

direct the Government to come up to the House before the House goes into the recess and tell us that the opinion of the House will be taken into consideration and the Government will not default. Let us have that direction. The hon. Minister of Defence is here. You kindly make a direction to the Government.

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY); I cannot make a direction. But I can ask whether anybody from the Government wants to react on this. I can say that. (*Interruptions*). The Government will look into the matter and see that the funds are allocated.

SHRI GURUDAS DAS  
GUPTA: Allocated on time.

DR. BIPLAB DASGUPTA: the money should be allocated on time.

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY): Okay.

Now, Bill for Introduction. The Navy (Amendment) Bill, 1997.

#### **BILL INTRODUCED The Navy**

##### **(Amendment) Bill, 1997**

रक्षा मंत्री ( श्री मुलायम सिंह यादव ) : उप-सभाध्यक्ष महोदय, मैं प्रस्ताव करता हूँ कि नौसेना अधिनियम, 1957 का और संशोधन करने वाले विधेयक को पुरःस्थापित करने की अनुमति दी जाए।

*The question was put and the motion was adopted.*

श्री मुलायम सिंह यादव : श्रीमान् मैं विधेयक प्रस्तुत करता हूँ।

#### **RE. PROPOSAL TO SET UP NATIONAL JUDICIAL COMMISSION TO REGULATE APPOINTMENTS OF JUDGES**

श्री नरेन्द्र मोहन (उत्तर प्रदेश) : उप-सभाध्यक्ष जी, मैं आभारी हूँ कि आप ने मुझे इस समस्या की ओर ध्यान दिलाने की अनुमति दी। महोदय आज देश को आजाद हुए 50 वर्ष हो गए हैं, पर हम तय नहीं कर पा रहे हैं कि हमारे यहां की जो हायर जूडिसियरी है, उस की नियुक्ति की प्रक्रिया क्या सही है या गलत है?

महोदय, इस विषय को लेकर एक लंबे अरसे से विवाद चल रहा है। और तो और विवाद यह भी हो गया है कि हमारी जो न्यायिक प्रक्रिया वर्तमान में हैं, उस में विश्वसनीयता का अभाव भी बताया गया है। यह विवाद अब सर्वोच्च न्यायालय और वर्तमान भारत सरकार के बीच में पैदा हो गया है और अफसोस की बात यह है कि सरकार की सोच यह है कि हायर जूडिसियरी की नियुक्ति का अधिकार केवल एक्जीक्यूटिव को ही मिलना चाहिए और सर्वोच्च न्यायालय का कहना है कि अगर ऐसा हो गया तो एक तरह से बड़ी "एनार्की" आ जाएगी। महोदय, मैं इस बारे में यहां सुप्रीम कोर्ट के जजमेंट को पढ़ना चाहूंगा:-

"There cannot be an independent judiciary when the power of appointment of superior judges vests in the executive." यह व्यू है सर्वोच्च न्यायालय का जबकि सरकार का कहना यह है कि यह बदलना चाहिए और इस के लिए कोई और व्यवस्था लाई जानी चाहिए। अब यह विवाद इतना गंभीर हो गया है कि एक ओर तो सर्वोच्च न्यायालय यह कह रही है। कि सुप्रीम कोर्ट के चीफ जस्टिस के सारे अधिकार वैसे ही हैं जैसे कि पोप को प्राप्त हैं। उसे इस प्रकार के अधिकार प्राप्त हैं और उस के दिए हुए निर्णय पर एक्जीक्यूटिव अपनी कोई राय व्यक्त नहीं कर सकती।

महोदय, अगर जजों की नियुक्ति के मामले में सर्वोच्च न्यायालय की यह अवधारणा है और सरकार की अवधारणा उस के विपरीत है तो क्या होना चाहिए, यह निर्णय सदन को करना चाहिए। महोदय, इतना ही नहीं, हमारे सर्वोच्च न्यायालय के मुख्य न्यायाधीश अहमदी साहब का कहना है कि:-

"In all methods of judicial selection employed in different countries, the executive has a pre-eminent role to play."

अब सुप्रीम कोर्ट के मुख्य न्यायाधीश यह कहते हैं कि:- "The executive must have a pre-eminent role to play."

और जो एक बहुमत से जजमेंट हुआ है, उसकी वह ताईद नहीं करता, उसका मत यह है कि सर्वोच्च न्यायालय के पास ही यह अधिकार रहे।

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY): Narendra Mohan Ji, you cannot make a speech.

श्री नरेन्द्र मोहन : उप-सभाध्यक्ष जी, यह बहुत

गंभीर मसला है। अगर न्यायाधीश के मामले में भी  
...(व्यवधान)...

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY): Every issue is an important issue. Don't make a lengthy speech. Try to be brief.

