

उपसभाध्यक्ष (कुमारी सरोज खापरडे): खलप साहब यहां बैठे हुए हैं। माननीय सदस्यों ने जो अपने विचार सदन में आपके सामने रखे हैं, उनका नोट कर दीजिएगा और कर्जन मिनिस्ट्री को पास-आन कर दीजिएगा और उनको कहिएगा कि इस पर कार्यवाही करें।

# I. STATUTORY RESOLUTION SEEKING DISAPPROVAL OF THE SUPREME COURT AND HIGH COURT JUDGES (CONDITIONS OF SERVICE) AMENDMENT (THIRD) ORDINANCE, 1996

## II. THE SUPREME COURT AND HIGH COURT JUDGES (CONDITIONS OF SERVICE) AMENDMENT BILL, 1996

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): I would like to take up the Statutory Resolution and the Supreme Court and High Court Judges (Condition of Service) Amendment Bill, 1996 together. The time allotted for this discussion is two hours. Shri Ram Jethmalani.

SHRI RAM JETHMALANI (Maharashtra): Madam Vice-Chairperson, I move the following Resolution:—

“That this House disapproves of the Supreme Court and High Court Judges (Conditions of Service) Amendment (Third) Ordinance, 1996 (No. 29 of 1996) promulgated by the President on the 21st June, 1996.”

One really won't take long on this because when it comes to brass-tacks, it is again a non-controversial measure. But there are a few things which are required to be said.

Madam Chairperson, I would again take this opportunity to reiterate what I had said a couple of days ago in this House that this is

another illustration of the misuse of Ordinance making power. All that this Ordinance does is to enhance the quantum of petrol to be consumed by Judges and their sumptuary allowance. They have remained static from 1986, why couldn't this be achieved by a regular Bill brought before the House? Why was it necessary to pass an Ordinance unless you get some reports that Judges have been marooned some- where due to lack of petrol in their cars and none of them could move or they couldn't hold an evening party? I wish to protest against this undemocratic habit of passing Ordinances. Then presenting the House with *faith accompli* measures and then asking us to convert these Ordinances into laws. It is an undemocratic measure. It is against the dignity and sovereignty of Parliament. I think somebody will give us an assurance that the Ordinance-making power would not be used for these purposes. When Ordinance-making power is misused for the purpose which is good, the trouble is that it is a worse situation because then we get used to that bad habit. Once we get used to that bad habit, the protest against that bad habit and its manifestations completely disappear from the body politic.

Now, so far as the substance of this Bill is concerned, I think it is a move in the right direction. But again it is a miserly and peculiar kind of a change in the emoluments of Judges. Now you have raised it from 150 litres to 250 litres; otherwise, in the morning the poor Judge when he leaves his house, he has to find out that he should go by the shortest possible route, the most polluted route. He cannot even make a diversion. Now he would be able to go by a healthier route; and in the evening he would be able to get a drive to a non-polluted place, where he can do some of his Constitutional works in the evening and get ready for the next day's arduous work. This is a change you have made. You have asked the Judge now to do a little bit of socialisation. You have increased the sumptuary allowance so that he can call on his friends and relatives and sometimes visit dignitaries, visit Judges. I hope some members of the Bar can go to his house for an evening.

This is all that you have done for the Judge. Now, it is all for the good. It does certainly make the life of a Judge a little easy. Madam, while putting my name again to this Statutory Resolution of disapproval, I want to use this opportunity for bringing to the attention of the Government and this House some very cardinal principles which have to be looked into, which have to be worked out in the matter of allowances, perks and salaries to our Judges. The British gave us one great principle that a Judge must be kept in such a comfort that he doesn't have any temptation to look for any financial assistance or any other kind of assistance from anybody else, who might turn out to be a litigant, one never knows. Bearing this wholesome principle in mind, ..... the pre-independence salary of High Court Judges used to be Rs. 4,000/- and that continued up to 1948 and that continued thereafter. The value of the rupee and the value of the politician went on falling, but the price of everything went on increasing. Ultimately, corruption went into every field and percolated, to some extent—fortunately only to some very small extent—even to the judiciary. I am glad that something had been done in the past to increase the basic salaries of Judges. But, Madam, I would say that things are not yet as happy as they have to be. If you bear in mind that Rs. 4,000/- for a British Judge as well as an Indian Judge was considered a decent salary in the pre-Independence time, today, considering the fall in the value of the rupee and the increase in the cost of living, the basic salary of the Judge should at least be Rs. One lakh, if not more. The Judges and the Law Commission have been asking and pleading for more and more. But, unfortunately, we have not been able to increase their basic salaries. The perks are reasonably all right today. They do call for a little revision here and there. But it is the basic salary which still irks.

This House and this Government—it calls itself a United Front Government which represents so many people and so many parties—must remember, first of all, that a new phenomenon has taken place, namely, the rise of regional parties. These regional parties are

absolutely jealous about such elements of federalism as exist in our Constitution. They want to preserve autonomy! Now, in a written constitution, if elements of federalism are to be preserved, who can do it except the incorruptible, independent, Judge who is not under the influence of the technical "appointing authorities" at the Central level. Today, let us understand, the Judge is the only protector of the human rights of the weak against the strong, of the worker against the rapacious capitalist, of the poor man whose fundamental rights are taken away. Unless you recognise that importance of the Judge, you are not going to be able to do justice to the Judge and you are not going to be able to do justice to the society of which the Judge is supposed to be the protector. Madam, let us not try and push things under the rug. Let us bear in mind today the vast disease from which the Indian body-politic is suffering. For this, you do not need my word. Read the manifestos of all political parties including the Congress party. They point out that the corruption which has come forth in such a big measure in this country is the most cancerous disease that has overtaken the body-politic. Today, in the midst of the galloping corruption, there is only the incorruptible Judge who remains the slender hope of the society to survive.

Madam, frankly speaking, I am not able to understand the economic policies of the Government because I find that Adam Smith and Marx have gone to sleep in the same political bed. That is some kind of a strange thing which you are handling. But all your economic policies will be blown to the winds, blown to smithereens, so long as you are not able to remove corruption from the body-politic. Corruption and economic growth do not co-exist at all. And today, the only guarantee that corruption and the corrupt will be removed from the body-politic remains the incorruptible Judge.

Madam, if we are to make our Judges incorruptible, we shall have to make them

immune to all kinds of fiscal temptations. Not that you can always achieve this by merely increasing the salaries. If somebody is a man of bad character, the bad character will assert because money is a disease. Some people who have enough for themselves want something more for their first generation; others want something for their future generation; Money is a morbid disease which sometimes makes one want more and more. But, to the extent to which it is possible, by healthy economic measures, we can ensure the fairness and independence of Judges. I think the time has come when the Government must seriously embark upon a revision of the basic salaries of the Judges.

Madam, when I wish this for the Judge, I have next to none in my belief, that if today our republic, a fragile republic, is surviving, it is surviving by the slender thread of judicial action which some people have started attacking as "judicial activism".

It is not judicial activism. It is not that judges have become actors. What has come to pass is that the judges have got to react to the filth around. This is a judicial response to the filth around and the judges are compelled to take action under the law and the Constitution to clean the filth about which complaints are made to the judges, whether by regular complaints or by newspaper reports or by letters written to the judges or post cards sent to the judges. So, today, the survival of the Republic depends upon this and I want somebody to give me an assurance that judges will be placed in that position where a judge will be totally economically independent not only for himself, but for his dependants, for the members of his family, for his children to whom he can give good education and so on and so forth.

Lastly, Madam, while I say this in favour of my judges, I am not oblivious or unmindful

of the occasional black sheep that creeps into the judicial family. I am conscious of all that. But let me again say this that compared to all our departments of public life, today, a judge is compared an angel and he requires to be protected. But one thing is certain that when you come across a corrupt judge, the society must pounce upon him and punish him with the kind of venom and vengeance which should be unheard of in the case of other criminals. The trouble is that judicial corruption is often difficult to prove, and occasionally when we succeed in proving it and the success comes with the help of a resolute and vigilant Bar which is taking care and keeping a vigilant eye on the judicial action and activity, when we bring a judicial culprit to book, the action is frustrated by the vote of elected Members of Parliament. I don't wish to stir up a hornet's nest. But let me remind the Members of this House of a most unglorious incident in the Parliamentary history of this country that the issue of a corrupt judge *versus* judicial integrity was converted into a north-south action, north-south dispute, and ultimately, the impeachment motion failed and the report of three most distinguished judges of this country, holding their brother-judge guilty, was frustrated by the action of a political party.

Madam, I want to take half a second more. Madam, I would like to submit that the power of appointment, the power of transfer of judges, the power of removing judges who do not deserve the office which they hold, must be transferred from the Government and Parliament to a regular Judicial Commission in which the Government should be represented, the Leader of Opposition and all the important Opposition parties should be represented, political workers should be represented. It is the Judicial Commission which should decide whether a judge is fit to remain in office or not. After a small inquiry, perhaps, a confidential inquiry, a corrupt judge should be removed from office. The procedure of impeachment which was intended to ensure independence, has unfortunately failed. It is such a cumbersome procedure that a judge can

come and go on canvassing with Members of Parliament and ultimately see to it that the motion for his impeachment fails. The power of impeachment must go, must be transferred from Parliament to an independent Judicial Commission. I think this is an occasion when the new Government must pay heed to our advice and do the needful. While I am utilising this opportunity of sharing my thoughts with the Government and this House, may I say that I have no intention to oppose the basic measure that has been brought forward, and therefore, Madam, may I take leave of this House to withdraw my resolution?

**SHRI SATISH AGARWAL (Rajasthan):** Madam, my name also appears along with Jethmalani Ji for moving this Statutory Resolution. So, without making a speech at the moment, if I say something later on, then I will naturally join him.

**THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE):** Even Mr. Ram Jethmalani cannot withdraw his Statutory Resolution just like that. Now that he has moved the Resolution, I think the Resolution stands moved.

**SHRI RAM JETHMALANI:** Madam, you proceed according to your rules. I have said what I wanted to say.

**THE MINISTER OF STATE OF THE DEPARTMENT LEGAL AFFAIRS, LEGISLATIVE DEPARTMENT AND DEPARTMENT OF SHRI RAMAKANT D. KHALAP):** Madam, I beg to move:

"that the Bill further to amend the Supreme Court Judges (Conditions of Service) Act, 1958 and the High Court Judges (Conditions of Service) Act, 1954, as passed by Lok Sabha, be taken into consideration."

Madam Chairperson, the hon. Members, Shri Ram Jethmalani, has advanced certain arguments. I am aware that this debate will go on and I will not touch those points which have been taken up at this stage, but at the end of the debate I will be covering those points raised by Mr. Ram Jethmalani.

Madam, meanwhile I commend this Bill for consideration of the House. This is a very innocuous Bill. There are only two provisions. We intend to raise the quota of petrol for the Judges of the Supreme Court and the High Courts and we also intend to raise the sumptuary allowance. The reasons have been stated. This was long overdue and accordingly this Bill has been moved. ...(*interruptions*)...

**THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE):** Have you taken note of the suggestion made about their salaries?

**SHRI RAMAKANT D. KHALAP:** Madam, at the end of the debate I will reply to those points.

*The questions were proposed.*

**THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE):** The Statutory Resolution moved by Shri Ram Jethmalani and the Motion moved by the Minister for consideration of the Bill are now open for discussion.

श्री रामनाथ कोविन्द (उत्तर प्रदेश): उपसभाध्यक्ष महोदया, मैं "द सुप्रीम कोर्ट एंड हाई कोर्ट जजज (कंडीशंस आफ सर्विस) अमेंडमेंट बिल, 1996" के अंतर्गत जो प्रावधान लाए गए हैं उनकी सपोर्ट करने के लिए खड़ा हूँ। महोदया, जैसा कि अभी मेरे पूर्व वक्ता माननीय श्री राम जेठमलानी जी ने कहा इस बिल को बजाय सीधे लाने के उन्होंने आर्डिनेंस के माफ़्त से लाया। पहला आर्डिनेंस 11 जनवरी, 1996 को प्रोमलगेट किया गया और उस आर्डिनेंस

के अंतर्गत एक बिल भी लोक सभा में 29 फरवरी, 1996 को इंट्रोड्यूस किया गया, लेकिन 10वीं लोक सभा के विसर्जन के साथ-साथ वह आर्डिनंस भी समाप्त हो गया। इसके पश्चात् इसी विषय पर दूसरा आर्डिनंस 27 मार्च, 1996 को लाया गया और उसका भी कार्यकाल समाप्त होने वाला था, इसी बीच में तीसरा आर्डिनंस 21 जून, 1996 को प्रोमलगेट किया गया। महोदया, संवैधानिक और हमारी पार्लियामेंटरी हिस्ट्री में बहुत कम ऐसे मौके आते हैं जबकि एक विषय के बारे में 3-3 आर्डिनंसेज प्रोमलगेट किए जाते हों। इससे केन्द्र सरकार की चर्किंग रिफ्लैक्ट होती है। उसकी मिसमैनेजमेंट पता लगती है और यह पता लगता है कि वह इन चीजों को एंटीसिपेट नहीं कर पाते हैं बिना योजना के और वह जब उनकी मर्जी आती है रात को उन्होंने सोचा कि मुझे इसकी जरूरत है, सुबह एक आर्डिनंस लाने के लिए प्रोसेस शुरू हो गया। महोदया, यह जो आर्डिनंस मेकिंग पावर है जिसके लिए हमारा संविधान कहता है कि बहुत कम मौकों पर इसका उपयोग होना चाहिए। लेकिन यह जो तीसरा आर्डिनंस प्रोमलगेट हुआ इससे ऐसा लगता है कि आर्डिनंस पावर मेकिंग पावर का पूर्ण रूप से दुरुपयोग हुआ है।

3.00 p.m

महोदया, मैं इस अवसर पर जो भारतीय संविधान के आर्टिकल 123 के तहत केन्द्र सरकार को अधिकार दिया गया है, उसको कोट करना चाहता हूँ।

"123. Power of President to promulgate Ordinances during recess of Parliament—(1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require."

महोदया, मैं यह कहना चाहता हूँ कि जिस प्रकार से हम यहां पर संसद में प्रतिवर्ष निश्चित रूप से तीन बार मिलते हैं, पेट्रोल की हाइक होती है, तीन वर्षों में होती है, चार वर्षों में होती है, महंगाई बढ़ती है और जब यह चीजें निरन्तर होती रहती हैं हम सबके जीवन में, तो क्या सरकार

इस चीज को एंटीसिपेट नहीं कर पाई? जो सुप्रीम कोर्ट के जजेज हैं, हाई कोर्ट के जजेज हैं उनके लिए मात्र एक महीने में डेढ़ सौ लीटर पेट्रोल की व्यवस्था की गई, समचुअली एलाउन्सेस के लिए साढ़े बारह सौ और साढ़े सात सौ रुपए दिए गए थे क्रमशः सुप्रीम कोर्ट और हाई कोर्ट के जजेज के लिए, क्या वह एंटीसिपेट नहीं कर पा रहे थे कि उनकी भी जरूरत है।

महोदया, बताया गया कि पिछली बार यह जो हुआ था, 1986 में यह दर तय की गई थी। आज इसको दस साल होने वाले हैं। केन्द्र सरकार दस साल बाद जागी। मेरी जानकारी के अनुसार, महोदया, सुप्रीम कोर्ट के जजेज और हाई कोर्ट के जजेज के बारे में जो चीफ जस्टिसेस और हाई कोर्ट जजेज की कान्फ्रेंस हुई है, उनमें भी यह सवाल उठाए गए थे और इन सवालों को केन्द्र सरकार के पास भेजा गया था। जैसा कि हम सब लोग जानते हैं, हाई कोर्ट और सुप्रीम कोर्ट के जजों की कोई ट्रेड यूनियन नहीं होती, वे प्रेस में नहीं जा सकते, अपनी बात को कही पर कंठ नहीं सकते। तो वह भी एक माध्यम था, जो हाई कोर्ट के जजेज और चीफ जस्टिसेस की कान्फ्रेंस में हुआ और उसके माध्यम से केन्द्र सरकार के पास यह बात पहुंचाई गई। महोदया, बड़े दुख की बात है कि केन्द्र सरकार इस विषय पर टस से मस नहीं हुई और पता नहीं उनको क्या सूझा, जब चुनाव डिक्लेयर होने वाले थे, इसके पीछे उनके क्या इरादे रहे हों, यह बात मैं नहीं कर सकता, लेकिन ऐसा लगता है कि जो हमारी कार्यपालिका है, चूँकि कार्यपालिका के माध्यम से सरकार चलती है और ला मिनिस्ट्री ने, जो कार्यपालिका देख रही है, उन्होंने शायद अपनी सुप्रीमेसी बनाए रखने के लिए इस मुद्दे को पेडिंग रखा। जब वह सरकार जाने वाली थी पिछली सरकार, नए चुनाव होने वाले थे, दसवीं लोक सभा भंग होने वाली थी तब उसके पहले शायद उन्होंने ऐसा सोचा कि देश के सभी वर्ग, जितने वर्गों को हम अधिक से अधिक कुछ सुविधाएं दे सकते हैं, खुश कर सकते हैं, उनमें जजेज भी हो सकते हैं और इसी एनोलोजी पर एक कनवर्टेड क्रिश्चियन को अनुसूचित जाति की सुविधाएं देने का वह बिल भी ले आए। इससे ऐसा लगता है कि सरकार की जो मानसिकता थी, वह चुनाव के पहले इस आर्डिनंस को लाने की, बिल को लाने की थी, जो दुर्भाग्य से पास नहीं हो सका।

उपसभाध्यक्ष (कुमारी सरोज खापड़ें): कोविन्द जी, आज हम सुप्रीम कोर्ट के जजों की सेवा शर्तों के विधेयक

पर चर्चा कर रहे हैं। क्या आप उसकी तुलना कन्वेंटड क्रिश्चियंस के साथ कर सकते हैं।

श्री रामनाथ कोविन्द: मैडम, मैं इनकी तुलना नहीं कर रहा हूँ। मैं इसके रिलेवेंस में इतना ही कह रहा हूँ कि सरकार को ऐसी कौन सी एमरजेंसी थी कि आर्टिकल 123 में जो पावर्स दी गई हैं आर्डिनेंस बनाने की, सरकार को उसका उपयोग करना पड़ा?

