

[Shrimati Ram Dulari Sinha]

(व्यवधान) पेशंस रखिये । आप ही मजदूरों के मसीहा नहीं है हम भी हैं । बराबर हल्ला नहीं करना चाहिये ।  
I also have a stronger voice than you.  
Mr. Jha. (Interruptions)

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): So far as the point raised by Mr. Shiva Chandra Jha is concerned, he is not opposing in the sense that he wants an improvement. And Mr. Kalyanasundaram has also not opposed the introduction. Under rule 67 you can only oppose the introduction. If you have a suggestion, that is for the Government to consider. So far as the technical point raised by Mr. Era Sezhiyan that the Bill should be circulated two days before is concerned, the rule is there. I do not know what the practice has been. But there is no violation of the rules. And the Chair cannot help in that. So far as the technical point of Financial Memorandum is concerned, I leave this question open for the consideration stage. The hon. Minister can look into this aspect whether a Financial Memorandum is required, and if the Government feels that a Financial Memorandum is required, that lacuna can be covered. If she is of the opinion that no Financial Memorandum is required, in that case, she can reply to that point at the stage of consideration. Now, you please introduce the Bill.

SHRI SHRIDHAR WASUDEO DHABE (Maharashtra): 'Two days' notice is very essential. Sir, you can direct the Minister that in future such notice should be given.

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): The rule about two days notice is only after the introduction and not before the introduction. In that case, there will be no violation of the rules whereas the general practice of giving copies to the Members before two days should be followed as far as possible. But the Chair cannot help in that. There is no violation of the rules.

The question is:

"That leave be granted to introduce a Bill further to amend the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955."

The motion was adopted.

SHRIMATI RAM DULARI SINHA:  
Sir, I introduce the Bill.

### THE HIGH COURT AT BOMBAY (EXTENSION OF JURISDICTION TO GOA, DAMAN AND DIU) BILL, 1980—Contd.

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): Now, we go to the High Court at Bombay (Extension of Jurisdiction to Goa, Daman and Diu) Bill, 1980. Shri Sibte Razi.

SHRI SYED SIBTE RAZI (Uttar Pradesh): Mr. Vice-Chairman, Sir...

SHRI ERA SEZHIYAN (Tamil Nadu): Sir, may I rise on a point of order?

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): But the Member is on his legs. Let him complete.

AN HON. MEMBER: Sir, where is the Law Minister?

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): The Law Minister has informed that he is busy in the Lok Sabha. Therefore. Mr. Shivraj Patil is taking the charge of the Bill. And I have permitted him to do so.

SHRI SYED SIBTE RAZI: Mr. Vice-Chairman, Sir, there has been a good deal of talk about the law's delay and a huge backlog of pending cases in our courts of law from the lowest to the High Court and from High Court to the Supreme Court.

The delay involved in the administration of justice is, perhaps, more in our country than anywhere else in the world. Sir, the Chief Justice of the United States of America made a remark in 1958 in this regard about the situation prevailing in his country, and I quote:

"Interminable and unjustifiable delays in our courts of law are compromising the basic, legal right of countless thousands of Americans and imperceptibly corroding the foundations of the constitutional Government in the United States."

The same condition, Mr. Vice-Chairman, Sir, has come to prevail with us today. The rate at which our courts are flooded with the pendency of cases requires immediate tackling from the Government side. Sir, the pendency of cases creates untold miseries to the litigants. Other problems are also being created when there are a large number of pending cases in the courts. It becomes very easy to tamper the witnesses. And due to human infirmity and weak memory, it happens sometimes that the witnesses are not able to give evidence correctly. Sometimes, deaths occur and then there is great problem in the administration of justice and disposal of those cases. In this way it happens that the real culprits escape the clutches of law.

Mr. Vice-Chairman, Sir, the greatest cause of the delay in the disposal of cases is too much work for too few judges. There are so many other reasons also as, for instance, delay on the part of the lawyers and then there are so many cases where the Government is involved due to the bureaucratic set up with the result that in many cases the Government has to approach higher and higher courts. Then, Sir, the system of our law courts is quite procedural, as we inherited from the British Raj, where the greatest maxim was that justice should not only be done but that it should also been seen to be done.

Such a procedure takes a great deal of time in the disposal of cases. I would request the Government to take a very serious view of the situation. In this connection I would like to place certain figures about the pendency of cases before the House. The number of cases pending in the various High Courts of our country today is about 6,25,670. If we take less than one year old cases, they number 1,76,574. More than one and less than two year old cases number 1,53,138. More than two and less than three year old cases number 94,881. More than three and less than four years old cases number 62,473. More than four and less than five year old cases number 42,343. More than five and less than six year old cases number 28,225, and so on and so forth. More than nine and less than ten year old cases pending in the various High Courts in the country are 6,528 and more than ten year old cases pending in our courts are 15,715.

It has been so many times suggested that our courts should dispose of cases early. The Chief Justice of the Supreme Court, Mr. Chandrachud, has suggested that there should be a shift system in our courts of law also. Some people have suggested that we should have bare-foot judges who should go to the remote areas of the country. But the basic thing that has to be looked into is the decentralisation of High Courts and the Supreme Court, which is very necessary. Mr. Vice-Chairman, Sir, the need for establishing more and more separate benches of High Courts in places other than their principal seats of functioning is very important, especially in sprawling States like Andhra Pradesh, Madhya Pradesh, Uttar Pradesh. It is advisable to have more additional benches in these States. Likewise, the establishment of a separate bench of the Supreme Court in South India at Bangalore or Hyderabad is long overdue.

SHRI M. KALYANASUNDARAM  
(Tamil Nadu): Why not Madras?

SHRI SYED SIBTE RAZI: Yes, it is for the Government to consider. You may include Madras also. I am just trying to express my feelings that the people are put to great hardships and that it is high time that we should think in terms of decentralisation of our courts. I also suggest it for Madras. Mr. Vice-Chairman, my request to the Government as well as to the Supreme Court is that they should take a liberal view and adopt a more generous attitude and help such decentralisation. Such a step will not only be in the right direction but I am confident that such a step will be in accordance with the attitude and tune of the people and the demands of the people. In U.P., there is a consistent and persistent demand of the people of western regions that a high court bench should be given to them. I feel that to make justice available at cheaper cost and to avoid unnecessary hardships to the litigants, this demand should be conceded and the Government should give a policy statement about what the Government thinks about the decentralisation of the courts.

With these words I conclude and support the Bill.

SHRI ERA SEZHIYAN: Sir, there is a technical difficulty; I have already written to you about it.

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): You can raise it; I have not got the papers.

SHRI ERA SEZHIYAN: When the Bill was taken for consideration on 16th February 1981, I raised that objection that there had been a Presidential recommendation under Article 117(3) obtained by the Government and published in the Bulletin dated 16th February. I asked them about the amount involved in the Consolidated Fund of India, and the hon. Minister of Law said:

"The only thing I want to say is that no amount is involved so far as Consolidated Fund is concerned.

It is a charged expenditure. It is the State which spends the money. This does not come under Article 117(3) of the Constitution."

But already a recommendation was obtained under 117(3) from the President and circulated to everybody and it has been presented to us. But here the Minister comes before the House and says that it is not involved under 117(3) and that the amount is a charged expenditure. Sir, the amount is to be spent out of the Consolidated Fund, even charged expenditure has to come out of Consolidated Fund. Even if they say that it is charged expenditure, it is drawn from the Consolidated Fund and President's recommendation under Article 117(3) is obtained.

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): What I find from the printed report is that Mr. Shiv Shankar said: "I will furnish information on both points when I reply to the debate."

SHRI ERA SEZHIYAN: Because the hon. Minister has come, I want to apprise him. Further complication has set in because of it. If you see the Bill, you will find clause 10 says:

"The expenditure in respect of the High Court at Bombay, including the expenditure in respect of the salaries and allowances of the Judges, officers and servants of the High Court shall, as from the appointed day, be allocated between the State of Maharashtra and the Union in such proportion as the President may, by order, determine."

That means, according to clause 10, there is going to be something drawn out of the Consolidated Fund of India later on. For this, they might have drawn. I am thinking for the Government itself, even though the hon. Minister's reply has not been correct in regard to this.

There is one more thing. There is clause 10 which, as per my contention, attracts mentioned in the Financial Memorandum. The Financial Memorandum is silent about clause 10. Clause 10 concerns withdrawal of money from the Consolidated Fund of India. They are talking of the other clauses. But this clause, namely, clause 10 has not been indicated in the Financial Memorandum. Hence, to this extent, the Financial Memorandum is defective. They should have mentioned this in the Financial Memorandum. They should have said that this is going to be the liability on the Consolidated Fund of India.

There is one thing more. I have not raised this point the other day. It is further complicated. Here, clause 10 says:

"The expenditure in respect of the High Court at Bombay, including the expenditure in respect of the salaries and allowances of the Judges, officers and servants of the High Court shall, as from the appointed day, be allocated between the State of Maharashtra and the Union in such proportion as the President may, by order, determine."

When you say this is going to be determined by the President, it is only the executive which is going to determine. It is a question of delegating the authority to the executive. This is a subordinate legislation. Here, I would like to refer to the State of Nagaland (Amendment) Bill, which comes in handy and which is going to be taken up for consideration later on. Here, clause 2 says:

"22A. The allowances and privileges of the Governor of Nagaland shall, until provision in that behalf is made by Parliament by law under clause (3) of article 158, be such as the President may, by order, determine."

Now, if you see this Bill, there is a Memorandum regarding delegated legislation. Here also, it says:

"...be such as the President may, by order determine."

This leads to a delegated legislation. In the State of Nagaland (Amendment) Bill, there is a Memorandum regarding delegated legislation. In the High Court at Bombay (Extension of Jurisdiction to Goa, Daman and Diu) Bill, Clause 10 clearly says:

"...in such proportion as the President may, by order, determine."

But the Memorandum regarding delegated legislation is completely silent about this clause, namely, clause 10, where in delegated legislation takes place. It talks of clause 13 and clause 14. But it does not mention about clause 10. The reply given by the hon. Minister is not correct. The Financial Memorandum is defective. The Memorandum regarding delegated legislation is also silent about this vital clause, namely, clause 10, and, hence, both these things are defective. Therefore, further consideration of the Bill is not desirable. Even if we consider it, it cannot be finalised today and this Bill cannot be passed because of the defects which I have pointed out.

