

[Shri K. R. Ganesh]

determined attack on poverty, attack on backwardness, attack on economic inequality and various other things. It has been the swan song of a certain section of the opposition, right from 1969 and particularly after the mid-term election, that democracy in this country is being subverted. This has been replied to by the Prime Minister and it has been discussed in the House many times. It is true that the *status quo* conception of democracy is being changed under the impact of socio-economic forces that have arisen in this country. It is the responsibility of the Government, it is the responsibility of all those political parties which believe in social change through parliamentary democracy, to confront the social forces that have arisen and see in which direction they want to go and evolve Government policies and actions for the realisation of that. This is exactly what the Government is attempting to do, whether it is foodgrains takeover, whether it is the takeover of the coking coal-mines or whether they are the various other social measures that have been taken. As far as the Supreme Court is concerned, it is the giving up of the very obsolete form or concept of seniority of the particular person to hold the highest office. It is by removing the roadblocks that we will be able to achieve things. Nobody says that socialism has been established in the country. That is not the claim of the Government. For achieving socialism many more things will have to be done. We have to improve the national economy. We have to strengthen the infra-structure and through fiscal measures we have to see that disparities in incomes are removed. There should be a proper distribution machinery. In that direction the takeover of the foodgrains trade is a positive and forward-looking step. Without the food-grains takeover it will not be possible for us to make any impact on prices. If you study the question of prices, you will find that it is only as a result of a sharp increase in the price of food articles that the prices of other articles have gone up. I may submit that we are late as far as

the question of foodgrains takeover is concerned. A viable distribution machinery is part of a planned economy and the sooner it is built up—and the Government has taken that step—many difficulties which will be there in its path will be removed.

I agree with the hon. Member, Shri Sundar Mani Patel, from Orissa that it is a State with a lot of difficulties. A very liberal grant has been given to it and whatever other assistance is necessary for Orissa, the Central Government, knowing about it, will give.

MR. DEPUTY CHAIRMAN: The Question is:

"That the Bill be returned."

*The motion was adopted.*

MR. DEPUTY CHAIRMAN: Before we adjourn, I would like to take the sense of the House. I would like to suggest that we take up the short duration discussion at 2.00. We will get half an hour more.

SOME HON. MEMBERS: All right.

MR. DEPUTY CHAIRMAN: The House stands adjourned till 2.00 P.M.

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

The House ressembled after Lunch at two of the clock—MR. DEPUTY CHAIRMAN in the Chair.

#### DISCUSSION UNDER RULE 176

SITUATION ARISING OUT OF THE SUPERSESSION OF THREE SENIOR JUDGES OF THE SUPREME COURT AND THEIR RESIGNATIONS

SHRI BHUPESH GUPTA (West Bengal): Mr. Deputy Chairman, Sir, I rise to start the discussion on the supei session

of the three Judges of the Supreme Court which has given rise to such a big noise in the country. The noise is artificial and if anything is politically motivated it is this noise against the supersession of the three Judges. I frankly confess that these three Judges are better out of the Supreme Court than in it. I am grateful to Mr. Hegde and Mr. Shelat and also Mr. Grover that they have been good enough to relieve ourselves of the anxiety by resigning from the Bench. On the Bench they are a menace to the nation. They are a menace to the principles on which we seek to build our society. They are a menace to the working people as they are a solace to the vested interests. Outside the Supreme Court they may make a little noise and gather around them the frustrated Mr. Morarji Desai, Mr. Vajpayee, Mr. Palkhiwala and others who will be receiving them today at Vithalbhai Patel House. But beyond that their capacity to mischief as individuals is very limited. Mr. Hegde, for example, came to occupy the Bench in Mysore, after having some little time in this House where he proved certainly noisy but otherwise useless to the party. And that is why nobody in those benches thought of getting him re-elected either to the Lok Sabha or to the Rajya Sabha. And when he went to Mysore, Mr. Nijalingappa gave him his benediction and blessings and found him a cushy job in the High Court of Mysore where he remained as a judge before he came here, after superseding some judges, as the Chief Justice of Delhi High Court.

Now we are concerned with more vital and fundamental issues. Mr. Hegde in his press conference made a reference to our party and accused us—We take it as praise—that we had been responsible for getting him out. I think if we had done it, it is a credit we undoubtedly deserve. But I think the Government itself has done it, and we have been preaching for it. The question of Supreme Court figured prominently in the last General Elections to the Lok Sabha, the mid-term poll of

1971. I cannot speak for other parties, but our party in its Election Manifesto had occasion to refer at length to the Supreme Court and among other things, we have said in that Election Manifesto of 1971:

"The supremacy of Parliament, which has been challenged by the Supreme Court, must at all costs be restored. The Constitution must be amended to place Parliament's supremacy and the will of the people expressed through Parliament beyond all challenge by judiciary, including the Supreme Court. This implies, first and foremost, that Parliament must resume its power to amend the Fundamental Rights chapter of the Constitution. The Constitution should also be so amended as to make it obligatory on the part of the judiciary to interpret legislation for social and economic changes not for restricting their scope or for protecting the vested interests affected by them, but for promotion of social justice and growth. The judiciary must be obliged to be guided by the Preamble and the Directive Principles of the Constitution in dealing with such matters."

That is what we said. We also said with regard to the judges:

"The judges, including the Chief Justice of the Supreme Court and the High Court, shall be appointed from among the names of the panels approved by Parliament in the case of the Supreme Court and by the concerned State Assemblies in the case of the High Court. Seniority shall not alone determine as to who should be appointed as the Chief Justice of the Supreme Court or of the High Court. There shall be no legal restriction on the number of judges of the Supreme Court."

This is what we stated in our Election Manifesto. Therefore, it is not as if we have taken a stand to-day in fear that [Mr. Hegde] will occupy the position of Chief Justice of the country. That would have been a disaster if he had been there.

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We have averted a major national calamity by kicking him out of that particular post. But that is quite beside the point. We had thought of introducing certain principles in reorganising the Supreme Court which we spelt out in our Election Manifesto. Therefore, let us discuss it from that angle. Naturally to-day we welcome the decision the Government has taken after 23 years of the commencement of the Constitution and after 15 years of the recommendation of the Law Commission which wanted this practice of appointing the Chief Justice of the Supreme Court on the basis of seniority to be abandoned. Here, Mr. Setalvad in his book "My Life, Law and Other Things" has said about the Supreme Court—of course, he speaks as a member of the Law Commission: "About the Supreme Court, we are constrained to observe that it is rightly felt that communal and regional considerations have prevailed in making the selection of the judges, so that the best talent among the judges of the High Courts have not found their way to the Court."

That was the conclusion of the Law Commission that the Judges of the Supreme Court, those who had come there, all of them did not represent, even by their standards, the best talent in the country. And Mr. Palkiwala and many others were members of the Law Commission. I can tell you that Mr. Hegde proves the case. It was a very good statement made. Unfortunately when Mr. Hegde was appointed as a Judge of the Mysore High Court, this salutary recommendation of the Law Commission, its warning, was forgotten. Here Mr. Setalvad pointed out that the Law Commission wanted the Chief Justice to be appointed on special considerations including ability, administrative capacity, and so on, not merely seniority, not even mere legal learning. I think if we had accepted this recommendation made sixteen years ago, we would not have perhaps had many of the Judges and some of the past Chief Justices among whom was

Mr. J. C. Shah, for example, who, I understand, is earning about a lakh of rupees after retirement in business, in foreign business connections, and so on. Therefore, what has been done is according to the recommendations of the Law Commission. And in our Constitution Article 174 never says that you must appoint as Chief Justice a person even from among the Judges of the Supreme Court. You can appoint anybody you like. If Mr. Daphtary can prove that he is less than 65 years of age...

SHRI C.K. DAPHTARY (Nominated): No, I cannot prove.

SHRI BHUPESH GUPTA: . . . Anyway, I am sorry if you cannot. But you can be appointed as Chief Justice of the Supreme Court. There is no bar at all to a person being taken from outside the Bench, whether of the High Court or of the Supreme Court. That was the provision made in the Constitution. And those who made that provision were not all very radical people. Most of them were conservative. When they made that provision, they never thought in terms of seniority principle. Yet, somehow or other, partly by habit, partly due to inertia or whatever reason, this practice came to be accepted for so many years. Now, therefore, this uproar should be stopped. The uproar is created by political reaction. That we must realise. The whole indignation in the name of independence and dignity of the judiciary cannot hide the fact that the inspiration for the whole campaign comes from those gentlemen of the Grand Alliance of 1971 who had again and again rushed to the Supreme Court...

SHRI C. D. PANDE (Uttar Pradesh): They do not belong to any political party.

SHRI BHUPESH GUPTA: . . . who got the Privy Purses Abolition Bill rejected, declared illegal, who got the first Bank Nationalisation Bill declared illegal and compelled us to pay Rs. 87 crores instead of Rs. 27 crores, who went also later to get many other Bills challenged in that way, and who, in the matter of car case, got Mr. Shelat issue a judgment—I think it was issued by one of the Judges . . .

SHRI C. K. DAPHTARY: By Mr. Justice Grover.

SHRI BHUPESH GUPTA: . . . that -every six months the prices of the car should be reviewed with a view to offering fair remuneration, fair return, to our great Birlas and others. Such is the position. This is their record and there is a force behind them. I am not going into the Golaknath case and all that. So, these are the people now who are running this campaign which is most unfortunate and some lawyers have temporarily fallen victim to this campaign. In which other country in the world today, in which modern country, does this business of seniority rule prevail in the appointment of the Chief Justice of a High Court or the Supreme Court? Does it exist in the United States of America from where many of the honourable Members of the right wing political parties take abundant inspiration? Does it exist in the United Kingdom? Does it exist in France or Italy? Does it exist in Japan or, for that matter, even in Taiwan which my friend, Shri Dahyabhai Patel, frequently visited in the past? Nowhere it exists. Nowhere it exists today. It existed here somehow or other by an accident of history. You cannot make the appointment of the Chief Justice contingent upon the principle of seniority for the simple reason that it rules out the role of Parliament, the role of the people, the role of the Government, the role of even the Supreme Court, because even the Supreme Court cannot say who should be the Chief Justice from amongst them or who is the best qualified so long as the senior-most Judge is entitled to get through and his claim comes. Even the Nizam of Hyderabad did not follow the law of primogeniture and in preference to the...

DR. Z. A. AHMAD (Uttar Pradesh): Even in the case of Agha Khan also.

SHRI BHUPESH GUPTA: Yes. In many other cases also.

But, here in our democracy, when we want to have a new society with high

social objectives, we are sticking to and we want to stick to the principle of seniority? Why? It is not so simple as they make out. It is neither the supersession nor seniority. But the anger is due to the fact that the office of Chief Justice has not been offered to Mr. Shelat for a few months as a care-taker Chief Justice or even to Mr. K. S. Hegde for a much longer period. That is the reason for their anger. Because, Sir, the Chief Justice influences the decisions of the Supreme Court and how the decision are influenced by the Chief Justice is given again by Shri Setalvad in his autobiography. He asked the Chief Justice of that time, Shri Subba Rao, as to how he could manage to depend on such a slender majority in order to give so important a verdict as the one in the Golak Nath case. Then, he says:

"When I happened to meet the Chief Justice, Shri Subba Rao, and Shri Hidayatullah at a dinner some time later, I told them that a decision involving such far-reaching consequences should not have been arrived at by a slender majority. The Chief Justice's answer was that they had tried their best to have a larger majority, but they could not succeed."

Now, Sir, this is how the majority is arrived at ! Even in Parliament they behave in a decent manner, very decent manner, to get a majority viewpoint and here your former Chief Justice is telling, "I could not succeed in getting the majority, but could get the slender majority of one and yet on that basis I gave the judgement in the Golak Nath case", seemingly to take the established and acknowledged powers of Parliament to amend article 368 and the Fundamental Rights Chapter of the Constitution. I ask whether the Judges were wiser than the 550 million people of our country, wiser than 760 Members of Parliament in the two Houses or wiser than the more than 3,500 elected MLAs in the country? Are we to mortgage our conscience, our future, our right to make our future, to the whims of the six Judges in

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the Supreme Court simply because they sit on the high pedestal of justice, wearing some robes for the time being? And, Sir, this judgment has been rewashed by the Supreme Court itself, not even Mr. Hegde daring to openly hold the Golak Nath case. Who stands vindicated? We stand vindicated. We who have been fighting against the monstrosity and challenge of the Golak Nath case, who took the challenge and went to the electorate and came back with a mandate to amend the Constitution, to resume our right to amend any part of the Constitution, including the Fundamental Rights Chapter, stand vindicated now. Therefore, let us remember this thing when the noise goes on.

Mr. Deputy Chairman, Sir, here Mr. Hegde is saying so many things. May I point out that Mr. Hegde has become the champion, guardian and angel of the purity of law, of the dignity of the law and of the conscience of the nation as far as the law is concerned. The man should have some amount of humility?

The "Hindustan Times" of yesterday writes about him. The "Hindustan Times" is not a communist paper; it is a Birla paper. The Birlas have never been found wanting in their affection for a man like Hegde. This is what they say—hon. Members may listen—in their editorial called "A Sad Postscript":

"The intemperate and injudicious statement issued by Mr. K. S. Hegde on Tuesday on his supersession leaves the objective reader with the feeling that perhaps it is just as well that this particular judge was passed over."

This is the statement of "Hindustan Times". Yet we found some friends in this House and the other House are flooding the Parliament House with their crocodile tears because Mr. Hegde has lost the prospects of becoming the Chief Justice of India to carry on the filthy tradition

of the Golaknath case established by Mr. Justice Subba Rao when he was the Chief Justice. I congratulate Mr. Gokhale. He has done an excellent thing. I do not know how many good things he has done in his life. But one good thing you have done is to remove these three judges...

*{Interruptions}*

As far as Shelat is concerned, who does not know Mr. Shelat? When he was a judge of the Ahmedabad High Court, 200 advocates of the Ahmedabad courts sent a memorandum complaining of corruption against Mr. Shelat and a memorandum was sent to the Chief Justice of the Supreme Court, Mr. Gajendragadkar, here by the lawyers' representatives. And Mr. Gajendragadkar, in order to relieve the members of the Ahmedabad Bar, shifted Mr. Shelat to the Supreme Court. Now we have lost that judicial wisdom. We have lost Mr. Shelat. Everybody knows that Mr. Shelat was one of the most reactionary judges ever to occupy the Bench.

Now, let us not talk about individuals. We know very well. Mr. Deputy Chairman, Sir, it is nobody's case that the Government has violated any provision of the Constitution. Yet an outcry about the independence of judiciary being destroyed has been raised. Why? It is meant to challenge the supremacy and sovereign rights of Parliament? Is it intended or designed in our Constitution to protect monopolists, ex-Princes, big landlords and other exploiting classes? The masses want a social change and they thwart the progressive socio-economic legislation so that this great nation of ours cannot march towards the road to progress. Surely, this is not the concept of independence of judiciary. It is a perversion of the phraseology and the concept. I say that there are enough cases to show how the judiciary under such men as Subba Rao, Sikri, Shah, Hegde, Shelat and so on have thwarted our progress.

Now, the Supreme Court under the most politically minded judges were plan-fully creating a confrontation between the

Parliament and the judiciary. We did not want it. It is they who created the confrontation, first under Subba Rao, then under other judges. Three of them are now gone. Who are the people who wanted confrontation with Parliament? The will of the people is supreme. The will of the people is sovereign. Parliament which makes peace and war and the Parliament in whose hands the destiny of the nation is placed through the elected representatives is the sole repository of people's confidence and people's wishes and nobody else and least of all the Supreme Court. They created artificial confrontation in order to serve the vested interests. No wonder that on the very opening day of the recent fundamental rights case, Mr. Hegde said, "Every judgement on the constitution issue is a political judgement". You know very well that Mr. Setalvad described the Golaknath case as a political judgement. Therefore, it is no use trying to make out as if these judges were not interested in politics. They were interested in politics. They were playing politics. They were helped by the politicians of a particular brand. This is the politics of right reaction encouraged by American imperialism. In some way, this politics was put to the test in the General Elections and these politicians were defeated by a massive mandate. Are we to allow these politicians to dominate the Supreme Court and especially the office of the Chief Justice of India? The mandate of the General Elections presupposes this in the sphere of the Supreme Court. I think the Government has done well to supersede and appoint the new Chief Justice of India by supersession.

Has not supersession taken place any time? Mr. Chagla became the Chief Justice of Bombay High Court by superseding his senior Mr. K. C. Sen. Mr. Hegde double crossed all his brother judges in the Mysore High Court to travel all the way to Delhi to get the chair of the Chief Justice for which he has unfailing affection. Mr. Grover came from

the Punjab High Court again superseding a number of judges to become the Chief Justice of Delhi High Court. In Calcutta High Court, some time ago, Mr. P. V. Mukherjee—incidentally he is the brother-in-law of the new Chief Justice of India—was twice superseded, once by Shri S. K. Basu as the Chief Justice and second time by Mr. Deep Narain Sinha. We never heard any noise at that time in Parliament. We never heard anybody complaining against supersession at that time. At that time, the Supreme Court should not have entered the politics of the country. They should not have become the weapon of right reactionary forces to launch an offensive and the entire issue had not become one in which they reposed their hope, and they wanted the Supreme Court to remain as a shield for the vested interests so that every time we passed a progressive measure, it could be challenged there. Every time we propose to bring about certain social changes, they can challenge our right to make laws. Every time, they can challenge the workers and working people's right to get relief and remedies. Therefore, today this question should be viewed as far as we are concerned and other like us are concerned who stand for progress, not in the context of judicial battle, but in the context of country's wider and bigger political right in which forces of future, forces of progress and forces of tomorrow are poised against the forces of yesterday, past forces and all reactionary forces of counter revolution and against the dead forces which hold us back all the time. By itself, Mr. Deputy Chairman, it may not be an important subject.

But the very fact that the right wing has created such a furor over it making so much noise is indicative of the fact that the Supreme Court is not an instrument of progress; it is not intended to serve either the Directive Principles of the Constitution or the Preamble of the Constitution. It is according to them, a weapon for them to use against the people against their struggle, against their interests, against the forces of progress,

[Shri Bhupesh Gupta] against our efforts in this Parliament to make laws to make the life of the people better. Therefore, today we are happy indeed when we stand here to welcome the action of the Government and to give our whole-hearted support to a wise, noble and courageous step they have taken.

Prime Minister Indira Gandhi said "The *status quo* must go". Yes, *status quo* has no place in any part of life. In the organs of the State/ whether this Parliament or administration or the judiciary, *status quo* has no place. *Status quo* becomes today a shield for reaction. Hence the beginning is good. We hope the process will be carried forward. Well, the beginning is good in the sense that you have removed a bar.

Mr. Deputy Chairman, I am glad Parliament has a right now. When the seniority rule was there we had no right. Now we have a right to question and criticise the Government's action; we can even advise the Government. In future anybody can do it. Now, if the seniority principle—no principle at all but practice—prevailed, we are debarred from giving any opinion and Parliament's responsibility—hence people's say—in the matter is ruled out and that cannot be a part of parliamentary democracy. Parliamentary democracy, if it is to be supreme, must be supreme also in the sphere of appointment and promotion of Judges and this should also be a matter of supervision and review by Parliament. Laws we pass. Government brings the laws and we pass by majority but we do not allow others to pass these things. We have our quarrel with the Government; that we will settle. But, unless the Government assumed the rights to appoint on behalf of Parliament—and there they should pay heed to the democratic opinion of Parliament—and unless they have the right to appoint the Judges in the Supreme Court and in the High Courts, parliamentary responsibility in the sphere becomes defunct and inoperative and becomes absolutely meaningless and illusory. So, all I say in the end is, a good

job has been done; we look forward to the future. We have won; we have advanced. Supremacy of Parliament is upheld not only by amendment of the Constitution; we stand vindicated even by the judgment of the Supreme Court which has overruled the Golak Nath case. We find still greater glory and glow when we find that three reactionary Judges—judicial abomination—in high places of justice had been removed or are gone by self-choice may be, once and for all. I do hope such men shall not be allowed to come 100 miles near the Supreme Court Bench in future.

SHRI S. S. MARISWAMY: (Tamil Nadu): Congratulations to Mr. Bhupesh Gupta for the beautiful funeral oration for democracy in the country.

SHRI BHUPESH GUPTA: May be I delivered a funeral oration but my friend seems to have been enlightened by that.

SHRI C. D. PANDE: Mr. Deputy Chairman, many a time in this House we discussed amendments to the Constitution and many a time we have lost and the Government have succeeded in getting the Constitution amended but we have never thought in terms of losing, because we knew there was a third party, a correcting institution in the shape of the court. Democracy means that there is a third party which holds the balance between the ruler and the ruled. There is always a delicate balance between the Executive, the Legislature and the Judiciary and that balance has been shattered now and this is the doom of democracy. And what is the shape of things to come? You have just now heard Mr. Bhupesh Gupta. He is gloating over the whole thing that so and so is gone, that so and so is committed. He says that a new bright light in the shape of Mr. Ray has come. People have quoted the Law Commission's Report. The Law Commission's Report, people should know, was written in 1958 or so, some 15 years back. Nobody has heard of that Commission's Report so long; not a single Report of that Commission has been implemented but today after 15 years suddenly you find it convenient to quote

that Report and you say that the Law Commission which comprised of Mr. Pathak, Mr. Palkhiwala and many others has said that seniority has no force whatsoever. But in the last fifteen years has any notice been taken of that recommendation? More than six Chief Justices have been appointed during the last fifteen years but it has never occurred to anybody to go by this recommendation so far. But because you find some Judges holding their heads high on their shoulders you cannot stand that and you cannot tolerate them. If democracy should teach anybody anything it is tolerance, tolerance of the other point of view but today things are coming to such a pass that you cannot tolerate any opposition. These Judges could not be tolerated because they are not toeing the line of the Government. That is what is irking your mind. Now what has happened? Mr. Kumaramangalam or Mr. Gokhale—I do now know—either of the two, three days before the Judgement on the Fundamental Rights case was to be delivered—if it is not correct Mr. Gokhale will correct me—approached Mr. Ray and told him that we are going to make you Chief Justice of India; you should toe the Government line.

(Interruptions) AN

HON. MEMBER: False.

SHRI C. D. PANDE : I am asking Mr. Gokhale, not you. You know as little as I know. Mr. Gokhale must be knowing. Either you prosecute the editor of this paper or tell the House what happened. (Interruptions) After all, what is all this? Do you know by appointing Mr. A. N. Ray, you have opened a new vista for the young careerist lawyers—not the Communist lawyers? There will be a large number of lawyers who will be seeking the recommendation of Mr. Bhupesh Gupta for appointment in the High Courts and the Supreme Court. Now there are four vacancies in the Supreme Court and they will be filled by the people who will promise to toe the line chalked out by the Government. Do you like this? Mr. Bhupesh Gupta wants committed Judges. Now if there is

any party who is aggrieved by the Government's decision or even by Parliament's decision has he no right to go to the Supreme Court? And if he goes to the Supreme Court what does he expect? He expects that there will be people there who will not be afraid of giving judgement even if it goes against the Government.

DR. Z. A. AHMAD : You want such Judges who would support you?

SHRI C. D. PANDE : They may go against us. On very important issues Mr. Shelat or Mr. Grover has not given judgments in our favour but we do not mind. Democracy means tolerance not vindictive-ness. Here it is because of vindictiveness that you have superseded these Judges. Nobody says that vindictiveness is a very great crime but supersession in the particular background is bad; it is the question of the background. Now you talk of integrity. What is integrity particularly in this context? Now a Judge has to give his interpretation of a certain thing and he cannot give an independent interpretation if he is looking up for his appointment, if he is looking for preferment. In such a case he cannot act with integrity. Integrity does not mean only straight dealings in money matters. Here integrity means correct interpretation of the constitution, of the letter and spirit of the Constitution. Mr. Bhupesh Gupta wants Committed Judges. Committed to whom? We want Judges who are committed to upholding the dignity of Parliament . . .

DR. Z. A. AHMAD : You want them to be committed to vested interests.

SHRI S. D. MISRA (Uttar Pradesh): We do not want them to be committed to the Communist Party.

SHRI C. D. PANDE: Committed to upholding the Constitution of the country, committed to the independence of the country.

