

MR. DEPUTY CHAIRMAN: Shrimati T. Ratna Bai, not here.

Shri Tarun Vijay, I have your special request that you want to read. But I would request that if you want to read...

SHRI TARUN VIJAY (Uttarakhand): Sir, I want that Tamil should be declared as the second official language of the country. I want to read it again. But I want that all the cheers for the Tamil language started in the Central Universities of our country and even in East Asia. Now, I would like to read it again.

MR. DEPUTY CHAIRMAN: You can read it before the House adjourns. Sardar Sukhdev Singh Dhindsa, not here.

Now we will take up Constitution (One Hundred and Twentieth Amendment Bill).

GOVERNMENT BILLS

The Constitution (One Hundred and Twentieth Amendment) Bill, 2013

THE MINISTER OF COMMUNICATIONS AND INFORMATION TECHNOLOGY AND THE MINISTER OF LAW AND JUSTICE (SHRI KAPIL SIBAL):
Sir, I move:

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

Sir, the moments sometimes come in the life of a nation when you need to revisit the past and you embrace the future. These moments have happened in the recent past in the form of the Food Security Bill, and Land Acquisition, Rehabilitation and Resettlement Bill. One such moment is here today with reference to the amendment to article 124. Sir, the original provision of article 124 (2) stated that the President of India shall appoint Judges to the Supreme Court and the High Courts in the States in consultation with the Chief Justice of India and such of the other Judges that the President may deem necessary for the purpose. Every Judge of the Supreme Court is appointed by the President, by warrant under his hand and seal. This was incorporated in the Constitution at its inception. Thereafter, Sir, after a long period of time, it was felt that the provision was not functioning or working

as well as it should have. In 1990, when the National Front Government came into being, for the first time they proposed that we should have a Judicial Commission for appointment of Judges to the Supreme Court and to the High Courts. That was part of the agenda of the then National Front Government. Thereafter, Sir, in 1993 the Supreme Court in the Advocates on Record Association case sought to change this procedure through an interpretation of article 124(2) of the Constitution. With the greatest respect to the Supreme Court, I do believe that in that process they rewrote the Constitution. I will just share with you what they did. Under article 124(2), the President who represents the Executive decides or has to decide who should be a Judge of the Supreme Court or of the High Court in consultation with the Chief Justice of India and other Judges.

They interpreted Article 124(2) to suggest that the primacy is not of the Executive, but that of the Judiciary. And, they said that without the concurrence of the Chief Justice of India, no Judge can be appointed by the Executive. And, they set up, what is called, the Collegium—under the 1993 judgement, consisting of the Chief Justice of India, along with two senior most Judges—who will then consult the Judges of the High Court and the Supreme Court and, then, appoint a Judge, both to the High Courts and the Supreme Court. Now, the word ‘collegium’ is not in Article 124 of the Constitution. There is no such thing as ‘collegium’ conceived of by the Constitution of India. How the Chief Justice of India, in consultation with two senior most Judges of the Supreme Court, will decide to appoint Judges of the High Court, is not conceived of in the Constitution of India. So, this resulted in a situation where the Executive was not a part of the decision-making process, though Justice Verma’s judgement, which is the majority judgement in the case suggested, said that this should be a collaborative exercise. As we found this system to work over the years, we found that the Executive had absolutely no role to play. Today, we have only a ministerial function to perform. The Collegium informs us about who the Judges will be. We, then, act as a post office and seek the consent and, thereafter, the Judges are appointed. We may write back to the Judiciary if we have some concerns about some Judges or some appointments. And, if they reiterate the recommendation, we have no role to play. So, this continued for a while and, then, the then Government sought a reference, in July 1998, from the Supreme Court about the interpretation of Article 124 itself as to how this Collegium is to function. Why has the Chief Justice to consult only two Judges and why not more? What is the

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logic of that, that's not a part of the Constitution itself? The Judges answered that reference by saying that the consultative process and the primacy of the Chief Justice alone should not be there; in fact, the Chief Justice should consult, not one plus two, but one plus four Judges, when it comes to appointment of Judges to the Supreme Court and one plus two Judges when it comes to appointment of Judges to the High Court. Now, why one plus four or one plus two? It is nowhere in the provisions of the Constitutions. In other words, what the Supreme Court did, was to rewrite the Constitution through the process of interpretation, which the Constitution-makers did not envisage. So, thereafter, this process continued and all political parties were somewhat concerned about it. In fact, I was looking at the manifesto of the Bharatiya Janata Party. Under the title 'Judicial Reforms', they indicated, "We must streamline the appointment procedure of Judges, in the higher Judiciary, through the National Judicial Commission and introduce guidelines and objective criteria to determine merit". This was a part of the manifesto of the Bharatiya Janata Party. It was also a part of their National Agenda for Governance, in 1998, wherein they said, "We will set up a National Judicial Commission, which will recommend judicial appointments in the High Courts and the Supreme Court and will draw up a code of ethics for the Judiciary". So, since 1990, the political parties have been clamouring for a Judicial Commission. In 1998, it was a part of the BJP's National Agenda for Governance.

The parties which were the alliance partners and which supported this agenda were the All-India Anna Dravida Munnetra Kazhgam, Samata Party, Biju Janata Dal, Shiromani Akali Dal, Trinamool Congress, Shiv Sena, MDMK, PMK, Lok Shakti, Haryana Vikas Party, TRC and Janata Party. These are the parties which supported this. I must compliment the Leader of the Opposition who was then the Minister, who, actually, in September introduced the Bill for setting up the National Judicial Commission. I might share this with you, Sir, and through you, Sir, with the distinguished Members of this House, that the constitution of the Judicial Commission is, in fact, something that we have borrowed in the proposal that we have put for the Judicial Appointments Commission. The suggestion was that it should be headed by the Chief Justice of India; alongwith the Chief Justice, there should be two other judges; then, there should be the Law Minister and there

should be one eminent person. That should form the National Judicial Commission. All that we have done in the Bill, which I am not moving at the moment, is that we have increased the one eminent person to two eminent persons. Otherwise, it is exactly the same. So, in a sense, we are grateful to the Leader of the Opposition that we are, in fact, adopting what he himself had suggested in September, 2003. Two meetings of the Standing Committee were held. Unfortunately, the Lok Sabha was dissolved, and, therefore, the Report of the Standing Committee could not be had. Thereafter, in 2007, we had the Administrative Reforms Commission which also said that the present system of appointment of judges to the higher judiciary is not something that is appropriate; therefore, we should have another body which decides on the appointment of judges to the higher judiciary. The constitution of that was different; I would not go into that matter. Then, the Law Commission took it up in 2008. The Law Commission said that this interpretation of Article 124 is completely contrary to the letter and spirit of Article 124 itself. Therefore, the original position, that was prevailing prior to 1993, should be brought back. And, the manner of appointment of judges, as it is at present, should not be accepted. All political parties are at one on this issue, which is why I am moving the Constitutional Amendment. There is no dispute that the present system does not work. I will tell you, Sir, why the present system does not work. Under the Constitution, the High Courts are sovereign in their own rights. In deciding matters which come to them, they are independent of the Supreme Court. Each High Court has the right to entertain extraordinary petitions under Article 226 of the Constitution and decide in a manner that they wish. They are not subordinate to the Supreme Court. What has happened through this judgement is that the High Court judges now look to judges of the Supreme Court for their appointment. It has disturbed the very, very delicate Constitutional balance which allows the High Court judges to function independently of the Supreme Court. I don't want to give details. But judges who hope to come to the Supreme Court are looking to members of the collegium and what their views are on subjects. This has disturbed the very independence of the High Courts in this country. If the Supreme Court is so keen to protect the independence of the judiciary, it should have been equally keen to protect the independence of the High Courts.

Secondly, Sir, the Constitution of India and one of its basic features is the separation of powers. The Executive is charged with the responsibility of taking

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decisions and implementing them. The Legislature is charged with the responsibility of framing laws and then having the Executive implement them and answerable to the Legislature.

And the Judiciary has the power to interpret laws and strike down, through the process of judicial review, any action that the Judiciary considers to be arbitrary, contrary to the Fundamental Rights of the Constitution or any other constitutional provision. What has happened is that in the case of appointment of Judges to the Supreme Court and to the High Courts, this delicate balance of separation of powers has been disturbed. The act of appointment is not a judicial act. The act of appointment has nothing to do with the interpretation of any provision of the Constitution. The act of appointment is an Executive act. So, in that sense, the Judiciary has taken over the Executive function through a process of interpretation by re-writing through interpretation of Article 124(2). That balance must be restored back. The Executive must have a say in the appointment of Judges. We do not say that we should go back to the pre-1993 position that the Executive should alone have the say. That is why the Judicial Commission should consist of Judges as well as the Executive so that a collaborative exercise should be hatched for deciding as to which Judge, on what grounds, should be appointed.

Sir, there is another aspect to it, namely, that this applies not just to appointments to the higher Judiciary, it also applies to transfers of Judges. The Chief Justice of India, along with the collegium, has the right to transfer Judges from one High Court to another, appoint a Chief Justice from amongst the High Court Judges to a particular court, transfer a Chief Justice from one court to another. That power has also been taken off. So, in other words, which Judge is to be transferred to which High Court, from one High Court to another, which has nothing to do with a judicial function of the court, which is a purely Executive act, is also now exercised by the collegium, which also impacts the independence of High Courts and High Court Judges because they are under threat of transfer from one court to another. So, in a sense, it has disturbed the delicate balance of the separation of powers, it has also disturbed the separation of powers which is at the heart of our Constitution, which, I believe, is the basic structure. The Judiciary cannot take over the functions of the Executive, just as the Executive must respect the verdicts of the Judiciary when the Judiciary strikes down laws and provisions of certain statutes.

Now, Sir, look at it from yet another point of view. The Judiciary tells us, at every stage, that Governments must be transparent and accountable and the Judiciary is right; and, I think, they have faulted us rightly on many occasions when we have not been transparent and we have not been accountable. This has happened, and we see public discourse in this regard within the media and even in this House. Accountability is at the heart of Executive decision-making.

Now, Sir, how a Judge is chosen? We have no access to that decision. There is no transparency because we don't know how a particular Judge is chosen or why a particular lawyer is chosen to be appointed to the High Court where the RTI doesn't apply. We can't seek any information. We do not know the basis on which he was appointed. So, what the Judiciary says must apply to the Executive, and surely, the same principles must be applied to the Judiciary too, when it is doing an executive act. We are entitled to know why a particular person was not taken in the High Court or why he was taken, and what the criteria is. Now, in answer to the reference in 1998, in October, the Supreme Court had said that the only limited judicial review that they would allow is if the Chief Justice has not consulted all the members of the collegium. So, if he has consulted with all members of the collegium, no writ petition can be filed, no information can be sought. Now, I wonder how this is possible, when under the rule of law, accountability and transparency are at the heart of Executive decision making. That is why, I wish the House actually unanimously passes this Bill, because the time has come for us to take this decision today. Once we are there, under the Bill itself, we will have to have regulations, on the basis of which how a Judge is to be appointed will be set out in great detail — what are the criteria necessary for a person to be considered for judgeship to the High Court, what are the criteria for a Judge to be considered for appointment to the Supreme Court, what are the criteria for a Judge to be considered for transfer from one High Court to another, and so on.

Sir, I must share with you something that concerns me deeply, and I am sure, concerns every Member of this House. We are very worried with the manner in which relatives of Judges are practising in High Courts. It is very disturbing. सर, बड़े दुख की बात है कि किसी का चाचा, किसी का भतीजा प्रैक्टिस कर रहा है और अगर आप कोर्ट में उनकी एपियरेंस और आमदनी को देखें, तो लगता है कि वे दो-तीन साल में बड़े वकील बन गए हैं। हम उस में कुछ नहीं कर सकते क्योंकि ट्रांसफर की पावर कोर्ट को है।

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तो यह भाई-भतीजागिरी कब तक चलेगी? हम जुडीशियरी का बहुत आदर करते हैं। मैं आप लोगों के माध्यम से कहना चाहता हूँ, सदन के सभी लोग कभी जुडीशियरी की संस्था के ऊपर आंच नहीं आने देते हैं। हमने इस सदन में कभी किसी जज की आलोचना नहीं की। हम जजमेंट की आलोचना कर सकते हैं, लेकिन हमने जज की आलोचना नहीं की। हम जजमेंट की भी आलोचना तब करते हैं, जब रिव्यू फाइल करते हैं या और रास्ते अपनाते हैं। अगर कोई रास्ता नहीं अपनाया जाता, तो अमेंडमेंट ले आते हैं, जैसे कि आज एक और बिल के द्वारा ला रहे हैं। लेकिन हम आलोचना नहीं करते क्योंकि हमें मालूम है कि वह ऐसी संस्था है, जिस की स्वायत्तता पर कोई आंच नहीं आनी चाहिए। देश आज भी मानता है कि न्यायपालिका ने बड़े अच्छे-अच्छे काम किए हैं। न्यायपालिका के द्वारा हमारी राजनीति में ट्रांसपेरेंसी और अकाउंटेबिलिटी आई है। मैं जुडीशियरी की दाद देता हूँ, लेकिन जिस मापदंड के आधार पर हमारे फैसले जज होते हैं, उसी मापदंड के आधार पर उनके फैसले भी जज होने चाहिए। हम नहीं चाहते कि जुडीशियल अपॉइंटमेंट्स कमिशन के अंतर्गत जुडीशियरी पर कोई फैसले थोपें, इसलिए हमने उसमें भी बैलेंस रखा है। उसमें चीफ जस्टिस होगा, दो सीनियर मोस्ट जजेज होंगे, लॉ मिनिस्टर होगा और दो एमिनेंट पर्संस होंगे। अब उन्हें कौन अपॉइंट करेगा? उन दो एमिनेंट पर्संस को **The Chief Justice of India, the Prime Minister of India and the Leader of the Opposition in the Lok Sabha** अपॉइंट करेंगे।

श्री नरेश अग्रवाल (उत्तर प्रदेश): राज्य सभा से क्यों नहीं?

श्री कपिल सिबल: मैं तो तैयार हूँ, लेकिन अरुण जी ने मुझे कहा कि लोक सभा से, क्योंकि यह रिप्रजेंटिव हाउस है और मैं इस बात को मानता हूँ। इसके लिए मैं धन्यवाद करना चाहता हूँ।

उसमें भी हमने सरकार के लिए कुछ ऐसा नहीं रखा कि फैसला हम ही करेंगे। उसमें भी हमने कहा कि प्रधान मंत्री बैठें, चीफ जस्टिस ऑफ इंडिया बैठें, लीडर ऑफ द ऑपोजीशन बैठें और दो एमिनेंट पर्सन्स नियुक्त कर दें। आज भी हमने ऐसा रखा है। हमारा पलड़ा कोई भारी नहीं है।

श्री नरेश अग्रवाल: लॉ मिनिस्टर को क्यों नहीं रखा?

