STATEMENT GIVING INFORMATION IN REGARD TO STARRED QUESTION NO. 62 ANSWERED ON THE 9TH NOVEMBER, 1966.

AIR CONDITIONERS IN USE BY MINISTRIES

THE DEPUTY MINISTER IN THE MINISTRY OF WORKS, HOUSING AND URBAN DEVELOPMENT (SHRI B. BHAGAVATI): Sir, I beg to lay on the Table a statement giving information in respect of Starred Question No. 62 answered in the Rajya Sabha on November 9, 1966, relating to air conditioners in use by Ministries. [Placed in Library. *See* No. LT-7528/66.]

THE CONSTITUTION (TWENTIETH AMENDMENT) BILL, 1966

THE MINISTER OF LAW (SHRI G. S. PATHAK): Sir, I move:

> "That the Bill further to amend the Constitution of India, as passed by the Lok Sabha, be taken into consideration."

This Bill has become necessary because of certain constitutional defects discovered as a result of two Supreme Court decisions. These defects relate to the appointment of District Judges and to orders of transfer relating to District Judges. Sir, these defects could be removed only by a constitutional amendment for the obvious reason that a constitutional defect cannot be removed by ordinary legislation. If ordinary legislation were enacted in order to remove a constitutional defect that will itself come into clash with the Constitution and will be void. That is the reason why these defects are sought to be removed by a constitutional amendment.

Now, Sir, this Bill does not seek to make any fundamental change in the constitutional provision. All that it seeks to do is to validate the appointments, judgments and orders of transfer. In other words it seeks to regularise what has been declared to be irregular and illegal by reason of the fact that the constitutional provision relating to the necessity of consultation and recommendation as required by article 233 had not been carried out. Now in order that I may be able to place before this House the real controversy that arose and the necessity for the enactment of this Bill I would like to place article 233 of the Constitution before the House.

[THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) in the Chair]

Article 233 (1) says:

> "Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State."

Now it may be remembered, Sir, that a Selection Committee was appointed in pursuance of the rules made in 1952 by the State Government purporting to act under article 309. Under these rules a Selection Committee had to be appointed consisting of two High Court Judges and the Judicial Secretary of the Government. This Selection Committee had to make selection from the Judicial Service, as well as from the Members of the Bar, under article 233 clause 2, which provides for direct appointment from the members of the Bar on a recommendation by the High Court. The question was whether the Selection Committee which furnished the list of persons selected to the High Court and the High Court transmitted that list to the Governor was in compliance with the Constitution, which provides consultation with the High Court and recommendation of the High Court. I have not read article 233 (2). I have pointed out the difference between article 233(i) and direct recruitment from the Bar on the recommendation of the High Court.

[Shri G. S. Pathak.]

Now, this question was never raised in any court until about 1966. There are two more questions which arise on the interpretation of article 233(1). I have already mentioned No. 1, the meaning of consultation. No. 2 is whether the word 'posting' in article 233 means merely first posting after appointment or also means 'transfer'. The Government had been acting on the supposition that posting would include transfer and for that reason the Governor had been making orders of transfer. In one of the cases the question arose: What is the meaning of consultation. In the other case, the question arose whether the word 'posting' would include transfers. The third point was whether the expression 'Service' in article 233 . . .

श्री राजनारायण (उत्तर प्रदेश) : आन् ए पौइन्ट आफ आर्डर । यह सुप्रीम कोर्ट का जो जजमेन्ट है, उस जजमेन्ट की कापी मंत्री जी के पास है, तो हम लोगों को भी मिलनी चाहिये ।

यह नियम के अन्दर बात कह रहा हूं ।

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): I do not know what the Law Minister wants to say about this?

SHRI G. S. PATHAK: The judgments are documents which are public property commonly available. It is not my duty to supply.

SHRI BHUPESH GUPTA (West Bengal): On a point of order . .

(Interruption)

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): What is your point of order?

SHRI BHUPESH GUPTA: Now, Sir, we are told that it is public property. It is a public property in the sense that it is printed and so on. I understand that, but then when the Minister sponsors an amendment of the Constitution of this kind, as a result of a judgment delivered by the Supreme Court, is it not his public duty also here in this House to make this judgment available to the Members of the House, so that they can reflect on that and come to conclusions with regard to the amendment proposed. Now, Sir, generally a memorandum is submitted by the Government and now it is not possible for all Members to get copies of the judgment of the Supreme Court. It is not even reported in full in the newspapers. Only summaries appear in the press. I do not know whether it has been printed in the usual law reports yet. Therefore, I say the Government wants to take this House for granted and they think with their majority they will pass it. It is not just.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): You have raised your point.

SHRI BHUPESH GUPTA: Now, I have limited myself to the implications of this. A constitutional amendment is sought to be moved here on the basis of a judgment and I do not know whether the Minister is in possession of the judgment.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): I think the practice of this House has been, in the case of such decisions, generally the judgments are not circulated or given copies of. This is not the first occasion when we are having, after the Supreme Court judgment, a Constitution Amendment.

SHRI BHUPESH GUPTA: My suggestion was not that all Members should get each a copy of the judgment, but a few copies should be made available to us at least on the Table or it should be supplied in the Library.

SHRI G. S. PATHAK: I submit that it is not the practice to supply copies of a judgment which may be referred to in the course of the debate relating

to any Bill. Now, I understand from any Secretary that twenty copies of each of these two judgments were placed in the Library of Parliament.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): Then, it is all right. That meets Mr. Bhupesh Gupta's point.

SHRI G. S. PATHAK: Now, if they had cared to look into the judgments in the Library, they would have got what they wanted.

SHRI BHUPESH GUPTA: We are opposing it anyhow.

SHRI G. S. PATHAK: I want to complete what I was saying when I was interrupted. Does the word 'service', which has been used in article 233 mean judicial service or could also cover people from the executive side. The contention was that you cannot have recruitment from outside the judicial service, unless there is direct recruitment from the Bar and that recruitment is confined only to members of the Bar. These were the three points which arose on an interpretation of Article 233. Hon. Members will also remember that article 236 defines the expression "district judge" in a very comprehensive sense so as to include sessions judge, and assistant sessions judge and many other classes of judges.

Now, Sir, as I have submitted on the 1st April 1953 rules were framed by the Governor under article 309, which provides for the appointment of a Selection Committee. Since 1954 this Selection Committee had been functioning whenever necessity arose for recruitment from the lower ranks of the judiciary or recruitment from the Bar.

SHRI BHUPESH GUPTA: Who appointed this Committee?

SHRI G. S. PATHAK: The Committee had to be appointed by the Governor under the rules, but as the High Court Judges were also sitting on the Committee and the High Court also was transmitting the list prepared by the Selection Committee to the Governor, the High Court must necessarily become a consenting party. Otherwise, they will not provide the Judges.

SHRI BANKA BEHARY DAS (Orissa): The advertisement for these posts was also made by the Registrar of the High Court. So, both were associated in that Committee.

SHRI G. S. PATHAK: You are right. As I have already stated, it was the Hight Court, through the Registrar, which sent this list to the Governor and the High Court had been acting and the Government had been acting on the supposition that transmission of this kind would mean approval of the list by the High Court itself. That was the view taken presumably by the High Court and by the Government. One Chandra Mohan, a member of the Judicial Service, filed a writ petition challenging the appointment of six recruits, and his case was that this Selection Committee could not be a substitute for the High Court. The Constitution provided consultation and recommendation of the High Court. The Constitution did not provide for consultation and recommendation of any Committee. That was the question that he raised. This writ petition was dismissed by the High Court. He took the matter to the Supreme Court and the Supreme Court allowed the writ petition. The Supreme Court took the view that consultation with the Selection Committee or recommendation of the Selection Committee was not adequate. It did not comply with the terms of the Constitution. Therefore, these rules are *ultra vires* and all appointments made under the rules are unconstitutional. I will read three or four important sentences from the judgment as Mr. Bhupesh Gupta has not got the judgment, I have got the blueprint of the judgment. The Supreme Court also held

1 P.M.

[Shri G. S. Pathak.]

that judicial Service or Service as contemplated in article 233 is confined to Judicial Service. Thirdly, 'posting' meant only first posting after the appointment. It did not mean transfer. The effect of that was that the Governor could not pass an order of transfer. It could be only the High Court which could pass an order of transfer under article 235 which says that the control over the District Judges vests in the High Court, and control includes transfer. That was the position. Now, I will read a few lines from this judgment which was pronounced on the 8th of August, 1966. That day is important, and I am sure the hon. Members will bear that date in mind. The Supreme Court said:

"While the constitutional provision say that the Governor can appoint District Judges from the Service in consultation with the High Court, these rules say that the Governor can appoint in consultation with the Selection Committee, subject to a kind of veto by the High Court which can be accepted or ignored by the Governor."

Then the Supreme Court says:

"The position in the case of District Judges recruited directly from the Bar is worse. Under article 233(2) of the Constitution the Governor can only appoint advocate recommended by the High Court to the said Service, but under the rules the High Court can either endorse the recommendations of the Committee or create a deadlock.

Then the Supreme Court says:

"We would therefore construe the expression 'Service' in clause (2) of article 233 as Judicial Service."

The conclusion is:

"In the result we hold . . ."

श्री राजनारायण : श्रीमन्, मेरा एक प्वाइन्ट आफ आर्डर है । माननीय मंत्री जी को यह जानकारी है कि हाई कोर्ट में मुकदमा दाखिल है और यह मामला सबजुडिस है । जो मामला सबजुडिस हो, उस मामले की क्या सदन में विधेयक के जरिये चर्चा हो सकती है ? दूसरा प्रश्न यह है कि जजमेंट का जो आखिरी भाग है

"For the aforesaid reasons we hold that the rules framed by the Governor empowering him to recruit District Judges from the judicial officers are unconstitutional and therefore for that reason also the appointment of respondents 5, 6 and 7 was bad."

मेरी जानकारी में यह है कि सुप्रीम कोर्ट ने जिन एपाइन्टमेंट्स को वायड और अनकांस्टीट्यशनल बतलाया है, वे अभी तक अपनी जगह पर पड़े हुए हैं और इस तरह से यह सरकार स्वत: सुप्रीम कोर्ट के आर्डर की कंटेम्पट कर रही है । तो मेरा असली प्वाइन्ट यह है कि जो जजमेंट पुराना हो चुका है जबकि उन्होंने अपने एक नियमित कोर्ट के जरिये वोनाफाइड रूप से जजमेंट किया है, वह वैलिड है या नहीं ?

واٹس جینٹلمین شری اکبر علی

خان): معزز ممبران جانتے ہوں گے کہ

رولنگ میں دوں گا -

†[**उपसभाध्यक्ष (श्री अकबर अली खान)**: मोअज्जिज़ मेम्बरान जानते हैं कि रूलिंग मैं दूंगा ।]

श्री राजनारायण : अगर माननीय मंत्री जी इस बारे में कहना चाहते हैं तो उन्हें कहने दिया जाय । आप जो रूलिंग देंगे वह महत्वपूर्ण होगी और इसलिए मैं यह चाहता हूं कि आप रूलिंग देने से पहले मंत्री जी की राय को जान लें और उसके बाद रूलिंग दें ।

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): Would the Law Minister like to say something?

†[ ] Hindi transliteration.

SHRI G. S. PATHAK: The matter is so obvious that it does not admit of any debate. Parliament's powers are not taken away because some cases are pending elsewhere, and Parliament is supreme within its sphere and can make provision by enacting a law covering even pending cases.

SHRI BHUPESH GUPTA: That is your view.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): It is a different thing when a matter is *sub judice* to discuss the pros and cons of that matter; it is an entirely different thing. If Parliament think in their wisdom that they want to pass a law, the mere fact that something is pending in some court cannot stand in the way. So I rule that this be generally taken into consideration and the Law Minister will proceed.

SHRI BHUPESH GUPTA: I have no objection but I do hope that your ruling will be remembered when we ask questions in regard to matters which are *sub judice*. When they are *sub judice*, first of all we do not know whether we can at all discuss. You have given the ruling. We can discuss. If once we can discuss, pros and cons is a matter of opinion. Therefore, you have given a very good ruling for the future.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): You have not rightly interpreted me. I say when the matter is pending, the facts or the pros and cons cannot be discussed. I hold that view.

SHRI BHUPESH GUPTA: How to know whether a particular case would not merit discussion of the pros and cons? Once you are in water, whether you sink or swim you are wet. So we can discuss that. I have no objection. I would like it to be done. We will gain by it. It is a long-term investment for us.

SHRI M N KAUL (Nominated): Mr. Vice-Chairman we as Members are unable to follow what is being discussed in the House. I would like to know precisely from the hon. Minister as to what is the matter which is *sub judice*. The point raised is that the matter before the Court is whether the appointments being bad, the judgments are also invalid. Is that the matter which is before the Court? If that is the matter before the Court, then it is argued that this is precisely the matter which is being dealt with by legislation here. I would like to know the factual position on this.

SHRI G. S. PATHAK: I want to be given an opportunity to give the factual position. Before I am able to give the factual position the points of order come.

Yes, yes.

(Interruptions)

श्री राजनारायण : श्रीमन्, हमारा प्वाइन्ट आफ आर्डर समझ लिया जाय । मंत्री जी ने पहले यह कहा कि इन जजों के जरिये जो फैसले किये गये हैं व फैसले वायड हो जायेंगे, इसी लिये यह बिल आया है । हमारा यह कहना है कि It has to be argued in the High Court whether these judgments are going to be binding or not. यहां तो मूल मामला है ।

SHRI G. S. PATHAK: I am seeking to implement the decision of the Supreme Court. I am not criticising any judgment of the Supreme Court.

SHRI M. P. SHUKLA (Uttar Pradesh): It is circumvented, not implemented.

SHRI G. S. PATHAK: It is for the House to decide. But before the House is able to decide, I have got a right to place the facts before the House.

SHRI MULKA GOVINDA REDDY (Mysore): That is not a proper appreciation of the position. We are not

[Shri Mulka Govinda Reddy.]

trying to implement a decision of the Supreme Court. On the other hand, we are trying to validate a thing which is declared as illegal and unconstitutional. That is the point.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): When the Law Minister . . .

SHRI MULKA GOVINDA REDDY: We are not implementing a decision. What we want to do is to validate a decision which has been held illegal and unconstitutional by the Supreme Court.

SHRI BHUPESH GUPTA: Sir, you will kindly apply your mind. Records will show that he has said that we are implementing the decision of the Supreme Court. No. The Supreme Court has held some actions as illegal . . .

SHRI MULKA GOVINDA REDDY: Unconstitutional.

SHRI BHUPESH GUPTA: The Supreme Court is the final authority. Up to now, these actions are illegal. What they want is to amend the Constitution to make the illegal action legal. Is it the intention of the Supreme Court? Therefore, it is not implementing the decision of the Supreme Court. It is an attempt to amend the Constitution so that the Supreme Court's decision is negated.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): Thank you.

SHRI SURESH J. DESAI (Gujarat): Sir, we want to hear the Law Minister and know the facts. Whatever the Opposition has got to say that can say later on.

SHRI MULKA GOVINDA REDDY: This is not a party forum.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): Mr. Law Minister, you proceed. I do not think that when you said 'implement', you meant it in that specific sense; in a wider sense you said it.

SHRI BHUPESH GUPTA: Sir, words uttered are uttered. Either you can say 'expunge them' or you can ask him to withdraw them. But you cannot say 'I do not think that you have meant it'. What he has said is on record; the stenographic report is there. Read that report. He said, we are implementing the decision of the Supreme Court.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): Now, he will explain it.

SHRI LOKANATH MISRA (Orissa): Sir, you allow me. On a point of order. The point is . . .

SHRI G. S. PATHAK: I rise on a point of order. What is the point of order that is being raised, that is a matter for the Chair to consider. Otherwise, I have got a right to address, and I am being prevented from exercising my right.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): I have given a ruling on the point of order.

SHRI BHUPESH GUPTA: On a point of parliamentary procedure—there is no point of order to ask what is the point of order.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): I have given my decision.

SHRI BHUPESH GUPTA: You have given. But I rise on a point of order to say that there is no point of order. He can rise to oppose a point of order.

SHRI LOKANATH MISRA: I shall just ask for a clarification.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): Let him finish.

SHRI LOKANATH MISRA: You have given the ruling. I would like to ask for a clarification about the ruling. Sir, would you permit the Minister even if it is against the Rules

of Procedure of the House to deal with a subject which is now *sub judice*. The very fact that he is explaining . . .

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): Would you refer me to the rule, Mr. Lokanath Misra?

SHRI N. PATRA (Orissa): He must quote the rule.

SHRI BHUPESH GUPTA: Has he withdrawn it?

SHRI G. S. PATHAK: The Supreme Court says that the relevant rules therefore clearly contravene the constitutional provisions of article 233, clause (1) and clause (2) of the Constitution, and are, therefore, illegal. Now, the final part of the judgment is:

> "In their result we hold that the U.P. Higher Judicial Service Rules providing for the recruitment of district judges are constitutionally void and therefore the appointments made thereunder were illegal."

There is one more sentence:

> "For the aforesaid reasons we hold that the rules framed by the Governor empowering him to recruit district judges from the 'judicial officers' are unconstitutional and therefore for that reason also the appointment of respondents 5, 6 and 7 was bad."

SHRI BHUPESH GUPTA: What did you do with that Governor?

SHRI G. S. PATHAK: If I am not permitted to proceed . . .

DR. M. M. S. SIDDHU (Uttar Pradesh): On a point of order. May I ask him whether in a writ petition before the Allahabad High Court the question of the 158 district and sessions judges, temporary and officiating (civil and sessions) is there or not? Secondly, I want to know whether the writ has arisen out of the judgment of the Supreme Court which has been quoted by the hon. Law Minister?

SHRI G. S. PATHAK: I will mention at the proper stage about certain writ petitions that are pending in the High Court. I will mention it. At present . . . (*Interruptions*). I am not yielding.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): Let him proceed.

SHRI LOKANATH MISRA: Sir, you wanted the rule; it is rule 238 on page 108. It says:

> "A member while speaking shall not—
>
> (i) refer to any matter of fact on which a judicial decision is pending;

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): I quite agree; I agree with you. But that does not mean that the power of Parliament to bring in legislation is tampered or limited by this provision.

SHRI BHUPESH GUPTA: You can pass your legislation . . .

SHRI MULKA GOVINDA REDDY: I might clarify the position. The position is . . .

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): I have understood the whole thing.

SHRI MULKA GOVINDA REDDY: The writ petition pending in the High Court is not with regard to appointments that have been declared illegal by the Supreme Court but it refers to certain matters regarding the judgment.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): I do not know anything about it. The Minister will proceed.

SHRI G. S. PATHAK: Now, Sir, the result of this Supreme Court judgment is that all the appointments which have been made since 1954 in contravention of article 233, clauses (1) and (2) are void. It should be re-

[Shri G. S. Pathak.]

membered that when the Supreme Court decides a case, it is not only deciding the dispute between the parties before it, it is laying down the law for the entire country, and, in particular, when it is interpreting the Constitution. Then, whatever the case, the declaration of law made by the Supreme Court would govern it.

SHRI BHUPESH GUPTA: No, you are making a wrong statement.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): You cannot object to any statement. Please listen to me. You cannot object to any statement, you can take down notes and at your turn, you can reply to that statement. I do not approve of this. Please sit down. Otherwise, in that way, you cannot proceed with your work. In order to proceed with your work, you must give him the opportunity and when you speak, certainly you say what you want.

SHRI BHUPESH GUPTA: Can't I say about the meaning? The Supreme Court, in our Constitution, does not lay down the law. What does he mean by 'lays down the law'?

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): All the courts.

SHRI BHUPESH GUPTA: Laying down the law is by Parliament alone.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): It is only a legal expression. The courts also lay down laws. He has referred to it. As a barrister you must be knowing it.

SHRI BHUPESH GUPTA: There is a difference between common law and statute law and Parliament, in our Constitution, lays this. Read the provision about Supreme Court, that chapter. Never in the Constitution has it been said that the Supreme Court lays down the law.

SHRI G. S. PATHAK: Article 141. That the Supreme Court lays down the law is known to every young man who enters the legal profession. It is such a common expression.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): And for the benefit of my friend, shall I read out article 141? It says:

> "The law declared by the Supreme Court shall be binding on all courts within the territory of India."

SHRI BHUPESH GUPTA: No no. "The law declared by the Supreme Court"—it is something declared. I say, the Supreme Court takes the law; you can say, the Supreme Court declares the law. The law declared by the Supreme Court shall be binding on all courts within the territory of India. Now, therefore, the Supreme Court's function is to declare . . .

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): What is the difference between declaring a law and laying down a law?

SHRI BHUPESH GUPTA: You are a very learned man, Mr. Vice-Chairman. Laying down the law is enactment of law or proposing the law. The Supreme Court does not enact where the question of law originally stands; the Supreme Court interprets the law. Here the Supreme Court declares the law, law as passed by Parliament. It has different interpretations, not different versions.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN). That will do. I have heard you, Mr. Bhupesh Gupta.

SHRI G. S. PATHAK: What is this point of order? I cannot use an English expression which is used by everybody in every court in India because Mr. Bhupesh Gupta has never heard of that expression. (*Interruptions*). I have a right to address the House.

SHRI BHUPESH GUPTA: He does not know anything.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): Mr. Bhupesh Gupta, it is not fair to judge anybody as not knowing anything. It is not dignified.