उसभाध्यक्ष (कुमारी सरोज खापड़ें): मुझे लगता है कि हम लोग आर्डिनेंस के बारे में चर्चा करें तो ज्यादा अच्छा है।

श्री रामनाथ कोविन्द: महोदया, मैं उस तक अपने को सीमित रखूंगा। महोदया, यह आर्डिनेंस बनाने की पावर का जो दुरुपयोग किया गया है, मैं उसका विरोध करता हूँ और उसकी भर्त्सना करता हूँ। उन्होंने जो संवैधानिक अधिकारों का दुरुपयोग किया है। उसको मैं कंडम करता हूँ।

महोदया, यह बहुत महत्वपूर्ण बिल है जो बहुत पहले ही आना चाहिए था। यदि यह बिल 5 बरस पूर्व या 8 बरस पूर्व आ जाता तो और भी अच्छा होता। हम सब लोग जानते हैं कि अगर जजों की सेवा शर्तें और उनको दी जाने वाली सुविधाएं अच्छी रहेंगी तो हम सबको निष्पक्ष न्याय मिलेगा और न्याय का स्तर भी बढ़ेगा।

महोदया, हमने पिछले 3 वर्षों में देखा है कि जुडिशियरी को अपने परंपरागत क्षेत्र के अलावा जनहित के मामले में और क्षेत्रों में भी आगे आना पड़ा है। हमारे संविधान के जो 3 आधार स्तंभ हैं - न्यायपालिका, कार्यपालिका और विधायिका, इन तीनों के लिए संविधान ने एक मर्यादा रेखा खींच रखी है और जब इन्होंने अपने कर्तव्यों को ठीक ढंग से नहीं निभाया तो हमें इन पिछले 3 बरसों में जुडिशियल ऐक्टिविज्म देखने को मिला है। महोदया, यह जुडिशियल ऐक्टिविज्म ही है, जिसके लिए इस देश की जनता ने न्यायपालिका को बहुत-बहुत सराहा है। आज न्यायपालिका का जो आदर आम जनता के मन में है, वह शायद पहले इतना नहीं था। भ्रष्टाचार के इतने मामले जिनमें करोड़ों

रुपए का धोखा हुआ, वे जुडिशियल ऐक्टिविज्म के माध्यम से ही सामने आए हैं और उनमें लिप्त लोगों को सजा दिलाने की प्रक्रिया की शुरुआत हो चुकी है।

महोदया, हमने देखा है कि जो पावर ऐक्जीक्यूटिव के हाथ में थी चाहे वह आऊट आफ टर्न बेसिस पर पेट्रोल पंप या गैस एजेंसीस एलाट करने की बात हो, हम सब लोगों ने इस सदन में ये मुद्दे उठाए। साथ ही साथ सरकारी कर्मचारियों को जो बिना बारी के मकान एलाट किए गए, उस मुद्दे को भी हमने यहां पर उठाया। हमारी बातें सरकार ने सुनीं लेकिन उस पर जो प्रतिक्रिया होनी चाहिए थी, वह नहीं हुई। जो लोग बरसों से सरकारी मकान पानी की कतार में खड़े हैं, उनको मकान नहीं मिल पा रहे थे। यहां पर हम सब लोगों के शोर मचाने के बावजूद उनके साथ कोई न्याय नहीं हुआ और महोदया, यही कारण था कि कुछ जो सामाजिक संस्थाएं थीं, वे पब्लिक इंटेस्ट लिटिगेशन के माध्यम से सुप्रीम कोर्ट में गईं और सुप्रीम कोर्ट ने इस मुद्दे को अपने हाथ में लिया और कई बातें बाहर आईं। जो लोग इसमें दोषी पाए गए, उनको सजा देने की प्रक्रिया शुरू हुई। महोदया, इन सब बातों से एक बात ज़ाहिर होती है कि जो हमारा कर्तव्य है, उस कर्तव्य को निभाने में हम फेल हो गए और हम फेल होते हैं तो आखिर....ये जो स्तंभ हैं भारतीय प्रजातंत्र के, ये सभी आपस में एक-दूसरे के पूरक हैं। I say all these three constituents of Indian democracy are complementary to each other. और अभी कुछ दिनों पूर्व की बात है, हम सब लोग जानते हैं। दिल्ली में एक बिल्डिंग है जामा-मस्जिद जो कि अंतर्राष्ट्रीय स्तर की इमारत है। It is one of the most historical monuments of India and we should feel proud of it. लेकिन वहां पर भी कुछ गैर कानूनी तरीके से कुछ इल्लिगल कंस्ट्रक्शन करने की बात हो गई। उसमें भी सरकार को आगे आना चाहिए था। But the Government miserably failed. और इसीलिए It was the high court which had to come forward and intervene in the matter. महोदया, मैं इस संबंध में इस मुद्दे पर इतना ही कहना चाहूंगा कि जो हमारी जवाबदारी है, जो सरकार की जवाबदारी है, अपनी गैर-जवाबदेही और गैर-निष्पक्षता और अकर्मण्यता के कारण ही हमने ज्यूडिशियल ऐक्टिविज्म को बढ़ावा दिया है। आम आदमी का आज न्यायालयों में विश्वास बढ़ा है और आम आदमी के लिए यदि आज कोई आशा की किरण है तो वह केवल भारतीय न्यायालय है। महोदया, रूल ऑफ ला के मुताबिक पूरा देश चलता है लेकिन रूल

ऑफ लाॅ को इम्प्लिमेंट करने वाली केवल ज्यूडिशियरी है और ज्यूडिशियरी ने जो अभी तक अपनी परफॉर्मेंस दी है देश के लोगों के लिए, इससे हमारी इंडियन डेमोक्रेसी और भी मजबूत हुई है। भारतीय जनमानस की प्रजातांत्रिक व्यवस्था में आस्था बढ़ी है। इसलिए मैं कहना चाहूंगा कि हम सब को भारतीय न्यायपालिका पर गर्व है।

महोदया, जैसा कि मैंने अभी निवेदन किया था, भारतीय संविधान ने जो तीन स्तंभ हैं प्रजातंत्र के, उन सब की एक मर्यादा रेखा खींच रखी है और उस मर्यादा रेखा से बाहर जाते हैं तो गलत होता है और उस मर्यादा में रह कर जो हमारा दायित्व और कर्तव्य है, उनको नहीं निभाते हैं तो भी गलत होता है। जो हमारे इंस्टीट्यूशन्स हैं संविधान के मुताबिक, जो स्टेट्यूटरी ऑर्गेनाइजेशन हैं, ऐसे इंस्टीट्यूशन्स का पिछले कई वर्षों में डेनियेशन हुआ है।

मुझे एक बात याद आती है कि गांव में अथवा और कहीं पर भी जब कोई विवाद उठता था चाहे वह विरोधी दलों के साथ अथवा किसी के स्तर पर भी हो तो यह कहा जाता था कि इन्वारी सी.आई.डी. से होनी चाहिये, इन्वारी सी.बी. आई. से होनी चाहिये। सी.बी.आई. एक ऐसी संस्था थी जिस पर हम सब लोगों को गर्व होता था लेकिन उस संस्था की परफॉर्मेंस जो विशेषकर आपातकाल से शुरू हुई, तब से उनकी निष्पक्षता पर प्रश्न चिह्न है। हमने आपातकाल को देखा और आपातकाल के बाद अभी एक विशेष परिवर्तन भी हमने इस संस्थान की निष्पक्षता में देखा। जनमानस का यह कहना था कि सी.बी.आई. जोकि भारत सरकार अथवा यों कहें कि प्रधान मंत्री जी के मातहत एक विभाग है। उसको निष्पक्षता से काम करना चाहिये था लेकिन ऐसी निष्पक्षता का इस एजेंसी के क्रियाकलापों से पता नहीं चलता है। यही कारण था कि the Supreme Court had to come forward and give some directions आपको जो रिपोर्ट करनी थी the CBI was asked to report directly to the Supreme Court in certain matters. जो स्कैम था जिसमें कि सुप्रीम कोर्ट को भी लगा ऐसा कहना, ऐसा निर्देश देना, अपने आप मैं इस संस्थान की जो निष्पक्षता थी उस पर प्रश्न चिन्ह लगाता है।

उपसभाध्यक्ष (कुमारी सरोज खापर्डे): कोविन्द जी मैं एक बात का ध्यान दिलाना चाहूंगी कि आप वाकई बहुत अच्छा बोल रहे हैं, इसमें कोई शक नहीं है। लेकिन मेरे सामने जो लिस्ट है, उसमें डिस्क्शन के लिए जो समय है वह दो घंटे का है और आपकी पार्टी को जो समय दिया हुआ है वह 22 मिनट का दिया हुआ है। मेरे सामने दो और मेम्बर्स के नाम लिस्ट में दिये गये हैं। आपकी पार्टी के।

आपने 2.55 पर शुरू किया था अभी 3 बजकर 17 मिनट हो रहे हैं, 21 मिनट आप कन्ज्यूम कर चुके हैं।

श्री रामनाथ कोविन्द: मैं अपना निवेदन विनम्र शब्दों में करता हूँ कि यह विषय महत्वपूर्ण विषय है।

उपसभाध्यक्ष: बहुत महत्वपूर्ण विषय है इसमें कोई शक नहीं है। मेरे सामने आपकी पार्टी के दो महत्वपूर्ण नाम हैं एक तो त्रिलोकी नाथ चतुर्वेदी जी और दूसरे राम रतन राम हैं।

श्री रामनाथ कोविन्द: महोदया, मैं अपनी बात को जारी रखते हुए इसी संदर्भ में कहना चाहूंगा कि संसद की, हमारी संस्था की, जो जे.पी.सी. थी उसको भी डेनीग्रेट किया गया और इसीलिए जे.पे.सी. बनी थी सिक्क्योरिटी स्कैम के बारे में, उसकी जो रिपोर्ट आई, उसका जो परिणाम होना चाहिए था वह नहीं हुआ। इसलिए ज्यूडिशियल एक्टीविज्म को बढ़ावा मिला this security scam के बारे में सी.ए.जी. की रिपोर्ट थी. The C.A.G. had adversely commented लेकिन उसके कमेन्ट्स को भी हमने सही परिप्रेक्ष्य में नहीं देखा। We had rather failed; the Government, particularly, failed on this score.

SHRI VAYALAR RAVI: But the people never failed.

महोदया, यह तो हमने सुप्रीम कोर्ट और हाई कोर्ट की बात की लेकिन जो नींव है ज्यूडिशियरी की, वह है तो अर ज्यूडिशियरी। उसमें जिला स्तर के जज होते हैं, मेजीस्ट्रेट, मुनिसिफ होते हैं, उनका वेतन बहुत कम होता है। और वेतन उन वकीलों से भी कम होता है जो उनके सामने अपीयर होते हैं। उन पर काम अधिक होता है। एक दिन में 60 से 80 केसेज तक कार्य सूची में लगे रहते हैं। It is humanly impossible to do justice to so many cases which are listed before a Judge.

महोदया, उनको सरकारी वाहन की कोई सुविधा नहीं है। यहां की दिल्ली की ज्यूडिशियरी की बात मैं आपको बताता हूँ। एक मेजीस्ट्रेट जिस अपराधी का मुकदमा ट्रायल कर रहा था, उसको कोर्ट में किया जा रहा था, जब शाम को वह जाते हैं तो एक ही डी.टी.सी. की बस में संयोग से जब वह मेजीस्ट्रेट साहब चढ़ते हैं तो उससे पहली सीट पर वह अपराधी भी बैठ जाता है। यह बड़े दुख की बात है कि जिस ज्यूडिशियरी को हम निष्पक्ष कहते हैं। उनके लिए सरकारी वाहन की सुविधा नहीं है जिससे वह इम्पार्शियल्टी से न्याय कर सकें।

महोदया, मुफसिल टाऊन है उनमें हमारे मुनिसिफ

लोग, जजेज लोग रिक्शा पर चलते हैं। उनको सरकारी मकान उपलब्ध नहीं होते हैं। उनकी यह हालत है कि उनको अपने निवास के लिए किसी न किसी का मकान किराये पर लेना पड़ेगा और जिसका मकान किराये पर लेंगे उसका ओब्लिगेशन भी होता है। यदि उसका मुकदमा उनके कोर्ट में चला जाए या कभी उसकी कोर्ट में आएगा तो कैसे हम जज से उम्मीद करें कि वह न्याय देने में निष्पक्ष हो सकते हैं। न्यायपालिका की जो सब से नीचे की सीढ़ी है लोअर ज्यूडिशियरी, इसके लिए मैं सरकार से आग्रह करना चाहूंगा कि वह अधिक चिंतित रहे। यह जो छोटे जज हैं, वही नींव है, वही आधार है जिन पर न्यायपालिका की इमारत खड़ी है। हाई कोर्ट जजेज की अप्वाइंटमेंट के बारे में मैं एक बात कहूंगा। वन थर्ड जजेज का अप्वाइंटमेंट डायरेक्ट थ्रू प्रोमोशन सर्विसेज से होता है, टू थर्ड जजेज डायरेक्ट फ्रॉम दौ बार आते हैं। लेकिन शैड्यूल्ड कास्ट और शैड्यूल्ड ट्राइब्स अथवा जो दूसरी बैकवर्ड क्लासेज हैं, यद्यपि रिजर्वेशन नहीं है, गवर्नमेंट की पॉलिसी भी है, डायरेक्शन भी दे दिया लेकिन वहां पर पोलिटिकल विल की कमी है, प्रबल इच्छा शक्ति नहीं है। यदि सरकार चाहेगी तो ऐसा बिकूल संभव हो सकेगा। मैं माननीय मंत्री जी से कहूंगा कि इस बारे में कृपया ध्यान दें। जो हमारी वेकेंसीज है, वह पूरी नहीं भरी जाती है। कई कारण हो सकते हैं। लेकिन इसके लिए मैं आगाह करना चाहता हूँ कि आज की हालत में जो दिसम्बर, 1995 में फिर्माज दी गई थी केन्द्रीय सरकार द्वारा उसके अनुसार 606 जजेज की स्ट्रेंथ थी, सभी हाई कोर्ट में केवल 448 जज काम कर रहे थे जिसमें 158 का बेकलॉग था। मुझे पता नहीं कि आज की स्थिति क्या हो गई है। अंत में, अपनी बात को समाप्त करते हुए मैं चाहूंगा कि ज्यूडिशियरी में बहुत सुधार की जरूरत है। न्याय मिलने में जो डिले होता है जिसको कहते हैं Justice delayed is justice denied. इस पर भी हमें ध्यान देना है। अधिक जजेज की नियुक्ति करनी है। टाइमली अप्वाइंटमेंट करनी है। रिटायरमेंट होने से पहले जब हम जानते हैं कि यह जज रिटायर होने वाला है तो हम पूर्व में व्यवस्था कर सकते हैं ताकि साथ साथ नयी अप्वाइंटमेंट भी हो जाए। यह कहना कि हमारे पास संख्या कम है लेकिन माननीय मंत्री जी इस पर विचार करें कि सभी न्यायालयों में ज्यूडिशियल आफिसरज की क्या हम दो शिफ्ट कर सकते हैं। मैंने हरियाणा प्रदेश में यह देखा है कि वहां पर कचहरी, लोअर कोर्ट प्रातः सात बजे से एक बजे तक लगती है। ऐसा बिल्कुल संभव है, यहां पर भी यह बात हो सकती है। दिल्ली हाई कोर्ट में हो सकती है क्योंकि बिलिंडिंग्स की कमी बताई जाती है। आप ज्यूडिशियल आफिसरज की ज्यादा अप्वाइंटमेंट कर सकते

हैं। दो शिफ्टें चला सकते हैं। अंत में मैं यह कहूंगा कि हमारे जजेज को सभी सुविधाएं मिलें।

आल इंडिया जूडिशियल सर्विसेस के क्रिएशन की जिसकी बात बहुत दिनों से चल रही है। अभी तक उसका फाइनल शेप नहीं बना है। एक ज्यूडिशियल रिफॉर्म कमीशन केवल सुधारों के लिए बने और कैसे हम मामलों को जल्दी से जल्दी निपट सकें।

मैं अंत में, महोदया, इस बिल की सपोर्ट करता हूँ। आपने जो मुझे समय दिया उसके लिए बहुत-बहुत धन्यवाद।

उपसभाध्यक्ष (कुमारी सरोज खापर्डे): आपका बहुत-बहुत धन्यवाद। श्रीमती मार्ग्रेट आल्वा।

SHRIMATI MARGARET ALVA (Karnataka): Madam Vice-Chairperson, the scope of the Bill is very limited. It is just about the increase in the Sumptuary Allowance and the fuel that is to be provided to the Judges. But, I think, there are many other issues which arise in this context and I would, start by asking whether the Judges should really be encouraged to entertain. What is the Sumptuary Allowance for? Whom are they supposed to entertain and where is the need to encourage them to entertain even more? I believe that the Code of Conduct for Judges is something which is very much needed. And, I believe that, left to me, though I was part of the Government, I never really saw the reasons why we had to give them a Sumptuary Allowance by an Ordinance. But since everybody feels that the Judges need to be kept happy, that they must be kept comfortable, that they must be given much more, I probably would be sounding out of tune or out of context if I said anything else and, so, I will not say anything beyond this.

THE LEADER OF THE OPPOSITION (SHRI SIKANDER BAKHT): Thank you:

SHRIMATI MARGARET ALVA: I am not talking about ending it. (Interruptions)

Madam, we are today talking about a judicial system in which pendency is so great that when you file a case, you probably expect your grandchild to be able to collect the judgment about whatever dispute or whatever property matter that you have gone to the court for. But I am not talking only about property matters here. The figures given in the

Parliament itself last year for the pendency in the courts are astounding. In the lower judiciary, it is over two crores of cases that are pending. In the High Courts, it is over twenty lakhs. Madam, as far as the Supreme Court is concerned, the present Chief Justice has been taking innovative measures and he has said that it is a question of good management. And so, an institute of management, the Indian Institute of Management, Ahmedabad, has been brought in to computerise and to find ways by which the pendency can be reduced by more modern techniques. And I wish the Supreme Court every success in its efforts. We have tried Lok Adalats. We have tried Tribunals. We have tried many things but because of the adjournments, the cost of litigation rises. Somebody spoke about it I think it was Mr. Jethmalni, who is not there now, who said that this is the only forum where the common man, the poor man can get justice. Madam, I totally disagree. This is one forum where the poor man and the really ordinary poor citizen of India does not get justice because he cannot afford it. He cannot afford the battle from the Munsif's court to the Supreme Court over fifteen or twenty years. In the case of the judicial system in this country, might is right and money is what wins and not the cause or the individual. And, therefore, I am of the opinion that judicial reform is called for, not these frills and dressings here and there, not by keeping this man happy or that man happy. The Supreme Court Judges, I beg to differ, are not under paid. They are paid much more than the Ministers of the Government of India. Let us not forget....(Interruptions). The Chief Justice of the Supreme Court gets Rs.10,000/- plus D.A.

We all know what the D.A. slab is, which goes on increasing. The Judge get Rs.9,000/- plus D.A. But, Madam, besides that, they get housing, leave travel facilities, free medical aid, transport, sumptuary allowance, free electricity and everything else that goes with it and you know how it goes up. I am not going into the details. But the question that I am raising is: Don't you think that there is a need for greater investment in the lower levels of the judicial ladder... because the real contact point of the common people with the Judiciary is the munsif courts, the district courts and the lower courts. If you go into these areas, you

will find that they have no space for court rooms, there is no way that you can sit there or do a thing. This is the point at which the problem begins. With that, of course, there is the question of holidays, the number of working hours done by the higher Judiciary, there is the question of money which the lawyers make by detailed arguments because the more days they argue the more money they earn. We had recommended in the Judicial Reforms Committee, of which I was a member, in the late seventies that arguments should be in writing and that there should not be waste of time in the court, but the lawyers protested because that way they would not make the money which they are making now. So, there are various issues involved with pendency and I think the only answer is to increase the strength of the benches. The Law Commission in its 11th Report had suggested a five-fold increase in the strength of the benches. Have you been able to do that? We say that we have no money. When it comes to the real things that are needed for buildings, for increasing the number of personnel, they say that there is no money. But we think that they need to entertain more, they need to have—as someone said—more petrol to be able to go for drives in the evening and do this and do that. That is not what the common people are asking for when we are talking about social justice in this country.

Madam, comparing the salaries with pre-Independence ICS in the white man's land and saying that this is what they got at that time so today it must be increased by so many times, should apply to every workman in the factory and that should apply to everybody across the board if they are talking about what the judges should get. Why only the judge? I would also like to say, Madam, that another question which has repeatedly been raised is the question of vacancies which are never filled, which go on, and I agree, for political reasons because of pressures and various other things plus the fact that every time there is a probe and there is an inquiry commission you pick up judges from the High Courts from here and there and put them to other things. Already there are problems and put them to other things. Already there are problems and then this gets multiplied. But the question that I ask is: Do our

benches today reflect the social reality of changing structure in this country? What class do they come from? What background do they come from? Where are they selected from? My colleague just now spoke and on one point I agree with him, which is the question of the Scheduled Castes, the minorities, the weaker sections finding a place on the benches. Are they really there or is it just tokenism? हाँ, एक एस.सी. को तो बैठना है, भाई तुम्हारा कोई है तो नाम दे दो। लगा देंगे। It is not because a person is somebody who can change the system or the structure or the thinking process. When we ask the judges we are told that we are selective; that we are trying to bring in considerations other than merit. Madam, if you are only talking about meritorious selection of all kinds, then you know the type of people that you will have people who believe in status quo who have something to protect and who have a vested interest in a system which is finally unjust. I believe that the time has come for us to look at the very question of recruitment and placement on the benches and the type of judges that we require to interpret the law in the interest of the common people, the poor ones who are suffering because of discrimination of the laws. I believe that the law courts are meant to be an instrument of social justice, that they have to interpret the law and give the benefit to those who have been denied the basic rights which are part of their constitutional inheritance. How many courts and how many benches are looking at this is something which I would like the Parliament to consider at some point of time.