श्री कपिल सिबल: जो भी लॉ मिनिस्टर होगा, वह जुडिशियल अपॉइंटमेंट कमीशन में रहेगा। कहने का मतलब यह है कि हमने ऐसा कोर्ट काम नहीं किया कि जुडिशियरी को हमने बांध रखा हो, जैसे 1993 से पहले था। मैं समझता हूँ कि आज सारा सदन इसे चाहेगा, क्योंकि यह तो एक एनेब्लिंग प्रॉविजन है, आर्टिकल 124(2) का जो अमेंडमेंट हम कर रहे हैं, यह केवल एनेब्लिंग प्रॉविजन है। फिर जो बिल आएगा, मैं तो चाहूंगा सभी माननीय सदस्य सर्वसम्मति से उसको भी पास कर दें, क्योंकि जैसा 2003 में अरुण जी ने सोचा था, मैं उसी

को अपना रहा हूँ। मैं आपको इतना और कहना चाहता हूँ कि जब यह मामला स्टैंडिंग कमेटी में गया, तो उस समय जो भी स्टैंडिंग कमेटी के सामने आये, उन्होंने यह नहीं कहा कि जूडिशियल कमीशन नहीं बनना चाहिए, सबने कहा कि बनना चाहिए। एक और बात मैं आपके सामने रखना चाहता हूँ कि Justice Verma and Justice Venkatachaliah, who were part of the majority of the 1993 judgement, wrote a letter to the Prime Minister saying that they believed that that system was not functioning properly at all and they, in fact, regretted that they had rendered that judgment. In fact, I also must regret because I was the counsel, along with Mr. Nariman, who argued the case.

MR. DEPUTY CHAIRMAN: So, do you regret now?

SHRI KAPIL SIBAL: I regret. My friend appeared on the other side.

SHRI RAVI SHANKAR PRASAD (Bihar): Mr. Parasaran is also here. Does he regret too?

SHRI K. PARASARAN (Nominated): Yes...(Interruptions)...second Judge's case, Presidential reference and nominated as a humble member of the Review Commission nominated by that noble Prime Minister, Mr. Vajpayee, and now, I am in this House on this side.

SHRI KAPIL SIBAL: Sir, wise men are always proved right. We were young; we were enthusiastic; we wanted to change the system, and we are sorry that we disregarded your wisdom at that point of time.

Sir, let me mention another fact. It was under the NDA Government that the National Commission for Review of the Constitution was set up. Now, when that Commission was set up, one of the issues they dealt with was 'appointment of Judges'. They also recommended a National Judicial Commission for appointment. So, in 1990, the National Front Government said it. In 1998, the BJP Government said it. The NDA Government said it. They brought a Bill. Venkatachaliah Commission said it. The Administrative Reforms Commission said it. The Law Commission said it. Every political party wanted it. Why should we delay it? There is no reason to delay it. The argument is that we need consultation. What consultation? We have been consulting since 1990. At least, since 1993, when that judgement was rendered, 20 years have passed. At every stage, every institution, every representative of every stakeholder has been consulted. Justice Venkatachaliah consulted everybody - the Bar Council, the political parties, Judges, academicians, everybody. They went before

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him. Parasaranji will bear me out. Everybody was consulted. And, the most erudite Leader of the Opposition brought a Bill and we also respect his wisdom apart from Parasaran's.

And, we are adopting that. So, why should we send it anywhere? Sir, there is one other issue before I conclude, and, that is, it is said that if we pass the Constitution Amendment Bill, this Bill may not be passed. Sir, as you know, this is an amendment to the Constitution and under Article 368 of the Constitution, it has to be ratified by half the States in India before it goes for assent for the President of India. Even if half the States ratify, it has to go for assent of the President of India and that process will take, at least, six months or so. I personally think that the Bill should be passed, the Bill which has the composition of the Commission but even if we were to send it to the Standing Committee, and, we agree that the Standing Committee will give its Report in a month's time, it is much before the States can ratify. So, by the time the States ratify, the Bill will have been passed in this House and it will become a law, and, then, the President will give assent. If the Members of the Commission are not in place, the President cannot give assent because if he gives assent and there is nobody in place, then, there will be a hiatus. So, obviously, he will not give assent.

I can also tell you that the President of India perhaps is the repository of legal wisdom because he knows how the Constitution works and how the Constitution functions. There is no way that the President of India will give assent to the Bill if the Commission is not in place. Even otherwise, the Commission will be in place for the simple reason that the Standing Committee will give its Report. So, there is absolutely no fear or worry about it.

Now, I come to the last thing which I want to mention. Sir, what we are doing in the Constitution (Amendment) Bill is that we are stating in Article 124, "Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal on the recommendation of the Judicial Appointments Commission and shall hold office until he attains the age of sixty-five-years". That is all that we are saying.

We supplant the original provision of appointment by the President in consultation with the Chief Justice and other Judges with this.

We are also adding 124 A wherein we say:

- “124(1) There shall be a Commission to be known as the Judicial Appointments Commission.
- (2) Parliament may, by law, provide for--
- (a) the composition of the Commission;
 - (b) the appointment, qualifications, conditions of service and tenure of office of the Chairperson and other members of the Commission;
 - (c) the functions of the Commission;
 - (d) the procedure to be followed by the Commission in discharge of its functions;
 - (e) the manner of selection of persons for appointment as Chief Justice of India and other Judges of the Supreme Court, Chief Justices and other Judges of High Courts; and
 - (f) such other matters as may be considered necessary.”

This is the amendment that we are bringing in Article 124 by rewording Article 124 and by adding Article 124A to set up the Commission. We have to have a similar amendment in Article 217 with respect to the High Courts. So, we are doing the same thing in Article 217(1) where we say:

“Every Judge of the High Court shall be appointed by the President by warrant under his hand and seal on the recommendation of the Judicial Appointments Commission referred to in Article 124A and shall hold office, in the case of an additional or acting Judge, as provided in Article 224, and in any other case, until he attains the age of sixty-two years.”

And, then, in Article 222, which is the power of transfer, again, the amendment is, we propose “The President may, on the recommendation of the Judicial Appointments Commission, transfer a Judge from one High Court to another.”

Sir, these are the amendments that I am bringing for the consideration of the House. Thank you.

The question was proposed.

SHRI RAVI SHANKAR PRASAD : Mr. Deputy Chairman, Sir, before the hon. Leader of the Opposition, I have to make a small point. In principle, we are fully supportive of National Judicial Commission institution but my humble request is this: When we sit in the Parliament, even minor statutory amendments are done upon the approval and vetting by the Standing Committee. Here, we are going for a Constitutional Amendment. There is twenty years' delay, Mr. Sibal is right. *(Interruptions)*

MR. DEPUTY CHAIRMAN: Okay. I am calling the hon. LoP.

SHRI RAVI SHANKAR PRASAD: I would humbly request, Sir, let the two Bills go to the Standing Committee. Let the Standing Committee take a call, and, thereafter... *(Interruptions)*.

MR. DEPUTY CHAIRMAN: That is his view. Why do you worry? ...*(Interruptions)*...

SHRI RAVI SHANKAR PRASAD: Sir, I have a last point. An impression should not go to the country that the Parliamentarians were so keen to get it passed that even the Standing Commission institution was ignored. ...*(Interruptions)*...

श्री राम कृपाल यादव (बिहार): इसकी कोई आवश्यकता नहीं है...*(व्यवधान)*...

SHRI RAVI SHANKAR PRASAD: Sir, kindly appreciate even the Law Commission ..*(Interruptions)*.. Therefore, it is my request to the House and to you, Sir, to refer the Bill to the Standing Committee. ..*(Interruptions)*..

श्री एम. वेकैया नायडु (कर्णाटक): जिस तरह से सीबीसी में हुआ, वैसे ही करना चाहते हैं। ये लोग जल्दवाजी में हैं।..*(व्यवधान)*.. थोड़ा सुनना भी चाहिए..*(व्यवधान)*.. सीबीसी में ऐसे ही हुआ..*(व्यवधान)*..

MR. DEPUTY CHAIRMAN: Hon. LoP is on his legs. Let him speak. ..*(Interruptions)*.. Let the hon. LoP speak, please ..*(Interruptions)*..

THE LEADER OF THE OPPOSITION (SHRI ARUN JAITLEY): Mr. Deputy Chairman, Sir, we have heard the hon. Law Minister making a very detailed presentation on the proposed Constitution Amendment wherein he seeks to now change the present system where the power of consultation in the Constitution vested in the Chief Justice of India, a power which has been repeatedly interpreted

and re-interpreted by the Supreme Court, and introduced the concept of the National Judicial Commission. He was very right when he mentioned that my Party, the BJP, the NDA and I myself as an individual have always and consistently been a supporter of the National Judicial Commission. We supported it pre-1993; we have supported it through all these stages, and when we were in Government, he is very right, I did introduce the Bill. We have been consistent. He is a recent convert. He was fair enough to admit that he wants to change his opinion from what was argued in the 1993 judgement, which is fair enough. It is quite possible for views to evolve. He today found virtues in Justice Venkatachaliah Committee which was constituted to review the functioning of India's Constitution. This was set up in the year 2000. It had many eminent people. Chief Justice Venkatachaliah headed it. People from across the board had different views, opinions and they came out with a Report which had a very high level of scholarship and wisdom behind it. One of the Members of the Committee is a distinguished nominated Member of this hon. House. Even about the Commission, I must say, the hon. Law Minister has now changed his opinion because when we set up the Justice Venkatachaliah Committee, we were told that you are trying to erase the memory of Dr. Ambedkar, and, therefore, the Party to which he belongs decided to boycott the functioning of that Committee. Today, the Law Minister—I am glad that history vindicates what the NDA Government did—has decided to quote extensively and rely upon the wisdom of the Justice Venkatachaliah Committee. While we were consistently in favour of the National Judicial Commission, the Congress Party was never. One of the reasons that the 2003 amendment could not be carried out was the consistent view of the Congress Party that we must go back. That was the view of the then your longest-serving Law Minister that Executive primacy has to be restored, and it is a fact that Executive primacy has to be restored which never found favour because large number of political parties were in favour of the National Judicial Commission. I must say to the credit of the Left Parties that the Left Parties were also, like the NDA, in favour of the National Judicial Commission. We could have differences with regard to its functioning or composition, but our commitment was always very clear.

Sir, I will come to the objection, which my distinguished colleague Mr. Ravi Shankar Prasad has raised, a little later. But have no doubt about this that our commitment to the National Judicial Commission and to restore the constitutional balance has historically been consistent. Whenever this Bill comes, whether now or

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in the next Session, in the Standing Committee or otherwise, our views are not likely to be altered. Therefore, we need not be told the virtues of what the National Judicial Commission will do, particularly by those who consistently opposed the National Judicial Commission and the very idea of a Commission when it was propagated by Justice Venkatachaliah Committee.

Sir, while we are discussing this very monumental piece of legislation, because we are going to rework and rewrite a provision in the Constitution and that is the proposal, I think we owe it to both the country and history to explain why we are doing it. The hon. Law Minister has made a very detailed and a very competent presentation. I just wish to add a few observations to this. What is it which is our principal object? Our principal object is three-fold.

The first is that India must have a completely independent and fearless judiciary. Under no circumstances is this country going to compromise with the basic tenets of independence of judiciary.

The second is this. Unlike many other constitutional systems in the world, the power of judicial review with our courts, what was vested in them and the way it has evolved, is extremely wide. They can review a large number of Executive decisions unless they impose upon themselves self-discipline of not wanting to review a particular decision. They can even review, within the parameters of their limited jurisdiction, legislations which we pass and subject to the basic structure doctrine, they can also review a constitutional amendment which we may bring about pursuant to our constituent power. So, our power of judicial review is extremely wide. And under no circumstances are we wanting to compromise with that power at all. This second aspect is, however, subject to a limitation which the framers of the Constitution themselves imposed. Just as independence of judiciary, power of judicial review is extremely important. Separation of powers, which the Law Minister rightly mentioned, is also one of the basic tenets of the Constitution. Therefore, each organ of the State, be it judiciary or legislature or executive, will be supreme within the sphere of its own jurisdiction. One cannot tell the other how that power is to be exercised. Therefore, when power of judicial review is exercised, it will be subject to the inbuilt discipline and limitation, which the separation of powers creates. And separation of powers is also a part of the basic structure of the Constitution. Neither can we alter it, nor can the Supreme Court alter it.

1.00 P.M.

Having said this, Sir, when we are reviewing the appointment system, we'll have to look back how our judicial system has functioned. Initial years after the Independence were formative years. Unity, sovereignty and evolution of the constitutional system were our priorities. Our courts were reasonably kind to the Governments of the day. The nation was being built at that stage. It is only in the 1960s that some element of assertion started as far as our courts were concerned.

The executive Government found it extremely difficult to accept that assertion. Therefore, in the early 70's a highly dangerous, almost poisonous concept of judges, with a social philosophy, was given birth to which in simple language was that India wants those people in the judiciary, who are committed to the philosophy of the then Government in power. This was extremely dangerous. If I can refer to the darkest phase of the Indian judiciary, in the mid 70's, we almost lost our status as a democracy because this whole concept of a committed judiciary, Judges with a social philosophy, had gained ground. Post that short lived era, we had various kinds of expansion; and I must say to the credit of the judiciary, they have expanded their own jurisdiction. They have made procedures simpler. They have safeguarded liberty. They have got into areas through activism. At times we make adversarial comments on that activism. If I look back today, in the last 2-3 decades, its activism almost bordering on assertion, bordering on assertiveness could really be defined the way our courts are going today. We need to go through that era and keep this brief history in mind, and look at the appointment procedures.

Sir, the initial years, what my learned friend, Mr. Sibal, refers to as the age of Executive Primacy, the pre-'93 age, I think, the first two or two and a half decades, after Independence, the 50's and 60's had men of very high scholarship in the world. This was not withstanding the Executive Primacy, allegations, or, charges, or, even comments about individuals who are almost non-existent. We had men of great scholarship. The Chief Justice of India would recommend the very best. The Government of the day would accept that recommendation; and the system worked with a sense of maturity, which could be a matter of pride for any democracy.

The problem started really in the early 70's when as a reaction against some of the judgements of the Supreme Court, particularly the 1973 judgement in the Kesavanand Bharati case, this whole concept of controlling the court was born. Sir,

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I have not the least hesitation in saying that if in the mid 1970's India did not become a dictatorship and autocracy, it was Kesavanand Bharati case judgement which prevented India from doing so. Otherwise, the Government of the day was almost prepared to do that. Even a review of that judgement had been filed in 1975 before the Supreme Court; and the Chief Justice at one stage had agreed to hear the review, the Bench was later dissolved. Now as a reaction against the judgement, in 1973, this whole concept of controlling the court was born in India for the first time. It is after that the problem really had arisen. In 1982 the Law Minister gave a very specious reason in a letter to the Chief Ministers and Chief Justices wherein one-third of Judges in every court must come from outside because if you have judges from outside, it will promote national integration. You don't have a Chief Minister of a State going to another State to rule and promote national integration. The reason given was let us have Judges from outside and, therefore, it will promote national integration.

