regard to his comment on the judiciary, in regard to the particular issue which Mr. Vayalar Ravi was referred to, regarding recommendations of the Chief Justice of the Supreme Court, I am not going into that aspect because it is totally outside the purview of discussion of this House. During my association with this House for quite a few years, we have

never discussed judiciary or the conduct of judges of the Supreme Court or High Courts. Therefore, I am not going into that aspect. But my limited point is whether a Member of the Cabinet can air his personal views publicly and the Government contradicts them not once but twice. After all, there is a thing which is known as collective responsibility. A Member of the Government may not agree with all the views of the Government. But once a decision is taken by the Government, the Cabinet and the Council of Ministers collectively are bound by it. Therefore, I would like to know from the Government—not from Mr. Ram Jethmalani; he can give a personal explanation in regard to the points raised by him as a Member of this House—

(a) whether it will come out authoritatively with regard to the views which have been expressed by a Member of the Cabinet concerning the selection process and (b) what their concept of the collective responsibility is. Simply because it is a coalition Government, the concept of collective responsibility which we have understood in the context of Parliamentary democracy cannot be given up. This is my submission to the Government, through you. Sir.

SHRI JOHN F. FERNANDES: Mr. Chairman, Sir, I am not going into the dispute as to whether members of the judiciary are sub-standard because it is not appropriate for Members of this House to cast aspersions or make defamatory remarks against them. The point which I am raising is different. Earlier the Government had mentioned in this House, in the other House as well as publicly, and Mr. Bommai has also mentioned about this in his submission, that they would nullify the Judgement given in 1993 where the judiciary appoint themselves. In view of the utterances of the two Ministers of this Government, I would like to know from the hon. Government whether they are going to move any amendment to see to it that the

Judgement of the Supreme Court of 1993 is nullified and that the executive also will be consulted in appointments.

THE MINISTER OF URBAN DEVELOPMENT (SHRI RAM JETHMALANI): Mr. Chairman, Sir, through you, I must express my utmost gratitude to all the Members of this House for having raised this issue. I have only one small grievance to make. What should have been debated is the merits of the issue but it has turned itself into a somewhat personal attack on me and my role. ...*(Interruptions)*

SOME HON. . MEMBERS: The question is of propriety.

SHRI RAM JETHMALANI: In the rough and tumble of politics, I accept even that as a compliment to me. If the issue is mixed up with my utterances, I think, that issue must be of some importance. I take that compliment. Sir, we are discussing a very sensitive issue—the role of the Government *quo* the judiciary, the judiciary's role *quo* the country and the judiciary's duty towards the administration of justice which is its most important function. Sir, am I not entitled to expect that on an issue as sensitive as that, there should be more light and a little less of heat? Again, I am making a small grievance though I am quite convinced that I am old enough to know 'harsh words break on bone'.

Yet it is better that we modulate our language and look at issues dispassionately. What I have to tell you and share with you, I hope, will satisfy every single Member of this House, including my most vociferous critics.

First of all, let me deal with my very, very dear friend, Shri Pranab Mukherjee. Though he was almost the last to speak, I think this respect is due to his position in this House. He raised two questions. One is a personal question, that I have been rebuked and repudiated twice. This is not correct. On the last occasion, when the question of reservations was mentioned in this House, I came and explained to the

House and within three minutes of my speech every single Member of the House, who had attacked me, accepted my explanation and complimented me for what I had done and for what I had said. My Prime Minister, who was present, got up and told that after the House has heard Mr. Jethmalani, the matter ended there. The House, then, had the grace and the generosity to end the debate right at that moment because my explanation was fully accepted. I have said and I wish to repeat it here for the benefit of my friend, Mr. Mukherjee, that there is nobody in this House who can claim to have more attachment and commitment to the cause of the Scheduled Castes, Scheduled Tribes and the Backward Classes. I know there are people who claim to be leaders of that unfortunate part of our population. But I have been working for them and I have been advocating their cause before all these gentlemen, who claim to be leaders today, who became the leaders of those unfortunate people. But, Sir, I wish to remind my friends, Prof. Mukherjee, and you know the kind of affection and respect with which I deal with every Member of this House and every section of this House and I, therefore, do not wish to go into the sores of the past, but I do wish humbly to remind all my friends sitting here, and each one of them is very, very dear friend of mine, who it was who had completely jettisoned Mandal so far as the Central Government was concerned. Your Government had jettisoned it and your Government had told... *(Interruptions)*

SHRI JANARDHANA POOJARY: We had implemented it, not you. Are you aware of that?

SHRI RAM JETHMALANI: Look, I am a student of law and I am a student of my papers. I read every single paper. I can produce to you authorities and the correspondence which passed between the Central Government and the State Government. The Central Government wrote to the State Government, "If you

want to enforce Mandal, you do it. But we will not enforce it at the Centre". At that time, I was fighting for mandal. *(Interruptions)* I fought almost a single-handed battle in the Supreme Court for months and months sitting there and sacrificing everything else and I got Mandal through the Supreme Court, when my good friend, Vasant Sathe, representing the Congress party, specially donned the clothes of a lawyer and came to the Supreme Court to tell the Supreme Court judges, "At least, my party is against Mandal". Sir, I do not wish to blow my own trumpet. But I claim that there is nobody in this House who has a greater attachment to the cause of these people.

SHRI VAYALAR RAVI: I am on a point of order. Sir. The hon. Minister is mentioning what happened in the Supreme Court and what the Congress leader said. This is regarding the opinion of a political party which I represent. I can say that the Congress Party has never taken a decision against the Mandal Commission.

SHRI RAM JETHMALANI: Where is the point of order?

