

MESSAGE FROM THE LOK SABHA —contd.

The Railway Protection Force (Amendment) Bill, 1985

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

"In accordance with the provisions of rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose the Railway Protection Force (Amendment) Bill, 1985, as passed by Lok Sabha at its sitting held on the 26th August, 1985."

Sir, I lay a copy of the Bill on the Table.

THE JUDGES (PROTECTION) BILL, 1985

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI H. R. BHARDWAJ): Sir, I beg to move:

"That the Bill for securing additional protection for judges and others acting judicially and for matters connected therewith, be taken into consideration."

Sir, as the hon. Members are aware, on 23rd of August, this Bill was passed by the Lok Sabha and now it is before this august House. The hon. Members are also aware that the Judicial Officers Protection Act, 1850 as it exists at present provides that no Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be used in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the

act complained of; and no officer of any Court or other person bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be used in any Civil Court, for the execution of any warrant or order which he would be bound to execute, if within the jurisdiction of the person issuing the same. The proposal is to provide for immunity against any Criminal or Civil action or proceeding against any person who is or was a Judge, in respect of any act, word or deed, committed, spoken or done respectively by him while acting or purporting to act in the discharge of his official or judicial duty or function. It is also proposed that this would not debar or prevent the President or the Central or the State Government or the High Court or any other appropriate authority as may be prescribed by any law to take such civil, criminal or departmental action against a Judge as may be considered appropriate.

[The Vice-Chairman (Shri Chimanbhai Mehta) in the Chair.]

Sir, the main difference between the existing provisions and the proposed provisions relating to protection of judicial officers are: (i) the proposed provision would confer immunity not only in civil action or proceedings but also in criminal action or proceedings; (ii) immunity would be available even after the person has ceased to be a Judge; and (iii) the requirement of good faith is not required to be met for conferring the immunity.

Sir, the judicial officers' protection and allied matters were gone into by the Law Commission in their 104th Report. And some of the provisions of this Bill are taken from the recommendations of the Law Commission's Report. I am confident that the House would support this Bill.

The question was proposed.

THE VICE-CHAIRMAN (SHRI CHIMANBHAI MEHTA): Shrimati Illa Bhattacharya.

*SHRIMATI ILA BHATTACHARYA (Tripura): Mr. Vice-Chairman, Sir, the Hon. Minister has moved the present Bill for securing additional protection for Judges and others acting judicially. But this object of the Hon. Minister is not spelt out clearly in the Statement of Objects and Reasons. The Hon. Minister has said in his introductory speech that the present amendments in the Bill have been framed on the basis of 104th Report of the Law Commission. Had it been said in the Statement of Objects and Reasons that under so and so special circumstances and according to so and so special reasons those additional immunities had been provided to the Judges and Judicial Officers, it would have been possible for the people to appreciate the present amendments. But it has not been specifically mentioned in the Statement of Objects and Reasons that the present amendments have been brought forward with a view to implementing the recommendations of the 104th Report of the Law Commission.

Sir, I have got objection to the definition of Judges in the present Bill. The definition has included those who are also acting judicially. It means that the additional immunities will be enjoyed not only by the traditional judges but also by those persons who conduct legal proceedings. Now what are the additional immunities? The additional immunities mean that no civil or criminal proceedings can be instituted against a Judge, retired or in service, or any judicial officer, if he misbehaves orally with, or even causes physical torture to a person within the Court room while discharging his official duties. This is a serious matter. These kinds of wide additional immunities should not be given to anyone. Under the situation, no justice can ever be obtained for wrong action done by a Judge or a Judicial Officer. Immunity of this nature should not be given to any person inspite of the

fact that he is a Judge or a Judicial Officer. Immunity from judicial scrutiny must not be given to any person who has done something wrong in the course of discharging his official duties.

Sir, let me illustrate my point. Suppose a colleague of a Magistrate has obstructed the proceedings in Court room. Under the situation, he can admonish him or insults him or even physically assault him. But the permission of the Government is required if his colleague wants to institute criminal proceedings against that Magistrate. Again, a Magistrate can misbehave with a person while going to his residence after he left his Court room. If such a misbehaviour is treated as an official duty during office hours, the Magistrate in question shall be at liberty to misbehave with any person as he is not liable to be proceeded with legally. So, under the present amending Bill, no Court will be able to take cognizance of any wrong behaviour on the part of a Judge or a Judicial Officer.

So the present Bill empowers the Judges or Judicial Officers to do whatever they like in the name of performing official duties. In our country every citizen enjoys equal rights under the Constitution. The legal position is, "When a man while performing his official duties misbehaves, he can be prosecuted under I.P.C." So if this Bill is adopted by the House, it will weaken the judicial system as enshrined in the Constitution. Right judicial system strengthens the foundation of the Constitution. Therefore, I feel that there is no necessity to provide additional immunities to the Judicial Officers.

Thank you.

SHRI VEERSHETTY MOGLAPPA KUSHNOOR (Karnataka): Mr. Vice-Chairman. I wholeheartedly support the Judges (Protection) Bill, 1985. The hon. Minister stated as to why this Bill is being brought even though there was a Bill of 1950 which was

*English translation of the original speech in Bengali.

[Shri Veershetty Moglappa Kushnoor]

also protecting the judges. But in that, there is some difference which he himself also mentioned while piloting this Bill and he stated that it was 'good faith'; he has to prove that in good faith he has done it or he has delivered the judgment and there was good faith, but by removing that 'good faith' he has now brought this Bill. This really is a very 'good Bill' and it is going to protect the judges even if they passed any judgment or if during the hearing of the cases if something is said and that is immune and nobody can question about the conduct of a judge in any court of law, either the civil or the criminal court.

[The Deputy Chairman in the Chair]

Just now, the predecessor who was speaking just now said that even if the judge outside commits something, whether he is immune and he will be protected. That is not the case. Specifically section 3 clearly stated: "...in the course of acting or purporting to act in the discharge of his official or judicial duty or function" and it has clearly been mentioned that during the course of the judicial function if something is said and any judgment is delivered and if it goes against certain persons, that is being protected. It is very necessary also because if a judgment is to be given fearlessly, then the judge will have to be protected. Unless he is protected, he cannot deliver judgment fearlessly. So, this is a very important Bill and we wholeheartedly support it.

I would now like to bring to the notice of the hon. Minister that people are talking very much about delay in justice. As is said justice delayed is justice denied. If we take the entire proceedings of the court and if we see the pendency of cases, it is said that in 1983, in all the High Courts, there were nearly 11 lakh cases pending. Not only that, even in the Supreme Court, thousands of cases are pending; I do

not have the figures, but you can see for how many years the cases are pending. Even in the courts of the Magistrates, in the year 1982, there were 66,14,765 cases pending. In the Civil Courts there were 31,80,699 cases pending in 1982. This means there are lakhs of cases pending for so many years. It is not one or two years; for a number of years the cases are pending in civil courts; in appellate and original courts nearly 2,43,764 cases are pending. So, this pendency of cases is causing anxiety among the litigant public; not only the public, everybody is affected. I will quote an instance. In the year 1948, a person instituted a suit and that was disposed of in 1983, after 35 years. When he filed the case, he was a bachelor; when the case was disposed of, he had six children and he could not give education to his children because otherwise his case pending in civil courts, would not get justice. If such a thing happens, how will the people have faith in the judiciary? Something will have to be done about this delay for several years. I would say, the Bench as well as the lawyers are responsible for this delay. For example, even for a small thing as IA, which is called the interim application, when it is filed, it will take months together to dispose it off. In the case of district judiciary, in the civil courts, when we submit an application, for temporary injunction, the argument goes on for days together. Neither the Bench will restrict nor the lawyers will restrict themselves. The argument goes on. It may take one day, two days, even for a small thing as interim application. Then, they go to the High Court, against the decision on the interim application, and get a stay. In this way, the case remains pending for several years. This is what is happening. We will have to see that these delays are minimised. We will have to take action in this regard.

Madam, in 1982 or 1983, I am not sure, the Government of India appointed a committee to go into these

delays and suggest ways to reduce them. This committee consisted of three eminent judges. The Chief Justice of the Calcutta High Court was the Chairman of this committee and the Chief Justices of the Orissa and Bihar High Courts were its members. I do not know what happened to the report of this committee, whether it has come to the notice of the Government. *(Time-bell rings)* I will just take two or three minutes. Madam, this sort of delay is causing anxiety to the litigant public. Here, I would like to refer to what the former Chief Justice of India, Shri Y. V. Chandrachud has said. He said 'The system of administration of justice suffers from much talking in all directions. The country has the most talkative Bar; and the talkative Bench in the world'. He has said that precious time is wasted in this. This is the comment of the former Chief Justice of India. I would request my hon. friend, Shri Bhardwaj, who is also an eminent lawyer, to see that something is done to minimise delays. With these words, I support the Bill.

THE DEPUTY CHAIRMAN: I think, what you said should apply to this Bill also.

SHRI VEERSHETTY MOGLAPPA KUSHNOOR: That is why. I have not taken much time.