The Court, by a split verdict, four against three said, "The last word belongs to the Executive". Therefore, if this country has seen appointments which were lacking in quality, it was post-1982 judgement. The Executive had the last word, and, therefore, the Executive started playing an important role. High Courts, particularly across the country, were flooded with such appointments. Why did in 1993, in the Advocates-on-Record case, the Supreme Court decide to say that consultation of the Chief Justice of India would actually mean a binding consultation on the Government? You can send it back once. They said that the word 'consultation' has to be interpreted in the constitutional context, and the constitutional context is that independence of Judiciary has to be maintained. The judges know the lawyers who appear before them. They know the quality of judges in the subordinate Courts or in the High Courts. Therefore, their assessment is the last word; their assessment is the best. Therefore, in the constitutional context, we will give the word 'consultation' a meaning which is a little distinct from the meaning the dictionary gives it. Therefore, they made it a binding consultation or a near binding consultation. I do believe, Sir, if this case had been argued in the 1950s and the 1960s, the word 'consultation' would have got the dictionary meaning. It got a different meaning because the men who were writing the judgement at that time

could see in front of them what would be happening in the 1980s. Therefore, they decided that in order to safeguard the system, an activist approach was required and too much of Executive interference in the matter of appointment of judges could actually play havoc with the whole concept of independence of Judiciary, because the seed of the very idea of controlling the Court, had been born in 1973, if not earlier. But the 1993 judgement—Shri Sibal pointed out some of the problems which exist today—created another issue. He was concerned with the Executive being bypassed almost entirely or substantially. It vested too much power in one individual and that was the Chief Justice of India. What if the likes, dislikes, assessments and the judgement about individuals of the Chief Justice of India itself were faulty, could the system rely too much on the judgement and assessment of one individual? We saw in that brief phase almost absolute power in the Chief Justice of India, a fact which was being resented even by his colleagues. And the trigger, therefore, for the 1998 reference was that the Chief Justice could disregard the views of his Court; he could disregard the consultation of his senior colleagues and impose his own whims in terms of appointment to the highest Court of the country. Therefore, in a more structured manner, the wider consultation of 1993 became a more structured collegium in 1998. What has it done today? Shri Sibal fairly pointed out some of the problems, like lack of transparency, the absence of a criterion, etc. Let me point out a few more problems which are worrisome. Each Judge in the Supreme Court belongs to one parent High Court. He has, obviously, some element of consideration, affection and concern for his parent Court. The experience has shown that he becomes the Constituency Judge of that High Court, and therefore, his say in the appointments of that High Court becomes very vital, and his day-to-day interests become very vital. Therefore, all aspirants, for being Judges in that High Court, whether he is the Collegium or not, have to be on his right side, have to be noticed by him because they feel that a substantial part of the say in the elevation to that High Court will be his. So, every High Court will have a Constituency Judge in the Supreme Court. Sir, I will not go into names because it is not proper in a responsible forum to get into names. The Constituency Judge has his own likes and dislikes in that High Court. He decides to block the best man of that Court from being elevated to the Supreme Court. And till he gives the nod, the best man from that High Court will not come. In recent years, I can count on fingertips some of the most outstanding Judges of High Courts who had not been

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elevated to the Supreme Court or whose appointments to the Supreme Court had got delayed till the Constituency Judge retired because he enjoyed a virtual veto. Therefore, some of the best Judges lost out. They could not come to the Supreme Court till they got the nod from him. And we all know the names. But we cannot get into those details. Many factors start influencing. Now, if you see the line of succession for the Chief Justice, the line of succession is always clear. We all know in which year who the senior-most, who will be elevated as the Chief Justice will be. People have started planning their careers, with a third eye on that line of succession, that when I am reaching the threshold of eligibility in terms of seniority and stature, so-and-so is the man who matters. Therefore, you will always find rumours. Mr. Sibal is aware of them and I am aware of them. So, who will bring whom is also a subject-matter of an assessment. What is happening in High Courts? Sir, in High Courts, you have a Collegium of three. Almost each member of the Collegium is as important as the other. Members of the Collegium will tell you—they will tell you more frankly after their retirements—that when the Collegium meets, instead of selecting the very obvious best,—obviously, some of the best also gets selected; it is not like saying that nobody, who is good, gets selected – each member of the Collegium has its own preferences and, therefore, ‘A’ has to accommodate the preferences of ‘B’, ‘A’ and ‘B’ have got to accommodate the preferences of ‘C’ and they collectively respect the preferences of each other. And those eminent lawyers, who didn’t fall into the preferential list, will lose out to those who were a part of that preferred preference.

Now the collegium system, when I compare it with the pre-93 system, I have not the least doubt in saying that we should not even ever think or dream of going back to pre-93. We don’t live in a country where the quality of politics is also ideal. I am sure Mr. Sibal must be meeting a large number of people recommended by his party Members and that is a problem every Law Minister has to face. Now that you have got a chance please make sure that your party Members are pushed to become judges. If you go back to pre-93, you will see what happened in 80s will start happening again and that is an issue we have to guard against. We went back to the collegium system. We evolved the collegium system. A collegium is as good as the Members of that collegium. Of course, if the Members of the collegium are

extraordinary Members of very high calibre and great objectivity, these aberrations, which I have pointed out, will not take place. But if that is not the case, then, you will certainly find the impact of all this taking place. What is the larger impact which has taken place? I refer to a point, which I think, my learned friend, Mr. Sibal, would agree with, but, which probably by-passed his attention or he didn't want to refer to it as a sitting Minister in the Government. The creation of this alternative system simultaneously has disturbed one of those three principal objectives that I pointed out, separation of powers. We could look back at that era and broadly say when was the court more conventional, when was it conservative and when has it been a very activist court. Sir, judicial activism is welcome. But activism and restraint are two sides of the same coin. An absolute authority in the matter of appointment, an independence in the matter of writing judgments, a single judge of the High Court can be corrected by a Division Bench. The Division Bench can be corrected by the Supreme Court. Supreme Court is not infallible, but it is final. Above the Supreme Court, it is only God and God doesn't correct judgments. He only sits at the final judgment, at a much later stage. Therefore, we are living in an age where their view is final and what does finality mean? Look at this age where the transfer of power, where the executive primacy or participation got left out and how restraint went out of activism. Otherwise, activism coupled with restraint, if it was activism which helped personal liberty, if it was activism which protected environment, if it was activism which protected the weaker sections of society, who couldn't otherwise, approach the court; it will be a vent-out phenomenon. Can in any jurisprudence in the world, under any authority of law, while terrorist action is on and our soldiers and security forces are sacrificing their life standing in front of the terrorist and fighting them, these suddenly emerge a judicial order which says, please provide so many calories of food to the terrorists. It happened in Jammu and Kashmir. A terrorist action is on. The security forces are fighting terror and how many calories a terrorist must get in terms of his food is an obligation imposed by the court.

It is, obviously, an order which raises serious eyebrows; but, it is final. The Government of the day cannot correct it. I have seen a judgment delivered about a year ago. It was a subject matter of great debate whether economic liberalisation—neo-liberalism or dangers of neo-liberalism—of post-1991 is good or whether you must have liberalisation or not to have liberalisation. It is a subject matter of this House. The Supreme Court of India cannot have an economic philosophy. Courts do

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not formulate policy. Courts have the power of judicial review. Courts cannot even review a policy and say, 'My policy is better than your policy.' Courts don't legislate. How are special police officers to function, how is Naxalism to be fought, how is insurgency to be fought, or, subjects such as security or economic policy or slum clearance are all matters come under the Government. Activism has gone to an extent that in case-after-case, when we fail to take action and if judiciary legislates, it is termed as judicial legislation. It lays down guidelines and those guidelines are, effectively, the law. Now, to put it simple, we argue that the political establishment has become weak in this country, Parliament is divided, polity is divided, therefore, it is happening. But, Sir, the emergence of this phenomenon making courts to say that the Government of the day must be kept in check, because the Governments may tend to breach the law. The Government may tend to upset the political balance. But, if there is a danger to the concept of separation of powers being disturbed, no Centre or State Government of any political complexion has ever said, 'Let us try and encroach on the power of the court.' The argument given is: Governments are not doing their duty. So, the court has to step in and do that duty. Sir, with utmost respect, it is a very serious and dangerous argument. If the Government is not doing its duty, please direct it to do its duty, but you cannot takeover the power. If three crore cases are pending in court, can anybody turnaround and say that courts are not doing their duty, because there is a delay. So, somebody else will now do that duty. This argument can work the other way round also. And, if it did work, we will be heading for anarchy, because courts have to decide those cases. We have to, probably, increase the number of Judges. Therefore, the whole argument that we step in and start performing the task of a court, because the Governments are not doing their duty, is not proper. Well, if the Governments are not doing their duty, compel them, stricture them. Your strictures have a great value.

We have discussed so many times that we have one of the biggest challenges—Current Account Deficit—today. When the hon. Prime Minister was here, I myself pointed out that some of the reasons for the Current Account Deficit could even be domestic, not just international. There is an imbalance in terms of our foreign currency earnings and our spending. I did point it out. Our excessive imports of coal are a cause of worry. It is because we mismanaged the coal economy. We

ourselves, the political system, have to be blamed for it. But, then, I spoke also about the iron ore exports.

They were a foreign exchange earner. I am sorry; iron ore exports! How do I criticize the Government of the day, or the State Governments? People may have erred. Those who have erred should be arrested and should be prosecuted, till such time that we get a clearance from the Court the ten billion dollar-imbalance created by lack of iron ore exports cannot take place. And each one of these orders, whether it was our own mismanagement of the coal economy or the issue of exports, is contributing to the Current Account Deficit, and the Current Account Deficit has taken the dollar-rupee parity to where it is today. The level of responsibility, accountability and answerability is of the Government. Courts write judgements; they are not answerable. Therefore, if we look at the history, when the power has completely been subsumed, it is only then that this imbalance in the separation of powers has taken place. And I don't subscribe to the philosophy which, in simple language, some people feel that they must all get together and correct that imbalance. I think, the Court must have all the powers that a Court has, but the imbalance in the separation of powers needs to be corrected. And, therefore, whatever be the restoration of authority, whether Legislative or Executive, we can't abrogate or abandon our own authority, because if the imbalance does take place, then systems would find it very difficult to function.

Sir, there is a difference between the Legislature, the Executive and the Court. Our jurisdiction, as a Legislature, is prescribed by the Constitution. The Government's powers are defined by the law. If they exceed their jurisdiction, it would be struck down, but the Court has the power to enlarge its own jurisdiction, because their last word on jurisdiction is the final word. You would find a number of cases. I saw my friend, Mr. Naresh Agrawal, the other day, raising an issue—to what extent must courts monitor investigation? Can monitoring of investigations and trials go on simultaneously? Will it lead to miscarriage of justice? Elsewhere in the world, it probably would have been a miscarriage of justice. In India, we have learnt to live with it, because the Court itself defines its jurisdiction. But, in the case of the Government stepping out of jurisdiction or the Parliament stepping out of jurisdiction, the Court has the last word; when the Court steps out of jurisdiction, they themselves decide whether they have the power or not and, therefore, the elasticity of jurisdiction is always there.

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Sir, I wish to make just one or two more points. I think, one of the big challenges—and this is a challenge, particularly, post-1991, with economic liberalization—is that in many principle High Courts of the country, legal practice has also become very lucrative. The best are, therefore, not willing to become Judges. I think, at some stage, the hon. Law Minister would apply his mind to this question. It is an institution which must have the very best, and if the best are not willing to become Judges, it creates a serious problem. Secondly, I think, we are going a bit too far now, in every legislation, in creating post-retirement avenues for Judges. There is a proposal through which you want to increase the age. Please, do it, but with a condition, that almost everyone, barring a few notable honourable men, who are an exception, wants a job after retirement. And we are lavishly creating it for them. If we don't create it, they themselves create it. I am glad the Supreme Court has reviewed its verdict saying every member of the CIC must be a retired judge. You have a situation where what should be the fees of a college is an accounting method, it is an accounting concept. The Supreme Court by a judicial order said, "Fees of medical colleges and engineering colleges must be fixed by retired judges." And, then, in every State, it created two more jobs. I think this whole temptation of continuing to occupy a Lutyens Bungalow is a very serious temptation. Therefore, kindly review that unless it is absolutely essential, either some of these tribunals must be subsumed into the judicial set up, pay the retired judges a pension equal to their last drawn pay because the danger is greater. The desire of a post-retirement job influences pre-retirement judgements. It is a threat to the independence of the Judiciary. Once it influences pre-retirement judgements, it adversely impacts the functioning of our Judiciary itself.

Sir, this is the last serious point. I would personally like to see a National Judicial Commission which has not merely the appointment powers but to which there is some element of accountability of the judges itself. This whole concept of judicial accountability is unknown and unwritten. Impeachment is a provision, which is in the rarest of the rare cases almost impossible to arrive at, and when you reach the closure of that procedure, the concerned judge resigns or retires. Therefore, impeachment does not take place. But, misconduct, falling short of impeachment, is accountable to whom? The judges say, 'judges are accountable to judges.. So, in India, judges appoint judges; judges are accountable to judges. I think, this thinking

now requires to be changed. That is one of the substances of Shri Ravi Shankar Prasad's argument. This requires a serious rethink. We don't like the present system; so, we are agreed to change it. We are making a monumental change. Monumental changes are never brought with a knee-jerk reaction. We have always said so. You recently turned to our view, and, therefore, say, 'we all agree'. Now, should the National Judicial Commission only be an appointment body, or, should it also have some element of powers in relation to accountability or not? In my respectful submission, it must have powers of accountability.