After some time you will find that the younger brothers of Mr. A. N. Ray will be here. They will form a queue at Mr. Gokhale's door saying: I am a very great socialist. I have been to Russia. I have



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written a thesis on leftism. I have studied in Hungary and I have a claim to be in the Supreme Court. I tell you after four or five years you will never find anybody who is not a leftist, more leftist than Mr. Gokhale. I tell you, Mr. Gokhale, perhaps you have some democratic instincts. In you, but you are being dominated. I wish Mrs. Gandhi were present here. We have great admiration for her. She is a great Prime Minister. She has achieved some thing and under her leadership this country has got many things. We are proud of it. Still we wish and we are not wishing too much that she would lead this country on the path of democracy. I heard the speech of Mr. Kumaramangalam yesterday in the Lok Sabha and I was shuddering to think about the things to come. Is it a confrontation between those who are committed to this philosophy or a certain doctrine and others? We do not want Judges to have an ideology, whether of the right or the left. They should have faith in the Constitution and dedication to it. They should give interpretation to the Constitution. Mr. Kumaramangalam was very eloquent because he has some knowledge of law. He said (that in the whole world from Australia to the United States, this and that there have been Judges recruited from their parties and they have been working well. I say I have no objection to partymen being appointed to the Supreme Court, but the moment they are appointed they should not be beholden to the Government. They should not ditto under the command of the Minister concerned or the Government. It is not so in the United States. He has quoted the United States and said that partymen are appointed to the US Supreme Court. Yes. He said that in so many countries their appointment is from the party and they are doing well. Can you give me a single example where a Judge has been appointed from the party and he has been dictated to by the party? They have gone against the wishes of the party. Justice Holmes, Justice Warren and Justice Douglas of the United States have been Judges for thirty

or forty years in the Supreme Court of the United States. They never dittoed the Government's action. They annulled many Acts passed by them, but neither President Roosevelt nor President Truman ever took any objection to it. They did not say: This man is coming in the way and, therefore, he should be removed. Have you heard of a single case where a Judge from any party is being dictated to? Mr. Bhupesh Gupta was quoting Mr. Setalvad and said Mr. Setalvad said this and that. Has he read what Mr. Setalvad has said about this episode? He is not happy. Do you think that Mr. Setalvad would agree to this? I say speaking about seniority we do not care what happens to Mr. Shelat or Mr. Hegde or Mr. Grover. After all, they would have retired in two or three years. We are not concerned with what happens to Mr. Hegde or what he would earn. We are concerned with whom you have appointed. What are your motives? What are your expectations from the new Judges? What is the temptation for people to come? Since the time leftism touched the High Courts and the Supreme Court, there has been a persistent effort on the part of some lawyers to come out as more leftists than their colleagues. They would say that the social content should form a very important part of justice. The social content depends on the interpretation of the Constitution. The interpretation of the Constitution is the main thing. Mr. Bhupesh Gupta is laughing. He may be laughing, but there are many people in the Central Hall and the Coffee House. They are very happy and they say: We have got a stranglehold on the Government today, but we are not with the Government." I tell you we do not like that Parliament should be treated like this. We say that we have the highest regard for Mrs. Gandhi. Under her leadership the country has achieved great things. We vanquished the Pakistani forces.

We sent one crore of people back to Bangla Desh; we liberated Bangla Desh, and that credit goes to Shrimati Gandhi. We are proud of it. But she should

realise that this achievement under her leadership is discredited ...

DR. Z. A. AHMAD : You have always condemned.

SHRI C. D. PANDE: No, never. On the question of peace and war, on the question of Bangla Desh, we were more ardent than you were.

DR. Z. A. AHMAD : What about banl nationalisation and the CIA ?

SHRI C. D. PANDE : I want to say that we are proud of it.

SHRI BHUPESH GUPTA: Are you proud?

SHRI C. D. PANDE: Yes. You have achieved great things for the country. There is nobody to replace you by and large and the masses have got faith in you. But for what purpose? You have achieved something. But today people like Shri Gokhale and Shri Kumaramangalam, they are riding at the power and prestige of the popularity of our Prime Minister. That is our concern. We want that Shri-mati Gandhi should put her foot down and say, thus far and no further. If she is a leftist, we do not mind. But she is a democratic leftist. To that extent, we have got great sympathy. Even some day I may support her. I support her in many things. But the views expressed by Shri Kumaramangalam in the Lok Sabha, if that is the criterion, if that is the shape of things to come, It is really a matter of great concern to all of us and the country. Who knows the merits of the Supreme Court Judges—not the Members of Parliament, not the general public, not the Political Affairs Committee of the Cabinet—better than the 10 topmost lawyers of the Supreme Court; they can judge better than others. Ten of the judges have no voice because they are afraid they would be sent out. They would try thereafter to look more leftist than Shri Bhupesh Gupta.

Therefore, I say to the Prime Minister. Great responsibility rests upon you. Those

who share your power, they have not built that power. The power has been built by the masses, by the issues which came on the way and you solved them and you have got the popularity of a life-time. And no Prime Minister has got that much power as you. But that power is being eroded. Perhaps, you do not know, or you know. That power is eroded by whom ? By your so-called leftist colleagues who have penetrated into your party. I say, somebody was telling that the Political Affairs Committee had stated nothing, that was not that Committee that decided the issue; that was a decision of the Politburo inside—two or three people—that decided the issue. Shrimati Indira Gandhi at some meeting at Kanpur said that this is a step that we want. I tell you, the time has come. This is a great responsibility, this is a great issue, an issue that will shake the whole country and shatter democracy and the hopes of the country. She is after all a democrat or a socialist or both simultaneously, a social democrat and not a communist. Mr. Kumaramangalam is leading the country or at least ha is trying to lead this country or at least to shape his tactics in the appointment of Mr. Ray. And we should take a lesson; this country should take a lesson as to how things are moving. I have been in public life and may be therefore some more years; but it is for the younger generation which has to face the democratic future for the country. It is to be considered whether justice should be dictated, whether justice should be on party-line basis, whether justice should be on an ideological philosophy. If that is the view that you are looking forward to, I am very sorry. We wish that Shrimati Gandhi sees the shape that it is taking and she should know the mind of the people behind her, not of those who have come into the Cabinet as radicals or communists.

With these words, I appeal to Shrimati Gandhi again that it is her duty and responsibility. Her popularity is at stake.

SHRI BHUPESH GUPTA: You support her. But what about Mr. Morarji Desai?

SHRI C. D. PANDE: What I speak here. I speak as a Member of this august House.

SHRI BHUPESH GUPTA: He gave her thirteen months. Perhaps the time has now been extended.

SHRI D. P. SINGH (Bihar): Mr. Deputy Chairman, during the last six years the country has watched with horror nearly half a dozen judges going amok and perverting the Constitution.

SHRI S. D. MISRA : More loyal than the King.

SHRI D. P. SINGH: You will hear what you have to hear. In 1967 it was in the famous Golaknath case that the pernicious doctrine by these Judges for the first time was evolved and an attempt was made to rob this country of the sovereignty, to rob this Parliament of sovereignty, and as one of the Judges had observed in his judgment that it was the first time when an attempt was made to pass on the sovereignty from Parliament to the Judges. We had come at that time to a stage where a judge was, after having said that, at least tearful to say that a part of the Constitution shall not be applicable for the past and it will be applicable in the future. Today we have arrived at a stage in the life of the Supreme Court where these modern Kalidasas are chopping off the very branches on which they are sitting.

They take the oath to uphold the Constitution and the first act they do is to declare one part of the Constitution as invalid and *ultra vires*. Nowhere in the world, nowhere in any decision of any country we have come across a situation where the Constitution by which they take oath in declared *ultra vires*. This is what these Judges have done today.

SHRI N. K. SHEJWALKAR (Madhya Pradesh): Not the Constitution, but amendment to the Constitution.

SHRI D. P. SINGH : The amendment of the Constitution. It will be appreciated in the language of article 368 that once

the procedure is followed then that amended portion shall become the part of the Constitution and the Constitution shall stand amended. In spite of that mandate, in spite of the fact that even the court is merely empowered to scrutinise and examine the validity of the procedures that have been followed the courts are usurping to themselves the power to say that one part of the Constitution will invalidate another.

Not only, this, more pernicious doctrines are evolved and the Judges in the last six years have persistently taken a stand whereby they say that they shall not respect the mandate of the Constitution. This is what they did in respect of article 368 where the right to amendment was guaranteed. The right to amendment was available to every portion of the Constitution. The entire nation may be on the one side, the will of the entire people may be on the one side but if the fundamental right of one single individual is violated then the Judges will claim that they have the right to decide, that it is their verdict that will prevail and the whole nation's will is set at naught.

Not only this, the greatest menace and the greatest injury to this nation was done when they perverted the meaning of the word "compensation" in article 31. Sir, from the word "compensation", they read "market value". This poor nation was struggling to do justice to the meanest of the people, to the struggling population asking for bread, for one square meal a day. But they were anxious to uphold the right of a few citizens to go on exploiting. Therefore, in exercise of its sovereign powers, this Parliament, in exercise of its constituent right, amended article 31 and provided in the article clause 2A whereby it was stated that the adequacy of the compensation shall not be gone into. That was kept beyond the power of review, beyond the pale of any controversy. But these judges said, no, they will not respect that mandate of the Constitution and they will

go into the adequacy of the compensation. And in spite of the fact that there was a long line of decisions right up to the Shantilal Mangaldas case, all these judges who were parties to that decision validating clause 2A in article 31, went back on that decision to uphold the right of a few capitalists, a few monopolists, to get the last ounce of the blood of this nation, of the poormen and to deny them all the advantages of the various economic legislations, dynamic legislations, which were enacted. Not only this, again the same doctrine was taken forward in article 363 which said that in the matters of treaty, in the matter of other obligations, the Supreme Court shall not have any right nor any other court. In spite of that mandate, in spite of that injunction, this coterie of judges tried to impose their political will on this nation and tried to sabotage every legislation that was being brought forward to bring about justice to the people.

Now, what do we find in this case? The mischief, the danger, that was lurking is highlighted in a press note of Mr. Justice Hegde himself. When a journalist asked him, "Why did you resign?", Mr. Justice Hegde said, "Well, I resigned because the Chief Justice has the power to set up benches. Therefore, what can I do?" He has implied thereby that the Chief Justice has the power to manipulate or create benches and he is in a position to set at naught the will of the bulk of the judges. Now that was the danger here. Sir, you will see that when the decision came on that day, these judges, anxious to advocate their view, to establish their view before the country, tried, in spite of the fact that the fundamental rights were amendable, to read into it and said that there were some imponderables, some unknown features, essential features of the Constitution which could not be touched. Six judges were on this side and six judges were on the other side, but the seventh judge, Mr. Justice Khanna, said, "Well, that may be so. There may be an essential feature of the Constitution but that essential feature is neither property nor the fundamental rights."

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Therefore, the total result of this decision was that the fundamental rights were amendable and there were no fetters on them. Now, these Judges, trying to sit in majority, were trying to pass an order which stated that although the fundamental rights were amendable, there were essential features, and they were not willing to incorporate these. If Mr. Hegde had been the Chief Justice, he could legitimately from a Bench of five Judges and those Judges were already on the Bench and could inflict this decision on the nation and set at naught the decision of the majority Judges. Now, what has been done? Nothing unusual in the supersession. As far back as 1950 there was a great statesman and parliamentarian, Mr. Sree-krishna Sinha, who was the Chief Minister of Bihar. At that time the Chief Justice of the Patna High Court was almost behaving, in the words of Sardar Patel, like the leader of the Opposition. Therefore, as far back as 1950 he came before the Central Cabinet and said, "I will have a Chief Justice of my choice." The Advocate General at that time was elevated as the Chief Justice. He was Pandit Lakshmikanth Jha. Two and a half years' later the same situation arose and the gentleman who would have been the next incumbent of that post had some political leanings and the Chief Minister suspected that the presence of that gentleman as Chief Justice on the Bench would not be conducive to the stability or political progress in the State. Therefore, he again came before the Centre and said, "I do not want this gentleman. I want the man below him to come and succeed him." And the Central Government had transferred him to Nag-pur. These things happened. Then came the Law Commission Report. Honourable Members have already mentioned about it and I need not repeat the same thing. But what is significant is apart from these cases, Mr. Justice Hegde himself, Mr. Justice Grover himself, Mr. Chagla himself, who, on earlier occasions were tempted and were most anxious to gain the coveted office ignoring the chances and possibilities of everyone superior to them, senior to them, and had no compunction at all when it came to their turn, now are anxious

[Shri D. P. Singh]

to deny this privilege to the Government which represents not only its own view but the view of the majority party. Elections were held on this mandate, on the right to amend the Constitution, and it is this will of the people which is being reflected in the judgment. This is not a new case in the - Supreme Court itself. Even in 1954 Mr. Justice Jaffar Imam, who was the seniormost Judge, who had to become the Chief Justice, was superseded and it was said, "I am convinced that there is no material on record to establish that except that his tongue was lisping, he lacked either mental faculty or ability to write properly." In those situations in the past those things had been done. But today it is very strange that in bringing about this position, the Judges who are the minority Judges and were claiming to be in majority and to bring about a pernicious situation, they went out of their way to exclude Mr. Justice Beg. Mr. Beg twice fell ill and there was a deliberate desire and attempt to exclude Mr. Beg from the Bench because as long as he was on the Bench, he was expressing views in favour of the views that were taken by Parliament by majority and the view on the basis of which Parliament already amended the Constitution, and twice it was almost decided or they were almost on the verge of deciding that Mr. Justice Beg be excluded. At one time in the last days . . .

(*Interruption'*)

SHRI BHUPESH GUPTA: Mr. Sikri went to the Nursing Home even.

SHRI D. P. SINGH: Now, Mr. Sikri went to the hospital at 9 o'clock and he got a report written that if Mr. Justice Beg sits on the Bench, his health might be affected. But the doctor was not willing to take the responsibility.

श्री जगदम्बी प्रसाद यादव (बिहार) : मुझीम कोटं गये थे ।

श्री डी० पी० सिंह : जी, गया था । द्राप के केस में भी जाऊंगा आपको बचाने के लिए ।

MR. DEPUTY CHAIRMAN: Now, Mr. Singh, you have to wind up. There should be no interruptions. Otherwise, it will take a long time. There are twenty speakers today and I think I will have to cut down the time of the speakers. Otherwise, we cannot proceed

SHRI BHUPESH GUPTA: Now, Sir, he is coming to the medical aspect.

SHRI D. P. SINGH: The Chief Justice went there and took a certificate that if he sat on the Bench, then probably his health would be impaired and that there was a danger and that he would not be able to work and the Chief Justice in the Chamber said that he would not be able to work, although all the time Mr. Beg was in the Hospital and was trying to dictate his judgment. But there was a violent protest on behalf of the Government that this decision to exclude him was a malicious one and was not a straight decision and, in fact, the Government side threatened to walk out. It is on this point, Sir, that Mr. Justice Beg happened to continue on the Bench and *we look* advantage of his ... (*Time Bed rings*) . . . powerful judgment. 60 page judgment, in which he has vindicated the majority view of Parliament and the majority view of the people.

Sir, it is being said in the name of the independence of the judiciary that this supersession is bad and this will undermine the independence of the judiciary. Now, Sir, what is being undermined? Sir, it is not the will of Mr. Gokhale, it is not the will of Shri Mohan Kunnramangaam and that is not the issue. It is the will of this Parliament . . .

(*Interruptions*)

SOME HON. MEMBERS: No, no.

SHRI D. P. SINGH: It is the will of the majority of the people, it is the will of the majority of the people of this country... (*Interruptions*) . . . and that is the view which is being respected. We went to the court directly on this issue that any impediments in the path of progress of this

nation towards peace and prosperity, towards dialing the economic good, towards the betterment of the people, shall not be tolerated and it is in this light and with this point in view that we went to the electorate and pleaded before them that the judicial decisions of the Supreme Court . . . [Interruption] . . . are creating difficulties.

MR. DEPUTY CHAIRMAN: Please wind up now.

SHRI D. P. SINGH: I will not take more than five minutes, Sir. Then, we came with a thumping majority and it is the people's will which has been vindicated. Now, Sir, the stage has come to implement those decisions. The first thing is to interpret those eleven decisions which the Judges gave and it is a matter of real exercise today to find out what they have decided in their 1600-page judgment. This one particular Judge with a particular predilection which is being manifested is betraying the views that he had and he is betraying the party to which he belonged. Sir, today, at 4 o'clock you can go and see in the Vithalbhai Patel Bhavan who the people are who are inviting him. . . . (Interruptions) . . . It is the Grand Alliance and not the advocates of the Supreme Court . . . (Interruptions). The tragedy of the situation is that those Judges who never pardoned one workman for absenting himself from work or for even the so-called indiscipline are the Judges who are inciting the young advocates to back out of the courts and today, they are training them, in trade union activities.

Who does not know that Mr. Justice Sikri went to Mr. Chagla? There was a big number of witnesses sitting there. He said, "Well, I am going, but there should be a strike all over the country". Is this the conduct of a Chief Justice? Is it consistent with the decorum? Does it advance the cause of judicial integrity. He has done nothing at all. On the contrary, he has all the time tried to pervert the Constitution. He has tried to sabotage in every possible way. That was the legacy that

was left by Mr. Subba Rao; that is still prevailing all over. And now in the courts here, in the judgments here and there, they are just trying to permeate their pernicious theory. If the Government at any point of time is able to isolate those people, who have insidious views, who are holding these contrary to the wishes of the people, then a stage has come really. Sir, when Government must interfere. The right of the Government is of course acknowledged. But the regret is that the Government has acted too late. Judges today are claiming the power to question the President's power to declare emergency, the President's power to declare war, to enter into treaties, so on and so forth. . .

MR. DEPUTY CHAIRMAN: Please wind up.

SHRI D. P. SINGH: This is a matter which should be in the interest of the nation. That should not be left in the hands of people who, either by training or by experience, are not equipped to consider it. Now what will happen if the judges are to decide whether the war was rightly declared in regard to Bangladesh or not? That will be a tragedy of the situation. It is bad enough if they are given this right. Today they are usurping the right to decide on the price of motor cars. Tomorrow they may decide on the price of vegetables. But these are forbidden fields. Judges all over the world where a Constitution prevails, where the rule of law prevails, where the Constitution exists, are desisted from going into these questions. These are self-imposed restrictions. These are political questions. . .

MR. DEPUTY CHAIRMAN: Please wind up, otherwise I will call the next speaker.

SHRI D. P. SINGH: Our judge, are always anxious to usurp these powers, and these were the leaders of this insidious group who tried to abuse their position to the detriment of our people . . . (Interruptions).

SHRI S. D. MISRA: Mr. D. P. Singh is the fittest person to be a Supreme Court judge. He is the most committed man. . .

*(Interruptions)*

MR. DEPUTY CHAIRMAN:  
Mr.  
Daphtary.

SHRI C. K. DAPHTARY (Nominated):  
Mr. Deputy Chairman, Sir, I am aware that there is a large number of speakers to follow and, therefore, I shall try to be brief—as brief as possible.

The issue that is before the House is a clear-cut issue. But if I may be permitted to comment at the outset on the blatant and crude manner in which the decision to supersede three Judges was published. . . .

*(Interruptions)*

SHRI JOACHIM ALVA (Nominated):  
How v>as it to be done?

SHRI C. K. DAPHTARY: I am dealing with this. I will say something. If it had been announced a month before, it would have been said that it was a bribe. But announced as it was, it was clearly to see who passed the examination. I do not know if all the Judges realised that the particular case that was being argued was to be a test and that the boy v.h'3 wrote the best essay would get the prize, and that the boy who did not come up to the required standard would be demoted. . .

SHRI AWADHESHWAR PRASAD:  
SINHA (Bihar): Mr. Daphtaiy, you are here addressing the Parliament, not a . . . *(Interruptions)* ... It is not the court; it is Parliament. . .

*(Interruptions)*

SHRI K. CHANDRASHKHARAN (Kerala): There is nothing wrong in Mr. Daphtary putting forward his views. His views are controversial. We may not accept them. But we must listen with respect and it was absolutely wrong on the part of the hon. Member to have criticised Mr. Daphtary . . . *(Interruption)*.

Mr. Daphtary...  
*(interruption)*. continue, Mr.  
Daphtary.

SHRI C. K. DAPHTARY: I am sorry if I have not acquired the eloquent method which is usual in this House.

SHRI AWADHESHWAR PRASAD SINHA: It is a reflection on the House.

MR. DEPUTY CHAIRMAN: You are going to speak on this. You can make whatever points you want to make.

SHRI C. K. DAPHTARY: I am only trying to put forward what my own view is. I appreciate and I am aware that it may be different from that of many others. But I do say that the timing was exceedingly unfortunate.

Now, coming to the actual issue, the question is not one merely of a breach of convention. That was the first defence put forward by the Law Minister when he spoke on the first occasion, if I am right in my recollection. It was a lame defence. It has to be borne in mind, Sir that two of the Members of the Law Commission have signed the protest which was issued by certain lawyers, including them, in Bombay. They knew perfectly well that the Law Commission has said has been misunderstood and misapplied. What the Law Commission said was that the sue by seniority was not something Hi to be followed automatically. And that was right for this reason. After all, the presumption is that the Judges who have been appointed to the Supreme Court are all hand-picked from the High Courts and, therefore, of equal intelligence and equal experience. But it might occur that someone of them is, in course of time, Ifound to be physically or otherwise unfit in which case the convention would not be strictly adhered to. But I do not think that the Law Commission ever meant that the convention was to be broken on political grounds, bare political grounds. That was certainly not what they meant. Sir, one convention can be broken. But I may quote the words of a Lord Chancellor in England who said long ago :

"To press forward to one pirnciple by breaking every other principle that appears to stand in the way is not

consonant with private morality or public justice."

Now I refer to the real perpetrator of this particular deed whom I may call—I do not know if I am breaking any rule—the takeover. He came forward in defence of it. Now it is perfectly clear from his statement which made no bones about it and which frankly and clearly put forward what the motive was for which I admire him, that what has happened follows the pattern of what other things have been done like the Coal Mines Takeover or the Mills Takeover. The first stage is taking over the management.

SHRI KALYAN ROY: He is the spokesman of the big money.

SHRI C. K. DAPHTARY: The first stage is taking over the management. The next stage will be the actual takeover. We have now arrived at the first stage when the management has been taken over and an administrator appointed. The time will come, I have not the least doubt, when there will be a complete takeover. Now, Sir, consider, may I put to the Members, the consequences, some of which have already been touched upon by the hon. Members over there. Promotion from one rank to another is going to be a prize for conformity. Only the other day, a Judge in a High Court where applications were made for some relief against some Government instrumentality said, of course in jest, "Oh, but do you think I can do it against Government?" Tomorrow he will ask himself: Should I do it against

Government? And he will have to mind the step and it is a very difficult decision for him to arrive at because he will have to estimate in every case whether the order which he proposes to make or he thinks of making as a just order would fit in with social justice. He would think: Will it fit in with Government's idea of social justice and social progress; am I by making this order impeding the growth of the welfare State? And he will be in serious doubts whether that order would or would not conform to these things. He

will, therefore, take the safe way out of it which would conform to it and do what he believes Government wants him to do. Each judge, whether at the District level or the High Court, will, so to say, ask himself: How can I think myself to be safe so that my chances of promotion are not hampered? There will be, if I may put it rather crudely, a sort of competition in boot licking. This, Sir, is the danger which is to be anticipated. The next step undoubtedly will be. . .

SHRI BHUPESH GUPTA: Do you have it in America?

SHRI C. K. DAPHTARY: The hon. Member has mentioned the States. Now in the States, you are all aware, normally someone from outside is brought in to be the Chief Justice. That has always been the practice but the junior most person or the junior person, so far as I recollect, I stand open to correction, has never been promoted over the top to become the Chief Justice.

SHRI BHUPESH GUPTA: But every appointment is made by the Senate.

SHRI C. K. DAPHTARY: I agree every appointment is vetted by the Senate. That is their system. Here the system of having the senior-most to succeed was introduced for a very good reason. It was introduced at that time when it was felt that to leave it upon the choice, of course of the Government not of this House or Parliament, would be to open the gates of nepotism, favouritism, communalism, casteism and now even Stateism. It was for a very good reason that the convention was established. It has been broken but not for a good reason.