★ **SHRI ALADI ARUNA** Alias V. ARUNACHALAM (Tamil Nadu): I whole-heartedly welcome this Bill. Independence of judiciary is the trait of our legal system. To protect the judges against the threat of money power, undue influence, coercion etc., palladium of law is inevitable. If the judges are not properly safeguarded by the due process of law, their firmness, fairness, fearlessness, impartiality and independence will be jeopardised. Credibility of a civilised society depends upon the uprightness of the judges. The founding fathers of our Constitution have already given protection to our judges by incorporating certain articles in our Consti-

tution. They are to be appointed by the President by warrant under his own seal. They will be allowed to continue in service up to the age of 65. During their tenure of office, they cannot be removed by ordinary disciplinary action. They can be removed only by Parliament. Even though our founding fathers, of the Constitution, incorporated article 124(4), providing for removal of judges from service with the approval of Parliament, I am proud to say that so far our Parliament has not exercised such a power. It does not mean that all judges are fair, honest and free from corrupt practices. It has been admitted by the judges themselves that the campuses of the courts have become hunting grounds of corrupt people; the locks of the courts are unlocked by the golden key and the calibre of the judges are declining miserably. Despite this state of affairs, we have not moved a single motion since Independence against any judge. This is because we want to maintain the dignity of the judiciary. We know very well that once this is shaken, it will collapse like a pack of cards. Therefore, we are restrained, patient and well-balanced, but, Madam, judiciary is always teasing Parliament and politicians.

This Bill extends and enlarges the amenities to the Judges even after their retirement. To keep the judiciary to be a national 'sentinel on the *qui vivit*,' no doubt, this measure will ensure the objective aimed at. In the days of Montague, Judges were described as "but the mouth which pronounces the words of law". But the atmosphere is now totally changed. Now the Judges who pronounce the words of law are proclaimed the rule of law. That is why the former Chief Justice of United States Hughes stated, "The Constitution is, what the judges say, it is".

In the name of supremacy of law, in the name of interpretation, in the name of independence of judiciary, in the name of judicial rule, democratic countries have been forced to the senior most District Judges, Therefore, Jackson Gorgea Senator

[Shri Aladi Aruna alias V.

Arunachalam]

rightly pointed out: "I am more afraid of army of judges than army of soldiers".

In this context, I would remind this House about the controversy prevailing between our State and Madras High Court. It is unfortunate to say that seven vacancies of judges in Madras High Court have been kept for the past 2½ years not because of nonavailability of legal luminaries but because of non-cooperation of the Law Ministry at the Centre. To fill up these vacancies our Government recommended three names of the seniormost District Judges, namely, (1) Mr. Paskaran, (2) Mr. Ramalingam and (3) Mr. Belly Gowdha and a lady additional Government pleader. But contrary to the convention, Madras High Court, without consulting the State Government, has recommended another three names from the Bar, namely, Mr. Madhavachari Srinivasan, Mr. Rangarajan Srinivasachari and Mr. Jeyaraman Iyer. The list of persons recommended by Madras High Court has been strongly opposed by the State Government on the ground that the list is caste-ridden and communal-oriented. To register protest against the communal sentiments, our State Government has written a letter to the Law Minister which says:

"The situation and circumstances prevailing in the State are such that it is not conducive to appoint three persons at a time belonging to one forward community.

The psychology of people of Tamil Nadu has yet to reconcile with this kind of consideration of only one community which is the minority community in the State."

Madam, it is very clear that the State Government is firm against those persons recommended by the High Court. The dimension of the protest is still wider. The Tamil Nadu Welfare Association under the presidency of Mr. Royappa, retired Chief Secretary of Tamil Nadu, has opposed tooth and nail the per-

sons recommended by the High Court because it causes imbalance between bar and service, and spreads red carpet to the reactionary force. Moreover, Dravida Kazhagam, a militant social organisation, has proposed to launch an agitation in front of the Madras High Court on 1st September against the recommendation of the candidates of the Madras High Court.

Considering all these things, our Government has repeatedly asked the Law Ministry at the Centre to accept the list of persons recommended by the State Government.

Without disclosing all these facts to this august House hon. Minister, during his reply to a supplementary question put by Mr. Gopalsamy, has blamed our State Government for the delay.

Madam, there is a deliberate delay on the part of this Government. The ball is in your court. You have to take a decision between the two lists. Perhaps, you might have been caught on the horns of dilemma, but to honour the decision of the State Government and to respect the sentiments of the public at large I earnestly request the Government of India to absorb the persons recommended by the State Government and absorb them without further delay. As soon as you absorb these four candidates, for the rest the names will be recommended from the State Government within 24 hours.

With these words, I conclude my speech. Thank you.

SHRI BIR BHADRA PRATAP SINGH (Uttar Pradesh). Madam Deputy Chairman, to my mind despite the provision of the Acts which are already in existence—namely section 197 Code of Criminal Procedure, sections 77 and 78 of Indian Penal Code and Judicial Officers (Protection) Act, 1950—there are several situations which have arisen in the country—e.g. organised gangsterism, terrorism where Special Courts are not constituted and rise of Mafia in many parts of the country—where not only

the witnesses are terrorised and threatened, but the judicial officers are also under great pressure. I know of a particular case when one gangster gang attacked another man in custody before a Judicial Officer, but when the Judicial Officer was required to depose before a court, he backed out and did not support the prosecution. So the situation has reached such a stage. Therefore under the circumstances the protection that was granted by the 1950 Act is not sufficient. So additional protections are sought. The proposed provisions would confer immunity not only in civil action or proceedings but will also confer immunity in criminal proceedings as well. The immunity would be available even after the person has ceased to be a Judge. The requirement of good faith is not required to be met for conferring the immunity, because it is well known not only in one decision but right from the Privy Council up till now that it has been one of the grounds that for malice in law or malice in fact or for malice or ill-will Judges have been prosecuted even for their due discharge of duty or during the course of duty. Our learned Law Minister said in the other House that he was going to implement the 104th Report of the Law Commission. The Bill is for securing additional protection for Judges and others acting judicially and for matters connected therewith. It covers both judges officially designated and also those who are not so officially designated as such and other public servants who are required to discharge judicial or quasi-judicial functions are also protected under this Bill. It is one of the criticism that the Statement of Objects and Reasons has failed to mention the class of judges or judicial officers who are not officially designated as judges. The criticism is that the Statement of Objects and Reasons is found wanting in this respect. But it has been included in the speech of our learned Law Minister. What is the scope of "duties" will be one of the most important questions. It has been asked

whether the scope of the Bill relates to judges' judicial duties only or it relates to his official duties as well. The definition is wide enough to cover it by omission of the words "judicial proceedings". Even to an executive Magistrate, a Deputy Tehsildar or a Tehsildar who is empowered as an executive Magistrate under the Criminal Procedure Code to discharge duties under Chapter VIII of the Code of Criminal Procedure whether immunity from departmental proceedings could also be granted. There are views that it should be extended against judicial proceedings only, but there are other views that it should also cover departmental proceedings. The expression "...any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function" has been a subject-matter of great discussion in the other House. Somebody said, supposing in the discharge of his duty he uses some abusive language against some litigant or against some counsel, then whether this protection would be extended to such an officer. If that interpretation is sought to be put forth, it would be a very difficult situation because that will be extending the protection too far. I think the learned Law Minister will meet such a criticism.

Now the other criticism is whether it is fair to club together legal proceedings and official duties. If the two factors are to be clubbed together, then the acts committed or words spoken get a still wider meaning and it will mean further reduction of the power conferred on the officials who are not judicial officers or who are not covered under section 77 or section 78 of the Indian Penal Code. Why not we consider securing additional protection for Judges and persons discharging judicial functions or quasi-judicial functions and duties?

Now I want to point out one thing—I have done it with regard to the other legislations as well. During

[Shri Bir Bhadra Pratap Singh] this session and the previous session we had two or three legislations with regard to Judges. Why not think of a comprehensive legislation on the conditions and services of the Judges? On other aspects of the matter, a separate Bill came for increasing the number of Judges—Supreme Court Judges, then about providing physical protection of Judges and then for making provisions in the Indian Penal Code itself for such acts and for giving better protection in comparison with other citizens and for giving other facilities so that they may not be required to depend on others in the society, running about and exposing themselves to dangers. Specially now it has become imperative in view of the Mafia gangs which are operating in different parts of the country, in the coal-fields in Bihar Eastern U.P. and so many other places where Special Courts are not constituted because there is nobody to depose against them. So, at such places the dangers are becoming more and more and now therefore there is no indication to restrict a Magistrate whenever he oversteps his jurisdiction. Because, you will find that in a famous Privy Council case in which, somebody was detained for a period and when it was proved that it was maliciously done, then that man was found liable. So, it is for the consideration of our good friend as to who will believe the *bona fides* in the discharge of their legal functions or whether it was malice in fact and malice in law and whether actually those guarantees, even now after this amendment, will save this man.

