लिए भी एक बहुत बड़ा खतरा है। इसे आतंकवादी गतिविधियों से भी जोड़ कर देखा जा रहा है।

अत: मेरा सरकार से अनुरोध है कि इस विषय में (i) लोगों को आगाह करें; (ii) नोटों की छपाई को मुश्किल बनाए, जिससे इसे कोई छाप न सके, (iii) बैंकों को हिदायतें दे, ताकि वे सावधान रहें और अन्य आवश्यक कदम उठाए।

श्री ओ.टी. लेपचा (सिक्किम): महोदया, मैं अपने आपको इस विशेष उल्लेख के साथ सम्बद्ध करता हूं।

THE VICE-CHAIRMAN (SHRIMATI JAYANTHI NATARAJAN): The House stands adjourned till 2.30 p.m.

The House then adjourned, for lunch, at fifty-nine minutes past twelve of the clock.

The House reassembled after lunch at thirty-three minutes past two of the clock.

[THE VICE-CHAIRMAN (PROF. P. J. KURIEN) in the Chair]

PRIVATE MEMBERS' RESOLUTION

Providing quick justice at the minimum cost of the masses, decentralisation of justice delivery system and a need to set up a collegium in the appointment of judges

SHRI VIJAY JAWAHARLAL DARDA (Maharashtra): Sir, I beg to move the following Resolution:

"That this House expresses its deep concern over the inordinate delay in the delivery of justice to the masses, mounting arrears of criminal and civil cases from the Supreme Court to subordinate Courts, high cost of litigation, excessive prevalence of either obsolete laws or those in conflict with each other, increased frequency in Public Interest Litigations, judicial activism or overreach of judiciary, non-existing of accountability of judiciary at all levels, near absence of alternative methods of dispute resolution like mediation and conciliation approach, plea-bargaining, evening courts, *Lok Adalats* or such similar outfits, denial of fundamental right to speech in the courts for fear of its interpretation under Contempt of Court, inadequacy in the system of appointment of judges of High Courts through collegium method and appointment of lower judiciary by the States, proliferation of allegations of corruption against judicial functionaries at higher and subordinate level, ineffective mechanism for probing cases of omission or commission, adoption of scientific oriented investigation techniques and their acceptance as evidence, need for establishing zonal or regional benches of the Supreme Court and increase in the number of High Court benches and urges upon the Government to adopt following measures:-

(i) ensure adequacy of the system in the appointment of Judges of High. Court through 'collegium' and system of appointment of subordinate judges by State Governments;

(ii) evolve time-bound measures to fill up existing 26% vacancies in High Courts and 20% vacancies in subordinate courts, as estimated by the Chief Justice of India;

(iii) expedite the mandatory Judicial Impact Assessment process so that resource crunch for creating additional judicial infrastructure could be taken care of;

(iv) set up a Federal Investigation Agency in terms of recommendations of the Padmanabhaiah Committee (2000) and further fine-tuned by the Justice V.S Malimath Committee (2003) to cut delays in investigation process 116 relating to heinous crimes like terrorism, war against the State, insurgency, etc.;

(v) enforce 19-Judges Bench decision of the Supreme Court given in the year 1999 to create-in-house mechanism for probing into acts of omission or commission and passing the proposed Judges Enquiry (Amendment) Bill, 2008 in the Parliament;

(vi) bringing higher judiciary under purview of the Right to Information Act;

(vii) evaluate the efficacy of existing cumbersome and time-consuming Constitutional provisions relating to impeachment of judges of the Supreme Courts and High Courts;

(viii) implement the perception of Chief Justice of India about setting up Zonal Benches of the Supreme Court a beginning to be made in a centrally located place like Nagpur and bring justice to the door-steps of *Aam Aadmi* by giving justice to everyone as enshrined in the Preamble of Indian Constitution;

(ix) launch a time-bound programme for liquidating the huge arrears of existing criminal and civil cases (approximately 1.5 crores) and ensure non accumulation of cases in future;

(x) gradual adoption of "Mediation and Reconciliation" approach through resorting to alternative methods of dispute resolution, like plea-bargaining, setting up fast-tract courts, *lok adalats* or extensive decentralization of justice-delivery system through similar other outfits;

(xi) review laws on Contempt of Court and introduce attitudinal change and accountability of law-enforcing and investigation agencies;

(xii) transparent, simple and time-bound but stern approach to tackle proliferation of allegations of corruption against judiciary or law-enforcing agencies; and

(xiii) take a holistic view regarding revision of obsolete laws and antiquated procedures to move towards dispensing quick justice at the minimum of cost in the wake of fast changing universal scenario.

" माननीय उपसभाध्यक्ष महोदय, आज मैं प्रस्तुत प्रस्ताव के माध्यम से भारतीय लोकतंत्र के एक महत्वपूर्ण स्तंभ न्यायपालिका के विषय में सदन के साथ-साथ समग्र देश का ध्यान आकृष्ट करना चाहता हूं। महोदय, आज न्यायपालिका के क्रियाकलापों का असर विधायिका और कार्यपालिका दोनों पर पड़ रहा है। राष्ट्रपिता महात्मा गांधी जी ने कहा था कि हम पूर्ण स्वराज्य तभी हासिल कर सकते हैं जब हर गरीब की आँखों के आँसू पोंछे जाएंगे। हमने अपने संविधान में भी आर्थिक, सामाजिक और राजनीतिक न्याय की बात की है, लेकिन अभी भी गांधी जी के पूर्ण स्वराज्य के लिए इंतजार करना पड़ेगा। "न्याय" और "कानून", ये दो शब्द मानव कल्पना और विवेक की सबसे महत्वपूर्ण उपज हैं।

रोमन लोगों के लिए न्याय ऐसी देवी है जिसका प्रतीक ऐसा सिंहासन है, जिसे तूफान हिला नहीं सकता, जिसकी नब्ज को भावनाएं प्रभावित नहीं कर सकतीं, जिसकी आंखें पक्ष और विपक्ष या पक्षपात की अनुभूति न देखने के लिए अंधी हैं और जिसकी तलवार पूरी तरह से बिना पक्षपात के निश्चित रूप से अपराधी के ऊपर गिरती है। इसी प्रतीक को भारत में भी न्याय के तौर पर स्वीकार किया गया है। लेकिन हमारे सामाजिक और राजनैतिक चरित्र की गिरावट ने न्यायपालिका के चरित्र पर भी गहरा प्रभाव डाला है। एमिनेंट जूरिस्ट नानी पालखीवाला जी ने कहा था - "निश्चित रूप से कानून पूर्ण नहीं है और यह पूर्ण हो भी नहीं सकता, भले ही यह देवताओं की समिति द्वारा ही निर्मित क्यों न हो।" आज अदालतों को कानून के मंदिर के रूप में नहीं देखा जाता है, बल्कि इसका इस्तेमाल casino की तरह होता है। अगर आप Trial Court से संतुष्ट नहीं हैं तो Division Bench चले जाइए, आपका चांस दोगुना हो जाता है और अगर Division Bench या हाई कोर्ट से भी संतुष्ट नहीं है तो सुप्रीम कोर्ट चले जाइए, वहां पर बेदाग छूटने के चांस तीन गुने हो जाते हैं। जैसा कि Legal Profession के बारे में Mr. G.K. Cheserton ने कहा है "They fight by shutting papers. They have dark, dead and alien eyes. And they look at our love and laughter, as a tired man looks at flies." यू.एस. सुप्रीम कोर्ट के चीफ जस्टिस जॉन मार्शल ने कहा है, "न्यायालय का काम सिर्फ केस का निर्माण करना नहीं है, बल्कि एक आम आदमी की निष्ठा, विश्वास और श्रद्धा का है।"

आज भारतीय न्यायपालिका विवादों के घेरे में है। हमारे माननीय प्रधान मंत्री जी ने भी कहा कि न्यायपालिका में हर स्तर पर जजों की appointment उपयुक्त मानदंडों के अनुरूप हो। मुख्य न्यायधीश श्री के.जी. बालकृष्णन ने भी एक न्यायाधीश के impeachment को रेकमेंड करके तथा सी.बी.आई. को इनवेस्टिगेशन के लिए अनुमति देकर कुछ महत्वपूर्ण कदम उठाये हैं। इसलिए आज यह उचित समय है जब हम हाई कोर्ट और लोअर कोर्ट के जजों के appointment के बारे में संजीदगी के साथ विवेचना करें। इस संदर्भ में हमें मौजूदा न्याय प्रणाली, न्यायपालिका से क्या आशा है? विधायिका की जिम्मेदारी और योगदान, मौजूदा अपराध निरोधी कानून तथा कानून-व्यवस्था को बनाये रखने वाली संस्थाओं के विचारों तथा राय को भी ध्यान में रखना चाहिए।

इस संदर्भ में अभी तक कितनी ही समितियों का गठन Judicial reforms के लिए हुआ है, जिनमें जजों की नियुक्ति के बारे में पारदर्शिता, उनकी accountability, जांच के व्यावहारिक तरीकों तथा जांच और prosecuting agency के re-orientation के बारे में काफी सिफारिशें की गई हैं। सन् 2000 में पुलिस रिफार्म पर एक पद्मनाभैया समिति का गठन किया गया था, जिसने तमाम अपराधों को फेडरल क्राइम घोषित करने के लिए कहा था ताकि केन्द्रीय संस्थाएं उन अपराधों की छानबीन गइराई के साथ कर सकें। इसकी रिपोर्ट में एक फेडरल एजेंसी के गठन तथा आतंकवाद को फेडरल क्राइम घोषित करने की सिफारिश भी की गई थी।

मुझे प्रसन्नता है कि सरकार इस ओर ध्यान दे रही है, लेकिन इसके लिए 26 नवम्बर, 2008 जैसी घटना, जो मुम्बई में हुई, का इंतजार करना पड़ा। विचाराधीन मामलों की एक लम्बी लिस्ट सुप्रीम कोर्ट से लेकर निचले न्यायालयों तक है और इनमें लगभग डेढ़ करोड़ तक मामले लम्बित हैं। यह स्थिति तब भी बनी हुई है, जब कि हर साल करीब डेढ़ करोड़ मामलों का निबटारा होता है। इस मामले में मुख्य न्यायाधीश, मंत्री, विद्वान न्यायविदों और पूर्व न्यायाधीशों द्वारा भी चिंता जाहिर की गई है। आज स्थिति यह है कि आम आदमी अपनी जिन्दगी में न्याय पाने के लिए दुश्वार है। न्यायालयों में कानूनी प्रक्रिया इतनी मुश्किल है कि पहले तो आम आदमी न्यायालय का दरवाजा खटखटाने से डरता है। यह प्रक्रिया इतनी लम्बी है कि छोटे-मोटे आदमी इससे घबराते हैं। आम आदमी न्यायालय का दरवाजा खटखटाने से डरता है और अगर मजबूरन उसको जाना पड़ता है तो वकील से लेकर दलाल तक उस आदमी को इस स्थिति में भी नहीं छोड़ते कि फैसला होने पर भी वह यह कह सके कि उसे न्याय मिल गया है। इस संदर्भ में न्याय की महंगी प्रक्रिया, न्यायाधीशों की कमी, मूलभूत सुविधाओं का न्यायालयों में अभाव, बजट की कमी

इत्यादि भी जल्द न्याय प्रक्रिया को सम्पन्न करने में बाधा पहुंचाती हैं। Justice delayed is justice denies. मैं समझता हूं कि जब तक मामलों पर शीघ्र फैसला नहीं होता है, तब तक जनता का विश्वास अदालतों पर वापिस नहीं आएगा, यही वजह है कि लोग शहरों में भी झगड़ों के निबटारे के लिए माफिया का सहारा लेने लगे हैं। ये लोग पैसा लेकर लोगों को फैसला सुनाते हैं तथा दंड का भी प्रावधान करते हैं। कुछेक हाई प्रोफाइल केसिस, जैसे कि श्रीमती इंदिरा गांधी, श्री राजीव गांधी जी के मामलों में सालों लग गए। श्री ललित नारायण मिश्र मर्डर केस अभी भी लम्बित है। कहते हैं कि अगर त्रेता युग के कौरवों और पांडवों का मामला आजकल की अदालतों के पास गया होता तो पूरा कलयुग फैसला सुनाने के लिए कम होता। आज स्थिति यह है कि इन सब परिस्थितियों से निबटने के लिए एक सम्यक प्रणाली की आवश्यकता है। अभी कुछ दिन पहले CPC में अमेंडमेंट करने के लिए हमने ADR की व्यवस्था की है, लेकिन कोर्ट के बाहर settlement की प्रक्रिया अभी आम जनता के बीच पापुलर नहीं हुई है। हमने Fast Track Court और Family Court भी बनाए हैं, लेकिन वहां भी स्थिति जैसी की तैसी बनी हुई है। Consumer Court, जो आम आदमी के लिए बने हुए हैं, वे भी आम courts की तरह काम कर रहे हैं। यहां पर न्याय पाने के लिए वकीलों की आवश्यकता होती है, वकील मोटी वसूल करते हैं। ऐसी स्थिति में छोटे-मोटे उपभोक्ता मामले Consumer Court में नहीं जा सकते। बिजली अदालतें भ्रष्टाचार का भयंकर नमूना हैं। सुनने में आया है कि अदालतें बिजली कम्पनियों की बिल्डिंग में ही लगती हैं। पहले तो उपभोक्ताओं पर बेहिसाब बिल लगा दिया जाता है, कई मामलों में तो 56 लाख, 35 लाख और 30 लाख तक के बिल आम उपभोक्ताओं पर आए हैं। फिर बातचीत करके इन अदालतों में उन उपभोक्ताओं को लाखों रुपए देने पड़ते हैं। इस मामले की जांच होनी चाहिए। इन अदालतों में मजिस्ट्रेटों के रहन-सहन और कार्य-प्रणाली की भी जांच होनी चाहिए। न्यायालयों के अवकाश कम करने चाहिए, Evening Court, Mobile Court और कार्य करने की अवधि भी बढ़ानी चाहिए। एक सरकारी समिति ने Judicial Impact Assesement की बात की थी, जिससे पता चले कि जो भी नया कानून बन रहा है उसकी वजह से बजट में कितना लोड बढ़ेगा, कितना खर्चा बढ़ेगा, यह सिस्टम अमेरिका में है। Judicial Impact Assesment कई ऐसे कानून हैं जिनकी वजह से न्यायालयों में मामले बढ़ जाते हैं। Environment से संबंधित तमाम कानून और नियम, जो दूसरे विभागों पर नई जिम्मेदारियां डालते हैं, उनके उल्लंघन की वजह से अदालतों में मामले बढ़ते जा रहे हैं। इसके बारे में कानून बनने से पहले infrastructure तथा बजट के बारे में अध्ययन होना चाहिए। मुझे कुछ अखबारों की रिपोर्ट से पता चला है कि न्यूयॉर्क के टावर्स, twin towers, जो आतंकवाद की वजह से 11 सितम्बर को टूटे थे, उनका तमाम तरह का हानिकारक मैटीरियल तमिलनाडु, महाराष्ट्र और आंध्र प्रदेश के तटों पर पड़ा हुआ है, वहां से लाकर यहां डाल दिया गया है, इसकी जांच के लिए विभिन्न प्रांतों के इन विभागों जैसे कस्टम, शिपिंग आदि के पास infrastructure नहीं है, जिसके लिए बिल पास होने से पहले यदि assesement का प्रावधान होता, तो ऐसी स्थिति नहीं आती तथा जब ये मामले अदालतों के पास जाते हैं, तो पहले से लंबित मामलों की लिस्ट में और बढ़ोत्तरी करते हैं।