SHRI BHUPESH GUPTA: Let us take the opinion of the Supreme Court itself under article 146 whether the Supreme Court lays down the law and whether there is a difference between laying down and declaration of law. I am prepared to bow to the opinion of the Supreme Court.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): All right. Let him proceed.

SHRI BHUPESH GUPTA: I do not know how you make money in the Bar.

SHRI G. S. PATHAK: In the same way in which you never made any money. Anyway, let us not waste time.

Now, Sir, the Supreme Court declares that all appointments under these rules, which they declared to be unconstitutional, are void. The necessary consequence is that all the acts of the Judges, whose appointments were declared illegal, would be void, and their judgments would be void. That would be the result, and consequently it became necessary to declare the appointments valid by a constitutional amendment, and also to declare the judgments of these Judges valid by this constitutional amendment.

Now, one thing I may point out to this House. There was a case in the High Court after the Supreme Court judgment which is binding on all the courts in India, in which the question arose whether in second appeals and revisions the question could be raised that the appointment of the Judges who decide the cases, out of which the second appeals and revision had arisen, was invalid. That was the question raised. And four judges against one decided to the following effect. I will read that part of the judgment:

"We hold that the appointment of the Munsifs and the Civil Judges purporting to have been made under the U.P. Civil Service (Judicial Branch) Rules, 1951, cannot be challenged in a collateral proceeding like an appeal or revision, and that even if it be assumed that the appointments of the Munsifs and the Civil Judges are invalid . . ."

Now comes the important sentence.

" . . . the impugned decisions are not liable to be set aside on that ground inasmuch as the *de facto* colour, under which they functioned in office, had not been exposed when the impugned decisions were rendered. In this view of the matter, we find it unnecessary to express our opinion on the remaining questions."

The same decision was with regard to Assistant Sessions Judges and Sessions Judges. There before the Full Bench the question was whether the decisions made by Judges, when the defect in the appointments was not known, would be binding on the citizens. But it related to the period before it was known or exposed, to use the language of the decision, that there was a defect in the appointment. It related to that period because it says:

" . . . inasmuch as the *de facto* colour under which they functioned in office had not been exposed when the impugned decisions were rendered."

Two points arise here—(i) whether you can raise the question of invalidity of appointment before the Judge himself whose appointment you want to challenge. They said, it could not be raised. (ii) They said that if the impugned decisions were made before the defect was exposed, then in that case the decisions would be binding. That was the judgment.

श्री राजनारायण : समझ में नहीं आया, समझा दीजिए ।

उपसभाध्यक्ष (श्री अकबर अली खान): आप नोट कर लीजिए।

SHRI G. S. PATHAK: Now, the Supreme Court had, in another case, decided that after the dispute relating to the validity of the appointment of Judges is decided, those judgments would be invalid. I will read that out to you, Sir. This was in Mr. J. P. Mitter's case. You will kindly remember that the dispute in that case was whether he could act as a Judge after he had passed the age of superannuation. This was the dispute. And the question arose before the Supreme Court as to what would happen when it is decided that he has passed that age? I will read out that passage to you from the Supreme Court judgment, Sir:

> "In such a case if the decision of the President goes against the date of birth given by the appellant a serious situation may arise because the cases which the said Judge might have determined in the meanwhile . . . ".

That is, from the commencement of the dispute up till the determination of the dispute—

> " . . . because the cases which the said Judge might have determined in the meanwhile would have to be reheard for the disability imposed by the Constitution, when it provides that a Judge cannot act as a 'Judge after he attains the age of superannuation, will inevitably . . ."—

Kindly mark the word "inevitably"—

> " . . . introduce a constitutional invalidity in the decisions of the said Judge."

Therefore, when it is ascertained that there is a defect in the appointment, evidently the constitutional invalidity of the judgments after that determination would necessarily arise. That is the position. Therefore, before the 8th August, 1966—8th August is the date of the Supreme Court judgment which decided that all these appointments are illegal—it might be controversial whether the judgments pronounced by the Judges, whose appointment was declared invalid on the 8th August, are valid or not. But there cannot be any question that after the 8th August, when there was full exposure of invalidity under the pronouncement of the Supreme Court itself, those judgments would be inevitably invalid and the cases will have to be reheard. That is the position.

This Full Bench case is coming before the Supreme Court in the sense that leave to appeal to the Supreme Court has been granted and the appeal has been filed or might be filed in a few days. Therefore this judgment itself is open to be reviewed by the Supreme Court. The Supreme Court might say that this judgment is illegal or is wrong but assuming that this judgment is right, it will operate only on the judgments delivered prior to 8th August. The Supreme Court decision, the other one which I have read, will be applicable to the judgments which have been made after the exposure of the defect on 8th August. Therefore, with regard to those judges who are working after 8th August and delivering judgments, it is clear that those judgments would necessarily become invalid whether the Full Bench decision is upheld by the Supreme Court or is reversed by the Supreme Court. If it is reversed by the Supreme Court, then the earlier judgments also would become invalid. That is the position which we are facing. When the Supreme Court made this decision, then several writs were filed impugning the appointments of judges other than those whose appointments were directly in question in the Supreme Court. Those writ petitions are pending. There are very large numbers of them. They will have to be decided according to the decision of the Supreme Court because the Supreme Court decision so far as the law declared is concerned, is binding on all

the Courts. That is the factual position. In this situation, when we find that five of these judges are in the High Court—they were appointed later and they are in the High Court—what are the consequences flowing from this situation?

PANDIT S. S. N. TANKHA (Uttar Pradesh): Not appointed later than the Supreme Court judgment.

SHRI G. S. PATHAK: Prior to the Supreme Court judgment but they are in the High Court. The position is this. What is the consequence which has flowed from the decision of the Supreme Court? All the judgments which have been made, whether on the criminal side or on the civil side, would be void. Cases will have to be re-heard. What are the cases? There will be sentences of imprisonment in criminal cases . . .

DIWAN CHAMAN LALL: After 8th August?

SHRI G. S. PATHAK: Both before and after. There will be sentences of death also. There will be civil cases where money decrees have been passed, decretal amounts paid, property transferred from A to B, titles declared by the Courts. All these will be upset and the cases will have to be unnecessarily re-heard. That will be the position. Further, those who have gone to the jails under orders made by judges whose appointments were illegal, can file suits for damages against the State, because not being a properly appointed judge, he is not enjoying the protection which belongs to a judge, and being an agent of the State, the State would be liable for damages for any action done by him. That will also be the position.

As regards the magnitude of this problem, it is necessary for me to mention that thousands of cases would be affected by the result of the Supreme Court decision. To give you an idea of the magnitude of the problem I shall give a few figures. In 1962 the persons convicted by Sessions Judges were 8,815 and in 1963 they were 8,850. In 1962 the persons sentenced to death by Sessions Judges were 412 and in 1963 they were 436. Sentenced to imprisonment for life were more than 1800 people in 1962 . . .

SHRI M. P. SHUKLA: I would like him to enlighten the point as to how many of such judgments related to the 15 judges appointed under the Higher Service Rules?

SHRI G. S. PATHAK: Imprisonment other than life more than 5,000 in 1962 and more than 7,000 in the other year *i.e.* 1963. There were appeals and some of the judgments must have been reversed. Since 1954, the appointments began to be made. I could give the figure of the appointments too. It will be necessary that the House should know how many judges were appointed in 1954 and 1957. They were 38 promotees, 11 direct from the Bar. In 1961-62 there were 29 promotees on the recommendation of the Administrative Committee of Judges. The first mentioned figures of 38 and 11 are in consultation with the Selection Committee—the very same Selection Committee, and here it is on the recommendation of the Administrative Committee. The Administrative Committee stands on the same footing as the Selection Committee because they are not all judges, there are just a few of them. Then there were 116 promotees on the recommendation of, or in consultation with, the High Court. Then about 100 judges were given the powers of the Sessions Judges and in this way they began to function as District Judges. There would naturally be no consultation with the High Court in the sense in which the Supreme Court has laid down that there should be consultation. Therefore, it is a question of a large number of judges since 1954. But we are not concerned so much with the number of judges as with the number of judgments. One judge may have given a large number of judgments during his tenure of office. Therefore the problem is a large one. The judiciary

[Shri G. S. Pathak.]

cannot function properly when there is the Democles' Sword hanging over the head of the judges who are parties to these writ petitions and if it is said that it is a mistake of the Government, we are concerned with what would happen to the people. People's rights will be unsettled. Their cases will have to be re-heard. We are not concerned with the mistakes committed by the Government or anybody. The High Court also was a party to this procedure. The word 'approval' was mentioned in the Supreme Court judgment and the question was whether the transmission by the Registrar amounted to approval by the High Court. The Supreme Court says: 'No, there must be consultation with the judges' and it is not the Allahabad High Court alone which is concerned with this question. In Rajasthan there was a Selection Committee consisting of the Chief Justice, the Administrative Judge and another, a nominee of the Chief Justice. That writ petition was filed. The matter was before the High Court. The High Court dismissed the writ petition. The matter is before the Supreme Court now. I am told that in Mysore also there is some question but I have not got the exact details . . .

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): You mean that it is a question of general importance?

SHRI G. S. PATHAK: . . . of that matter. Therefore it has become necessary that this situation which is a very unfortunate situation, which concerns the people and their rights, should be set right. And consequently this Bill seeks to exclude those who were not found to be eligible to be appointed under article 233, according to the judgment of the Supreme Court and to validate the judgments given. Otherwise the result would be what I have pointed out now. I am not, therefore, introducing something in this amendment of the Constitution which was not found originally in the Constitution, so far as the substantive provision is concerned. I am merely trying to regularise what was an irregularity, an illegality, by seeking the validation of the judgments transfers and appointments of District Judges. That is the position and I submit that this House will, as the Lok Sabha has done, consider this Bill and later pass the Bill. Thank you.

The question was proposed.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): There are two amendments, one in the name of Shri M. P. Shukla and the other in the name of Shri Rajnarain.

SHRI M. P. SHUKLA: Sir, I beg to move :

1. "That the Bill further to amend the Constitution of India, as passed by the Lok Sabha, be referred to a Select Committee of the Rajya Sabha, consisting of the following Members, namely—

Shri G. S. Pathak,
Shri P. N. Sapru,
Diwan Chaman Lall,
Shri B. K. P. Sinha,
Shri Lokanath Misra,
Shri Bhupesh Gupta,
Shri V. M. Chordia,
Kumari Shanta Vasisht,
Shri Mulka Govinda Reddy, and
Shri M. P. Shukla.

with instructions to report by the first day of the next session."

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): Have you obtained their consent?

SHRI M. P. SHUKLA: I have taken the approval of almost all of them except that of the Law Minister, but because he is in charge of the Bill I thought he would like to be on the Select Committee and therefore I have put down his name.

श्री राजनारायण : श्रीमन्, मैं प्रस्ताव करता हूं कि :

2. "संविधान में और संशोधन करने वाले विधेयक को, जिस रूप में वह लोक-सभा द्वारा पारित किया गया है, राज्य सभा की एक प्रवर समिति को सौपा जाये जिसमें निम्नलिखित सदस्य होंगे :—

श्री गोडे मुराहरि,

श्री अटल बिहारी वाजपेयी,

श्री ए० डी० मणि,

श्री मुल्क गोविन्द रेड्डी,

श्री ए० पी० चटर्जी,

श्री लोकनाथ मिश्र,

श्री भूपेश गुप्त,

श्री चित्त बासु,

श्री बी० एन० मंडल, और

श्री राजनारायण . . . ."

وائس چیرمین (شری اکبر علی خان) - کیا آپ نے بھی ان کی منظوری لے لی ہے ؟

†[**उपसभाध्यक्ष (श्री अकबर अली खान)** : क्या आप ने भी इनकी मंजूरी ले ली है ?]

श्री राजनारायण : करीब करीब । "और उसको एक सप्ताह के अन्दर प्रतिवेदन देने का निर्देश दिया जाये ।"

2. ‡["That the Bill further to amend the Constitution of India, as passed by the Lok Sabha, be referred to a Select Committee of the Rajya Sabha consisting of the following Members, namely:—

Shri G. Murahari,

Shri Atal Bihari Vajpayee,

Shri A. D. Mani,

Shri Mulka Govinda Reddy,

Shri A. P. Chatterjee,

Shri Lokanath Misra,

Shri Bhupesh Gupta,

Shri Chitta Basu,

Shri B. N. Mandal, and

Shri Rajnarain,

with instructions to report within a week."]

The questions were proposed.

श्री राजनारायण : श्रीमन्, यह विधेयक जो आज विचारार्थ प्रस्तुत है, निश्चय ही बहुत ही महत्वपूर्ण विधेयक है और उसमें कई बातें साथ साथ सम्मिलित है । पहली बात तो यह कि क्या हम सुप्रीम कोर्ट की महत्ता, उसके सम्मान को, सुरक्षित रखना चाहते है या नही ? दूसरी बात, क्या हम न्यायपालिका और कार्यकारिणी का शुद्धत: अलगाव रखना चाहते हैं या नही ? तीसरी बात, कानून निर्मात्री परिषद् के मातहत, जब मन चाहे तब, सुप्रीम कोर्ट को ला दिया— कास्टीट्यूशन में संशोधन विधेयक ला कर— यह व्यवस्था चलाना चाहते है या नही ? देखा जाय, यह कांस्टीट्यूशन है । इस कारटीट्यूशन के प्रति ईमानदारी की शपथ ली गई है । अमरीकन कांस्टीट्यूशन में अब तक केवल पांच परिवर्तन हुए हैं और भारतीय संविधान में यह बीसवां संशोधन है न ? कितने समय के अन्दर, इसको भी मद्देनजर करना चाहिये । मुझे अफसोस है, कि एक व्यक्ति जो कानून का कुछ जानकार भी है, मंत्री पद पर आने मे अपनी सारी बुद्धि को सरकार के कुत्सित प्रयासों द्वारा शोषण कराने का अवसर दे रहा है । सुप्रीम कोर्ट के जजमेन्ट की जो वस्तुस्थिति माननीय पाठक जी ने यहा रखी, वह वस्तुस्थिति सही नहीं है । एक जबर्दस्त बात पाठक जी कह रहे है कि उनको जजेज़ के अपाइन्टमेन्ट पर उतनी चिंता नही है जितनी उनके द्वारा दिये गये जजमेन्ट को कानूनी करार देने के लिये चिंता है ।

श्री गोपाल स्वरूप पाठक . मुझे दोनों की चिंता है ।

†[ ] Hindi transliteration.
‡[ ] English translation.

श्री राजनारायण : उन्ही के वाक्यो को मैं दोहरा रहा हू । अगर यह सही है, तो मैं अदब के साथ कहूंगा कि फिर उसी जजमेन्ट को कानूनी करार देने की ही व्यवस्था हो और जो गलत तरीके से जज मुकर्रर हुए हैं उनके गैर कानूनीपन को सवैधानिक बनाने की कुचेष्टा न हो । परन्तु वस्तुत. बात है कुछ दूसरी जगह । कुछ दूसरी चीज कही जा रही है । उस जजमेन्ट से कोई मोहब्बत नही है, मोहब्बत है उन जजों से । मै चाहूंगा . . .

وائس چیئرمین (شری اکبر علی خان)

وہ رصایا تھی جس کے مقدمے انہوں نے طے کئے -

†[**उपसभाध्यक्ष (श्री अकबर अली खान)** : वह रियाया थी जिसके मुकदमे उन्होंने तय किये ।]

श्री राजनारायण : उनसे नही । वे तो कहीं इसमे नही आते हैं ।

وائس چیئرمین (شری اکبر علی خان)

مصیبت میں تو وہی پڑے ہوں -

†[**उपसभाध्यक्ष (श्री अकबर अली खान)**: मुसीबत में तो वही पडे हैं ।]

श्री राजनारायण वे नही पडे हैं, वे कभी आते ही नही हैं । यह तो देखा जायेगा । तो जो बोनाफाडइ कोर्ट है उस बोनाफाइडे कोर्ट के जरिये जितने फैसले हुए है कानून की निगाह मे वे सभी फैसले कानूनी हैं । इसलिये माननीय मंत्री जी का यह तर्क कि उन जजों के द्वारा जो फैसले दिये गये हैं वे फैसले भी गैर कानूनी हो जायेंगे, यह कानून को सही समझ नही है । कानून देखा जाय कलकत्ता ला जर्नल, वाल्यूम 15, 1912, पेज 516 :

"It may also be mentioned that the pronouncement of the Supreme Court does not validate the official acts, namely, judgments, decrees, orders and sentences passed by officers whose appointments have been declared illegal. The reason is that they acted in *bona fide* discharge of their public duty and under colour of office and they were *de facto* holders of public office"

श्रीमन्, यह कलकत्ता ला जर्नल का जो पोर्शन मैंने पढा इससे माननीय मत्री जी और सदन के सभी सम्मानित सदस्यों के दिमाग में यह सफाई आ जानी चाहिये कि ये बहुत ही सफाई के साथ कानून का भाष्य करते हैं, उन जजों के द्वारा जिनका अपौइन्टमेन्ट सुप्रीम कोर्ट ने अवैध करार दे दिया है, जो फैसले हुए हैं, उनके जो बोनाफाडइ काम हुए है, पब्लिक ड्यूटी हुई है, वह अवैध नही माने जायेगे, वह गैर कानूनी नही माने जायेगे । हम इस के अनेक उदाहरण जानते हैं । उत्तर प्रदेश में एक

The U.P. Honorary Assistant Collectors Act, 1938

था, उसको भी अगर पाठक जी पढ़ेगे तो उनको मालूम होगा कि उनका भी कुछ जजमेन्ट था, उस जजमेन्ट को उत्तर प्रदेश विधान सभा मे लाकर के जो थोड़ा सा कुछ लेक्यूना था उसको ठीक कर दिया गया । तो अगर जजमेन्ट के ही बारे मे पाठक जी चिंतित हो तो पाठक जी को साफ साफ कहना चाहिये, यद्यपि हम उनके तर्क से सहमत नही हैं, हमारा तर्क निश्चित है कि जितनी देर तक, जब तक, सुप्रीम कोर्ट न उनके अपौइन्टमेन्ट को गैर कानूनी करार नही दिया तब तक उनके जरिये जो फैसले हुए हैं वे सभी फैसले जायज हैं, सभी फैसले कानून सम्मत हैं, सभी फैसले वैध हैं, उन पर कोई आच नही आनी चाहिये और जो ला मिनिस्टर साहब कहते हैं कि वे प्रभावित

†[ ] Hindi transliteration.