SHRI VAYALAR RAVI: Sir, can something that happens in the Supreme Court be quoted here? *(Interruptions)* The Congress Party has never taken a position against the Mandal Commission... *(Interruptions)*

SHRI MD. SALIM: Sir, we are not discussing his conduct... *(Interruptions)*

श्री सुरेश पचौरी: सर, ये विषय से हटकर बात कर रहे हैं। अपने विषय पर बात करें तो ज्यादा अच्छा होगा।...*(व्यवधान)*...

SHRI SANGH PRIYA GAUTAM: I am on a point of order. Sir. There is a constitutional amendment under Article 16, which is Article 16 (4) (a). Reservation in promotions... *(Interruptions)*... for Scheduled Castes and Scheduled Tribes.

SHRI RAM JETHMALANI: I don't need your protection.

SHRI SANGH PRIYA GAUTAM: But the previous Government had no issue, no order in accordance with the constitutional amendment. Therefore, Mr. Jethmalani is right in saying so.

SHRI RAM JETHMALANI: Sir, at the disputed meeting at which I am supposed to have made that disputed remark, all that happened was the usual thing. That gentleman of the Press asked me the usual question which is asked from every person who belongs to the BJP Government. What plans do you have to tinker with the Constitution? Do you have secret agenda? I said, "No, we have no secret agenda because (a) I am a very reverential student of Dr. Ambedkar. I consider him as my intellectual and legal master..." And I said that I considered his Constitution of India the holiest document, holier than my scriptures. And I said, "I stand for reservations, but the reservations are coming to an end under article 334 when the 50 years are expiring. Now you have to sit down, if you want to continue the reservations, we have to amend the Constitution, and we are going to amend the Constitution." Will you tell me that we have a secret agenda in amending the Constitution for the benefit of the Scheduled Castes? ...*(Interruptions)*... I am not yielding.

SHRI KAPIL SIBAL: That is not what the Press said about it.

SHRI RAM JETHMALANI: That is what the Press said. ...*(Interruptions)*...

SHRI KAPIL SIBAL: You see your statement in the Press. That is not what the press said.

SHRI RAM JETHMALANI: Will Mr. Kapil Sibal sit down?

SHRI KAPIL SIBAL: No, no. I don't have to ask you to sit down... *(Interruptions)*...

SHRI VAYALAR RAVI: Sir, he cannot ask the hon. Member to sit down. I ... *(Interruptions)*...

MR. CHAIRMAN: Please sit down. ...*(Interruptions)*... It is not for the hon. Member to ask other Members to sit down. I can ask...

SHRI RAM JETHMALANI: Sir, you deal with them.

MR. CHAIRMAN: If you don't yield, then he has no right to speak. That is the main thing. If he yields, then he has a right to speak. ...*(Interruption.i)*...

SHRI KAPIL SIBAL: Sir, there is a point of order here.

SHRI RAM JETHMALANI: Will my hon. friend Mr. Kapil Sibal sit down? He will have a reply... *(Interruptions)*...

MR. CHAIRMAN: He wants to raise a point of order.

SHRI SANJAY NIRUPAM: Under which rule does he want to raise the point of order? ...*(Interruptions)*...

MR. CHAIRMAN: Under which rule? ...*(Interruptions)*... Please sit down. Yesterday, I did not allow a Member to raise a point of order because he did not quote the rule. Please sit down. ... *(Interruptions)*...

SHRI KAPIL SIBAL: Sir, if you permit me, I will raise the point of order. ... *(Interruptions)*...

MR. CHAIRMAN: Please sit down.

SHRI KAPIL SIBAL: Sir, the rule is 258. The point of order is, today the discussion that is before the House relates to the remarks of Mr. Jethmalani in respect of the appointment of judges to the Supreme Court when he said that the recommended persons are not the best persons for the job, that those judges who are sought to be appointed are not the best persons for the job. Now, the question is whether the Government accepts this position or not and whether Mr. Jethmalani's remarks are his personal remarks or whether the Government endorses it. That is the question that has to be decided. We want you ruling on that... *(Interruptions)*...

SHRI RAM JETHMALANI: I am coming to that. ...*(Interruptions)*...

MR. CHAIRMAN: That is all right. ...*(Interruptions)*...

SHRI KAPIL SIBAL: Sir, if you permit me. ...*(Interruptions)*...

SHRI NILOTPAL BASU (West Bengal): You go through rule 258. ...*(Interruptions)*...

MR. CHAIRMAN: What rule has been applied is the main thing while he is speaking. That is the main issue. *(Interruptions)*

SHRI SURESH PACHOURI: It is appointment of Supreme Court judges.

श्री सभापति: आप उनकी बात तो सुन लीजिये। **(व्यवधान)** अरे, जिसको आप मुजरिस कह रहे हैं, आप बात तो उनकी सुन लीजिये। **(व्यवधान)** ठीक है, उनको हक है बात करने का। पहले यहां पर उनको कहा गया कि आपने ऐसे किया है, अब उसकी सफाई देने का उनको हक है। पहले यहां चार्ज किया गया, इसलिए वह अब अपनी सफाई दे रहे हैं। इस हाऊस के, राज्य सभा के मैम्बर हैं। कोई बात उन पर कही जाए तो इतना तो होना चाहिये कि हम उनकी बात सुनें। **(व्यवधान)** चलिए।

श्री सुरेश पचौरी: मैं भी विनम्रता पूर्वक आपसे निवेदन करना चाहता हूं कि उनको यह हक नहीं है कि एक एक घंटे तक विषय से हट कर अपने किस्से कहानियां सुनाते रहें। **(व्यवधान)**

श्री सभापति: चलिए, बोलिये आप। ...**(व्यवधान)**

श्री रामदास अग्रवाल: (राजस्थान) उनको क्या हक है ...**(व्यवधान)**...