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): I find from the records that Mr. Sezhiyan raised some point of order at the time when the Bill was moved for consideration by the Law Minister. While replying to the point, the Law Minister, Shri Shiv Shankar, said:

"The only thing I want to say is that no amount is involved in so far as the Consolidated Fund is concerned. It is a charged expenditure. It is the State which spends the money. This does not come under article 117(3) of the Constitution."

Then, you raised a point, Mr. Sezhiyan. The Law Minister replied:

"I will require more details to reply to it. I will do it at the end."

Then, the Vice-Chairman asked:

"Mr. Sezhiyan, do you have any objection to the introduction?"

You said:

"Introduction has been done in the other House. My objection is only to the consideration."

At this stage, Shri N. P. Nanda said:

"Mr. Sezhiyan's point can be answered just now by the hon. Minister and after that we will take up consideration of the Bill."

Then, the Law Minister said:

"I will furnish information on both the points when I reply to the debate."

I would now suggest that since this debate has gone on, these points can be answered by the hon. Minister when he replies to the debate, both these points and the point in regard to delegated legislation which has been raised today.

Now, Mr. Malik.

श्री सत्यपाल मलिक (उत्तर प्रदेश):  
मान्यवर, यह अच्छा बिल है। लेकिन सरकार का हाईकोर्ट की खंडपीठ की स्थापना करने के मामले में बहुत दोगला और बेइमानी का रवैया रहा है। इससे पहले कि मैं खंडपीठों की जहाँ जहाँ मांग है और जहाँ-जहाँ खंडपीठ की स्थापना होनी चाहिए, हाईकोर्ट बेंच की, उस मामले पर आऊँ, मैं यह भी कहना चाहूँगा कि इस सरकार से शिकायत करना इसलिए बेमतलब है कि पूरी न्यायपालिका के ऊपर इन लोगों ने एक हल्ला बोल रखा है। पचासों जगह हाई कोर्ट और सुप्रीम कोर्ट में खाली हैं। नियुक्तियाँ इसलिए नहीं हो रही हैं कि जिस तरह के जजों की इनकी जरूरत

है उस तरह के लोग इतको नहीं मिल रहे हैं और सुप्रीम कोर्ट के चीफ जस्टिस का रिटायरमेंट होने में अभी वक्त है। खैर, मैं इस बात को छोड़ देता हूँ।

मान्यवर, मैं इस मौके का इस्तेमाल करना चाहता हूँ केन्द्र सरकार की इस मामले में बेइमानी की और दोगली नीति पर। उत्तर प्रदेश हिंदुस्तान का सब से बड़ा सूबा है। 110 मिलियन से ज्यादा लोग उस सूबे में रहते हैं। अभी पिछले दिनों मेरठ में करीब तीन महीने तक सारे पश्चिमी उत्तर प्रदेश के 26 जिलों की अदालतों का दो महीने से ज्यादा तक पूरा कामकाज बन्द रहा। किसी तरह का कोई सरकारी काम 26 जिलों में दो-अढ़ाई महीने तक हो नहीं पाया। और उत्तर प्रदेश के इन 26 जिलों की मांग कोई नई नहीं थी। आजादी के फौरन बाद डा० सम्पूर्णानन्द का मंत्रिमण्डल जो कांग्रेस का मंत्रिमण्डल था, उस मंत्रिमण्डल ने सर्वसम्मति से फैसला किया और केन्द्र को भेजा कि उत्तर प्रदेश में जो इलाहाबाद हाई कोर्ट है, उसके बँच की स्थापना मेरठ में होनी चाहिए।

इसके बाद नारायण दत्त तिवारी मंत्रिमण्डल ने यही फैसला किया। बनारसी दास के मंत्रिमण्डल ने भी यही फैसला किया और आज जनता के दबाव में विश्व नाथ प्रताप सिंह के मंत्रिमण्डल ने भी यही फैसला करके दिल्ली भेजा है। लेकिन मुझे सख्त अफसोस इस बात का है कि हिन्दुस्तान की प्रधान मंत्री श्रीमती इन्दिरा गांधी का रवैया इसमें एक बहुत नरों लोकलिज्म की दृष्टि का रवैया रहा है। जिस वक्त मेरठ के वकील मिलने के लिए आए, पश्चिमी उत्तर प्रदेश के बाकी जिलों के वकील मिलने के लिए आये, तो उनको कहा गया

कि आपको घबराने की जरूरत नहीं है, हम इस पर सहानुभूतिपूर्वक विचार करेंगे। लेकिन जब इलाहाबाद से वकीलों का डेलिगेशन, जो बहुत ताकतवर बार है, मिलने के लिए आया, तो उनको कहा गया कि घबराने की जरूरत नहीं है और पश्चिमी उत्तर प्रदेश को बैच मिलने वाला नहीं है और तीन महीने के आंदोलन के बाद, तीन महीने तक 26 जिलों में पूरी तरह काम-काज बन्द रहने के बाद पश्चिमी उत्तर प्रदेश के लोगों को एक झूठा आश्वासन दिया गया, उत्तर प्रदेश के मुख्य मंत्री ने कहा कि छह महीने के अन्दर-अन्दर हम बैच देंगे। आज चार-पांच महीने तो हो चुके हैं, तीन आदमियों को एक कमेटी बनाई गई है, लेकिन तीन दिन पहले जब लोक सभा में सवाल किया गया ला मिनिस्टर से कि आपकी इसके मामले में कोई राजनीतिक पालिसी है कि नहीं है ? तो उन्होंने कहा कि नहीं यह मामला डिस्क्रिशन का है और आप इस डिस्क्रिशन का राजनीतिक कारणों से बेइमानी के साथ इस्तेमाल करते हैं और मैं कहना चाहता हूँ—मेरी इस बात के पीछे ताकत है कि उत्तर प्रदेश में मेरठ कमिशनरी सब से इम्पोर्टेंट कमिशनरी है। आपके सौते-लेपन का सब से बड़ा सबूत है कि आपका चीफ मिनिस्टर साल भर से ज्यादा गद्दी पर है, लेकिन मेरठ कमिशनरी में एक दिन भी बीरे पर जा नहीं पाया है।

श्री सैयद सिद्दीक रज़ी : अभी 22 तारीख को जा रहे हैं।

श्री सत्यपाल मलिक : 26 जिलों की यूनेनिमस डिमाण्ड को, सारे तबकों का पूरी तरह से बन्द सर्वसम्पुल हुआ हो, हर तबके के लोग उसको मांग रहे हों और आप उन लोगों की मांग मानने

के लिए तैयार नहीं हैं। मैं इससे ज्यादा कोई बेइमानी की बात मानता नहीं हूँ।

मान्यवर, पश्चिमी उत्तर प्रदेश के लोगों को सात सौ, आठ सौ किलोमीटर का सफर करना पड़ता है इलाहाबाद जाने के लिए। इलाहाबाद पहुंचने तक, जवान बदल जाती है, तौर-तरीके बदल जाते हैं, मौसम का फर्क हो जाता है और पश्चिमी उत्तर प्रदेश का आदमी जब इलाहाबाद के स्टेशन पर उतरता है, तो पंडे इतनी लुटाई नहीं करते हैं जितनी वकीलों के दलाल और टाऊट करते हैं और वे दूसरी दुनिया में जाकर लुटते हैं।

सब से ज्यादा मुकदमें आज इलाहाबाद के हाई कोर्ट में बकाया हैं। इलाहाबाद में जो उत्तर प्रदेश का हाई कोर्ट है—सारे देश में जो मुकदमों के डील करने की औसत है एक जज को, साल भर को, 650 मुकदमें औसतन हिंदुस्तान में डील करने पड़ते हैं। लेकिन इलाहाबाद के हाई कोर्ट में एक जज को 1300 से ज्यादा मुकदमें डील करने पड़ते हैं। सब से ज्यादा पैडिंग मुकदमें आज उत्तर प्रदेश की जो इलाहाबाद हाई कोर्ट की बैच है, उसके पास पड़े हुए हैं।

आज राजस्थान, जिसकी कुल आबादी 35 मिलियन से ज्यादा नहीं है, उसमें आपने एक बैच दिया हुआ है। उत्तर प्रदेश जिसकी आबादी 110 मिलियन है, उसमें सिर्फ एक बैच दिया है। मध्य प्रदेश जिसकी आबादी 50 मिलियन है, वहां आपने दो बैच दिये हुए हैं। वहां भी भोपाल में एक बैच की मांग है। वह मानी जानी चाहिए। औरंगाबाद में महाराष्ट्र में जो मांग है, वह भी मानी जानी चाहिए।

[श्री सत्यपाल मलिक]

तो मान्यवर, आज सारे देश के जो जाने-माने जूरिस्ट हैं, श्री कृष्ण अग्र्यर ने कहा था—कुछ दिन पहले न्यायमूर्ति भगवती ने कहा कि न्याय को न्याय मांगने वाले के दरवाजे पर पहुंचाया जाना चाहिए। कृष्ण अग्र्यर साहब ने कहा कि डिस्टेंडलाइज्ड जस्टिस इज एक्सिसिबल जस्टिस। सारे लोग इस बात को मानते हैं कि मंहंगा और दूर का इंसफ कोई इंसफ नहीं होता।

तो मान्यवर, मैं यह निवेदन करना चाहता हूँ कि आपने अच्छा काम किया है कि इस बेंच की स्थापना की है। लेकिन उत्तर प्रदेश और बाकी सूबों की जो जायज मांग है जो जगह-जगह उठाई जा रही है, उसको आप मानिये। 12 जिलों के लिए आप लखनऊ में बेंच देंगे, लेकिन 26 जिलों के लिए आप मेरठ या पश्चिम उत्तर प्रदेश के किसी जिले में बेंच नहीं देंगे। इस से ज्यादा बेईमानों और मैं फिर इसको दुहराता हूँ—और कोई बात नहीं हो सकता है। तो मैं चाहूंगा कि इस बिल पर बहस के दौरान ला मिनिस्टर इस बात को साफ करें कि आप को इस मामले में नोति क्या है, और यह घोषणा करें कि जल्दो से जल्दो मेरठ में या मेरठ के आसपास के किसी भी जिले में पश्चिमोत्तर प्रदेश के लोगों को बेंच देंगे। यह कह कर मैं अपना बान खत्म करना हूँ।

SHRI SANKAR PRASAD MITRA (West Bengal): I am glad to hear from the hon. Minister that the Government has realised that in every High Court and in the Supreme Court, there are far too many cases and too few Judges. It is not only a question of decentralisation; it is a question of increasing the strength of different High Courts as well as perhaps the strength of the Supreme Court. Unfortunately, in actual practice the strengths have not been increased

substantially and there are any number of vacancies in different High Courts. These vacancies are not being filled up for years together. I am glad, Sir, that the Government is thinking in terms of decentralisation of the High Courts and the Supreme Court. There should be a clear-cut policy on the question of decentralisation. To my mind, however, decentralisation is necessary not only in the cases of the High Courts and the Supreme Court but also at district levels including the setting up of rural courts within the reach of the rural poor. On this question, a comprehensive statement by the hon. Minister is required. I hope the hon. Minister would be good enough to apply his mind carefully to this question and come forward with a statement as early as possible.