The introduction of politics into the Supreme Court is a new\* thing. Now, hon. Members have said that the Judges were politically motivated. Mr. Setalvad, for whom I have very great respect, has unfortunately said that Golak Nath's case was a political decision. What he meant by that I do not know. After all it was a bare majority of seven over six. And



[Shri C. K. Daphtary.]

incidentally it may be mentioned—and hon. Members know it very well—that in the States even today most of the judgments except one or two or three in a year are not unanimous. Most of them often are by a bare majority of one. So the fact that by a majority a particular decision was carried or a particular judgment was delivered does not make it a political decision. Now I do not wish to discuss before hon. Members who all know about it the dispute about Fundamental Rights or the amendment of the Constitution. Nor would I like to touch upon personalities or the passing over of Mr. Justice Jafar Imam or the passing over of Mr. Justice Mukherjee who ultimately became the Chief Justice of Calcutta. I know the reason but it is not right to discuss them in public. There were good reasons but it will be wrong to go into them here. It is wrong in fact to refer, if I may make my own submission in the matter, to any individual cases. None of them fits in with what has been done on this occasion. None of them was for a political reason. This is obviously and avowedly for a political reason. Now it has been said that there is a desire to obtain certainty, that up to now there has been no certainty, but the certainty that is to be achieved is in one way only in such a manner that it is doubtful whether anyone will be able to get up and make his views heard to the contrary. Today the Fundamental Rights are in peril; tomorrow the freedom of speech will be in peril and the time may come when I may not even get up and express an opinion against a political step which is likely to infringe on the fair dispensation of justice. It is unnecessary to say more. Opinions must differ but when it is said that this is a move which is calculated to interfere with the independence of the judiciary the implications must be understood. I have already mentioned some. The fact is that the Judges must now determine a controversy in a particular way and in a particular way only. Hon. Members are aware of the sort of matters that come before the courts. It is not often that the validity of

a law passed by Parliament is under challenge. No doubt there are occasions when laws are challenged. The hon. Mr. Bhupesh Gupta said that the moment a law is passed everyone runs to the Supreme Court to challenge it but why not pass Acts which cannot be challenged? I give an instance. Though the Act has not been challenged, it is a notorious Act called the Monopolies and Restrictive Trade Practices Act. This particular Act no one understands, not even those who administer it. Everybody is confused about it and they themselves confess that they interpret it on the instructions of the Government. Today it is this Act; tomorrow it will be another Act and the day after it will be all the Acts that will be interpreted by the Government. That is the system that prevails if I remember right in the Soviets where the courts do not interpret the law but the executive interprets the law and the court merely fits it to the facts of the case. That is the other danger that is being run.

Sir, people have lost confidence in the Supreme Court already. There are those who have their mailers pending and who wonder whether they have even the faintest chance of being able to put forward their case or of having it considered with an unbiased mind. If in the Supreme Court confidence is lost, then I submit that would be the end of democracy. We know today that the contest is not between laissez-faire and regulation, but it is between regulation and enslavement or compulsion, compulsion on a wholesale scale. Now, it may be that many laws are passed honestly with a view to carrying forward a particular scheme, but they are passed badly. They are being administered badly. Fifty per cent of the writ petitions that lie in the courts today are there because those who administer the laws are either negligent or ignorant or arbitrary or oppressive or vindictive or corrupt. If these things did not exist, half the work in the courts would disappear. Now, how will those particular matters be decided? One fears that they will not be decided as a matter of just balance between

the two parties, but decided in a manner which the judiciary thinks will please someone. This is the greatest danger we run. The result is that justice has been debased. with the pure silver of justice the dross of political lead has been mixed and that is the justice which we may now expect. In fact, there are those who say—I do not agree with them—that there will be no justice at all. The hon. Member, Mr. Bhupesh Gupta, congratulated the Law Minister for a parti-iii. I would like to congratulate him for another. His portfolio has been He will now be the Minister of Law, but no longer the Minister of Justice.

SHRI S. S. MARISWAMY : There is a rumour . . .

MR. DEPUTY CHAIRMAN : This is not the place for rumours. Mr. Mulla.

SHRI A. N. MULLA (Uttar Pradesh) : Mr. Deputy Chairman, Sir, I had the privilege of listening to Mr. Daphtary and I am very happy that I got a chance to listen to what he had to say. I believe the case for the opposite side has been put at its highest by what has been said by Mr. Daphtary. Before taking up certain aspects which are involved in the discussion which is before us, I think it can be divided into two main parts. The first aspect of our discussion today is the hurt caused to the Judges because of their supersession. That is entirely a personal matter. I have my sympathies with the Judges. I am conscious of their erudition, of their knowledge of law and, therefore, I sympathise with them that they have been superseded. The second question, which is the dominant question involved here, is whether this supersession has been done because public interest demanded it or not. I have come to the conclusion that the public interest demanded the supersession. Therefore, whatever my sympathies may be with these Judges, the interest of the people must override my sympathies for them.

I will now try to explain and give out why—come to this conclusion that the public interest demanded this type of action

taken by the Government. And perhaps, the Deputy Chairman would be surprised that I hinted at this sort of action three years ago—I do not know in prophetic capacity. I wrote a note, and I would read a paragraph and half of that note and place it before the hon. Members of this House as to what the situation developed because of Golak Nath's case, and what was the problem before the Government and how the Government would ultimately have to face it. Now, I will place that paragraph and half before you. (*Interruptions*) you cannot stop me from reading it by your shouts. Here it says—

"There is a clear conflict between the interests of different groups of citizens. On one side there is a small group of rich people with vested interests holding monopolies, and on the other side there are teeming millions whose house is a virtual hovel, whose entire wardrobe is on their bodies and whose total wealth can be placed in their fists."

This conflict cannot be reconciled by closing our eyes and by saying that they are all citizens and the interests of both the groups should be equally protected. A time has come when priorities must be determined . . .

They are pleading in the name of Jawaharlal Nehru but they are no longer the followers of Jawaharlal Nehru.

"As early as 1938 Pt. Jawahar Lai Nehru wrote an article entitled 'whither India'. In this article he said :—

"We will have to give an answer to the question, which is the group for whose liberty we are primarily striving. We cannot avoid giving an answer to this question. If we do not answer it today we will have to do so tomorrow. Do we give priority to the group consisting of millions of farmers and labourers or to some other smaller group? We should certainly give liberty to as many groups as is possible but we should not forget which is the real group for whom we stand

[Shri A. N. Mulla.]

primarily, and if a conflict arises between their interests, whose side we have to take? To say that we will not answer this question is also an answer for this shows that we want the 'status quo' to be maintained.'

We did not try to answer this question during the last 20 years but now we cannot avoid answering it because the people today are again restive and on the march and they want a categorical answer. This answer has to be given by all citizens and 'citizens' in this context includes not only the members of the Government and the legislators but also the judges.

Today the crux of the whole problem is that while the majority of the representatives of the people admit this irreconcilable conflict and want to side with the poverty-stricken and weaker section of the citizens against the rich and privileged group by gradually introducing laws to lessen this imbalance, a large number of the Supreme Court Judges are of the opinion that the guarantee of fundamental rights in the Constitution makes no difference between the rich and the poor and the rights of all are to be equally protected. It seems that they do not accept the basic conflict between the rights of the rich and poor and so it does not strike them that when they in some cases are protecting the rights of the rich they are really denying the rights of the poor and thus perpetuating a social order which is unjust and which does not become just because it has been existing since a long time."

What is the duty? I come to this question. (*interruptions*). Go on. Go on. Now what is the duty of the people in the situation? I come to that line.

"what is the duty of the representatives of the people in this situation? Obviously, this stalemate has to be resolved because while other games can end in a draw, the game of life which is another

name for the process of evolution does not accept this end."

What has been done at the moment is the breaking up of this stalemate which was continuing for the last seven years. Today I congratulate the Government that it had the courage to break this stalemate. What was this stalemate?

(*Interruption by Shri J. P. Yadav*)

SHRI A. N. MULLA: हाउस के खंदर नहीं, बाहर आकर कहिये। Come outside...

(*Interruption by Shri J. P. Yadav*)

MR. DEPUTY CHAIRMAN : If you keep on barracking like that he will take more time and I will have to cut down the time of those who barrack. Therefore, please allow him to continue. He has a right to make his point. On the one hand you want to extend democratic rights and at the same time you do not allow a Member to speak in the House.

श्री जगदम्बी प्रसाद यादव : श्रीमन्, हाउस को जानना क्या है। इन्होंने जैसे काकोरी कैसे किया उसी तरह से यहाँ भी

श्री उप-सभापति : वे क्या कह रहे हैं, उसको आप सुनिये।

श्री जगदम्बी प्रसाद यादव : वे जो कुछ कह रहे हैं उसमें कुछ पता ही नहीं लग रहा है।

श्री उप-सभापति : देखिये यदि आप हर समय जो भी बोलने होंगे इसी प्रकार बैरक करेंगे तो वह ठीक नहीं है।

श्री जगदम्बी प्रसाद यादव : यह सिमरक आपका ठीक नहीं है।

MR. DEPUTY CHAIRMAN : [ have been observing this for a long tune. That is why I am asking you not to barrack him.

श्री जगदम्बी प्रसाद यादव : श्रीमन्, ट्रेजरी बैचेल की ओर से भी ऐसा ही होता है। सिन्हा साहब भी बड़ी जोर से गरज गरज कर बोल रहे थे...

श्री उपसभापति : उनको भी, बिटायो था, आपको भी बिटायो। आप बैठ जाइये।

Continue the speech.

SHRI A. N. MULLA : I was submitting that this action taken by the Government « as long overdue because for the last seven years we were having the cloud of the Go-laknath case over us, a barrier in our way. Although now everybody says that that law no longer holds, it has been over-ruled, even now there are traces in the present judgment which has been delivered. We will ask for some other barriers which will stop people from going on towards their goal. Now, the question to be determined by the Members of this House is : Are we to proceed towards the socialist goal or not? That is the primary question. Are we committed to the people or not? And if we are committed to the people of this country, then we have obviously to take these measures and pass those laws which will do away with these imbalances and will make the common man to come to his own. And, therefore, this attempt on the part of the Government to make Legislature work in close affinity with the judiciary is a healthy act because this confrontation between the judiciary and the legislature was not a healthy sign. It was imposed by the judiciary. It is the Golak-nath case which came to the conclusion that the people of this country are to be saved from the elected representatives of the people. It is that type of confrontation in the mind of the judiciary that started this conflict between the judiciary and the legislature. Unfortunately, this story of the last six years makes a poor reading in the Privy Purses case, in the Bank Nationalisation case and so on. We have travelled the same road on and on. More barriers were being erected.

Mr. Daphtary just now raised a point that this was very badly timed and if a month earlier this had been announced, perhaps some justification might have been there for passing such an order. But who is responsible for this order being passed at this stage? Mr. Daphtary never asked the judges as to why they took six months

to decide this case. Mr. Daphtary never asked the judges as to why this judgment was pronounced on the last day when the Chief Justice was going to retire. If the Chief Justice had pronounced the order a month earlier, this order would have come a month earlier. This order was not to be passed while this case was being discussed at that time.

Another thing that has been said by Mr. Daphtary is that there are political reasons. After all, we have to decide that very question, whether this order has any political reasons behind it. Well, it is just a question of terminology. Mr. Daphtary calls it political reasons; I call it national reasons. It is the Opposition which gives the name of political reasons to national reasons. The rights of the common man have to be protected. It has to be seen that the vested interests are put in their proper place. And if any arrangement is made between the judiciary and the legislature which means that they can walk hand in hand towards attaining those very goals which all of us want, then it should be a happy augury and it should not be criticised.

Now, so far as the judiciary is concerned, if this has given it a jolt, I do not think it is a bad jolt. After all, the Rip Van Winkles of the law have to be awakened. Therefore, if this jolt has awakened them. I am not sorry that this jolt has been given; the judiciary cannot remain wedded to yesterday. I believe, perhaps even more than other citizens, that it has to contribute and play an honourable role in building up a new India of tomorrow in which the common man comes into his own under a pattern of laws which are just and equitable and on which the foundation of a welfare State can be safely and firmly laid. If it is for this reason that this step has been taken. I do not think that because these three judges are not there, therefore, the justice administered to-day in our Supreme Court is not being administered by independent judges. Is this the claim of anybody? Is it being said that the justice being administered to-day in the Supreme Court is not being administered by independent judges? What is the reason for that apprehension that

[Shri A. N. Mulla.]

today it may be administered but tomorrow, due to some influence, there would be a change from this independent dispensation of justice?

Lastly, one thing more I would like to say. A good test to find out whether a particular cry that is raised is the cry of the people is to see whether the cry is on the lips of the rich alone or an appreciable section of the poor is also behind it. A cry which comes from the mountains alone and not from the valleys can safely be held to be the cry of the vested interests alone. So far as this particular cry is concerned, I do not see any people connected with this cry. It is only on the lips of the vested interests. And I challenge them. (*Interruptions*). It is the cry of the vested interests. Nobody would be influenced by that cry.

Therefore, I think it is a very correct measure that has been introduced.

SHRI LAL K. ADVANI (Delhi): Mr. Deputy Chairman, Sir, just a little while ago we heard an eminent jurist giving the reactions of the entire community of lawyers, judges and jurists in this country to the Government's action. (I think it was a very authentic voice. It had nothing to do with politics.

Our friends on the other side referred to the reception being given this evening to the three Judges who have resigned and said that it was a reception given by the Cirand Alliance. This much is true that various parties, excepting the Congress Party and the Communist Party, as parties have associated themselves with this reception. I know that even in the Congress Party there are many friends who feel that the Government's action was unwise. When Mr. Daphtary said something, I am sure Members on that side know that Mr. Daphtary had nothing to do with any of these parties. (*Interruptions*) So far as the legal aspect is concerned or the reactions of the legal community are concerned, Mr. Daphtary has given expression to those. I will try to deal with the implications for the country's politics, for

the country's democracy, because it is not only the enlightened section of political opinion or the lawyers or the judges or the jurists who have felt concerned about this particular action of the Government, but I think, by and large, anyone who has anything to do with politics or anything to do with the functioning of democracy, feels distressed that this thing should have happened. Perhaps if the discussion and debate had been confined to the issues raised by Mr. Gokhale the day immediately following this appointment, may be, this confusion might not have been there and it has nothing to do with democracy and it is a small mallei pertaining to the choice of Chief Justice and the criteria on which it should depend. But I think the issue is not simple, whether the Chief Justice should be selected on the basis of seniority or not or whether seniority-c;f/«-merit-cwH-suitability should be the criterion or something else should be the criterion. I think Mr. Gokhale, when he said it, did not realise that he has other colleagues who have a more clear view of the matter than he has, and therefore, when I heard from the Rajya Sabha Gallery in the Lok Sabha yesterday Mr. Kumaramangalam presenting the whole case I felt that all the apprehensions and misgivings that were being expressed by various sections of opinion, not only political, non-political, bar associations all over the country so much so that all the courts in Delhi are closed today, in most parts of the country perhaps courts are closed, now, these people who may have supported the Government even on the Privy Purses issue, even on the bank nationalisation issue, that it is these people in a unanimous way—there are very few people here and there, friends like Mr. D. P. Singh, who spoke with a new-found loyalty for the Congress—with a few exceptions, by and large, everyone of them feels that the appointment of the Chief Justice in this particular case has been ill-conceived, it goes against the grain of the Constitution, I have nothing to say about Mr. A. N. Ray. I am entirely in agreement with Mr. Daphtary that we need not bring in personalities here. Yesterday Mr. Kumara-

mangalam was very unhappy with what Mr. Hegde said and he said that Mr. Hegde spoke like a politician even though he said every Judge has politics and there is nothing wrong in being a politician. But he went on to accuse Mr. Hegde of speaking like a politician saying that his statement after resignation was breathing more politics than law, and all sorts of things. In fact, hearing him I felt that Mr. Kuma-lamangalam's speech, insofar as it referred to Mr. Hegde, was nothing else but a string of cheap jibes and nothing else absolutely. He accuse] Mr. Hegde and Shri Madhu Limaye of descending to the ground level. His whole speech was nothing but a string of jibes. So. I would not go into the question of Mr. A. N. Ray or Mr. Hegde or Mr. Hegde's judgment in the Prime Minister's case or Mr. Grover or Mr. Shelat. The issue is this : Are we to accept what Mr. Kumanunangalam said yesterday there ?

SHRI S. D. MISRA : It is the philisophy of the Government.

SHRI LAL K. ADVANI : Mr. Kumaramangalam justified the Governments action on the bagk of the Law Commission Report and curiously, in his 50-minute speech, Mr. Kumaramangalam not so much referred to the Law Commission, because he knows . . .

SHRI AWADHESHWAR PRASAD SINHA : Sir, he should not refer to what happened in the other House.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE) : I have also not yet spoken on the debate.

SHRI LAL K. ADVANI : All right. Sir, his case w,\% plain. He said that a Judge is to be selected not merely on the basis of seniority, but his social philosophy has to be seen and his social philosophy is important. Secondly, the other criterion that mentioned or the other explanation and rationale that he gave for the Government's action was that the Government does not

want a confrontation between the judiciary and the executive to go on. Yet, it has been my view that the recent judgment of the judiciary, the judgment by the Supreme Court is on the whole a very balanced judgment in respect of the various Constitution Amendment Acts that we have passed and one of the motivations of the judiciary in giving this kind of judgment has been its anxiety to avoid a confrontation between the judiciary and the executive and that anxiety is so evident although, when Mr. Kumaramangalam speaks in terms of a judiciary that is not going to confront itself with the executive, he simply means that he wants a committed judiciary which, in fact, is only an euphemism for a subservient judiciary and nothing else. It is plain and simple and he talks about social philosophy. On the other side there are so many friends who are supposed to belong to the Congress party and even Mr. Kumaramangalam belongs to the Congress party and Mr. Kumaramangalam subscribes to the social philosophy known as communism. Many of my friends here do not subscribe to it and they hold that the social philosophy of communism is unacceptable to India, is repugnant to parliamentary democracy, is obnoxious and so on and many of you also feel so and you have every right to feel so and Mr. Kumaramangalam speaks of social philosophy and he says that Mr. A. N. Ray's social philosophy was superior to that of the others only because he seems to place the Directive Principles on a slightly higher level than the Fundamental Rights. It is something that baffles all understanding. It baffles all understanding. If this kind of explanation, if this kind of interpretation, if this kind of social philosophy, are to be accepted, then, I think, the end has come. My own view is that the Constitution that we have adopted is not merely a compilation of various constitutional provisions and it is not a mere law. But there is a social philosophy underlying this also. There is a social philosophy and when any Supreme Court Judge or, for that matter, any Minister of the Government or any Member of Parliament comes and takes the oath dt allegiance to the Constitution, he subscribes

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to the social philosophy underlying this Constitution and when we take the oath, accepting this Constitution as such, we accept its social philosophy and this social philosophy is that in this document an attempt has been made to synthesise individual liberty with social and economic justice. This is the attempt made in the Constitution and it is a very able attempt. Of course, there can be shortcomings. In any scheme of things, we can make suggestions, we can make changes, we can make amendments, and we have made certain amendments which are of a far-reaching nature.

4 P.M.

But even there if the judges come to the conclusion that this article—proviso to Article 31C—saying that if any legislature in any part of the country by a majority declares that this particular law is in pursuance of the Directive Principles,—the court will have no authority even to go into the fact whether it is in pursuance of the Directive Principles or not. And the courts have struck it down. I think that is a very bad thing. I recall that this particular article—Article 31C—was introduced in the Constitution by the Government on the basis of the recommendations of the Law Commission. And the Law Commission itself had suggested that the declaration should be justiciable. That was the Law Commission's view. But the Government in its own wisdom decided to make this declaration non-justiciable. The Supreme Court did not strike it down. I do not think there is anything wrong about it. There is nothing wrong about it. And unless we accept that the judiciary should not be independent, the judiciary should be subservient to the executive, I cannot accept what Mr. Kumaramangalam gave as the rationale of the Government's decision.

Sir, yesterday and today I have been hearing people, suggesting that this Parliament is superior to the Judiciary. I am a Member of Parliament. But as a person who has gone through the Constitution, I

do not say that the Parliament is superior ! to the Judiciary. I also do not say that the Judiciary is superior to the Parliament. It is not. All of us have been given specific functions by this Constitution. But I would certainly say that Judges have been placed on a slightly higher pedestal than ! my friends opposite, even those who are members of the Government. Mr. Kumaramangalam, for instance, is a member of the Government today. But tomorrow morning, if the Prime Minister so thinks it proper, she may go to the President and say, "I drop Mr. Kumaramangalam from my Cabinet"; the President accepts it. Mr. Kumaramangalam holds office at the pleasure of the President. No judge holds office at the pleasure of the President,—no judge, whether elected judge or nominated judge. It is only if Parliament in its wisdom adopts a Resolution of impeachment against any action of the President, a Judge can be removed.

After all, what does this show ? This only points to the scheme of affairs as provided in the Constitution and the basic theory, the basic position or the basic role of the judiciary assigned to it in the Constitution.

The issue that has been raised by the appointment of Mr. A. N. Ray as the Chief Justice is, therefore, not whether seniority alone should be the criterion or seniority-cum-merit should be the criterion. Whether the Law Commission's recommendation in this regard should be accepted or not is the issue. Do we think that the role of the judiciary should remain as it is ? Or do we accept what Mr. Kumaramangalam is going to tell us ? Mr. Kumaramangalam believes in Communism. Mr. Bhupesh Gupta believes in Communism. He says it very frankly and openly. I was surprised yesterday when Mr. Kumaramangalam was quoting the American judges and the American judicial history. I was expecting him to quote Marx and Lenin. 'Judges are the most reactionary people in the whole world'—this is what Lenin said. And he

could have said that. But he quoted American judicial history—how many judges were on Roosevelt's side and how many were on the other side, and all that. It was just an attempt at confusion, confusing the whole debate. After all, the American judicial system has its own merits and demerits. It has its own checks and balances. There the President appoints on his own and after that it has to go to the Senate. Even when the Constitution was framed in India, there was a proposal that the Rajya Sabha should be entrusted with this role and any appointment to the Supreme Court should be endorsed by the Rajya Sabha to be operative . . .

*(Interruption)*

So my submission is that the American judicial system is not relevant to what we are having today—not relevant at all.

Therefore, I would like to quote Dr. Ambedkar. That is very relevant. There were two suggestions. The first was that the power of the President should be absolute. The President should appoint the Judges or the Chief Justice entirely on the advice of the Executive, or, the whole matter should be referred to the Legislature. Dr. Ambedkar did not agree. He said :

"There can be no difference of opinion in the House that our judiciary must both be independent of the executive and must also be competent in itself. The question is how these two objects could be secured. There are two different ways in which this matter is governed in other countries. In Great Britain, the appointments are made by the Crown, without any kind of limitation whatsoever, which means by the executive of the day." (It is being suggested by the other side that we have accepted that form of appointment).

"There is the opposite system in the U.S. where offices of the Supreme Court shall be filled only with the concurrence of the Senate.

It seems to me that in the circumstances in which we are today, it would

be dangerous to leave the appointments to be made by the President without any kind of reservation or limitation, that is to say, merely on the advice of the executive of the day. Similarly, it seems to me that to make every appointment subject to the concurrence of the Legislature is also not a very suitable provision. Apart from its being cumbrous, it also involves the possibility of the appointment being influenced by political pressure and political considerations. The draft article, therefore, steers a middle course. It does not make the President the supreme and the absolute authority in the matter of making appointments. It does not also import the influence of the Legislature. The provision in the article is that there should be consultation of persons who are ex hypothesi well qualified to give proper advice in matters of this sort."

My question to Mr. Gokhale is : whom did the President consult in this matter .' Did he consult any Supreme Court Judge or any High Court judge as he is required to do under the Constitution? When Mr. Ray was appointed as Chief Justice, the Chief Justice of Bengal High Court, with whom he has worked, should have been consulted. Even the Cabinet did not discuss this issue. The Political Affairs Committee discussed it. What the Constitution recognises is the Cabinet and the Cabinet did not discuss this issue. Sir, one thing more I would like to say before I conclude.

*(Interruptions)*

MR. DEPUTY CHAIRMAN : Let him conclude. Don't ask him any questions.

SHRI LAL K. ADVANI : There is a lot of discussion as to why Mr. Sikri consulted some of the Judges and why he did not consult the others. Some allegations were made even against Mr. Sikri. I have tried to find out what was going on and I was deeply distressed to learn that the judgment of the Supreme Court on these particular cases of the constitutional amendment did reach the Government even before the judgment was delivered. There is a convention among the Judges that the



[Shri Lal K. Advani.]

moment a Judge concludes his judgement, he signs it and passes it on to his colleagues for circulation. They may see it. If they want, they may concur or just sign it and return it back to the respective Judges. This time something curious happened. It was something distressing. The judgement that was circulated did not return. It disappeared. The executive has deliberately tried to engender this kind of distrust and mistrust within the judiciary. I have a fear that it will go on spreading.

SHRI BHUPESH GUPTA : Mr. Justice Sikri went to the Willingdon Nursing Home to wangle a certificate from Dr. Caroti saying that Mr. Bee would not be able to come and participate in the judgement.

(Interruptions)

SHRI LAL K. ADVANI : I have not made any allegation against any particular individual.

I have been anxious to avoid that. But this point I know and therefore I mentioned it because once this kind of a thing goes on then the faith and trust that keeps the judiciary together and makes it work as a team will no longer be there. As Mr. Daphtary has very rightly said, hereafter it would be even more difficult for judges to be independent; they cannot be independent. They can be something like in the Soviet system, the Communist system—it may have its own virtue; it may have its own demerits.