Madam, the question of corruption has been raised. We are all concerned. This House, that House, the Press, everywhere we go we are talking about fighting this evil, but I would like to ask: It is not a social malaise and if that is so, how do you in the same breath say that the only honest people are in the Judiciary and on the benches? They are the product of the same educational system; they are the product of the same upbringing; they are the product of the same processes in which everybody else has grown and who are responding to situations. Let us not believe just because someone wears his black robe or wig that he suddenly becomes something different, superhuman or god. You are dealing with

human institutions I was going through in the library the cases and cases of corruption charges against judges whether it is the Gujarat High Court—the famous Sethna case in the Bombay High Court—where they had to resign, the Allahabad High Court—and the famous case when recently the Chief Justice of the Supreme Court visited the Punjab and Haryana High Court and there everybody had to walk out when the welcome speech by the Bar Association chief started like this: "My Lord, we have to say that we have no faith in the judges of this High Court." That is the opening remark and everybody was so embarrassed that they walked out. There are cases over and over again which have come. My point is you have to deal with that system and the problem is right from the lowest level to the top. I believe that impeachment as a process, we have seen from experience and otherwise, is too messy, is too cumbersome and too politicised when it comes to the final stage. The need is to find a system by which the guilty are punished and punished effectively. How we do it is for all of us law makers to think and workout with the judiciary. They are as much concerned because there are many pronouncements I have seen by the High Court judges and the supreme Court judges themselves and the Chief Justice himself—it is their concern expressed about this problem which is coming into the judicial system. They are concerned and there is need, I think, for all of us, instead of just saying that they are saints to find a way by which the institution of the judiciary is protected and wherever there are mistakes, something is done to set them right. Are you not familiar with matters of law families? I call them 'family offices' which exist in every State. The senior becomes the judge, but the office continues to function with his sons or his juniors and with all those around him. They appear in his court, they give advice and they are very much part of the system. Is that not corruption? The signature may not be on the opinion but we know that behind the scenes they are very much a part of the family offices. Why does the question of transfers of judges arise? It is not because somebody is to be punished. It is because there is need to move a lot of them out of the areas from where you picked them up. Madam, I am totally against,

and I state it openly, this two-thirds coming from the bar and only one-third by promotion. I believe that we have to change this ratio; give more scope to those who have been in the judiciary to come up so that there is an incentive they can look for. They know if they perform well, they are efficient and good, they will move up. But, everybody is going over their heads for various other considerations. Many of them come because they have no briefs; because a real good lawyer who owns hell of a lot of wealth does not want to become a judge. He earns too much that he does not want to move out. Who are those who want to come to the Bench? Not the successful lawyers. And once they sit there they decide cases argued by the best lawyers that are available. Therefore, I am saying that the system is lopsided. Let us see how the recruitment is to be improved and how they move up. But, Madam, most of all, I would like to say that there is a tremendous need today from an All-India Judicial Service, a system which will cut across States and which will be able to function like the All India Civil Services, with a different ethos and an All India commitment, which I think ultimately will be the answer. There are certain High Courts which are known for 'stays'. I have been a practising lawyer—you are told, "go to so and so High Court, स्टे मिलेगा आपको, आपका कोई आफिस है इधर। स्टे मिलेगा उधर। जाकर लाओ, यहाँ मत आओ।" Benches are fixed. Oh! you are a tenant case; before so and so bench it will be admitted. Do not go to so and so bench. Postpone it; he is pro-landlord, he is not a pro-tenant; so and so bench is pro-landlord, you go there if you want to win. So, there are ways to get benches fixed. We know how the lawyers manage to get them posted before certain benches which are identified. Madam, you would be surprised that the PAC Report has pointed out that taxes of Rs. 4121 crores have been stayed by courts in this country by way of interim relief without even hearing the Government or even without having arguments and with *ex parte* orders—Rs. 4121 crores! And who are these people, may I ask? The rich, those who can afford to pay, companies who have the best lawyers, they are the ones who owe this money to the Government. And we are talking about the

perfect judiciary which must be kept happy because they are doing such a fantastic job in protecting the interest of everyone concerned. Madam, I also want to point out what I have been very much concerned about and that is the whole question of this contempt of court which is becoming the instrument by which the courts are trying to give themselves a special position.

I would only quote Lord Denning on this who said, "Let me say that we will never use our jurisdiction as a means to uphold our dignity. That much rest on surer foundations."

Anybody and everybody who criticises or says anything against them is charged with contempt and sentenced. The Contempt of Court Act is something which is becoming an instrument by which the judiciary believes that it can give itself a position which perhaps public opinion is not prepared to give. You jail bureaucrats, you send political people behind bars, you have summoned Speakers to the courts. You are deciding policies. You are taking decisions on everything. We have under the Constitution what we call Separation of Powers. The judiciary is not the executive or the sovereign body in this country. It is one of the three arms of the democratic system as the Constitution has envisaged. But I must say that the way in which any exposure of the undesirable elements within the judiciary attempted by anyone is dealt with does not make much sense as far as the image of the judiciary is concerned. Disposing of the famous Shiela Barse's case, the apex court had pointed out: It is the privileged right of the Indian citizen to believe what he considers to be true and to speak out his mind though not perhaps with the best taste and speak perhaps with greater courage than care for exactitude. The judiciary is not exempt from such criticisms. This is the judgment of the Supreme Court and Madam, I believe that the time has come for the judiciary to first set its house in order and for the Supreme Court to review decisions which have made contempt of court an instrument, if I may say, of victimisation of those who have shown the courage to point out what is wrong with the judiciary anywhere. A Dhingra can condemn the whole of Parliament, all the political people, good, bad,

indifferent, whom he has never seen or never come into contact with. We can all be clubbed corrupt. We can all be clubbed anything they want. And Parliament is a mute spectator to all that happens. Madam, Governments change, Ministers come, Ministers go, Opposition people sit there, they sit here. My appeal is, are we giving enough thought to the primacy of Parliament as the central point of our political system as the Constitution-makers have envisaged? There is a very clear division of powers between the executive, the judiciary and the legislature.

There is a balance which has to be maintained. When that balance starts shifting one way or the other, it is either that you have the tyranny of the executive, and autocracy or you have the tyranny of the legislature, another type, but I believe that that is the safest because we represent the supreme will of the common people of this country and the legislatures are ultimately the final authority, if I may say so, the sovereign authority of the people because they repose their faith in us. If they are not happy with you or with me or with them, they throw you out every now and then.

Whether it was Mrs. Gandhi, whether it was anybody else, we have paid the price when the people have been angered. We have submitted to the will of the people. It can be a huge majority lost in 1989, we have submitted to the will of the people. And, therefore, let us not be carried away by temporary arguments and throwing stones at each other. I think the time has come for us to have a clear look at judicial activism. I am not protecting any corrupt person and I am not talking about any individual. It has been rightly said and I wish to quote because I can only quote the judiciary to convince anybody; Justice H.R. Khanna, the distinguished jurist, has pointed out that Governance of the country or a State is the task assigned by the Constitution to the Government which is responsible to the duly elected legislature. Criticising the transgressions of the Court, Mr. Justice Khanna said, if mankind while passing through the successive stages of political consciousness has done away with the despotism of kings, dictators, it would be puerile to expect it to put up with the despotism of the judiciary, and it goes on. I can quote any

number of these debates which have taken place on the role of the judiciary in a democratic system. Madam, the time has come, I think, for a debate when we must look at these issues across party-lines and put the record straight. I believe same is the case with trying to decide everything through the Bench. The Bible was being telecast. The Court said it shall stop. And it is stopped. Latenight movies are not good. Stop. They are stopped. Something else is not good, according to the Judge, so you stop. There is no questioning the authority of a single man and tomorrow if he tells me that the sun sets in the east, then I would have to say 'yes' because I would be charged with contempt of court if I said 'no'. And if this is the level to which we are coming that a Magistrate can tell me, I am corrupt and I am wrong, somebody else needs to be, probably, sent to the desert for forty days to be purified, we are supposed to do it; otherwise, the arm of the judiciary will take action. How far can this kind of atmosphere go on? On this, I believe, political people have to face the people and if the people find you wrong and corrupt, you are out. That is how Governments change and we have not had a system of any kind of violent change of Government. It is all open, peaceful and by the democratic process. I believe, it is time that the elected representatives of the country decide how far we are going to allow the judiciary to go. It cannot be pampered and everybody is not going to submit and bow on the knees, simply because you stand before a blackrobed personage in the court. Madam, I thank you for the time you have given me. Since you have rung the bell, I do not want to go far beyond. But I do want to say, as far as some of the other issues which have been raised earlier, I certainly agree that corruption in the country is causing concern. But all the same, I do not think a wrong solution can be accepted in the name of a problem. There must be a national debate on this issue and I would appeal that forgetting party-lines, we take up the issue and reconfirm our faith in the supremacy of Parliament and the rights of the law-makers, which ultimately represents the will of the people of this country. Thank you, Madam.

PROF. NAUNIHAL SINGH (Uttar Pradesh): Madam Vice-Chairman, I associate myself with the hon. speaker.

**THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE):** Thank you.

**SHRI SURINDER KUMAR SINGLA (Punjab):** Madam, we all agree. The whole House agrees.

**SHRI SANATAN BISI (Orissa):** Madam Vice-Chairman, Mrs. Margaret Alva has spoken at length about judicial activism and other things. She has questioned the correctness of judicial activism. I am not going to reply to all those things.

At the outset, I would like to say that this Bill would enhance the ethical value of the judiciary. Therefore, I support it. The other thing I would like to say, Madam, is: this is the proper occasion to congratulate the judiciary rather than to denounce it. This is because of the fact that the judiciary is coming to the help of the citizens when they are not taken care of by the Executive. In this connection, I would like to quote what Justice A.M. Ahmadi has said: "... the causes, namely, the reluctance of the Legislature and the Executive to take hard and unpleasant decisions...."

I would like to draw the attention of the House to the several cases. We had the Ayodhya case. We had the Mandal case. Then, we had the case in regard to the sugar scam. When the Executive and the Legislature are not looking into the grievances of the ordinary citizens, the judiciary has to come to the rescue of the people; it has to come to the rescue of the poor litigants. That is why, Madam, I whole heartedly support whatever Justice Ahmadi has said. I want judicial activism to continue.

At the same time, reforms have to be made in the judicial system. A decision has been taken by our Government. It is a right decision. I am proud of the fact that our Government, the United Front Government, is going to bring in judicial reforms. In this connection, our Law Minister has already met the chief Justice of India in regard to the lacunae that are there, in regard to the appointment of judges, etc.

As a Member of this House, I have seen that whenever we raised the problems faced by the people, there was no response from the Government, from the Executive. They were not doing anything. That is why the poor

citizens, the poor people, had to seek the help of the judiciary.

Madam, it is an occasion when we should congratulate the citizens also. It is an occasion when we should congratulate the humble citizens for his fighting, democratic, spirit.

**SHRI SURINDER KUMAR SINGLA:** Madam, on a point of order. (*Interruptions*) Mr. Biplob Dasgupta, are you the Vice-Chairman? I am raising a point of order, for a decision by the chair. Madam, I just want to know whether any Member can really refer to a meeting which the Law Minister had with the Chief Justice of India. The hon. Member is referring to a meeting; he is referring to the discussions which the Minister of Law had with the Chief Justice of India. My question is whether he can, or, he cannot.

**DR. BIPLAB DASGUPTA (West Bengal):** Why not?

**SHRI SANATAN BISI:** What is unconstitutional here?

**SHRI RAMAKANT D. KHALAP:** Madam, I, myself, had referred to my meeting with the Chief Justice of India in the Lok Sabha while I was replying to the discussion on this Bill.

**THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE):** There is no harm in a Member making such a reference. (*Interruptions*)

**DR. BIPLAB DASGUPTA:** \*

**SHRI SURINDER KUMAR SINGLA:** \*

Madam, this is happening every time.

**AN HON. MEMBER:** This is an un-parliamentary word. This must be expunged.

**SHRI JOHN F. FERNANDES (Goa):** He must withdraw these words, Madam.

**SHRI TRILOKI NATH CHATURVEDI (Uttar Pradesh):** Such phraseology should not be used. (*Interruptions*)

**THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE):** Mr. Biplob Dasgupta, please do not make such comments against another Member. (*Interruptions*)

**SHRI SURINDER KUMAR SINGLA:** Madam, they cannot tolerate any criticism of

\*Expunged as ordered by the Chair.

their Chief Minister and his party. (Interruptions) That is the reason why he is saying like this. They cannot tolerate. (Interruptions)

SHRI JOHN F. FERNANDES: He must withdraw these words, or, it should be expunged.

SHRI SURINDER KUMAR SINGLA: He should withdraw it, or, it should be expunged. (Interruptions).

DR. BIPLAB DASGUPTA: Madam Chairperson can do whatever she likes. But I do not think I have used any expression which is unparliamentary. I was only advising him as a friend. (Interruptions) What did I say? I only said: 'Don't raise such issues'. Because he has been doing it repeatedly, the only expression I could find was: \*

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Mr. Biplab Dasgupta, I would like to request you one thing. You should never make this kind of a comment about any hon. Member of this House. These remarks are expunged. Now, Mr. Bisi, you please continue with your speech.

SHRI SANATAN BISI: Madam, I was referring to our attitude to the present problem. I was talking about judicial reforms and, in that regard, I referred to the meeting between the Law Minister and the Chief Justice of India. These are the things we are doing. There is nothing wrong in my making a reference to it and, therefore, I do not think anybody can take objection to it.

Madam, it is a question of institutions. It is not a question of individuals. The three institutions, namely, the Executive, the Legislature and the judiciary should work independently; they should have respect for each other and their common aim should be the welfare of the people. They are the three pillars of our society. They should work for the good of the society so that our society can flourish, our democracy can flourish. Thank you.

It is because of the apathy of the Executive that they have gone to the Judiciary, and rightly have they done so. So I congratulate them for doing so even after all these years when the

\* Expunged as ordered by the Chair.

Executive was not functioning, when the Executive was arbitrary and when the Legislature was not amenable to the reasonable demands of the people and the society.

When I go through their statement, I find it is very deplorable and it is rather puzzling my mind. What have they said here? "The High Court Judges and Supreme Court Judges have said that there was a persistent demand for a further improvement of the conditions of service of the Judges." If it is not out of place, Madam, I would humbly submit that if this was done much earlier in the case of the High Court Judges and the Supreme Court Judges, they would not have made this demand persistently. This was very much delayed and the delay is quite deplorable. And it is quite well known that it was done with an ulterior motive.

Some of the hon. Members have already mentioned about enhancement in allowances, perquisites and residential accommodation to be provided to District Judges, District Munsifs and so on. Here I would submit that so far as the purview of this Bill is concerned, this relates to High Courts and the Supreme Court. About decisions which concern the States, the State Governments will take action accordingly.

Regarding the other thing about which there are apprehensions about the mischief that may be done and so on, here it is meant for judicial meetings and judicial officers and, so far as the aspect of price rise in petrol and eatables is concerned, there cannot be two opinions about our giving them something more.

Lastly I would say, let us salute the Judiciary and do for them whatever is possible on our part.

Thank you.

श्री मूल चन्द मीणा (राजस्थान): उपाध्यक्ष महोदया, यह जो उच्चतम न्यायालय और उच्च न्यायालय न्यायाधीश (सेवा शर्त) संशोधन विधेयक, 1996 माननीय मंत्री जी लाए हैं, देर से सही, लेकिन एक अच्छे काम के लिए और न्यायाधीशों की जो बहुत पुरानी मांग चली आ रही थी उसको पूरा करने के लिए लाए हैं। इस बिल के पास होने से, आज के समय के अनुसार, महंगाई की दृष्टि से कई न्यायाधीशों के सामने जो समस्याएं रहती हैं वह समस्याएं सोल्व होंगी।

महोदया, इस सदन के अंदर माननीय न्यायाधीशों के संबंध में कई माननीय सदस्यों ने कई प्रकार की बातें अपने अपने दृष्टिकोण से कहीं। मैं यह मानता हूँ, एक कहावत है— "मुण्डे मुण्डे मतिभ्रमा; गुण्डे गुण्डे सरस्वती", हर व्यक्ति का अपना दृष्टिकोण होता है और अपने अपने दृष्टिकोण से माननीय सदस्यों ने अपनी बात कही न्यायाधीशों के संबंध में। मैं यह कहना चाहता हूँ कि न्यायपालिका के ऊपर इस देश के लोगों का बहुत बड़ा भरोसा है।

महोदया, लोकतंत्र के तीन स्तंभों में जब कोई स्तम्भ अपना कार्य करने से विमुख हुआ है, अपना कर्तव्य निभाने में विमुख हुआ है, तो कई ऐसे मौके आए हैं कि न्यायपालिका ने अपना एक अच्छा रोल अदा किया है। ऐसे कुछ ऐतिहासिक निर्णय पिछले तीन साल में हुए हैं। यह निर्णय ऐतिहासिक हैं, जिनको हम भूल नहीं सकते। उसका मुख्य कारण रहा है विधायिका और कार्यपालिका की नेगलिजेंसी, जिन्होंने अपने कर्तव्य को पूरा नहीं किया। जो कार्य पब्लिक इंटेरेस्ट में होने चाहिए थे, उनका दुरुपयोग हुआ। आज जो हम बात करते हैं हवाला कांड की, तो यह हवाला कांड कैसे सामने आया। एक पत्रकार और कुछ व्यक्ति रोज कार्यपालिका के लोगों के सामने गए, मगर कोई सुनवाई नहीं हुई। बाद में जनहित में एक याचिका न्यायालय में आई। इसमें कई प्रशासनिक अधिकारी, राजनेता कम है बल्कि प्रशासन के अधिकारी ज्यादा हैं, को लेकर एक ऐसा मामला न्यायालय के सामने आया है। इसके साथ हम यह नहीं कह सकते कि आज की न्याय-प्रणाली के प्रति गांव के अंदर जो दृष्टिकोण है वह बदला हुआ दृष्टिकोण है।

4.00 p.m.

आज न्यायाधीश के पद पर जो लोग हैं मुंसिफ मजिस्ट्रेट और सत्र-न्यायाधीश, अगर इनकी बात हम करें तो गांव के लोग कहते हैं कि एक हाथ में पैसा लो और दूसरे हाथ में खूनी का सिर लो तो जज पैसे को महत्व देगा। यह भावना आज लोगों के मन में घर कर रही है। आज न्यायालयों के अंदर भ्रष्टाचार फैला हुआ है। आज न्यायालयों के अंदर मुंसिफ मजिस्ट्रेट बैठे रहते हैं और उनकी बगल में बैठा हुआ बाबू 10-20 रुपए तारीख चेंज करने के लिए लेता रहता है और वे देखते रहते हैं।

महोदया, भ्रष्टाचार मिटाने की बात सुप्रीम कोर्ट के जजों ने कई बार कही है। लेकिन वे अपने गिरेबान में झाँककर देखें कि सुप्रीम कोर्ट में भी तारीख बदलने के पैसे लिए जाते हैं। महोदया, हिन्दुस्तान का आदमी इतना गरीब है कि वह आज सुप्रीम कोर्ट और हाई कोर्ट के अंदर वकील खड़ा नहीं कर सकता। आज सुप्रीम कोर्ट की स्थिति यह है कि एक मिनट के लिए वकील खड़ा करेगा तो एक लाख रुपए खर्च होंगे और वकील केवल इतना ही बोलेगा कि

"माई लॉर्ड, गिव ऐनदर डेट।" इतना बोलने के वह एक लाख रुपए ले लेता है। हिन्दुस्तान का आदमी जो गांव में रहता है, वह वकील के लिए इतना पैसा खर्च नहीं कर सकता। इसलिए इस ओर भी सरकार का ध्यान जाना चाहिए कि लोगों को सस्ता न्याय मिले और लोगों की समस्याओं का निदान हो सके। ऐसा कोई रास्ता निकालना चाहिए।

आज आप जजों की तनखाह बढ़ा रहे हैं, इसके लिए हम सभी सहमत हैं क्योंकि महंगाई का युग है लेकिन न्याय की जो व्यवस्था है, गांव में बैठे हुए जो आदमी है, उसको न्याय नहीं मिलता है। न्याय न मिलने के कारण उसकी दुर्दशा होती है। जो लोग उसके ऊपर हावी हैं, उनके अत्याचार उसको सहन करने पड़ते हैं। आज छोटे न्यायालयों की बात आप देख लीजिए। कई लोगों के मर्डर कर दिए गए और मर्डर करने वाले को कोई जेल नहीं हुई। वे बरी कर दिए गए। आज मर्डर करने वालों को जमानत मिल जाती है। इसलिए न्यायाधीशों के लिए भी एक आचार-संहिता बनानी चाहिए। उस आचार-संहिता में उनके द्वारा दिए गए निर्णयों की भी जांच होनी चाहिए कि ये निर्णय किया भावना से दिए गए हैं। तब जाकर भ्रष्टाचार रुक पाएगा।

महोदया, आपको याद होगा कि संसद में भी एक जज के खिलाफ महाभियोग का प्रस्ताव आया था। उस जज ने भ्रष्टाचार किया था। लेकिन संसद में बैठने वाले इतने भले हैं कि उन्होंने उस न्यायाधीश को बचा दिया। एक और न्यायाधीश ने संसद के सदस्यों के लिए ब्या-क्या नहीं कहा। जैसे जानवरों का मेला लगता है, इस तरह की बात उन्होंने संसद-सदस्यों के बारे में कही। लेकिन इसके बाद भी संसद में बैठे हुए लोग उनको माफ कर देते हैं। इसलिए मेरा निवेदन है कि न्यायपालिका के ऊपर कंट्रोल होना चाहिए कि वह अपनी सीमा से बाहर जाकर काम न करे। कई जजों ने अपनी सीमा से बाहर जाकर काम किए हैं। उदाहरण के तौर पर मैं बताना चाहता हूँ कि संसद सदस्यों के क्वार्टर केवल संसद सदस्यों को ही मिलते हैं, और किसी व्यक्ति का उससे कोई मतलब नहीं है लेकिन उस पर भी एक जन-याचिका लग गई और न्यायाधीश उसको सुन रहे हैं। इसलिए जजों के लिए भी आचार-संहिता बनानी चाहिए।

श्री मोहम्मद सलीम (पश्चिमी बंगाल): आप सब कुछ तो डि-कंट्रोल करना चाहते हैं, केवल न्यायाधीश को कंट्रोल करना चाहते हैं?

