

up Special Mentions every day. Depending upon the business of the House, we may or may not take them up every day. But the list is being circulated...

DR. (SHRIMATI) NAJMA A. HEPTULLA: The list is not circulated to everybody. It is only circulated to those Members who have given their names for Special Mentions.

MR. DEPUTY CHAIRMAN: Your suggestion will be examined.

DR. (SHRIMATI) NAJMA A. HEPTULLA: What I am suggesting is that you can circulate it to all the Members. In any case, we do not have many Special Mentions every day. It is only the photocopy of the list that needs to be made available. Then, it becomes easy for Members, who would want to be present in the House when Special Mentions are made, and, perhaps, I may not repeat the same Mentions. It will help the House. Thank you.

MR. DEPUTY CHAIRMAN: The House is adjourned till 2.30 p.m.

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

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

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

PRIVATE MEMBERS' RESOLUTIONS

Need to take effective steps to avoid confrontation between Legislature and Judiciary

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Now, we take up further discussion on the Private Members' Resolution moved by Shri Ramdas Agarwal.

SHRI RAMDAS AGARWAL (Rajasthan): Sir, I am not aware if anybody has given his name to speak on this Resolution.

SHRI S.S. AHLUWALIA (Jharkhand): It is over, Sir.

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Over! Any more names on this Resolution? No more names. Okay. ...*(Interruptions)*... Do you want to speak on this?

SHRI RAVI SHANKAR PRASAD (Bihar): Yes, Sir.

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Yes, you speak on this. ...*(Interruptions)*...

SHRI RAVI SHANKAR PRASAD: Sir, Ramdasji has brought about a very good resolution, and I was going through it. In view of the seriousness of the issues involved, I thought, I must share my views today because the hon. Law Minister is also present here.

Sir, our Constitution stipulated a very fine blend of understanding and coordination between the Executive, the Judiciary and the Legislature. This is what is based upon the principle of separation of power, and separation of power means that each body is sovereign in its own field, and all the three are collectively accountable to the Parliament. The job of the Legislature is to make laws, the job of the Legislature is to ensure Executive accountability; the role of the Executive is to ensure governance, lay down policies, implement it and the job of the Judiciary is obviously the power of judicial review, with a clear mandate that it can also declare any action of the Government and the Legislature as unconstitutional, if it is found to be so. Sir, I hope, you are aware that we have got a chapter, part-III, in the Constitution of India, which clearly says, "If any law framed is contrary to the fundamental rights, the court can declare it to be ultra vires." Sir, this whole issue arose in a very fine coordinated way. Occasional differences were there, but the inner strength of the Parliament, the extraordinary understanding of the Judiciary and the Executive ultimately sought to ensure that any differences should not spill beyond the limits of the Constitution. Sir, Keshav Singh's case is very well known. You know it very well. When there was a confrontation between the Judiciary and the Legislature, there was a reference by the President of India under article 143. But, Sir, why I said Ramdas Agarwalji deserved to be congratulated? Of late, this very fine lakshman rekha is getting breached. The job of the Executive is to govern; the job of the Judiciary is to undertake rule of law; the job of the Executive is to ensure that the laws passed and policies made are properly implemented. And, all these three are collectively accountable to the Parliament. Now, Sir, how this problem has arisen? We will have to find that. The reason as to why today I wanted to speak on this is, I want to lift this whole debate to some higher level.

First came the instrument of public interest litigation in the Judiciary. We need to welcome that.

THE MINISTER OF LAW AND JUSTICE (SHRI M. VEERAPPA MOILY): With the permission of the Chair, I would like to bring to the notice of the veteran Member that today is the Law Day, the day on which our Constitution was signed.

SHRI S.S. AHLUWALIA: But, it is very unfortunate that though today is the Law Day, the 26th November; everybody is remembering about 26th November, 2008 but nobody is remembering this day, even the Government! In the Central Hall, not a single flower is put on the table where this law was passed, where the Constitution of India was adopted! Now, you want to remind me this! During Zero Hour, I raised this issue, but nobody came forward from the Treasury Benches, to support me on this.

SHRI RAVI SHANKAR PRASAD: Mr. Law Minister, we deeply appreciate you for reminding us. The Law Day is celebrated in the courts very well.

Now, Sir, this public interest litigation came about. The reason why today I speak wearing many hats. Obviously, the first and foremost is the Member of Parliament's, the second is that of

a lawyer and also an active lawyer who has done a lot of PIL matters, and also a man having experience of governance as a former Minister in the Vajpayee Government. Therefore, I shall try to very briefly coordinate the teething problems as to how we have come to this situation.

Sir, public interest litigation is a good instrument. It has enhanced the image of our Judiciary world over, for the poor, for the downtrodden. If there are cases of corruption, Judiciary has intervened and ensured that many people are accountable. But, what happened was, of late, public interest litigation started degenerating. It became a kind of instrument where some people thought that they shall use it to have Executive accountability on a repeated basis. Kindly appreciate this aspect, Sir. I had occasion to raise this issue on some forum, and today I wish to share that in the Parliament.

Suppose, a particular agency is not functioning well. The court can give directions. If it is a municipal body, the court can give directions saying you are not functioning well. If the court decides to have a committee to oversee the functioning of MCD, sorry, it is not the functioning of the court. There are differences. We had a problem in the All-India Institute of Medical Sciences where the Director and the then Health Minister had a problem. Now, would the court appoint a committee to oversee the functioning of the All-India Institute of Medical Sciences? One of the problems which I say with profoundest respect to the Judiciary is that issues of governance are too complicated and the Judiciary should not intervene in the issues of governance under the plea of special committees and monitoring committees and the whole range of things. That is one of the biggest teething problems which is happening today. I had occasion to appear in my professional capacity in different High Courts of the country.

