

The House reassembled after lunch at thirty-five minutes past two of the clock. **The Vice-Chairman, Shri Syed Rahmat Ali in the Chair.**

Resolution Re. Appointment of a Judicial Reforms Commission Contd.

SHRI P. N. SUKUL (Uttar Pradesh): Mr. Vice-Chairman, I rise to support the Resolution moved by my learned friend, Shri Hansraj Bhardwaj, for the appointment of a Judicial Reforms Commission. As mentioned in the Resolution, Sir, the purpose of this proposal is to ensure that our judicial and legal system becomes an effective instrument of social change and provides socio-economic justice to the under-privileged and the weaker sections of our society.

Sir, it is a fact, and it is also a pity, that despite the lapse of 37 years since our Independence and despite the appointment of a Law Commission we have not yet been able to evolve a legal system, a judicial system, suited to our needs and we are still guided by and large by the British system of law. It was in the last century that four Law Commissions were appointed and people like Macaulay and others were there to frame the laws for us and these laws were basically meant for ruling the colonial people and meant for the colonial regime and we are still being guided by these very laws. It is, therefore, very necessary that the entire laws of the country are looked into and a different system is evolved which will be suited to the needs of our country.

Today, Sir, ours is a socialist Republic. The laws that we have enacted were originally those of the British and they were not meant for a socialist republic. As I said earlier, they were meant for a British colony. But, Sir, today, the judicial system has to be an instrument of social change so that the society may be developed on the desired socialistic pattern. Otherwise, the very spirit of our Constitution will be killed and that is why it is

felt necessary that a Judicial Reforms Commission should be appointed to look into this very important matter.

Sir, according to me, the judiciary is not merely an interpreter of law. The judiciary has a much more important obligation to perform. The judiciary in a democracy like ours is also the protector and the watch-dog of the citizens' rights and privileges and we find today that the judicial system or the legal system, as it stands today, is entirely helpless. We cannot ensure justice for the common man and we cannot do anything unless, of course, our people, more than two-thirds of whom are illiterate and almost half of whom are living below the poverty line, are in a position to understand their rights and privileges. They also have no means by which they can take their matters to a court of law for justice and, unless these two things are done, our courts will keep quiet, will just watch the exploitation of man by man in our country and, of course, like passive onlookers they would be just doing their duty as a formality. That is why it is necessary that our legal system is suitably developed through intensive research in the field of law so that the law is in a position to cater to the needs of the people. As I was saying, our present law is not in a position to cater to our present suffering and toiling masses and the weaker sections of society.

Sir, it is a very happy thing, I should say, that when the Law Commission was first appointed by Parliament it was agreed to by our first Prime Minister Pandit Jawaharlal Nehru in pursuance of or in reply to a non-official resolution which was tabled in the Lok Sabha. Today also, Sir, we are considering a non-official Resolution tabled by my learned friend, Shri Hansraj Bhardwaj. It was in 1954 that a non-official resolution was tabled in the Lok Sabha, suggesting the appointment of a Law Commission and our learned and great Prime Minister, Pandit Jawaharlal

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Nehru, agreed to that resolution in pursuance of which that Law Commission was ultimately appointed.

It said that the Law Commission should be appointed with a view to realise that justice is simple, speedy, cheap, effective and substantial. Now, I would like to ask the Law Minister whether any of these things has been achieved since the setting up of the Law Commission. We have not been able to make justice speedy, we have not been able to make justice cheap, we have not been able to make justice effective and we have not been able to make justice substantial. We have fared miserably in all these, and that is why today millions and millions of our countrymen who are not able to knock at the doors of justice, on the temples of justice, are not in a position to get social justice and economic justice. I am not talking of political justice. But socio-economic justice has to be ensured for the people of a Welfare State, for the people of a Socialist State. It is still not there. Therefore, since our legal system is not conducive to the establishment of a socialist pattern of society, the system has to be changed. A thorough research has to be done and the matter has to be probed into very, very deeply. Such a system has to be evolved as may render justice simple, speedy cheap and substantial. To meet all this, a Law Commission was appointed in 1954 by Parliament. But despite its very many Reports—more than 90 or 91 Reports are there—despite all these Reports we have not been able to achieve any of these things. In my humble opinion, the Resolution tabled by my learned friend Mr. Bhardwaj must be graciously and in a big way accepted by our Government, and a Judicial Reforms Commission should be set up as early as possible.

Sir, in this connection I would like to quote from speech given by Mr. Jus-

teady cheap and substantial. To tie P.N. Bhagwati who he was speaking at the 8th Annual Conference of the Andhra Pradesh Judicial Officers' Association in June 1983. According to him, the Judiciary must devise new methods, forge new tools and innovate strategies to reach social justice to the common man. According to him, India is a secular republic and the Constitution ensures justice to all Indians. I quote:

"It is the responsibility of the Judiciary to see whether the two great concepts of secularism and Justice go well in the present context of personal laws as offered by the different legal system obtaining in India."

In this connection, Sir, I will also like to quote President Derek C. Bok of the Harvard Varsity, who was formerly Dean of the Law School. Mr. Bok Says:

"The laws that govern affluent clients and large institutions are numerous, intricate and applied by highly sophisticated practitioners. In this sector of society, rules proliferate, law-suits abound and the cost of legal services grows much faster than the cost of living. For the bulk of the population, however, the situation is very different. Access to the courts may be often in principle. In practice, however, most people find their legal rights severely compromised by the cost of legal services, the baffling complications of existing rules and procedures and the long frustrating delays involved in bringing proceedings to a conclusion."

I have quoted, Sir, from Mr. Justice Bhagwati and also from a foreign authority to prove that we are still lagging behind in having a proper and judicial system.

What's the position today? What is the malady plaguing our legal and judicial system. The main malady is delay. We have not been able to give justice within a reasonable period of time. Ten lakh cases are supposed to be pending in various High Courts of the country. More than 50,000 cases are supposed to be pending only in Patna High Court. Because of so many factors, these arrears are going on increasing day by day. If a man who seeks the redressal of his grievances dies during the pendency of the case, what is the ultimate good of the verdict that we deliver? If he fails to get justice, then what is the utility and purpose of the Judges and the Minister and other connected with the judicial system? We are not there just to fulfil the formalities. We have to ensure speedy justice and cheap justice to our people. If we fail to achieve this thing, then we fail in our duty and the history is going to remember us in a very unpleasant way. This is all that I can say. In May, 1984, a woman got the gratuity of her husband after 8 long years through a court judgment. If the husband dies and the gratuity is payable to his wife or dependent who are now deprived of the regular income of the man who runs the family and if we take 8 long years to pay gratuity or pension or family pension or Provident Fund, then what are we doing? I must say that I simply fail to understand the propriety of our actions. In another case, in March, 1984, a sub-Judge of Delhi, Md. J.M. Malik, decided a case which had been pending for 34 years. The case was pending for 34 years and then a Sub-Judge took a decision in the matter. In this way, how long the higher courts are going to take and for how long a man has to wait to get justice? That has to be seen. In Bihar, a man known as Rudal Shah was detained for 14 years unnecessarily without any reason. In August, 1983, the Supreme Court ordered the Bihar Government to free him and pay him compensation for his unnecessary detention for 14 years. In another

case, the court ordered a compensation of Rs. 15000 to Shri Bhoma Charan Oraon for his detention in Ranchi Asylum for six years. This is how the cases are delayed. That is why I want to know whether the money can compensate a man for the time spent by him in jail. You can pay him Rs. 50000 or Rs. 100000 or Rs. 15000 as in this case. But can this amount be sufficient to compensate him for the long years that he has spent in prison during which he was deprived of his liberties? You cannot compensate him. In March 1983, a three-Judge Bench of the Supreme Court overruled an earlier two-Judge order of the Supreme Court after a delay of more than two years. Then the execution also took another two years. This is what we could provide our people with for so long. So, I say, Sir this delay must be cut short as much as possible. And we must be able to provide justice to our people in a cheap and speedy manner.

Sir, speaking at the inauguration of the National Law School at Bangalore in February this year, our Chairman, Mr. Hidayatullah said that "the system of jurisprudence in India has become outdated. Trials based on the British system were too long drawn-out. Procedures had become too cumbersome." These are the views of our learned Chairman who had been a Chief Justice of India. At the same function, while speaking, our present Chief Justice, Mr. Chandrachud also said that reforms were necessary in the system of justice as well as in the system of legal education. According to him, Social justice is the prime sustenance of law.

Sir, now I come to the expensive side of justice. Today there are developed countries like France where justice for the very poor is almost entirely free. Even the poorest citizen can approach the courts for justice. If they belong to the lowest income group, they do not have to pay at all. Of course, the higher income groups

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have to pay something but it is almost nominal. Expenses are supposed to be according to ones income. In India also, Sir, the same system should be adopted. Justice should be free or at least inexpensive for the poor because ours is a poor country. Our people cannot afford the big fees of our advocates of the Supreme Court and the High Courts. And for want of money they cannot have justice, and those having money can always manage to prevail upon others. So, Sir, if we are really a socialist state, if we really want to establish a socialist society on a socialist pattern, if we are really intereted in stopping the exploitation of man by man, then we have to look into our judicial and legal system. And we have to make it as inexpensive and as speed, as is possible.

Now, Sir, there is one more thing. The independence of the judiciary has also to be maintained. And the judiciary has also to be a committed judiciary. These two aspects have also to be taken into consideration. Regarding the independence of judiciary, the Law Commission have suggested stringent tests for appointment of Judges to the Supreme Court. According to the Report of the Law Commission, merit alone should not count. Such Judges should be appointed as command the respect of lower Judges. And according to this Report, no one should be appointed a Judge unless he has stopped all affiliations with political parties for not less than seven years and have shown his freedom from political prejudice, bias or favour. Now, Sir, this recommendation is not being implemented at all. It is a very sad state of affairs. In my own State of Uttar Pradesh, some Judges have been appointed recently, many of whom had not severed their relations with political parties for as long as seven years. I think, hardly one or two years lapsed since they severed their connections with political parties. And, I am sure the same

thing should be ...*(Interruptions)*. I am giving my own opinion on the subject. *(Interruptions)*.

THE VICE-CHAIRMAN (SHRI SYED RAHMAT ALI): Mr. Mishra, you will get the chance to speak after him. Please complete, Mr. Sukul.

SHRI P. N. SUKUL: Sir, in this connection, as regards the high-handedness of the judiciary, I am going to quote another example. In 1975, the Allahabad High Court delivered a judgement against our then Prime Minister and present Prime Minister, Shrimati Indira Gandhi, and it was a very controversial judgment which was ultimately set aside by the Supreme Court and again, when she was re-elected in 1980 another election petition was filed against her and the same Allahabad High Court said that the cases from the Oudh area in Uttar Pradesh, 14 districts lying in the Oudh region of Uttar Pradesh, can be instituted only in the Lucknow Bench of the High Court and not in the Allahabad Bench of the High Court. But still in 1975 because of political considerations that judge of the Allahabad High Court could deliver a judgment against the highest person, the greatest person, the tallest political figure of our country at that time.

SHRI SANKAR PRASAD MITRA (West Bengal): Mr. Vice-Chairman, Sir, this kind of an allegation he should not make.

SHRI P. N. SUKUL: What allegation? I am taking no names, Mr. Mitra. I am taking no names. I am simply referring to the propriety of a judgment. I am simply referring to a judgment and its propriety, no one I am naming, and because of that Supreme Court judgment this time the same High Court has said, we are not in a position to take up this case, it must go to the Lucknow Bench of the High Court. But in 1975 the Allahabad High Court forgot its jurisdiction. That is why I say that the independence of judiciary has to be there

and a committed judiciary we deserve (*Time bell rings*).