SHRI NAGESHWAR PRASAD SHAHI (Uttar Pradesh): This is a suggestion from the Chief Justice of West Bengal, Sir. The Minister may mind it that this is a suggestion from the Chief Justice of West Bengal.

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): It is not a suggestion from the Chief Justice of West Bengal; it is a suggestion from an hon. Member who has sufficient experience.

SHRI NAGESHWAR PRASAD SHAHI: He is ex-Chief Justice of West Bengal.

SHRI NARASINGHA PRASAD NANDA (Orissa): We should be grateful to Mr. Shahi for introducing the ex-Chief Justice of West Bengal.

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): I do not think he needs introduction. Shri Gopal-samy.

SHRI V. GOPALSAMY (Tamil Nadu): I am very thankful to you, Sir, for giving me this opportunity. Last time when the discussion took place in this House on this Bill, I was

listening to late Bhupeshda whose memory remains as a guiding star in this House. When he spoke on this Bill, he expressed the view that the demand of the Goans should be respected by this Government. We have to safeguard the interests of the people of Goa and we have to respect their aspirations also. When Vasco da Gama landed at Calicut, the Portuguese found the route via the Cape of Good Hope and Goa, Daman and Diu subsequently became the Portuguese colonies. Only after 1962, freedom smiled on them. So when the question of Goa came before the other House—the Lok Sabha—the great Pandit Jawaharlal Nehru respected the sentiments of the people of Goa. It will be very proper on my part if I quote what Pt. Jawaharlal Nehru said on the floor of the Lok Sabha on December 8, 1961.

“Goa is a fairly small enclave. In terms of Indian geography, it can well be a small part of a district of India. But, because of the past, because of many things that have grown up in India, and because in India we have welcomed the fact that India is a country of considerable variety, and we have preserved it, we are prepared, and we intend, to keep Goa's individuality, and keep it as a separate entity, in direct connection with the Central Government, and maintain its special features, whatever they may be, such as customs, culture, etc., as we did in the case of Pondicherry, till the people of Goa themselves want to change them. It will not be imposed on them. If they want to change them in future, of course, they can always change them.”

Sir, what happened in 1967? An opinion poll was held. What was the desire of the people of Goa? They expressed in unmistakable terms that they did not want any merger with Maharashtra. Now what has happened? Before the take-over of Goa, they had a High Court of their own. That is the point. After the take-over, the status of that High Court was re-

duced to that of a Judicial Commissioner's Court. Now we have abolished the Judicial Commissioner's Court and we are going to set up a Bench of the Bombay High Court at Panaji. Why not we constitute a High Court of their own? That is the question I would like to put before the Government.

Sir, what has happened? The opinion of the Chief Minister of Maharashtra will be sought to decide matters concerning the appointment of the High Court Judges, and not that of the Chief Minister of Goa. The opinion of the Chief Minister of Maharashtra will be sought to decide matters concerning the appointment of the High Court Judges. So where have we safeguarded their interests and where have we safeguarded their identity?

Again, in the year 1962, Jawaharlal Nehru spoke on the Constitution (Twelfth Amendment) Bill. Here also he was very clear:

“Goa, Daman and Diu will be Union territories and they will have a good deal of autonomy.

We have made it clear that we want Goa to maintain its separate identity, separate individuality, call it what you will, because in the course of more than 400 years Goa has had a separate identity and the course of history had imparted it some.”

So I would like to request the hon. Minister to consider my suggestions. Mr. Shiv Shankar, the Law Minister, is a practical man, a pragmatic man, and I would like to put my suggestions to him. Though he is not here, I think what I put forth before this House will reach him. He should consider my suggestion: Let the Bill go to a Joint Select Committee to get the opinion of the local people there before we pass this Bill. This is the point I want to stress before this House.



[Shri V. Gopalsamy]

Mr. Bhandare, who is a lawyer from Bombay and an hon. Member of this House, when he spoke on this Bill he described Konkani as a dialect of the Marathi language. Because I am interested in languages I would like to say that Konkani has been recognised as an independent language over five years ago by the Sahitya Akademi. So, there is a strong feeling in Goa that the interests of Goa will be compromised by the high-ups in Maharashtra. So, that type of fear and suspicion should not be allowed to grow. So, how to respect the sentiments of the people of Goa? Also we have to keep the word which was given by the great Jawaharlal Nehru in the Lok Sabha.

Sir, in this respect again I would like to stress my point: Let the Bill go before a Joint Select Committee.

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): How can you? There is no Motion for reference to a Joint Select Committee or a Select Committee.

SHRI V. GOPALSAMY: If the Minister wants, he can move it. I am putting it before the Government and I am requesting the Minister because we are interested in the autonomy of the States.

One more point. Many things were said in this House though they do not come within the purview of the Bill. Many things were said about the Judiciary also. I would like to say that justice should reach the doors of the have-nots. Everybody says "Justice delayed is justice denied." Therefore, justice should reach the doors of the have-nots. A have-not from Kanyakumari or Tirunelveli cannot come all the way to Delhi to seek justice at the Supreme Court. So it is better to have a Bench of the Supreme Court in the southern region—whether in Madras or in Hyderabad or in Bangalore or in any other place. For that, already, article 130 of the Constitution has empowered the Chief Justice of the Supreme Court to start a Bench of the Supreme Court at a place other

than Delhi after getting the approval of the President of India. Now the Supreme Court Chief Justice recently in a public meeting has himself agreed that there is a demand and has also stressed the importance of the demand that the southern region should have a Bench of the Supreme Court. So I would like to stress upon the Government to fulfil the long felt demand of the South.

With these words, I conclude.

Thank you.

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): I think the House will co-operate. We have to finish this Bill today.

SHRIMATI PURABI MUKHOPADHYAY (West Bengal): For how long will we sit?

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): The hon. Minister has to reply and there are some Members who are wanting to speak during the third reading of the Bill. But I think we will finish within a reasonable time.

श्री शिव चन्द्र झा (बिहार) :  
 थर्ड रीडिंग वालों को बुलवा दीजिए तब  
 मंत्री जी आ जायेंगे ।

संसदीय कार्य विभाग में राज्य मंत्री  
 (श्री सीता राम केसरी) : मंत्री जी  
 नहीं आयेंगे । वहां बहुत देर होगी ।

THE MINISTER OF STATE IN  
 THE MINISTRY OF DEFENCE (SHRI  
 SHIVRAJ V. PATIL): Sir, article  
 117(3) reads like this:—

"A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill."

This provision in the Constitution is made with respect to the Money Bills, with respect to the Bills which will involve expenditure from the Consolidated Fund. Now, Sir, the sub-clause to article 117 does not mention that the date has to be given. The hon. Secretary of the Rajya Sabha is informed that the President recommended that the Bill passed by the Lok Sabha should be considered by the Rajya Sabha also. Now the essence of the formality is fulfilled. What is not given is the date. But the fact that the recommendation as obtained is brought to the notice of the hon. Chair and the House means that in essence the formality is fulfilled. Apart from that, ...

**SHRI ERA SEZHIYAN:** One point. On this, the Minister may not be aware of one thing.

**SHRI SHIVRAJ V. PATIL:** I have gone through the record.

**SHRI ERA SEZHIYAN:** Not this one.

**SHRI SHIVRAJ V. PATIL:** Let me finish.

**THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI):** He is not insisting on this point of order. Therefore, you may not reply to this.

**SHRI ERA SEZHIYAN:** Yes, I am not insisting on the point of date. When we asked in the last session...

**SHRI SHIVRAJ V. PATIL:** That is exactly what I was going to explain. Before I finish, if you interrupt, there is likelihood of your committing some sort of... (*Interruptions*). I was going to say that, though it is not necessary, we would give the date to this hon. House and to the Chair, if required, in writing. I can inform this hon. House that on the 10th February, 1981, the recommendation was obtained. It may be given in writing also. If there is a direction from the Chair, that direction will be fulfilled.

**SHRI ERA SEZHIYAN:** That is the thing.

**SHRI SHIVRAJ V. PATIL:** If we have committed any mistake, we will stand corrected and we will follow all the directions given by the Chair.

The second point which was made by the hon. Member was: What is the amount of expenditure involved? Sir, a Financial Memorandum was given, and in that Financial Memorandum it is suggested that the expenditure involved in maintaining the Judicial Commissioners' Court, was to the tune of Rs. 1.30 lacs. It is also mentioned in the Financial Memorandum that the additional recurring expenditure that would be required to be incurred on the establishment of this Bench of the High Court is Rs. 62,000 per year. In all, the expenditure that would be involved would be Rs. 1.92 lakhs. Now that is mentioned in the Financial Memorandum itself. So, there is no ambiguity as to what the amount of the financial expenditure involved is in establishing the new Bench of the Court. This point is also met.

The third point that was made was with respect to this. (*Interruptions*) I am coming to one point after another. After I cover all the points if you find that I have committed a mistake, you may raise it, and I will immediately reply.