آل انشي محمد سليم: آب سب کچھ توڑی  
فکروں کہ ناچار سب کو کٹر کنٹرول کرنا چاہتے ہیں۔  
وہ نہ تو دل کرنا چاہتے ہیں۔

†[Transliteration in Arabic Script]

**श्री मूलचन्द मीणा:** मैं न्यायाधीश को कंट्रोल करने की बात नहीं कर रहा हूँ। मैं केवल इतना कह रहा हूँ कि न्यायाधीश का निर्णय निष्पक्ष होना चाहिए, किसी भावना में उनको नहीं बहना चाहिए। जिस तरह से न्यायाधीशों की नियुक्तियाँ होती हैं, देश में कई विचारधाराएँ चल रही हैं और उन विचारधाराओं के लोग न्यायाधीश बन गए हैं तो उनके निर्णय भी इससे प्रभावित हो रहे हैं। मैडम, मैं उनकी नियुक्तियों के संबंध में एक बात जरूर कहना चाहता हूँ।

देश की आजादी के पचास साल होने के बाद भी आज देश के न्यायालयों में शेड्यूल्ड कास्ट एवं शेड्यूल्ड ट्राइब्स के न्यायाधीश करीब नाममात्र के हैं जबकि आज यह नहीं कहा जा सकता कि इस वर्ग के लोग पढ़े-लिखे नहीं हैं, योग्य नहीं हैं। इस बात को हम नहीं कह सकते। नियुक्ति का जो दृष्टिकोण अब तक रहा, वह यही रहा है। इन लोगों को, जब तक शेड्यूल्ड कास्ट एवं शेड्यूल्ड ट्राइब्स के लोगों को निष्पक्ष न्याय नहीं मिलेगा, जब तक इनके लोग न्यायाधीश नहीं बनेंगे, इनकी नियुक्तियाँ, जो रिजर्वेशन की पालिसी है, उसके अनुसार नहीं होगी, तब तक शेड्यूल्ड कास्ट एवं शेड्यूल्ड ट्राइब्स के लोगों को निष्पक्ष न्याय नहीं मिल पाएगा। इसलिए निष्पक्ष न्याय के लिए इनकी नियुक्तियाँ होना बहुत जरूरी है।

मैडम, आज न्यायालयों के अंदर अंग्रेजी में काम होता है, अंग्रेजी में बहस होती है, अंग्रेजी में लिखा-पढ़ी होती है, निर्णय जो होते हैं, वे अंग्रेजी में सुनाए जाते हैं। मैं चाहता हूँ कि न्यायालयों में हिंदी लाई जाए, यह राष्ट्र की भाषा है और ज्यादातर लोग हिंदी को बोलने वाले और समझने वाले हैं। इसलिए सबसे महत्वपूर्ण कार्य यही है कि न्यायालयों के अंदर राष्ट्रभाषा हिंदी का प्रयोग ज्यादा से ज्यादा किया जाए, अंग्रेजी का कम किया जाए।

महोदया, जजों की सुविधा का जो सवाल है, आज माननीय सदस्य बता रहे थे कि जजों को कई कस्बों में मकान नहीं मिलते हैं, ऐसी स्थिति है। लेकिन एक स्थिति थी पहले, आज से दस-पंद्रह साल पहले, सेशन जज को जब सरकारी मकान मिलता था तो उससे मिलने के लिए कोई नहीं जाता था, उससे मिलता नहीं था। सेशन जज मिलने से डरता था।\*

एक समय था दस-पंद्रह साल पहले कि वे अपने बंगले से बाहर नहीं जाते थे। यदि बंगले से बाहर जाते थे तो इजाजत लेकर लोगों से मिलते थे लेकिन आज? आज जो वकील केंसों में पैसा लेते हैं वही जज बन जाते हैं।\*

वकील को तो कम से कम जज नहीं बनाना चाहिए, वकील को जज नहीं बनाएं।\*

...(व्यवधान)...

**SHRI VAYALAR RAVI (Kerala):** Madam, anything derogatory to Judges, I think should not go on record.

**THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE):** This is what I have been telling all the Members, please don't make this kind of a comment against the judiciary or anybody in the House. By making any remark against them you will not be sending a good message to the country.

**श्री मूलचन्द मीणा:** मैडम, मैं न्याय के लिए बात कर रहा हूँ।

**THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE):** Please expunge all these remarks made by the Member. It is not in good taste.

**श्री मूलचन्द मीणा:** ठीक है मैडम, जब आपने कह दिया तो...

**उपसभाध्यक्ष (कुमारी सरोज खापर्डे):** मिस्टर मीणा, आप विषय पर आइए, भावनाओं में बहते हुए कुछ कहते जाना ठीक नहीं होता है।

**श्री मूलचन्द मीणा:** मैडम, जजों के मकान की बात थी, उनके वहिकल्स की बात है। जजों के आने-जाने के लिए वहिकल्स की व्यवस्था है। रहने के लिए, एक ऐसी वातावरण में रहे जिससे न्याय के प्रति जो लोगों की भावना है, वह न्याय लोगों को देते रहें। आज लम्बे समय से 25 लाख के करीब केसेज पेंडिंग पड़े हुए हैं, लम्बित चल रहे हैं। लोगों को दस-दस, बीस-बीस साल हो गए हैं न्याय नहीं मिला है। इसलिए लोगों को शीघ्र न्याय दिलाने के लिए एक ऐसा कार्यक्रम गवर्नमेंट को बनाना चाहिए, ज्यादा न्यायालय खोलने चाहिए जिससे लोगों को न्याय मिल सके। समय पर उनको न्याय मिल जाएगा तो लोगों को राहत मिलेगी, यही मैं इस मौके पर कहना चाहता हूँ। धन्यवाद।

**SHRI M.A. BABY (Kerala):** Thank you very much, Madam, for having permitted me to participate in this discussion.

The subject has a limited scope. It is about a certain increase to be made in the allowances of the Supreme Court and High Court Judges for them to entertain their friends and those

\*Expunged as ordered by the Chair.

who are invited to their places and also in the fuel that is available to them. But this increase in fuel has justifiably fuelled a larger debate on the state of justice and jurisprudence in our country.

Madam, at the outset, I should deal with the issuance or promulgation of the ordinance for this particular purpose. Without spending much time on this aspect, I would submit that this is a case where an ordinance should not have been promulgated. Anyway, at a particular juncture, this had to be done and now we are converting it into an Act.

The question which has been debated by all in relation to this particular ordinance is whether the judiciary has been in a position, in our country, to discharge its responsibilities. During the course of his speech, Shri Jethmalaniji has tried to, I do not say, malign us, for Shri Jethmalaniji is not in the habit of maligning anybody, but to criticise us indirectly by saying that now we see the spectacle of Adam Smith and Karl Marx finding a common place of action or 'sharing a common bed'. That is what he has said. Anyway, Madam, the point is, when the first part of the name of my very esteemed colleague, which is 'Ram', has been illegitimately appropriated for sinister purposes by a group, a political force with ulterior motives, to keep our country together, to keep our people together, various political forces have been forced to come together on a limited Common Minimum Programme. This is the only thing I would like to submit in response to what Shri Jethmalaniji has said.

Madam, this Common Minimum Programme speaks about the step which we are taking today. I quote from the Common Minimum Programme: A Bill on judicial reforms will be introduced within six months in order to expedite piled up cases and to eliminate delays. In consultation with the Chief Justice of India and the Chief Justices of High Courts, steps will be taken to dispose of all pending cases within a period of three years." By quoting the Common Minimum Programme with regard to some very burning issues related to speedy administration of justice, I am only trying to convey the fact that this major aspect has also been attended to in the Common Minimum Programme. It is true

that it is not in a sufficiently elaborate manner which, of course, is not within the scope of such a Common Minimum Programme. It is a Common Minimum Programme. Therefore, I have quoted the relevant portion. I shall give you a copy of the Common Minimum Programme because the time at my disposal is very limited. Madam, there has been a discussion whether the sovereignty lies with the Legislature or the Executive or the Judiciary and in an eloquent presentation, Margaret Alva Ji stated that it lies with the Legislature. Of course, in a limited way, we can say that. I want to extend that further and would like to submit that in the final analysis, the sovereignty lies with the people of our country. Only as representatives of our people, the Legislature can exercise that power for a limited period. Madam, you have very rightly given the ruling during the course of the debate that we should not send a wrong signal. That has been a very right and correct ruling which goes without saying. The point today is that various important and responsible constitutional institutions are transgressing their well-stipulated areas of operation and it would be improper if we blame either the Executive or the Judiciary or the Legislature for this unfortunate situation. Our Constitution gives full protection to Members of Parliament and we cannot be drawn to court for something that we state here. But we should not exploit the situation and we will not exploit this privilege that Members of Parliament are entitled to hurl uncalled for, immature, improper accusations at any other important Constitutional authorities. (*Interruptions*)

SHRI JOHN. F. FERNANDES: It is going on for four days in the Press and then it is withdrawn. (*Interruptions*)

SHRI M.A. BABY: I am not referring to any particular incident. I am only making a general formulation. (*Interruptions*)

SHRI V. NARAYANASAMY (Pondicherry): Each constitutional authority has got its own limitation. One should not encourage that. (*Interruptions*) That is my submission.

SHRI M.A. BABY: This being the case, what I would like to submit is that out of these three important pillars of democracy—I won't

like to exclude the Fourth Estate, which is also equally important, if not more, like these three constitutional institutions, the Fourth Estate is also expected to behave and conduct itself in an utmost discreet and responsible manner—out of these three constitutional pillars, Madam, if a particular institution misbehaves or conducts itself in an unbecoming manner ... (Interruptions)

उपसभाध्यक्ष (कुमारी सरोज खापर्डे) : मीणा जी और मसूद खान जी, आप दूसरों को बोलने में तकलीफ क्यों पहुंचा रहे हैं। उनको सुनिये। अगर नहीं सुनना है तो लॉबी में बात कीजिये।

श्री मोहम्मद मसूद खान (उत्तर प्रदेश) : मैं कह रहा था बोलो नहीं, चुपचाप सुनो।

انقری محمد سلیم : میں کہہ رہا تھا براہ کرم  
چپ چاپ سنو۔

उपसभाध्यक्ष (कुमारी सरोज खापर्डे) : अब यह मुझे कैसे पता चलेगा? मुझे तो यहां से इतना ही दिखाई दे रहा है कि आप दोनों बोल रहे हैं।

SHRI M.A. BABY: Madam, it is a remarkable concept. It is the society as a whole which should check the aberration. When you look at the entire process, including the making of the Constitution, the Constitution is not something which is divine. The Constitution is the result of the freedom struggle. It is the result of the debate which we had in the Constituent Assembly. These are the results of the personalities of power and stature who are the products of India's freedom struggle. But do we have that Constitution preserved in the same manner? Madam, I would like to submit that—I do not say that what we have today is a totally mutilated Constitution—we have 74-75 amendments which have changed the contents and thrust of the Constitution in a very significant manner and we also have some Constitutional amendments in the form of some atrocities committed during the time of Emergency, taking away the powers of the States and Provinces. In the Representation of the People Act there was an amendment which had a retrospective effect in order to protect something which was not done in the year 1971; I do not want to go into the details of that. So many things have happened. When we

swear in the name of the Constitution, the Constitution itself is something which is very much different from what was adopted in the Constituent Assembly. As has been stated therein—"We, the people of India enact this and give unto ourselves...", in such a beautiful and precise way we have enacted that Constitution.

Mrs. Margaret Alva, my respected colleague, made her speech which consists of two portions. The first portion of her speech—the second portion started with the issue of corruption and things like that—was almost what I wanted to say and she made it in a beautiful and eloquent manner. At that time I was wondering whether she was speaking from the CPI-M benches or not!... (Interruptions)... I do not grudge; I was only wondering what she was doing when she was a Minister; all this wisdom descended on her immediately after having changed her position of sitting... (Interruptions)...

SHRI V. NARAYANASAMY: Madam, he cannot make an observation like this or uncalled remarks against the Member of the House when she is not present. It is not good... (Interruptions)...

SHRI M.A. BABY: Is it against the Member? I am in full agreement with what she said.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): You have crossed the time-limit. Your time is over.

SHRI M.A. BABY: We always get an opportunity to discuss such fundamental issues in the Parliament, Madam. There was an opportunity for Indian Parliament. I would like to continue with a self-critical note. When we speak about the aberrations, keeping in view the institutions, Constitutional institutions,—Margaret Alvaji very rightly pointed out that there is aberration, there is degeneration in the judiciary also; I am in full agreement with that—we in the political process are heading the degeneration. In all humility and with a sense of responsibility we have to admit that. The fact that judiciary is also degenerating has been very sharply formulated in the presently famous Vohra Committee Report where the term 'that even judiciary is not free from the

embrace of mafia.' is used. This is the formulation made in the Vohra Committee Report. Madam, having stated that, invoking a very important Constitutional provision, the other House, in its wisdom, decided at a point of time to deal with the problem of corruption affecting the Indian judiciary. I am referring to Justice Ramaswamy's impeachment case.

All the constitutional requirements, Madam, had been fulfilled. It was not that that some Parliamentary committee found fault with a particular Judge. There was a motion moved in the other House and on the basis of that motion the then Speaker appointed a three-member judicial committee. Jethmalaniji has said that when we say a three-member judicial committee one should not think that three members with remarkable integrity from the Bench.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Mr. Baby, your party is given only 8 minutes. You have started your speech at ten minutes past four of the clock. Now it is going to be 4.25 P.M.

SHRI M.A. BABY: Madam, I would have taken more time. But most of the points which I want to raise have been covered by Mrs. Margaret Alva. That is why I am trying to compress my speech, to be brief.

Madam, ultimately this judicial committee consisting of eminent judges was to examine 14 charges and, with great judicial sagacity, it examined these 14 charges levelled against a Judge of the Supreme Court. They found him guilty in ten cases. Two charges were not proved and one was only partially proved and he had been completely exonerated on another charge. This means that the judicial committee judiciously examined all aspects. I need not have to explain the rest of the story. It is public knowledge. The other House of the Parliament had an opportunity. Now what was the message given? It was generally felt that the stand of the ruling party on the Ramaswamy episode would send a wrong message across the country that the ruling party was not only disinterested in tackling corruption but also wanted to legitimise it. Now the political system had failed to correct the corruption within itself. In the case of constitutional provisions which

were available to the political system to check corruption in other areas including judiciary, the political system remained exposed because of the unfortunate conduct of a section of the Members of the other House.

SHRI V. NARAYANASAMY: Madam, I am on a point of order. The hon. Member was referring to a case in which a Judge of the Supreme Court was involved. He was referring to a three-member judicial committee and he was referring to the other House. I am only on a limited point. My point of order is this. In our House we never refer to any proceedings of the other House and we cannot cast any aspersions against the Members of the other House. Therefore, being a senior Member of this House—I think Mr. Baby will agree with me—he should not speak on that subject. If he still persists on that, I need your ruling on this point.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Mr. Baby, what the hon. Member has stated in this House is true. You should not refer to the proceedings in the other House.

SHRI M.A. BABY: Madam, my intention was not to cast any aspersion. If any such impression is there, I would like to disabuse the mind of those who have such an impression that my intention was to cast aspersions on the Members of the other House.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): You please conclude.

SHRI M.A. BABY: I would now quickly mention about one particular aspect which has a great constitutional implication.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): There is a long list before me. It is very difficult for me to adjust the time.

SHRI M.A. BABY: Madam, I am dealing with some of the points which the subsequent speakers want to raise. So, they will be relieved of those points.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): We should be fair enough to them. (*Interruptions*). Mr. Baby, we should be fair enough to them also. We must give them some time to speak.

SHRI M.A. BABY: Madam, I shall conclude quickly. As per the convention and the constitutional provisions, it is the prerogative of the person identified by the President of India, who can be the leader of the majority party in the other House, to form the Council of Ministers. It should be the prerogative of that person who could be a Member of the other House or otherwise, who would decide as to who should be the Ministers for different Ministries and Departments. Nobody else can interfere. As per the Constitution and conventions nobody can interfere.....

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Mr. Baby, it is very difficult for me because you have already taken 20 minutes more. Your party was given eight minutes.

SHRI M.A. BABY: Thank you very much for your indulgence. I am quickly summing up.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): There are many Members who are sitting here. They also would like to speak. Only two hours have been allotted to this Bill.

SHRI M.A. BABY: Madam, I will quickly sum up.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): 'Quickly' does not mean that you take 10 minutes more. We started the discussion on this Bill at 2.40 p.m. and now it is 4.35 p.m.

SHRI M.A. BABY: Madam, I will wind up within five minutes.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): One of the hon. Members would get up and say, How long is it going to take, Madam? Then I will be landed in trouble. Do you want to put me in trouble?

SHRI M.A. BABY: Madam, there can be some more consideration towards a baby. (*Interruptions*).

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): You are not the real baby. You are a grown-up baby now.

SHRI M.A. BABY: Madam, it is true that there is a grey area in my statement, but still....

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Mr. Baby, please conclude within two minutes.

SHRI M.A. BABY: Therefore, my submission is, the Supreme Court gave an abundantly different and special direction that a particular office, a particular department, should not go to the Minister who was looking after a particular department. I don't know whether our fourth estate took note of the abundant constitutional implications arising out of that direction of the Supreme Court. I don't say that the Supreme Court assume that authority.....

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Mr. Baby, it is enough. Now you have to conclude your speech. There are many names before me.

SHRI M.A. BABY: Madam, I am only making points.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): You are making points for the last 10 minutes. You cannot go on speaking like this.

SHRI M.A. BABY: Madam, I am winding up.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): How much time will you take?

SHRI M.A. BABY: Madam, you have given me five minutes.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): I have given you only two minutes. Please conclude within two minutes; otherwise, nothing will go on record.

SHRI M.A. BABY: Okay, Madam. For the speedy administration of justice, there should be decentralisation of justice to the extent possible. To begin with there should be, at least, three more Benches of the Supreme Court in three metropolitan cities, such as, Calcutta, Madras or even Bangalore in the given environment and Bombay. I don't mind if one or two more Supreme Court Benches are there. Similarly there should be High Court Benches in every far-flung important city of different States.

Shri Jethmalani made a point about transfer and appointment of judges. It is very important.

I don't know whether a judicial commission would be good enough. But such larger issues should be addressed by the United Front Government as promised in the Common Minimum Programme. Madam, another important aspect is that....

**THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE):** Mr. Baby,....

**SHRI M.A. BABY:** Madam, this is my last point.

**THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE):** I am sorry. You cannot go on like this. Nothing will go on record now. You cannot go on speaking Shri Triloki Nath Chaturvedi.

आपकी पार्टी का समय तो खत्म हो चुका है फिर भी मैं आपको 5 मिनट देना चाहूंगी। मेरे सामने इतने सदस्यों के नाम हैं कि मुझे उनको एडजस्ट करना मुश्किल हो जाएगा।

**SHRI TRILOKI NATH CHATURVEDI** (Uttar Pradesh): The born—M.A. Baby of the House has already discussed the fundamentals of this Bill and I will not take more time than allotted to me. I will just make a few points. Madam Vice-Chairperson, we have to keep the dignity of the House as well as that of the judiciary in view when we criticise the judiciary. So far as substantive issues or the substantive theme of the Bill is concerned, there is not much of a dispute. This measure has been adopted only to compensate for the rise in prices. Probably, this Bill could have been passed by the earlier Government if it had so managed its parliamentary programme because this Bill is really beyond dispute despite our different views on the approach of the judiciary. Yesterday, the Law Minister had talked about pendency and I don't want to go into it in any detail. As regards the pending cases, I think there are two aspects to it—the higher judiciary, and the district judiciary and so on which is sometimes called the lower judiciary. I think Mr. M.C. Setalvad, Chairman, Law Commission, long back, almost 20 years back, had submitted a report on this and the eleven reports including the Malimath Committee report have been mentioned here. Mr. Bhardwaj would be able to through much more light on this. My submission to the hon.

