MOTION FOR PRESENTING AN ADDRESS UNDER ARTICLE 217 READ WITH CLAUSE (4) OF ARTICLE 124 OF THE CONSTITUTION TO THE PRESIDENT FOR REMOVAL FROM OFFICE OF JUSTICE SOUMITRA SEN OF THE CALCUTTA HIGH COURT;

AND

MOTION FOR CONSIDERING THE REPORT OF THE INQUIRY COMMITTEE CONSTITUTED TO INVESTIGATE INTO THE GROUNDS ON WHICH REMOVAL OF SHRI SOUMITRA SEN, JUDGE, CALCUTTA HIGH COURT WAS PRAYED FOR:

AND

MOTION FOR ADDRESS TO THE PRESIDENT UNDER CLAUSE (4) OF ARTICLE 124 OF THE CONSTITUTION

MR. CHAIRMAN: We shall now resume discussion on the Motion that could not be finished yesterday. The hon. Leader of Opposition.

THE LEADER OF THE OPPOSITION (SHRI ARUN JAITLEY): Mr. Chairman, Sir, yesterday, after some initial observations with regard to the bar being raised on issues of probity when it comes to Constitutional functionaries like the Judges, I had dealt with at length what the learned Judge had to say in his defence when he appeared before the House yesterday.

In a nutshell, so as to maintain the continuity, if I can just repeat two or three sentences, the case against the Judge is that from his tenure as an Advocate-Receiver to his tenure as a Judge, there is a thread of continuity where he never rendered accounts for monies which came into his possession as Receiver. He created, on his own admission, encumbrances. And I was trying to build up a case that he even misappropriated those funds. And, that is the case the Inquiry Committee has established and the in-House Judges Committee has established. This misappropriation spilled over into his tenure as a Judge. He became a Judge on 3rd December, 2003. It is only in 2006, when the Court passed an Order against him, that he had to then repay it under a coercive threat of a Court Order.

The second limb of the charge against him is that before various authorities, whether it was the Court, the in-House Committee, or the Inquiry Committee, he misrepresented the facts. He misled

them, and this entire misrepresentation was during his tenure as a Judge. A Judge is expected to be candid. A Judge is expected to be a role model litigant. A Judge does not come up and say, 'I invested this money erroneously, by an error of judgement, in Lynx India. The money got lost because of insolvency', when the fact is that he did not, from the monies, in this case, of Steel Authority of India, invest any monies in Links India.

Sir, since the House had adjourned yesterday for continuing this debate today, I got a further opportunity to read the entire evidence which came up before the Committee set up under The Judges Inquiry Act by the hon. Chairman. And, I must say that even when the learned Judge was here yesterday, and he made a very persuasive presentation, some of the facts that he stated - and I say this with a sense of responsibility - were not merely a continuation of this exercise to mislead the entire enquiry process, and earlier, the judicial process; when he appeared before this House, the entire basis of his defence, on the basis of documents admittedly before the inquiry which the hon. Chairman appointed, was completely at variance. The truth was something else. I will refer to three illustrations of this fact.

The hon. Judge says, "The Committee that the hon. Chairman appointed mentioned that the Judge was a holder of a particular account whereas the account belonged to some other Soumitra Sen, and that he was being hanged because the Committee attributed a bank account to him which was in the name of some other Soumitra Sen. When all of us heard this, we were actually surprised that how the Committee could commit such a patent error on the face of it. I checked up the entire evidence. When the charge was made against him that you obtained moneys by sale of goods in the Steel Authority case, you usurped those moneys; you misappropriated those moneys. On the contrary, from some other case of Calcutta Fans where you were a Special Officer, you invested those moneys in a company called Lynx India. The Committee or any other litigant did not make this charge of this account against him. This judge, in the first instance, through his mother went to a single judge of the Calcutta High Court and he told the single judge of the Calcutta High Court, "Well I had kept this money in Account No. O1SLP0156800 and this money was invested in Lynx India.

Through his mother he filed a written note. This account number that he himself gave was the account of the other Soumitra Sen. And that written note - I hold in my hand the relevant extract - is before the Inquiry Committee. The Calcutta High Court never had an opportunity to see it. Even the

in-house inquiry did not get it. It's only the Inquiry Committee appointed by the hon. Chairman that obtained this by directing the bank to come here. Not only this, when we challenged the order of the Division Bench at two places and I will read it and those familiar with court proceedings will appreciate that this is in form of grounds of appeal and an interim application - he makes the same observation. "For the learned judge failed to appreciate that all investments made by the erstwhile Receiver in the company were by way of cheques drawn on ANZ Grindlays Bank from bank Account No.01SLP0156800." His defence was that from this account he made the investments in Lynx. So, both the High Court and everybody called for this account and they found that from this account no investments had been made. Twice he told the Division Bench this. After he told the Division Bench this and the single judge did not accept his case and they found that from this account no moneys had been paid to Lynx, the matter came up for inquiry under the Judges (Inquiry) Act. They charged him not for holding this account; but you say that from this account you paid moneys to Lynx, unfortunately, from this account no money has been paid. The copy of the charge is then given to him. He doesn't correct the error. The charge is then given to him. The charge doesn't say that you hold this account. The charge says from this account also no money has been paid to Lynx. So, the defence is false. When he comes up before the inquiry Committee, he files a detailed reply. Even in the reply, he doesn't say that this belongs to some other Soumitra Sen. It is only when the bank official comes his counsel now very conveniently puts a question to him, 'Well this account doesn't belong to my client, it belongs to somebody else'. So, the bank rightly says, 'Yes, it belongs to somebody else.' So, the Inquiry Committee says, 'You yourself put up a false account from which you had made the payments and when it is found out that this is not the real account, they get the account opening form. The account opening form is of one Soumitra Sen who is an employee of Food Specialities Ltd. So, you passed off his account as your account in the pleadings." So, the Inquiry Committee holds against him from these moneys of sale or this account you have not paid any money. Now what does he do when he appears before us? He comes here and says, 'Look so casual and vindictive was this Inquiry Committee that they foisted a false account on me.' Sorry, the

truth is otherwise. You passed off a false account as your account. When the bank was called, they detected this fraud and the Committee has, therefore, given a finding against you.

So, the first point on which he tried literally to rubbish the procedure of the inquiry was by saying that a false account is foisted on me. The second fact - and we can check up the record - is when he says, "The accounts were materially operated between 1993 and 1995. No bank statements are available, and I am being hanged without the bank statement showing expenditure." This worried me a little, Sir. So, I went and checked back the record at night, and from the evidence, which the Committee appointed by the hon. Chairman, I found that before the High Court, he never brought the bank statement. Obviously, he himself had to show the bank statement of expenditure. But, the inquiry appointed by the hon. Chairman directed one of the banks to come and show the statement. So, the bank filed the ledger. So, second falsehood where he misled the House yesterday was, "bank statements are not available". The bank statements are available. They are exhibited in the inquiry appointed by the hon. Chairman. What does the bank statement say? I am just holding the statement of Allahabad Bank where I had mentioned yesterday that some Rs.4,68,000 was deposited. From 24th March, 1993 onwards, by cash, and mostly by cash, some payments by cheque, he withdraws the money. And, Rs.4,68,000, on 8th March, 1996, within two years, becomes Rs.5,378. No money given to any workmen; no money given to Lynx India; all cash and cheque withdrawals for himself. Till date, he has not explained what did he do with this money. It's only in 2006, ten years later, when he got caught, he says, "Okay, I will pay with interest". So, this House was again misled yesterday by saying that bank statements are not here. Bank statements are available. I hold them in my hand.

The third thing he said yesterday where he tried to mislead us, "Even if you hold me guilty and remove me, I - will still shout from rooftops that I did not misappropriate the money." Well, you may have a great determination or a pathological conviction that you have not misused the money, but the best proof is how were the cheques cut out from this account? The cheques can't lie; individuals can. On the inquiry appointed by the hon. Chairman, what do the cheques show? I am holding zerox copies of the cheques which are on the record of the inquiry. The same names as I mentioned

yesterday cheques in favour of one K.L. Yadav, one Guru Enterprises, one Subroto Mukherjee, Prashed Prasad Chaudhary, Ram Nath Roy and the same names which I had mentioned yesterday. Now, who are these people? These are not workmen. What is the second set of cheques? Now, regarding the second set of cheques, the record is with me. It is in Committee's record. Any Member can borrow the record from me. All these cheques are cut out 'self and cash withdrawn. You can shout from rooftops that you did not withdraw this money, but these cheques and this misappropriation will hang like an albatross around your neck even when you are shouting from rooftops. These are all self withdrawals. These are all withdrawals in favour of a company, S.C. Sarkar and Company, the bookseller, publishers that I mentioned. And, then, there are cheques towards ANZ Grindlays Bank card number so and so which is for VISA credit card. These are exactly the same facts I had given yesterday. Now, you use the money, you utilise the money which is really custodial, as he says, in his possession, which is case property. He holds it as a trustee. And, when he holds it as a trustee, he not only misuses this money, misappropriates this money, but in 2003 when he becomes the Judge, he does not tell the Court that I should now be discharged. He continues this misappropriation. The misappropriation continues to 2006. And, the second limb of his offence is when he is called before Courts, when he is called before an in-House inquiry, when he is called before the inquiry appointed by the hon. Chairman, he tells them, "I made some wrongful investments. There must have been an error of judgement on my part, but there is no misappropriation."

Self cheques, credit card cheques, book publisher's cheques, cheques in favour of some other unknown gentleman! And, both the inquiries, the inquiry appointed by the Chief Justice of India, and, the inquiry appointed by the Chairperson of the Rajya Sabha, have come to a finding that this was a case of misappropriation.

He says that I eventually went and returned the money. I mentioned this yesterday, and, some of us who are familiar with this branch, know that the first explanation, in fact, that is the only explanation, to breach of trust deals with a situation when, as a trustee, you hold money which is to be used for a particular purpose. The explanation to section 403 of the IPC states that a dishonest misappropriation for a time only is a misappropriation with the meaning of this section.

So, any kind of misappropriation, even if it is for a temporary period, in this case, this period stretches to almost more than ten years, is a misappropriation. And, as a Judge, between 2003 to 2006, not only he continues the misappropriation but also misrepresents to every authority, and, he tells to every authority which is constituted, "well, these were some honest, bonafide investments, which got lost, and, therefore, I paid back after ten years with interest".

Can we afford to have a Judge whose conduct is of this manner? The plea that he raises is that since the main suit is pending, the issue is *sub judice*. The issue of Justice Sen's misconduct or proven misbehaviour within the meaning of article 124 and article 217 is not pending in any court. In fact, that is the sole jurisdiction of this House. He then says, "I did not claim a right of silence". The summons issued to him under the Judges Inquiry Act say, "you can appear in person and through counsel but be prepared to answer all the questions". So, his counsel appears, and, it is a clever strategy that he does not appear himself nor offer himself as a witness. He is the best available person who can tell us and produce his accounts. What would a Judge do? He will be candid and say, this is how I spent the money. It was an error of judgement. I compensate the loss caused. He does not appear because these cheques would be confronted to him, the accounts would be confronted to him, and, he will have no answers to give.

So, the second limb of the charge on which he is held guilty is his misconduct during his tenure as a Judge, both continuing the misappropriation and stating incorrect, inaccurate facts. So, on each of these grounds, two different bodies have come to a conclusion, and, in all fairness, we are not really bound by what the in-house inquiry has said; we are not even bound by what the then Chief Justice's letter to the Prime Minister contains. There may be many cases of a grosser impropriety, of which evidence, unfortunately, may not be forthcoming. Therefore, we have to consider how we strengthen the system that even those cases do not go unchecked. But is that a ground that because many people who have committed similar or larger offences have got away, therefore, why pick me up, why single me out? Can we afford to have a Judge whose conduct smacks of this kind of a proven misconduct? Therefore, when an opportunity has come, where a committee of two very eminent Judges and one very eminent jurist has come to a finding, is there anything extraordinary in his presentation saying that they have violated the procedures, or, the substantive facts are incorrect, that we should really consider not accepting the committee's recommendation?

And, therefore, I concluded yesterday, and, I am reaffirming that, I support Mr. Sitaram Yechury's motion that this is a fit case of proven misconduct where the Judge concerned must be removed from office, and, the Address to the President should be so recommended by this hon. House.

Sir, I would now like to make just a few observations. The first thing that comes to our mind is - and this has nothing to do with this particular case - that even in 2003, when this misconduct was continuing, how come such persons get to be appointed? It really seriously means that we have to revisit that process. Originally, when the Constitution was framed, we had a system where Judges were appointed by the Executive Government in consultation with the Chief Justice of India. Ordinarily, the Government would be bound by the Chief Justice's advice. In 1993, that system got changed by a judicial interpretation and the advice of the Chief Justice of India was binding on the Executive Government. That is the position today. Today, even though the Government is a part of the consultation process, it can refer back the case once, but effectively, our experience has been, this was the experience when the NDA Government was in power, this is the experience of the present Government, that we are living in a system where Judges appoint Judges. The Government, at best, has only a very marginal say. There is no other process by which there is any kind of a participation in the process of appointment of Judges. Sir, both the pre-1993 system and the post-1993 system had several handicaps. The best in this country are not willing to become Judges. We have to seriously consider why. At times, the selection process, where only Judges appoint Judges and the process is a non-transparent process, will always create situations where rumours in the corridors of the court and those who are close observers of the judicial process will be far too many. It was unthinkable once upon a time; it is not unthinkable today. That is why whereas, on the one hand, I suggested that vigilance has to increase, at the same time, we think of an alternative. My suggestion to the alternative is, I am not going into the details but a two-fold alternative. We should seriously consider a system which is being debated about setting up a National Judicial Commission. The National Judicial Commission must have Judges. It must have the participation of the Executive. It can also have participation of the people selected by a collegium of some eminent citizens. It can't only remain the domain of the Judges. Therefore, public interest has to be protected in the matter of appointment of competent Judges, in the matter of appointment of Judges who are men of integrity,

men of scholarship. Not only this, the criteria for appointment today does not exist. Is it today the discretion of the collegium? Collegium is also a system of sharing the spoils. When the High Courts recommend, members of the collegium share the spoils. This is an impression which close observers have. Therefore, the discretion whether the collegium system continues or we have a National Judicial Commission must also be now statutorily regulated so that arbitrariness can be avoided. After all, there has to be some objective criteria. Except elected offices, there is no other appointment which is made where there is no threshold criteria for entry. What is your academic qualification? How bright were you during your academic days? What is your experience as a lawyer? If you are a Judge, how many judgements have you written? How many have been set aside? How many have been upheld? How many juniors have you trained? How many cases have you argued? How many cases have been reported which you have argued? Have you got laws laid down? Have you written papers on legal subjects? These are all objective criteria. One cannot disregard them and say I pick up a name out of my hat and appoint him because I am in the collegium. Therefore, we need, I am glad the hon. Prime Minister himself is here, a system where this should be seriously reviewed.

Secondly, Sir, the matter of Judges judging Judges and nobody else participating in this is also an issue which requires a serious review and which requires to be referred to, in my opinion, the same National Judicial Commission.

The third issue is this. When appointments are made we have to seriously consider how the institution functions, whether it functions without any pressures. Today, whether it is politicised appointments or it is appointments which lack credibility or it is subsequent lack of accountability or biases on account of relatives, biases on account of religion,, caste, and personal relationship, these are all areas where accountability and vigilance norms have to be improved and increased, so that the independence of the institution can seriously be preserved.

Sir, I have always believed that we must seriously consider this larger issue of almost every retiring judge, barring a few honourable exceptions, holding a belief that he is entitled to a job after retirement. Jobs have been provided in certain statutes; they are created by certain judicial orders. Therefore, search for a job on the eve of retirement begins, as a result of which there is a serious

doubt which is raised that retirement eve judgements at times get influenced by the desire to get a job after retirement.

Therefore, I think when there is a Bill pending with regard to increasing the retirement age from 62 to 65 in the case of High Court Judges, we should correspondingly think of increasing the strength of judges, even increasing the facilities, remuneration and pension available, but putting a stop to this practice of everybody being entitled to a job after retirement. The desire of a job after retirement is now becoming a serious threat to judicial independence.

Lastly, Sir, it is just a brief comment. I have said in the very beginning that the separation of powers is one of the basic features of our Constitution. At times it's argued that the separation of powers is threatened because Governments of the day don't want an independent judiciary. They want to influence the independence of judiciary. So the theories like committed judges, judges with the social philosophy were all propounded at one point in time. Those are now ideas of the past.

Separation of powers requires that every institution works in its own spheres. And if every institution works in its own spheres, it has to lay down the *lakshman rekha* of its own jurisdiction. But why is it necessary to lay down *lakshman rekha* of its own jurisdiction? What happens if one steps into the other's domain? And I must candidly confess that this attempt to encroach upon the *lakshman rekha* is neither coming from governments of the day in the Centre or the States nor is it coming from the Executive or the Legislature. Some serious sidestepping is coming from the judicial institution itself. Therefore, we require a certain element of judicial statesmanship; we require a certain legislative vision so that we can maintain this separation of powers. Otherwise, what should be the economic philosophy of India? What should be our economic policy? Whether we go to the post-91 policy of liberalisation or we go to State controls is the matter entirely for the Executive. Courts cannot say that this is neoliberalism which is creating problems. Courts cannot have an ideology. The only ideology that courts can have is commitment to the rule of law and what law is made by Parliament. Courts cannot tell this to the Government.

There was an incident in the past when a terrorist group was holed up in Kashmir and courts asked our security agencies how many calories were to be fed to the terrorists, because they have a

right under Article 21 carrying a gun in their own hands. How Maosim is to be fought or insurgency in the North-East is to be fought, we have gone through these debates in this House. That is the domain of the Government. The Government has to decide the policy. Courts cannot decide that policy. What should be the land acquisition policy? The Government is seriously contemplating a new Land Acquisition Act. What should be the quantum of relief and rehabilitation? These are all areas for the Government to decide.

I recently came across a fact that a Pakistani prisoner should be released. There may be some space for compassion in any civilised society.

But, whether the Government of India wants to release the Pakistani prisoner or it wants to exchange for another Indian prisoner in Pakistan, is a matter of the foreign policy or the security policy of the Government of India. We have not handed over the management of India's foreign policy to the Supreme Court of India and, therefore, how the Pakistani prisoner is to be treated -released or otherwise - is entirely in the domain of the Government of India. Now, these are all examples of recent past that I am mentioning where the space or line of separation of powers itself gets obliterated and the encroachment, in most cases, is neither coming from the Legislative nor the Executive. Therefore, we need a serious introspection and I, therefore, said that we need a judicial vision, a legislative statesmanship and *vice-versa* in this country so that the correct balance of separation of powers can itself be maintained.

Finally, Sir, we were dealing with the case of a delinquent Judge. I am of the clear opinion after going through the reasoning of the Inquiry Committee; detailed reasoning has been given; it's a very well written report which is substantiated by huge number of documents. The conduct of the Judge leaves much to be desired- his conduct as a receiver, his conduct as a Judge, his conduct in the course of inquiry and finally - though not a ground for impeachment, but a ground on the basis of which we must make our own assessment - the kind of statement he made yesterday. I think, this is a case which should leave none of us in doubt that it's a fit case for removal of this Judge and we must so make a recommendation of the Address to the President of India. Thank you.

DR. E.M. SUDARSANA NATCHIAPPAN (Tamil Nadu): Thank you, Sir. I support the Motion for presenting an Address under article 217 read with clause (4) of article 124 of the Constitution

followed by the Motion for considering the Report of the Inquiry Committee constituted to investigate into the grounds on which removal of Shri Soumitra Sen, Judge, Calcutta High Court was prayed for and Address to the President under clause (4) of article 124 of the Constitution.

Sir, we respect the judiciary in all quarters. We never mention the name of any individual Judge or any action of the Judges or any of the courts. We are following the system of separation of power and more so, under the leadership of Dr. Manmohan Singhji, the Government always obliges and respects the orders and directions of the Supreme Court, the High Courts and all the courts. But, yesterday, we felt very sorry after hearing an eloquent speech of a Judge, who is a sitting Judge, where he attacked the judiciary to the maximum. We can even see that the words he used were never used in the record of the Parliament. Never as a politician or as a Member of Parliament, we used the word 'prejudice'; we never used the word 'pre-judge'; we never used the words 'they don't have any power'; we never said that Order 39 or Order 40 of CPC says that they cannot ask anything from the receiver. We never said like that. We oblige that they have got separate jurisdiction. We have our own jurisdiction. We are doing our job; they are doing their job. That was the nature of the speech that we had in Parliament yesterday.