Sir, the question put was: If it was to be incurred by the State Government, why was the recommendation of the President necessary? Sir, here the expenditure that would be incurred by the High Court of Judicature at Bombay, would be borne by the Maharashtra State, but the part of the expenditure that would be involved in establishing the Bench at Panaji for Goa, Daman and Diu, would not be borne by the Maharashtra State; it would be borne by the Central Government. That is why that money has to come from the Consolidated Fund of India, and if the money is

[Shri Shivraj V. Patil]

coming from the Consolidated Fund of India, then it would be necessary to take the recommendation of the President. So, the recommendation has been obtained, and that recommendation has been submitted in the House also. This is my reply to the second point.

The third point is about the delegated legislation. What is the delegated legislation here? We are not giving powers to the President to make any rules. We are not giving any legislative powers. What is provided in clause No. 10 is:

"The expenditure in respect of the High Court at Bombay, including the expenditure in respect of the salaries and allowances of the Judges, officers and servants of the High Court shall as from the appointed day, be allocated between the State of Maharashtra and the Union in such proportion as the President may, by order, determine."

Now, what will be the portion that would be borne for the Bench to be established there and all those things? If there is any expenditure over and above Rs. 1.92 lacs and in the second year also if there is any expenditure more than that, how has that expenditure to be apportioned between the two, the State of Maharashtra and the Union Territory? Here, a Bill, was passed to provide for this kind of contingency with respect to the Assam High Court also. I am reading from the North-Eastern Area Reorganisation Act, 1971. Section 33 says:

"The expenditure in respect of salaries and allowances of the Judges of the common High Court, shall be allocated among the States of Assam, Manipur, Meghalaya, Nagaland, Tripura and the Union in such proportion as the President may, by order, determine."

Sir, here, we are giving the executive powers to the President to find out as to what amount of expenditure has

to be borne by the State of Maharashtra and what amount of expenditure has to be borne by the Central Government or the Union Territory over there. Now, this is not a delegated legislation and so it is not necessary to provide with this Bill a memorandum on delegated legislation. What is mentioned in this clause is that the executive power is available to the President to say that this is the expenditure which will be borne by the State of Maharashtra and this is the expenditure which will be borne by the Central Government. So, in my humble opinion, it is not necessary to give a memorandum on delegated legislation with respect to this as this is a sort of executive power made available to the President.

SHRI ERA SEZHIYAN: The first point was regarding the date of the President's recommendation, and about "The Bill as passed by the Lok Sabha." There is no conflict between us about that. He said it is not necessary. My point is, the Chair has given a ruling on these two points and the rulings of the Chair should be implemented. We expect the rulings of the Chair to be implemented. But in this case, it has not been implemented. That is the only thing that I will point out. It is necessary to give the date...

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): Let us avoid that point.

SHRI ERA SEZHIYAN: I say, it is necessary. The second point is, the Law Minister said that no amount is to be taken out of the Consolidated Fund and so it is not necessary to get a presidential recommendation under article 117(3). I want to know what happened to that statement. Is that statement correct or not?

SHRI SHIVRAJ V. PATIL: The previous statement of the Law Minister would stand corrected in the light of what I am saying.

**SHRI ERA SEZHIYAN:** Then he himself conceded that article 117(3) comes in because there is apportionment of the expenditure to be incurred by the High Court of Bombay. Clause 10 says:

"The expenditure in respect of the High Court at Bombay, including the expenditure in respect of the salaries and allowances of the Judges, officers and servants of the High Court shall, as from the appointed day, be allocated between the State of Maharashtra and the Union in such proportion as the President may, by order, determine."

This brings it under article 117(3). That is why I asked for the Rules of Procedure. The rule says:

"Clauses or provisions in Bills involving expenditure from public funds shall be printed in thick type or in italics."

That means, clause 117(3) is attracted because clause 10 is there. If clause 10 was not there and only clause 9 was there, article 117(3) would not have been attracted, as it would not be from the Consolidated Fund of India but only from the Consolidated Fund of the State. Because clause 10 comes, article 117(3) has been invoked. And because article 117(3) has been invoked, there is financial implication and so clause 10 should have been printed in italics, which the Government has failed to do. They have not taken into consideration the purport of clause 10. Now the Financial Memorandum simply mentions the total expenditure. The House is interested in knowing how much is to be apportioned to the Consolidated Fund of India. That should have been indicated at least. You will not be able to say exactly how much. Probably it is going to be worked out. The Bill says that it has to be decided in future by the President by order. Therefore, these two lacunae are there. The Financial Memorandum

fails to mention this aspect. And in view of article 117(3), clause 10 should have been put in bold type, which they have not done. This is a failure on the part of the Government because if there is financial implication, the clause should be in bold type.

**THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI):** Wherefrom are you getting it?

**SHRI ERA SEZHIYAN:** From the rules. I think it is the same for the Lok Sabha and this House. Regarding financial memorandum, the rule says:

"A Bill involving expenditure shall be accompanied by a financial memorandum which shall invite particular attention to the clauses involving expenditure and shall also give an estimate of the recurring and non-recurring expenditure involved in case the Bill is passed into law."

That means a Bill involving expenditure should be accompanied by a financial memorandum which shall invite particular attention to the clauses involving the expenditure. Here Clause 10 is involving a particular expenditure. Therefore, the financial memorandum should have invited the attention of the House to that particular clause and also given an estimate of the recurring and non-recurring expenditure involved. My objection is as far as this House is concerned, we are interested in knowing how much is to be taken out of the Consolidated Fund of India. That they have failed to indicate. Having considered the point that we are going to take something out of the Consolidated Fund of India, they took sanction from the President but they have failed to mention it in the financial memorandum. So they have failed on two aspects: They have failed to mention Clause 10 and they have failed to mention the amount that will be taken out of the Consolidated Fund. It should have been put in bold letters...

SHRI SHIVRAJ V. PATIL: I have followed your point.

SHRI ERA SEZHIYAN: The third one is he said there is no delegated legislation as far as Clause 10 is concerned...

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): I think, Mr. Sezhiyan, there is no scope for re-arguing the whole case. You have made your case. I don't think you can re-argue the same thing...

SHRI ERA SEZHIYAN: Of course, they have got the majority. They may be able to pass this measure but...

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): You leave it to me. On this aspect you leave it to me...

SHRI ERA SEZHIYAN: Again I will invite attention to the next Bill that is going to be introduced. There also you see...

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): I have seen.

SHRI ERA SEZHIYAN: Wherever it is said, "the President may, by order, determine...", it becomes delegated legislation. This is a very crucial question. I want your very considered ruling on this point.

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): Mr. Minister, would you like to say something on this?

SHRI SHIVRAJ V. PATIL: I am just finishing in four, five, sentences. The point is the financial memorandum gives the details. If the honourable Chair allows me, I will just read out:

"Under the existing arrangement there is a Judicial Commissioner's court in the Union Territory of Goa, Daman & Diu consisting of the Judicial Commissioner and the Additional Judicial Commissioner. After jurisdiction of the Bombay High

Court is extended to the Union Territory the Judicial Commissioner's court will stand abolished. At present an expenditure of the order of Rs. 1.30 lakhs per year is being incurred on the pay and allowances of the Judicial Commissioner and the Additional Judicial Commissioner and their personal staff. It has been estimated that the establishment of a permanent two-judge bench of the Bombay High Court at Panaji as proposed in the Bill would involve an additional recurring expenditure of Rs. 62,000 per year."

Now, it is provided there...

SHRI ERA SEZHIYAN: With particular attention of the specific Clause and the amounts involved.

SHRI SHIVRAJ V. PATIL: It is very difficult to give the exact amount. It is an estimate. Now, the specific Clause is provided there, because next year if there is an expenditure more than this, how it is to be apportioned...

SHRI ERA SEZHIYAN: It is not mentioned.

SHRI SHIVRAJ V. PATIL: Let me say what I want to say.

Now, this year when the court will be established, this would be the expenditure. Suppose there is a little bit more of expenditure on this, how it is to be apportioned, or suppose next year there is some more expenditure incurred how it is to be apportioned, how much should be borne by the State Government and how much by the Central Government, and who should decide it, are the points. The authority for decision is given to the President, the Central Government. This authority has not to be exercised by framing rules. This authority has to be exercised as executive authority. So there is no question of delegation of power.

As far as the second point is concerned, it is mentioned at the top of the copy of the Bill, "As passed by the

Lok Sabha on 23rd December, 1980". It is mentioned in the Bill itself, in the copy of the Bill which is provided to the honourable Member and the honourable House. It is mentioned at the top of it, "As passed by the Lok Sabha on 23rd December, 1980". This is not a Bill of a different nature from the one which is passed by the Lok Sabha. This Bill, a copy of which you may be reading, mentions that fact. So, in essence, all these formalities have been fulfilled. Even after that, if the honourable Chair feels and if the honourable Member wants some more explanation to be given to understand the essence of the Bill, the heart of the Bill, the pith of the Bill, well, we are ready to give it. If there is any formality to be fulfilled it will be fulfilled. We are subject to the direction by the Chair. If anything is to be done, it will be done.

SHRI ERA SEZHIYAN: I did not raise the point. . . .

THE VICE CHAIRMAN (SHRI DINESH GOSWAMI): One point raised by Mr. Era Sezhiyan is that there is delegated legislation and the memorandum on delegated legislation is not there. He has drawn my attention to the next Bill, the State of Nagaland (Amendment) Bill, 1981. I feel there is a distinction. In the case of the Nagaland Bill the legislative power of Parliament for making laws on emoluments, allowances, etc. has been delegated to the Governor and, therefore, there is delegation of legislative power and as such the memorandum on delegated legislation is required.

But here in this case, no legislative power of Parliament is delegated under clause 10 of the Bill. What is done is that Parliament has conferred executive power on the President. Therefore, I do not think there is any need for memorandum on delegated legislation.

So far as financial memorandum is concerned, the position is like this. So far as expenditure is concerned, I feel it is clause 9 of the Bill which is the

operative clause. Clause 10 only speaks of apportionment and it only confers on the President power to make apportionment of the expenditure between the State of Maharashtra and the Union. The only objection that can be taken is that in the financial memorandum there could be a paragraph stating that so much expenditure would be there from the Consolidated Fund of India. But that cannot be stated just now because it will depend on the decision of the President under clause 10. This is a technical omission and I rule out the objection raised. The hon. Minister can proceed with the consideration of the Bill.