Minister is that our approach is by and large ritualistic. Our approach to both these aspects should be different. I must say that you must go to the States, talk to the Chief Justices and the Chief Ministers and find out what problems they have regarding housing, modernisation, etc. of lower judiciary you must see that these problems are solved and attended to effectively at the State level because at the higher levels we are able to devote time. At the moment, I do not want to dilate upon the question of the many other aspects of judicial reforms which are called for. This is part of the Malimath Committee report and other reports. Probably, it is high time for the Government to come out with a white paper delineating the entire situation. We have to see as to where we stand and in which direction we are going. Madam Vice-Chairperson, I also request the Minister to ensure that the funds which are given for modernisation of the judiciary and similar other departments are utilised for the purpose. I have a very unfortunate and a very tragic tale to narrate about the non-utilisation of funds in a number of States. I do not want to name them. I myself appeared before a Finance Commission which was presided over by no less a person than late Mr. Y.B. Chavan. The problems at that level are really acute and need to be attended to if you want to carry justice to the common man. The second point that I wish to make is regarding the conflict between the Bar and the judiciary. If need be, we should amend the Bar Council Act or any other statute to get rid of this conflict. The conflict only causes the cessation of courts and brings further suffering to the common people by whom we swear day in and day out. This brings disrepute to the judicial system because the Bar and the judiciary, in a restricted sense, constitute the essence of the judicial system. I do not want to go further into this. The third point that I wish to make is regarding the mindless litigation on the part of the Government which has clogged the wheels of the judicial system. In a particular office, I had conducted a study in this regard. I can quote umpteen instances. I had also mentioned to the then Finance Minister, Mr. Madhu Dhandavate to see that so far as Government was concerned, it should not go in for litigation on the slightest pretext. It is there on every level, from the Magistrate's

court to the High Court, the Supreme Court and the Tribunals. This leads to corruption and many other things. When I was Chief Secretary of Delhi, this was brought to my notice by no less a person than the former Chief Justice, Mr. J. Andley. He asked me as to what was happening in a land acquisition case. This provides for collusion at different levels. I do not want to say anything more than that. But this is extremely important because the persons who go into this litigation on behalf of the Government somehow or the other do not pay proper attention to see whether the case is the right one or not. The next point that I would like to make, Madam, is the question of filling up of the posts and the question of transfer of judges. The former Law Minister is here. When we talk of Mr. Gupta's case or the second case about the transfer of judges and their appointments, unfortunately or fortunately now the Supreme Court itself has assumed a role and power in this particular matter of appointment, which, I think, does not belong to it. With due humility, I would like to mention that they are probably redoing something in the Constitution and not interpreting it properly. But having said that and the Government having conceded that particular point, as regards transfer of judges, I would only like to mention that this matter has been raised, as I find, in the Press. I think that the public and the Bar are also equally concerned with it and there should be a much wider consideration of it because the policy relating to transfer of judges was not adopted in an *ad hoc* manner or in a haphazard manner or suddenly. There is a long historic background behind it, there are rationale reasons behind it, and they need to be taken into consideration. Madam, I would also like to mention that the question of contempt of court is a very relevant point. In a democratic system, there will have to be a much freer approach to criticism of the judicial system as such but there should not be any attempt to denigrate any individual judge. We can always comment upon judgements. Justice Krishna Iyer and the Jurist, Dr. Upendra Baxi, have done these things quite effectively and we should not forget about them. Madam, I would also like to mention—I do not want to go into the details because my time is already up—how the cost of litigation has to be brought

down. That is a very important point for consideration. The last point which I would like to make in this connection is that while the social dynamics of the society has to be taken into account but that should not, in any case, give a complexion or colour to the judiciary, whether it is the present one or ones which come subsequently, that it is, in any case, tilted this way or that way. Here, we should also not forget that—when we criticise, sometimes with great vehemence, we talk of the supremacy of Parliament—if anything is supreme in this country, it is the Constitution. There is no supremacy or sovereignty of any of the pillars of the Constitutional institutions including the judiciary. And it is the responsibility given to the judiciary. I think that in the recent past and even earlier, the judiciary acquitted itself with great credit. Let us not forget it because, be it in Ramesh Thapar case or in A.K. Gopalan case, we talked of human rights, fundamental rights, so on and so forth. I think that we cannot ignore that aspect. Madam Vice-Chairman, I hope that you would bear with me for two minutes more. I would like to mention that even in the British times, a few ordinances issued by the Viceroy had to be reviewed because the then Chief Justice of the Federal Court questioned a particular ordinance and even persons occupying lower categories at that time—Mr. Wanchoo was the Agra District Judge—passed orders against detention in 1942. So, judiciary is a vital institution under our Constitution. It is a tradition. It is a symbol of fairplay. It fulfils all our hopes. That is why I would like to submit that when we talk about providing them these simple facilities, perquisites, it is not something that we are doing a great favour to the judiciary. Don't compare the pay scales and other perquisites that were given before independence and after independence because it is a much more complicated question.

Then, there is a question of judicial activism. When we talk about this, let us not forget that this is not judicial activism. It is merely judicial action. Long before, I think in the lecture, I delivered in the 89th M.N. Roy Memorial Lecture, I had talked about this and made a criticism also. Therefore, I am not fascinated by this. What we have to do is to go

into the circumstances which have made this necessary. If the Executive does not play its role properly, if Parliament, somehow or other, makes itself irrelevant—there are various scams and the JPCs, Joint Committees went into them—what is the remedy to the common man? Whatever it is, whether it is protection of liberties of the common people or exposure of the misdemeanours of people, however high they may be, it could not be called judicial activism. I think the Judiciary has played a good role and it has a role to play. If the legislators could conduct themselves well, if the Members of Parliament conduct themselves well, inside the House as well as outside the House, then probably there may not be a cause to be worried about judicial activism. We need to adhere to a Code of Conduct which is prescribed for us. There was a day when Mr. Mudgal, a former Member of Parliament, resigned—I think he was expelled from the House—because he was accused of doing some kind of brokerage through asking questions. I don't want to go deep into this matter because it is self-evident. The Ramaswamy case is reflective of the stage where we have come to. I am not casting aspersions on any person. Yes, I know our Constitution envisages an equilibrium, an harmonious equilibrium of various institutions, particularly of the Executive, the Judiciary and the Legislature. This has to be kept in view and there should not be any trespassing by one into another's domain. I think we have to do a fair amount of introspection why people are being compelled to go to the Supreme Court or the High Courts for redressal of simple grievances. You know the garbage case in which the Supreme Court had to direct the Municipal Corporation of Delhi to take immediate action for the timely removal of garbage from public places. Why should the people go to the Supreme Court or the High Courts, whether it is the hawala case or the urea case? Why should they go to them? It is the duty of Parliament. It is the duty of the Executive. Let us discharge our responsibilities properly. It should not be viewed as if the blackrobed Judges are doing something or the other. When I say this, I am not fascinated by judicial activism or overawed by the Judiciary. Why should we develop cold feet? That is why,

let us not give scope to others to trespass into our area.

Then comes the question of Judges' accountability. I have no doubt in my mind that the Judges should also think about their accountability. They should observe the Code of Conduct meant for them. A Committee of Judges worked out a Code of Conduct applicable to the Judges. Unfortunately, it has not yet been adopted by the Judges. I think this is one thing which we should put before the Supreme Court in a constructive manner. In the next Conference of Judges, the Law Minister should explain the viewpoint of Parliament. But it is not correct to say that the Judiciary is usurping the powers of Parliament or the Executive. I think we are only shirking our responsibility. It is not fair to criticise the Judiciary without trying to know where the fault lies. We talked about the committed Judiciary during Emergency. I have with me Mr. Antulay's book which was written at that time. I have also two or three other books which were written about the judicial system in this country.

But even this particular author also somehow got the relief from the judiciary. We may not like the decision. But the question is that judiciary is the guardian of public liberty. I mentioned about the Code of Conduct because there are a number of cases which have been mentioned in various High Courts, etc. So, the judiciary also has to take a serious note of this. It is a question of awakening the conscience of people or awakening the social conscience. Whether it is the conscience of the judiciary or the Parliament or the entire polity or the executive, Madam Chairperson, that has to be activated and that is what the people are looking forward to. There should neither be the denigration of other institutions, nor the denigration of the judiciary by us sitting in this House. That is why some people talk about us and call us 'the only privileged criminals'.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Thank you, Chaturvediji, Shri Hansraj Bhardwaj.

SHRI HANSRAJ BHARDWAJ (Madhya Pradesh): Madam, thank you very much. Let

me make it very clear that the tradition of the Parliament while discussing about judiciary is that we should go unanimously. Whenever we bring any measure in support of the Judges' perks and conditions of service, the House always as one adopts the law. It is because the Judges do not speak for themselves. The members of Parliament can speak for themselves in this House and also in the other House. But the Judges do not speak for themselves. Therefore, we speak for them. India is governed by rule of law and law is no respecter of persons. The Judges are expected to be independent and impartial. They are a different institution and we should be very cautious in criticising the judiciary because they perform very delicate functions. They decide the disputes between citizens and between citizens and the state. This is an institution which is charged with the duty to defend the citizen's rights and against the mightiest. It is a very delicate function.

I discussed this proposal of increasing a little the perks of Judges earlier because the Pay Commission delayed its report and the Judges were very hard-pressed for transport, etc. and they wanted some increase because you would also not like, as parliament, that the Judges should live in discomfort. An uncomfortable judiciary will deliver an uncomfortable decision. Therefore, it is the commitment of the nation as a whole because, mind you, it is one of the three most important pillars of the state and whatever criticism people may make against the judiciary, the judiciary today enjoys public confidence more than any other organ of the state, whether it is the legislature or the executive. You go to any ordinary man in the street, he says that the judiciary is doing very good. I spent ten years in this Ministry. You will ask me, what have we done for the country? There is no doubt that cases are piling up, there are arrears, there are delays, there are expenses. An ordinary citizen is not getting respite in spite of the best efforts of so many Law Ministers. I was one of them for quite a long time. But I can say, Madam, with confidence that I convened five conferences of the Law Ministers of all the States, because in a *quasi* federal structure that India is, you have to discuss matters with the

State Governments. It is there that the High Courts and the subordinate courts are located. It is their money that is involved. So, I cannot, we cannot and the present Law Minister cannot really say that it is done here. We deal with only the High Courts and the Supreme Court from the Centre. The entire litigation is fought in the States. So, you have to call them. Give conferences of the Law Ministers were held at five different places in the country. The first one was in Bangalore, then in Pondicherry, then in Madhya Pradesh, then in Goa — the Law Minister's State—and then last we met in Hyderabad in 1996 when there was a declaration. We chalked out a 20-point programme based on Malimath Committee Report. We had unanimously implemented at least thirteen or fourteen points out of those 20 points. The Supreme Court has 46,000 cases today. The arrears have been brought down by 20,000. Today, there are about 25,000 or 26,000 cases. How was it achieved. We got the Supreme Court Registry computerised. The cases were put in bunches. So, one case means complete 100 cases at a time. They were bunched together in the Registry. We gave them money. But look at the country's situation today; There are not court rooms for judges. There is no housing for Judges.

There are no adequate facilities for them; they are using the same old typewriters; they are not using the modern gadgets which are required for quick disposal of cases.

**DR. BIPLAB DASGUPTA:** For lawyers also.

**SHRI HANSRAJ BHARDWAJ:** Let me say a few words, if you want to hear something; otherwise, I will get confused. So, what I did was, I approached the then Deputy Chairman of the Planning Commission, Shri Pranab Mukherjee and he gave me six hundred crores in the Eighth Plan. I said that the States should give 50 per cent and the Centre will give 50 per cent and let us do complete work for improvement of infrastructure in the courts and housing for judges in five years. How many Supreme Court and High Court Judges are there? They are not more than the number of Members of Parliament. There are about 560 — 600 judges in the High Courts and 26 judges

in the Supreme Court. So the minimum need is to give them a good court-room to work; give them adequate facilities in the court-room like a typewriter a word processor, etc. So we started it and today the result is that 90 per cent of the registries of the High Courts are computerised. Cases have been bunched together. Today a citizen of our country residing in a remote corner of the country can know from the Collector's office about the position of his case in the Supreme Court or in the High Courts by paying twenty rupees. We have done a lot of work by working together. No Law Minister differed with me when we invited them for discussions. I had discussions with them and the Law Secretaries who agreed there. I even invited all the Chief Ministers and the Chief Justices in 1993. The hon. Law Minister will have the minutes of that meeting. That was a Joint Declaration made in New Delhi and was known as Delhi Declaration. It said that we will do these things. So the country is on the march. One has to pass the touch from one hand to another and it is in very safe hands now and I wish all success to the present Law Minister that he fulfils the promise to the countrymen that the justice will be speedy, inexpensive, effective and substantial. To that extent, I am proud to say that that march is on. It is for the first time in India we brought on one side the Chief Ministers and on the other side the Chief Justices — The Chief Justice of India on the dais — the Law Ministers and the Law Secretaries interacting. So this was a national debate. And once the nation meets and decides, definitely things improve. It was like an NDC of the Judiciary. Today if you criticise judges, very well you are very competent because you enjoy this freedom of article 105. But, see whether we are doing all our work properly. If there is any fault in the Executive, it is for the Executive to address itself rather than abuse the Judiciary. There is no fun in abusing the judges. There is no fun in criticising ourselves. We should devote our energies to fulfil the task. The Parliamentary democracy that India is, will be governed only by the Rule of Law and by no other procedure. If the judges feel that they can govern the country by judicial pronouncements, they are mistaken. They will destroy themselves because their job is to decide cases and deliver justice to the people.

If they think that they can act like Ministers or Chief Ministers, they are totally living in an illusion because their job—as rightly said by Shri Chaturvedi—is what the Constitution has assigned to them. If they fail miserably there, then the people will say something different from what they are saying today for the Judiciary. So, this is a small measure. I would like the Law Minister to initiate another debate whether in Parliament or outside as to how quickly we can provide that quicker system.

In 1954, Pandit Nehru while intervening in a debate said that we are doing insubstantial justice to the countrymen; Since then we have travelled almost 40 years. Now at least some work has been done. If you want a white paper, it is ready in the Law Ministry. It can only be passed on to you. That document is ready there.

We have opened four channels for disposal of cases. You can go to courts and the other one in the Arbitration Law which the Law Minister got passed from this House. The Arbitration Law is already in force. I did not wait for the Parliament and I enforced it through an Ordinance. Then there is the Alternative Dispute Resolution which is the first institution of its kind in Asia and the Pacific region. It has started functioning in India. Previously, people used to go the Paris; they used to go to America; they used to go to London and pay heavy fees, but we are very fortunate that we brought the ADR system in India. It was inaugurated in October, 1995. So we have gone a long way. Today there is improved infrastructure; the judges are also feeling that if they don't decide the cases quickly and if they don't go into the woes of the people they will have to face the curse.

We urge upon the legal community to please cooperate because it is their future that is involved. If you do not do work in the court, then how will the judges decide the cases? So, all these programmes are there and we hope, as is the tradition of this House, that in the matter of judiciary, we do not criticise much because the Constitution does not permit debate on the conduct of judges. Sometimes we may fault, you may fault. But the question is if you today support the machine the judiciary is like a heart-lung machine—at the time of operation when your heart is being repaired,

you pass it on to the machine and it works during the time of operation and when your heart is all right, the function is passed on to the same organ, i.e. the heart, and the machine is removed. If there are any aberrations or any errors, then what is the court going to do? If the citizens come to the court with a petition saying, "My Lord, this has not been done; this is the duty of the legislature or the executive they cannot direct the legislature that they must pass this law; they definitely give *mandamus* to the executive. So, this judicial activism is being unnecessarily criticised. This is a part of the judiciary. If enlightened citizens of this country go to the judiciary, can the judge say that we shut our eyes? I had my first quarrel with Justice Bhagwati in the famous UP case and I was under an illusion that this judicial activism is something which we should not do. But the citizens are aware of their rights. People who are going to court are very important citizens. One of them I know is Mr. Shourie. He was Collector when I was a student. So people are going to the courts and the courts have a constitutional duty to look into their grievances. So, we should not feel shy of dealing with these problems. A time would come when we will do our work properly and that there will be not criticism. This is only a transitory period. We must support the Law Minister in this matter. Thank you Madam.

SHRI N. THALAVI SUNDARAM (Tamil Nadu): I thank you, madam, for giving me this opportunity to speak on the Supreme Court and High Court Judges (Condition of Services) Amendment Bill, 1996.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Eight minutes have been allotted to your party. Keep that in mind, please.

SHRI N. THALAVI SUNDARAM: Madam, it is a very small amendment to increase the allowances of the High Court and the Supreme Court judges. Madam, so far as the allowances were concerned, Rs. 1250 per month for the Chief Justice and Rs. 900 for the judges of the Supreme Court. For the Chief Justice of the High Court, it was only Rs. 300 and for the judges of the High Court, it was only Rs. 300. As far as these allowances were

concerned, they were very meagre. Madam, I request the hon. Minister to consider providing adequate allowances to the judges. Madam, what is happening in various Ministries and Departments of the Central Government? Every three years there is an increase in their allowances. I feel it would be proper to leave the matter of deciding the quantum of allowances and other facilities to the judges to the Chief Justice of India or to the Chief Justice of the High Court concerned. I appeal to the Minister to consider this point and bring a suitable legislation in this regard. As far as transfer of judges is concerned, in Tamil Nadu there are a large number of judges who are from other States like Andhra Pradesh and Karnataka. Madam, as far as language is concerned, only in the lower courts Tamil is being used, if we are going to file an appeal before the High Court, then it becomes very difficult for the advocates and for the judges. Madam, the costs of typing and other things have increased and it is very difficult to interpret from Tamil to English or Hindi or any other language. Madam, as far as transfer of judges is concerned, inconvenience is caused to the hon. judges. It is creating problems when a number of judges belonging to the same States are there.

Madam, as far as security is concerned, there are gang wars, bomb blasts and other criminal activities which have become the order of the day. Murder is taking place even in court premises. As far as our State is concerned, last week some rowdy elements came to the criminal court and murdered some accused. Now there is a threat for the judges and the lawyers also and inside the premises of the court campus. Hence, I request the hon. Minister to provide some facility for judges in the court campuses. Madam, as far as Article 130 is concerned, it says, "The Supreme Court sitting in Delhi and such other place or places as the Chief Justice of India may with the approval of the President from time to time, appoint. We are from Madras and some other places like Kerala and Karnataka. We are not able to get an immediate remedy from the Supreme Court. Hence, I request the hon. Minister to consider some Benches in Karnataka and in Kerala because we are not

able to get immediate remedy in the Supreme Court. If we file appeals before the Supreme Court, we immediately get orders from Delhi. But it has to reach our places. Hence I request the hon. Minister to consider a Supreme Court Branch in the State of Tamil Nadu or Karnataka. Madam, there are a lot of vacancies as far as tribunals are concerned. There is the Central Administrative Tribunal and the Railway Tribunal. In these tribunals, normally Government appointed only retired judges of the same State or some other State. Now, recently, Madam, there is a vacancy in the Cauvery Tribunal. You know very well, Madam, we are raising everyday to appoint a new Chairman or to reinstate the same Chairman before the Cauvery Tribunal. As far as tribunals are concerned, there are a lot of cases pending before the Central Administrative Tribunal. The Central Administrative Tribunal is only concerned with matters relating to the Central Government, matters relating to IAS officers and IPS officers and regarding transfers from one place to another. There are a lot of cases pending in the Central Administrative Tribunal. Now, I would request the hon. Minister to take immediate steps to fill the vacancy of a Member in the Central Administrative Tribunal. There is a Railway Tribunal. A lot of Members have not yet been appointed till date. As far as the Railway Tribunal is concerned, there are a number of cases pending before the Railway Tribunal. As far as this Railway Tribunal is concerned, we want a remedy from the Railway Tribunal to get the money for our people because some sort of action took place in the railway Tribunal. As far as this Bill is concerned, there is very little scope for discussion regarding the conditions of the Supreme Court judges, High Court judges and the amendment Bill. Madam, this is a very meagre amount. The Minister should consider and fix certain facilities for the Supreme Court judges and High Court judges and should give security and some other allowances for judges. On behalf of AIADMK, I conclude and I support this Bill, Madam.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Mr. Gurudas Das Gupta. He is not present. Mr. Narayanasamy.

SHRI V. NARAYANASAMY (Pondicherry): Madam Vice-Chairman, thank you for giving me this opportunity to participate in the discussion on the Supreme Court and High Court judges (Conditions of Service) Amendment Bill, 1996.

Madam, this Bill is a very small one. This seeks to increase the amenities that are provided to the judges of the Supreme Court and High Courts. I think all the hon. Members of this House would welcome this.

While talking about the amenities being provided to the Supreme Court and High Court judges, I hope the hon. Minister would agree with me when I say that several reforms were brought forward by the previous Government. Several judicial commissions were appointed. The Law Commission also made several recommendations on judicial reforms. Unfortunately, however, some of them are gathering dust. I think the hon. Minister would agree with me. We have seen that during the previous regime, several reforms were brought forward like computerisation process, giving more amenities to the judges, etc. Also, in order to ensure speedy justice, several judges were appointed to the Supreme Court and High Courts. It is a fact.

However, Madam, what is the situation in the case of district court and the lower courts? When we look at the statistics of the disposal of cases by the judges in the lower courts, we find that the amenities provided to them, the facilities made available to them, in terms of the staff strength, buildings, housing for the judges, etc., are not quite sufficient. The buildings which were constructed during the British period are still being used. They are in a dilapidated condition and this is where the courts are functioning. Therefore, this is one area where, I think, the Law Minister should convene a meeting of the State Law Ministers to go into the question of providing the necessary infrastructure and other facilities to the judges of the lower courts.