Sir, really, it is a historic day that now we are discussing the issue which was initiated by the judiciary. It is not initiated by any Member of Parliament except the procedure. Under the Judges Inquiry Act 1968, there is a procedure that you have to come forward with a petition or complaint against the sitting Judge of the High Court or the Supreme Court with the signature of 50 or above Members of Rajya Sabha or 100 Members from Lok Sabha. That procedure alone is followed by our side and we initiated this procedure only on the basis of the judicial aspect. The hon. Chief Justice of India had made a request to the President, requesting initiation of these proceedings against a sitting Judge of the Calcutta High Court.

For that I am just quoting from the report of the Inquiry Committee, Volume-II, page 65, item No. 9, "On 03-12-2003 Receiver was elevated as a Judge of the Calcutta High Court." This is a date very important for us. From that date onwards our jurisdiction starts to discuss on this matter. Then, he cites 20 events which have happened before the single Judge of the Calcutta High Court where it

was dealing with a Receiver's petition, how the Receiver has not properly acted and how he has not produced the accounts. In spite of the repeated summons were issued to him, he did not appear before the court. He did not give proper answers to the court. Events according to him, have been given on pages 65, 66, 67 and 68.

Finally, Sir, on the 19th item, on 10-04-2006, hon. Justice Sengupta passed a detailed order, directing the erstwhile Receiver to pay a sum of Rs.52,46,454/- after adjusting the said sum of Rs.Five lakhs. The erstwhile Receiver and/or his agent, and/or representative was injuncted from transferring, alienating, diposing of or dealing with right, title and interest in moveable and immovable properties ling at his disposal, save and except in usual course of business, though he was discharged on 03-08-2004.

Sir, it is a very pathetic situation. A Judge, who has assumed a position of a Judge, was continuing as a Receiver also for more than eight months. If he was really feeling that he was elevated to a Judge of High Court, the entire life of the people, the entire judicial system were in his hands, he should also feel that when the warrant of appointment had come from the President of India, he should have relinquished from the Receivership, he should have deposited the amount in the court and he should have given accounts to the court and then he should have assumed the position of the Judge of the High Court. He has never done it. From the dates of events, he has a just passed on the case as a Judge while we are discussing on his misbehaviour and misappropriation only during the period he was a Judge. He was questioning how could you deal with the person, Receiver, how could you question the Receiver, only the court could do so. Further he quoted order 40 of the Civil Procedure Code. As a Judge he continued himself as a Receiver also for more than three years, that is, till he was relieved. Eight months after the single Judge decided the case on the basis of a petition, he was removed from the Receivership and somebody else was appointed in that place. Subsequently, the proceedings continued for four years. And for four years he was representing the matter through various agents and Advocates. Finally, when the clear order was given by the single Judge in 2007, he came forward to deposit the entire amount. He paid the first installment of Rs.40 lakhs. Then, he paid the rest of the amount on 27.06.2006.

I am quoting from page 69 of the report. On his own submission a sum of Rs.40 lakhs has been paid by the erstwhile Receiver. Then, on behalf of erstwhile Receiver the constituted Attorney filed an application for extension of time to deposit the balance amount. This matter was considered by the court when he was also a sitting Judge of the same Calcutta High Court.

Then the pitiable position was, on 17-11-2006 a publication was issued, in the local newspaper.

A publication on this issue was made in the local newspaper. Then, the Chief Justice of that particular High Court, Calcutta, Chief Justice V.S. Sirpurkar, wrote a letter to the Chief Justice of India on 25.11.2006. This I am placing from his own submission, given on page number 3 of the reply, which is given before the Inquiry Committee. I am reading it from page number 3, para 1.2:

> "This private communication by the Learned Single Judge led to the formation of an adverse opinion by the Hon'ble Justice V.S. Sirpurkar against me on the basis whereof he said, Hon'ble Justice V.S. Sirpurkar wrote a letter to the then Hon'ble Chief Justice of India dated 25.11.06 informing him of the allegations against me and his opinion and/or his views."

In that way, it goes on, Sir. Therefore, this is a *suo motu* proceeding which started with the Chief Justice of a particular High Court and it goes to the Chief Justice of India. Then, subsequently, he started to work on. The Judge - he is also a sitting Judge in the same Court - started working on and paid the rest of the amount on 21.11.2006. The Learned Advocate on record of erstwhile Receiver by a letter deposited the remaining balance amount of Rs.12,46,454/- before the Registrar. Then the Single Judge orders, on 31.7.2007, the application being G.A. No. so and so, for recalling the order, dated so and so. In that way, he lifted the injunction imposed on him. Till 31.7.2007, the Judge has never challenged the order of the Single Judge. He has never gone to this Division Bench. He has never gone in for any other review or revision or any proceedings. He has never gone for that. He has never challenged it. He accepted it. But, subsequently when he finds out that Justice Sirpurkar has initiated the proceedings through the Chief Justice of India, then only he files a petition before the Division Bench; that is on 25.9.2007. Hon'ble Justice Pranab Kumar Chattopadhyay and Hon. Justice Kalidas Mukherjee were pleased to re-set aside the impugned judgment on 31.7.2007. Sir, repeatedly, he was telling us, "We have to rely upon this judgment.' Sir, nobody who has got

small knowledge of law can accept when the initiated proceeding is already on. Whatever thing had happened anywhere, that will not be counted. Already, a Single Judge has passed an order; that was obeyed by the particular person; he paid the deposit. That means, he accepted every misappropriation, mishandling, everything. It was accepted. Then where is the position for citing another Division Bench judgment on which he has initiated afterwards, through his mother and other persons, that this order is wrong and, therefore, you expunge the portion which has commented upon the Receiver who was a erstwhile Receiver, and, therefore, he initiated that proceedings? Therefore, we cannot look into the Division Bench judgment at all. It cannot be a binding. He was telling us, "You want to take away the proceedings of the Division Bench judgment and you don't want to obey the Judge's order. Sir, the Judge's order is not a judgment *in rem*. It is not a judgment for the whole world. He has not produced any particular thing. It was a judgment in a particular person per se. That particular person is going to get a relief by that order. If that is so, it is not binding upon anybody. And more so, Sir, he challenged every position afterwards. Sir, being a Judge of the High Court, he should understand how the proceedings of the law have come up, how the Supreme Court has evolved a new system of correcting themselves within their own peer group and how they came out. In 1968, we enacted the law. In 1993, they took their own power of appointing themselves as Judges, and within three years, a lot of complaints started coming. Therefore, many cases have come to light and one of the cases is Ravichandran Iyer vs. Justice Bhattacharya. In that judgement, Justice Ramaswamy and another Judge have passed a judgment saying that the time has come; therefore, we have to rectify ourselves by way of creating an in-house system.

By this system we have come forward with a new convention.

Sir, I am just citing from the 21st Report of the Department-related Parliamentary Standing Committee on Personnel, Public Grievances Law and Justice on Judges (Inquiry) Bill, 2006. It is on page 9, paragraph 10 and I quote:

> "10.0. In 1997 the Supreme Court of India passed two resolutions dealing with Judicial Accountability viz Restatement of Values of Judicial Life and in-house procedure within the Judiciary. The Restatement of Values of Judicial Life Resolution was adopted in the full court meeting of the Supreme Court on May 7, 1997 which included the following:

'That an in-house procedure should be devised by the Hon'ble Chief Justice of India to take suitable remedial action against the Judges who by their acts of omission or commission do not follow the universally accepted values of Judicial Life including those indicated in the Restatement of Values of Judicial Life'.

The in-house procedure is essentially meant for disciplining the Judges, against whom complaints of judicial misconduct and misbehaviour were received. The in-house procedure rests on the premise that there may be complaints casting reflection on the independence and integrity of a Judge which is bound to have a prejudicial effect on the image of the higher judiciary. In the in-house procedure, a complaint against a judge is dealt with at an appropriate level within the institution. It is examined by his peers and no outside agency is involved, thus the independence of judiciary is maintained".

This was actually made on the basis of an observation of the Supreme Court in C. Ravichandran Iyer vs. Justice A.M. Bhattacharjee and others case. The Law and Justice Department Standing Committee had sent the Bill to all the High Court Judges. That was the first time that the Judges (Inquiry) Bill was sent to the High Court Judges. A full court of ten or eleven High Courts were convened by the High Courts and all of them replied in certain ways. They supported the in-house system. They supported the amendment to insert the provision. They opposed certain provisions. This is the kind of reply given by the full court of every High Court. That was a new history which was created during that period. At that time they cited a full court decision of the Allahabad High Court, as they replied to the request of the Standing Committee. They cited the Ravichandran Iyer's case. I am just reading out that portion on page 134:

"The Apex Court itself has laid down that the Chief Justice of a High Court has ample power to deal with any Judge who misconduct himself. Self-regulation by Judiciary is the method which has been emphasized by the Apex Court. The in-house remedy for restoring the confidence of the people against errant behaviour or misconduct' by any Judge has functioned quite effectively.

The Chief Justice of India being head of the Judicial fraternity does not lack means and power to discipline the Judges. The gap between proved misbehaviour and bad behaviour inconsistent with high office can only be disciplined by self-regulation through an in-house procedure as laid down by the Apex Court in C. Ravichandran Iyer's case".

This is the position of the Supreme Court. How can a sitting Judge criticise and say that the Chief Justice of India had made his own effort and he had prejudged everything? He also commented that the in-house procedure is not at all correct because there was no resolution passed by Calcutta High Court. Sir, all of us very well know that an annual conference of Chief Justices of all High Courts is convened. The hon. Prime Minister also attends that meeting. At that time the Chief Justices of all High Courts come. They make certain procedure for themselves. They make their own resolution. They follow that resolution. That is the convention that we are following in India. It is happening every year. They are making resolutions and they are acting upon them. But he challenged even that. He challenged each and every system and institution. We can't tolerate this just like that. He challenges in-house proceedings. He challenges the Chief Justice of India. He challenges the Judges who were Members of the in-house proceedings.

He says that two judges were elevated as the Supreme Court Judge and another judge was not elevated. These are all the things which he has mentioned. Even we have never mentioned these things in this House. This is the first time when we have heard this from a sitting High Court Judge in this Upper House.

Sir, I have gone through each and every part of the evidence before the Committee. This Committee was constituted by the hon. Chairman only after the CJI was convinced after the In-House proceedings that there was misbehaviour and misappropriation and he recommended it to the President of India. On the basis of that, hon. Members of this House took this initiative and that initiation has led to the provision of appointing a new Committee. That Committee was also challenged by him. He questions as to what is the right of the Committee to look into receiver's activities; they have got no right on that. He was saying like this. We are not saying who should be appointed as a receiver; we are not asking as to how he was appointed; we are also not asking whether he was doing the work properly or not. No, we are not doing that job. We are trying to find out after being a Judge of the High Court what is his conduct; what misappropriation he has done.

From his own submission, we can find out how he misappropriated. As I have submitted earlier, he admitted that by way of submitting to the Court's order he paid the amount after four years, after he became a judge of the same Court. That means after four years he comes out and deposits the amount.He says, "I deposited the amount twice; I have deposited all the money in the Lynx India Co. which has liquidated. Therefore, the matter is over." He wants to tell one part of the story. This is like the Shakespeare drama. 'Iron was eaten away by the rat'. That is the story he wants to tell. Subsequently, he says, "No, no, even then I paid from my own pocket; I deposited around Rs. 50 lakhs." Why did you deposit the money? If you have not misappropriated the money in the last 14 years, why did you deposit the money? He deposits the money and he does not challenge the order. Then he comes forward and says that it was purely on a prejudicial matter.

Sir, I would like to talk about another thing. He has even come to a conclusion that the selection process was poor. On page 61, para 3.6, in his reply to the Committee, he says, "Past actions of a Judge long prior to his elevation, cannot be the subject matter of impeachment. If past actions are brought within the ambit of Article 124 (4) read with the provisions of the Judges Inquiry Act, it will make a mockery of the selection process of a Judge of the High Court or the Supreme Court". Here I would like to submit one proposition. After 1993, the procedure which is being followed by the judges is totally different. They never consult the Executive. Previously, before 1993, the procedure was like this: The local Chief Minister, through the Governor, will give a list of names, who have got good background and good reputation. That will then be considered by the Chief Justice of the High Court. Then he will make his remark on that and then send it to the Ministry of Law and Justice. The Ministry of Law and Justice, through its apparatus as the department was looked after by Home Secretary will find out as to what is the background of that particular nominee. Then they will compile a report on the basis of his background and that is then submitted to the Chief Justice of India. The Chief Justice of India will consider it and finally he will take his decision and then it will be forwarded to the President of India for issuing the warrant of appointment.

That was the procedure followed before 1993. Sir, the Constitution never says as to who has to appoint a judge. It is the President's will. At the same time, the settled provision, which was followed

till 1993, was the will of the people, the will of the local federal Government, the will of the elected representatives. The Chief Minister represents the whole State, and, therefore, his will was to be considered. So, it was routed through him. But they have to find out whether they come within the purview of the judicial system. Therefore, the Chief Justice of that particular High Court made the recommendation. And, finally, they have to find out whether he is a person of integrity, whether he is having the national spirit and whether he will abide by the Constitution. These are all the things which will be considered by the Union Government. Then, it will go to the Chief Justice of India, and it will then go to the President. But, after 1993, they have been totally misled by the Judgement which was rendered by a Bench. Before that, in the Committee on Personnel, Public Grievances and Pensions, Law and Justice, the former Chief Justice of India, Justice R.S. Pathak, former Chief Justice of India, Justice P.N. Bhagwati, and former Chief Justice of India, Justice Ranganath Mishra, all of them deposed before the Committee. I would like to read out the 21st Report of the Committee. On Page No.27, it says: While taking stock of the impact of the post-1993 situation, the former Chief Justice of India, Justice P.N. Bhagwati, stated as follows: "Ask any lawyer, standard has gone down. Why? It is because of the mode of appointment. When the Supreme Court gave its Judgement that the appointment should be in the hands of the judiciary, the Government should be bound by it, and it should end with the judiciary, namely, the Chief Justice and first four Judges, everyone thought, perhaps, at least, some people thought, but I never thought myself that this would improve the appointment or quality of appointment of judges." Also, the former Chief Justice and Judge of the International Court of Justice, Shri R.S. Pathak, says, "So far as the collegium is concerned, I must frankly confess that I have serious reservations about it. In regard to the old practice that we used to follow in appointment of judges, although this is not a matter really for today's deliberations, in my Judgement in S.P. Gupta's case, you will find that I thought we were quite happy with the old system provided it worked out *bona fide*.' The former Chief Justice of India, Justice Ranganath Misra, summed up on the issue of appointment of Judges as under: "I had made a reference, as a Judge or as a Chief Justice, to a larger Bench of the Court to find out how this process will be worked out. It was sent to a Nine-Judge Bench. It was a larger Bench. We wanted a decision from the Supreme Court on the question. It was not a matter which was to go beyond a point and decide how the vacancies of the Judges would be filled up. There was a wrong thing, probably, in my own way. I

consider that the referring Bench had said that all other questions were closed and that was the only issue to be discussed by the larger Bench." And it goes on like that. Therefore, all the former Chief Justices of India, very reputed persons at the international level, they have come forward to say that post-1993 situation is bad enough. This particular occasion we can prove it. If, really, this particular appointment was a transparent one, it was known to the Judges of the Calcutta High Court, it was known to the advocates of the Calcutta High Court, it was known to the people of Calcutta because the fate of the State is to be decided by that particular judge when the case comes before him, then, they would have come forward and said, "Sir, he has already cheated up to Rs.35 lakhs. Therefore, he should not be appointed as a judge."

They will come out and they will tell the concerned people that this Judge has created a bad precedent. He swallowed the money in the past ten years. He has not placed the accounts before the court. He has not obeyed the orders of the court. Even if we accepted it for the sake of argument that he had deposited the money, the Lynx India Limited was not ordered to deposit by way of the order of the Court; it was done by him. That is the misappropriation. He accepted it in his own reply that he had deposited money. Where is the order for that? No court had ordered that but he had done it. Therefore, such persons are not needed in the Judiciary. And such persons can never be appointed if proper procedures are followed.

Therefore, Sir, my submission is that these proceedings are very clear. The Inquiry Committee has gone through each and every aspect of the case. Sir, he had even challenged these proceedings as 'criminal proceedings'. He wanted his innocence to be proved beyond doubt. It wasn't and it was very clearly explained in the Inquiry Committee Report (Volume I) at page 3, "The proceedings for the investigation into the conduct of a Judge under the 1968 Act are not criminal proceedings against the concerned Judge; the Judge whose conduct is under inquiry is not a person who is to be visited either with conviction, sentence or fine; nor is the Inquiry Committee, appointed under the 1968 Act, empowered to make any such recommendations. Besides, the Judge in respect of whose conduct an inquiry is ordered under the 1968 Act is not a person 'accused of any offence' and no fundamental

right of his under article 20(3) of the Constitution of India would be infringed by his giving evidence during an investigation into his conduct...". Sir, he avoided appearing before the Committee at every stage and he challenged the veracity of the Committee. And finally, he went on to say if he did not get justice from the inquiry committee, he would go to the rooftop and tell the world that he has not done anything. Such was his position. He misused his eloquence and, that too, at a place where he is not supposed to. Therefore, I finally submit that the impeachment proceedings should go on.

Sir, finally, the judiciary has to be clear in its mind. This is one of the cases, one of the test cases, where they have been challenged. We have not challenged them. No politician has challenged them. No parliamentarian has challenged them. But their own people have challenged them. It is high time they had reviewed their own position. They should not cross the Lakshman Rekha. This is how we have to work. This is the way in which the Parliament is working. This is the way in which the Executive is working. Therefore, we have to coexist and we have to protect the Constitution. Thank you, Sir.

SHRI SATISH CHANDRA MISRA (Uttar Pradesh): Sir, while agreeing on certain issues which both the speakers before me, especially the Leader of the Opposition, have stated, in respect of the role of the Judiciary and the way the Judiciary is now encroaching into the area of the Legislature and the Executive, with great respect, I disagree on certain other issues.

Hon. Chairman, Sir, the Parliament, Judiciary and the Press, the media, are the safeguards of justice and liberty and they embody the pillars and the spirit of the Constitution. But, unfortunately, today, the credibility of all these pillars is being openly questioned now.

Sir, as junior lawyers we were always taught by our seniors that while arguing cases in the court we should not see who the Judge is, we should not see the face of the Judge and start arguing but we should see the files and the merit of the case that we have. Similarly, at a certain point of time, most of the hon. Judges also conducted themselves with great dignity and did not see the faces of lawyers during the court proceedings. But they used to see the cases on merits what was the case which a lawyer was presenting before the hon. Judge.

But, Sir, today the situation is largely changed and it is unfortunate. Today, in the corridors of courts, and otherwise, when the lawyers are talking to litigants, they are not concerned to know how much law the lawyers know with respect to the matter or how expert he is in the law. But, now the question usually put to the lawyer is whether he knows the judge or not. So, that is the unfortunate situation which has now reached which, of course, requires serious consideration.

Sir, earlier we always had honourable judges, who used to function in a manner that it was not their job to make the law, but it was the job of the Parliament or the Legislature. But, today what the courts say is not what the Legislature says or what the Act or the Constitution says, but, it is a matter of fact; now the judges instead of discovering the law, stating the law and applying the law, not making the law, forgetting the judicial review part, have started framing the law which is what the hon. Leader of the Opposition has elaborated in detail with respect to the separation of powers- getting into the field where the separation of power is now given a go-bye, which is not correct.