उपसभाध्यक्ष महोदय, जजों की strength के बारे में एक कमीशन की रिपोर्ट में कहा गया था कि कई देशों में 10 लाख की जनता के पीछे 150 जज हैं, जब कि हमारे देश में 10 लाख की जनता के पीछे सिर्फ 13 जज हैं। डेढ़ करोड़ लंबित मामलों को निपटाने के लिए यह स्थिति बहुत ही दयनीय है। मुख्य न्यायाधीश ने कहा है कि केन्द्रीय कानूनों की वजह से मुकदमों में 50 प्रतिशत से 60 प्रतिशत तक की वृद्धि हुई है, जब कि सरकार ने अनुच्छेद 247 के तहत अपनी शक्तियों का इस्तेमाल करते हुए अतिरिक्त अदालतों का गठन नहीं किया है। सरकार को प्रांतों के न्यायालयों के खर्चों का भी हिसाब-किताब तय करना चाहिए कि वहां पर खर्चों में कितनी बढ़ोत्तरी की आवश्यकता है और सरकार इनको किस तरह की सहायता दे सकती है।

महोदय, दिसम्बर, 1999 में 19 जजों की एक बैठक में भ्रष्टाचार के संबंध में कहा गया था कि न्यायपालिका इसमें व्याप्त भ्रष्टाचार की जांच और उपाय के लिए एक In House System बनाएगी, लेकिन अब 9 सालों के बाद

सुप्रीम कोर्ट का यह विचार है कि इस संबंध में उसको कोई पावर्स नहीं हैं। सूचना के अधिकार के तहत जानकारी में सुप्रीम कोर्ट ने कहा है कि न तो सर्वोच्च न्यायालय और न ही इसके मुख्य न्यायाधीश, उच्च न्यायालयों या सर्वोच्च न्यायालयों के जजों के नियोक्ता हैं और न ही अनुशासनात्मक कार्यवाही करने के लिए उपयुक्त Authority हैं। पूर्व मुख्य न्यायाधीश, श्री वर्मा ने कहा है कि इसी वजह से जुडिशियरी ने अपने आपको संदेहास्पद स्थितियों में लाकर खड़ा कर दिया है, जबकि जुडिशियरी को सर्वोच्च नैतिक मापदंड स्थापित करके इसकी मिसाल अन्य संस्थाओं के सामने पेश करनी चाहिए। इस संबंध में Judges Enquiry Amendment Bill, 2008 एक महत्वपूर्ण कदम है। इस विधेयक के पास होने से जजेज़, जनता के प्रति उत्तरदायी होंगे। यह अमेंडमेंट बिल जल्दी पास होना चाहिए। जुडिशियल कमीशन को भ्रष्ट जजों के खिलाफ शिकायतों को सुनना चाहिए तथा यह कमीशन बाहरी हस्तक्षेप से मुक्त होना चाहिए। अभी हाल के गाजियाबाद प्रोविडेंट फंड स्कैम और चंडीगढ़ में एक जज के यहां बरामद कैश, जो किसी और जज के लिए भिजवाया गया था, इस बात के उदाहरण हैं कि जुडिशियरी में अब ऊंचे स्तर पर भी किस तरह से भ्रष्टाचार बढ़ रहा है। इस जुडिशियल कमीशन में चीफ जस्टिस और अन्य जज भी होंगे, वे लोग सिटिंग जजेज़ के खिलाफ शिकायतें सुनेंगे तथा मामले का निपटारा करेंगे। ऐसी स्थिति में जनता को कैसे भरोसा होगा कि जांच और निर्णय निष्पक्ष होंगे।

महोदय, एक दूसरी स्थिति यह है कि उच्च न्यायालय और सर्वोच्च न्यायालयों में जजों के बेटे-बेटियां एक दूसरे के कोर्ट में पेश होते हैं। सुनने में आया है कि ये नए वकील जमानत वगैरह तथा मामलों के निपटाने में सबसे त्वरित तथा महंगे हैं। इसी सदन के एक सम्माननीय सदस्य ने कहा था कि आज न्यायालय son's stroke से पीड़ित हैं। इस मामले में जांच होनी चाहिए तथा पता लगाना चाहिए कि कितने जजों के बच्चे इस तरह से practice कर रहे हैं और इस संबंध में संबंधित न्यायालयों का क्या रोल रहा है।

आज स्थिति यह है कि कोई भी मामला जिसमें वीआईपी involve हैं या sensational मामला है, उसमें electronic media का trial शुरू हो जाता है। Studio court room बन जाता है और इनके द्वारा बहुत जल्दी निर्णय सुना दिया जाता है। ये सब बंद होना चाहिए, इससे न्यायिक प्रक्रिया तथा जांच प्रक्रिया प्रभावित होती है।

आज की स्थितियों में अपराध करने वाले भी आधुनिक तकनीकों और आधुनिक हथियारों का इस्तेमाल कर रहे हैं। ऐसी स्थितियों से निपटने के लिए हमारी जांच संस्थाओं को आधुनिक तकनीक का इस्तेमाल करना चाहिए। इन आधुनिक तकनीकों के द्वारा इकट्ठा किए गए सबूतों को evidence act की मान्यता मिलनी चाहिए। जिस तरह से अपराध जगत अत्याधुनिक तकनीकों का इस्तेमाल करके बच निकलने में कामयाब हो रहा है, उस गति से हमारा कानून आगे बढ़ नहीं रहा है। इस संदर्भ मैं Narco Analysis, Polygraph Test तथा Brain Mapping Test की बात करना चाहूंगा, जो कि तमाम अपराधों की जांच में बहुत ही महत्वपूर्ण भूमिका अदा करते हैं। अनुच्छेद 21 और 20(3) के तहत कोई भी व्यक्ति अपने ही खिलाफ गवाही नहीं दे सकता है, लेकिन आज के युग में बढ़ते हुए अपराधों, आतंकवाद और serious heinous अपराधों पर लगाम कसने के लिए मैं इस तरह की जांच प्रक्रिया को मंजूरी देना परम आवश्यक मानता हूं।

Consumer courts कई बार ऐसे फैसले देते हैं, जिनमें काफी heavy fine लगा दिए जाते हैं। जब ऐसे फैसले High Courts में जाते हैं तो उन्हें यह कहते हुए निरस्त कर दिया जाता है कि यह मामला उपभोक्ता मामलों के दायरे के बाहर आता है। यहां punitive damage और penalty में फर्क करना अनिवार्य है और सेक्शन 141(d) और (f), जो कि Consumer Protection Act का है, में प्रावधान है कि वह एक करोड़ रुपए तक का fine लगा सकता है।

इसी तरह Negotiable Instruments Act की धारा 138 के तहत bounce होने वाले चेक के मामले हैं, जिनके बारे में गहन विचार करने की आवश्यकता है। इस बारे में कोर्ट की प्रक्रिया इतनी लंबी और कठिन है कि जो लोग पर्याप्त पैसा न होने के बावजूद चेक दे देते हैं, ऐसे लोगों के खिलाफ कार्रवाई नहीं हो पाती है।

3.00 **P.M.**

जहां तक न्यायपालिका, कार्यपालिका और विधायिका के मध्य शक्तियों के विभाजन और अनुपालन का प्रश्न है, वहां भी कई बार देखा गया कि न्यायपालिका ने इस लक्ष्मण रेखा को भंग किया है। न्यायपालिका को कार्यपालिका और विधायिका की शक्तियों की हद परिभाषित करने की जिम्मेदारी दी गई है, लेकिन इन शक्तियों का प्रयोग संयम के साथ होना चाहिए। यह बात सही है कि कई जगहों पर विशेष रूप से पर्यावरण की सुरक्षा वगैरह के मामले में कार्यपालिका विफल रही है। वहां पर लोगों ने और courts ने PIL के माध्यम से प्रदूषण खत्म करने और पर्यावरण की सुरक्षा में महत्वपूर्ण भूमिका अदा की है, लेकिन PIL के नाम पर courts के द्वारा कार्यपालिका की जिम्मेदारी को संभालना, यह कोई अच्छी बात नहीं है। अभी दिल्ली में सीलिंग को लेकर काफी confusion की स्थिति रही, एक Monitoring Committee बनी और फिर वह भंग हो गई। एक बार तो एक जज ने रेलवे प्लेटफार्म पर ही कोर्ट लगा दिया। इन सब स्थितियों से कोर्ट को बचना चाहिए।

न्यायालयों में रिक्त पद चिंता का विषय है। उच्च न्यायालयों में 26 प्रतिशत की कमी है, जहां जजों की संख्या 792 होनी चाहिए, वहां पर केवल 586 जज हैं। निचली अदालतों में 20 प्रतिशत की कमी है। 15,399 की प्रदत्त संख्या में 12,368 जज हैं। पिछले सात सालों में निचली अदालतों के बजाय उच्च न्यायालयों में लम्बित मामलों की संख्या में काफी वृद्धि हुई है। उच्च न्यायालयों में 1999 में जहां 27.5 लाख मामले लम्बित थे, वहीं 2006 में यह संख्या बढ़कर 36.8 लाख हो गयी है। निचली अदालतों में 1999 में जहां लम्बित मामलों की संख्या 2 करोड़ थी, वहीं 2006 में यह संख्या बढ़कर 2 करोड़ 48 लाख हो गयी है। जजों की चयन की प्रक्रिया में सरकार का महत्वपूर्ण रोल है। क्या कोलिजियम सिस्टम सही काम कर रहा है या नहीं या हमें 1993 की पूर्व की स्थिति में लौट आना चाहिए? यह एक विचारणीय विषय है। इस विषय पर अभी कानून मंत्री जी ने कहा था कि उनके विभाग में जजों की नियुक्ति के संबंध में एक भी फाइल लम्बित नहीं है। फिर इस देरी के लिए कौन जिम्मेदार है? अगर यह फाइल कानून मंत्री जी के पास नहीं है, उसके बावजूद भी वह सारी प्रक्रिया लम्बित है, तो फिर इसके लिए कौन जिम्मेदार है? खाली पड़े पदों को कैसे भरा जाएगा, यह बात अभी भी स्पष्ट नहीं है। मुख्य न्यायाधीश ने कहा है कि मौजूदा 792 की संख्या में अगर 1,539 नए पद सृजित कर दिए जाएं तो सारे लम्बित मामलों का निपटारा एक साल के अंदर हो जाएगा। इसी तरह जरूरत है कि निचली अदालतों की सारी 15,399 जगहों को भरा जाए तथा 18,479 नए पदों का सृजन किया जाए। अगर आर्थिक कारणों की वजह से नए पदों का सृजन मुमकिन न हो रहा हो तो कोई स्थानापन्न स्थिति हो जिससे सारे लम्बित मामलों का निपटारा शीघ्र हो सके। मौजूदा कानूनों में अभी भी तमाम अप्रचिलित और पुराने कानून हैं जो अब प्रयोग में नहीं लाए जा रहे हैं। ऐसे कानून बहुत ही हास्यास्पद लगते हैं। इन कानूनों की समीक्षा होनी चाहिए तथा इन्हें Statute Book से निकाल देना चाहिए। एक पी.सी. जैन कमेटी बनी थी। उसकी सिफारिशों के तहत अब तक कितने कानूनों को खत्म किया गया है तथा कितने कानून ऐसे हैं जिन्हें रिपील होना चाहिए, उनकी भी समीक्षा होनी चाहिए। इसके अतिरिक्त कितने ऐसे कानून हैं जिनमें संशोधन की आवश्यकता है? कई कानूनों का तो बहुत ही इमेजिनेटिव इंटरप्रिटेशन होता है। धनभाग की एक फास्ट ट्रैक कोर्ट ने भगवान राम और भगवान महावीर को कोर्ट में उपस्थित होने के लिए सम्मन भेज दिया। इसी तरह हिन्दू माइनॉरिटी और गार्जियनशिप एक्ट के तहत एक साल के लड़के को छः महीने की लड़की (पत्नी) का कानूनी अभिभावक माना है। अभी उच्चतम न्यायालय के मुख्य न्यायाधीश ने सभी उच्च न्यायालयों को भेजे गए सर्कुलर में कहा है कि भ्रष्ट और काम न करने वाले जजों को बाहर का रास्ता दिखाया जाए उन्होंने कहा है कि सभी जजों का काम के आधार पर मूल्यांकन हो तथा सिर्फ सिनियोरिटी प्रमोशन का क्राइटेरिया नहीं होना चाहिए। इस संबंध में मैं कुछ सुझाव देना चाहता हूं। उच्च न्यायालयों में सीधे भर्ती अंग्रेजों के समय में शुरू हुई थी जब गोरे लोगों को भारतीयों के ऊपर बैठा दिया जाता था। खेद की बात है कि यह प्रक्रिया आज भी जारी है और कोलिजियम की वजह से भी तमाम भ्रष्ट और सिफारिशी जज आकर ऊपर बैठ जाते