Sir, now let me raise a further larger issue. The Government undertakes certain work. A big road is required to be built, a big dam is required to be built; other infrastructure activities are required to be built. NGOs have grievance, they are entitled to have their grievance. They go to the court, they get a stay. The court is also under legal right to give a stay. But a question needs to be asked today. If a stay is vacated after two years, what happens to the delay which was caused? The reason as to why I am flagging these issues today is, as to how these teething problems have come about. Legislation is the job of the House. Let us be very clear about it. Judiciary repeatedly says that legislation should be left to the wisdom of legislature. But, at times what happens, Sir, certain areas are areas of problem. This may be because of our inefficiency or Governmental inefficiency. I will leave it there. But if judiciary says that because this is a pressing area, we will give directions, then, they have got to give directions. But, we should not forget that we have the highest regard for judiciary, we are proud of Indian judiciary, their independence, their stature, world over it is being talked about, but, judiciary is not the alternative for good governance. This fundamental issue is required to be appreciated. And if this rule is not understood, then, the Lakshman Rekha is breached. That is a very teething problem because where the boundary of governance ends and where the limits of judicial accountability

starts is a very complicated question and therefore, the wisdom is required to be trusted. Sir, today is also the occasion that we need to look inwards as to why this problem has arisen. The problem has arisen because people are generally having not a very constructive image of we who are in politics. We need to do introspection as well and this is very wrong. There is degeneration everywhere. People have a very good image about the Army. Fine. But you also had the occasion of a Former Chief of the Army, who was a Governor, was found to be involved in a scam. There are good politicians, there are bad politicians. But, today, as a class, we politicians don't enjoy a very good image. What is happening is, this kind of image deficit is also in some way provoking the people, inspiring the people, agitating the people to have a view that judiciary is the only answer. This disconnect is required to be plugged. That is very important and the reason as to why I am saying so is that we are proud of our democracy. As I always say, it is now 60 years that Indian democracy has been functioning and with the unfortunate experience of 70s when Emergency was imposed, no political party will dare to curb freedom, impose emergency. India shall be governed by democracy, by political process, by elections. Today they are in power, someday we will come to power, and the people of the country know that they can defeat any political leader howsoever popular; and they can unseat any political party howsoever powerful. If this is the strength of Indian democracy, then, why this image deficit? That is the question that we need to ask today. I think, this is a problem which has to be responded to by the collective will of all of us. We need to restore the pristine image of the Parliament and the image of politicians, which was the great tradition of our democracy and freedom movement with towering leaders of Congress and other political parties, who worked together regardless of political differences. This is also an occasion for us to look inwards. Thirdly, Sir, the Executive also would learn to be a little more active, responsible and accountable. Sir, there is a very famous quote. Some of my friends from Bihar will know it. If they find something in a jam they will say इसको कोर्ट से कराकर ले आइए, हम कर देंगे। You get it redressed from the court, then, we will do it accordingly. This is not a good sign. After all, courts are also overburdened. If people start going to courts and they have got so much of arrears — I hope the Law Minister is listening to me — if the people start going to courts for everything, ultimately what will happen to the democratic process? Sir, I won't take a long time but I am so grateful that you gave me time. But, let me conclude by this comment that we should be proud of our Constitution which has laid down the fine blend and coordination and the respective *Lakshman Rekha* of all the three State organs. Yes, there would be an occasional hiccup. Yes, there would be an occasional effort to encroach upon. But, we need to trust our inner strength. We need to trust the basic spirit of our Constitution and we also need to trust the abiding principle of democracy which, ultimately, ensures that we all work in co-ordination.

I am very grateful to you, Sir. Thank you.

SHRI Y.P. TRIVEDI (Maharashtra): Sir, it is rather unfortunate, today, there is an apparent conflict which even a blind person can see between the judicial complex/hierarchy and the work of Parliament. The judicial activism was started with Justice Bhagawathi's intervention by way of Public Interest Litigation. It has, probably, now reached to a limit where certain guidelines and norms have to be issued and adhered to. This can be done only by lawyers and the people sitting on the Benches. It is unfortunate, today, the credibility of many institutions are falling. The credibility of politicians, as it was stated a little bit earlier, is also receding very fast. The judiciary, certainly, has a role to play. The people have a considerable faith in the judiciary. But, the judiciary should not stand itself and consider that it is standing and taking a contrary view to politicians or Parliament. Now, we have seen, very often, conflicts do arise between the interpretation given by courts and very often people try to find out as to what is the will of the Parliament on this. What did the Legislators want to do about this? This is something on which judiciary, very often, uses its own interpretation and on many occasions it is quite at variance with what Parliament intended to do. This conflict is not something new. It is an old conflict. It has been witnessed even in the USA. When a Judge of the Supreme Court asked, 'After all, there are limits to the powers of Judiciary. If the Parliament says that this is white and this is black, then the judiciary cannot intervene at all.' And, the Judge said, "No. We are the final authority, because even if you say this is black, we will decide what the shade of black is and we will determine a shade which will almost become white." So, this conflict between judiciary and legislature has been going on for a long-time. Now, the time has come that we must try to find out — as it was rightly stated — a *Lakshman Rekha*. The Judiciary has its own functions. The Legislature has its own function. And, to draw this *Lakshman Rekha*, it is the primary duty of the lawyers who are appearing, it is the primary duty of the Judges who are presiding over courts and also the Parliamentarians who should try to lay down their own limitations. If will arises, a certain requisite statute can also be passed in order to define the parameters within which the judiciary should function and the parameters in which the Parliament is supreme. I think, it is very necessary and it is high time that it is done. Thank you.