Sir, before coming to the issue of the impeachment and on merits of impeachment which is before us, I would like to say that there are certain issues which the hon. Leader of the Opposition has spoken, and the other colleague has spoken, on the appointment of judges. It was said that in the appointment of the hon. judges, there is a detailed procedure. The judges have taken on themselves the appointment of judges, post-1993, and that is why the denigration in the system has been found today. The Executive or other authorities have no role to play now. Sir, I beg to disagree on this because I know that the judge whom we are impeaching today was appointed at a time when we had one of the finest and most eminent Law Ministers; the appointment was done in the year 2003. ...*(Interruption)*... In 2003, we had Shri Arun Jaitley as the Law Minister. The appointment was made at that time. The scrutiny was also made at that time by him in his capacity as the Law Minister. And, I, as an individual, say before the House that I know that the scrutiny that was done was not a scrutiny which was here and there; but it was a detailed scrutiny. Why I say this? Because I know this. I myself was one of the persons who got scrutinized by him. That is why I am saying this, with great respect. ...*(Interruption)*...

SHRI SITARAM YECHURY (West Bengal): That is why you were not appointed.

SHRI SATISH CHANDRA MISRA: I am coming to that. Sir, everybody knows; in my family, my father was a judge, he retired as the Chief Justice; my uncle was a High Court judge; my elder brother was a High Court judge, he retired as a High Court judge. But, Sir, when I was called upon by the hon. Chief Justice to give the consent, with folded hands I requested and said, "No, I am not the person who is fit to sit on that seat." But, then, I was asked from various sources; when the collegium members were asked to force me that I should give my consent. One of the hon. judges who was in the collegium is presently a judge in the hon. Supreme Court and the other retired as the Chief Justice.

Then, ultimately, Sir, I had given my consent, in spite of the advice given by my father that I should think it several times, but I was asked to give my consent and I gave my consent. After the consent was given, the collegium met, it cleared the name. The process followed. It went to the Chief Minister. The Chief Minister cleared it. Then, it came to Delhi. In the meantime, when it was being scrutinised in the Law Ministry, at that point of time, the Chief Minister was changed. A new Chief Minister came. Of course, from the same party. But, then, suddenly, a letter was written to the Law Ministry by the Chief Minister saying, "Look here, I have certain reservations for this gentleman, and one more gentleman who was there also for different reasons". The reason for this was, 'that we have found out that when he was the Chairman, Bar Council of U.P. and the Secretary of the Bar Association, he had led a big agitation of the lawyers because the jurisdiction of the Lucknow was being taken away by the Allahabad Bench. So, there was the agitation and he participated in that'. This was number one. Number two was, 'that kindly find out, according to an information, he is not an advocate'. I had already become a Senior Advocate by that time. The full court had designated me as a Senior Advocate. But why I was not an advocate was, because it was said, 'that he has several houses; he has several buildings; he has a building in Noida; he has a building in Nainital; he has a building in Lucknow, and he is getting rent from, those buildings. Though he is the highest income-tax payer amongst the lawyers in the State, but kindly scrutinise whether he is actually an advocate or something else or a builder'. So, this letter went. When it went to law minister of course, it was looked into, and the matter was forwarded to the collegium. Then, I wrote a letter saying,

"Kindly do not consider my name, if all this is being done, and I don't want to be considered". But the scrutiny was done. The scrutiny was done at that level and this intervention was there. As such an intervention was there and thus to say that 'no intervention' is done, is not correct. In spite of the fact the allegation was there that you are not an advocate, the fact was, I was not in politics; I was purely a lawyer. At that point of time, I was always engaged by the parties which were in the opposition. Those parties which were not in power used to engage me for their cases. The Bhartiya Janta Party which was there in the opposition had engaged me to challenge the President's rule, I had argued it before the Division Bench and before the full Bench and had won, and strictures were passed against the Presidential Proclamation, but still I was not a lawyer! So, this was the scrutiny which was done.

SHRI RAVI SHANKAR PRASAD (Bihar): You are better here.

SHRI SATISH CHANDRA MISRA: No, I am thankful. I thank the hon. Chief Minister who was in this House earlier. The day I took oath, I said, "Because of you I am here". Today, I get this opportunity to see whether a High Court judge should be impeached or not. This is the irony of the fate which is there. Therefore, to say that the appointment of the judges is purely by the judges, Sir, so far as I am concerned, I do not agree to that because I personally know these facts for that purpose.

SHRI SITARAM YECHURY: We are glad that you are here with us now.

SHRI SATISH CHANDRA MISRA: I thanked him for that.

Sir, now coming to the matter which is before us today, i.e., the Impeachment Motion, though the time has been allotted, I have seen the time, but I have made a written request, the time is at your discretion, that the time may be extended because I would be speaking, probably, a bit differently.

MR. CHAIRMAN: Please do economize.

SHRI SATISH CHANDRA MISRA: If I have to stand up and say, "I agree to the proposal, then, I can sit down straightway and I will not require any time". But this is a serious issue, Sir, where we have to consider the Motion with respect to impeachment of a sitting hon. judge. Therefore, we have to look into the background not only the facts and merits of the case but also the background with

respect to what is the scope of article 124 and what is misbehaviour within its meaning; how an act is considered as misbehaviour? All these aspects will have to be looked into, and, then, we have to see whether it falls into that category or not.

And whether it is a case where under impeachment we should accept the Resolution and remove the Judge. I also do not agree to what the hon. learned speaker spoke before me that the hon. Judge when he was standing yesterday and he was making his submissions did not speak properly. He had every right. A person who is coming as accused and who is being charged that you have to be removed. A right to defend has been given to him which, has also been considered by the hon. Supreme Court in Constitutional Bench judgements holding that he has full right to defend. If it is not given, then, of course, it will be violation and the entire action of this House is likely to be struck down even if it is passed. Therefore, he has every right to defend and once he is the defence he has the right to say that these are the facts which have been ignored or which have not been looked into and which should be seen. Therefore, for this purpose, I would refer to what was said by the Committee which was appointed in the case of Justice Ramaswamy, in the House Committee Report I one paragraph what they said at that point in time was: "The immunity of Judges is not for the protection of a malicious or a corrupt but for public in whose interest it is that Judges should be at liberty to exercise their functions with independence and without fear of consequences. However, the standards of ethical and intellectual rectitude expected of Judges are directly proportional to the exalted Constitutional protection that they deserve to enjoy. The country is entitled to be most exacting in its prescription of the standards of rectitude in judicial conduct. What might be pardonable in the case of an ordinary citizen or officer might in the case of a Judge look indeed unpardonable. His morals are not the standards of marked place but is the punctilio of a higher code."

Sir, in V. Ramaswami vs. Union of India while considering the matter the hon. Supreme Court had observed: "The Judge of the Supreme Court as well as the Judge of High Court is a Constitutional functionary and to maintain the independence of Judiciary and to enable the Judge to effectively discharge his duties as a Judge and to maintain the rule of law even in respect of the lis against the Central Government or the State Government, the Judge is made totally independent of the control and influence of the Executive by mandatorily embodying in article 124 or article 217 that a

Judge can only be removed from his office in the manner provided in clause 4 and 5 of article 124. Thus a Judge either of a High Court or the Supreme Court is independent of the control of the executive while deciding cases between the parties including the Central Government, State Governments uninfluenced by the State in any manner whatsoever. It is beyond any pale of doubt. There is no master and servant relationship or employer and employee relationship between the Judge of a High Court and the President of India in whom the Executive power of the Union of India is vested under the provisions of article 53 of the Constitution. The President has not been given the sole power or the exclusive power to remove a Judge either of the Supreme Court or High Court from his office though the President appoints the Judge by warrant under his hand and seal after consultations with such of the Judges of the Supreme Court or High Court in the States as he may deem necessary for the purpose and in the case of appointment of a Judge of the High Court, the President appoints the Judge by warrant but still the only mode of removal of a Judge from his office is on the ground of proved misbehaviour..," The word is 'proved misbehaviour' "..or incapacity as laid down in clauses 4 and 5 of article 124." Here we are on the question of proved misbehaviour; we are not on the question of incapacity with respect to the hon. Judge. Sir, under article 124 of the Constitution action for removal of a Judge is only on proved misbehaviour. The word 'misbehaviour' was not advisedly defined. It is a vague and elastic word and embraces within its sweep different facets of conduct, as opposed to good conduct.

Sir, the word 'misbehaviour' has found place under Article 124. The scope of Article 124 was considered, again, in the case of Krishna Swamy in 1992. Sir, Krishna Swami was a Member of Parliament and belongs to this House. He was also an advocate. He had filed his petition before the hon. Supreme Court. A Constitution Bench had considered the matter and then it had considered the scope of Article 124 and it said in para 60, "The Committee as Judicial authority adopts the procedure of a trial of a civil suit under the Code of Civil Procedure; it is not inquisitorial but adversary to search for the truth or falsity of the charges by taking evidence during the investigation like a trial of a civil suit and it should be the duty of the advocate and the learned Judge or his counsel to prove/disprove if burden of proof rests on the Judge, as a fact by adduction of evidence or the affirmation or negation or disproof of the imputation under investigation. The word 'investigation' is to discover and collect the evidence to prove the charge as a fact or disproved. The Evidence Act

defined the words 'proved' and 'disproved' as and when after considering the matters before it, the court either believes the fact to exist or not to exist or its existence is so probable/non-existence is probable and the test of acceptance or non-acceptance by a prudent man placed in the circumstances of particular case was adopted. The consideration of the evidence is like a criminal case..." hon. Chairman, Sir, this is very important "...as the finding would be 'guilty' or' non-guilty' of misbehaviour under Section 6 of the Act. The test of proof is 'proof beyond reasonable doubt."

So, it is like a criminal case. It has to be either proved guilty or non-guilty. And, it has to be 'beyond a reasonable doubt.' If there is any doubt, you cannot prove him guilty. It has to be completely 'beyond a reasonable doubt.' That is the aspect which has been referred to in this judgment.

Sir, with respect to definition of 'misbehaviour', the same has further been discussed in the same judgment. It says in para 71, "Every act or conduct or even error of judgment or negligent acts by higher judiciary *per se* does not amount to misbehaviour. Willful abuse of judicial office, willful misconduct in the office, corruption, lack of integrity, or any other offence involving moral turpitude would be misbehaviour. Misconduct implies actuation of some degree of *mens rea* by the doer. Judicial finding of guilt of grave crime is misconduct. Persistent failure to perform the judicial duties of the judge or willful abuse of the office would be misbehaviour. Misbehaviour would extend to conduct of the judge in or beyond the execution of judicial office. Even the administrative actions or omissions too need accompaniment of *mens rea.* The holder of the office of the Judge of the Supreme Court or the High Court should, therefore, be above the conduct of ordinary mortals in the society." So, now, after going through this, we have to find out what the evidence is and what the charges are. The charges, to which a reference was made, are two. The first one is misappropriation of large sums of money which he received in his capacity as a Receiver appointed by the High Court of Calcutta. The second charge is, making false statements, misrepresented facts with regard to the misappropriation of money before the High Court of Calcutta. Now, the question is what is the finding? Before coming to the findings, a question arises. We have to see whether the misbehaviour is proved as a Judge or we have to see whether misbehaviour is proved as a lawyer. I was only thinking that if my name had been cleared I would have been standing here for the behaviour as a lawyer either today or on some other day. But, is that the jurisdiction and scope under Article 124? We have to see this. We have to

look into what the hon. Supreme Court had said. It says 'proven misbehaviour' in the capacity of a Judge. Or, when he was a student or when he was in university or when he was an advocate, he did certain acts which, according to you, were not akin to what an advocate is expected to do, you prove him guilty and oust him from the position of Judge. That is not permissible under this. But, here, a reference is made. He did properly reply to these charges yesterday. It will have to be seen whether an act, as an advocate, would be a ground for his ousting as a Judge. It is not a case of a person committing murder which remained hidden or involved in dacoity or some other thing which remained hidden earlier and erupted suddenly.

He was a lawyer in that court from where the name was recommended. It was known that he was 'Receiver'; and, he was functioning as a Receiver when he was appointed. Now, the question is whether that becomes a ground for his removal as a Judge, which was before having been appointed as a Judge. For this purpose, I would like to refer to the findings of the Inquiry Report. Did the Inquiry Committee go into all those questions and all those grounds that were raised by him in his explanation? We find a very sketchy and short-inquiry report, which deals, very precisely, with the issues and it appears that the conclusion was already in the mind that he has to be held guilty, which ultimately comes out in the report. Up to page 22 of the report, which deal with respect to inquiry it is all with respect to the conduct as an advocate. After hearing the judge, I thought he had a case. But after hearing the hon. Leader of the Opposition, I thought he had no case at all and we were just made to hear something having no force for two hours. But, then, I thought that I should go deep into the Inquiry Committee's report and see what it says. Kindly see what the findings say. It says that it is diversion of funds; it is misapplication of funds, so far as the first charge is concerned, as an advocate. It does not say 'misappropriation of funds'. Now, it can be said that since it is misapplication of funds, since it is diversion of funds, therefore, it is a 'misappropriation'. Sir, 'misappropriation' to the understanding of common man, to the understanding of a layman would be that if I had been given some money or some property or anything in trust to me to keep it with myself till required to be returned; and, when I am supposed to return it, I don't return it and I misappropriate even that money, then, it would of course be misappropriation. ...*(Interruptions)*... Yes, diversion. ...*(Interruptions)*... It is said that there is diversion from one account to another account. That is the finding. Now, if it is transferred from this account to that account, it would not

become misappropriation. Since reference has been made, I would like to refer to one of the paragraphs of the report, which says that when it was asked to make the payment, when he was directed to give the payment, he immediately paid that. He did not protest. That is the charge. That is the allegation. For arriving at the conclusion that he is guilty, his action of making payment of the entire money with full interest is taken in the report. And, it is said that it means he was guilty. So, this is not the right ground to hold him guilty. Had he taken the money himself, it would have been alright. The second most important thing is that the entire findings with respect to second charge and also the first charge are based through and through only on the basis of the hon. Single Judge order. It says that the hon. Single Judge said this and the hon. Single Judge said that, completely overlooking the Division Bench Order which sets aside Single Judge Order. It was looked in the manner in which, probably, the Committee wanted to look it. It completely over looked that this entire charge is demolished by the Division Bench. To say that when he was called by CIT, thereafter, he went back and filed an appeal and got it. The single judge order set aside, will not demolish the existence of Division Bench Order*...(Interruptions)...*

MR. CHAIRMAN: Conclude please.

SHRI SATISH CHANDRA MISRA: I am just going to conclude. But. *...(Interruptions)...*

MR. CHAIRMAN: Your extended time is over.

SHRI SATISH CHANDRA MISRA: Sir, I had sought time for this purpose only. Please give me some more time. If the appellate order completely exonerates him from the misappropriation and says that there is no misappropriation, why was this order not challenged in the Supreme Court? Why didn't anybody else go to the Supreme Court? Why didn't anybody else or any of the parties go to the Supreme Court to say that the Division Bench had joined with him? Who else has been charged for this offence? Conspiracy cannot be single-handed. There have to be two minds and two people. There is no charge on anybody else with respect to this. It is like casting an aspersion on the Division Bench also to say that he obtained the orders. Therefore, my submission at the end is this.

Charge number one says, 'It is duly proved.' It is not proved. The charge was about misappropriation of large sums of money which he received in his capacity as a Receiver. There is no misappropriation. Simply say at the end of the Report that it is duly proved is not correct. And the Inquiry Committee's finding on this issue cannot be blindly accepted.

The second charge is about making false statements. It is said that the statements made by the mother in the affidavit were false. There is no misappropriation from this, and there is no proven misbehaviour.

I would only conclude by saying that I do not agree with the Motion which has been proposed. I feel that it should be rejected. I think all of us should not be swayed and conclude that we have to remove him come what may. We should look into the facts of the case. Each one of us have got the material. It is the duty of each one of us that we should tread very cautiously in this field. We should apply our minds. Thank you very much.

MR. CHAIRMAN: Before I call the next speaker, may I remind the hon. Members that the time allotted for this debate is four hours. Therefore, a certain time-discipline has to be maintained.

SHRI ARUN JAITLEY: We are glad Mr. Misra did not become a judge. ...*(Interruptions)*...

SHRI SITARAM YECHURY: Sir, do these four hours include today's timings or is yesterday's time also included in this?

MR. CHAIRMAN: I think there was no ambiguity about it. Today's timing is 2 hours 56 minutes. ...*(Interruptions)*... We will try to accommodate, but I do request everyone to maintain time-discipline because we have a process to go through at the end of it. ...*(Interruptions)*... No; there is a set procedure. Mr. N.K. Singh, please go ahead.

SHRI N.K. SINGH (Bihar): Sir, it is an immense privilege to participate in this very important debate. One must feel somewhat handicapped considering that one is speaking after three very

eminent lawyers who have already spoken at great length. My preceding speaker was Mr. Satish Chandra Misra. The first non-legal luminary, so to say, given with very ordinary discipline, I would beg to submit before this House eight points for your consideration.

First and foremost, clearly one is reminded of what an eminent jurist, Arthur Schlesinger had said. He said, "The genius of an impeachment proceeding lies in the fact that it punishes the man without punishing the office. "This is precisely what this House intends to do through this very important Motion moved by my senior esteemed colleague, Mr. Yechury. Sir, yesterday, when I heard with careful attention the defence made by Justice Sen, I got three distinct impressions which I must share with this House. First and foremost, the impression which I got was that he sought to create a false hiatus between the sovereignty of Parliament seeking to bring it in conflict with the higher Judiciary. He repeatedly quoted what has been happening by the higher judicial functions as if to say that we would really stand up to the underdog in which he claimed to place himself in that position. I do believe, Sir, that for the reasons that I am going to give, that was a false hiatus, and a somewhat misleading thing.

My third important point, Sir, is that in his entire defence, he sought to create straw-enemies and straw-allegations which he then started to destroy. What was that? For instance, Sir, kindly look at page 74 of his written reply where he mentions about the fact that an order passed; and he says, 'Unfortunately, my explanation that these withdrawals were towards payment of workers' dues pursuant to a Division Bench order ..." Sir, it was nobody's case. Nobody had alleged that he was being held responsible for the payment or the delay in the payment of workers' dues. So, to demolish something which was initially never leveled against him is like creating straw-enemies to be able to then answer that in his own way.

Similarly, Sir, I think that in the Inquiry Commission's Report, he has clearly sought to alter the meaning of misappropriation. My esteemed colleague, Mr. Misra, has dealt greatly with the meaning of what he believes is misappropriation. As a Trustee, Sir, it is clearly understood that the money which he received was to be held in Trust. That Trust enjoined upon him a responsibility that he could not divert the proceeds of that Trust into some other account. For instance, he could not use it for his

personal purposes, no matter whether he reimburses it subsequently or not. As a Trustee, Sir, there are certain obligations which are cast upon him and therefore, any attempt in his defence to alter the meaning of misappropriation, in my view, is flawed.

Also, Sir, his suggestion in his defence yesterday - and that is my next point - on biases and predilections of successive high judicial authorities and by successive inquires which were held, in my view, did not seem to be borne out, considering that he himself had not cooperated with any of the processes. If you look, Sir, at the successive adjournments which he sought, where he failed to appear himself personally, where he really appeared through his attorney and sometimes really giving petitions in the name of his mother, in my view, suggests that the suggestion of bias and predilection looks to be flawed.

My next point really, Sir, is about the credibility and the integrity of the processes and procedures which you have followed before these judicial findings were reached. I believe that nothing which he has said in his defence casts any doubt on the procedures and credibilities. I agree, Sir, that a Judge is not supposed to know anything about the facts of life until they have been presented to him in evidence, and, as has been said by very eminent jurists all over the world, explained to him at least three times. Indeed, Sir, they were explained to him more than three times. Sir, the findings which have been received in this, clearly, are findings in two parts. One, as very rightly pointed out by my esteemed colleague, Mr. Misra, is regarding his conduct as an advocate. As an advocate, he knows better than I do that you are enjoined upon as an Advocate to follow the Advocates Act. What did his conduct mean? What he did under the Advocates Act? Report comes to the conclusion that his conduct was most unbecoming of an advocate. There is a Part II which then deals with his conduct as a Judge. Therefore, Sir, in the findings which have been reached, in the concluding paragraph, in part 8 of the Inquiry Committee Report, the misappropriation is duly proved. This is in two parts, in his conduct as an Advocate and in his conduct realty as a Judge.