Sir, my last point is, this is why this issue, before I come to the question of procedure, what should be the basis of appointment of a judge. A judge must have an element of scholarship, he must have an experience, he must be objective, he must be a man of integrity, he must have the temperament of a judge, he must have adequate experience, and he must have a huge level of maturity. Today, in the Collegium System, Mr. Sibal complains that we are not told the reasons why a man has been appointed. Please remember the famous saying, "When no reasons are given, then no reasons could have been given." Because you pick individuals, that objective assessment of the criteria does not take place. So, my suggestion to you would be, and it is a matter when the Bill is considered by the Standing Committee, to consider it, how would I want the criteria to be, what is the academic qualification of a candidate, how many years he has put in as a lawyer. Today, in a world with information technology available, how many cases has he argued? How many cases that he has argued are actually reported judgements? How many articles has he written? How many papers has he presented? How many seminars has he addressed? How many juniors has he trained? What is his level of income? I am just suggesting a few off the cuff. There could be 20 objective criteria which the Collegium will have to consider when the bio-data of each individual comes up. Impressionistic assessment is what takes place today. It has to be replaced by an element of objectivity. A threshold limit is required for any job in Government. There is no threshold for you to become a Judge except the number of years that you have practised and your age. Therefore, unless the Commission has strict guidelines that these are the objective criteria on which Judges are going to be appointed, this element of subjectivity in the present system will not be replaced with objectivity. Sir, my final point is that as to why we feel that both, the Constitution Amendment and this Bill, must go to the Standing Committee. Mr. Prasad has said that it is a

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monumental piece of legislation. I assure you on behalf of my party that whether it comes on the first day of the next Session or otherwise, we are in support of this very concept. I am sure the Standing Committee will get an opportunity to hear various stakeholders, Judges, Chief Justices, former Chief Justices, Lawyers, Bar Associations, Bar Councils, etc. Let everybody give his viewpoint, let litigants give their viewpoint. Give your report, take it up on the first day of the next Session and take up both simultaneously. The reason you must take both simultaneously is that because if we pass the Constitution Amendment and replace the 'Chief Justice consultation' with that of 'Commission', we have frozen the power of the Chief Justice, subject to the assent of half the Assemblies. In this era of present politics we are going through, assuming an election intervenes and the Commission is not created, what will be the situation? You may be sure of the stability of the Government, we are not. Assuming your Bill gets delayed for some reasons and it is not done in one month or two months, you have taken the powers away from the Supreme Court by way of Constitution Amendment and you have not created an alternative system. Constitutional hiatus should never be created by the Legislature. Therefore, please ask the Standing Committee which is chaired by an eminent Congressman to give its recommendations within four or six weeks. We are in September and the next Session will be in November. Take it up on the very first day and pass the two together because the very nature of these two Bills is so interlinked and interconnected, whether power of accountability is to be given to the Commission or not, or power of only appointment is to be given, is an issue which is required to be taken up by the Standing Committee after hearing people. Therefore, both these matters are so intrinsically linked that they must come together. My party today and on any later day will support both these Bills subject to whatever minor variations are suggested by the Standing Committee. But, please, this requires consultations and this does not require a kneejerk reaction which we are adopting today. Thank you.

MR. DEPUTY CHAIRMAN: Let us have one our lunch-break. The House is adjourned for one hour.

The House then adjourned for lunch at
thirty-nine minutes past one of the clock.

The House re-assembled at thirty-eight minutes past two of the clock.

[MR. DEPUTY CHAIRMAN in the Chair.]

MR. DEPUTY CHAIRMAN: Let's continue the discussion. Shri Rajeev Shukla.

संसदीय कार्य मंत्रालय में राज्य मंत्री तथा योजना मंत्रालय में राज्य मंत्री (श्री राजीव शुक्ल): धन्यवाद, उपसभापति महोदय। आज एक ऐतिहासिक बिल संसद में आया है और पांच, दस साल नहीं बल्कि पूरे बीस साल के इंतजार के बाद संसद में यह बिल पेश हुआ है। इन बीस सालों में इस देश में इस बात पर बहस चलती रही कि इस तरह का कमिशन बनना चाहिए या नहीं। फिर इस पर हर तरफ चर्चा हुई, दो-दो बार स्टैंडिंग कमेटी में चर्चा हुई, वेंकटचलैया कमिशन में चर्चा हुई, उन्होंने देश के नामी-गिरामी वकीलों से चर्चा की, बड़े-बड़े जजेज से चर्चा की, फार्मर चीफ जस्टिसेज से चर्चा की और बार काउंसिल से बातचीत की। इस तरह हर जगह चर्चा कर के बीस साल के बाद और उस चर्चा के निचोड़ और सहमति के आधार पर यह बिल यहां पेश हुआ है। मुझे लगता है कि अब हम सदस्यों के हाथों में एक ऐसा अवसर आया है कि जिस से हम इस देश की तकदीर बदल सकते हैं। आपके पास आज अवसर है, जब आप जुडिशियरी में एक ऐसा रिफार्म ला सकते हैं, जो इस देश की न्यायिक व्यवस्था में एक मजबूत बदलाव ला सकता है। अगर आपने आज इस चक्कर में यह अवसर खो दिया कि महीने, दो महीने के बाद देख लेंगे या जब अगला सत्र आएगा तब उसमें देख लेंगे, तो मैं इस बात को लगातार देख रहा हूँ कि 1993 से सत्र आ ही रहे हैं और यह बिल अगले सत्र के लिए ही टलता चला जा रहा है। हर बार यह टल जाता है और फिर टलने के बाद टला रहता है, अभी कुछ नहीं होता। आप इस बात को ध्यान में रखिए। पता नहीं, क्यों ऐसा कहा जा रहा है कि इसको टाल दिया जाए।

महोदय, नेता विपक्षी दल, जब कानून मंत्री थे, तब उन्होंने इसकी शुरुआत की थी और इनके डिप्टी रवि शंकर प्रसाद जी जब कानून राज्य मंत्री थे तो उन्होंने इसकी बढ़-चढ़ कर पैरवी की थी। यह खुद उनका आइडिया रहा है, खुद उन्होंने लगातार जोर दिया था कि यह होना चाहिए। इनके बाद जितने भी कानून मंत्री आए, भारद्वाज जी से लेकर उनके बाद के, सबने यही कहा कि होना चाहिए। सिब्ल साहब ने जैसा कहा, जस्टिस जे.एम. वर्मा ने, जिन्होंने 1992 में ऐसा रिकमंड किया था, उन्होंने खुद कहा कि यह हमारी बहुत बड़ी गलती थी, जो हमने कोलिजियम रिकमंड किया, क्योंकि इसमें अच्छे जज नहीं आ रहे। साल 1992 से पहले जो प्रक्रिया थी, वह यह थी कि राजनीतिक और जुडिशियरी के मिले-जुले लोगों की सहमति से जज एपॉयंट होते थे और एक से एक अच्छे जज आए, जिनमें मोहम्मद करीम छागला जैसे जज आए और ऐसे जज आए, जिनके बारे में बोला जाता है कि सबसे अच्छे चीफ जस्टिस ऑफ इण्डिया आए हैं। सारे ऐसे जजों की नियुक्ति उसी सिस्टम से की गई थी, जिसमें पॉलिटिकल प्रोसेस प्लस जुडिशियल प्रोसेस, दोनों के मिलेजुले प्रयास हुए थे और जिनके

[श्री राजीव शुकल]

द्वारा जज एपॉयंट किए जाते थे। आप तो राजनीतिक प्रक्रिया को जानते हैं, उसमें मुख्य मंत्री को पूछा जाता था, कानून मंत्री को पूछा जाता था और सब अपनी-अपनी राय देते थे। एक बात इसमें सबसे ज्यादा जरूरी है कि जहां कहीं किसी ऐसे व्यक्ति का चयन होता है और उसमें अगर राजनीतिक लोगों की राय ली जाती है तो उसमें बहुत ज्यादा फीडबैक मिलता है, जिसे आप सोच नहीं सकते। उसमें वे कोशिश करते हैं कि अगर कोई एक्स बन रहा है, जैसे राम लाल बन रहे हैं और अगर उसके खिलाफ दस शिकायतें होंगी तो सामने आ जाएंगी। पॉलिटिकल प्रोसेस में कोई नहीं छोड़ता है, जिसके खिलाफ जो होता है सामने आ जाता है। श्याम लाल के लिए अगर होगा तो उसकी भी दस शिकायतें सामने आ जाएंगी, तो उसके बाद पूरी छानबीन होती है। यानी एक पूरी प्रक्रिया के बाद एक जज नियुक्त होता था और वह जज आउटस्टैंडिंग जज होता था। आप उस समय के जजों का क्वालिटी लेवल देख लीजिए और उसके बाद के जजों का क्वालिटी लेवल को देख लीजिए।

महोदय, मुझसे पहले यहां सिब्ल साहब और जेटली साहब, दोनों के भाषण हो चुके हैं। इन दोनों के भाषणों में मुझे कहीं कोई मतभेद नहीं दिखता। आज की जुडिशियरी की क्या बुरी हालत है इस बारे में दोनों ने बताया। कानून मंत्री बता रहे हैं और उससे जेटली साहब भी एग्री कर रहे हैं कि क्या हो रहा है? भाई-भतीजावाद, दोस्ती, अपने फेवरेट, अपने चहेतों को जज बना दिया जाता है? इससे बड़ी गंभीर बात क्या हो सकती है कि एक सिटिंग जज ने एक सिटिंग चीफ जस्टिस ऑफ इंडिया के खिलाफ पत्र लिखा कि उनकी बहन को चूंकि मैंने जज नहीं बनाया था, इसलिए मेरा प्रमोशन नहीं हुआ। आप सोचिए कि अगर इस तरह की कोई चिड़्डी किसी प्रधान मंत्री या मुख्य मंत्री के खिलाफ लिख दी जाए, या कोई ऑफीसर लिख दे कि मुझे इसलिए सेक्रेटरी नहीं बनाया गया, क्योंकि मैंने प्रधान मंत्री की बहन जो जॉयंट सेक्रेटरी थी उसे प्रमोशन नहीं दिया, तो पूरा मीडिया पीछे लग जाएगा, आप सब मिलकर हाउस नहीं चलने देंगे और प्रधान मंत्री का इस्तीफा ले लेंगे। इसी तरह से मुख्य मंत्री के खिलाफ शिकायत होने पर उसका इस्तीफा हो जाएगा, लेकिन यहां किसी ने चीफ जस्टिस की कोई बात नहीं की, क्योंकि जुडिशियरी का सवाल है। कितना गंभीर आरोप था। इस तरह से आप देखेंगे कि जुडिशियरी में आरोपों की झड़ी लगी है, दो-दो की बात मैं नहीं कर रहा हूं। पहले की व्यवस्था जो पॉलिटिकल प्रोसेस और जुडिशियल प्रोसेस से मिलकर चलती थी, उनके नियुक्त जजों की क्वालिटी देख लो और आज के जजों की क्वालिटी देख लो। मैं इसमें कोई शक या संदेह नहीं कर रहा हूं, लेकिन चीफ जस्टिस ऑफ इंडिया वी.एन. खरे ने क्या कहा? उन्हीं की बातों को मैं रख रहा हूं। उन्होंने कहा कि जुडिशियरी में भारी करप्शन है, जजों के खिलाफ कार्यवाही होनी चाहिए। जस्टिस वी.एन. खरे का जबर्दस्त स्टेटमेंट है। उससे पहले जस्टिस वेंकटचलैया साहब ने स्टेटमेंट दिया हुआ है कि जुडिशियरी में करप्शन है। मैं लोअर जुडिशियरी की बात नहीं कर रहा हूं, लोअर जुडिशियरी में जो विजिबल करप्शन

है। जस्टिस मार्कण्डेय काटजू ने तो एक हाईकोर्ट के बारे में यहां तक कहा, आप सोच भी नहीं सकते, उन्होंने यहां तक कह दिया कि यह पूरा हाईकोर्ट ही सड़ा हुआ है। और उन्होंने कहा कि उनको "मी लॉर्ड" या "माई लॉर्ड" भी नहीं कहना चाहिए क्योंकि वे पब्लिक सर्वेंट होते हैं। साथ ही उन्होंने कहा कि आखिरी साल में कुछ जज ...(व्यवधान)...

श्री रवि शंकर प्रसाद: माननीय मंत्री जी, आपने सम्माननीय काटजू जी का जिक्र किया, तो उनका एक स्टेटमेंट है कि 90 per of Indians are fools. क्या आप उस स्टेटमेंट से भी सहमति रखते हैं?

श्री राजीव शुक्ल: वह उन्होंने विदड़ों कर लिया था। He has withdrawn that and apologized. I am only mentioning what he said about the Judiciary, and I am not saying that all Judges are corrupt. Seventy-eighty per cent Judges are still very honest, very good. But if some apples are rotten, the entire basket ...

MR. DEPUTY CHAIRMAN: Don't take any name. Don't take any name.

श्री राजीव शुक्ल: मैं तो उनके क्वोट्स बता रहा हूँ, उनकी बात नहीं कर रहा हूँ। जस्टिस बालाकृष्णन आए। चीफ जस्टिस बनने के बाद उनका पहला स्टेटमेंट यह था कि जुडिशियरी में जो करप्शन आ गया है, उसको हम खत्म करना चाहते हैं। उसके खिलाफ हमें कड़ी कार्रवाई करनी चाहिए। उसके बाद जितने चीफ जस्टिस आए, टेकओवर करते ही उन्होंने अपने पहले इंटरव्यू में कहा कि जुडिशियरी में करप्शन है। इसका मतलब है कि all is not well with the system. जो कोलजियम सिस्टम आपने लगाया है, आप खुद ही कह रहे हैं कि उसमें गड़बड़ी है और जो क्वालिटी ऑफ जजेज़ आने चाहिए, वह नहीं आ पा रहे हैं। नेता विपक्ष ने इस बात को बहुत अच्छे ढंग से रखा कि जो कस्टीट्यूएंसी वाले जज होते हैं, जो हाई कोर्ट से सुप्रीम कोर्ट में आ गया, वहीं उसका मालिक हो गया। उसका जो चहेता है, चाहे वह काबिल हो या न हो, उसको आप जज बनाकर ले आते हैं, उसी का प्रमोशन हो जाता है और आप क्वेश्चन कर कर नहीं सकते, क्योंकि आर.टी.आई. इन पर लागू नहीं होता है। अगर इनके खिलाफ बोलो तो कन्टेम्ट ऑफ कोर्ट हो जाता है। इनके बारे में आप क्वेश्चन नहीं कर सकते, इनका बर्डिक्ट फाइनल होता है। तो यह अजीब बात है कि बाकी देश भर में तो ट्रांसपेरेंसी है, पोलिटिकल आदमी के गले में जितना फंदा लग सके, फांसी लगाते जाओ। क्या सारे ही नेताओं में गड़बड़ है? सिर्फ कुछ नेताओं में गड़बड़ है। इसी तरह से क्या एक भी जज यह बोल सकता है कि सारी जुडिशियरी सही है? अगर दावे के साथ यह कह सकते कि सारी जुडिशियरी सही है, ट्रांसपेरेंट है, तो आज यह बिल लाने की हमें कोई जरूरत नहीं थी। कोई भी चीफ जस्टिस ऑफ इंडिया ईमानदारी से अपनी छाती पर हाथ रखकर बोले कि सारी जुडिशियरी सही है। वे खुद मानते हैं और फिफ्टी परसेंट जजेज़ इस कोलजियम सिस्टम के खिलाफ हैं। ...(व्यावधान)...