हुए हैं, यह सही मानी मे अर्थ का अनर्थ किया जा रहा है। जो सोना है उसको पीतल बना कर दिखाया जा रहा है। तथ्य क्या है, हमें माफ करेंगे। जब ऐसी बाते आ जाती है तो तथ्य रखने ही पडते है। ये कौन कौन लोग हैं जो इस तरह से लिये गये है और सदन को यह बात अच्छी तरह से समझ लेनी चाहिये। हमारे कास्टीट्यूशन मे एक प्राविजन है 233। उत्तर प्रदेश मे 1953 मे यू० पी० हायर जुडीशियल सर्विस रूल बना था। उस रूल के मुताबिक दो जज होते थे और एक वहा पर लीगल रिमेम्बरेसर होता है और ये तीनों ही सरकार को सलाह देते हैं। एक रूल बना दिया गया है और जो हमारी मान्यता है, जो सविधान को जानते हैं, वह यह मानते है कि सुप्रीम कोर्ट ने जो फैसला दिया है वह सही है। लेकिन 1953 के रूल के मुताबिक यह सरकार संविधान की अवहेलना कर रही है। सुप्रीम कोर्ट का जो जजमेंट है वह निश्चित रूप से सही है। जो कानून का विद्यार्थी होगा वह भी इस नतीजे पर आयेगा कि सुप्रीम कोर्ट ने जो फैसला दिया है वह सही है।

[THE DEPUTY CHAIRMAN in the Chair]

वास्तव मे 15 जिला जजो को जुडीशियल मजिस्ट्रेट नियुक्त किया गया। अब सीधा प्रश्न यह उठता है कि ये जुडीशियल मजिस्ट्रेट कौन लिये गये। माननीया, आप क्षमा करेंगी, वे जज रह चुके हैं और उनके सम्मान के विरुद्ध मुझे कोई बात नही कहनी है। जो लोग लिये गये थे वे कोई विशेष बुद्धि रखन वाले लोग नही थे। इनमें से ऐसे बहुत से लोग थे जो मुन्सिफी की परीक्षा में फेल हो चुके थे। इनमे से बहुत से लोग ऐसे थे जिनकी वकालत नही चलती थी और जो अपने बार मे तीसरे रेटर चौथे रेटर और पाचवें रेटर के वकील माने जाते थे। मगर उनकी पहुच थी, उनकी पहुंच मिनिस्टर तक थी, उनकी पहुंच बड़े बड़े अधिकारियों तक थी। इसलिए इन लोगो को यू० पी० हायर जुडीशियल सर्विस 1953 के मातहत ले लिया गया। तो मै यहा पर पाठक जी के मोटिव को चैलेन्ज करता हू। अगर पाठक जी सही है और चाहते है कि जजमेंट वैलिडेट रहे तो पाठक जी 10, 15 जजो की नियुक्ति से क्यों प्रभावित हो रहे है। उनको उनके लिए क्यो चिन्ता है? वे लोग कौन हैं, उनके नाम क्या है, मैं आप सब लोगों के सम्मुख और इस सदन के समक्ष रख दूगा, तो आप को सब पता चल जायेगा। इसमे एक श्री के० सी० पुरी, जो कि यू० पी० विधान सभा मे सेक्रेटरी पद पर रह चुके है और इस समय लीगल रिमेम्बरेस के पद पर है तथा उनके मातहत डिप्टी लीगल रिमेम्बरेस भी है। एक कहावत है, "बाप पूत वजनहर भाई धिया गौनइर" यानी बाप बेटे और घर वाले सब मिलकर ही मसले का हल कर लेते है। इसी तरह से यू० पी० गवर्नमेंट ने भी किया है और जिस को चाहा नियुक्त कर दिया। जो आदमी मुन्सिफ की परीक्षा मे फेल हो चुका है, उसको डिस्ट्रिक्ट जज नियुक्त किया गया है। आज हालत यह है कि ऐसे लोगों को इसमे रखा गया है जो साठ-गाठ करते है और उसके नाम गवर्नर के पास रैफर कर दिये जाते है। गवर्नर साहब पर दबाव डाला जाता है और फिर उनकी नियुक्ति डिस्ट्रिक्ट जज के पद पर कर दी जाती है। तो आज सविधान की मान्यताओं को भंग करके आपने उनकी नियुक्ति की है वह बिल्कुल गलत है। यह जो यू० पी० हायर जुडीशियल सर्विस रूल है वह गलत है और उसके मातहत काम नही होना चाहिये। आज इस सरकार ने सुप्रीम कोर्ट के फैसले को निगेट करने के बाद इस सदन मे इस विधेयक को प्रस्तुत किया है।

माननीय, मैं विनम्रता से कहना चाहता हूं और पाठक जी भी इस को कबूल करेंगे कि इसमें सुप्रीम कोर्ट का कोई सम्मान नही है। तनिक अंगुली दबी कि बड़ा अनर्थकारी

[श्री राजनारायण]

काम कर दिया गया है बिना इस बात की चिन्ता किये हुए कि क्या सही है और क्या गलत है । आज यह सरकार कांस्टीट्यूशन को मान्यता नहीं दे रही है और इस बिल पर जो इस समय बहस हो रही है उससे सदन ने अपने कर्तव्य का पालन नहीं किया । इतना ही नहीं कि हमारे पास इसके लिए साधन नहीं था, मैं तो यह कहना चाहता हूं कि इसके लिए सब साधन थे मगर सरकार उनको नहीं करना चाहती है । इसमें कैसे कैसे लोग लिये गये और कौन कौन लिये गये, यह मैं आपको बतलाऊंगा । 8 अगस्त को सुप्रीम कोर्ट का फैसला हुआ था । 8 अगस्त के फैसले में सुप्रीम कोर्ट ने लिख दिया था कि इनकी नियुक्ति गलत है । अगर सरकार के दिल में सुप्रीम कोर्ट के फैसले के प्रति आदर होता तो उनको हटा दिया जाता ।

श्री सी० डी० पांडे (उत्तर प्रदेश) : यह तो एक टैक्नीकल प्रोसीजर की गलती थी, वैसी गलती नहीं थी ।

श्री राजनारायण : टैक्नीकल प्रोसीजर की गलती कहना ठीक नहीं है । सुप्रीम कोर्ट के फैसले को समझने की क्षमता इस समय पांडे जी में नहीं रह गई है । सुप्रीम कोर्ट ने टैक्नीकल गलती नहीं कही है, सुप्रीम कोर्ट ने तो वस्तुतः कहा है । वस्तुतः इसलिए कहा है और हम उस जजमेंट को पढ़ देते हैं । आप सुन लीजिये कि टैक्नीकल कहा है या वस्तुतः कहा है ।

"We are assuming for the purpose of these appeals that the Governor under article 233 shall act on the advice of the Ministers. So the expression 'Governor' used in the judgment means Governor acting on the advice of the Ministers. The constitutional mandate is clear. The exercise of the power of appointment by the Governor is conditioned by his consultation with the High Court; that is to say, he can only appoint a person to the post of District Judge in consultation with the High Court. The object of consultation is apparent. The High Court is expected to know better than the Governor in regard to the suitability or otherwise of a person belonging either to the judicial service or to the Bar to be appointed as a District Judge. Therefore, a duty is enjoined on the Governor to make the appointment in consultation with the body which is the appropriate authority to give advice to him. This mandate can be disobeyed by the Governor in two ways, namely:"

तो श्रीमन् सुप्रीम कोर्ट के जजमेंट में यह बात बिल्कुल साफ लिखी हुई है कि डिस्ट्रिक्ट जज का अपौइन्टमेंट गवर्नर हाई कोर्ट की सलाह से करता है और यह बात हमारे कांस्टीट्यूशन में भी लिखी हुई है। सामान्यत: गवर्नर मंत्रि परिषद की राय पर सब कार्य करता है। लेकिन हमारे विधान के अनुच्छेद 233 में साफ लिखा हुआ है कि जजों की नियुक्ति हाई कोर्ट की सलाह पर ही होगी । तो यह टेक्नीकल बात नहीं है यह सब्सटैंस है यह मूल बात है । मगर जूडिशियरी एग्जीक्यूटिव और लेजिस्लेटिव ये अलगाव के महत्ता है । अगर यह बात न हो तो कुछ भी कह दीजिए कि मंत्री की सलाह पर राज्यपाल सारा काम करता है । लेकिन कांस्टीटयूशन में यह लिखा है. . .

पंडित श्याम सुन्दर नारायण तन्खा : अगर मूल बात नही होती तो कांस्टीटयूशन में अमेंडमेंटस करने की क्यों जरूरत पड़ जाती ।

श्री राजनारायण : मूल बात को नहीं समझा जा रहा है । कांस्टीटयूशन को अमेंडमेंट करने की जरूरत क्यों होती है । तो मेरा कहना यह है कि इससे प्रभावित कितने लोग हैं उनको देखा जाय । सन् 1953–54 में इस कमेटी की सिफारिश पर तीन आदमी रखे गये थे जिनमें श्री के० सी० पुरी हैं एक भार्गव

साहब हैं और तीसरे श्री कुंवरनाथ श्रीवास्तव हैं जो स्वयं मुन्सिफ की परीक्षा में फेल हो गये थे। 1958–59 में इस कमेटी ने आठ आदमियों के नाम की सिफारिश की थी जिसमें से श्री जगमोहन लाल सिन्हा असिस्टेंट एल० एर० एक हैं। सन् 1964 मे भी सरकार ने कुछ लोगों की नियुक्ति की मगर सुप्रीम कोर्ट के फैसले के बाद भी सरकार ने उन लोगों को भी अभी तक नही हटाया इसमें मुन्सिफ

2 P.M. लोग हैं। कांग्रेस एग्जिक्युटिव में इस पर बड़ा विवाद हुआ जिले जिले में इस पर विवाद हो रहा है तमाम वकालतखानों में विवाद हो रहा है इलाहबाद में विवाद हो रहा है और यहां विवाद हो रहा है। मुझे जानकारी है कि कांग्रेस पार्लियामेन्टरी एग्जिक्यूटिव कमेटी में बहुत से लोगों की यही राय थी कि किसी भी हालत में कास्टिट्यूशन का अमेंडमेट नही होना चाहिये। पहले इस बात को मान्यता दी गई कि अमेडमेट नही होना चाहिये और इसीलिये यह विधेयक आने मे देर हुई। मगर लखनऊ खटखटाया गया श्रीमती सुचेता कृपलानी जो मुख्य मत्री है उनके यहां सिफारिश पहुंची और वे यहां पर आई और वह समाचार पत्रों में आप लोगो ने पढा भी होगा कि श्रीमती सुचेता कृपलानी लाबीइंग कर रही है वे प्राइम मिनिस्टर के पास, श्री कामरज के पास और सभी के पास जा कर के कहती है कि हमारा व्यक्तिगत सम्मान ऐट स्टेक हमारा मामला है इसको किसी तरह से सुलझाना चाहिये।

पंडित श्याम सुन्दर नारायण तन्खा : उनके सम्मान का सवाल नही है यह पब्लिक इंट्रेस्ट डिमांड करता है। वही उन्होंने अपना प्वाइंट आफ ब्यु दिया कि पब्लिक इट्रेस्ट यह डिमांड करता है कि इसको मंजूर कर लिया जाय।

श्री राजनारायण : पब्लिक इट्रेस्ट यह डिमांड करता है कि इस विधेयक को माननीय पाठक जी आज वापस ले लें क्योंकि 158 जो अपनी जुडीशियल सर्विस से प्रोमोशन पा के गये हैं वे कह रहे है कि आज उनके अन्दर अस्थिरता का वातावरण है। वे समझ रहे है कि इस अमेंडमेंट के ज़रिये से उनके ऊपर कुठाराघात किया जा रहा है और उनके ऊपर निकम्मे लोगों को लादा जा रहा है। जिन को सीधे तरीके से अपनी जुडीशियल सर्विस की बदौलत डिस्ट्रिक्ट जज बनना था उनके ऊपर लाद दिया गया जुडिशियल मेजिस्ट्रेट को। माननीया आप जानती हैं कि उत्तर प्रदेश में जुडिशियल मेजिस्ट्रेट्स इंडिपडेंट नही है उनको एक्जिक्युटिव पावर करनी पड़ती है। जुडीशियल मेजिस्ट्रेट को राजनारायण पर डंडा भी चलाना पड़ता है और वे डिस्ट्रिक्ट मेजिस्ट्रेट के मातहत हैं। डिस्ट्रिक्ट मेजिस्ट्रेट उनके कांडक्ट के बारे में लिखता है। उनका कांडक्ट कैसा रहा यह हाई कोर्ट नही लिखता है। वे जुडिशियल मेजिस्ट्रेट उठा करके जज बना दिये गये। क्या एक्जिक्युटिव की पावर से एग्जिक्युटिव अफसरों को जज बना दिया जायेगा और तब समझा जायेगा कि यह जुडिशियरी इंडिपेडेंट रहेगी। तब जुडिशियरी अन्याय का काम करेंगी। इसके बारे में माननीय सुप्रीम कोर्ट ने अपने आवजर्वेशंस दिये हैं। मैं उन्हीं के शब्दों में सम्मानित सदस्यो को सुना देता हूं।

उपसभापति : राजनारायण जी, आपने 20 मिनट ले लिये है।

श्री राजनारायण : यह विधेयक ही ऐसा है।

उपसभापति : और 12 सदस्य बोलने वाले है।

DR. B. N. ANTANI (Gujarat): I am sorry, madam, but I rise on a point of order. When we are discussing the question of general principles, when it affects the Constitution, is it in order to discuss individual cases of any State? Howsoever, I might agree with him, is it admissible?

SHRI MULKA GOVINDA REDDY: Because of that State the question has arisen.

DR. B. N. ANTANI: A general principle affecting all the States, the whole of India, is being discussed.

THE DEPUTY CHAIRMAN: But he has not mentioned any names. Mr. Rajnarain is all right.

SHRI RAJNARAIN: He is also all right and you are also all right.

THE DEPUTY CHAIRMAN: You continue, but if only you can be brief now.

श्री राजनारायण . माननीया आप देखिये इसके महत्व को और हम इतनी जल्दी जल्दी चल रहे हैं उतने पर आप घबडा रही है। यह प्रश्न उत्तर प्रदेश से उठा और अब सब पर लागू किया जा रहा है। मै सुप्रीम कोर्ट के जजमेंट का पोर्शन पढ़ रहा हू .—

"Before India attained independence the position was that District Judges were appointed by the Governor from three sources, namely, the Indian Civil Service, the Provincial Judicial Service and the Bar. But after India attained independence in 1947, recruitment to the Indian Civil Service was discontinued and the Government of India decided that the members of the newly created Indian Administrative Service would not be given judicial posts. Thereafter, District Judges have been recruited only from either the judicial service or from the Bar. There was no case of a member of the executive having been promoted as a District Judge. If that was the factual position at the time the Constitution came into force, it is unreasonable to attribute it to the makers of the Constitution, who have so carefully provided for the independence of the judiciary, to dislodge the same by an indirect method. This is an indirect method. What can be more deleterious to the good name of the judiciary than to permit at the level of a District Judge recruitment from the executive department? Therefore, the history of the service also supports our contention that the expression 'service' under article 233 can only mean the judicial service.".

सुप्रीम कोर्ट ने इसका प्राण, इसकी आत्मा निकाल कर के रख दी है । जुडीशियल मेजिस्ट्रेट को उठा कर के डिस्ट्रिक्ट जज बना दिया गया और उनको बराबर डिस्ट्रिक्ट जज रखा जायेगा । इन तमाम मान्यताओं को सामने रखते हुए सुप्रीम कोर्ट ने एक बहुत ही उचित और बहुत ही सही फैसला किया है। अब उस फैसले को मारने के लिये उस फैसले की हत्या करने के लिये उस फैसले को महत्व-हीन करने के लिये यह सरकार एक कास्पिरेसी कर रही है और कास्पिरेसी कर के असत्य और गलत बातों को बता 2 कर के यहा पर एक विधेयक प्रस्तुत करती है। इस विधेयक को प्रस्तुत करने के लिये केवल दो ही कारण पाठक जी ने बताये है । मै सदन के सम्मानित सदस्यों की सेवा में उन दो बातो को पुनः रख देना चाहता हू ताकि वे उनको याद रखे । पहला कारण उन्होंने यह बताया कि जजमेंट भी वायड हो जायगा। इसके बारे में मैने कलकत्ता हाई कोर्ट की रूलिंग दे दी कि जजमेंट वायड (अवैध) नही होगा दूसरा कारण यह बताया कि सभी जजेज उससे प्रभावित होगें । यह भी गलत है। 158 पर तो असर पडता नही इसमें 32 कमेटी से मान्यता प्राप्त किये हुये है जिन में 17 रिटायर हो चुके है या हाई कोर्ट के जज बन गये है । बाकी 15 बचे है जिन को हाई कोर्ट ने आफिशिएटिंग जज बना दिया था और वे आफिशिएटिंग जज बने रहेगे और कोई दिक्कत नही पड़ेगी । इसलिये अगर सरकार चाहती है कि सदन में सत्य का वातावरण हो, किसी के साथ अन्याय न हो, एग्जिक्युटिव के लोगो को जुडिशियरी के सिर पर न बिठाया जाय और जो हमारे यहां पुराने समय से, ज्यादा समय से

जूडिशियल सर्विस में पड़े हुए हैं, उनको सामान्य रास्ते से चल कर अपनी जगह अपनी मान्यता प्राप्त हो तो सरकार को यह विधेयक हर्गिज नहीं लेना चाहिये । इस विधेयक से अनेक अनर्थ होंगें । जो निकम्मे रहे हैं जिन की क्वालिफिकेशन्स नही रही है जो एग्जिक्युटिव के काम में लगे रहे हैं वे अगर डिस्ट्रिक्ट जज बन कर के काम करेंगे तो क्या होगा । जितना अनर्थ हो चुका उतना काफी है :

अबलों नसानी अब ना नसैहों ।

जितने फैसले उनके हो चुके वे काफी है वे इल्लीगल नहीं होगे मगर आगे उनको फैसला करने की जगह पर नहीं रहने दिया जाना चाहिये । अगर ऐसा होता है तो सुप्रीम कोर्ट का अपमान है, संविधान का अपमान है संविधान के निर्माताओं का अपमान है और न्यायपालिका और कार्यपालिका इन दोनों का जो अलगाव है इसको एक में करने का सरकार का दुष्कर्म है । इस लिए मैं पूरे जोर के साथ पूरी ताकत के साथ इस विधेयक का विरोधी हूं और चाहता हूं कि इसे इस अवसर पर भी प्रवर समिति में भेज दिया जाय, प्रवर समिति ठंडे दिल से सभी आंकड़ों को मंगा कर देखे । एक हफ्ते का समय निर्धारित कर दिया जाय और एक हफ्ते के अन्दर प्रवर समिति अपनी रिपोर्ट दे दे । रिपोर्ट के बाद सारी बातें सामने आ जायंगी, दूध का दूध और पानी का पानी, सब सामने आ जायगा ।

SHRI M. P. SHUKLA: Madam Deputy Chairman, the Constitution of the country is not an ordinary law which can be made or unmade at every momentary requirement. It is a fundamental law of the land, which has to be amended very rarely and with extreme care. It can be amended when there arises a situation which has not yet been envisaged or anticipated by the framers of the Constitution. It can also be amended where it is found to be inadequate to give effect to an accepted public policy or anticipated public purpose. It can also be amended where its language is found to be inadequate or defective to give effect to its own purpose, which the Constitution has envisaged. But the Constitution prescribes a circumference to which every other law, rule or practice must conform. Where any law is found not to conform to such circumference, it has inevitably to go.

Madam Deputy Chairman, with extreme regret I have to say that the Law Minister has brought forward a Bill which is in direct conflict with these universally accepted principles of constitutional amendment. A Constitution has got its own sanctity and the Law Minister has now been setting a new precedent of constitutional amendment which molests that sanctity. The Bill which he has brought forward before the House is not brought with any of such purposes, but in my humble opinion the Bill has been brought forward to legalise an illegal act, an unconstitutional act of the administration of Uttar Pradesh. Where it is the duty of the executive or the administration to conform to the provisions of the Constitution and act within the limits prescribed by the Constitution, they have gone beyond the provisions of the Constitution. They have not only gone beyond the provisions of the Constitution but I should very humbly say they have deliberately, wilfully and purposely violated the Constitution.

Madam Deputy Chairman, it will be not at all necessary now to dilate upon such facts, as Shri Rajnarain has already pointed out those facts and I who come from U.P. have known facts personally for the last ten years how deliberately, even when they were pointed out by the eminent Judges of the High Court that these rules were not in conformity with the Constitution, they were defied, and they went so far as to associate a non-member of the High Court Bench to be a member of the Selection Committee.

Madam Deputy Chairman, the judgment of the Supreme Court pronounced on the 8th of August has upheld

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the Constitution. It has not said that the Constitution has been found inadequate to give effect to any accepted public policy. It has not been said that in regard to certain accepted principles of public policy the party that is running the Government is failing to give effect to it for want of Constitutional sanction. But the Bill has been brought simply to legalise the illegal appointments deliberately made by the U.P. administration. This is not only a very limited purpose of constitutional amendment but I should say it is subversion of the principles of constitutional amendment.

Madam, the Law Minister has pleaded that the judgments and acts of the Judges who have acted under these appointments are going to be illegal. Recently the Allahabad High Court has ruled that such judgments and such Acts of those courts who have acted under the colour of office cannot be illegal and they cannot be questioned as the Law Minister himself has pointed out in the ruling that he cited before the House. There are other rulings of the Calcutta High Court. That very judgment is also going to be appealed against and I may inform you that the Allahabad High Court has given permission to go in appeal to the Supreme Court.

Madam Deputy Chairman, the Law Minister says that the whole of the cadre of the District Judges is wrongly appointed whereas the very Judges who hold those appointments hold that the judgment of the Supreme Court only affects 15 Judges who were appointed under the U.P. Higher Judicial Services Rules, 1953. They were only 15. Madam Deputy Chairman, I should say that it is the height of arrogance of the U.P. administration that they have appointed four Judges during the pendancy of the appeal when the date for hearing the appeal was perhaps fixed before the Supreme Court. Even this could not be postponed till the decision of the Supreme Court. Advertisement was made and applications were invited, and the consideration was prolonged for four years and after four years they have made appointments. Madam Deputy Chairman, I should like to say that this amendment is going to give legal effect to the nepotism and favouritism that the U.P. administration has practised during the last 15 years. The Service Judges who are very large in number are very greatly disappointed by the attitude which under the pressure of the U.P. Government the Union Government has taken. The very acts which are said to be illegal are not questioned in any Court even now, only the appointments are questioned, and so long as this judgment of the High Court stands these acts which the hon. Law Minister has placed before this House in thousands will remain legal judgments and legal acts and nobody will question them till the appeal before the Supreme Court is finally decided. There was no hurry This is a question in which both facts and the point of law are disputed The Law Minister says and the U.P Government says that the whole of the cadre numbering about 158 or 168 are affected, by the judgment of the Supreme Court of August 8, 1966 whereas the Service Judges who form the core of the judiciary there say that only these 15 are affected. Then the Government say that the judgments and acts even before the 8th August are affected. But the judges say that only the judgments and acts after the 8th August are affected.

Why then those Judges whose appointments were found to be illegal by the Supreme Court were allowed to act even after the 8th August? This was in clear defiance of the Supreme Court ruling and I should say it was a sort of contempt of court. But the U.P. Government allowed them to function in anticipation that Parliament would be favouring them with an amendment of the Constitution.

Madam Deputy Chairman, my humble submission is that the Government will not lose anything, heavens will not fall if the Bill is referred to

a Select Committee and the opinion of the Bar of the country is invited over it. The opinion of the Bar is very sharply divided throughout the country as those who have been reading newspapers and talking to people who know law know. The whole of the judiciary in Uttar Pradesh is divided in its opinion; the whole Bar is divided, and even the Members of Parliament who know law have difference of opinion. Madam Deputy Chairman, this was a fit case in which the Attorney-General should have been invited to the House and should have given his opinion. But I understand that he is not available in the country and, therefore, I do not press this proposal before the House. But I would like very humbly to beg the Law Minister to wait for a few months and accept my amendment and let the Bill go to a Select Committee of this House, and let it emerge as an accepted Bill.

