

was leaving Son Nagar station situated on the Gaya-Mughal Sarai section of the Grand Chord on the Eastern Railway an U electric goods train side-collided with it. As a result the fourth coach from the engine of the passenger train was badly damaged and capsized, 5th and 6th coaches also capsized and the 7th coach derailed. The electric engine of the goods train along with two wagons went down the embankment and next 11 wagons derailed and capsized. I regret to say that 9 persons were killed and fifty-two injured, of whom five seriously, as a result of the accident.

The Assistant Operating Superintendent, Dehri-On-Sone and the Assistant Engineer attended the site of the accident immediately with two railway doctors. The Accident Relief Train from Son Nagar reached the site of the accident at 01.00 hours with two railway doctors. The medical van from Gaya accompanied by one railway doctor and three other doctors reached the site of the accident at 03.50 hours. The medical van from Mughal Sarai accompanied by the Divisional Medical Officer Mughal Sarai reached the site of the accident at 04.35 hours. The Divisional Superintendent, Danapur accompanied by Divisional Officers reached the site of the accident at 07.05 hours. Senior Deputy General Manager of the Eastern Railway, the Chief Medical Officer and the Chief Commercial Superintendent also attended the site of the accident.

I myself accompanied by the Member (Engineering) and the Director (Safety) Railway Board left for the site of the accident by air. We reached at 21.50 hours and visited the injured in the hospitals at Dehri-On-Sone and Son Nagar.

The Additional Commissioner of Railway Safety is holding inquiry into the accident beginning on 20-11-68 at Son Nagar.

*Ex-gratia* payment to the next of kin of dead and to those injured has been arranged.

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1968.

THE DEPUTY MINISTER IN THE MINISTRY OF LAW (SHRI MOHAMMAD YUNUS SALEEM) : Sir, I

move for leave to introduce a Bill further to amend the Code of Civil Procedure, 1908.

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

SHRI MOHAMMAD YUNUS SALEEM : Sir, I introduce the Bill.

THE JUDGES (INQUIRY) BILL, 1968—continued.

श्री निरंजन वर्मा (मध्य प्रदेश) : श्रीमान् जजेज इन्क्वायरी बिल 1938 सदन में लाया गया है। इसके पूर्व लोक सभा में जब यह बिल लाया गया था और वहां इसके सम्बन्ध में जो আলোचनाएँ हुई थी उनका उत्तर देते हुए इन बातों के उपर होम मिनिस्टर ने प्रकाश डाला था। हमारा यह निश्चित मत है कि इस बिल को लाने में गवर्नमेन्ट का दो प्रकार का उद्देश्य है। अभी तक शासन के द्वारा यह यत्न किया जा रहा था कि किसी न किसी प्रकार से जजेज को भी अपने प्रभाव क्षेत्र में रखा जाय। दो प्रकार से जजेजों को प्रभाव क्षेत्र में रखा जा सकता था और वे दोनों प्रकार के काम सरकार ने अपने हाथ में लिए। एक प्रकार का काम तो यह था कि जजेज जब रिटायर हों तो उनको अधिक में अधिक कमेटियों में ले लिया जाय और उन कमेटियों में लेने के बाद उन जजेज के लिए ऐसे काम दिए जाय जो जनता में हिल-मिल कर किए जा सकते हैं, उदाहरण के लिए अभी तक यह परिपाटी चली आ रही थी कि सबसे ज्यादा प्रजातंत्र का कोई रक्षक होता है तो वह न्यायाधीश होता है, जो पार्टी सरकार चलाती है अगर वह पार्टी किसी प्रकार में अन्याय करने पर तुल जाय और विरोधी दलों का दमन करने लग तो विरोधी दलों को एकमेव आशा यह रहती थी कि वे न्यायालय की शरण में जा सकते थे और न्यायालय से न्याय पाने की इच्छा रख सकते थे। इस बिल के आने के बाद यह सम्भावना और भी नष्ट होती चली जा रही है।

जैसा कि हमने पूर्व में निवेदन किया, पहली बात तो यह है कि जजेज को किसी प्रकार से

[श्री निरंजन वर्मा]

प्रलोभन नहीं दिया जाना चाहिए। अगर न्यायाधीशों को किसी प्रकार का प्रलोभन दिया गया तो न केवल वे अपने कर्तव्य में और धारणा में गलत होंगे, अपितु इस देश को भी हानि होगी और प्रजातंत्र की भावनाओं पर एक भारी कुठाराघात हो सकता है। पहले यह क्रिया नहीं चलाई जाती थी कि जजेज के लिए यह प्रलोभन दिया जाय कि तुम्हारी नौकरी समाप्त होने के बाद किसी न किसी प्रकार से तुम्हें दुबारा प्रशासन के द्वारा फिर नौकरी में किसी दूसरे बहाने से रखा जा सकता है या किसी दूसरी प्रकार की नौकरी दी जा सकती है। प्रशासन ने बड़ी होशियारी से और अक्लमंदी से यह काम अपने हाथ में लिया। अब भिन्न-भिन्न प्रकार की जो कमेटियां बनती हैं उनमें किनी न किनी बहाने रिटायर्ड जज को पहुंचा दिया जाता है अर्थात् एक न्यायाधीश के मन में यह इच्छा जागृत होगी कि यदि हम सरकार की तरफदारी करेंगे, सरकार का पक्ष समर्थन करेंगे तो सम्भवतः आगे चल कर हमें सरकार कोई नौकरी देगी, नौकरी नहीं देगी तो किसी न किसी प्रकार से चोर दरवाजे से किसी कुर्सी पर बठने का अवसर मिल जायगा और दस-पांच साल आनन्द के साथ व्यतीत हो सकेंगे। एक प्रलोभन यह था जो सरकार के द्वारा दिया गया और उसी का परिणाम है कि सरकार अनेक कमेटियों में इस बात की गुंजाइश रखे चली आ रही है कि रिटायर्ड न्यायाधीशों को अधिक से अधिक स्थान दिया जाय। दूसरी बात, अगर इस प्रलोभन से भी न्यायाधीश जो ईमानदार होता है, दृढ़ रहता है, जो पक्षपात द्वारा सरकार का पक्ष किसी प्रकार से समर्थन करने के लिए तैयार नहीं है, जिसकी इच्छा शक्ति दुर्बल नहीं है, सरकार और विरोधी दोनों को एक बराबर समझता है, उसको आतंकित करने के लिए, उसको डराने के लिए यह बिल लाया गया है और यही कारण है कि अब जजों के ऊपर एक नगी तलवार लटकती रहेगी और वे यह समझेंगे कि अगर हमने किसी पार्टी का अहित किया—और अधिकांश में ऐसी पार्टी कोई नहीं हो सकती

जिसके हाथ में शासन आए, जिसके हाथ में मौ मेम्बर या पचास मेम्बर है, उदाहरण के लिए इस बिल के पास होने के पश्चात् लोकसभा में यह प्रश्न आए, किसी भी पार्टी के सौ मेम्बर किसी एक जज के बारे में यह धारणा बैठा दें कि इस जज को कुर्सी से हटाया है तो वहां मौ आदमी लिखकर प्रेसिडेंट को देगे और अगर राज्य सभा में यह प्रश्न आए तो 50 आदमी लिखकर प्रेसिडेंट को दे दे और इसके पश्चात् अगर प्रेसिडेंट चाहेगे तो अपनी इच्छा और विवेक के अनुसार एक कमेटी का निर्माण करेंगे। और उस कमेटी ने हाईकोर्ट का जज होगा, एक सुप्रीम कोर्ट का और एक कोई अच्छा ऊंचे दर्जे का व्यक्ति जो जुडीशरी में विश्वास करता हो, ऐसा व्यक्ति चाहे वह वकील हो, चाहे रिटायर्ड जूरिस्ट या बार असोसियेशन का प्रेसिडेंट हो, या कोई भी व्यक्ति हो। इन तीनों को वह रख लेगे। लेकिन इन तीनों को रखने का जो विधि और विधान है वह भी एक प्रकार से बहुत अच्छा नहीं कहा जा सकता। उसमें ऐसे व्यक्ति आ सकते हैं जो जजों को आतंकित कर सकते हैं और जजों को आतंकित करने के बहाने या उनको डराने के लिये, चाहे कोई जज हर प्रकार निष्पक्ष रहे और चाहे किसी प्रकार सरकार की इच्छाओं के सामने झुकने के लिये तैयार नहीं हो, उसके लिये वह हर कार्यवाही कर सकते हैं। मेरे कहने का उद्देश्य यह नहीं है कि हर समय यह कार्यवाहियां होती रहेगी लेकिन एक भावना यह भी है कि इन कार्यवाहियों के लिये दरवाजा खोल दिया गया है। जो पार्टी इन पावर है, जो शक्ति निहित दल है, जो पार्टी शासन सत्ता में बैठी है उसको अगर जज का अभिप्राय अपने विपरीत मालूम हुआ तो वह उसकी आतंकित करने के लिये इसके द्वारा जल्दी क्रियावित किया जा सकता है। मैं सरकार में पूछना चाहता हू कि सरकार उत्तर दे कि इन अट्ठारह बीस वर्षों से सरकार को अभी तक इस तरह का बिल लाने की आवश्यकता क्यों नहीं हुई। 1950 में जब कांस्टीट्यूशन बना था, तब धारा बनी थी इस प्रकार का कानून बनने के लिये। इस बिल को सन 1950 में नहीं लाया जा

सकता था लेकिन 1950 के बाद, 18 वर्ष व्यतीत होने के बाद सरकार को इस बिल को लाने की अब क्या आवश्यकता पड़ गई। इन 18 वर्षों में कोई गजब तो हो नहीं गया, कहीं पर कोई बहुत ज्यादा अन्याय तो नहीं हो गया और अगर कोई इस प्रकार के अन्याय होने की शिकायत सरकार के पास आती तो वह इसी दृष्टिकोण के साथ किसी खास व्यक्ति या घटना को सामने ला सकती थी। लेकिन इन दिनों यह बिल लाने का उद्देश्य कुछ यह भी हो सकता है कि विरोधी दलों को इस बात का भय रहेगा कि इन दिनों जब कि कांग्रेस सरकार स्थान स्थानों पर हार रही है, जब कि प्रदेशों में कांग्रेस सरकारें नष्ट होती चली जा रही हैं इसलिये कांग्रेस सरकार अपने हाथों को मजबूत और सज्जन बनाने के लिये इस प्रकार का बिल जिसकी कभी कोई आवश्यकता नहीं थी और अभी पिछले अठारह वर्षों में जिसकी कोई आवश्यकता नहीं समझी गई थी, उसको ला रही है। अपने हाथों को मजबूत करने के लिये इस बिल को ऐसे समय में लाया गया है इसके सिवाय और बहुत सी बातें कही जा सकती हैं लेकिन स्टेटमेंट आफ अवॉकेट्स एन्ड रीजन्स में बताया गया है

"Under the Constitution, a Judge of the Supreme Court or the High Court may be removed from office on the ground of proved misbehaviour or incapacity of the judge after an address has been presented to the President for such removal by each House of Parliament"

इसमें दो बातें हैं। या तो किसी जज के मिस-विहवियर का होना या किसी जज की इन-कैपासिटी, अयोग्यता का होना। ये दोनों बातें 18 वर्षों में शासन के समक्ष अभी तक नहीं आ पायी हैं, यह अभी क्यों शासन के सामने आई है। अगर ये दो बातें शासन के सम्मुख आई थी तो यहां पर कहना चाहिये था कि हमको फलाने फलाने केस में इस प्रकार की अनियमितताएँ देखने में आई या जजों ने कहीं भ्रष्टाचार किया या मिसबिहेव किया। जब तक ऐसे उदाहरण शासन इस सदन के सामने नहीं रख सकता तब तक यह कैसे कहा जा सकता

है। इस बिल को लाने में एक विशेष प्रकार की आवश्यकता है या इस तरह की कोई आवश्यकता है। जब तक इस प्रकार की कोई बातें नहीं बतायी जायेगी तब तक यही समझा जायेगा कि जहां शासन का पहला उद्देश्य प्रलोभन देने का नष्ट हो गया वहां दूसरा उद्देश्य आतंक करने का हो रहा है और इसी कारण से और इसी अभिप्राय से इस बिल का सदन के सामने लाया गया है। हम समझते हैं कि होम मिनिस्ट्री ने जो यह बिल जल्दी जल्दी में प्रस्तुत किया है इस समय इसकी कोई आवश्यकता नहीं थी और अगर इस समय कोई आवश्यकता थी तो इस बिल को और अधिक विस्तृत रूप में उचित ढंग से जिससे विरोधी दलों को किसी प्रकार की आपत्ति नहीं होती, लाया जाता तो उसका अभिनन्दन किया जा सकता था लेकिन वर्तमान समय में जो यह बिल लाया गया है यह अनावश्यक है और इसके द्वारा किसी प्रकार का लाभ नहीं होगा, केवल एक लाभ यह होगा कि जो सरकार सत्ता में बैठी है वह अपने हाथों को मजबूत करेगी और जजों को डरा कर प्रजातंत्र का जो एक अच्छा विकास हो रहा है उसका अवरोध करने में अपने आप को कलकित करेगी। इसके सिवाय दूसरा कोई कारण हो नहीं सकता।

SHRI M. V. BHADRAM (Andhra Pradesh). Mr. Vice-Chairman, Sir I would like to rise to welcome this Bill. But the word misbehaviour has not been defined in the Bill. Some other acts of the judges must also be brought within the mischief of the Bill. I would like to draw the attention of the House to an editorial in a paper where it is said that the term used is a generic term and "the judges who are found to be vindictive, confused and partial ought to come under the category of those indulging in misbehaviour". In this connection, I would like to bring to the notice of the Home Minister and also of the House one or two incidents. Now the Supreme Court in several cases has held that suspension pending an enquiry is not a punishment under law, and that only the relationship between the employer and the employee has been suspended. There is no one judgment but there are several judgments of the Supreme Court on this issue. But recently when the Inspector-General of

[Shri M. V. Bhadram]

Police of Andhra Pradesh was suspended pending an enquiry for charges of corruption against him, he went to the Andhra High Court for staying the operation of the suspension order, and a single judge granted him stay of the operation of the suspension order. Later on, of course, the Government went in appeal and the decision was reversed. But it clearly shows that because of the status of the Inspector-General of Police, one type of judgment is given and if the person involved is an ordinary worker or an ordinary citizen, a different type of judgment is given, by the High Court Judges also. So this sort of partial treatment should come within the purview of this Bill.