हैं। आश्चर्य की बात है कि कहीं भी, यहां तक की कार्यपालिका में भी, किसी ने भी ज्वाइंट सेक्रेटरी या डायरेक्टर के पद पर सीधे भर्ती नहीं सुनी होगी लेकिन उच्च न्यायालयों में 60 प्रतिशत से अधिक की भर्ती इसी तरह से होती है जो कि भ्रष्टाचार का एक और कारण है। यह प्रतिशत दस से ज्यादा नहीं होना चाहिए और जो लोग वास्तव में और सादर प्रतिभा वाले हैं, निष्पक्ष हैं, ऐसे लोगों का चयन सीधे तौर पर उच्च न्यायालय के लिए होना चाहिए। निचली अदालतों में भर्ती की प्रक्रिया से ही लोगों को ऊपर जाने की सुविधा होनी चाहिए। निचले स्तर पर जजों का स्तर काफी अच्छा है। वहां पर सर्विस के दौरान मूल्यांकन करके उनके प्रमोशन उच्च न्यायालयों के लिए होने चाहिए। इससे निचली अदालतों में काम करने वाले जजेज का मनोबल भी बढ़ेगा तथा सिस्टम में ट्रांसपेरेंसी आएगी। सभी स्टेट्स में निचली अदालतों की भर्ती प्रक्रिया, वेतनमान तथा प्रमोशन में समानता होनी चाहिए। इस बारे में अभी क्या प्रक्रिया है, सरकार को एक रिपोर्ट देनी चाहिए। सीधी भर्ती के लिए केंडीडेट्स को बार का कम से कम 5 साल का अनुभव होना चाहिए तथा ए.डी.जे.के स्तर पर सीधे भर्ती समाप्त होनी चाहिए। अभी एडिशनल डिस्ट्रिक्ट जज के स्तर पर भी भर्ती की संख्या काफी है। अभी सुप्रीम कोर्ट के जजों की रिटायरमेंट ऐज 65 साल है तथा हाई कोर्ट के जजों की 63 साल है। निचली अदालतों में रिटायमेंट की ऐज अभी भी 58 साल है तथा असेसमेंट के बाद उन्हें 60 साल तक सेवा का अवसर दिया जाता है। उनकी रिटायरमेंट की ऐज 62 साल होनी चाहिए, जिससे नीचे से लेकर ऊपर तक इसमें व्यवहारिकता आएगी।

Declaration of assets and liabilities - अभी संसद के सदस्यों के लिए यह अनिवार्य हो गया है कि वह अपनी आय, असेट्स और लॉएबिलिटीज़ के बारे में घोषणा करें। सारे पब्लिक सर्वेंट्स के लिए भी यही स्थिति है। लेकिन हाई कोर्ट और सुप्रीम कोर्ट के जजेज के लिए यह स्थिति नहीं है। इसके बारे में अगर जुडिशियरी की अलग राय है तो यह उसे संदेहास्यपद स्थिति में खड़ा करती है। वेतनवृद्धि होनी चाहिए और सेवा निवृत्ति आयु भी बढ़नी चाहिए। परन्तु अगर न्यायाधीश यह कहते हैं कि हमारी आय के संबंध में कोई सवाल न पूछा जाए तो कहना पड़ेगा कि वे अपने आपको इस देश के विशेष अथवा परम उच्चाधिकार प्राप्त नागरिक समझते हैं। इस विषय के अंदर मैंने एक जून, 2008 को एक लेख लिखा है, जो कि मीडिया में छपा है। इसका विषय है "Who is to judge the judges" "न्यायाधीशों को न्याय चाहिए और समता भी।" मैं चाहूंगा कि मेरे इस लेख की कापी मेरे इस भाषण के साथ रिकार्ड पर ली जाए।

मैं यह भी मांग करता हूं कि सुप्रीम कोर्ट की एक बैंच नागपुर में होनी चाहिए, क्योंकि दक्षिण क्षेत्र - साउथ इंडिया से लगाकर, आने वाले नागरिकों को दिल्ली पहुंचने तथा वकील को हॉयर करने में समस्या होती है। यही समस्या पूर्व और पश्चिम के लोगों को होती है तथा मामले लम्बे समय तक चलते हैं। इस समस्या से निज़ात पाने के लिए सुप्रीम कोर्ट की बैंचेज स्थापित की जाएं। इस संबंध में मैंने एक बिल संसद में प्रस्तुत किया है। इस संबंध में जो अमेंडमेंट माननीय सदस्य श्री जोयिस ने किया है, मैं उनके साथ सहमत नहीं हूं।

अन्त में, मैं यही कहना चाहूंगा कि संविधान ने देश के सभी नागरिकों को कानून के समक्ष समान होने का भी वचन दिया है। सरकार के इस वचन का पालन करने की जिम्मेदारी भी देश के वरिष्ठ न्यायालयों की है। इस स्थिति में न्यायाधीश जैसे जिम्मेदार लोग अपने लिए अन्य नागरिकों से अलग अधिकार मांग रहे हैं, तो उन्हें यह बताना आवश्यक है कि वे समता के अपने अधिकार का उल्लंघन कर रहे हैं। आखिर जितने सम्मानीय न्यायाधीश हैं, उतने हमारे देश के नागरिक भी सम्मानीय हैं। धन्यवाद।

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): Now, the, Resolution is moved. There is one amendment by Shri M. Rama Jois. He can now move the amendment.

SHRI S.S. AHLUWALIA (Jharkhand): Let me speak first. His speech will be a maiden speech. He will move the amendment.

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): Let him move the amendment. Then I will give you chance.

SHRI M. RAMA JOIS (Karnataka): Sir, I move:

"That the words "need for establishing zonal or regional benches of the Supreme Court and increase in the number of High Court benches" in lines 18 and 19 of the opening para of the Resolution, be deleted."

The questions were proposed.

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): Now both the Resolution and the amendment are open for discussion. I think Shri M. Rama Jois himself can speak first.

THE MINISTER OF LAW AND JUSTICE (SHRI H.R. BHARDWAJ): Has the amendment been circulated? Give a copy of it to me.

SHRI S.S AHLUWALIA: One copy should be given to the hon. Minister concerned. However, it has been circulated by dak.

SHRI M. RAMA JOIS: Sir, I have gone through the entire Resolution. Under Rule 157, normally there should be one issue, but ten to twelve issues are made part of the same Resolution. Whatever that may be, at the outset, I must state that as far as judiciary is concerned for more than five decades the performance of the judiciary has been exemplary. When Dr. Ambedkar was asked what is the most important provision in the Constitution, he pointed out ...*(Interruptions)*...

SHRI S.S. AHLUWALIA: What is this? How? I want to raise this issue. ...*(Interruptions)*... In the morning also, we have seen the Agriculture Minister's or some other Minister's phone was ringing. Earlier also I raised this issue. It is a security hazard. When jammer is working, how is mobile phone working inside? Through a mobile phone, one can blast the bomb. When jammer is there, how this filmy song is coming? How is it coming?

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): This will be examined.

SHRI S.S. AHLUWALIA: It is very strange.

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): It should be examined and reported to the Chairman.

SHRI M. RAMA JOIS: Although certain flaws and drawbacks in the judiciary have been pointed out, but I can say with certain amount of confidence that for more than five decades the performance of the judiciary in our country has been exemplary. When Dr. Ambedkar was asked as to what is the important article in the Constitution, he pointed out article 32 which confers Fundamental Rights on every citizen to move the Supreme Court for the enforcement of Fundamental Rights, and a similar

article in case of High Court is article 226 of the Constitution. During these five decades, there are thousands of students, who would not have otherwise secured seats in the medical or engineering colleges; they have secured seats through the orders of the High Court and the Supreme Court. Similarly, so many poor people, who could not have got justice, have got justice whether it is election or whether it is any other matter of employment, particularly service matters. There are hundreds and thousands of cases in which persons, who are aggrieved and who are denied justice, have come to the High Court under article 226 and some have come to the Supreme Court under article 32; all of them have got relief, and particularly, I refer to the decision of the Supreme Court in Keshavanand Bharati case. The entire nation is grateful to the Supreme Court for this judgement. Because of that Judgement, our democracy has been completely strengthened. We do not know what would have been the fate of our Constitution and the democracy but for the judgement of the Supreme Court in Keshavanand Bharati case. These are only general points. I will come later to the points which are sought to be made. I will, particularly, refer to the amendment which I have moved, because there is one point raised that there should be more Benches of the High Court in different places. Secondly, the Supreme Court also should set up benches at different places. As far as this aspect is concerned, there is a Fourth Report of the Law Commission of India presided over by no less a person than Mr. M.C. Setalvad, and Mr. M.C. Chagla was the Member. And, now they have expressed their clear views about the necessity or desirability of constituting benches of the High Court. They have given several reasons. I will read that:

"2. In our opinion, the question whether the High Court should sit as a whole at one place or in Benches at different places has to be considered solely from the point of view of the administration of justice, and political and sentimental considerations have, as far as possible, to be excluded. We are firmly of the opinion that in order to maintain the highest standards of administration of justice and to preserve the character and quality of the work at present being done by the High Courts, it is essential that the High Court should function as a whole -it is an integrated whole, the Chief Justice and other Judges, because even petitions are addressed to the Chief Justice and companion Judges of the High Court and the Supreme Court – and only at one place in the State.

3. The High Court is the highest Court of Appeal in the State and it is necessary that it should have the assistance of the best legal talent and the best-equipped law library. It is also necessary that it should work in a proper atmosphere and should be constantly conscious of the traditions built up by the Chief Justices and Judges in the past. With regard to the new High Courts, the Chief Justice and the Judges should be equally anxious to build up traditions similar to those of the older High Courts. This, in our considered view, is only possible if the Chief Justice and Judges sit at the same place and administer justice as a team.

4. If the High Court works in Benches, it will be difficult, if not possible, for the Chief Justice to have proper administrative control over the working of the Benches or the doings of his colleagues who will constitute the Benches. The cohesion and the unity of purpose, that should exist among all the Judges of a High Court, will necessarily be absent when some Judges sit at places far away from the principal seat of the High Court. Every court has an atmosphere and traditions. A new Judge coming to the Court becomes conscious of these and tries to act in conformity with them.

5. The High Court Bar acquires a justifiable reputation by appearing before the Judges of the High Court, by arguing important cases and by helping the Court finally to settle the law at the highest level. A Bench of the High Court can never expect to get assistance from such a Bar. A District or Taluka Bar, however competent it may be, cannot be compared to the High Court Bar. The litigant, therefore, appearing before a Bench will have to be satisfied with less competent advocacy.

6. A well-stocked and well-equipped library is essential to the proper working of the Court. Such libraries only exist in the High Courts. At the other places where the Bench sits, both the lawyer and the Judge will be considerably handicapped.

7. In the High Court, Judges are familiar with the judgements delivered by their colleagues from day to day. Being constantly in touch with each other, they are in a position to consult with each other on points of practice so that there should be uniformity in the decisions given and certainty in the minds of the litigants as to how the Court will decide. If there are different Benches, it is quite possible that one Bench may come to a decision contrary to the one given by another Bench a few days before. The High Court will have to be frequently constituting Full Benches to resolve these conflicts."

"As against these serious disadvantages are there any countervailing conveniences which the litigant will receive by the constitution of these benches? It is said that in the India of today, justice should be taken to the door of the litigant and, therefore, the litigant should not be compelled to go long distances to the High Court. This argument is based upon a complete misapprehension of the working of the High Court and the system of administration of justice in our country. In the trial of cases, both civil and criminal, undoubtedly, the court, functioning as a court of first instance, must be easily accessible to the litigant and his witnesses. The civil and criminal courts in the Talukas and Tehsils and at District headquarters, subordinate Judges and the District and Sessions Courts, in the District satisfy these needs. When the argument is put forward that in England, the High Court Judge goes on circuit, it is forgotten that he goes as a court of first instance and never as an appellate court.

If the liberty of the citizen is to be safeguarded and the rule of law to be ensured, it is of paramount importance that the High Courts all over India should be strengthened.