It has been repeatedly said—even Mr. Mulla has just now said—that this thing has been done in the interests of the people.

SHRI BHUPESH GUPTA : The Soviet system did not leave it to the Judges . . .

SHRI LAL K. ADVANI : I wish one single instance has been cited where the Government's intention to do good to the people on any particular issue had been thwarted by the Judges. Not one ! After

all, we have passed all these amendments and even after passing these amendments—after the amendments have been passed the Government has acquired so much authority—there has been no particular legislation. So I have come to the painful conclusion that this Government is interested neither in the welfare of the people nor in democracy—neither of the two—but simply in the perpetuation of its own office. And if there is any obstacle anywhere—whether it is the Judges, whether it is the Constitution or whether it is the Opposition—all of them are regarded as obstacles and there is an attempt to have them committed to the party in power. They started, first of all, with trying to bring in a committed President, and after having secured a committed President they have gone on speaking about committed bureaucracy, committed judiciary, committed press and committed Opposition. Now, one of these, this particular decision about Mr. A. N. Ray, is an implementation of this pernicious doctrine of commitment in the sphere of judiciary. I regard it as a very severe blow to the independence and dignity of the judiciary.

MR. DEPUTY CHAIRMAN : I have called Dr. Seyid Muhammad.

DR. V. A. SEYID MUHAMMAD (Kerala) : Sir, this discussion has been going on in this House as well as outside for some time. It is a serious matter and it is in extreme seriousness that I want to deal with this matter before this House.

It is not my desire to indulge in name—calling or bitterness or bile : That one of the superseded Judges has done and done with the maximum amount of bitterness, bile and bickering that a human heart is capable of. I do not take it as a judicial precedent.

One thing I have been noticing, from the previous speaker and the other speakers on my right, that they seem to be extremely solicitous about Communist infiltration in the Congress Party. I can assure them, we have no fear and they need not

fear about it. This organisation is almost a century old. We had communists among our ranks and communalists among our ranks and socialists of various doubtful shades. They found the democratic atmosphere and the secular atmosphere here most uncomfortable and left and set up separate shops and they are finding now that the business is not at all good.

SHRI LAL K. ADVANI : When did they leave?

[THE VICE-CHAIRMAN (SHRI V. B. RAJU) In the Chair]

DR. V. A. SEYID MUHAMMAD : I can tell them, it is they who have to be careful about the communists.

They are indulging in unprincipled coalitions and agreements with the marxists. Be careful about that. Please don't warn us; you are warned. The whole discussion, the whole attack had been going on two premises that a certain wrong has been done, namely, overlooking of the seniority and second as a result of that the judicial independence has been violated or is threatened.

First of all let us examine what is this seniority rule or seniority principle. I can tell you that almost all the High Courts in India and the Supreme Court, whenever a railway servant or a police officer or junior IAS officer has gone to them and claimed the seniority rule for purposes of promotion, they have ruled that seniority is not the only criterion for promotion and on that ground rejected their petitions or suits. It is surprising that when it comes to their own case, seniority rule is taken up as one of the fundamental principles of constitutional law, the overlooking of which is claimed to be a violation of the very foundations of the judicial system. I do not know how this double standard is being applied. The judiciary is constituted as the sentinell and protector of the rights of the ordinary man and when the ordinary man goes to them they say that seniority rule is not applicable for purposes of promotion but when it comes to their own

case it is a basic right of theirs. This double standard is difficult to understand. By this double standard you are not going to mislead anybody.

Now, what is the substance of this allegation that the moment the seniority rule is overlooked the independence of the judiciary is violated? I just cannot understand this. It is said that evil lies in the eyes of those who behold and not in the object itself. Suppose the seniority rule is refused in the case of a bank employee; can he say that "my seniority has been overlooked, my honesty will be at stake? I will misappropriate the money" of the bank or the concern where he is working; can he say that? Or suppose a lady typist is in an institution and her seniority is violated and suppose she says I am afraid my chastity is at stake. This is just like that. If there is any fear of the independence of the judiciary it is in the minds of the persons concerned; it is inherent in them that the independence of the judiciary will be violated or expanded according to the promotions or non-promotions given to those judges.

The concept of the independence of the judiciary has come about after a long struggle starting from the 16th century, from Queen Mary, from Elizabeth I and the Stuarts. First the Judges used to hold office during the pleasure of the sovereign. Then another principle developed, the principle of appointment during good behaviour. The struggle between these two went on till the Act of Settlement of 1701 when the principle of the security of tenure was embodied in it (section 3) and it was said that no Judge shall be removed except by a Resolution of the Parliament, that is, by impeachment. This is repeated in the American Constitution in Article 3. And we in article 124 have embodied that provision that a Judge once appointed shall not be removed except for misbehaviour or incapacity and that too only by a Resolution passed by each House of Parliament with a two-thirds majority of the total number of Members. Apart from that we have given various other extra

[Dr. V. A. Seyid Muhammad.]

protections most of which we do not get in the American Constitution or the English Constitution, namely, the age is fixed, the salary is fixed, pension and various other perquisites are fixed and these things cannot be changed to the disadvantage of the Judge after he is appointed. Furthermore we have embodied in the Constitution a principle that in the Houses of Parliament the conduct of the Judges cannot be discussed. We have also said that they shall be paid from the Consolidated Fund so that it is not subject to the vote of the House. All this extra protection has been included. Even provision for rent-free has been made in the JI Schedule. Having studied all the Constitutions of the world, having given adequate protection to the independence of the judiciary, do you think the Constitution makers would have left out this principle of seniority, if that was to be one of the principles concerned with the protection of the independence of judiciary? No, Sir. It can never be so. About the position in other countries, I need not say anything. It has been said by Mr. Kumaramangalam in the other House and that has been reported in the papers. For example, take the United Kingdom. It is not only a case where the senior most invariably gets a chance to become the Chief Justice, but the Attorney-General has the right to say whether he wants to be the Chief Justice or not. He is a political man. He is appointed as a Minister and sometimes as a Cabinet Minister and he has the right of first refusal. Only after the Attorney-General says 'Yes or No' anybody else has a chance of becoming the Chief Justice. I need not cite examples. Examples have been cited in large numbers. So, I will not take any further time on it. It is therefore absolutely clear that neither our Constitution-makers, nor the Constitution-makers of America, Canada or any English-speaking country have thought that the seniority principle is a principle which touches the question of the independence of the judiciary. The first premise is, whether any wrong has been done. A wrong can be done only in two

ways. It must be a wrong either legally or it must be wrong morally or ethically. Simply because a thing hurts the interests of somebody, it cannot be a wrong. You have to show what is the wrong done. It is seen that the principle of seniority has no application regarding the question of independence of the judiciary, as I have shown. The first premise that a wrong has been done has no foundation. There is a wrong neither in law, nor in fact, nor on moral principles. Precedents have been quoted to show how seniority had been overlooked in the appointment of the Chief Justice of Bombay. Mr. Chagla was appointed there overlooking Justice Sen. In the Patna High Court Mr. Jha was appointed and various instances have been cited here. So, neither the rule, nor the practice, nor any invariable precedent exists to show that the seniority rule is the rule which is in existence or which is necessary for the independence of the judiciary. That being the position, the fundamental premise on which the entire argument is built goes and there cannot be any doubt about it.

Now, why is this hubbub being made, if I may use that expression? There must be some reason. My colleagues in the Supreme Court are striking today. Many heated discussions are going on. Some of our friends are agitated. There must be a reason behind it. The reason is obvious. The reason is the Golaknath judgment is dead and it is no more. That is the reason. When that judgment was delivered it was proclaimed as the Magna Carta by reaction. From the turrets and towers of vested interests trumpets and bugles were blown, as if to proclaim to the world the success of reaction. The trend of that decision was followed in the bank nationalisation case and in the privy purses case and everything was all right for them. The Chief Justice who gave the judgment, while he was continuing as such and within months of that decision, negotiated with opposition parties to contest for the Presidentship, thinking that he had rendered such a wonderful service to the people that he would be elected as the President of India. Mr. Setalvad condemned that action as the most

improper thing for a Judge to do, to enter into political negotiations with political parties while he was holding the high judicial office to become the President of India. That gentleman who was in the vanguard of that decision and is now enjoying in the salubrious climate of Bangalore catering advice to all and sundry about issues constitutional and unconstitutional. And thereafter, when the bank nationalisation came, the shadow continued. And the Congress Party went to the people for a definite mandate to get an amendment of the Constitution and the mandate was given including the mandate for amendment of the fundamental rights. Sir, just like in the case of the individuals. Governments are also sometimes put in an agonising situation; the agony of making a difficult choice which may not be altogether pleasant for some people. But in taking the choice, they have to take into consideration not the reaction of particular individuals, but the sum total of the reaction of the people of the country and their future. And in taking that agonising decision, they do not act lightly, they do not take it with mere political motives, they do not take it with any vendetta, they do not take it because a certain petition has been rejected or has been decided in a particular way. This is a Government deciding the future of millions and crores of people and in taking a difficult decision, sometimes they may have to hurt somebody. And such people will always shout and shout they will continue to shout.- But in spite of the shouting, in spite of what has happened, this struggle between progress and reaction will continue. And in spite of the din and noise which has been made, the dust will settle down, and the country will advance, will progress, and the Government will not be deterred by these personal allegations or by personal motives. We will continue with our goal—you may call it political. It does not matter by what name it is called. A rose is a rose by whatever name it is called. I am reminded of the Englishmen. They have a peculiar quality. For example, take stubbornness. If stubbornness is manifested in some other nationality, that becomes mulish obstinacy. If it is manifested in themselves, it becomes 18 RSS/73—9.

tenacity and national character, a laudable national character. When the Government in a difficult situation takes a decision which concerns the future of millions of people, for you it is a political decision. But when those Judges whom you laud as heroes, they give decisions based on their political philosophy, they are proclaimed as assertions of judicial independence and the upholding of the Constitution and the fundamental rights. Mr. Justice Patanjali Sastri has in his judgment said that the political and social philosophy of a judge will necessarily be reflected in his judgments. And an eminent jurist of America said that in the process of judicial decisions, two processes are involved. The first is objectively ascertaining what are the elements of law involved and secondly, subjectively and deductively applying those principles to the facts of the particular case. In the second process, subjectivity will necessarily come in and in that process the social and economic and other political philosophy of the judge will necessarily come in. When we say that, when the political elements, the philosophical elements, the economic elements, the social elements of a judge is mental make up come into the decisions and stand in the way of progress, as I said, we are put in difficult situation. It is not with lightheartedness or with vindictiveness or with vendetta that we do something. We have a greater stake in this country and to interpret them as if they are personal equations, as if it has something to do with the judges or the particular action of a judge, it is nothing of that sort. The present decision has been taken after considerable deliberations and serious thought and consultation... (*Interruptions*). It is not by inspiration that we do it. Consultation is a process of democracy. Unlike your conception we do consult.

THE VICE-CHAIRMAN (SHRI V. B. RAJU) : It is his maiden speech. Please do not interrupt.

DR. V. A. SEYID MUHAMMAD

:  
Please do not have any particular sympathy in that way. You can interrupt me as

I Dr. V. A. Scyid Muhammad.]  
much as you want. Convention is all right.  
But they are not sticking to the convention.

So, Sir, I repeat again. Let this not concern you. We will go on with our objectives, call it political or by whatever name. We do not treat in political. We are doing it for the reasons I have already stated. Thank you.

SHRI THILLAI VILLALAN (Tamil Nadu) : Mr. Vice-Chairman, Sir, after hearing the interesting speeches by the hon'ble Members I will add a few more views on this motion. We are discussing about the situation arising out of the supersession of three senior Judges of the Supreme Court at the time of the recent appointment of the Chief Justice of India and the resignations by these three Judges. Mr. Vice-Chairman, the supersession of the three seniormost Judges and the appointment of Mr. Justice Ray as the Chief Justice of India as a result of the hasty action on the part of the Government gives rise to two points. First is the breaking of a well-established and accepted convention and then a hurried action on the part of the Government. I would like to discuss this motion in two parts. In the other House our hon'ble Minister, Mr. Gokhale, has said that the appointment of Mr. Ray as the Chief Justice, superseding three-senior Judges, is fully in accordance with both the letter and the spirit of the Constitution. My first part of the argument is this, Mr. Vice-President. The appointment is not according to the letter of the Constitution...

AN HON'BLE MEMBER : Mr. Vice-Chairman.

SHRI SASANKASEKHAR SANYAL (West Bengal) : Coming events may cast their shadows ahead.

SHRI THILLAI VILLALAN : I mean Vice-Chairman. So far as the Constitution is concerned, we find no specific provision for the appointment of the Chief Justice.

After persuing the whole Constitution we can pick out three provisions, articles 124, 126 and 248. Article 248 is not necessary. Article 126 deals with the appointment of the Chief Justice. It says :—

"When the office of Chief Justice of India is vacant or when the Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose."

The provision under article 124(2) says :—

"Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years."

Mr. Vice-Chairman, I would like to ask you : Is there any other provision dealing with the appointment of the Chief Justice ? There is no mention about Chief Justice. Every "every Judge" includes the Chief Justice also, then the President must consult before the appointment the Chief Justice and other Judges of the Supreme Court and then only he can appoint.

There is no separate provision for the appointment of the Chief Justice. So we have to infer that only article 124(2) deals with it. The hon. Minister categorically said that the President has absolute power in the case appointment of the Chief Justice. Where is the provision ?

SHRI M. RUTHNASWAMY: (Tamil Nadu): Article 126.

SHRI THILLAI VILLALAN: Article 126 deals with only Acting Chief Justice.

SHRI M. RUTHNASWAMY: When the office is vacant.

SHRI THILLAI VILLALAN : I will make the point quite clear. Even article 126 should be read with article 124(2) always. If the President wants to appoint a judge in the Supreme Court as the Acting Chief Justice, he must follow the method mentioned in article 124(2). He cannot act under the purview of article 126 alone. Even if he wants to act under the purview of article 126, he must act according to the provision in article 124(2). So, my humble submission is that firstly it is not according to the letter of the Constitution. Then he has said that it is in accordance with the spirit of the Constitution also. In order to strengthen his argument he says that the Law Commission has recommended for the breaking of the accepted convention and that the Government is implementing only the recommendation of the Law Commission. I humbly say that I differ from his view because I have read the report itself. I will be thankful if the Law Minister is able to show which is the recommendation that he wants to implement. This recommendation was submitted in 1958. It was accepted in principle in 1960. Now they want to implement it in 1973, after 13 years. The regular limitation period is 12 years. It has been already lost, I think, according to law. In Tamil we say "kala-! vadhi aachu", that is, it is barred by limitation. But they want to take it up now because they want to justify their action. In the Law Commission recommendation, they want that a new convention should be created and then according to that convention, the appointment should be made. That is the recommendation, not appointing somebody and then finding out reasons and justifying it with ready-made reasons, taking some parts in a recommendation out of context. So, my submission is that according to the spirit also, he has failed to satisfy us that the appointment is justified.

Mr. Vice-Chairman, a similar occasion came when Pandit Jawaharlal Nehru was the Prime Minister. The first Chief Justice, Mr. Kania, died. The next incumbent to

that post was Mr. Patanjali Sastri. Since he had only a tenure of three or four months, Nehru wanted to depart from the accepted principle of seniority.

He wanted to appoint somebody who had a long tenure. He wanted to deviate. But he did not do anything overnight as has happened now—they have announced the appointment, then the resignations followed, and all that. Nehru did not do in that way. He consulted the whole judiciary, all the judges. They all said we will all resign if you appoint anybody except Patanjali Sastri. Then Nehru changed his mind and he allowed Patanjali Sastri to be appointed. That is the way in which he consulted and he introduced certain changes in the procedure. So my submission is that even if you do a good thing, you must adopt a good way. If you want to do a good thing by a bad way, the good thing will also become bad. We accept the principle that for the betterment of the society we want to change. We are not against any change because we are accustomed to breaking all traditions in our part being belonging to a reformist movement. We were accused by the people, "They are breaking the tradition, they are breaking the beliefs, they are breaking the old beliefs in the minds of the people". Our leaders, our beloved Anna and Periyar were accused that they are breaking the traditions. Our main slogan in our area is "reason, not tradition". So we are not against breaking any tradition or breaking any age-long practice. But now it should be broken, when it should be broken, is the question. Here we want to break an accepted procedure, an accepted practice, an accepted convention. But you have broken such a convention or practice or procedure in a day, at an inopportune time. That is my view. You were expecting a judgment of the Supreme Court. That judgment was delivered on 24th. You came out with an announcement of another judge on 25th. Why? Mr. Shelat has three months' time. You could have appointed him. Three months' time in the life of a country is nothing. It is a minute. You could have appointed

[Shri Thillai Villalan.]

Mr. Shelat and then said you are going to accept the recommendation of me Law Commission or we can discuss, we are going to depart from the old convention, we want to follow another convention. We can decide it. Then we can appoint the present Chief Justice Ray. Nobody will be affected. The people, the bar, the Bench, will also not feel hurt. That is my submission. So far as breaking old convention is concerned, I would like to know whether this appointment has been discussed in the Cabinet or in the Political Affairs Committee of the Cabinet, whether one of the seniormost Ministers strongly opposed it. I would like to know whether it is a fact and whether the President himself advised not to do this. Then the Law Minister was brought and he explained that we wanted to do it even today. I want to know whether it is a fact. Then I have only one point.

The last point is that for the appointment of Judges, the Law Minister, Mr. Gokhale, said that they want these people to be superseded because they want stability, administrative experience, clarity of verdict and all that. But the honourable Minister, Mr. Kumaramangalam, said yesterday that they want to know the social philosophy of the judges and also the outlook and also the mind of the Judges to be appointed. I want to know whether this philosophy or this condition is only that of Mr. Kumaramangalam or of the Government because it is not found in the recommendation for which the Law Minister pleaded strongly. Nowhere do I find that this philosophy is to be tested and then only the Judges are to be appointed. But our Mohan Kumaramangalam pleaded strongly for the social philosophy and I would like to know whether this is the condition prescribed by Mr. Mohan Kumaramangalam for the future Judges. I would like to conclude by saying that we can do things, good things but not in a bad way or a hurried way. Thank you, Sir.

SHRI A. P. JAIN (Uttar Pradesh) : Mr.

Vice-Chairman, Sir, I have carefully heard the debate in this House. I have also carefully read the report on the discussion in the Lok Sabha as it appeared in the papers and I have also gone through the report on the Press conference of Mr. Hegde. I am sorry, Sir, to find that too much of politics has been brought into this matter and the real issues have been clouded. Now, Sir, I am prepared to concede to Mr. Hegde that he was not writing a judgment of the Supreme Court in addressing the Press conference. He was talking as a politician. In fact, he has declared that he is going to enter politics and we have to put up with it. But one thing I regret in what Mr. Hegde has said and that is imputing the motive, that he has been superseded because he gave an adverse verdict in one of the references made to the Supreme Court in the Prime Minister's election petition. Now, I would have no objection provided he had adduced some cogent reasons for that. But that was absent and so, that is regrettable. Now, similar objectionable things were there particularly in the speech of Mr. Kumaramangalam to which I shall come presently.

Sir, today, it is not the question of determining the supremacy of Parliament *vis-a-vis* the Supreme Court. In fact, under our Constitution, the people are supreme and they are represented in the state through Parliament. I think that the supremacy of Parliament has been established. We have the supremacy and we can pass any law. But then comes the sphere of the court. Once we pass a law, is the Supreme Court "justified or not justified in interpreting that law?"

I was a member of the Constituent Assembly and we have assigned definite functions to the Executive, Legislature and the Supreme Court. The division of their powers is fairly well defined and nobody has questioned it so far except some of my friends, particularly those with communist leanings, who may perhaps not care to have a Supreme Court at all. I am not one of them and I think the Supreme Court is a blessing and it is an institution

which inspires confidence, not any particular party or of its policies. It is the general confidence of the people of India, which is in accordance with the parliamentary traditions of at least countries which follow the British traditions. Here is an institution which functions in a manner that wins the confidence of the people at large, consisting of various groups and of different political views.

Now, I regret the controversy which arose from the Golaknath case on more than one occasion. Even before that matter was taken up by the Congress Party, I had expressed the view that the Golaknath case, in so far as it wanted to establish *status quo* for all times, was bad. If the philosophy of Golaknath case is accepted, then it means that the only alternative, to alter the structure of the Constitution, was revolution. And that being the position, there is not much dispute between, I think, many large sections of people about the position of the Supreme Court.

I want, Sir, to put certain questions to Mr. Gokhale. Does he or does he not want to give a place of dignity, honour and independence to the Supreme Court? If he wants that, does he or does he not realize that what has happened during the last few days has lowered the dignity and the confidence in the Supreme Court? ! Now, Sir, may I ask Mr. Gokhale whether there is another example of a Supreme Court, that is, the highest court, where 13 Judges have delivered, eleven judgments? What does it show? It shows that the Supreme Court is atomised. I am not going to question the power of the Government to appoint a judge of the Supreme Court in its discretion; that is, to make a choice, among the possible persons, of one person. I also do not want to press that it was necessary for Government to have consulted the outgoing Chief Justice. There Mr. Gokhale's position is sound, so far as it goes legally. But whether he has maintained the spirit of the Constitution is the question on which I differ from him.

Now, Sir, it is true that there have been cases of supersession in the past. It is also true that there will be cases of supersession

in future. It is also true that the Law Commission, about 15 years ago, laid down that seniority alone should not count in the Selection of the Chief Justice. Now these facts are unquestionable. I don't subscribe to the doctrine that because the recommendation of the Law Commission has not been acted upon during the last 15 years it has lost its validity. The supersession could take place only when the occasion arose. The question arises whether the Law Minister has given weight to the valid considerations in the supersession. Sir, our Constitution lays down that, in the matter of appointment of a Judge to the Supreme Court, except the Chief Justice, the Chief Justice of the Supreme Court must necessarily be consulted. I know of a case where the Government wanted to appoint a particular person as a Judge of the Supreme Court. He was very efficient in international law but he did not have much experience of the national law and the Chief Justice stood against him. The Government conceded and changed the recommendation.

In the case of dismissal of the Judges of the Supreme Court, there is a provision in sub-article (4) of Article 124 of the Constitution which says:

"A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity."

Why did we incorporate that provision in the Constitution? It was to give during the term of a Supreme Court Judge, surety that he will not be removed or tampered with or punished. Now, Mr. Gokhale has superseded 3 Judges. If they had not resigned, they would have continued to be the Members of the Supreme Court entitled to sit on the benches and participate in the proceedings of the Supreme Court.<sup>4</sup>



[Shri A. P. Jain.]

and deliver judgments. If they were unfit or incompetent, there should have been a definite finding. Mr. Gokhale, if he wanted to inspire confidence in the country about the Supreme Court, should have given reasons why he was superseding them. I am sorry to say that he gave no reasons. He only cited some precedents of Mr. Chagla and Mr. Imam and the recommendations of the Law Commission. Well, they were good so far as they went. But I think it was his duty to have given reasons for the supersession. Are these persons incompetent? Are they incapacitated? Are they guilty of any misdemeanour? I am not talking about Mr. Hegde. He was a politician before and became a judge and he has become a politician after his resignation. He will fight his battle in political field. I want to know what defect Mr. Gokhale found in Mr. Shelat and Mr. Grover. Are they not experienced judges? I am not going to say one word against Mr. Ray. I do not want to lower the prestige of the Supreme Court. I want Mr. Gokhale to tell this House why he superseded these two gentlemen, Mr. Shelat and Mr. Grover. It is not his home affair. It is a matter of national importance. He has got to give the reasons. He is responsible to us. I ask him pointedly what were the reasons for superseding these persons?"

Now, Sir, it is unfortunate that Mr. Kumaramangalam, in the other House, has raised certain political issues which are not of much help to Mr. Gokhale but which will positively harm him. I expect Mr. Gokhale to clarify what Mr. Kumaramangalam said were views of the Government or his personal views. Now, one of the remarks which Mr. Kumaramangalam made was that there was no such peculiar animal in the world as a non-political judge. Among the animals, there are tigers who rule supreme in their areas and there are tail-wagging spaniels. Mr. Kumaramangalam made certain other remarks. "Certainly, we in the Government have a duty to take into account the philosophy and outlook of a judge in

coming to a decision." Now what did he mean? Did he mean to say that he wanted tail-wagging judges whom he can dictate what decisions they should take?