Sir, in this connection, I would like to cite my own case, nobody else's case. In 1980, I was elected a Member of the Rajya Sabha. A man had contested against me and he lost very badly. But then he filed an election petition in the High Court saying that the Secretary of the State Legislature is not a Government servant and, therefore, not competent to be a returning officer. Just see, since 1952 we have been having Secretaries of State Legislatures only as returning officers for purposes of Rajya Sabha elections or for purposes of elections to the State Councils and then, Sir, there was a judge at that time in the Lucknow Bench of the Allahabad High Court, I will not name him, but I will only say that he was a relation of Mr. Charan Singh, our Lok Dal leader, who upheld that thing and said, yes, the Secretary of the Legislature is not competent to be the returning officer, because he is not a Government servant, and ultimately that case I had to take in appeal to the Supreme Court and the Supreme Court decided that no, it is wrong, and that is why I could be here and serve here. So, Sir on the basis of all these things I say that somehow we must have such a legal and judicial system where such things are not permissible or cannot be there. The judiciary should be entirely independent.

In the end, Sir, my one suggestion will be that in the National Law School Bangalore, that has been opened recently, and to which our learned and hon. Law Minister was also invited, in that school now a five year law course has been started. You see, by starting a five year law course what do we actually mean? Do we mean that all those persons, including perhaps our Minister and judges and Chief Justices, who have passed only two year law course are deficient in understanding law or legal implications? Why do we

want to make it 5 years' course? Do we want to make it 5

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years' course so that our poorer sections of society, our rural folk, may not become judges and advocates? If we want that, that will be very dangerous, and it will be fraught with serious consequences. So, I would request the hon. Minister to ensure that if not, two, the law course must not be for more than 3 years so that the boys coming from poorer families also can study law and become advocates and judges.

With these words, I support the Resolution of my learned friend, Shri Bhardwaj.

श्री चतुरानन मिश्र (बिहार) : उप-सभाध्यक्ष महोदय, जिस प्रस्ताव के जरिये माननीय सदस्य भारद्वाज जी ने एक बहुत ही महत्वपूर्ण विषय की ओर सरकार का ध्यान आकर्षित किया है। किन्तु आसन्न आम चुनाव के कारण आज न तो सरकार का ध्यान है और न जान है। अभी तो चुनाव का वक्त है और इस महत्वपूर्ण काम को कौन करेगा? तो यह चलने वाला नहीं है। वैसे तो लग रहा है कि सदन के दोनों पक्षों में किसी को ऐतराज नहीं होगा कि कानून और व्यवस्था में जहाँ तक संभव हो जल्दी सुधार किया जाए।

श्रीमन, मैंने जो अपना संशोधन दिया था वह यह है कि एक वर्ष के अंदर इस काम को समाप्त कर दिया जाए। हमारे लिहाज से टाइम फॅक्टर बहुत बड़ा फॅक्टर है। आज कंट्री अनगवर्नबुल होता जा रहा है। भाषण जितना कर लें, हम लोग आजाद आदमी है हक है भाषण करने का भाषण कीजिए लेकिन देश अनगवर्नबुल होता जा रहा है और बहुत ज्यादा टाइम आपको और हमको नहीं है कि इस परि-

[श्री चतुराना मिश्र]

स्थिति का हम सुधारें। मेरा ख्याल है कि कानूनी सिस्टम के मामले में हम लोग अपनी ही क्रियेशन के प्रिजनर हैं और यह हमारा ही बनाया हुआ सिस्टम है जिसको हम भुगत रहे हैं और दशाब्दियों से सारी खामियों को जानते हुए भी असहाय है कोई मौलिक सुधार लाने में।

अभी माननीय सदस्य सुकुल जी ने जवाहरलाल जी के भाषणों को उद्धृत किया। भाषण तो सबका अच्छा है, लेकिन वह लागू होता क्यों नहीं है इस पर भी कोई कहे? मैं उसी के बारे में आपका ध्यान आकर्षित करूँगा। अगर हम लगे चाहते हैं कि काइम कम हो तो दो चीजों के बारे में अविलम्ब सुधार करने की जरूरत है। लीगल सिस्टम को जिसमें जुडिशियरी भी है और दूसरे जेल को। कोई कोर्ट जेल के बारे में कुछ नहीं कहता उसको अधिकार नहीं है। अभी माननीय सदस्य सुकुल जी ने कई कैसों का वर्णन किया, बिहार के। उपा-अध्यक्ष महोदय, मैं आपका ध्यान दिलाऊँ कि वह भाड़ी संथाल आबादी के पहले ही जेल में गया था और छुटा 38 वर्ष के बाद। इसलिए छुटा देर में कि पुलिस ने कभी उसकी इनवेस्टिगेशन रिपोर्ट ही नहीं दी थी। उसमें कोर्ट क्या करे? टाइम पर टाइम पड़ता जाता था। कोर्ट के सामने न लाकर वैसे ही तारीखें पड़ जाती थीं। इसलिए जो जड़ बात है वह यह है कि प्रशासन में सुधार होना चाहिए कि इनवेस्टिगेशन निर्वाचित समय में हो ताकि उनका फैसला जल्दी हो सके। कोर्ट में प्रोड्यूस नहीं किया जाए, वैसे ही डेट पर डेट लग जाए तो क्या होगा? जेल के बारे में मेरा ख्याल है कि जो जेल हैं उनमें व्याप्त व्यभिचार अष्टाचार आदि बातें बहुत से अखबारों

में आ चुकी हैं हमारी जैले सुधार के लिए नहीं बल्कि ये किमिनल मैन्यूफैक्चरिंग कंपनियां हैं। जो डकैत है वह मर्डर होकर निकलता है, जो पाकेट मार है वह डकैत होकर हमारी जेलों से निकलता है। आपमें से भी बहुत लोग जेल गए हैं, अब जाने वालों की तादाद कम हो गई। (व्यवधान) हम लोग तो जेल अभी जाते रहते हैं। तो जेलसुधार के लिए बल्कि किमिनल मैन्यूफैक्चरिंग कंपनी है जिसका पूरा शेयर गवर्नमेंट का है, दूसरा कोई शेयर होल्डर भी नहीं है मैं एक-दो उदाहरण देना चाहूँगा कि कैसी स्थिति है। अभी कुछ दिन पहले की बात है मैं जनवरी महीने में गिरिडीह जिले में गया था। वैसे ही एक जज महोदय से बात चल रही थी। वहां मैं जनवरी, 84 में गया था और डेट दी जा रही थी 85, अक्टूबर की। इतने केरिज उस कोर्ट में हैं। इससे पहले की डेट खाली नहीं थी। इसलिये 1985 में डेट दी जा रही थी। वह जज भी क्या करेगा? हम लोगों को भी अगर बैठा दिया जायेगा या भारद्वाज जी वहां जा कर बैठ जायेंगे तो वे भी क्या करेंगे। एक-एक कोर्ट में 10-12 हजार कैस हैं तो जज अकेला सारे कैसों का डिस्पोजल कैसे कर सकता है। यह तो आपकी क्रिएशन है। कैसों की अगर ज्यादा संख्या हो गई है तो जजों को कोर्ट में बढ़ाइयेगा, आप स्पेशल मजिस्ट्रेट बनाए कीजियेगा। सिस्टम को सुधारने की जो बात आई है उसके बारे में भी मैं कहना चाहूँगा। मुझ पर एक बार मुकदमा चला था कि 144 दफा का मैंने उल्लंघन किया है। मैं कोर्ट में हाजिर हुआ? मैंने कहा कि अगर दफा 144 लगी हुई है तो हम को यह आदेश दिखला दीजिए, हम मंजूर कर लेंगे। उन्होंने हम को बताया कि ऐसी कोई व्यवस्था नहीं है कि शुरु में आपको दिखलाया जाए। हम को तब दिखलाया

जायेगा जब फाइनल स्टेज पर आ जायेगा । 4-5 वर्ष तक मुकदमा चला । आप जानते हैं, हम भी आपकी ही तरह राजनीतिज्ञ है । हम बराबर उसमें नहीं जाया करते थे लेकिन वह 4-5 वर्ष तक चलता रहा । आखिर जब जज फैसले तक आया तो हमने उनसे कहा कि आप पद्धति के चले कोर्ट का, हमारा और सब का समय बर्बाद होता है । किन्तु कोर्ट ने कहा कि हमारी पद्धति ऐसी है कि वह कुछ करने से नाचार है यह कहना कि अदालत बराबर इन्साफ करे यह बहुत कठिन काम है हमारे लिहाज से । इतिहास में बहुत बार ऐसा हुआ है कि न्यायपालिका ने सत्य का साथ नहीं दिया है । नहीं तो, जिसने कहा कि धरती गोम है उसको कहीं फांसी की सजा होनी चाहिये ? मुकरात को कहीं फांसी की सजा होनी चाहिये ? गांधी जी को जेल होनी चाहिये श्री ? जो राज करता है वह जुडिशियरी पर छाया रहता है लेकिन बतलाता नहीं है कि हम इस पर छाये हुए हैं । आप भी ऐसा करते हैं, चाहे इलाहाबाद केस के बारे में हो या दूसरे कोई वाद में हो । यह चलता ही रहता है । इसलिये आप की यह मांग कि इस तरह से कोई बुनियादी कानूनी परिवर्तन कीजिए जिससे समाजवाद से आए, मखौल है । बँडे हुए तो हैं पूँजीवाद की गाड़ी पर और चलना चाहते हैं समाजवाद पर । यह भ्रम आप न रखिये और न दूसरों को भ्रमाइए । आप यह सब कम्प्यूजन् पैदा न कीजिए । मैं एक छोटा सा सुझाव देना चाहना हूँ । क्योंकि यह विषय बहुत गहन है, बहुत दिनों से विचार हो रहा है, बहुतेरे ला कमीशन की भी रिपोर्ट आई है, बहुत को तो दीमक खा गई होगी और कुछ बच गई होगी तो उससे हमारे वधि मंत्री जी खोजेंगे कि कुछ है या

नहीं है । वरना कोई रिसर्च करेगा, डाक्टरेट करेगा तो पता लगेगा । सरकार में किस को फुरसत है कि इसको पढ़ें और उसको करे । मेरा ख्याल है आप एक-दो काम कीजिए । एक तो यह है कि मुकदमे का डिस्पोजल निर्धारित समय में हो । अगर कम्प्यूनिस्ट या मोगलिस्ट देशों की तरह नहीं कर सकते तो कम से कम ग्रील की रीढ़ी तो कम कर दीजिए । पहले केस सबडिविजन में होता है, फिर डिस्ट्रिक्ट में, फिर हाई कोर्ट में और फिर सुप्रीम कोर्ट में । इस बीच बार बार स्टे आर्डर होता है । यह अपील चार जगह आती है । अनेकों बार टाइम पैटीशन होता है और अनेक बार एफिडेविट संगोधित होता है । ऐसी हालत में वर्षों का टाइम नष्टी लगेगा तो और क्या होगा ? अब यह तो है कि हमारी जिन्दगी रहते फैसला हो जाना है । जो पहले लाइफ एक्सपेक्टेशन था अगर वही रहता तो मुकदम का फैसला कभी भी जिन्दगी के रहते न होता । अब लाइफ की एक्सपेक्टेसी बढ गई है इसलिये जिदा रहते फैसला हो भी जाता है । मेरा ख्याल है आप इन सब मामलों में सुधार कीजिए । यह जो मुकदमों की अपील चार स्टेज में रखा है इसको दो स्टेज में रखिये । ऐसा कर दीजिए कि अपील सिर्फ दो स्टेज पर ही हो । जो ऊँची कोर्ट्स हैं उनको ही बढ़ाकर सारे देश में डिस्ट्रिक्ट कर दीजिए । उसके बंचेज ज्यादा बना दीजिए । कोई ऐसा ही रास्ता निकालिये । बहुत बड़ा देश है इतने स्टेज रखना बहुत ज्यादा है । टाइम पैटीशनिंग लिमिट कर दीजिए । बार-बार टाइम लिया जाता है, यह दूर होना चाहिये । और जो पैसे वाले लोग होते हैं वे नेटिगेन्टस ज्यादा होते हैं । सरकार का जो कई