श्री के.सी. त्यागी (बिहार): "छाती पर हाथ रखकर", यह कोई अच्छा शब्द नहीं है, आप "दिल पर हाथ रखकर" बोलिए।

श्री राजीव शुक्ल: मेरा मतलब है सच्चाई से है। गीता या कुरान पर हाथ रखकर... वह मैं कह नहीं सकता। तो यह एक बहुत बड़ा मसला हम लोगों के सामने है। जस्टिस कपाड़िया को तो जस्टिस की न्यायमूर्ति, प्रतिमूर्ति माना जाता है। उन्होंने तक कहा और वे तो ऐसे थे कि सुप्रीम कोर्ट के अपने कलीग से भी नहीं मिलते थे। कहते थे कि लिखकर भेज दो, कहां कोई उनको इन्फ्लुएंस न कर ले, तो वे इस तरह के जज थे। उन्होंने तक इस बात की शिकायत की, इसका मतलब कहीं न कहीं कुछ गड़बड़ है। अब वह गड़बड़ी ठीक कैसे हो सकती है? वह बड़बड़ी ठीक हो सकती है जबकि फिर से वही प्रक्रिया वापस लाई जाए, जिसमें पोलिटिकल प्रोसेस और जुडिशियल प्रोसेस, दोनों तरफ के फीडबैक से मिला-जुलाकर जो नाम आए, उनमें जो बेस्ट लोग हों, उनको जज बनाया जाए। अभी जो प्रपोज़ल है, उसमें क्या है? यह बहुत सिम्पल है। इसमें ऐसा कुछ भी नहीं है कि सरकार या राजनीतिक लोगों की कोई दखलंदाजी हो जाएगी या उनका दबदबा हो जाएगा। चीफ जस्टिस ऑफ इंडिया अभी भी कमेटी के चेयरमैन रहेंगे। सुप्रीम कोर्ट के दो सीनियरमोस्ट जज उसके मेम्बर होंगे, तो जुडिशियरी के तीन लोग डायरेक्ट उसमें हो गये। इसके बाद पोलिटिकल सिस्टम से सिर्फ एम आदमी, लॉ मिनिस्टर होगा। बाकी जो दो लोग होंगे, वे **eminent people** होंगे। यह पारासरन साहब भी हो सकते हैं, ये तो पोलिटिशियन नहीं हैं। वह सोली सोहराब जी भी हो सकते हैं, फली नरीमन जी हो सकते हैं, कोई और बहुत बड़ा समाजसेवी हो सकता है। तो दो **People of eminence** लाए जाएंगे, इसमें यह नहीं है कि कोई दो मिनिस्टर उसमें जाकर बैठ जाएंगे या एमपीज़ जाकर बैठ जाएंगे। तो सोचिए, जो कमीशन होगा, उसमें सिर्फ लॉ मिनिस्टर एक अकेला पोलिटिकल व्यक्ति होगा, बाकी सब बाहर के लोग होंगे और उसके बाद भी कोई कहे कि न्याय-व्यवस्था पर अतिक्रमण है, तो मैं कैसे मान लूं? या इसमें यह है कि पोलिटिकल सिस्टम कोई अपने आदमी डाल देगा? राजनीतिक लोगों की बात मैं कैसे मान लूं? मुझे लगता है कि बहुत ही संतुलन बनाने के लिए इस तरह का प्रस्ताव लाया गया है और इस संतुलन के ज़रिए ही सही जज आ सकते हैं और बीस साल के बाद आपके हाथ में यह मौका आया है।

महोदय, न्यायिक व्यवस्था का हाल खुद जेटली साहब ने, सिब्ल साहब ने बताया। अहमदाबाद में दो जजों में इस बात पर लड़ाई हो गई कि एक जज ने दूसरे जज के बेटे को, जो प्रैक्टिस करता था, उसकी मदद नहीं की और मारपीट की नौबत आ गई। एक कोर्ट से तो चीफ जस्टिस ऑफ इंडिया और राष्ट्रपति के खिलाफ सम्मन निकल गए और जज साहब ने देखा ही नहीं कि किसके सम्मन हैं, किसके खिलाफ जा रहे हैं? उन्होंने नाम तक नहीं पढ़ा।

इसके बाद स्टिंग ऑपरेशन करके दिखाया गया कि कैसे देकर कैसे सम्मन निकाल लिए

थे। महात्मा गांधी के खिलाफ सम्मन निकल गए। इसके बावजूद कहा जाता है कि सारी व्यवस्था सही चल रही है। मैं इस बात को कैसे मान लूं कि सारी व्यवस्था सही चल रही है। इस बात से 70 प्रतिशत जज दुखी हैं। आज अगर आप सुप्रीम कोर्ट और हाई कोर्ट के 70 प्रतिशत जज, जो ऑनैस्ट हैं, उनसे बात करें, तो आप देखेंगे कि वे सब दुखी हैं और वे ही बार-बार इस बात को बोल रहे हैं। इसलिए मैं जजों का ही हवाला देकर बोल रहा हूं, अपनी तरफ से कुछ नहीं कह रहा हूं। जो जज लोग बोल रहे हैं, न्यायिक व्यवस्था के खिलाफ, आज की ज्युडिशियरी में जो कुछ चल रहा है, उसके खिलाफ वे जो कुछ बोल रहे हैं, मैं सिर्फ उसी को आपके सामने हाइलाइट कर रहा हूं। इसके बाद, करप्शन के कितने केसेज़ हैं, अगर मैं उनका जिक्र करना शुरू करूं तो दिल्ली हाई कोर्ट, पंजाब होई कोर्ट, हरियाणा हाई कोर्ट, गुजरात हाई कोर्ट, इलाहबाद हाई कोर्ट, हर जगह की शिकायतें हैं। कर्णाटक हाई कोर्ट के तीन जजेज़ पकड़े गए। इसलिए करप्शन की तो मैं बात ही नहीं करना चाहता हूं, इतने ज्यादा किस्से हैं, खुद जजेज़ ने जिनके खिलाफ कार्यवाही की। आज जो सिस्टम बना हुआ है, उस सिस्टम में आपने क्या किया? 65 साल में सिर्फ एक जज को आप संसद के सामने लाकर उसको इम्पीच कर पाए हैं। इसलिए आप यह सोचें कि आपका जो सिस्टम है, उस सिस्टम में उनको इम्पीच करके आप इसे ठीक कर लेंगे तो आप ऐसा नहीं कर सकते। बहुत बड़ी प्रक्रिया है, बहुत मुश्किल प्रक्रिया है। तमाम जज दुखी हैं। आप यह समझिए कि आज जब आप इस बिल पर चर्चा कर रहे हैं तो तमाम जजेज़ यह चाह रहे हैं कि कैसे और कितनी जल्दी यह बिल लागू हो क्योंकि कहीं किसी का प्रमोशन अटका हुआ है, तो कहीं तो बिल्कुल टेलेंटेड था, जिसको आना था, उसको रोक दिया, किसी का ट्रांसफर गलत कर दिया। वे सब परेशान हैं और चाहते हैं कि ट्रांसपेरेंट सिस्टम कायम हो, एक ऐसा सिस्टम कायम हो जहां वे अपनी बात रख सकें। जैसा कि अरुण जेटली साहब ने कहा कि आप एग्जीक्यूटिव को तो बहुत उपदेश देते हैं कि प्याज कितने पर बांटना चाहिए, यह भी ज्युडिशियरी तय करना चाहती है, बस और ट्रेन कैसे चले, यह भी ज्युडिशियरी तय करना चाहती है, म्युनिसिपल कार्पोरेशन कैसे चले, यह भी ज्युडिशियरी तय करना चाहती है, ट्रैफिक व्यवस्था कैसी हो, यह भी ज्युडिशियरी तय करना चाहती है, नेता को सुबह से शाम तक कैसे तंग करें, इसे भी ज्युडिशियरी तय करना चाहती है तो फिर आप क्या कर रहे हैं? जैसा जेटली जी ने बताया, आज पूरी कंट्री में 3 करोड़ केसेज़ पेंडिंग हैं। सर, जो मेरे पास आंकड़े हैं, वे बताते हैं कि जितने केसेज़ पेंडिंग हैं, लघु न्यायिक व्यवस्था की वजह से उनको निताने में 323 साल लगेंगे। न्यूयार्क टाइम्स में लिखा है कि "It appears that the wheel of Judiciary in India has come to a standstill." वहां न्यायिक व्यवस्था बिल्कुल पंगु हो गयी है, चल ही नहीं रही है। उसके बाद एक-एक महीने के समर हॉलीडेज़? ग्रीष्मावकाश? ऐसे कहीं इतनी छुट्टियां मिलती हैं? एक तो वैसे ही इस देश में 201 दिन की छुट्टियां हैं। इस देश में एक व्यक्ति 201 दिन की छुट्टियां ले सकता है, हमने पूरा हिसाब लगाया है। अगर वह अर्न्ड लीव, मेडिकल लीव को मिलाए और उसके अलावा शनिवार, रविवार और त्यौहारों की सभी छुट्टियों को मिलाए तो 365

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दिन में से 204 दिन तो वैसे ही वह छुट्टी पर जा सकता है। इस प्रकार काम करने के लिए सिर्फ 161 दिन ही बचते हैं और उनमें भी ग्रीष्मावकाश? आप यह देखिए कि कितने दिन काम होता है? हालत यह है कि केसेज़ की पेंडेंसी लगातार बढ़ती चली जा रही है। जो काम आपका है, वह काम आप कर नहीं पर रहे हैं। मैं मानता हूँ कि व्यवस्था की कमी है। वे कहेंगे कि हमारे पास इतना इन्फ्रास्ट्रक्चर नहीं है। लेकिन जितना इन्फ्रास्ट्रक्चर उनके पास है, कम से कम उतनी तो डिलीवरी वे करें। तारीख पर तारीख, तारीख पर तारीख डलती जाती हैं। बाप ने केस किया और पोता उस केस को लड़ रहा है, 32-32 साल, 35-35 साल केस को लड़ने में लग जाते हैं। अतुल्य घोष का केस 32 साल तक चला। यह हालत हो गयी है कि किसी को भी न समय पर न्याय मिल पाता है और न ही समुचित न्याय मिल पाता है। कहीं न कहीं कुछ न कुछ खराबी तो है। आप वैकेंसीज़ की हालत देख लीतिए। चलिए, कोलीजियम सिस्टम 1992 से चल रहा है, 20 साल हो गये हैं। इलाहावाद हाई कोर्ट में हर समय 80 वैकेंसीज़ रहती हैं। वहां पर टोटल स्ट्रेंथ लगभग 160 के करीब है और उसमें से 80 जजेज़ की वैकेंसीज़ हर सहय रहती हैं। हर हाई कोर्ट में वैकेंसी खाली है, उसे भी वह फिल नहीं कर पाते हैं। इस प्रकार अपनी खुद की जो जिम्मेदारी है, उस जिम्मेदारी का पालन सही ढंग से नहीं हो पा रहा है। जैसा कि लीडर ऑफ दि अपोज़िशन ने कहा--वे जाने-माने वकील हैं, कानून मंत्री भी रहे हैं--कि आप यह कहते हैं कि पॉलिटिकल सिस्टम या एग्जीक्यूटिव, कार्यपालिका अपना काम नहीं कर पा रही है, इसलिए हम उसमें दखल देकर यह काम करवाना चाहते हैं। अगर एक बार कार्यपालिका भी यह कहने लगे कि आप अपना काम ठीक से नहीं कर पा रहे हैं, इसलिए हम दखल देकर जजेज़ का काम करेंगे, ज्युडिशरी का काम करने लगे, तब आपको कैसा लगेगा?

तब यह कहा जाएगा कि यह हमारे अधिकारों पर अतिक्रमण है और सब लोग इस पर बोलना शुरू कर देंगे। मुझे माफ करना, हमारे यहां यह होता है कि अगर ज्युडिशियरी के बारे में बहस हो रही है, तो वकील बोलेंगे, चूंकि उस पर वकील ही बोल सकते हैं। मैं गैर-वकील हूँ इसलिए अपनी बात रख रहा हूँ। मैं कानून विद् नहीं हूँ। मैं अपनी बात एक गैर-वकील की हैसियत से रख रहा हूँ। क्या आप सस्ता न्याय लोगों को दिला पा रहे हैं? मैं बताना चाहता हूँ कि अपर मिडिल क्लास का आदमी भी सुप्रीम कोर्ट में मुकदमा नहीं लड़ सकता क्योंकि एक-एक वकील की फीस, बड़े-बड़े वकील की फीस 25-25 लाख रुपये प्रति हीयरिंग है, एक-एक appearance की यह बात बड़े वकील नहीं बोलेंगे। एक सुप्रीम कोर्ट के रिटायर्ड जज ने मुझे इसे कहा कि मैं अपना केस सुप्रीम कोर्ट में नहीं लड़ सकता। हम वकीलों का खर्चा नहीं दे सकते। आप न सस्ता न्याय दे पा रहे हैं, न सही न्याय दे पा रहे हैं, न समुचित न्याय दे पा रहे हैं, न टाइम पर न्याय दे पा रहे हैं। इसके बाद भी आप कहते हैं कि पॉलिटिकल सिस्टम खराब है, सब सरकारें खराब हैं। आप कौन-सा न्याय दे पा रहे हैं? आप खराब नहीं हैं, आप बहुत अच्छे हैं, बाकी सब खराब हैं। आप बाकियों के खिलाफ जजमेंट पर जजमेंट,

जजमेंट पर जजमेंट, जजमेंट पर जजमेंट दे रहे हैं। आप कभी आईना भी तो देखो। जैसे-जब अखंड रामायण होती है, तो बोला जाता है कि संपुट, तो हर बात के बाद एक संपुट में लगा देना चाहता हूँ कि 70 प्रतिशत जज अभी भी अच्छे हैं, लेकिन 30 परसेंट जजों की वजह से 70 प्रतिशत की बदनामी हो रही है और इन 70 परसेंट की ड्यूटी है कि इन 30 परसेंट को ठीक करें। यह तभी ठीक होगा, जब इस व्यवस्था में बदलाव होगा। जजों के घर के बाहर कोई नोटों के बंडल छोड़ जाता है, कोई ए.सी. लगवा लेता है, कोई फोन ले लेता है, इतने किस्से हैं कि आपको क्या बताएं कि भरा पड़ा है, लेकिन उनको न कोई उठाता है, न बोलता है, मीडिया भी बहस करने से डरता है। एक नया चक्कर शुरू हुआ है। जज बोलते हैं कि मीडिया पर जो अभियान चलता है, जो कैम्पेन चलता है, उससे उनके जजमेंट प्रभावित होते हैं। वे करना कुछ और चाहते हैं, लेकिन मीडिया के डर से, जब मीडिया में किसी इश्यू पर कैम्पेन चल जाता है, तो वे फिर उस पर जजमेंट देने से डरते हैं और वे वह जजमेंट नहीं देते हैं, जो कानून के हिसाब से होता है, उन्हें मीडिया के प्रभाव में जजमेंट देना पड़ता है। यह भी एक नई चीज़ है कि आप **influenced** भी होते हैं। आपके तो आंख, नाक, कान ऐसे होने चाहिए कि आप किसी भी चीज़ से प्रभावित न हों। इसीलिए छांट कर ऐसे लोग लाए जाते हैं जो इस तरह का न्याय दे सकें। मोहम्मद करीम छागला को नेहरू जी दिल्ली लाना चाहते थे, लेकिन उन्होंने आने से मना कर दिया। पहले किसी किस्म का लालच होता ही नहीं था। ऐसे-ऐसे जबर्दस्त जज थे। वे सब उसी सिस्टम से निकले हुए थे, जो सिस्टम पहले था और बाद के सिस्टम से कैसे जजेज निकले, इसके बारे में मैंने चार-पांच जजेज का हवाला दिया।