MR. CHAIRMAN: Now please sit down. *(Interruptions)* He is talking about that. *(Interruptions)*

SHRI VAYALAR RAVI: Sir, I am on a point of order. *(Interruptions)* I am on a point of order under rule 240. It says, "The Chairman, after having called the attention of the Council to the conduct of a member who persists in irrelevance or in tedious repetition either of his own arguments or of the arguments used by other members in debate, may direct him to discontinue his speech." When I am

beginning; a speech quoting Shri Ram Jethmalani's observations on a private network where he said, "Names recommended by the Supreme Court Chief Justice were not up to the mark; and they are not fit to be judges of the Supreme Court"...(interruptions)

SHRI NILOTPAL BASU: That, (hat is not relevant is the point of order. {Interruptions})

SHRI RAM JETHMALANI: My friend who just raised this point of order has raised an excellent point of order to which I would have immediately yielded if this point of order had been raised at the time when my good friend Pranab Mukherjee got up and raised the issue of my previous statement on reservations. Now, instead of one charge, he is making two charges. I am explaining the first charge. When I am the victim of the breach of the rule, you do not quote rules but the rules you remember only when I am trying to take advantage of it. (Interruptions)

SHRI NILOTPAL BASU: Sir, you have to respond to the point of order and not he. (Interruptions)

MR CHAIRMAN: There is no motion before the House. Let us understand. Some issues are raised and something was said about the hon. Member, and as a Member and Minister he is responding to those things. There is no point of order. Mr. Ram. Please speak now.

SHRI RAM JETHMALANI: Coming to the issue, the main issue today before the House, first of all, let me put my good friend, Mr. Sibal, at peace. Mr. Sibal quoted my speech from the *Hindustan Times* or some newspaper which he is carrying. I am correctly produced, I am correctly reported and I do not go back upon a single word. I am not one of those politicians who usually complain they were misreported. (Interruptions)

AN HON. MEMBER: Last time you said so.

SHRI RAM JETHMALANI: I will deal with it on the footing that every word in the report is true. Now, first of M.. (Interruptions)

SHRI KAPIL SIBAL: Is that the Government's position?!

SHRI RAM JETHMALANI: I am too old to succumb to this kind of a very *trampy* cross-examination. Sir, first of all, the issue of National Judicial Commission is agitating the whole country. (Interruptions)

AN HON. MEMBER: Is it an issue; (Interruptions)

श्री बालकवि बैरागी (मध्य प्रदेश): यह तो इश्यु नहीं है सर। (व्यवधान) यह इश्यु नहीं है। (व्यवधान)

PROF. VIJAY KUMAR MALHOTRA: That is the issue.

श्री खान गुफरान जाहिदी: क्या यही इश्यु है। (व्यवधान)

MR. CHAIRMAN: Let me say something. Whatever appeared in the Press, on that he is asked to say and he is saying. It is in the total context he is speaking.

SHRI RAM JETHMALANI: Sir, there were times, for almost fifteen years the country was debating the interpretation which the Supreme Court had put upon the Constitution in 1982. People like me and many people shared my views at that time. I do not know whether they share them today that judiciary committed suicide, collective suicide when they decided that the power of appointments, removal and transfers is vested only in the executive; the executive is paramount and not the judiciary. Sir, there were people who were happy with that interpretation (Interruptions)

AN HON. MEMBER: The words 'committed suicide' is unparliamentary (Interruptions)

SHRI RAM JETHMALANI: Sir, it is not unparliamentary. I am sorry if they

say everything is unparliamentary. The judiciary abdicated its power to the executive in 1982 and every single newspaper had reported this. Articles have appeared in law journals. They have appeared abroad in legal journals in academic circles. It" my friend said that the judiciary committed suicide, by saying that the power ultimately rests with the executive, if judicial suicide is not a proper word, it is my word. It is not unparliamentary. It is certainly not unparliamentary. Now, Sir, similarly, in 1993(Interruptions).....

SHRI MD. SALIM: Sir, I want to raise a point of order ...(Interruptions)... Sir, my point of order is arising out of rule 241 and rule 251. First, I would like to know whether he is making this statement as a Member of this Hqusc or as a Minister. In what capacity is he scaking as a Member or as a Minister?(Interruptions).....

Sir, I will raise my second point of order after your ruling on the earlier one. ... (Interruptions)...

MR. CHAIRMAN: He is talking under rule 241 because certain things have to be told as personal explanation. ... (Interruptions)...

SHRI MD. SALIM: So, it is his personal explanation. It is not the view point of the Government. ..(Interruptions)...

SHRI PRANAB MUKHERJEE: It is not the Government's point of view. ... (Interruptions)... It is his personal explanation. ... (Interruptions)... That is your ruling. Sir. Thank you. Sir.

SHRI MD. SALIM: Sir, rule 241 says that he will not bring in debatable issues. ... (Interruptions)...

SHRI NARENDRA MOHAN: He is explaining his point of view. ... (Interruptions)...

SHRI RAM JETHMALANI: My friend should today at least... (Interruptions)...

MR. CHAIRMAN: He has to explain his point of view. ... (Interruptions)...

SHRI MD. SALIM: Whatever you said is all right. ... (Interruptions)... But rule 241 says that he should not extend, he should not expand ... (Interruptions)... But, he is making a long statement. ... (Interruptions)...

MR. CHAIRMAN: He is making a statement. ... (Interruptions)... Please make your statement. ... (Interruptions)...