Now, the general concept is that justice should not only be done but should also appear to have been done. Is this a factor which comes in for consideration while giving this protection to the Judges? But one thing I must say, and that is about the deteriorating standards of judicial officers both at the lower judiciary and at the High Court level. I do not want to say anything about the Supreme Court, but you know that when pronouncement was made in A.K. Gopalan's case in 1952 in the Su-

preme Court, some criticism was made that the highest judiciary of the country had given precedence to the Code of Criminal Procedure over the Fundamental Rights.

And I cannot say and I do not 5 P.M. want to say about the Supreme Court. But it is being said that in the High Courts people do not accept judgeship, that those who are having lucrative practice, good practice, hesitate to accept judgeship. About the lower judiciary, the criticism is coming more and more. It is also being said by many Chief Justices that financial corruption is creeping slowly and slowly into the lower judiciary. And I cannot dream of those days when Munsif was considered to be a pious person and above board to whom every dispute was referred with great confidence. Now civil judiciary is also very much infested with corruption. We have to think very seriously why the judicial standards are going down and why the third arm of our democracy is going to lower levels. So, it is not only to give protection to our Judges from criminal onslaughts, from Mafia, gangs, gangsters, but it is also to develop, to improve, their quality and their standards of life by which they can remain impartial and they can remain fair to the general litigants.

With these words, I support this Bill.

Thank you very much.

SHRI GAYA CHAND BHUYAN (Orissa): Madam Vice-Chairman, this Bill is for securing additional protection for Judges officially designated as such and others acting judicially and for matters connected therewith. So, a person not officially designated as such is also included, and it seems it is mainly intended for those persons mainly.

When there is sufficient protection under section 197 of the Cr.P.C. and section 77 of the I.P.C. and under the Judicial Protection Act, what is the necessity of bringing a legislation of this kind to protect legislative officers, executive magistrates, tehsildars etc. who are doing some legal work, and even those dealing with cases under section 44 of the Cr.P.C., who are not Judges in the normal sense of the procedure. So, Madam, the Statement of

Objects and Reasons, as stated by the hon. Minister, is not convincing to me. I do not know why such a Bill was required to be introduced.

In clause 3 of the Bill the words "official duty" can be interpreted in various ways which is highly objectionable, when it will be common in practice and in force. In this Bill, Judge means not only a person officially designated as such but also a person who is empowered by law to go in legal proceedings. Why instead of "legal" is it not said "judicial"? Instead of saying "legal proceeding" it should have been mentioned in the Bill as "judicial proceeding". Sir, official duty and legal proceeding are separate. So, the words "official duty" are highly objectionable. Instead of "legal" the word "judicial" should have been used. The individual dignity and the rights which are guaranteed by the Constitution will be at peril and in danger if such a Bill is passed. The Judicial system by this Act will further deteriorate. There should be a systematic system and a code of conduct between the bar and the Bench. As regards the matter of practising in all such courts from the lowest to the highest of the judicial officer or the judge himself makes utterances or does something which comes under the purview of contempt of court, nothing can be done against him. This is happening many times in this country and in many a court.

Nowadays the relations of judges, such as sons, brothers and other relations, practice in the same court, and the people, the clients and the litigant public have an apprehension in their minds that favouritism has already entered into the decisions and appointments of judges of High Courts. If you take statistics, most of the judges are somewhat, directly or indirectly, related to a previous judge, in all the High Courts. When the Chief Minister and the Chief Justice compromise between themselves, each is able to have his nominee very suitably placed. I can cite glaring instances. If statistics are taken about the Orissa High Court by the hon. Law Minister, one per cent of a community in the State are habitually becoming judges because of their relations being to previous judges and Chief Ministers.

Madam, the court is vigilant to invoke its authority, but you will find that nowadays, due to erosion of quality, there are many conflicting interpretations and rulings, for which the litigant public are paying a very high price. They are put to harassment. There are conflicting rulings in the same High Court by the same judges or different judges. Why is it so? It is because talent is not coming into the judiciary due to this favouritism. So my suggestion is this. In the Indian Administrative Service, competition is there so that talent comes up. Similarly there should be an All India Judicial Service. And just like the public Service Commission, there should be a commission here also so that talented judicial officers can be appointed.

Madam, there should be a limit to the immunity given to the judges. I feel that this Bill will undermine the very concept of the judicial system which has already been sufficiently safeguarded under the Constitution and various Acts. Thank you.

SHRIMATI SUSHILA ROHATGI (Uttar Pradesh): Madam Deputy Chairman, a little earlier,...

श्री जगदम्बी प्रसाद यादव (बिहार) :
आप वित्त से विधि में आ गई ?

श्रीमती सुशीला रोहतगी : वित्त भी कोई बुरी चीज नहीं है।

Madam Deputy Chairman, a little earlier one of our hon. colleagues in the Opposition said very loudly and resonantly that he is more afraid of the army of judges than an army of soldiers. Madam, I beg to differ from him because I am not afraid of either of them because the army of judges interpret the law and protect the citizens and the army of soldiers protect our borders from covetous eyes and also protect the peaceful citizens from lawlessness. Therefore, I do not see how any question of being afraid of either of the two arises here.

Madam, while welcoming and supporting this Bill, I would like to say that two very relevant things have been raised today which had been recommended earlier by

[Shrimati Sushila Rohatgi]

them protection in criminal proceedings and also in respect of civil proceedings. I think, seeing the times, the pressure, the tension and the violence in the atmosphere and taking everything into account, this is absolutely timely and necessary. What do we expect, especially as the most populous democracy in the world upholding the principles and institutions of democracy of which judiciary is extremely important? Should it not be our effort to strengthen this spirit? How could we expect judges to do their best? After all, they are human beings. They are doing their best although there is still scope for improvement. They have to be kept free from the element of fear, the element of uncertainty—what will happen to their families, what will happen to them, what will happen to their future after retirement. These are the kind of fears which can arise. We have among us judges who have, in spite of these difficulties, stuck to their duty. There are occasions when these calculations have to be taken into consideration. Seeing the threats, seeing the inroads and the erosion into our values of life and the prevalence of violence in the atmosphere, I think, judges who are expected to act—who mostly act—with fearlessness, have to be provided necessary protection. And I think it is absolutely necessary and I believe every honourable Member will like to support this Bill today.

Apart from that, I would also like to say that there have been cases when justice has been denied because it has been delayed. I was going through some of the reports and I noted that at the end of December 1983 there were one million cases pending. I hope the arrears have been brought down now. I would like to ask the Minister what the exact position today is. Any delay in doing justice to a litigant means denying justice to him. It is very unfair. That is what judges are expected to do—do justice to the litigants and expeditiously too. Therefore, I am sure efforts are being made to reduce

the arrears to a considerable degree. Not only that. Presently obtaining justice is very expensive. Every effort must be made to see that justice is done to the litigant as less expensive as possible and in as short a period as possible. There were at one time many vacancies of judges in Allahabad High Court. I come from Allahabad. I believe that this also has been remedied now to a very great extent. Apart from Allahabad, I think the number of vacancies of judges all over has also been taken stock of and many of those vacant posts have been filled up now so that justice can be expeditious and less expensive. These are the two things that I wanted to highlight and I think these have been taken care of by the Bill that has been introduced today.

Apart from that, judges have to maintain a standard of their own they have to maintain the dignity of the court. They have to be ensured a certain basic standard of living so that they can prove to the people that they can act without fear, without favour, without favouritism. Complaints do come that they have relations, that they have done certain things which are not in consonance with the high office, with the high position, they are holding. I think this Bill will go a long way in helping that in that direction.

Before I conclude I would only say I am reminded of a little story of a medical practitioner. He had a scalpel in his hand and he was to perform an operation on an expectant mother. He knew that there was very little chance of the child he was going to operate on the mother for, being born perfect, he knew that 99.9 per cent the child would be a very handicapped child. The doctor found himself in a dilemma, whether he should allow such a child to be born, a child who would be handicapped all her life, a child who would be struggling between life and death. Ultimately his sense of duty as a doctor—to give life not take it—prevailed and the Law Commission and that is to give

made him carry out the operation. The operation was successful. The helped the child later on. After twenty years there was that child grown in to a hale and hearty adult. This is the balance of justice which judges have to maintain. Irrespective of what it means to a judge emotionally or otherwise, his duty is to do justice and he has to do justice in consonance with the spirit of the Constitution.

With these words, Madam, I support and welmoce this Bill.