It may be pointed out that a very large majority of those who have answered the questionnaire issued by the Commission including the Judges of the. Supreme Court who have answered it have expressed a view against the formation of benches. Informed opinion is thus decisively against the proposed course. The Commission is of the view that we should firmly set our face against steps which would lead to the impairment of the High Courts with the inevitable consequence of the lowering of the standards of administration of justice."

Then, this has been reiterated by the Law Commission in its 14th Report. It says, "We had earlier occasion to make a Report on the desirability of the High Court of a State sitting in benches at different places in the State. We then reached the conclusion that the efficiency of the administration of justice should be the paramount consideration governing this matter and that

this consideration weighed overwhelmingly against the creation of benches of the High Courts. The structure and composition of the Courts should not be permitted to be influenced by political considerations. That this has happened in the past in certain cases can be no valid ground for extension of that policy. We are of the view that we should firmly set our face against the constitution or creation of benches. Such a course would lead to an impairment of the efficiency of the High Court with the inevitable consequence of the lowering of the standards of administration of justice. Since the Report was made, we have visited all the- principal centres where the High Courts sit and the evidence given before us has confirmed us in the view taken by us in that Report. We re-affirm the reasons given and the conclusions stated in that Report in regard to this question."

This matter also came before the Supreme Court also in 200(6) S.C.C.P. 715. This is what the Supreme Court said. "Practical difficulties in having different benches of the High Court located in different regions are far too many. Apart from the heavy burden, such a bench would inflict on the State exchequer; the functional efficiency of the High Court would be much impaired by keeping High Courts in different regions. When the Chief Justice of the High Court is a singular office, and when the Advocate General is also a singular office, vivisection of the High Court into different benches at different regions would undoubtedly affect the efficacy of the functioning of the High Court."

There are other points which I would like to bring to the notice of the House. Breaking it into different, benches severely affects integrity and the efficiency of the High court. I am telling this both by my experience as judge for 15 years and as a lawyer for 35 years. Wherever Benches have been set up, there is a complaint that the High Court's functioning is not efficient, particularly at the level of Benches. At the High Court level, you have the Chief Justice and the Advocate-General. The Secretariat is there in the capital. Suppose any urgent matter of public importance comes up before it, it can ask the Government to appear. If the case comes up in the morning, you can get the records by 2.30 p.m. and the case can be decided. If the Benches are outside the capital, the Government cannot be called upon to produce the records immediately and the Advocate-General's assistance will not be there.

Wastage of time is another important matter. I have known it personally. Judges have to travel, sometimes every week and sometimes every two weeks. Sometimes they have to travel by train or car, and sometimes they have to take a flight. The valuable time of a judge is wasted while travelling. They travel so much, and then again come to sit in another Bench. They cannot discharge their functions in the same manner as they could have if they sit only at one place. The wastage of time and energy of the judges cost very much on the efficiency of the judiciary.

Another thing is space. When the High Court is there, there are court rooms, rooms for staff and library, are also there. When the Benches are established, the entire accommodation which is available in the High Court goes waste. And you spend crores of rupees. Setting up Benches is not a small expenditure. For every judge, you have to provide books. You need library building, residential accommodation for judges, residential accommodation for the Registrar and other officers of the court. Hundreds of crores of rupees are required for it. When the country is suffering from financial

crisis and we are short of funds, we are unnecessarily spending. When everything is available in one building with the Chief Justice and other judges, unnecessarily, we are increasing the expenditure and also the inefficiency. A huge expenditure is required for housing.

Another important thing is, under Article 235 of the Constitution, the administrative control of all the subordinate courts in a State is vested in the High Court. They can discharge their administrative functioning by taking decision only in a full court. Therefore, all the judges have to meet and take a decision in respect of every important administrative matter. That is why, either every week or once in 15 days or once in three weeks, there will be a full court meeting. If you have Benches elsewhere, for a full court meeting, all the judges have to come back, and again go back to the Bench. This is, again, not only heavy expenditure on the State exchequer but also heavy strain on the energy and time of the judges. So, the administration of subordinate courts also suffers, because under Article 235 of the Constitution, all the judges have to sit together and administer.

These Benches will have no Chief Justice. Whether it is the Supreme Court or the High Court, Chief Justice is the most important officer. He is the leader of the court. In the absence of the leader, the Benches function elsewhere. This is also a disadvantage.

I mentioned the role of Secretariat earlier. The founding fathers of the Constitution thought that the High Court should be in the capital. Just as the Legislature should be in the capital, the Supreme Court should be in the capital of the country and the High Court should be in the capital of the State, so that when important matters come up before the High Court, they can immediately call for records from the Secretariat and give decision in the matter. For example, the Administrative Tribunals are in the capital of the country. Government servants throughout the State come to the administrative tribunal in the capital. After the decision is given to them, if they want to move the High Court, they have to go to the Benches elsewhere. This is the anomaly which has been created on account of the constitution of benches.

And administrative tribunals, as I said, are all situated in the Capital. What is the basis of this demand for establishment of these benches outside? With full amount of sincerity and complete amount of knowledge, I can tell you that this is only a regional or a parochial or a political demand. They say, "I will get a bench here in this area and rouse the regional feelings." It is very easy to rouse the regional feelings. That has happened as far as the formation of benches is concerned. He roused the regional feelings of the people and demanded, "We want a bench here. We want a bench there!" But there is no need. And, as the Law Commission has pointed out, presence of party is not necessary in the Supreme Court or in the High Court. It is only necessary in district courts and subordinate courts. Now, in almost every tehsil of the country, they have got a munsif court and a magistrate court. And at the subdivisional level, you have got civil judges. At the district level, you have got district and sessions courts. Taking the judiciary to the doors of the people does not mean taking the Supreme Court and the High Courts at their doorsteps. In fact, the Supreme Court has pointed out that most of the cases arise only in subordinate courts, and most of the people or citizens come into contact with subordinate courts. That is why, the Constitution has taken care to

ensure the security of tenure of subordinate judges. In a case, which came up before the Supreme Court, regarding the security of tenure of subordinate judges, the Supreme Court pointed out that the security of tenure is absolutely necessary for subordinate judiciary because most of the cases are decided by them. That is why, while the High Court and the Supreme Court judges have the protection, that means they can be removed only through impeachment; otherwise not. That is because they have to be independent and fearless judges. For that purpose, that has been there.

As far as subordinate courts are concerned, there is a separation of judiciary from the executive and the entire control of subordinate judiciary is vested in the high courts. Therefore, even the transfer of a civil judge or a magistrate cannot be done by the executive because under article 51, there is a separation of judiciary from the executive, and for that purpose, full protection is given to the subordinate courts. Therefore, my submission is that there is absolutely no justification for that. On whatever reasons the Law Commission, in its Fourth and Fourteenth Reports has given it, that is applicable to all High courts and also to the Supreme Court. For instance, the nation's Capital is in Delhi. Why is it in Delhi? Why is it not elsewhere in the country? There are many historic reasons for having the Capital of the nation in Delhi. Therefore, when the national Capital is in Delhi, the Supreme Court also is in Delhi. And asking some of the judges to go and work elsewhere is to completely destroy the integrity, the dignity and the authority of the Supreme Court, Therefore, it should never be resorted to, and, as I said, these are all demands made on a parochial basis. In this behalf, I may refer to what the Supreme Court has said regarding this. In one case, regarding colleges, a State said: "Students coming from my State only will get seats in MBBS, and all that!" In such a case, which came up before the Supreme Court in 1984, five judges have said this:

> "We find that, today, the integrity of the nation is threatened by the divisive forces of regionalism, linguism and communalism and regional linguistic and communal loyalties are gaining ascendancy in national life and seeking to tear apart and destroy national integrity. We tend to forget that India is one nation and we are all Indians first and Indians last. It is time we remind ourselves what the great visionary and builder of modern India, Jawaharlal Nehru, said, 'Who dies if India lives; who lives if India dies?' We must realise; and this is unfortunately that many in public life tend to overlook; sometimes out of ignorance of the forces of history and sometimes deliberately with a view to promoting their self-interest, that national interest must inevitably and forever prevail over any other considerations proceeding from regional, linguistic or communal attachments." [AIR 1984 S.C. 1420 Para 1]

You find out what is the reason for that demand for establishment of a bench outside. It is either regional or linguistic, or it is made on the basis of some caste or community. Therefore, in larger public interest or in national interest, the High Court must be situated in the State Capital, and the Supreme Court must work in Delhi. The seat of the Chief Justice and all the Judges of the Supreme Court is in Delhi and they have to function here. Splitting the High Courts and the Supreme Court is not at all in the national interest.

There are a few other points. The Resolution speaks of judicial activism. Many times we are worried why the Judges go out of their way and give relief in so many cases. It is because of the Executive inactivism. It is responsible for that. I will give you two very glaring examples. Take the case of capitation fee in medical and engineering colleges. This was rampant, particularly in

Karnataka from where I come. There is a famous saying that Karnataka has a liquor lobby and an educational lobby. They used to collect Rs.20-30 lakhs as capitation fee. There was no legislation. The Executive did not interfere. This was going on for many years and ultimately the Supreme Court came to the rescue in Unnikrishnan's case in 1994. The Constitution Bench of the Supreme Court said that there should be free seats and there should be no capitation fee; and regulated the admission to medical and engineering colleges. As a result of that hundreds of economically poor students have been able to get admission into medical and engineering colleges. The Government did not do it. The allegation was that, probably, some persons in Government were hands in glove with owners of colleges and, therefore, they were not taking any steps at all.

He has very rightly referred to the environment cases. But for the Supreme Court's interference in Godavarman's case and other cases, probably, our environment would have been destroyed. The forest contractors come and remove the trees without permission and in violation of the Forest Act and all that. I can quote hundreds of cases like that where the Supreme Court and the High Courts have come to the rescue of the citizens and protected the individual's right as well was the national interest.

Regarding delay in appointment, it is rightly a bane in our administration of justice. If a Judge dies or resigns, I can understand that you take some time to make the appointment. But when you know that a Judge is going to retire – the retiring Judge cannot continue even for a single day after 62 years – why don't you make the appointment? The previous Chief Justices' Conference has decided that six months before the vacancy occurs, the process should be initiated and by the time the Judge retires, the new person should be ready to take office. Still 200 or 300 posts are vacant. The result is that if a Judge is appointed on a particular date, he will acquire experience in one or one-and-a-half years. Suppose he is not appointed for one-and-a-half years and he is appointed thereafter, the opportunity of acquiring experience during that one-and-a-half years is lost. It is a permanent loss to the nation. That has happened in the appointment of Judges to hundreds of posts because they are not filled up in time. ...*(Interruptions)*... Therefore, there must be a strict calendar for appointment of Judges. When you know the Judges whom you are going to retire, you know the vacancies which are coming into existence. Therefore, you should start the process of appointment six months before and see to it that it is finalised and by the time a Judge retires, the new Judge is appointed. So, there will be no wastage of time.

As far as corruption is concerned, of course, recently there are so many allegations which I can attribute to the general moral degradation in the country. Even otherwise, by and large, the judiciary is not that corrupt as some people imagine. It is not correct to take a few cases and then say that the entire judiciary is corrupt and all that. Transparency among Judges will come provided there is transparency in appointment. When you make appointment of Judges on collateral consideration such as castes and political affiliation or other considerations other than merit and suitability, these problems will come. Therefore, at the time of appointment of Judges, the Government must be extremely careful and ensure that only persons with good moral character are appointed. That is the

only way of reducing corruption in the judiciary. There is only one line which unfortunately was not made part of our education. Both for the rulers and the ruled there is one doctrine of Trivarga. It is published by Bharatiya Vidya Bhawan. It says: "परित्यजेदर्थकामौ यौ स्यातां धर्मवर्जितौ।"

It says: "Please reject wealth and desires which are contrary to law." That should be a part of education common to all subjects, whether it is MBBS or law. One should be educated to ensure that he or she would not accept money or wealth or fulfil his/her desires which are contrary to law. That is the principle laid down since times immemorial in our country. But, unfortunately, that is not a part of our education system.

As far as impeachment is concerned, no doubt, the provision for impeachment has been incorporated in the Constitution by our founding fathers with the best of intentions. This was to give protection to the judges of the highest body, particularly, as the High Courts and the Supreme Court, have to deal with persons in power. So, unless they have protection under the Constitution, we cannot expect them to exercise their power without fear or favour. Therefore, if, for any reason, impeachment proceeding is considered as an impossible process, then, an equally efficacious alternative remedy has to be found out. We cannot simply remove the impeachment provision without an effective mechanism for checking corruption or misconduct among the judges. And that will be dangerous. Therefore, before taking away the provision for impeachment, we must have an alternative, a very efficacious, remedy, as equally efficacious as impeachment.

Sir, in the matter of recruitment of judges of Subordinate Courts, article 233 provides that the Governor shall appoint District Judges on the recommendation of the High Court. Here, the word 'Government' is not used. And, article 234 says, "The Governor shall make appointment of all the Subordinate Judges on the basis of the selection made by a committee, and the rule shall be framed in consultation with the High Court and the Public Service Commission." Therefore, the best way of ensuring best recruitments as far as the Subordinate Judiciary is concerned is to entrust the selection process to a committee constituted by the Chief Justice. In fact, Karnataka and Kerala have constituted a Committee for selection of Subordinate Judges, while the Chief Justice is authorised to constitute the Committee consisting of only High Court Judges, not outsiders. The Chief Justice constitutes a committee of High Court Judges. They call for applications, hold competitive examinations and make the selection. That is why in Karnataka and Kerala, recruitment has been satisfactory as far as Subordinate Courts are concerned. In some States, the State Government itself directly does it. Therefore, in all the States, a uniform pattern should be followed, where it should be entrusted to a committee to be constituted by the Chief Justice, and such a rule can be framed in consultation with the High Court and the Public Service Commission.