SHRI NARENDRA MOHAN: I am going to be very brief, Sir. But in the matter of appointment of senior judiciary, if the House is not taken into confidence, then perhaps, it is going to be a wreckless thing, the Government must take Parliament into confidence as to what the policy regarding appointment of senior judiciary is. I would like to know whether the Government is really serious in having a National Judicial Commission. If that is so, what is going to be the constitution of the National Judicial Commission? Who are going to be the members of the National Judicial Commission? Are they going to associate the Leader of the Opposition or the senior leaders in that Commission? There are many more important points which must be brought to the notice of the House. The point is, when the judicial activism has been brought to our notice, a point as to who is the appointing authority for the senior judiciary, has been raised time and again. I would like to know whether it is the Executive or the Supreme Court "Judges.

यह मामला इसलिए और बढ़ गया कि अभी हाल में तमिलनाडु में एक जज की नियुक्ति हुई और उसको लेकर के यह कहा गया, हमारे यहां का जो ज्यूडिशियल पैनल है, उससे भूल हुई है व जिस जज को नियुक्त किया गया है, उसका चरित्र संदिग्ध है। कमेटी आफ ज्यूडिशियल एकाउंडेबिलिटी ने साफ-साफ कहा कि चेन्नई के उच्च न्यायालय में जिसकी नियुक्ति की गई, वह ऐसा व्यक्ति है जिसको दो बार वहां के न्यायालय ने सजा दी थी।

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY): Mr. Narendra Mohan, you know the procedure. As far as Zero Hour submissions are concerned, the hon. Members always try to be very brief. Therefore, don't make

a speech. You try to drive home your point in a meticulous way.

SHRI NARENDRA MOHAN: I would like to submit one more point which is very important. There is a judgement of the Supreme Court which categorically states that when the selections for the judicial service of the State are being made... (*Interruptions*).

SHRI NILOTPAL BASU (West Bengal): Sir, one Member cannot monopolise the whole proceedings. (*Interruptions*).

SHRI NARENDRA MOHAN: Sir, I am not trying to monopolise the whole proceedings. I am going to give some information. (*Interruptions*).

SHRI NILOTPAL BASU: Mr. Narendra Mohan, I am not asking you. I am addressing the Chair. (*Interruptions*).

SHRI NARENDRA MOHAN: Sir, it is such an important thing... (*Interruptions*).

THE VICE-CHAIRMAN (SHRI V. NARAYANASWAMY): Mr. Narendra Mohan, if this is an important issue, there are so many others ways to give notice and discuss it. In fact, Zero Hour mention is meant to draw the attention of the Government to a specific issue.

SHRI NILOTPAL BASU: Sir, this is not a debate. (*Interruptions*).

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY): Mr. Nilotpal Basu, he is going to conclude. Kindly take your seat.

SHRI NARENDRA MOHAN: Sir, I am going to conclude within two minutes. I am going to point out what the Supreme Court judgement says. It says: "In the appointment and selection of senior judiciary, the integrity and the character of the honest judges must be taken into consideration." It further says: "The democratic policy of the State itself would be in a serious peril if the honest judges are not appointed."

Now, even after this judgement, how has it happened? At Chennai, a person has been appointed a Judge of the High Court without taking into consideration this very basic fact. This is a very serious matter and I request you, and through you, this House, to consider this issue. If the dispute between the Supreme Court and the Executive remains, who is the final appointing authority?

SHRI SATISH AGARWAL  
 (Rajasthan): Sir, I also associate myself with the sentiments expressed by my colleague, Shri Narendra Mohan.

श्री गोविन्दराम मिरी ( मध्य प्रदेश ) : मैं इनको एसोसिएट करता हूँ।

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY): Everybody cannot get up like this. Some names have been given by some hon. Members. I have to accommodate them. Shri Surinder Kumar Singla.

SHRI SURINDER KUMAR SINGLA  
 (Punjab): Sir, I differ with my esteemed colleague, Shri Narendra Mohan Ji. He said that after fifty years, the issue has not been settled. The issue has, in fact, been settled. It was the nine-member Bench of the Supreme Court which asserted the power of the Legislature. It was really upsetting the whole constitutional scheme of things. The Supreme Court took upon itself the task of appointment. It was a settled issue. It was for the first time in 1993 that the Supreme Court by its judgment took upon itself the power of appointment and asserted the power of the Legislature. This was the first point that I wanted to make. Secondly, the present Chief Justice of the Supreme Court has said that nowhere in the world the Executive is denied a say in the sphere of appointment. In fact, the Executive is one of the organs of the State which decides appointments of judges. But it is being denied this power today. The third point, and, of course, a very relevant one, is that if we continue to have the present system, then you will have so

many problems. For example, if in a period of ten years you have 20 judges and if those 20 judges appoint the other judges, then the evil of nepotism, the evil of favouritism and the evil of personal choices would come up. Over a period of ten years if twenty people occupy the offices and do the selection of judges for the next 50 years, that would be more dangerous. What India needs is an independent judiciary. Now the question is: Who will select them? The best way is that the old system of appointment of judges be restored and let the Supreme Court not interfere and let it not enjoy the power where this particular Act is not justiciable. The powers of the legislature cannot be justiciable in the Supreme Court.