SHRI VEERAPPA MOILY: Mr. Vice-Chairman Sir, I am quite happy that this Resolution is now put before the House, particularly on an issue which is of this significance, for consideration. ... Particularly with regard to the Legislature, the Judiciary and the Executive on the day when the Constitution of India was inked, we celebrate it as a Law Day. This is a historical day because we adopted the Indian Constitution on 26th November, 1949. It is a comprehensive document. I would rather say a step further that it is a document of concrete resolution. It has addressed the problems of this country. And, I would also say that even though we say that it was debated in the Constituent Assembly, we should not forget the fact that this has the backing of wisdom of thousands and thousands of years. So, I would like to say that this is a spiritual Constitution that has been sanctified by the Constituent Assembly; a kind of

3.00 P.M.

document that has really bound the people together notwithstanding the religion, the race, the region, the caste or the language. That is how, today, we are proud to say that we are the largest parliamentary democracy. As I had already told yesterday, around eighty crores of electorate are, today, entitled to vote in such a big democracy as like this. It has provided a detailed structure of the Government with three pillars — the Legislature, the Judiciary and the Executive. It recognizes these three pillars of the Democratic Republic of India. The Constitution itself has clearly assigned specific roles to these three pillars. Ever since the adoption of the Constitution, the Executive, the Legislature and the Judiciary have, by and large, been functioning within the demarcated areas. This is the major achievement of our democracy. We live on this democratic system. The division of power between these three wings of the State has specifically been provided; and they need to operate in their respective spheres. The doctrine of separation of power has received judicial recognition at various stages. In the Delhi Law Case of AIR 1951, SC 332, the Supreme Court noted that though there are no specific provisions of the Constitution vesting legislative powers exclusively in the Legislature, the judicial powers in the Judiciary, the essence of the doctrine of separation of power was implicit in the constitution of scheme. Later on, in the Indira Gandhi versus Raj Narayan case also the Apex Court treated the separation of powers, as a part of the basic structure of the Constitution, comprising three organs of Republic. The court further observed that it is through each of these three organs that the sovereign will of the power has to operate and manifest itself, not only through one of them. We need to be conscious of this kind separation of power. That is the essence of the Constitution. We are going to stabilise this process, we are going to sustain this process for many, many hundred years to come. This could contain the aspirations of the people belonging to all the strata of the society. They have a solution there. That solution will have to be provided and those solutions will have to be nurtured by all the three pillars of democracy. Even in a case of 89, Ilyasi Versus State, the Apex Court observed that although the Doctrine of Separation of Power has not been recognised under the Constitution in its absolute rigidity but the Constitution makers have meticulously defined the functions of various organs of the States. It is a time-tested document. It is a document which remains and will continue to remain sacrosanct. That does not mean that we should not respond to the changes. Changes do take place. Changes should take place. A State is not a static organisation/society. We need to respond to the changes. Somewhere, Dr. Babasaheb Ambedkar did say that if you do not make a change and if the Constitution and various wings of the Government and the State do not respond to the aspirations of the people, it will become a volcano and explode itself. This is the caution which needs to be taken by the Legislature, by the Judiciary and also by the Executive. In S.S. Bola versus B.D. Sardana, the AIR 1997, there Supreme Court said and I quote: “It cannot be denied that the harmonious working of the Judiciary, the Legislature and the Executive would always

advance the cause of democracy. In any written Constitution, Sovereignty vests in the people, with the people as represented by the three wings and no wing can claim supremacy over any other wing.” This is what all the speakers including the hon. Members, Shri Ramdas Agarwal and Shri Ravi Shankar, many of you and many of us canvass for. The spheres are well defined with the balances and the counter balances. When we analyse the problem in true spirit and perspective, there is no occasion for conflict. On the other hand, it will develop mutual respect and harmony in otherwise gruelling giants. This is the beauty of our Constitution. This is how all the three wings will have to be synchronised. An independent Judiciary is the *sine qua non* of a vibrant democratic system. Independence does not mean that there should not be accountability. Independence will, definitely, be coupled with accountability. That is how we are now thinking. Maybe, a proposal is going to the Cabinet that we need to replace, with the permission of the Parliament, the Judges’ Inquiry Act with the Judges’ standard and accountability Bill. Whoever it may be, whether he is in Executive or in Legislature or in the Judiciary, we need to maintain certain standards. We need to be accountable to the people and the Governance, ultimately, will become the fulcrum of one of these bodies. This is what needs to be done and I hope to get support from all of you when I bring that Bill to you. That will definitely be a new path-finding Bill with an innovative approach to reassert and reassert ourselves to the constitutional aspirations. This is what we intend doing. Only an impartial and independent judiciary meted out, even handed justice without fear or favour. Judiciary is the protector of the Constitution. As such, it may have to some time strike down executive, administrative and legislative Acts of the Centre and States. For rule of law to prevail, judicial independence is of prime necessity. Ultimately, whether it is the Executive, Legislature or the Judiciary, their ultimate aim is to ensure the rule of law. Even the last man in the queue should be guaranteed with this kind of a sense of rule of law. Unless that is achieved, I don’t say that we are living in an atmosphere which is intended to be created by the Constitution of India and this needs to be revisited by all the three Wings of the State. The Members of the Constituent Assembly were very much concerned with the question of independence of Judiciary and made provisions to ensure this end. The Supreme Court itself — I have already quoted — never wanted that there should be any supremacy saying that this is supreme or that is supreme. This kind of a rivalry of supremacy to be established will have to be put an end and it has to be balanced, and, ultimately all the three wings will have to be equal and cannot override one another. This is the principle. The Supreme Court has itself laid emphasis on independence of Judiciary from time to time. The apex court recently in A.C. Talwar vs. the High Court of Himachal Pradesh 7 SCC has observed that the constitutional scheme aims at securing an independent Judiciary which is a bulwark of democracy. In State of Bihar v. Bal Mukund Shah and others (2000), the apex court has observed that ‘the concept of separation of powers

between Legislature, Executive and Judiciary, an independent Judiciary, as a fundamental concept, has now been elevated to the level of basic structure of the Constitution and are very heart of constitutional scheme.’

But, ultimately, with all these, the soul of the Constitution is the citizen of this country. None of these bodies can meddle with the soul of this country, *i.e.*, the citizen, its liberty, its rights and its getting access to justice everywhere. That is what we call in the world as ‘inclusive justice’; it cannot be an ‘exclusive justice’. No one can feel deprived or alienated from the mainstream of rule of law or the justice. That is why the essential doctrine, *i.e.*, the sovereign will of the power has to operate and manifest itself with the three organs of the State has been recognized. We cannot silence the sovereign will of the people. We cannot ignore the sovereign will of people. None of these three bodies should interfere with that kind of a sovereign will. That needs to be asserted and reasserted again and again in the democratic society of India.