I would like to quote another instance which involves not one but hundreds of judgments of the Supreme Court. Under the Industrial Disputes Act, for violation of section 33 under certain conditions, the worker can go straight to the tribunal. But the Supreme Court in several cases has held that even though there is a technical violation, the action taken by the management should be viewed on the basis of the material before it. Thus the Supreme Court has given the green signal to the entire lot of industrialists to violate the law. Now they can violate section 33 and be immune from any action; at the same time, they can take action against the workers. There have been hundreds of cases like this not one. So it means that the Supreme Court in all these cases held a partisan attitude towards the employer as against the employees. This sort of thing should also come under the purview of this Bill. Day in and day out we are told that we should go by the rule of law. What is this rule of law? The Supreme Court says you can violate the law and yet not be punished. Similarly a partisan attitude is taken in the appointment of judges also. Now the conditions in the society are reflected in the judges also, for are they not human beings living in the same society? So this should also be taken into consideration by the Government while appointing judges. We have seen in the case of the judges of the High Court and in the case of the district judges, merely political appointments are made and they are made to be influenced, though not corrupted, by extraneous considerations and not by the material before them. These things should be checked. Otherwise, there cannot be any respect for the courts.

We feel that the courts should act as a deterrent and check the excessive acts of the executive. But when the judges also take this sort of course then naturally the people will lose faith in the judiciary and it has already started in the country. If the Parliament and the Government do not see to that and if the situation is not remedied, then I do not know where the country is going. In these circumstances, the word "misbehaviour" should be clearly defined here so that their partial attitude, their vindictive attitude or their partisan attitude or their inefficiency could be brought within the scope of the Bill.

Thank you, Mr. Vice-Chairman.

SHRI BHUPESH GUPTA (West Bengal): Sir, generally this Bill has been welcomed by all concerned in the country. Therefore, I have no hesitation in extending our support to this measure. But naturally on an occasion like this we should like to know certain matters of public importance from the point of view of the independence and dignity of our judiciary or of this House.

Sir, it is not customary with us in the Parliament to say anything against the judges even without naming anybody. We are second to none in maintaining the dignity and independence of our judiciary. We would like this independence and dignity to be enhanced and not reduced. I make it absolutely clear because in a Parliamentary set-up like this, when we have division of powers between the legislative, executive and judicial organs of the State, we must have a judiciary which is reliable, which evokes confidence and which functions with honour and dignity in the country. That is very very important for all of us. That is what we want to see thrive in our present set-up. Now, our Constitution has given some special position to the judiciary and rightly so. We would like all the strong features of the judiciary to be further strengthened. Sir, when I say this thing I naturally have some ideas which I would like to convey to the House. As far as this Bill is concerned, it is only a matter of procedure. Our Constitution provides for the removal of the judges. This is elaborated, in a procedural sense, by this Bill.

First of all, I should like to know how you are going to define or understand the word "misbehaviour". It

seems the word "misbehaviour" has not been defined. Who is going to define the word "misbehaviour"? Here, people can have different ideas as to what constitutes "misbehaviour" even in ordinary life, not to speak of on the part of a judge. I do not find any definition of the word "misbehaviour" here. Am I to understand that this committee-of-three, which shall be appointed under Clause 3—or Section 3 when it becomes an Act—will define what constitutes a "misbehaviour"? Well, it seems that we are putting too much premium on this because here again two Justices and a jurist will be deciding as to what constitutes "misbehaviour". I do not think it would be so fair to leave it to them in this manner. They would be placed in a very embarrassing situation if they are called upon, in dealing with a case, also first to define what constitutes "misbehaviour". Would it not have been better if we had tried to give a definition of the word "misbehaviour" in this context so that within the framework of the definition the discretion of the judges or of the court could be exercised? But there is no such thing here.

Then again, the incapacity of a Judge! What do you mean by "incapacity"? By reading the Bill one would get the impression that there are some suggestions about physical incapacity or rather explicit statement of physical or mental incapacity in which case a Judge may even be called upon to subject himself to medical examination and so on. Let us be clear that we are restricting "incapacity" only to this aspect of the definition. But I should have thought that the word "incapacity" would be a little more widely defined. I do not get a clear indication from it because in the definition of the clauses of the Act neither of these words—incapacity or misbehaviour—is really defined.

Then, of course, the other thing follows. I need not go into that. This will create a little complication because things are left very bad. Now, what principle should we follow in this matter? First of all, we must have a clear idea of the kind of judiciary we have under our Constitution. The appointment does not rest in the hands of the Parliament direct. The appointment of judges lies in the hands of the Central Government and in particular the Home Minister, of course,

on the basis of the recommendations of the executive—of the various States—through the procedure laid down under the Constitution. Then, of course, the judges play an important role. They are consulted, I believe. The Chief Justice of India is consulted when an appointment is made to the Supreme Court. I understand, the Chief Justice of the High Court is also consulted. Sir, I would like to make it absolutely clear, let this appointment be made by the Chief Justice in the case of the High Court and the Chief Justice also in the case of the Supreme Court without—Mr. Chavan will not mind—the Home Minister coming into the picture at all. You do come into the picture, Mr. Chavan. I will tell you how. You know very well. Why should I tell you? First let us talk how they are appointed because we may commit original sin. The appointment of the Judges should be left entirely in the hands of the judiciary. There can be two ways. The appointment of the Judges takes place in certain countries in this form : appointment by the Parliament itself direct. Direct appointment takes place. All the Judges are appointed by the Parliament in certain countries. We do not have that system. You can consider it. But I am not suggesting it for the moment because I want to remain within the scope of our Constitution. Another good system would be, let the judiciary decide as to who should be the judge instead of political parties or political considerations being brought in. You will ask me, Mr. Vice-Chairman, as to how politics comes in. I know that you would not ask me, but suppose you ask me that question. Politics comes in the moment the party in power at the Centre is supposed to advise the President in this matter. Now, there the party comes in. There the executive comes in. There comes a mix-up of the judiciary and the executive. Therefore, in the matter of appointments I cannot understand at all why the executive should have a say. Let the judiciary settle its business. I would like the dignity of the judiciary to be maintained in this manner. Why am I saying so? Because, Mr. Chavan or whoever it is, is liable to make a misuse of power. As you see, under our Constitution certain names come from the States and everybody knows that the man who gives this recommendation plays a crucial role and he somehow or other is the

[Shri Bhupesh Gupta]  
 Chief Minister of that State. He consults many people, he consults his partymen. Otherwise how is it that in some States like the State from which I come a defeated candidate 3 P.M. of a particular party got appointed as a Judge of the High Court immediately after his defeat? You may or may not read things into it, but public confidence is shaken. A gentleman is put up as a party candidate, when his party is in power, and when that gentleman loses his seat, almost immediately he is appointed as a Judge. Now even if I assume that he is a very good lawyer and is eligible for such appointment in the normal situation, the fact that he had contested the election but had come to the Bench in this manner creates certain unwholesome feelings about it or at least is liable to create certain suspicions and wrong feelings which we would like to avoid. This has happened in West Bengal. Take for example a former Member of this House, Mr. Debabrata Mookerjee. Unfortunately he is not present. He contested the election. I am not questioning his ability as a good lawyer but I am talking of the principle; personalities are not involved. He contested the 1952 General Election as a Congress candidate. He was a practising lawyer in the Calcutta Bar. He was defeated by our candidate. Immediately after we found him appointed as a Judge of the Calcutta High Court. The people of Calcutta do not like these things, including those who support the Congress Party. I have been told that this was not good because there were other people in the field. If he had gone in for politics, he should have stuck to politics and the Congress Government at the Centre should not have advised the President to appoint him as a Judge of the Calcutta High Court. People did not like it. I am very sorry that Mr. Debabrata Mookerjee is not here; it is no reflection on him; he was a good lawyer; I do not deny it; perhaps he wanted to be a Minister. Then having failed to be a Minister he thought at least the consolation prize of judgeship would be good enough. I am not questioning his ability of course as a good lawyer.

Then there is another case of a friend of mine. We were together in England. A Minister of the Congress Government contested the election in West Bengal; as a Minister he was defeated again, unfortunately by us in

one of the Calcutta constituencies. Then he became a Judge of the Calcutta High Court. I must tell you he has made a good judge. All my good friends are good wherever they are, no doubt it. I am not at all denying that he has made a good judge; he is still on the Bench. But was it right? This kind of appointment takes place only because of political considerations.

In contrast I can give you another example. There was another gentleman of Bengal whose name was recommended for appointment as a District Court Judge by all the people concerned. But his appointment was stopped on the ground that he was a member of the Students' Federation or something like that. Yet he was a very good lawyer and all the officials who looked into his files were convinced about his legal qualifications. But a political decision was taken that he should not be given the post of District Judge, although he was not a member of any political party. In the days of the British he took part in some student movement as many people did. Even Mr. Chavan took part in some party activities, some radical party or some democratic party. Why should a decision of this kind be taken? Why should witch-hunt take place like that? That was because of political considerations. I can give you very many examples like that. Recently we had a colleague in the Lok Sabha, a parallel colleague in the other House. He lost the election. Then he was made a Judge; he is known to be a very good friend of a very powerful Congress Minister. He appeared in a particular case, the Karanjia case. He appeared against Mr. Karanjia when he was a practising lawyer. Then he became a Judge having lost the Congress seat. Then we suddenly read in the papers that the same gentleman was trying Mr. Karanjia in the Nagpur High Court. Now these things are not good; they are very bad. Those people who read newspapers know that a particular Judge who is trying Mr. Karanjia had been not only a great friend of an important Congress leader—the Deputy Prime Minister of the country—but also a person who appeared against Mr. Karanjia in a number of cases. The same man was acting as a Judge. I would like that the Judge himself should say "No, I would not try that case because I had appeared against Mr. Karanjia in other cases." Now,

Mr. Vice-Chairman, these are matters to be considered very seriously and we should follow certain principles in these matters. For example I would not like Judges after retirement taking up executive jobs. But we found the Chief Justice of the Bombay High Court resigning his post and taking up an ambassadorial job in Washington, which is an executive job. I would not like these things to be done at all. Now you may say that this thing took place after he had resigned as the Chief Justice of the High Court of Bombay. But people do not separate these things in that manner because they know that his decision to resign was conditioned and influenced by his desire to take up an executive post or an ambassadorial post in Washington rather than occupy the position of the Chief Justice of the High Court of Bombay. Now, Mr. Vice-Chairman, if I resign in order to get another job, when I am already occupying a very high position, how would you look at it? Therefore these are questions to be settled. I am not saying that you should settle them now itself.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : Mr. Bhupesh Gupta, I want to tell you that you have taken 20 minutes.

SHRI BHUPESH GUPTA : Twenty minutes is nothing ; I have just started.

THE MINISTER OF HOME AFFAIRS (SHRI Y. B. CHAVAN) : May I remind you that we are not discussing the appointment of Judges, we are supposed to discuss the removal of Judges and you are mostly dealing with the appointment of Judges ?

SHRI BHUPESH GUPTA : Mr. Chavan, you are quite right. But why should I be faced with a situation when I have to remove a Judge? If the appointment is good, the question of removal will not arise. Don't you see that point? Therefore I say that you should plug the loophole at the first instance ; do not bring in a wrong man and burden the Parliament with the task of removing him. After all you should keep in view the opposition in Parliament. In the Lok Sabha the opposition will get 100 Members ; we will get 50 here. But with your blessings by 1970 we shall be well over 50. What will happen now? If you bring

in judges like that, we shall sign petitions here just as we get up on no-confidence motions in the other House. In the other House 100 people will sign and the proceedings will start. Therefore we will be a permanent court sitting somewhere in the lobbies of the Parliament House to deal with the cases referred to it under the Resolutions of either House of the Parliament. I say that the appointment is a very important thing. I am now coming to the removal part.

You are right. Why are you asking us to do this? We are called upon to give a petition. Frankly speaking, I should consider it to be a sad day for our parliamentary and democratic institutions if the Members were called upon frequently to submit petitions for the removal of judges in this House or the other House. I am very fond of submitting petitions but I would say that the day will be bad when this becomes the occurrence in this House or the other House when Members of Parliament line up together to start proceedings against the judges by signing petitions. That is why I am interested in seeing that the judiciary is so constituted and that this Bill does not become at all operative. Yet I would like to have a measure of this kind in order to deal with some exceptional cases, if need be. This is a serious point because as I said, I welcome the Bill not because I would like it to be frequently used but because I would like to have a weapon in our hands and yet I would strike a note of warning that in the matter of appointments, care should be taken so that it is not necessary to start proceedings of impeachment or proceedings for the removal of judges. As I said, it would be a sad day for India if in the Parliament we were frequently to get up with a petition signed by 50 in this House or 100 in the other House seeking the removal of our judges.

That brings me to the question of the character and integrity of our judiciary. I said before that a beginning should be made at the appointment level. Let me give one or two suggestions to Mr. Chavan. First of all I do not like the judges meeting the Home Minister at all. I may tell you that I found some judges from some parts of the country going to the Home Minister's house or talking to him or trying to be very pleasant to him. I do not say that they

[Shri Bhupesh Gupta] should be necessarily unpleasant. They should be as pleasant to him as Mr. Dharia is to me but I would not say that they should go out of their way. In the British days there were judges who would not even talk to the executive officers. In England it is considered to be highly improper for a judge to behave in a manner which may look, even if it is not intended, that he is trying to be friendly or currying favour with the executive. It is not done. In our country unfortunately such things happen. One or two cases I know. One day—I have said it again and again and I would repeat it as this is a relevant occasion—I was in the residence of the late Home Minister, Shri Govind Ballabh Pant, and he was always very kind to me. He asked me to sit by him. You know he used to lie in a big sofa with his leg stretched and he used to make, even in the paucity of space, some space for me to sit down by him and I did. I found a Judge of a High Court—neither I will name the High Court nor the Judge—coming and touching his feet, probably in the Hindu way.