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If that is the position, I think it is a lamentable. You change the method of the appointment of judges. You change the method of the appointment of the Chief Justice. You change the personnel but do not change the fundamental basis of the Supreme Court, that is within their sphere the judges should be independent. They should not be influenced by the views of the Government or any other persons. Mr. Ciokhale, I know, has been both a lawyer and a judge and I do not think he will agree with Mr. Kumaramangalam's point of view. 11 that is the position, what is he going to do to restore the prestige of the Supreme Court? It has been badly hurt partly because of their own actions in writing 11 judgments, and also by Mr. Gokhale's action in not taking the country into confidence and saying that for this and this reason he is superseding them. Well, for Mr. Hegde it may be that the reasons of supersession were political but what about Mr. Shelat and Mr. Grover? Has Mr. Grover no administrative experience? Is he an incompetent Judge?

SHRI JOACHIM ALVA : I shall tell you about Mr. Shelat.

SHRI A. P. JAIN: You can say anything. I will hear you. So, I think the only service that Mr. Gokhale can render to this country and to the Parliament is that old chapter should end, and a new one be opened under which the Supreme Court is designed that it is not influenced by any opinion, that the judgments are independent, full of reason, logic and honesty.

SHRI JOACHIM ALVA : Not perceived with monopolists.

THE VICE-CHAIRMAN (SHRI V. B. RAJU) : Mr. Aha. you are going to speak in your turn.

SHRI A. P. JAIN : You please do not interrupt.

Now, Sir, I think the time is not too late and, therefore, it is for Mr. Gokhale, he is the law conscience of the Government, to think it over again. I am not saying it in a spirit of denunciation, not in a spirit of controversy. I appeal to his conscience to give serious thought to what I have said, tomorrow early in the morning when he wakes up and to find out a device by which the position, the status, the dignity and the independence of the Supreme Court are established.

SHRI M. RUTHNASWAMY (Tamil Nadu): Mr. Vice-Chairman, Sir, once before on the floor of this House, on a seminar distressing question, I recalled a period in English parliamentary history, the period of Walpole and I asked the question whether we in this country were to wallow through a Walpole period instead of learning a lesson from the experience of that regime. Today, Sir, I am compelled to recall another period in English parliamentary history, the period of the Stuarts, when the question of the independence of the judiciary as against the Crown was raised and discussed. There was Francis Bacon, the Lord Chancellor of England who was soon to be convicted of bribery and corruption and was to be hurled from his eminent place. He proclaimed that the Judges were the lions that surrounded the throne of England. But they were under the throne, below the throne implying thereby that they had to carry out the mandates of the Crown. On the other side was Sir Edward Coke heading the Common Law lawyers in Parliament, who pleaded for the independence of the judiciary as against the Crown. It took a whole civil war; it involved the beheading of King Charles I before the matter was settled in favour of the independence of the judiciary. Are we to go through a similar struggle in this country? It looks like it because only the other day the Minister for Steel and Mines announced the future policy of the Government in regard to the appointment of Judges. Just as in the Stuart period the parliamentarians had to fight against the theory of the Divine Right of Kings today

we may have to fight against the theory of the Divine Right of a Socialist Government to govern wrong. But, Sir, a struggle is not necessary because the wise makers of our Constitution have settled once for all the relations between the judiciary and the executive. Article 32 of the Constitution gives the Supreme Court the right of judging the constitutional validity of any law passed by Parliament or other legislatures and the power to issue writs of *habeas corpus*, *mandamus*, *Injunctions*, *certiorari* etc. to protect the citizen who has been offended by any law passed by Parliament. The independence of the judiciary is therefore safeguarded because under article 124 the Judges of the Supreme Court can be removed only by a Resolution of impeachment passed by both Houses. But the Constitution has also laid down that the executive shall be the appointing authority of the Judges of the courts. Appointment and promotion of Judges as well as other officials of the State are all executive functions and therefore the executive is rightly charged with the duty of appointing the Judges but then the executive has not arbitrary power of appointing any body they like. There are certain rules, certain conventions and one convention has been established over 20 years or so with small deviations here and there that the senior-most Judge should be appointed Chief Justice. That convention has now been broken. The Law Minister adduces the recommendation of the Law Commission in support of their action. But that was not an absolute recommendation. But there was no point in that recommendations as is shown by the fact that the Minister for Steel and Mines never spoke a word about this recommendation of the Law Commission. If the executive has the right of appointing the Chief Justices I suppose there are certain rules governing the conduct of business by the executive. I have been trying to get a copy of these rules of business but I have not been able to get it because I am told it is a confidential document. Why should it be confidential? The executive, that is, the Government is responsible to Parliament and Parliament has the right to know how the business of

[Shri M. Ruthnaswamy.]

the Government and the Cabinet is conducted. I have, Sir, a suspicion—and my suspicion may be well-founded—that there is a clause in the rules of business that any change, any major change in policy should be decided by the whole Cabinet. I should like to know from the Law Minister whether that procedure was followed. Was a full meeting of the Cabinet held in order to bring about this vital change, this important change, this serious change, in the appointment of the Chief Justice ? The Law Minister himself admitted the other day that it was by the Political Affairs Committee of the Cabinet. That will not do. It is not good enough. It is a major change in policy and any major change in policy should have been discussed and decided by a full meeting of the Cabinet. The President's actions are also governed by conventions. The executive is also governed by conventions. The whole relationship between the President and the Council of Ministers is governed by convention. According to the strict letter of the law, the President may veto any legislation. The President may veto any administrative act of the Council of Ministers but a convention has been established that the advice of the Council of Ministers should "be accepted by the President. If the convention can hold good in the case of relations between the Council of Ministers and the President, why should it not hold good in the case of the appointment of the Chief Justice of the Supreme Court ?

Then, an argument again advanced by the Minister of Steel and Mines is that we want a judiciary which will be in conformity with the social philosophy of the Government. Now, may I ask if in all these twenty years the Supreme Court has stood in the way of achieving any social or economic progress by the country ? Has the judiciary stood in the way of rapid promotion of literacy in the country ? There has been no opportunity for the judiciary to interfere with the drive for literacy because there has been no such drive at all. All these years we have been

going at the jog-trot rate of one per cent per year which will mean that it will take seventy-five years for our country to reach total literacy. Has the judiciary stood in the way of building village roads which are necessary for lifting the subsistence economy of our agriculture to a more progressive economy ? Has the judiciary stood in the way of the rapid advancement of the rural housing which will convert the hovels of the vast majority of our rural population into human habitation ? Has the judiciary stood in the way of attempts at providing full employment which the Government itself has advocated? No, Sir. This accusation of the judiciary that it has been standing in the way of social progress is one of the many alibis which this Government has been able to find handy in order to cover up its inability to do things which are absolutely necessary for the social and economic progress of the country. The judiciary has not stood in the way of any serious attempt at social and economic progress. It is your incompetence, it is your inability, it is your wrong choice of priorities in regard to your Plans, it is your preference for prestigious steel plants and things which will bring glory to your administration but which will not do any good to the vast majority of the population, it is your wrong choice of priorities that has been responsible for the slow economic progress and not the obstruction of the judiciary.

The question arises, where do we go from here ? Are we committed to an era where the judiciary will be the handmaid of the executive, where the judiciary will not have the independence that is necessary for its functioning ? The doctrine of separation of powers means the independence of each power, the independence of the Legislature, the independence or autonomy of the executive and the independence of the judiciary. Where can we look forward to this independence and autonomy in such a philosophy as that enunciated by the Minister of Steel and Mines ? Another argument is that the judiciary must actively contribute to social and economic growth. It is not the business of the judiciary. The

judiciary is a brake, it acts as a brake. And no Government can run on mere power just as no motor car can run on mere fuel power. It has also to have a brake, it has also to have an accelerator. But the accelerator in the Government is the executive. The brake in the Government is the judiciary and you cannot club these two functions in order to realise your social philosophy.

Again I ask : Where do we go from here ? Is it a bleak prospect ? My hope is in the thing called *esprit de corps*, *esprit de corps* which keeps the family together, which keeps the members of a family loyal to each other, which keeps the member of a club or any other corporation together, which keeps the members of a corporation loyal to each other, which makes them stand up for their dignity, self-respect and honour against all accusations, against all attacks from outside. I hope and trust that even a judiciary appointed under the philosophy enunciated by the Minister of Steel and Mines will cultivate the *esprit de corps*; however the judges may have been appointed, however they may have been promoted, let them cultivate the spirit of corporate unity, of corporate loyalty, of standing up for the dignity of their corporation, the judicial corporation, for the self-respect of their corporation. If they do that, then I think there will be a future for the Government of a free people, by a free people, for a free people in the country.

SHRI AWADHESHWAR PRASAD SINHA (Bihar) : Mr. Vice-Chairman, Sir, I came to Parliament in 1950. Since then, the great Panditji, before he departed in 1964, brought about 16 amendments to the Constitution. Sir, may I say something which happened when the constitution was being framed ? I was then the General Secretary of the Bihar Congress Committee and I was very much in touch with Panditji. I told him about certain sections of the articles of the Constitution already passed and I expressed my apprehensions that land reforms would be very difficult. Panditji was sad, and he said, "Awadhesh.

you should know how to wait in politics." Then in 1951 he brought forward the first Constitution amendment which was meant for land reforms and when that was passed, he told me, "Are you happy now ?" I said, "Yes, Sir." He brought forward 16 amendments and enriched the social and economic content of the Constitution. Then that great man, that great visionary, passed away.

Then came Shri Lai Bahadur Shastri. He brought about this seventh amendment. But unfortunately he breathed his last in a foreign land. We did not meet him after his return, we only saw his dead body.

Then the Golak Nath case came. Sir, some of the judges thought that Nehru had gone and that Lai Bahadur Shastri had gone; that in 1967 the general election was coming, that this was the time to strike. Sir, I would like to be very frank. I belong to a community of people who are noted for frankness. My blood cells are made up of frankness. I speak out what I feel and I speak out more from my heart because with God overhead I speak. Sir, they thought that that was the time to strike. People talked of committed judges. One of the judges of the Supreme Court told me about it. When Shrimati Gandhi said that the civil servants should be committed to the Constitution and when Shri Kumaramangalam yesterday said in that House about the philosophy of the judges, he meant the philosophy enshrined in the Constitution. He is being maligned for nothing.

They struck when we were weak. Sir, you know the vested interest tries through many ways to fight out the under dogs, the disinherited, the dispossessed. It takes many shapes and many forms, and some of our goody, goody people are also taken in by that which masquerades as independent judiciary. Sir, this is the big Golaknath case. This has the majority judgment which says that article 368 merely shows the procedure of changing an amendment. Judges have the power of changing the amendment, they

[Shri Awadheshwar Parasad Sinha]

say. But one of them, Mr. Bachavat—I am sorry I cannot pronounce his name correctly, but he is really Bachavat since he saved the nation—says that article 368 gives the power of amending the Constitution. The Constitution means all the provisions of the Constitution. Actually that was the time when these Judges should have been struck. But my great sister and the great Prime Minister of India—she is not here—tolerated. I charge her for forbearance, outrageous forbearance, that even after they said that article 368 had no power of amending the Constitution which even a Senior Cambridge student would say that it has, tolerated it. And what are the names of the Judges? Mr. Subba Rao...

SHRI JOACHIM ALVA : Swatantrite.

SHRI AWADHESHWAR PRASAD SINHA : I would not say that Mr. Shah, Mr. Sikri, the great Mr. Shelat and Mr. Vidhyalingam, five Judges. If I were in the position of Shrimati Indira Gandhi, I would have indicted these five Judges as anti-constitution. I tell you very frankly and I admire the forbearance of this great lady.

SHRI BABUBHAI M. CHINAI (Maharashtra) : Thank God. You are not.

SHRI AWADHESHWAR PRASAD SINHA : Thank God, you will have what you want. The people are marching. Your days are numbered—I mean of capitalism.

Now this great lady has brought 12 amendments during this small period of six years, you know the great decision that has been taken in which eleven judgments have been delivered. Actually, this Privy Purses case has not been decided. I mean to say that Mr. Sikri and his colleagues think that this is not a very important matter. They left it again to the Constitution Bench as if that was not the Constitution Bench itself.

Then, Sir, what does Mr. Seervai, who has established himself not only as a national but as an international jurist during

his 11 or 12 days of legal and juristic exercise in the Supreme Court in this case, say? I had been to listen to his lecture. What does he say? That eminent jurist on the 1st of May said that the recent order of the Supreme Court on the fundamental rights signed by nine of the thirteen Judges was clearly incorrect, not by what it has stated but by what it is committed. My friend, Mr. Ajit Prasad Jain, was talking of an independent judiciary. This is what the independent judiciary has done. Mr. Jain is a man who suffered ten years in jail, a man who has suffered for the country. Mr. A. P. Jain is not an ordinary person. But even if such men are taken in what can I do? Sir, I quote :—

"The power of amendment would also include within itself the power to add, alter or..."

This is what Justice Khanna said. That order was signed by nine and four did not sign it. Why should that order be incorrect? If it is incorrect, should I feel that the judiciary is independent or they are subserving, not consciously—I would not say that—but sub-consciously the vested interests? I would say that with all the force at my command and in all humility. Sir, this supersession of the three judges is a turning point in our history. We are unmistakably marching on towards a peaceful revolution. This is one of the greatest turn in the peaceful revolution. We should not take it as an ordinary step by the great lady, the Prime Minister, about whom I have said, and said deliberately, that her forbearance was outrageous for so many years. One judge was to retire on the 15th of July; he was to be leave Chief Justice, not functioning Chief Justice. The other gentleman was Mr. Hegde. Sir, I am a very small man, ordinary man. a man in the street. I would like to bring to the notice of Mr. Gokhale, who, according to Mr. Hegde, "has no ideas or ideals"...

SHRI BHUPESH GUPTA : When the bank nationalisation case came, before he delivered the judgment, he telephoned Mr. Morarji Desai and told him about the judgment. Everybody knows it.

SHRI NAWAL KISHORE (Uttar Pradesh)  
: Mr. Bhupesh Gupta was sitting there.

[MR. DEPUTY CHAIRMAN in the Chair]

SHRI BHUPESH GUPTA : Let him deny it.

SHRI AWADHESHWAR PRASAD SINHA : Sir, I spoke on the 28th March, 1972 (page 178) and quoted Mr. Hegde's speech. He had said :

"Fundamental rights cover basic needs."

I said :

"This is a statement which no one can accept."

MR. DEPUTY CHAIRMAN : You will have to finish.

SHRI AWADHESHWAR PRASAD SINHA : Just a few minutes.

MR. DEPUTY CHAIRMAN : You will have to wind up. We cannot be sitting like the Supreme Court for months.

SHRI AWADHESHWAR PRASAD SINHA : Sir, you have come just now. I started only five or six minutes before. I am a disciplined man. If you say, I will finish.

MR. DEPUTY CHAIRMAN : You may take one or two minutes more.

SHRI BHUPESH GUPTA : Sir, I entirely agree with you. We cannot sit like the Supreme Court. Certainly you cannot sit like either Sikri or Hegde.

SHRI MAHAVIR TYAGI (Uttar Pradesh)  
: You must sit like Ray.

SHRI AWADHESHWAR PRASAD SINHA : In his speech Mr. Hegde had said :

"History had shown that popularly elected legislatures had also, at certain stages in a nation's life, not hesitated to destroy the right of citizens. There were

times in the nation's life when emotions took the place of reason." Like that, all sorts of aspersions were cast on the Members of Parliament. Even now I find some Members of Parliament shedding tears for Mr. Hegde who sat over here and talked for so many years. When he went there, he became a turncoat. Sir, in his speech Mr. Hegde has said that even from the Congress Party he is receiving people, as if there are Communist Congressmen and Non-Communist Congressmen. I am a pure and simple Congressman. I have my differences with Mr. Bhupesh Gupta and others in so many matters. I cannot be a Communist Congressman. And I tell you, even if all the Communist Party of India members join the Congress, the Congress will remain the same. I tell you I have no fear of the Communists. I am a hundred per cent Congressman. So Mr. Hegde need not advise us. And Mr. Kumaramangalam was an Advocate-General in our Government in Madras. Mr. Kumaramangalam was earning Rs. 50,000 per month. But he is now getting after deduction of income-tax only Rs. 1,700. The poor man is getting only that much now. I heard his speech yesterday in the Lok Sabha and it is one of the best performances in legal, juridic and constitutional matters. In the end I may tell you, we can have sympathy for the three persons who have gone now. Even now tell me. Mr. Deputy Chairman, that Mr. Sinha, the way you are conducting yourself is disgraceful for a Member of this House. I tell you in all seriousness and earnestness that I shall resign at once from the Membership and I will not sit a day more here. But they wanted to continue till 30th April. One of them wanted to be there till 31st May. They set a date for their resignations. They could not vindicate their honour if they felt that way, at once. Why do you set a date if you want to vindicate your honour ? So, Sir, I am proud that after four or five or six years of annihilation of its right, after Parliament was dispossessed of its right, Parliament has now got back its right and it has turned the corner and the Government has taken a

[Shri Awadheshwar Prasad Sinhal

right decision. I am proud of my Government and I am proud of my Law Minister and I am proud of my Prime Minister.

SHRI SASANKASEKHAR SANYAL : Mr. Deputy Chairman, I must make it clear that we on this side do not hold any brief for the so-called bypassed judges nor do we hold any brief against the lucky Chief Justice who has just been appointed because to us these are all equally colourless water. They assume the colour of the bottle in which they are put. I wonder if Mrs. Indira Gandhi's social philosophy will even be answered by the present Chief Justice. Of course, if that social philosophy means that people should be kept in detention without trial, he will answer. If that social philosophy means that properties given to landless tenants are being taken away by landlords, then that social philosophy will be answered. After all, these judges are born, brought up and groomed in such a way that they think like Shakespeare's *coriolenus* that they are only Gods to punish and not men of our world. We simply want to assess whether the right thing has been done, whether the thing has been done in a right way, whether the right reaction has been produced, among the people concerned. Democracy is said to be the rule of law. Rule of law means independence of judiciary. This independence comes from the maxim that justice is blind. And that is also what the oath means that we shall discharge our duty without fear or favour. But now a days the unauthorised oath is there. They see too much. Favour is sought from the very beginning and the prospect of getting sinecure appointments after retirement makes them executive-minded from the very beginning. They know which side of the bread to butter. The allies of the ruling party, the big zamindars, they are the persons who are also protected by all means by the Supreme Court judges. Do you remember that case in which 30, 40 riarajans were burnt alive by big zamindars ? The matter came up before the Supreme Court. The Supreme Court rarely

goes into questions of fact. The whole matter was reopened and these people were acquitted because, according to them, these people cannot commit such acts. That was the argument.

Sir, the principle of natural justice is there. Seniority is not the only criterion. But that is holding the field and so the principle of seniority must be adhered to unless there are other considerations laid down. Other things being equal, seniority must prevail. But what are the other things which are not equal ? I do not know whether my friend, Shri Gokhale, has compared the judgments of Mr. A. N. Ray with the judgments of these unfortunate Judges and whether he has got anything to indicate that one is more progressive than the other.

Now, Sir, the whole thing is leaving a bad taste in the month. Why ? That can be assessed from the facts. Here, Sir, I am not concerned with what the Judges are saying. They are disappointed people, frustrated people, and they will speak anything. But what is the effect on the member of the legal profession, the advocates, in the country ? They are feeling very sore about it.

AN HON. MEMBER : Not all.

SHRI SASANKASEKHAR SANYAL : By and large, they are feeling sore. It is not a question of majority or minority. By and large, most of the advocates have taken this things as an affront.

There is another thing also. Now, what will be the effort upon the other Judges. From now on they will have to behave not as Judges of the People's Republic but as Judges of Her Majesty's Service, And, Sir, that makes all the difference.

Then, what about the effect upon the litigants ? Do you know who the biggest litigant in India today is ? Everybody knows that. The biggest litigant is the State, the States of India and the Government of India. You go to any criminal court in India. You will find that in a

large number of cases the State is the litigant. You go to any revenue court or a civil court and you will find that the largest litigant is the State. The Government today is by far the biggest litigant in the country. If that is so, don't you think that in the present circumstances the common man feels that he is in peril? Is it Rule of Law or is it any rule of terror?

Therefore, Sir, my point is that confidence in the judiciary has been shaken and the minds of the independent Judges have been affected and they are no longer independent. They see themselves and their prospects and they see the pistol of the ruling party over their heads. They also see the predicament in which they will be put and see that they would be bypassed in favour of more ambitious and more successful people in the judiciary. So, Sir, the judiciary is demoralised. Sir, I have also been at the Bar for more than fifteen years. In the British days we were against the British administration. But we held that the British Judges were different. We have now got independence and in spite of all our differences, we are trying to maintain the freedom. But, Sir, when we appear in the courts these days, we really shudder, because we feel that a gesture from the public prosecutor or a gesture from the Government pleader or even a gesture from an assistant bench clerk will decide the merits of the case. If you can appoint anybody as a Judge, why not appoint the additional registrar of the Court as the Chief Justice of the Supreme Court? Is he not competent? The question is not whether what you are doing is right or is within your rights to do. But the question is whether you have done the right thing in a right way and in the right spirit and more than that, the question is whether you are understood by people to have done the right thing in a right way.

Sir, I was telling my friends outside. One of them asked me why Indiraji is doing all these things. I said India has something dramatic in her. She is capable to

doing extra ordinary things, but not ordinary things. Sir, I gave a very clear answer to my friend there: Indira Gandhi is incapable of removing poverty. She is incapable of removing illiteracy. She is incapable of removing unemployment. She is incapable of removing corruption. Bin sh.> is capable of removing faith in the judiciary. She can even abolish the judiciary altogether and administer all law through subordinate, delegated legislation of the executive.

MR. DEPUTY CHAIRMAN: Shri Himmat Sinh.

SHRI HIMMAT SINH (Gujarat): *Mr* Deputy Chairman, Sir, in view of the importance of the subject, I wanted very much to stick to my brief. But I think I am voicing the feelings of the House when I say that we have been sufficiently provoked by what Mr. Daphtary had to say in respect of the latest decision of the Government in the appointment of the Supreme Court Chief Justice. Mr. Daphtary, in a very polished manner, in a very suave way, tried to assert that (he methoa in which the decision was taken was very crude and that the way in which the judges were by passed was not very ethical, if I understood him correctly. I come from the same region; he also comes from the same region, so also does Mr. Shelat. Mr. Shelat comes from Gujarat. He was Chief Justice of Gujarat before he came here. My friend Mr. Bhupesh Gupta gave out some revealing facts about him. I do not know if Mr. Daphtary took note of those facts about Mr. Shelat. Two hundred members of the Bar of Ahmedabad made a written representation to the Chief Justice of India—the then Chief Justice, Mr. Gajendragadkar, and a representation from Ahmedabad came here and waited upon the Chief Justice, Mr. Gajendragadkar. The allegations were so serious and the matter was so abnormal that the Chief Justice was obliged to pay a visit to Ahmedabad and find out for himself what was the veracity of the allegations that were made. He was convinced that Mr. Shelat had behaved in a manner



[Shri Himmat Sinh.]

which was not becoming of a Chief Justice of a High Court. And as things used to happen in those days, Mr. Shelat was simply removed from Ahmedabad and brought as a puisne judge in the Supreme Court, thinking that as a puisne judge in the Supreme Court, Mr. Shelat would be harmless; he would be innocuous ..... (*In interruptions*). I request the Government and the Minister in charge, Mr. Gokhale, to lay on the Table of this House the representation which was made by the Ahmedabad Bar, which was submitted by 200 advocates of Ahmedabad personally by their elected representatives before the Chief justice of India. As a person coming from Gujarat...

SHRI BABUBHAI M. CHINAI: Sir...

(*Interruptions*)

SHRI HIMMAT SINGH: Mr. Chinai, I know you are beholden to them and they are beholden to you...

(*Interruptions*)

SHRI BABUBHAI M. CHINAI: Why don't you say such things outside Parliament? You don't have the courage to say such things outside Parliament... (*Interruptions*). Mr. Deputy Chairman, Sir, why do you give them the permission to name a person who is not here to reply?

(*Interruption*)

SHRI HIMMAT SINGH: Let me tell you that money can create corruption but it cannot conceal corruption. As a Member of that fraternity, Mr. Daphtary should have bowed his head in shame when these facts were revealed by my friend, Mr. Bhupesh Gupta. He did nothing of the sort. He tried to justify the existing methods which have prevailed up to now. Thus he has proved to be one of the biggest advocates of the *status quo*. The greatest testimony of this Government's respect for democracy is the manner in which Government has extended its patronage to people like Mr. Daphtary and

others who do not see eye to eye with them. What greater assertion of democracy you can have? This is what the Government is suffering from now. Then, Mr. Daphtary seems to be very touched about the M.R.T.P. Act. Why? Because it is only the monopolists who can buy services of people like Mr. Daphtary. When they have judges committed to their philosophy, they can get away with almost anything when they appear before them. Of course, there is a sense of commitment on part of the judges! That sense of commitment is to the *status quo*. That sense of commitment is to the vested interests. That sense of commitment is to the reactionary elements. Mr. Babubhai Chinai, you will be well advised to note it.