SHRI D. RAJA (Tamil Nadu): The Parliament represents the will of the people.

SHRI M. VEERAPPA MOILY: The sovereign will of the people; you represent and we represent; Yes, in Parliament. I don’t want to use the word ‘supremacy’. After all, you are the law-giver. But the law-enforcer also becomes important. But, ultimately, it is the people who are important and none of us can claim that we are superior to the people. The sovereign will of the people will have to manifest, reflect in the functioning of all the three bodies. That is what I would like to say. Hon. Members have raised a number of issues. I am not referring to individual issues that were raised, but I would like to sum up issues which have been raised on the floor of this august House, from the manner of appointment of Judges of High Courts to corruption in the judiciary and public utterances by some in the judiciary.

Shri Ramdas Aggarwal had referred to judicial activism becoming judicial adventurism. In this regard, I would like to invite attention to Dr. Kailashnath Katju Memorial lecture delivered by respected, Shri Somnath Chatterjee, former Speaker. I quote, “The obvious consideration before the Constituent Assembly was to preserve and protect the freedom and democratic rights of the people and the supremacy of the popular will in our system of governance”. Here, I would like to say that we just forget governance. Whether it is Judiciary, Legislature or the Executive, governance is the fulcrum of the entire activity. If governance fails, everything will collapse altogether. This is what we need to address. I quote again, “The centrality of will of the people finds its expression in the Preamble of the Constitution itself. The words, ‘we, the people of India’ and ‘do hereby adopt, enact and give to ourselves this Constitution’ recognises the sovereignty of the people and their primacy in our Constitutional system and convey its eternal message. And through the provisions of the Constitution we have enumerated the powers and responsibilities of the organs of the State before the facilitators of national will, leaving hardly any scope for doubt or confusion in the mutual relationship”. Shri Somnath Chatterjee further quoted

Chief Justice Verma, who was a former Chief Justice of the Supreme Court. I quote, “The sovereign will of the people finds expression through their chosen representatives of the Parliament. The real political executive is the Council of Ministers which also controls the Lok Sabha wherein lies the real legislative power. Parliament exercises political and financial control over the Executive. And there are inherent checks and balances to keep every organ within the limits of Constitutional power. The grey areas are meant to be covered by a healthy consensus developed on the basis of mutual respect keeping in view the common purpose to be served by the exercise of that power”. Shri Somnath Chatterjee had on that occasion also referred to the words of Pt. Jawaharlal Nehru when he had intervened in the debate of Constituent Assembly on the issue of Judiciary functioning as some kind of a super-Legislature or super-Executive. Even at that time, that perception had come in. I think he clarified that. Panditji, while speaking in the Constituent Assembly, had said, “No Supreme Court and no judiciary can stand in judgement over the sovereign will of Parliament”. This is what you had referred to. That is what was told by Panditji in the Constituent Assembly. “If we go wrong here and there, you may point it out, but in the ultimate analysis, where the future of the community is concerned, no judiciary can come in the way. Ultimately, the fact remains that the Legislature must be supreme and must not be interfered by a court of law in a measure of social reform”. So, you have the ultimate say in that and particularly, in social reforms.

I think the Parliament and the Legislature can better understand social reforms and the social fabric of the society than anyone else because we represent the people. I hold that view. We need to uphold those great principles which have been enunciated by our great leader, Pt. Jawaharlal Nehru. This is what many of our hon. Members spoke about. Our Ramdas Agarwalji has referred to the hon. Prime Minister, Dr. Manmohan Singh, who mentioned about the enormous powers of our judiciary and enormous responsibility in the exercise of these powers in his Address to the Conference of Chief Ministers and Chief Justices in 2007. Our respected Prime Minister said, “Unless the three wings of the State understand each other better, they will not be able to function effectively in the interest of our nation and our people. The three wings have well-defined roles and functions under our Constitution. However, all the wings have a common goal which is the fulfilment of the hopes of our founding fathers as spelt out so clearly in our Constitution.” He further said, “I do sincerely believe that the Judiciary, the Executive and the Legislature have an obligation both to our Constitution and to our people to work in harmony. That is the mandate of the Constitution. I don’t think that any one of these three can violate the mandate of the Constitution which represents the sovereign will of the people.” Constitution represents the sovereign will of the people. This is what we need to focus. I quote again that “Each one of these organs of the State has an important and vital role to play in improving the welfare and well-being of the people. In each one of the organs has constitutionally-assigned roles and responsibilities and these must be discharged in all honesty.

Each organ must respect the roles and functions of the other. Powers accorded to each organ must be exercised cautiously. In the context of judiciary, the primary obligation is to enforce the rule of law, uphold the Constitution and enforce the discharge of obligation by any authority of the State. These are all delicate issues, which need to be addressed cautiously. All organs including the judiciary must ensure that the dividing lines between them are not breached. This makes for a harmonious functioning.” Hon. Members have mentioned about issues like method of appointment of judges on the recommendation of the collegium. Shri Rajeev Shuklaji mentioned about corruption in the judiciary; Shri Natchiappan mentioned about the role of the Executive and the method of appointment of judges through collegium; Shri Rajniti Prasad and other speakers mentioned about declaration of assets of judges. Dr. Gyan Prakash Pilania submitted that the purpose of all three wings of the Government must be to look after the *daridranarayan*, the common man or *aam aadmi*. Some important issues were raised by Prof. Ram Gopal Yadavji. Shri Sarkar, Shri Rama Jois, Shri Ganga Charan and Dr. Prabha Thakur raised issues regarding reservation in the judiciary, judgement on executive matters, contempt of court, supremacy of legislature and observations by the Supreme Court. These are all some of the essential things which have been raised. Today Shri Ravi Shankarji has also mentioned about some havoc played by PIL. How they are doing? It is a common knowledge that many a time people who file the PIL have made it a profession. I think we need to address this question. They take away a lot of time of the court at various stages because they are popular issues. Sometimes the populist hunger to get the publicity will definitely take away the precious time of court. ...*(Interruptions)*...