[श्री चतुरानन मिश्र]

सी करोड़ रुपया टैक्स के रूप में वसूल होना चाहिए वह रुपया मुकदमों में फंसा पड़ा हुआ रह जाता है। सरकार उस पैसे को वसूल नहीं कर पाती है। लेकिन जो गरीब लोग हैं वे कोर्ट में नहीं जा सकते हैं। वे लम्बे समय तक मुकदमा नहीं कर सकते हैं। यही कारण है कि लेटिगेन्ट्स वही लोग हैं जो पैसे वाले हैं। इसलिए मेरा कहना यह है कि इस संबंध में सुधार किया जाना चाहिए।

जहां तक श्रम कानूनों का संबंध है, इसके भी बहुत ज्यादा मुकदमे हो गये हैं। कानून में ऐसा सुधार किया जाना चाहिए कि परसनल मैटर में और इंडिविजुअल केस में लेबर कमिश्नर जो फैसला दे दे वह बाईंडिंग हो जाय। उसकी अपील न हो। अभी स्थिति यह है कि कानूनी व्यवस्था पूंजीपतियों की सुविधा के लिए ज्यादा दिखाई पड़ती है। इसके साथ साथ हमारा यह भी ख्याल है कि जो हमारे देश में हरिजन हैं, आदिवासी हैं या समाज के जो बहुत ही उपेक्षित लोग हैं या जो पावर्टी लाइन के नीचे हैं, उनके लिए बड़े पैमाने पर कानूनी सहायता का प्रावधान किया जाना चाहिए। कानूनी सहायता का विज्ञापन तो बहुत ज्यादा किया जाता है, लेकिन वास्तविक काम बहुत कम होता है। इस तरह की व्यवस्था से काम चलने वाला नहीं है। इसको बहुत बड़े पैमाने पर संगठित करना होगा तभी यह काम आगे बढ़ सकता है।

दूसरा अनुरोध मैं यह करना चाहता हूं कि हमारे देश में केसेज की संख्या इसलिए ज्यादा हो रही है कि अपना देश एक सोशियो-इकनॉमिक ट्रांसफॉर्मेशन की स्टेज से गुजर रहा है। इसका

मतलब क्या है? इसका मतलब यह है कि समाज में बहुत से संघर्ष चल रहे हैं। गरीब लोग चाहते हैं कि जमीन का बंटवारा हो, उनको खेती करने के लिए जमीन मिले। हम जमीन के मामलों को भी फौजदारी में रख देते हैं। बहुत से ऐसे केसेज होते हैं जिनमें आदिवासी लोग जमीन प्राप्त करने के लिए संघर्ष किये होते हैं, जंगल के अधिकार को प्राप्त करने के लिए संघर्ष किये होते हैं। आप उनको भी क्रिमिनल केसेज में रख लेते हैं। हम लोग भी जब सत्याग्रह करते हैं तो उसको भी क्रिमिनल में करार दे दिया जाता है। मैं समझता हूं कि राजनीतिज्ञों का सेक्शन कोई क्रिमिनल प्रोसीजर में तो है नहीं। अगर इसका बाईफ्रैक्शन नहीं होता है तो केसेज की संख्या बहुत ज्यादा हो जाएगी। इसलिए हमारा ख्याल है कि कुछ ऐसी व्यवस्था कीजिये कि इन दोनों को अलग अलग किया जा सके। सबसे बड़ी बात यह है कि जब हम देश की कानून व्यवस्था में सुधार लाने की बात करते हैं तो इसके लिए सबसे ज्यादा कसूरवार लोग राजनीतिज्ञ ही हैं। इसमें शासक दल के लोग बड़े कसूरवार हैं, और विरोधी पक्ष छोटी पार्टी के लोग हैं, इसलिए छोटे कसूरवार हैं। आज हमारे देश में स्थिति यह है कि क्रिमिनल्स, बदमाशों को सबसे ज्यादा मदद राजनीतिज्ञों की तरफ से दी जा रही है। सरकार इसको रोक सके, कानून इसको रोक सके, इसकी सदबुद्धि हमको मिले। सदबुद्धि कोई माफिट में तो मिलती नहीं है, यह तो हम लोगों को स्वयं करना पड़ेगा। इसके लिए जरूरत इस बात की है कि एक कोड निर्धारित किया जाय कि अगर किसी माफिया गैंग पर या समूह पर या इसी तरह के किसी क्रिमिनल पर मुकदमा होता है तो राजनैतिक पार्टियों

की तरफ से उसको संरक्षण नहीं मिले, राजनीतिज्ञों का संरक्षण नहीं मिलेगा। यही बदमाश लोग समाज को बिगाड़ते हैं। ये लोग समझते हैं कि अगर हमारी मदद से कोई एम. एन. ए. या एम. पी. बन सकता है तो क्यों न हम स्वयं चुनावों में खड़े हो जायें। पार्टियाँ उनको टिकट दे देती हैं और फिर वे लोग यहां भी आ जाते हैं और वहां भी आ जाते हैं। इसके बाद पूरे वातावरण को ही दूषित कर देते हैं। इसलिए कानूनी व्यवस्था में सुधार होने का काम काफी कठिन हो गया है। मैं यह कहना चाहूंगा कि बहुत बड़े-बड़े सुधार होने संभव नहीं हैं। अगर हो सकते हों तो मैं उनको पसन्द करूंगा। मैं चाहता हूँ कि प्रशासनिक सुधार जितने किये जा सकते हैं उतने किये जाने चाहिए। टाइमली चार्ज शीट दाखिल की जाय। इवेन्टिगेशन लिमिटेड टाइम के अन्दर किया जाय। जो पुलिस अधिकारी हैं या कोर्ट के अधिकारी हैं वे निर्धारित समय में इवेन्टिगेशन पूरा नहीं करें तो उनको दोषी माना जाय और उनकी प्रमोशन को रोक दिया जाय। जब हमारे देश में इस प्रकार की स्थिति रहेगी कि एक आदमी जो आजादी के पहले ऐरेस्ट हुआ था वह अभी भी जेल में बन्द रहे तो यह हमारे लिए बहुत ही लज्जाजनक स्थिति है। इस स्थिति में हमें शीघ्र सुधार लाना चाहिए। सारांश यह है कि अभी हमारा जूडिशियल सिस्टम और जूडिसियरी कोलेप्स की स्थिति में आ गई है। जेल सिस्टम कोलेप्स कर गया है, कन्ट्रो अन-गवर्नेबल हो गया है और इसकी मुख्य रिसांस-बिलिटी शासक दल पर है। इसलिये जो कानून में परिवर्तन करना है, उसको कोजिये और जो एक्जीक्यूटिव ब्रंच से किया जा सकता है, उसको अविलम्ब कोजिये और इसमें सुधार कोजिये।

धन्यवाद।

SHRI KAMALENDU BHATTACH-
ARJEE (Assam): Mr. Vice-Chairman,
Sir, I rise to lend sup-
port to the Resolution moved
by Shri Hansraj Bhardwaj
with full-throated case. It is very cor-
rect that the present legal system of
India is not an effective instrument of
social change. As it is not a very ef-
fective instrument of social change,
naturally it cannot provide socio-econ-
omic justice to the weaker sections of
people, to the under-privileged people
who form the majority in India.

Sir, we all know that the old order
changes yielding place to new. Change
is the only unchanging thing in this
constantly changing universe. It is
not a very happy thing that although
we attained Independence in 1947, till
today we are guided by Anglo-Saxon
jurisprudence. We all know that India
is a socialist country and goal of soc-
ialism has also been embedded in our
Constitution. Can you achieve this
socialistic goal through the present le-
gal system? This is my question. I
am sure none can give an affirmative
answer. It is a very common comp-
laint among the poor sections of the
people of India, the down-trodden
masses, the toiling masses, the people
who cannot pay for costly litigation
that they are very scared of going to
the court. First, they are ignorant.
Then they have no money. They are
very poor. The court of law for them
is a sort of jigsaw puzzle. Whenever
they go to a court to fight out a case
for the redressal of their grievances,
they always have the psychological
fear. What is that fear? What is
the use of going to the court? If I
go to the court to fight out a case, it
will take three years, five years, ten
years or may be 20 years, who knows?
So this inordinate delay in the dispen-
sation of justice is a great hurdle for
the poor people who cannot fight out
costly cases. And even when they
go to the court, the poorer sections
of people have to pay exorbitant fees
to the lawyers. In the process they
lose all their property, lock, stock and

[Shri Kamalendu Bhattacharjee]

barrel and whatever they already have. There is a very interesting story. Two poor people were fighting out a case in the court over land. They had been paying fees to the lawyers for a long time. So what happened, during interrogation the judge asked one of the parties: "I can not understand to whom the land really belongs". Then one of the lawyers stood up and said: Sir, formerly the land belonged to two of them; but now the land belongs to two of us" because in the process of fighting the case they had already lost all their property. That is a very important thing. Dispensation of justice has got to be cheap if we really mean to achieve our socialistic goal, if we really mean to make India a socialistic country to all intents and purposes. And if dispensation of justice is not cheap, it is a very serious hindrance to the attainment of our objective. This has got to be borne in mind if we really want to make India a socialistic country that justice must be effective. We all know that justice delayed is justice denied. If a man gets justice after twenty years, what is the use of this justice? It has got no value for him.

Now, as far back as 1928, Pandit Motilal Nehru laid great emphasis on judicial reforms, and in the 50 also, the chip of the old block, Pandit Jawaharlal Nehru, harped on the same string. Now when people go to the court—as I have mentioned already—day after day they have to wait, and why? Because some of the people do not know the actual procedures. Some people are afraid of going to the court and poor people have got a sort of sentiment that these courts are meant for the rich people, for the affluent section of society, for people with rest and fortune and it is meant for the poor. If we introduce this sort of judicial reforms by appointing a Commission by which this sort of misgivings and apprehensions are utterly removed from the minds of the poor people of India, the ear-

lier it is done the better it is for our country.

Now when we speak in terms of separation of powers of the Executive, the Legislature and the Judiciary, all the pundits and all the scholars take part in sort of discussions and debates and all of them lay great emphasis on the separation of the Judiciary from the other two. There is a great reason behind it. It is very important to know that the Judiciary must be kept separate from the Executive and the Legislature. But the Judiciary must be free not in words but in reality. The Judiciary has got to be free.

Now our beloved Prime Minister has introduced the 20-Point programme. There are many schemes under this programme, and I have found that under this 20-point programme lands have been distributed free to the landless people. But what happened the moment the Janata regime came? All the landlords came, swooped on them and took away the lands and those poor people did not get any justice anywhere. So, if justice remains just on paper, if justice is not carried into the field, to the poor people of our country, what is the value of this justice? I don't find any meaning in it. So, justice has got to be made effective, substantial and cheap and its dispensation must be very, very fast.

Now I have gathered this knowledge that the National Law School of Bangalore has recommended that the law course should be for five years. I don't understand the reason behind it. Five years is a very long time and most of the poor parents cannot afford to defray the educational expenses of their sons and daughters who will have to pursue their studies for five long years. Most of the people in our country are poor and they cannot afford to defray educational expenses for five long years. Formerly the law course was for two or three years. I gather that our present Law Minister also is a product of the two-year law

course. Nobody can deny his wisdom, nobody can question his wisdom, nobody can question his learning. If a product of a two or three-year law course could be so good as to carry on his career in all illustrious manner—wherever they have been, they have done illustrious service to the nation—and if they are good enough, why a five-year course now? This is a thing which we should give serious thought to and we should make it a three-year course as it was previously. I have learnt that the persons who are on the Board are rich persons. I don't know whether my knowledge is perfect or not, but the persons who have made this recommendation or this suggestion—it seems to all intents and purposes—do not think about the children of the poor people.

With these words, Sir, I support this Resolution moved by Shri Hansraj Bhardwaj.