श्री जगदम्बी प्रसाद यादव : माननीय उपसभापति महोदया, न्यायाधीशों को विशेष संरक्षण देने की जो बात है, गायद ही किसी को उस पर एतराज होगा। मैं इस बात को इस रूप में लेना चाहता हूँ कि देश में अगर प्रजातंत्र को कायम रखना है और प्रजातंत्र तभी कायम रह सकता है जब न्यायालयों की स्वतंत्रता हो और न्यायालयों की स्वतंत्रता की प्रतिष्ठा तभी रह सकती है जब न्यायाधीश सही मायनों में समाज में प्रतिष्ठित हों। यह एक ऐसी प्रक्रिया है जिसको हम यह भी कह सकते हैं कि न्यायाधीश इस विशाल देश के प्रजातंत्र का रक्षक भी है। जब मैं इसको इस अर्थ में लेता हूँ तो मैं मंत्री महोदय को कलावाज कहूँ या इनके सचिवालय को कलावाज कहूँ कि जहाँ कहीं पर भी भुविद्या और संरक्षण की बात आती है तो वहाँ पर नौकरशाही अपनी नाक जरूर घुसेड़ देती है। जहाँ तक जजों का विशेष भुविद्या देने की बात है, कोई इस बात पर एतराज करने को तैयार नहीं। लेकिन जब मंत्री महोदय इसमें समाहर्ता और दंडाधिकारी को सम्मिलित करते हैं, न्याय की प्रक्रिया का नाम जोड़कर, तो उनसे एक सवाल पूछने की इच्छा होती है। मैं गांव का रहने वाला हूँ। गांव में पंचायत मरपंच करता है। वह भी न्याय करता है, किसी के पक्ष में और किसी के विपक्ष में और डाइरेक्ट एक्शन कहाँ होता है? प्रहार तो गांवों में होता है जहाँ सुरक्षा की बिल्कुल कमी है। मंत्री जी, आपने उस छोटे से न्यायाधीश को कितनी सुरक्षा प्रदान की है, कितना संरक्षण प्रदान किया है? आप एक जाने-माने वकील हैं। आप अगर इसमें समाहर्ता

और दंडाधिकारी को निकाल दें तो मैं मान सकता हूँ कि आप सचमुच में सरकारी तंत्र के शिकार नहीं हुये बल्कि आप इंसाफ के लिये जो वकालत करने रहे हैं और जो जजों की स्थिति आपने देखी है, आपने ठीक उसके अनुसार किया है। समाहर्ता या दंडाधिकारी का जो संरक्षण का अधिकार है... (व्यवधान) जो स्वयं अपने को समाज का रक्षक समझते हैं तो अब उस जज को भी रक्षक की जरूरत होगी और उसकी रक्षा का भार भी डिस्ट्रिक्ट मजिस्ट्रेट, जिला कलेक्टर करेगा। आज उसको भी इसकी आवश्यकता होगी। एक शब्द है इसमें ऐरेना। ऐरेना में, जज कभी गलत काम भी कर सकता है और वह गलत काम बार बार हो सकता है। तो क्या उसे गलत काम के लिये ऐरेना के भीतर सुरक्षा देंगे। मैं नहीं चाहता हूँ कि मैं इन चीजों का उल्लेख करूँ। लेकिन मैं यह जरूर चाहूँगा कि यह सुरक्षा जो समाहर्ता और दंडाधिकारी के बारे में है, मंत्री जी इस पर आवश्यक प्रकाश डालें। यह समाहर्ता जिसके हाथ में स्वयं डंडा है, स्वयं रक्षा का भार है, उनको संरक्षण की आवश्यकता क्यों और कैसे महसूस हो गई? मैं दूसरी बात यह कहना चाहता हूँ कि आज जजों को अगर संरक्षण की आवश्यकता है तो सरकार से ही है। धीरे धीरे सरकार जजों को अपनी मुट्ठी में लाने का सशत प्रयास करती जा रही है। पहले ट्रांसफर के बारे में फिर नियुक्ति के बारे में। अगर ये दोनों चीजें सरकार घुमाफिरा कर अपने हाथ में रखती है तो दंडाधिकारी जिसको स्वतंत्र जजमेंट देना होता है, इंसाफ करना होता है वह प्रभावित होता है। आज अगर जज की प्रतिष्ठा में कहीं कहीं उंगली उठती है तो वह इसलिये उठती है कि लोग मानते हैं कि पता नहीं कि जज कभी सरकार से प्रभावित न हो जाय। आज यह एक सवाल समाज के सामने उठा हुआ है। इसलिये मंत्री जी मैं चाहता हूँ कि आप उन्हें सरकार से कैसे संरक्षण देंगे? आपने गुडों, जो गलत ढंग से गुडागिरी करते हैं वे मजा पाने के बाद सजा देने वाले को डरा धमका कर या बाद में उस पर आक्रमण के डर से वह गलत इंसाफ, नाजायज इंसाफ न करें, इसके लिये आप संरक्षण तो दे रहे हैं, लेकिन अपने द्वारा जो आप उनको संरक्षण नहीं देंगे उसक

[श्री जगदम्बी प्रसाद यादव]
 आपके पास कौन सा इलाज है? दूसरी बात भी मैं कहना चाहता हूँ कि आज जजों को संरक्षण समाज में बढ़ते हुये जातिवाद से, संप्रदायवाद से, समाज में जो भ्रष्टाचार का प्रभाव बढ़ता जा रहा है जज भी नौकरी करते हुए इस समाज में रहता है। उन्हें इस समाज का मुकाबला करना पड़ता है। मैं जानना चाहता हूँ कि इसका जो प्रकोप इन के ऊपर होगा इस प्रकोप के कारण इन्साफ नहीं दे पाएंगे। आप वकील रहे हैं आप जानते हैं कि जिला स्तर न्यायालय में कोई न कोई जज जातिवाद के कारण कोई सम्प्रदायवाद के कारण कोई भ्रष्टाचार के कारण लोगों का इशारा उस ओर होता है और समाज का यह सब से बड़ा भयंकर प्रहार जजों के चरित्र पर उसके कार्य पर है। मैं नहीं समझता कि सरकार ने इस छोटे से बिल में इस पर कोई संरक्षण या रोक की गारंटी समाज के सामने प्रस्तुत की है। इसीलिए मैं चाहता हूँ कि जो यह भयावह स्थिति है समाज में उसका जो प्रभाव जजों के ऊपर पड़ रहा है उसके क्या कारण है? एक सवाल और है। जज आज जिस स्तर के हमें चाहिए उस स्तर के जज नहीं मिल रहे हैं। मैं मंत्री जी से बात कर रहा था। उन्होंने कहा कि जज का पर्याप्त वेतन मिलता है लेकिन मैं जानता हूँ कि जज जो इन्साफ करता है कोर्ट में जो उसके सामने वकील बहस करता है कई वकील ऐसे हैं जो एक दिन में इतना कमाते हैं जितना जज का एक महीने का वेतन होता है। ऐसे वकील जिन की इंटीग्रिटी ऐसे वकील जिनकी मेरिट समाज सेवा में आ सकते हैं वैसे वकील आपको कैसे प्राप्त होंगे, क्या यह जो संरक्षण का बिल आप लाय है इससे ऐसे वकील आपको प्राप्त होंगे जिनको आप जज बना पायेंगे। एक बात और इससे जुड़ी है। अगर आपको जज मिलते भी हैं आज हिन्दु-स्तान में चाहे सुप्रीम कोर्ट हो चाहे उच्चतर न्यायालय हो या जिला स्तर का न्यायालय हो आज जजों की संख्या पर्याप्त नहीं है। सरकार ने इसे स्वयं स्वीकार किया है और सरकार ने इनकी संख्या बढ़ाने की बात भी की है। संख्या इतनी नहीं है कि लाखों केषों का निपटारा इस देश में आसानी से हो। आप कहते हैं कि गरीब को हम इन्साफ

देगे गरीब को इन्साफ कहाँ आप देगे पैसे वाले को भी इन्साफ नहीं दे पा रहे हैं। हमारे अनेक मित्रों ने यह बात सामने रखी कि वे भी इन्साफ नहीं पा रहे हैं तो गरीब कहा से इन्साफ पायेंगे। अब दूसरी इन्साफ की पद्धति गांवों में जागृत हो रही है। आपने अच्छा तरीका निकाला कि गांव में जाकर आन दी स्पाट इन्साफ मिले। आन दी स्पाट इन्साफ देने के लिये मैं कोई व्यवस्था नहीं देख रहा हूँ। इसलिए आप विचार कर के देखें। बिल खाली सिर्फ संरक्षण का है आपने कहा कि क्रिमिनल से संरक्षण नहीं था उनको क्रिमिनल से भी संरक्षण देगे लेकिन सरकार जब कोई बिल लाती है तो हमेशा पीसमील बिल लाती है। पीसमील लाने से फिर कुछ दिन बाद लगता है कि इसमें कुछ कमी रह गई है अगर उस कमी को दूर कर दें तो इस समस्या का निदान होगा। इसलिए मेरे मित्र ने भी सवाल उठाया है। एक सवाल अलादी अरुण जी ने उठाया है उन्होंने तमिलनाडु में एक खास जाति के वर्ग के जजों के बारे में कहा लेकिन मैं इस बात को इस रूप में नहीं लेना चाहता। इतना जरूर कहना चाहता हूँ कि आज ज्युडिशियरी में जिन पिछड़े वर्गों का न्याय देने की बात हम करते हैं उनके वर्गों में से न्यायधीशों की संख्या आज हिन्दु-स्तान में बहुत कम है, नहीं के बराबर, है, हरिजन, बनवासियों की संख्या तो नगण्य है। इनका तो भगवान जाने। सवाल यह है कि समाज में यह संरक्षण होता है, पार्लियामेंट में संरक्षण होता है तो इन वर्गों के पार्लियामेंट में सदस्य हैं मन्त्री हैं, वहां पर इनका संरक्षण नहीं होता है इसलिए वहां इनकी संख्या नहीं है। इसलिए समाज के किसी मुद्दे पर बात होती है तो इस मुद्दे पर विचार करना चाहिए कि इन वर्गों के लोगों को हम एक समानतावादी दृष्टि में रख सकते हैं। मैंने आपका ध्यान इन मुद्दों पर आकर्षित किया है मुझे उम्मीद है कि आप इन समस्याओं का निदान करते हुए बताएंगे, सचमुच में इस छोटे से बिल से कुछ यह पता लगे कि अपने समाज के जजों की हित की कामना से इस बिल को लाए हैं।