I now come to the question of pendency of cases. From the replies we get to our questions in Parliament, we find that the cases are mounting; the pendency is mounting. One of the reasons for this is that the vacancies are

not being filled up; whether it is in the case of Madras High Court, the Calcutta High Court, or, the Bombay High Court. There are a number of vacancies in these courts. Whoever has been in the regime, we find that the process itself, the process of appointing the judges itself, takes a long time. This is one of the reasons for the pendency of cases in the various High Courts as well as in the Supreme Court.

Madam, Members have said a lot about judicial activism. This is a burning issue today in the country. The powers and duties of the three wings, namely, the Executive, the Legislature and the judiciary, have been laid down in the Constitution. They have to play their respective roles, confining themselves to the area which has been assigned to them. Unfortunately, however, we find that in their interpretation, in some of their judgments, the judges have gone beyond their jurisdiction and they have started preaching to the people of this country, through their judgments. This is not at all within their ambit. In a given case, the judiciary has to apply the law and either say that it is *ultra vires*, or, it is in accordance with the Constitution. Similarly, when it is a question of dispute, it has to be settled; if it is a criminal case, the court has to decide whether a person is guilty or not. On the other hand, we find that in most of the cases, the observations made by the judges are not at all relevant to the case on hand. We find that the judges have been affected by publicity mania. Judges started giving press statements, which is actually against the norms that have been prescribed, against the code of conduct. They have to dispense justice for which they are there in the Judiciary but, unfortunately, we find that they are transgressing their jurisdiction without confining themselves to the area which has been assigned to them, and are functioning actively.

According to the code of conduct for Judges, the kith and kin of the Judges cannot practise in the same High Court or the Supreme Court. But, unfortunately, we find that their family members are doing so. Who is to question them? When the Bar Association enters the field, there is a conflict between the Judiciary and the Bar. A Bar Association president has been put in prison in the name of contempt of court. There is no harmonious

relationship between the Judiciary and the Bar. Therefore, this leads to a lot of friction between the Judiciary and the Bar to the detriment of public interest. In 1995 there was a strike by lawyers in Delhi and, at least for four or five days in a month, lawyers did not go to courts. Who are the people affected by it? It is not the lawyers alone. It is the common man, who is supposed to get speedy justice, who is affected. The Judges are not bothered, the Bar Association is not taking interest. Therefore, these are areas in which I want the hon. Minister to have an interaction with the Bar Association and have a discussion with them for maintaining good relations between the Bar and the Bench.

One observation has been made by the hon. Member, Shri Baby. It is a fact that in the Vohra Committee report, a nexus between politicians and criminals has been mentioned. In the same report, without naming anybody, an observation was made to the effect that the Judiciary was not above board. They made that observation also. And involvement of Judges has also been mentioned. Therefore, Madam, if anybody thinks that those who are dispensing justice are above the Constitution or above the law, it is not correct. In a recent judgement—I do not want to quote the judgement—the Judges quoted the Mahabharata. They have started preaching the Mahabharata also. They made an observation in the judgement and they started criticizing politicians and bureaucrats. It is not within their jurisdiction. In a given case they have to decide whether relief is to be given or not, or, they may direct the Government to give relief. They are supposed to dispense justice. If uncalled-for remarks are made by a politician, he can be hauled up before a court of law for defamation and, if it is done by a bureaucrat, he can be booked under contempt of court. Then, for Judges also there should be some parameters, guidelines, a code of conduct. If they violate the code of conduct, which is the machinery to take action?

We say, independent Judiciary. Yes, we agree. They have got certain powers. When Parliament decides something or the Executive decides something, according to the system, there is a lot of criticism, but when the Judges themselves decide about their amenities and perks, who is to question them?

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Will you please conclude?

SHRI V. NARAYANASAMY: Madam, I am going to conclude in one minute.

There cannot be different yardsticks for different people in a democracy. The Judges make observations regarding Judges' amenities, that this has not been given or that has not been given. In the judgements they make observations and make the Executive execute things. As the hon. Member has mentioned, if it happens to be Members of Parliament and the Executive, then the Press gives front page news that Members of Parliament are taking benefits for themselves and so on. Therefore, Madam, there should be restraint on the part of each and every organ of democracy, including the fourth estate.

Madam, I do not want to comment on the judgement, but I would say that there was no necessity of quoting from the Mahabharata while criticising a politician in a criminal case. This shows there is something wrong with the judiciary. I would request the hon. Minister to call a meeting of the Judges and discuss all these things threadbare. There has to be a harmonious relationship between the Bar and the Bench on one hand and the Executive and the Legislature for their independent functioning. As far as I am concerned, I feel the judicial activism is going beyond its limit and power. That is an area where we all have to sit together and consider. Sometimes it may suit some political party and they may be happy, but tomorrow, when it comes to them, they would start criticising. So, this is not a question of this party or that party, it is a question of common interest. So, while I agree on the independence of the judiciary, yet I must say it must function within its own set parameters.

उपसभाध्यक्ष (कुमारी सरोज खापर्डे): श्री ईश दत्त यादव। आपकी पार्टी का समय तीन मिनट है।

श्री ईश दत्त यादव (उत्तर प्रदेश): मैडम, हमारा टाइम तो नारायणसामी जी ने ले लिया, दो मिनट और बढ़ाकर पांच मिनट कर दें।

महोदया, जो विधेयक प्रस्तुत किया गया है उच्चतम न्यायालय और उच्च न्यायालय के न्यायाधीशों की सुविधा

बढ़ाने के लिए, मैं इसका पूरा समर्थन करता हूँ क्योंकि उच्चतम न्यायालय और उच्च न्यायालय के न्यायाधीशों को अगर सुविधा नहीं मिलेगी तो वे निश्चित और स्वतंत्र रूप से और मैं कहने को तैयार हूँ कि निष्पक्ष ढंग से भी काम नहीं कर सकते। जो सुविधाएं बढ़ाई जा रही हैं, मैं चाहता हूँ कि इससे ज्यादा भी उनको सुविधाएं बढ़ाएं क्योंकि जज का, न्यायाधीश का दायित्व बहुत बढ़ा होता है। व्यक्ति-व्यक्ति में विवाद हो, दो राज्यों के बीच में विवाद हो, संविधान की व्याख्या का विवाद हो, तो सब कुछ का निर्णय और निस्तारण करने का अधिकार जज को होता है। इसलिए जो सुविधाएं बढ़ाई जा रही हैं। मैं इनका समर्थन कर रहा हूँ।

मैडम, यह जो संशोधन लाया गया है, इसमें मुझे दो बातें समझ में नहीं आ रही हैं। पहले जो गा "150 लीटर आफ पेट्रोल ऐवरी मन्थ" जज के लिए और अब पेट्रोल की जगह पर कानून मंत्री जी ने इसे फ्यूल, ईंधन कर दिया है। तो पेट्रोल या डीजल रहने में तो कोई दिक्कत नहीं थी, फ्यूल तो फिर दिक्कत करेगा कि यह पेट्रोल लेंगे, डीजल लेंगे या जहाज वाला ईंधन लेंगे या केरोसीन ऑयल लेंगे, 150 की बजाए 200 लीटर कौन सा लेंगे? यह बहुत ऐम्बिग्यूस लगता है। तो मैं चाहता हूँ कि कानून मंत्री इस पर गंभीरता से विचार करें। पेट्रोल और डीजल आप करिए, पहले पेट्रोल था, डीजल अभी बढ़ाया है और उसका रेट निकाल लीजिए पेट्रोल और डीजल का ताकि पैसा भी आपका न बढ़े और इन दोनों में से कोई मिले। मैडम, दूसरी ऐम्बिग्युटी यह लगती है कि "150 लीटर आफ पेट्रोल ऐवरी मन्थ और दि एकच्युअल कंजम्शन आफ दि पेट्रोल", अब पेट्रोल की जगह फ्यूल कर दिया, तो एकच्युअल कंजम्शन क्या होगी? इसकी लिमिट होनी चाहिए 200 लीटर तक की। एकच्युअल उन्होंने कह दिया, लेकिन अगर 700 लीटर हमारा खर्चा हो गया तो आप क्या करेंगे? इसलिए, मैडम, मेरी राय में इतना पोरशन, इतने शब्दों पर पुनर्विचार करने की आवश्यकता होगी अन्यथा बार-बार इसमें कन्फ्यूजन होता रहेगा।

मैडम, हमको बहुत कम समय आपने दिया है इसलिए मैं ज्यादा कुछ नहीं कहना चाहता, लेकिन न्यायाधीशों के ऐप्वाइंटमेंट का जो प्रोसीजर है, इसके संबंध में मैं कुछ निवेदन करना चाहता हूँ।

हाई कोर्ट के जजेज के अपोइंटमेंट का प्रोसीजर संविधान के आर्टिकल 124 में है और हाई कोर्ट के जजेज के अपोइंटमेंट का प्रोविजन संविधान के आर्टिकल 217 में है। मगर दोनों की शब्दावली एक है। केवल मैं आर्टिकल

217 पढ़ करके सुनाना चाहता हूँ। कोर्ट कर रहा हूँ। "Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court...."

यह इनके अपोइंटमेंट का प्रोविजन है—हाई कोर्ट के जजेज का और सुप्रीम कोर्ट के जजेज का। लेकिन इसमें सरकार कहाँ से पिक्चर में आती है। मैडम, मैं जो आपके माध्यम से सरकार से निवेदन करना चाहता था कि अगर सरकार जजेज के अपोइंटमेंट में हस्तक्षेप न करे तो हाई कोर्ट और सुप्रीम कोर्ट के जजेज बहुत स्वतंत्र और निष्पक्ष हो करके काम करेंगे, क्योंकि संविधान में जो व्यवस्था दी गई कि महामहिम राष्ट्रपति जी हाई कोर्ट या सुप्रीम कोर्ट के जज के परामर्श से जज की नियुक्ति करेंगे। मैं समझता हूँ प्रेक्टिस में, व्यवहार में यह नहीं होता है। व्यवहार में अगर हाई कोर्ट के जज का अपोइंटमेंट करना है तो राज्य सरकार की भूमिका और राज्य सरकार की राय महत्वपूर्ण होती है। यदि सुप्रीम कोर्ट के जज की नियुक्ति करनी है तो देश के प्रधान मंत्री या भारत सरकार की राय महत्वपूर्ण होती है।... (घंटी)... इसलिए मेरी राय है और मैं यह चाहता हूँ कि केन्द्रीय सरकार और प्रदेश सरकार जज की नियुक्ति में इस तरह हस्तक्षेप न करे और यदि इस तरह का कोई प्रोविजन भी हो तो मैं चाहता हूँ कि सरकार इस पर गंभीरतापूर्वक विचार करके इस तरह के प्रोविजन को निकाल देने की कृपा करें। क्योंकि अगर अपोइंटमेंट सरकार के जरिए नहीं होगा तो वह जज ज्यादा निष्पक्ष होंगे और ज्यादा साहस और हिम्मत के साथ फैसले कर सकेंगे।

मैडम, मैं बहुत कुछ कहना चाहता था। लेकिन आपने घंटी बजा दिया। केवल एक बात कह कर अपनी बात समाप्त करूंगा। मैडम लोअर कोर्ट से लेकर सुप्रीम कोर्ट तक बहुत ज्यादा मुकदमे लम्बित हैं।

**उपसभाध्यक्ष (कुमारी सरोज खापर्डे):** तीन मिनट की जगह मैंने आपको चार मिनट दिए। टोटल आपके सात मिनट हो गए। अभी पांच लोग और बोलने वाले हैं।

**श्री ईश दत्त यादव:** बड़ी कृपा होगी मैडम, बस दो ही मिनट की प्रार्थना कर रहा हूँ।

लोअर कोर्ट से लेकर के सुप्रीम कोर्ट तक मुकदमे ज्यादा पैडिंग हैं, बहुत ज्यादा लम्बित पड़े हुए हैं। मैडम मैं जानता हूँ कि ग्रांड फादर ने मुकदमा दाखिल किया। वह मर गए और पिता जी भी मर गए और अब मुकदमा ग्रांड

सन लड़ रहा है और लगता है कि ग्रेट ग्रांड सन की जिंदगी तक भी उस मुकदमे का निबटारा नहीं होने वाला। इसीलिए...(व्यवधान)...

**श्रीमती रेणुका चौधरी:** उतने दूर की बात कर रहे हैं आप। मेरा अपना केस है। मैंने 1987 में पुलिस कंप्लेंट दी है। और आज आई है तथा पता नहीं कितने दिन चलेगा यह।

**उपसभाध्यक्ष (कुमारी सरोज खापर्डे):** आया तो सही आपका केस।

**श्री ईश दत्त यादव:** मैडम, वास्तविकता यही है और आदमी लड़ते-लड़ते निराश हो जाता है और गरीब लोग तो मुकदमा लड़ना छोड़ देते हैं जब ज्यादा समय चलता है। इसमें उनकी जो बची सम्पत्ति है वह भी बिकने लगती है। उनके पास कोई साधन नहीं रहता है, उनको न्याय नहीं मिल पाता है। अभी श्री हंसराज भारद्वाज जी कह रहे थे कि जजेज को बैठने की जगह नहीं है। तो सरकार जजेज के लिए क्यों नहीं कोर्ट रूम बढ़ाती है। मैं समझता हूँ कि हर हाई कोर्ट में जजेज की रिक्तियां पड़ी हुई हैं। सरकार इसको क्यों नहीं भर रही है, जजेज की संख्या क्यों नहीं सरकार बढ़ा रही है। मैं समझता हूँ कि इस बारे में कानून मंत्री को उत्तर देना चाहिए कि आपको कठिनाई क्या है। यह बात सही है कि अभी आपका एंग्रेटिश पीरियड है, एक महीने से आप काम कर रहे हैं। लेकिन इस पर आप गंभीरता से विचार करें। आप जजेज की संख्या बढ़ाएं, कोर्ट रूम की संख्या बढ़ाएं।

**उपसभाध्यक्ष (कुमारी सरोज खापर्डे):** यादव जी, आपका जो एंग्रेटिश पीरियड है वह खत्म हो गया है। अब जरा आप अपना भाषण कंक्लूड करें।

**श्री ईश दत्त यादव:** मैडम, मेरी बात से आप भी सहमत होंगी कि जस्टिस डिलेड जस्टिस डिनाइड। अगर विलम्ब किया जाता है तो आदमी को न्याय नहीं मिल पाता है। इस पर भी कानून मंत्री जी और भारत सरकार गंभीरता से सोचे। इस देश के नागरिकों को स्वतंत्र और निष्पक्ष और सस्ता व शीघ्र न्याय मिल सके, मेरी यही आपके माध्यम से सरकार से अपील है। बहुत-बहुत धन्यवाद।

**SHRI JOHN F. FERNANDES (Goa):** Thank you, Madam.

I rise to support this Bill. This is an innocuous Bill. As already mentioned by my hon. colleague, Mrs. Margaret Alva; the judiciary is a pampered lot. They are well paid. They are not underpaid. I do not know what the necessity was on the part of this

Government...*(Interruptions)*. I am asking the Government. What was the need of the Government to bring an Ordinance? There was no urgency. The country was watching us. Many politicians were before the judiciary in scams after scams. It was not proper, it was not judicious, to hand over these sops in a hurry through an Ordinance. This is a money Bill. They could have waited. I am not against this. I think nobody has opposed this. This is a very innocuous Bill. Only the hon. Minister came in with some amendments. Instead of "petrol", he is going to say "fuel" instead of "100", he is going to give them "200" litres. The words whichever is less are there in the principal Act. They are not mentioned in this Bill.

Coming to the functioning of the judiciary, I think I would not commit any contempt of court...*(Interruptions)*. The Constitution is very clear. We, the Parliament, this legislature, the executive and the judiciary, are creations of the Constitution. The limits are well defined. Members of Parliament cannot be hauled up or impeached by the courts. They can disqualify a Member of Parliament or a member of a legislative assembly for any violation of the electoral law. That is all. A Judge can be impeached by Parliament. Though I say "Parliament", it means only the other House. I think it is high time the Constitution was amended and the Upper House also was given equal powers in the impeachment of the judiciary. We have seen last time. My friend, Mr. Narayanasamy, raised objections when Mr. Baby was referring to the impeachment...*(Interruptions)*. What I am saying is, it should be a joint sitting of both the Houses. It never came up before this House. It was disposed of by the other House. There should be a joint sitting of both the Houses in the Central Hall and both the Houses should sit in judgement. That will be most appropriate. This opportunity was denied to the Upper House. It is high time we amended the Constitution and saw that impeachment was done by the Parliament and not only by the other House. This opportunity was denied to us. And we cannot say anything about the conduct of the other House. It is high time we took our job properly by amending the Constitution.

Many of my colleagues had mentioned

about the impeachment and the failure of the impeachment. Now we are blaming the judiciary for judicial activism. Let us be very frank and ask ourselves, "Have we failed in governance or not?" We say there was a Government. But was there any governance? I am not criticising any party. I am just saying how the systems act. We have laws. Do we have justice in the country? We have scams after scams. If there is a human failure, if some people plunder this country, then we blame the system...*(Interruptions)*. Let us not go on party lines. If there is a human failure, we shelter and we blame the system. This is where we have failed. We have failed because there is no political leadership. And that is why the judiciary has taken an upper hand. We cannot blame them. They are also human beings. Every time, we take the limelight in the Zero Hour because Doordarshan is there. Why don't you take the camera to the courts? I have seen the famous case of O.J. Simpson in the United States of America. I happened to go there. Every day, that case was serialised on the television. Naturally, the judiciary also needs some limelight. After all, they are also human beings. There are about 25 million cases pending. But a mere post-card is converted into a petition. I am not against it. Everyone needs justice. But if you just go on entertaining the galleries, then I don't think we are dispensing justice properly. *(Time Bell)* Madam, I hardly started.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): I cannot help it...*(Interruptions)* I must tell you that the time allotted for this Bill was only two hours...*(Interruptions)* I will give you two minutes and not more than that.

SHRI JOHN F. FERNANDES: Okay, Madam. Now, we are talking of the code of conduct. The Chief Election Commissioner says that there should be a code of conduct for the politicians. But there is no code of conduct for the Chief Election Commissioner. You know what he has called the people in power. I won't repeat that. Why shouldn't there be a code of conduct for the judiciary? Are they not human beings? The Government had given a paper to the judiciary in 1992. The Government of India had framed a code of conduct and the same

was sent to the judiciary. They are still sitting over it for the last five years. So, what is the Government doing about it because everyone wants to have his own code of conduct? Now, we are talking of equitable justice. Through this Bill, we are giving sops only to the Judges of the Supreme Court and the High Courts. What about the judges at the lower level? So, let us think about it with an open eye. Let us not give something blindly. If we want to dispense justice in this country then we have to give equal benefit to everyone and not only to the people sitting at the top. I don't think this is happening in the case of the Legislature because in certain cases the MLAs are getting more salaries than the Members of Parliament. It is a glaring case of discrepancy. Why should it happen? I think the hon. Law Minister will come again before Parliament with a proposal to see to it that this discrepancy is removed and equal benefit is given to judiciary at all levels, from top to bottom and not to the judges of the Supreme Court and the High Courts only.

I have many points to make but the time at my disposal is short. I was talking to the former Minister of State for Personnel. Now there are many cases where judgments are dispensed and the Government is denied of crores of rupees of revenue. I come from Goa. In my State there is one case. The hon. Law Minister also comes from Goa. A company made cosmetics and sold the mas medicines and pilfered about 18 crores of rupees. The matter is under the investigation of the CBI. The company filed a case in the court of law and got an injunction. In this way, the exchequer of the State Government of Goa has been looted and no decision has come as yet. I think the hon. Minister knows it very well. Now we are talking of justice. ...*(Interruptions)* I am not saying this or that Government. I am saying the relevant Government and those individuals who were there at that time. It is a glaring case. Shrimati Margaret Alva also gave certain examples. Why shouldn't the judiciary be under the purview of the CBI? Now we have the quasi judicial body under the Customs and if a collector does something wrong, he will be brought under the CBI net.

Lastly, I request the hon. Minister to see that something is done about the paper relating

to the code of conduct given to the judiciary in 1992 by the Government.

They are sitting over it. Law is common to everybody. As we have a code of conduct for the politicians, which was given to us by Mr. Seshan, I think, Mr. Seshan should also have that code of conduct. The judges should also have that code of conduct. With these few submission, I conclude with the hope that the hon. Minister will react to my queries.

SHRI GURUDAS DAS GUPTA (West Bengal): Madam, I apologise that I was held up in a meeting of the Select Committee of this House. I will be very brief. My first point is, there has to be a reasonable procedure for the appointment of judges and the procedure that we adopt in this respect should not be violated. There should be enough safeguards to ensure that proper people are selected for the highest positions. There are a number of cases and a number of examples where proper persons have not been selected for the high office of judiciary. I do not want to go into them. Therefore, there must be a proper procedure.