SHRI RAVI SHANKAR PRASAD: Sir, the Supreme Court has said that PIL has now become *Paisa* Interest Litigation. And, it has become ‘publicity interest litigation’ for some. Therefore, I thought I must let you know that. Even the Supreme Court is talking about it. There is need to take concrete action.

SHRI M. VEERAPPA MOILY: I totally agree with Shri Ravi Shankarji because ultimately, the authority of the Court should not be abused. If any individual or association wants to abuse the process of the Court, I think, the Parliament has to look at it. I think we will address those questions.

SHRI D. RAJA: PILs have some relevance. You cannot totally ignore them.

SHRI M. VEERAPPA MOILY: No, I don’t mean that. Genuine PILs are being overtaken by these fake and fraud PILs. We are referring to them, not to genuine PILs. PILs have played their role. For a while, I should not be mistaken, or, Shri Ravi Shankarji should not be mistaken, that we are against the PILs. They are good if they really represent the citizens’ rights and liberty.

SHRI RAVI SHANKAR PRASAD: I only quoted the Supreme Court.

SHRI M. VEERAPPA MOILY: Now, the question is that we need to protect the concept of PIL. No one should take away that precious right of any citizen to go to the Court and file a Public Interest Litigation. They should not be seen as suspects. This is what we want. I think, Sir, the time has come to revisit some of these issues, and come out with some legislation. Maybe in that way, we can address those problems and we need to do it. Precious time of the Court, which is meant to provide inclusive justice, to re-assert many of these things, should not be wasted. Because, we have seen judicial system in many countries, and when we compare our Supreme Court with that of other countries, it is becoming fatter; the Supreme Courts of other countries are becoming thinner. On question of litigation, I think we need to look at it. We are separately addressing those issues.

As mentioned by some of our hon. Members, and particularly the point arising out of the resolution of Agarwalji, I may add that in so far as the declaration of assets is concerned, we had brought a Bill here, but there were some disputes even at the introduction stage. Normally, it does not happen. Even then, it has got its own effect on the Judiciary.

SHRI RAMDAS AGARWAL: You have achieved your target.

SHRI M. VEERAPPA MOILY: Ultimately, we want to achieve this objective, whether through this Bill or otherwise, that does not matter. We must commend the Judiciary. They have responded well to the wishes of this Parliament. This is what has happened. We have been practising as advocates either in the Supreme Court, or the High Court, or the subordinate Courts. I had an impression, a hesitation, an apprehension that on many of the things which we need to take forward, there may be resistance from the Judiciary. But, after having had various interactions through the national consultation on the judicial reforms focussing on the disposal of cases which was held on 24th and 25th of October this year, with congregation of Chief Justices of all the High Courts, all the Judges of the Supreme Court and also with all the Chief Ministers, the kind of resolution which we have passed is far-reaching; and I get an impression now that the Judiciary is totally, actively responding to the changes, to public accountability, and to the need of taking the Judiciary forward to make it relevant to the lives of citizens of this country. I must tell you that all the Supreme Court Judges, including the Chief Justice, participated on both the days actively. They presided over the groups and workshops and came out with very positive resolutions. There was not even a single negative resolution that was passed on any day. This is a great thing that has happened, and the impression that the people have that Judiciary is not responding to changes, not responding to accountability, I must say, with my knowledge and experience, that it is not correct. We need to trust each other and all the three bodies will have to trust each other. And, if that is done, I think, the picture of the country will change. We need to destroy some of the prejudices, destroy some of the rituals and destroy

some of the systems, which have crowded the system in Parliament or Judiciary or Executive. We need to take it forward. We cannot be slow. We cannot afford to be slow.

While launching the First Five Year Plan, Pandit Jawaharlal Nehru said, “we have chosen to ride on the tiger, and, having chosen to ride on the tiger, we need to speed up; otherwise, the tiger will eat you.” That is the stage through which we are all going. Many people say, Moily, why are you in a hurry? Why do you hasten? It is because ultimately this is the picture. Now, the time has come when we need to walk fast, run fast. When running is possible, why should we walk? This is the principle, I think, we need to work on. We are working on many of those things. We need to develop that kind of confidence among all the three wings. Regarding confrontation, when there is no need of confrontation, and, when there is a possibility of convergence of views, why should we go in for confrontation? This is one message which I would like to share with all of you, and, I am confident that whatever the Constitution requires or expects, it can be done by mutual consultation and taken forward.

You have raised many issues like appointment of judges, the accountability etc. We are addressing them. We are actively working on them. So, I am thankful to all the Members who have actively participated and expressed their views. That is what is required. I think, many more days will come in the Parliament when we will come up, one by one, with measures to improve the judiciary and also develop proper bridges among the Executive, Legislative and the Judiciary.

With these words, I conclude and thank all the hon. Members who participated in the discussion and provided many, many valuable inputs which can be guidepost for me to proceed further in this matter. Mr. Vice-Chairman, I also thank you for the opportunity given to me to reply. Thank you.

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Thank you. Now, Shri Ramdas Agarwal.

श्री रामदास अग्रवाल : उपसभाध्यक्ष जी,...(व्यवधान)...

SHRI S.S. AHLUWALIA: Sir, the Minister has not requested him to withdraw ...*(Interruptions)*...

SHRI M. VEERAPPA MOILY: Sir, I think, I forgot to mention it. If the hon. Member can kindly withdraw ...*(Interruptions)*...

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): No, no. There is time. You can say it later. ...*(Interruptions)*...

श्री रामदास अग्रवाल: उपसभाध्यक्ष जी, मैंने जब यह संकल्प...(व्यवधान)...

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): If he convinces the Minister, why do you worry? If he can convince the Minister, why do you worry? ...*(Interruptions)*...

SHRI S.S. AHLUWALIA: First of all, the Minister should convince the Mover. ...*(Interruptions)*... It is not the point. The point is that while the Minister was responding to the queries or the questions raised by the Members participating...*(Interruptions)*..