SHRI PAWAN KUMAR BANSAL
 (Punjab): Madam, under our Constitution, judiciary is one of those

three important institutions on which rests the heavy edifice of our democracy. It is also an exaggeration to say that, in fact, it is the judiciary which is charged with the sacred duty of acting as the watchdog or the guardian of the people's rights and the democratic institutions and also to enforce the rule of law which is one of the basic canons of our polity. Whether it be a private dispute over property or an action at Tort, or it is the question of redress of one's grievance against a Government action or the question of trying a delinquent for violating any provision of law or for committing any unlawful act, it is always the judiciary to which we turn for adjudication and final verdict. That is the exalted place which is given to the judiciary and it is strictly in consonance with that concept that the present Bill has been brought about. This Bill makes a salutary provision in as far as it seeks to confer on a judge immunity from legal action against any Act committed, thing done or word spoken in the discharge of his judicial functions or official duties.

This, I hope, would have the outright approval of the entire House; but there were certain hon. Members who expressed the opinion that in the presence of the Act of 1850, there was, in fact, no need to bring about the present Bill and for that the hon. Minister pointed out the difference or the lacuna which was sought to be overcome by the present enactment. However, I would like to join those hon. Members who say that when we give a thought to the question of judges or to anything which has to do with the judges, it would be in the fitness of things to bring about a comprehensive legislation on the subject. It has often been said in this House that the terms and conditions of service of the judges are not good as to attract the best talent from the Bar to the Bench.

Besides providing for the present protection in this Bill, there is another

aspect which needs to be considered by all in this House and outside. A Judge, by the sheer form of his functions, exposes himself to the wrath of the unscrupulous amongst the litigants who may choose to embarrass him in any form and the cases are not wanting where the Judges have been physically assaulted or threatened for passing a particular order or judgment. As such, some effective steps need to be taken to enable a judicial officer to discharge his duties dispassionately, honestly and fearlessly.

Madam, there are plethora of enactments and laws that we have on various subjects in our country and the present Bill seeks to add another to that. The result is we sometimes forget about an Act. One example that came prominently before us was at the time of the passing of Anti-Defection Bill and we forgot to take note of extending that provision to the Union Territories. Therefore, the matter had to be brought to the Parliament again. And that is precisely what we are doing today when in the form of the present Bill or any other Bill to do with the Judges, we do repeat what we say on one subject and then again on the other. So, it would be in the fitness of the things that a comprehensive legislation is brought about to cover the entire spectrum of things concerning the judiciary in the country. Judiciary, I would say, is the fountain from which flows the nectar that inspires confidence in the citizens about democratic values and institutions of the country. However, unfortunately, maybe because of the conditions of service or the general deteriorating standards, we do not really attract the best possible talent to the judiciary. A Judge like the Cesar's wife, we admit has to be above suspicion. And I, therefore, urge upon the hon. Minister to come forward with a legislation, an all-embracing legislation to provide for the best possible conditions for Judges so that they, in fact, come up to the expectations of the ordinary human being and there would be no situation in which like the ideal Ram

[Shri Pawan Kumar Bansal]
Rajya, the litigant would feel sore but accept respectfully a judgement that has been delivered.

With these words, Madam, I support the Bill but with a hope that something is urgently done to improve the lot of the Judges and to instil confidence in the public about the functioning of the judiciary.

श्री सत्य प्रकाश मालवीय (उत्तर प्रदेश) : माननीय उपसभापति जी, इसका जो उद्देश्य और कारण है और इसके अनिरीकृत माननीय विधि मंत्री जी ने जो लोक सभा में भाषण दिया था और आज भी इस बिल को प्रस्तुत करते समय अपने भाषण में जो उन्होंने विचार व्यक्त किए हैं उनको मैं बहुत ध्यान से सुना है, लेकिन फिर भी हो सकता है कि मेरी समझ में कुछ कमी हो, मेरी समझ में नहीं आ रहा है कि इस विधेयक को लाने की क्या आवश्यकता पड़ी और न्यायिक रूप से कार्य करने वाले अन्य व्यक्तियों के लिए संरक्षण देने के लिए यह विधेयक लाया गया है, इसका मतलब यह हुआ कि सरकार इस नतीजे पर पहुंची है कि अभी तक जो उसके लिए व्यवस्था के जो प्रावधान थे उनमें कुछ कमी थी। जैसे कि भारतीय दंड विधान या इंडियन पीनल कोड की धारा 77 में दिया है :

"Nothing is an offence which is done by a judge when acting judicially in the exercise of any power which is given or which in good faith he believes to be given to him by law."

या आई०पी०सी० की धारा 228 या जुडिशियल आफिसर्स प्रोटेक्शन एक्ट जिसमें कि सिविल लायबिलिटी से जजों को संरक्षण प्रदान किया गया था या क्रिमिनल प्रोसीजर कोड की धारा 197 में इस बात का प्रावधान है कि किसी सरकारी कर्मचारी के विरुद्ध यदि हम फौजदारी का मुकदमा दाखिल करना चाहें तो उसके लिए राज्य सरकार की अनुमति की आवश्यकता होती है या एक और कानून है जिसको कंटेम्प्ट आफ कोर्ट कहते हैं क्योंकि इसमें उद्देश्य और कारणों में मंत्री

जी ने यह नहीं बताया और न ही अपने भाषण में स्पष्ट किया है कि आज तक कितने ऐसे मामले न्यायालयों में हुए हैं चाहे वे दीवानी हों या फौजदारी के न्यायालयों में जहां पर किसी मजिस्ट्रेट या जज के खिलाफ केवल इस कारण मुकदमें दाखिल किए गए हों कि उन्होंने अपने मुकदमें में कोई फैसला दिया हो, यह बताने की कृपा करेंगे? दूसरा मुझे यह भी आपत्ति है, सब क्लॉक टू के क्लॉक ए में :

"In this Act, "Judge" means not only every persons who is officially designated as a Judge, but also every person...

(a) who is empowered by law to give in any legal proceeding a definitive judgment, or a judgment which if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive."

इसका मतलब यह हुआ कि किसी भी कानूनी कार्यवाही के संबंध में यदि किसी मामूली अधिकारी के पास भी कोई मामला लंबित होगा या विचाराधीन होगा तो उसके विरुद्ध भी हम कोई कार्यवाही नहीं कर सकेंगे। जैसे उत्तर प्रदेश में यू०पी० महानगरपालिका अधिनियम है 15०पी० कार्पोरेशन एक्ट वहां के जो एसैसमेंट के मामले हैं, एक टैक्स सुपरिटेण्डेंट उनके पास दिया जाता है। तो इसका मतलब यह हुआ कि टैक्स सुपरिटेण्डेंट उस कार्यवाही के सिलसिले में अगर कोई ऐसा काम करेगा, जिसको करने का उनको अधिकार नहीं है, तो भी उनके अधिकार के खिलाफ हम न्यायालय या दीवानी न्यायालय में कोई मुकदमा नहीं ला सकते। मैं विधि मंत्री जी का ध्यान उन्हीं के लोकसभा में दिए गए भाषण की ओर आकर्षित करना चाहता हूँ --

"I practised law for 20 or 25 years or more. I have had an occasion when the judge seriously differed with me. He even went to the extent of telling me that my argument was nonsense."

ऐसे भी जज हो सकते हैं, जो किसी वकील को या किसी न्यायालय की शरण में जाने वाले नागरिकों को नोन-सेंस कहने के अलावा और भी शब्दों का इस्तेमाल कर सकते हैं। आज हमारे पास इस बात के अधिकार हैं। तो न्यायक्षोषों को या ऐसे लोगों को, जो मुकदमों में फैसला करेंगे कानूनी कार्यवाही में, उनको संरक्षण देने के नाम पर जो मौलिक अधिकार हैं, उन्हीं का आप हनन करने जा रहे हैं क्योंकि आज यदि कोई जज हमको कोई ऐसी बात कहता है, जो उनका नहीं कहनी चाहिए तो किसी भी नागरिक को इस बात का अधिकार है कि वह दफा 500 आई०पी०सी० के अंतर्गत मुकदमा चला सकते हैं। उसी तरीके से हर्जाने का या सिविल कोर्ट में जाकर मुकदमा चला सकते हैं। लेकिन इस संरक्षण के अधिकार को देकर हम-नागरिकों के मौलिक अधिकार आप छीन रहे हैं।

दूसरा स्टेटमेंट आफ ओब्जेक्ट्स एण्ड रीजन्स में कहा गया है अन्त में —

"It will be difficult for the Judges to function if their actions in court are made the subject of legal proceedings either civil or criminal."