SHRI P. BABUL REDDY (Andhra Pradesh): Mr. Vice-Chairman, Sir, I thank you for the opportunity you have given me. Sir, this Resolution I support partly.

[The Vice-Chairman (Shri Santosh Kumar Sahu) in the Chair.]

And when I say 'partly', it is so far as the need of judicial reform in the legal system is concerned. Certainly, without doubt, in my humble opinion, everybody should support it. But what is the reform that should be brought about?

The next few lines of the Resolution say: "...to become an effective instrument of social change, and also to provide socio-economic justice to the underprivileged and the weaker sections..." Sir, I do not understand how Judiciary can become an effective instrument of social change. It is the purpose of Parliament to make laws aimed at bringing about social changes. There is a misconception of the function of the
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Judiciary. Are we asking the Judiciary to make laws for this country? In a democracy, no doubt, the necessity for an independent Judiciary can never be exaggerated. What is the function of the Judiciary? They have to interpret the law. In interpreting the law, they will certainly have the object of the legislation in view. If two views are possible, certainly it is their duty to advance that interpretation which is consistent with the object of the legislation. But if the language is clear and it is capable of only one interpretation, the Judiciary is helpless. Are we asking for a committed Judiciary that was in the air in 1970-71? I just remind hon. Members of this House that there was a talk of a committed Judiciary in the years 1970 and 1971. That was there in the air. There cannot be a committed Judiciary as such. Judiciary is committed only to the Constitution of the land. They should interpret any law according to the language employed in it with reference to the object of the enactment and also with reference to the provisions of the Constitution. Does it mean that if a particular law runs in the teeth of Fundamental Rights or any other constitutional provisions, the Judiciary are to put their seal on that? Is it for this purpose that the Judiciary exists in the country? If that is so, we can as well entrust the administration of law at the Centre and in the States to the law departments. The Judiciary is meant to help uphold the rights of the citizens against the State, if necessary. If the State is encroaching on their rights, they should go to the court. In a democracy it is the court that should come to the aid of the citizen who complain that his rights are being taken away by the Executive, or even by Parliament. And so long as the Constitution is there, the commitment can only be to the Constitution.

Sir, reforms are necessary no doubt. Much of the criticism of the Judiciary is based upon the manner in which the Judiciary is functioning today. I do not say that courts alone

[Shri P. Babul Reddy]

should be blamed for that because we have been seeing that there were a number of vacancies in the posts of High Court Judges in this country, ranging from 95 to 100, earlier. Thanks to our present Law Minister, the vacancies have been reduced from 100 to 45 now, or 49. He is taking good steps to fill up those vacancies. But that is not sufficient. Even if you fill up all the 45 or 49 vacancies, it will only touch the fringe of the problem. The problem is that the spate of work, writ petitions particularly, in various High Courts is increasing by leaps and bounds. In Andhra Pradesh High Court, where I am still practising—when I am not here, I am there in the High Court—the position was that two years back the number of writ petitions filed was 9,000 last year it was 12,000, and this year even by June 30, it exceeded 10,000. In another six months, you can easily expect another 10,000. So this year the number is expected to touch 20,000. The number of Judges of the Andhra Pradesh High Court—I am giving an illustration because I am quite familiar with the facts obtaining there—are 21. This was fixed about ten years back. So, how can those 21 Judges, even if they work very hard, dispose of all those cases? They are bound to pile up. So, the number of Judges should be increased both in the High Court, and in the Supreme Court. In the Supreme Court also what is the position today, Sir? The cases which were filed, the special leave petitions which were filed, the special leave petitions which were filed, in the year 1978, have not come up for hearing. In many cases their fate is not known—I am not speaking of appeals—whether they should be numbered as appeals or not. The special leave petitions are pending from the year 1978, awaiting that light of that day in the Court. That is the awful position. How can those 21 Judges of the Supreme Court dispose of all those cases? The last vacancy, our Law Minister was good

enough to fill up very quickly. There is no vacancy now. But the arrears are going up. How to solve the problem? You have to create vacancies by law. Parliament can make law increasing the number of Judges of the Supreme Court.

Even then, how many? There is no question of approaching the problem in a niggardly way. If the arrears in the Supreme Court require 42 Judges, should have 42 Judges. Why not? In a big country like ours, which is about 8,000 km. from north to south and about 2,500 km. from east to west what is the harm in having the biggest judiciary. We have to meet their problem boldly.

Sir, what is the position today in the Supreme Court? I am told from very reliable sources that one Judge has reserved judgements in 57 cases which are three years old, two years old and more than a year old, that is, one to three years old, which have not been delivered. One Judge, I am speaking of. I do not know about other Judges. Sir, this is the state of affairs.

I also reliably understand, Sir, and you may recall that in the West Bengal High Court a writ was filed seeking to stay the election of the State Assembly. The learned Judge has given stay. An appeal was filed in the Supreme Court. The Supreme Court, no doubt, delivered its decree, but the judgement has not been delivered even till today. The decree was delivered more than two years back. But the learned Judge whose judgement the Supreme Court set aside, had the fortune of entering the Supreme Court and becoming an old Judge of the Supreme Court. This is how things are moving in the High Courts also. Of course, the standards of the Supreme Court, the High Courts are also following. I am very sorry to say that recently in a High Court also in one criminal case the judgement was reserved. Life imprisonment is pending for five persons for ten months. It is never

heard of. Liberty of the citizen is given the pride of place in the administration of justice. If there is a habeas corpus petition it is posted even above part-heard cases because we look at liberty as a cherished right in a democracy, and it cannot be sacrificed. So, even above part-heard cases it is listed. A ten-month old judgement has been reserved in a case where five people are undergoing life imprisonment. At least two or three of them will be acquitted finally.

In selection of Judges also we are committing mistakes. I can tell you very frankly. If a particular gentleman becomes Chief Minister, it is certain that another particular person would become a Judge.

AN HON. MEMBER: In your State?

SHRI P. BABUL REDDY: No, no. In your State also.

SHRI HANSRAJ BHARDWAJ
(Madhya Pradesh): I agree with you.

SHRI P. BABUL REDDY: Everywhere. Do not feel shy to say that. I am not speaking in a partisan manner or as a partyman. I am speaking very objectively as a person who is interested in the welfare of this country and its judiciary.

Sir, the executive also must come to aid. Supposing in the administration of law a defect is found, immediately they should try to remove it. I will give a glaring example. The Chief Justice of India said in Bangalore, "What an awful state of affairs? If a law is really standing in the way, certainly we should amend the law, the Evidence Act, whatever Act is." 'X' murders 'Y', and 'X' is also the heir of 'Y'. In law a murderer cannot be a heir to the person whom he murdered. The criminal court says 'X' murdered 'Y'. The High Court confirmed it. The Supreme Court also confirmed it. Then 'X' came back and filed a suit after serving life imprisonment for the property of

‘Y’. The District and Session Judge said that on civil side there is a Supreme Court judgment that you have murdered ‘Y’ and not entitled to property. According to the law. The High Court confirmed it on the basis of Supreme Court judgment. The Supreme Court said that criminal court Judgment is only relevant but not conclusive so defendant must once again prove in the civil court that ‘X’ murdered ‘Y’. Then he will be disinherited. Sir, with all the said paraphernalia the prosecution in many cases they were not able to prove. The poor defendant could not prove ‘X’ murdered ‘Y’. Is it possible? It is impossible I can tell you. Sir, the Supreme Court which has developed various theories of prospective over-ruling etc., could have developed a principle, because I can understand the difficulty of the High Court. But Supreme Court has no difficulty at all. They can develop a theory if there is ingenuity to meet a situation. Now, Sir, the judiciary has failed to do their job and we have to do our job immediately. This has happened more than two years back. We must amend the Evidence Act and in these matters we should see that the judgment of the criminal court is conclusive. Therefore, we need reforms immediately.

Sir, there should be benches of the High Court and Supreme Court. I will tell you one instance a man comes from Assam and another from Trivandrum and files a special leave petition in the Supreme Court. Three or Five Judges of the Supreme Court sit and say notice on special leave petition returnable in ten days. This man cannot go to Assam and come back to Delhi because ten days time is not at all sufficient for coming and going. Similarly, a person from Trivandrum also faces these difficulties. He cannot stay in Delhi because it is so prohibitive and costly. The Supreme Court Judges simply say notice is returnable after ten days. The person who files special leave petition has to pay the senior fee and junior

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fee because tax fee which he has already paid was dissolved on the day when the notice was issued. The Advocate thinks that he has done his job and digested the fee. The Supreme Court is casual. After issuing notice they would give an opportunity to respondent. He will also come from Trivandrum or Assam. After hearing both sides the Supreme Court says special leave has not been granted. This is how things are going on because of one bench in Delhi. Some people say there should be one bench at Bangalore or at Hyderabad. I feel, Sir, in a country like ours at least in four places the Supreme Court must function. It should be nearer to the people. What is wrong in that? By establishing four benches at four places the Advocates in the Supreme Court including the Mover of the Resolution, Shri Hansraj Bhardwaj may suffer. Does not matter. He will sacrifice. He has got that spirit. What I feel is that the lusture of the court is not lost. If they think that the lusture of the court is there only if they sit at one place and very close to the executive to be instructed, then, I am afraid it is absolutely wrong. The lusture of the court depends upon how Judges behave. The lusture of the court depends upon the manner in which they function. Sir, there should be a bench in South, be it in Madras or Bangalore or Hyderabad. Does not matter. Because I don't go to practice. I don't have any selfish motive. There should be a bench somewhere in Calcutta also. Then only the people of these States can have access to the bench of the Supreme Court for speedy disposal of their cases. It can also be said in a very important constitutional matter, you can trust those Judges sitting in the bench and finally they can refer it to Delhi where they reign supreme power. After all, you can trust our judges of the Supreme Court. They will refer a matter which involves an important constitutional question. That is one thing. The next thing is—

there is no question of any delicacy here—however big the courts may be, they have not behaved properly in delivering quickly. Parliament can make a law—they have the authority to make a law—that just like in the rules of mofussil courts and district courts that a decision should be given within two weeks or three weeks, a judgment should be delivered by the Supreme Court within one month. They have no business to keep a judgment reserved for three years or two years or one year, keeping all people guessing. Sir, I will give you another instance—article 371D creating tribunals in Andhra Pradesh. The question of validity of this Article is in the Supreme Court. There the question is, if they render a judgment against the Government—the Government is a party here and the tribunal is exercising the jurisdiction of High Court under article 226—the Government can annul the order within 90 days. This is against the very basic concept of independence of judiciary and this is being questioned. This has been there for two or three years. The superannuation case of Andhra Pradesh has been there for more than one year and three months. In Andhra Pradesh, they have reduced the age of superannuation from 58 to 55. The judgment is not delivered as yet. A number of cases are pending in the Andhra Pradesh High Court, awaiting the Supreme Court judgement. Heaven knows when the Supreme Court would deliver the judgment and when the Andhra Pradesh High Court would follow. There must be a time-limit fixed say, one month, by Parliament should make a law fixing time-limit of one month for the delivery of judgements. And there should also be a maximum time-limit for hearing. Now the judiciary makes a mockery of it; they hear one case for nine months, for six months or for three months. Everything worth saying can be said in one hour or two hours, and if it is a very complicated case, in three hours. Anything more than three hours, I

can say with my experience as a senior advocate in the High Court, is a waste of time. If anybody feels that he has something very precious to say beyond three hours, let him file written arguments. . . .

AN HON. MEMBER: Or write a book.

SHRI P. BABUL REDDY: . . . or write a book. We will read it at leisure. So he can file written arguments over and above three hours' or two hours' time and ask the judges to go through them. These are the things that should be done.

SHRI JAGDAMBI PRASAD YADAV (Bihar): Even now after arguments, they file written statements.