श्री निरंजन वर्मा : ब्राह्मण के पांव पड़ने आये होंगे । ब्राह्मण थे वह ।

SHRI BHUPESH GUPTA : Yes, in the Brahmanical way. I can tell you it was not the RSS way anyhow.

श्री निरंजन वर्मा : आप तो डरे हुए हैं इस लिये आर० एस० एस० का नाम घसीटते हैं ।

SHRI BHUPESH GUPTA : In the absolute Hindu way minus the RSS way. He touched his feet. I was a little surprised, because I knew the gentleman, as to why it should have been so. Men like me did not touch his feet. I went there and did Namaste and he asked me to sit. A person, a Judge of a High Court, coming to him, a person senior to me in age anyhow and also in other respects perhaps, should not have done that. Maybe he did not mean anything at all but he did it. Then the same man—that is what I read in the papers some months later—somehow or other was called to the Supreme Court Bench. I would not like that. He may be absolutely innocent. He may be guided by deep, profound affection for the late Home Minister Pandit Pant, a case of very great, divine respect but the conjunction of these events makes things look odd. That is

what I say Mr. Chavan does not have that advantage. He has a lot of leg-pulling but not leg-touching. Therefore I say that he should not appoint them. I think this is very important. Secondly, in the matter of appointment of judges, I would say one or two things, because the Government appoints ultimately from a list given by the people concerned. Younger people, with dynamic, progressive ideas from the Bar should be appointed as Judges and we should certainly lay down codes and norms of behaviour in such a manner that such people are elevated to the Bench. We would like the younger generation to come to the Bench. They need not be absolute pundits in law or master of jurisprudence. If they have a working knowledge of law, good commonsense, solid ideas, progressive outlook and human love and compassion, they should be brought to the Bench and that can be done only if the appointing authority gives proper directions and exercises its mind in a proper manner whoever that appointing authority may be. We are a dynamic society. We are a progressive society. Certain values which we accepted as dear to our heart in the old days are no longer considered to be worthy of our attention. In fact we feel that some of the values should be discarded. They have become outmoded and obsolete. We therefore want people with a wider, dynamic outlook. Of course law is made here but it is interpreted and applied by the Judges. It depends on what kind of man you have at the Bar when it comes to the administration of justice. Are they men with a progressive outlook? Are they men with a secular outlook? Are they men with a democratic outlook? Are they men with a great sense of social justice? Are they men who know how to judge right from wrong in the context of the changing realities of life? Are they men looking forward to developing a prosperous society which is in the process of making? That is very very important.

[THE DEPUTY CHAIRMAN in the Chair] In the matter of appointments, we want such people to be promoted. I know there are very many Judges who are admirable in their judgment and independence as well as courage and they should be rewarded and they should be promoted. Their services should be recognised in whatever suitable form the Government wants to do



it because we would like independence and dignity not only to be admired on the floor of the House but acknowledged in public life and rewarded in an honourable and fitting manner. I say this because to-day we are living in the midst of social conflicts. There are contending classes. There are reactionary classes and forces in our society which want to hold back our social progress. There are forces which want to take the society forward. I am not talking in party terms at all. Naturally the Bench must reflect the advancing forces of the society. It must reflect those who want to take the country forward. It must function in such a way that it is an instrument in our hands for getting not only private justice but also social justice within the framework of the law and the Constitution within their own sphere. I think, Madam Deputy Chairman, we do not pay adequate attention to these aspects of the matter. May I take you to the American Constitution and cite an instance? Before the War, when President Roosevelt, with all his progressive measures, relatively speaking—the New Deal and others—I am talking in their terms—when even he thought that such progressive measures were not being supported in law courts by the judiciary, President Roosevelt laid down certain norms for the appointment of Judges, so that the judiciary would conform not to the wishes of this or that individual, but to the demands of the society, or the demands of the situation for putting things better. And that is what was done. Now here, in our country, much depends upon the Home Minister or the Government for that matter, as to what type of people should come to the Bench. I would leave it for them to decide, whoever they are. It may be Mr. Chavan today. Tomorrow it may be somebody else. Yesterday it was someone else. But norms should be there. An outlook should be there. If you have such people then, well, nothing will happen; there would be no need for application of a measure of this kind.

Then, no one who had been connected with the big business or monopolists and so on, or had been building up their legal career by appearing for monopolists, or championing the cause of monopolists should be brought to the Bench. This again I say because you may say, "Why should he not be brought if he is an eminent lawyer?"

Yes, he may be an eminent lawyer. But we are not putting here professional men to practise and earn money. We are here putting men at the Bench to administer justice, the laws that we also pass here, to administer the laws in such a manner which is helpful to social progress. Well, if that is so then, obviously, people, whom you think are connected, or have been connected in the course of their long professional career with utterly reactionary forces or retrograde ideas, well, they should not be elevated to the Bench. That also should not be the case. Otherwise, Madam Deputy Chairman, if you bring in a lawyer to the Bench, a lawyer of the monopolists, one who had built up his practice with *monopolists' money*, if you bring in such a person, I sound this warning beforehand. Now that we are getting a fifty signatures or a hundred signatures, well, we may find an occasion to submit a petition against such a lawyer made Judge. In fact, he may misbehave in a certain manner. He may make certain pronouncements in the court of law against certain ideas, which we may consider as a sign of intellectual incapacity or which we may consider as an act of misdemeanour. Madam Deputy Chairman, I can say from a certain behaviour of a Judge in a given situation—anybody can say such a thing in Parliament—that it is an act of intellectual incapacity, or it is an indication of the lack of integrity. What happens then? A petition comes in. Therefore, one should be very very careful about the appointment of the Judges. By and large we have very excellent people at the Bar. By and large many of our Judges are good and admirable people. I am not denying it. But then there are also certain other people we had taken note of. Therefore I say that you are passing a law the implications of which must be properly understood. Madam Deputy Chairman, as far as the judiciary is concerned, we want to see it constantly nourished and improved. Now all these kinds of things are happening. So many things are happening as far as the judiciary is concerned. Now I am not going into them. I would suggest to Mr. Chavan that this subject we can discuss when we discuss the law governing contempt of court, I mean the Contempt of Courts Bill. When it comes we will discuss, but I would appeal to him that he should refer the Bill to a Select Committee. I shall make that suggestion giving a motion also to that effect. Many of us

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feel that the Bill should be referred to a Select Committee. We, all opposition, have sent a letter to him. Our friends of the Congress also feel likewise, and I may inform you that Mr. Chavan—I was very much pleased with his gesture—has accepted, may be privately, the suggestion made by us and has said that he would agree to refer the Bill to a Select Committee. These little gestures are good, I tell you. I know tomorrow I will have a lot of things to say against Mr. Chavan, but today he has done this thing and he has responded to a humble suggestion of ours from both sides and I must acknowledge that he merits a measure of deserved gratitude. This is what I say.

THE DEPUTY CHAIRMAN : You may wind up now.

SHRI BHUPESH GUPTA : Yes. Now the position is this. Therefore, the judiciary question has to be settled in this manner. I do not know if he will approve of it, but may I make a suggestion? Mr. Chavan should make a rule or amend the Constitution that retired Judges shall never seek executive posts, or shall never join private concerns. It should be done; it is time we did it.

I may tell you that I was shocked in one matter, and I have no hesitation in repudiating it. I was shocked when I read a speech by a former Chief Justice of India, Mr. Subba Rao, supporting the RSS. I was literally shocked.

SHRI PITAMBER DAS (Uttar Pradesh) : You will be more shocked when the whole country were to support the R.S.S.

SHRI BHUPESH GUPTA : I was shocked . . .

THE DEPUTY CHAIRMAN : Please wind up now.

SHRI BHUPESH GUPTA : I am winding up with an interesting thing. Don't take it in the wrong light. I hope Mr. Chavan will agree it was not proper for Mr. Subba Rao to deliver a lecture at the R.S.S. rally to glorify the RSS organisation. Now I shudder to think if there are Judges of that kind sitting in the Bench. I do not say anybody is there. It is not my suggestion, but I was greatly surprised that a Chief Justice of the Supreme Court of India could be one who, after retirement, becomes a champion of the RSS. I think it is time we look into the political

outlook—in a broad sense—and the social outlook of the men whom you appoint as Judges. Only in that sense I am saying; in that sense only I am making the submission, not in order to malign an individual. Now Mr. Subba Rao made a speech and he printed it and sent copies of it to all Members of Parliament. I have got also a copy of that speech. But this is so.

SHRI PITAMBER DAS : Admire his national outlook.

SHRI BHUPESH GUPTA : My friend says, "Admire the national outlook." I would not like such a sense of admiration to be elevated to the Bench of the High Courts and the Supreme Court. Have it elsewhere. Put him as the RSS *Sanchalak*. Put him by the side of Guru Golwalkar. But such people should not be in the Bench.

THE DEPUTY CHAIRMAN : Now let me call the next speaker.

SHRI BHUPESH GUPTA : Have you got a next speaker?

THE DEPUTY CHAIRMAN : I have got quite a number.

SHRI BHUPESH GUPTA : Previously there was not one. Anyhow, then I am finishing.

These are my suggestions. Once again I say before I sit down that we would not like a situation when we in Parliament have to sign petitions to arraign our Judges. On the contrary, we would like the dignity and independence of our judiciary to be nourished and strengthened day by day, month after month, year by year. This is what we would like. Hence we would like the appointment of all judicial officers to be taken out of the hands of the executive, and I would like the Judges themselves to settle their affairs, the Chief Justices of the High Courts and the Supreme Court, as the case may be, to settle the matter of appointment of Judges—without any outside interference—in consultation with brother Judges. That is what we would like, and from Parliament we can only hope and trust that in making such appointments they will look forward to a changing society, which is in the process of being rejuvenated, where the conflict of the life is taking place not

only in the economic or political sphere, but also in the sphere of law, and this pertains to the administration of justice. This is how the matter should be approached.

THE DEPUTY CHAIRMAN : That will do. Mr. Momin.

श्री जी० एच० वलीमोहम्मद मोमिन (गुजरात) : डिप्टी चैयरमैन साहिब, इस बिल की ताईद करने के लिए मैं खड़ा हुआ हूँ। यू तो आईन में जजेज के हटाने के लिए काफी गुजाइश है, जब से हिन्दुस्तान आजाद हुआ है और आईन बना है—और इल्जाम लग सकते हैं—जहाँ तक एक्जीक्यूटिव का ताल्लुक है और काँग्रेसी हुकूमत ही २० साल तक रही है, उसने इंडिपेंडेंट जूडिशियरी के उतूल को बड़े एहताराम से देखा है। आईन में यह बहुत जरूरी था कि जजेज से मेलाफाईड इन्साफ किसी भी शहरी को हो जाय, तो वह अदालतों में जा सकता था और यह बहुत खुबी की बात है। कही जजमेंट्स प्रत्याघाती या रिपकगनरी हों, और लोगों को खटके हों लेकिन इस गवर्नमेंट ने, एक्जीक्यूटिव अथारिटी ने उन जजमेंट्स का भी एहताराम किया है उस उतूल को बलन्द रखने के लिए कि हमारे यहाँ जूडिशियरी बहुत इम्पार्शियल है और इंडिपेंडेंट है इसलिए जरूरी था कि चेक्स और काउन्टर-चेक्स के तरीके रखे जाये, अगर कही जजेज का मिसबिहेवियर और इनकेपेसिटी हो, इसलिए नहीं कि जज ने एम्प्लायर के हक में फैसला दिया था लेबर के हक में फैसला दिया बहुत मुमकिन है कि कोई ऐसा ला हो, जिसमें एम्प्लायर को सहलियत ज्यादा मिल सकती है। तो ऐसे आईन में मशोधन पार्लियामेंट कर सकती है, जो लेजिस्लेटिव हाऊस है, जो यह देखे कि ऐसा आईन या ला न बनाए जिसका एडवांटेज, जिसको हम केप्टेलिस्ट सेक्टर या इन्फ्लुएशियल सेक्टर कहते हैं, वह ले सके। इसलिए इसके सम्बन्ध में यहाँ बड़े काशन से, बड़े पेशेन्स से काम लिया है कि इतने मेंबर चाहिए, कमेटी चाहिए, यह स्पीकार हो, यह चैयरमैन हो। इसलिए इम्पार्शियलिटी के साथ जो जूडिशियरी की डिगनटी है वह इस से बरकरार रहेगी।