Finally, coming again to the Amendment, I sincerely appeal to all the hon. Members not to allow the High Courts and the Supreme Court to be split into Benches and sit at other places. Thank you, Sir.

THE VICE-CHAIRMAN (PROF. PJ. KURIEN): Thank you. It is your maiden speech. Shri Rajniti Prasad.

श्री राजनीति प्रसाद (बिहार): उपसभाध्यक्ष महोदय, हमारे बीच में श्री दर्डा साहब और श्री म. रामा जोयिस साहब ने अपनी बातों को रखा। मेरी भी 35 साला कानून के प्रति जिम्मेदारी रही है और मैं वकील रहा हूं। एक दर्द के साथ मैं कहना चाहता हूं कि लोअर कोर्ट्स में जो subordinate judge हैं, जिनके बारे में श्री रामा जोयिस साहब ने कहा, एक कमिटी बनती है और उसके examinations होते हैं, competitive examinations होते हैं और उनको उसी आधार पर appoint किया जाता है। हमको अफसोस यह होता है कि जो ऑनरेबल हाई कोर्ट के जजेज़ appoint होते हैं, उनके लिए कोई कंपीटीशन नहीं है, बल्कि वे कहां से आते हैं, उन लोगों को ही जजों के रूप में ज्यादातर appoint किया जाता है। उदाहरण के लिए अगर किसी एक परिवार में कोई गलती से भी जज हुआ है, तो उसके सारे परिवार के लोग कभी न कभी जजों के रूप में नियुक्त होकर आ जाते हैं। मैं यह जानना चाहूंगा कि क्या यह सही तरीका है, क्या उसके लिए कोई अलग से कानून नहीं बनेगा, क्या competency का आधार जेनेटिक होगा, परिवारवाद होगा, क्या इसके बारे में कोई विचार नहीं हो सकता है?

महोदय, श्री रामा जोयिस साहब ने बहुत अच्छी बात कही कि हमारे सुप्रीम कोर्ट और हाई कोर्ट में बहुत सारे कानून ऐसे हैं, जिनमें अत्याचार के खिलाफ हम लोग निर्णय देते हैं, उनका एडमिशन होता है, हमारे आदेश पर होता है, यह बात सही है। मैं यह नहीं कहता कि सुप्रीम कोर्ट और हाई कोर्ट या जुडिशियरी एकदम खराब हो गई है, ऐसा हमारा कहना नहीं है, लेकिन हमारा यह कहना है कि अगर हवा में गंदगी हो गई है, पानी में गंदगी हो गई है, समाज में गंदगी हो गई है, तो उसका प्रभाव हमारी जुडिशियरी पर पड़ता है। इस बात को हमें दिमाग में रखना चाहिए और ऐसा नहीं सोचना चाहिए कि सभी लोग ठीक-ठाक हैं। अगर सभी लोग ठीक-ठाक होते, तो हमको यह नहीं कहना पड़ता कि judges are becoming corrupt. हमको यह कहना नहीं पड़ता। जो आदमी गरीब है, उसके लिए न्याय पाना बहुत मुश्किल है, उसके लिए सुप्रीम कोर्ट या हाई कोर्ट में आना बहुत मुश्किल है। हम लोगों ने कानून बनाया है, संविधान हम लोगों ने बनाया है, इसलिए नहीं बनाया कि उसमें गरीब आदमी के लिए जगह नहीं होती। सुप्रीम कोर्ट, हाई कोर्ट और लोअर जुडिशियरी को लोग भगवान मानते हैं, लेकिन अगर यह बात होगी कि भगवान ही न्याय नहीं कर पाएगा, तो मुश्किल हो जाएगा। श्री रामा जोयिस साहब ने बहुत अच्छा कहा और दर्डा साहब ने भी कहा कि कानून की व्याख्या करने वाले को, उनको न्याय देने वालों के पास कोई सहानुभूति नहीं होती है, कोई दर्द नहीं होता है, किसी तरह की कोई मुरव्वत नहीं होती है, लेकिन हमको अफसोस के साथ कहना पड़ता है कि कानून में जो न्याय करते हैं, ऐसे कुछ लोगों के बारे में कहा जाता है कि वे परिस्थितियों से गाइड होते हैं। एक पुरानी कहावत है कि - Show the man, I will show the law, यानी आप आदमी को दिखाइए, हम आपको कानून दिखाएंगे। यह बहुत ही दुर्भाग्यपूर्ण बात है कि किस तरह से जजों के एपाइंटमेंट्स हो रहे हैं। यदि आप बहुत ही इंटेलिजेंट आदमी हैं, आप हाई कोर्ट में या सुप्रीम कोर्ट में बहुत अच्छे वकील हैं, फिर भी आपको जज के कुल में नहीं लाया जा सकता है, क्यों नहीं लाया जा सकता है, इसलिए नहीं कि आप काबिल नहीं है, इसलिए कि आप उस कुल में आए नहीं हैं। इसलिए ये घटनाएं घटती हैं। हमारे दर्डा साहब ने बहुत अच्छा कहा कि इसके लिए कानून बनाना चाहिए। क्या जजेज़ लोग, हम लोगों से अलग हैं, कानून से अलग हैं, उनकी संपत्ति की जांच क्यों नहीं होनी चाहिए, इसके बारे में हमें विचार करना पड़ेगा।

महोदय, मैं सदन के माध्यम से यह कहना चाहता हूं कि जुडिशियरी ऐसी जगह है, जिस पर लोगों का विश्वास है, अगर वह विश्वास टूट गया, तो आने वाले दिन हम लोगों के लिए बहुत दुर्भाग्यपूर्ण होगा। इसलिए मैं चाहता हूं कि आप लोगों को, इस सदन को कुछ ऐसा कानून बनाना चाहिए ताकि वे लोग, जिनको हम भगवान मानते हैं, यदि वे भगवान नहीं रहे, अगर उनमें कुछ गड़बड़ियां आ गई हैं, तो उसकी भी जांच हम लोगों को करनी चाहिए। हम लोग क्यों डरते हैं, हम लोग उनके खिलाफ corruption के cases क्यों नहीं करते, उनके खिलाफ

anti-corruptions में क्यों नहीं जाते हैं! आज मुझको बताइए कि किसी जज के खिलाफ anti-corruption में कोई केस दर्ज हुआ हो और उसका trial चला हो उनके बारे में ऐसा क्यों नहीं होता है। चूंकि मैं जजों का बहुत आदर करता हूं, लेकिन अगर जज हमसे अलग हो जाएंगे, समाज से अलग हो जाएंगे, न्याय से अलग हो जाएंगे, तो उनके बारे में जरूर विचार करना होगा। इसके साथ ही साथ जज के appointment के बारे में भी विचार करना पड़ेगा।

महोदय, आपने मुझे out of turn समय दिया है, इसके लिए मैं आपको बहुत-बहुत शुक्रिया अदा करता हूं। धन्यवाद।

DR. ABHISHEK MANU SINGHVI (Rajasthan): Mr. Vice-Chairman, Sir, I congratulate my colleague, who sits on the same bench as all of us here, on moving this composite Resolution facing several issues. While I cannot say that I agree with every issue which he has raised, there are several there which require our deep consideration in greater measure.

The first and obviously the most important is the issue of backlog and arrears. I remember that long ago, Nani Palkiwala used an evocative phrase which, I think, typifies the problem. He said that justice is supposed to be blind, but in India it can also be considered lame because it hobbles along at a pace which should be considered slow in a community of snails! And he added that if litigations were added as sport in the Olympics, India would surely get a few gold medals!! But, Sir, the problem is really, if one were to give these figures to any other audience than Indian, it would be frightening. I have some figures with me and they are truly the pendency figures and they should frighten us out of our lives. Happily, of course, most of these figures are really numbers on a file. And, if they are properly screened and tracked, they would disappear since a large number of them are not live and are moot and infructuous. But, kindly consider the figures. The figures are that there are about 2.98 crore pending cases in all the courts put together today. Of which, about 2.6 crores are pending in the lowest tier. Just like you have many Indias in one, you have many judiciaries in one, The Supreme Court, has a figure well under 50,000; maybe, 46,000, or 49,000. The High Courts put together have about 38 or 40 lakhs and the subordinate courts have about 2.6 crores, making a grand total of just under 3 crores.

We know these figures, we know these debates and we have so many discussions, symposia and seminars. Unless we understand the real nature of the problem why this occurs, the principal causes, we can never begin to solve them. The problems are very severe, but the causes appear to be so remarkably simple, one wonders why they have not been solved. If you go to a hospital, you cannot run a hospital without doctors. One of the principal causes is, you cannot run a judicial system without enough judges. For the whole country of a billion plus people, the higher judiciary has less than 850-860 people. Out of 850 people, there is an affidavit filed in the Supreme Court, made 5-7 years ago, at no point of time since Independence – in those days, the strength was 750 – till that date, in about 2002, there were always 150-170 vacancies out of those 750. Today, out of 866 total strength of all the higher judiciary, we have 266 vacant, Which means, over 1/3 of an already very small figure of judges is permanently vacant, unappointed and non-functioning in this country of 3 crore arrears. What is worse, this would be again comical, if not tragic in our country, some time ago, we increased the sanctioned strength of our High Court; *i.e.* the sanctioned strength of the total number of persons you can have, that number was increased by 10-20 per cent. When after the

number is increased, we have not even fulfilled the total appointment of the original un-increased strength. That is the fate and if you see the current figures as on October 2008, as I said, 266 vacancies were there out of 866. But now I come to the really sad part, a part, which the 'many *'Indias'* in one' and the 'many judiciaries in one' always ignores, the subordinate judiciary. In the subordinate judiciary for a country like this with a very huge population, but a very large litigating population, we have a total of how many judges that subordinate judiciary gets – about 16,000, and out of that 16000 over 3500 are the vacancies, so, again over one-third. Now how I ask myself, can you run a hospital without doctors – judiciary without judges? As Mr. Jois rightly said, you know the date of retirement of a judge on the day of his appointment, on the day of his appointment you know when he is to retire. We have to work towards a system whereby we have a notification of his successor at least one month in advance of the retirement of the incumbent. That should not be impossible. Today if I was to pinpoint, there are three major causes – there are many other causes for the huge arrear problems in this country. The first is a lack of coordination between the various appointing authorities, if I may use that phrase, or the various consultees because even under the Supreme Court judgement by which the judiciary is to appoint the judiciary, there is a consultation process, there is exchange of views and that consultation process is not coordinated, is delayed, frequently repetitive and is aborted. The second major cause is a pathetically low judge to population ratio. We have now reached somewhere around near 11 or may be 11.5 or 12 judges for a million of population. The minimum or at least the decent paradigm acceptable for judiciary, – after all judiciary is a service, it is just like having doctors or any other service, – is minimum 50 judges for a million population which is the global norm. Countries have more than that but a lot of countries have at least 40, 45 or 50. We are now at 11.5 or 12. Way back in 2002, in the All India Judges Case, the Supreme Court has given several directions and several times one of the principal directions was to achieve 50 judges per million population at least within one, two or three years. We still function at a very low figure. So that is the second major reason. The third major reason is abysmally small amount of expenditure for the judicial sector. Here again the figures are interesting. The Plan Expenditure in the Ninth Plan for the judicial sector increased from .07 – it is not even .7 per cent. It went up in the Tenth Plan to .78 per cent and in the Eleventh Plan, that is, the Plan just before the current one, to .07 per cent. So today after much pushing and prodding we are having a .07 per cent expenditure on the judiciary. Now if you have unfilled vacancies, which are more than one-third in the higher judiciary and the lower judiciary, if you have an abysmally low expenditure and you have pathetically low judge to population ratio how can you possibly have disposal? These three things have to be solved. I do not see why they should not be solved. For example, on the funding issue there is a study. Mr. M.J. Rao, who was then heading the Law Commission of India, studied the problem in terms of the figures alone and for 2005 he found that the total investment required for clearing the backlog of all High Courts and all subordinate courts would be Rs.2100 crores and the annual recurring expenditure for five years, if you attack the problem, would be an additional Rs.875 crores. It is for five years. Now given the fact that the judicial sector has an across the board effect on every aspect of our life, on our economy on our commerce or our infrastructure or development and, of course, on the common citizens, this, with utmost respect I would say, is peanuts. It should not only be sanctioned by the Government immediately, but, it should be implemented on a war footing. The reasons are not far to