SHRI RAM JETHMALANI: Sir, what I have said is correctly reproduced. I did not malign any judge. I did not malign the judiciary in general. I pointed out the loopholes of an existing system. I have pointed out a better system is available and the better system should be introduced. So far as respect for the judiciary is concerned, at a time when the judiciary of this country was muffled, when it was practically destroyed and distorted out of shape, I suffered along with my brother lawyers and 103 of them were rotting in the Nasik Jail. I was one who was outside the country to carry on the torch of judicial independence and democracy of this country. ... (Interruptions)... Yes, I was. And the hon. Member would know that those who were in jail constantly read my messages and my articles and my propaganda. They were circulated to every prisoner in jail. ... (Interruptions)... Secondly, I have been fighting ... (Interruptions)...

SHRI VAYALAR RAVI: Sir, we do not want his biography. ... (Interruptions)...

SHRI RAM JETHMALANI: I am explaining that. I have the highest respect for the *ludkiaTy*... (Interruptions)... People in this House are not sharing with me. ... (Interruptions)...

श्री सुरेश पचौरी: और भी इश्यूज हैं जिन पर हम लोगों को बात करनी है।... (व्यवधान)

MR. CHAIRMAN: Hon. Members, when he wants to give his personal explanation, he has a right to say about his credibility for the respect of the

...he is not allowed, then it is not doing justice to him. ... Carry on ...

SHRI RAM JETHMALANI: Sir, my point is...

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SHRI VAYALAR RAVI: He himself had said when I raised this issue... For Your benefit, I will quote what I got from your statement... Will you yield for a minute? ... This appeared in a newspaper, *Indian Express* ...

MR. CHAIRMAN: Are you yielding?

SHRI RAM JETHMALANI: No, Sir. I am not ... Those of my friends who know me, who know my life, my professional career, will know that my whole life has been devoted to the establishment of judicial independence and dignity ... I am one of those who have said and I said in this very meeting on that day before the Bar that though, most of our departments of public life have deteriorated in character and to some extent, that deterioration is reflected in every other branch as well. But by comparison, our judges are still angels compared to many other departments of life. I stated this in that very meeting and Mr. Kapil-Sibal must have heard me a number of times saying so at other meetings. But, today, he has forgotten.

SHRI VAYALAR RAVI: Sir, I am on a point of ... Article 121 of the Constitution... Please have a look at it... Sir, Article 121 says, "No discussion shall take place..."

SHRI KAPIL SIBAL: Sir, publicly he says they are angels but privately he says something else...

SHRI VAYALAR RAVI: Sir, the point of order is, Article 121 says, "No

discussion shall take place in Parliament with respect to the conduct of any judge of the Supreme Court or High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the judge as hereinafter provided." Now, he is ...

SHRI RAM JETHMALANI: You are discussing about the conduct of the judges. I am not ...

SHRI VAYALAR RAVI: He is discussing about the conduct of the judiciary ... The conduct of the judiciary means, the conduct of individual judges. How can you discuss and how can you elaborate beyond the point I raised on the conduct of the judiciary? ... It is present under Article 121 of the Constitution... Sir, with your permission, I read out what he has said. He said, "Those persons are not the best persons for the job..." — he went on to say — "I do not want to get into names nor do I wish to tell you what the allegations are. But, certainly, there is good bit to be said that they are not the best persons to go to the Supreme Court." ... He said it that there are certain judges including a Scheduled Caste Chief Justice not respected by the Supreme Court. You said it, Sir. I am on that point. ... Answer that point. I want an answer from Mr. Jethmalani on that point. ...

SHRI RAM JETHMALANI: You will have an answer to every point provided you do not refer that book every five minutes. ...

SHRI MD. SALIM: Sir, please refer to page 365 of M.N. Kaul and S.L. Shakdher's *Practice and Procedure of Parliament*.

MR. CHAIRMAN: Which Edition?

SHRI MD. SALIM: It is Fourth Edition and page 365.

PROF. VIJAY KUMAR MALHOTRA: Is it his point of order ...*(Interruptions)*...

SHRI MD. SALIM: I stick to this point. Sir, first, the Member while making a personal explanation should not be allowed to make a long speech. Secondly, not to bring in the debatable issues to convert the entire issue into a debatable issue. And then it reads at page 365, "But, he cannot make a long personal explanation in the midst of a speech; for that, he must seek permission and raise the matter separately."

MR. CHAIRMAN: What is the page number?

SHRI MD. SALIM: At page 365; last but one para and last two lines. This is the ruling in 1965 in the Lok Sabha. The rule itself says that he should not bring in any debatable issues because it is only a specific question. Next para continues, it says, "He should explain only the question raised and his conduct on that question." His life-time achievements should not be explained here,

MR. CHAIRMAN: Let me sec...*(Interruptions)*... Let me sec ...*(Interruptions)*... Here it is. Is it the same? It says, "When the Member is present in the House at the time the allegations are made, he is normally permitted to make a statement by way of personal explanation at the end of the speech of the Member who makes the allegations or, if the latter gives way, immediately after the allegations are made. But he cannot make any personal explanation in the midst of a speech..." There is no speech going on ...*(Interruptions)*... No, no ...*(Interruptions)*...

SHRI MD. SALIM: Sir, please see the subsequent para also.

MR. CHAIRMAN: Now, please conclude in a short time ...*(Interruptions)*...

SHRI RAM JETHMALANI: Sir, you can set a time-limit. I will finish at least

five seconds before the time-limit ...*(Interruptions)*... May I take ten minutes ...*(Interruptions)*...

MR. CHAIRMAN: Okay, ten minutes.