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Let us see if the... ...*(Interruptions)*...

श्री रामदास अग्रवाल: मेरे बोलने के बाद कर लेंगे। ...*(व्यवधान)*...

SHRI S.S. AHLUWALIA: Sir, the normal practice is that while concluding, the Minister requests the Member. ...*(Interruptions)*...

श्री रामदास अग्रवाल : मेरे बोलने के बाद कर लेंगे। ...*(व्यवधान)*...

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): He can request after the reply. Let us see whether the Minister has convinced the Member. ...*(Interruptions)*...

SHRI S.S. AHLUWALIA: Is the Chair participating in the debate?

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): I am only saying, let us see. ...*(Interruptions)*... I am absolutely neutral.

श्री रामदास अग्रवाल: उपसभाध्यक्ष जी, इस सदन में जब मैंने यह संकल्प प्रस्तुत किया था, उस समय मेरे मन में यह बात थी कि यह बहुत sensitive matter है, बहुत संवेदनशील विषय है, इस पर विचार करने से कहीं किसी हमारी judiciary को या अन्य किसी विंग को कोई आघात तो नहीं पहुंचेगा। लेकिन आज मैं यह बात बड़े गर्व से कह सकता हूँ कि इस विषय को इस सदन में जिस गंभीरता के साथ और जिस विचार विनिमयता के साथ डिसकस किया गया, वह आने वाले समय के लिए बहुत महत्वपूर्ण है। इसीलिए मैं अपना आभार माननीय सभापति महोदय को भी व्यक्त करना चाहता हूँ, आपको भी देना चाहता हूँ और इस सदन के माननीय सदस्यों को भी देना चाहता हूँ कि जिस दिन यह विषय समाप्त हो रहा था, आपने इसकी तारीफ बढ़ाकर इस सत्र में भी इस विषय को लाने के लिए अनुमति प्रदान की, इसके लिए मैं आपका आभार व्यक्त करता हूँ। साथ ही आज जैसे माननीय मंत्री जी ने कहा कि आज का दिन “लॉ डे” के नाम से बड़ा महत्वपूर्ण है, आज कानून का दिवस है, आज के ही दिन constitution की स्थापना हुई थी। मुझे इस बात का गर्व है कि आज के दिन एक महत्वपूर्ण विषय एक अंतिम परिणति में आ रहा है और इसलिए यह अपने आप में फिर से एक ऐतिहासिक दिन बन सकता है। यदि हमारे मंत्री महोदय, हमारी सरकार गंभीरता के साथ, जिन विषयों को उन्होंने भी आज स्वीकार किया है, इसके ऊपर कार्यान्वयन करने के लिए और इसके ऊपर तीव्र गति से आवश्यक सुधार कानून लाने के लिए प्रयास करेंगे तो जिस प्रकार से आज “लॉ डे” के दिन constitution के रूप में हम याद करते हैं, वैसे ही हमारे आदरणीय मंत्री महोदय का भी शायद वह दिन आ सकता है, जब हम लोग सदन में बैठ कर यह याद करेंगे कि 2009 में आज के ही दिन हमारे माननीय मंत्री जी ने इतने गंभीर विषय को जिस पर वे स्वयं भी चिंतित हैं, सारा देश भी चिंतित है, सारी जनता भी चिंतित है, इस प्रकार का महत्वपूर्ण विषय पूरा होकर उसमें हमने कोई निर्णय लिया।

उपसभाध्यक्ष जी, मैं अपने मन से दूसरी बात और कहना चाहता हूँ। मैं यह इसलिए कहना चाहता हूँ, क्योंकि हम आपस में एक-दूसरे के संवेदनशील विषयों पर चर्चा के साथ-साथ अगर किसी ने कोई achievement किया है, तो उस पर भी कुछ बात कही जानी चाहिए। अभी मुझे जानकारी मिली थी कि ज्ञानपीठ ने हमारे कानून मंत्री साहब को एक बहुत शानदार अवार्ड, मूर्तिदेवी पुरस्कार, दिया है और वह भी इसलिए दिया है, क्योंकि उन्होंने रामायण पर इतना शानदार पुस्तक लिखी है कि जिसकी प्रशंसा सारे देश में और दक्षिण भारत में विशेष रूप से हो रही है। मैं उन्हें इस ज्ञानपीठ पुरस्कार प्राप्त करने के लिए अपनी ओर से सदन में बहुत-बहुत बधाई देता हूँ।

उपसभाध्यक्ष महोदय, मेरी दूसरी प्रसन्नता का विषय यह है कि जिस विषय पर आज यह सदन बैठ कर अंतिम रूप से डिसकस कर रहा है, उसमें कल ही हमारे माननीय मुख्य न्यायाधीश, सुप्रीम कोर्ट ने एक वार्ता प्रस्तुत की थी, उस वार्ता में उन्होंने भी इस बात को स्वीकार किया है कि कार्यपालिका और विधायिका में किसी भी प्रकार का टकराव, किसी भी प्रकार का मतभेद और किसी भी प्रकार से प्रतिस्पर्द्धा नहीं होनी चाहिए, यह उन्होंने स्वीकार किया है। आज मुझे इस बात की खुशी है कि मेरे इस विषय के ऊपर हमारे इस सदन में डा. ई.एम. सुदर्शन नाच्चीयप्पन जी ने, श्री राजनीति प्रसाद जी ने, डा. ज्ञान प्रकाश पिलानिया जी ने, प्रो. राम गोपाल यादव जी ने, श्री मतिलाल सरकार जी ने, श्री राजीव शुक्ल जी ने और श्री म. रामा जोयिस साहब ने, डा. प्रभा ठाकुर ने और अंत में सारे तारों को झांकृत करते हुए हमारे श्री रवि शंकर प्रसाद जी ने, क्योंकि सारा विषय उन्होंने फिर से और एक तरीके से इतने दिनों के अंतराल में जो भूल गए थे, आज उन्होंने फिर से एक भाषण देकर इस विषय के ऊपर बड़ा विशिष्ट प्रकाश डाला। उपसभाध्यक्ष महोदय, मैं उन सब महानुभावों को, जिन्होंने इस संकल्प के ऊपर अपने विचार व्यक्त किए, बहुत-बहुत धन्यवाद देता हूँ और उन्होंने मेरे प्रति जो यह भावना प्रकट की है कि मैंने इस संवेदनशील विषय को सदन में लाकर एक अच्छा काम किया है, तो मुझे अपने सांसद होने पर गर्व है।