अब मैं **lower judiciary** की बात करता हूँ। इसके बारे में कहने की तो कोई जरूरत ही नहीं है। हर आदमी का अनुभव होगा, जो गांव, देहात, जिलों की अदालतों में जाते हैं। वहां पर तारीख देने के लिए ओपनली पेशगार पैसा लेता है। उसका न कोई सिंटग आपरेशन करता है, न कुछ होता है। पैसा देते जाओ, तारीख लेते जाओ, पैसा देते जाओ, तारीख लेते जाओ, वहां पर ओपनली पैसे का कलेक्शन होता है। यह **visible** है। जब इसके बारे में **higher judiciary** में शिकायत करो, तो वहां पर कहा जाता है कि **lower judiciary** तो करप्ट है, उसकी बात मत करो, उसको छोड़ो। क्या आप एम.एल.ए. के करप्शन को छोड़ देते हो, उसको पूरी सजा दी जाती है। एक कारपोरेटर का करप्शन हो, ग्राम प्रधान, ग्राम पंचायत, जिला पंचायत का अध्यक्ष हो, आप उसका दम निकाल देते हैं। क्या हम यह कहते हैं कि वे लोअर लेवल के पॉलिटिशियन हैं, उन्हें छोड़ दो क्या उन्हें छोड़ दिया जाता है? यहां पर **higher judiciary** की ड्यूटी है। **They are duty bound to weed out the wrong and corrupt elements in the lower judiciary. It is their responsibility. The onus lies on them because for District Courts, High Court is responsible; the Chief Justice of the High Court is responsible. They appoint the Judges there. It is their responsibility.** आम आदमी को न्याय कहां मिलता है--तहसील पर, जिला अदालतों में **Additional Sessions**

3.00 P.M.

श्री राजीव शुक्ल]

Judge, District Judge, Additional District Judge, Chief Metropolitan Magistrate, Chief Judicial Magistrate वहां पर ये सब ही तो न्याय देते हैं। आपके यहाँ पर higher judiciary तो lower judiciary को भी कंट्रोल नहीं कर पर रही है। उसका जो rampant corruption है, उसको भी खत्म नहीं कर पर रही है।

टाइम पर न्याय नहीं दे पा रहे हैं, जो आपकी वेकेंसीज़ हैं, उनको नहीं भर पा रहे हैं, अपने केस नहीं निपटा पा रहे हैं और करप्शन की शिकायतें ओर ऊपर से हो रही हैं। इसके बाद भी कहा जाता है कि भई, दखल न दो, हम जैसे कह रहे हैं, करने दो, आप कुछ गड़बड़ करोगे तो मैं आपके ऊपर कार्यवाही करने के लिए बैठा हूँ। जैसे कि जेटली जी ने कोल का और आयरन ओर जिक्र किया है--मैं आयरन ओर की कहानी भी बता देता हूँ। गवर्नमेंट में सिस्टम की गड़बड़ी या डिले हो सकता है। उसकी भी जो आलोचना होती है, हम आलोचना करते हैं, लेकिन आयरन ओर मॉइन्स चाहे गोवा की हों, चाहे कर्णाटक की हों, कितने सालों से बंद पड़ी हैं? आप एक जज़मेंट दो, जिनको सज़ा देनी है, उनको सज़ा दो। पूरा ब्लैकट बैन लगाया हुआ है। देश को अरबों डॉलर का नुकसान हो रहा है। रुपया नीचे जा रहा है, डीज़ल-पेट्रोल के दाम बढ़ रहे हैं, जैसा इन्होंने कहा कि इसी वजह से करेंट एकाउंट डेफिसिट है। आयरन ओर मॉइनिंग से जो सबसे ज्यादा इन्कम होती थी, वह भी बंद पड़ी है। जिन्होंने गलत किया है, उनको बैन करो। जिन्होंने गड़बड़ की है, उनको सज़ा दो। सारी ही मॉइन्स बंद हैं, यह कौन सी तुक है, जो सुप्रीम कोर्ट पीछे पड़ा है।

एक केस का पूरा ट्रायल हुआ, सब कुछ हुआ। जो बड़बड़ी वाली कम्पनियां हैं, उनको सज़ा दो, जेल में भेजो और उनको बंद करो। उन कम्पनियों पर बैन करो। सारे के सारे लाइसेंस रद्द हो गए हैं और सबका पैसा जब्त कर लिया। आप बताइए कि भारत में कौन इन्वेस्ट करने आएगा? अगर किसी ने यहां अपने पैसे लगाए हैं और उसके हजारों-करोड़ रुपये जब्त हो गए, तो वे दूसरी जगह जाएंगे। जब आप उनका पैसा जब्त कर लो, तो वे इंडिया क्यों आएंगे? वे तो इंडोनेशिया जाएंगे। मतलब यह कि सबके ब्लैकट बैन, सबके लाइसेंस जब्त, तो कहीं न कहीं, कोई न कोई मतलब यह जो prudence जुडिशियरी में होता है, उसका भी तो कहीं न कहीं कोई इस्तेमाल होगा। मैं यह किसी का नाम नहीं लेना चाहता। जज़मेंट देने का तरीका, मुकदमा सूनने का तरीका, केसेज़ की पेंडेंसी मतलब जिधर छुओ उधर ही गड़बड़ियां निकल रही हैं, उसको ठीक कराने की जिम्मेदारी भी आपकी है। हमारे चाचा राम जेठमलानी जी यहां बैठे हुए हैं। जब ये खड़े हो जाते हैं, तो वकील ही क्या जजेज़ भी हिल जाते हैं। तो लोग इनको पकड़ते हैं कि चाचा को वकील बनाओ। ...(व्यवधान)... लोगों का यह परसेप्शन है कि बड़ा नामी वकील पकड़ोगे, तो सही जज़मेंट आ जाएगा। अगर आपने लेसर नोन वकील पकड़ा, तो फिर आपको सही जज़मेंट नहीं मिलेगा, क्योंकि जज भी बड़े वकील से

डरते हैं, इसलिए जो नोन वकील हैं, उसी को पकड़ो, तो इसका मतलब है कि आप बड़े वकील और छोटे वकील के चक्कर में कहीं न कहीं इन्फ्लुएंस हो रहे हैं। मैं आज यहां यह बात भी रखना चाहता हूँ कि हमारे यहां वकीलों की हालत इतनी खराब है कि आप जिला स्तर पर जाकर देखिए कि उन वकीलों को साइकिल तक नसीब नहीं है। आप हाई कोर्ट के वकीलों की हालत देखिए, कहीं उनकी टाई जा रही है, कहीं पेंट जा रही है, क्योंकि आमदनी ही नहीं है। ...**(व्यवधान)**... जैसा इन्होंने कहा कि उनके कोट के बटन भी बराबर नहीं होते हैं। मुझे ऐसे वकीलों से बड़ी सहानुभूति है। ये जो पांच परसेंट सुपर वकील हैं, यह सारी किटी इधर जा रही है, बाकी टोटली डिप्राइव्ड हैं।...**(व्यवधान)**... हम यहां नाम नहीं ले रहे हैं, यह सबके ऊपर लागू है। पूरे देश में पांच परसेंट सुप्रीम कोर्ट, हाई कोर्ट के वकील ऐसे हैं, जिनका पूरा रुतबा है कि पूछो मत। उनकी अथाह कमाई है, बाकी की इतनी बुरी हालत है कि आप सोच नहीं सकते। अगर ये जजेज यह तय कर लें चाहे जैसा वकील हो, चाहे वह नोन हो या नोन न हो, रामलाल हो, श्यामलाल हो या दीनानाथ हो, लेकिन अगर सही बात करता है, केस में अच्छी आर्ग्यूमेंट कर रहा है, तो हम फैसला इसके हक में देंगे। हम बड़े वकील की शक्ल देखकर फैसला नहीं देंगे। यह करेक्शन हो जाए। **You are getting carried away also**, यह भी समस्या है। तो हर तरफ से तो कमी नजर आ रही है। यहां पर सिब्ल साहब बैठे हुए हैं, मैं उनको यह सुझाव भी दूंगा कि आगे क्यों नहीं सोचते हैं हमने पहले भी एक बार राज्य सभा की स्पीच में कहा था कि जैसे IAS, IPS होता है, उसी तरह से इंडियन जूडिशियल सर्विस का भी कॉन्सेप्ट IJS सोचिए। उसमें शुरु से ही उच्छे लोगों को एकेडमी में ट्रेनिंग देकर-क्योंकि फिर वे वकील नहीं रहेंगे तो प्रभावित होने की बात ही नहीं है। अभी हॉयर जूडिशियरी में वहीं से वकील लेते हैं और कुछ नीचे डिस्ट्रिक्ट कोर्ट से प्रमोट होकर आते हैं। वे बेचारे ऐसे प्रमोट होकर आते हैं, ऐसे मौके पर आते हैं, उनको इतनी देर हो जाती है कि वे सिर्फ हाई कोर्ट के जज बनकर ही रिटायर हो जाते हैं। उनके लिए शायद ही कभी चीफ जस्टिस बनने का हाई कोर्ट में मौका आता हो। जो डिस्ट्रिक्ट कोर्ट्स से आते हैं, उनका सुप्रीम कोर्ट में पहुंचने का तो सवाल ही नहीं है। ऐसी उनकी भी व्यथा है। इसलिए आप इस सिस्टम में कुछ न कुछ ऐसी व्यवस्था कीजिए कि आप इतने परसेंट लोग वकील क्षेपी से लेंगे, इतने परसेंट लोग इंडियन जूडिशियल सर्विस से लेंगे और इतने परसेंट लोग, जो स्टेट जूडिशियरी होती है, जिसको प्रोविशियल जूडिशियल सर्विस कहते हैं, उससे लेंगे। उस खाते में तीनों जगहों से लेकर ...**(व्यवधान)**..

MR. DEPUTY CHAIRMAN: Shuklaji, two more speakers are there from your party.

श्री राजीव शुक्ल: यह तो मेरे ऊपर है कि मैं अपना पूरा टाइम लेता हूँ या कितना टाइम लेता हूँ।

MR. DEPUTY CHAIRMAN: You only gave the names.

श्री राजीव शुक्ल: उपसभापति जी, कांग्रेस पार्टी का टाइम आप मत तय कीजिए।

MR. DEPUTY CHAIRMAN: You gave the names.

श्री राजीव शुक्ल: कांग्रेस पार्टी का टाइम हम तय करेंगे।

MR. DEPUTY CHAIRMAN: You gave the names. What can I do?

श्री राजीव शुक्ल: जब इन तीनों से निकालकर, इसी प्रोसेस से जज़ेज आएंगे..(व्यवधान)..

SHRI K.N. BALAGOPAL (Kerala): Sir, the Minister cannot say like that. ..(Interruptions).. But, Sir, you are talking about the names that are available in the list. ..(Interruptions)..

MR. DEPUTY CHAIRMAN: That is why I said that. ..(Interruptions)..

SHRI RAJEEV SHUKLA: Who knows? I may cut those names. ..(Interruptions).. Who knows? I may cut those names. ..(Interruptions)..

SHRI K.N. BALAGOPAL: But, Sir, the way he is talking is not proper. ..(Interruptions)..

MR. DEPUTY CHAIRMAN: He can remove the names. ..(Interruptions).. He can remove rest of the names. So, there is no problem. ..(Interruptions)..

श्री राजीव शुक्ल: जब यह होता है कि बीच में टोक दिया जाता है, तो इससे पूरा का पूरा क्रम टूट जाता है।

SHRI PIYUSH GOYAL (Maharashtra) : It is a permanent problem, Sir. ..(Interruptions).. It is a problem for all of us. ..(Interruptions)..

MR. DEPUTY CHAIRMAN: This is the problem with others also. ..(Interruptions).. It is good that the Minister also experiences what others experience. ..(Interruptions)..

श्री राजीव शुक्ल: उपसभापति जी, इसलिए आज इन सारी स्थितियों को देखते हुए, Balagopalji, thanks a lot. Because of you I could consult my notes again. Otherwise, I was not able to look at my notes. इन सारी चीजों को देखने के बाद आपके हाथ में बीस साल बाद एक अवसर आया है, एक अपारच्युनिटी आई है। आप चाहें तो उस अपारच्युनिटी का इस्तेमाल कर सकते हैं, चाहें तो भारत की न्याय व्यवस्था को एक नई दिशा दे सकते हैं और चाहें तो अपने हाथ से यह अवसर खो सकते हैं। यदि आप इसको फिर से टाल देंगे तो यह ऐसे ही टलता रहेगा, जैसे पिछले बीस साल से टलता चला आ रहा है। मैं फिर से यह

बात दोहराता हूँ कि, "समर शेष है, नहीं पाप का भागी केवल व्याध, जो तटस्थ है, समय लिखेगा उनका भी अपराध।" ये रामधारी सिंह दिनकर जी की पंक्तियाँ हैं। अगर आपने वक्त पर फैसला नहीं लिया, तो अवसर आपके हाथ से निकल जाएगा। आज भारत की इस न्याय व्यवस्था को बदलने का अवसर है। आज वह अवसर है कि जिसमें आप एक ऐसा संतुलन बना सकते हैं कि जिसमें ज्यूडिशियरी का भी पूरा दबदबा कायम रहे और राजनीतिक व्यवस्था का भी थोड़ा सा हस्तक्षेप रहे ताकि सही लोगों का चयन हो। सिब्ल साहब इस तरह का बिल लाए हैं कि, "तुम्हारी भी जय-जय, हमारी जी जय-जय, न तुम हारे, न हम हारे"। वरना बात तो सही है कि कुछ न कुछ बात तो होगी, कुछ न कुछ मजबूरियाँ तो रही होंगी, वरना यूँ ही कोई बेवफ़ा नहीं होता। अगर ऐसे लोग आलोचना कर रहे हैं तो इस सिस्टम में, जो 1992 से जस्टिस जे.एस. वर्मा का दिया हुआ, जिसकी इतनी आलोचना हो रही है, जिसमें इतनी कमियाँ हैं, खुद जज लोग कर रहे हैं, तो निर्णय लेना चाहिए। इसलिए मित्रो, आज मौका है, चाहे तो इस मौके का इस्तेमाल कर लो, चाहे उसे गवां दो। बहुत-बहुत धन्यवाद।

SHRI SATISH CHANDRA MISRA (Uttar Pradesh): Thank you Mr. Deputy Chairman, Sir, for giving me this opportunity to speak on this very important Constitution Amendment. But, I must admit that when I stand to speak I know we have heard eminent people like Shri Kapil Sibal, a very eminent lawyer and Shri Arun Jaitley, and there are other eminent lawyers—more eminent than I would like to be somewhere near, but I can't be there—Mr. Ravi Shankar Prasad, Mr. Ram Jethmalani and Mr. Parasaran. We had other lawyers also who are not here.