SHRI RAM JETHMALANI: Sir, I will finish within ten minutes ...*(Interruptions)*... Ten minutes of uninterrupted speech ...*(Interruptions)*...

MR. CHAIRMAN: We forgot, it is already 1.12 P.M. How long shall we continue?

SOME HON. MEMBERS: Up to 1.30 P.M.

MR. CHAIRMAN: Okay, that's all right.

SHRI RAM JETHMALANI: Sir, my good friend, Mr. Sibal, with his usual tender and honesty, has made my task very easy because he at least conceded in private that I have always called judges angels. I am happy with that confession. What I say in private about anybody — unless I have said it to Mr. Kapil Sibal himself, he can only be speaking on rumours.

Now, Sir, the issue is of the constitutional position. I am a student of constitutional law. While I am willing to learn from all my friends here, I cannot possibly admit that I do not know the Constitution, as much as they do. Who has cited a single authority, a single precedent, in which a Minister is prevented from speaking in public about one of the planks of his party's manifesto? Sir, paragraph 23 of the National Agenda of the BJP expressly says, "A National Judicial Commission will be set up to look after the matter..." ...*(Interruptions)*...

Sir, here is the National Agenda of Governance ...*(Interruptions)*... But, as a person I cannot speak about the National Agenda of my party, to which I have got loyalty ...*(Interruptions)*... I am hearing a most bizarre interpretation of law from a person for whom I have a great respect. I

am surprised, when he is not in the role assigned. I am glad ...*(Interruptions)*...

SHRI KAPIL SIBAL: Mr. Chairman, Sir, I have a point of order under rule 258. You please hear me ...*(Interruptions)*...

SHRI NARENDRA MOHAN: Sir, Rule 258 deals with general discussion.

SHRI KAPIL SIBAL: Yes, yes, I am raising a general point of order, if you permit me. *Sir... (Interruptions)*

MR. CHAIRMAN: No general point of order...*(interruptions)*...

SHRI KAPIL SIBAL: Sir, the point I wish to make is that nobody disputes the items in the National Agenda ...*(Interruptions)*... There is a need for setting up a National Judicial Commission. We are not here to discuss that. Mr. Jethmalani has admitted with candour that what is reported in the newspaper is correct. Therefore, he maintains personally that the judges who are recommended are substandard. He said so. This is what he said. Now the point is, is this the Government's point of view? That is the only point. ...*(interruption)*. Everything else is irrelevant. ...*(interruption)*...

MR. CHAIRMAN: Mr. Sibal, please sit down. He is not speaking about the Government's point of view. He is giving his point of view. If, later on, Government's position is given by the Government or by the leader of the House, please do not ask him about that. *(interruption)* That is all right. *(interruption)*. Let him speak. *(interruption)*

SHRI PRANAB MUKHERJEE: We submit, Mr. Ram Jethmalani said, he is not contradicting. I will myself respectfully submit, consult the proceedings of the House and what the Prime Minister said on the floor of this House. Thereafter you decide yourself whether it is a contradiction of Mr. Ram Jethmalani's statement or not. I am not concerned with what happened in the other House.

MR. CHAIRMAN: That is right.

SHRI PRANAB MUKHERJEE: So far as the Rajya Sabha is concerned, if I remember correctly and you can check up the records and haul him up, the Prime Minister said that it was his personal view, it was not the view of the Government. My submission is, please allow him a personal explanation whether as a Minister, he can air his personal view which has been contradicted by the Prime Minister on the floor of the House. In newspaper item PMO has said regarding judiciary, that it is the view of Mr. Ram Jethmalani, it is his personal view, it is not the view of the Government. If it is not a contradiction by the Government, then what else is a contradiction by the Government? Sir, through you, I would like to know about this from the Govt. Let him give his personal explanation on these two points.

MR. CHAIRMAN: The points raised by Mr. Pranab Mukherjee are very valid. I was present when the Prime Minister said, 'they are your personal view, not the Government's. So, now what he has raised.. *(interruption)*

SHRI RAM JETHMALANI: The question raised is very valid. Am I a person to deny the validity of what he has said? *(interruption)*. Now hear the answer. At that time when the matter was raised in both the Houses, I was not present. I was called after the Prime Minister had made his statement. When the Prime Minister heard my version of that, he got up and said, 'now that you have heard the explanation, the question is...*(interruption)*.

MR. CHAIRMAN: Mr. Ram Jethmalani...*(interruption)*. The problem here is what the hon. Members of this side are raising is a very valid point — whatever the Prime Minister said in the other House was not said in this House.

SHRI PRANAB MUKHERJEE: I agree.

MR. CHAIRMAN: So, the question is — the way the Prime Minister said — we

do not know, we do not generally refer to the other House. That satisfaction has not been expressed in this House either by him or by the Government. That is the main thing.

SHRI RAM JETHMALANI: Sir, you are absolutely right, so are the hon. Members. If the whole idea is to make the Prime Minister come and repeat things here, we will ask either the Prime Minister or the representative of the Prime Minister, the Leader of the House is here — he will make some statement. (*interruption*). There is no problem on that, (*interruption*). Now, Sir, all this time will not be debited to my account. (*interruption*). Sir, if a national issue of importance is to be discussed and we have a point of view, why does the present method require to be substituted by Press another? It is imperative that the inquisitive Press wants to know the reasons; the politicians want to know the reasons; the ordinary people want to know the reasons. Why do you want a method which the Supreme Court devised? Mind you, it was devised substantially as a result of my advocacy! appeared in the Supreme Court along with other distinguished lawyers and persuaded the Supreme Court to hold that the executive cannot be trusted, it must be a power with the judiciary.