उपसभाध्यक्ष महोदय, जो चीज़ हम चाहते थे, वह कभी कानून से होती है, कभी चर्चा से होती है, कभी बहस से होती है और कभी-कभी एक इंडिकेशन से भी होती है, इशारे से भी होती है। मैं हमारे लॉ मिनिस्टर साहब से यह बात कहना चाहता हूँ कि आप judges के assets and property के मामले को लेकर जो प्राप्त करना चाहते थे, कई वर्ष पहले जिस कानून के द्वारा आपने इसे प्राप्त करने का प्रयास किया था, कई सालों से यह कानून बनने के लिए तत्पर था, सरकारें भी चाहती थीं, लेकिन यह कानून बन नहीं पाया। यह बार-बार अटका, बार-बार रोका गया, कई कारणों से रोका गया, उसमें कई विवाद खड़े किए गए। कई जगह तो ऐसी-ऐसी बातें भी सामने आ गईं, जो नहीं आनी चाहिए थीं, लेकिन अंत में इस संकल्प के आने के बाद जिस प्रकार की बहस सदन में हुई और जिस प्रकार से लोगों ने चर्चा की, मैं समझता हूँ कि हमारे सभी माननीय न्यायाधीश महोदय इस बात को जानते हैं कि आज सदन में या सदन के बाहर, इस देश के अंदर जनता में उनके बारे में किस प्रकार की चर्चा हो रही है और मुझे इस बात की खुशी है कि उन्होंने अपने कानों से इस सदन की आवाज़ को सुना, जनता की भावनाओं को सुना। महोदय, पिछली बार मैंने जब भाषण दिया था, तब मैंने हमारे माननीय judges से निवेदन किया था कि कानून बनाने की आवश्यकता न आए, आप स्वयं आगे बढ़कर अपनी सम्पत्ति की घोषणा के लिए आगे आ जाइए, तो ज्यादा अच्छा होगा और मुझे इस बात की खुशी है कि आज सारे देश के high courts और सुप्रीम कोर्ट के माननीय जजों ने इस बात को स्वीकार किया है कि कानून आए या न आए, पारदर्शिता के लिए वे अपने आप को जनता के सामने प्रस्तुत करने को तैयार हैं। मैं उन सब महानुभाव जजों को, courts को और हमारे इस पूरे सदन को भी इस बात की बधाई देता हूँ कि आपने कानून नहीं बनाया, लेकिन कानून न बनाकर भी आपने यह बात प्राप्त कर ली है, यह हमारे सदन के लिए भी गौरव की बात है और माननीय मंत्री महोदय के लिए भी यह प्रसन्नता का विषय है।

उपसभाध्यक्ष महोदय, मैं आपके सामने दो-तीन बातें रखना चाहता हूँ। मैंने अपने संकल्प में जो बातें कही थीं, अगर आप इजाजत दें, तो मैं संकल्प को एक बार दोहराना चाहता हूँ।

“यह सभा विधायिका और न्यायपालिका के बीच यदा कदा होने वाले टकराव पर गहरी चिंता व्यक्त करती है,।”

जो आप सबने की है।

“और सरकार से आग्रह करती है कि वह यह सुनिश्चित करने के लिए सुस्पष्ट और कारगर उपाय करे कि सरकार का प्रत्येक अंग अर्थात् विधायिका, न्यायपालिका और कार्यपालिका संविधान में प्रतिष्ठापित

उपबंधों के अनुसार सुचारु, स्वतंत्र रूप से और एक-दूसरे के हस्तक्षेप के बिना कार्य करे और देश के लोकतांत्रिक और संघीय ढांचे को कोई खतरा न हो, क्योंकि उस जनता के सिवाए, जो हमारे देश में सर्वोपरि है,”

जैसा अभी हमारे माननीय मंत्री जी ने कहा कि इस देश के अंदर केवल जनता सर्वोपरि है, केवल जनता हमारी मालिक है और हमारे ऊपर कोई मालिक नहीं है, इसलिए वही बात कही गई है कि देश की जनता जो सर्वोपरि है,

“कोई भी अंग दूसरे अंग से श्रेष्ठ नहीं है और राज्य के सभी तीनों अंग उसके प्रति जवाबदेह हैं।”

माननीय मंत्री महोदय ने इन शब्दों को स्वीकार किया है और इन शब्दों के साथ उन्होंने इस बात को मान लिया है कि ये सारी बातें, जो अब संकल्प में व्यक्त की गई हैं, उसमें उन्हें कोई एतराज नहीं है।