बहुत सी बातें आनरेबिल मेम्बर भूपेश गुप्त ने कही। उन्होंने कहा कि जजेज यू होते हैं, जजेज यू होते हैं लेकिन खूबी यह है कि उन्होंने सुझाव दिया कि चीफ जस्टिसेज पर छोड़ देना चाहिये कि वे अपनी अपनी जूडिशियरी को सम्भालें। जब वे खुद मुम्बाराव की टीका कर रहे हैं और साथ ही साथ यह भी सिफारिश करते हैं कि होम मिनिस्ट्री को मैदान में नहीं आना चाहिए, जूडिशियरी के सुपुर्द कर देना चाहिए, तो मैं समझता हूँ कि सुझाव इसलिए दिए जाते हैं अखबारों में छपे और कुछ न हो। सवाल यह है कि यहाँ लोकाधी में एक्जीक्यूटिव अथारिटी कम्पलीटली पार्लियामेंट के ताबे है। आज यह नहीं है, काँग्रेस गवर्नमेंट है, इसलिए इस तरह के अपाइन्टमेंट हों, कोई भी गवर्नमेंट हो उसको जूडिशियरी को इंडिपेंडेंट रखना पड़ेगा। जजेज को लिबरल व्यू लेना चाहिए, प्रेजेंट कन्टेक्ट देखना चाहिए और अवाम की अर्ज है उसको भी देखना चाहिए। मोशल कन्टेक्ट जजेज और होम मिनिस्ट्री के बीच रहना चाहिए। यह आक्षेप अभी तक नहीं हुआ कि कही भी गवर्नमेंट का दबाव आया। ऐसे अल्फाज पोलिटिकल मोटिव से रखना इन्डोसेंट बिल पर किसी हिसाब से मुनासिब नहीं था इसलिए कि होम मिनिस्ट्री या प्रेसिडेंट पार्लियामेंट के ताबे ह, हम सब इस चीज पर विचार कर सकते हैं। बहुत खूबी की चीज यह है कि इस २० साल में जूडिशियरी ने आन दि होल बहुत अच्छे तरीके में मार्टन अजेज का खयाल रखते हुए लिबरल आउटलुक के साथ काम किया है। बहुत मुमकिन है कि किसी किनी जज को खयाल आता हो कि जज की कुर्सी छोड़ देने के बाद मुझे भी पार्लिटिक्स में जाना है और पार्टीकुलर ट्रेन्ड रखना है, उस जज पर भी कन्ट्रोल रहेगा और वह चीज भी दुरूस्त हो सकेगी। इसलिए यह सामान्य बिल था।

एक भाई ने कहा कि तलवार लटकती रहेगी तलवार लटकने का कोई सवाल नहीं है, जजेज कोई रिक्वायर्गनरी नहीं है, जो स्टेटसक्यो, है लीगल थिंग्स एज दे आर, उनको डेमोक्रेटिक स्ट्रक्चर में इन्टरप्रेट करना है। ला के बनाने की

[श्री जी० एच० वलीमोहम्मद मोमिन]  
जो शक्ति है वह अवाम से आती है और अवाम के नुमाइन्दे हाउस में रहते हैं और वही बाहर अच्छी पोलिटिकल क्लाइमेट तैयार करते हैं।

श्री निरंजन वर्मा : आदरणीय महोदया, माननीय मित्र से मैं यह पूछना चाहूंगा कि कृपा करके यह स्पष्ट करे कि अगर इस बिल में इतनी खुबियां और अच्छाईयां नजर आ रही हैं, तो १८ वर्ष तक इसे क्यों नहीं लाए गए क्या १८ वर्ष के बाद इलहाम हुआ तब इसे आप लाए हैं।

श्री जी० एच० वलीमोहम्मद मोमिन : यही बात है। अगर जल्दी ले आते तो आप कहते हैं कि इतनी उजलत की क्या जरूरत थी, दो चार साल वेट कर सकते हैं और आप अब यह कह रहे हैं, आपको कुछ न कुछ कहना है और हम जो कह उसके खिलाफ कहना है।

मैं बिलकुल मुनफिक हू और मैं खुद चाहूंगा चव्हाण साहब भी इस चीज को चाहेंगे कि— इस देश ने आज तक जूडीशियरी का रवैया रहा है २० साल तक उसको देखते हुए— ऐसा मौका न आए, किसी स्पेशल केस में हो बात दुसरी है। यह तो प्रोसीजरल है कि इस तरह का प्रोटेक्शन दिया गया है और इस तरह की सेक्टिटी दी गई है और इस तरह की सीरियसनेस लाई गई है ताकि अच्छी प्रावीजन रहे और अगर इस्तेमाल का मौका आए तो इस्तेमाल हो सके। जजेज होने वाले और बैठने वाले अखबारों में पोलिटिकल ट्रेन्ड्स को देखते होंगे। कोई जज अपने खयालत रख सकता है, लेकिन साथ साथ यह ठीक बात है, जितने भी प्रत्यावासी बल है, जो प्रापर्टी की सेक्टिटी के नाम पर या दूसरी चीज के नाम पर पब्लिक गूड के खिलाफ काम करते हैं जजेज का उन चीजों को समझना है और न समझने हो तो उनके अन्दर प्रावीजन है मेलाफाइड बर्ताव और इनकेपेसिटी की, जिसके लिए कह सकते हैं कि तुम्हारे दिमाग में कपेसिटी नहीं है। इसलिए यह बहुत अच्छी चीज हो रही है, जिस पर जहां तक होम्स मिनिस्ट्री का ताल्लुक है, जिस सिचुएशन में उसको डील करना है, उसमें उसकी फर्मेनेस से इस्तेमाल करना है,

उसमें उसको डेमोक्रेटिक स्ट्रेंसेज का ध्यान भी रखना है। विरोध पक्ष से कुछ न कुछ बोलने की गुंजाइश रहेगी, लेकिन जहां तक मेरे पक्ष का ताल्लुक है, उसकी तरफ से चव्हाण साहब आज तो इस डिफीकल्ट सिचुएशन के अन्दर एक बेलेन्स को मेन्टेन रखते हुए, एडमिनिस्ट्रेशन का कायम रखते हुए, जो यह बिल लाए हैं, उसकी ताईद करते हुए मैं बैठ जाने की इजाजत चाहता हू।

SHRI M. RUTHNASWAMY (Madras) : Madam Deputy Chairman, while I appreciate that the motive of the Government in bringing forward this Bill has been quite honest and honourable—because this would facilitate the discussion and decision of Parliament on the question of removal of a particular Judge by the presentation of an Address to the President—I do not think that this particular procedure is one to be welcomed, for it contemplates the constitution of a Committee which will act as a trial committee of the Judge in question. That will mean two trials, one trial by the Committee that is going to be formed under this Bill and the other trial by Parliament in full session. This Committee would act like a kind of Grand Jury receiving charges against the Judge and deciding whether these charges are proved and whether the case should go before the real jury, the trial jury, namely, Parliament. The possibility of these two trials is against all canons of judicial administration. I can understand an appeal going from a lower court to a higher court, but here is a case of trial by two bodies, a Committee of Parliament and Parliament in full session.

With regard to the constitution of the Committee, there are going to be two Judges and the third Judge also, to be appointed by the Speaker or the Chairman, is to be a distinguished jurist. That means another Judge. So, it means trial by three Judges in a Committee. That is trial by fellow-Judges. Although one can trust the impartiality and independence of the Judges when they sit in court, one cannot be sure that they will import the same impartiality, the same independence when they are sitting in what might be called a Parliamentary Committee. There is such a thing as professional loyalty, the loyalty of the members of the profession to another member of the profession

Rightly, wrongly the decision of this Committee might be construed as an expression of professional loyalty if Judge is acquitted. What the Constitution contemplates is really the impeachment of a Judge. It is true that the Constitution provides that Parliament may by law regulate the procedure for the presentation of an Address and for the investigation and proof of the misbehaviour or incapacity of a Judge under sub-section (4) of section 124, but this is not the kind of investigation as is being contemplated under this Bill. The real forum for the trial of a Judge, be it misbehaviour or incapacity, should be Parliament sitting in full session, a solemn session with all the responsibility of Parliament sitting as a court of law. It is only when a Judge becomes notoriously incapable, notoriously unfit for his post, that he will be put up for trial, for impeachment before Parliament. Public opinion and parliamentary opinion must be gathered and consolidated and must give expression with regard to the trial of a Judge in this kind of impeachment. When we take the cases of impeachment that have occurred in England, for instance, we find that they are initiated by the House of Commons and tried before the House of Lords. It is in full Parliament—the trial takes place in the House of Lords and the prosecution is done by the House of Commons through two or three persons elected by the House of Commons. That is how the great impeachment of Warren Hastings took place. When the House of Commons decided to impeach Warren Hastings, they appointed in a Committee three or four persons. Edmund Burke was one of them, Sheridan was another and two or three others went through the whole case and the charges against Warren Hastings. Having considered those charges, a small body—it was not a Committee of Parliament—called managers of impeachment *i.e.* presentors was set up and it was they who impeached *i.e.* presented Warren Hastings before Parliament. Similarly, in the case of impeachment of Judges, it should be done in a full session of Parliament, in a public session of Parliament. In a solemn session, in a public session, with the responsibilities that attach to Parliament in general and especially in the case of a judicial trial like this. It is there that the impeachment of Judges should take place. It is a helpful procedure that must be contemplated, not this kind of parallel, inquisitorial procedure that is contem-

plated by this Bill. On account of these reasons I regret I cannot accept this Bill that has been brought forward before Parliament. As the Constitution contemplates, it must be on very rare occasions that such a trial of a Judge would take place. In all these twenty years, as has been pointed out, no such case has occurred and why should we think just now that such cases would occur? We hope and pray that such cases would not occur. There has not been any case of a Judge of the Supreme Court or of any High Court being suspected of incapacity or of misbehaviour. When such cases occur, then it will be time for a Bill like this to be brought forward, but certainly not this kind of procedure, which, as I said, contemplates two trials, one trial by a Committee of Parliament and another trial by a full session of Parliament. There is this practical difficulty. Suppose there is a difference of opinion between the Committee and the full Parliament. If Parliament supports the decision of the Committee, well and good. Suppose there is a difference of opinion. Suppose the full Parliament, with a two-thirds majority, as is required, refuses to accept the decision of the Committee, a scandal of the first order will be produced not only reducing the authority of Parliament, but also reducing public confidence in Judges, in the integrity and impartiality of these three Judges who are to constitute the Committee. So, on the ground of public policy and on the practical ground that a difference of opinion between the investigating committee and Parliament will lead to a great scandal and to a depreciation not only of Parliament in the eyes of the public, but also a depreciation in the standing of the High Courts and the Supreme Court of the country, I cannot accept this Bill.

SHRI K. P. SUBRAMANIA MENON (Kerala) : Madam, this Bill seeks to remove Judges who commit any offence or who are supposed to be working against the accepted standards of morality. Now, I would point out in this connection that the question of morality, ethics, dignity, good conduct, etc. cannot be divorced from the system in which it works. It cannot be divorced from the class or society in which it takes place. When we talk of the dignity of the judiciary, the independence of the judiciary, etc., it only means independence of the judiciary within certain limits already existing in

[Shri K. P. Subramania Menon.]

the system. It does not mean independence of the judiciary from the classes which rule this society, which rule the country. It only means independence from certain laws or certain executive orders or certain Ministers. It does not mean independence totally from the society in which the judiciary functions.

In this connection I would like to point out to you, Madam, that we look at it from an altogether different standpoint. We say there cannot be any independent judiciary. There cannot be any dignity of the judiciary apart from the dignity of the society in which that judiciary functions. We say that the society in which the present judiciary functions has absolutely no dignity. This is a wretched society, this is a moribund society, and the judiciary also is a part of that society. Today the judiciary functions in this society only to perpetuate the injustices and the inequalities which are already inherent in the society, and to talk of independence of the judiciary in such an unjust society is all humbug; it does not exist. The point is Madam, there are different classes. In a class-ridden society in which different classes work at cross purposes, different ethics, different morals are there. The judiciary also accepts the morals, the ethics, the code of conduct of a particular class. If it does not accept the ethics, the morals and the code of conduct of the bourgeoisie class, it cannot exist in the society. That is the fact to the matter, and to think that we can expect any justice from a judiciary like this in this country will be absolutely wrong on our part. I do not say that particular Judges are wrong or particular judgments are wrong, but the general thing is, what do we find?

SHRI LOKANATH MISRA (Orissa): One clarification. Do no Member of your party, the Left Communist Party, go to a court of law?

SHRI K. P. SUBRAMANIA MENON: Even if a member of my party goes to the judiciary, he will be part of the system just as I am a part of your system and I will get absorbed in your morals.

SHRI LOKANATH MISRA: For getting justice, do any member of your party go to the court of law even if you do not believe in these particular law courts and in this society? I want

to know specifically whether or not if a case arises you go to a court of law and take advantage of the court of law.

SHRI K. P. SUBRAMANIA MENON: We take advantage of whatever is there.

SHRI LOKANATH MISRA: You take advantage?

SHRI K. P. SUBRAMANIA MENON: Of course, we have to as long as we are living in a society which we have; if you think that we should not come to this Parliament, that we should not take advantage of it, then you are wrong. We will take advantage of it.

The point is, Madam, who are these Judges? How are they recruited? What is their background? Generally the Judges are recruited from the leading lawyers. How are these leading lawyers made? The leading lawyers in the country are those who get absolute for the big bourgeoisie in tax-dodging, in black-marketing and all sorts of anti-social crimes, and the men who defend the Birlas and the Tatas, the men who get fabulous payments are the leading lawyers in the country. It is precisely such leading lawyers who are taken to the Bench. You know that in such cases they come to the Bench with their hangovers of the past, with their connections with the big bourgeoisie, with their connections with the blackmarketers, with their connections with the tax-dodgers. Naturally their judgments will be conditioned by their own understanding of morals, their own understanding of justice, their own understanding of the property right which they acquired as lawyers, as spokesmen who get absolute for the big bourgeoisie in the country.

AN HON. MEMBER: Not in all cases.

SHRI K. P. SUBRAMANIA MENON: In most cases. (*Interruption.*) There may be one or two exceptions, but this is the rule. The point is, such Judges, whatever may be the case under discussion, whatever may be the people who come to them, will always be conditioned by their prejudices and the judgments which they deliver will always be in the interest of the classes whom they are

accustomed to serve as lawyers. As a matter of fact today in our country what has happened is that the judiciary slowly has become the bastion of conservatism, the bastion of the rich, the haven for all the tax-dodgers and the blackmarketers and all sorts of anti-social elements. Whatever may be their interpretation of the Constitution, whatever may be their interpretation of the existing laws and whatever may be the laws themselves, the fact remains that in the eyes of the common man the judiciary in this country has already become and it is everyday more and more becoming the spokesmen, the perpetrators of the most unjust conditions existing in the country.