SHRI P. BABUL REDDY: So far as High Courts are concerned, there are many High Courts which have three or four Benches. For example, in Madhya Pradesh and Maharashtra, there are three or four Benches. But some States have no High Courts. For example, five States have one High Court, the Assam High Court and establishment of a Bench is overruled on the plea that there is not sufficient work. Sir, there is no sufficient work in Sikkim but we have a high Court there. I know what is the work of the Sikkim High Court and what the Sikkim judges are doing there. They do not have ten minutes' work a day on an average. But in Assam there is one High Court for its work a day on an average. But States like Arunachal Pradesh, Manipur, Tripura, Mizoram, etc. but they do not have High Courts at all. Some States are asking for Benches, but there are States which are asking for a High Court and even that we are not giving. So these things have to be looked into.

Lastly, I will touch upon the court fee aspect. This court fee is really a very savage thing. In some States—I am sure the Law Minister must have examined it—there is a uniform

rate of 11 per cent fee. Now, of course, the Supreme Court has reversed the decision and said that fee is also like tax. There is no limit, only the sky is the limit and you can invoke only article 14 for arbitrary imposition. All these years we were told that there was an essential distinction between fee and tax and that fee was for services rendered. But now they say they are obliterating that distinction. Let them do it. At least now the legislature must come forward and say that there should be some uniform court fee and some uniform method should be adopted. Otherwise this flat rate of 11 per cent is atrocious. It is bordering on savagery. So, my submission is that this court fee matter also has to be looked into.

Lastly about appointment of judges. In our country if a particular man becomes Chief Minister, another particular advocate, who was not likely to become a judge ever, is now certain to become a judge. To avoid this and to make judiciary highly independent for a proper functioning of democracy, this power must be taken away from the executive. I am not casting any aspersions, on x, y or z. Right through, without exception, from the year 1950 till the year 1984 there has been abuse of this power. I do not want to name and I should not name anybody while speaking in Parliament. But such things have happened. I do not mean to say that such things will not happen if the power is transferred to the judicial hands. At least the pulls and pressures will not be so much. I would suggest that the appointment of High Court judges and Supreme Court judges should not be left to the executive, the executive should not have any say in that matter, but it should be vested in a committee of five judges with the Chief Justice as Chairman with a senior judge of the Supreme Court and three Chief Justices of the High Courts including the Chief Justice of the concerned High Court as Members. Of course, the final

[Shri P. Babul Reddy]

order can be issued in the name of the President; I don't mind. But the recommendation of the committee so constituted shall be final. This would make the functioning of the judiciary truly independent and very satisfactory which is very necessary for effective functioning of democracy. Thank you.

श्री राम भगत पासवान : उपसभाध्यक्ष महोदय, मैं हंसराज जी को बहुत धन्यवाद देगा हूँ। वे उस समय के अनुसार बहुत ही माननीय बिल वर्तमान न्याय और विधि प्रणाली में सुधार लाने के लिए लाए हैं। यह बिलदी तो आज के बाद ही लाना चाहिए था। न्याय प्रणाली में आमूल परिवर्तन नहीं हुआ है, जिस से बहुत ही आक्रोश है। कहने को तो बड़ा सुझाना मालूम पड़ता है कि कानून सब के लिए बराबर है, लेकिन कानून बड़े लोगों द्वारा खरीदा जाता है। एक निर्दोष व्यक्ति को फासी के तख्ते पर लटका दिया जाता है और दोषी कभी हाथ नहीं लगता है, इस प्रकार की न्याय पद्धति है। यह पद्धति अंग्रेजों के जमाने से चली आ रही है। यह जो जूडीशियल सिस्टम है इस से हरिजन और वीकर सेक्शन ही नहीं, भारत को 80 प्रतिशत जनता फ्रस्टेटेड है क्योंकि उसे लोअर कोर्ट, हाई कोर्ट और सुप्रीम कोर्ट में बहुत परेशानियाँ उठानी पड़ती हैं। मैंने अध्ययन किया है गांवों के करीब 90 परसेन्ट व्यक्ति लोअर कोर्ट्स में किसी न किसी रूप में इनवाल्व्ड है। न्यायाधीश 5-10 रोज की डेट दे देता है, डेट पर मुनता नहीं, कार्यवाही करता नहीं, फिर दूसरी डेट दे देता है। कई तरह की फीस लगती है— एक मुंशी की फीस, एक वकील की फीस, एक पेशकार की फीस फिर इनडायरेक्ट फीस.....

श्री जगदम्बी प्रसाद यादव : बीच में दोन्तीन फीस छूट गईं।

श्री राम भगत पासवान : जो छूट गई वह आप कह दीजिएगा। किसी स्त्री का पति मारा जाता है, कोई हरिजन सताया जाता है— जनता पार्टी के राज में हरिजनों के बहुत से गांव जला दिये गये, पिपरिया, धर्मपुरा... (व्यवधान) माननीय विधि मंत्री जानते हैं, गरीबों के हमदर्द हैं। जिसका पति मारा गया, जिसका पुत्र मारा गया, वह स्त्री कहां से फीस दे सकेगी कैसे उसको न्याय मिल सकता है। विधि मंत्री मानवता के बहुत बड़े पुजारी हैं, वह वर्तमान कानून में अविलम्ब सुधार लाएँ ताकि गरीबों को न्याय मिल सके। तो लोअर कोर्ट की यह स्थिति है।

हाई कोर्ट और सुप्रीम कोर्ट की हालत देख कर तो वकील की वह पंक्ति याद आ रही है कि :

‘बड़े हुए तो क्या हुए जैसे ताड़ खजूर
पंथों को छाया नहीं, फल लागे अति दूर।’

जिस वृक्ष से चलने वालों को छाया न मिले और न फल ही मिले तो उस को जरूरत ही क्या है। यह हाई कोर्ट और सुप्रीम कोर्ट गरीबों के लिये नहीं है। क्या कोई गरीब आदमी इन हाई कोर्ट्स और सुप्रीम कोर्ट में न्याय पाने के लिये जा सकता है। यह तो पूंजीपतियों के लिये है, लैंड लार्ड्स के लिये हैं, स्मगलर्स के लिये हैं, प्राफिटियर्स के लिये हैं, ब्लैक मार्केटियर्स के लिये हैं। यह गरीबों के लिये नहीं है। मैं इन्स्टेंस देना चाहता हूँ। यह हमारा देश समाजवादी देश है। यह डेमोक्रेटिक और वेलफेयर स्टेट है। यह वचनबद्ध है गरीबों को न्याय दिलाने के लिये और सरकार बहुत काम कर रही है गरीबों के लिये। अब गरीबों को गरीबी की रेखा से ऊपर लाने के लिये श्रीमती इन्दिरा गांधी के नेतृत्व में काफी बड़ा काम शुरू किया गया है और यहां के गरीबों को उन में बड़ी आस्था है, विश्वास है। वह भी समझती हैं

कि गरीब परेशान है। उन के प्रति अन्याय हो रहा है। लेकिन उस को सुधारने की शक्ति श्रीमती इन्दिरा गांधी में ही है। तो आप उन को न्याय दिलाने के लिये वचनबद्ध हैं। आप ने गरीबों की परचा दिया, लैंड के लिये। उस को जोत दी आबाद होने के लिये। आप ने उस को बटाईदारी का परचा दिया, घर के लिये परचा दिया और हाईकोर्ट ने उन सब को रिजेक्ट कर दिया। वहन से गांवों के नाम में बता सकता हूं — मधुबन जगतपुर, जागियार कहां नहीं हैं कि जहां के लिये परचों को हाईकोर्ट ने रद्द कर दिया है और उस के दाद जब वे गरीब जमीन जोतने के लिये गये तो उन को नक्सलाइट करार दे दिया गया। मैं तो कह सकता हूं कि यह जुडिशियरी ही है नक्सलाइट्स को पैदा करने वाली। आज जुडिशियरी का जो सिस्टम है उस को धरातल का पता नहीं है, उस को कोई नालेज नहीं है। वह गांव में जा कर नहीं देखती कि उन का वेलफेयर किस तरह से हो रहा है और किस तरह से समाज को आगे बढ़ाने की व्यवस्था की जा रही है। वह कुछ देखते नहीं और एक जगह बैठे बैठे जो उन के बड़े-बड़े वकील ने बता दिया उस के आधार पर फैसला कर देते हैं और उसमें गरीब पीसा जाता है। उस को फायदे की जगह शक्ति होती है। वही आज पीसा जा रहा है। तो विधि मंत्री महोदय, मैं कहना चाहता हूं कि इस से मनुष्य को मर्यादा पर, उस के धन और धर्म पर कुठाराघात हो रहा है। इस लिए जुडिशियरी में आमूल परिवर्तन कीजिए।

इस के गठन पर भी हम लोगों को विश्वास नहीं है। अभी तक जुडिशियरी

में नीचे से ऊपर तक हरिजनों की बहुत कमी है। इसमें रिजर्वेशन तो लागू होता ही नहीं। वैसे हरिजन वकील बहुत काफी हैं लेकिन कोई न कोई बहाना लगाकर उन को नहीं लिया जाता है। उन को लिया जाना चाहिए। जनता पार्टी के राज में नेशनल ला स्कूल, बंगलौर की स्थापना की गयी थी। जेठमलानी साहब और कोई एक जस्टिस थे उन सब ने मिल कर ला के कोर्स को 5 साल का कर दिया। अब गरीब के लड़के बहुत कम ही ला कोर्स में एडमिशन लेते हैं। यह जब से 5 साल का कोर्स हो गया है तब से वे सोचते हैं कि हम तो पढ़ नहीं सकेंगे इस लिए इस व्यवस्था को आप बुझा कर रद्द कीजिए। यह कोर्स दो वर्ष के लिए ही रहना चाहिए। पहले यही था। आप भी ला के जाता है और दो वर्ष का कोर्स पढ़ कर डा० राजेन्द्र प्रसाद और दूसरे देश के बड़े-बड़े वकील हुए हैं। तो यह एक बड़ा भारी षडयंत्र है और इस लिए इस पांच वर्ष के कोर्स को दो वर्ष का कर दिया जाना चाहिए।

वर्तमान जो न्यायपालिका है उस में इतनी डिले होती है कि बहुत से लोग फस्ट्रेटे हो कर मुकदमा छोड़ देते हैं। 5, 10, 15 या बीस वर्ष तक कई बार मुजरिम का पता नहीं लगता और केस चलता रहता है। बहुत से लोग जेल में ही सड़ते रहते हैं। तो आप टाइम फिक्स कीजिए कि इतने समय में मुकदमे का फैसला हो जाना चाहिए। अभी हर डिस्ट्रिक्ट लेवल पर और पंचायत लेवल पर केसों का निपटारा होना चाहिए। डिस्ट्रिक्ट लेवल पर जो जज हैं, न्याय दंडाधिकारी है, उनको पंचायतों में जाकर फैसला करने के लिए कहिए। ट्रेवलिंग

[श्री जगदम्बी प्रसाद यादव]

बहाल कीजिए जो पंचायतों में जाकर फैसला करें और वह फैसला अंतिम समझा जाए। इससे गरीबों की परेशानी कम होगी।

उपसभाध्यक्ष महोदय, इसके साथ ही साथ मैं यह भी कहना चाहता हूँ कि गरीबों को न्याय नहीं मिलता है क्योंकि वह बहुत खर्चीला हो गया है। जो लॉगल एंड आप गरीबों को देते हैं उसमें 100 रुपये देते हैं। कौन वकील ऐसा है जो 5 वर्ष, 10 वर्ष या 1 वर्ष तक सी रुपये लेकर कैस लड़ता रहेगा? तो यह बिल्कुल फार्स जैसा मालूम हो रहा है। तो जितना भी खर्चा है, डाइरेक्ट या इन्डाइरेक्ट जितना भी लगता है उसको दोजिए, ताकि वह न्याय पा सके।