MR. DEPUTY CHAIRMAN: You are also an eminent lawyer.

SHRI SATISH CHANDRA MISRA: But I have a little experience also in this field, I must say. I have 37 years of experience as a lawyer. Though I have not sat on the bench, I have some experience of the other side as well through my family. My father was Chief Justice, my real uncle was a judge and my real brother was a judge. Through my legal background, I also know about bar associations. I was Secretary of the High Court Bar Association. I was Member of the Bar Council of U.P. And then I was Chairman of the Bar Council of U.P. I have seen the system of the whole of U.P. where we have the maximum number of lawyers as of today. Thereafter, I got the opportunity of being the Advocate General of U.P. I have some experience but not as much as those eminent persons have who have spoken earlier. When I heard them speaking on the Bill, I must admit that Mr. Kapil Sibal and Mr. Arun Jaitley were on the same lines. They spoke almost on the point that there was a necessity and there is an extreme necessity to have a change in the system and to

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have the National Judicial Commission. With due respect to Mr. Arun Jaitley, I was slightly disappointed at the end of his speech when he said that we should defer it and that it should go for further examination. In the beginning of his speech he said, “When we brought it, you opposed it.” The impression was that since you have brought it, we have to defer it. Why can’t both of them be together? It should not be like this that ‘since you have brought it, I should say that it should be deferred, because when I brought the same thing, you said that it should be deferred.’ This way it will always remain deferred. We have already witnessed that. It is not 20 years. I must say that it has been more than 22 years since the National Judicial Commission was conceived. Why am I saying 22 years? I am saying it on the basis of the judgement of the hon. Supreme Court itself. After the 1983 judgement in S.P. Gupta’ case, the matter went before the three hon. judges. It was a transfer case. It came again. In the Supreme Court Record Association case and Subhash Sharma’s case in 1991, it was referred to a larger bench to look into the veracity of 1983 judgement in S.P. Gupta’s case. In that very judgement, if we see it, the reference was only on two points and not with respect to the entire issue. Ultimately, the Supreme Court took up the matter and entered into various other issues which were not even referred to it. I would read only five lines of paragraph 50 of the judgement of Subhash Sharma’s case. It says, “It is not a power or right to appoint judges. It is essentially a discharge of constitutional trust of which certain constitutional functionaries are collectively repositories.” It further says, “We are aware of the position..” Now this is very important. Today, we are not considering the accountability of the judges. We must keep in mind that there is a difference and distinction between accountability and with respect to the appointment though they may be interlinked. If we have proper judges, they will be more accountable. If we don’t have proper judges, they will not be accountable. But in paragraph 50 of the judgement, the hon. Supreme Court, while making reference to it, in 1991 said that it had taken note of the National Judicial Commission. It says, “We are aware of the position that the setting up of the National Judicial Commission through a constitutional amendment is in contemplation.” We are in 2013 now. “In the event of the amendment being carried and a National Judicial Commission being set up, the correctness of the ratio in S.P. Gupta’s case of the status of the Chief Justice of India may not be necessary to be examined in view of the fact that by the

amendment the Chief Justice of India would become the Chairman of the Commission.” Thereafter they say, “In case the Commission is not constituted, the two questions indicated above which are of vital importance to the efficient functioning of the judicial system in the country require consideration and there is an element of immediacy in the matter.”

So, therefore, the hon. Supreme Court right from the beginning itself was conceding to a judicial commission; and that was in 1991, when they referred the matter to the Bench of Nine Judges. The first judgement came, thereafter Presidential reference was made and then the second judgement came where the collegium system, which was earlier with three judges, was increased to five judges. Then, a memorandum was prepared under that judgement by the Government of India, by the Law Minister which was sent to all the Chief Justices. But the procedure with respect to the appointment was never followed. Why I am saying that it was never followed because we need to have an independent judiciary. The necessity is to have an independent judiciary as has been said by previous speakers. It is one of the main pillars of democracy; and plays a very important role in ensuring and securing the social justice which is enshrined in the Preamble of the Constitution. Now, if we see the Preamble of the Constitution, it says, “We the people” will secure social justice to all citizens of the country. How are we securing the social justice? Dr. B.R. Ambedkar, the father of the Indian Constitution, when he framed the Constitution, he never conceived that there will be a system of appointment of judges in such a manner that there will be no chance of securing social justice through the judiciary. Why I am saying so is because, as on date, under the present system which is there so far as Scheduled Castes and Scheduled Tribes are concerned, they are the most weakest section of the society. There are nearly 30 crores of SCs and STs in the country. But where from should they get justice? Is there any one to understand their problem? Every time I have been raising, in this House, that out of 160 Judges in the Allahabad High Court, 80 Judges posts are vacant. That is something different. Out of the 80 Judges also, we do not have a single Judge belonging to the Scheduled Caste even today in the Allahabad High Court. If this is the situation, how can we ensure social justice? We need to ensure that the appointments are made in a manner where their voice is also there. I request the Law Minister to look into this aspect. I know that I have seen the circular. Being the Advocate-General at one point of time, I had persuaded the then Chief Justice

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and collegium members to, at least, recommend one name from the Scheduled Caste category for appointment as a Judge. With great difficulty we could get three names for appointment as Judges. Out of three names, two names were turned down by the higher collegium when it reached the Supreme Court. The one who was appointed had expired after two years. Thereafter not a single name from the Scheduled Caste category was recommended. As per the circular, we made all efforts to get their names recommended. The Law Minister knows about the circular that the Chief Minister can also recommend the names. Even the judgement says that he can recommend the names. The Chief Minister did not recommend a name. They took care that no name was sent. When Bahujan Samaj Party was in the Government for five years; and when I was the Advocate General in 2003-04, we could, at least, send two names. If you are sending 100 names for appointment as Judges, at least, include one name from the Scheduled Caste category. But not even one name was recommended. This system is failing not because of this reason alone. There are other reasons also. As has been pointed out by previous speakers, this Bill should not be confused with the other Bill. As the Leader of the Opposition, Shri Arun Jaitley rightly said, there has to be an accountability of the Judges also. I fully agree with him that there should be accountability of the Judges; and some procedure should be there with respect to that. But we can't include that in this Bill. As soon as we include that in this Bill there will be confusion. Earlier we tried to include it but failed. When we include it in this Bill, there will be several questions on the independence of the judiciary saying that you are interfering with the independence of judiciary. Therefore, I would say that it has been very rightly separated from this Bill. It can be brought separately. It can be thought of separately. It can be discussed separately. Thereafter it can be brought for a discussion. But at this point of time we should only concentrate on the appointment of Judges. When we consider the appointment of Judges, we are not overarching the judicial dictums which are there, or, the judgement which the hon. Supreme Court has given. They have taken over the collegium. There is no provision in the article. When I read the articles again and again with respect to appointments, both the articles don't refer to any collegium. They say 'with the consultation of the Chief Justice'. Here it is reversed. The Chief Justice will not consult the President, but he will just communicate the President that look here I have selected so and so. Now, what is

the procedure of selection? It is totally non-transparent. It is not known to others, except the persons who are members of the collegium. A collegium is framed. Three judges sit together or five judges sit together. They sit together and decide. We know, whoever is in this profession knows, others also know that when the collegium meets, one member says, "This is my list" and the other member says, "This is my list", and then they say, "Let us decide it. If ten names have to be sent, we will choose three each." Is this the system? A judge has to be appointed on the basis of his qualities because he has to discharge his duties even with respect to enforcing the fundamental rights of 125 crore people of this country. They are putting everything into their hands. But they have become supreme, as has been rightly pointed out by the Leader of the Opposition that only god is above them, and no one else. We have given them so much power and they have taken all that power. They are only interested in PILs mostly because there they can decide whether there should be a *nail* or a *parnala* and everything like whether this dog should remain in this street or it should not remain in a park, every sort of thing which one can imagine. What is the function of the Executive? The Executive knows how to deal with them. They are the policy-makers. After a policy is made here, it is given in the hands of the Executive. The Executive has to take action. Whoever is in power, whichever party may be in power in any State or in the Centre, whenever they take any decision, they always think that this decision first has to be got approved by the judges or by the courts, it may be the High Court or the Supreme Court. Now what is being said is if a policy is framed, there should be a method, there should be a common decision that any policy being made for development or for any work, it should first be referred to the Supreme Court or to the High Court for their approval and then the action should be taken. Because if it is not done, then the Ministers may go to jails, the officers may go to jails. Who is going to work then? Who is going to sign the files then? All this is already happening. The judges' qualities which are required for appointment, is the basic thing which should have been considered. The judge should be of an unimpeachable integrity. He should possess high integrity, honesty, skill, high order of emotional stability, firmness, serenity, legal soundness, agility and endurance. Now there should be personal qualities also which should be taken into consideration, which are not considered and that is moral vigour; moral vigour of the person concerned who is being appointed. And, ethical firmness of imperviousness to corrupting or venal

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influences; humility and lack of affiliations, judicial temperament, and zeal and capacity to work and give judgements and decide the matters. Now today, we find the judges are appointed, but they also don't feel whether the judgement is going to be right or wrong. Therefore, even the judgements are kept on hold for years together and they are not delivered. The judge, while giving a judgement, is not able to judge that whether the judgement would be right or wrong. So, in these circumstances, we have to take into consideration that also. If a Judicial Commission is made, it is not going to interfere in the independence of the judiciary. I do not agree that by making a Judicial Commission, there will be any interference in the independence of the Judiciary. The Supreme Court, as I have already said, has already conceived this. The only thing they want is that the Chief Justice of India...

MR. DEPUTY CHAIRMAN: Please conclude. Please look at the display board also.

SHRI SATISH CHANDRA MISRA: I am seeing, Sir. If you say I will sit down.

MR. DEPUTY CHAIRMAN: I know you are a veteran and an erudite lawyer.

SHRI SATISH CHANDRA MISRA: I have no inhibitions about myself. I had conceded in the very beginning.

SHRI RAVI SHANKAR PRASAD: Mr. Deputy Chairman, Sir, this is a very extraordinary debate. Please give a little latitude. This is my request to you. We barely discuss these issues.

MR. DEPUTY CHAIRMAN: That is what I am doing.

SHRI T.K. RANGARAJAN (Tamil Nadu): Sir, this is a very important debate. Please give us some more time. We are prepared to sit till 11 o'clock today.

MR. DEPUTY CHAIRMAN: That is what I am doing. It is for the House to decide. I have no problem.

SHRI SATISH CHANDRA MISRA: I would say that it is not that nobody falters. When I read the judgements with respect to that case, all the judgements, what have the Judges said there? They said, "You cannot make a system where the Chief Justice of India's powers are subdued to anyone else, and the Chief Justice of

India has to be kept at the pivotal position.” But, when I see the Amendments, that has been taken care of ! The Chief Justice of India is the Chairman. He will chair. He is the Chairman, and after that, the Collegium is also there. They have a Collegium of three Judges. So, two Judges are there already. What has been added is two eminent jurists which will be there on behalf of the Chief Justice of India, the hon. Prime Minister and the Leader of the Opposition. Again, the Chief Justice of India is there in this decision. Of course, the Law Minister will be there. The Law Minister should be there. He is responsible, he is accountable to the whole country. People will ask him as to why three crores of cases are pending in this country, what about the poor persons who are going to Courts every day. As Rajeev Shuklaji said, "तारीख पर तारीख, तारीख पर तारीख". What about them? Of course, I don't agree to everything that Rajeev Shuklaji said because he said that this is a debate where only lawyers are likely to speak. He forgot what his past is. He belongs to a category which is above all. He belongs to the media, who judge everyone, who judge me, who judge judges...

MR. DEPUTY CHAIRMAN: Media conduct trials as well.

SHRI SATISH CHANDRA MISRA: They judge everything. They judge the whole country and the whole world. Everybody is afraid of them. Even I am afraid of them. I know that what I am speaking is being judged, and they are judging what should be taken out of my speech. They are also giving judgements, and their judgements are not delayed. Their judgements come immediately. As soon as we go out, we know that the judgement is there. And here, judgements come after years together. Not only that, Rajeev Shuklaji has another experience. He is the son of a lawyer, son-in-law of a lawyer and brother-in-law of a very eminent lawyer of this country, who is here. So, Rajeev Shuklaji is all-in-one, and he is also the Minister now. Therefore, when he pointed fingers at only lawyers being there to speak, I could not agree with him. I wish he was here in the House now.

While saying about judges, who gave their judgements, what did the then Chief Justice of India, Justice J.S. Verma, say later on? That is very important. The system was framed, and they did it saying that it would be for the better. As Mr. Jaitely pointed out, what happened in mid 70s? Ripples started, and ultimately, this judgement came and everything was taken by them. Judges started appointing judges in a manner which was, totally, non-transparent and sitting in tight chambers

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amongst themselves not even consulting the Bar Associations, not consulting lawyers, not consulting anyone and deciding on their own. Even the members of the majority in the second Judges Case, notably, the late Justice J.S. Verma said that if they had the benefit of foresight, they would not have created such a body. This is what Justice J.S. Verma said. So, we have to see that a system, which is not transparent, a system which has no participation of the Bar is changed. Every time, we say that it is a two-wheel chariot, that, one is the Judiciary and the other is the Bar. Now where is the consultation with the Bar? Bar does not even know about things. They come to know, later on, when the damage is done. They come to know when the list is already sent to the States and then to the Centre for the purpose of appointments. The Bar's consultation is not there. The Bar's views are not there. Why I am saying this is that, very recently, it has been seen that this tyranny of secrecy has largely affected the judiciary. And, the hon. Law Minister must have received it when the names of ten judges of the Madras High Court were sent. The entire 1,000 lawyers of the Bar Association signed a letter and sent it saying that these appointments, absolutely, do not fall into any of the categories worth being considered. Their names were sent for appointment. The Punjab and Haryana High Court, their Bar Associations, has said in June 2013 that they have also sent a representation against the reference of the names. Suddenly we come to know that these names have been sent and we just sit as lawyers in the Bar Associations and get astonished, 'O! this name has gone and that name has gone.' It was said that the lawyers who would otherwise suit the best, even if they are considered, they don't want to become a judge because they don't want to fall into that category. Today you are considering the name; you ask his consent to be given in writing and then you say, 'no, sorry, we have received some information later on and, therefore, we are not appointing you.' Therefore, I would say, with respect to this Constitution Bill, there is no necessity of sending it for selection. Why I am saying so is the procedure which will be followed—it is the Constitutional amendment—will be considered here. After being passed here, it will go to the Lok Sabha. After the Lok Sabha it will go to the various States and after it is ratified, it will then go to the President. I fully agree with Mr. Ravi Shankar Prasad and Mr. Jaitley. I agree to an extent the objection raised by Mr. Ravi Shankar Prasad that the other Bill which is there should be sent to a Select Committee or, maybe, a Standing Committee which

may be decided because there are several things on which I also have certain suggestions which I would like to give with respect to the modalities which are to be there. But this Bill, as has been assured by the Law Minister, would be the normal thing. It calls for assurance also. Unless there is a procedure laid down for appointment in the Bill, the President would not sign the Constitutional Amendment and, I am sure the Government would not even send it unless they frame that and get it passed from this House. I would like hon. Law Minister to give the Statement that both the things will be ultimately sent together for the assent and then only they will be made an Act and if this is assured, then, I am sure, the objection which has been raised by Shri Ravi Shankar Prasad would be met on that issue. With this, I conclude. Thank you very much.