SHRI SHIVRAJ V. PATIL: What is sought to be done by this Bill is abolition of the Judicial Commissioner's Court for Goa, Daman and Diu and establishment of a permanent Bench of the High Court of Judicature at Bombay. Why I am mentioning this fact so elaborately is that we are not establishing a permanent Bench in Goa, Daman and Diu in a void. The Judicial Commissioner's Court was already there. In place of that, a permanent Bench is being established. There was a demand for the establishment of a Bench of the High Court because under the Constitution the safeguards provided for the Judge sitting in the High Court are more pronounced and more effective than the safeguards available to the Judicial Commissioner's Court. That is why there was this demand and we are fulfilling this demand. This is something different from the position that is available in different other States.

A suggestion was made that there should be decentralisation of judiciary and justice should be taken to the door-steps of litigants. I have no quarrel with this proposition and to the extent possible it has to be done. I would not like to go into details as to whether it is possible and how it should be done, because for that other things have to be considered separately. Here the case is different.

[Shri Shivraj V. Patil]

It is not a case where a new Bench is established where nothing is there. This is a completely different case. This is my submission.

The other point raised by hon. Members is that there should be no delay because justice delayed is justice denied. I have no quarrel with this kind of statement also. I do accept that justice has to be quickly done and how quickly that has to be done, what kind of machinery has to be evolved, etc., it will not be possible for me to discuss now while discussing this Bill. But I do concede that justice has to be quickly done. How quickly that has to be done, whether by modifying the procedures or by appointing more judges or by having more Benches or by having arbitration, seeing by that the Court will not be flooded with cases, etc., all these things are to be considered while deciding this issue and it would not be possible to decide them here.

Then, Sir, the second point is about the personality of the Union territory of Goa. Sir, what is it that is being done now? Now, here a Bench is provided for Goa, Daman and Diu. The Judges sitting there, constitutionally and according to the recommendations also, can come from different States and it is not necessary that the Judges should come from Maharashtra or from Goa alone and it is not necessary that the Judge should necessarily be from Maharashtra; he can come from Goa also or from UP or from Bihar or from Tamil Nadu. It is because this kind of a provision is already available in the Constitution. Now, here we are creating a Bench for Goa. The executive authority that is available for Goa, Daman and Diu is not affected. Their financial powers are not affected and their power to modify the social structure is not affected. That remains intact and that would help in maintaining the personality of the Union territory and the creation of a Bench is not going to affect this aspect in any

manner. Sir, it is an innocuous Bill and I think it is not necessary for me to dilate too much on it.

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): You have a precedent for this when the Manipur Special Commissioner's Court was abolished. So, I have a precedent from my area also. This is just by the way.

SHRI SHIVRAJ V. PATIL: Sir, all the formalities are fulfilled and I would request the House to pass this Bill. It is not necessary for me to say anything more on this.

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): The question is:

"That the Bill to provide for the extension of the jurisdiction of the High Court at Bombay to the Union territory of Goa, Daman and Diu, for the establishment of a permanent bench of that High Court at Panaji and for matters connected therewith, as passed by the Lok Sabha, be taken into consideration".

*The motion was adopted.*

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): We shall now take up the clause-by-clause consideration of the Bill.

*Clause 2 to 14 were added to the Bill.*

*Clause 1—Short title and commencement*

SHRI SHIVRAJ V. PATIL: Sir, I beg to move:

2. "That at page 1. line 4, for the figure '1980', the figure '1981' be substituted".

*The question was put and the motion was adopted.*

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): The question is:

"That Clause 1, as amended, stand part of the Bill".

The motion was adopted.

Clause 1, as amended, was added to the Bill.

### Enacting Formula

SHRI SHIVRAJ V. PATIL: Sir, I beg to move:

1. "That at page 1, line 1, for the word 'Thirty-first' the word 'thirty-second' be substituted".

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): The question is:

"That the Enacting Formula, as amendment, stand part of the Bill".

The motion was adopted.

The Enacting Formula, as amended, was added to the Bill.

The Title was added to the Bill.

SHRI SHIVRAJ V. PATIL: Sir, I move:

"That the Bill as amended, be passed".

The question was proposed.

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): There are four names with me and I would only request the Members to be very brief. Yes, Mr. Dhabe.

SHRI SHRIDHAR WASUDEO DHABE (Maharashtra): Sir, I congratulate the Government for having taken a decision to establish a High Court Bench at Goa. It was earlier demanded here and a number of times we raised this issue as the Judicial Commissioner's Court was not sufficient to meet the needs of the people. I am sure the people of Goa would be very happy over the establishment of a High Court Bench in Goa.

There is nothing new about having common courts for one State or the other or Union Territories. But I would like to know what will happen to the Judicial Commissioner, whether he will be eligible for appointment as a High Court Judge or not or they will be thrown out as soon as the Judicial Commissioners' Courts are abolished. I would like to request the Minister to consider seriously that the interests of the people who have worked there for a long time are not affected as is done in the case when abolition of courts takes place.

Sir, a Bench is being established at Aurangabad. There are 20 demands for Benches of various High Courts and Supreme Court. Some think that India is only north and south and bench should only be considered either at Bangalore or Madras. Also, there are areas like Gauhati, Bhubaneswar or North Eastern areas—thousands of miles away from the seat of the Supreme Court. Therefore, a suggestion was made by the Chief Justice that a Supreme Court Judge should go and sit along with two High Court Judges to dispose of the pending matters there itself. In my area also there is a demand for a Bench of the Supreme Court at Nagpur, which is 800 miles away. So, I would like to know that when he says that individual cases are being considered, the matter should be spelt out, and what is the criteria that is going to be followed to establish benches. I would like the Minister to specifically assure the House on this occasion that no decision will be taken without following the criteria to render justice to the poor people as pointed out by a number of persons all over the country.

श्री शिव चन्द्र झा : उपसभाध्यक्ष जी, यह विधेयक जो है जिससे कि एक परमानेंट बिल बन रहा है गोआ में यह बिल्कम बात है, बिल्कम विधेयक है। मंत्री महोदय ने बहुत जोर दिया कि



[ श्री शिव चन्द्र भा ]

डीसेंट्रलाइजेशन कर रहे हैं। बहुत अच्छी बात है। कोर्ट का न्याय जितनी तेजी से जितना ज्यादा जनता के पास जाये हम इसका स्वागत करते हैं। लेकिन कुछ ऐसी बातें जो और कोर्टों को लेकर कर रहे हैं, वही बीमारी कहीं वहां न खो जाय। गोआ का बढ़ना सन 1962 से शुरू हुआ है। गोआ हम लोगों ने सहा है। जिस रूप में 62 के बाद देआ में काम हो रहा है, खुशी है कि गोआ में 62 के बाद से प्रगति हुई और बहुत तेजी से हो उस प्रगति में यह भी एक कदम है जो हम चाहते हैं। लेकिन मंत्री महोदय से मैं पूछना चाहता हूँ कि डीसेंट्रलाइजेशन जो आप कहते हैं जिस रूप में एक्वाइंटमेंट की बात आप कर रहे हैं, आपने स्टेट के मिनिस्टर्स को भी लिखा है कि उनसे कन्सेंट रिटन ले ली जाय तब ही हम उनका एक्वाइंटमेंट करेंगे। यह प्राविजन, क्लॉज यदि आप लगाते हैं तो क्या उस पर आप पाबंदी नहीं लगाते हैं जिसके लिए कि बात उठ रही है देश में। रिटन कन्सेंट लिया जाय जो कहीं भी हम उनको ट्रांसफर करेंगे। तो यह तो मानी हुई बात है कि हिन्दुस्तान का जज हो, आई० ए० एम आफिसर हो, आई० पी० एस० आफिसर हो, एक किनारे से दूसरे किनारे तक उसको ट्रांसफर किया जा सकता है। लेकिन उसके साथ यह प्राविजन कि हम रिटल लेंगे कुछ उस तरह की बात हो जाती है कि जैसे एक लायल्टी की लहर कैलीफोर्निया की वर्कले यूनिवर्सिटी में चली थी और सारे अमेरिका में उसका विरोध हुआ था। उससे यह होता है कि राजसत्ता उसको दबा रही है। ऐसी चीज नहीं होनी चाहिए। वह बीमारी वहां भी नहीं होनी चाहिए।

दूसरी बात मैं समझता हूँ कि जुडीशियरी में एक रेडिकल ट्रांसफरमेशन की जरूरत है। जो बनावट है चाहे गोआ की हो, दिल्ली की हो, पटना की हो, उसमें जजेज जो कि एक्वाइंटिज होने हों वे इलेक्टोड बाई द पीपुल हों इलेक्टोड, जनता द्वारा जज चुन जायें। आपने डीसेंट्रलाइजेशन की बात कही वह उसी की एक कोरोलरी है कि जनता खुद चुने आप न बहाल करें। आपको आश्चर्य होगा यह सुन करके कि जजेज कैसे चुने जायेंगे। लेकिन दुनिया में अभी भी पूंजीवादो समाज में जैसे कैलीफोर्निया में सरकिट कोर्ट के जजेज चुने जाते हैं। इलेक्टोड होते हैं, एक्वाइंटोड नहीं होते हैं, चुने हुये होते हैं। दिलोप सिंह सान पंजाब का एक व्यक्ति कैलीफोर्निया में था, उल्फा उपजाते उपजाते उसके मन में भावना आई चुनाव लड़ने की और वह इलेक्शन में आ गया, सरकिट कोर्ट का जज चुना गया। फिर भी वह हाउस आफ रिप्रेजेंटेटिव में चुना गया। सुप्रीम कोर्ट में वहां इलेक्टोड सिस्टम नहीं है लेकिन लोअर स्केल में इलेक्शन सिस्टम है। इसी लिए यदि आप जनतंत्र को बढ़ाना चाहते हैं, जैसा नारा है कि एडमिनिस्ट्रेशन में भी जनता का पार्टिसिपेशन हो, जजेज की बहाली में भी जनता का पार्टिसिपेशन होगा जब आप इलैक्टिव प्रासेस शुरू करेंगे, जनता चुने। आप शुरुआत कर सकते हैं डिस्ट्रिक्ट जज से, सुप्रीम कोर्ट को थोड़ी देर के लिए छोड़ दीजिए। आप डिस्ट्रिक्ट जज के लिए चुनाव कर सकते हैं। उसके लिए इलैक्टोरेट जो वहां के रजिस्टर्ड एडवोकेट्स हैं, वही इलैक्टोरेट कालेज उनका होगा और उसी के जरिए आपका इलैक्टिव जनता सिस्टम चलेगा।