मंत्री जी इस बात का भी स्पष्टीकरण करने की कृपा करेंगे कि कोई भी आदमी, जो फैसला देता है, चाहे जज हो या एग्जीक्यूटिव अथॉरिटी हो, उनके फैसले की हम अपील कर सकते हैं। उनके फैसले की अपील के बाद रिवीजन में जा सकते हैं। स्टेटमेंट आफ ओब्जेक्ट्स एण्ड रीजन्स में आपने व्याख्या की है, इसकी क्या आवश्यकता थी? कहीं ऐसा तो नहीं है कि इससे हमारा जो अपील का अधिकार है या रिवीजन का अधिकार है, उसका आप छीनने की साजिश कर रहे हैं। इसमें साफ दिया हुआ है —

"It will be difficult for the judges to function if their actions in court are made the subject of legal proceedings either civil or criminal."

दूसरे यहां पर सेक्शन "2" के सब-क्लाज़ "ए" में है लीगल प्रोसीडिंग,

जिसको हिन्दी के तर्जुमों में कहा जाए तो विधिक-कार्य। यह लीगल-प्रोसीडिंग क्या होगी, किस प्रकार की लीगल प्रोसीडिंग होगी? इस सिलसिले में एकट में कोई परिभाषा नहीं की गई है। मैं समझता हूँ कि यह बहुत व्यापक है और इस प्रकार से लीगल प्रोसीडिंग की व्याख्या न करके मामूली से मामूली अथॉरिटी को भी आप इस बात का अधिकार देने जा रहे हैं कि वह निरंकुश होकर काम करे और जब वह निरंकुश होकर काम करेंगे, तो उनके विरुद्ध हम किसी न्यायालय की शरण में नहीं जा सकते हैं।

अन्त में मुझे यह भी कहना है कि मैंने खुद भी यहां पर करीब-करीब पांच छह कानूनों को गिनाया। तो इस संवत्स में जल्दवाजी में कोई काम न करके और सारे पुराने कानूनों को देखकर के आपको एक व्यापक और कफिहेंसिव बिल लाना चाहिए। तभी सरकार का जो मकसद है बिल को लाने का, वह पूरा हो सकेगा।

SHRI YALLA SESI BHUSHANA RAO (Andhra Pradesh): Madam Deputy Chairman, I welcome this Bill insofar as it relates to the judges in regard to the discharge of their judicial duties. So far as the definition given in clause 2 of the Bill is concerned, it says that in this Act, 'Judge' means not only every person who is officially designated as a Judge, but also every person who is empowered by law to give in any legal proceeding a definitive judgement. Here it is not stated a 'judicial proceeding', but it is only a 'legal proceeding'. This Bill is also meant for securing additional protection for Judges and others acting judicially and for matters connected therewith. So, this is a Bill meant not only for Judges who are officially designated as such, or as we think traditionally occupy the posts of Judges, but for also these who are not so officially designated. Even an Executive Magistrate, a Deputy Tehsildar, who was empowered to discharge legal proceedings and those which are not strictly called judicial proceedings, they are also protected under this law. They are not in any way judicial minded or trained or educated in that field. By this enlarge-

[Shri Yalla Sesi Bhushana Rao]

ment of scope to such persons there is always the possibility of greater misuse. My humble submission is, this Bill applies not only to judicial duties discharged by the judges but also applies to official duties. Then, in the case of official duty, the power of immunity is enlarged and the judges can do anything and everything against a person. This immunity comes not only when acting in judicial capacity but also acting in the official capacity and not only in the decision that a judge has given but the act that he does or the words that he spoke in the course of the proceedings. This should not be there because this immunity which gives power is not right in the process of judicial system. So I humbly submit to the hon. Minister of Law that there is no need for this immunity for any person or official on duty. Recently we enacted so many piecemeal legislations. There was an enactment for the allowances that we recently passed; there is a Bill pending regarding the number of judges and now we are passing this enactment. Instead of piecemeal enactment, I request the hon. Minister to have a comprehensive mode of legislation for the judiciary and the Bar. It is necessary as there is always some grumbling or some criticism in their transfers, in their promotions, in their service and in other respect also. Likewise, is also must apply to the Bar.

With these words, I appeal to the hon. Minister to consider these aspects. Thank you.

SHRI SANKAR PRASAD MITRA (West Bengal): Madam Deputy Chairman, I was encouraged to take part in this debate by the second sentence in the Statement of Objects and Reasons. In this sentence, it is said: "It is essential to provide for all immunities necessary to enable judges to act fearlessly and impartially in the discharge of their judicial duties." This sentence, it seems to me, is a departure from the trend of thinking when three judges, and later on one more judge of the Supreme Court, were superseded or when High Court judges and Chief Justices were transferred from one court to another purely on political grounds at the instance of a high judicial authority who was anxious to please or placate the executive Govern-

ment. Some persons ignorant of the judicial process charge that in exercising powers of judicial review and declaring void any law made by the legislature, the courts adopt an attitude of confrontation with the Legislature. This is a criticism which goes against the elementary principles of Constitutional law. We have adopted a quasi-federal system of Government and a written Constitution. Disputes therefore are bound to arise about legislative competence. The Constitution has enjoined upon the courts the duty to settle such disputes upon going into the question whether the challenge to competence is sound and well-founded. But judges must know their limitations also and exercise self-restraint. They must be interested in the law as a kind of discipline. The role of courts is not to lay down policies, but merely to act as brake against the deviations or violations of law. Judges must be guided by an inner compass that evolves of a moral and rational view. They must have a commonsense reaction to things than a strictly doctrinaire approach. Judges are carrying out Constitutional functions, which are indeed delicate. Every time, a judge says that the law is unconstitutional, he is overriding a democratically-reached decision. The Constitution requires the judges to do that, but it requires them to do that only with great caution and circumspection. The court should not suffer from a sense of mission; that is the function of the Legislature, of the elected representatives of the people.

Madam, I was somewhat confused by a statement made by my esteemed and hon. friend, the hon. Minister of State for Law, in the Lok Sabha, when he introduced the Bill. In the summary which has been supplied to us, this is what I find—I quote:

"While the Supreme Court was fully autonomous, in the case of High Courts and the judiciary down below, was absolutely under the control of the Government in the matter of taking any action against them."

I do not know whether he has been correctly reported.

SHRI H. R. BHARDWAJ: That is incorrect reporting. This has already been

rectified. You got the uncorrected report. I said, nobody is under the Government control, in the case of lower judiciary.

SHRI SANKAR PRASAD MITRA: This was my feeling, that he was not correctly reported. That is why, I pointed out to you that if there is any mistake in the original speech, you should correct it.

Madam, I want to say only this that in our country, I have observed that some of the Supreme Court Chief Justices and some of the Supreme Court Judges tend to forget sometimes that the Constitution has not given them any supervisory powers over High Courts. The High Courts are supreme in their own spheres. It is the High Courts which have supervisory powers over subordinate courts under article 235 of the Constitution. The Supreme Court is merely a court of appeal in Constitutionally-specified circumstances, and it is nothing beyond just a court of appeal, without any supervisory jurisdiction whatsoever over High Courts. This is indeed a tragic feature in our judicial system today, which has penetrated into the system. While supporting this Bill, I put the record straight and express the hope that this feature would soon come to an end, in the larger interests of judicial administration in our country. Thank you, Madam, for giving me this opportunity.

SHRI H. R. BHARDWAJ: Madam Deputy Chairman, at the outset, I must express my thanks to all hon. Members who have participated in the discussion on this Bill. There are issues regarding the service conditions of judges, regarding delays, the expenses involved in litigation and the facilities to be provided to the courts and litigants. But I do not think it would be fair to take the time of this august House in discussing those issues here now. There have been demands from several Members that a comprehensive Bill should have been brought forward so that these issues are sorted out at one time. I regret I am unable to do so because the hon. Members will appreciate that when you amend law regarding the Supreme Court Judges that is altogether a different sphere, when you amend certain amenities and all those things, they are governed by a different

law. When you amend provisions regarding subordinate judiciary, that is yet altogether a different sphere and when you amend laws like the present one, that is altogether a different sphere because when you talk of the enquiries against Supreme Court and High Court Judges altogether a different procedure is laid down, but with regard to other Judges there is altogether a different procedure. So, I cannot club them together because laws do not permit me to do so. Similarly, with regard to the amenities for the Supreme Court Judges, that will have to be done through a different law, but that is not so with regard to other Judges and judicial officers. So, that is a matter where the Members will kindly review their statements and that is why it cannot be done at one time.