Madam, I would submit that the Law Minister has not convinced us about the need and adequacy of this amendment. Even if we accept that the amendment is needed, the question arises whether mere amendment of articles 233 and 234 is sufficient to give import to the purpose that is envisaged by the judgment of the Supreme Court. The higher Services in Uttar Pradesh are recruited through the Public Service Commission. If we would have to amend article 233, then the Service Judges will not have an opportunity to compete for these appointments. Probably there will be inequality of opportunity and therefore articles 14 and 15 perhaps might also need to be amended; and so also article 320.

Then I think if the Law Minister is bent upon bringing about this amendment of the Constitution, I would like him to go through all these points and then bring forward a Bill which may just be sufficient, adequate, and comprehensive enough to set at rest all such doubts and also be above dispute. The Service Judges who are not affected by this judgment but who will be affected by this amendment will be sorely disappointed and there will be discontent in the judiciary also. In Uttar Pradesh and also in our country the judiciary was a service of which we were proud. Where discontent was there in all the other Departments, only the judiciary was without such apparent discontent. The Law Minister says he has brought this Bill because of public good. The majority of District Judges and Civil and Sessions Judges do not want this Bill. They are very badly affected by this Bill. Their promotions and other things are going to be affected by this ..... (*Interruptions*) I say so with the same knowledge of law and facts as you have. You are a lawyer and I am a lawyer and in law courts you may plead your point. But why they have come up with this amendment, not just to give effect to the judgment of the Supreme Court, but in order to circumvent this judgment. This is a wrong principle, and for this reason, my humble submission is that the Law Minister may kindly accept my amendment and refer the Bill to a Select Committee so that the Bill may become acceptable not only to this House but also to the people whom it affects.

SHRI MULKA GOVINDA REDDY: Madam Deputy Chairman, the Constitution of any country is a document which should not be trampled under foot on account of the whims and mercies of the people concerned. It is very important that we should not resort to amending the Constitution as often as we like. Under article 368, the Constitution is being sought to be amended. I do not mean to say that we should not amend the Constitution when the needs of the times and the needs of the society demand such an amendment. We all supported when the Seventeenth Amendment of the Constitution was brought forward before this House. Most of us felt that the present-day society requires that the Constitution should be amended in order to fulfil the aspirations of the common man the tiller of the soil. But in this particular case, I do not see any reason why the Constitution should

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amended. During the freedom struggle and after, we have always pleaded that the judiciary of the country should be independent and that it should not be amenable to influences. Not only that. It should be independent. The Judiciary must be separated from the Executive. In many States, the Judiciary has already been separated from the Executive. In a State like UP and in some other States, it has not been completely separated from the Executive. Why do we want this separation of the Judiciary from the Executive? We want this because the Judiciary should not be influenced by the extravagant acts of the Executive and we want that in a parliamentary democracy the rights of the citizens should be decided according to the law and the Judiciary which gives those decisions should be above board, should not be amenable to any influences of whatever sort they may be. We do not want that the Judiciary should be under the influence of the Executive. Today one party may be in power. Tomorrow it might be some other party. We do not want that things should be repeated here as were repeated in Ghana. When the Chief Justice of the Ghana High Court gave a judgment and when that judgment went against the Government, the then President of Ghana, Dr. Nkrumah, dismissed that judge. We do not want such things to happen here. What we want is the supremacy of the Judiciary.

In order to see that the Judiciary is independent, the recruitment should be such as the judges that are recruited to the services are not recruited merely on the basis of the recommendations made by the politicians or by the Ministers or MLAs or MPs. That is why in this Constitution, it has been very clearly provided that the recruitment of district judges should be in accordance with article 233. The Law Minister has said that under article 309, some rules were framed by the U.P. Government and on account of these rules, these appointments were made. Even framing the rules under article 309 is not in accordance with the Constitution; the rules framed under article 309 are not to be made applicable to the recruitment to judicial services, and that has been clearly stated by the Supreme Court. Article 233 says—

> "(1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.
>
> "(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment."

According to article 309, the rules were framed and a Selection Committee was appointed consisting of the Judges of the High Court sitting on the Selection Committee and the Judicial Secretary, being the third member, sitting on that Committee. The very Selection Committee was wrong. 'In consultation with the High Court' does not mean that a Committee should be appointed where the Secretary to the Government should be associated. According to this article in the Constitution, the High Court has no authority to delegate its power to any sub-committee that may be appointed by the High Court, even though that Committee might be appointed by the High Court. It is clearly stated in this article that all the Judges of the High Court should sit and decide about the merits of a candidate to be appointed as district judge and only after the High Court has considered it, the Governor should make the appointment.

The Law Minister pleaded before this House that in order to implement the verdict of the Supreme Court this Bill has been brought forward before us. The verdict of the Supreme Court is that the appointments

of the district judges made in U.P. are illegal and unconstitutional. So, in order to implement that verdict, what the Government should have done was that those persons who have not appointed in accordance with the provisions of this Constitution should have been removed from the Judiciary. I know, it is a hard thing to do. But they should have been give alternative jobs in some other departments. Instead of doing that, the Law Minister wants us to be a party to validate the illegal and unconstitutional appointments made by the Government of U.P.

SHRI SURESH J. DESAI: May I tell my hon. friend, Mr. Mulka Govinda Reddy, that there are not only one or two people involved but a number of them. And out of those involved, five are acting as High Court Judges.

SHRI C. D. PANDE: Everything will go topsy turvey.

SHRI MULKA GOVINDA REDDY: There are so many who are prepared to work as High Court Judges. About these we need not bother. The number might be one or two hundred or even five hundred. It would not be more than five hundred in U.P., at any rate.

SHRI C. D. PANDE: In Mysore also.

SHRI MULKA GOVINDA REDDY: Whether it is Mysore or Gujarat or any State, illegal, unconstitutional appointments have been made and we are asked to validate such appointments. This is why we want the judiciary to be independent because the rights of millions of people are involved, whether civil rights or any other rights that may go before any District Judge. And, therefore, it is necessary that these Judges are not amenable to influences, particularly to political influences. I may quote for the information of the Member that judgeship of the High Court was promised to a prominent person in my State. He was asked to canvas for the Chief Minister in 1957. Later on, even after nine months of his Chief Ministership, he could not make that appointment, and the person who canvassed for the Chief Minister is now opposed to him. So these are instances. Judgeships were promised. Therefore, District Judges are made on the basis of the fact that these people will be amenable to their influences, and the relatives and friends of these people will help the Congress Party in power. And with reluctance I must point out that these things are happening in the Congress regime and we have got to criticise the Congress Government and the Congress Party in this country.

Therefore, what I want to impress on this House is that these Judges should not be amenable to any influences. In this particular case it is quite evident that on the recommendation of the Ministers or some persons who are interested in them, these persons were recruited as District Judges. We want to do away with such a practice. We want that the Judges should be above board, that they are not amenable to any political or any influences. And, therefore, it has been clearly laid down in these Constitutional provisions that District Judges should be appointed in accordance with article 233.

Another point that the Law Minister wanted to make was that if we do not validate the appointments that have already been made, the judgments delivered by these Judges will also be void. He himself quoted the full Bench decision of the Allahabad High Court wherein it has been said that even though the appointments might be declared void the judgments made by these Judges should not be considered as void and they should be declared as valid judgments. Leave might be granted to them to go to the Supreme Court. I do not know what view the Supreme Court will take. But there is no

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justification to say that the judgments delivered by these Judges who are now declared to have been appointed not in accordance with the law, whose appointment has been declared illegal and unconstitutional, will be declared void. So that argument is not to be accepted by us.

Another point that he made was that this judgment was delivered on 8-8-1966. Afterwards, some of the Judges have pronounced judgments. That clearly shows that the Government have not taken the decision of the Supreme Court in this matter seriously as much as they should have done. They have violated the judgment of the Supreme Court in that they have not taken action to see that those Judges whose appointments have been questioned by the Supreme Court were not asked by the U.P. Government not to hear any case or deliver any judgment until this question is settled once and for all by Parliament. Here is a case where there is a clear dereliction of duty on the part of the Central Government as well as on the part of the State Government. It amounts to contempt of the Supreme Court. So whatever judgments have been delivered after 8-8-1966 should be declared void. And in not directing the State Government to take appropriate action in asking the Judges not to deliver any judgment or to hear any case, the Government have failed in their duty.

Madam Deputy Chairman, there is no valid argument put forward by the Law Minister for us to accept this amendment. It has got very wide implications. Tomorrow if the Judiciary or the Executive commits anything unconstitutionally, they would again come up before Parliament to validate that unconstitutional thing. So it is improper for us to accept this amendment, and I oppose this with all the vehemence at my command.

I would also support the amendment moved by Mr. Rajnarain and Mr. Shukla that this Constitution (Amendment) Bill might be referred to a Select Committee.

THE DEPUTY CHAIRMAN: Please wind up now.

SHRI MULKA GOVINDA REDDY: He has tried to include so many things under this validating clause to validate the judgments that were delivered by these Judges, to validate the appointment of these Judges whose appointment has been declared illegal and unconstitutional, and also to validate the judgments that were delivered deliberately after 8-8-66 when the Supreme Court gave its decision in this case. I, therefore, oppose this Bill.

SHRI G. S. PATHAK: Madam, may I inform Mr. Reddy that four out of six Judges, who were directly concerned with the Supreme Court judgment, were not given any judicial work after the decision. The question about the remaining two did not arise because they did not take over charge. That is the position.

SHRI MULKA GOVINDA REDDY: You tell us whether after 8-8-66 some of these Judges did not deliver judgments . . .

SHRI G. S. PATHAK: Apart from those who were parties to the Supreme Court judgment.

DR. M. M. S. SIDDHU: Madam, this is a time to have a little introspective as well as a retrospective view of the judiciary as a whole. We as legislators are called upon to see that the prestige of judiciary is kept up. We find that from the year 1954 in Uttar Pradesh things were not as they should have been. It is a matter of regret that in the year 1954 when the rules came into being, the Selection Committee consisted of two Judges and a Legal Remembrancer (the Secretary). The

inclusion of a Secretary in a Selection Committee creates doubts and it has been known that the Selection Committee can be influenced by the executive because the Legal Remembrancer is also the Secretary of the Government.

Then when we come to the appointments, the Law Minister has rightly given us the break-up that in the years 1954—57 selections were done through the Selection Committee but in 1961 there was a departure, and there was a relaxation of the Higher Judiciary Rules which have been declared void. In such cases the Selection Committee did not meet but an Administrative Committee met. It may be argued that the Law Secretary was not able to reach Allahabad to sit in that Committee, therefore, an Administrative Committee was appointed. But was it so? Why in 1961, 1963 and 1964, the Administrative Committee did it rather than the Selection Committee? Here is the difference that in the Judiciary Rules which have been declared void, it could be done only through a Selection Committee. Here in 1961 and 1963 there was no Selection Committee and the recommendations of suitable candidates from the Bar. When there is a Selection Committee, why the two different methods were adopted? If I were to go into it, I would first ask the Minister whether he has gone through it, whether some brother Judges pointed out to the Chief Justice of the U.P. that the Selection Committee did not cover the spirit nor it fulfilled the requirements of article 233? Is it not a fact that the matter was brought up to the notice of even the Government? Was not the Government conscious of the fact that the departure was made from 1954—57 and in the years 1961, 1963 and 1964? Why? If the departure was made, there must be valid reason for it and the valid reason could be that the judges knew that there was a lacuna and still they continued to do it. That is why one has to go into the reasons. I am not against certain things being done to protect the litigant public. I am for it and I think every one of us is concerned about that but we have to take into consideration that the High Court or even the Governor does not create a condition in which we have to come before the House for another amendment. We will validate the past acts done which are declared void but what guarantee is there that the executive will not do it again or the High Court, in its judgment, will not do or commit the error again and again. It would have been far better for the Minister to have come and given an explanation of what "consultation or recommendation of the High Court" meant so that the matter would be clinched once and for all. While we are validating the past act, we have not created the conditions in which the article could not be interpreted in another way. That is why a reference should have been made to the Supreme Court by the President, it might have clinched matters and we would have got a correct direction for the High Court as well as the Governor.

Another question—I am not a legal pundit—that has been mooted by the Minister is that there can be a lacuna or infirmity due to lack of legislative incompetence and there can be lacuna due to the construction of the Fundamental Rights. These two can be corrected by a legislative Act. If there is infirmity or lacuna due to constitutional limitations, then I agree with the Minister that it can be remedied through the Constitutional amendment. That is the position. The question has arisen in the minds of the people whether it is a constitutional lacuna or infirmity or there is some lack of legislative competence. Therefore, even if there is an iota of doubt that public who are party to judgments that the judgments delivered from 1954 to date can be questioned, then we must make that known to the the public who are party to Judgments that they are protected. We should not leave them in insecurity. At the

[Dr. M. M. S. Siddhu.]

same time the U.P. Government and the authorities have to explain to us that while they knew that the defect had occurred on the 8th August, 1966, what measures were taken by them to implement the spirit and the orders of the Supreme Court, whether it required a Constitutional amendment? Were there no remedies to remove other defects on the 9th August 1966? If there was no remedy for the past they should have come out then and there but the Governor should also have appointed afresh judges to remove the defect after consultations or recommendation with all judges of the High Court. Why from 9th August to date, has this violation continued? Was it in the belief that they could come forward for amendment and they allowed the defect to go on? This attitude of any Government that they could come forward before the House to have a lacuna removed and during that period they would continue to do irregular things calls for a censure from every section of this House. I do not like it and I would request the Minister that the Government should not continue to do wrong things in the belief that they would be able to rectify those defects later. With these words I conclude.

SHRI A. P. CHATTERJEE (West Bengal): The Statement of Objects and Reasons, as appended to this Bill, I humbly submit, is overdramatising the situation and this over-dramatisation has been made to cover up a very improper thing which is going to be done by the Law Ministry. Certain mandatory constitutional provisions, according to the decision of the Supreme Court judgment, delivered on 8th August, have been violated and in violation of those mandatory provisions, certain appointments were made. As far as this amendment of the Constitution is concerned, this is not an amendment of the Constitution itself but this is being introduced in order to cover up the illegal appointments made of certain persons as District Judges. In order to cover up these illegal appointments made by the executive, this amendment is being brought to the Constitution. And in order that this Bill may have a very easy passage, in the Statement of Objects and Reasons attached to the Bill panicky statements are made just to create panic in the minds of hon. Members of this House so that they may be stampeded into supporting this Bill, into thinking that the judicial machinery in U.P. will come to a standstill and will be paralysed if this is not passed. Madam Deputy Chairman, that kind of a panic is absolutely uncalled for because as I learn, there are in the State of Uttar Pradesh as many as 168 District Judges and this judgment of the Supreme Court has affected only 15 of them. If the judgment has affected only 15 out of 168 Judges, I do not know why in this Statement of Objects and Reasons it is stated that the functioning of the district courts in U.P. would practically come to a standstill. Therefore, I submit that this is an inexactitude. I do not know whether it was deliberately made in the Statement of Objects and Reasons. Even if it is not deliberately made, I would say that it has been recklessly made. It is a reckless statement of the Law Minister and the Law Minister must take the responsibility for it and I humbly submit that the Law Minister should explain why such a reckless statement has been made in the Statement of Objects and Reasons attached to an important Bill like the Constitution (Amendment) Bill which is being brought forward by him. Madam, I would like to submit that the situation is not at all panicky, nor is it as bad as the Law Minister wanted to make out here while moving for the consideration of the Bill.

Madam Deputy Chairman, it is true that some of the appointments of District Judges in Uttar Pradesh have come under fire as far as the judgement of the Supreme Court is concerned. If they have come under fire, does it mean that the judgements and decrees

which have been passed by those District Judges should all go? The Law Minister is an advocate of high standing and I think he ought to know that in such cases as these the principle of *de facto* appointments is invoked in order to uphold the judgements given by persons whose appointments might have been irregular and might have been invalid. Such have been the decisions of various High Courts in India and such have been the decisions also of the High Courts and Supreme Courts elsewhere in the world, I mean outside India.

Madam Deputy Chairman, I might place before this House for the consideration of the House and of the Law Minister a very eminent judgement that was delivered as early as, I think, 1912 by Sir Ashutosh Mukerjee, that eminent Judge of the Calcutta High Court. It was not only a judgement of Sir Ashutosh Mukerjee, but it was based upon the decisions and judgements of various other High Courts, of the Supreme Court of the United States of America and also of the High Courts of England. Sir, Ashutosh Mukerjee while quoting those judgements, based his judgement on them. In the U.S.A. for example, the question arose whether a person who was sentenced to be hanged for murder, by a judge who was not properly appointed, could be hanged. That man came up to the Supreme Court and the Supreme Court held that even though the Judge might have been irregularly appointed, his appointment cannot be challenged collaterally and the man was hanged even though the Judge was irregularly appointed. May I with your permission, Madam, place that portion of the judgement of Sir Ashutosh Mukerjee before the House? It will not be long. It is a succinct judgement. He observed:

> "That the acts of one who, although not the *de jure* holder of a legal office, was actually in possession of it under some colour of title or under such conditions as indicated the acquiescence of the public in his action, cannot be collaterally impeached in any proceedings to which such person was not a party. The view, however, has sometimes been maintained that there can be no *de facto* officer where there is no office *de jure*. But the contrary opinion has been maintained upon weighty reasons; and it has been held that an unconstitutional law establishing an office, may, until such law has been declared unconstitutional, be regarded as conferring colour of title, and that the incumbent of such an office should be treated as a *de facto* officer. The two fundamental pre-requisites to the existence of a *de facto* officer are, first, the possession of the office and the performance of the duties attached to it; and second, colour of title, that is apparent right to the office and acquiescence in the possession of it by the public. The proposition that the official acts of public officers, in an office created by an unconstitutional procedure, performed before its unconstitutional character has been declared by an authoritative decision, cannot be collaterally attacked, is illustrated by more than one decision to be found in the books. In Clareke *vs.* Commonwealth, the prisoner had been convicted for murder in a Court, the Judge of which was exercising functions in a country attached to his district subsequent to his election, and his contention on appeal was that the Act of the Legislature by which such addition of territory was attempted to be made was unconstitutional. But the Court held that the question could not be raised collaterally, that the Judge was a Judge *de facto* and as against all, but the Commonwealth a Judge *de jure;* and the murderer was hanged."

There is another judgement also referred to. There was a case of burning of houses. The Judge *de facto* convicted the person of burning the houses. It was held by the Court that the Judges were Judges *de facto* 'and as against all parties but the Commonwealth they were Judges *de jure*, and having at least a colour of titl eto their offices, their title thereto could not be questioned'. And the result was that

[Shri A. P. Chatterjee.]

the man who burnt the dwelling-house went to the penitentiary for eight years, in spite of the fact that the Judge who sentenced him was not a proper Judge who had been legally appointed. Therefore, Madam Deputy Chairman, it has been definitely held and established that the *de facto* doctrine will be invoked and ought to be invoked when we find in judicial appointments some irregularity had been there. Though those Judges who had been appointed irregularly had given judgements and decrees, those judgments and decrees were not affected. Therefore I see no reason for being panicky or for thinking that those judgements would be invalid, that those judgements and decrees would be set aside. The Law Minister has referred to the passage in the judgement of the Supreme Court in Justice Mitter's case. But those observations are not apposite at all as far as the present case is concerned. That was the case of a person continuing beyond his legal tenure of service. So these two cases are absolutely different. A Judge's tenure is fixed by the Constitution and if he continues beyond that tenure then some consequences may follow. The Supreme Court's observations are not at all relevant or apposite in this case, where the Judges had been appointed irregularly. Suppose for the sake of argument these observations of the Supreme Court are apposite—I do not think they are, but let us suppose for the sake of argument that they are—and that they apply to the facts of this case also, then what the hon. Law Minister should have done is to bring in amendments in order to validate the judgements and decrees that have been passed by these persons who were illegally appointed. There was no need to bring an amendment to article 233. He could have brought in an amendment for the purpose formally validating these Judgments and decrees given by those Judges who have been appointed illegally.

3 P.M.

SHRI C. D. PANDE: Amendment of what? Amendment of the Constitution, is it not?

SHRI A. P. CHATTERJEE: Yes.

SHRI C. D. PANDE: That is what we are doing.

SHRI A. P. CHATTERJEE: But then the cat comes out of the bag and the real reason becomes obvious. We find that the amendment is not merely to validate the judgements and decrees but the amendment is also to validate the appointments and therein lies the rub, Madam Deputy Chairman. What I submit is this that this amendment of the Constitution is a colourable exercise of power sought to be made by the Government under article 368 of the Constitution.

SHRI AKBAR ALI KHAN (Andhra Pradesh): That is consequential. When you validate . . .

SHRI A. P. CHATTERJEE: Not consequential; not at all. There can be an amendment merely to validate the judgements and decrees and you can leave out the appointments so that the appointments can be made afresh later by the Governor in accordance with the provisions of article 233 of the Constitution. That could have been done. It is true that if the appointments are made afresh under article 233 of the Constitution, they may have to lose the retrospective benefits of their services as Judges. But that is not a reason why the Constitution should be amended, just in order to give retrospective benefit to the services of these persons who have been illegally appointed. I am told. Madam Deputy Chairman—it may not be true —that some of these District Judges are sons of bigwigs in the State of Uttar Pradesh.

SOME HON. MEMBERS: No.

SHRI A. P. CHATTERJEE: One of them I understand is the son of a very eminent person in the State of

Uttar Pradesh and it is only because of this that the strings are being pulled from high quarters and these appointments are also being sought to be validated in this way by means of an amendment of the Constitution. Madam Deputy Chairman, as far as the question of the constitutional amendment is concerned, there is a serious charge that can be laid against it from another point of view also. And it is this.