इसलिए आप बुनियादी परिवर्तन लाएं। अभी वही पुराना ढांचा है, इससे इसाफ नहीं हो पाता है। हम आखिरी के सामने देख रहे हैं।

तीसरी बात, पिछले सेशन में कानून मंत्री ने बहुत जोर दिया कि हम शूल्स कास्ट, बैकवर्ड जो हैं, इन लोगों को प्रश्रय देने की बात उठाई—कोई दूसरा मुद्दा था, जहाँ तक मुझे याद है। आप बताएं कि कितने जज हैं देश में जो पिछड़े वर्ग के हैं, हरिजन वर्ग के हैं और उनको प्रश्रय देंगे? खास करके जब नया बेंच आप बना रहे हैं गोआ में और आप कह रहे हैं कि बिहार से, उत्तर प्रदेश से भेज सकते हैं। तो आप क्या यह प्रोजेक्शन रखेंगे कि जो पिछड़ा वर्ग का है, या हरिजन है, ऐसे लोग जो हैं, एक्स्ट्राएटेड लोग जो हैं, उनको प्रिफरेंस देंगे जो नया बेंच आप वहाँ बनाने जा रहे हैं?

अब महिलाओं की बात आ जाती है। उनकी भी प्रिफरेंशियल ट्रीटमेंट की जरूरत होती है। तो यह जो बेंच बन रहा है, परमानेंट बेंच, हम इसका स्वागत करते हैं, गोआ खूब बड़े, अच्छा है। लेकिन एक बात मैं एसाइड रिमार्क के रूप में कह देना चाहता हूँ कि वह पनजी में जो पुल है अभी तक लटका हुआ है। चाहे यह बात इससे संबंधित न हो, लेकिन विकास की गति किस धीमी गति से चल रही है। वह पुल कितने साल तक बनेगा। इसलिए उसको स्पीड-अप करें। लेकिन जूडिशरी सारे देश में, एक बुनियादी तौर पर उसमें परिवर्तन लाएं और एक व्यवस्था—संविधान में संशोधन करने की जरूरत हो, तो करें ताकि अजेज का जनता द्वारा चुनाव हो। यह पद्धति आप शुरू करें तब न्याय जो है, आप जनता के पास ही नहीं

पहुँचेंगे, बल्कि हकीकत में होगा। बल्कि मोबाइल कोर्ट यदि आप बनावें, जरा सोचिए इन बातों को...

श्री सैयद शिम्ते रजो : शा साहब सुप्रीम कोर्ट के जज हो गये।

श्री शिव चन्द्र झा : इन सभी बातों को मद्देनजर रख कर के यह जो विधेयक है, यह स्वागत के लायक है, लेकिन आप दूर की बात सोचें।

श्री हुसमदेव नारायण यादव (बिहार): उसभाषाक्ष महोदय, मैं इस विधेयक के संबंध में कुछ बुनियादी बातें मंत्री महोदय के सामने रखना चाहता हूँ और वह इसलिए कि अभी कुछ सवाल श्री शिव चन्द्र झा पूछ रहे थे। मैं आपसे निवेदन करूँगा कि मैंने इसी राज्य सभा में प्रश्न किया था अताराकित प्रश्न नं. 1171 दिनांक 11-8-1980। सरकार ने उत्तर दिया कि उच्चतम न्यायालय में कार्यरत जजों की संख्या 1-6-1980 तक 336 है, जिसमें हरिजा पांच, आदिवासी शून्य, मुसलमान सोलह, महिलाएं नौ और पिछड़े वर्ग के बारे में सरकार ने उत्तर दिया कि पिछड़े वर्ग के बारे में सरकार को पता हो नहीं है कि कोई पिछड़े वर्ग का आदमी है, कहाँ नहीं है। तो जिस देश में—मैं कह रहा हूँ कि अभी आप खण्डपीठ की स्थापना कर रहे हैं, हाई कोर्ट के बेंच बना रहे हैं, जहाँ 336 उच्च न्यायालय में, हाई कोर्ट में, देश के अन्दर 1-6-1980 तक 336 जज थे, उसमें मात्र पांच हरिजन इस देश के हाई कोर्ट में जज थे, आजादी के तीस-वत्तीस साल के बाद भी एक भी आदिवासी को इस लायक नहीं

[श्री हुसमदेव नारायण यादव]

बनाया गया इस देश में कि वह हाई कोर्ट का जज बन सकता है, क्या यह देश के लिए जर्म की बात है या नहीं ?

इस पर भी सरकार को सोचना चाहिए और फिर मुसलमान भी 336 में केवल 16 बनाये गये। आदिवासी और हरिजन तो कम पढ़े-लिखे थे, नहीं मिले तो नहीं मिले। मुसलमानों में तो पढ़े-लिखे लोग कम नहीं हैं।

338 में से 16 ही कैसे बहाल हुए जबकि महिलाएं देश की आधी आबादी हैं मात्र 9 ही जज नियुक्त हुई। मैं सरकार से मांग करता हूँ कि हाई कोर्ट में जजों की नियुक्ति में दबे हुए समुदाय को भी उचित प्रतिनिधित्व मिलना चाहिए क्योंकि संस्कार भी इस देश में अवर दिखाते हैं। मनुष्य जाति संस्कार से पीड़ित होने के कारण उसी ओर प्रेरित होती है। स्वर्गीय डा० लोहिया ने लोक सभा में एक केस की नज़ीर दी थी जिसमें उन्होंने कहा था कि एक हरिजन लड़के ने एक द्विज की लड़की से शादी किया तो द्विजों ने गुस्से में आकर उसकी हत्या कर दी और जब मामला अदालत में गया तो फैसला दे दिया कि इस हरिजन लड़के ने द्विज की लड़की से शादी करके उन जाति के लोगों को इंस्टिगेट किया जिस इंस्टिगेशन में आकर उन लोगों ने हरिजन की हत्या कर दी और इसके बाद अभियुक्त को बरी कर दिया गया। अब बताइए यह संस्कार कहां से प्रेरित होता है। यह जो जाति संस्कार होता है उस संस्कार से स्व-विवेक का इस्तेमाल होता है। इसलिए उच्च न्यायालय में और न्यायालयों में दबे हुए समुदाय के लोगों को जो न्याय नहीं मिलता है उसका एक कारण यह भी है।

मेरे अतार्किक प्रश्न संख्या 272, 9 मार्च, 1981 को सरकार ने उत्तर दिया है जिसमें मैंने प्रश्न पूछा था कि क्या सरकार बतायेगी भारत सरकार द्वारा नियुक्त अधिवक्ताओं की संख्या हाई कोर्ट और सुप्रीम कोर्ट में क्या है, कितने वकील हरिजन, आदिवासी, महिला, मुस्लिम एवं पिछड़े वर्ग के हैं? 330 हैं, उसमें और तो 15 हैं। हरिजन और आदिवासी का कोई पता नहीं है। पिछड़े वर्ग के बारे में कोई पता नहीं है। जिस सुप्रीम कोर्ट में हाई कोर्ट में इतने इम्पॉटेन्ट केस आते हैं, जहां बहस की जाती है, वहां एक भी हरिजन सरकारी वकील आज तक बहाल नहीं हुआ, एक आदिवासी सरकारी वकील को आज तक बहाल नहीं किया गया। फिर पिछड़े वर्ग के लोगों का तो सरकार को पता हो नहीं है कौन पिछड़ा है कौन नहीं है तो सरकार क्या बताएगी? इसीलिए जान कर भी छुपाया गया।

उपसमाध्यक्ष महोदय मैं आपसे निवेदन करना चाहूंगा कि जो आप खंडपीठ बना रहे हैं न्यायालय बना रहे हैं—उच्च न्यायालय—इस उच्च न्यायालय में फैसला करने वाले उस वर्ग और समुदाय के होने चाहिए जिन के ऊपर समाज में निरंतर जुल्म और अत्याचार होते आए हैं। इसलिए—पैरवी करने वाले ऐसे वकील और अधिवक्ताओं की नियुक्ति होनी चाहिए जो समाजिक न्याय को समझते हैं और शिक्षित पीड़ित वर्ग के हितों को।

आखिरी बात मुझे कहनी है कि 30-32 की आजादी के बाद भी बिहार जैसे प्रदेश जहां, से मैं आता हूँ—आपको सुन कर आश्चर्य होगा उस बिहार में मात्र केवल दो पिछड़े वर्ग हाई कोर्ट के जज बहाल किए गए हैं? और क्यों नहीं।

बहाल होते हैं ? मैं मांग करता हूँ हाई-कोर्ट जज का नामिनेशन नहीं होना चाहिए। इसमें किसी के सिफारिश का जरिया न हो बल्कि पब्लिक सर्विस कमिशन द्वारा जैसे आई० ए० एस० और दूसरे अफसरों को बहाल करते हैं वैसे ही कंपीटेशन के जरिए से नियुक्ति करिए। मेरा दावा है अगर ऐसा करेंगे, तो बैंकवर्ड क्लासेज के भी ऐसे लोग हैं जो कंपीटेशन से उस हाईकोर्ट जज को कुर्सी में जा सकते हैं। आप नामिनेशन करते हैं सुप्रीम कोर्ट, हाईकोर्ट के जजों का और गवर्नर्स का। यह तीनों के तिकडे में जो नाम सिफारिश में आएगा वह नियुक्त होगा। मैं कहूँगा तेरा बेटा बेटो वह कहेगा तेरा नाती बेटा बेटो — इस तरह मिल कर लेते चले जाएंगे आपस में सिफारिश करते चले जाएंगे। दूसरी तरफ दबे हुए वर्ग का बेटा खेत में मार खाता है। इसलिए मैं मांग करता हूँ, उनको तब तक इन्साफ नहीं मिलेगा, न्याय नहीं मिलेगा जब तक जुडीशरी में उनको उचित प्रतिनिधित्व नहीं मिलेगा। जब आप इस तरह का कानून बनाते हैं तो इस बात के ऊपर विशेष खयाल करें।

इन शब्दों के साथ मैं अपना कथन समाप्त करता हूँ।

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): Yes, Mr. Hegde. Mr. Bhabhra, do you want to speak on this?