Madam, I have had occasion to read some of the judgments recently in Kerala of the High Court or of some other place. Every time the Government goes for procurement of foodgrains from the rich landlords, the rich people go to the court and get a stay from the court. The moment somebody goes to the court for stay of procurement the court gives it blindly, absolutely without any thought to the social consequence of their action. They give it. What does it mean? I know hundreds of tonnes of foodgrains are kept in godowns and are getting rotten while the people go without food just because the courts are giving stay orders to procurement. While the people go without food, while there is already food in the granaries of the rich people, the courts have stayed their procurement. Have not the courts any social responsibility, I ask. The courts which give such stay orders, which give stay orders against procurement of foodgrains from landlords at a time when the people in the country are starving are doing a criminal thing. I would say whatever may be their understanding of law, they are doing a social crime. But the thing is our courts live in the heavens; they do not live among the people; they do not have any understanding of social justice. The point is, if the judiciary in this country, the courts do interpret the laws—whatever may be the drawback of the laws, the laws should be interpreted in such a way that it helps social progress. They should have commitment to social progress. They should not live in ivory tower and think that whatever laws are there, they should protect only the property. But when it comes to the interests, the

rights of the common man, these courts have become absolutely useless. When it comes to the interests of the property owners, when it comes to the interests of the capitalists, they find all sorts of ways to give protection to them. In most cases the poor man, is unable to get justice from the courts, because the procedure, the expenses involved and all these things are so prohibitive that even if he goes

4 P.M. to the court, he does not get it whereas in the case of the rich, he can get the biggest of the big lawyers, he can have all sorts of things and have so many proceedings in the courts, here, there and in the Supreme Court, and all that in such a way that justice in the country has become a matter of money only. I remember one of the Judges of the Allahabad High Court having remarked that justice in this country is available to anyone; it is just like a room in the Ashoka Hotel. If you have got money, you can go and stay there. Similarly, justice in this country is available only to the man who can pay for it, who can spend hundreds and thousands of rupees for it. If you do not have the means to pay for it, if you do not have the resources, you are denied that justice. This is the fact that is there today. The people of this country, the ordinary men, the workers, the peasants and such people are losing their faith in this system of justice, in this system of judiciary, in all that it signifies, and they are identifying the judiciary, the system of justice, with the class interests of the ruling class, the landlords, the capitalists and their henchmen.

Thank you.

KUMARI SHANTA VASISHT (Delhi): I am very happy that the hon. Home Minister has brought forward this Bill to provide for the trial of Judges or for inquiry in cases of their misconduct or incapacity. Unfortunately, Judiciary is the third wing in the parliamentary system of Government. In this country, judiciary did start with very high standards and traditions, and has been held in very great regard, so much so that it has become the holy cow in our country. Though they have been given that much status, and honour, they have not always justified their status or honour. In quite a few cases and especially at the subordinate levels and others, you see that the judges have

[Kumari Shanta Vasisht.]

been amenable to influence by people in executive authority or in administrative positions. And many times, as our friend, Mr. Menon, pointed out, the system of appointment is such that they are taken often from the Bar. That also means that they enjoy good relationship and are in the good books of quite a few important people in the State or at the Centre, and when they are in the good books of important people, they are sometimes asked to serve as judges. That implies a certain amount of patronage. If they are so selected, if they are under the influence of those people who are in the position of appointing them, it is natural that they should sometimes listen to them and obey and try to please them for their future career and so on and so forth. And that takes away some of the independence of the judiciary.

So also, in smaller, lower courts, the power of money is not very little. I think money, unfortunately, has played too much part, and more extensively as the time has passed, and much as we want the judiciary to be very much above any kind of doubt or suspicion, the practice has become more and more widespread when money has played a certain amount of part or influence has played a greater part. Sometimes Chief Ministers are in the habit of influencing the judges, even High Court Judges, and the High Court Judges give their judgments accordingly to please the Chief Ministers because some of the powerful Chief Ministers are in the habit of giving appointments to judges or High Court judges so that they could do something either to please people in their constituencies or please the people in the States or somewhere. And that does not provide for fairness in the judgments or justice. And that is one of the major handicaps. The judiciary, when you think of it, is in quite a bit of difficult situation because the litigation has increased, the laws we are making are enormous and defective, and they have so many loopholes. The judges go on blindly giving injunctions, for the same charges they go on giving injunctions again and again, so that all those who are dealing with courts, cases, etc. feel that by and large it is justice that is very much delayed, so that it is almost denied.

And it is extremely expensive. How people can really afford litigation is

difficult to understand because for ordinary people it is beyond their means. And only with a good deal of money can people fight their cases; yet they do not really feel that they will be able to get justice.

I think as Mr. Menon said—I am sorry to say that I have to agree with him on a few points—that our society is a very feudal society. It goes on by a certain identification, with certain economic laws or groups, and the judges are also of the top class along with the administrators, the businessmen and others, with whom they do have a good deal of conscious or unconscious identification and their judgments are accordingly influenced and biased sometimes like that. And when there is this system and this social order, it is very difficult for the ordinary people who do not have the pull or pressure or power or the money to get justice, and it is very difficult indeed for ordinary people.

[THE VICE-CHAIRMAN, (SHRI D. THENGARI) in the Chair]

Sir, in this Bill there is a provision that if a certain number of Members of the Lok Sabha or the Rajya Sabha have signed a motion that there are charges against a certain judge, then it will either be admitted or not admitted by the Speaker or the Chairman, as the case may be. If a provision is being made that the Members of Parliament can sign and bring charges against a judge, I think then it should automatically imply that a Committee will be constituted which will look into those charges, hear the evidence and give a decision. But what is the use of asking the Members of Parliament merely to sign a motion of charges? I cannot understand it. The mere fact that a hundred Members of the Lok Sabha or 50 Members of the Council of States sign and ask for some inquiry to be held about the conduct of a judge or his misbehaviour or incapacity should automatically imply that the Speaker or the Chairman, as the case may be, should constitute a committee to look into those charges. If it is left to the discretion of the Speaker or the Chairman that they may or they may not admit it, what is the use of asking the Members of Parliament to sign it. Or let it be left to the discretion of the Speaker or the Chairman



and when they have heard the charges against any judge—charges of a serious nature—even if it is signed by five Members, let discretion be given to them and they can constitute a committee to look into the matter. Or let the Home Minister look into the question. But what is the use of the idea of having 100 Members to sign a motion and then giving discretion to the Speaker or the Chairman that he may or may not admit the particular motion of the Members and may or may not constitute a committee?

Then, when the Members of Parliament have asked for it and the Committee is to be constituted, it is said here—

“(a) one shall be chosen from among the Chief Justice and other Judges of the Supreme Court ;

(b) one shall be chosen from among the Chief Justices of the High Courts ; and

(c) one shall be a person who is, in the opinion of the Speaker or, as the case may be, the Chairman, a distinguished jurist;”

Why have this when the Members of Parliament are not even going to be automatically given the authority or the power to call for an inquiry about a certain judge?

All the different members will have to be outsiders as happens in every other case. Judges have as much reason to try to protect their own caste people, the other judges, as have other sections. So, there too would be jealousies of their own or there would be favouritism of their own class and they would like to take sides this way or that way. So I do not know whether strictly speaking this machinery will be without bias. Of course, some machinery should be there. But what it should be, I cannot say. But leaving it only to the Supreme Court Judges and the High Court Judges and one jurist, I do not think, would always make for impartiality because basically the pulls are so great everywhere in every sphere of life here that by and large justice is not easily available.

Then the Bill says—

“(3) The Committee shall frame definite charges against the Judge on

the basis of which the investigation is proposed to be held.”

I suppose that only when they have got some charges against any judge they would bring them forward. When the Members sign in such large numbers, 100 or so, it should be clear. After that, there could be an investigation or inquiry; evidence can be taken and something can be done about it. I think it is very necessary that the judiciary should also be called upon to improve, that more justice should be available to the people as a matter of right and not as a matter of privilege. It should not come to them by accident but it should come to them in a planned way. Justice must be ensured to one and all. Today favourable judgment is rather the privilege of a very few people who have enough power and pulls to be able to get it; otherwise, by and large people suffer quite a lot. The machinery, the help in securing justice to the people are not largely operative or as effective as it should be; it needs to be improved. In this matter also, I think, this Bill has come at a very suitable time and not too early. I think the more serious the thought—given to this matter the better it would be. I hope the object with which this Bill has been brought forward today would be fulfilled and that the Government would be able to create an atmosphere and wherewithal for greater justice in the country, for higher and better standards of justice. I thank you very much.

श्री राजनारायण (उत्तर प्रदेश) : श्रीमान् एक अमंगति इस विधेयक में है। यह विधेयक अनुच्छेद 124 के (4) की तह में आया है। अनुच्छेद 124 का 4 जो व्याख्या है वह इस प्रकार है, “उच्चतम न्यायालय का कोई न्यायाधीश अपने पद से तब तक हटाया न जायेगा जब तक कि सिद्ध कदाचार अथवा असमर्थता के लिए ऐसे हटाये जाने के हेतु प्रत्येक सदन की समस्त सदस्य सख्या के बहुमत द्वारा तथा उपस्थित और मतदान करने वाले सदस्यों में से कम से कम दो तिहाई के बहुमत द्वारा समर्थित समावेदन के राष्ट्रपति के समक्ष संसद के प्रत्येक सदन द्वारा उसी सत्र में रख जाने पर राष्ट्रपति ने आदेश न दिया हो।”

[श्री राजनारायण]

इस का जो (5) है वह इस प्रकार है कि "खंड (4) के अधीन किसी समावेदन के रखे जाने की तथा न्यायाधीश के कदाचार या असमर्थता के अनुसंधान तथा सिद्ध करने की प्रक्रिया का संसद विधि द्वारा विनियमन कर सकेगी"। अब यह संसद विधि द्वारा विनियमन करने जा रही है। अब आज अगर हम विधि न बनायें तो क्या हो।

पंडीत श्याम सुन्दर नारायण तन्खा (उत्तर प्रदेश) : जो आज तक हुआ।

श्री राजनारायण : तो हमको कुछ लोग यह समझा रहे हैं और जहां तक मैंने सरकारी पक्ष के लोगों को सुना, वह यह कह रहे हैं कि इस में बहुत सहूलियत होगी और आज के जमाने में कम से कम इस सरकार ने अपने में इतनी तो चेतना पैदा की कि वह विधि विनियमन करने के लिये एक विधेयक ला रही है। मगर मैं यह कहना चाहता हूं कि अब तक जो व्यवस्था थी उस को यह विधेयक और पेचीदा बनाया गया या उसको आसान बनाया गया यह देखा जाय। जनतंत्र का हर पक्षपाती और हिमायती इस बात को जानता होगा कि जितना ही पेचीदा कानून होगा उतना ही सामान्य लोग उस के लाभ से वंचित रहते हैं और जितना ही सीधा कानून होगा उतना ही सामान्य लोग उस के लाभ को प्राप्त करते हैं तो मेरा एक प्रश्न यह है कि यह विधेयक अब तक की जो व्यवस्था थी उस को पेचीदा बना रहा है। उस को और दुरूह मुश्किल और कठीण बना रहा है या उसको आसान और सरल बना रहा है। अगर सरल बना रहा है तो मैं इसका पक्षपाती हूं और अगर मुश्किल बना रहा है तो मैं समझता हूं कि इस सदन के प्रत्येक सदस्य को और खास कर के मोहनधारिया जैसे लोगों को जरूर इस का विरोध करना चाहिये या इस के लिये सुझाव देना चाहिये।

अभी तक देखा जाय कि संविधान में जो व्यवस्था है वह हमें रोक नहीं सकती। अगर किसी जज को मैं कदाचारी पाता हूं अगर किसी जज को पागल पाता हूं तो मैं आ सकता हूं और

एक प्रस्ताव पेश कर सकता हूं, चेअरमन को दे सकता हूं और चेअरमन उस प्रस्ताव को मदन में रख सकते हैं और सदन के उपस्थित सदस्यों के 2/3 से यदि वह पास हो दोनों सदनों से तो राष्ट्रपति उस को निकालने की व्यवस्था कर देंगे। यह है।

श्री महेश्वर नाथ कौल (नामनिर्देशित) : यह नहीं है।

श्री राजनारायण : कहा नहीं है। अनावश्यक ढंग से, बिना समझे बूझे प्रश्न करने से कोई फायदा नहीं। किताब पढ़ी जाय और फिर किसी नतीजे पर आया जाय। अब तक के संविधान में जैसी व्यवस्था हम ने कहीं वह नहीं है यह कैसे समझा जाय। जैसी व्यवस्था मैं ने बतायी अभी तक के संविधान के द्वारा वह नहीं है यह कैसे सिद्ध हो।

श्री महेश्वर नाथ कौल : यहां तक तो सही है कि आप नोटिस दे सकते हैं। मौजूदा स्पीकर उस को एडमिट कर सकता है। वह हाउस में आ सकता है। उस नोटिस पर बहस हो सकती है, लेकिन कांस्टीट्यूशन में यह लिखा गया है कि जज के खिलाफ बिना इक्वायरी के मामला चल नहीं सकता। तो यह मामला एक जगह आकर एक हद तक चल सकता है और उस के बाद अटक जाता है। उस अटकाव को हल करने के लिये यह बिल लाया गया है।

श्री राजनारायण : अटकाव कहीं नहीं है। अटकाव तो बुद्धि में है और अगर बुद्धि में अटकाव हमारे घर मंत्री के है तब तो यह प्रश्न टेढ़ा हो जाता है। अटकाव तो यदि यह विधेयक पास हो जायगा तो भी है और यदि बुद्धि में अटकाव नहीं है तो यह विधेयक नहीं रहेगा और तो भी मामला बन जायगा। हमने इसीलिये बहुत गंभीरता के साथ इस का अध्ययन किया। हमारे यहां पहले यह लिखा हुआ था कि अगर सदन के किसी मेंबर को हटाना ही तो, अगर यह प्रश्न कहीं उठे तो राज्यपाल या राष्ट्रपति, अगर पार्लियामेंट हो तो राष्ट्रपति

और विधान मंडल हो तो राज्यपाल, उस को देखेगा और देख कर एलेक्शन कमिशन के पाम भेज देगा, एलेक्शन कमिशन की सम्मति के अनुसार यह चलेगा। मगर वह कहाँ उठे। इस सवाल को हम ने उत्तर प्रदेश की विधान सभा में उठा दिया कि श्री कमलापति त्रिपाठी उस सदन की सदस्यता से वंचित किये जायें। अब उस में बड़ा वक़ेला मचा। अगर सदन उचित स्थल नहीं है तो कौन सा वह स्थल है जहाँ इसे उठाया जाय क्योंकि उस में लिखा है कि अगर यह प्रश्न कभी प्रस्तुत हुआ तो राज्यपाल उस को देखेगा। अगर वह प्राइमा फेमी केस पायेगा तो एलेक्शन कमिशन को भेज देगा और उस की सम्मती से वह व्यवस्था कायम करेगा। मगर यह नहीं लिखा गया कि यह प्रश्न कहाँ उठेगा। इतने डिटेल् में न तो कोई विधान हो सकता है और न कोई कानून। अनावश्यक सरकार को इस में कठिनाई महसूस हो रही है। यह सीधा है, माफ है। यह जो हमारे मित्र कौल साहब हैं, बहुत बड़े पंडित हैं, लोक सभा के सचिव रहे चुके हैं . . .