SHRI BABUBHAI M. CHINAI: I can write a history of this.

SHRI HIMMAT SINGH: You better do that for a change. Now, Mr. Deputy Chairman, the importance of this debate lies in the fact that it gives us an opportunity to make an assessment of our judiciary and to find out how it has been dispensing justice. Unfortunately, the judiciary's heritage has been somewhat incongruous and not in tune with the requirements of this country. The judiciary has so far interpreted law and tried to administer law, but never attempted to give justice to the poor man because the poor man cannot afford the luxury of litigation. Judiciary has never thought in terms of justice to the common man. The poor man of this country has suffered so long. He has shown exemplary forbearance. He has put up with hardships. He has never challenged the existing order of society in the manner in which the common man would do in any other country. He would revolt. When the processes of progress are slow, revolution overtakes them. The common man of this country would have plunged in revolution in this country but for thousands of years of culture which the poor man, has shown and not the members of your class, Mr. Babubhai Chinai.

SHRI BABUBHA1 M. CHINAI: I know how poor you are and how you have come to this House.

SHRI HIM MAT SINH: In the name of culture and forbearance the poor people have put up with this and they have not bothered about it. There is a Parliament elected by the popular vote, a Parliament which has received such a massive mandate and when that Parliament wants to enact laws, they should not be prevented. The Parliament's hands should not be fettered and the common man will not tolerate if there is any institution which tries to fetter the hands of that Parliament. I have said something about Mr. Shelat. I will now say something about Mr. Hegde. Mr. Hegde has taken the whole personality of the country in his purview and therefore I must bring in Mr. Hegde. Mr. Hegde has shown scant regard for the poor: He has called them unenlightened and illiterate. Mr. Hegde has no regard for the press because the press does not behave according to him, because the press cannot indulge in the blatant lies which Mr. Hegde can indulge in. And Mr. Hegde has also stated that Mr. Shelat could be passed over; there was nothing wrong; it was normal. Why does Mr. Hegde make this remark I wonder. Probably Mr. Hegde knows about the representation against Mr. Shelat and Mr. Hegde is afraid that that representation, if it comes to light, there might be several other representations also against himself and therefore he feels nervous. So he is quite happy with Mr. Shelat's passing over; he glosses over it. But Mr. Hegde says that as far as he was concerned, he should have been the Chief Justice and because he is not made the Chief Justice, overnight the judiciary becomes faulty—according to Mr. Daphtary also; people lose confidence in the judiciary and the judiciary cannot be relied upon to dispense justice as was expected only a fortnight earlier. Now, this is the type of people we have to deal with. (*Time-bell rings*) I am sorry, Mr. Deputy Chairman, I must wind up. But before I do so, there is one more point.

There is one particular pattern of propaganda to which I want to draw the attention of this House. Whether it was Jawaharlal Nehru or whether it is Indira Gandhi, the pattern remains the same. When Jawaharlal Nehru was at the helm of affairs, the *bete noire* of the reactionary parties was Krishna Menon. Today the *bete noire* is Kumaramangalam. And whether it is Krishna Menon or Kumaramangalam, the attack is not against Krishna Menon or Kumaramangalam; the attack is against the Prime Minister because they want to prevent the Prime Minister from going ahead with the measures which she is committed to take to the people of this country. They also object to the Prime Minister taking this issue before the people. I think the Prime Minister has to be complimented for the speech she has made at Kanpur, that such a vital issue which affects the very future of this country has been taken to the people. The people must be acquainted with it and people must know where they stand *vis-a-vis* these reactionary elements.

Sir, I have one or two more points for which you will kindly give me time. One is that Mr. Hegde has said . . .

MR. DEPUTY CHAIRMAN: One minute only and exactly after one minute I will call the next speaker.

SHRI HIM MAT SINH : Mr. Hegde has said that there are members of the Congress party who have gone and complimented him and congratulated him. I am reminded of the days of Nehru when members of his Council of Ministers used to come openly and oppose him behind his back—never in his presence. These are the people we have to guard against and this is my warning to the Government also. As far as the so-called learned people are concerned, I want to remind the House of one particular warning which has been given. It says in Sanskrit:

"साक्षराः निपरीता भवेत्  
राक्षसा एव केवलम्"

[Shri Himmat Singh]

It means that a learned person, if he is perverse, becomes a devil incarnate. The number of these devils is increasing and we have to be on our guard. Thank you very much.

SHRI OM MEHTA: Mr. Himmat Singh referred to Mr. Hegde having said that some Members of Parliament from our side have gone and congratulated him. It is absolutely wrong. If he has got the courage he should name them. No Member of Parliament from my side has gone to congratulate him... *(Interruption)*... I say with certainty that not a single Member from our side has gone to him. *(Interruptions)*

SHRI N. G. GORAY (Maharashtra): Sir, I for one welcome this debate, this controversy because it helps us to clarify our ideas and we come to some definite conclusions. Sir, unfortunately in this debate personalities were dragged in and a lot of bad feeling was created. I would like to avoid it but unfortunately Members on both the sides have not been helpful so far as avoiding personalities was concerned. Sir, myself or Members like me are a bit surprised when friends from the other side concentrate their attack on ex-Judge Hegde or some other Judge and they come up with stories that there was a representation made by 200 advocates against him, that the matter went up to the Chief Justice and he had to come down to Ahmedabad and then, Sir, when we want to know what happened afterwards they tell us that he was raised to the Supreme Court. It is very amusing and I do not know whether they are really serious when they run down the Judges or whether they are flippant. I am really surprised and I put to myself this question. Supposing Mr. Grover or supposing Mr. Hegde or supposing Mr. Shelat were to give a judgment in conformity with the views of the Government, would it have been possible that Shelat would have been raised to the post of Chief Justice forgetting all that had hap-

pened in Ahmedabad against him? Therefore it becomes very difficult to follow the debate. Are really some serious issues involved or not? When they begin to tell these stories about Shelat, Hegde and others one feels that this is a very flippant debate or a very frivolous debate and what is involved is not really the main issues but it is only that you want to know whether a particular man is always careful of being on the side of the Government or not. To my mind the issues involved in this controversy are fundamental. What is to be the relation between Parliament and the Judiciary? From that point of view I welcome this controversy because this controversy was so far going on behind closed doors. We were feeling that whatever progressive steps we were taking were put down by the Judiciary and most probably the Judiciary was feeling that we were going ahead without sufficient warrant, that we were doing something which was not in accordance with the Constitution. This confrontation was going on and here, Sir, I am reminded of my late friend, Mr. Nath Pai, who was the first to point out as soon as the Golak Nath case was decided that that was a challenge to the supremacy of Parliament. At that time the ruling party did not accept what he was saying. Today nobody remembered him; that is why I want to remember his name because it was he who pointed out the hidden challenge in the Golak Nath case. He brought forward a Bill and I must tell my friends here that whenever Nath Pai spoke to assert the supremacy of Parliament as against the Judiciary he did not run down any Judge. It was always couched in respectful terms because he wanted to preserve the dignity of the Judiciary and also the supremacy of Parliament. This was a very delicate performance, a very delicate operation, and he tried to perform that operation in such a manner that both the supremacy of Parliament and the independence of the Judiciary were preserved. But, Sir, I am sorry to find that here it seems that there is a sense of triumph that we have at last vanquished the Judiciary. What is it that

we want to do? Do you want an independent judiciary or you do not 6 P.M. want it? It is like saying, well, we want an independent judiciary only so long as they obey us. It is like saying, you are independent, but you are independent only so long as you obey me. This is not independence. This is not the spirit of democracy. In a democracy there will be clashes. There will be confrontations. There will be conflicts and still both sides will take care (to see that the independence of the Judge continues. Otherwise, it becomes a totalitarian society. Yesterday I listened to what Mr. Kumaramangalam was saying in the Lok Sabha. Which is the authoritative view of the Congress Party? Is it the one put forward to us by Mr. Kumaramangalam, or is it the one which was put forward by Mr. Gokhale a few days back? I would like to know which is that. Mr. Kumaramangalam has very definite ideas. He has his own ideas. In this House also he has made no bones about it and he has said: I belong to a particular ideology. What is that ideology? In that ideology, call it the communist ideology or call it the Marxist ideology, there is nothing like the independence of the judiciary. The judiciary is only a limb of the Government . . .

SHRI BHUPESH GUPTA: It is a kulak's interpretation.

SHRI N. G. GORAY: Yes, that is my interpretation. I would like to know the other interpretation. That is why Mr. Kumaramangalam could only quote Judges from America, England, etc. He could not quote any Judge from Russia because there is nothing to quote. They dare not go against the executive. And, therefore, it was natural that he could only quote from America, he could quote from France, he could quote from England, but not from Russia. (*Interruption*) There writers like you Mr. Alva are sent to the lunatic asylum and they cannot raise their little finger against the Government. The judiciary has to keep quiet about it. Both of us know that.

(*Interruption*)

18 RSS/7?—10.

MR. DEPUTY CHAIRMAN: Mr. Alva, you will have your chance.

SHRI N. G. GORAY: What I want to point out is that even this analogy from America will not suit us because it is a different social milieu. So far as America is concerned, the difference between the Republican party and the Democratic party is superficial. There is no basic difference so far as their social outlook is concerned, or their political or economic outlook is concerned. Therefore, it does not matter who is on the Bench, who is in the judiciary, because there is no radical difference between the two parties. The other thing is so far as the federal structure is concerned. Their federal structure is such that there is a lot of autonomy for the constituent units. Now, if you want to apply this analogy here, let us see what will happen. We have got States which are ruled by different parties. In Tamil Nadu there is the DMK. In other States there may be some other parties in power. Now, what will happen if they say that what is sauce for the Supreme Court goose is sauce for the High Court gander, then they are going to apply the same yardstick? If you want your people in the Supreme Court whose social outlook and philosophy is in consonance with your philosophy and social outlook, well in Tamil Nadu all the High Court Judges will be so appointed who have the same philosophy and the same social outlook as the DMK. Suppose in Orissa there is another Government or in Gujarat there is the Swatantra Government or any other Government. Does it mean that they will appoint all their High Court Judges from this point of view that they must always conform to their social philosophy and social outlook? Therefore, I would pray that the Government should consider this matter. (*Time Bell rings.*) All right, I sit down.

MR. DEPUTY CHAIRMAN: You can take two minutes and please go ahead.

SHRI N. G. GORAY: These are basic subjects, I am not attacking anybody and my time is cut short . . . (*Interruptions*)

MR. DEPUTY CHAIRMAN: He has taken ten minutes and he can take another two or three minutes to wind up.

SHRI LAL K. ADVANI: Pardon me. This is not the first time. This has happened to Mr. Goray once before.

MR. DEPUTY CHAIRMAN: Mr. Advani, your party is a party of how many Members, and there is a lot of difference between you two.

SHRI LAL K. ADVANI: It is not at all that question.

SHRI JAGDISH PRASAD MATHUR :  
Sir, he took half an hour.

SHRI K. CHANDRASEKHARAN : Sir, I am not saying about the membership of our party. I was yesterday watching the Lok Sabha proceedings from the Rajya Sabha Gallery. I felt in my heart of hearts about the way in which things were going on there, particularly the presiding officer's or the Speaker's approach to the various speakers and the way in which the speakers were given time in a very important debate like this; that was rather good. And I would respectfully submit—I am not making any insinuation, I never make any . . .

MR. DEPUTY CHAIRMAN: You should be conscious of the fact that if I make an exception in the case of anybody . . .

SHRI K. CHANDRASEKHARAN : Sir, I am not saying that you should make an exception at all, I am not saying that; I will never say that. But I would suggest that you should give . . .

MR. DEPUTY CHAIRMAN : Whenever I ring the bell for Mr. Goray, he gets offended and sits down.

SHRI K. CHANDRASEKHARAN : Sir, the difficulty is that some Members cannot catch up with the bell and yet continue, like Mr. Bhupesh Gupta. Mr. Bhupesh\*

Gupta never worries about the bell. The Chair may ring the bell twenty times. But if you ring twice, I am undone.

SHRI BIPINPAL DAS (Assam): Sir, on a point of order, instead of wasting the time, I request you to allow Mr. Goray to continue.

MR. DEPUTY CHAIRMAN : For how long. I would have allowed Mr. Goray to continue for 10 more minutes. But if you set the time, I will allow I will allow him any time you say.

SHRI BIPINPAL DAS: I request you to exercise your discretion.

SHRI N. G. GORAY : Sir, I am not going to adopt any dilatory tactics. I will just say what I have to say and sit down.

DR. K. NAGAPPA ALVA (Mysore): Sir, I have a representation to make . . .

MR. DEPUTY CHAIRMAN: When for the first time the bell warning is given, you can take a little more time. That is all.

DR. K. NAGAPPA ALVA : Sir, Sir, we know Mr. Goray's stature, and the role his party has played in the political life of the country. He must be given more time, at least equal to the time that was given to Mr. Bhupesh Gupta.

MR. DEPUTY CHAIRMAN : As far as I am concerned, I know Mr. Goray, I have great respect for him.

SHRI BHUPESH GUPTA: Why not time be given "> Let him be given. I would like to hear him. I am sitting to hear him. But this kind of petty argument about me, I do not like. Always, Bhupesh Gupta, Bhupesh Gupta—it is an obsession with them.

MR. DEPUTY CHAIRMAN : I cannot make an exception. I know Mr. Goray's stature. Let us not waste our time.

SHRI SASANKASEKHAR SANYAL (West Bengal): Sir, I am not wasting the

time. For future guidance, you spot out. There are Members who do not even wait for your bell and sit down.

SHRI N. G. GORAY: Yesterday, the hon. Kumaramangalam had said that for the last six years continuously, the judiciary has been in confrontation with the Government. Now, you want to end that chapter and begin a new. I would like Mr. Gokhale to tell us what it is that he expects from the judiciary. If you do not want a judiciary which will confront you, then do you want to have a judiciary which will always be in conformity with your views ? Or do you want a captive judiciary ? Or do you want a cooperative judiciary ? I would myself say that we would like to have a judiciary which co-operates with the Government in the sense that it tries to understand the urges that are making the Government pass certain legislation and take certain economic and social steps. This is the real harmony that should exist between the judiciary and the executive. Now I would like to ask him whether the steps that they have taken are going to be helpful in creating that sense of harmony, that sense of co-operative effort, that the judiciary functions in its own sphere and you function in your own sphere in such a manner that you together push this country forward socially. That is the ideal solution. But the steps that you have taken have hit the judiciary. You may as well say that what has happened in the country after your decision is only a sort of effervescence. You must take note of the fact that never in the history of India the advocates of the Supreme Court had completely boycotted the Supreme Court, struck work and come out in open denunciation of the Government. And it is not only in Delhi but throughout India. You must try to understand that.

SHRI BHUPESH GUPTA : They are divided.

SHRI N. G. GORAY : That is not material. They are divided in the sense that 20 people are on one side and 100 people on the other. Therefore, I am asking you

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in all seriousness to take note of the situation. We all of us who want to preserve this democratic fabric in this country are interested in seeing to it that the dignity of the court, the advocates, the judiciary is maintained and it is not impaired. That is what I want to say, Sir.

And the last point that I would like to emphasise here is this. By abusing every other judge are you really serving that man ? While you are raising him to that height you are really destroying him. I was reminded of that story in the Mahabharata where Ashwaththama carried for ever on his forehead that bleeding wound. This Chief Justice Shri Ray is going to carry on his forehead this label permanently that he is your trusted man, that he is your yes man while the others were not. This is not going to add to his stature. I do not know him. I do not know any of the Judges. This is one point in my favour that I do not know any of them. I never appeared before them. I do not have any personal knowledge about Justice Shelat or Justice Hegde or Justice Grover or anybody. Sir, the most curious thing is that while you are saying something about Justice Shelat or Justice Hegde or Justice Grover, none of you has come forward to tell us what is it in Mr. Ray that fulfills the conditions that were laid down by the Law Commission. I have been hearing you patiently. You have said that the Law Commission has said that it is not only the seniority. Remember the words "not only seniority". That means that seniority is not ruled out. It is not the only factor that vJjuld determine promotion. Yes, I agree. I have been always for that. But then you must tell us what is it in Mr. Ray that makes him eligible for this rank. Is it the towering personality that was described by the Law Commission ? Has he some outstanding merit ? We have never heard of it. I do not know when he proved his towering peisonality and his outstanding merit. It may be that he has proved it in private but certainly not in public. Therefore, I would like to know why is it that you have raised this person at such a moment in such a manner that

[Shri N. G. Goray.]

he will always carry this stigma that he is a man who is trusted by the Government'.

Sir, this bifurcation of judiciary and executive is a very salutary principle. This is because the people must have complete confidence in the judiciary as far as possible. After all, it is the executive which will appoint the Judges. But every care is taken to see that the judiciary is kept as separate and as independent as possible, irremovable and all that. I would pray of the Government that if they really want to maintain this fabric and if they want to keep all these three wings—the executive, the Parliament and the judiciary—on equal dignity, then they should do nothing, they should not resort to any measures which will destroy that dignity and that authority. I would only pray that the Government sees its way to reviving this dignity which has suffered a very serious set-back. You are destroying the image that has been created by 25 years of patient labour. The Parliament and the people outside were looking up to the federal judiciary with respect. They thought "If we do not get justice here we shall get it there." Not that they were getting justice every time, but at least that myth was there. In a democracy, in any system of Government, myths are very necessary. Myths have an important role to play. If you destroy the myth (that the judiciary is independent, that the judiciary is irremovable, that the judiciary is not corrupt, or that it is not likely to be corrupted, then you are destroying something very important. Please don't do it.

SHRI JOACHIM ALVA (Nominated): Sir, I was not present here when my name was called because I had gone to take a glass of water, and I have been sitting here since 2-30. Thank you very much for calling me. In the last 25 years, we had good judges, bad judges and <sup>is</sup> judges. Now you see how they have come out with their statements.

I came to Parliament in 1950, but I lost one year of Membership due to Mr. Nija-lingappa, the master of reaction, who got me out. But the Prime Minister was good enough to recommend me to the President and make me a Member of this House. Sir, I remember walking from one room to another in 1950. I just opened the door and I saw Pandit Nehru sitting on the dais of the then Supreme Court near the Parliament Library along with Sardar Patel, the first Chief Justice, Mr. Kania, Mr. Sudhir Ranjan Das, Mr. Mukherjee and the grand old respectable man Mr. Patanjali Sastri. I have a vivid impression of that in my mind. Now gone are those "days. We have descended to the level of \*\*\* judges. Sir, I remember also I went to the trial of Dr. Shyama Prasad Mukherjee a few months thereafter. I am an old lawyer. I have forgotten law. I was only a member of the Congress Party when I attended the trial at that time. I knew that he would be acquitted. But there is something which I have not forgotten. Mr. Daphtary is not here. Mr. Daphtary took up the case of the Chief Commissioner of Delhi in regard to the discharge of Dr. Shyama Prasad Mukherjee, Mr. Chatterjee and another M. P. from Rajasthan. He said something about the court. I am not sure of the exact words that he said, but the words of Mr. Sudhir Ranjan Das and Mr. Mukherjee are still ringing in my ears. They said, "Will you withdraw that statement?" Mr. Daphtary immediately withdrew and apologised. Mr. Daphtary is not here now to say whether he will withdraw his statement. He has championed the cause of the monopolists, he has handled property all his life. But I pay my tribute to him for handling the defence of Mahatma Gandhi. But he had been making money, Rs. 2,000 or Rs. 3,000 a day. He is not like Mr. Bula-bhai Desai with whom I was in jail, Mr. Bulabhai Desai was a great man. When his name was mentioned in the Law College, Bombay, I wept. Mr. Bulabhai Desai was a great patriot. Mr. Daphtary spoke about Mr. Setalvad. Mr. Setalvad is the greatest Indian lawyer today. Mr. Setalvad is a

\*\*\*Expunged as ordered by the chair.

grand old man. He has written the biography of Mr. Bulabhai Desai because he learnt law at his feet. Yet he talks of Mr. Setalvad having political motives in his speech. His speech was applauded only by the Opposition, not by the Congress Party. But whenever Mr. Setalvad spoke, we clapped, we had great respect for him. I am grateful to him, for on two great occasions he gave me advice when I was arrested for sedition. When I was in difficulty in a court case, I went up to Mr. Daphtary. When I had a case against me for defamation I went up to him. I said somebody was defective and I went up to him for advice. I always held Mr. Setalvad in the highest esteem. Mr. Setalvad's room was always open to people who are in trouble. And yet he said Mr. Setalvad had a political motive. What is his political motive? All his life he was only earning money? We do not want this kind of lawyers. We have lawyers today who have no sense of patriotism. They have no sense of patriotism. Mr. V. N. Abhyankar of Nagpur was hauled up and he told the court, "I want to be a patriot amongst lawyers. I do not want to be a lawyer amongst patriots." These are the type of people we want. Now what type of people have you got? You have people who boycott courts. What for? Now about Mr. Sikri. I know that gentleman. I know him for years when he was a banister. I will not tell you anything which is not true. I will tell you something about Mr. Sikri and his wife. One day I saw Mr. Sikri and his wife walked out of a cinema house after the picture before the national anthem was sung. I fought with the people in the cinema house. The people walked out of the cinema house before the national anthem was sung. What type of patriots are they? There was another group of young people. I asked (them from where they came). They said they belonged to the military forces from Bombay. Before the national anthem was sung, all these people started leaving the hall. Is this the Chief Justice of India? We want men of character. We want men of patriotism. We want qualities of greatness and even men with right disposition, and not sitting rich all the time. Now about

Mr. Shelat. Mr. Feroze Gandhi paid me compliments that I made the best speech on the Press Bill in the Lok Sabha and he said my wife made the best speech here. There was a journalist in Maharashtra who advertised in the paper. These are the type of journalists. Now, I was telling you about Mr. Shelat. What happened? I had a decree of Rs. 5,000 and my great paper was close down. Netaji Subhas Chandra Bose's photographs were there. No paper in India published them. Subhas Chandra Bose asked me, how did you publish such photographs? The official liquidators at that time said we had to take action because he had not paid some instalments. And the Muslim nationalist, Fazalbhoy, Solicitor, said he is not going away let us forget him. And you know what Mr. Shelat said in the court? Why not jail Mr. Alva?

AN HON. MEMBER: For how much?

SHRI JOACHIM ALVA: For Rs. 100. I would call him a \*\*\*. I use a very strong word because this is a political\*\*\*. I used to call him a\*\*\* . . .

SHRI BABUBHAI M. CHINAI : On a point of order, Mr. Deputy Chairman. Is it necessary for the honourable Member to call an ex-Judge of the Supreme Court in such terms?

SHRI JOACHIM ALVA: What an ex-Judge? No character. He is corrupt. He should have gone out.

SHRI BABUBHAI M. CHINAI : Sir, I submit that what Mr. Alva said about Mr. Shelat should be expunged from the record.

SHRI JOACHIM ALVA : No. no. He is a political\*\*\*.

SHRI BABUBHAI M. CHINAI Mr. Deputy Chairman, I again make a submission to you, kindly use your discretion and

►◆Expunged as ordered by the chair.



[Shri Babubhai M. Chinai.] expunge the words which he has used for an ex-Judge of the Supreme Court.

MR. DEPUTY CHAIRMAN : Mr. Alva, you should finish

SHRI JOACHIM ALVA: He was a "man. (Ti/nc-bell) Don't ring the bell. Why Sir? (Time Bell rings) ... Because his son was there practising in the court and in less than three years lie was carrying away all the briefs and the Bar lawyers protested strongly against him. Is he a man of character ? Is he a man to be appointed the Chief Justice of the Su Court ? Is he worthy of being made the Chief Justice ? Is he fit to sit there ? Once I met him in the Rashtrapati Bhavnn and I asked him "Why the hell you have come here ?" and he ran away from me.

Then, Sir, Mr. Hegde. He is known to be always on the side of the monopolists and he is on their side. All those members on the other side have run away and they un away because they did not want to hear my speech. Dr. Alva and Mr. Veerendra Patil atl have run away and they did not want to hear me speak about Mr. Hegde because he was on their side and he used to make speeches against the Prime Minister of India as a Judge. And, Sir. I have seen with my own eyes his going to the Home Secretary, Mr. Mallayya, in connection with his judgship.

Then, Sir, Mr. Subba Rao. He wanted to become the President of India. He wanted to be the President of India and these people supported him.

Then, Sir, Mr. Sinha. J accuse of Mr. Sinha of downright corruption.

MR. DEPUTY CHAIRMAN : Mr. Alva, you have to finish now.

SHRI Yt ALVA: Please give me more time nse I i ome hunt points to make.