My friend, Mr. Kapil Sibal, would know that it is so. I argued that independence of the judiciary required that the power must be taken away from the executive. But now, in regard to the power for which I canvassed only three years ago, or, four years ago, if I, myself, am now requesting a change, I have to give some reasons.

The procedure requires a change because the very procedure requires that there should be consultation. 'Consultation' has been defined to be — at least, by one Chief Justice — consultation with five senior-most judges of the Supreme Court. Now, this has become a debatable issue — about consultation provided for even in that procedure. Some say: 'No;

two'. Some others say: 'It should not be two; it should be five'. This is one debatable issue.

The second debatable issue which has arisen and which had created a deadlock is that when the Chief Justice consults two judges, or, five judges, as the case may be, is he bound to communicate the views of these two or five judges to the Government to that the Government would know what the views of these two or five judges are, or, should he only say 'I have consulted the judges'. Some questions have arisen.

I am reliably informed — on this, there can be no contradiction — if you put a question on this point, the Law Minister would answer it — that a deadlock has arisen. It is not that I am only saying this. It is given in the Government papers. A petition has been filed in the Supreme Court — 371 of 98 — Mohan Lai Gupta *versus* the Union of India. It shows clearly that a deadlock has arisen. The Government is not making appointment. Now, I have to defend the action of the Government.

Why is this deadlock? The deadlock is that even the consultation thing prescribed in the procedure itself by the Supreme Court is not being followed. If the consultations procedure is not followed, all the recommendations become questionable. (*Interruptions*) I am not yielding. (*Interruptions*) I am not answering Mr. Kapil Sibal. (*Interruptions*) I will finish in one more minute.

SHRI MD. SALIM (West Bengal): Sir, on a point of order. (*Interruptions*) He cannot say that he is not yielding. (*Interruptions*)

MR. CHAIRMAN: What is your point of order?

SHRI MD. SALIM: Sir, I invite your attention to the Fourth Edition of Kaul and Shakhder — page 367. There have been earlier rulings both in the Lok Sabha and in the Rajya Sabha. As per this, personal explanation should be restricted to the specific matter raised, the

specific question raised. It should not be utilised by the Member who is making the personal explanation to deliver a speech. It should be a restricted explanation and only the allegation levelled by another Member should be answered. Please refer to the ruling given by the Speaker of the Lok Sabha. This is quoted on page 367 of Kaul and Shakhder Fourth Edition.

Sir, I want your ruling on this. (*Interruptions*) I want a ruling by the Chair; not by the monitors. (*Interruptions*)

PROF. VIJAY KUMAR MALHOT-RA: All these members wanted Mr. Jethmalani to be called to reply to their points. You asked me to go and bring him here. When he is brought here and he is replying to the points, they say; 'Don't make a speech'. This is not the way. (*Interruptions*)

MISS SAROJ KHAPARDE: (Maharashtra): Nobody from this side asked for Mr. Jethmalani to be called to the House. (*Interruptions*)

PROF. VIJAY KUMAR MALHOT-RA: Yes.

MISS SAROJ KHAPARDE: No. (*Interruptions*)

SHRI PRANAB MUKHERJEE: We did not. (*Interruptions*)

MR. CHAIRMAN: What the hon. Member, Mr. Salim, said is correct. This is what is said in the fourth Edition of Kaul and Shakhder — page 367. It says: 'A member who desires to make a personal explanation should do so at the earliest opportunity; he should restrict himself to the particular matter and not to seek to reply to the debate or the criticism of a general nature levelled against him; a personal explanation cannot be utilised for making another speech'.

That is correct. Mr. Jethmalani, on the issue which has been raised, if you have to make your explanation, please limit yourself to that only.

SHRI RAM JETHMALANI: Sir, the nearer I am getting to the explanation, the more restive they are becoming.

SHRI NILOTPAL BASU: Sir, another point of order. He should make his personal explanation as an individual Member and not as a part of the Government. Please refer to the last point he was making. You can check the record. He said; I have to defend the position of the Government'. He said: 'I have to definitely defend the position of the Government'. He cannot wear two caps at the same time; one, that of a Minister; the other, that of an individual Member. (*Interruptions*)

MR. CHAIRMAN: About this point, whether one is a Minister or one is an ordinary MP, one can defend.

SHRI RAM JETHMALANI: If my friends will now permit me three more minutes, I will finish.

First, I merely said, "The consultative process not having been followed, the recommendations are questionable." The trouble is that some people just pick up a newspaper. My speech will contain 100 words. The newspaper summarises it to only 10 words. My whole speech has been videotaped, and Mr. Sibal can find it out from the Bar.

Second, Now I am coming to the issue of constitutional right. So long as the Cabinet or the Government has collectively not taken a decision on a particular point either of policy or of an administrative measure, every member of the Cabinet is free to exercise the constitutional right of free expression, and there is no bar whatsoever under any system of constitutional law. It is a matter between the Prime Minister and that Minister. If the Prime Minister does not like his statement, it is for the Prime Minister to take action. It is no part of anybody else's business, other than the Prime Minister, to tell him why he has allowed the Minister so much freedom.

In this particular case, I did say that since the proper procedures were not being followed, a serious deadlock had arisen. Therefore, we must try now the third method — the second method which I have advocated has failed — of appointment of a Judicial Commission, on which not only should the Government be represented but my friend, the Leader of the Opposition should also be represented. Hereafter, he will have a voice in making appointment of the Supreme Court Judges, transferring them and removing them from office. I have acted in Public interest.