Secondly, nobody should be above the law, not even the sitting judges. Every citizen must be equal in the eyes of law. If it is true for a Minister or for a politician or for a bureaucrat, that must also be true for a sitting judge because there have been mounting complaints of violations involving members of the judiciary as if there is an immunity, a total immunity, and that immunity really inspires them to commit violations because they are never hauled up. Therefore, Madam, nobody should be spared, and it is really for the apex Court of India to take into consideration the mounting number of complaints of crippling corruption involving the judicial system of the country. It is for the judges, it is for the legislature, it is for the country as a whole to check corruption, and nobody should be allowed to believe that he or she is above the law just because he or she occupies a particular position or office. Thirdly, when everybody is accountable, why can't the judiciary be? Everybody is accountable. The Parliament shall be enacting within a few days a law that would bring even the high office of Prime Minister under a particular section of law, i.e. the Lokpal Bill.

If that is going to be done for the Prime Minister, then why can't the same be done for a member of the judiciary? Madam, judicial activism can be attributed to the inactive role of Parliament, to the inactive role of the Government. The role of judiciary begins at a point where the bureaucracy, the administration and the legislature fail. Since we have been failing,—we have been failing over the years to take some positive action—it is natural that somebody else as a part of the State system shall step in. If anybody is to be blamed, it is not the over-activism of the judiciary, but it is the total sterile role of other parts of the State machinery which is to be blamed. Madam, I want the hon. Prime Minister to take into consideration the question of expeditious trial. Expeditious trial is very important because ultimately it is the weaker sections of the community which are victimised. The people who are having money, including the big corporate houses, can always take recourse to the judicial system, but it is only the people who belong to the economically and politically backward sections of the society who always suffer. Therefore, expeditious trial has to be ensured. I suggest the setting up of a special bench, a special bench to look into the problem of provident fund violations, a special bench to look into the atrocities on women, a special bench to look into the atrocities being committed on the economically weaker sections. A special bench has to be set up and it has to be ensured that trials of this nature take place expeditiously.

Madam, there are a number of complaints of interference by people occupying high positions into the judicial process. There are a number of complaints that people in high positions are interfering into the judicial process. What you can do about them—that also has to be taken into consideration. Can the law be suitably amended so that the interference by people occupying high positions can be taken care of?

Lastly, Madam, corruption in judiciary has become as grave as the corruption in other spheres of the society. Something has to be done about it because there are complaints that in many cases manipulated judgments are being delivered. There are complaints; I do not want

to go into them. Therefore, the question of all-pervasive corruption in the society as a whole and in the judiciary as a part of the society must be looked into. We want to have safeguards from the Government and we hope that the legislature shall do its best to look into the problems that have been enumerated above.

SHRI VAYALAR RAVI (Kerala): Madam, I will be very precise and I will finish within two minutes.

I support this Bill. But I want to make a point about the judiciary. The judiciary is a strong arm of the Constitution in a democracy and is the guardian and protector of the rights, life and property of the citizens. Moreover, it is a big organ. We are paying very high respect to the judiciary. The existence of a democracy is based on the faith of the people in the judicial system. The faith of the people in a democracy affects everything. That faith should not be eroded. So, it is necessary for every one of the three pillars of democracy, the judiciary, the executive and the legislature, to play in its own field. When the UP Assembly and the Allahabad High Court entangled in a case of contempt of court and the privilege of the Assembly, there was an agreement. There was an understanding. There was a compromise. I am sorry to say that compromise had been broken by the judiciary by issuing an order to arrest the Speaker of the Manipur Assembly and to produce him before the Supreme Court. Mr. Gurudas Das Gupta was saying that we were responsible because we were not reacting. But this House remained as an impotent spectator when this solemn agreement was violated and the poor Speaker was arrested and produced before the judiciary. Their egoistic approach, their subjective approach was, as soon as you enter you can go. What does it mean? It shows the arrogance of the judiciary. They want to rule the country by executive orders. Today we are the law-makers. (Interruptions)...

SHRI GURUDAS DAS GUPTA: May I make a point, Mr. Ravi? It is also a failure of intervention on the part of the other House that led to this situation with regard to this issue. All are to be blamed. (Interruptions)...

SHRI VAYALAR RAVI: I agree with you. (Interruptions)...

SHRI SATISH AGARWAL: The Parliament has the power to summon and impeach Judges of the Supreme Court. We resorted to that single process once in 48 years and unfortunately the Congress party abstained from it....(*Interruptions*)...

SHRI GURUDAS DAS GUPTA: I don't want to name any party at all. The position remains that the other House refused to act. I think they abdicated their responsibility (*Interruptions*)...

SHRI VAYALAR RAVI: Madam, I only made a point about that agreement, that understanding.

SHRI GURUDAS DAS GUPTA: It is not an understanding. It is an obligation.

SHRI VAYALAR RAVI: Yes, it is an obligation. I agree with Agarwalji that this House has not ever resorted to impeachment of judges. This House has shown respect to the judiciary. Are we getting equal respect? The denigration of the Parliament has come from the Bench, from the utterances of the judges. I do not agree with Mr. Gurudas Das Gupta when he says that we have failed. We have never failed. The Members of Parliament have never failed, the executives might have failed. Every issue is debated here. We might have gone to the well. We might have said anything.

SHRI GURUDAS DAS GUPTA: The failure of the other House is a failure of the Members collectively.

SHRI VAYALAR RAVI: The Parliament has never failed to discharge its responsibility. We expressed our resentment at executive actions many times.

Madam, I would like to make one more point. The people never fail. They defeated my party. My leader had been defeated. Many Governments have been thrown out because the people know how to react to the political issues. I admit that we have been defeated. We, the Members of Parliament, never fail. The people never fail. But the judiciary is spreading a rumour that they are intervening to save democracy. Mr. Justice V.R. Krishna Iyer and Mr. Justice Bhagwati were the exponents of judicial activism for a right cause, namely, child labour, bonded labour, social justice, etc.

Unfortunately, nowadays the judiciary is getting into the political arena and creating problems. It would lead to some kind of a mutual acrimony. I don't want to do it. As far as corruption in the judiciary is concerned. Mr. Setalvad, and eminent lawyer and jurist, has written about the corruption in judiciary in one of his books. I am not accusing any judge or anybody. But judicial activism should be for a noble cause. It should be for a noble purpose. That purpose has been defeated by the frequent interference of the judiciary. the Judges of the Supreme Court and the High Court think that they can rule the country by case laws.

SHRI SATISH AGARWAL: Excuse me, Madam Vice-Chairperson.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): If you go on interrupting, there would be no end to this.

SHRI SATISH AGARWAL: Madam, I am only reminding him that a suggestion was made for constituting a committee of jurists to ensure accountability of judges. (*Interruptions*) But no such ...(*Interruptions*)

SHRI VAYALAR RAVI: Madam, article 226 deals with writs. It gives wide powers. I will quote only the last sentence of this article. It says, "and for any other purpose". By adding 'any other purpose', it gives wide scope. Under the sun anything will become judicial activism. The judiciary failed in one important aspect, i.e. article 143. the President of India does not refer every issue to the Supreme court. A writ petition was filed in the Supreme Court for not allowing *kar seva*. Unfortunately, they agreed for *kar seva* and appointed observers. The whole Babri Masjid was demolished. Thereafter, the President of India referred this matter to the Supreme Court under article 143. I am sorry to say that the Supreme court refused to intervene. After some arguments they returned it. They failed in discharging their duty. They are also equally responsible for allowing *kar seva* which resulted in the demolition of the Babri Masjid. It is the responsibility of the judiciary also. Judicial prudence alone must have compelled the Supreme Court to intervene in the matter. Under article 143, they should have come with a proper judgement to keep communal harmony

and to prevent Hindu communalism which has emerged in this country today. Thank you.

**SHRIMATI URMILABEN CHIMAN-BHAI PATEL (Gujarat):** Madam, I will not repeat any point which has already been made. I would like to mention only two or three points. If we see the judgements delivered by the judiciary, in the name of human rights and environment hazard, in many cases people move the courts and get stay orders. Once they get a stay order the work on those projects whether it is a power project or dam or a national project. I can understand if they move a court for the protection of environment or human rights. Courts can consider such cases. In this way many important projects are hampered. In such cases where stay orders are issued, the work does not start for years. Those people who start these projects or industries face a lot of difficulties and the Government also faces a lot of difficulties. So in this process the price of these projects goes up by four times or 10 times. In this way many national projects, State projects and development projects are being hampered. I think it should be taken care of. In the national interest and in the interest of the development of the country, these projects should not be hampered. Courts can continue with those cases but the work should not be stopped. I think that should be the attitude of the judiciary. Traditionally, we do not expect judges to approach the Press or the electronic media or any other media. But we find that some judges are fond of going to the media and making use of the Press for getting some popularity. I would like to point out that there should be some machinery to prevent them from resorting to such cheap popularity by making use of their powers and position. At times it so happens that the judgement goes biased. There are a large number of cases where justice is delayed. You know that justice delayed is justice denied. In our country, it is very difficult for a poor man to get justice. He has to spend a lot of money and time. The common man or the poor man cannot afford it. Immediate steps should be taken to take care of this problem. The Government should look into this and should do the needful. Thank you.

**श्री राम रतन राम (उत्तर प्रदेश):** उपसभाध्यक्ष महोदय, जो सुप्रीम कोर्ट के जजेज के बारे में 200 लीटर पर मन्थ

का अमेंडमेंट है उसमें मैं 300 लीटर की संस्तुति करते हुए अमेंडमेंट करूंगा। हाईकोर्ट और सुप्रीम कोर्ट के जजेज को एट पार रखा गया है। बेहतर यह होगा कि सुप्रीम कोर्ट के जजेज को थोड़ी सुप्रीमेसी दे दी जाए। मैडम, संविधान के लागू होने के पश्चात् जुडीशियरी से, न्यायपालिका से यह उम्मीद थी कि वह निष्पक्ष रूप से, स्वतंत्र रूप से न्याय का प्रतिपादन करेगी। लेकिन जो छवि बनती रही वह 1970 तक की न्यायपालिका की छवि एक टिमिड जुडीशियरी के रूप में थी। 1970 और 80 के बीच में असर्टेड? जुडीशियरी के रूप में थी, 1980 और 90 के बीच में यह बोल्टड जुडीशियरी के रूप में थी और 1990 के बाद एक टाइरेंट जुडीशियरी के रूप में इसकी छवि प्रस्तुत हो रही है। न्यायपालिका में जो करप्शन हो रहा है, इलाहाबाद हाईकोर्ट के एक जजमेंट में उसका हवाला दिया गया है, जिसमें एक रूलिंग आई है कि न्यायपालिका के इम्प्लाइन को टिप्स देना करप्शन के चार्ज में नहीं आता है। तब लोग टिप्स क्या देते हैं, वे टिप्स लेते हैं और तब से पूअर क्लायंट्स, जितने भी गरीब तबके के लोग आते हैं उनकी फ्लीसिंग होती है और इस आधार पर वहां पर करप्शन की बढ़ोत्तरी हो रही है। जुडीशियरी की टाइरनी की बात का एक लखनऊ का इक्जाम्पल मैं देना चाहूंगा। जैसे ही प्रेजीडेंट रूल की इम्पोजीशन यू.पी. में हुई है और जिन मंत्री महोदयों ने अपने बंगले खाली किए हैं।

Most of the Government houses have been occupied by the judges of the high court, of course, after allotment. But what will happen to the popular representative when they come to power after elections?

इसी आधार पर मैं यह कह सकता हूं। दूसरी बात यह है कि न्यायपालिका अपने मातहतों और उनके फायदों के बारे में कोई ऐसी रूलिंग न दे जिससे ऐसे कंप्लीकेशंस होते हैं। न्यायपालिका ने यह आदेश किया हुआ है, यह रूलिंग दी हुई है कि डिस्ट्रिक्ट जज की कार पर लाल बत्ती लगेगी और उनको मकान देने की जिम्मेदारी डिस्ट्रिक्ट मैजिस्ट्रेट की होगी जो दो महीने के अंदर देगा। नतीजा यह है कि जिला जज अपने को कैबिनेट रैंक के मंत्री के बराबर समझते हैं और मकान अलाट करने के बारे में जिला मैजिस्ट्रेट को परेशान करते हैं और न मिलने पर वे कंटेम्प्ट आफ कोर्ट की धमकी देते हैं। न्यायपालिका के ऊपर भी अंकुश लगना चाहिए। उनके बिहिवियर में ट्रांसपैरेंसी होनी चाहिए। इन्हीं शब्दों के साथ मैं इस अमेंडमेंट में यह अमेंडमेंट करते हुए कि सुप्रीम कोर्ट के जजेज को 200 लीटर की बजाए 300 लीटर कर दिया जाए, इस बिल का समर्थन करता हूं।

6.00 P.M.

**SHRI BRAHMAKUMAR BHATT** (Gujarat): Madam Vice-Chairperson, the suggestions made in the Bill, in my view, are trivial and insignificant ones and, therefore, there will be hardly any objections so far as the proposals are concerned. I fully endorse what the hon. Member, Smt. Margaret Alva, has said. Therefore, I don't want to repeat many of the points which have been discussed. But on one suggestion which the hon. Member has made, that is that the debate should go on, I would like to say that the debates does go on, so far as I know, in every Bar-room of this country. The debate is going on amongst lawyers about the decisions pronounced by various courts of this country, particularly, the Supreme Court. It is only that the debate which is going on should be formally organised by the Government of India, by the Law Ministry, and the Government must see to it that the discussion is thoroughly made and some sort of a balance is struck between the two. It is because there are so many cases in the past, whether it was the Keshvanada Bharati case or other cases, where there was a demarcation made between the judiciary and the legislature. But, sometimes, we fail to understand how the judges pass orders. I know of one such order by a Gujarat High Court Judge. Somebody had made a complaint that the highways were damaged and that they should be repaired in time. The Court passed an order stating that within 25 to 30 days, all the highways should be repaired and resurfaced. Nothing was done because the question was of money. The Government had no money to spend towards the repairs of the roads. So, the order became almost infructuous. What I would submit is that while passing orders,—I am a lawyer myself—it will not be proper for the courts to pass such orders which become infructuous or which interfere in the jurisdiction or demarcation earmarked for the legislature under the Constitution. One more thing that I would like to say is that, as Mr. Chaturvedi has also referred to, from my experience, I have found that sometimes that judiciary was totally dumb and docile. I am sorry to say this. At the time of Emergency,—I myself was a victim of Emergency—I was put behind the bars under

the Maintenance of Internal Security Act. We were simply reading newspapers in prison. And a debate about the riots was going on in the Supreme Court. The Supreme Court had said, "Even if somebody is fired, he has no remedy but simply bear whatever is done by the Executive." So, in such cases, the judiciary also must realise that the demarcation between the judiciary and the executive is well-maintained. Apart from all these things, I would say that the basic thing which is required is, as Mr. Jethmalani has pointed out, please enhance the salary of the judges. No good lawyer who is offered the post of a judge would agree to become a judge. There are so many friends of mine, who had been asked to become judges but who have reluctantly and modestly refused to become judges. The only way out is that you not only increase their perks but you increase basically their salaries as such. A good and a leading lawyer like Mr. Jethmalani will appear in the Supreme Court in a murder trial for two or four hours and will charge a lakh of rupees, while a judge, who hears the case for the whole month, will be getting just Rs. 9,000 or Rs. 10,000 minus the income-tax. So, if we want that good lawyers should occupy the Benches of the High Courts and the Supreme Court, should become judges, the Government should see to it that a decent salary is paid to them. It should come out with a Bill so that good lawyers and good jurists prefer to become judges either of the Supreme Court or the High Courts. There is no way out. That is all I wanted to submit. Thank you, Madam.

**उपासभाध्यक्ष (कुमारी सरोज खापर्डे):** मुझे लगा कि सारे स्पीकर्स बोल चुके हैं, लेकिन इधर देखा तो लगता है कि श्री नरेश यादव जी बाकी हैं। परन्तु आप 3 मिनट से ऊपर समय मत लीजिएगा।

**श्री नरेश यादव (बिहार):** उपाध्यक्ष महोदया, मैं माननीय मंत्री जी के द्वारा लाए गये उच्चतम न्यायालय और उच्च न्यायालय न्यायाधीश (सेवा शर्त) संशोधन विधेयक, 1996 के समर्थन के लिए खड़ा हुआ हूँ। मेरे से पूर्व मेरे काफी साथियों ने इस पर अपने सार्थक विचार रखे हैं ऐसा लगता है कि न्यायालय की छाया जो है। वह हमारे इन साथियों के विचारों से यहां पर परिलक्षित हुई है। स्पष्ट तौर से, उपाध्यक्ष महोदया, मैं यह कहना चाहता हूँ कि यह जो कनसेट है, यह कनसेट सेपरेशन आफ पावर्स और चैक एंड बैलेन्स के लिए लाया गया है।

महोदया, कार्यपालिका, न्यायपालिका, विधायिका, इसके साथ ही छ. राम मनोहर लोहिया ने एक और स्तम्भ इसमें जोड़ा है प्रेस का, यह चार स्तम्भ लोकतंत्र के हैं और इन चारों में आज कोर्डिनेशन की आवश्यकता है। भले ही अमरीका में सेपरेशन आफ पावर है लेकिन हमारे संविधान-विज्ञ ने इस बात को माना है कि तीनों में कोर्डिनेशन होना चाहिए और जब तक कम से कम तीन में समन्वय होकर के हम संचालन नहीं करेंगे तब तक इस देश का विकास नहीं हो सकेगा। माननीय न्यायाधीश के प्रति, माननीय न्यायालय के प्रति किसी की अवमानना नहीं हो सकती, सबकी इनके प्रति श्रद्धा है, अभी लोगों का इनके प्रति सम्मान है। मैं माननीय मंत्री जी का ध्यान आकर्षित करना चाहूंगा कि न्यायालय के निर्णय पूरे देश में एक भाषा में होते हैं, जबकि इस देश में भाषाएँ अनेक हैं। हम यह चाहेंगे कि इतना तो अवश्य होना चाहिए कि क्षेत्रीय भाषाओं में न्यायालय के निर्णय हों। यह नहीं होना चाहिए कि वकील जितना फर्टि से अंग्रेजी बोल ले उतनी ज्यादा फीस उसकी हो जाए। यह नहीं होना चाहिए कि उनका क्लाइंट समझें या न समझें, लेकिन वकील जोरदार हंगामेदार अंग्रेजी बोल दे और कहें कि ज्यादा से ज्यादा फीस तुरन्त ले आओ। क्लाइंट यह समझता है, केस भले ही हार जाए, लेकिन क्लाइंट समझता है कि चलो, वकील साहब ने बहुत अच्छी मेरे केस में बहस की है। इतना जरूर होना चाहिए कि न्यायालय की वह भाषा हो, जिसे लोग समझ सकें कि क्या बात हमारे वकील साहब न्यायालय के समक्ष रख रहे हैं।

उपाध्यक्ष, महोदया, दूसरी बात मैं यह कहना चाहता हूँ कि केस का डिसपोजल जो है, वह आज निश्चित तौर से बहुत धीमा है। अभी हमारे साथियों ने बताया कि हाई-कोर्ट में बीस लाख से ज्यादा, पूरे देश के न्यायालयों में तीन करोड़ से ज्यादा केस लंबित हैं। आखिर कैसे होगा निपटारा? क्या यह सच नहीं है? मैं माननीय मंत्री जी का ध्यान इस ओर आकर्षित करना चाहता हूँ कि सही मायने में, जैसी हमारे साथियों की राय रही, बैच के इंतजार में केस लंबा खिंचा चला जाता है कि कौन सूटेबल, फेवरेबल बैच हमारी है। ऐसा क्यों? न्याय के सामने सूटेबल, फेवरेबल क्या है? न्याय के सामने तो सब बराबर है। सबको बराबर ईसाफ कानून का मिलना चाहिए, लेकिन यह सूटेबल, फेवरेबल बैच के इंतजार में महीनों-महीनों केस रह जाता है। इसलिए हम यह कहना चाहेंगे, उपाध्यक्ष महोदया, आपके माध्यम से कि मंत्री जी अमरीकी पद्धति की तरह यहां पर जूरी व्यवस्था होनी चाहिए। आर्बिट्रेशन जो है, वह सिर्फ इंटरनेशनल डिसप्यूट में नहीं, साथ-साथ कॉमर्शियल डिसप्यूट में नहीं, गांव में भी मुकदमों में पंचात की व्यवस्था

होनी चाहिए, जिससे गांव गांव में जाकर मामलों की सुनवाई हो और उसका वहां निर्णय हो सके।

महोदया, अंत में मैं एक बात कहकर अपनी बात समाप्त करूंगा। हमें इस बात की चिंता करनी चाहिए, जजों की संख्या बढ़ाने की चिंता छोड़कर, मुकदमों में न हो इसकी चिंता करनी चाहिए। चूंकि जजों की संख्या बढ़ाने का मतलब है मुकदमों बढ़ाने का अनुमान कर लेना। अगर मुकदमों घटाने की चिंता हम करते हैं तो यह मानकर चलेंगे कि समाज में तनाव कम हो और इसके लिए हम लोगों को प्रयास करना चाहिए।

उपाध्यक्ष महोदया, आपने मुझे बोलने के लिए समय दिया, इसके लिए बहुत बहुत धन्यवाद।

THE MINISTER OF STATE OF THE DEPARTMENTS OF LAW AND JUSTICE IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI RAMAKANT D. KHALAP): Madam Chairperson, I am grateful to the hon. Members of this House who have discussed this issue in detail. I am grateful to them for the erudite speeches and for the guidance which they have given me in the course of their speeches. What came before the House as an innocuous Bill to enhance the fuel quota and sumptuary allowance, gave rise to a debate which has covered almost the entire gamut of judiciary, the relations between the judiciary, the executive and the legislature. The Members very eloquently spoke about the inherent defects within our various systems. Some were visibly angry because of several pronouncements of the judiciary, which they described as judicial activism. Some described them as infringement of our rights. And a number of Members also spoke about the need for reforms in judiciary, the need to attack the mounting arrears in various courts. But on the whole, the common refrain was that this Bill has to be passed by this House. The common refrain was, no matter what a few Judges have pronounced time and again, the perks, the salaries and the other service conditions of the Judges must be improved and, on the whole, almost everybody, without any exception, has expressed a very high opinion about the judiciary as a whole. I join all these Members in expressing my faith in judiciary, my respect for judiciary and the nation's respect for the judicial system that this country has. We must all be happy in observing that the judicial

system that India boasts of, is probably one of the best in the whole world. There are, no doubt, certain events, certain occasions, when certain pronouncements have been made by the judiciary, but as some of the Members themselves expressed, these pronouncements were invited because of the system failure, because of human failure, as my friend, Shri John F. Fernandes said, because of certain lacunae amongst us and, by and large, on account of our failure to respond to our own deficiencies. The hon. Member, Shri Ram Jethmalani, wanted that the salaries of the Judges should be so raised that it should be minimum one lakh of rupees. But the hon. Members, Shrimati Margaret Alva, on the other hand, raised a poser, do the Judges earn less today? We, thus, have two opinions, one verging at one extreme and the other opposing it equally vehemently.