Sir, I go to my last point which is about some of the broader issues. This Impeachment Motion has enabled this House to deliberate, for the first time, on the area of stalled judicial reforms. Sir, India is seeking to become a major economic power. It is seeking to achieve over 8 per cent rate of

growth. Whether we go to John Rawls Theory of justice which really wants to seek an explanation that inequalities and certain kinds of economic deprivation can only be tolerated if it benefits all sections of society.

And we must ask ourselves this important question whether our present judicial system is adequate to meet India's changing economic realities. In terms of improving and the Prime Minister knows it better than anyone else, in choosing our climate of investment, on transfer of properties, on mergers, on pricing and a whole host of things and addressing it in a manner which really would enable this country to grow. Is our judicial system equipped for a system which is managing rapid economic changes, Sir, while maintaining the social cohesiveness of a social order with a nine per cent rate of growth? Indeed, Sir, as has been very rightly pointed out by the hon. Leader of Opposition, this Impeachment Motion has given us an invaluable opportunity to consider some of these things beyond narrow partisan confines.

Sir, I strongly believe in the appointment of a National Judicial Commission and the demarcation of responsibilities between the three functions. Indeed, many of us were shocked and I am sure many of us would have been shocked when certain judicial pronouncements were made which questioned the Parliament, which questioned, for instance, whether it was necessary to attend Parliament, which questioned the integrity of this very vital organ, which is the over-arching organ of our Constitution. Many of us were so appalled, many of us were ashamed to be part of a process when it was being pronounced, and certain aspersions were being cast on Parliament, and we were mute spectators. Indeed, if we do not consider this opportunity to think about major issues of judicial reforms, setting up a Judicial Commission, a better demarcation of responsibilities, a better examining of whether our present judicial system equips us to deal with rapid economic growth, with issues of poverty and inequalities, we will miss, Sir, a very important opportunity. I, therefore, support this Motion. I support it because I do believe that in the end, if we do not maintain justice, justice will not maintain us. This was a very important saying by Francis Bacon in 1615 at the impeachment of the then Attorney General in the House of Commons. You must be reminded of this. We must be reminded also that how easy it is to judge rightly after one sees what evil comes from judging wrongly. We must judge rightly. We must exercise the sovereignty of this House. We must not allow this valuable opportunity to slip away.

I support this Motion and I support also the opportunity of this Motion to bring about a kind of qualitative change in the way in which the demarcation of powers between the three important organs enshrined in our Constitution can be restored and a measure of dignity and respect for each of these organs which the Constitution defines.

MR. CHAIRMAN: Thank you for your precision. Mr. Tiruchi Siva.

SHRI TIRUCHI SIVA (Tamil Nadu): Sir, I rise to support the Motion moved by Shri Sitaram Yechury.

Sir, Francis Bacon once said, "The place of justice is a hallowed place, and therefore, not only the Bench but also the foot-space and the confines and the purpose thereof ought to be preserved without scandal or corruption."

Sir, we are proud that we have a long-standing tradition of sustaining an independent judiciary which has safeguarded our democracy and Constitution. The Indian judiciary which has got its own tradition is considered to be one of the pillars of democracy and it is duty-bound to uphold the moral values and ethics to secure the trust of the people. The trust in the judiciary by the people of this country and the Constitution is so immense that the day that trust is breached, it is the breach of trust of the people of India and the Constitution.

Sir, it is to be understood that however carefully the institutional forms may be constructed, the final analysis mostly depends upon the actual behaviour and the accountability of the individuals concerned. What is 'accountability'? The Oxford dictionary says, one who is responsible for one's own actions and decisions and is expected to explain when asked for. So, accountability is an inevitable and indispensable part of democracy. No public functionary or no public institution is exempt of this accountability, Sir.

Sir, the judicial accountability may not be on the same lines of the accountability of the Legislature or the accountability of the Executive. But they are also not above scrutiny. Sir, when the faith of the people in the quality, integrity and efficiency of the Government institutions starts eroding, we have a responsibility. The check and balance system comes in between. When we find the breach of trust by the judiciary, the only remedy available is that of the impeachment brought in the Parliament. Sir, in the long history of our Parliament the first impeachment which was brought in the

other House fell through, but this is the first ever case the case of Justice Soumitra Sen. When we surveyed the pages of the Constituent Assembly, there was near unanimity in bringing the impeachment. Only one Member of the Assembly, Shri R.K. Sidhwa, from Central Province had cautioned on 24th May, 1949 while participating in the debate of the Constituent Assembly that if two-thirds majority of the two Houses sitting together want a judge to be removed it would be quite possible that no judge would be ever dismissed for an act of wrong-doing. This is the only observation, only caution, given by one Member. Otherwise, there was unanimity. And, we have experienced that. Even this one case is being criticized and evaluated and there were difference of views which cannot be disputed. This is very essential. The case of Justice Soumitra Sen also puts forward a strong case for judicial reformation in the country. Sir, the method of selection of judges, as earlier spoken by my colleagues here, to the High Courts and to the Supreme Court by the collegium should have to be reconsidered. The Legislature movement towards constitutional amendment in these lines is the need of the hour. Sir, may I quote Dr. Babasaheb Ambedkar in the Constituent Assembly regarding this? In fact, the question as to whether the appointment of judges requires the concurrence of the Chief Justice was seriously debated in the Constituent Assembly. Dr. Ambedkar responded to the said suggestion in the following words: "With regard to the question of concurrence of the Chief Justice, it seems to me that those who advocate that proposition seem to rely implicitly both on the impartiality of the Chief Justice and the soundness of his judgement. I personally feel no doubt that the Chief Justice is a very eminent person. But after all, the Chief Justice is a man with all failings, all the sentiments and all the prejudices which we as common people have; and I think to allow the Chief Justice practically a veto upon the appointment of judges is really to transfer the authority to the Chief Justice which we are not prepared to vest in the President or the Government of the day. I, therefore, think that that is also a dangerous proposition." That is the observation made by Dr. Babasaheb Ambedkar, not mine. Now, the Government's approval of the Judicial Accountability Bill is a positive step to check the discrepancies of the higher judiciary and to ensure necessary action to be taken. In this context, I support the Motion moved by my colleague, Shri Yechury. Yesterday, we heard Justice Sen's defence argument. He was eloquent

as everyone appreciated. I would like to submit some of the observations, through you, to this august House. In what authority he went to that extent? There are two things. One is that the findings of the Committee appointed by you clearly say that there was a large-scale diversion of funds and such diversion was in violation of the orders of the High Court; the purpose for such diversion remains unexplained. Justice Soumitra Sen was appointed as High Court Judge on 3rd December, 2003. The Committee noted that Justice Sen's actions were an attempt to cover up the large-scale defalcation of Receiver's fund. Sir, out of the two grounds of misconduct, the second is misrepresentation of facts with regard to the misappropriation of money before High Court of Calcutta.

Sir, this is what Justice Soumitra Sen said in reply to the motion received under article 217, read with article 124(4) of the Constitution, to the Rajya Sabha. Sir, I will quote. He himself contradicts. At one place, he says, "The respondent was appointed as a Receiver in the year 1984 by Order dated 30.4.1984. Till 2003, neither the hon. Calcutta High Court nor any of the parties required the respondent to render any accounts. For the first time, on 27.2.2003, an application was made by the plaintiff seeking directions for accounts and sale of the remaining goods and handing over sale proceeds. Despite the aforesaid statutory matrix, for about 19 years, nobody sought accounts, which is a clear indication that in Calcutta High Court, a practice had developed of not giving periodical accounts to the Court". He himself says again, "Rule 15 of the Calcutta High Court OS Rules lays down that unless ordered otherwise, the order appointing a Receiver shall contain a direction that the Receiver shall file and submit for passing half-yearly accounts in the Office of the Registrar and that such accounts have to be made at the end of months June and December every year and are required to be filed in the months of July and January respectively." So, at one place, he says that in the Calcutta High Court, there is no practice of giving periodical accounts to the Court. On the other hand, the rule 15 of the Calcutta High Court clearly says that he has to maintain accounts and give every six months. Then, I come to the second most important point. I am having the synopsis of yesterday's debate. He has clearly observed that the sale is still not complete. Therefore, the matter

is still *sub judice* and it should not be discussed in the House. Sir, nowadays, it has become a fashion to question the sovereignty and the authority of the House. Sir, he says that it cannot be discussed in the House. But, Sir, we are empowered by the Constitution under article 124, clause (4) and clause (5) that we can impeach; we can take the case of a Judge under the provisions of this article. Article 124(5) states, "Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4)." Sir, while submitting before the Judges Inquiry Committee, he very clearly says that a Receiver is answerable only to the Court which appoints him and to no one else, and, therefore, the hon. Committee cannot enquire into the conduct of the respondent in its capacity as the Receiver. So, he questions the authority of the Inquiry Committee. He questions the authority of the Parliament even when the Constitution has empowered the Parliament. I second my colleague, Shri N.K. Singh's observation that it is our foremost duty to uphold the sovereignty and authority of the Parliament.

MR. CHAIRMAN: Would you please conclude?

SHRI TIRUCHI SIVA: Sir, I would like to conclude by quoting hon. Justice J.S. Verma who said, "The existence of power must be accompanied by accountability. Erosion of credibility in the public mind resulting from any internal danger is the greatest latent threat to the independence of the Judiciary. Eternal vigilance to guard against any latent internal danger is necessary lest we suffer from self-inflicted moral wounds." Mr. Yechury, before he moved this motion, said that it is not a motion against the Judiciary; it is only a motion against the misbehaviour of one Judge. On these grounds, and on the arguments that we have placed, Sir, I support the motion moved by Mr. Yechury.

DR. YOGENDRA P. TRIVEDI (Maharashtra): Thank you, Sir. Mr. Arun Jaitley told us that this is rarest of the rare event. I agree with him. Here are so many legal luminaries giving their best, putting their viewpoint in a scintillating manner with eloquence and then is the catch word, all that they are doing is without charging any fees. That is the rarest of the rare event. I was hearing with rapt attention to Shri Sitaram Yechury when he referred to the trial of Robert Olive and Warren Hastings...

He quoted from the oration of Edmond Burke. I also looked into what happened at that trial, and, I would like to quote another eminent jurist who addressed the House of Lords. His name is Sheridan, and, in my opinion, Sheridan even excelled Burke in certain respects, and, this is what he

said while the trial of Warren Hastings was there. He said, "Not a hair shall be plucked from head to the ground unless legal guilt is established by legal proof." This is what Sheridan said. Mr. Yechury made out a very spirited and detailed account of what has happened. There was also a very spirited reply by Justice Soumitra Sen. He made out four points, which have to be examined because this House today is acting in the capacity both as jury as well as judge. So, let us look at what was the defence of Justice Sen. He said that he had collected the money as a receiver when he was a lawyer. A struggling laywer; I can understand. He is in command of some money, which he put in here and there; for the time being, he parked the money somewhere. He parked the money with Lynx India Private Limited, which later went into liquidation. I am little surprised because according to my knowledge, Lynx India Private Limited is still a very living corporation. It has large properties in the city of Mumbai. The building in which I am staying in Mumbai, there also, it has a very valuable flat running into quite a few crores of rupees. So, it is not a dead company. It is Lynx India Private Limited. Then, he said, later on, he returned the money. He gave it to the workers, and, thereafter, returned the money. This is his first submission. The second thing which he said was that there is a difference between his role as a Receiver and later as a Judge. He says that as a judge, he has an impeccable career, and, none of his judgement was doubted, and, he has been an excellent and ideal judge.

Later, he talked about *res judicata* and referred to the Division Bench judgement, which has been referred to earlier, and, which is at page 31 of the Inquiry Report. Lastly, he said, and, this is something, which I did not expect from a Judge, that there are others who have done similar crimes and they have all escaped. Mr. Arun Jaitley, thereafter, took us through the facts. I believe that more than law, facts are more important. According to me, facts are like arguments of God. So, we must examine the facts very minutely. How the moneys were parked with Lynx India is mentioned at page 16. For what reason, the moneys were parked with a private limited company, and not with an established undertaking, not with a public sector company, not with a big corporation. We do not know for what reasons it was done. Later, thereafter, moneys were disbursed at various places, and, probably trying to get a soft corner from Mr. Yechury, he said that moneys were given to workers. It is a very humanitarian job, but whose money? It was not his personal money. It was the money which was deposited with him on escrow account, which he was holding as a trustee, and,

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first of all, that money was given to the workers, as he says, and, later, thereafter, it was returned to the court as per the directions of the court, but at what stage? Much after he became the Judge. He became the Judge in 2003, and, moneys were returned sometime later in 2005 after the court's order.

This is the catch. If the moneys would have been returned before he became a judge, it was understandable. He could say, "I was a struggling lawyer. I was in possession of money which I might have misused or mismanaged. Now, I want to start a new career. So, I want to atone for my sins or whatever it may be and I am returning the money". But he did not do it. There was no atonement. There was no repentance. There was no *pashchataap.* But he continued to keep the money even after he became a Judge. That means it becomes a continuing offence. The offence which was committed earlier, he continued with the offence later also. He did not try to wriggle out of it. He could have returned the money saying 'sorry, I did it during those days when I was just a young lawyer'. What does this indicate? It indicates that this gentleman who came here, he lacks the basic streak. He is not a man of conviction; he is a man of convenience. When the convenience ran against him, he returned the money. He could have done it the moment he became a Judge. There is something like atonement; there is something like repentance which can absolve a man from any crime. But he did not do that. We know that past always haunts a man, and one has to get rid of that past in a very graceful manner. Otherwise, what happens? We should not only see that justice is done, but, as Justice Vivian Bose, in that famous judgement of *beedi* supply company has said, 'Justice should not only be done, but it should be seemed to be done'. The same probity which we expect from all sections of the society, including the politicians, we require from the Judges. An ideal Judge is the one who was in Maharashtra, Mr. Javadekar you will bear me out, Justice Ram Shastri, who stood before the Peshwas, did not allow the Peshwas elephant to go further. He said, "I will not allow that to happen". This is the type of ideal Judge which we want. Our judges should be sea-green incorruptible. The argument that some culprits have gone scot-free should not have come

from a Judge. One cannot say that because hundreds of murderers have gone scot-free, the murderer who is proved to be guilty before me should also be let off. It is not the argument of a Judge. After hearing Justice Sen, after hearing Mr. Yechury, after hearing Mr. Arun Jaitley, after hearing all the other eminent lawyers here, who just argued their case without charging fees, I have come to the conclusion that it is the rarest of the rare case. I support the Resolution and would not mind that in future also we should be ready and if more such cases come, we should be able to tackle them. Thank you.

श्री किशोर कुमार मोहन्ती (उड़ीसा): सभापति महोदय, आज इस सदन में जो Motion आया है, मैं उसे support करता हूं और मैं चाहूंगा कि यह सदन अच्छी तरह से इस पर चर्चा करते हुए एक ऐसी सहमति पर पहुंचे, जिसे आने वाले कल में तवारीख याद रखे।

सर, आज सारे भारतवर्ष में जो हल्ला मचा हुआ है, वह एक ही चीज़ के ऊपर मचा हुआ है और वह है corruption. इसी corruption के ऊपर आज इस सदन में हम एक ऐसी चर्चा कर रहे हैं, जो एक न्यायाधीश के ऊपर है। यह अपने आप में एक बहुत बड़ी चीज़ है। इस सदन की गरिमा को बचाने के लिए हम सबको अच्छी तरह से सोच विचार कर इस कदम को उठाना है। जब मैंने सभी को सुना और मैंने रिपोर्ट देखी, तो मुझे ऐसा लगा कि कहीं पर जब वे एक वकील के तौर पर एक रिसीवर बने थे, तभी से उनकी मंशा में कहीं-न-कहीं खोट था।

महोदय, सौमित्र सेन जी को हाई कोर्ट ने 30.4.1984 को रिसीवर नियुक्त किया था। उस समय कलकत्ता हाई कोर्ट में इन्हें एडवोकेट के रूप में appoint किया गया था और 12.03.2003 को ये जज बने, लेकिन इसी बीच 27.02.2003 में एक केस, GA875-2003 फाइल हुआ था, जिसमें रिसीवर के रूप में टोटल account और proceeding देने के लिए हाई कोर्ट ने इनको कहा था। एक बात यह है कि 03.08.2004 को, जब कि ये जज बन चुके थे, हाई कोर्ट ने एक proceeding में कहा था कि एक और रिसीवर appoint किया जाए, तब तक ये रिसीवर भी थे। 03.08.2004 से पहले ये वहां पर रिसीवर भी थे और जज भी थे, क्योंकि दूसरा रिसीवर 03.08.2004 को appoint किया गया था। ये 03.12.2003 में जज के लिए योग्य हो चुके थे और इसके बाद ये वहां पर जज होते हुए भी रिसीवर थे, तो ये कैसे कहते हैं कि मैंने गलती नहीं की।

महोदय, मेरे पास एक और प्वाइंट है कि इन्होंने तब तक पैसा रिटर्न नहीं किया, जब तक कि हाई कोर्ट ने इन्हें पैसा रिटर्न करने के लिए नहीं कहा। 2006 में कोर्ट ने कहा कि आप पैसा वापस कीजिए, तब जाकर इन्होंने पैसा वापस किया। अभी एक साथी कह रहे थे कि अगर इनकी मंशा अच्छी होती, तो ये जज बनने से पहले ही

मजदूरों का पैसा वापस कर देते। अगर इनके दिल में कोई खोट नहीं था, तो 2006 में कोर्ट के द्वारा कहने के बाद इन्होंने पैसा क्यों वापस किया, इससे पहले क्यों नहीं किया? जब सरकार किसी को नौकरी देती है, तो वह थाने से उसके चरित्र के बारे में enquiry करवाती है और थाने से उसके चरित्र के बारे में लिखित रूप में प्रमाण पत्र मांगती है। चरित्र प्रमाण-पत्र मिलने के बाद ही उसको नौकरी दी जाती है, लेकिन मेरी समझ में यह नहीं आया कि जो पैसा मजदूरों पर खर्च करने के लिए इन्हें दिया गया था, उसको इन्होंने अपने दूसरे account में रख लिया और इतना करप्शन करने के बाद भी इनको जज कैसे नियुक्त किया गया?