SHRI KAPIL SIBAL: Mr. Jethmalani, in "THE INDIAN EXPRESS", has alleged, and I quote:

"Judges at the highest level were involved in the lesser pursuit of propping up unworthy appointments to the Bench."

This is a far cry from the explanation that he is now seeking to give in the House.

I want Mr. Jethmalani to tell us whether he has sent notice to the *nev/s*-paper to effect that this does not reflect what he has said because now his explanation is that he never said so and that what he said was the since the procedure of appointment was not properly followed, as envisaged, by the judgement and as envisaged by past practice, the appointments were substandard. His explanation is entirely different from what he has categorically said here. Clearly, he wants to get out of the statement. Clearly, he is going back on what he has said. That must be placed on the record of this House.

SHRI RAM JETHMALANI: One more sentence, and I will finish. First of all, there is no question of any judge belonging to a Scheduled Caste or a Scheduled Tribe at all being involved in this case.

Second, nobody has involved a Scheduled Caste or a Scheduled Tribe Judge in this case. None is involved in it.

If you want to cast unnecessary aspersions on anybody, you are welcome to do so. None has been referred to.

Lastly, I wish to say to the House that I am not supposed to discuss the conduct of a judge in this House.....(*Interruptions*)...

SHRI KAPIL SIBAL, Sir, it is defamatory. It must be expunged from the record of the House. ...(*Interruptions*)...

MR. CHAIRMAN: Please limit yourself to what you have to say in the

House. Anything which you want to talk outside the House, should not form part of this.

SHRI GURUDAS DAS GUPTA: Sir, I have a point.

My point is that we want to know from the hon. Minister whether he has said something which tantamounts to casting aspersions on the proposal of appointment made by the Chief Justice.

That was the moot point. ...(*Interruptions*)... I am not yreltiing. I have carefully listened to you. I have never interrupted you. I believe every Member has a right to speak on his own without being interrupted. But, at the end of the speech, I must confess what he has said strengthens my suspicion that his remark has been derogatory; and it is unbecoming of a member of the Government and unbecoming of a member of this House.

SHRI SANGH PRIYA GAUTAM: Sir, I am on a point of order. There are judgements of the Supreme Court. Some Judges have-passed remarks against their colleague Judge belonging to the Scheduled Caste, Justice K. Ramaswamy. Whatever he has said, they used to deliberately overrule it. Is it not insult to the Judges belonging to the Scheduled Caste? This is my point of order.

MR. CHAIRMAN: This time, this point does not arise out of this.

Now it is 1.30 P.M.

SHRI RAM JETHMALANI: Am I supposed to be in attendance in the afternoon?

MR. CHAIRMAN: Now, I will adjourn the House for lunch for one hour. We will meet at 2.30 P.M.

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

The House re-assembled after lunch at thirty-three minutes past two of the clock, The Deputy Chairman in the Chair.

SHRI JOHN F. FERNANDES: Madam, the House was adjourned abruptly. Mr. Jethmalani has said that the Government is free to make a statement on his mention. So, I want a response from the Government. I want to know whether the Government will respond to his statement made in the House. He has said that the Leader of the House or the Prime Minister can react. Let there be a response from the Government.

SHRI KHAN GHUFRAN ZAHIDI: I support him. Madam. *(Interruptions)*.

THE DEPUTY CHAIRMAN: The Law Minister is *here*. *(Interruptions)*. But he does not know what has happened.

SHRI JOHN F. FERNANDES: The House was abruptly adjourned for lunch. *(Interruptions)*

THE DEPUTY CHAIRMAN: How does the Law Minister know what has happened in the Rajya Sabha? *(Interruptions)*

श्री नरेन्द्र मोहन: उपसभापति महोदय, जेठमलानी जी ने जो भी बयान दिया ...*(व्यवधान)*... सदस्य के रूप में दिया है। सरकार के रूप में नहीं दिया है। अतः उस पर कोई टीका-टिप्पणी नहीं होनी चाहिए। उन्होंने यह कभी नहीं कहा कि सरकार ...*(व्यवधान)*...

श्री खान गुफ्रान जाहिदी: जो नरेन्द्र मोहन जी कह रहे हैं बिल्कुल ठीक कर रहे हैं, वही सही है। उन्होंने अपना पर्सनल ऐक्सप्लेनेशन किया है। ...*(व्यवधान)*... और यह कहा कि गवर्नमेंट अपने कमेंट्स के लिए फ्री है। *(व्यवधान)*...

प्रो. विजय कुमार मल्होत्रा: महोदय, यह स्पेशल मेंशन था। स्पेशल मेंशन में कोई मिनिस्टर रिसपाण्ड करे, यह जरूरी नहीं है। सुबह इस पर डेढ़ घंटा बहस चली। इसमें इतना टाइम लग गया है। इसके बाद इस मामले को ...*(व्यवधान)*...

श्री खान जाहिदी: मिनिस्टर का रिसपाण्ड होना बहुत जरूरी है। हमने तो ऐक्सप्लेनेशन गवर्नमेंट से मांगा है...*(व्यवधान)*...

THE DEPUTY CHAIRMAN: We have already spent an hour on that. *(Interruptions)*.

SHRI JOHN F. FERNANDES: The Minister has said that the Government is free to make a statement. The Prime Minister or the Leader of the House can make a statement. *(Interruptions)*.