As has been hinted by the previous speaker also, you are not changing the provision of the Constitution; you are not amending article 233 and article 233 remains as it is. If article 233 remains as it is, then what is this amendment? It is no amendment of the Constitution at all. It is merely a *carte blanche* to cover the illegal actions of the Executive. As has been pointed out by the previous speaker, suppose there are certain other constitutional provisions which are also violated by the Executive. Then is it open for the Minister of Law or for any other Minister to come forward with an amendment to validate those illegal actions of theirs? Madam, there is a certain sanctity about the provisions of the Constitution and that sanctity goes because of the fact that every time there is violation of a constitutional provision it will be sought to be regularised by means of an addition to the same constitutional provision. This is an intolerable situation; a constitutional amendment cannot be done in this fashion. Article 368 gives you power to amend the Constitution but it does not give you the right to whitewash the violations of the Constitution by the Executive. Madam Deputy Chairman, there will have to be a distinction between a constitutional amendment as such and regularisation of the violations of the Constitution. You can amend the Constitution no doubt but you cannot bring in a Bill in the guise of a Constitution (Amendment) Bill to protect your violations of the Constitution. This Bill has been brought forward not to amend the Constitution. Article 233, as I said, remains as it is but it has been brought forward to protect the violations of the Constitution. That, as I have submitted to you; Madam, is absolutely intolerable and that absolutely is not what is contemplated by article 368 of the Constitution. Therefore this would be a *mala fide* exercise of power.

THE DEPUTY CHAIRMAN: Two minutes more.

SHRI A. P. CHATTERJEE: Madam, I say what we have been asked to do is not really what we can do under article 368 of the Constitution. The hon. Minister posed the question: what could we do after the 8th when the Supreme Court judgment was delivered? Well, the District Judges are continuing to sit and are continuing to deliver judgements. I did not expect this observation from the Minister of Law. The Minister of Law with all his sense of responsibility should not have cited this as a reason for bringing forward this amendment. If the Supreme Court has said that the appointment of these District Judges made in this fashion is absolutely irregular, then those Judges whose appointments were so made should not have been allowed to sit in the courts at all after 8th August 1966. By allowing the Judges to sit in the courts after the 8th August 1966, they are committing contempt of the courts so to say. Not only they are not ashamed of committing contempt of court but the Minister has come forward to use that as a reason for bringing in a Constitution Amendment Bill saying that because the Judges are sitting after the 8th August therefore in order to protect them we should pass this amending Bill. Madam, I may humbly submit to you that there is not an iota of reason at all for bringing forward this Bill and I am opposing this Bill lock, stock and barrel. And if the House thinks that this lock, stock and barrel opposition must not be done, I will support those amendments which have been moved for reference of this Bill to a Select Committee. Let it be referred to a Select Committee and let it be considered dispassionate-

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ly and then let it be found out whether this Bill ought at all to be brought forward or not.

SHRI C. D. PANDE: Madam Deputy Chairman . . .

SHRI BHUPESH GUPTA: Is Mr. Pande going to speak on this Bill?

SHRI C. D. PANDE: Yes; it is U.P.

SHRI BHUPESH GUPTA: It is the pleasantest surprise in my life.

SHRI C. D. PANDE: This is a very delicate situation and nobody in the party or in the Government would like to amend the Constitution. But if you look at the situation that has been created I think there is no other course left than the step which we have taken now.

Now soon after independence there was a great deal of scarcity of officers in all branches of Administration. In the Executive and in the Judiciary also there was shortage of hands. As far as the Executive was concerned the Government at that time throughout the country appointed *ad hoc* Commissions with two Members of the U.P.S.C. and the Chief Secretary of each State and they recruited from the open market, from the military.

SHRI BHUPESH GUPTA: I see you have black market also.

SHRI C. D. PANDE. And in this way we replenished the administrative branch and the I.A.S. officers then appointed in 1947-48 are now occupying high positions in the Government and there is no complaint whatsoever.

SHRI AKBAR ALI KHAN: And some of them have even been appointed as Judges of the High Courts.

SHRI C. D. PANDE: A similar step was taken in the judicial branch also and . . .

SHRI A. P. CHATTERJEE: The hon. Member is really making a comment on the decision of the Supreme Court.

SHRI C. D. PANDE: I will come to that also.

Now, in a similar way, the judicial service had also to be replenished. Those who are lawyer members here will know that the Judges directly recruited to the High Courts are supposed to be better than those Judges from the service. Is it not so, Mr. Tankha? It is the general belief that the Judges directly appointed to the High Court are supposed to be slightly better than the Judges who rose from the service. Now if people could be appointed to the High Court directly the Government at that time presided over by a very eminent person thought that he can replenish the judiciary in the lower level also. Then a Committee, as in the case of the Administrative Services, was appointed with two Judges of the High Court and the Judicial Secretary. It is not as if a foreign matter has been introduced in the Committee, there has been so much of talk about foreign matter here. He is no other person than the Judicial Secretary. Now, this has been going on for the last thirteen years and if any irregularity has been committed by the Government, then which is the aggrieved party. The aggrieved party is no other than the High Court itself. The High Court has sustained, approved and accepted every recommendation made by this Selection Committee. Now, if the real person, who could have any grievance against this method of appointment has acquiesced in it—I do not say that they have acquiesced in it as such—where is the ground to suspect that the whole procedure was devised for nepotism? I tell you the real difficulty is that the Committee was not technically well formed. Had it been well-formed, all this would not have arisen. Because it is not a Committee of the High Court, because a certain foreign element, the Judicial Secre-

tary, has been introduced, the whole thing has been vitiated. It is technically vitiated and the Supreme Court has taken objection to that and nothing else. They do not say that the men are not suitable. Out of 158 persons, there may be five or six persons who may not be suitable. I can say that if the High Court had that type of proper Committee, which is envisaged in article 233, then perhaps the same persons would have been selected, with the exception of four or five persons. Really it is a technical error in deviating from the provisions of article 233 of the Constitution. To that extent the Supreme Court has taken objection. The High Court has not taken objection. The High Court was a party to it. The Government appointed a Committee and the High Court also appointed a Committee slightly departing from the original conception of the Committee as envisaged in article 233.

SHRI AKBAR ALI KHAN: There are two Committees.

SHRI A. P. CHATTERJEE: A District Judge is the son of the Chief Justice of the Allahabad High Court.

SHRI C. D. PANDE: And these decisions have been held to be valid by the Supreme Court. The Supreme Court never took any objection. My friend there said that I am casting a reflection on the Supreme Court. I must say in this connection that that is far from my mind. In this House I am neither for the Judiciary nor for the Executive. The Executive may go wrong. So, we in Parliament have a right and a duty to see that neither the Judiciary nor the Executive could go beyond their spheres of activities. The very fact that the Supreme Court has made the judgement that everything is so biased does not mean so. I do not hold that theory. According to me, if there has been a certain technical error in the selection of the Judges for thirteen years, the Supreme Court should have taken slightly more care to see . .

SHRI A. P. CHATTERJEE: This is not according to the Constitution. He should not cast any reflection on the Supreme Court.

SHRI C. D. PANDE: I am not casting any reflection on the Supreme Court. No Judgement anywhere is valid or is supposed to be sound, unless it takes administrative difficulties into account. A judgement is not a theoretical thesis. It must have a bearing on the administration of the country. For thirteen years judgements have been delivered by these Judges and if all these judgements go wrong, then what happens to this country? Where is the Government? There have been two or three Governments. You may hold them responsible, but they are not going to provide life back. They are not going to pay back the decree amount in respect of those who have got their decrees. Therefore, my submission is that this is the only course open to the Government. The Government has consulted the most eminent jurists in this country and they have also advised them that there is no other course. People ask: Why do you not wait and why the U.P. Government should not continue with this position? I know the situation. The moment the judgement was delivered on the 8th or 9th of August, they came rushing to the Central Government. They asked the Government here to amend the Constitution as early as possible. In September Mrs. Kripalani came here and approached all the Members of Parliament.

SHRI BHUPESH GUPTA: What for did she come?

SHRI C. D. PANDE: To ask the Government. She came here I know.

SHRI BHUPESH GUPTA: She had fallen out with Mr. C. B. Gupta.

SHRI C. D. PANDE: How do you know? Do not be frivolous.

SHRI BHUPESH GUPTA: Prove it before the House.

SHRI C. D. PANDE: How do you know?

SHRI BHUPESH GUPTA: I know it because she was in the Central Hall.

SHRI C. D. PANDE: You are a very responsible person. Do not be frivolous all the time.

SHRI BHUPESH GUPTA: How do you know?

SHRI C. D. PANDE: You are frivolous. Then, there was no time to bring forward an amending Bill. Now, for four months, of course, we have been working under a shadow. People say: Why do you worry? All the judgments passed so far will be valid, because they have the colour of authority. The colour of authority is there, but only that colour of authority is questioned. Mr. Arun Prakash Chatterjee said that according to the High Court judgment, you cannot decide on a collateral subject in this appeal. But if there are any *quo warranto* petitions in some court, what will be the position? They will say, who are you to pass this Judgment? This is *quo warranto*. They will say, you are a so-called judge. This is a wrong judgment. The moment this proceeding comes up, there is no court. The Supreme Court has first to hold that this man is good as any man in the street, as they say. Therefore, do not be under the delusion that your judgments will be valid because they have been passed by a competent judge who is supposed to have done it in good faith and who is supposed to be under the colour of authority till that time. There are people waiting to question such decisions or judgments. Therefore this delusion that these judgments are sound is only for two or three months. The moment they go to the Supreme Court, they will be held to be invalid. Therefore, we cannot take any risk where millions of our people are involved. Thousands of judgments are involved. If this is allowed to happen, do you think the Government will be able to face it? Do you think that the Chief Minister, who has left that place, is responsible? What are they to do? It is the Government of India which is responsible. The people of India are responsible. If any mistake is committed, you can censure the Government of India or the Government of U. P., but you cannot let down these litigants who will suffer. Therefore, in my opinion, the only course left is to pass this amendment. We have had eighteen or nineteen amendments. Let this be the twentieth amendment of the Constitution. It is very painful, but it is a 'must'.

SHRI LOKANATH MISRA: Any number of amendments you must get passed before the next Lok Sabha.

SHRI C. D. PANDE: One more tomorrow.

श्री निरंजन वर्मा (मध्य प्रदेश): आदरणीय उपसभापति महोदया, किसी देश का संविधान उस देश के लिये बहुत पवित्र माना जाता है और हम लोग भारतवर्ष के संविधान को भी उसी प्रकार से पवित्र मानते हैं। ब्रिटेन का संविधान यद्यपि कोई लिखा हुआ संविधान नही है लेकिन उसे भी वहां के लोग बहुत पवित्र मानते हैं और यही बात अमेरिका के संविधान के लिये है। अमेरिका के संविधान को बने हुये बहुत वर्ष हो गये लेकिन वहां पर चार पांच संशोधनों के अतिरिक्त अभी तक बहुत अधिक संशोधन नहीं हुये हैं। अपने देश का दुर्भाग्य है कि अपने यहां संविधान के बनने के बाद ही बार बार उसमें संशोधन आते रहे हैं, चाहे ये संशोधन किसी अज्ञानता के कारण हों चाहे ये संशोधन उस समय जब कि संविधान का निर्माण किया गया था उसमें कोई कमियां रह गई हों इस कारण हों लेकिन संविधान में संशोधन करने की एक परम्परा अपने यहां पर आती रही है। संविधान में जितने भी संशोधन हुये हैं उनमें यह चैप्टर 6 बड़ा विवादास्पद रहा है। जब संविधान का निर्माण हो रहा था उस समय संविधान की निर्मात्री परिषद् में इसके बारे में बहुत विवाद उत्पन्न हुआ था। और उसके पश्चात् बार बार धारा 233, 234, 235 और 236 के बारे में लोगों को तरह तरह की अनुभूतियां देखने को आई। धारा 233 के अंतर्गत जजों की नियुक्तियों के बारे में जो धारणा

बनाई गई थी उस समय से आज तक लोगों का इस तरह का संशय था कि जजों की नियुक्ति के संबंध में एग्जीक्यूटिव्ह के लिये किसी प्रकार से कोई बड़ा हाथ नहीं देना चाहिये। लेकिन संविधान में जब ऐसी बात आ गई तो सब लोगों ने उसकी तरफ कोई तरह से न देख कर यह आशा की थी कि अब आगे चल कर और संशोधन किसी न किसी प्रकार से न आयेंगे और एग्जीक्यूटिव्ह को उंचा हाथ करने के लिये मौका नहीं दिया जायगा। संविधान की धारा 233(1) में लिखा हुआ है कि :

"Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State."

इसी में दूसरी एक और भी उप-धारा है :

'A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment."

तो इसमें निश्चित रूप से दो धाराएं हैं, उनका आशय अलग-अलग है : एक प्रकार के वह व्यक्ति जो कि जुडीशल सरविसेज में हैं और उनकी उन्नति होती है और एक प्रकार के वह व्यक्ति जो कि जुडीशल सरविसेज में नहीं हैं किन्तु सीधे उनका रेक्रुटमेंट किया जाता है। इन दोनों के बारे में किसी प्रकार धारा 234 और 235 में यह भी एक बड़ा विवाद का विषय इन सोलह-सत्रह वर्षों में बना रहा। 235 में है :

"The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law."

यह कन्ट्रोल शब्द तो इसमें है इस कन्ट्रोल के बारे में भी भिन्न भिन्न मत समय-समय पर प्रदर्शित किये गये हैं। क्या हाई कोर्ट को या गवर्नर को किसी का ट्रान्सफर करने का अधिकार है इसके बारे में संदेह बना रहा। यह अभी जो कांस्टीट्यूशन टेवेन्टियथ अमेंडिंग बिल सदन के सामने लाया गया है उसमें इन दोनों बातों के बारे में भी बताया गया है। इसमें धारा 233 (ए) जोड़ी गई है। उसके अनुसार :

"Notwithstanding any judgment, decree or order of any Court,—

(a)(i) no appointment of any person already in the judicial service of a State or of any person who has been for not less than seven years an advocate or a pleader, to be a district judge in that State, and

(ii) no posting, promotion or transfer of any such person as a district judge, . . .

तो कन्ट्रोल के स्थान पर उसको सुव्यवस्थित करने के लिये यहां ट्रान्सफर शब्द आ गया। यहां तक तो ठीक है। लेकिन—

"made at any time before the commencement of the Constitution (Twentieth Amendment) Act, 1966, otherwise than in accordance with the provisions of article 233 or article 235 shall be deemed to be illegal or void or ever to have become illegal or void by reason only of the

[Shri Niranjan Varma.]

fact that such appointment, posting, promotion or transfer was not made in accordance with the said provisions;"

माननीया, निश्चित रूप से एक बात स्पष्ट है और वह यह है कि जैसा कि हमारे योग्य मित्र श्री चटर्जी ने अभी बताया कि अगर इसकी अमेन्डमेंट की धारा (ए) न आई होती और अमेन्डमेन्ट की धारा (बी) अगर सदन के सम्मुख आती तो संभवत: यह बात हो सकती थी कि उत्तर प्रदेश में कुछ जजों की जो नियुक्ति हो गई और सुप्रीम कोर्ट ने उस नियुक्ति को ठीक नहीं बताया तो उनके द्वारा किये गये कार्य, आर्डर्स, जजमेन्ट, डिक्रीज, उनका प्रभाव जनता पर पूरा पड़ेगा और जनता के बड़े भाग को असुविधाओ का सामना करना पड़ेगा। न केवल सरकार को किन्तु जनता को भी तकलीफे उठानी पडेगी। इसलिये (बी) का जहां तक भाग था वहा तक तो माननीया यह योग्य हो सकता था, लेकिन (बी) के साथ (ए) भी इसमें जोड़ दिया गया, यह हमारी समझ मे किसी तरह से ठीक नहीं है। आपने यहां संशोधन करते समय यह भी ध्यान नही रखा जो अभी तक प्रवृत्ति रही है कि जुडीशरी पर एग्जीक्यूटिव्ह हावी होता जा रहा है। हमारे स्वयं के प्रदेश मे अलग अलग एग्जीक्यूटिव्ह और जुडीशरी दोनों थीं। हम इस बात को जानते हैं कि जब एग्जीक्यूटिव्ह जुडीशरी पर हावी हो जाती है तो उसका परिणाम कितना बुरा और भयंकर होता है। उत्तर प्रदेश मे प्रारम्भ काल से, जब से ब्रिटिश रेजीम था, वहां भी जनता को, बार को, वकीलों को, और बड़े-बड़े योग्य विद्वानो को इस बात की शिकायत है कि वे वहां की जुडीशरी पर एग्जीक्यूटिव्ह का बहुत बड़ा प्रभाव है। वहां के जो कलेक्टर्स हैं, जो डिस्ट्रिक्ट मजिस्ट्रेट कहलाते है, वे भी समय समय पर फैसला बदलवाने के लिये जुडीशरी को प्रभावित करते रहे है। ऐसी दशा में अब जब कि जुडीशरी को अलग करने की अपेक्षा की जाती थी और हम यह समझते थे कि इस प्रकार का कोई संशोधन लाया जाय कि जिस संशोधन के द्वारा वास्तव में पूरे भारतवर्ष में एग्जीक्यूटिव्ह और जुडीशरी अलग हो जाय, इसको न करते हुए संविधान में यह जो संशोधन लाया गया है यह बिलकुल एक गलत बात है, इसका जैसा परिणाम समझने की चेष्टा की गई है वह परिणाम भी अच्छा नही होने वाला है। जुडीशरी और एग्जीक्यूटिव्ह के बारे मे अपने यहां पर समय समय पर जो राय प्रदर्शित की गई उसके बारे में मैं निवेदन करूंगा।

Reforms of Judicial Administration, Volume 1, Chapter 129, page 69 में यह बताया गया है कि :

"The almost universal chorus of comment is that the selections are unsatisfactory and that they have been induced by executive influence. It has been said that these selections appear to have proceeded on no recognizable principle and seem to have been made on consideration of political expediency or regional or communal sentiments."

इतना ही नहीं, एक चीफ जस्टिस तक ने इसके बारे में अपनी धारणा जो बनाई है वह यह है :

"The Chief Minister now has a hand, direct or indirect, in the matter of the appointment to the High Court Bench. The inevitable result has been that the High Court appointments are not always made on merit but on extraneous considerations of community, caste, political affiliations and likes and dislikes have a free play. This necessarily encourages canvassing which, I am sorry to say, has become the order of the day."

तो जहां तक ऊंचे प्रकार के जजों की बात है, उनको इन्फ्लुएंस करने के प्रश्न पर, जनसामान्य में यह धारणा है। तो डिस्ट्रिक्ट जज या नीचे

के जो जज हैं उनको प्रभावित करने के लिये भी, जनता का मत ऐसा है कि एग्जीक्यूटिव की तरफ से बारम्बार ऐसी कोशिश की जा रही है कि उनको प्रभावित किया जाय। तो इस तरह से संविधान में अब एक और संशोधन लाकर इन जजों को जिनकी नियुक्ति गलत आधार पर कर दी गई है, यह उचित कारण नहीं है, कि उन नियुक्त जजों का वैलिडेशन करने के लिये संशोधन किया जाय, और अगर यही संसद् की परम्परा रही, छोटी छोटी बातों पर यदि संशोधन लाये गये, क्योंकि भारतवर्ष के प्रान्तों में इस प्रकार की गलतियां कई बार हो सकती हैं, तो क्या हम उन प्रान्तों की गलतियों को सुधारने के लिये बारम्बार कांस्टीट्यूशन में अमेंड्मेंटस लाते जायेंगे और इस प्रकार से कांस्टीट्यूशन प्रतिवर्ष में एक बार नहीं, दो बार नहीं, दम दस बार बदला जायेगा? अगर इसी प्रकार से बदला जाता रहा तो कांस्टीट्यूशन के प्रति जो एक पावन भावना जनता के हृदय में है उस भावना का क्या होगा लॉ मिनिस्टर साहब यह भलीभांति नहीं समझते। (*Time bell rings.*) जो गलतियां उत्तर प्रदेश में हो गई आज सुचेता कृपलानी उनके लिये आ कर कहें या न कहें लेकिन उन गलतियों को ठीक करने के लिये अगर कोई उपाय अपनाया जा सकता था तो अमेंडमेंट की धारा (1) की आवश्यकता नहीं थी। हमारे योग्यमंत्री श्री पाठक जी उसको छोड़ कर केवल (बी) पार्ट जिसके द्वारा कि उनके डिक्री, आर्डर्स, जजमेंट वैध किये जायेंगे, जहां तक उचित था, उसके लिये अमेन्डमेंट लाते तो किसी प्रकार से यह कहा जा सकता था कि उनका कार्य उचित है। लेकिन पूरी की पूरी, सब लोगों की अवैध नियुक्तियों को वैध करवाने के बाद अमेन्डमेंट करना कांस्टीट्यूशन में, यह हम समझते हैं किसी तरह से उचित नहीं है।

इन शब्दों के साथ अमेन्डमेन्ट जो लाया गया है उसका हम विरोध करते हैं।

SHRI SURESH J. DESAI: Madam Deputy Chairman. I rise to support fully and completely this Constitution Amendment Bill so ably moved by the hon. Law Minister. This is an essential and necessary piece of legislation. But, unfortunately, some controversy seems to have been imported into it, a lot of politics also, and so many extraneous considerations have also crept into the matter. For instance, it is said that because the son of a certain high personage in UP has been involved these irregular appointments are validated. It is also said, and the question is also posed, about the independence of the Judiciary. Now, all these are extraneous and irrelevant considerations. The question before the House is whether the vast body of judgments, writes orders and sentences passed by the judicial officers in whose appointment a technical flaw has now been found, whether this body of judgments, etc. has to be upheld or has to be struck down. That is the crux of the whole matter. Now the question is, if this vast body of judgments, etc. is struck down, an insurmountable difficulty will arise because it is not merely a question of the appointment of a few judges or the validation of those appointments, but the question is, so many properties have passed hands, so many rights have been transferred and so many people have suffered imprisonment; people have been hanged also. Now, no Government worth its name can do any other thing but to validate all these judgments, orders, writs, passed by the judicial officers. It is a simple matter which can be understood by anybody. But it is said that the Constitution should not be amended in a flippant manner. It is a strange argument also. Some people from the Opposition have said that it is not an amendment of the Constitution at all. These are all irrelevant arguments.