महोदय, मेरा कहना यह है कि जजों के appointment का जो प्रोसेस है, इसको ठीक करने के लिए हम लोगों को एक Autonomous Judicial Commission बैठाने की जरूरत है, क्योंकि हम लोग देख रहे हैं कि जब courts के कोरिडोर में बातचीत चलती है, तो वहां पर भाई-भतीजावाद बहुत चलता है। वहां मुंह देखा-देखी बहुत चलता है कि यह जज हमारे क्लब का मेम्बर है या यह हमारा दोस्त है, इसलिए इनके लड़के को जज बना दो। इस संबंध में हम जानते हैं, क्योंकि ओडिशा से एक ऐसे ही जज थे, जिनको वहां के एक जज के प्रेशर के कारण हाई कोर्ट में आने नहीं दिया गया। सौमित्र सेन कह रहे थे कि जिन-जिन को सुप्रीम कोर्ट का जज नियुक्त किया गया, उनके कुछ स्वार्थ हैं, इसलिए वे मेरे विरुद्ध बोले, लेकिन हम जानते हैं कि उनमें ओडिशा के एक ऐसे जज थे, जिनके बारे में हम लोग जानते हैं कि वे एक सच्चे जज थे और बहुत अच्छे जज थे, उनके ऊपर भी ये आरोप लगाए हैं। जब ये सुप्रीम कोर्ट के जज के ऊपर आरोप लगा रहे हैं, तो इससे हम लोगों को समझ लेना चाहिए कि इनकी मंशा कितनी अच्छी है।

महोदय, मैं यह कहना चाहूंगा कि हाई कोर्ट में जो system of appointment of judges है, उसमें कुछ बदलाव लाना जरूरी है। आज थोड़ी-थोड़ी चीज के लिए संविधान को बदलने की आवाज उठने लगी है, हमारे संविधान में बदलाव लाने के लिए आवाज उठ रही है। सदन में हमारे काम करने की जो शैली है, उस पर आवाज उठने लगी है। आज लाखों-करोड़ों लोग हमारे खिलाफ, करप्शन के खिलाफ, हमारे काम के खिलाफ सड़कों पर candle लेकर आंदोलन कर रहे हैं। अगर हम लोग आज यह नहीं देखेंगे कि हमारे जजों का जो कर्त्तव्य है, वे लोग उसको सही तरीके से निभा रहे हैं या नहीं निभा रहे हैं, तो ये लोग हमको माफ नहीं करेंगे। हम आज इस सदन में इसको discussion के लिए लाए हैं।

यह इम्पीचमेंट मोशन एक जज के विरुद्ध आया है, लेकिन यह जज अकेला जज नहीं है, ऐसे कई जजेज़ हैं जो करप्शन में डूबे हुए हैं। ऐसी कई अदालतें हैं, जहां आदमी अपना हक़ नहीं पाता है। उनका जजमेंट उसके विरुद्ध जा रहा है। ऐसे जजमेंट्स को रोकने के लिए न्यायपालिका में परिवर्तन लाना जरूरी है। हमारे अपोजिशन के लीडर कह रहे थे कि Autonomous Judicial Commission बिठाना जरूरी है। अगर उसके जरिये जजेज़ अप्वाइंट होंगे, तो हम जरूर कुछ अच्छे जज पा सकेंगे, जो निर्भीक भाव से और अच्छे तरीके से जजमेंट दे सकेंगे तथा हर एक आदमी अपना हक़ पा सकेगा। यही कहते हुए मैं अपनी बात समाप्त करता हूं।

श्री मोहन सिंह (उत्तर प्रदेश): सभापति महोदय, मैं श्री सीताराम येचुरी द्वारा रखे गये महाभियोग के प्रस्ताव का समर्थन करने के लिए खड़ा हुआ हूं। दसवीं लोक सभा में जब 1993 में सुप्रीम कोर्ट के जज के खिलाफ इम्पीचमेंट मोशन आया था, उस लोक सभा का मैं साक्षी हूं। कपिल सिब्बल साहब ने अपने ढाई घंटे के भाषण में उनके ऊपर लगे आरोपों की जबर्दस्त सफाई दी, लेकिन हाउस का कोई दुर्भाग्य था, क्योंकि जांच करने वाली जो कमिटी बनी थी, उसके एक मैम्बर पी.वी. सामंत साहब थे। इसलिए एक राज्य के प्रतिनिधि सांसद समझते थे कि इम्पीचमेंट होना चाहिए। चूंकि रामास्वामी के खिलाफ इम्पीचमेंट मोशन था, इसलिए एक राज्य के संसद सदस्य चाहते थे कि यह इम्पीचमेंट मोशन न हो। सरकारी पार्टी प्रांतीयता के झगड़े में फंस गयी, इसलिए उस मोशन के पक्ष या विपक्ष में सरकारी पार्टी ने कोई व्हिप जारी नहीं किया। नतीजा यह हुआ कि दो दिनों की बहस के बाद संसद के भीतर वोट के समय जो रिक्वायर्ड नम्बर्स होने चाहिए थे, वे लोक सभा में नहीं जुट पाये और वह प्रस्ताव गिर गया।

मैं समझता था कि राज्य सभा में सौमित्र सेन को कोई अधिवक्ता नहीं मिलेगा, लेकिन जब हाई कोर्ट की प्रैक्टिस खत्म हो जाती है, तो अपनी प्रैक्टिस का अभ्यास जारी रखने के लिए वह सिलसिला राज्य सभा में जारी रखना चाहिए, इसलिए आदरणीय मिश्रा जी उनकी वकालत के लिए यहां खड़े हो गये। मैं उनको धन्यवाद देता हूं। मुझे खुशी हुई, लेकिन जिस तरह कल सौमित्र सेन ने तथ्यों को दबाया, उसी तरह पौने दो घंटे के भाषण में मिश्रा जी ने भी लिखित दस्तावेज में दिये हुए तथ्यों को बहुत होशियारी के साथ दबाने का काम किया।

सौमित्र सेन ने तीन बातें कहीं। एक तो उनकी समीक्षा के लिए चीफ जस्टिस ऑफ इंडिया के घर पर जांच करने वाले जो जज साहेबान थे, उन्होंने उनको बुलाया और इस बात का प्रलोभन दिया कि यदि आप त्याग-पत्र दे दें, तो आपको किसी प्राइवेट कम्पनी में अच्छी सर्विस दी जा सकती है। अब यह एक ऐसा आरोप है कि चार लोग एक कमरे में बैठे हैं, हाई कोर्ट का जो व्यक्ति जज हो, वह इस तरह के hearsay को इतने बड़े सदन के सामने रखे, जिसकी पुष्टि का कोई आधार हम लोगों के पास न हो। मैं समझता हूं कि इस तरह का false evidence प्रस्तुत करना ही इम्पीचमेंट के लिए काफी है, ऐसा मैं आग्रह करना चाहता हूं।

दूसरी बात उन्होंने यह कही कि बहुत सारे जजों ने ऐसा किया और उनको उस समय चीफ जस्टिस ऑफ इंडिया ने छोड़ दिया। उन्होंने चंडीगढ़ के एक जज का हवाला दिया। उन्होंने इलाहाबाद हाई कोर्ट के जजों, जो प्रॉविडेंट फंड के misappropriation में फंसे हैं, का भी हवाला दिया कि उनको छोड़ दिया गया। यह भी तथ्यों से परे है। सच्चाई यह है कि इलाहाबाद हाई कोर्ट के जजेज़ और जो डिस्ट्रिक्ट जज थे, उन्होंने अपने पद से त्याग-पत्र दे दिया। सीबीआई ने उनके खिलाफ जांच की। उनके खिलाफ डिस्ट्रिक्ट कोर्ट में चार्जशीट दाखिल की गयी और डिस्ट्रिक्ट जज ने उन जजों को जमानत पर छोड़ा है। यह स्थिति है और यही स्थिति चंडीगढ़ हाईकोर्ट के जज के

बारे में है कि सी.बी.आई. उन की जांच कर रही है। मैं समझता हूं कि किसी जज के लिए यह safest course था, यदि उन की जांच सी.बी.आई. करती। यदि उन के खिलाफ कोई criminal proceedings जारी होती तो उन को संविधान के impeachment motion के जरिए सजा हो सकती थी। यदि पार्लियामेंट उन के खिलाफ कोई कार्यवाही करेगी तो किसी तरह के criminal procedure से उन के विरुद्ध कार्यवाही करने से पूरी बचत है। इसलिए उन्होंने बहुत आसान तरीका सोचा कि हम इस पार्लियामेंट के जरिए ही अपने को impeach करवा लें और उस तरीके के तहत जैसा कि रिपोर्ट में कहा गया है कि वह कमेटी के सामने आते ही नहीं थे, अपने किसी वकील को भेजते ही नहीं थे और इसके बारे में कहते थे कि एक महीने का समय दो, दो महीने का समय दो। सर, जो जजेज इंक्वायरी के लिए बैठे थे, उन का कहना है कि इस तरह अपने को छिपाकर रखना यह माना जाएगा कि आप तथ्यों से बचना चाहते हैं और दोष को स्वीकार करना चाहते हैं। महोदय, यहां पर बड़ी मार्मिक व्याख्या की गयी कि wishful misbehaviou की परिभाषा क्या है? मैं ऐसा समझता हूं और संविधान विशेषज्ञ इस बात को कहते हैं कि संविधान की धाराएं in letter and spirit, उन की मंशा और उस की भाषा - दोनों को जोड़कर पढ़ी जाती हैं। यदि संविधान में ऐसा लिखा गया है तो misbehaviour की जो मंशा है, उस मंशा पर जाने की हम को कोशिश करनी चाहिए। महोदय, हमारे क्षेत्र में एक वीडियो कंपनी का ऑफिस था। उस का दफ्तर shift हुआ और एक महीने तक कुल ढाई सौ रुपया उस ने अपनी जेब में रख लिया। उस को कंपनी के सी.डी.ओ. ने suspend कर दिया। उस ने हाई कोर्ट में याचिका दाखिल की तो हाई कोर्ट ने कहा कि तुम को इंचार्ज की हैसियत से उस पैसे को या तो सेफ में या बैंक में रखना चाहिए था। इस राशि को जेब में रखना अपवंचन है, अमानत में खयानत है और उस आदमी की नौकरी ढाई सौ रुपए के कारण चली गयी। महोदय, यहां तो मामला इतना बड़ा है। अभी मिश्रा जी ने कहा कि "वकील की हैसियत से।" लेकिन यह वकील की हैसियत से नहीं है, वकील की हैसियत से तो कोई केस नहीं हुआ। जब वह जज नियुक्त हुए तो उन के खिलाफ याचिका दायर हुई कि वह ट्रस्टी के रूप में इस पैसे को अपने खाते के अंदर लिए हुए हैं - जज रहते हुए और एक मामले में ट्रस्टी रहते हुए दोनों पलड़ों के ऊपर एक साथ थे। इसे misbehaviour के रूप में स्वीकार किया जाए या नहीं किया जाए?

महोदय, अभी एक मामला सुप्रीम कोर्ट के सामने आया। हिंदुस्तान की सरकार द्वारा एक व्यक्ति को हिंदुस्तान का मुख्य सतर्कता आयुक्त नियुक्त किया गया। उस को हटाने की कोई व्यवस्था नहीं थी। वह सुप्रीम कोर्ट में कहता रहा कि हम को हटाने की कोई व्यवस्था नहीं है। महोदय, मामला यह था कि एक राज्य के सचिव की हैसियत से पामोलिन का आयात करने पर उस के ऊपर कुछ आरोप लगे। उस की कुछ इंक्वायरी भी नहीं हुई, उस के तथ्य भी सामने नहीं आए, लेकिन सुप्रीम कोर्ट ने कहा कि जिस पद पर आप बैठे हैं, वह पद सब की समीक्षा के लिए है। इसलिए आप का पद किसी भी तरह के संदेह से परे होना चाहिए। आप पर आरोप सिद्ध हुए या नहीं हुए,

आप दागी थे, इसलिए इस पद पर रहने के हकदार नहीं हैं। महोदय, मैं ऐसा समझता हूं कि हाईकोर्ट के जज की पोस्ट किसी भी हालत में Chief Vigilance Commissioner से कम नहीं, उस से बड़ी हुआ करती है। ऐसी हालत में misbehaviour की एक तार्किक व्याख्या कर के उस की परिभाषा को बदलने का कोई मतलब नहीं। उस की मंशा पर हम को जाना चाहिए। महोदय, मंशा इस बात को बतलाती है कि जज का आचरण ऐसा हो जिस पर किसी तरह के संदेह की गुंजाइश न रहे। यदि अधिवक्ता के रूप में ही आप ने ऐसा किया तो आप की जज की नियुक्ति ही मैं समझता हूं गलत है।

महोदय, आप बार-बार घड़ी देख रहे हैं। मुझे बहुत सारी बातें कहनी थीं, एक बात यहां नेता विरोधी दल की ओर से बहुत गंभीर कही गयी। महोदय, पिछले कई वर्षों से मैं हाईकोर्ट/सुप्रीम कोर्ट के जजमेंट्स को पढ़ता हूं। पिछले कई वर्षों से सुप्रीम कोर्ट ने judicial verdict बहुत ही कम दिए वहीं administrative verdict बहुत से दिए हैं। अभी तीन दिन पहले उन्होंने कहा कि संविधान बड़ा है, संसद बड़ी नहीं है। तो हम जानना चाहते हैं कि संविधान ही यदि सर्वोच्च है, तो सुप्रीम कोर्ट उस से भी सर्वोच्च है?

सुप्रीम कोर्ट, हाई कोर्ट और संसद इन सबकी लक्ष्मण रेखा सुप्रीम कोर्ट ने ही 1964 में तय की थी। जब उत्तर प्रदेश का एक मामला आया - न्यायपालिका बनाम विधायिका, तो उसमें उन्होंने दोनों की लक्ष्मण रेखा को परिभाषित किया। मैं ऐसा समझता हूं कि विगत कई महीनों और कई वर्षों से हिंदुस्तान की जुडिशियरी उस लक्ष्मण रेखा का निरंतर उल्लंघन कर रही है और इस संबंध में सारी परिभाषाएं दी जा रही हैं कि जुडिशियरी सर्वश्रेष्ठ है तथा संसद और कार्यपालिका उसके बहुत नीचे हैं। सच्चाई यह है कि भारत का संविधान दर्ज़ करते समय हमारे संविधान निर्माताओं ने खुद लिखा है कि "हम, भारत के लोग, ... भारत के संविधान को अपने ऊपर आत्मार्पित करते हैं।" भारत के लोग सर्वोच्च हैं, इसमें कोई दो रायें नहीं हैं, लेकिन वे लोग 5 साल के लिए अपनी संप्रभुता को संसद सदस्य के रूप में हमें दे देते हैं, हमें सांसद के रूप में delegated power है। 5 साल के लिए जनता की संप्रभुता संसद में निहित हो जाती है, मेरे हिसाब से यह संसद की परिभाषा है।

सभापति जी, लोक सभा में 3 दिनों तक बड़ी जबर्दस्त बहस हुई थी - न्यायपालिका बनाम संसद, इस पर 3 दिनों की बहस हुई। अगर राज्य सभा में भी ऐसी बहस हो, तो मैं समझता हूं कि उसके कुछ सार्थक परिणाम निकल सकते हैं। इन्हीं शब्दों के साथ, मैं यह निवेदन करता हूं कि या तो आप इस impeachment को पास करिए, नहीं तो आज़ादी के बाद जो एक ऐसी धारा हमारे संविधान में है, जिसको हमारे संविधान निर्माताओं ने incorporate किया था, उस धारा को निकालकर फेंक दीजिए। इतने वर्ष बीतने के बाद भी इसका इस्तेमाल संसद ने आज तक नहीं किया है, यदि संसद इसका इस्तेमाल नहीं करती, तो इस धारा को संविधान से निकालकर फेंक दिया जाए, इसकी कोई जरूरत नहीं है। यदि यह धारा है, तो इसका एकाध बार इस्तेमाल करके हमको यह बताना चाहिए कि भारत की संसद, न्यायपालिका के भ्रष्टाचार को खत्म करने के लिए कटिबद्ध है, प्रतिबद्ध है। इन्हीं शब्दों के साथ मैं इस मोशन का समर्थन करता हूं।

SHRI D. RAJA (Tamil Nadu): Sir, I rise to support the Motion moved by my comrade, Shri Sitaram Yechury. Sir, it is a historic defining moment in the life of our Parliament. We do not come across impeachment motions to remove a judge quite often. The first impeachment motion was taken up in the Ninth Lok Sabha. The then Speaker, Shri Rabi Ray, admitted that impeachment motion against Justice Ramaswamy. How that impeachment motion fell through, my hon. colleague just now explained and I do not want to go into the details. This is the second impeachment motion. Both the motions are to impeach a sitting judge on the grounds of corruption.

Sir, right since the days of our struggle for Independence, the national leadership of the country has been stressing on the need for a judicial system based on probity and integrity. Sir, I would like to quote Mahatma Gandhi, the Father of the Nation, who led the non-cooperation movement, who asked people to violate laws even at that point of time. Mahatma Gandhi, in the year 1929 had said on the judge indictment, "Justice is practically unobtainable in the so-called course of justice in India." Then, Mahatma Gandhi goes on to stress on it in the year 1931. On 6th August, 1931, Mahatma Gandhi wrote, "What we must aim at is an incorruptible, impartial and able judiciary right from the bottom."

These are the words of Mahatma Gandhi. Now, we are discussing how to impeach, how to remove a judge. Yesterday, we heard Justice Sen. With due respect for his eloquence, I must point out the Justice himself admitted that he had mishandled the funds. He used the words, "mishandling of the funds. Inexperience of that person at that particular point of time, and money has no colour". These are the words he used while defending his case. He went on to point out, "Mr. K.G. Balakrishnan, the then Chief Justice acted as accuser, prosecutor and judge. If K.G. Balakrishnan can be let off, why not I?" That is how he posed the issue. Sir, money has no colour. Does he think corruption has some colour? Does he think corruption has some bias, some caste basis or religious basis? What does he mean? So, yesterday, the entire defence of Justice Sen was not convincing at all. In fact, it has thoroughly exposed him.

Sir, the Inquiry Committee appointed by you identified two charges. Charges number one, misappropriation. Charge number two, making false statements. They said, "Duly proved as set out in Part IV of the Report." It is duly proved as set out in Part IV of this Report. I do not know how my

colleague, Shri Satish Chandra Misra could not see through these findings of the Inquiry Committee. The Inquiry Committee consisted of Justice Sudershan Reddy, Justice Mukul Mudgal and Shri Fali S. Nariman, very eminent lawyer and we all adore him for his commitment and integrity. Sir, this is the problem.

Sir, I am not a lawyer like Shri Arun Jaitley or Shri Sudarsana Natchiappan or some others, but as a political activist, how I look at the issue. The judge, when he was an advocate or when he was a judge, he had misbehaved, misconducted himself, and it has been proved. There are evidences and he must frankly admit it. Instead of that, he is questioning the sovereignty of Parliament also by saying, "How Parliament can discuss a *sub judice* matter?" Sir, here, I must say what Pandit Jawaharlal Nehru once said, " No Supreme Court or Judiciary can stand in judgement over the sovereign will of Parliament representing the will of entire community." This is what Pandit Jawaharlal Nehru had said, Sir. So, I think, it is a clear case, and there is no need to further examining various facts; there is no need to further analyse various facts, evidences and this Parliament, this Rajya Sabha can come to a unanimous understanding to impeach Justice Sen and remove him. That will go a long way in the history; that will go a long way in the life of our Parliament. This Parliament is not a talking shop. This Parliament means commitment; this Parliament means sincere, dedicated work for the country in upholding the Constitution.

Sir, here, I would like to come to the other larger issue. The larger issue is, Shri Arun Jaitley has also spoken on this - the powers of the Executive, the Legislature and the Judiciary. How this will have to be seen? Sir, here, we understand there should be a balance. But the point here is, we do not have a National Judicial Commission. We have been asking the Government to come forward to set up a National Judicial Commission. Why do we demand a National Judicial Commission? Accountability and transparency should become the hallmarks of the process of appointment of judges to the High Courts and the Supreme Court.

This can be achieved only by providing for an independent authority which is accountable to the Parliament exercising the power of selection to appoint Judges to these courts. Whether the Government, at least, now is prepared to set up a Judicial Commission and when the whole nation is

agitated on the issue of corruption, I do not think the Government can delay on this issue further. Sir, if we have to draw lessons from some other countries I can refer to the Constitution of South Africa, how South Africa has evolved a mechanism to appoint Judges, even to remove Judges. I suggest to the Government, at least, you must be aware of the Constitution of South Africa which has a fair workable mechanism of appointing Judges, removing Judges. We can try such a mechanism. The point here is that we need at this point of time a Judicial Commission.

MR. CHAIRMAN: Please conclude.

SHRI D. RAJA: Sir, I am concluding. ...*(Interruptions)*... Sir, all Judges are not like Justice Kapadia. It is Justice Kapadia who said 'integrity is the only asset which I have got. Integrity is my asset.' I quote Justice Kapadia. All Justices cannot be Kapadias and are not Kapadias. That is why when the issue was discussed in the Constituent Assembly and later also, I quote what Sardar Patel had said. Sardar Patel...

MR. CHAIRMAN: Please conclude. ...*(Interruptions)*...

SHRI D. RAJA: Sir, I am concluding. ...*(Interruptions)*... I will conclude by only quoting Sardar Patel and Dr. Ambedkar. ...*(Interruptions)*... Sardar Patel in his letter on 8th December, 1947 addressed to the Governor-General of India regarding dealing with the procedure for filling up vacancies in High Courts to the following effect: "Purity of motives not the monopoly of the Chief Justice nor nepotism and jobbery the vices of politicians only." Sardar Patel wrote this in 1947, Sir.

MR. CHAIRMAN: Thank you, Mr. Raja.

SHRI D. RAJA: Then I quote Dr. Ambedkar. He also in the same way talked about, 'who are our Chief Justices: Chief Justice is a man with all the failings, all the sentiments and all the prejudices which we as common people have.' They are not super human beings. They come from the same society. Sir, that is why Thomas Jefferson once quoted, 'our judges are as honest as other men and not more so.'