**श्री महेश्वर नाथ कौल :** नहीं, मैं गलती कर सकता हूँ।

**श्री राजनारायण :** यह कहते हैं कि विधि द्वारा विनियमन कर मकेगी, आवश्यक नहीं है कि वह करे ही। मगर सदन को यह अधिकार है कि अगर कोई प्रस्ताव आये तो उस प्रस्ताव के बारे में अध्यक्ष या चेअरमैन सदन की राय ले सकता है कि हमारे पास जज को हटाने का नोटिस है। हम चाहते हैं कि सदन इस पर राय दे। सदन में कब रखा जाय, कितने दिन के बाद रखा जाय या जज को बुला कर हम कैसी जांच करे, प्राइमा फेमी केस है या नहीं, उनको देखने के लिये क्या हो, वह सब हो सकता है। इस में कही यह नहीं है कि स्पीकर या चेअरमैन जो नोटिस को ग्राह्य करते हैं उन को कोई रूकावट है।

**पंडित श्याम सुन्दर नारायण तन्खा :** सवाल यह है कि जब मोशन आ गया और यहां

डिम्कशन हुआ, उस के बाद प्रोसीजर क्या हो।

**श्री राजनारायण :** हर संसदीय प्रथा का विद्यार्थी, हर पार्लिमेंटरी प्रैक्टिस का जानने वाला यह जानता है कि जब संसद में कोई ऐसी स्थिति आ जाती है तो कुछ रेसीड्यूरी पावर्स रहती हैं चेयरमैन या स्पीकर की, जिन के बारे में कोई डिटेल् नहीं लिखा रहता; उन मामलों का वह निर्णय कर सकता है। जब सदन में प्रस्ताव आ गया और दो तिहाई बहुमत से पास हो गया दोनों सदनों में तो वह राष्ट्रपति के पास भेज दिया जायगा और राष्ट्रपति अपने हस्ताक्षर से जज को निकालने की व्यवस्था कर देगे।

**पंडित श्याम सुन्दर नारायण तन्खा :** इसी के वास्ते प्रोसीजर प्रॉस्क्राइब कर रहे हैं कि राष्ट्रपति के लिये क्या तरीका होगा।

**श्री राजनारायण :** अब उसको और कठिन बनाया जा रहा है। इसको पढ़ कर देखा जाय अब हम को कहा जा रहा है कि यदि श्री भूपेश गुप्त को श्री चागला के बारे में कोई गड़बड़ी की जानकारी हो तो पहले भूपेश गुप्त जी अपने चरण घुमाए और 50 राज्य सभा के सदस्यों को हासिल करें। 50 राज्य सभा के सदस्यों के हस्ताक्षर जब तक वे न लें तब तक वे चेयरमैन साहब की खिदमत में नहीं जा सकेंगे। जब 50 राज्य सभा के सदस्यों के हस्ताक्षर वे ले लेंगे तब वे चेअरमैन साहब की खिदमत में जायेंगे। (Interruptions) चेअरमैन साहब सुप्रीम डिक्टेटर हैं। उस 50 हस्ताक्षर के बाद भी यदि चेअरमैन साहब चाहें तो उसको रद्दी की टोकरी में फेंक देंगे और कहेंगे तुम्हारा दस्तखत किया कराया सब व्यर्थ है। तो गुप्ता जी क्या पागल हैं। काहे को राज्य सभा के 50 मेंबरों के पास जा कर के वे जी हुजुरी करें कि आप दस्तखत कर दीजिये, आप दस्तखत कर दीजिये। आखिर अधिकार तो यह स्पीकर साहब को है या चेअरमैन साहब बहादुर को ही है। जब चेअरमैन साहब बहादुर

[श्री राजनारायण]

अपना वह अधिकार इस्तेमाल करेंगे ही तो जैसे 50, वैसे एक। एक आदमी भी चेअरमैन को लिखकर दे सकता है कि साहब, फलों जज के बारे में हम को यह शिकायत है और चेअरमैन उसको बुला कर प्राइमा-फेसी केस देख ले। जो कमेटी बनाने की बात है उसमें हमको कोई एतराज नहीं है, वह ठीक है। मगर हमको इस पर जबरदस्त एतराज है कि राज्य सभा के 50 सम्मानित सदस्य जब तक हमको हस्ताक्षर करने के लिये नहीं मिलें तब तक चाहे कोई जज पागल हो, चाहे रिश्वती हो, चाहे कदाचारी हो तब तक उसको हटाने की बात हम नहीं कह सकते। क्या यह सत्य है? अगर सत्य है तो इसको हटा दो और हमारा मामला साफ हो जाय।

देखिये, दो बातें मैं आपके जरिये चव्हाण साहब से कहना चाहता हूँ क्योंकि वे भारतीय परम्परा की बात करते हैं। वे रायस्ट हैं और एम० एन० राय के साथ रह कर मार्क्सवादी बने हैं। मार्क्स ने केवल सम्पत्ति की संस्था को भंग करने की बात कही और भारतीय उपनिषद ने सम्पत्ति के मोह को हटाने की बात कही है। दोनों अधूरे रह गये। अब मैं कह रहा हूँ कि सम्पत्ति की संस्था और सम्पत्ति का मोह, जब तक दोनों नहीं हटाये जायेंगे तब तक सब बिगड़ता रहेगा। दोनों को हटाइए। सम्पत्ति की संस्था को भी तोड़िये और सम्पत्ति के मोह को भी तोड़िये, तभी कुछ हो सकता है। इसी लिये अपने को समाजवादी कहने वाले बहुत से मुल्क जिन्होंने मोह को हटाने की बात नहीं कही अब उनमें आर्थिक विपत्ति बढ़ती जा रही है। अब न लेनिन का सिध्दांत रह गया और न गांधीजी का वह सिध्दांत रह गया कि हर नाई और वकील की मजदूरी बराबर हो। हर इंसान इंसान बराबर है वह सिध्दांत रखा का रखा रह गया। इसलिये मैं कहना चाहता हूँ कि सम्पत्ति का मोह और सम्पत्ति की संस्था दोनों को जब तक चव्हाण साहब हटायेंगे नहीं तब तक मामला बनेगा कैसे। चव्हाण साहब

एक प्रशासक हैं और देख रहे हैं कि आज हालत क्या है। पैसे से पार्लियामेंट के सदस्यों को खरिदा जा रहा है और विधान मंडल के सदस्यों को खरिदा जा रहा है। तो कोई भी जज अगर विधान मंडल के सदस्यों को पैसा दे कर खरिदना चाहे पानी की तरह पैसा बहा कर के तो हम को 50 आदमी नहीं मिलेंगे। एक आदमी अगर किसी जज के बारे में अच्छी तरह से जानता है तो भी वह जज पानी की तरह पैसा बहा कर के इसको कार्यान्वित नहीं होने दे सकता है यदि चव्हाण साहब इसको रखते हैं, तो। बहुत मे लोग लेकर दे सकते हैं कि क्या आप समझते हैं कि हम पार्लियामेंट के मेंबर हो कर के पैसे से खरीदे जा सकते हैं। यह लेकर हमने बहुत सुना है। लेकिन जो आज वस्तुस्थिति है उसको देखा जाय। यह दलबदलू क्यों हो रहे हैं? धन, पद और सत्ता का मोह मनुष्य से क्या क्या अनर्थ नहीं कराता और आज वह अनर्थ कर रहा है। सारे कानून और सारी मर्यादाएं रखी जा रही हैं, मगर लोग अपना व्यक्तिगत लाभ इतना व्यापक बनाते हैं कि आज सारे का सारा प्रशासन भ्रष्टाचार में डूब गया है चव्हाण साहब तो इतना भ्रष्टाचार के सागर में डूबे हैं चव्हाण साहब इसको व्यक्तिगत न मानें कि केवल उनकी नाक बची है और उसमें थोड़ी थोड़ी सांस आ रही है और वह भी डूबने वाली है। इस लिये मैं घर मंत्री से सफाई से कहना चाहता हूँ कि हमको काहे को रोख रहे हो। . . .

श्री वाई० बी० चव्हाण : आप भी डूबना चाहते हैं।

श्री राजनारायण : हमें काहे को रोक रहे हो कि हम 50 आदमियों को ढुंढ़ें और तब जा कर इस प्रकार का मामला लायें।

देखा जाय, मैं दूर नहीं जाऊंगा। बहुत से जजों की बात जानता हूँ। कमांडर अर्जुन सिंह भदौरिया लोक सभा के सम्मानित सदस्य हैं और मंपोपा के उत्तर प्रदेश राज्य के अध्यक्ष हैं। आज तक उनकी जमानत नहीं मंजूर हुई। 30, 31 तारीख की मीटिंग में श्री यशवन्तराव

चह्वाण, घर मंत्री, को हमने लखनऊ में बताया था। कारण क्या है? जब लोग सरकारी पक्ष के एडवोकेट, सरकारी पक्ष के लोगों को मीटिंग में बुलाते हैं, पुलिस के डी० आई० जी० और आई० जी० को बुलाते हैं और उन्हें बुलाकर उनसे राय मश्विरा करते हैं कि हम जमानत मंजूर करें या नहीं। 12 सितम्बर को वे गिरफ्तार हुये और आज कौन, मी तारीख आ गई, 18 नवम्बर। सितम्बर बीत गया, अक्टूबर बीत गया और आज 18 नवम्बर हो गया, यानी दो महीना और छः दिन हो गये। लोक सभा चल रही है और लोक सभा के सम्मानित सदस्य जेल में बन्द हैं, उनकी जमानत नहीं हो पाई। कोई भी इम्पॉजिबल जज क्या इस जमानत को खत्म कर सकता था। इसके लिये कहा जा सकता है कि यह तो मुकदमा है, जैसा मुकदमे में होगा वैसा देखा जायेगा। मगर हमारे ससोपा दल के भूतपूर्व नेता, श्री मधु लिमये, जिनको हमारे चह्वाण जी भी अच्छी तरह से जानते होंगे, '44 में गिरफ्तार है उनका 14 दिन का रिमांड है क्या यह कल का केस है जिसमें तपतीश करनी है। लोक कल्याण की मांग को ले करके हमारे श्री पुनाचा और घोष जी की रेल जो लोगो को सिर पर चढ़ कर कुचल देती है, उन लोगों को दस दस हजार रुपये का मुआविजा दिया जाय, यह मांग लेकर वे जा रहे हैं और वहां 14 दिन का रिमांड दिया गया और उनको जेल भेज दिया गया। इससे बड़ी क्या कोई तानाशाही होगी।

एक माननीय सदस्य : भगोडे।

श्री राजनारायण : श्रीमन, मैं उस शकल को देख नहीं पाया, केवल आवाज सुनी। कोई भगोडा कह रहा है। जिसने यह कहा उसने जरूर माफी मांगी है अग्रेजों से। जिस के मुख से ये शब्द निकले हैं उसने जरूर देश से गद्दारी की होगी और उसने जरूर अग्रेजी साम्राज्यवाद के सामने घुटने टेके होंगे।

अब यह देखा जाय कि मैं बड़ी इज्जत करता हूँ। हमारी अपनी यह राय है पैट्रियट के बारे में,

लिक के बारे में और न्यू एज के बारे में भी। मगर उस राय को मैं यहां पर व्यक्त नहीं करूंगा, विषयांतर हो जायेगा।

ये जो हमारे ई० टी० सेन हैं उन्होंने एक कन्टेम्प्ट आफ कोर्ट की प्रोसीडिंग्स चला दी। न्यू एज, पैट्रियट और इनके जो एडीटर हैं हमारे श्री भूपेश गुप्त, जो इस सदन के सम्मानित मेम्बर हैं उनके ऊपर। उसमें जा रहे हैं कौन? वे जो कि चीफ जस्टिस रह चुके हैं बम्बई हाई कोर्ट के, उनका नाम है श्री चागला साहब। चागला साहब क्यों जा रहे हैं? हमारे सदन के एक सम्मानित सदस्य के ऊपर एक मुकदमा चला है और उस मुकदमे की पैरवी ई० टी० सेन करवा रहे हैं जिसमें कि सी० आई० ए० का पैसा पूरा वह रहा है लेकिन उसमें चागला साहब जा रहे हैं। बूढ़ाई के समय में पैसा कमाने का इतना लालच है? आखिर इस लालच की कोई सीमा होगी? इसीलिए हमने पहले कह दिया था, हमारी बात को समझो कि सम्पत्ति का संस्था और सम्पत्ति का मोह दोनों समाप्त होने चाहिए। प्रिवी पर्म को हटाने की बात करते हो, कहते हो हो समाजवाद कर दो, सामाजिक सम्पत्ति कर दो। सामाजिक सम्पत्ति फिर बिगड़ सकती है अगर सम्पत्ति के मोह पर अकुश नहीं लगेगा। इसीलिए मैं अपने मित्रों को कहा करता हूँ कि संतति और सम्पत्ति के मोह के बधन से मुक्त होकर ही अच्छे समाजवादी हो सकते हो। संतति और सम्पत्ति के मोह का बधन रहेगा और कहोगे कि हम समाजवादी हैं तो हम मानने के लिए नैयार नहीं हैं, वह चल नहीं पाएगा।