MR. DEPUTY CHAIRMAN : I have already given you more time. I will give you only one minute more. Please wind up quickly.

SHRI JOACHIM ALVA: It is no use, Sir. I want to make some points.

MR. DEPUTY CHAIRMAN: No. Only one minute.

SHRI JOACHIM ALVA: Then, Sir, about Mr. Sinha. He accepted a party on h's 6'ith birthday anniversary from Mr. Shanii Prasad Jain. How does he accept the party as the Chief Justice of India ? Mr. Chinai does not say anything about this.

Then, Sir, one more point. Com the days wien mere were great Judges. I do not know whether my friends know of Sii Subramania Iyer. When he was a Judge in the Madras High Court, he wrote a letter to President Wilson protesting nst the oppression in India by the British. He wrote a v;ry famous letter to Presi 'ent Wilson and the whole world was startled at what it revealed and it became , famous, i /here are those Judges of Mr. Subrama'ia Iyer's calibre? Where are such lawyers ? And where are men of guts these days ?

Today, Sir. we want judges of the right type and we do not want judges who are for the Maharajas, who are against the bank nationalisation and who are against all pro- iive legislation. We want the right type of judges and not judges that the Opposition has been demanding. Thank you, Sir.

MR. DEPUTY CHAIRMAN : Yes, Mr. Sitaram Singh.

श्री सीताराम सिंह (बिहार) : उपाध्यक्ष महोदय, मैं आपकी अनुमति से इस सदन के सम्मानित सदस्यों का ध्यान हज़ारों में भारत के मुख्य न्यायाधीश की नियुक्ति के समय उच्चतम न्यायालय के तीन वरिष्ठ न्यायाधीशों के प्रतिवचन और उन तीन न्यायाधीशों द्वारा स्वागत दिए जाने की ओर खींचना चाहता हूँ। श्रीमन्, आज यह दुर्भाग्यपूर्ण

घटना है कि उच्चतम न्यायालय के जजों की नियुक्ति के सवाल पर इतनी तनावपूर्ण उलझन पैदा हो गई है। यह उलझन क्यों है? यह उलझन इसलिए है कि सत्तारूढ़ दल हर चीज अपने नज़रिये में, अपनी दृष्टि से देखता है और अपने अनुकूल भविष्य की परिभाषा करने के लिए उच्चतम न्यायालय के न्यायाधीशों की नियुक्ति अपने पक्ष में, अपने हित में किया है। आज देश का प्रचुड़ वर्ग मर्शकित हो गया है और चिन्ताग्रस्त हो गया है कि आगे देश में क्या होने वाला है। श्रीमन्, जिस तरह से चन्दन की तामीर है शीतल, ठंडापन, कोई भी पक्ष या विपक्ष या सत्तारूढ़ दल हो, वह यह नहीं कहेगा कि उसकी तामीर गर्म है। सब कोई कहता है। इस चीज की तामीर ठंडी है। शीतल है, तो उसी तरह से उच्चतम न्यायालय के जजों की नियुक्ति होगी चाहिए कि कोई उंगली न उठाये, कोई विवाद खड़ा न हो। लेकिन दुर्भाग्य कि जिस उस स्थिति में आज हम लोग हैं — कल से लोक सभा से लेकर राज्य सभा में इसकी जोरदार चर्चा चल रही है। जिस ढंग से लॉ कमिशन की मंशा के विपरीत, परंपरा के विरुद्ध श्री ए० एन० राय की नियुक्ति की गई है, मैं यह कहूंगा कि दुनिया के राजनीतिक इतिहास में यह बेमिसाल घटना है, श्रीमन्, इस देश की जनता को वोट पर से विश्वास उठता हो जाना था, रह गयी न्यायपालिका, अब न्यायपालिका को भी जनता जका की दृष्टि से देखेगी।

महोदय, हेगडे को इसलिए बरीयता नहीं दी गयी; क्योंकि उन्होंने प्रधान मंत्री की चुनाव याचिका पर खिलाफ निर्णय दिया था और दो न्यायाधीशों श्री जैन्ट और श्री खोवर को इसलिए कि उन्होंने निजी स्वतन्त्रता के बारे में जो निर्णय दिया था सरकार के वह मनपसन्द नहीं था। श्रीमन्, अगर इस मनोवृत्ति को रोका नहीं गया तो वह दिन दूर नहीं कि सरकार कह देगी कि इस देश में उच्चतम न्यायालय की और संसद् की जहरत नहीं है। तब लोकतंत्र का अंत हो जाएगा और कार्यपालिका की बेरी न्यायपालिका बन कर रह

जाएगी। नियुक्ति के सन्दर्भ में श्रीमती इन्दिरा गांधी और ए० एन० मिश्र के विरुद्ध चुनाव याचिका भी है, इस घटना से लोकतंत्र खतरे में पड़े गया है। श्रीमन्, मैं मुझाव देना चाहता हूँ कि तीनों न्यायाधीशों को बुलाया जाए और लोक सभा की विश्वास में लेकर उनकी पुनः नियुक्ति की जाए। श्रीमन्, जनता संसद् भावभीम है। मैं तीनों न्यायाधीशों को बधाई देना चाहता हूँ कि उन्होंने त्यागपत्र देकर इस और जनता का ध्यान खींचा है। मैं सत्तारूढ़ दल को चेतावनी देना चाहता हूँ कि याद रखो, कातिल का बढ़ता हुआ हाथ कभी आपके गले पर चलेगा।

जहाँ तक मेरे मित्र भूपेण गुप्त का सवाल है, उनका भाषण मैंने ध्यान पूर्वक सुना, मुझे कोई आश्चर्य नहीं हुआ इसलिए कि श्री गुप्त स्टालिनवादी हैं, स्टालिन के सिद्धान्त पर चलने वाले हैं। हमारे मान्य नेता महात्मा गांधी, निलक, डा० लोहिया के सिद्धान्त के मुखालिफ़ हैं, इसलिए उनके भाषण पर मुझे आश्चर्य नहीं हुआ।

MR. DEPUTY CHAIRMAN: Mr. Bipinpal Das.

SHRI BIPINPAL DAS : Mr. Deputy Chairman, Sir, I have been following this debate today for more than 4-1/2 hours and I have tried to follow what the Opposition has said on this particular issue.

The first thing that strikes me is that nobody has said that the President and the Government have done anything unconstitutional. The President's action has been strictly in accordance with the provisions of the Constitution. They have raised this question of supersession of 3 Judges and they are making a loud noise about it— inside the House and outside the House— as if this is the first time that supersession has taken place. Supersession has taken place in the past and we are not creating a new precedent about it.

There are Mr. Chagla, Justice B. P. Sinha, Justice P. V. Dixit, Justice Bisham-bar, Justice Hegde and even Justice Grover and they have all superseded I do not know

{Shri Bipinpal Das } how many more may be there. Supersessions have taken place in the past in the field of judiciary and it is not a new precedent.

Sir, some people have referred to the Law Commission's recommendation. Some people have said that the Government have suddenly woken up to the recommendations of the Law Commission that seniority alone should not be the criterion after 15 years.

[THE VICE-CHAIRMAN, (SHRIMATI PURABI MUK.HOPADHYAY) m the Chair]

As I have said, supersession has taken place in the past. I have also said that this is not a new precedent that we are creating today. It is not that we have woken up to the recommendations made by the Law Commission after 15 years.

Now, Mr. Daphtary put forward some strange arguments and tried to twist and give a new meaning to the recommendations of the Law Commission. He said two things. He said that the Law Commission's recommendation that seniority alone should not be the criterion did not mean anything else but the conditions of health or some such minor factors and only in such conditions, somebody might be superseded and seniority may not apply; otherwise according to Mr. Daphtary, seniority should apply. Then he said that the Law Commission never meant this thing to be applied with a political motive and the Government today has applied it with a political motive. In the next breath, he said that the appointment in U.S. is a political appointment. It is not a question of supersession there because the man comes from outside. Now, attempt to justify both the things in the same breath looks like, not exactly, hunting with the hound and running with the hare. I am surprised to hear this kind of logic for man eminent jurist like Mr. Daphtary for whom I have very high respect.

Now, Madam, I do not think that the action of the Government needs any justification in this House or in the other House. The step taken by the Government has been amply justified by one single event and that was the press conference of Mr. Hegde. People were a little confused. But after the press conference, I have met lawyers, doctors, teachers and press correspondents who have said that Mr. Hegde has done one service to the Government and that is, he has himself proved that men like him should not be appointed to the post of Chief Justice. At least in his case, he has justified supersession. Sir, I do not want to discuss personalities. I want to discuss the issues. But I must say in passing that I was very sorry that a man of his stature who aspired to be the Chief Justice of India, should have indulged in this kind of criticism against the Prime Minister or against Mr. Gokhale or against Mr. Kuma-ramangalam. The language that he used against these persons was not expected from a man like Mr. Hegde.

It has been said that this was politically motivated. I just wanted to find a single argument to prove and a single evidence to be given by somebody in this House which would have convinced me that this was actually politically motivated. Mr. Hegde gave the argument that perhaps the Prime Minister was angry with him because he gave his judgment against the Prime Minister in some election case. A correspondent asked him if he had any proof. He said none. Here also we heard the same arguments that the appointment was politically motivated. Please, for God's sake, give one instance and one evidence. Let us also be convinced. People in this House know about my faith in democracy and that I will submit to none in my love for and faith in democracy. But you have not convinced us by any argument or evidence or fact. Do you mean to say that these Judges were superseded only because they did not see eye to eye with the Government ? Do you mean to say that Mr. Ray, the Chief Justice, is seeing eye to eye with the Government ? What is the evidence ? Is it not a fact that only recently Mr. Justice

Ray gave two judgments against the Government, the one on the MISA and the other on the Newsprint Control Order ? These are two vital matters on which he struck down the law. Is it not an instance that Mr. Justice Ray is capable of maintaining his independence ? Is it not a proof that in spite of these two verdicts against the Government, the Government has appointed him Chief Justice? It is not a proof that it is not politically motivated, that he is not a henchman of the ruling Party, subservient to the executive ? What more proof do you want ? It is an evidence that in spite of the two judgments delivered against the Government on two vital matters, he has been selected for Chief Justiceship. That proves our contention that we do not want a subservient Judge, that we do not want to take away the independence of the judiciary. We did not take action out of political motivation. But what is your argument, what is your proof ? My friend, Mr. Goray, wanted to know his special qualifications. He pointed the question to Mr. Gokhale and I hope he will reply to that. But I have given sufficient evidence to show that Mr. Justice Ray is not subservient, the selection has not been politically motivated. So far as Mr. Hegde is concerned, his press conference is a proof in itself. I need not go into it.

Now, Sir, I do not know whether the judges should be appointed on political considerations or not. But then what is happening in other democratic countries? Again my esteemed friend, Mr. Goray, has said: Why should we compare it with the U.S.A.? We have different set-up, different tradition, different circumstances, different political history. Mr. Daphtary also said the same thing. Whatever may be the difference between India and the USA, nobody can deny that the USA is a very big democratic country in this world; so is the U.K., so is Australia and Canada. At least in these four countries the judges are appointed out of political considerations.

SHRI N. G. GORAY: Then say it that you are doing the same thing here also.

SHRI BIPINPAL DAS: I said that I do not believe in it. But even if it is done on political considerations, what is wrong with it so far as democracy is concerned? That is my question. What is wrong in a democratic system if the judges are appointed on political considerations? Now here is a fact. Since 1933 to 1971, 26 Judges were appointed to the Supreme Court of the USA, out of whom 22 belonged to the party of the President in power.

SHRI N. G. GORAY: Do you want to have the spoils system here also?

SHRI BIPINPAL DAS: I do not say that we should imitate it. I am only trying to argue: What is wrong in political appointments in a democratic set-up? Now about the judicial system of the U.K. one eminent jurist has written a book in which he has said, "the best part of all, that of Lord Chief Justice, is virtually a reward for political service." So, this is the verdict given by a legal authority of the U.K. itself. So, this is the system going on. What is wrong if it is done on political considerations? However, it is not so here, I maintain that. I want a proof from you to show that it is so. Even if it were so, there is no contradiction between political appointment of judges and the democratic system.

Sir, about this point that the Judges must be independent, the independence of the Judiciary has been interpreted as political independence of the Judges. Because Mr. Mohan Kumaramangalam said that the Judges must have the social philosophy of the times, they must respond to the winds of change of the times, Members have criticised Mr. Kumaramangalam. May I have your permission to read what President Theodore Roosevelt in his message of December 8, 1908 to the Congress of the U.S.A. said:

"The decisions of the courts on economic and social questions depend upon their economic and social philosophy; and for the peaceful progress of our people during the 20th century we shall owe most to those Judges hold to a

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20th century economic and social philosophy and not to a long outgrown philosophy which was itself the product of primitive economic conditions."

This is what the President of the U.S.A. said about the social commitment of the Judges that they appoint. I think that the arguments put forward in the criticism of the Opposition of the action taken by the Government in this matter do not stand any ground from the point of view of democracy or even of the independence of the Judiciary.

Now about the independence of the Judiciary I had a lot of things to say. But there is no time. I agree with Mr. Goray that in a democratic set-up the Judiciary must be independent. But who has told him, who has told others, that Mr. Justice Ray will not maintain the independence of the Judiciary? Why cast this aspersion on Mr. Justice Ray that he might try to pronounce judgments always in favour of the Government? This is an aspersion on the entire Judiciary that exists today in the Supreme Court and in the High Courts. Are you doing justice to the Judiciary by saying all these things, by casting aspersions on Mr. Justice Ray or other Judges who are there? It is very very unfortunate. I am very sorry. You say independence of the Judiciary; yes, I want the Judiciary to be independent of the Government, of the executive. But no judiciary anywhere in the world can be independent of the social conditions and the social aspirations of the masses. Nobody can be free from that.

Now, look at the judgment in the Fundamental Rights case; 13 Judges have given 11 judgments. I want to ask this question. If it is the duty of the Judiciary to interpret the law, the letter and spirit of the Constitution and of law, why should they not give a single interpretation? Mr. Hegde has said that if the Government wants to translate its social philosophy into

action let it pass laws and it is for them only to interpret the law. But while interpreting the law 13 Judges give 11 interpretations. What does it prove? It only proves. Madam, that even in the matter of reading the letter of the Constitution and finding out its meaning the Judiciary is not agreed or united. Why? What is the cause? It is because they have different outlook, different mental make-up, different attitudes to society and to values, different training. When a particular type of mental make-up is created, it becomes a subjective factor which comes into play in the interpretation of laws and the interpretation becomes different for different persons. If that is so, if this subjective factor comes into play, then what is wrong in Mr. Mohan Kumaramangalam saying that we want Judges to be committed to the social philosophy of the times, a philosophy that is accepted by the vast masses of the people? Therefore I think, Madam, considering all aspects of this question, the action taken by the Government is absolutely justified, absolutely correct; there is no doubt about it.

I would conclude by saying this. Let our critics and the self-appointed guardians and self-righteous defenders of democracy open their eyes and see the rushing torrents of flood waters coming down the slopes. If they can, let them swim with the current. If they cannot, let them step aside and be damned into vegetating in the backwaters of history. But if they stand in the way and try to resist the current they will be swept away and be thrown deep into the sandy beach where they will turn into fossils of a dead past fit only to be objects of a future anthropological museum.

SHRI BABUBHAI M. CHINAI: Madam, I am thankful to you for giving me some time. This is my fifteenth year in Parliament and I have seen several occasions on which very important issues have been discussed and passions have been roused. This is a special occasion when I find that passions have been roused to such an extent that friends have lost their equilibrium. Sometimes. The subject

before us today is a sensitive one. It has to be considered dispassionately. While we have to express ourselves candidly, let us not raise rancour. It is not merely a question of supersession of three Judges. There is more to it—the way the decision has been taken, the reactions of the superseded Judges, as also a good body of the legal profession.

SHRI HIMMAT SINH: On a point of information I would like to know from Mr. Chinai whether his written speech has been written by one of the retired Judges.

SHRI BABUBHAI M. CHINAI: My written speech or my written observations are always mine. It is not borrowed from Soviet Russia or anywhere else, as Mr. Hirnmat sinh always does. One way to look at it would be to take a cynical view and to say that the executive at all times and in every country perennially seeks to push forward its powers; the judiciary is a repository of ancient wisdom but an outdated institution, and that the legal profession has been for ever and always will be a parasitical class. This amounts to sweeping the dust under the carpet and not facing up to the facts. Let us see what has happened? A few days before the retirement of Shri S. M. Sikri, the Chief Justice of the Supreme Court of India, the President of India, on the recommendation of the Prime Minister, appointed Justice Ray as his successor. Article, 126 of our Constitution unambiguously gives this power to the President. There is no constitutional provision as to what course the President shall pursue in this behalf. If he chooses to consult the outgoing Chief Justice, it is the President's will nothing more and nothing less. So, I for one would not even remotely suggest that the President of India has done anything that should be cavilled at.

However, the new appointment, following as it did the long-awaited judgment on the controversial amendments to the Constitution, has/set in motion a serious

controversy. One very unfortunate result is that the judgment itself has paled into insignificance and the debate in Parliament and outside is largely concentrated on personalities and motives.

The gravamen of the charge is that Government have superseded three other Judges presumably on the ground that these Judges were not committed to the new socio-economic thinking of the ruling party. One Judge would have retired in July, 1973, another in June, 1974 and the third would have continued till February, 1977, one month more than Justice Ray.

I have tried my best to understand the viewpoint of the Government. Firstly, it is to ensure a certain degree of stability in the machinery of the Supreme Court, so that the law of the land may be settled and the citizens may know what the law is. Secondly, it is to establish the principle of merit over seniority. There is considerable force in these arguments. I, for one, am thoroughly disappointed that the Supreme Court has been changing its views from time to time on fundamental questions. Again, the latest judgment of the Supreme Court on the constitutional amendments is almost in the void. The majority judgment is left hanging. It has to be interpreted and applied by different constituent Benches with reference to specific cases already before the Supreme Court, and which, in fact, provided the occasion for the judgment. This is, to say the least, extraordinary. Could not the thirteen learned Judges have organised their programme of work in a way that they could have applied the guiding principles of the majority and settled at least one case? At the same time, I would urge upon the Government not to ignore public opinion. The general feeling is that if justice delayed is justice denied, then the supersession of judges in an arbitrary fashion will result in the denial of justice to the public. The citizens go to the highest judicial tribunal of our country, as a court of last resort in civil and criminal matters and as a protector of their rights and liberties. Nothing should be done or should seem to >>>e done

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by the Government of the day which will create the feeling that appointments to the judiciary are politically motivated.

It is for this reason that the Constitution provides adequate safeguards to ensure that the Supreme Court is manned by an independent and efficient judiciary. I am extremely sorry that an impression is sought to be created by no less a person than the Prime Minister among the masses that the opposition to the decision of the Government stems from the vested interests. This is not fair. It is only diversionary tactics.

THE VICE-CHAIRMAN (SHRIMATI PURABI MUKHOPADHYAY): Instead of five minutes, you have already taken nine minutes. I cannot allow you any more time.

SHRI BABUBHAI M. CHINAI: I should be given, at least ten minutes.

THE VICE-CHAIRMAN (SHRIMATI PURABI MUKHOPADHYAY): Only five minutes are given.

SHRI BABUBHAI M. CHINAI: The previous speakers took twenty minutes. I will finish in two minutes.

Having said this, I have to regretfully point out that the behaviour of the Judges who have been affected are not in keeping with the traditions of the judiciary. It is not in conformity with the discipline of the defence forces and even of the much-maligned bureaucrats. What is worse, it falls short of common courtesy expected of ordinary men and women. I am referring to the absence at the swearing-in ceremony of the new Chief Justice and also to the press conference which Shri Hegde had chosen to give the other day.

Surely, those who are supposed to adorn the Bench and are disappointed that they cannot do so, should show respect to the judiciary. The Chief Justice, whoever he is, occupies a Chair, and the Chair has to be respected. By refraining from the official ceremony has not the Chair been

insulted and the judicial system itself devalued? By making references to the worth or lack of worth of the present incumbent to the post of Chief Justice, is not another blow being struck precisely by those people who ought to know better? I would appeal to everyone to uphold equally the prestige of the Government, the judiciary as well as Parliament.

The Prime Minister, Shrimati Indira Gandhi, in particular—I submit—has to be extremely careful in the expression of her views. Of late I find in her a tendency to lay the blame for the acute trials the country as a whole is facing at the doors of everybody else, except her own Government. I fully appreciate that no Government can implement all the policies unless a minimum support on essentials is forthcoming from the opposition parties. Unfortunately, the general public in our country is carried away by

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politicians and political speech es. Is it not time that Shrimati Indira Gandhi calls a meeting of the leaders of the Opposition parties and enters into a working arrangement with them in regard to the programmes for taking care of the under-privileged and all those who are badly affected by droughts and other natural calamities? It is not enough to say that opposition parties do not understand what socialism is and what democracy is. Surely, the ruling party is not the only party which has got all the wisdom and all the understanding of political theories and practices.

(Time Beit rings)

The times are hard, and the problems are pressing. I entirely agree that *the* problems cannot be resolved without institutional changes. Let not these changes be made in a flippant way or on the basis of propaganda that the existing order is vicious to the core.

THE VICE-CHAIRMAN (SHRIMATI PURABI MUKHOPADHYAY): Please sit down. Mr. Schamnad.

SHRI BABUBHAI M. CHINAI: Is it only your discretion that you give the time? You gave twenty minutes to my friend.

THE VICE-CHAIRMAN (SHRIMATI PURABI MUKHOPADHYAY): Mr. Babubhai, you wanted only five minutes and you have taken 13 minutes.

SHRI BABUBHAI M. CHINAI: I never said I wanted five minutes. Please do not put words in my mouth. I have been watching, Madam Vice-Chairman, whenever I want to speak you do not want to allow me. You can always say, "Do not speak". I will not speak.

THE VICE CHAIRMAN (SHRIMATI PURABI MUKHOPADHYAY): I am as impartial as you want a Chairman to be. I allocated five minutes. But because I am impartial I gave you 13 minutes instead of five.

SHRI BABUBHAI M. CHINAI: You have not given 13 minutes. But I am prepared to bow before your ruling. But please do not treat a Member like this.

SHRI HAMID ALI SCHAMNAD (Kerala): Madam Vice-Chairman, let me at the outset say that legally speaking there is nothing wrong in the supersession of the Judges as it is being done today. But, Sir, taking the moral aspect of the question, the way how it is being done, the way how it is being carried out today has created a feeling in the country that even in the judiciary people will be loosing confidence. As far as the executive is concerned, Sir, this suspicion is there everywhere in the country. But as far as the judiciary is concerned, for the last 25 years people have the highest respect for the judiciary because they feel that wherever injustice is done to them it will be undone at the hands of the judiciary. Now even that feeling is being taken away. Till now the Government was appointing Judges because of one's integrity, because of one's legal equipment, because of one's administrative efficiency. Now one other factor is sought to be added, namely, they are appointing him because of social outlook,

because of his political philosophy, because of his opinion. If that is so-justice will be undone. Government openly says that political leaning in his political opinion will be taken into consideration. If that is so, I am only too sorry. Tomorrow the Government of India can be a party to a case and a citizen of India may file a suit against the Government. Now knowing the political philosophy of a Judge, knowing the social philosophy of the person, knowing his opinion on general matters what will happen? It is here that I oppose this appointment.

With regard to the question of seniority, I am of the view, that seniority alone need not be the criterion in appointing the Judges because, as has been said by many hon'ble Members, with regard to the Revenue Board appointments, with regard to the promotion in the Police Department and in many other departments seniority alone is not the criterion. Efficiency and other things are also taken into consideration. Here also I would have conceded if efficiency, administrative experience and legal equipment and other matters are taken into consideration.

On the contrary, the Government openly says that it has taken his political philosophy into consideration. If that is so, we are at a loss to understand why it is being done. The Government ought to have taken the Parliament into confidence. I am not against breaking conventions. Conventions could be broken if it is for the betterment of the people at large. We have no quarrel about it. Now you say it is for the betterment of the common man. Here I may ask: Can a common man today go to the court? Can a common man of Allahabad or Kerala or Mysore go to the Supreme Court or even to the High Court? It is not possible, because litigation is very costly. The court fees are costly. Even the fees of lawyers who are for socialism are very high. It is not possible to approach even socialist lawyers. If a poor man goes to a socialist lawyer and says, "You are after all pleading for socialism. I am a poor man, an



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NGO. Why not plead my case in the court?" He will say "No". So you cannot say that you are only helping the common man by appointing the present Chief Justice. We supported this Government when they brought forward progressively measures like bank nationalisation, abolition of privy purses and so on. We supported the Government in the land reforms in the various States. But we are not able to support the Government on this issue.