MR. CHAIRMAN: Thank you very much.

SHRI D. RAJA: That is why we need a Judicial Commission. ...*(Interruptions)*... I am finishing, Sir. ...*(Interruptions)*... You have rightly asked because it was Karl Marx who said that every one should be equal and people should have their basic needs and no question of exploitation and no question of discrimination, no question of..

MR. CHAIRMAN: Thank you, Mr. Raja.

SHRI D. RAJA: This is what Karl Marx said, Sir. On the basis of this, I strongly support the motion moved by Shri Sitaram Yechury and this impeachment motion should be accepted by the entire House unanimously and we should see that Justice Sen is removed. That is my request. Thank you.

SHRI PAUL MANOJ PANDIAN (Tamil Nadu): Mr. Chairman, Sir, I thank you for giving me this opportunity to speak on this historic motion. Sir, since I have been allotted only four minutes, I would like to submit to you only four points. The first point is with regard to the admissibility of this motion which was questioned. Whether this motion can be taken up by this august House was the first query of Mr. Sen. Mr. Chairman, Sir, I would only invite your attention to rule 238 of our Rules of Procedure where it is mentioned about the Members' rights that while speaking a Member shall not refer to any matter of fact on which judicial decision is pending. Admittedly, there is no judicial decision pending with regard to the impeachment of justice Sen.

(MR. DEPUTY CHAIRMAN in the Chair)

Further they referred to the charge against another member. And finally clause 5 - due to paucity of time - 'reflect upon the conduct of persons in high authority, unless the discussion is based on a substantive motion drawn in proper terms.' Sir, explanation is also given, the words 'persons in high authority' mean persons whose conduct, in the opinion of the Chairman can only be discussed on a substantive motion drawn in proper terms under the Constitution or such other persons whose conduct in the opinion of the Chairman should be discussed on a substantive motion drawn in terms to be approved by him.' This is a substantive motion admitted by the Chairman and in terms of article 124 and 217 and in terms of the Judges Inquiry Act, 1968. Therefore, Sir, this august House is supreme to discuss a motion against Justice Sen irrespective of any judgment of any Division Bench or any court. That is my first submission, Sir.

My second submission, Sir, is that Mr. Sen was referring to the judgment of the Division Bench stating that he had been exonerated of the charges. Sir, I would only refer that the In-House Committee went into the allegations against Justice Sen. The Inquiry Committee which went into the allegations against Mr. Sen had examined five witnesses, had examined documents, had conducted a thorough inquiry and had conducted a trial. Mr. Sen did not offer to give any explanation before the Committees. Sir, it is the contention of Mr. Justice Sen that the principles that apply to an election petition must apply to his case. Sir, I would submit that the principle in the election petition with regard to corrupt practices when the initial evidence is established, a prima facie case is established by the petitioner, thereafter, the burden shifts on the other party who has to rebut the evidence. In the absence of rebuttal of evidence adverse inference has to be drawn. In this case since the guilt of Justice Sen during the inquiry, by adequate evidence, was established, it was Justice Sen who had to go personally, offer an explanation to get exonerated before the Committee which he has not done. Therefore, Sir, it cannot be a case that the Division Bench judgment will help him, support him. Even otherwise the Division Bench has not gone into the same facts, the same evidence and the same witnesses, and, therefore, there cannot be protection for Justice Sen. Sir, if the same facts, if the same evidence and the same documents are scrutinized and full trial is conducted by the Division Bench, then there can be a case stating that it was considered by the Division Bench.

My third point is, even in ordinary cases where Government servants are acquitted of criminal charges, courts have upheld judicial principles that the departmental proceedings will continue. Sir, on the same principles the misconduct has been established and now we are initiating action under the Judges Inquiry Act by virtue of article 124, clause 5, wherein the Parliament is empowered to make a law to make an inquiry with regard to the conduct of a judge. This is in pursuance of an Act of Parliament, pursuant to a Constitutional provision, Sir. Therefore, the action, despite the Division Bench Judgment, can be maintained against Justice Sen in accordance with this principle.

My fourth point would be that he has stated that ...*(Interruptions)*... He has stated that the order of the Division Bench had exonerated him and therefore, that must be taken into account. Sir, the only ground on which the Division Bench went into this whole issue was ground No. 8 which was referred to by the mother of Justice Sen. It had not gone into any other issue, Mr. Deputy Chairman, Sir.

Finally, Can a non-judicial body can decide this issue, which is settled by a Division Bench? Sir, the Parliament is supreme. The Constitution provides for the removal of a judge. The Constitution provides for the enactment of a law by way of Judges Inquiry Act. The entire proceedings have been gone into and endorsed by the In-House Committee, thereafter endorsed by the Judicial Inquiry Committee and all the facts have been clearly established by the Leader of the Opposition. Therefore, keeping in view the above legal propositions, I support the Motion moved by Mr. Yechury. I request that the Motion be passed unanimously.

SHRI H. K. DUA (Nominated): Mr. Deputy Chairman, Sir, I rise to support the Motion moved by Shri Sitaram Yechury, and very ably and clinically supported by Shri Arun Jaitley, Dr. Natchiappan and other legal luminaries. The House, for two days, has witnessed a unique debate where I find there is a cross-section of opponent views converging on one issue. This kind of consensus, which if available on many other issues of national concern, will be helpful. Sir, yesterday, it was a sad time, however, for the House to see a Judge standing in the dock before the House for doing what he should not have done. None of us here is drawing any pleasure to get an opportunity to punish a Judge for straying from the righteous path. I wish Justice Sen, now a respondent before the House almost an accused had resigned from his job as soon as it came to be established that he had indulged himself with public money for private gain. The Chief Justice of India had, after due deliberations with his colleagues, advised him that he, in his own interest, better sent in his papers and say good bye to the Bench. But Justice Sen, for reasons known to him, would not listen to a reasonable advice, even from the Chief Justice of India. If he had resigned, he would have saved this House the pain of impeaching a Judge. If this House decides to impeach Justice Sen, as it should, this will be the first of its kind for the Rajya Sabha. And, none of us, sitting here, is really enjoying the authority, to remove a Judge, given to Parliament under the Constitution. All of us believe that there should have been no need to use this authority, but we have to do it. None of us, sitting here, is keen to go through the experience that will set historic precedent for the future. I hope another opportunity of this kind does not arise. But the way our institutions are declining, although I am not very sure. The process for removal of a Judge itself by impeachment is, indeed, painful for the House. It is unpleasant. But, we have to carry this out. It is our duty to do so to save the Judiciary from someone

who has frittered away his right to sit on the august Bench of the Calcutta High Court. Justice Sen, yesterday, told us that he had committed no fault while being on the Bench and that the charges against him pertained to the period before he was appointed a Judge. Sir, the real question is that of the integrity of a Judge. And, integrity has no cut-off date. A judge is supposed to have integrity even to qualify for being appointed a Judge. Integrity cannot be acquired only when the oath of office is taken and the Judge sits on the Bench. That is the real question. And, Justice Sen has given no evidence that integrity has not been compromised by him before he was appointed.

I will come to this point later again. Why care was not exercised by the collegium of the Supremeny Court which selected him as a judge? This point was made by many Members, led by Shri Arun Jaitley and by Mr. Nachiappan also. Sir, the case for the removal of Justice Sen is absolutely sound and valid for impeachment. There were allegations which tended to suggest that Justice Sen had kept public money with himself and used it for private gain. He was advised by his friends at the Bar and the Bench that he better resign as a judge. Mr. Sen, would not listen. Mr. Deputy Chairman, Sir, May be, he thought that his conscience was clear. But, Sir, we all know, how flexible conscience has become these days. The elasticity of conscience of many people leads to greed and most often to untruth and the kind of complications which this House is sorting out today.

Mr. Deputy Chairman, Sir, despite the advice, he continued to serve on the Bench. He must have thought he could get away with it. That could be the reason. Otherwise, I don't see why any sensible person in that position would not take that advice. He would have known what later consequences could be. He was denied work, but, even then he would not take the message that he was needed no longer.

Sir, this House has taken up the issue after much thought and a great deal of care. We, in this House, don't want to interfere with the independence of the Judiciary. And I will be the last man who would suggest interference with anything that falls in the Judicial domain. It was the Chief Justice of India who wrote to the Prime Minister in the year 2008 seeking his intervention to initiate impeachment

proceedings against Mr. Sen, a sitting judge of the Calcutta High Court. The CJI gave detailed information about Justice Sen's misdoings or misconduct, or the word, 'misbehaviour' that is being used during the debate when he was appointed Receiver in the case called the Steel Authority of India *versus* the Shipping Corporation of India way back in 1993. The CJI also appointed an in-House committee of judges to inquire into the allegations and came to the conclusion that Justice Sen is not the kind of a judge who should adorn the Bench. Hence, the CJI's letter to the Prime Minister seeking Justice Sen's removal under article 124 (4) of the Constitution. The matter later fell in the lap of the Chairman of the Council of the States, which has assembled here today to decide Justice Sen's fate. Our Chairman is known for following the letter and spirit of law. He appointed a Committee comprising of Justice B. Sudershan Reddy of the Supreme Court, Justice Mukul Mudgal, Chief Justice of Punjab and Haryana High Court and Mr. Fali Nariman. They are all men of great integrity and calibre. Mr. Nariman, incidentally, sat on these benches where some of us are sitting now. The Committee has spent considerable time and effort and came to well thought out two conclusions: One, that Mr. Sen is duly proved guilty of misappropriation of large sums of money which he received as a Receiver appointed by the High Court of Calcutta. Two, that Justice Sen is duly proved guilty of making false statements by misrepresenting facts with regard to misappropriation of money before the Calcutta High Court. I won't go into the details or the background in which they have come to these conclusions. Legal luminaries in the House have already gone into these. So, I would not like to take more of time of House, but point out that no one is supposed to speak nothing but the truth to the court. Justice Sen did not choose this simple course either. I wouldn't go into the details of the Committee's Report. Other Members have already gone into it. The Committee was meticulous in its approach. It also gave enough opportunities to Justice Sen but he thought it below his dignity to personally explain to the Committee as to why he did what he should not have done.

Sir, this House needs only to go by the Report of Justice Sudershan Reddy, Justice Mudgal and Mr. Fali Nariman. There is no need for further investigation or cross examination of Justice Sen. Sir, yesterday, Justice Sen had about 100 minutes of opportunity to present his case, with which I was not fully convinced.

I would commend to the House the Motion before it that an Address be sent to President that Justice Sen be removed.

Having said this, I would like to draw the attention of the House to just one disturbing aspect of the case, and, Sir, this is very important although others have touched on this issue, this is indeed very important. And this House will have to take up again this question after disposing off this Motion of Impeachment. How did Justice Sen get elevated to the Bench of the Calcutta High Court while he, as a receiver, had the temerity to misappropriate large sums of money and also tell untruths to the court? His selection as a Judge of the High Court shows that a drastic review of the present system of selection of Judges by the collegium has become urgent. Sir, I hope this House will have an early opportunity to discuss the entire system of appointment of Judges to the higher Judiciary. The present system is totally unsatisfactory and unacceptable to the people. Sir, the way Judges are appointed by the collegium, if you talk privately to the people who practise law or people who have been Judges horrendous stories of the selection process come to be known. The Collegium consists of a few people which are said to be the seniormost Judges of the Supreme Court. We often hear that if there are 7 posts, they will divide two each and possibly Chief Justice will get one extra. I am told that influences are brought to prevail upon them, bargaining takes place and much else. There have been allegations of favouritism also. One hears all that. I won't go more on this except to ask, do we know or anybody in the country knows what are the criteria for the selection of Judges. The Delhi High Court came with a Judgment laying down criteria for nursery school admissions. That was some years ago. Delhi University has now the criteria where you require 100 per cent marks for getting admission in some colleges. Do our Judges ever get 100 per cent marks in the selection of judges to the Supreme Court and High Courts? I would like to ask: Have criteria been spelt out like the criteria for nursery school children in Delhi?

Sir, the people have the right to know what makes a good Judge. Often in the districts, in the State Capital where most High Courts are located, the people are disappointed with the state of the Judiciary at this time. They are also disappointed with Parliament; they are also disappointed with the Executive, but *Kachahri* is the last hope of the people. If it suffers the loss of faith, if the people stop believing the *Kachahri,* then, I am sure, the country suffers a lot.

With that I end my speech with a plea that this Motion should be passed.

DR. BHARATKUMAR RAUT (Maharashtra): Thank you, Sir, for having given me this opportunity.

Today, Sir, is a historic day in the history of this House. It is because when this House is voting for impeaching a sitting Judge of the High Court, for the first time, outside this House and in the nation, the people have awakened to the struggle to eradicate corruption from public life. So, this is definitely a historic day.

Sir, I am morally bound to support the Impeachment Motion because I am one of those 58 signatories who have demanded the impeachment. Therefore, I will be supporting it. However, since I am not a legal luminary, I have not studied or practised law, I am a bit ignorant. I only fear that often in the legal and intellectual battles, the first casualty is of the truth. So, I am a bit skeptical.

Yesterday, let me confess, I was a bit confused after hearing the emotional speech by Justice Sen and I was wondering whether we were living up to our responsibility of being the custodians of the faith of this nation or whether we were just making an innocent man a scapegoat. But, after hearing the speeches of the hon. Leader of Opposition and later speakers, I am convinced that Justice Sen seems to be guilty and needs to be impeached. So, I support the motion.

However, I would like to bring it to your notice, Sir, that some questions still remain unanswered and I would request, rather I would pray, for those who speak later, particularly, Shri Sitaram Yechuryji, to reply to these queries.

Sir, Justice Sen said that he was exonerated by the Division Bench. I do not know how it was. But the Division Bench has exonerated him. Is the CJI empowered to question the validity of the Division Bench of a High Court when there was no appeal pending before the Supreme Court? Can he take action *suo motu* and question the verdict given by a Division Bench? I would like to know that.

Then, a point which has also been touched upon by some hon. Members, is that Justice Sen - I am taking it with a pinch of salt but still I am mentioning it - claimed that the then CJI had called him to his residence and in the presence of two, other Judges offered him VRS and a good posting. Is that true? Sir, it is the responsibility of this House now to either prove the guilt of Justice Sen, or, if

there is some iota of truth in what he has said, to find out whether the CJI is empowered, morally or legally, to offer VRS to a person who, in CJI's opinion was guilty of corruption. Can you offer the Judge a lucrative position in an informal chat? We need to know; the nation needs to know and somebody has to give the answers. Otherwise, we should institute a probe into this aspect. But I don't know by which method we can do it.

Sir, it means a corrupt Judge can be rehabilitated if he resigns from his position. Is that the law? I would like to know if any law permits that.

The third thing, Sir, is about what Justice Sen talked about the wrong account. He explained in detail about how he was being hanged because of a wrong account and the hon. Leader of Opposition has torn into his arguments. Now, the question is, if there was a wrong account, it amounts to a bogus account, a take account, a benami account. Do our banks allow the operation of such *benami* accounts? If a bank account is to be opened by a man like me, I need my photograph, my ration card and then only I can open an account. How can one Soumitra Sen with a different father's name open an account and operate? Has any committee checked with the bank officers as to how they open such an account? If this fraud could be unearthed, there could be thousands and lakhs of such *benami* accounts which are being operated all over the country. What are we going to do about it?

Fourthly, Justice Sen said that he had made payments to the workes. I go by his word that he has made payments to the workers. Is it not our responsibility to ensure and to bring the truth to the fore that he had not made that payment to the workers? If he had made payments to the workers, there must be cheques, there must be receipts. Have you traced those people to whom he claims to have made the payments?

How can we say that he has not made the payment, or, how can we believe that he has made the payment? There is a nexus which has to be proved. We cannot leave these loose ends left when we pass the impeachment. The last point which I would like to bring to your notice is that, as Mr. H.K. Duaji and others have also mentioned, he was a practising advocate when this crime was

committed. After that, he is made a judge. Judge-making is a process which goes on for some months. When I was a working journalist, at that time I was made a special executive magistrate by the Government. The job of a special executive magistrate is to sign true copies of secondary school certificates and birth certificates. Even then Police came to my house to verify my validity, my address and my पूरा चरित्र। You appoint a person as a judge who is guilty of fraud, who is guilty of corruption and who is taking away workers' money. If you appoint him as a judge, it is a grave injustice to the people of India because a sitting High Court Judge plays with my life and death. He has the power to hang me; he has the power to send me to life imprisonment. If a guilty man, sitting as a judge, exercises this power, where do I go? As a common citizen, I don't have the right to come to you and impeach the judge. How do I do? Sir, this entire process of appointment of judges through collegium, I think, needs to have a relook. किसी का मामा, किसी का चाचा या किसी का बेटा they should not become judges. A judge should be made strictly on merit. Corruption in the process of judge making is rampant.

MR. DEPUTY CHAIRMAN: Please conclude. ...*(Interruptions)*...

DR. BHARATKUMAR RAUT: Sir, I am supporting the Motion with reservation that unless we come to the final conclusion and bring the entire truth to the nation, we cannot hang only one person. By hanging one person, we cannot cleanse the system. To cleanse the system, sending one person out is not enough. This process, if it has started now, should go to its logical end. Thank you.

SHRI KUMAR DEEPAK DAS (Assam): Sir, I am here to support the Motion moved by hon. Member, Shri Sitaram Yechury. In fact, I am one of the Members who signed this Motion for the impeachment of Justice Soumitra Sen for his involvement in financial misappropriation before he was appointed as judge. We want a fearless, independent and non-controversial judiciary. It should be incorruptible and impartial. Sir, fair image of the judiciary is a must. Sir, we have taken this step as essential in the interest of the republic to strengthen the judiciary as well as to stop the corruption in the higher places. Sir, a member of the higher judiciary can be removed from his service only through the process of impeachment under Article 124(4) on the ground of proven misbehaviour. A three-

members Committee was constituted by the ho'n. Chairman to look into the complaint and determine whether it is a case fit for initiating the process of impeachment. The Inquiry Committee after examining all the pros and cons came to conclusion that Justice Soumitra Sen is guilty of misbehaviour under Article 124(4) read with proviso (b) of Article 217(1) of the Constitution of India.

Sir, before this impeachment motion, we have the example of impeachment of Justice V. Ramaswamy who faced impeachment in 1991 in the Lok Sabha. That attempt failed due to the absence of a political consensus. We must agree that dismissal of a Judge is too serious an issue to be determined by political consideration. Again, we must have to examine whether the Parliament can discuss the correctness of any judicial order, and if the Parliament sits on judgment, would it create a constitutional crisis? Sir, as there is no other way to punish errant Judges, the present Government is bringing a new law to punish errant Judges. We are eagerly waiting for such steps in this direction. But, the big question has been raised by some hon. Members that how Justice Soumitra Sen was selected a Judge. Yesterday, Justice Sen, in his defence, spoke for long. Sir, there is an urgent need of more transparent procedure on what should be the provisions for selecting a Judge. Sir, I would cite an example. In Guwahati High Court, in the years of 90s when I joined as a young lawyer, I found that one Judge, *.

MR. DEPUTY CHAIRMAN: Don't take the names.

SHRI KUMAR DEEPAK DAS: He was appointed as a Judge and he had to go for oath-taking ceremony. But, in the meantime, the Bar Association of Guwahati High Court came to know that this person, who was selected as the Justice of Guwahati High Court, did not have the qualification that was required to become a Judge. In the High Court, one of our senior colleagues filed a *quo warranto* petition. At that time, Justice Sangma had passed an order and stayed the matter and that was appealed in the Supreme Court. That was held right. But, I want to say that the transparency in the procedure of selection of Judges has to be further examined. We have to look into the provisions for selecting a Judge. I just want to give an example of an hon. High Court Judge who has recently given an opinion that 25 per cent of the superior Judges are corrupt. This is horrible. So, we need a transparent procedure and a Judicial Commission on this so that all these factors can be examined

*Not recorded.

and appropriate action can be taken. With these few words, I again support this motion of impeachment and I thank you for giving me time to give my observations.