seek. I have pointed out the three reasons. The solution is, therefore, equally simple. With regard to the funding part, I have just given you Rs. 2100 crores at that time, maybe two to three thousand crores now. The second problem is, we need a monitoring person, a senior person who simply monitors the file movements between the various consultees for the appointment process to ensure the simple principle that one month before the incumbent retires, the successor is notified. That can be done by a monitoring person appointed by the judiciary who will coordinate with the judiciary because as you know for example, to the Supreme Court appointment you need a consultation process which extends from the various Supreme Court collegium to the Central Government and between them. For a High Court appointment it involves the State Government, the State High Court Chief Justice, the Supreme Court collegium and the Central Government. This coordination to keep the file moving all the time either way – you may not appoint X, you may appoint Y,-whoever you appoint, but the appointment must come one month before the incumbent retires and that simple thing will mean that every minute at least one-third more of your sanctioned available strength is working, which should have been working all along. Mr. Chairman, Sir, there are other several issues. There is an article in our Constitution, a very simple article but strangely, hardly ever used. It is article 224 (a). It permits a High Court Chief Justice in consultation with a Central Government to appoint ad hoc judges to his own High Court. Those ad hoc judges can be retired judges from his own High Court. They can be ex-judges from other High Courts. It requires a Chief Justice to speak. Now the retired judges also present a readymade pool. I am not making this suggestion as a substitute for appointing new persons. That is the best. That must be done. But if you are not able to appoint new persons to one-third of the posts, if they go begging because of whether there is politics, whether there is ego, whether where are fights, whether there is lobbying, whether there are consultations, whatever it maybe, at least you have a readymade pool of retired judges who can be used to simply fill up the vacancies. Many of these people are decent, they have no great expectations, and they will leave in a short while, immediately after the other appointments. They can dispose of cases because they have been retired after being judges for ten to fifteen years. In England, for the lower judiciary they have a concept of recorders. Recorders are Senior QCs, what we call Senior advocates in this country. The Senior QCs are called recorders on the lower side, on the criminal side sit as magistrates. They are called recorders and dispose of hundreds and thousands of criminal cases and they leave the bench after two to three years. This is the kind of thing which this country has to use. The lower judiciary, of course, is in a very bad shape. I am very sorry to say while the senior judiciary in India does a lot of work, while they work more than any other judicial system they always have to have a care and to look out for the subordinate' judiciary which has neither a voice nor a say in all of this. If you were to treat the High Court judges or the Supreme Court judges even half or one-third as badly as you are treating a subordinate judiciary, there would be a judicial revolt. Kindly consider most of our lower judiciary today functions in court room where there are no air conditioning. There are *pan-stained* walls, there are cobweb dirt and they dispose of hundreds of cases in very oppressive atmosphere and they do a good job. There you have one-third vacancy. Recently, I was happy to know that Parliament increased three times the perks and benefits of judges roughly. A Supreme Court Judge's salary went from Rs. 30,000 to Rs. 90,000. A High Court judge's salary went the same way. We welcome it. That is comparable to the best in the world.

But, when you did it, did you pause and shed one tear for the lower judiciary who looks after their interests? They have to dispose of 2.6 crores of your cases and there is not one person here or in the judiciary who speaks for them. Now, those are people who come under the State Government and the State Governments are prodded, they all give the usual plaintive cry of lack of funds. So, I would have said, and, I have said so officially and I have no hesitation in saying so here that the senior Judiciary, higher Judiciary should have said, 'yes, this is a good thing that you have increased our terms and conditions and this should have been done long ago and we all support it. But we will not take it unless there is at least a 50 per cent increase in the terms and conditions of the lower judiciary.' That would really be a proper signal and a proper message to the country as a whole. Ultimately, these are the people who suffer, because they do not have any lobby and they do not go on strike as they cannot go on strike. If you were to do this with your labour class, you would know the lesson in a short while.

Mr. Vice-Chairman, I know that I have a limited time and my friend, Mr. Naik, is good enough to cede his slot to me. I will try to conclude as quickly as possible.

Sir, the other aspect, of course, is to continue to press on with our bypasses. As you know, litigation is like clogged artery in India. When your artery is clogged, you go to a surgeon for a bypass. The bypass was, originally, the arbitration. It is supposed to be a bypass for litigation. Thereafter, we found that the bypass itself got clogged. The artery for which you made bypass – arbitration – itself got clogged. In today's context and lawyers also know, arbitration means, a pre-litigation litigation. It means, double litigation. First, you litigate in arbitration and then you litigate it in litigation. So, now, you must develop a second bypass. It has been developed to some extent. But, we need to expand it. The bypass to arbitration itself is ADR and CDR. It is Alternative Dispute Resolution or the Consensual Dispute Resolution. There, of course, a good work has been done in one area. And that one area is our Lok Adalats. From 1982 *i.e.*, for the last 25-odd years, on an all-India basis, the Lok Adalats have disposed of 2.4 crore cases. It is a fantastic figure in 6,58,000 Lok Adalats since 1982. But, we have, on the basis of a Report of a Government of India Committee which I had the honour to co-author, led to the amendment of the C.P.C. by which we have now Section 82. It provides a whole menu of other areas, like judicial settlement, mediation, conciliation, etc. The numbers there are extremely small. They run in tens, not even in hundreds. Now, of course, you are increasing it through an initiative mediation in individual High Courts. But, there is no all-India scheme tying up the whole thing. The Lok Adalats work best for petty issues like motor vehicle claims, land acquisition. But, for other forms of conciliation and mediation Lok Adalats cannot work. The Lok Adalats do not work for corporate matters or middle level matters. So, we have to develop, in quantity terms, the issues regarding mediation, conciliation and other forms like ADR or CDR which is a bypass to the bypass.

Mr. Vice-Chairman, Sir, the solutions have to be multi-pronged. They have to be consistent. And, we have to decide on all-India basis and carry it on for, at least, 5 or 3 years. If we make zig-zags of policy, we will have no results. More over, the policy has to be holistic, not piecemeal. It has

to be IT, computerisation, case-flow management tracking, appointment in vacancies in time, funding issues, ADR and CDR and, of course, we have, now, Gram Nayalayas which the hon. Law Minister has piloted and the Fast Track Courts which the former Law Minister had created. So, a combination of all these things should lead to a difference.

May I end very quickly by adding two more things? In Mr. Darda's Resolution there are two-three more issues. The first one is age issue. I have myself, just a few months ago, as a Private Member Bill, moved a Constitutional Amendment Bill for equating 62 to 65 for High Court judges. I have found it laughable. I have found it bizarre. I have found it unthinkable how a High Court Judge retires at the age of 62 and a Supreme Court Judge retires at the age of 65. And, the same High Court Judge becomes a Judge of the Supreme Court. It is not supposed that the same mind degenerates at 62, functions better at 65. The reverse can be true. But, this cannot be true. I have never understood the basis for this system. Apparently, the only basis I can give is that some section of the bureaucracy have raised objection. If you increase their age to 65, also raise our age of retirement. I think, this is an absolute red herring. We always talk of an independent judiciary as a third wing and as a third organ. What is the connection with the service terms of the bureaucracy? Let me also tell you that the functional reality – as some of us practice in court everyday knows – a large part of the unseemly practice of the judiciary which I might call with utmost respect is the politics of the judiciary. The politics of the judiciary can, sometime, make the politics of politicians blush. The politics of the Judiciary would considerably be diminished if we did not have a 62 and a 65 hiatus. If both retire at 65, a large part of lobbying we see today in terms of appointments, a large part of the weaknesses, a large part of the anxieties, insecurities. And, today, life expectancy has increased in India, way, way beyond when this constitutional provision was made. In most countries the normal retirement age is 70. Very well, you need not consider 65 at the moment, but 62 would be indefensible. So, from all points of view, this should immediately be done. And, it will improve as it is a large part of the vacancy problem because you would be continuing for longer with the judges.

There is no reason that the RTI should not apply to the Judiciary, a third issue raised by Mr. Darda. Our Committee, whose Chairman, Dr. Natchiappan, sits with me here, of which I am a Member, had recommended long ago that there is no question of the RTI not applying to the Judiciary. Everybody is subject to that. Of course, a valid distinction exists. The RTI will apply only on the administrative decisions of the Judiciary. Obviously, it is not to apply to the judicial decisions of the Judiciary. But there is no earthly reason why the RTI should not apply to the Judiciary. It is now being applied in a very partial and piecemeal manner on the basis of some kind of an individual case decision because I file an application, I don't get a reply, I file a petition, the petition is decided. Otherwise, there is no uniform application of the principle. And, I think, that should be done very quickly.

Mr. Vice-Chairman, Sir, I am grateful for the time given to me. I will conclude only by saying that this is an area where actually reforms can be quick, can be effective and the results and benefits of the reforms will be far, far more far-reaching than in other sector. The cost-benefit ratio of this reform is all, all in favour of benefit. The cost is infinitesimal. We can't afford to wait a minute. It is a solvable

crisis. But the crisis is truly humongous. Therefore, I think, all efforts, including efforts like this by way of Resolution of Private Member's Bills, are welcome. But the ultimate important thing is where do we stand on action and implementation. That's where India, as usual, has to consider its options. Because we are always either an argumentative country like Amartya Sen or an over-legislative country. But we have to be, now, an implementational country. Thank you very much.

SHRI MATILAL SARKAR (Tripura): Sir, when I see so many learned persons and lawyers speaking in this House, I hesitate to speak because I am not a man to be categorised as a lawyer. Even then from the point of view of a .common man, I would like to place some of the issues before the House.

First of all, I would like to thank my good friend, Mr. Darda, for having brought forward a very important Resolution. To start with, I would like to point out the miserable condition of the pendency of cases. The figure, he has already mentioned, is 1.5 crores or like this. I would like to give here one example. A case was filed in the year 1946 in the sub-court of Coimbatore. The case went to the High court, then to the Apex Court, the Supreme Court. And, this year, in the month of February the case was finalised. So, the case was finalised after a long period of 62 years! Not to speak of 62 years, it generally happens that it takes 10-12 years to decide a case. The point is how to minimise this period because justice delayed is justice denied. It is the constitutional right of the people to seek justice. So, the lacuna should be identified and resolved.

My second point is about pendency of cases. Several committees have been set up for dealing with this. They have given their reports also. I would like to give some information about the joint meeting of the Chief Ministers and the Chief Justices, which discussed on how pendency can be minimised. It was held in 1993. A report came out from that discussion that the pendency can be minimised by arbitration, mediation, negotiation, widening the scope of Lok Adalats, etc. I think, these recommendations have not been implemented as yet in the right earnest. Otherwise, the pendency would have minimised. There is a huge pendency of cases in the Guwahati High Court. A large number of these pendencies, almost 50 per cent, come from the State of Tripura. Agartala is situated at a long distance from Guwahati. Though there is a bench at Agartala, – as my hon. friend has elaborated-it cannot act as an instrument of High Court. It may be a subsidiary to it, but it cannot act like a High Court. So, there is a popular demand from my State; from its people, democratic masses and lawyers that Agartala Bench should be upgraded to that of a separate high court. There should be a high court at Agartala. I would like to raise the demand here. Mr. Darda has given this scope, so, I would like to raise the demand here that there should be a separate high court at Agartala, and there should be separate high courts for all the North Eastern States because each State has a characteristic of its own. There is no infrastructure in the States. There is no connectivity to Guwahati by roads or by airways. It is very difficult. So, Tripura should have a separate high court and so also the other States.

Sir, the third point which I would like to enunicate is this. The Judiciary, sometimes, crosses its border. We have seen this in many cases. When we see that a judge gives a verdict that workers/employees have no right to strike and that they have no right to hold processions, then, we,

actually, feel that it is a matter of grave concern. The sense of democracy is yet to prevail upon a part of the Judiciary. It is yet to prevail. Otherwise, how can they ban the strikes? And, how can holding a procession be banned? We frame laws in Parliament. And, these laws, sometimes, get disqualified. We have seen this in the case of OBC reservations. We passed the law here and we have seen how the Central Government had to go a long way in getting this law, that is, reservation for OBC students in higher education, implemented. There should be a clear demarcation showing which area belongs to whom. There should be some demarcation. Demarcation is there, but, it is not obeyed in the truest sense of the term.

Sir, I have many other points, but I do not want to initiate. There might be some controversy also; so, I do not want to speak more. Again, in the end, I would like to highlight my demand that the State of Tripura should have a separate High Court. Thank you.

SHRI D. RAJA (Tamil Nadu): Mr. Vice-Chairman, Sir, at the outset, I must congratulate our colleague, Shri Vijay J. Darda, for raising several issues through a form of Resolution. One may agree on some of the issues, one may disagree on some of the issues, but despite all those things, he has given a scope for debate on certain crucial issues related to our judiciary. We are proud that we have some eminent lawyers in our – House Shri Arun Jaitley was sitting here, Shri Abhishek Manu Singhvi spoke on this subject, then, we have Shri Ram Jethmalani and other Members. But I am a political activist and how I look at the problems is important in today's context. Thanks to Dr. Ambedkar and a galaxy of leaders who laboured and created the Constitution which we have today. I think our Constitution is one of the best in the world. It is a republican Constitution. It is not a theocratic one; it is a republican Constitution. This Constitution provides powers to various wings of the State apparatus. We, the Parliament, have the responsibility of enacting legislations. In the system of our governance, I think, Parliament is supreme. Parliament makes laws, Parliament has the power to amend the Constitution according, to the requirements of our society, our nation, it does not mean that we undermine the independent Judiciary in the country. Again, we hold in great esteem the independent Judiciary in our country. There is a bureaucracy. Bureaucracy has a defined role in our system. There must be a balance among these wings of the State apparatus. Sometimes, there are conflicts between the Legislature and the Judiciary. These conflicts will have to be resolved amicably and the supremacy of Parliament cannot be undermined. I do agree that Judiciary is there as a custodian of Constitution. The Judiciary can see how the Constitution is protected and how the laws are being implemented. But Judiciary cannot take over the powers of the Legislature. Having said this, I must go to some of the issues. We have been talking about judicial reforms for long. I think the time has come when we should really move towards judicial reforms because our Judiciary needs to be more sensitive and responsive. Our society is like that. Our society is a hierarchal society and our society is an unequal society based on inequalities, discriminations, disparities and the people at the lower level are fighting for justice. They want their due place in society. They want their due place in nation building. They want their due role to be acknowledged in building the nation. There, I think the Judiciary must be more sensitive and responsible, and, there, we find problems. I know that there are cases. We are to criticize the judicial verdicts also and the Judiciary should not be the one which creates a fear psychosis in the minds of people. If Judiciary says strike is illegal, I cannot agree with

that. I will have to protest. I should not be taken to task in the name of contempt of court. I agree. The Judiciary should see that the judgements or the constitutional provisions are implemented in true spirit; but there are certain verdicts, given by Judiciary, to which one cannot agree. I quote this example. When employees or workers go on strike, the Judiciary comes on the way and it says, 'it is illegal, it cannot be done, to which we cannot agree. It is a fundamental right; it is democratic right, which our Constitution guarantees. We are a democracy. Above all, we are a democracy, we are a parliamentary democracy; and our democracy gives such powers to our people and the Judiciary cannot curb those powers of our democracy given to our own people.