I, therefore, Madam Chairperson, cannot pronounce on what is adequate for the Judges, nor can I promise in this House that I shall bring a Bill raising the perks, the salaries and the allowances of the members of the judiciary to the extent that some of our Members would want them. This is because I am working within the confines of financial constraints that we have before us. I cannot give a promise in this respect because this is a matter which will have to be looked into by the Finance Ministry and by the Government as a whole and also probably by the House as a whole when the issue is taken up at the right opportunity.

However, I will agree with the Members in saying that every possible step should be taken at the earliest, if possible, so that we provide a decent living to the Judges. We take steps so that they are able to discharge their duties without favour or fear and they work in such a manner that their action itself invites our respect and our appreciation for the work they do.

It has been suggested that so far as the question of transfer of judges, appointment of judges and removal of judges is concerned, a Judicial Commission be appointed. Some Members wanted that transfer of judges from one State to another should not be resorted to and the reason they gave was that the judges are accustomed to a particular regional

language and when they go elsewhere they find it difficult; there is problem regarding their housing; problem regarding education of their children and so on and so forth. Madam Chairperson, this policy of transfer, this policy of appointment and this policy of promotion is now guarded by the pronouncements of the courts themselves. The courts themselves have said that they are going to regulate these matters—of course, the opinions of the Governors of States are also taken into consideration while these appointments are made. It is, therefore, another realm which needs to be properly considered at an opportune time.

The most important issue which has been raised by the Members relates to the pendency of cases. We have a pyramid. The Supreme Court is at the top where today the pendency is about 27 thousand cases; we have the High Courts with a pendency of about 30 lakh cases and down below we have the lower judiciary, Madam Chairperson, where the pendency runs into lakhs and lakhs and lakhs—the total pendency is somewhere in the vicinity of 25 million cases. When we look at such huge figures, it does not remain the work of the Government alone to tackle this problem. It is such a huge problem—at one place I indulged in a little arithmetic and I said that 25 million cases multiplied by 10, 10 because per case probably there will be 10 people involved, parties themselves, then witnesses, lawyers and so on—that takes you to 250 million which is almost 1/4th of our entire population. And I further calculated that if per person of a family is involved, probably our entire population is directly or indirectly involved in litigation. So, let us understand the gravity of the problem. The problem is so huge that when I read the United Front's Common Minimum Programme which has promised that the entire backlog of these cases would be cleared within three months ...(*Interruptions*)... I am sorry, three years, even if it is three years, Madam Chairperson, it did send a chill down my spine when I took over the portfolio of Minister of State for Law and Justice in this Government. However, though it has sent the chill, the warmth which I am getting from the Members of this House will definitely show a path to me

and to all of us in finding some suitable remedy to this huge problem.

Judicial activism is another issue which has attracted the attention of the Members of this hon. House. Madam, this is a matter essentially for academics to go into. What is judicial activism, I cannot personally define, but is this new in our country? Is this process restricted to our country alone? Judicial activism has been resorted to the world over. Great jurists have spoken and written about it. As some Members said when the system fails, when we don't respond to the problems of the people and when a citizen approaches the court with his or her problem, the court rises to the occasion. It is not just interpreting the law. While interpreting the law, the court may sometimes come across a situation where the lacuna in the legal system becomes visible to the judiciary. In such cases, it becomes important for the judiciary to tell that the law is insufficient in this particular respect, and, therefore, a new system of law or another law has to be enacted by the Parliament. Sometimes the whole section of our community does not get the benefit of the law which is enacted by the Parliament or our legislatures. And probably it is because there is no implementing machinery, probably because the machinery which is supposed to implement it, fails in its duty; then the judiciary rises and says, "this is the place where you have failed; this is the area which requires your attention." Then we realise the importance of that particular piece of legislation. Now, if we look at it as an infringement upon our rights, Madam, then I would definitely say that we may be exceeding the briefs allotted to us. At the same time, if a judge travels beyond the scope of the legislation while dealing with the case of a particular person which is before him, tries to make or pass a sweeping judgement about a tribe or a class of persons, probably that may result in affecting the credibility of that particular institution about which the judge speaks. When I make this statement I also say that when we, sitting down in this House, indulge in similar tactics of making sweeping statements and passing a judgement about the judges themselves, then probably we may also be committing the same sin about which a number of hon. Members of this House have

spoken today. Madam, therefore, I leave this situation at this stage and proceed on to the other conditions.

Our judicial system needs to be made cheaper; this is what some Members have said. We all agree to this. But, finally the question remains as to what price a man should charge for this wisdom or, for that matter, foolishness. No criteria can really be laid down. The best way by which we can reduce the cost of litigation, rather the cost of justice probably, would be to make it swift and to see to it that our cases do not linger on. I heard one of the worthy colleagues, probably Renukaji, mentioning that her case filed in 1987 had seen the light of day only recently. I think she is very lucky, if I would say so. ...*(Interruptions)*... There are cases and cases. ...*(Interruptions)*... Whereas someone said that cases filed by the grandfathers have not been resolved even in the days of their grandsons. Probably, they may go to the days of their great grandsons. ...*(Interruptions)*... How do we tackle this? A number of commissions have said, the Law Commission has given its report, the Conferences of the Chief Ministers, Law Ministers and the Chief Justices have taken place. Not one; a number of them have taken place. Each conference has passed resolutions. There is a mountain of books and reports in the archives of the Ministry. Madam, mere passing such resolutions and sitting over in conferences has not been able to tackle or solve this problem. We have, therefore, to look at those places, other countries and courts which have evolved their own system to tackle this problem. I will first take our own Supreme Court. The problem in the Supreme Court at sometime was as bad as ever. But, we must congratulate our Supreme Court, our Chief Justice, Mr. Ahmadi, who, with the help of his own colleagues, has been able to resort to set a court management system. Of course, he has made use of the modern methods also, the computers and all. But basically the question was of management of the court in the best possible manner—using these systems, grouping the cases, allowing the benches to sit for a longer period, looking into the work of the registry, finding out the cases where a common question of law is involved—by this

way we have been able to reduce the pendency of cases in the Supreme Court over the last three years to just 27,000 cases as of today. And 27,000 cases, Madam Chairperson, is equivalent to the number of cases that are being initiated in the courts per year. Again a simple arithmetic. If you take hundred cases per day and multiply by 2,000, 2,000x12 months probably you will get 24,000 cases. That is the number of cases filed which means that the situation in the Supreme Court has become so manageable today and we must really appreciate and this House must congratulate the Supreme Court for this yeoman service which they have done to our nation. If the Supreme Court is able to solve this problem in such a beautiful manner, why can't our High Court judges do it? Let us emulate, let the High Court emulate the Supreme Court. Let the system percolate down to the High Court and if this happens perhaps the problem of pendency in the High Courts which today is about 30 lakhs can certainly be reduced to manageable figures. Of course, thereafter you go down to the lower division. We have alternative systems. The other day we passed in this very House the Arbitration and Conciliation Bill. We have the Lok Adalat system. These Lok Adalat systems are very successful in a number of places. In many other places enough work in Lok Adalats has not been done. So it will be my endeavour, of course with the help of all of you, to see that Lok Adalat system really picks up in every State of our country, in every district of our country. Not only this, this alternative dispute redressal system which has now been accepted and particularly this particular Bill which you passed the other day on Arbitration and Conciliation, if this system is adopted I think the cases which really come for hearing in the court can be reduced. Madam Chairperson, in America the situation was as bad as it is today in our country. And they resorted to the system of conciliation, mediation, arbitration, out-of-court settlements, so much so that every court, I am told, has an annexe today. The ADR system, i.e. the Alternative Dispute Redressal System, is an annexe to the court. Every case which gets initiated or any problem which arises is first tackled by different agencies and only when it becomes impossible, the matter

has to go to the court and the matter goes to the court. I am told that just about 7 to 8 per cent of the cases really go for trial. Is it impossible for us to do? If we imitate the West in every other respect, why can't we imitate them in this respect which is so beneficial to all of us? Madam Chairperson, I feel that this problem really is not a big problem. If we look at it from this particular angle as time goes on and if we get cooperation from every section of society we will be able to tackle this issue.

DR. BIPLAB DASGUPTA: We imitate the West for wrong reasons always.

SHRI RAMAKANT D. KHALAP: yes, we imitate the West for wrong reasons, let us imitate them for good reasons at least once in a while. There are vacancies in courts but there are not many. We have taken steps to see that particularly in the higher judiciary at least six months before the vacancy arises we should be ready to fill it. In fact, I have written to all the Chief Justices, I have written to all the State Governors, I have written to the Chief Ministers not only to take steps but to fill the vacancies. Also I have told them that there are problems of housing, there are problems of infrastructure. I have said that they should take steps for the purpose of redressing these important grievances of the judiciary.

Madam, we have a scheme—it is a Centrally sponsored scheme—under which money is given to the States for the purpose of providing the infrastructure. But the House may be surprised if I say that a large number of States have not utilised the money given to them over the years. A Fund of Rs. 50 crores was set up for this purpose. When I took over, I thought, for such a huge country, only Rs. 50 crores would not be sufficient. I was talking to my officers about this. They put up the statistics before me. I was appalled. I was surprised. This sum of Rs. 50 crores which was made available to the States was not being spent to create the necessary infrastructure.

Here also, once again, Madam, I have written to all the Chief Ministers. I have told them: "Please spend the money which is allotted to you and also spend your own money so that this problem of housing, of

infrastructure, which is facing the judiciary is solved." I hope to get a proper response from the State Governments.

Madam Chairperson, some other issues, like the representation of Scheduled Castes and Scheduled Tribes in the judiciary, have also been raised.

SHRI VAYALAR RAVI: What about the other staff? There is a large number of vacancies. There is no reservation. This is the case in many High Courts. I do not know about the Supreme Court, but this is the position in many High Courts. This aspect should also be looked into.

SHRI RAMAKANT D. KHALAP: In regard to appointment of judges to the High Courts and Supreme Court, so far, the reservation policy is not followed.

SHRI VAYALAR RAVI: I am not talking about the judges; I am talking about the other staff.

SHRI RAMAKANT D. KHALAP: I do not think we should follow it. Of course, ultimately, as and when a policy in regard to the manner of appointment of judges is evolved, this issue could be taken up.

SHRI VAYALAR RAVI: I am talking about the other staff; for example, clerks, typists and others. It is a large number. The figure runs into hundreds. No reservation is made. This is the position in the Kerala High Court. This may be the case in other High Courts also. This has to be looked into.

SHRI RAMAKANT D. KHALAP: We will look into this.

Madam, some issues are very important. Mr. Chaturvedi spoke about publishing a White Paper on judiciary. I do not think there is any need for this. Having known the intensity of the problem facing us, I do not think any White Paper is required. But I would like to inform the hon. Member that I am initiating a process by which most of these problems which are facing us would be tackled. An attempt would be made, a conscious and an honest attempt would be made, to tackle these problems.

SHRI TRILOKI NATH CHATURVEDI: Including, Mr. Minister, Government litigation and mindless and mounting litigation.

SHRI RAMAKANT D. KHALAP: Mindless and mounting litigation, including Government litigation, as he said; yes.

Madam, hon. Member, Mr. John Fernandes, talked about televising the proceedings. There are two views on this. O.J. Simpson's case became very famous, particularly, because of the televising of the proceedings. One school of opinion says that televising of the proceedings is a good thing because the people at large should know what is happening in the courts. But Madam, there is another school which says that you cannot allow the public at large to view the proceedings before the court because, in that case, it would amount to prejudging of the case by the public before the case is decided by the judge, as it happened in the O.J. Simpson's case. For example, tomorrow, if I am hauled up before a court, or, you are hauled up before a court, the witness abroad and the whole evidence and argument goes before the public, would you like the judges to judge you, or, would you like the public to judge you? This is the other school of thought in regard to this issue.

SHRI JOHN F. FERNANDES: I said about televising the proceedings, the Zero Hour proceedings, of courts. They should also have some publicity.

SHRI VAYALAR RAVI: That is a problem for the courts.

SHRI M.A. BABY: Mr. Minister, you have said that there are two-three points. I would like to know about the establishment of Supreme Court Benches.

SHRI RAMAKANT D. KHALAP: Madam, the last point is about the setting up of Supreme Court Benches in the South, the East, the West and the North.

SHRI GURUDAS DAS GUPTA: What about Special Courts? This was a specific issue. I raised a specific issue, Mr. Minister. What about setting up of Special Courts for the expeditious trial of cases involving the weaker sections, the women and also the workers who cannot afford to go to court, spending lakhs of rupees?

**SHRI JOHN F. FERNANDES:** Madam, the important point made by me was about the code of conduct. A code of conduct framed by the Law Ministry in 1992, when Mr. Vijaya Bhaskara Reddy was the hon. Law Minister, was given to the Judiciary for concurrence. For the last four years they are sitting on that. What action is the Government going to take about it? They should also come under the judicial code of conduct. They cannot only tell others to behave properly.

**SHRI RAMAKANT D. KHALAP:** I can assure my learned brother here that at the appropriate time and place, this issue of model code of conduct could be raised with the Judges themselves, discussed and finalized.

About Supreme Court Benches....

**SHRI GURUDAS DAS GUPTA:** About Special Benches of High Courts.

**SHRI RAMAKANT D. KHALAP:** I am looking at it from the point of view of total pendency before the courts, and I am emboldened to make a statement, from the experience of the Supreme Court, that if the courts accept and adopt the same procedure adopted by the Supreme Court, the whole pendency itself will come down. In fact, in the Supreme Court a situation is likely to arise, in a short period, that about 10 Judges may become surplus. Therefore, what are you going to do with a Bench in the South, North, East or West? We will not need this. The whole question of Benches came because people found that cases were pending there and you go there and come back again and matters remained as they were.

**SHRI M.A. BABY:** This is a big sub-continent.

**THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE):** Let him finish. If you go on interrupting like this, he won't be able to finish his reply.

About the Supreme Court, so far as the Judiciary is concerned, it is like the heart of a human being. It can be only in one place. Don't break it into pieces and take them to different places. More so because, if it is healthy, if you keep the Supreme Court healthy and responsive to our needs, I don't think this demand will arise at all in the days to come.

Madam Vice-Chairperson, I think I have covered every other point. I request the House to kindly pass this Bill.

**SHRI GURUDAS DAS GUPTA:** What about Special Benches of the High Courts?

**SHRI SATISH AGARWAL:** Madam, as a co-sponsor of the Resolution, I beg to move for leave of the House to withdraw the Resolution.

**THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE):** You can't. Mr. Ram Jethmalani is not here.

**SHRI GURUDAS DAS GUPTA:** Madam, just a mement. I have raised it specifically because a number of Parliamentary Committees have recommended this. The hon. Minister should make himself acquainted with the recommendations of the Parliamentary Committees. A number of Parliamentary Committees have suggested that there should be Special Benches of the High Courts to tackle, particularly, the problems of the weaker sections of the community—labour, women, Scheduled Castes and Scheduled Tribes. There are a number of provident fund cases. also. A number of suggestions were there. Why should not the Minister acquaint himself with them?

**SHRI RAMAKANT D. KHALAP:** I am not turning a blind eye to the suggestions of the hon. Member, but I was looking at it from the entire angle of pendency and the need to reduce the pendency, which automatically takes care of the various problems. Otherwise what will happen is, we create courts and courts and tribunals and tribunals.

**SHRI GURUDAS DAS GUPTA:** It is a not a question of creating courts and courts. Even the West Bengal Government has said that it is ready to spend money for this. Please look at the point from a different angle. Hundreds of provident fund cases are there.

**SHRI RAMAKANT D. KHALAP:** I will have it examined, Madam

**THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE):** I shall first put the Resolution moved by Shri Ram Jethmalani to vote.

**SHRI SATISH AGARWAL:** Madam, as a co-sponsor of the Resolution, I may be permitted—he has authorized me—to

withdraw the Resolution in view of the assurance given.

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): The question is...  
...(Interruptions)...

DR. BIPLAB DASGUPTA: It is not clear. Mr. Ram Jethmalani is not here.

SHRI SATISH AGARWAL: I am a co-sponsor of the Resolution. Mr. Ram Jethmalani has asked me to seek leave of the House to withdraw it. I seek your indulgence, Madam. It can be done; it is at your discretion.

I am a co-sponsor of the Resolution. Why go into technicalities? It would be better if permission is granted by the House to withdraw the Resolution. While withdrawing from the House, Mr. Jethmalani had authorised me to do so in view of the assurances given by the hon. Law Minister. Madam, this is within your discretion to allow me to withdraw the Resolution.

*The Statutory Resolution was, be leave, withdrawn.*

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Now, the question is:

That the Bill further to amend the Supreme Court Judges (Conditions of Service) Act, 1958 and the High Court Judges (Conditions of Service) Act, 1954, as passed by Lok Sabha, be taken into consideration.

*The motion was adopted.*

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): We shall now take up clause-by-clause consideration of the Bill.

*Clauses 2 to 6 were added to the Bill.*

*Clause 1, the Enacting Formula and the Title were added to the Bill.*

SHRI RAMAKANT D. KHALAP: Madam, I move:

That the Bill be returned.

The question was put and the motion was adopted.

## CLARIFICATIONS ON STATEMENT BY MINISTER

**Incident of arson and massacre of people in the Bhojpur District of Bihar on 11th July, 1996.**

THE VICE-CHAIRMAN (MISS SAROJ KHAPARDE): Now we take up the clarifications on the statement made by the Home Minister. Shri V. Narayanasamy.

(THE VICE-CHAIRMAN, SHRI MD. SALIM, IN THE CHAIR)

SHRI V. NARAYANASAMY (PONDICHERRY): Mr. Vice-Chairman, Sir, the hon. Minister after visiting the site at the Bhojpur district of Bihar has come with an elaborate statement to the House. In the statement, the hon. Minister as stated that on 29.4.1996, there was an exchange of fire between CPI (ML) and Ranbir Sena.

It was followed by an incident in the month of May. The people who were involved have been granted bail. On the 8th, 9th and 10th July, there were exchanges of fire between these two groups. Ultimately, Naimuddin who was the target of Ranvir Sena, a group of 60 people went and attacked him and he and other people were killed.

Madam, it had been stated in the statement itself that such incidents took place not only in 1996 but in 1995 also.

Sir, a very important aspect is there. It has been admitted that there was no police camp. It was known to the Bihar Government that there were a series of incidents of killing of people taking place, exchange of fire between these two groups taking place, but they have taken action against one sub-inspector, five havaldars, eighteen constables. The Minister also came down heavily on the police administration when he visited that place.

Sir, I would like to say merely taking action against officers of the lower rank would not help. The people who have been in the realm of affairs, especially the Superintendent of Police, who has been monitoring the law and order situation there, what has been his role? What has been doing? How did the police administration behave especially when there were recurrences of incidents in 1995 and in the month of April, May and June, 1996? I do not know. So, taking action against officers at the lower level is not going to solve the