उपसभाध्यक्ष महोदय, मैं केवल एक बात और आपके सामने कहना चाहता हूँ कि हमारे माननीय सांसदों ने तीन चिंताएं व्यक्त की थीं, जिसे उन्होंने भी अपनी चिंता का विषय बनाया है, तो सबसे पहली चिंता थी कि क्या विधायिका और न्यायपालिका में यदा कदा किन्हीं विषयों पर होने वाले टकराव को टाला जाना चाहिए? महोदय, इस टकराव को टालने के लिए बहुत जल्दी कदम उठाने की आवश्यकता है क्योंकि मैं quote करना चाहता हूँ, अभी तीन दिन पहले ही राजस्थान विधान सभा के माननीय अध्यक्ष महोदय ने किसी पार्टी के सदस्यों के कांग्रेस में शामिल होने के संबंध में कोई निर्णय लिया था। उसके विरुद्ध कुछ लोग हाई कोर्ट में गए थे। हाई कोर्ट ने सम्मन जारी किया। लेकिन विधान सभा के अध्यक्ष महोदय ने उस सम्मन को लेकर आने वाले व्यक्ति को विधान सभा में नहीं आने दिया और सम्मन तालीम नहीं हुआ। महोदय इस प्रकार का टकराव उचित नहीं है। अगर इस प्रकार का टकराव होगा तो उसके गंभीर परिणाम होंगे। I think, the hon. Minister might be understanding what I have told that in the Rajasthan Vidhan Sabha, the Speaker of the Vidhan Sabha has denied permission to those persons who came with the summons in the Vidhan Sabha to serve it, and I do not want to go into the merits of the issue. I am just telling that this kind of टकराव जो लेटेस्ट हमें दिखाई देता है, यह उचित नहीं है। इसके बारे में तत्काल कोई न कोई व्यवस्था होनी चाहिए क्योंकि विधान सभा का अध्यक्ष सुपीरियर है, लोक सभा का अध्यक्ष सुपीरियर है या हाई कोर्ट का जज सुपीरियर है, इन बातों के कारण अगर टकराव पैदा हो जाएंगे तो हमारे लिए ज्यादा घातक होंगे। इस ईशू का क्या बनेगा, मैं नहीं जानता, लेकिन अगर इस प्रकार के टकराव होंगे तो ये हमारे लिए ज्यादा घातक होंगे। यह चिंता हम लोगों ने यहां व्यक्त की थी जो माननीय मंत्री जी के नोटिस में है। दूसरी चिंता यह सामने आई है कि जो विशेषाधिकार हमारे जजेज को प्राप्त हैं, उनके जजमेंट के ऊपर जब कोई प्रतिक्रिया व्यक्त होती है तो वहां पर यह विषय आ जाता है कि यह कोर्ट के आदेशों के खिलाफ बोला जा रहा है। महोदय, मैं किसी भी प्रिविलेज के खिलाफ बात नहीं कर रहा हूँ, लेकिन मैं यह कहना चाहता हूँ कि अगर हम हमारे राष्ट्रपति के अभिभाषण की आलोचना कर सकते हैं, अगर हम अपने देश के किसी भी बड़े नेता के भाषण का या किसी धार्मिक नेता के भाषण का विरोध कर सकते हैं, उस पर अपने विचार व्यक्त कर सकते हैं तो कोई भी हाई कोर्ट और सुप्रीम कोर्ट के जजमेंट के बारे में हम अपने विचारों की अभिव्यक्त क्यों नहीं कर सकते, इस पर भी इस देश में विचार करने की आवश्यकता है। महोदय, तीसरा विषय चिन्ताजनक है। जैसा आपने कहा है कि जजेज के अप्वाइंटमेंट्स के बारे में एक निर्णायक प्रक्रिया अडॉप्ट की जानी चाहिए ताकि इस बारे में संदेह और शंकाओं का दौर न हो। अगर जजेज के अप्वाइंटमेंट्स में शंकाएं आएंगी, अगर जजेज के अप्वाइंटमेंट्स में ही हमें संदेह होगा तो फिर निर्णय कहां से होगा, समाधान कहां से होगा? इसलिए महोदय, मैं आपसे निवेदन करना चाहता हूँ इन सारे विषयों के ऊपर सदन ने जिस प्रकार से गंभीर चिंतन मनन किया, विश्लेषण किया। अंत में मंत्री महोदय, Just a minute please. I just want to request the hon. Minister. He is capable to do things, and I believe that on this auspicious day, he will take certain decisions and will convey

to the country, convey to all organs of the society and convey to all the organs of the Constitution that the public is supreme, and we will have to follow them, and we will have to change the rules, regulations and the law, if necessary, and if any one of them attacks each other, they have to be protected, but not by giving any special privilege to any section of these three wings. Thank you very much, Sir, for the opportunity which you have given to me.

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Mr. Minister, do you want to say something?

SHRI M. VEERAPPA MOILY: Thank you, Mr. Vice-Chairman, Sir, for providing wide opportunity to me and all the hon. Members to reflect on an important issue like this. I think, in a situation like what we have discussed, ultimately, the sovereign will of the people will prevail.

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): No, no. Just a minute please.

SHRI M. VEERAPPA MOILY: You wanted me to say that. So, all three wings will have to reflect that.

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Mr. Minister, there is one problem. He is a mover of the Resolution and he also has a right to reply. So, you only request for withdrawal.

SHRI M. VEERAPPA MOILY: I request the hon. Member to withdraw this Resolution as my reply has already reflected the full body of the Resolution which was presented before the hon. House. In view of all that, I make an appeal to the hon. Member to withdraw his Resolution.

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): So, Mr. Ramdas Agarwal, are you withdrawing the Resolution?

श्री रामदास अग्रवाल: महोदय, मैं माननीय मंत्री जी से एक प्रार्थना करना चाहता हूँ कि कानून बनाने की उनकी इच्छा है... He wants that the law should be made. But, Sir, in our country, in our administration, in our States, कोई भी गवर्नमेंट होगी, कानून बनाने में इतना समय, इतनी देरी होती है कि उसकी सारी भावना और उसकी सारी आवश्यकता समाप्त हो जाती है। मैं माननीय मंत्री जी से प्रार्थना करूँगा कि भावना और आवश्यकता समाप्त न हो, उससे पहले आप कोई अच्छा कानून बनाकर के इस देश के अंदर कोई अच्छी व्यवस्था लाने का प्रयास करें। अगर आपका यह एश्युरेंस है तो मैं अपना संकल्प वापिस लेता हूँ।

The Resolution was, by leave, withdrawn.

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Now, Shri O.T. Lepcha to move a Resolution regarding the development of the State of Sikkim.

Need to prepare an Action Plan for all-round development of Sikkim

SHRI O.T. LEPCHA (Sikkim): Sir, I move the following Resolution:

“Having regard to the fact that —

- (i) Sikkim was merged to the Union of India out of emotions in the year 1975;