So far as the service conditions of Judges are concerned, we have already made the statements that we have been doing it and after we took over in January I have the proud privilege to have moved two or three legislations my senior colleague, Mr. Sen, also has said that whatever matters were pending before we came here, have already been implemented. In 1983 there were certain recommendations that no action was taken on the pending matters, but after 1985, within six months, we have been able to collect those pending matters and now we are shortly meeting with the Chief Justices. On 31st we are going to have a joint meeting. On 29th or 30th they are coming here and on 31st we are having a joint meeting of the Chief Justices from all the High Courts, Chief Justice of India, Chief Ministers and the Law Ministers. They will be talking together over all the matters with regard to their service conditions, improvement in the courts etc....

Interruptions

Our agenda is very comprehensive and we will discuss them.

About emoluments, some people really do not appreciate that the Judges' salary as prescribed in the Constitution is not the only thing that they get. For example, a Supreme Court Chief Justice gets Rs. 5000 as salary under the Constitution. Then we provide him dearness allowance, which after the latest amendment, would roughly

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be Rs. 2700. Then we have given a sumptuary allowance of Rs. 500. That would be added to this. Then we have given conveyance allowance that would be added to this. Then we are giving electricity and water charges.

SHRI SANKAR PRASAD MITRA:
Free house.

SHRI H. R. BHARDWAJ: They get full furnished free accommodation. We charge nothing from them. So, that is another facility. So, if you roughly look at the whole thing that is being paid, to the Judges, it is not as though they are not paid anything. That is not really so, meagre considering the situation in the country. Members of Parliament, Ministers and other Constitutional functionaries, what are they being paid. So, this system is being reviewed. So far as the Judges are concerned, we are still anxious to know what more can be done. The suggestion of conveyance allowance of Rs. 500 was offered by the Judges themselves, but in the meantime some inflation in petrol price has come up and so it has become inadequate. We are prepared to go into that. Now the hon. Members will appreciate that from the very beginning we are honestly working on the aspect of cooperation. Not only that, we are trying to evolve a system to really be in social touch with the Judges. Social touch means, Judges are also highly respectable persons in the society, they have to face the tensions of life in the society. When two brothers fight, where do they go? They go to the Judges. And if the Judges are not in a proper frame of mind, they will not be able to solve the tensions of the society. We want to let them be free from tensions of their own social problems. With that view we are going. We are really very happy to tell this august House that the Judges also feel the same way that there is a difference of approach now.

Now, with regard to Justice Mitra's observation about a proper approach being adopted. I am very grateful to him. I can assure you that so far as the supersession matter is concerned, we are absolutely not prepared to supersede a Judge

who really deserves any promotion. Why after all should this type of an approach be adopted by us that you supersede one Judge and give promotion to another? How are we concerned? For us they are all highly respectable Judges and they are equal. There is absolutely nothing in that. We have taken certain decisions recently. People did not expect us to take them. But then there are so many things the present Government has done which people never expected that the same would happen. We can assure this House that judiciary will be treated with utmost respect; their comforts, their working in the courts will be looked into expeditiously, notwithstanding our discomforts. This is one aspect which has been raised, though not directly connected with the Bill which is in our hands for discussion and passing. But these aspects were mentioned and therefore I just wanted to put the record straight on these issues.

With regard to the observation of my friend, Mr. Bansal, that in the Anti-Defection Bill we forgot to bring the Union Territories. I would like to say that this is not correct; we did not forget it; but the law that was to be passed with regard to the Union Territories was not a constitutional amendment. The two things could not be clubbed together because the Fifty-second Amendment was a constitutional amendment and the other one was not a constitutional amendment. So they had to be brought separately.

SHRI PAWAN KUMAR BANSAL:
Why not at the same time?

SHRI H. R. BHARDWAJ: How can you bring a constitutional amendment with an ordinary law? In constitutional amendment you have to exercise, on every clause, two-third present and voting majority, which is not necessary for the other law. So the whole exercise is strenuous when it is a constitutional amendment bill. It is not that way when it is an ordinary law. So these observations I just wanted to make in order to put the records straight.

Now coming to the present Bill, Madam, I have stated in my observations when I started that three fundamental issues have

been put in this Bill. One is that a Judge will be protected after this Bill is passed in criminal cases also. Now the question was raised, firstly, with regard to the definition of a "Judge". I am not putting a new definition in the Bill. If hon. Members care to read section 19 of the Indian Penal Code, the same definition is there, excepting the word "officially" has been added. And I shall explain presently why this word was added. I read with your permission the definition:

"The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person who is legally empowered by law to give in any legal proceedings a definitive judgment...."

So this is bodily lifted from there and put here. There is no occasion for the hon. Members to criticise that I have tailored a new definition for a "Judge". A "Judge" as defined in the Indian Penal Code itself is a "Judge" in this Bill also. Now the question raised is why this word "officially" has been added. I must inform the hon. Members that these days or always the Judge performs judicial functions while he is delivering a judgement in the court or trying a case. But administrative Judges and other Judges who are charged with administrative work of the court, perform certain functions as Judges which other people do not perform. So those activities of the Judges have also been protected. So that it is so, these two words—"officially" and "function"—have been added. There should be no objection so long as the person to get this immunity remains a Judge. We are not bringing an outsider; we are rather putting a comprehensive sort of protection round the Judge. Once you accept that a Judge does deserve some sort of protection, then there is no reason for

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criticism for this thing or that thing. The question is, if a Judge occupies a certain sacrosanct position in the society, a important position and respectable position, a sacred position in the society and we do have to give some protection to him, then we shouldn't criticise because you have put

"official" or "function" and that only the judicial aspect should be protected.

SHRI SATYA PRAKASH MALAVIYA: You have used "official duty" besides "judicial."

SHRI H. R. BHARDWAJ: I have difficulty is you do not understand!—and if you do not understand, do not listen. I have said that official duty is distinct from judicial duty. When from 10 a.m. to 4.00 p.m. you hold court, you hold judicial functions. But when you write an administrative report as a Judge or when you write a confidential report of one of your colleagues, that is not a judicial duty; that is an administrative or official duty. Otherwise it will be a difficult thing to reconcile them together. A friend from Tamil Nadu has put a very pertinent question. When somebody recommends somebody and you want the Judge's comments and ask him, "What do you say about so and so?" He says, "His integrity is doubtful." And the next day that man says "I have been made a dishonest person by this man and I must prosecute this Judge." How do you recommend people? Otherwise you say, have been kept in view. I don't want to elaborate.

SHRI ALADI ARUNA alias V. ARUNACHALAM: You are doubting the recommendations of the State Government.

SHRI H. R. BHARDWAJ: Please sit down—I will reply to your question. I am coming to your question and I am happy you raised the question. You will get a reply.

I am only explaining about the word "official" as distinct from the word "judicial." If there had been any difficulty, Justice Mitra would not have left this issue. He understands because he was a Chief Justice. There is difficulty in the understanding between a person who has practised law and a person who has not practised law. There is that difficulty between those who do not know and those who know, the system of courts. So, I am submitting that there is absolutely no intention to play any hide-and-seek game. I have put all the three salient features of this Bill in my speech when I started. With regard to the

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definition I explained that it is bodily lifted from the IPC. With regard to this we have made a departure from the IPC—about what is a thing which is done in good faith. The definition in the IPC says, "Anything done with due caution and care." We have not used those words. You should have put questions to me on that aspect and I would have been happier, because I omitted the words "good faith." Now, why have I omitted the words "good faith?" Because, when a Judge sits in the court, we feel that he will act honestly. This is the presumption. When we make a person a Judge, he subscribes to the oath and then sits as a Judge. Every person from the society, every member in the society, expects that he will act honestly and judicially, and good faith is expected of him. Once he does not act in good faith, does not act honestly, there is a strong Bar that takes care of that Judge. It has happened. When Judges try to be smart, the Bar takes control of them, people like Justice Mitra take control of them. I will be happy if the Judges read his speech and take guidance from him. I cannot give that guidance to them. But because he comes from the same noble profession, the same institution, and he is a senior Member, people can take a cue from him. But we have to give that protection to the Judges notwithstanding the criticism. Therefore, the words "good faith" have been omitted. We now say, acting officially or judicially. The only thing that is required is, when the Judge claims protection, the onus will be to say that he was acting officially or judicially and it was one of his functions as such. He is not being protected when, as somebody said, supposing he slaps somebody outside. Then it is not for his protection because it is none of the functions of a Judge to beat somebody or abuse somebody outside the court. But I would certainly expect restraint from both sides.

Today in the House we had so many angry exchanges. We do not file cases against each other because our discussions are protected. We cannot really go in for that. Similarly, the situation in the courts also is surcharged sometimes. Malaviyaji was right—it happened with me on several occasions. I was proceeded against for con-

tempt. but I don't hold contempt for those Judges who spoke that type of a thing. Today I have very cordial relations with them, not because I am a Minister; but before that also. When I found that something was wrong with me, I at once went to the chamber and said, "I am very sorry that this has happened in the court today and I never meant to insult your lordship."