The history of the case is well known to the House and I need not narrate it again. In 1953, the UP Government passed the Higher Judi-

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cial Service Rules. Under these Rules, judges had been appointed by a Committee of two Judges and one judicial officer, and the recommendations of this Committee were passed through the High Court. Even the Supreme Court in its judgment says "with the approval of the High Court". And the appointments were made. Now, the Supreme Court found that these appointments were not in keeping with article 233(1) of the Constitution, that is, that these appointments were not actually made by the Governor in consultation with the High Court. That is why the Supreme Court held that the UP Higher Judicial Service Rules to be constitutionally void and the appointments made under them are illegal. Now, the question is as to the irregularity of the appointments and judgments after the 8th August, 1966 when this judgment was pronounced. The question is what would happen to the vast body of judgments, writs and orders which were passed before the 8th August, 1966. Some hon. Members of the Opposition have quoted two cases of the Calcutta High Court also; the case of Mr. Justice Ramachandran of the Madras High Court was also quoted at times. But these cases, let me point out, never came in an appeal before the Supreme Court these were decided by the Calcutta High Court and the Madras High Court. They never came in appeal before the Supreme Court. The relevant judgment which is to the point here is what was decided by the Supreme Court in the case of Mr. J. M. Mitter, which has been cited by the hon. Law Minister also, and there the Supreme Court clearly states:

> "If the decision of the President goes against the date of birth given by the appellant, a serious situation may arise because the cases which the said Judge might determine in the meantime would have to be reheard, for the disability imposed by the Constitution when it provides that a judge cannot act as a judge after he attains the age of superannuation will introduce a constitutional invalidity in the decisions of the judge."

This is the relevant point, this is the crux of the matter that in the present case also the appointment of these judges invite a constitutional invalidity. That is why these appointments have got to be regularised and the body of judgments, etc. which they had passed also have got to be upheld by law.

Another point that has been raised is whether when this matter is *sub judice*, Parliament can pass any legislation or not. This is also a very strange argument because those who have studied the British constitutional practice must have come across the doctrine that Parliament is supreme and Parliament can do anything except to make a woman into a man and a man into a woman.

SHRI BHUPESH GUPTA: That also? Then may, I say that Mr. Suresh Desai is for all practical purposes a woman?

SHRI SURESH J. DESAI: I can change you into a woman also. Then the House will be happier.

THE DEPUTY CHAIRMAN: Please continue.

SHRI SURESH J. DESAI: That is the British practice, and that is the practice which we have also been following that Parliament is supreme And this argument of being *sub-judice* is very strange. Suppose there is some provision in the Criminal Procedure Code or the Civil Procedure Code and if it is challenged in the High Court, then would you say that Parliament should not legislate anything in any manner? That is their doctrine. Parliament has got a right to amend any law or to pass any legislation whenever it likes. So, this question about its being *sub-judice* is also irrelevant.

Then the question arose as to whose mistake it has been. Well, there has been no mistake. After all, it is a question of the interpretation of the law. When the UP Higher Judicial Service . . .

SHRI LOKANATH MISRA: In the case of Mr. Biju Patnaik when it was *sub judice,* it was irrelevant to mention.

SHRI SURESH J. DESAI: I can appreciate the fact that whenever Mr. Lokanath Misra speaks, he brings in Mr. Biju Patnaik into the picture. That is also not relevant.

It is not a question of a mistake. It is a question of what constitutes 'in consultation with the High Court'. It is whether the recommendation of the Committee which went through the High Court for the approval of the High Court amounted to a consultation or not. It is a matter of interpretation. Now, the Supreme Court has laid down new rules for the appointment of judicial officers and all the appointments henceforward in all the States will be made according to those rules and it is not merely a question of UP. There are many other States, these have been irregularities in Mysore, in Rajasthan. All these are sought to be validated by this Bill. So, the question does not arise whether there has been a deliberate mistake and whether deliberately an illegal act has been committed or not. That is not very relevant.

With these words, madam, I completely support the Bill and the hon. Law Minister has not only given a complete exposition, a detailed exposition of the law involved, but also the gravity of the situation that would arise if this Bill is not passed.

With these words, I commend the Bill.

PANDIT S. S. N. TANKHA: Madam Deputy Chairman, I am one of those who agrees entirely with the view that the Constitution should not be lightly interfered with and amended. But all the same, the question is whether the present amendment is of that character. The Constitution should certainly be amended where the public interest demands it or where social justice demands it and in all such cases there is no bar to its being amended, even if it has to be amended a hundred times or so, so long as it adheres to the principle that the change will bring in either better social laws or better social justice or better administration in the country. Now, Madam, for the proper appreciation of the action which the Government proposes to take by amending the Constitution, it is essential to clearly understand what has really happened. It is not as if things were going chaotic in the State of U.P. from the time we become independent and they are now being put right or that the defects are being cured now. It is nothing of the kind. What happened, Madam, was that appointment of High Court Judges, as you know, is made under article 217. But this amendment which we are considering primarily refers to the appointment of District Judges and their posting etc. The matter is covered under article 309. It was because of the provision of article 309 that this step was taken by the Government in U.P. The proviso to article 309 mentions as follows:—

"Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act."

[Pandit S. S. N. Tankha.]

Now no Act was passed on the subject in the State but because of the wordings of the above proviso it was considered that a committee of persons could be appointed by the Governor which could act for him to recruit District Judges and for other matters connected with those posts and as such a Committee was appointed by the Government of U.P. in 1953. in that Committee—it is very important to note—two High Court Judges were appointed. The Legal Remembrancer was the third person among the members. The Legal Remembrancer, as you know, Madam, is a person who on his next promotion usually becomes a High Court Judge. And as such the Committee is practically a composition of three High Court Judges who made these appointments and transfers of the District Court Judges.

SHRI BHUPESH GUPTA: Either a High Court Judge or not a High Court Judge. No practical business.

PANDIT S. S. N. TANKHA: Two were already High Court Judges.

THE DEPUTY CHAIRMAN: Mr. Tankha, you have very limited time.

PANDIT S. S. N. TANKHA: This Committee recommended for the appointment of these Judges and for their transfers etc. It is not as if the High Court was ignored by anybody. The recommendations went to the full High Court. The High Court duly considered them and after acceptance of the same forwarded them to the Governor who made the appointments on the basis of these recommendations. Now where is the question of saying that some politics was imported into this or some other things were imported, or it was meant to bypass the High Court? Not at all. The High Court did not object to the appointment of the Committee or its recommendations. Had this been so, it could mention to the Governor that this was not what they contemplated, or what the Constitution contemplated but that something else was being done and that he was doing something not authorized under the Constitution.

श्री राजनारायण : गवर्नर ने जजों की मीटिंग बुलाई थी।

PANDIT S. S. N. TANKHA: All along it has been understood in the State of U.P. that the appointments were being properly made. No question arose at any time. It is not true that people in the State began to think that the appointments were being made on party lines and, since there was a quarrel between those carrying on the administration each section of them was exerting pressure and exercising undue influence on the Governor and, therefore, these wrong appointments have been made which are now being validated by the Law Minister. Nothing of the kind. has happened, I might assure the House.

And then I might also inform you that this was at a time when Pandit Pant was at the head of the administration in U.P.

SHRI M. N. KAUL: Who was the Chief Justice at that time?

PANDIT S. S. N. TANKHA: I do not remember.

श्री राजनारायण : माननीया, उनका भी लड़का बनाया गया है और सारा अनर्थ हुआ है।

PANDIT S. S. N. TANKHA: This allegation also I refute. The Chief Justice's son is not in question in this. That affair ended long ago. And, therefore, to bring in that name and say that wrongly appointed persons are being validated is absolutely incorrect

SHRI BHUPESH GUPTA: That was validated.

PANDIT S. S. N. TANKHA: Somehow or the other it was considered

valid or was validated. Now the question arises that since 1953 these Judges, who have been appointed at the instance of this Committee, and who have been working all along, have carried on their functions from day to day, and in the course of their functioning they must have delivered hundreds and thousands of judgements, in consequence of which certain things have followed. Now, are we to set aside all these things and say that all those persons who were appointed since 1953 or 1954 were wrongly appointed to their posts and, therefore, the judgements delivered by them should be declared as void?

SHRI LOKANATH MISRA: Why should you anticipate that they would be set aside? It is still pending in a court.

PANDIT S. S. N. TANKHA: Since 1953. My dear friend, just consider this. How can we take that risk? Can the Government at all take that risk?

श्री राजनारायण : तो उतना ही ले आइये ।

THE DEPUTY CHAIRMAN: You continue, Mr. Tankha.

PANDIT S. S. N. TANKHA: My friend says, let us bring in new legislation to validate their judgements but not appointments of these persons. May I ask him what wrong have these persons committed?

श्री राजनारायण : यह फेवरेटिज्म है, कुनबापरस्ती है, भाई भतीजा वाद है ।

PANDIT S. S. N. TANKHA: No, certainly not. There is no *Bhai Bhatijavad* involved in this.

SHRI RAJNARAIN: I know your Law Minister, I know your Chief Minister and I know your Prime Minister.

PANDIT S. S. N. TANKHA: This is only trying to bring a bad name to the administration. My friend, Mr. Gupta, for when I have great respect, said that Mrs. Kripalani had come here to fight and quarrel with Mr. C. B. Gupta, the ex-Chief Minister of U.P.

SHRI BHUPESH GUPTA: Yes, she has been coming here again and again every other day.

PANDIT S. S. N. TANKHA: Yes, she did come here. But she came to explain matters to the Government and the Prime Minister about the state of affairs which had been created because of the judgement. She suggested to them to undertake this legislation; otherwise many things would become uncertain in the State.

श्री राजनारायण : जब इतने दिनों तक पृथ्वी नहीं धंसी तो राष्ट्रपति से कह दें कि सुप्रीम कोर्ट की ओपिनियम ले लें ।

श्री लोकनाथ मिश्र : सुप्रीम कोर्ट ऐड्वर्स ओपिनियन दे देगा ।

श्री राजनारायण : प्रापर कांस्टिट्यूशनल तरीका हमारे पास है और अभी तक धरा नहीं धंसी, गगन नही फटा ।

PANDIT S. S. N. TANKHA: Therefore, Madam, the main question that arises is whether or not the appointments and transfers suggested by the appointed Committee to the High Court were to be considered as consultation with the High Court as contemplated under article 233(1).

Now, Madam, with the little knowledge of law that I have and with my feelings on the situation as has been created I am of the view that the Supreme Court, for which I have the highest respect and which certainly is the highest legal authority in the land and the best judge to interpret law, has created a very serious situation by giving this judgement. I cannot say anything else but that it has been very harsh in giving the judgment and unmindful of the consequences that would follow from it because after all the people who have been

[Pandit S. S. N. Tankha.]

appointed have not done any wrong. This was a Committee constituted by the Government and the High Court has been closely in touch with it all along from 1953 onwards. If the High Court did not approve of the Committee, how is it then that it had tolerated the Committee and the appointments made by that Committee all along? In these circumstances, to say that the actions of the Committee that were invalid and that they had not acted under article 233 (1) is not perhaps correct. However, it is a view taken by the highest court of appeal and nobody can question it and as such we have to abide by its decision. Therefore, Madam, what was the course left for the Government to adopt? The only course left for the Government, therefore, was to bring forward this legislation in order to protect the persons who have been appointed on the basis of the recommendations of the Committee and who possessed the necessary qualifications. That is to say that the recruits, if they were recruited from the Bar, possessed the 10 years' qualification as an advocate, and if they were from the judicial service then too they have completed at least 7 years, judicial service and thus alone could they have been properly appointed. But they should have fulfilled all the qualifications required, And it is only such appointments of judges that are meant to be validated under this Bill. The others who have been considered by the State Government as not to have the required qualifications, their appointments will not be validated but they will be sent back to the judicial line. Of course, they cannot be made High Court Judges if they do not possess the necessary qualifications. Therefore, I do not see why any objection should be taken to the method or rather the step which the honble. Minister has taken. With these words, I strongly support the measure.

SHRI BHUPESH GUPTA: It was very interesting to hear Mr. Tankha, a learned man but gone wrong in the Congress Party. He said that the Legal Remembrancer was practically a High Court Judge because he is next to the High Court Judge. Can we have a category 'practically a Member of Parliament' because one had been defeated in some election and now the Congress High Command might think of sending him to the Rajya Sabha? No, you cannot. Can you think that Prince Charles is practically the Sovereign of England? No, although he will take the Crown. Therefore, I think such infantile utterances should not be made by so knowledgeable a man as Mr. Tankha but then he belongs to the Congress Party.

As far as the Bill is concerned, when I heard the Congress friends speaking, they did not seem to be ashamed of the manner in which their Chief Minister and the executive are running the administration of the country and even handling matters which belong to the judiciary. They should at least be ashamed of it. I am not interested in Shrimati Sucheta Kripalani's coming here. She has a variety of reasons for coming here, I agree, but that does not settle the problem. She may or may not have come to expedite the enactment of this Bill. She may have come for certain other reasons or may not have come for certain other things but the U.P. Government has put into effect certain U.P. Higher Judicial Services Rules and these are against the constitution.

SHRI S. S. N. TANKHA: They are not. They are in conformity with the Constitution. I had pointed that out earlier.

SHRI BHUPESH GUPTA: There is a constitutional provision. It is now held by the Supreme Court that the appointments were illegal. That is why we are called upon to legalise the illegal acts on the part of the U.P. Government.

SHRI A. P. CHATTERJEE: The Supreme Court has also held that those rules are *ultra vires.*

SHRI BHUPESH GUPTA: Very often we are called upon to legalise the illegal acts of the Government. Now these were done by the Government it is an executive act and not a judicial act. It is an executive act and the Governor acts on the advice of the Council of Ministers. Technically and constitutionally speaking, the Council of Ministers is responsible for the mess it has created and yet not a word of condemnation comes from the opposite side against the U.P. Government. Is it because the U.P. Government is managed by your party? If that is so, then I would say that you are putting partisan interest above the interest of the Constitution.

SHRI S. S. N. TANKHA: Certainly not.

SHRI BHUPESH GUPTA: You are putting a sense of prestige and your own community, whatever it is, the Congress Party and so on, above the requirements of the principle of the Constitution. I could have understood the Minister beginning his speech by expressing regret that the U.P. administration behaved in this unconstitutional and illegal manner. Instead of doing that, he was entering into a rigmarole of all kinds as if we are a Full Bench of the Supreme Court or the High Court. I can tell you that we are men of common clay. We are not judges either in a District Court or a High Court or the Supreme Court. We should be told why the U.P. Government behaved in this manner and even after the matter has been declared illegal, kept the appointments instead of annulling them. We should be told about that. Now you have a Government here. It is its characteristic in every thing and almost every thing it is mismanaging. It is the universal characteristic of the Government. Nothing it touches, nothing that this Government of incompetent people touches is not mismanaged. Therefore, we are not surprised but at least for courtesy's sake we expected the Minister piloting this Bill to tender an apology to the Parliament and the nation for this gross mismanagement of affairs and Mr. Tankha tells us that the Supreme Court has been very harsh. Should the Supreme Court sprinkle rose water on you because you have done an illegal act? What should the Supreme Court do? Should they put you in a bed of roses so that you could comfortably enjoy? The Supreme Court should pass strictures against you. In fact the Supreme Court has been very kind to you. The Supreme Court should pass strong strictures against this utterly incompetent mismanaging Government. If anything the Supreme Court is guilty of showing great liberality towards you rather than being harsh. Therefore you need not be upset by it, Mr. Tankha.

SHRI S. S. N. TANKHA: I said that the Supreme Court judgement will work hardship on the persons in question.

SHRI BHUPESH GUPTA: This Government passes a law under the emergency which it has not the competence to pass. There sits the eminent jurist to-day who pointed out that the D.I.R. particularly that clause which we passed, Parliament did not have the authority to pass and that it would be challenged after the emergency is over and we will have to pay compensation. That is why he brought another Constitution (Amendment) Bill to legalise the illegal detention of people. That is your habit. Therefore, if it were merely a question of legalising certain difficulties in the way because of judgments, decrees and so on, as the Statement of Objects and Reasons says, we could have done that, if necessary by amending the Constitution but what we are doing here is, in addition to that we are legalising the illegal ap-

[Shri Bhupesh Gupta.]

ointments. The appointments are legal and these illegal appointments e are called upon to legalise by mending the Constitution. What does t show? It shows that the ruling party is thinking itself as above the Constitution. If the Constitution serves he ruling party, well, it is good. If the Supreme Court is in line with the thinking and ideas of the ruling party and the ways of the ruling party, it is good. If the Supreme Court's finding goes against the rulings party, if the Constitution comes in the way of the ruling party's carrying on its administration in an arbitrary manner, then the Constitution has to yield to the ruling party and it is amended. The Supreme Court is doublecrossed by amending the Constitution. This is Government we have. That is why I criticise it. This Uttar Pradesh affair is not a simple thing. It is an amazing thing. These people do not even know the real position. This article of our Constitution clearly says:

4 P.M.

> "Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State."

So it is to be in consultation with the High Court. Anyone would have known this when he advised the Governor and when this extraneous element was introduced. You have put such legal liminaries as Secretaries and they ought to know what is in the Constitution regarding consulting the High Court. But they are stupid people, ignorant people, illiterate people, speaking from the point of view of constitutiional law. Suppose there is a law that in certain matters we have to consult the State Legislature and in some State Legislature some strangers are brought in and they are there when the consultation takes place. Would that consultation be treated as legal and valid? No, it is not, because strangers were introduced and that Assembly was not an Assembly. It ceased to be the State Assembly, whether it is the U.P. with 420 persons or somewhere else. It would not be valid and, therefore, they should have understood it.

And Madam Deputy Chairman there is as Head of the Government in that State, Shrimati Sucheta Kripalani who, I am sorry, is a Bengali lady.

THE DEPUTY CHAIRMAN: Do not mention names.

SHRI BHUPESH GUPTA: All right I will say the Chief Minister. But it is a feminine name and so sweet to mention. The Chief Minister of Uttar Pradesh who has been imported from West Bengal, she—I have to say "she", I cannot say "he"—is making a mess of the whole thing. The U.P. Government, Madam, is a mismanaged kitchen. It is a mismanaged kitchen in every sense of the term. You see what they do with the question of the government employees there. So it is mismanagement everywhere. Now, we do not know who these 15 gentlemen are. Suppose you do not confirm these appointments, suppose you did not made these illegal appointments legal, nothing would have been lost. There are other persons who can come up and fill their places. So they need not have done this. I am not concerned whether the son or son-in-law of anybody is involved there. My submission is that nothing happens in Uttar Pradesh without nepotism. That is a fundamental presumption. If anything happens, then there must be nepotism in it. That is the very first presumption as far as Uttar Pradesh is concerned. It is for them to rebut me and say that there is no nepotism. I say it is the same whether it is the Court or the University or colleges or elsewhere.

SHRI RAJNARAIN: As far as the U.P. Government is concerned.

SHRI BHUPESH GUPTA: Yes, I do not charge my hon. friend Rajnarain with nepotism. How can I do that?

He is my colleague and fellow-fighter. When I say Uttar Pradesh I mean the Government of Uttar Pradesh. It is one factional crowd called the Council of Ministers, the so-called Council of Ministers or euphemistically called Council of Ministers. Therefore, this thing they have done. Those who have been hanged, we cannot get them back. May be, they themselves would not like to come because of this kind of regime of the Congress. Some of us would like to get hanged now rather than be in this regime. Therefore, I am not saying anything about them. But these judgments and other things have taken place. We do not know what are the implications of this on them. Assuming that they are not good, anyhow we cannot do anything about them for the present. But I would have liked the judgments to be gone into. Even if the proceedings do not take place again every judgment can be gone into so that you can tell the nation that you have looked into the judgments given by the illegitimate children of the judiciary. Legitimacy is a bourgeois proposition and I am, therefore, not making a big point about it. We are living in a bourgeois society where judges are appointed in this manner and it is precisely to see that the judgments have not been vitiated by any extraneous considerations that I suggest this. There have been appointments and transfers. Transfers have taken place. Everybody knows that in Uttar Pradesh transfers take place according to factional fluctuations. There are two or three factions functioning in Uttar Pradesh, at Lucknow and transfers depend very much on which faction is dominating. If you do not like a man, he goes to Bara Banki or Ghazipur or Musaffarnagar, depending on the faction that is there dominant. I do not know what has happened. After all, they are quarrelling openly.