इसके साथ ही साथ मैं मुझसे यह भी है कि जजों को लोअर कोर्ट से लेकर सुप्रीम कोर्ट तक ट्रांसफर होना चाहिए, इंटर-सेट ट्रांसफर होना चाहिए ताकि न्याय में किसी प्रकार का पक्षपात न हो। इसके साथ ही मैं कहना चाहता हूँ कि जहाँ ऐप्पेइटेस हो जाते हैं, हरिजनों पर अत्याचार हो जाते हैं, उनको जलाया जाता है, उनके लिए स्पेशल कोर्ट बनाइये। अब तो हमारी सरकार ने उनको बहुत संरक्षण दिया है, पहले की अपेक्षा बहुत कम अत्याचार होते हैं, फिर भी कहीं कहीं हरिजनों पर अत्याचार होते हैं तो उनको न्याय मिलने में दिक्कत होती है। सरकार को वहाँ स्पेशल कोर्ट बनाकर गरीबों को न्याय दिलाना चाहिए।

उपसभाध्यक्ष महोदय, मैं हंसराज जी को बहुत धन्यवाद देता हूँ कि वे यह माननीय विधेयक सदन में लाये। मैं विभिन्न तीनों मंजी में आग्रह करता कि

वर्तमान जूडिशल सिस्टम जो अंग्रेजों के जमाने का था उसमें आमूल परिवर्तन लाये। आम जनता को कम से कम समय में न्याय सुलभ हो। गरीबों को बिना खर्च के न्याय मिल सके, ऐसी व्यवस्था करें। इन्हीं शब्दों के साथ मैं इस विधेयक का समर्थन करता हूँ और हंसराज जी को धन्यवाद देता हूँ कि वह ऐसा बिल लाये।

इन्हीं शब्दों के साथ मैं आपको धन्यवाद देता हूँ कि आपने मुझे बोलने का समय दिया। साथ ही मैं सरकार से निवेदन करना चाहता हूँ कि इस विधेयक को वह मान ले। यही मेरा आग्रह है।

SHRI S. W. DHABE (Maharashtra):
Mr. Vice-Chairman, Sir my friend, Shri Hansraj Bharadwaj, has brought forward this Resolution for constituting a Judicial Reforms Commission. Though I support the idea in this Resolution, I would like to caution the Mover of this Resolution that the appointment of such a Judicial Reforms Commission means another ten years. Unless some interim reports are given and prompt steps are taken, it will only be postponing the issues which are pending today for immediate decision at the hands of the Law Minister and the Government not only for judicial reforms, but also for decentralising the judiciary.

Now, Sir, what are the problems which we are facing today in the country? The first problem which was referred to by my friend Reddy, is with regard to the implementation of article 130 of the Constitution which says that the Chief Justice may constitute benches in places other than Delhi with the approval of the President of India. Sir, the President of the Vidarbha Vikas Mandal Sangharsha Samiti, of which I am the President made a demand to establish a Supreme Court bench at Nagpur and the High Court Bar Association at Nagpur and the entire people of Vidarbha

Vidarbha supported it. When I raised the question as to how many proposals are pending with the Government with the Chief Justice, the reply given was that there were 4 or 5 proposals—one from Calcutta supported by not only the Government but also a Resolution of Tripura, another from Aadhra Pradesh, then also a demand from Bangalore and a few other places. For the last two years the proposals are pending, and a stock reply is given by the hon. Law Minister that under article 130 unless the Chief Justice recommends nothing can be done. With due respect, I would like to suggest, Sir, that it is not the legal position. The legal position is that it is not the Supreme Court but it is the Parliament which is empowered. The Chief Justice may recommend, but the ultimate power, is vested in Parliament under the Seventh Schedule, Entry 77. Sir, I would like to quote Entry 77:

“77. Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practise before the Supreme Court.”

The power is therefore vested in Parliament.

There was a unanimous demand that the highest judiciary must be decentralised. It is more necessary, apart from giving justice to the poor. The Supreme Court sitting at Delhi has become so unwieldy that 1,54,000 cases are pending before the Supreme Court. A large number of Special Leave Applications are pending. In civil appeals there has been no hearing for ten years. I would like the hon. Law Minister to consider exercising powers under Entry 77. The Supreme Court at Delhi may sit for constitutional matters. So far as other matters are concerned, they may constitute benches of the Supreme Court at different places with proper jurisdictions; they may hear appeals and give decisions then and

there. Nagpur is an ideal place. My submission is supported by amendment of articles 323A and B. They were amended by us, by this House, during the emergency. So far as service matters are concerned, it is the Government which is at fault. So far as service matters are concerned, the High Courts and the Supreme Court are sitting for over 4 or 5 years. I appeared in one case, of a dismissed transport worker in 1962 and it came up in 1974—after 12 years. Similarly, the industrial workers and the working class all over India were demanding that the 3-tier system of the judiciary, labour court, then the High Court and then the Supreme Court, should be done away with. It is taking at least 5 to 10 years. Therefore, what we find that 323A has been amended. The amendment was made about eight years back. Till now, there is no implementation. Why? Much fault lies with the Government. They have created various laws and provisions and they don't implement them. 323-A provides for Administrative Tribunals. It has been provided that these tribunals will be set up. When these tribunals are set up under 323-A, sub-clause (d), they will exclude the jurisdiction of all courts except the jurisdiction of Supreme Court under article 136. There is a similar provision in 323-B, sub-clause (3) regarding labour disputes, collection and enforcement of taxes and (b) foreign exchange, imports and exports across the custom frontiers, land reforms, etc. Now, for the last 22 years, we have not been able to have the land reforms, distribution of land, etc. A large number of cases are pending. In the Karnataka High Court itself, there are about 10,000 cases pending. It has been provided in clause (d) that it will exclude the jurisdiction of all courts except the jurisdiction of Supreme Court. This has to be done by a law of Parliament. I fail to understand why the Government is keeping silent. Why are they not bringing a legislation under 323-A(b) which will not only give justice to the poor people, to a

[Shri S. W. Dhabe]

servant and a labourer and others, but it will also reduce, to a large extent the burden on the High Courts? There is no explanation given till now by the Government. Why are they not doing anything for this. Sir, this is one Constitution where the salaries of Judges of Supreme Court and High Courts are fixed in the Constitution itself under article 125. The salaries of Judges are given in the Second Schedule, i.e. Rs. 4000 and Rs. 5000. You cannot even increase the salaries. We cannot give them proper emoluments. on the other hand, We have provided in article 59(3) of the Constitution that the Parliament has got power to fix not only the salary but also the emoluments of the President, the highest office in our country. It is no use blaming the judiciary, that judiciary is partial. Somebody is related to the Judge and, therefore, he has given a judgment of a particular type. One Hon'ble member said that the judgment was biased. Somebody says that the Judges was biased and, therefore, the judgement was given against the Prime Minister. Is it proper? We were in this House at that time. You were also in this House. How the Allahabad High Court judgment was given? It was because there was a bungling by lawyers and the plea of jurisdiction was not raised before the Allahabad High Court. Only an affidavit was filed. No proper evidence was given. When the matter came here, we all expected it to be upset by the Supreme Court. But there were enthusiastic people who wanted to please the Prime Minister and so the law was amended. The majority of the Members were not in favour of it. The Supreme Court judgment itself says that since the law has been amended, we are allowing it. We had put the Prime Minister above the law at that time making a special provision for a Committee of the Members of Parliament to hear the matter. Was it proper? It has tarnished the image

of the Prime Minister more than doing justice. You can only get justice if we have faith in the judiciary and if we have independent judiciary. The judgment may be wrong, but to criticise that the judgment is motivated and biased is something which at least is not expected of this House of Elders. Such observations are made

THE VICE-CHAIRMAN (SHRI SANTOSH KUMAR SAHU): Mr Dhabe, for how many minutes more you want to speak because the Minister has to intervene?

SHRI S. W. DHABE: I will not take much time. There is one point which I want to say. That is for starting a new branch of public interest litigation. Certainly they have done justice to the people. It is no use having an ivory-tower judiciary system. Otherwise, the hutment dwellers in Bombay whose hutments were ordered to be abolished, would not have got stay orders. Many people could get justice. I think, a right step was taken by the Supreme Court.

The other matter in which the Ministry has to move is the legal aid to poor. I find that under article 39(A) which was also amended during the emergency, a directive principle was given that legal aid to poor will be given. But the law must not stop there. It is not to be an administrative machinery. Justice Bhagwati may have a passion for legal aid to poor. And he has done a good work. But that does not by itself solve the question. I would like the Minister to examine the whole scheme. We are spending more money on administration. 80 per cent of the grants are being spent on administration and expenses on TA and DA of the members of the legal aid boards. In Maharashtra, for the last six years, the legal aid board have not even framed the rules for giving legal aid to the poor. Article 39(A) says that you must have a legislation for legal aid to poor. I am against the bringing in

of the administrative machinery under the legal aid scheme. Let the voluntary organisations be formed. Let the lawyers from their own organisations and ask for some grants if they want. But if you create a machinery like a Department or a Board for legal aid to the poor, you know what the experience will be. Board means more mismanagement. And the purpose will be defeated. Therefore, the time has come that we should have a second look at the scheme. We should pass a legislation under article 39(A) so that the legal aid is available to the poor.

Lastly, I want to make few suggestions for the consideration of the hon. Minister. One of the complaints at the lower level is that there are no library facilities at the lower courts' level. Adequate libraries are not there and they do not know what the latest laws are what the up-to-date position in regard to law is. Secondly, the demand by the working class for a long time is that the Industrial Disputes Act is not amended so far as execution of the proceedings is concerned. After the labour courts given an award, the industrial tribunal gives an award or we get reinstatement or even recovery orders, we must again go to the Collector for recovery. That takes another four years or five years. The National labour Commission made recommendations in 1969 that the labour courts and the industrial tribunals who administer those laws should be given the powers for execution of decrees so that they can directly recover. This is one of the unanimous demands of the working class that the law requires to be amended so that the execution powers are given to the labour courts and the industrial tribunals.

Now, I come to my third suggestion. Let us not look to the judiciary as merely giving justice to the rich people. I think, when the previous Law Minister was there, some committee was appointed. I think, Sir, you were also a member of that

Committee, and Mr. Nanda was also a Member of that Committee. And that committee recommended the abolition of court fee in civil courts and such other courts. And today, Sir, as one hon. Member was saying, Rs. 5,500 is required to be paid to a lawyer in one case, the highest in the world. If that be the case, how can poor working class get justice? Therefore, in order to make justice cheap, it is very essential that the court fee should be abolished and certain other methods should be found. The Government should have a general 'expenditure' on giving justice to the people. It should not be thought that it should be a self-earning department and therefore we must have more court fee. 11 per cent is the compulsory court fee. As my friend has said, in my State, 10 per cent is the minimum if you fill an appeal. You have to spend 10 per cent for the court fee. Therefore, the question of court fees is closely linked up with judicial reforms. The abolition of court fees should be seriously considered by the Ministry and it should take the necessary steps to do so in the interests of justice.