श्री राजनीति प्रसाद (बिहार): सर, सब से पहले तो मैं श्री सीताराम येचुरी जी को धन्यवाद देना चाहता हूं जिन्होंने इस ऐतिहासिक पृष्ठभूमि में हम लोगों की गवाही दर्ज़ करायी।

सर, यह केवल impeachment of a judge का मामला नहीं है बल्कि हमारा ध्यान आज पूरे देश में व्याप्त Judiciary की हालत की ओर खींचता है। सर, मैं इस impeachment का समर्थन करता हूं। इस impeachment के बारे में मुझे यही कहना है कि अगर आप सोचते हैं कि आज की Judiciary 50 साल पहले वाली Judiciary है, तो वह गलत होगा। क्योंकि अगर हम किसी कोर्ट में जाते हैं, बाहर के कोर्ट में जाते हैं, तो सबसे पहले यह सोचते हैं कि कौन सा आदमी पहचान वाला है। हम यह नहीं पूछते हैं कि कौन जज है, बल्कि यह पूछते हैं कि कौन सा वकील पहचान वाला है और उसी को हम लेते हैं। यह गजब बात है कि हम लोग जज को नहीं देखते हैं, बल्कि वकील को देखते हैं कि वह किस जज का favourable आदमी है और कौन क्या करने वाला है? हमारे हिंदुस्तान के कई जज हैं, जिनके बारे में कहा जाता है कि यहां किसी particular lawyer की चलती है। मैं किसी जज का नाम नहीं लेना चाहता हूं, लेकिन यह चलता है, क्योंकि अगर उसके दादा भी जज हैं, तो वह पूरी lineage में आता है। दादा, बेटा, पोता, नाती, नातिन - इन सभी को जज बनाने का काम होता है। यह देश कैसे चलेगा? इसलिए इसके बारे में हमें विचार करना चाहिए। आदमी का जो बुरा कर्म होता है और अच्छा कर्म होता है, वह साए की तरह उसके साथ चलता है। इसलिए जजों को किसी भी तरह से doubtful नहीं होना चाहिए। मैं यह कहना चाहता हूं कि - virtues are solemn to life but vices are the way of life. हम लोग यह कहते जरूर हैं, लेकिन करते नहीं।

उपसभापति जी, जजों को कैसा होना चाहिए और कैसा नहीं, आप इसके बारे में जरूर विचार करिए। आप सोच रहे हैं कि जज लोग बिल्कुल छनकर आते हैं, लेकिन ऐसा बिल्कुल नहीं है। यहां कई लोगों ने कहा है कि 2003 में जो जज बहाल हुए - सेन साहब, इन पर 1984 में ही मामला दर्ज हो गया था, वहां से defalcation चल रहा था, क्या आपने इसको देखा नहीं, आपने उसको महसूस नहीं किया? जब एक खलासी का appointment होता है, तो पुलिस का verification होता है कि यह चोर तो नहीं है, बेईमान तो नहीं है, बदमाश तो नहीं है, इस पर 107 का मुकदमा चला या नहीं चला, इस पर 307 का मुकदमा चला या नहीं चला? आप एक जज को बहाल कर रहे हैं, जिनके बारे में पहले से एक केस pending है, उनके defalcation का केस pending है और आपने इसे देखा नहीं, उनको बहाल कर दिया। जब वे बहाल हो गए, तो आपने उनसे कहा कि आपने 1984 में defalcation किया और आप पैसा खा गए। यह पैसा खाने वाली बात तो पहले भी थी। जब वे 2003 में जज appoint हुए, तो आपने इन चीजों को क्यों नहीं देखा?

श्री तारिक अनवर (महाराष्ट्र): आप किससे बोल रहे हैं?

श्री राजनीति प्रसाद: मैं चेयर को address कर रहा हूं, लेकिन आदमी इधर-उधर भी देखेगा। मैं कहता हूं कि अब जुडिशियल कमीशन बनाने का वक्त आ गया है। जब एक चपरासी का appointment होता है, तो आप इंटरव्यू लेते हैं, उसको इंटरव्यू के लिए बुलाते हैं। इसलिए मैं कहना चाहता हूं कि आप जुडिशियल कमीशन बनाइए, इससे अच्छे जज आएंगे और उनका इंटरव्यू होगा। अगर आप जुडिशियल कमीशन नहीं बनाएंगे, तो फिर वही होगा कि किसका बेटा जज बना है, किसका बच्चा जज बनकर आया है, वही चलेगा।

उपसभापति जी, 1993 तक एक नियम था कि जजों की नियुक्ति में चीफ-मिनिस्टर का भी consent लिया जाता था, लेकिन अब वह व्यवस्था खत्म हो गई, collegium में चली गई, अब consent वगैरह कुछ नहीं होता। अब सीधे यह देखा जाता है कि वह आदमी कौन से खानदान का है? अगर उसका खानदान ठीक है, तो चलिए, जरा इसका bio-data निकालिए। उस bio-data से अगर यह पता चलता है कि इनके परिवार में पहले कभी कोई जज नहीं था, तो वह आदमी कभी जज नहीं बन सकता है। कभी-कभी exceptionally कोई आदमी जज बन जाता है, दिखाने के लिए बना दिया जाता है। इसलिए मैं कहना चाहता हूं कि हमें इस सिस्टम को बदलना पड़ेगा। हम अगर सिस्टम को नहीं बदलेंगे, तो यह चलता रहेगा और जुडिशियरी में करप्शन prevail करता रहेगा। इसलिए मैं चाहता हूं कि आज हम लोग इस बात पर विचार करें कि कैसे हमारा जुडिशियल सिस्टम ठीक होगा? इन्हीं शब्दों के साथ मैं आपको धन्यवाद देता हूं।

SHRI RAM JETHMALANI (Rajasthan): Mr. Deputy Chairman, Sir, a patient two days' wait is justified when today we are on the point of reversing a somewhat unpleasant precedent that we set up nearly 11 years ago. I can see that the House is in almost full attendance and I can see that the Motion will be carried by the requisite majority required by the Constitution. I fully support it. But, Sir, instinctively, whenever I see a dissenter, I start respecting him. Ultimately, it is dissent which keeps democracy going, and I found a great dissenter right here in my neighbourhood. Sir, I admire his bravery; I admire the use of his legal talent. But I wish he had reserved these for a better occasion. Sir, if he had cared only to go through the report of these three Judges, he would have realised that they knew as much law as we all know. They perhaps knew better. They did not rest content with finding this gentleman. I will call him Respondent. I refuse to call him learned Judge as some people have called him. This Respondent is not convicted because he misbehaved as a Receiver. Of course, his misbehaviour started when he was a Receiver. The first misbehaviour was that he has produced

before you this whole document of an explanation of his conduct. Read this document. Not at one place does he say that I am a trustee, that I was a trustee of the funds which came into my possession. Sir, every child knows, and I don't wish to take you through authorities, but here is a small little line from a famous dictionary, Black's Law Dictionary, which everybody knows about, "A Receiver is a fiduciary of the court". Means, he is a trustee of the court. He is a trustee of the court; he is a trustee of the parties and he is also a trustee of the property or the fund entrusted to him. This property came into his hands as a trustee. But, Sir, he ceased to be a Receiver when he became a Judge. His Receivership came to an end but the trust which was attached to the property which was in his hands did not come to an end until the trust became extinguished and the property got purged of the character of a trust property. If he has realised that I have now ceased to be a Receiver, it was his duty to walk up to the court and say, "I am now becoming a Judge. Please relieve me of this trust property which has been in my hands and here is that property. Take charge of it". Sir, he did not do this. He thought that when he has become a Judge, all people surrounding him will turn into sycophants and will forget the rupees fifty two lakhs which he had pocketed. But, unfortunately for him, there was a fellow Judge in the High Court itself who did not become a sycophant and he carried on an investigation into the trust property which was in his hands. Sir, look at this explanation. At page 31, he propounds a doctrine and I want you to hear this doctrine. "It is judicially settled that till such time I, as a Receiver, am not directed to return the sum lying with me, I cannot on my own return the same". In other words, he is telling you to accept the proposition that even though he ceased to be a Receiver and it was his duty to go and give an account of the property which he received as a Receiver to the court which appointed him a Receiver, he is not bound to do anything of that kind until he is asked to do so.

In other words, the trust property becomes personal property and I can deal with it as I like. Sir, this receiver lawyer should have known that as a trustee he is bound by the provisions of the Indian Trust Act. The Indian Trust Act has an express provision, Section 20, which deals with investments. A trustee can invest trust property in seven specified investments which are permitted under that Section and if you invest in any unauthorized deal, that itself renders you liable for a prosecution for criminal breach of trust. The law does not permit a trustee because the law says, "in these seven ones and no other" - so clear is the law - and yet he went and invested this property in

a private financial business which is not a Government authorized entity in which he could have put this money. He claims that that entity became insolvent, went into liquidation, and he thought that everybody would forget about that money.

Sir, now for Mr. Mishra's bravery. If you had read this Report and if you had come up to page 22 - because I don't blame anybody for losing patience after you read the 22nd page - at page 22, the Report starts dealing with his misbehaviour as a judge. I am reading the last paragraph on page 22. It says, "All that is stated above took place during the period when Sen, the receiver, was an advocate. The assessment of the Inquiry Committee is that as an advocate and as an officer of the High Court of Calcutta, Sen's conduct was wrongful and not expected of an advocate. But his conduct in relation to matters concerning the moneys received during his receivership after he was appointed a judge was deplorable, in no way befitting a High Court judge". From here starts their dealing with this misbehaviour as a judge of the High Court. I regret to say that if there was a more vigilant method of appointment of judges, this man did not deserve to be appointed, but having been appointed, he has no business to stay as a judge for even one day. And this House will be committing a hara-kiri of its judicial functions, if you don't rise to the occasion and see that not only this judge goes, but other judges who similarly misbehave do not occupy judicial offices for a day longer.

Sir, there was a reference to his eloquence. Eloquence is, doubtless, a quality which people should possess. I must tell you that I have never heard Shri Mohan Singh speak, but today I was so impressed while I was hearing your Hindi eloquence, I said, I hope before I die, I will one day be able to deliver a speech like you. But, Sir, eloquence has nothing to do with moral sense; eloquence has nothing to do with the quickened conscience. Eloquence is often the property of the biggest cheats and charlatans. After all, unless you know this glib talking art, you will not be able to cheat people and it is not a matter of surprise that today the glib talkers are at the top of the world and people who can't speak are not.

This gentleman gave a demonstration of his eloquent deception. / But why did he not appear before those three Judges which were inquiring into his conduct? Because he is afraid of answering questions. I wanted to ask questions while he stood there. In three questions I would have demolished his eloquence and he would have faltered, he would have fallen down here right in this House and would not have been able to go back.

You can speak as much untruth as you like so long as there is no risk of interrogation and cross-examination. That is why, in the court of law, we do not believe a witness who has not submitted himself to cross-examination. Examination, in itself, is useless unless it has survived the filter of cross-examination, and, cross-examination by people who would know how to cross-examine. Before every judicial authority where he could be questioned, he did not get up and answer. To those three Judges, who were holding an inquiry, when they called him, he said, "I am pleading the Fifth Amendment." Fifth Amendment is not meant for crooks like this. Fifth Amendment is meant for illiterate accused who, by answering questions, might implicate themselves in offences which they have not committed. That, of course, is the origin of the rule. Now, Fifth Amendment is a Constitutional right. But that right is available in a prosecution for a criminal offence. This Judge was not being prosecuted for a criminal offence. He was being prosecuted for his ability and for his qualifications of being a judge and continuing to remain a judge of the High Court. He is not going to be sentenced to imprisonment. So, Sir, don't be impressed by the kind of eloquence. He becomes eloquent wherever he cannot be questioned.

The next question is that he has paid Rs.52 lakhs. He paid that amount of Rs.52 lakhs, while that single judge caught hold of him and asked, "Where is that money which you got as receiver? You have not given it." So, he paid that money. Sir, my fellow Members in this House tell me outside, "The man has paid Rs.52 lakhs. So, why not let him go?" Please understand what he got by paying those Rs.52 lakhs at that late stage! He should thank his stars for that. But he is an ungrateful man. He eats and gobbles up the hand which feeds him. These brother judges, who, unfortunately, continue to practice some kind of trade unionism to save their brother judges, have saved him from being prosecuted and punished for a serious offence of criminal breach of trust, punishable under Section 409 of the Indian Penal Code, where the maximum punishment is life imprisonment and imprisonment which may extend to ten years. But, by paying off that money which he had pocketed, - though, of course, I am sure, his poor mother made some contribution to that money - he has earned his freedom from jail. And, I assure you that if he had been prosecuted, he would have been in jail for, at least, five or ten years. He has earned that freedom by that money.

Therefore, please do not entertain any sympathy for this man, that this man has paid Rs.52 lakhs, and we should let him go. This is not settlement of a civil dispute. He was guilty of a non-compoundable offence under which you can pay millions and millions but you cannot compound that offence. It is only an extenuating circumstance on the question of punishment. But that extenuation value he has already got out of that money because he has escaped the whole prosecution under Section 409, and the ignominy which he would have gone through, which his family would have gone through, as a result of prosecution, and, ultimately, appealing to the Court to give him a lighter sentence, because he has paid off. So, I would like to tell my friends that this is a case in which we are dealing with a judge who ought not to have been made a judge, if there were better methods of appointment, and who, fortunately, has been caught as a result of another vigilant judge. He talks of the Division Bench. If a single Judge had no jurisdiction to go into matters in which he went into, what was the Division Bench doing? The Division Bench merely said, "All right, you have paid this money." Therefore, again, out of that true trade unionism and a little sense of mercy, they said, "We will remove that remark which the single Judge has made. We will expunge that remark." That judgement was a bad judgement, and that judgement is a judgement which was, certainly, considered by the Chief Justice to whom a complaint went from the Chief Justice of the Calcutta High Court.

Sir, that Chief Justice of India may be somewhat controversial, but so far as this Judge is concerned, this Chief Justice helped him. He gave him an extra hearing. He gave him a hearing in his house. He listened to him and then he said, 'I would give you an extra-Constitutional opportunity to establish your innocence and gave him that in-House Committee of Judges who sat and listened to this man and said that you seem to be a hypocrite'. You don't give him any mercy, and it says 'You face the consequences of the conduct in which you have indulged.'

So, Sir, this is not a matter in which the House can take a lenient view. Let us settle a good precedent today so that Judges who are of the same mould of mind as this Judge realize that the Parliament of this country will rise to the occasion and not do things which we have done in the past. Of course, this is not an occasion to enter into a debate about the appointment of an extra-judicial commission; we may do that some other time. But today, I hope that even Mr. Misra would withdraw his dissent and the decision shall be unanimous. Thank you.

SHRI RAVI SHANKAR PRASAD: Sir, I am extremely grateful to you for giving me this limited time. I have to make very few points.

(MR. CHAIRMAN in the Chair)

What is Justice Soumitra Sen's conduct as a Judge? He became the Receiver in the 80s; got the sale proceeds in the early 90s. He became the Judge in December, 2003. The first thing that was required to do was to submit to the court that 'I do not want to be named the Receiver any further'. He did not do so. For the whole of 2004 and for the whole of 2005, he did not submit any account. When the Single Judge issued him a show cause notice, he did not reply. The notice was given thrice. Most importantly, Sir, when a final order was passed asking him to pay Rs.33 lakhs with an interest of Rs.55 lakhs, he went and prayed for more time. He made a part-payment.

A question has been asked about the Division Bench. The Division Bench relies upon his affidavit but in the inquiry conducted by your committee it has been found that it was a case of misrepresentation. He said that he had invested in Lynx India Limited but that was not a fact. He did not invest this received amount of the Receiver. It is a case of misconduct as a lawyer; it is a case of continued misconduct and misrepresentation as a Judge.

Therefore, Sir, I request that this impeachment has to succeed.

I have to make only one more point at the end. What is the authority of a Judge? Is it the source of law? Is it the power of contempt? Or, is it something more? Sir, we have seen Additional District Judges giving capital punishment and, after their retirements, moving around in their mohallas, with all the mafiosi whom they had awarded punishments never dared to challenge them. We have rarely heard a District Judge or a retired Additional District Judge ever getting threatened or any revenge being taken against them by those criminals who had been given conviction by them. Why is it so? It is the moral authority of a Judge. This is a great tribute to our Judiciary and our rule of law that the moral authority of a Judge is the most important authority and, for that, integrity is very important. If that integrity is found to be wavering, it is time to take action.

I will conclude, Sir, with what the hon. Leader of the Opposition has stated. There is a need for a lot of improvement in judicial appointments. This whole case of appointments by the collegium is a

kind of constitutional appropriation by the judges from the Executive and the Constitution. This is not permissible. This needs to change, Sir.

There is one thing more which is very important in the present context. Yes, judges' activism in probity, in the fight against corruption is okay, but all over the country we see that judges are taking away power by appointing committees - MCD should work like this; this committee should work like this. Sorry, Me Lords, this is not your function. May be, the authority is not functioning properly, but for that you are not the authority. Let the democratic process, the rule of the law and parliamentary accountability set right the course. That is important.

With these words, I fully support the Motion which Mr. Yechury has moved. Thank you, Sir.

SHRI SITARAM YECHURY: Mr. Chairman, Sir, we are reaching conclusion of a historic debate on the Motions that I had moved which is on the brink of creating history, not only in the history of Parliament but, I think, also in the history of our democracy. As I said at the outset, Sir, I had moved these Motions, not as an indictment or a reflection of our opinion of the Judiciary as a whole, but I had moved these Motions in order to strengthen the independence of the Judiciary, in order to establish the integrity of the Judiciary which was getting besmirched by the acts of one particular individual and, while moving these Motions, I had said that we are doing this with no jubilation or elation, neither vindictiveness nor vendetta, but we are invoking legitimate Constitutional provisions to ensure that the sanctity of our Constitution is maintained and the supremacy or the centrality of our Constitution, which is the sovereignty of the people, is established through their elected representatives, that is the Parliament. In doing so, I think, we have today, in a sense, also reflected the general mood that is there in the country. We have seen the waves of protests against corruption at high places. We have seen the concern and the actual disgust that many in our country are reflecting in their own ways against this sort of corruption; and, in the midst of that, the Parliament rising to the occasion and saying that we will invoke our Constitution, we will invoke the supremacy of the Parliament in order to ensure that corruption in high places will be checked and when anything wrong is brought before us, we will act to correct it. That, I think, is a very important element today

to convey to the country and our people - the will and resolve of this House in tackling corruption at high places. I think, this is something the debate has established. That is why, Sir, I am truly impressed with the richness of the debate and this only further strengthens my own confidence that when the occasion demands, this august House has risen to the occasion, and has risen to the occasion in a splendid manner with no acrimony or personal attacks. We have discussed an issue as serious as this and on the merits of it; it is a matter to note that we have the Leader of the House, the hon. Prime Minister, sitting through the entire debate; we had the hon. Leader of the Opposition not only being present but also contributing richly to the content of this debate which was shared by all, cutting across the political-lines. I think, the richness of the debate also naturally transcended the limited purpose of the Motions. It is only natural, Sir. It naturally transcended the barriers of these Motions in talking of the separation of powers between the Legislature, the Executive and the Judiciary. It talked of the issues of separation of these powers, what should be the role of the Judiciary, how the appointments should be done and I am very glad that these issues have been brought into public domain and in the discussions of the Parliament so that in the coming days we should address them in all seriousness and, if time permits, I will return to that shortly.

But, Sir, there have been some questions that have been raised. Notably, my distinguished friend and colleague, Shri Satish Chandra Misra, who of course told me personally and he apologised for saying that he opposed the Motions. I said, "What is the debate if there were no dissent?" Like Ram had said, I must thank Shri Ram Jethmalani; I must dare say- Sir, I do not want to use this - but who else will come to the defense of Sita Ram but Ram? In that sense, he has made my job much easier by taking up some of these matters. But, Sir, an important question has been raised by Shri Misra and also by my distinguished colleagues, Shri Bharat Singh Raut and others, on the question of the word and the concept of misbehaviour. Now, the question of what was the role of Shri Soumitra Sen after he became a judge? That has been answered by Shri Jethmalani and I do not want to repeat it.