तो मैं यह चाहता हूँ कि यशवन्तराव जी संशोधन द्वारा इस विधेयक को इस तरह से ले लें कि राज्यसभा में दी गई मूचना की दशा में उस सभा के पचास से अन्यून सदस्यों द्वारा 'मैं से' की दशा में उस सभा के पचास से अन्यून सदस्यों द्वारा निकाल दिया जाय। इस तरह से कर सकते हैं—

राज्यसभा में दी गई सूचना हस्ताक्षरित हो तो, यथास्थिति, अध्यक्ष या सभापति ऐसे

[श्री राजनारायण]

व्यक्तियों से, यदि कोई हो, परामर्श करने के पश्चात् जिन्हें कि वह ठीक समझे और ऐसी सामग्री पर जो उसे उपलब्ध हो, या तो प्रस्ताव को अंगीकृत कर लेगा या उसे अंगीकृत करने से इंकार कर देगा। यह अधिकार सर्वथा चेयरमेन या सभापति को वैसे ही है कि वह किसी प्रस्ताव को स्वीकार करेगा या नहीं करेगा, फिर राज्यसभा के 50 सदस्यों के पास और लोकसभा के 100 सदस्यों के पास क्यों भेज रहे हैं, इसकी कोई आवश्यकता नहीं थी। अगर चव्हाण साहब चाहें तो सीधी बात कहें कि किसी मेम्बर को जो जानकारी होगी उसकी बुनियाद पर वह चेयरमेन या स्पीकर के पास उसका नोटिस देगा, चेयरमेन या स्पीकर उसके नोटिस को उचित समझे तो जांच-पड़ताल कर लेंगे और जांच-पड़ताल करने के बाद उसे सदन में रख देंगे

एक खतरा है। आपके द्वारा मैं कौल साहब से विशेष निवेदन करूंगा क्योंकि इस विधेयक के बनाने में उनका काफी हाथ रहा है, अभी तक जो सविधान है उसमें अगर इतना हो जाय कि जो विनियमन का हक है, कोई चेयरमेन या अध्यक्ष को नोटिस देता है, उसके सम्बन्ध में वह तत्सम्बन्धी व्यक्तियों से जांच-पड़ताल कर ले और अगर यह मालूम हो जाय कि मामले में दम है तो बाकायदा सदन में पेश कर दे और वह दो-तिहाई बहुमत से पास हो जाय। इतना हो जाय तो...

**श्री महेश्वर नाथ कौल :** यह बिल्कुल नहीं हो सकता क्योंकि कांस्टीट्यूशन में लिखा है—  
“For investigation and proof of mis-behaviour or incapacity of a judge.”  
नेचरल जस्टिस किस तरह से होगा अगर आप जज को अपोच्युनिटी नहीं देंगे। पार्लियामेंट अपना कामेटी कायम कर सकती है लेकिन जब कांस्टीट्यूशन में लिखा है—

“... procedure to be regulated by law”, it must be regulated by law.

**श्री राजनारायण :** मैं समझता था थोड़े कहने में कौल साहब समझ लेते हैं लेकिन लगता

है कि जब तक मैं ज्यादा व्याख्या नहीं करूंगा वे समझेंगे नहीं। जब चेयरमेन के सामने हम अर्ज करेंगे किसी जज के विरुद्ध तो ‘विधि विनियमन के द्वारा’ यह अधिकार स्पीकर या चेयरमेन को क्यों नहीं देने है? स्पीकर या चेयरमेन बाकायदा जिस व्यक्ति से सम्बन्धित प्रश्न है उसके बारे में जांच कर ले, उसको मौका दे दें और अगर स्पीकर या चेयरमेन सेटिसफाइड है कि मामला ठीक है, इसमें बुनियादी दम है तो उसको सदन में पेश कर दें। जो ‘रेगुलेट’ शब्द को लेकर आप हल्ला मचा रहे हैं उसके सम्बन्ध में संसद का हक है कि संसद विधि विनिर्मित करे। हम विधि इतनी ही बनाएंगे कि जब आवेदनकर्ता चेयरमेन के पास पहुंचेगा तो चेयरमेन को हक होगा कि सम्बन्धित जज को मौका देकर उसके बारे में जांच-पड़ताल करने के बाद अगर उनको मालूम होता है कि मामला दमदार है तो उस मामले को इस सदन में रख दें और वह दो-तिहाई बहुमत से पास हो जाय। इस विधेयक के अनुसार पहले 50 आदमी का हम दस्तखत कराएं, अध्यक्ष या सभापति को अर्जी दें, अध्यक्ष या सभापति चाहे तो उसको फेंक दे, न चाहे तो तत्सम्बन्धी व्यक्तियों से जानकारी करे।

“राज्यसभा में दी गई सूचना की दशा में उस सभा के 50 से अनूय सदस्यों द्वारा हस्ताक्षरित हो तो, यथा-स्थिति, अध्यक्ष या सभापति ऐसे व्यक्तियों से, यदि कोई हो, परामर्श करने के पश्चात् जिन्हें कि वह ठीक समझे और ऐसी सामग्री पर, यदि कोई हो, विचार करने के पश्चात् जो उसे उपलब्ध हो, या तो प्रस्ताव को अंगीकृत कर लेगा या उसे अंगीकृत करने से इंकार कर देगा।”

मैं चाहता हूँ कि इतना ही रहें, इसके आगे न बढ़ें। यदि सभापति अंगीकृत कर लेता है तो वह तीन आदमियों की कमेटी बनाए जिसमें एक सुप्रीम कोर्ट के जजों में से चुने, दूसरा बाकी हाई कोर्टों के जजों में से या हाई कोर्ट के

मुख्य न्यायाधीशों में से किसी को करे और एक जो कानून जानने में माहिर हो। क्यों? इस लिए कि यदि अध्यक्ष की राय में प्राइमा फेमी केस नहीं है तो वह कमेटी बनाएगा नहीं, प्राइमा फेसी केस है तभी कमेटी बनाएगा। यह द्रविड़ प्राणायाम क्यों? यह कमेटी का बीच में प्रावीजन करके देर करने की साजिश क्यों? यह जो कमेटी है तीन आदमियों की उस पर भी लागू होता है वही सम्पत्ति वाला मामला। यशवन्त राव जी चव्हाण न जानते हों तो जानलें कि 1946 के चुनाव में कांग्रेस लड़ी, ठीक है उसमें जनतंत्र था, 1952 के चुनाव में पूंजीवाद आ गया, 1957 में एक बटा तीन, १९६२ में दो बटा तीन, 1967 में चार बटा पांच और मध्यावधि में सोलहो आना।

**श्री शीलभद्र याजी (बिहार) :** यह नया अनुसंधान है आपका?

**श्री राजनारायण :** जितना चंदा पूंजीपतियों से एकत्रित हो वह एक जगह आए और उस चन्दे में मे जितनी ताकत हो जिस दल की जिस राज्य में उस हिसाब से बांट दिया जाय। कांग्रेस सबसे ज्यादा लाभ में रहेगी, इसके बाद उत्तर प्रदेश में जनमंघ आएगा जिसको, श्रीमान्, आप विलांग करते हैं हम तीसरे नम्बर पर आएंगे।

**उपसभाध्यक्ष (श्री दत्तोपन्त ठेंगड़ी) :** आप जल्दी समाप्त कीजिए।

**श्री राजनारायण :** आप इसमें परेशान क्यों हैं? हम जल्दी कर रहे हैं। हम अपने तर्क की पृष्टी में तमाम उदाहरण दे रहे हैं, हमको उससे हटाया न जाय। मैं यह बहुत ही ईमानदारी के साथ कहने के लिए खड़ा हुआ हूँ कि दिन-ब-दिन ज्यों ज्यों कांग्रेस का राज बढ़ता जा रहा है त्यों त्यों चुनाव जनतंत्र के नाम पर पूंजीपतियों की गोद में चला जा रहा है। यह आज इस देश का पूंजीपति जहां चाहता है वहां के चुनाव को पैसे के जरिये प्रभावित कर लेता है। शुरू में भी इसकी सबेरे चर्चा हुई। यही मूल रोग है। श्री यशवन्त राव चव्हाण

कितना ही चिल्लाते रहे जनतंत्र, जनतंत्र लेकिन चुनाव का मामला बिगड़ जायेगा क्योंकि वहां पानी की तरह पैसा बहेगा। आप जानते हैं, श्रीमान् कि श्री राम प्रकाश ने कहा कि एक करोड़ रुपया चाहिये और चन्द्रभानु गुप्त जी ने कहा कि हमें 75 लाख रुपया चाहिये, तो यह कहां से आयेगा यह एक करोड़, 75 लाख या 10 लाख? तो यह जो सौ पचास लाख रुपया है यह सब मिल कर सब पार्टियां स्ट्रेण्ड के मुताबिक बांट लें। आज कांग्रेस जहां 20 खर्च करती है तो जनमंघ वहां 25 रुपया खर्च करता है और हमारी पार्टी एक भी खर्च नहीं कर पाती। इसलिये मेरा कहना है कि पैसे के बल पर आप अपनी पापुलैरिटी और सर्वप्रियता को कायम नहीं रख सकते। अगर चाहते हैं कि ईमानदारी के साथ चले तो एक तरीका बना लें। तो श्रीमान् जो तीन आदमी आयेंगे, एक कानून का माहिर, एक सभी हाईकोर्ट के मुख्य जजों में से और एक सुप्रीम कोर्ट के चीफ जज या अन्य जजों में से उनके लिये मैं आपके द्वारा चव्हाण साहब से पूछना चाहता हूँ कि क्या चव्हाण साहब इसके बारे में गारंटी दे सकते हैं कि जिस जज के विरुद्ध उन जजों को जांच करनी है वह जज उनको प्रभावित नहीं कर सकता, पैसे की बुनियाद पर प्रभावित नहीं कर सकता। तीन आदमियों में पैसा खूब खेलेगा और इसका दायरा जितना बढ़ेगा उतना ही पैसे का महत्व भी कम होगा। इसलिये मैं चाहूंगा कि वह जो एक बाधक है उसको इसमें से निकाल दिया जाय, वह प्राविजन भी निकाला जाय।

**उपसभाध्यक्ष (श्री दत्तोपन्त ठेंगड़ी) :** राजनारायण जी, अब खत्म कीजिये।

**श्री राजनारायण :** श्रीमान् साथ ही साथ मैं चाहता हूँ कि सरकार हर सदस्य को यह अधि-कार दे, जैसी कि संविधान की मंशा है। अगर संविधान की ऐसी मंशा रही होती तो संविधान के बनाने वाले सजग थे, होशियार थे, वे इसका प्राविजन कर देते, मगर उन्होंने इसको उस समय छोड़ा, इसकी आवश्यकता उस समय

श्री राजनारायण

प्रतीत नहीं हुई। कोई भी सदन का सदस्य यहां के सभापति को अपना नोटिस देकर के किसी भी जज के विरुद्ध सदन में चर्चा करा सकता था परन्तु अगर यह विधेयक अधिनियम बनता है तो हम चर्चा नहीं करा पायेंगे और बाध्य हो कर हमे ऐसे लोगों के पास जाने को प्रयत्नशील होना पड़ेगा जिनकी ईमानदारी में हमें विश्वास नहीं है। इसलिये मैं बहुत ही अदब के साथ कहना चाहूंगा कि जो जज दोषी हों, कदाचारी हों उनको पकड़ा जाय, उनके पकड़ने में देरी नहीं की जाय वरना अगर देरी होगी तो कदाचारी जज जितने दिनों तक अपने पद पर आसीन रहेगा उतने दिनों तक वह देश का नुकसान करेगा, समाज का नुकसान करेगा। आपको मालूम नहीं है कि ये इतने मुकदमे क्यों भरे पड़े हैं मुकदमे क्यों आज हाईकोर्ट के अन्दर बढ़ते जा रहे हैं इसलिये बढ़ते जा रहे हैं कि अगर किसी आदमी का मुकदमा है तो वह किसी न किसी तरह से पेशकार को मिलाकर, रजिस्ट्रार को मिला कर तारीख पर तारीख बढ़ावाता जाता है और जज लोग अपने कमरों में बैठ कर मस्ती से जिन्दगी बसर कर रहे हैं और गरीब परेशान हो रहे हैं, रुपयों की बदौलत कम पैमे वालों को थका दिया जाता है, जो ईमानदारी में हैं, जिनके सही मुकदमे उनका थका थका कर रख दिया जाता है। इसलिये बड़े पैमाने पर इस देश में बढ़ते हुये भ्रष्टाचार को रोकने के लिये हमारा यह सुझाव है कि इन अंशों को हटाया जाय, सीधे हर मेम्बर को अधिकार हो कि वह सदन में अपने निवेदन-पत्र को ले कर आ सके और उस पर सदन में चर्चा हो सके। इसलिये मैं पुनः बार बार आपके द्वारा घर मंत्री से निवेदन करूंगा कि प्रस्तुत विधेयक को इस समय पास कराने के लिये आग्रह न करें, जिन बातों को हम लोगों ने पेश किया है उनपर गम्भीरता से विचार करें और अगर वह गम्भीरता से विचार करेंगे तो हमें पूरा यकीन है कि उनका हमारी बातों में दम मिलेगा और उसके मुताबिक इसमें संशोधन करने के लिये तैयार होंगे।