In the same way, I can quote several judgements which went against the spirit of social justice in our country when *Dalits, Adivasis* or people from OBCs fight for their justice, fight for their place in jobs, in educational institutions, etc. I think, Judiciary should understand why this demand comes up. Otherwise, why should the Parliament respond to those demands? It is because the Parliament understands. It is the House of the Representatives of the people. So, they understand the requirements of the society, the problems of the people. So they make law and when the law needs to be implemented, there, the court comes on the way. Sometimes, the decisions of the court become very retrograde and one has to come out openly criticising that. That is where I think the time has come for comprehensive judicial reforms. Now, we have the I AS, the IPS cadres as part of bureaucracy and there are examinations to select these IAS, IPS cadres. But what about the Judicial service? Now, we will have to see whether we have an Indian Judicial Service and we recruit Judges accordingly. Sir, there is a demand. I am telling you. Several political parties have raised it. This may not be the occasion to discuss that issue. But, at some point of time, we may be compelled to discus that issue. There are demands from several political parties why we do not think of giving some reservation in Judiciary, and that demand has been raised by several parties. I am not talking about any single party, including my party, but that demand is echoed in the country, and, sometimes we may be compelled to discuss it because it is a society in which the Judiciary has to be very sensitive, and, there, the Judiciary will have to see the aspirations for equality, the aspirations for social justice, the aspirations for overcoming the social hardships which are existing in our country for several centuries.

Now, there is one more problem, the problem of judicial accountability. Personally, I participated in several seminars which discussed judicial accountability and fight against judicial corruption. It is very disturbing to see that the corruption in Judiciary is becoming very open. I don't name anybody. The Law Minister is sitting here. It is a known fact. Some people even say, there is 20 per cent or 22 per cent corruption in our Judiciary. I do not know; it is for the Government to assess what is the level of corruption in our Judiciary. But nobody has denied that there is no corruption in our Judiciary. Nobody has said this thing so far, even our Law Minister. I ask him whether he has the courage to say that 'no; it is corruption free. I am very happy to hear that. I don' think so because there is. There is. That is where the poor man, the poor woman finds it difficult. In Tamil, there is a saying, 'you climb up the stairs of court and you get pauper and you get poorer and poorer and you finish off your

life.' That is the fate of Indian poor people in this country. I think there must be proximity between judiciary and the poor people. There, the question of judiciary representing all sections of our society becomes important and judicial accountability becomes important. One can be very proud of India's RTI Act. The UPA Government can very well claim that it was during their regime that RTI was brought in. But the point here is whether the provisions of RTI Act could be applied to the judiciary or not. The debate goes on that if RTI can be applied to other wings, why not to the judiciary. I don't think there is anything wrong in the demand to apply the provisions of RTI Act to the judiciary.

Coming to contempt of court, I think it needs to be reviewed. People should not have fear of the judiciary; they should have real respect for our judiciary. They must speak out if they don't agree with certain judgements. India is a diverse country. We have social objectives, we have national objectives and everyone is concerned with the country and its progress. If certain judicial verdicts are not in tune with our understanding, people should have the right to criticise and they "should not be subjected to contempt of court; they should not have any fear.

Many suggestions have been made about the functioning of judiciary. There are demands in several States to have branches of High Court. In Tamil Nadu, we have one branch of high court at Madurai, and in Kerala, a debate is on whether to have another branch at Tiruvananthapuram or not. It is an unsettled question. Mr. Vice-Chairman, Sir, you are from Kerala and you understand it better.

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): Yes. You should support it.

SHRI D. RAJA: Sir, you may ask the Law Minister if he is willing.

SHRI H.R. BHARDWAJ: They are supporting it; others are supporting it. But I know the position.

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): You can pass a Resolution.

SHRI D. RAJA: There are such demands. In the same way, there are demands to have Supreme Court branches, zonal branches and I am aware that there are many....

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS AND THE MINISTER OF STATE IN THE MINISTRY OF PLANNING (SHRI V. NARAYANASAMY): Do you want it in Kerala only?

SHRI D. RAJA: No, you can have it in Chennai if you support it.

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): Mr. Narayanasamy, you don't know his relations with Kerala. You should know that. He cannot forget Kerala. ...*(Interruptions)*...

SHRI D. RAJA: The point here is, we can think of having some branches of Supreme Court in some other centres also, for instance, the South. I genuinely think there can be a branch of the Supreme Court in South, preferably Chennai, because Chennai High Court is one of the oldest high courts in the country having all the required infrastructure. May be we could put in place better infrastructure in the coming years. There is a possibility. We will have to think of all these issues.

SHRI H.R. BHARDWAJ: The South has captured the whole of the Supreme Court.

SHRI D. RAJA: That is a different thing.

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): That is on merit.

SHRI D. RAJA: So, Sir, if we move on these lines, we may have better functioning of the judiciary. I hope to see more women advocates and lawyers becoming Judges of High Courts and Supreme Courts. I hope to see such a day when women, young people with merit, come up and occupy positions in High Courts and the Supreme Courts. I think the time has come for that. Government will have to think of comprehensive judicial reforms. I think this debate has given an opportunity to everyone to give their views but it is for the Government to consider these views and Government will have to take serious note of it because judiciary is one very important wing of the State apparatus. They look at judiciary only for justice. Otherwise everybody looks at Parliament because it is the august body in our democracy, and next to Parliament they go to courts for justice and for addressing their problems. So, the question of judicial reforms is important and the Government should give due consideration to it. With these words, I conclude. Thank you.

श्री एस.एस. अहलुवालिया: उपसभाध्यक्ष महोदय, मैं अपने विद्वान साथी श्री विजय जवाहरलाल दर्डा जी द्वारा प्रस्तुत संकल्प के समर्थन में बोलने के लिए खड़ा हुआ हूं।

महोदय, हमारी पार्टी की तरफ से हमारे विद्वान साथी जस्टिस श्री म. रामा जोयिस जी ने सारी बातें रखीं। उनकी बातें मूलत: लॉ कमीशन की रिपोर्ट और सुप्रीम कोर्ट की जजमेंट पर आधारित थीं, किन्तु जनता की अदालत में जो आवाज है और जनता की अदालत में जो सोच है, वह कुछ और है। अगर हम कहते हैं कि good administration के लिए सिर्फ capital में ही High Court और Supreme Court रहने चाहिए, तो वह धता बताती है उस सोच को जो e-Governance की बात करते हैं, जो कहते हैं digitally सब कुछ available होगा, सारी फाइल्स digitally available होंगी। हमें capital में जाकर या capital के किसी अधिकारी को बुलाने की जरूरत नहीं है, उसको फाइल लेकर आने की जरूरत नहीं है। एक password मिलेगा और उस password से मैं digitally उस फाइल को देख सकूंगा। वही सही मायने में e-Governance होगा, व्यक्तिगत रूप से वहां पेश होकर कुछ कहना नहीं होगा। अगर फाइल देखनी है तो वहां बैठकर जज देख सकता है। इन्होंने 13 उदाहरण दिए हैं, जिनकी judiciary के लिए आज जरूरत है, जिसमें सुधार लाने की जरूरत है और क्या-क्या कमियां या खामियां हैं, उनको दूर करने की जरूरत है। क्योंकि, सबसे बड़ी बीमारी आज यह है कि कचहरी में जाकर, चाहे वह mofussil का कोर्ट हो, District Court हो, High Court हो, चाहे Supreme Court हो, सब जगह adjournment की जो धांधली है, बंद होनी चाहिए। Adjournment हो गया, जज नहीं है। तो आप लिस्ट में लाओ मत। हमारे में और judges में क्या फर्क रह गया? 20 सवाल होते हैं Oral Answer के, 20 में से तीन ही आते हैं, चार आते हैं, 20 तक पहुंच ही नहीं पाते, लेकिन जवाब तो उपस्थित रहता है, मंत्री भी उपस्थित रहता है। वहां वकील उपस्थित रहता है, पैरवीकार भी उपस्थित रहता है, किन्तु जज किसी एक important case को, जिसको कि 15 मिनट, आधे घंटे या एक घंटे की बहस में सुना जा सकता था, उसके लिए घंटों लगा देते हैं, Afternoon भी दे दिया या उसके उसके बाद उठकर collegium की मीटिंग में चले गए और सारी की सारी लिस्ट को तीन महीने बाद डाल दिया। तो यह adjuornment की एक बहुत बड़ी धांधली है और इसका आरोप सिर्फ judiciary या judge पर ही नहीं, बल्कि इसमें हमारे सीनियर वकील भी involve हैं। हमारे सीनियर वकील cases ले लेते हैं दस clients के, दस फाइल्स ले लेते हैं और एक कोर्ट से दूसरी कोर्ट में hopping करते रहते हैं और जब वे थक जाते हैं तो उठकर कहते हैं adjournment ले लो। गरीब

पैरवीकार की फीस तो लग गई, गांव या शहर से आकर उसका दिल्ली के होटल में ठहरना और उसको फीस देना, उस पैरवीकार के लिए तो न्याय महंगा होता जा रहा है। इस पर थोड़ा अंकुश लगना चाहिए। एक और धांधली है कि बड़े पैसे वाले लोग, कारपोरेट हाउस वाले लोग blocking of senior advocates कर देते हैं। एक केस के लिए मुझे न्याय दिलाने के लिए अच्छा पैरवीकार, अच्छा वकील उपलब्ध न हो, इसके लिए वे उसको block कर लेते हैं। उनकी फीस उसको दे देते हैं। और उसकी डॉयरी में उसको block कर देते हैं। मैं जब उनसे पूछने के लिए जाता हूं कि क्या आप मेरे केस की पैरवी करेंगे, तो वे कहते हैं कि नहीं, मैं बिज़ी हूं, उस तारीख को नहीं होगा। यह blocking of advocates है। इसके बारे में क्या सोच है?

उपसभाध्यक्ष (श्री पी.जे. कुरियन): क्या कर सकते हैं, what can be done?

SHRI S.S. AHLUWALIA: It should be controlled somehow. Something should be done. When we are talking about ethics and principles, at least, ethics should be invoked on those who are talking about law, legal justice. Where are their ethics and principles? Have they mortgaged their ethics and principles? Why are they doing it? But, they are doing it. It is practically everyday phenomenon and people are suffering. Sir, when we talk about delivering justice at the doorstep of the *aam admi*, then, I think कि पुराने ज़माने में जो ग्राम पंचायत का न्याय था, जिसको हम ग्राम न्यायालय के नाम से अभी लाना चाह रहे हैं, उसमें मैं समझता हूं कि भारत के देहात में, बरगद के पेड़ के नीचे बैठा हुआ हमारा बूढ़ा बुजुर्ग, उस सुप्रीम कोर्ट के या हाई कोर्ट के वकील से ज्यादा समझदार है और वह दूध का दूध और पानी का पानी कर देता हूं, लेकिन आज जुडिशियरी में हालत यह है कि कोई जज मेहनत करने के लिए तैयार नहीं है, कोई वकील मेहनत करने के लिए तैयार नहीं है। Judge says, "Okay, I have heard you. Now, give your written submission." And, what do they do? They take their written submission from both the sides and tell the steno to type it. Now, even it is not required because they are taking it in digital format. सी.डी. लगाओ, कट करो, पेस्ट करो and Judgement is only on the last page and what is that Judgement? People are crying. Yesterday, I saw a person, due to injustice before the Supreme Court, was trying to self-immolate. We are taking about Gandhiji कि गांधी जी ने कहा था कि जब तक हम अंतिम आदमी की आंख का आंसू नहीं पोछेंगे, तब तक हम आर्थिक उन्नति नहीं कर सकते या आज़ादी हासिल नहीं कर सकते। हमारे सुप्रीम कोर्ट के सामने खड़ा होकर एक आदमी self-immolation करे कि मेरे साथ अन्याय हो रहा है, इसके पीछे यही कारण है। इन चीजों पर अंकुश लगाने के लिए हमें क्या करना है, इसके बारे में हमें सोचना चाहिए। वैसे तो हमारे हरेक कोर्ट में different matters के लिए different Benches बने रहते हैं - bail matter है, service matter है, criminal matter है, prosecution है, stay matter है, इसके लिए अलग-अलग बेंच बने रहते हैं, किंतु कभी आपने सोचा है कि जो कॉरपोरेट हाउस के केसेज़ हैं, जो बड़े-बड़े व्यापारियों के रेवेन्यू से संबंधित केसेज़ हैं, वे भी उसी कचहरी में जाते हैं और एक गरीब देहाती है, एक गरीब भारतवासी जो अपने individual न्याय की मांग करता हुआ कचहरी में जाता है, उसको भी उसी कतार में खड़ा कर दिया जाता है और हमसे भी उतनी ही फीस ली जाती है, जितनी उससे ली जाती है, हमारी stamp duty भी उतनी ही है, जितनी उसकी है। फिर हम कहते हैं कि हमारे पास कोर्ट में खर्चा करने के लिए पैसे नहीं हैं या पैसे उपलब्ध कराए गए हैं। बहुत सारी कमेटियां बैठीं, बहुत सारी रिपोर्टें आईं कि किस तरह से केसों की संख्या कम की जाए। इसके लिए Fast Track Courts बनाए गए, लेकिन क्या केसों की संख्या कम हुई? केसों की संख्या कम नहीं हुई, दिन पर दिन बढ़ती जा रही है, pending cases बढ़ते जा रहे हैं, क्योंकि काम नहीं होता। वहां काम नहीं होता, सिर्फ adjournment होते हैं। हमारे विद्वान साथी श्री विजय जवाहरलाल दर्डा जी ने जो सवाल उठाया है, वह सवाल बहुत महत्वपूर्ण है। हमारे भारद्वाज जी तो बहुत विद्वान