And, Shri Ravi Shankar Prasad has answered some of the other issues. I do not want to repeat only for the sake of time, and also respecting the reminding that Mr. Ahluwalia has done about the Iftar and the timing of it, I don't want to go into all those aspects of it. But there is the word

'misbehaviour'. Sir, the Inquiry Committee that you had established actually goes into the genealogy of this particular word, which due to paucity of time, I did not read out at the time of introducing the Motions, but I will read out now. It is a short passage. It says, I quote, "The word 'misbehaviour' in the context of the judges of the High Courts in India was first introduced in proviso (b) to Section 202 of the Government of India Act, 1935." Under the 1935 Act, it was initially the Privy Council and later the Federal Court of India that had to report to India's Governor General when charges were made of misbehaviour against a judge of a High Court. In the Report of the Federal Court in respect of charges made against Justice S.P. Sinha, a judge of the High Court of Allahabad, one of the charges made by the Governor General against the judge were, "That Justice S.P. Sinha has been guilty of conduct outside the court, which is unworthy of and unbecoming of the holder of such a high office," which was then particularized. Since this charge was not substantiated against the Judge by evidence, it was held to have been not established. But the charge as they framed has tersely but correctly described the scope and ambit of the word 'misbehaviour', namely, guilty of such conduct whether inside or outside the court, i.e., "Unworthy and unbecoming of the holder of such a high office." The same word 'misbehaviour' now occurs in the Constitution of India in article 124(4) when read in context with proviso (b) to article 217(1). These provisions state that a judge of the High Court shall not be removed from his office except on the grounds of proved misbehaviour. The prefix 'proved', only means proved to the satisfaction of the requisite majority of the appropriate House of the Parliament, if so recommended by the Inquiry Committee. The words 'proved misbehaviour' in article 124 have not been defined. Advisedly so because the phrase 'proved misbehaviour' means such behaviour which, when proved, is not befitting of a judge of the High Court."

Sir, the entire discussion we have had in the last two days here has only proved that there is a misbehaviour on the part of Shri Soumitra Sen. And since this is now being proved in my opinion and contention, which we will decide upon through a vote subsequently, that this has been proved in a House of Parliament on the basis of this discussion that we have had, after giving all the time

required, in fact, we extended the time required for Justice Soumitra Sen to make his defence, if after that we come to that conclusion, Sir, that is the meaning of proved misbehaviour. And that proving we have to do. Are we convinced about that proving? That is what we have to stand up to, and that is what we have to do, Sir, and that is the issue that is there. But with regard to the other thing, Mr. Jethmalani answered it, about the role of Mr. Soumitra Sen after he became a judge, and, in fact, he just quoted the introductory paragraph, but if you just go through the Inquiry Committee Report, Sir, there are, at least, four major sections and, at least, seven sub-sections where the Inquiry Committee has established, after becoming a judge, the misbehaviour of Mr. Soumitra Sen. This is all there on record from pages 22 to 26, and I do not want to take time reading them out, and it is all there on record, and as part of the evidence that we have. So, today, it is not a question of our passing judgement or discussing about Mr. Soumitra Sen as an advocate and not as a judge. And, also, as I said, when I was moving the Motion, it is no longer tenable to say that these charges were made against Mr. Soumitra Sen before he became a judge, therefore, the Judges Inquiry Act does not apply to him since it was not when he was a judge. That has also been established under law, that it is not the question of what is established on the issue of misbehaviour that I have just quoted to you; it is not a question of when you are a judge or when you are not; it is not a question whether you are doing it in the court or you are doing it outside. But the question is whether your behaviour will cast aspersions not only on your character and integrity but the character and integrity of the entire Judiciary.

You are liable to be drawn under this section. Mr. Bharatkumar Raut has also raised the issue of the Division Bench. Mr. Ravi Shankar Prasad has referred to it. But, let me just take up this matter on behalf of what the Inquiry Committee has said. Mr. Jethmalani also answered it that and, of course, Mr. Arun Jaitley, answered it in the morning. We also exposed that and I am not repeating that deliberately. When Mr. Soumitra Sen also made a lot of false and misleading statements here with - claims - authenticated documents, I would want him to authenticate and place the same before the House and make them the property of the House. I will come as to why I am saying this subsequently before I conclude this reply. But, I would only request the hon. Leader of the Opposition to do so.

Sir, this what the Inquiry Committee has said on the Division Bench. It says, "The observation in the judgment dated 25th September, 2007, of the Division Bench of the Calcutta High Court to the

effect that there was no misappropriation of Receiver funds by Justice Soumitra Sen was, after considering the uncontested Affidavit filed on his behalf by his mother which categorically asserted that the entire sum received by him from the sale of goods i.e., Rs. 33,22,800 was invested in M/s Lynx India Limited and that the company has gone into liquidation a couple of years later. This statement, along with further misleading and false statements, in Ground 13 of the Memorandum of Appeal that they have appended to this Report were material misrepresentation made by and on behalf of Justice Soumitra Sen before the Division Bench of the High Court of Calcutta. The finding by the Division Bench in its judgment of 25th July, 2007, that Justice Soumitra Sen was not guilty of any misappropriation was made on a totally erroneous premise induced by the false representation. A made on behalf of Justice Soumitra Sen." Sir, I don't think you require a greater clarity than this. Therefore, what was the misbehaviour or what was misappropriation that was done has to be understood.

Sir, Mr. Jethmalani has referred to Section 403 of IPC. What was the deal? Why did he pay back the money back when he was asked to pay back? It is only to escape imprisonment. Sir, the questions were raised on the question of misappropriation. Is diversion a misappropriation? Is using that money temporarily for some purpose constitutes misappropriation? We have heard the labours of Mr. Soumitra Sen yesterday when he said, 'you tell me one paisa that is there in my account. Have I made any money at all from holding this money? So, therefore, there is no misappropriation that I have committed.' But, Sir, what is the definition of 'misappropriation' under Section 403 of IPC? Section 403 of IPC says, 'Whoever dishonestly misappropriates or..." - please underline "...converts to his own ... shall be punishable with imprisonment..." It clearly says if a person 'coverts to his own use.' Then it goes on to clarify in the explanation, "A dishonest misappropriation for a time only is a misappropriation within the meaning of this section." So, whether it is for a short time or whether it ia for personal use only to be returned even if you are a fiduciary and a trustee. If money is deposited with me, I cannot borrow that money even temporarily. Sir, even temporarily I cannot borrow that money for my personal use and return back that money. I may be very honest and return back that money. But, the very act of borrowing that money makes me guilty of

misappropriation. That is the Indian law. Our laws are very clear it is both the acts of omission and commission. You cannot say, 'I don't have any money that I have put in my bank accounts and, therefore, I am not guilty.' But, your acts of omission that have led to such acts of guilt are actually breach of law. Therefore, on all these counts whatever matters that we have discussed earlier he is guilty. In 1984 he was appointed as Receiver and the matter finally settled in 2006. In 2002, SAIL asked for the accounts as to what happened to that money. He does not reply immediately. Yesterday he was telling us in a much laboured manner. In the whole two hours of his presentation, there was only one mention about SAIL and that one mention came in terms of reference to the learned counsel of the SAIL. When the whole case of misappropriation centers around the money of dispute between SAIL and the SCIL, he was made the trustee of it and for that there is no reference. But, he, of course, asked me to go back to my workers and find out if they have been paid. I am grateful if that had happened. Sometimes, justice can be done by these courts also and by such Judges. If the workers have been paid, it is good. But, that is not the issue. The issue is, who gave you the right of Rs. 70 lakhs given to you to pay to the workers to divest Rs. 25 of that and invest in a private company which was going into liquidation? Is there any scam involved in this? That needs to be investigated, Sir. You have divested Rs. 25 lakhs of money that was meant and set aside for wages and compensation to the workers to be invested in a private company which goes bust within a couple of years! Was it done with knowledge that it is going to go into liquidation? What is the feedback there? That also needs to be investigated today, Sir. So, these are various issues which have come up. They all have come on record now. We all came to know how fictitious accounts have been recorded, how cheques have been issued for the payment of Credit Cards. Therefore, keeping this in mind, as I mentioned, the case, according to me, is a closed case.

Finally, the point I want to make is, the labour behind the entire argument yesterday was that there was a great conspiracy against him. What is the conspiracy? You have the Chief Justice of India. You have noted Judges like Justice A.P. Shaw, Justice A.K. Patnaik and Justice R.M. Lodha. Have they all conspired against Justice Soumitra Sen? You have the Chief Justice Justice B.N. Agarwal and Justice Ashok Bhan. They are all the senior most Judges. Do you mean to say that they have conspired against Mr. Sen? And, now, do you mean to say that Justice Sudarshan Reddy, Shri Mukul Mudgal and Fali Nariman have all conspired against Mr. Sen. We have had the pleasure of knowing Mr. Nariman. I mean, he was our colleague here. We have known his uprightness here. To

question the integrity of such people and to say that all of them have colluded in a great conspiracy to prosecute Mr. Soumitra Sen is a great conspiracy theory that has been woven yesterday and that conspiracy theory needs to be broken.

Therefore, Sir, finally, I think, the issues that have been raised by the hon. Leader of the Opposition echoed by many other hon. Members here on the larger issues connected with Judiciary, Executive and the Legislature, this Motion today has to be adopted and should be used as the trigger for us to continue with these discussions, so that we, as parties - CPI (M) has always been asking and continues to ask even now have to ask for establishment of the National Judicial Commission along with the Lokpal. We think that both should go together. And, these are the issues, finally, we have to take up, because our constitutional scheme of things talks of judicial review, not judicial activism. And, that is where, Sir, the hon. Judges will interpret the law. But, unfortunately, the power to make law lies with Parliament and that is the supremacy. And, it is that supremacy we should uphold.

Finally, Sir, let me quote what Pandit Jawaharlal Nehru has said during the Constituent Assembly debates. He said, 'No Supreme Court and no judiciary can stand in judgment over the sovereign will of the Parliament representing the will of the entire community. If we go wrong here and there, it..." - the Judiciary - "...can point it out. But, in the ultimate analysis, where the future of the community is concerned, no judiciary can come in the way. Ultimately, the fact remains that the Legislature must be supreme and must not be interfered with by the court of law in measures of social reform." So, this is something which we will have to uphold.

I thank all those who participated, and, through you, urge that the Motions that I have moved yesterday be accepted.

I, therefore, recommend, once again, that these Motions be accepted by the House.

MR. CHAIRMAN: I shall now put the Motions, moved by Shri Sitaram Yechury, for presenting an Address to the President for removal of Justice Soumitra Sen, Judge, High Court of Calcutta, from his office, along with the Address to the President, under clause (4) of Article 124 of the Constitution, to the vote of the House.

As I have informed earlier, the Motions, along with the Address are required to be adopted by a special majority. The question is:

"This House resolves that an address be presented to the President for removal from office of Justice Soumitra Sen of the Calcutta High Court on the following two grounds of misconduct:

(1) Misappropriation of large sums of money, which he received in his capacity as receiver appointed by the High Court of Calcutta; and

(2) Misrepresented facts with regard to the misappropriation of money before the High Court of Calcutta."

The Address shall be as follows:

"Whereas a notice was given of a motion for presenting an address to the President praying for the removal of Shri Soumitra Sen, from his office as a Judge of the High Court at Calcutta by fifty-seven members of the Council of States (as specified in Annexure 'A' attached herewith).

AND WHEREAS the said motion was admitted by the Chairman of the Council of States;

AND WHEREAS an Inquiry Committee consisting of —

(a) Shri B. Sudershan Reddy, a Judge of the Supreme Court of India;

(b) Shri Mukul Mudgal, Chief Justice of the High Court of Punjab and Haryana at Chandigarh; and

(c) Shri Fali S. Nariman, a distinguished jurist, was appointed by the Chairman of the Council of States for the purpose of making an investigation into the grounds on which the removal of the said Shri Soumitra Sen from his office as a Judge of the High Court at Calcutta has been prayed for;

AND WHEREAS the said Inquiry Committee has, after an investigation made by it, submitted a report containing a finding to the effect that Shri Soumitra Sen is guilty of the misbehaviour specified in such report (a copy of which is enclosed and marked as Annexure 'B');

AND WHEREAS the motion afore-mentioned, having been adopted by the Council of States in accordance with the provisions of clause (4) of article 124 of the Constitution of India, the

misbehaviour of the said Shri Soumitra Sen is deemed, under sub-section (3) of section 6 of the Judges (Inquiry) Act, 1968, to have been proved;

NOW, THEREFORE, the Council of States requests the President to pass an order for the removal of the said Shri Soumitra Sen from his office as a Judge of the High Court at Calcutta."

Under clause (4) of Article 124 of the Constitution the Motion and the Address will have to be adopted by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members of the House present and voting.

6.00 P.M.

The House divided.

MR. CHAIRMAN: Subject to correction: Ayes: 189

Noes: 16

Ayes - 186

Achuthan, Shri M.P.

Adik, Shri Govindrao

Agarwal, Shri Ramdas

Ahluwalia, Shri S.S.

Aiyar, Shri Mani Shankar

Akhtar, Shri Javed

Alvi, Shri Raashid

Amin, Shri Mohemmed

Anand Sharma, Shri

Antony, Shri A.K.

Apte, Shri Balavant *alias* Bal

Ashk Ali Tak, Shri

Ashwani Kumar, Shri

Azad, Shri Ghulam Nabi

Badnore, Shri V.P. Singh

Baidya, Shrimati Jharna Das

Baishya, Shri Birendra Prasad

Balaganga, Shri N.

Balagopal, Shri K.N.

Batra, Shri Shadi Lal

Behera, Shri Shashi Bhushan

Benegal, Shri Shyam

Bernard, Shri A.W. Rabi

Bhartia, Shrimati Shobhana

Budania, Shri Narendra

Chakraborty, Shri Shyamal

Chatterjee, Shri Prasanta

Chaturvedi, Shri Satyavrat

Chowdary, Shri Y.S.

Daimary, Shri Biswajit

Dalwai, Shri Husain

Das, Shri Kumar Deepak

Dave, Shri Anil Madhav

Deora, Shri Murli

Deshmukh, Shri Vilasrao Dagadojirao

Dua, Shri H.K.

Dwivedi, Shri Janardan

Elavarasan, Shri A.

Faruque, Shrimati Naznin

Fernandes, Shri Oscar

Gill, Dr. M.S.

Gnanadesikan, Shri B.S.

Goyal, Shri Piyush

Gujral, Shri Naresh

Gupta, Shri Prem Chand

Hashmi, Shri Parvez

Hema Malini, Shrimati

Husain, Shri Jabir

Ismail, Shri K.E.

Jain, Shri Ishwarlal Shankarlal

Jain, Shri Meghraj

Jaitley, Shri Arun

Javadekar, Shri Prakash

Jayashree, Shrimati B.

Jethmalani, Shri Ram

Jha, Shri Prabhat

Jinnah, Shri A.A.

Jois, Shri M. Rama

Joshi, Dr. Manohar

Kalita, Shri Bhubneswar

Karan Singh, Dr.

Karat, Shrimati Brinda

Katiyar, Shri Vinay

Keishing, Shri Rishang

Kesari, Shri Narayan Sing

Khan, Shri K. Rahman

Khan, Shri Mohd. Ali

Khanna, Shri Avinash Rai

Khuntia, Shri Rama Chandra

Kidwai, Shrimati Mohsina

Kore, Dr. Prabhakar

Koshyari, Shri Bhagat Singh

Krishna, Shri S.M.

Kshatriya, Prof. Alka Balram

Kurien, Prof. P.J.

Kushwaha, Shri Upendra

Lad, Shri Anil H.

Lepcha, Shri O.T.

Madani, Shri Mahmood A.

Maitreyan, Dr. V.

Malihabadi, Shri Ahmad Saeed

Mangala Kisan, Shri

Mathur, Shri Om Prakash

Mishra, Shri Kalraj

Mitra, Dr. Chandan

Mohanty, Shri Kishore Kumar

Mohapatra, Shri Pyarimohan

Mohite Patil, Shri Rajitsinh Vijaysinh

Moinul Hassan, Shri

Mukherji, Dr. Barun

Mukut Mithi, Shri

Mungekar, Dr. Bhalchandra

Naidu, Shri M. Venkaiah

Naik, Shri Pravin

Naik, Shri Shantaram

Nandi Yellaiah, Shri

Naqvi, Shri Mukhtar Abbas

Natarajan, Shrimati Jayanthi

Natchiappan, Dr. E.M. Sudarsana

Pande, Shri Avinash

Pandian, Shri Paul Manoj

Pany, Shri Rudra Narayan

Parida, Shri Baishnab

Parmar, Shri Bharatsinh Prabhatsinh

Pasha, Shri Syed Azeez

Paswan, Shri Ram Vilas

Patel, Shri Ahmed

Patel, Shri Kanjibhai

Patel, Shri Surendra Motilal

Pilania, Dr. Gyan Prakash

Pradhan, Shrimati Renubala

Prasad, Shri Rajniti

Prasad, Shri Ravi Shankar

Punj, Shri Balbir

Rai, Shrimati Kusum

Raja, Shri D.

Rajeeve, Shri P.

Ram Prakash, Dr.

Ramalingam, Dr. K.P.

Ramesh, Shri Jairam

Rangarajan, Shri T.K.

Rao, Dr. K.V.P. Ramachandra

Rashtrapal, Shri Praveen

Ratna Bai, Shrimati T.

Raut, Dr. Bharatkumar

Raut, Shri Sanjay

Ravi, Shri Vayalar

Rebello, Ms. Mabel

Reddy, Shri G. Sanjeeva

Reddy, Shri M.V. Mysura

Reddy, Dr. T. Subbarami

Roy, Shri Tarini Kanta

Rudy, Shri Rajiv Pratap

Rupala, Shri Parshottam Khodabhai

Rupani, Shri Vijaykumar

Sadho, Dr. Vijaylaxmi

Sahani, Prof. Anil Kumar

Sahu, Shri Dhiraj Prasad

Sai, Shri Nand Kumar

Sangma, Shri Thomas

Seelam, Shri Jesudasu

Seema, Dr. T.N.

Selvaganapathi, Shri T.M.

Sen, Shri Tapan Kumar

Shanappa, Shri K.B.

Shanta Kumar, Shri

Sharma, Shri Raghunandan

Sharma, Shri Satish

Shukla, Shri Rajeev

Singh, Shri Amar

Singh, Shri Birender

Singh, Shri Ishwar

Singh, Shri Jai Prakash Narayan

Singh, Dr. Manmohan

Singh, Shrimati Maya

Singh, Shri Mohan

Singh, Shri N.K.

Singh, Shri R.C.

Singh, Shri Shivpratap

Singhvi, Dr. Abhishek Manu

Shiva, Shri Tiruchi

Solanki, Shri Kaptan Singh

Soni, Shrimati Ambika

Sood, Shrimati Bimla Kashyap

Soz, Prof. Saif-ud-Din

Stanley, Shrimati Vasanthi

Swaminathan, Prof. M.S.

Tariq Anwar, Shri

Tarun Vijay, Shri

Thakor, Shri Natuji Halaji

Thakur, Dr. C.P.

Thakur, Dr. Prabha

Thakur, Shrimati Viplove

Thangavelu, Shri S.

Tiriya, Ms. Sushila

Tiwari, Shri Shivanand

Trivedi, Dr. Yogendra P.

Uikey, Miss Anusuia

Vasan, Shri G.K.

Verma, Shri Vikram

Vora, Shri Motilal

Vyas, Shri Shreegopal

Waghmare, Dr. Janardhan

Yadav, Shri Ram Kripal

Yadav, Shri Veer Pal Singh

Yechury, Shri Sitaram

NOES - 16

Agrawal, Shri Naresh Chandra

Ali, Shri Munquad

Ansari, Shri Salim

Baghel, Prof. S.P. Singh

Ganga Charan, Shri

Jai Prakash, Shri

Jugul Kishore, Shri

Karimpuri, Shri Avtar Singh

Kashyap, Shri Narendra Kumar

Kureel, Shri Pramod

Misra, Shri Satish Chandra

Pathak, Shri Brajesh

Rajan, Shri Ambeth

Rajaram, Shri

Saini, Shri Rajpal Singh

Singh, Shri Veer

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

MR. CHAIRMAN: The House stands adjourned till 11 a.m. on Friday, the 19th of August, 2011.

The House then adjourned at ten minutes past six of the clock
till eleven of the clock on Friday, the 19th August, 2011.