श्री जगदम्बी प्रसाद यादव : माननीय उपसभाध्यक्ष जी, मैं यदि प्रस्ताव और प्रस्तावक का नाम देखना हूँ उनका नाम हंस मे शुरू होता है और फिर हमारे जो विधि मंत्री हैं वे जगन्नाथ हैं, दुनिया के मालिक हैं और हंस क्षीर-नीर का न्याय बड़ा साफ साफ करता है। ऐसे दुनिया के अन्दर जहाँ हंस का न्याय हो और उस पर सदन विचार-विमर्श करे तो बड़ा अच्छा लगता है। श्रीमन्, मैं हंस राज जी के प्रस्ताव को देखता हूँ तो मुझे लगता है कि इसमें इसका विराट विवेचन होना चाहिये। इसका जो रूप है वह ठीक नहीं है। मैं इस पर एक बात कह कर कुछ सुधार प्रस्तावित करना चाहूंगा। क्या इसमें हमारे माननीय प्रस्तावक जी घुमा-फिरा कर कमिटेड ज्यूडिशियरी तो नहीं चाहते हैं? अभी जो वर्तमान में अपने देश में शंका

[श्री जगदम्बी प्रसाद यादव]

पकट की जा रही है वह यह है कि वर्तमान सरकार ज्यूडिशियरी को कमिटेड करना चाहती है। वैसे मैं देखता हूँ मुझे लगता है कि ज्यूडिशियरी लगभग कमिटेड हो चुकी है। इसलिए अभी तत्काल जो नियुक्तियाँ हुई हैं उन नियुक्तियों में हमारे विधि मंत्री जी ने कहा है कि मुख्य व्यावधान से परामर्श लेना आवश्यक नहीं है। यही पर मुझे शंका हो जाती है। इतना ही नहीं बल्कि सुनने में आया है मंत्री जी ने उसमें से 10 को एक ही वर्ग के एक ही दल के लोगों को लिया है और ऐसे लोगों को लिया है जिनका हाईकोर्ट और सुप्रीम कोर्ट में कोई सीख नहीं है। इसलिए मुझे शंका है। इसमें स्पष्ट लक्ष्य जोड़ा गया है, इफेक्टिव इंस्ट्रूमेंट आफ सोशल चेंज। हमारे माननीय सदस्य रेड्डी साहब ने कहा कि ज्यूडिशियरी सोशल चेंज ही ला सकती है। सोशल चेंज के अनुसार उसका इन्साफ कर सकती है इंटरप्रिटेशन कर सकती है। जो शब्द हैं जैसे लैंड टू दी टिलर्ज और आजकल एंग्रीकल्चर में बलाया हुआ है लैंड टू लैंड जिसमें बकरी बांटी जाती है लेकिन लैंड टू लैंड कहा जाता है, लैबरेटरी का जहाँ कोई काम नहीं है। इसीलिए मुझे शंका है कि माननीय प्रस्तावक जी का विचार कमिटेड ज्यूडिशियरी का घुमा-फिरा कर लाने का तो नहीं है अगर है तो दुभाग्यपूर्ण है और यदि ऐसा नहीं है तो मुझे कोई एतराज नहीं है। मैं इस में जो सुधार चाहता हूँ न्याय के हिमाब से विधि के दर्शन के हिमाब से इसमें कुछ बातें साफ करनी चाहियें थी। समाज के जीवन आदर्शों एवं मूल्यों की रक्षा करें जो संविधान के प्रावधान पवित्रता के साथ प्रस्थापित किये जाते हैं, एक बिन्दु, दूसरा कानून इतने सरल, स्पष्ट, बोधगम्य होने चाहियें कि न्याय मांगने

वाला स्वयं उसे समझ सके और रक्षा के लिए स्वयं लड़ सके। तीसरा प्वाइंट है कानून इस प्रकार पंजीकृत किए जाएं कि उनके क्रियान्वयन की प्रक्रिया सहज भाव से संचालित चलती हो चलती रहे उद्देश्य की प्राप्ति में बाधक न हो। चौथा कानून समयानुकूल परिवर्तनशील बनें, उन्हें समस्याओं के समाधान का एक तरीका बना कर सामाजिक परिवर्तन को एक दिशा दी जा सके। अच्छे कानून में समाज की अपनी एक अस्मिता प्रतिबिंबित होनी चाहिए, ने उधार के और नकल के कानून न हों, समाज के सभी वर्ग उसमें अपनी वाणी पा सकें, अपने को प्रतिबिंबित पायें और उन्हें अपना अभिभावक समझें। मैं चाहता था कि यह जो प्रस्ताव है उसमें अगर इस कड़ी को जोड़ दिया जाये तो यह प्रस्ताव सम्पूर्णता को प्राप्त होता है अन्यथा सम्पूर्णता को प्राप्त नहीं होता है।

एक बहुत पुरानी प्रपोजी की कहावत है कि जस्टिस डिलेट, जस्टिस डिनाइट। न्याय में विलम्ब होना ही न्याय नहीं देना है। आज अपने देश का जैसा स्थिति हमारे माननीय मित्रों ने यहाँ रखा है, उसमें है कि लगभग कई लाख मुकदमों उत्तर प्रदेश में हैं, 62 हजार से ऊपर लाख के लगभग मुकदमों बिहार में है इसी तरह से लाखों मुकदमों वर्षों वर्षों से पड़े हुए हैं। तो यह जो कहावत है यह लाखों को इन्साफ नहीं देने के लिए प्रमाण प्रस्तुत करती है। अभी अभी बतियाराम का केस लगभग पौने 3 सौ वर्ष में फैसला पाया है। अपने यहां तो कसों की लम्बाई का सबसे बड़ा रिकार्ड होगा। आज एक समस्या सामने है कि इस विलम्ब को कैसे दूर किया जाये। एक और अधिक केसेज और दूसरी और कम जजेज की बात है। कुछ मित्रों

की राय है कि अदालत को रात्रि में बैठना चाहिए और केंसों का फैसला करना चाहिए। कुछ ने कहा कि अवकाश प्राप्त जजों से सहयोग लेना चाहिए, बोझ अधिक हो गया है, उसको ठीक किया जाये कुछ ने कहा कि कानून की प्रक्रिया में सुधार लाना चाहिए जिससे कानून की प्रक्रिया में जो बखेड़ा होता है जिसके कारण विलंब होता है वह दूर हो जाये। अंत में कहा जाता है कि समाज तब तक नहीं सुधरेगा आपस में जब तक वैमनस्य रहेगा और तब तक ये मुकदमे बढ़ते रहेंगे। इस प्रक्रिया के रूप में क्या हम कुछ नहीं कर सकते हैं? विधि मंत्री जी, विधि वक्ता भी हैं और एक सामाजिक व्यक्ति भी हैं जीवन का अनुभव भी है तो वे इस पर जरा सा विचार करें। छिटपुट रूप में हमारे न्यायाधीशों ने भी विचार किया है चाहे वे माननीय देसाई जी हों, भगवती जी हों या मुख्य न्यायाधीश चन्द्रचूड़ जी हों। उन्होंने कहा है कि न्यायिक व्यवस्था में परिवर्तन होना चाहिए गरीब व्यक्ति न्याय से वंचित न रहे। मुख्य न्यायाधीश कहते हैं कि न्यायाधीश निर्भीक हों निष्पक्षतापूर्वक न्याय दें। लेकिन इन सारे पहलुओं पर ही नहीं सारे वक्ताओं ने कहा कि गरीब कैसे न्याय पाए कौन सा उपाय है जिससे गरीब न्याय पा सकता है और गरीब तो छोड़िए, उच्च तबके वाले भी जिनको काफी पैसा नहीं है जो काफी अच्छे अभिवक्ता नहीं रख सकते हैं वे कैसे इन्नाफ पाएं?

श्रीमन्, आज वास्तव में देखा जाए तो जिस तरह से हमे अंग्रेजों के उपनिवेशवाद से छुटकारा मिला है लेकिन अंग्रेजी भाषा के उपनिवेशवाद से छुटकारा नहीं मिला है, उसी तरह से आज हमारा जो जुडीशियल सिस्टम है वह भारतीय जुडीशियल सिस्टम नहीं है। आज इस पर एक प्रहार होना चाहिए था और खास

करके हंटराज जी की तरफ से जो हंस ही नहीं, हंस्मों के राजा भी हैं। यह जो न्याय की पद्धति है यह भारतीय न्याय की पद्धति नहीं है। यह सिस्टम जिस वातावरण में तैयार हुआ है जिस परिप्रेक्ष्य में तैयार हुआ है इसका जो इतिहास और भूगोल है वह इंग्लैंड का इतिहास और भूगोल है, वह हमारे देश का इतिहास और भूगोल नहीं है। इसके साथ हमारी क्षमता नहीं है। मैं गांव से आता हूं। कुछ दिन पूर्व तक जब तक कि हमारी ग्राम पंचायतें नहीं थी लोग आपस की पंचायतों में झूठ नहीं बोलते थे और कुछ दिन की ग्राम पंचायतों में झूठ नहीं बोलते थे। वे कहते थे कि कचहरी में जायेंगे तो यह बात नहीं कहेंगे जो वकालत लिखाएगा वही बोलेंगे। यहां हमसे सही बात सुन लीजिए लेकिन आज उन पंचायतों में भी लोग वही बोलते हैं जो उनके पक्ष में है सच्चाई नहीं बोलते हैं। इसलिए कि हमने अंग्रेजों का चरित्र नहीं लिया है, इसलिए कि उनके वातावरण में नहीं पले। अंग्रेजों की विधि परम्परा में नहीं पले, वह हमारी परम्परा है भी नहीं, लेकिन अंग्रेजों ने हमारे चरित्र को तोड़ने की कोशिश की, हमारी परम्परा को तोड़ने, हमारी भयंदा और भाषा तथा संस्कृति को मिटाने की कोशिश की। उसी का लेकर आज भी हम चल रहे हैं। तो आज की आवश्यकता है कि हम इस पद्धति का भारतीयकरण करें, लेकिन भारतीयकरण कैसे होगा?

भारतीयकरण के लिए पहले भाषा का भारतीयकरण हो, जब तक कि न्याय जनता की भाषा में, जनभाषा में नहीं दिया जाए—हमने कहा कि कानून ऐसा हो, जो न्याय पाने वाला समझ सके और उसके द्वारा न्याय पा सके। इस अंग्रेजी कानून को—अंग्रेजी 2 प्रतिशत ही अभी तक जान पाये हैं लोग, कानून को

[श्री जगदम्बी प्रसाद यादव]

जानने वाले दशमलव जीरो, जीरो कितने के बाद होगा, पता नहीं। उसमें भी कई कानून ऐसे हैं कि जो वकील के लिए, परेशानी का घर है।

तो, इसीलिए, जब तक भाषा का सुधार नहीं होगा, जन भाषा नहीं होगी, लेकिन विधि मंत्री जी हिंदी के समर्थक होते हुए भी, राजभाषा के समर्थक होते हुए भी, आज भी पढ़ाई राजभाषा में नहीं, विधि व्यवस्था राजभाषा में नहीं। दुर्भाग्य यह है कि जो संविधान बना था, अंग्रेजी में बना जहर था, लेकिन साथ ही हिंदी में भी बना था। उस विधान को यह स्वीकृति थी लेकिन चालबाज नौकरशाह ने उसको ट्विस्ट किया और ट्विस्ट करके कहा कि यह आर्थेटिक नहीं हुआ। तो जिस देश में, जिस देश को अपनी भाषा में संविधान भी स्वीकृति न हो और उसकी आज तक स्वीकृत कराने की जिम्मेदारी विधि मंत्री न निभा सकें, तो पता नहीं वह हंस राज जी के इस प्रस्ताव का कार्यान्वयन एक रिफार्म्स कमेटी बना करके कैसे कर सकेंगे?

तो इसलिए मैं चाहता हूँ कि भाषा जन-भाषा हो, तब भाव बदलेगा, तब उसके बाद जो व्यवस्था के बदलने की बात है, वह व्यवस्था बदलेगी, नहीं तो नहीं बदलेगी।

उपसभाध्यक्ष (श्री सन्तोष कुमार साहू) : आप कितना समय और लेगे ?