PANDIT S. S. N. TANKHA: The Supreme Court has not held that the appointments are bad on the ground that you are mentioning, Mr. Gupta, certainly not.

SHRI BHUPESH GUPTA: I say the whole thing is wrong, wrong from beginning to end. First of all their dealings with the people are wrong. The main problem today is not the tinkering with the Constitution. I am for rewriting the Constitution. Why amend it? I should like a Constitution which would have proportional representation so that those gentlemen cannot sit in seats of authority and power. Having got a minority of votes they cannot occupy majority seats on that side. That is not the point. The point here is whether the Constitution should be amended in this manner for legalising the dereliction of duty on the part of the Uttar Pradesh Government, for giving sanction to something for which the Government should be castigated, condemned and criticised very strongly and if possible punished. I can understand if the U.P. Government had been turned out of office over this illegal act of the Congress party. But the Government which behaves in this illegal and horrible manner is not turned out of office. If I had seen that Government turned out, I would have welcomed it. That would have shown that there was sincerity. But those people remain where they were and they will still be there carrying on their illegal acts. That is my complaint in this connection. This is an executive act. I will tell Parliament again and again that it was Mr. Setalvad who made one of the finest judicial utterances of our times when he said that this Government is tending to become a constitutional dictatorship. He will be remembered for generations and generations for this great utterance courageously and valiantly made. I give him three cheers on behalf of the nation for the manner in which he spoke out. He said that the Congress Government of India was using power in such a manner that the Government was tending, to become a constitutional dictatorship. Here we find another example of an act of constitutional dictatorship. It is all chaos, confusion, crisis and clash, in ideas, thoughts, ways and behaviour.

[Shri Bhupesh Gupta.]

Madam Deputy Chairman, the Uttar Pradesh once gave us very eminent people, in political life, in literature and even in science and other spheres of life. But today Uttar Pradesh is only a factional, quarrelling place. Shri C. B. Gupta and his sixty lakhs you know.

THE DEPUTY CHAIRMAN: Again I have to tell you you should not bring in names.

SHRI BHUPESH GUPTA: All right. I shall say the former Chief Minister and Rs. 65 lakhs.

Therefore, I say we are opposed to this measure. We are opposed not because something is said here but we are opposed to the whole spirit, the manner and the approach of the Government. This Government treats Parliament as if we are at their bidding. Because they have a two-thirds majority they seem to think that they can violet and trample under foot the Constitution of the country. Having been chastised, criticised and called to account by the Supreme Court they come here to have a constitutional amendment so that they can double-cross the Supreme Court. I say these constitutional double-crossers should be called to account and denounced by the nation and hence my strong criticism. These gentlemen who are incompetent as Ministers, who are violators of the Constitution, who are the traducers of good, normal public life in our country want Parliament to be ready at their command so that they can do whatever they like including violating the Constitution and then mobilise their brute majority in this House to pass such measures as this Bill. Madam, I oppose the Bill.

Thank you very much.

SHRI M. N. KAUL: Madam Deputy Chairman, I feel that the Government should have put forward their case more boldly than they have done. The vehemence of the attack on it is not justified. This is not one of the cases in which you can say that the view that was taken by the Government was patently wrong. As one great Judge of the Supreme Court of the United States has said the judgments of the Supreme Court may be fallible. The importance that attaches to a judgment of the Supreme Court is because of its finality; the judgment may be right, it may be wrong. I have known of eminent text-book writers on legal matters saying that a certain view taken by the House of Lords was wrong and the House of Lords may in due course reverse that view. There is no presumption that because the view of the Government has not been upheld by the Supreme Court that view is patently wrong. So I think it would have been better if the Government had come forward and said as Pandit Nehru once said in Lok Sabha, "Although the Supreme Court has reversed our view I still feel that our view is correct but I bow to their judgment." That is the approach that the Government should have taken. The Government should have struck a firmer note that the view that they had taken was the correct view and the Supreme Court had taken a different view but under the Constitution the judgment of the Supreme Court is final and it is for that reason that they are bringing forward this amendment, and because the judgment is final there is no other way of doing it. I think this is not one of the cases in which one can build up a political attack against the Government.

SHRI G. S. PATHAK: Madam . . .

SHRI BHUPESH GUPTA: The boy on the burning deck.

SHRI G. S. PATHAK: . . .a suggestion has been made that the President should make a reference to the Supreme Court. This is wholly out of place. What will the Supreme Court do if the question is framed and referred to it? The Supreme

Court will say, 'We have already decided it; is there any new question, which is a complicated question and which we have not decided? It is an identical question which we have already decided and, therefore, we refuse to answer this reference.' They have got the power to refuse to answer a reference in case they find that the reference was unnecessary.

There was another suggestion, namely, to refer the Bill to a Select Committee. The question is, what will the Select Committee do? What is the complicated question which the Select Committee has got to answer? This, I submit, is calculated to delay the passing of this Bill.

Then, Madam, it was said that the appointments need not be validated because the Constitution is not meant to validate actions. You will find that actions have been validated under article 31B. Parliament has the power to amend the Constitution to validate Acts, to validate everything that has been done in the name of judgment or even a statutory enactment. Therefore, Madam, it is not correct to say that this amendment of the Constitution is unjustified.

It was also said: why validate the appointments, validate only the judgments. The answer is obvious. What will happen to the judgments of the present Judges whose appointment has been declared illegal under the judgement of the Supreme Court, after the passing of this Bill and after the 8th August? Unless their appointments are legal, their judgments will always remain illegal. So the appointments will have to be validated. Therefore, it is not merely a question of validating judgments delivered prior to 8th August but it is also a question of validating their actions after the 8th of August and this cannot be done unless you validate their appointments.

Mr. Chatterjee mentioned the judgment of Sir Ashutosh Mukerjee. I repeatedly said in my opening remarks that there is a distinction between the judgment pronounced at a time when the illegality is not exposed, when it is not known whether the appointment is legal or not, and the judgments delivered after it is known. He has cited a case which referred to that aspect and I pointed that out very clearly from the judgment of the Full Bench of the Allahabad High Court. Until the defect is exposed it is a controversial question whether a judgment pronounced by a *de facto* Judge under colour of office is valid or not. But this question does not arise in the case of judgments delivered after the 8th August and all those judgments which relate to this question are irrelevant. After the illegality was exposed on the 8th August everybody knew that these Judges were illegally appointed and they could not pronounce judgments at any time thereafter unless there was validation of their appointments. This distinction is missed in the speeches of the Opposition.

Madam, I do not want to delay this debate. I submit that all the points are quite clear before the House and I hope the House will pass the motion.

THE DEPUTY CHAIRMAN: I will put the amendment of Shri M. P. Shukla to vote.

SHRI M. P. SHUKLA: Madam, I would like to withdraw my motion.

THE DEPUTY CHAIRMAN: Has he leave of the House to withdraw his amendment?

SOME HON. MEMBERS: No.

THE DEPUTY CHAIRMAN: The question is:

1. "That the Bill further to amend the Constitution of India, as passed by the Lok Sabha, be referred to a Select Committee of the Rajya Sabha consisting of the following members, namely:—

Shri G. S. Pathak,
Shri P. N. Sapru,

[The Deputy Chairman.]

Diwan Chaman Lall,
Shri B. K. P. Sinha,
Shri Lokanath Misra,
Shri Bhupesh Gupta,
Shri V. M. Chordia,
Kumari Shanta Vasisht,
Shri Mulka Govinda Reddy, and
Shri M. P. Shukla.

with instructions to report by the first day of the next session."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

2. "That the Bill further to amend the Constitution of India, as passed by the Lok Sabha, be referred to a Select Committee of the Rajya Sabha consisting of the following members, namely:—

Shri G. Murahari,
Shri Atal Bihari Vajpayee,
Shri A. D. Mani,
Shri Mulka Govinda Reddy,
Shri A. P. Chatterjee,
Shri Lokanath Misra,
Shri Bhupesh Gupta,
Shri Chitta Basu,
Shri B. N. Mandal, and
Shri Rajnarain,

with instructions to report within a week."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

"That the Bill further to amend the Constitution of India, as passed by the Lok Sabha, be taken into consideration."

(The House divided)

THE DEPUTY CHAIRMAN: Ayes—141; Noes—11.

AYES—141

Abdul Shakoor, Moulana.
Abraham, Shri P.
Ahmad, Shri Syed.
Ammanna Raja, Shrimati C.
Anand Chand, Shri.
Anandan, Shri T. V.
Anis Kidwai, Shrimati.
Annapurna Devi Thimmareddy, Shrimati.
Ansari, Shri Hayatullah.
Arora, Shri Arjun.
Asthana, Shri L. D.
Baharul Islam, Shri.
Bhatt, Shri Nand Kishore.
Bobdey, Shri S. B.
Chagla, Shri M. C.
Chaman Lall, Diwan.
Chandra Shekhar, Shri.
Chandrasekhar, Dr. S.
Chavda, Shri K. S.
Chengalvaroyan, Shri T.
Chetia, Shri P.
Das, Shri L. N.
Dasgupta, Shri T. M.
Dass, Shri Mahabir.
Desai, Shri Khandubhai K.
Desai, Shri Suresh J.
Devaki Gopidas, Shrimati.
Dharam Prakash, Dr.
Dharia, Shri M. M.
Doogar, Shri R. S.
Ghose, Shri Surendra Mohan.
Gilbert, Shri A. C.
Gujral, Shri I. K.
Gurupada Swamy, Shri M. S.
Hathi, Shri Jaisukhlal.
Jairamdas Daulatram, Shri.
Kakati, Shri R. N.
Kathju, Shri P. N.
Kaul, Shri M. N.

Khan, Shri Akbar Ali
Khan, Shri M Ajmal
Khaitan, Shri R P
Kotharı, Shri Shantilal
Koya Shri Palat Kunhi
Krishan Kant, Shri
Kulkarni, Shri B T
Kurre, Shri Dayaldas
Lalitha (Rajagopalan), Shrimati
Mahammed Haneef Shri
Mahanti, Shri B K
Mallik, Shri D C
Mallikarjunudu, Shri K P
Mangladevi Talwar, Dr (Mrs)
Mary Naidu, Miss
Mehta, Shri Asoka
Mehta, Shri Om
Mir, Shri G M
Mishra, Shri L N
Mishra, Shri S N
Mohammad Chaudhary A
Mohinder Kaur, Shrimati
Momin, Shri G H Valimohmed
Muhammad Ishaque, Shri
Nandini Satpathy, Shrimati
Neki Ram, Shri
Pahadia, Shri Jagannath Prasad
Pande, Shri C D
Pande, Shri T
Panjhazari, Sardar Raghbir Singh
Parthasarathy, Shri R T
Pathak Shri G S
Patil, Shri P S
Patra Shri N
Pattanayak, Shri B C
Pawar, Shri D Y
Phulrenu Guha Dr Shrimati
Pillai, Shri J Sivashanmugam
Poonacha, Shri C M
Punnaiah, Shri Kota
Purkayastha, Shri M
Pushapaben Janardanrai Mehta, Shrimati
Qureshi, Shri M Shafi
Ram Chander, Shri
Ramaswamy, Shri K S
Ramaul, Shri Shiva Nand
Rao Shri V C Kesava
Ray, Shri Ramprasanna
Reddy, Shri K V Raghunatha
Reddy, Shri N. Narotham.
Reddy, Shri N Sanjiva
Reddy, Shri N Sri Rama
Reddy, Shri Nagi
Reddy, Shri Y A
Roy, Shri Biren
Sadiq Ali, Shri
Sahai, Shri Ram
Salig Ram, Dr.
Sanjivayya, Shri D
Sapru, Shri P N
Savnekar, Shri B S
Seeta Yudhvir, Shrimati
Setalvad, Shri M C
Shah, Shri K K
Shah, Shri M C
Shakuntala Paranjpye, Shrimati
Shanta Vasisht, Kumari
Shervani Shri M R
Shukla Shri Chakrapani
Shukla, Shri M P
Shyam Kumari Khan Shrimati
Siddhu, Dr M M S
Singh, Shri Dalpat
Singh, Dr Gopal
Singh Shri Jogendra
Singh, Shri Santokh
Singh, Raja Shankar Pratap
Singh, Shri T N
Sinha, Shri Awadheshwar Prasad.
Sinha, Shri B K P
Sinha, Shri R B
Sukhdev Prasad, Shri
Supakar, Shri S
Sur, Shri M M
Swamy, Shri N R M
Syed Mahmud, Dr
Tankha, Pandit S. S N

Tapase, Shri G. D.
Tara Ramchandra Sathe, Shrimati.
Thanglura, Shri A.
Thanulingam, Shri P.
Tiwary, Pt. Bhawaniprasad.
Tripathi, Shri H V
Untoo, Shri Gulam Nabi.
Usha Barthakur, Shrimati.
Varma, Shri B. B.
Varma, Shri C L.
Venkateswara Rao, Shri N.
Vidyawati Chaturvedi, Shrimati.
Vyas, Shri Ramesh Chandra.
Yajee, Shri Sheel Bhadra.
Zaidi, Col. B. H.

NOES—11

Chatterjee, Shri A P.
Das, Shri Banka Behary.
Gaikwad, Shri B K
Ghosh, Shri Niren
Gupta, Shri Bhupesh
Misra, Shri Lokanath.
Narayan, Shri M D
Rajnarain, Shri.
Reddy, Shri Mulka Govinda.
Sarla Bhadauria, Shrimati
Vajpayee, Shri Atal Bihari.

The motion was adopted by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

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

Clause 2—Insertion of new article 233A

SHRI M P. SHUKLA (Uttar Pradesh): Madam, I move:

"That at pages 1 and 2, lines 9 to 12 *and* 1 to 9, respectively, be deleted"

Madam Deputy Chairman, in spite of the vehement support of the Law Minister, I am extremely sorry to say that I am not convinced with this part of the Bill. Proposed sub-sections (a) (i) and (ii) are only meant to validate the appointment of the directly recruited district judges. In the opinion of the service Judges, their appointment is not at all hit by the judgment of the Supreme Court and they form the bulk of the cadre. Out of 158, all minus 15, are of the view that their appointment is not at all hit by the judgment of the Supreme Court. They are all members of the judicial service of U P They know law and they know Constitution and in their opinion this amendment is not at all necessary. It is uncalled for and oppressive to them The U P. Government have magnified the facts and made a fuss of the whole thing They have so misrepresented facts that it would appear to be for a public purpose to amend the Constitution

The other part, which validates the judgments, may be said to affect the people at large, but this affects at the most only 15 persons and an amendment of the Constitution just to cover up the acts of the executive is never permissible . Out of the whole cadre, 1 to 5 were appointed by the Committee formed by the High Court Nos 16 and 17 were appointed and confirmed by the High Court. Nos. 18 to 47 were appointed and confirmed by the High Court Nos 48 to 158 were appointed by the Administrative Committee and not yet confirmed Here also the facts as given by the hon. Law Minister, are in direct contravention of the actual position and, therefore, particularly this portion of the amendment is not at all necessary and is not at all in the public interest I would, therefore, appeal to the Law Minister to accept my amendment and delete this provision, which is only meant to validate the appointment of these Judges It is significant that out of the 15 judges appointed, four were appointed when the appeal was pending before the Supreme Court and perhaps the date was fixed. It was only

a few months before the judgment of the Supreme Court and yet they are continuing them Their appointment is also going to be validated by this amendment I think this amendment directly comes into conflict with article 141 of the Constitution which is to the effect that the judgment of the Supreme Court is binding on all By bringing forward this amendment, we are circumventing the judgment of the Supreme Court Madam Deputy Chairman, one fact we must not forget that it is the administrative machinery, the executive which has acted in direct violation of the Constitution Now they want to dictate We fought the case up to the Supreme Court The bulk of the judiciary, that is 158 minus 15, are against this amendment Now they who violated the Constitution wilfully are running from Lucknow to Delhi and pressing the Union Government to bring forward this amendment to the Constitution only to protect and help those appointments which were in violation of the Constitution in violation of the law This means that the executive is dictating to Parliament and to the Government that the law and Parliament must be subordinated to their wishes, to their unlawful acts In my humble opinion this is in direct violation of the principles of constitutional amendment With this submission I would again request the Law Minister to withdraw this part of the Bill and accept my amendment

The question was proposed

SHRI MULKA GOVINDA REDDY I support this very sensible amendment moved by Mr Shukla This is a simple amendment You will be implementing the decision of the Supreme Court in that we will not be validating the appointment of Judges whose appointment was declared illegal and unconstitutional The apprehensions that are held by the Law Minister that if you do not approve of the appointments or if you do not validate the appointments made by the U P Government the judgments will become infructuous or you will have to reopen those cases—that fear will be met if we accept this amendment and pass this legislation

SHRI BHUPESH GUPTA I do not wish to say very much I congratulate the hon Member, Mr Shukla, from Uttar Pradesh of the Congress Benches, because good things rarely come from those quarters Here is one occasion when a Congress Member has moved a very sensible amendment, and I think we should all support him In fact this afternoon I feel very much infatuated by Mr Shukla from Uttar Pradesh whom I know in the Uttar Pradesh Congress what he is saying is absolutely sound, and what is more a Congressman is saying this You can imagine when a Congressman says that the Congress Government is violating the Constitution what the Opposition would say You know very well Therefore I think in deference to the truth which is reflected in his amendment the Congress Members, I think will be good enough to accept the amendment and impress upon our Law Minister who is not showing any legal acumen to accept this amendment I appeal to Mr Shukla, you can go on a hunger strike but never withdraw this amendment

श्री राजनारायण माननीया दुनिया के जनतंत्र मे व्यक्तिगत, सकुचित स्वार्थ को लेकर जिस आसानी स आज भारतवर्ष की पार्लियामेंट सविधान मे सशोधन करने जा रही है ऐसा शायद कही नही हुआ होगा। मुझे अफसोस है कि श्री पाठक इलाहाबाद मे आते है। पाठक जी न यहा पर तथ्यो को मरोडा है, सत्या का तोडा है और सविधान ज्ञान को तिलाजलि द दी है। मै समझ नही पाता कि महज इसमे सशोधन कर देने मात्र स जो अनुच्छेद 14 है सविधान का ,उसमे भी सशोधन करने की ओर क्या वे प्रेरित नही होगे अनुच्छेद 14 यह कहता है

[श्री राजनारायण]

"भारत राज्यक्षेत्र में किसी व्यक्ति को विधि के समक्ष समता से अथवा विधियों के समान संरक्षण से राज्य द्वारा वंचित नहीं किया जायेगा।" मैं कहना चाहता हूं कि महज इस संशोधन से अब काम चलने वाला नहीं है। फिर यह मसला इस संशोधन के होने के बाद भी हाई कोर्ट में जायेगा और सुप्रीम कोर्ट में भी जायेगा 16 वां अनुच्छेद भी मैं पढ़ देना चाहूंगा :

"राज्याधीन नौकरियों या पदों पर नियुक्ति के सम्बन्ध में सब नागरिकों के लिये अवसर की समता होगी।"

क्या आज जो यह संशोधन हो रहा है यह संविधान के अनुच्छेद 16 के प्रतिकूल नहीं जा रहा है ? यानी जिस जुडिशियल मैजिस्ट्रेट को चाहें, उस जुडिशियल मैजिस्ट्रेट को संविधान में संशोधन कर के डिस्ट्रिक्ट जज बना दिया जाय यह सर्वथा अनुचित है, घोर अनर्थ है, कानूनी ज्ञान का अपमान है। इसी के साथ साथ मैं अनुच्छेद 320 की तरफ भी जाऊंगा :

"संघ तथा राज्य के लोक सेवा आयोगों का कर्त्तव्य होगा कि क्रमशः संघ की सेवाओं और राज्य की सेवाओं में नियुक्तियों के लिये परीक्षाओं का संचालन करें।"

तो यह जो 320 अनुच्छेद है इसके विपरीत भी इस संशोधन के जरिये ला मिनिस्टर साहब हिदायत कर रहे है कि लोक सेवा आयोग अब कुछ करने वाला नहीं है।

THE DEPUTY CHAIRMAN: That will do.