This is the system because this is a noble profession. Noble institutions are working together for the common good of the society. So, we do not carry ill-wills of this type against each other, and that is why the litigant has gone there to seek justice. The counsel is there to address and assist the court, and the Judge is there to administer justice. So, all these three actions are equally noble. I do not think anybody carries personal ill-wills against anybody in this process. So, when the Judges are sought to be protected, we presume that they will act honestly. And we have left it to them. We have left not to this lobby, but we have left it to their sound discretion because the system of checks and balances as is done in the institution, is always there. A strong bar makes an honest and good judiciary. If the bar is weak, the judiciary will also be weak. This is always there. Against the transfer-of-Judges case there was a strong reaction, and it became difficult for the Law Minister to defend that action, and somebody else had to defend it. So, we have taken lessons from history, and we will continue to take them. But we must unite when there is a good thing offered. So, good faith is presumed when we give this protection to the Judges.

Now, Madam, I come to a case which was pertinently mentioned with regard to Tamil Nadu. I am very happy that the hon. Member himself told us, and I said so while answering a question, that we would come into the picture when the Chief Justice of the High Court recommends and submits a report to the Chief Minister who consults the Governor and sends his own recommendation. There were cases which were recommended. The State Government did not agree with those recommendations. And that is how that

the controversy between the Chief Justice and the Chief Minister or the State Government has withheld the very process of appointment of Judges. Now the question is whether the Chief Minister recommended persons from a particular caste or the Chief Justice recommended persons from a particular caste. We have nothing to do with that. Let them decide the issue themselves and send us a report. And if they will not do it, we will appoint Judges, we will not wait for these. I am telling you. The Chief Justice of India will be consulted, and we will not care whether the Chief Justice will not send names or the Chief Minister will not send names, and we will see that Judges are appointed.

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: Madam...

THE DEPUTY CHAIRMAN: No no. Do not disturb. He will not be recorded.

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: *

THE DEPUTY CHAIRMAN: He has not been recorded.

SHRI H. R. BHARDWAJ: I am only taking the House into confidence.

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: *

THE DEPUTY CHAIRMAN: Please sit down, Mr. Aruna.

SHRI H. R. BHARDWAJ: There is no blame on us. I will assent the blame if you decide and the whole House decides that the names are lying with me. The question is that we want appointment of Judges to be decided. But the difficulty is that there is a controversy somewhere else, and that has gone on for a long time. We have decided now that the Chief Justice of India will decide this issue, and we will appoint the persons recommended by him. Whether names come from the Chief Minister or names come from the Chief Justice, we will not bother. The

law permits us to appoint, and so long as the law permits us we will appoint quickly. We will not wait for them.

He has not pointed out anything about where the fault lies. He himself has said that from his own State some names of persons who are of a particular community were sent by the Chief Justice. They were not favoured by the Government. I do not know if the Governments take into consideration communal aspect. That is a very bad thing. I wanted just to put the record straight. And I have always assured this House that whenever the question of Judges comes, we have issued guidelines.

I was happy when Yadavji said that weaker sections, backward people, have not got their due share in the appointment of Judges. I fully endorse his view. I assure you, Yadavji—we cannot have reservations, that is not possible—we have already issued instructions that women, backward sections of the society, should be taken care of especially.

SHRI SANKAR PRASAD MITRA: Provided candidates are available.

SHRI H. R. BHARDWAJ: Provided. That is a big proviso. This is a constitutional appointment. But we have issued special instructions. We have issued letters to constitutional functionaries to search for talent. If a lady lawyer is available and she fulfils all constitutional requirements, even if she is rejected by the Chief Justice or the Chief Minister, we will persuade them to consider her as against other candidates because this is a social requirement, a social necessity today, to seek equal participation of all. Otherwise this institution will be occupied by a privileged section of the society. So with this type of assurance, Yadavji should be satisfied that although I do not concede that all Yadavs are backward, the backward Yadavs will certainly be taken care of. So I can assure him that we are fully seized of this matter of giving representation. I have myself moved, as a Member of the Rajya Sabha, in the concluding part of 1984, a Private Member's Resolution for judicial reforms. I am very happy

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to say that shortly we will announce it, after this session of Parliament. We are already determined to go in for judicial reforms because the arrears are staring into our face and litigation is so expensive in the country. This is really causing headache to us day and night and we cannot sleep unless we solve this problem.

SHRI PAWAN KUMAR BANSAL. Now you can bring an official resolution.

SHRI H. R. BHARDWAJ: Now it is my own resolution which I have the privilege to implement. The hon. Prime Minister has indicated in the President's Address that we will introduce judicial reforms. And the moment we will be free from this session—I think we are concluding on the 29th—we will be meeting on the 31st. So we are not wasting absolutely any time. With this type of our emotional and social involvement in judicial reforms, I do not think there is any room for criticism. You may criticise when you find that there is some going back on this. But, Madam, we have a commitment. It is not only a slogan that we raise and forget. It is our commitment that social justice must prevail. The jurisprudence, the legal philosophy has really to undergo a vast change because otherwise this arrears business and the litigation expense business will shake the very foundation of our judicial system. So we are trying to solve these problems. About the observations made by the earlier Chief Justice, Mr. Chandrachud, I have been reading them and I have been practising before him. He had a long innings as judge, but little was done. But I will not fail in my duty because it is more or less for the judges themselves to see how they can cut delays in the court procedures. We cannot really bring any law and tell the Supreme Court, "You will not hear a case for two months or three months; you will not remain without delivering a judgment for years together." Even with regard to questions from this august House, if you send a requisition to the Registry of the Supreme Court or the High Court, they will refuse to give statistics as to how long a judgment is pending. That is a question which is really within the jurisdiction of the

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Supreme Court itself. The fact remains that today in India, you have an independent judiciary from the magistrate's court, the munsiff's court to the Supreme Court. The subordinate judiciary is directly under the High Court and the High Court, as Justice Mitra said, is not subordinate to the Supreme Court. Sometimes there is an attempt by the Supreme Court to erode into the High Courts' functions. Sometimes directions are issued, and the High Courts do not like them. But it is between themselves! They really have some type of exchanges—"you have transgressed into my jurisdiction or their jurisdiction" and so on. But these issues can come up when we have many High Courts and the Supreme Court. But there has not been at any time any fundamental type of a problem which could not be solved.

So the basic assurance of the Government is that supersession will be only an exception when recommended by the Chief Justice. I am laying down a firm foundation for a policy by saying that no judge will be superseded unless the Chief Justice of India really wants it. As I said in the transfer of Chief Justice case, no Chief Justice will be transferred unless the Chief Justice of India consents to it.

In regard to appointments, some appointments have been delayed because allegations of favouritism were there. And the orders from the hon. Prime Minister are that there should be no favouritism in the appointment of judges. In some case, we have not agreed to the recommendations of our own Chief Ministers. We will not really want to discuss these things because these issues are made known when they are decided. So, all this scrutiny, this type of assurance, this type of past conduct, must reassure this House that we mean business and we will be sincere about it. Really the object of this Bill is to give protection to judges—as defined in the IPC—against criminal action. Now, Malaviya wanted to know if there were any cases where judges were prosecuted. He knows it. Why do we really have to discuss those things? We feel that there should be no litigation between a judge and a person, whoever he may be. Sometimes

criticism does arise that judges go out of their way and do things they are not supposed to do. I agreed frankly in the House, I opened my heart to the Members. Sometimes such criticism does occur. What do we do? Should we abuse them equally? No. We have to wait for the appropriate time. Mostly we go to his chambers and discuss it freely and try to see the matter is set at rest. Sometimes complaints do come that a certain judge hears a case of his relation which the judge is not supposed to do. People have written about judges saying that so-and-so judge is in so-and-so court. And there have been contempt petitions. But then, I don't think any judge has insisted on the contempt issue. Mostly the matter was heard but the issue dropped when it was assured to the judge that no disrespect was meant, no reflection was meant, in that sort of criticism. So there are safeguards inbuilt into our system. This small amendment to the earlier Bill is not something which is a very fundamental change to the earlier position. I have broadly touched all the points raised by the honourable Members. We are now going ahead with the meeting of all the Chief Justices, Chief Ministers and Law Ministers, and we will from time to time—I say from time to time because I cannot bring a comprehensive Bill because the conditions of service of all judges are not similar—come before the House and tell you this is what we want for the judges and I hope you will be equally generous. Those who have made criticism have also done good to the institution because this will draw the attention of the judges to the criticism. I once again express my very grateful thanks to those who have supported

ted and made constructive suggestions. I once again request that this Bill may kindly be passed.

THE DEPUTY CHAIRMAN: The question is:

“That the Bill for securing additional protection for Judges and others acting judicially and for matters connected therewith, as passed by the Lok Sabha, be taken into consideration.”

The motion was adopted.

THE DEPUTY CHAIRMAN: We shall now take up the clause-by-clause consideration of the Bill.

Clauses 2 to 4 were added to the Bill.

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

SHRI H. R. BHARDWAJ: Madam, I move:

“That the Bill be passed.”

The question was put and the motion was adopted.

THE DEPUTY CHAIRMAN: The House stands adjourned till 11.00 a.m. on

Wednesday, the 28th August 1985.

The House then adjourned at nineteen minutes past six of the clock, till eleven of the clock on Wednesday, the 28th August, 1985.