श्री जगदम्बी प्रसाद यादव : दो चार मिनट और।

उपसभाध्यक्ष (श्री सन्तोष कुमार साहू) : नहीं, जल्दी कीजिए। चार पांच और मिनट हैं।

श्री जगदम्बी प्रसाद यादव : मैं जल्दी ही करने वाला हूँ, देरी करने की मुझे

इनमें जरूरत नहीं है। मैं अपनी बात दो-तीन मिनट में खत्म करना चाहता हूँ।

मंत्री जी से मैं निवेदन करूंगा कि एक बात तो निश्चय करें कि अगर न्याय की सचमुच में पुकार आप सुनते हैं, तो न्याय जिसको चाहिए, उसको मिलना चाहिए। आज उसको न्याय नहीं मिल रहा है। उनको न्याय तब तक नहीं मिलेगा जब तक कि प्रक्रिया को आप ठीक नहीं करेंगे, प्रक्रिया जब तक ठीक नहीं होगी, तब तक प्रक्रिया उनकी भाषा में नहीं होगी, उनकी समझ में नहीं आएगी। मुझे तो कभी-कभी ऐसा लगता है कि आजादी या तो नौकरशाह के लिए है, 90 प्रतिशत, 10 प्रतिशत इसमें कुछ हमारे पहुंचे हुए राजनीतिज्ञ होंगे, या जिनको भगवान ने पैसा दिया है, जो कमाने के हुनर में माहिर हैं, उन्हें ही आजादी है, उन्हें ही न्याय है, उनमें न्याय खरीदने की शक्ति। आज आपने न्यायाधीश को भी निरीक्षक, निष्पक्ष नहीं रखा। आज न्यायाधीश भी हमारा कमीशन पाने के लिए, कोई काम पाने के लिए, यहां तक कि टिकट का ही लोभ हो जाए, तो कुछ कर सकते हैं।

धीरे-धीरे मंत्री जी, न्याय पर से भी लोगों की साख विश्वास मिटता जा रहा है। इसकी भी सुरक्षा अगर आप नहीं करेंगे, तो फिर हम कहां पहुंचेंगे ? (समय की घंटी) प्रजातंत्र की रक्षा के लिए आवश्यक है कि जूडिशरी हमारी स्वतंत्र रहे, जूडिशरी कह सके कि कहां पर हम गलत हैं, कहां पर हम ठीक हैं, लेकिन मुख्य न्यायाधीश ने कहा कि आज जूडिशरी को भी खतरा है, भीतर से भी खतरा है, कार्यपालिका से भी खतरा है और उस खतरे का सिगनल आपने तबादले के रूप में और नियुक्ति के रूप में बता दिया है। अगर यही प्रमोशन की भी स्थिति हुई, तो मैं नहीं समझता कि

किस प्रकार आप उनको निवारण देगे ? बार-बार हमारे को उपसभाध्यक्ष जी का सिग्नल हो रहा है। इसलिए मैं दो-तीन निवेदन आपसे करना चाहूंगा। एक निवेदन तो यह कि सचमुच में हमारी जो न्याय पद्धति है, उसकी जो प्रक्रिया है, वह भारतीयता का स्वरूप धारण कैसे करे, वह इंग्लैंड का पाश्चात्य का पिंड पानी छोड़ कर हमारी अपनी न्याय पद्धति में, हमारे साथ समरस कैसे हो, इसका गंभीर रूप से विवेचन कीजिए। दूसरी बात, इस न्याय को हम जो हमारी राष्ट्र की निश्चित भाषाएं है उन भाषाओं में ही उनमें सब जगह प्राप्त हो और इन नौकरशाह के चंगुल से, उनके पंजे से छुट कर हम जनता को उनकी भाषा में न्याय दे सके। यह कैसे ठीक होगा ? तीसरी बात, समाज में जो रिश्तों की बात चली है, आज हर एक आदमी सोचता है। पहले सोचता था कि मैजिस्ट्रेट खरीदा जा सकता है, और आज सोचता है कि जज भी खरीदा जा सकता है। इस विकृति को कैसे दूर करें ? जब तक इस विकृति को दूर नहीं करते हैं तब तक मैं समझता हूँ कि इंसान के प्रति जो लोगों की आस्था मिटती जा रही है, वह मिटती ही जाएगी। चौथी बात गरीबों को न्याय मिलना चाहिए लेकिन वकील बहाल करने के बाद भी आप उसकी सही प्रक्रिया को पकड़ नहीं पाए हैं। जब तक सही प्रक्रिया स्थान पर जाकर नहीं पकड़ी जाए कि कैसे इसका निराकरण होगा, इसमें कह सकते हैं कि सामाजिक परिवर्तन की आवश्यकता है। हाँ, सामाजिक परिवर्तन की आवश्यकता है। लेकिन हम इसके लिए भी रास्ता निकाल सकते हैं। पांचवीं बात, एक बार फिर दोहराना चाहूंगा न्याय पद्धति कमिटेड नहीं हो, स्वतन्त्र न्याय पद्धति रहने देने की आप कम से कम अपने कार्यकाल में करें। आप न्याय

के जानकार हैं। आप एक अच्छे विधि-वेत्ता रहे हैं और आपके प्रति लोगों को आस्था भी है। आप उस आस्था को बनाए रखें।

इन्हीं शब्दों के साथ मैं आपको पुनः आग्रह करते हुए अपनी बात को समाप्त करता हूँ।

SHRI DINKARRAO GOVINDRAO PATIL (Maharashtra): Mr. Vice-Chairman, Sir, I welcome this Resolution and also I support it. In fact, the existing judicial system is rotten one. The laws are also outdated. Therefore, there is need for change of the existing judicial and legal system. People have to wait for years and years to get justice and generation after generation litigations are going on without getting any fruit. Every year about 10,000 new cases are filed in the Supreme Court and hundreds of new cases are filed in the lower courts. The pending cases will take at last 35 years for disposal even if no new cases are filed in any of the courts. The problems of disposing of cases have become untractable. Sir, justice delayed is justice denied. In such a deadening atmosphere the demand for justice has been rising to a climax. However, that cry remains unsatisfied. The result is frustration, discontent, dissent and violence. I shall give one example. In Andhra Pradesh, in Telengana region, there was a small farmer having a small piece of land. He could not maintain his family on that piece of land. So, he had to go to work on the land of a landlord as an agricultural worker. Because of his poverty and bad economic condition he mortgaged his piece of land to this landlord. The agricultural worker could not return the money in time which he had taken from the landlord. So, the landlord filed a civil suit against him for money and also for the piece of land. The poor worker could not afford to go to the threshold of the court building because of his inability to engage a lawyer. So he lost the case and his piece of land also. One

[Shri Dinkarrao Govindrao Patil]

day he decided to ask the landlords about this injustice. He went there. Instead of asking him, he took an axe in his hand and gave a fatal blow to the landlord. The landlord died on the spot. The poor worker cut the dead body into pieces, kept those pieces of the dead body in a wooden box and took that box on his head and went to the house of the judge who had delivered the judgement. The judge asked him: "What have you brought?" The poor fellow replied that he had brought justice in that box. Then he opened the box and showed the piece of dead body to the judge and said: "This is my justice". This is the situation in our country.

So, therefore, litigation has become a game of the rich. This is the unfortunate fate of the poor. Public interest litigation and the Lok Nayalaya movement have come into being in response to the lacunae in our judicial system. These two devices of imparting social justice are still at an incipient stage. Lok Nayalaya—i.e. people's court—is based on the concept of dispensing inexpensive and impartial justice in an atmosphere of mutual amity and goodwill. Therefore, the genesis of Lok Nayalaya can be traced to the Constitution of India, under article 39A. I quote that article:

"The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities".

Therefore our Government initiated the legal aid scheme for the benefit of the weaker and down-trodden people.

THE VICE-CHAIRMAN (SHRI SANTOSH KUMAR SAHU): Mr. Patil, please conclude now.

SHRI DINKARRAO GOVINDRAO PATIL: Just two-three minutes more. Therefore, I must congratulate our

young leader, Rajiv Gandhi, who has initiated a Legal Cell on behalf of the Congress Party. So I would like to make two or three suggestions.

First, only such a person should be appointed as a judge who will interpret the laws in favour of justice for the larger interests of the underprivileged and weaker sections of society. The judges should be having a progressive mind.

Second, there is need for mass awakening and creating legal consciousness in the minds of people. So all these present laws should be revised.

And lastly, the courts are inadequate and insufficient to give speedy justice. Therefore, more courts should be set up. This is essential to give justice in the present circumstances.

In the end, I support the Resolution brought by my learned friend, Shri Bhardwaj.

THE VICE-CHAIRMAN (SHRI SANTOSH KUMAR SAHU): Shri Radhakrishna. I would request you to be brief, because the Minister has to reply.

SHRI PUTTAPAGA RADHAKRISHNA (Andhra Pradesh): Mr. Vice-Chairman, Sir, there can be no two opinions either in this House or outside, about the fact that justice is costly in terms of time as well as in terms of money. That is why there is every need to set up a Commission for Judicial Reforms. I do not know what is the idea of Mr. Hansraj Bhardwaj and what are the reforms he wants to bring about through that Commission. But I am of the opinion that there must be some basic changes in our Constitution and the set-up must be changed. At the time of framing of our Constitution, the circumstances and the social conditions were different and keeping all those things in view the set-up was established. That way, keeping in view the present circumstances and the contemporary social conditions, there is every need for change of the Constitution and the set-up. Particularly, Sir, our Judiciary is established on the principle of separation of pow-

ers but, I think, in fact there is no separation. Clearly there is judicial supremacy. Our Judiciary is entrusted with writ power and judicial review over administrative actions and legislative acts also. That is why there is judicial supremacy over both the Executive and the Legislature in the name of rule of law. That is why I am of the opinion that Parliament must define what is the rule of law and what is its limit. There must be some limit to the rule of law since Parliament, that is, the supreme legislature of the country, is the will of the people. The very preamble of our Constitution says that we have constituted India into a sovereign, socialist, secular, democratic republic. When we really want this sovereignty to be with the people, Parliament being the representative of the people, the opinion of Parliament is the will of the people. So, the people's will in a sovereign democratic country must prevail. That is why I am also one with Mr. Bhattacharjee there.

THE VICE-CHAIRMAN (SHRI SANTOSH KUMAR SAHU): Please help us; please conclude. Please give a few minutes at least for the reply.

SHRI PUTTAPAGA RADHAKRISHNA: Sir, another thing is, we want a socialist pattern of society and for that also Parliament must be free from judicial review. In some socialist countries like the USSR, there is no power of final interpretation with the Judiciary, that is, High Court or Supreme Court. In the USSR, the Presidium of the Supreme Soviet of the USSR is the final authority for the interpretation. In the same way, in Switzerland also the Federal Assembly is the final authority to interpret. That is why they are able to reflect the people's will in the Legislature.

THE VICE-CHAIRMAN (SHRI SANTOSH KUMAR SAHU): Please conclude now. You can speak later on some other Bill. The time is limited.

PROF. C. LAKSHMANNA (Andhra Pradesh): Firstly he is given five min-

utes only and that time also is being curtailed now.

SHRI PUTTAPAGA RADHAKRISHNA: Give me another two minutes, Sir.

THE VICE-CHAIRMAN (SHRI SANTOSH KUMAR SAHU): We want to hear his reply.

SHRI PUTTAPAGA RADHAKRISHNA: Since the power of final interpretation is with the Judiciary, there have been several difficulties for bringing about new laws. In this connection I would like to draw the attention of this honourable House to the recent judgment of the Supreme Court upholding the constitutional validity of the Hindu Marriage Act. I will just explain its fate. Some two years ago or so, the Andhra Pradesh High Court had struck down section 9 of the Hindu Marriage Act, that is, provision for restitution of conjugal rights. At the same time, I think, the Delhi High Court had upheld the validity of that section. After two years or so, the Supreme Court has upheld it now. Sir, this law was brought about nearly thirty years ago and has been in operation. But the law which has been in force for nearly thirty years was struck down by some competent court as invalid. Now, what will be the fate of such cases all these years? There is no homogeneity, no similarity. From Judge to Judge, from court to court, it differs. That is why there is every need for defining the rule of law and interpretation, and there must be a limit to the rule of law and Parliament must be the supreme interpreter in the matter of Constitution.

Anyhow, I support the Resolution for setting up a Commission for Judicial Reforms and I hope the House will pass the Resolution. Thank you.

THE VICE-CHAIRMAN (SHRI SANTOSH KUMAR SAHU): I now call upon Shri S. M. Krishna, the Finance Minister, to lay the Notifications.