उपसभाध्यक्ष (श्री दत्तोपन्त ठेंगड़ी) : अब समाप्त कीजिये, काफी टाइम हो गया है।

श्री राजनारायण : ठीक है, अब हम बैठते हैं, अभी हमारे आल्वा साहब जो हैं वह बोलेंगे, इनको मौका दे दिया जाय, यह बोलें।

SHRI JOACHIM ALVA (Nominated) : Sir, a country or a people get the Government which they deserve. I think the people also get the Courts or the Judges they deserve. It is a great pity that after 20 years of independence we have been compelled to bring forth this Bill when perhaps our character as a nation has declined very much. There is pressure on Members of Parliament; the monopolies have increased their wealth; they pressurise Ministers, Chief Ministers and even Union Ministers and the poor man round the corner gets a raw deal. If this bastion of judiciary fails, then our democracy is bound to crash and we will have no salvation. If M. Ps. are influenced, if Cabinet Ministers are influenced, if Judges are also going to be influenced, what is our fate as a nation? May I here pay a tribute of humble praise to the British Judges who kept the flag flying? We must salute the British Judges and we must salute the sense of British Justice. I review for the *Times of India* the autobiography of Sir Sankaran Nair, a great Judge and a Statesman, who relates an incident of the British Chief Justice of the Madras High Court in the earlier part of the century, refusing to have tea alone with the Madras British Governor who invited him. He said he would come along with others, not alone. But what happens today? The former Chief Justice of the Supreme Court, Mr. Sinha, in his capacity as the then Chief Justice went and took a 60th birthday party in his own honour given by Shri Shanti Prasad Jain, who was involved in the Vivian Bose Commission of Enquiry. That Report was then being discussed in the Lok Sabha. What a scandal. How was Mr. Sinha ever appointed to even the Bench of the Patna High Court in the first place? Sir, I speak with some knowledge of Judges. I had been hauled up before six High Court Judges but I escaped the knife. The last full Bench before whom I was hauled up was presided over by Sir Eric Weston, a very fair-minded Judge, with then Mr. Justice Chagla and late Mr. Justice Lokur, three of the ablest Judges of India. It was regarding my 'Forum' editorial "Halt this march to the Gallows" regarding the Chimur and



Ashti villagers who were sentenced to death in the Quit India Campaign against the British. The article also referred to the famous Sholapur patriots who were hanged in the early thirties. Sir Eric, enquired as to what objection there was if the Editor hailed them as 'patriots' when even the Indian Judges had not the guts to refer to that point. Now Sholapur is represented by a top capitalist in the Lok Sabha. We want to breed a nation of judges who shall be first class in character, under whose control even our necks would be safe for execution. I may tell you that a German youth was executed for espionage during the last war and he wrote to his parents from the Tower of London that he had a fair trial. Can we say the same thing about our Judges today? It has been mentioned to us that BLITZ Editor, Mr. Karanjia, was convicted and sentenced at Nagpur by two Judges for contempt of Court and Mr. Nathwani was one of them. I personally have had the pleasure of the friendship with Mr. Nathwani when he was my esteemed colleague in the Lok Sabha; he is a good-mannered, unassuming and a decent man. But Mr. Nathwani was involved in three cases against Mr. Karanjia . . .

SHRI A. D. MANI : On a point of order, Sir. It is laid down in the Constitution that the conduct of a Judge cannot be discussed on the floor of Parliament. What Mr. Alva is trying to do is to establish that Mr. Nathwani had some kind of prejudice against Mr. Karanjia. Mr. Karanjia happens to be a very good friend of mine. But in trying to defend him I would not like to cast any aspersion on the Judge of the High Court. I am surprised that the hon. Home Minister is keeping silent when these references are being made. Please ask the Speaker not to refer to this matter; otherwise I will have to rise on a point of order again.

SHRI JOACHIM ALVA : Why did you not object when I raised the matter about Mr. Sinha? I did it when I was a Member of Parliament and when he was in the Bench. No one objected. Mr. Nathwani was involved in three cases against Mr. Karanjia as plaintiff.

SHRI Y. B. CHAVAN : He made reference to Mr. Sinha not for his judicial action but that he accepted a

certain party in his individual capacity but I may make an appeal that we are referring not to a case which is tried but we are trying to refer to his judicial conduct which really speaking, even on the ground of propriety, should not be raised here and even to refer to his judicial conduct which really speaking, even on the ground of propriety, should not be raised here and even under the Rules it cannot be done.

SHRI JOACHIM ALVA : Then there will be no safety left. If I am hauled up today, it will be Mr. Karanjia tomorrow. We must have safety. I must know, as the German boy who was hanged in the Tower of London wrote in his letter to his father: 'I have faith in British justice'. Mr. Mani is an experienced journalist and a great editor and an important parliamentarian and he must understand the man in the street.

SHRI A. D. MANI : I have to refer to this again, I set up a Committee to defend Mr. Karanjia in an obscenity action. My *bona fides* about this matter are known. Mr. Nathwani was practising in the Bombay High Court. Does it mean that a person who has accepted a brief of one party against another shall not sit in judgement at any time in the future where the other party is involved?

(Interruptions.)

THE VICE-CHAIRMAN (SHRI D. THENGARI) : Mr. Alva, kindly steer clear. It is possible to steer clear.

SHRI JOACHIM ALVA : Mr. Nathwani was one amongst a dozen Judges of the Maharashtra High Court who should have said: "I cannot put my hand in this. I am connected with this". Sir John Simon did it. I am indebted to my hon. friend Mr. M. N. Kaul who reminds me of what Sir John Simon did this in the Privy Council. . . I may say further for the information of my friend that when a British Member of Parliament raises a point or starts delivering speech—we do not follow the standard—if there is a Bill in which money is involved or his own interest is involved, he says: 'I am involved in this matter. I am a Director and I am concerned in this matter'. He says it.

**SHRI BHUPESH GUPTA :** Mr. Vice Chairman, a privilege case is pending before the Privileges Committee of this House on my complaint about the Punjab Police coming to my house. I am not attending the meetings of the Committee because I am the complainant. Although I am a Member of the Privileges Committee, I am not going there. Although I have been asked to go, I have told : 'Since I am a complainant, I had better stay out of the Privileges Committee and let the Committee decide on its own.' This is the standard we are laying down in this very House.

**SHRI JOACHIM ALVA :** These are very important matters. Sir John Simon was a great and noble man. He came to India. He was a most distinguished lawyer and still he said, 'I could be in the Privy Council judging this case, but I prefer not to.' We want our Judges to say that. Even if he is an archangel, his mind is always influenced when he, before he became a judge, dealt with half-a-dozen cases. The Judge should not have flown from Bombay to Nagpur to try the case. It may be today my case, tomorrow it may be his case or that of the man in the street. He must have the courage to mention about it. Mr. Mani knows that there was the case of Mr. Justice Byers who was a European Judge of the Madras High Court during the Quit India Campaign. He shot a boy in Madras. He was prosecuted. I was looking into some old copies of my paper *Forum* recently and accidentally I found some material about the case. The prosecution that the British Raj arranged was in such a way that he was acquitted or discharged. I very fiercely attacked Justice Byers in the *Forum* on the ground that he was unfit, that a man who shot a boy in Madras could not exercise judicial judgment and that he should be removed from the Bench. Mr. Justice Byers moved through the Government of Madras to the British Government in India that the law of contempt should be so amended that I could be hauled up in Madras. That did not happen but today we are trying to change it. Again there were Judges Alsop and Collister, two European Judges of Allahabad High Court. Mr. Horniman wrote a few inoffensive lines about them in his then daily, *The Bombay Sentinel*, during the last war, in Bombay. The European Judges felt outraged and

demanding that Mr. Horniman's body be produced in the Allahabad High Court. But thanks to Sir John Beaumont, one of the greatest, noblest and fearless Judges who said, 'Nothing doing. I am not going to hand him over'—Sir John Beaumont, then Chief Justice of Bombay said this much in effect pronouncing judgement. I had been appearing quite often for Mr. Horniman and he wanted me to sit beside him at least in the High Court and assist him in his defence. I must say that I could not find time to go as I had hardly started my own journal. Sir John Beaumont told me later 'How can I, when you come and make allegations against my magistrate, against my police, transfer a case' and yet I got one case transferred but he wanted to lay down certain principles. Later he said, 'I cannot do this. How can I hand over Horniman for an offence like this?' Why I mention this is that Mr. Mani unduly gets sensitive and ignores human prejudices. I even went to have a look at the judges of the Allahabad High Court on a hot afternoon and they seemed to have glared at me from the Bench as if I was a dark prowling cat'. I wanted to know who these great judges were who wanted to remove the body of Horniman ...

**श्री निरंजन वर्मा :** श्रीमन्, मैं आल्वा साहब का ध्यान इस ओर भी आकर्षित करना चाहता हूँ कि अभी वह ब्रिटिश जजों की बहुत प्रशंसा कर रहे हैं लेकिन उनको यह भी खयाल होना चाहिये कि कलकत्ता में महाराजा नंदकुमार को फाँसी देने में उन्होंने क्या क्या खराबियाँ कीं ।

**SHRI JOACHIM ALVA :** Then the Imperial Raj was concerned. . .

**SHRI BHUPESH GUPTA :** Mr. Mani aspires to be a statutory Englishman but he can never become one.

**SHRI JOACHIM ALVA :** I must tell you of another case. An aggrieved, distressed father himself told me. The father was no less than the leader of a party of the old Central Legislative Assembly. He said : "Mr. Alva, four of my sons were convicted, four were sent to jail and I could have purchased their liberty with one lakh." I say this with all solemnity and I am prepared to make an oath. He said : "The matter went up and there was an offer for half

or a lakh but I refused to give." Then they were convicted—of what—Rs. 15,000 cheating done in Madhya Pradesh on account of a War Contract. Who had not sinned in those days? It was all because that father had the courage to stand up against Mr. Jinnah in the elections from Bombay. Mr. Liaquat Ali Khan had his sons prosecuted. What does the Chief Justice do? He takes away from the hearing judge himself and hears the case, confirms the convictions on the four boys, when he was fully known to the father and even their fathers had known each other for years. That was a matter for his God, for himself and for his conscience. There is a God above. We cannot hang people like that. There is something for you to stand up before your conscience. Everyone has to answer his God and his conscience above all. The Judge sitting has some very, very high duty and when he does it for accessibility or contacts, what can you do? The Chief Ministers must see that they have the best of the first-rate Judges. I cannot understand a leading practitioner saying: 'I am getting Rs. 30,000 at the Bar and I cannot sacrifice for about Rs. 3,000.' Look at Mr. Robert McNamara. He was asked once, twice and thrice to become a Member of the US Cabinet. He said: 'How can I say 'No' till the end,' Mr. McNamara may be connected with bombing of Vietnam but I would like to praise him for saying: 'How can I refuse the fourth time when three Presidents have asked me to get into the Cabinet?'. My official salary will be only \$ 30,000 when I am already earning over a million dollars.' Where is the public spirit of our lawyers? Are they only concerned with briefs? Are they only concerned with money and facts? We do want able men in our country, we want men of courage and patriotism. We want such men on the Bench, we want such men as Members of Parliament and we want them as Ministers. We, today, are not following one-tenth of the British practice. If the practice of the House of Commons and the Parliament, which we adore so much and for which we do Puja, were followed, half of our Ministers would have resigned for would have been dismissed and sent out. Which Chief Minister or even the Prime Minister has been known to have sent away a corrupt Minister?

(Interruptions)

The time has come when the public of India will demand its price. The

public will not wait for the High Court Judges to pronounce judgments. They will take the law into their hands. I told my wife—we live on the ground floor flat in Bombay—"Perhaps one day the people will ask us to get out of the house and we shall have to bow to it." These are things that are going to happen. In Bombay previously we had meetings of 1,000 people or so but now one or two lakhs of people join in a meeting. That shows the public urge and we cannot be waiting for High Court Judges. What sort of character do the judges possess?

Now these are very important trends but I am more concerned about the character of the judges.

SHRI BHUPESH GUPTA : Give concrete suggestions.

SHRI JOACHIM ALVA : At the lower level no Judge should be appointed on whom there is the slightest reflection of his character and integrity. No one shall be appointed as a Judge just because he is the nephew or cousin or a relative of a Chief Minister or even a Chief Justice. I would here refer to a Madras case where a legal regulation was lifted in order to make the cousin of a then leading Minister a Judge of the High Court. And that gentleman is strutting about in Delhi now. My authority is the 'Hindu' of Madras, which wrote an editorial on it. Now, if Chief Ministers and Ministers intervene to get their relatives on the Bench, what will happen to the nation? Such a Minister is not worthy Minister.

SHRI BHUPESH GUPTA : We will continue tomorrow, Sir.

THE VICE-CHAIRMAN (SHRI D. THENGARI) : He will finish now, I think.

SHRI BHUPESH GUPTA : We have other appointments fixed up. We may continue tomorrow, Sir.

SHRI A. D. MANI : Let us continue tomorrow.

SHRI BHUPESH GUPTA : The time is over.

SHRI A. D. MANI : May I make a submission? Ordinarily we are not allowed to say anything about Judges.

SHRI BHUPESH GUPTA : I have asked Mr. Mani to speak because I would like to hear him—tomorrow, not today. It is past five of the clock. Why are you waiting, Sir? Please adjourn the House.

THE VICE-CHAIRMAN (SHRI D. THENGARI) : Let him finish.

SHRI BHUPESH GUPTA : He will continue tomorrow; he has more to say. Please adjourn the House.

THE VICE-CHAIRMAN (SHRI D. THENGARI) : The House stands adjourned till 11A.M. tomorrow.

The House then adjourned at one minute past five of the clock till eleven of the clock on Tuesday, the 19th November, 1968.