SHRI HARI SHANKAR BHABHRA (Rajasthan): Yes, Sir.

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): All right. Last time you were not here. I will give you a chance. Yes, Mr. Hegde.

SHRI RAMAKRISHNA HEGDE (Karnataka): Sir, I would not have chosen to speak on this Bill if the hon. Minister had cared to reply to

the very important points raised by Mr. Gopalsamy, hon. Member from Tamil Nadu. He did not even touch the few important points that the hon. Member raised. I do not agree with Mr. Dhabe either that the people of Goa will be happy with this measure. On the contrary, they will feel that something has been imposed on them. The people of Goa never asked for the extension of the jurisdiction of the Bombay High Court nor of the Karnataka High Court. They wanted the upgrading of the present system, that is, the Judicial Commissioner's post to the rank and status of a High Court. That was their demand. But by this measure, this Government has not only done injustice to the people of Goa, but it is also unfair to our great departed leader, Pandit Jawar-lal Nehru. Goa is not like other Union Territories. It has its own history, its own culture. Goanese people have their own language. I do not know whoever told Mr. Bhandare that Konkani is a dialect of Marathi. Konkani is an independent language; it has been recognised by all people who know something about languages. And today we are having Konkani broadcasts. It might be true that in the northern parts of Goa, the Konkani language that is spoken there, may be influenced by Marathi as it is influenced in the southern part by Kannad language and in Cochin where Konkani is spoken by considerable number of people, it is influenced by Malayalam language. This inter-impact between languages is always there.

Sir, I cannot help saying that through this measure, the Government of India is bringing about the integration of Goa territory into Maharashtra through backdoor. First, it was the extension of the jurisdiction of Bombay University to Goanese colleges. Now it is the extension of the jurisdiction of the Bombay High Court and tomorrow it might be that the Government of India will also extend the jurisdiction of All-India services of Maharashtra cadre, that

Shri Ramakrishnan Hedge]

is, IAS and IPS, to Goanese territory. Sir, the Goanese people have categorically rejected the idea of merger. It is true that there was a persistent demand by my Maharashtra friends that Goa should become a part of Maharashtra. It is also true that there was a small section, particularly in the ruling party, which also wanted the merger of Goa in Maharashtra. But I had also some small part to play in those days when we demanded that the decision must be left to the people. A few people in the ruling party should not be allowed to take a decision; but the people should have the chance, the opportunity to say whether they really want their territory to be merged with Maharashtra or not. So, ultimately, the Government of India agreed and a referendum was taken and the people emphatically, with overwhelming majority, rejected the idea of merger.

Now why this measure has been brought against the people's will, for indirect merger of Goanese territory into Maharashtra? I oppose it tooth and nail, with all my might. Sir, if there was a case of bringing about a measure it should have been in different form. Mr. Patil this morning read out the Statement of Objects and Reasons that there were certain Constitutional difficulties in upgrading the Judicial commissioner's position...

SHRI SHIVRAJ V. PATIL: No Constitutional safeguards...

SHRI RAMAKRISHNA HEGDE: Was it not possible if he had only amended the relevant provision in the Constitution providing for the same safeguards to the Judicial Commissioner? It was much easier. Why did you bring this Bill? Why do you want to extend the jurisdiction of Bombay High Court? This is against the will of Goanese people. I oppose it. Even at this stage I would appeal to the hon. Minister to give a second thought and let this Bill be referred to the Joint Select Committee.

भी हरी हाकर भाइया : उपसभाध्यक्ष महोदय, मैं इस बिल का स्वागत करता हूँ। अच्छा होता कि गोआ में इस बिल के बजाय भूलग से एक हाईकोर्ट बना दिया जाता लेकिन बेंच बनाने का भी मैं स्वागत करता हूँ।

इस बिल के संबंध में कुछ काम्यली-केमन्स पैदा हो रहे हैं। मे चाहुंगा कि मंत्री महोदय उस तरफ ध्यान दें। एक तो इस में धारा 6 और धारा 8 इन दोनों धाराओं को आप देखिये, उन में कोई अंतर नहीं है। मैं समझता हूँ कि किसी भी एक धारा से काम चल सकता था जब खास कर धारा 6 बना दी गयी तो धारा 8 में भी वही शब्दावलि है। केवल धारा 8 के अंदर उन प्रोसीडिंग्स का उल्लेख किया गया है जो ट्रांसफर की जायेगी बंबई हाई कोर्ट में। बाकी कोई भी वकील जो जुडिशियल कमिश्नर की अदालत में बकालत कर सकता है वह बंबई हाई कोर्ट में भी बकालत कर सकता है इसका प्रावधान ही धारा 8 में किया गया है। इसलिये दोनों को मिला कर एक ही किया जा सकता है और इसकी अलग से रखने की आवश्यकता नहीं थी।

इसी तरह एक और परेशानी पैदा होने वाली है प्रेक्टिकली और वह है गोआ, दमन, दीव के बीच में जो अंतर है वह शायद 500 किलोमीटर से ज्यादा का है। दमन, और दीव तो बंबई के नजदीक पड़ता है और गोआ पड़ता है बतनागिरि के नजदीक। दमन, दीव के लोगों को बंबई नजदीक पड़ता है अनिस्वत गोआ के। दमन, दीव के लोग यदि बेंच में एरियर होने के लिये, अपने मुकदमे करने के लिये बेंच में जायेंगे तो उन को बंबई से हो कर 500 किलोमीटर की यात्रा करनी पड़ेगी जब कि बंबई पहुंचने में उन को 50 या 100 मील की ही यात्रा करनी पड़ेगी।

तो इस तरह से जो बेंच गोआ, दमन, दीव को मिला कर कायम की गयी है उसमें से दमन दीव के लोगों को पहुंचने में परेशानी होगी और बंबई उन के लिये ज्यादा नजदीक होगा। इस पर विचार किया जा सकता है।

अंत में मैं एक निवेदन और करना चाहूंगा कि लोग कहते हैं कि जस्टिस डिलेड इज जस्टिस डिनाइड, लेकिन एक इम्पीनेंट जज ने यह भी कहा है कि जस्टिस हरीड इज सस्टिस वरीड, यानी हमें इन दोनों के बीच से कोई रास्ता निकालना है। आप एक तरफ तो न्याय-पालिका की इज्जत को अधुष्य रखने के लिये बाध्य हैं और दूसरी तरफ न्यायपालिका में करप्शन न हो और न्यायपालिका लोगों को सामाजिक और आर्थिक न्याय भी दे यह देखने के लिये बाध्य हैं। इन दोनों के लिये आप को रास्ता निकालना पड़ेगा क्योंकि हाई कोर्ट और मग्नम कोर्ट के जजेज को ट्रांसफर कर के या उन का क्रिटिसिज्म कर के काम नहीं चलेगा। आज मुफस्सिल कोर्ट्स के अंदर अधिकांश जनता परेशान हो रही है। उन को आप जस्टिस नहीं दे पाते हैं। आज ज्यादा शिकायतें लोगों को इन मुफस्सिल कोर्ट्स से हैं और उन में जो करप्शन है उस के कारण वहां लोगों को आसानी से न्याय नहीं मिल पाता है। उस का सुधार करने के लिये हम को कानून ऐसा बनाना पड़ेगा कि नीचे की अदालतों में लोगों को न्याय-सामाजिक और आर्थिक न्याय, गरीब लोगों को भी मिल सके। सुप्रीम कोर्ट और हाई कोर्ट तक तो बड़े लोग ही पहुंच पाते हैं, पैसे वाले लोग ही पहुंच पाते हैं। साधारण गरीब लोग वहां तक नहीं पहुंच पाते। इस लिये सुप्रीम कोर्ट और हाई कोर्ट के जजेज की आलोचना करना या उन का किसी वहां से ट्रांसफर कर देने से या उन पर कोई राजनीतिक दबाव डालने से न्यायपालिका का ज्यादा हित नहीं होगा और उस से अदालतों का भ्रष्टाचार समाप्त नहीं होगा। हम को चाहिए कि अपनी न्याय-

पालिका की स्वतंत्रता को हम बरकरार रखें और नीचे के कोर्ट्स में जो लोगों को न्याय नहीं मिल रहा है, सामाजिक और आर्थिक न्याय नहीं मिल रहा है वह उन को मिले और उसमें बहुत जल्दबाजी भी न हो ऐसा कोई मार्ग हम को अपनाना चाहिए। यही कह कर मैं अपनी बात समाप्त करता हूं।

**श्री शिवराज बी० पाटिल :** उपसभाध्यक्ष—महोदय, यह थर्ड रीडिंग के समय चर्चा हो रही है और सम्माननीय सदस्यों में हेरगड़े जी के सिवाय बाकी सारे सदस्यों ने यह कहा नहीं कि यह बिल पारित नहीं होना चाहिए, यह बिल पास नहीं होना चाहिए। सिर्फ सम्माननीय सदस्य हेरगड़े माहूब ने कहा कि मैं इसका विरोध करता हूं, यह पारित नहीं होना चाहिए। यह कहते समय स्वयं उन्होंने कहा कि जो गोआ में बेंच बनाई जा रही है, उसके सम्बन्ध में जो कुछ ख्यालात हमारे एक दूसरे साथी ने यहां पर जाहिर किये थे, उसके बारे में मैंने कुछ भी नहीं कहा। मैंने उस समय कहा था और अब भी कहूंगा कि यह बेंच बनने की वजह से गोआ में जो सरकार है, उसकी ऐडमिनिस्ट्रेशन में, उसके प्रशासन के अधिकार में कोई अन्तर आने वाला नहीं है।