Another matter that I should like to refer to is about Justice Hegde. I had high regard for him. I knew him as Public Prosecutor in Mangalore when I was a junior lawyer working in that court. I had high esteem for him. Now after giving up his office, he has lowered himself. Even third class magistrates would not give such statements as he has given. He has said that he gave an order against the Prime Minister in an election petition, it is only an interlocutory order on an election petition. He has made much of even that. He has made some personal remarks about the Law Minister and about other Ministers; just like a politician, like A. K. Gopalan or E. M. S. or any other politician, he has also made speeches and statements. He has become more a politician than a jurist. Therefore, I cannot support Justice Hegde. But at the same time, I oppose the way the Government has tackled the question. It would effect the independence, integrity, impartiality of the judiciary.

SHRI UMASHANKAR JOSHI (Nominated) : Madam Vice-Chairman. I am one of those who believe that the judiciary has also to change to facilitate changes in a developing country. That is how it can survive in a developing country, if I may say so. By adjusting itself to the changing social pattern, rather facilitating change in the social pattern, it can even rejuvenate itself. I think that process was going on in our country, however, backward we may seem to be. It is a pity that the executive should have resorted to what

may be described as shock therapy when it was least called for, when the three-legged race between the legislature and the judiciary was practically over.

There is, on the one side, beating of chests and gnashing of teeth; there is, on the other, an euphoria for having cut down the judiciary to size. This has done untold damage to the great institution of the judiciary. Some persons are vying with one another in decrying the judiciary. There is a glib talk of the judges turning overnight into antisocial monsters. A psychosis is created which would only help the forces of chaos.

The Law Minister in his wisdom in the other House was trying to be correct when he said that the executive did something which was within its right. The cloak was given up by one of his colleagues yesterday in the Lok Sabha. He did not lean on the recommendations of the Law Commission. With almost a sort of an affront; the Minister propounded his philosophy that persons with a social philosophy were to head the Supreme Court, that politics should not be eschewed and even politicians could find themselves occupying position the Bench. This is an attempt, to say the least, to politicise the judiciary and pressurise the judges politically.

Politics is like oxygen. Even a poet like myself cannot breathe without politics. The judge may have had in some cases a brilliant and useful political career. But once he is a judge, qua judge, he is certainly not a politician. The Minister of Steel and Mines referred to U.K. with what appeared to be, to me at least a tinge of sarcasm, as the home of democracy the talked of the Anglo-Saxon ideal of justice. We are trying, in our own little or great manner, to be socialistic, adopting the institutions we have adopted voluntarily to the newer urges. Mr. Kumaramangalam seemed to lay down that in order to be socialistic, we have to be Sovietistic.

This then is the real issue and not merely the supersession of senior judges, which has helped, of course, in throwing up the larger and more important issue. Is the Supreme Court to retain its autonomy or is it going to be an extension of the Legal Department? I should like to tell this House, and, through you, Madam Vice-Chairman, the Lok Sabha, that if the judiciary is emasculated, Parliament will fare no better. The two live and die together. If they quarrel sometimes, that shows their vitality, that shows that they are alive and kicking. An element of fear, I am afraid, is injected into the judicial structure. Mr. Kumaramangalam unfortunately in his speech yesterday has initiated the practice of witch-hunting in the most exalted of our institutions.

Some people are asking the question: Does the Government want scapegoats? If there is no change, is the judiciary the villain of the piece? There is so much swearing by social change. It is perhaps a stance on the part of many. Look at the living conditions of the people in our country. Who is presiding over so much inefficiency and corruption in our country?

The least that should be done is to assuage the feelings of the people, to take them into confidence,—I would urge the Law Minister to consider this—about the autonomy of the judiciary in our land and frame rules for the appointment of the Chief Justice of the Supreme Court by a committee of members of the judiciary and representatives of Parliament. The executive should be the last to deal with such an appointment.

SHRI H. R. GOKHALE: Madam, Vice-Chairman, it has been a long debate lasting over five hours and I have listened ...

SHRI OM MEHTA : It is six hours.

SHRI H. R. GOKHALE: I have listened to all the speeches with great attention. Some have said that what the Government has done is a very right thing to do

and others have said that it may be right, but the liming is bad and still others have said that what is done is wholly wrong. I am grateful to Mr. Goray and some other honourable Members who drew the attention of the House to the basic and fundamental question which really deserves to be discussed *in extenso* in order to clear our minds as to what the principle is. What the policy is, what the foundation is, for adopting a certain policy.

I agree with Mr. Goray that the issue, that an issue like this, should be discussed without any feeling of bad temper or acrimony and the discussion should be confined to the basic issues. But, since I am replying to the debate, Madam, it is my duty to refer to some of the questions which have been raised in the course of the debate and, therefore, before I go to the main basic issue which really is the issue, I will dispose of the other points which have been raised in the course of the debate.

Madam, in this House, excepting one honourable Member, an honourable Member of the DMK, nobody has raised any doubt about the constitutional validity of this appointment. To my mind, it is quite clear that it was within the powers of the President on the advice of the Council of Ministers to make the appointment of the Chief Justice of India.

I do not wish to enter into a legal argument on this. I have had occasion to speak something about this in the other House and, to my mind, it appears unarguable, after reading the two articles, article 124 and article 126, that such a power does not vest in the President.

The question is whether this power should have been used and used in this manner. That really leads us to the wider question to which I will come later. But, unfortunately in the course of the debate, wild allegations have also been made and motives have been questioned. One honourable Member said that it is unfortunate that while we are dealing with the judiciary, allegations which go to reflect on the integrity of the Judges have also

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been made, particularly on the present incumbent who is occupying the high position of the Chief Justice of India. It was said that it was reported that either myself or some one else went and saw the Chief Justice of India a day before and asked for an assurance from him that he will decide cases in our favour.

I cannot help repudiating this as a blatant lie. No Chief Justice would be worth his assignment if he gives such an assurance and no Law Minister would be worth his position if he asks for such an assurance. Therefore, the question of taking an assurance from a Judge that if he *gives* a certain office he should give a certain type of verdict in specified cases is, to my mind, unthinkable and that such a thing should have been mentioned in the course of the debate is, to my mind very unfortunate.

It was said with reference to my short intervention in the Lok Sabha a couple of days ago that I had confined the discussion to the Report of the Law Commission. I would like to remind the honourable Members that on that occasion I was only intervening at the Zero Hour when these questions were raised and it was not a full-fledged debate. The full-fledged debate in the Lok Sabha has started yesterday and will end tomorrow and probably the first opportunity which I have to deal with the basic issue is here today when I am making this reply to the debate in this House. An impression was sought to be created that in view of what my colleagues and friend spoke in the Lok Sabha yesterday, probably he and I are projecting different points of view.

I would like to disabuse the hon. Members of any such suspicion. On vital issues I like this one has to be clear, all members of the Government have to be clear as to what the basic objectives in view are. There may be a different approach to it. One may put it in one way and the other in another way but so far as the basic

approach is concerned, there cannot be a difference of opinion.

I referred to the Law Commission. I read the relevant portion of the Law Commission's Report, rather *in externa*, in the Lok Sabha and said that the eminent jurists and the lawyers who constituted the Law Commission had given a unanimous report so far as this aspect of the matter was concerned and have recommended that the convention of appointing Chief Justices on the basis of seniority should be given a go-by. They specifically examined the various issues which arose when this matter was taken into consideration and they have said that the Chief Justice of India may be appointed from one or the other of the junior Judges of the Supreme Court or of the High Court or from the Bar. It is true that they have not said that it should never go on the basis of seniority but the test is not the seniority. The test which they have indicated is that the Chief Justice of India by the very nature of the office which he is called upon to hold has to perform functions which are very different from the functions of a puisne judge of the court. They also observed that in appointing the senior-most judge in the office of the Supreme Court of India, does not mean any reflection on those who are superseded because the fact that a person is erudite and a very competent scholar and learned in law is in itself not enough for determining the question as to whether a person should at the same time be regarded as capable of holding the position of the Chief Justice of India. They have said that the Chief Justice of India requires certain qualities of leadership, a certain amount of experience, a certain amount of knowledge—I am repeating their words—of men and matters in view of the major constitutional issues which come before the Supreme Court and which the Supreme Court is called upon to decide. Therefore, I do not see why there is this feeling of shock. The charge perhaps is correct that we did not do it earlier. We waited so long. Perhaps we should have done it earlier but it does not mean that the validity of the recommendations of the Law Commission is impaired because

they were not implemented so far. In my respectful submission, if at all they were at any time valid, they were not really so valid at any other time than they were in the circumstances today. Well, look at the argument that if the senior-most man is not appointed as the Chief Justice of India, there is a great danger of the independence of the judiciary being impaired. Why is there this fear so far as our country is concerned? Even in our country it has not happened. I can quote innumerable instances where not recently but for the last several years in the High Courts appointments to the Office of the Chief Justice have not been made on the basis of seniority. There are instances in Calcutta, in Madhya Pradesh, in Kerala where the Chief Justice's appointment had been made on considerations other than the considerations of seniority and even in the last 25 years nobody has complained that the independence of Judges of the High Court has been impaired because the senior-most has not been appointed as the Chief Justice of India. Bypassing of seniority has taken other forms also. Many people who have been junior in the High Court have been straightaway elevated either to the Supreme Court in suppression of their senior in that Court or have been elevated as Chief Justices of other Courts. I am not bringing in personalities. I agree that we should avoid any discussion on the personalities in the major and fundamental issues of this kind. In spite of that, I have been the target of a personal attack. I do not wish to bring down the level of this debate by replying to the personal attack. I would rather leave that aside and treat them with the contempt which some of the statements deserve.

But the point is that even those people who benefited by supersession are complaining. Mr. Justice Hegde himself superseded two or three of his senior colleagues from the Mysore High Court when he was elevated to the Supreme Court. He superseded many other Chief Justices of other High Courts who were senior to him. Mr. Justice Grover was certainly not the senior-most Judge in the Punjab High Court when

he was elevated to the Supreme Court. Mr. Ray, the present Chief Justice, was not the senior-most Judge in the Calcutta High Court when he was elevated to the Supreme Court. There are innumerable instances. If I had the time, I would have given you at least two dozen instances or perhaps more in which these supersessions have taken place in one form or another in the last 25 years, that is after Independence. Nobody was ever grumbled about it. Nobody has ever complained that the independence of the judiciary has been impaired because of this and that the High Court Judges have not been performing their duties in a proper way because they fear that they will be superseded. On the other hand, it is common knowledge that even after the passing of the first constitutional amendment, a major legislation dealing with agrarian reform was first struck down by the High Court. Innumerable instances can be quoted where the High Courts, in the course of the last 25 years or so, have struck down legislations passed by Parliament and have questioned the validity of constitutional amendments. What kind of independence is this which solely depends on the possibility of being promoted to the highest office. A judge's independence mainly rests in his conscience. It rests on the constitutional guarantees which have been given to him in the Constitution. A reference was made here that a judge's salary once fixed, cannot be decreased except by the process of constitutional amendment or it cannot be increased. A reference has been made here that no judge can be removed from his office except for proved misbehaviour in accordance with the procedure laid down in the Constitution, namely, by way of impeachment in Parliament. Every judge is assured that whatever be his honest and conscientious conclusion in a given and specified case, there is no fear of his being removed. But the fear that he may not get the Chief Justice's post is a fear which is enough to impair his independence. I do not agree that our Judges are made of that poor stuff. Our Judges have shown independence when a challenge was made and when they faced situations of a very difficult character.

[Shri H. R. Gokhale]

Sir, I really must confess that I did not quite follow what was said by Mr. Daphtary because he once said that the timing was bad and the modality was bad. I do not know whether I am right in saying that otherwise if this modality had not been adopted, it would have been good. But assuming that he did not like the steps also, I will proceed on that basis.

I am, with all respect for Mr. Daphtary, unable to agree with his arguments. Why was the modality bad? If we had done it earlier before the case was heard, these very friends would have legitimately said that we did that at that time because we wanted to pressurise the Judges when they were about to deliver judgment on a major case of momentous importance. They would have argued that we had forced the resignation of all these Judges in the midst of a case so that the whole process of arguments which had gone on for a considerably long time, perhaps the longest in the history of the Supreme court—I am not sure—was thwarted by our taking the step at that time. I also regret that it was mentioned by one hon. Member that the Government had prior intimation because it was leaked out to the Government as to what the judgment of the Court was. Sir, I will assure the hon. Members that the day on which the judgment began to be read in the Court, my officers were sitting in the Court and it is only when every judgment was being read that the officer went to the telephone and told me on the telephone that so and so Mr. Justice has taken this view. I was jotting it down like cricket score—jotting down from morning till afternoon—to tally the results as indicated to me on the telephone on that very day.

Then, somebody said that in the course of this discussion notes were not circulated; this thing has leaked out. This is a matter entirely within four walls of the Supreme Court and the Judges alone know. And I do not know who leaked this out to the hon. Member. What are the sources of his information?

The question is not a minor question. The question is of vital importance where we should not allow our ideas to be mixed up in these petty attributions to motives either on one side or the other.

Then it was said that the Law Commission's recommendations were misunderstood, although Mr. Daphtary did not care, unfortunately, to explain where the misunderstanding lay. According to me there is no scope for any misunderstanding whether we like it or not whether we implement the recommendations or not. One is entitled in his liberty to say now that in his view the recommendation was wrong and it should not have been so. That I can understand.

श्री जगदम्भो प्रसाद यादव : सौ कमिशन के जितने मेम्बर हैं, वे सब जिन्दे हैं और उन्होंने इस एक्शन को कंटेम किया है। इससे ज्यादा और ख़ास क्या चाहते हैं ?

surprises me. I can understand people saying that in the circumstances when the recommendation was made they thought it was right. But I think in the present circumstances the recommendations hold valid. I can understand that. But Mr. Daphtary's argument was that it was misunderstood, that the recommendation was misunderstood; and I do not know how it was misunderstood because he has not explained how it is misunderstood. Then he was referring to laws which are made and he was saying that bad laws are made. Well, I do not want to dispute it; probably we may be making bad laws sometimes, but our quarrel is not with the striking down of the laws. He said: Why not make good laws so that they are not struck down.' Well, we want to. If the Government and Parliament proceed on the basis of the law laid down by the Supreme Court and frames legislation on that foundation and then the law is challenged the Supreme Court says "What we laid down earlier was not correct; it was a bad law"—as the Supreme Court says now, but was a good law as the Supreme Court said earlier. I am eager to point out—and I would

repeat ii—because some reference was made to it in this House, that in the last six or seven years the relations between Parliament and the judiciary have not been for very happy. Golak Nath's case struck a blow to the supremacy of Parliament, to the sovereignty of Parliament and thus to the sovereignty of the Indian people. But let me remind the House that even before the Golak Nath judgment there were two judgments of the Supreme Court where the Supreme Court had upheld the right of Parliament to amend any provision of the Constitution. Now if the law is struck down after a series of decisions altered by the Supreme Court after a course of years, what has the Government to do? How are the people to know? But it has not happened only once in Golak Nath's case. That was a blow, as I said, because that went into the root of the matter where the sovereign power of Parliament to amend any provision of the Constitution itself was challenged. But it has happened in a number of cases. Let us go to the bank nationalisation case. Article 31(2) was amended by the Fourth Amendment. The Fourth Amendment had been held valid. Even a few months before the bank nationalisation case, in another case which is known as the Shanti Lal Mangaldas case, the Supreme Court had upheld article 31(2).

And when in the bank nationalisation case there is what you might legitimately call a judicial somersault all that had been laid down has been held to be bad and we are told that that was not good and this is good. How is one to understand what the law of the land is? In the Princes case even before the Act of the Government discontinuing the Privy Purses was struck down the High Court had laid down that the recognition of the Rulers was a political act and the court could not go into it but in the latter case which came before them they said, no, we can go into it. The Government passes legislation or takes executive action on the basis of the

interpretation of the law given by the Supreme Court. What else is the Government to do if it is not to do this? There has been such an uncertainty of the law that one sometimes felt whether the Supreme Court itself knows its mind. One sometimes felt that in any case the people, the Government and the Members of Parliament were entitled to know after all what the law of the country is. Then questions arise for bringing up amendments of the Acts. Since you have said we amend the Act accordingly because we respect the judgment of the courts. That is the only way in which Parliament can function. In all these cases the majority of the Supreme Court—I regret to say—has always taken up a stand which has gone contrary to national aspirations. I am not saying the aspirations of a party; there is something like national aspirations. By what large majority of votes in both the Houses were these amendments passed? They reflected the bulk of opinion in the country and yet you find some Judges taking a view which thwarts all these measures of legislation, whether it is bank nationalisation, whether it is abolition of Privy Purses, whether it is derecognition of the Princes or whether it is the question whether Parliament had the power to amend the Constitution or not. It has all been known; there is nothing for a shock here. Now I am not going to England because we are not in a position to justify what has been done in the country but because we all regard—I believe most of us in any case regard—that the system of British justice has been regarded as invulnerable, has been regarded to be independent. We ourselves in India have largely drawn from those countries where the Anglo-Saxon system of Jurisprudence prevails like England, Canada, Australia or the United States of America. We have taken something from everywhere and harmonised all that is good into what we now call our Constitution. That is why we say that in England this has been done innumerable times and in England I can say with confidence that nobody has ever questioned the right of the executive to appoint the Lord Chief Justice

. [Shri H. R. Gokhale] ignoring seniority. It has been done not once but umpteen times. The Lord Justice of the Court of Appeal is elevated to the position of the Lord. Chief Justice of Eng-land by passing the Master of the Rolls who is the Chairman of the Court of Appeal. People have been appointed directly to the House of Lords from the Court of Appeal; people have been appointed from the Bar. For a long time the convention was that the Attorney-General was, as a matter of course, offered the position of the Lord Chief Justice of Eng-land and yet nobody said...

SHRI LAL K. ADVANI: May I interrupt? I would merely submit that no one questions that. The issue is the rationale behind the action as presented by Mr. Kumaramangalam.

SHRI H. R. GOKHALE: All this has a bearing on the rationale.

SHRI LAL K. ADVANI: But that is not the issue.

SHRI H. R. GOKHALE: We cannot argue between each other. I am arguing my point in my own way. The question is I regard it as very important for the rationale that all this ought to be mentioned. If the rationale in England is that these things do not impair the independence of the Judiciary—it is conceded that England is a democracy; it is conceded that in England there is a fairly efficient machinery for the administration of justice—why should there be a doubt here? Have we no faith in the genius of our people, in the genius of the representatives of our people, in the genius of those who constitute the Judiciary in this country? This is beyond reproach in countries where identical or near-identical systems of jurisprudence exist. No one has even cared to raise a whisper against this thing. These things are raised now and I do not understand why. I am not referring to political appointments because we have not taken political considerations into account in making this

appointment. I am referring to appointments in England, Australia and Canada. I will not refer to America because now the position there stands slightly on a different footing.

श्री जगदम्बी प्रसाद यादव : सुपर लॉ मिनिस्टर तो यहाँ है नहीं, उनका जवाब तो हुआ नहीं ।

SHRI H. R. GOKHALE: You can borrow your phrases from Mr. Justice Hegde, I have jno objection, but I am not accustomed to borrowing from anywhere.

(Interruptions)

SHRI VEERENDRA PATIL (Mysore): Madam...

SHRI JOACHIM ALVA: He is a friend of Mr. Hegde.

THE VICE-CHAIRMAN (SHRIMATI PURABI MUKHOPADHYAY): I will not allow this kind of interruptions. For five hours you have continued the discussion touching on different aspects. Now, the Minister is replying.

SHRI VEKRENDRA PATIL: On a point of order...

THE VICE-CHAIRMAN (SHRIMATI PURABI MUKHOPADHYAY): You did not rise on a point of order earlier.

SHRI VEERENDRA PATIL: That is what I am saying. The point is nobody has questioned the right of the Government...

THE VICE-CHAIRMAN (SHRIMATI PURABI MUKHOPADHYAY): It is no point of order.

SHRI VEERENDRA PATIL: How can you arrive at that decision without hearing me fully? I have not uttered even one sentence.

(Interruptions)

THE VICE-CHAIRMAN (SHRIMATI PURABI MUKHOPADHYAY): Mr. Patil, there is no point of order. This is only bullying the Minister and the House. We cannot be treated like this. Please sit down. Minister, please go on.

SHRI VEERENDRA PATIL: I wanted to say by way of a point of order something, but even without hearing me you say there is no point of order.

SHRI H. R. GOKHALE: I was referring to other countries for the simple reason that, while experience of public affairs and the background of political experience is regarded as a plus point in determining...

SHRI N. G. GORAY: Let him at least formulate his point of order and then you can rule it out.

SHRI VERENDRA PATH.: It is very strange that the Chair rules that there is no point of order. I did not say anything. I did not elaborate it. I was just speaking and at that time the Chair rules that there is no point of order. Where is the point in our rising on a point of order? Whether there is any point of order or not, it is for the Chair to rule later on. If the Chair does not want to hear a Member and before hearing the Member the Chair wants to say that there is no point of order, I do not want to say anything.

THE VICE-CHAIRMAN (SHRIMATI PURABI MUKHOPADHYAY): Please continue.

SHRI H. R. GOKHALE: I was saying that it is not something which is not being done in all the democratic countries, that if you select a Judge or when you appoint the Chief Justice you do not take into account his background, his social outlook, his understanding and experience of social and economic matters. I was saying that other countries have gone much further than this inasmuch as even active political participation has been regarded as a plus

point. We have not done that and we are not going to do that. What I am saying is that it is not such a shocking thing . . .

श्री जगदम्बी प्रसाद यादव : पैसा कर लेते हो ब्रॉडर क्यों होता ।

SHRI UMASHANKAR DIKSHIT: Nobody interrupted earlier.

SHRI H. R. GOKHALE: A charge has been made that in appointing a person as the Chief Justice of India it has been so done because he will be amenable to our views and to our desires. Now, this is completely without foundation and it is baseless. This argument shows, I would respectfully submit, an ignorance of the considerations which weigh with us when we appoint a person as the Chief Justice of India or a Judge of the Supreme Court. It is also an illusion to believe that Judges, because they happen to be Judges, are demigods who have no opinions, who have no prejudices, who have no predilections or biases. Judges like all men have predilections, prejudices, biases and opinions. I would point out that the famous and perhaps the greatest American judge, Benjamin Cardozo—he was one of the ablest judges in America—describes this as follows:—

"Deep below consciousness or other forces, the likes and the dislikes, the predilections and the prejudices, the complex of instincts and emotions and habits and convictions, which make the man, whether he be litigant or judge."

And therefore in choosing a person, it is absolutely necessary that you have to take into account what is the background of the person. To say that he will decide a case in our favour is a wrong way of putting it. We do not mind a case being decided against us. But the question is, he will interpret the Constitution, give a proper interpretation of the Constitution and not import into the Constitution his basic philosophy which is hostile or against the national aspirations. I am referring to this



, H. R. Gokhale.]

because I wanted to point out that this is not such a thing as has created any revolution in India, that we are departing from something which has not been regarded as the proper thing today anywhere. In Mr. Justice Ray, we have a person about whom, through his judicial pronouncements, we have been able to know how he has been reacting to major issues of national policy. It requires great courage for a single Judge in a Bench of eleven to differ and take a different view on article 31(2) with regard to the compensation in the bank nationalisation case. It requires courage to be in a small minority in the Princes case and to say that the system of the princely order can no longer prevail in India and that the privy purse should be abolished. It is wrong to say that he has decided all the cases in our favour, it is also not taking into account all the facts. I can give a long list of cases which Mr. Justice Ray has held against us, the last two being of recent memory. In the MISA case, he joined the unanimous judgment of the Supreme Court, striking down Section 17A of the Maintenance of Internal Security Act. He was the Judge who read the leading judgment of the Court in the case where the newsprint control policy of the Government was struck down. He was the writer of the leading judgment in that case.

Therefore, the question is, we do not expect a Judge to decide in our favour. If anybody went and asked the question. "Will you decide a specific case in ray favour?", I have already answered that question: No Minister will be worth his salt to ask the question and no Judge would be worth his salt to give such an assurance. But the point is that you take into consideration the overall background of the man, his approach to national issues, whether his approach has been such as not to thwart national aspirations and the steps taken for the achievement of those national aspirations or whether he has always been, more often than not, an obstacle to progress. If these considerations have weighed with us, I have no reason to be apologetic in saying that these are the considerations which have weighed with us in making the selection of the new Chief Justice.

THE VICE-CHAIRMAN (SHRIMATI PURABI MUKHOPADHYAY): The House stands adjourned till 11.00 A.M. tomorrow.

The House then adjourned at forty-nine minutes past seven of the clock till eleven of the clock on Friday, the 4th May, 1973.