श्री राजनारायण : माननीय, एक मिनट तो सुना जाय। मैं आप को बता दूं कि हमने भी यह अमेंडमेंट मूव किया था, मगर यहां जगलरी हो रही है और इस सदन में कोई काम कायदे से चल नहीं रहा है। हम को सोमवार को या सैटरडे को एक पोथा दे दिया जाता है कि फलां फलां विधेयक लिया जायेगा। नियमों में लिखा हुआ है कि 48 घंटा पहले की नोटिस होनी चाहिये। हमको कल नहीं बताया जा सकता कि आज यह विधेयक लिया जायेगा। आज से तीन दिन पहले हमें मालूम होना चाहिये हम को कल बताया गया कि आज यह लिया जायेगा। रूल यह कहता है कि जो आज लिया जाय उसके बारे में 72 घंटे पहले हमें मालूम हो, मगर हम को यह नहीं बताया जाता है। हम को यह कह दिया जाता है सोमवार को या सैटरडे को कि फला हफ्ते में ये, ये विधेयक आयेंगे। यह बिलकुल गलत है और नियमों का उल्लंघन है। हमने भी अमेंडमेंट दिया था मगर हमने इसपर इनसिस्ट नहीं किया था। हमारा भी अमेंडमेंट यही था, श्री लोकनाथ मिश्र का भी अमेंडमेंट यही था, मगर आपके कार्यालय से बताया गया कि चूंकि श्री महाबीर प्रसाद शुक्ल का अमेंडमेंट है, इस लिये वह आप का भी है, उन्हीं के नाम पर आप भी बोल लीजियेगा और उसको इस तरह से रखने में दिक्कत पड़ रही थी यद्यपि नियमों के अनुसार मुझ को कोई दिक्कत नहीं थी।

तो ला मिनिस्टर साहब ने यह बात कही कि कुछ इस तरह के मामले हाईकोर्ट में विचाराधीन है। मगर हाई कोर्ट पक्ष में फैसला दे दे तब भी सुप्रीमकोर्ट में जाया जा सकता है और अगर हाईकोर्ट विपक्ष में फैसला दे दे तो भी सुप्रीम कोर्ट में जाया जा सकता है। तो इस अनसर्टेनटी इस अनिश्चितता के वातावरण को क्यों रखे संविधान में संशोधन करके। एक निश्चितता का वातावरण बनाया जाय। मैं अनुच्छेद 143 को पढ़ना चाहूंगा :

"यदि किसी समय राष्ट्रपति को प्रतीत हो कि विधि या तथ्य का कोई ऐसा प्रश्न उत्पन्न हुआ है, अथवा उस के उत्पन्न होने की सम्भावना है, जो इस प्रकार का और ऐसे सार्वजनिक महत्व का है कि उस पर

उच्चतम न्यायालय की राय प्राप्त करना इष्टकर है तो वह उस प्रश्न को उस न्यायालय को विचारार्थ सौप सकेगा तथा वह न्यायालय ऐसी सुनवाई के पश्चात् जैसी कि वह उचित समझे, राष्ट्रपति को उस पर अपनी राय प्रतिवेदित कर सकेगा।"

इसके 143वे अनुच्छेद के अनुसार सरकार ने राष्ट्रपति को क्यो नही सलाह दी कि यह इतना बडा प्रश्न है, इस प्रश्न पर उच्चतम न्यायालय की राय ले ली जाय । मैं समझता हू कि यह सरकार इसमे अपराधिनी है, यह सरकार इसमे दोषी है ।

माननीय, मै एक तथ्य आपकी सेवा मे और प्रस्तुत करना चाहूगा । उत्तर प्रदेश मे जब . . .

THE DEPUTY CHAIRMAN: You have to speak on the amendment please You cannot go into that again.

(Interruptions)

श्री राजनारायण एक मिनट । सुन तो लीजिये ।

उपसभापति एक मिनट दूगी ।

(Interruptions)

SHRI RAJNARAIN: * * *

THE DEPUTY CHAIRMAN That will be expunged

श्री राजनारायण : एक मिनट आप दे दीजिये । *(Interruptions)* चुप रहिए ।

(Interruptions)

THE DEPUTY CHAIRMAN: Order, order.

श्री राजनारायण पहले हल्ला तो हो लेने दीजिए ।

उपसभापति · अब ठण्डा हो गया ।

श्री राजनारायण खत्म हुआ ।

उपसभापति अब आपको भी खत्म करना है एक मिनट मे ।

श्री राजनारायण मेरा निवेदन है कि एक जानकारी आप कर ले और आपके द्वारा यह सदन कर ले कि जब यह मसला उत्तर प्रदेश में उठा तो उत्तर प्रदेश के राज्यपाल ने इलाहाबाद हाई कोर्ट के चीफ जस्टिस को बुलाया । उन्होंने उनसे पूछा कि इन जजो ने जो जजमेंट किए है क्या सुप्रीम कोर्ट के फैसले का उन पर असर नही पडेगा? जहा तक मेरी जानकारी है, चीफ जस्टिस, इलाहाबाद हाई कोर्ट ने कहा कि सुप्रीम कोर्ट के फैसले को उन जजो द्वारा किए हुए जजमेंट पर कोई असर नही पडेगा राज्यपाल ने यह राय ले ली थी । उसके बावजूद भी यह षडयत्र किया गया है । कुनबापरस्ती , भाई भतीजावाद और पक्षपात का इससे बढकर ज्वलत उदाहरण नही मिलेगा भ्रष्टाचार और गैर कानूनी कामो को कानूनी स्वरूप प्रदान करने के लिए आज यह विधेयक प्रस्तुत किया गया है ।

THE DEPUTY CHAIRMAN Do you want to say anything about the amendment?

SHRI G. S PATHAK I do not want to say anything about the said But I am opposing this amendment.

THE DEPUTY CHAIRMAN The question is

"That at pages 1 and 2, lines 9 to 12 and 1 to 9, respectively, be deleted"

The motion was negatived.

THE DEPUTY CHAIRMAN· The question is

"That clause 2 stand part of the Bill"

***Expunged as ordered by the Chair.

(*The House divided*)

THE DEPUTY CHAIRMAN Ayes—138, Noes—11

AYES—138

Abdul Shakoor, Moulana
Abraham Shri P
Ahmad, Shri Syed
Ammanna Raja, Shrimati C
Anand Chand, Shri
Anandan Shri T V
Anis Kidwai Shrimati
Annapurna Devi Thimmareddy, Shrimati
Ansari Shri Hayatullah
Arora Shri Arjun
Asthana Shri L D
Baharul Islam, Shri
Bhatt Shri Nand Kishore
Bobdey, Shri S B
Chagla Shri M C
Chandra Shekhar Shri
Chandrasekhar Dr S
Chavda Shri K S
Chengalvaroyan Shri T
Chetia Shri P
Das, Shri L N
Dasgupta Shri T M
Dass Shri Mahabir.
Desai Shri Khandubhai K
Desai Shri Suresh J
Devaki Gopidas, Shrimati
Dharam Prakash, Dr
Dharia, Shri M M
Doogar Shri R S
Ghose Shri Surendra Mohan
Gilbert Shri A C
Gujral Shri I K
Gurupada Swamy Shri M S
Hathi, Shri Jaisukhlal
Jairamdas Daulatram, Shri
Kakati, Shri R N
Kathju, Shri P N
Kaul, Shri M. N.
Khan, Shri Akbar Ali
Khan, Shri M Ajmal.
Khaitan Shri R P
Koya, Shri Palat Kunhi
Krishan Kant, Shri
Kulkarni Shri B T
Kurre Shri Dayaldas
Lalitha (Rajagopalan), Shrimati
Mahammed Haneef, Shri
Mahanti Shri B K
Mallik Shri D C
Mallikarjunudu, Shri K P
Mangladevi Talwar, Dr. (Mrs).
Mary Naidu, Miss
Mehta, Shri Asoka
Mehta Shri Om
Mir, Shri G M
Mishra Shri L N
Mishra Shri S N
Mohammad Chaudhary A
Mohinder Kaur, Shrimati
Momin Shri G H Valimohmed
Muhammad Ishaque, Shri
Nandini Satpathy, Shrimati
Neki Ram Shri
Pahadia Shri Jagannath Prasad
Pande Shri C D
Pande, Shri T
Panjhazari, Sardar Raghbir Singh.
Parthasarathy Shri R T
Pathak, Shri G S
Patil, Shri P S
Patra, Shri N
Pattanayak, Shri B C
Pawar Shri D Y
Phulrenu Guha, Dr Shrimati
Pillai Shri Sivashanmugam.
Poonacha Shri C M
Punnaiah Shri Kota
Purkayastha, Shri M
Pushpaben Janardanrai Mehta, Shrimati
Qureshi Shri M Shafi
Ram Chander Shri
Ramaswamy, Shri K S

Ramaul, Shri Shiva Nand.
Rao, Shri V C. Kesava
Ray, Shri Ramprasanna.
Reddy, Shri K. V. Raghunatha.
Reddy, Shri N. Narotham.
Reddy, Shri N. Sanjiva.
Reddy, Shri N. Sri Rama
Reddy, Shri Nagi
Reddy, Shri Y. A.
Roy, Shri Biren
Sadiq Ali, Shri
Sahai, Shri Ram.
Salig Ram, Dr
Sanjivayya Shri D
Sapru, Shri P N
Savnekar, Shri B S
Seeta Yudhvir, Shrimati.
Setalvad, Shri M C
Shah, Shri K K
Shah, Shri M C
Shakuntala Paranjpye, Shrimati
Shanta Vasisht, Kumari
Shervani, Shri M. R.
Shukla, Shri Chakrapani
Shyam Kumari Khan Shrimati
Siddhu, Dr M M S
Singh, Shri Dalpat
Singh, Dr Gopal
Singh, Shri Jogendra
Singh, Shri Santokh
Singh, Raja Shankar Pratap
Singh, Shri T N.
Sinha, Shri Awadheshwar Prasad
Sinha, Shri B K. P.
Sinha, Shri R B
Sukhdev Prasad Shri.
Supakar, Shri S
Sur, Shri M M
Swamy, Shri N. R M.
Syed Mahmud, Dr.
Tankha, Pandit S S N.
Tapase, Shri G D.
Tara Ramchandra Sathe, Shrimati
Thanglura, Shri A.
Thanulingam, Shri P.
Tiwary, Pt Bhawaniprasad.
Tripathi, Shri H V.
Untoo, Shri Gulam Nabi
Usha Barthakur, Shrimati.
Varma, Shri B. B.
Varma, Shri C. L.
Venkateswara Rao, Shri N.
Vidyawati Chaturvedi, Shrimati
Vyas, Shri Ramesh Chandra
Yajee, Shri Sheel Bhadra.
Zaidi Col B H

NOES—11

Chatterjee Shri A P
Gaikwad, Shri B. K.
Ghosh, Shri Niren
Gupta, Shri Bhupesh
Misra Shri Lokanath.
Narayan, Shri M D
Rajnarain, Shri
Reddy, Shri Mulka Govinda
Sarla Bhadauria, Shrimati.
Vajpayee, Shri Atal Bihari
Varma, Shri Niranjan

The motion was adopted by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting

Clause 2 was added to the Bill.

THE DEPUTY CHAIRMAN The question is.

"That clause 1 the enacting formula and the title stand part of the Bill"

(The House divided.)

THE DEPUTY CHAIRMAN Ayes—139; Noes—11.

AYES—139

Abdul Shakoor, Moulana.
Abraham, Shri P.
Ahmad, Shri Syed.
Ammanna Raja, Shrimati C.
Anand Chand, Shri.
Anandan, Shri T. V.
Anis Kidwai, Shrimati.
Annapurna Devi Thimmareddy, Shrimati.
Ansari, Shri Hayatullah.
Arora, Shri Arjun.
Asthana, Shri L. D.
Baharul Islam, Shri.
Bhatt, Shri Nand Kishore.
Bobdey, Shri S. B.
Chagla, Shri M. C.
Chaman Lall, Diwan.
Chandra Shekhar, Shri.
Chandrasekhar, Dr. S.
Chavda, Shri K. S
Chengalvaroyan, Shri T.
Chetia, Shri P.
Das, Shri L N.
Dasgupta, Shri T. M
Dass, Shri Mahabir
Desai, Shri Khandubhai K.
Desai, Shri Suresh J.
Devaki Gopidas, Shrimati.
Dharam Prakash, Dr.
Dharia, Shri M. M.
Doogar, Shri R. S.
Ghose, Shri Surendra Mohan.
Gilbert, Shri A C.
Gujral, Shri I. K.
Gurupada Swamy, Shri M. S.
Hathi, Shri Jaisukhlal.
Jairamdas Daulatram, Shri.
Kakati, Shri R N.
Kathju, Shri P. N.
Kaul, Shri M. N.
Khan, Shri Akbar Ali.
Khaitan, Shri R. P.
Koya, Shri Palat Kunhi.
Krishan Kant, Shri.
Kulkarni, Shri B. T.
Kurre, Shri Dayaldas.
Lalitha (Rajagopalan), Shrimati.
Mahammed Haneef, Shri.
Mahanti, Shri B. K.
Mallik, Shri D. C
Mallikarjunudu, Shri K. P.
Mangladevi Talwar, Dr (Mrs).
Mary Naidu, Miss.
Mehta, Shri Asoka.
Mehta, Shri Om.
Mir, Shri G. M.
Mishra, Shri L. N.
Mishra, Shri S. N.
Mohammad, Chaudhary A.
Mohinder Kaur, Shrimati.
Momin, Shri G H. Valimohmed.
Muhammad Ishaque, Shri.
Nandini Satpathy, Shrimati.
Neki Ram, Shri
Pahadia, Shri Jagannath Prasad.
Pande, Shri C D
Pande, Shri T
Panjhazari, Sardar Raghbir Singh.
Parthasarathy, Shri R. T.
Pathak, Shri G S
Patil, Shri P S
Patra, Shri N
Pattanayak, Shri B. C.
Pawar, Shri D. Y.
Phulrenu Guha, Dr Shrimati.
Pillai, Shri J Sivashanmugam.
Poonacha, Shri C M.
Punnaiah, Shri Kota.
Purkayastha, Shri M
Pushpaben Janardanrai Mehta, Shrimati.

Qureshi, Shri M. Shafi.
Ram Chander, Shri.
Ramaswamy, Shri K. S.
Ramaul, Shri Shiva Nand.
Rao, Shri V. C. Kesava.
Ray, Shri Ramprasanna.
Reddy, Shri K. V. Raghunatha.
Reddy, Shri N. Narotham.
Reddy, Shri N. Sanjiva.
Reddy, Shri N. Sri Rama.
Reddy, Shri Nagi.
Reddy, Shri Y. A.
Roy, Shri Biren.
Sadiq Ali, Shri.
Sahai, Shri Ram.
Salig Ram, Dr.
Sanjivayya, Shri D.
Sapru, Shri P. N.
Savnekar, Shri B. S.
Seeta Yudhvir, Shrimati.
Setalvad, Shri M. C.
Shah, Shri K. K.
Shah, Shri M. C.
Shakuntala Paranjpye, Shrimati.
Shanta Vasisht, Kumari.
Shervani, Shri M. R.
Shukla, Shri Chakrapani.
Shukla, Shri M. P.
Shyam Kumari Khan, Shrimati
Siddhu, Dr. M. M. S.
Singh, Shri Dalpat.
Singh, Dr. Gopal.
Singh, Shri Jogendra.
Singh, Shri Santokh.
Singh, Raja Shankar Pratap.
Singh, Shri T. M.
Sinha, Shri Awadheshwar Prasad.
Sinha, Shri B. K. P.
Sinha, Shri R. B.
Sukhdev Prasad, Shri.
Supakar, Shri S.
Sur, Shri M. M.
Swamy, Shri N. R. M.
Syed Mahmud, Dr.
Tankha, Pandit S. S. N.
Tapase, Shri G. D.
Tara Ramchandra Sathe, Shrimati.
Thanglura, Shri A.
Thanulingam, Shri P.
Tiwary, Pt. Bhawaniprasad.
Tripathi, Shri H. V.
Untoo, Shri Gulam Nabi
Usha Barthakur, Shrimati.
Varma, Shri B. B.
Varma, Shri C. L.
Venkateshwara Rao, Shri N.
Vidyawati Chaturvedi, Shrimati.
Vyas, Shri Ramesh Chandra.
Yajee, Shri Sheel Bhadra.
Zaidi, Col. B. H.

NOES—11

Chatterjee, Shri A. P.
Gaikwad, Shri B. K.
Ghosh, Shri Niren.
Gupta, Shri Bhupesh.
Misra, Shri Lokanath.
Narayan, Shri M. D.
Rajnarain, Shri.
Reddy, Shri M. Govinda.
Sarla Bhadauria, Shrimati.
Vajpayee, Shri Atal Bihari.
Varma, Shri Niranjan.

The motion was adopted by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 1, the enacting formula and the title were added to the Bill.

SHRI G. S. PATHAK: Madam, I move:

"That the Bill be passed."

THE DEPUTY CHAIRMAN: The question is:

"That the Bill be passed."

(*The House divided*)

THE DEPUTY CHAIRMAN: Ayes —140; Noes—11.

AYES—140.

Abdul Shakoor, Moulana.
Abraham, Shri P.
Ahmad, Shri Syed.
Ammanna Raja, Shrimati C.
Anand Chand, Shri
Anandan, Shri T. V.
Anis Kidwai, Shrimati.
Annapurna Devi Thimmareddy, Shrimati
Ansari, Shri Hayatullah.
Arora, Shri Arjun
Asthana Shri L. D.
Baharul Islam, Shri.
Bhatt, Shri Nand Kishore.
Bobdev, Shri S B
Chagla, Shri M C.
Chaman Lall, Diwan
Chandra Shekhar, Shri.
Chandrasekhar, Dr S
Chavda, Shri K S
Chengalvaroyan, Shri T.
Chetia Shri P
Das, Shri L N
Dasgupta Shri T M
Dass, Shri Mahabir.
Desai, Shri Khandubhai K
Desai, Shri Suresh J.
Devaki Gopidas, Shrimati.
Dharam Prakash, Dr
Dharia Shri M M
Doogar, Shri R S
Ghose, Shri Surendra Mohan.
Gilbert Shri A. C.
Gujral, Shri I. K
Gurupada Swamy, Shri M S
Hathi Shri Jaisukhlal.
Jairamdas Daulatram, Shri
Kakati, Shri R N.
Kathju, Shri P. N.
Kaul, Shri M N
Khan, Shri Akbar Ali
Khan, Shri M Ajmal.
Khaitan, Shri R P
Koya, Shri Palat Kunhi
Krishan Kant, Shri
Kulkarni, Shri B T.
Kurre, Shri Dayaldas.
Lalitha (Rajagopalan), Shrimati.
Mahammed Haneef, Shri.
Mahanti, Shri B K
Mallik, Shri D C
Mallikarjunudu, Shri K. P.
Mangladevi Talwar, Dr. (Mrs.).
Mary Naidu, Miss.
Mehta, Shri Asoka
Mehta, Shri Om.
Mir, Shri G. M.
Mishra, Shri L. N.
Mishra, Shri S. N.
Mohammad, Chaudhary A.
Mohinder Kaur, Shrimati
Momin, Shri G. H. Valimohmed.
Muhammad Ishaque, Shri.
Nandini Satpathy, Shrimati
Neki Ram, Shri.
Pahadia, Shri Jagannath Prasad.
Pande, Shri C D
Pande, Shri T
Panjhazari, Sardar Raghbir Singh.
Parthasarathy, Shri R. T.
Pathak, Shri G. S.
Patil, Shri P. S
Patra, Shri N.
Pattanayak, Shri B C
Pawar, Shri D. Y
Phulrenu Guha, Dr Shrimati.
Pillai, Shri J Sivashanmugam
Poonacha, Shri C M.
Punnaiah, Shri Kota.
Purkayastha, Shri M
Pushpaben Janardanrai Mehta, Shrimati.
Qureshi, Shri M Shafi.
Ram Chander, Shri
Ramaswamy, Shri K. S.
Ramaul, Shri Shiva Nand
Rao, Shri V. C. Kesava.
Ray, Shri Ramprasanna
Reddy, Shri K V. Raghunatha.
Reddy, Shri N. Narotham.
Reddy, Shri N Sanjiva.
Reddy, Shri N. Sri Rama.
Reddy, Shri Nagi.
Reddy, Shri Y A.
Roy, Shri Biren.

Sadiq Ali, Shri.
Sahai, Shri Ram.
Sahg Ram, Dr.
Sanjivayya Shri D.
Sapru, Shri P. N
Savnekar, Shri B. S.
Seeta Yudhvir, Shrimati
Setalvad, Shri M C
Shah, Shri K K
Shah, Shri M. C.
Shakuntala Paranjpye, Shrimati.
Shanta Vasisht, Kumari
Shervani, Shri M R
Shukla Shri Chakrapani
Shukla, Shri M P
Shyam Kumari Khan, Shrimati
Siddhu, Dr M M S
Singh, Shri Dalpat
Singh, Dr Gopal
Singh, Shri Jogendra.
Singh, Shri Santokh
Singh, Raja Shankar Pratap
Singh Shri T N
Sinha, Shri Awadheshwar Prasad
Sinha, Shri B K P
Sinha, Shri R B
Sukhdev Prasad, Shri.
Supakar, Shri S.
Sur, Shri M M.
Swamy, Shri N. R M
Syed Mahmud, Dr
Tankha, Pandit S S N
Tapase, Shri G D
Tara Ramchandra Sathe, Shrimati.
Thanglura, Shri A
Thanulingam, Shri P.
Tiwary, Pt Bhawaniprasad.
Tripathi, Shri H V.
Untoo, Shri Gulam Nabi.
Usha Barthakur, Shrimati.
Varma, Shri B B
Varma, Shri C L
Venkateswara Rao, Shri N.
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Vyas, Shri Ramesh Chandra.
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NOES—11

Chatterjee, Shri A. P
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Ghosh, Shri Niren
Gupta, Shri Bhupesh
Misra, Shri Lokanath.
Narayan, Shri M D
Rajnaram, Shri
Reddy, Shri Mulka Govinda
Sarla Bhadauria, Shrimati
Vajpayee, Shri Atal Bihari
Varma, Shri Niranjan

The motion was adopted by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

THE CONSTITUTION (TWENTY-SECOND AMENDMENT) BILL, 1966

THE MINISTER OF HOME AFFAIRS (SHRI Y B CHAVAN) Madam, I move:

"That the Bill further to amend the Constitution of India be taken into consideration"

The question was proposed.

SHRI MULKA GOVINDA REDDY (Mysore): Madam, I support the Constitution (Amendment) Bill particularly to include Sindhi as one of the national languages. Sindhi should have been included in the national languages long back Some injustice had been done to an important language, and now that injustice is sought to be rectified I am happy to associate myself with this Bill