कानून मंत्री हैं और बहुत experienced हैं। मेरी तो आपके माध्यम से उनसे गुजारिश है कि ये कम से कम इन चीजों पर अंकुश लगाने की कोशिश करें कि एक आदमी जो अपना केस लड़ने आए, तो कम से कम वकील के कारण और जज के कारण उसका adjournment नहीं होना चाहिए, उसकी सुनवाई हो। आज तो जंगल में लकड़ी की चोरी के केस में वह बीस साल तक केस भोगता है और आज PIL के माध्यम से या और दूसरे रास्ते के माध्यम से, यानि अनुच्छेद 226 या 32 के तहत वह हाई कोर्ट और सुप्रीम कोर्ट में जाकर पूरा न्याय पा लेता है। एक मुर्गी चोरी के केस में वह बीस साल तक कचहरी का चक्कर काटता है, जिसकी सज़ा मात्र एक सौ रुपए का fine है। आप इससे जिस दिन उसको छुड़ा लेंगे, उस दिन आप आम आदमी के घर तक न्याय पहुंचा देंगे, यही मेरी आपसे गुजारिश है। आपने मुझे इस विषय पर बोलने का अवसर दिया, इसके लिए आपका धन्यवाद।

SHRI SHANTARAM LAXMAN NAIK (Goa): Sir, I fully share the sentiments expressed by my friend and my bench mate, Shri Vijay Dardaji except one point, that is, the Bench of the Supreme Court should be held at Nagpur. I wish it to be in Goa. All Judges will go willingly and there will be no complaints from anybody. So, it should be in Goa. Except this point, I agree with all other points.

Sir, the system of judiciary in this country is the same-as was started by the British during their days. Earlier we had Arthashastra and Manusmriti through which justice was delivered. And, as has been mentioned, we had a village nyaya system which prevailed for several years. Today, Parliament is an instrument from which people expect relief. But, are we really in a position to give relief to the people of India? That is the sole question I am posing before this House. This is because most of our powers have been taken away either by the Supreme Court or by the Election Commission. I say point blank that almost 50 per cent of our powers have been taken away by the Supreme Court and 30 per cent by the Election Commission under article 324. So, what remains is only 20 per cent. I say this with full responsibility because you see today out of various interpretations laws are laid. Practically through the medium of interpretation, one is expected to explain the meaning of few words here and there. That is what the interpretation means. But, over the years, full-fledged laws have been established through the instrument of interpretation. If you see that way, the laws passed by us will be so small and laws created through judgement will be vast. Suppose an average man wants to know a law on a given subject, he has to read one thousand pages of a judgement to know what a law is because that particular article which is there in two lines has gone into hundred pages. This is the substance. Therefore, powers of Legislature have been taken away,

Secondly, the Government of India could have codified the principles laid down by courts. For instance, if a pronouncement is made, if the Government agrees with it, put it in law and if it does not agree, amend the law and reject it. We have not done that also. Same is the case with Election Commission. There is an article 324 of Constitution of India which gives only supervisory power to the Election Commission. But, under the power of supervision, hundreds of letters have been written and orders have been issued by the Election Commission from time to time which they say are equivalent to law. For us it takes years together to create a law. But for Election Commission, one letter written by them to the Chief Election Officer of a State is a law. Mr. Seshan, who started all

this, used to say, 'my powers override the powers given under the Representation of the People Act,' which is passed by Parliament. We can understand that courts have powers to quash a legislation, if it violates the fundamental rights, or if it is against public policy. But from where did the basic structure of the Constitution come? You have lauded Bharati1 case. There was nothing like the basic structure of the Constitution when we read it and when people read it. No one heard about it. After so many years, through interpretation, this concept came. From where did it come? If Parliament did not say anything about the basic structure of the Constitution, from where did this concept come? Through interpretation only. Through interpretation only, you laid down such a fundamental law. Suppose tomorrow this House or the country wants to have a Presidential form of Government and wants to give up Parliamentary form of Government. Of course, both are the democratic forms. What will the Supreme Court say? No, you cannot have it, because parliamentary form of government is the basic structure of the Constitution. Who has laid it down? Judges have laid it down. This is how they have gone so far. This is most unfortunate. Suppose you have to decide where a school has to be established, or where a dam has to be constructed, or where an industry has to be located. Who will decide it? The Government of the day. No. It is the courts which decide where an industry has to be located, or where a school has to be established, or how much calories have to be given in the mid-day meal, or how many *idlies* should be given. It's to be decided by the Supreme Court. Is it the objective of the real interpretation? This is what I want to say.

They say that since the legislature and the executive do not act, they are acting. So just because the legislature does not act for a moment, power goes to them. If this logic or this interpretation is accepted, tomorrow the Prime Minister of India can say that since lakhs of cases are pending in courts, and you are not deciding them, being the Executive, I will decide and dispose of the cases. Can he say so? Suppose the Chief Minister of a State says, since the High Court is not deciding cases, and hundreds of cases are pending there, you are not doing your duty, being the Executive, I will decide them. So how will it work? The separation of powers which is recognised by the Constitution must be respected. How can the judiciary transgress the power and override the powers of other organs? This is the question.

Today, I am told that the Supreme Court is hearing a case for the MPLAD Scheme. Arguments are being made whether this Scheme is valid or not, or whether it is constitutional or not. Today, we are serving the people with whatever we have been given. We are doing something. We go to our constituencies. We don't have to look to the sky. If something is needed there, we give. One day courts can say that this is invalid, and this has to be scrapped, and MPs have no right. This is something like corruption. It is possible.

Coming back to the functions of the Election Commission, declaration of assets is a very good concept. Everybody has to declare his or her assets. But declaration of assets is a substantive law. But should it come through the interpretation of a judgement? If Parliament wants, such a law could have been enacted. Maybe we have failed in enacting such a law. But the Supreme Court, through its judgement, has elaborated what are the assets one has to declare. I don't say that it is bad. In

fact, I welcome such things. However, it should have been laid down by the legislature only. If the legislature does not do it, the power does not come to you. I am told, and I am not sure about it, that there is a judgement of the Bombay High Court that if you commit a mistake in the filing of assets, you are disqualified. There is no such provision given anywhere under the Representation of the People Act or under the Constitution. Therefore, such interpretations are being made. That is most unfortunate. Public litigations are welcome. There is no doubt about it that at one stage, the judiciary found that in the interest of public, such things should be welcomed. If it is to be welcomed, shouldn't there have been any regulation? There are some small guidelines prepared by the Supreme Court regarding public litigations. Today, it has become such a vast subject that it is being administered without any proper guidelines whereas all other litigations come under article 226 or 32. But public interest litigations have no guidelines whatsoever, and they are being entertained time and again. How much time is wasted in pity matters? Scrutiny is not being done properly. Not only that; while dealing with these litigations, monitoring committees are being appointed. And the monitoring committees have totally replaced the Government Departments! So, the Supreme Court conducts or runs the Government Departments through these monitoring committees. That has happened in many cases. I was surprised that Shri Jois, who is a veteran man from the judiciary, in the past, opposed establishment of Benches. To take justice to the doorsteps, this concept of Benches has come. And you are saying that it should be only at one place; this is most unfortunate. Why are we not having it at other places? It is only because of paucity of funds. The principle is good; everything is accepted. Because of paucity of funds, we cannot have Benches everywhere. But to say that no bench of a High Court should be there is something which I cannot understand.

Now, I would give two or three suggestions quickly. We have to simplify our laws. In case we have to administer in an effective manner, the rulings of various courts have to be codified.

The next one is about computerisation of lower judiciary. Computerisation of Supreme Court and High Courts is going on to a large extent, but computerisation of lower judiciary is not there. If an order is passed by the court releasing a person, and if the verdict is not executed for days together, the detenue would suffer. Therefore, in these days of e-governance and computerisation, these things should not happen.

Another aspect which has been referred to is about modern technology like narco analysis and brain mapping. That should be recognised under the Evidence Act, If, today, such things are valuable, why should it remain outside the purview of the Evidence Act? We are using dogs today. In fact, they are doing a very good service as far as tracing of culprits is concerned. I do not know what is the value given to a smell that is taken by dogs, which leads to a conclusion. ...*(Interruptions)*...

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): Do the experts agree on that? ...*(Interruptions)*...

SHRI SHANTARAM LAXMAN NAIK: I do not know, Sir.

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): That is scientific. ...*(Interruptions)*... Scientists should agree, ...*(Interruptions)*...

SHRI H.R. BHARDWAJ: Sir, these are all matters of evidence for reference to the court. This is done with a view to help the investigating agency. ...*(Interruptions)*...

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): But some merit has to be given; that is the point.

SHRI SHANTARAM LAXMAN NAIK: But some value has to be given ultimately. ...*(Interruptions)*...

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): That is only to help the investigation.

SHRI SHANTARAM LAXMAN NAIK: That is why it is used.

And lastly, Sir, I come to the aspect of creating a Federal Investigation Agency. In case detection of crime is to be regularised, especially keeping in view the terrorist attacks which are going on for quite some time in the country, there must be a total unanimity in the country on having a separate legislation. What type of legislation we should have is anybody's guess! There can be different types of views, but a full-fledged legislation on the creation of a Federal Investigation Agency is a must, I wonder why CBI which does a good work, and they have done a lot of work, should still work under a small legislation called 'The Delhi Special Police Establishment Act'. Why should it be so? We should have a separate legislation. As far as Federal Investigation Agency is concerned, obviously we will have a separate legislation. When the CBI is already functioning, why should it function under a scanty legislation? It is not correct. Therefore, even if the Federal. Investigation Agency and the CBI are two separate entities, then also I propose that there should be a separate legislation, as far as the CBI is concerned.

As far as Election Commission is concerned, I would like to make one or two points further. Today, we have several orders passed by the Election Commission, especially, under the Symbols Order 1968. Now the Symbols Order 1968, which was passed as early as 1968, governs substantially the fate of the political parties. If a political party speaks something, who decides its validity? It is the Election Commission. Under what Act does it decide? Is it under the Representation of the People Act? No. The Election Commission decides it under an order passed by it and it is considered to be a valid law for all these years. Therefore, such type of orders and such type of letters have to be examined. Even if there is a good law announced or pronounced through letters, we can very well consider it for the purpose of inclusion in the legislation.

As regards judgements of courts, I think, nobody has referred to the point. I don't know. As far as contempt of court is concerned, it is believed that you can't say anything about a judgement that is passed. It is not so. When you file an appeal against a judgement, you say where the Judges have erred, the Judges have erred in this or the Judges have erred in that. It is not contempt. Even if a

writer writes an article pinpointing a mistake in a judgement, there is no contempt. The only thing is that you can't impute motives to the Judges. Therefore, without imputing motives to the Judges or the judiciary, if you criticise, it will do good to the society, and nobody, even the Judges, should take it in a bad light. They should also welcome it. With these words, I conclude. Can I continue now?

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): As you like. If you want to conclude, you can conclude.

SHRI SHANTARAM LAXMAN NAIK: I conclude.

THE VICE CHAIRMAN (PROF. P. J. KURIEN): Okay, you are concluding. That is fine. Now Messages from Lok Sabha.

MESSAGES FROM LOK SABHA

(i) Motion re. nomination of one Member from Rajya Sabha to Committee on Public Undertakings

(ii) Motion re. nomination of one Member from Rajya Sabha to Committee on the Welfare of Scheduled Castes and Scheduled Tribes

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

(I)

"I am directed to inform you that Lok Sabha, at its sitting held on Friday the 12th December, 2008, adopted the following motion:-

"That this House do recommend to Rajya Sabha that Rajya Sabha do agree to nominate one member from Rajya Sabha to associate with the Committee on Public Undertakings of the House for the unexpired portion of the term of the Committee vice Shri Amar Singh retired from Rajya Sabha and do communicate to this House the name of the Member so nominated by Rajya Sabha".

I am to request that the concurrence of Rajya Sabha in the said motion, and also the name of the member of Rajya Sabha so nominated, may be communicated to this House."

(II)

"I am directed to inform you that Lok Sabha, at its sitting held on Friday, the 12th December, 2008, adopted the following motion:-

"That this House do recommend to Rajya Sabha that Rajya Sabha do agree to nominate one member from Rajya Sabha to associate with the Committee on the Welfare of Scheduled Castes