श्री संजय निरुपम (महाराष्ट्र) :  
 उपसभाध्यक्ष महोदय, जजों की नियुक्ति के लिए एक साफ-सुथरी और क्लियरकट पालिसी होनी चाहिए और एक पालिसी के तहत मेरी यह मांग है, हम अपनी पार्टी की तरफ से यह मांग यहां पर रख रहे हैं कि ऐक्जीक्यूटिव को सारे अधिकार मिलने चाहिए जजों की नियुक्ति के लिए। इससे फायदा यह होगा कि आज जिस तरह से हमारी अदालतें निरंकुश होती जा रही हैं और जिस तरह से भ्रष्टाचार बढ़ता जा रहा है, उस पर कंट्रोल करने के लिए, उस पर नियंत्रण स्थापित करने के लिए ऐक्जीक्यूटिव के पास कुछ पावर्स होंगी।

महोदय, दूसरी बात यह है कि आज जो नियुक्ति की स्थिति है, जो सिलसिला है, हमारे पास जो प्रक्रिया है, वह अगर सहीद होती तो हमारे तमाम हाई-कोर्ट्स में और सुप्रीम-कोर्ट में जजों की पोस्टें खाली नहीं रहतीं। अभी हमारे मुंबई हाई-कोर्ट में जजों के 12 पद रिक्त पड़े हैं।

महोदय, तीसरी बात यह है कि मैंने ऐसा सुना है कि यह सरकार जजों की नियुक्ति के लिए कोई बिल लाने जा रही हैं इसी सत्र में, संभवतः एक महीने बाद। मैं मांग करता हूँ कि वह बिल तत्काल लाया जाए और उस बिल पर विचार करके उसे पास किया जाए। धन्यवाद।

SHRI SATISH AGARWAL  
 (Rajasthan): Thank you, Mr. Vice-Chairman. I have nothing to say at the moment because the opinion seems to be divided on this issue, but I stand by the Judgment of the Supreme Court delivered by a nine-Judges bench in 1993

and I think, that is a very appropriate Judgment and in this present political climate if we go away from that Judgment, I think it is on account of certain judicial activism, that the Parliament is thinking on those lines. It is not fair. So, I support Mr. Narendra Mohan and do not agree with the contention of Mr. Surinder Kumar Singla.

**RE: SECRET BALLOT FOR  
RECOGNITION OF TRADE UNIONS  
AND PARTICIPATION OF WORKERS  
IN MANAGEMENT**

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY): Mr. Jibon Roy, please be brief because there are names of so many Members on this issue. Other Members can say only one sentence.

SHRI JIBON ROY (West Bengal): Sir, it seems that the Government is backing out from its commitment to labour on the matter of recognition of trade unions through secret ballot and participation of workers in management. Mr. Vice-Chairman, Sir, this Government is an alliance of various parties. Obviously, the Common Minimum Programme represents the , desires and aspirations of various economic classes of our society. So far as labour is concerned, only on two issues the Government has made the commitment, that secret ballot will be given to workers to determine the collective bargaining agency and that workers will be involved in the production system. There were only two demands. Now the Government is bringing in the demands of all the other classes also. They are going forward with the issue of liberalisation and globalisation with a much greater speed than the previous Government, but they are silent so far as labour's demand is concerned. These two issues have no financial commitment and they do not affect the vision and approach. In reply to my Unstarred Question No. 1592 on 10th March—I had asked whether the

Government had committed, through the Common Minimum Programme, that for the purpose of determining the collective bargaining agency it would introduce the system of secret ballot; if so, the steps taken so far to implement the secret ballot, and by when the Government wishes to complete the process—the hon. Labour Minister said, "Certain central trade union organisations have submitted a memorandum to the Prime Minister urging the Government to frame suitable legislation for recommendation of trade unions by secret ballot".

THE VICE-CHAIRMAN (SHRI V. NARAYANASAMY): You kindly conclude.

SHRI JIBON ROY: The Government did not make any commitment. It is there in the Common Minimum Programme. The Government is saying that it is the demand of the trade unions. The Minister says, "The issue of determination of representative character of trade unions by secret ballot has been referred to a bipartite committee of trade unions." It was a commitment to the nation. It was a commitment to the entire labour. It was not a commitment to the trade unions. It involves the industrial productivity of the country. It involves the industry. (Time bell)... Only one minute more, Sir. Our industrial productivity cannot be improved, whether there is reform or whether there is no reform, unless there is labour democracy in the factories. Now the workers are being reduced to slaves of the system and also of trade union leaders. Government may come and go. But the trade union leaders and their affiliations do not change sometimes for 30 years or 40 years. They continue. It cannot happen. I appeal to the Government, through you, Sir, to make a statement in this House on the issue of implementing the system of secret ballot.

SHRI DIPANKAR MUKHERJEE (West Bengal): It is a very important point. The Government cannot go back on its words given in the Common Minimum Programme.