**श्री रामदुर्जन हेरगड़े :** कर्नाटक हाई कोर्ट का बेंच क्यों नहीं बनाया ?

**श्री शिवराज बी० पाटिल :** उनकी फाइनेंशियल पॉवर में भी कोई अन्तर आने वाला नहीं है, उनके आर्थिक अधिकारों में भी कोई अन्तर आने वाला नहीं है। वहां की सरकार को, वहां की जनता को जो नया समाज बनाना है और अपने को जैसा चाहे वैसा समाज बनाना है उसका जो अधिकार दिया है, उसमें भी कोई अन्तर आने वाला नहीं है। इस प्रस्ताव से यह पता चलता है कि अगर वहां पर कोई व्यवस्था है तो वह व्यवस्था कायम रखने में हाई कोर्ट की बेंच बनने से कोई बाधा आने वाली नहीं है। आप थोड़ी देर के लिए सोचिये

[ श्री शिवराज बी० पाटिल ]

कि असम में से बहुत सारे स्टेट हो गये, मगर हर एक के लिए अलग अलग हाई कोर्ट बनाया नहीं गया। इसलिए बनाया नहीं गया कि अगर वह ऐसा कहते तो भी हाई कोर्ट का बनाना आर्थिक दृष्टि से योग्य नहीं होता।

श्री रामकृष्ण हेगडे : जो अलग अलग स्टेट बने वह असम स्टेट से बने, लेकिन गोआ महााष्ट्र में नहीं बना। (व्यवधान)

श्री शिवराज बी० पाटिल : असम स्टेट से अलग अलग स्टेट बने, वहाँ की संस्कृति कायम रहे। . . . (व्यवधान)

THE VICE-CHAIRMAN (SHRI DINESH GOSWAMI): You are not very correct. Tripura is within the jurisdiction of Gauhati High Court.

SHRI RAMAKRISHNA HEGDE: I was not referring to that. He said that different States have been formed out of Assam, but Goa is not part of Maharashtra State.

SHRI SHRIDHAR WASUDEO DHABE: I would like to know from the Minister whether the Chief Minister of Goa will be consulted in appointment of judges?

SHRI SHIVRAJ V. PATIL: I am coming to your point also. I cannot reply to all the points at one time. मैं वहीं कह रहा था। मैं कहने जा रहा था कि असम में से अलग अलग स्टेट्स तैयार हुए और इस दृष्टि से बनाये गये कि वहाँ की संस्कृति कायम रहे और वहाँ उनकी पर्सनैलिटी कायम रहे। फिर भी वहाँ पर एक ही हाई कोर्ट रखा गया। वह इसलिए कि अलग अलग हाई कोर्ट बनाना संभव नहीं था। आर्थिक दृष्टि से संभव नहीं था, दूसरी दृष्टियों से संभव नहीं था। उसी प्रकार यहाँ पर अगर अलग हाई कोर्ट बन जा जाए तो ऐडमिनिस्ट्रेटिव मशीनरी बटनो पड़ेगी, उस पर बहुत खर्चा होगा।

टैरिटरी कम होने की वजह से दूसरी हाई कोर्ट बनाना ठीक नहीं है। इन सारी चीजों को ध्यान में रखकर ही ये सारी चीजें बनाई जाती हैं। . . . (व्यवधान)

आपने कहा कि जूडिशल कमिशनर्स क्यों नहीं हैं। कंस्टीट्यूशन में सेफगार्ड नहीं है तो हाई कोर्ट का सेफगार्ड देने के लिए आप क्यों नहीं बनाते। यह आपका सुझाव था। मगर इस सुझाव से आप देखिये कि जूडिशरी का सारा चित्र ही बदल जाता है। कई प्रकार के चित्र आ जाते हैं, एक सुप्रीम कोर्ट रहेगी, दूसरा हाई कोर्ट रहेगा, तीसरे जूडिशल कमिशनर रहेंगे। . . . (व्यवधान)

श्री रामकृष्ण हेगडे : जूडिशल कमिशनर और कहीं भी नहीं होगा, ऐक्स्प्रेट गोआ ?

श्री शिवराज बी० पाटिल : इसीलिए मैं कह रहा हूँ कि एक नई प्रणाली एक नये प्रांत के लिए बनाना ठीक नहीं है। जूडिशियरी में एकता का स्वरूप है, उसको बदलना आप चाहते हैं ? तो उस से तो अच्छा है इस प्रकार से करना। इसलिए इसका उद्देश्य वहाँ की पर्सनैलिटी को मिटाना या अलग रूप देना या किसी प्रांत का रूप देना ऐसा नहीं है। इसीलिये मैं कहना चाहूँगा कि इस दृष्टि से जो किया गया है सोच-विचार करके किया गया है। वह आपको मान्य होना चाहिये। शायद आप ऊपर से न हों लेकिन दिल से मान्य होंगे, ऐसा मैं समझता हूँ।

दूसरा सवाल यहाँ माननीय सदस्य झा साहब ने उठाया। बहुत बड़े-बड़े सवाल उन्होंने उठाये। मैं समझता हूँ इतना टाइम नहीं है कि सारी बातों का जवाब दूँ। उन्होंने जूडिशियरी की बात कही, अपायंटेंट जूडिशियरी की बात कही। यह बहुत बड़ी बात है। दुनिया की घटनाएँ, कंस्टीट्यूशन्स हैं। अलग-अलग जगह पर अलग-अलग चीज है। अमेरिका के अंदर भी सीनेट को, सुप्रीम कोर्ट के जज को चुनकर देना या देने का अधिकार है। फ्रांस के अंदर अलग-अलग चीज है। फ्रांस के कंस्टीट्यू-

यूशन के इन्टरप्रेटेशन के लिये वहाँ के स्पीकर, चेयरमैन और पार्लियामेंट के मेम्बर बैठते हैं। जर्मनी के अंदर इलेक्टिव जुडिशियरी है। इलेक्टिव जुडिशियरी होनी चाहिये या नहीं होनी चाहिये यह बहुत बड़ी बात है। इसके ऊपर बिल पर विचार करते समय मैं अपने विचार प्रकट नहीं कर सकता। अगर आपके इस पर विचार हैं तो आप अपने विचार बाहर और यहां कहना चाहें तो यहां प्रकट कर सकते हैं। इलेक्टिव जुडिशियरी होना या न होना अलग बात है। अपनी जैसी जुडिशियरी है यह बड़े सोच-विचार करके बनी है। जो कुछ इस पर हमारा काम चल रहा है उस पर कुछ बोलूंगा तो उसकी इन्टरप्रेटेशन अलग-अलग हो सकती है। मैं कंट्रोवर्सी में नहीं जाना चाहता। एक भो शब्द बोलूंगा तो उसका कोई भी इन्टरप्रेटेशन कुछ भी कर सकता है। मैं न बुरा बोलना चाहता हूं और न अच्छा बोलना चाहता हूं, जैसा है वैसा ही ठीक है। हम उसी को चला रहे हैं। अगर आपके कुछ विचार हैं तो आप जरूर कहिये। उस बारे में मैं इस बहस के अंदर कुछ जवाब नहीं देना चाहता और न दे सकता हूं। दूसरा सवाल आपने यहां पर ट्रांसफर आफ जजेज का उठाया। मैं समझता हूं यहां पर बिल पर विचार करते समय ट्रांसफर आफ जजेज की बात करना ठीक नहीं है।

उपसभाध्यक्ष (श्री दिनेश गोस्वामी) : वह भी छोड़ दीजिए। (व्यवधान)

श्री शिव राज बी० पाटिल : मैं इस बारे में कुछ नहीं बोलूंगा। मोवाइल कोर्ट्स के बारे में भी मैं कुछ बोलना नहीं चाहता। आपने, हरिजन भाइयों और महिलाओं को भी जज होना चाहिये इस बारे में कहा। मैं कहना चाहता हूं कि अगर ऐसा हो सके तो अच्छी बात है और ऐसा करने का प्रयास हमारे ला मिनिस्टर ने किया है। सुप्रीम कोर्ट के अंदर हरिजन भाई सबसे पहले जज बने हैं। महिलाएं भी आती हैं तो अच्छी बात है मैं बिलकूल

कहूंगा। अपाएंटमेंट वगैरह भी होता। होती हैं, आप जानते हैं। उनको अपाएंटमेंट आना पड़ता है, सुप्रीम कोर्ट के अपाएंटमेंट को रिक्मेंड करना पड़ता है। जब मारा जाय तो होता है तब अपाएंटमेंट होता है, एक मारा जाय धाबे साहब ने उठाया था उस बारे में मैं कहना चाहता हूं। उन्होंने कहा कि जो जुडिशियल कमिशनर हैं उनका क्या होगा। वहां पर एडोशनल जुडिशियल कमिशनर है, जुडिशियल कमिशनर नहीं हैं। वहां सिर्फ एडोशनल जुडिशियल कमिशनर हैं। हाई कोर्ट का जज बनाते समय उनको बनाया जाएगा या नहीं बनाया जाएगा इस समय मैं कुछ नहीं बता सकता। अगर उनको बनाना है तो जापानियन है, क्वालिफिकेशन है और दूसरी बात है उन सब पर विचार होगा। अगर बनाया जाय तो बनायेंगे और नहीं बना सकते हैं तो बनायेंगे। मैं सब सदस्यों को धन्यवाद दूंगा कि उन्होंने इस बिल का समर्थन किया। (व्यवधान)

श्री रामकृष्ण हेगड़े : अगर हाई कोर्ट में एक बेंच वहां स्थापित करना जरूर है तो आपने कर्णाटक हाई कोर्ट की क्या तैयारी माराष्ट्र की क्यों की ? इसका जवाब दे दीजिए। (व्यवधान)

THE VICE-CHAIRMAN (DINESH GOSWAMI) : The question is:

"That the Bill, as passed".

THE VICE-CHAIRMAN (DINESH GOSWAMI) : The stands adjourned to re-assemble tomorrow at 11 A.M.

The House then adjourned at fifty-nine minutes of the clock till eleven o'clock on Friday, 20 August, 1981.