श्री मोहम्मद सलीम: महोदय, हमारे सदस्यों का यह कहना है और मेरा भी यह कहना है कि जेठमलानी जी के ऐक्सप्लेनेशन से हमारा कोई ताल्लुक नहीं है। उन्होंने अपना पर्सनल ऐक्सप्लेनेशन दे दिया, चेयरमैन ने उनको अलाऊ किया था। दिक्कत यह हुई कि उन्होंने ऐज़ ए मैनबर अपनी स्टेटमेंट की। गवर्नमेंट के बारे में भी हमारे बहुत से सवाल थे। इस सरकार से प्रॉब्लम यह है कि एक मंत्री का जो डिमार्टमेंट है, दूसरा मंत्री उसके बारे में कहता है।

{شری محمد سلیم: مہودیہ ہمارے سڈسیوں کا یہ کہنا ہے اور میرا بھی یہ کہنا ہے کہ جیٹھ ملانی جی کے ایکسپلینیشن سے ہمارا کوئی تعلق نہیں ہے۔ انہوں نے اپنا پرسنل ایکسپلینیشن دے دیا۔ چیئرمین نے انکو الاؤ کیا تھا۔ دقت یہ ہوئی کہ انہوں نے ممبر کی حیثیت سے اپنی اسٹیٹمنٹ کی۔ گورنمنٹ کے بارے میں بھی ہمارے بہت سے سوال تھے اس سرکار سے پرابلم یہ ہے کہ ایک

منتري کا جوڈیپارٹمنٹ ہے۔ دوسرا منتري اسکے بارے میں کہتا ہے۔

जजिज का अपाइंटमेंट ला मिनिस्ट्री का मामला है उस पर अरबन डेवलपमेंट मिनिस्टर बोल रहे हैं, कावेरी का मामला है तो डिफेंस मिनिस्टर बोल रहे हैं, फारेन अफेयर्स का मामला है तो एग्रीकल्चरल मिनिस्टर बोल रहे हैं। गवर्नमेंट को आकर के इसके बारे में अपने स्टैंड को क्लियर करना चाहिए।... (व्यवधान)

{ شری محمد سلیم ”جاری“: ججز کا اپائنٹمنٹ لامنسٹری کا معاملہ ہے اس پرارون ڈیولپ منسٹریول رہے ہیں۔ کاویری کا معاملہ توڈفینس منسٹریول رہے ہیں۔ فارن افیئرز کا معاملہ ہے توایگریکلچر منسٹریول رہے ہیں۔ گورنمنٹ کوآکر کے اس کے بارے میں اپنے اسٹینڈ کو محایر کرنا چاہئے۔۔۔ ”مداخلت“۔۔۔ }

श्री नरेन्द्र महोन: विषय यह नहीं है। विषय तो अकारण उठाया जा रहा है।... (व्यवधान)...

श्री मोहम्मद सलीम: हाउस के अन्दर जब कहते हैं कि क्लेक्टिव रेसपांसिबिलिटी है ... (व्यवधान) ... मिनिस्टर पास कर देते हैं ... (व्यवधान) ... फ्री फार आल, फ्री फार आल चल रहा है।... (व्यवधान)...

{ شری محمد سلیم: ہاؤس کے اندر جب کہتے ہیں کہ کلیکٹیوریسپاسیبلٹی ہے۔۔۔ ”مداخلت“۔۔۔ منسٹریاس کر دیتے ہیں۔۔۔ ”مداخلت“۔۔۔ فری فار آل۔ فری فار آل چل رہا ہے۔۔۔ ”مداخلت“۔۔۔ }

†[]Transliteration in Arabic Script

THE DEPUTY CHAIRMAN: I understand the problem. If this is a matter of law, I feel that the Law Minister is a competent person to speak about it. That is why there is a division of labour. Otherwise, anybody can speak anything. But whatever is your worry, concern, agony or complaint, that is being registered by the Government. The Law Minister is there. Mr. Barnala is there. They will convey your feelings to the Prime Minister. Just now, neither Mr. Barnala nor the Law Minister can react to it because the Ministers are confined to their Departments. This is the job of the Prime Minister who assigns various duties and Departments to the Cabinet. So, these people cannot say anything.

Nobody can say ammgng. They may express their personal opinion. But we do not want their personal opinion any more. श्री रमा शंकर कौशिक ।

Atrocities on minorities and Violation of Human Rights in the State of U.P.

श्री रमा शंकर कौशिक (उत्तर प्रदेश): उपसभापति महोदया,...

श्री उपसभापति: कौशिक जी, आप बोल रहे हैं। मैं एक बात कह दूँ, मैं आपसे ही नहीं पूरे हाउस से कह रही हूँ कि स्पेशल मेशन होने के बाद हमको एनवायरनमेंट और फारेस्ट मंत्रीलय को डिसकस करना है। आप कृपा संक्षेप में बोलें और कोई कंट्रोवर्सी न करें।

श्री रमा शंकर कौशिक: उपसभापति महोदया, मैं आपके माध्यम से इस सदन के और इस सरकार के विशेष रूप से माननीय गृह मंत्री जी के संज्ञान में यह तथ्य न केवल आतंक के साये में जी रहे हैं बल्कि मौत के साये में जी रहे हैं। महोदया, आए दिन वहां कार्यकर्ताओं की, विशेष रूप से मुस्लिम कार्यकर्ताओं की हत्याएं हो रही हैं। अभी एक जुलाई को गुलावटी जिला बुलन्दशर में एक कार्यकर्ता श्री जफर कुरैशी की पुलिस के द्वारा गोली मार कर के हत्या कर दी गई इसी प्रकार से उससे पहले यामीन कुरैशी को गौतम बुद्ध नगर पुलिस ने फर्जी मुठभेड़ में मार डाला और इकबाल मेवाती को गाजियाबाद पुलिस ने फर्जी एनकाउन्टर में मार डाला, इतना ही नहीं, अनेक ऐसे मुस्लिम साथियों और