SHRI K. N. BALAGOPAL: Sir, it is a privileged situation to speak on such a historic Bill. Sir, first of all, I want to say to the hon. Minister that there is some confusion about sending the Bill to the Standing Committee. We feel — my party feels—that the Bill should be passed, but there should not be any vacuum. Hon. LoP spoke about some legal points about the Constitutional Amendment and if the Constitutional Amendment is passed and if then the other Bill is lagging, it will create some confusion. So, you have to clarify that and we request that there should be a consensus about the passing of this Bill. Otherwise, this difference will be used in the court to defeat the legislation. So, that should be kept in mind. Sir, Executive, Legislative and Judiciary are three important organs of the present Parliamentary system and we are for a healthy combination and interaction between the three organs. But we all know that higher judiciary is very important in the country and now stories which are coming about higher judiciary is not a thing to make anyone happy in the country. Sir, the arbitrariness or the way in which judicial appointments are made is what we are discussing. Sir, the question of arbitrariness of the collegium system, the people who have got out of the judicial panel, are all coming to the fore. Sir, we are sure that it resulted because of the authoritarianism of an era in the 1970s. Before Emergency, during 1973 the Executive superseded three judges. It is a very famous case in the Indira Gandhi regime. That was history. Three judges were superseded and it was done for helping themselves to get benefit in an election case. That is history. Sir, this was there and because of these authoritarian practices, later judiciary got an opportunity to make such an improvement in their system in 1993. It was ratified through a judgement replying to a Presidential query in 1998, it was confirmed.

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But, what had happened actually? It was like falling out of the frying pan into the fire. Actually, one was an extreme. Now, we have the other extreme. Now, the judiciary is totally arbitrary. It is not a matter of just higher judiciary. This attitude is affecting the entire system. Sir, there is a proverb in Kerala. It goes like this. “Kurunthottikku vatham pidichal.” ‘Kurunthotti’ is an Ayurvedic herbal plant and it is the medicine for rheumatic diseases. If ‘Kurunthotti’ itself gets rheumatic disease, what will happen? That is what is happening in the country. The country is facing a very bad situation. So, we have to balance the situation. There should be a balance between the Executive, Judiciary and the Legislature.

Sir, I want to speak something more than what our eminent speakers have spoken here. I am not a practicing lawyer. My father was not a lawyer. My brother-in-law is not a lawyer or my father-in-law is not a lawyer. And, I am also not a practicing lawyer.

MR. DEPUTY CHAIRMAN: You can have son-in-law as a lawyer.

SHRI K.N. BALAGOPAL: But, I have the practical experience. Sir, this is not a matter of appointment of Judges alone. I respect the views and arguments of the hon. LoP. He said that Judges have any ideology about globalisation. Even though I respect his speech from academic and legal point of view, but I differ on politics. I want to differ with the point he has said today. It is about the ideological commitment of the Judiciary. Justice Cardozo, in his famous article “Judicial process” said that Judges are not free from the push and pull of the cosmos. Yes, Sir. Judges are subject to push and pull of the cosmos. Now, the push and pull is relating to the liberalisation policies. Sir, liberalisation policies are making Judges different from the judicially active Judges of 1970s and 1980s like Justice Krishna Aiyar, Justice Chinapa Reddy, etc. Three Judges were very prominent at that time who interpreted laws in favour of the common people.

Now, it is not a matter of appointment of Judges alone is important, but the combination of Judges we have is also important. I hope that it would have been discussed by the hon. BSP leader. Look at the composition of Judges in the country. How many SC Judges that we have in the system? How many ST and how many OBC Judges we have? In the last five years—I may be corrected if I am wrong—

there is not a single woman Judge in the Supreme Court. I don't know exactly what the position now is. I may be corrected. I am not sure. I read some article. The percentage of women Judges in the country is very less. The percentage of women, SC, ST is very less. Not only SC/ST, but even the people from lower economic strata are also very important.

MR. DEPUTY CHAIRMAN: What about the percentage of MPs?

SHRI K.N. BALAGOPAL: Sir, that is also there. I will reply to that, but you have to give me additional time for that argument.

The economic capacity or economic strata is also very important. Why am I saying this? I am not blaming. But, I would say that the people who are living in ivory tower cannot decide about the issues relating to common people. Now, we have statistics about Parliament. I am not against rich people. But, the percentage of rich people in Parliament is increasing. The percentage of very rich is also increasing. Same is the case with Judiciary also. Those who are coming from the ivory towers cannot know about the common man's problems.

Sir, Bangalore Water Supply Case is a very famous case. It shows how to interpret law in favour of the workmen of the country. Now, they are banning even strike. Sir, they are banning *hartal* or strike or any other activity! Why? We know what the history of the country is, what the Freedom Struggle is and how different kinds of agitations were there in the country? Now, even the court is saying that if somebody is in custody for one day, he should be eliminated from the political system!

MR. DEPUTY CHAIRMAN: Now, please...(Interruptions)...

SHRI K.N. BALAGOPAL: What is the doubt? ...(Interruptions)... For somebody history may have started later; that is why. If you study the history, that is okay.

Sir, I am talking about the judgements given by various Judges. Now, the Judiciary says that for those who elected MPs and MLAs are convicted, there is no right of appeal. The Minister has taken a very good initiative by bringing forth amendments to the existing Act. Now, if a person remains in custody even for a single day, he is not eligible to file nominations; if a Member is convicted in a case,

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he won't be allowed to continue as a Member of Parliament or the Assembly. What kind of thinking is this, Sir? Whatever political ideology we may follow, we must fight for the cause of the people. We raise issues. There may be different ideologies, but it is those who never go out and look into the common people's issues who pass such judgements. So, this strata of Judges needs to be changed. That is very important. I am not talking only about income parity, Sir. Now, how many people are coming into the profession is another matter for debate and I would not like to get into that. Recently, there have been some other judgments also.

Sir, I will take another five to six minutes.

MR. DEPUTY CHAIRMAN: Your time-limit is already over.

SHRI K.N. BALAGOPAL: There should be some comparative analysis, Sir. Sir, eminent jurists are present here. The hon. Minister is also there. Now, it is not only about the Supreme Court Judges or the High Court Judges, but even Judges of the Subordinate Courts think that they also can interpret the Constitution. There have been some cases in Kerala recently. Workers from the Left, as also the Congress, were arrested for taking part in an agitation and they were charged with destruction of public property. If some glass is broken, they can make out a case. I can give you some more examples. Recently, a group of people from the Congress and our party were arrested in different cases. Now, the glass of a jeep was broken. They calculated the loss at two lakh rupees and charged it as damages. The Magistrate of a Subordinate Court said, "The loss is of two lakh rupees; you are ten boys; you have to pay two lakh rupees each before you get bail." This was not proper. They were just college students, and this was just an allegation. For that, they were supposed to pay two lakh rupees each! What is the judicial competence of such people? If a young boy, girl, or a young man goes to the court to seek bail, they need to pay money as guarantee or surety whereas there is no such condition in the law.

Then, there is another case which is being tried in the High Court. The Judge of a Subordinate Court had a deposition before him about a crime. This was a very serious case in Kerala. One lady, and I am not naming the lady, deposed before the Judge.

MR. DEPUTY CHAIRMAN: Don't mention the name of the lady; don't name the Judge.

SHRI K.N. BALAGOPAL: I am not naming them, Sir.

There was this solar scam in Kerala. The lady is in jail. Just as it happens in some television shows, I would give a clue and you may assume. She gave a statement, a long statement of 21 pages...

MR. DEPUTY CHAIRMAN: Why do you refer to a particular case?

SHRI K.N. BALAGOPAL: And the Court has not recorded it, due to some Public-Interest Litigation....

MR. DEPUTY CHAIRMAN: Why do you refer to a particular case? Don't bring in politics here!

SHRI K.N. BALAGOPAL: Sir, the case is before the High Court. The High Court is not inquiring into it.

MR. DEPUTY CHAIRMAN: No, no, Balagopalji; you are referring to a case that is in the Court now. Don't do that.

SHRI K.N. BALAGOPAL: I will not do it again, Sir.

MR. DEPUTY CHAIRMAN: But it is a case which is, at present, going on in the Court. Don't go into that, please.

SHRI K.N. BALAGOPAL: I will not mention it again, Sir. So, there are such examples. That is why, I say that we need to look into the style of functioning of the Subordinate Judiciary.

Sir, I support what Shri Rajeev Shukla has proposed. He said that there should be a National Judicial Service in the country.

MR. DEPUTY CHAIRMAN: Okay. Now you conclude.

SHRI K.N. BALAGOPAL : Sir, regarding this Bill, I have given one amendment. I am not going in for division, but I want to get a reply from the Minister.

MR. DEPUTY CHAIRMAN: You move your amendment at that time. When you move your amendment, the Minister would give the answer.

SHRI K.N. BALAGOPAL: Yes, I want to get the answer because when the hon. LoP was speaking he said that there should be some model criteria for appointment of judges. When you are selecting a judge, there should be some guidelines. My amendment is on Clause 3. I have said 'the manner', the manner is there, 'and broad guidelines for selecting a judge should be there'. That means, the enabling Act should give that direction. ...(Time-bell rings)... Otherwise, Sir, what will happen? Sir, I have taken only 13 minutes. I would speak for 15 minutes only.

MR. DEPUTY CHAIRMAN: You took extra six minutes. That is the point.

SHRI K.N. BALAGOPAL: Sir, extra 10 minutes were there. So, I am not comparing. Sir, the right is given to the Executive – please keep an eye on me, Sir. As per the Judicial Appointments Commission Bill, 2013, it is said that the Legislature will give the right to make rules to the Executive. That means, some Joint Secretary of the Department may write some rules and it is accepted. This is happening, Sir. What is FEMA? On FEMA, the statutory motion is there. The Govt. annulled the FEMA rule. Then, the new rule came. So, as per our delegated legislation process, which rule if annulled, up to that time that law will persist. If they appoint some High Court judge or a Supreme Court judge on that legislation, without an enabling provision in the Bill, and Constitutional provision, then, that would lead to another kind of problem. That is why I am saying that this should be there in the Constitutional Amendment.

MR. DEPUTY CHAIRMAN: You can move it later.

SHRI K.N. BALAGOPAL: Sir, I want to get a reply from the hon. Minister because this is an important thing.

MR. DEPUTY CHAIRMAN: Okay, the Minister will give a reply.

SHRI K.N. BALAGOPAL: That is why, in principle, we are supporting this historic Bill, Sir. Thank you, Sir.

SHRI SUKHENDU SEKHAR ROY (West Bengal): Mr. Deputy Chairman, Sir, I am grateful to you for giving me the chance to speak on the vital Bill, *i.e.*, the Constitution (One Hundred and Twentieth Amendment) Bill, 2013. Sir, our Party, the All India Trinamool Congress and our leader, Miss. Mamata Banerjee, has full faith in Judiciary. We believe in the independence of the Judiciary, and the powers of

judicial review because we know that the Judiciary in our country, by delivering landmark judgements in plethora of cases, right from Keshva Nand Bharti Case to 2G Case, over the decades, have reaffirmed justice, social, economic and political as enshrined in the Preamble to the Constitution of India.

[THE VICE-CHAIRMAN (SHRI BHUBANESWAR KALITA) in the Chair.]

Sir, my Party, the All India Trinamool Congress does not believe in a committed Judiciary. A committed Judiciary was advocated by the so-called Young Turks in the era notoriously known as Emergency period. We all know what happened in 1973 when the Judiciary was made to measure. Three of the senior judges were superseded by a puisne judge in the Supreme Court to give shape to the philosophy of committed Judiciary. But, Sir, gone are the days. Things have undergone a sea change since then. But due to abject failure on the part of the Executive and the inaction on the part of the Legislature, the so-called judicial activism has surfaced and at times the so-called judicial activism has turned to be judicial excess.

Sir, moreover, irregularities and nepotism, if not other corrupt practices, are being perpetrated on a regular basis in the matter of appointment of judges in the High Courts and Supreme Court.

Nowhere in the world, as I know, such a system of collegium exists whereby the Judges appoint Judges based on the pick and choose formula as per their whims and fancies. Majority of the advanced countries though guarantee independence of judiciary, the appointment of Judges and other service conditions are guided by such a mechanism which ensures transparency and accountability. In India, unfortunately, we are lacking that. Sir, take the example of Switzerland. In Switzerland all the political parties have a voice in the appointment of Judges. We do not want to seek that power for the political parties. But in Switzerland the Members of the Federal Court are appointed by the Swiss Federal Assembly. Even the Constitution of Nepal provides for a Judicial Commission. For the past twenty years we are discussing and debating. We have not come to finality; we have not come to a conclusion as yet. Even today we are a divided house. Ultimately, the country will lose; ultimately, this is a burden on the common man who is seeking justice. We are not thinking of them. They are knocking the doors of the judiciary. For decades together they are not getting justice. We are discussing and debating without

[Shri Sukhendu Sekhar Roy]

coming to any conclusion. This is why I think that this is the need of the hour that this Constitutional (Amendment) Bill is passed and supported by each and one Member of this House. Sir, all the time the politicians seem to be the sacrificial goats and others are holy cows, nobody can touch them. We have not forgotten the maxim which is even today prevalent in England, UK, that 'King can do no wrong'. In India, the Judges can do no wrong. They have adopted that maxim for them. They think that they are law unto themselves and they do and undo anything they want because only impeachment is there, nothing else. How the impeachment is directed against them all of us know which we need not discuss elaborately. So, taking the advantage of the umbrella of impeachment, they are exercising their powers sometimes in a way transgressing into the jurisdiction of the Executive and the Legislature. This is why this Constitutional (Amendment) Bill is very much necessary. Many hon. Members have spoken about the balance of separation of power and it must not be disturbed. Yes, the founding fathers of our Constitution introduced the separation of power, balance of power among the three pillars of our liberal democracy. Now a time has come that we have a very serious view as to whether these three pillars are still intact with their powers and jurisdiction or not. In the matter of appointment of Judges, we need not say anything about how the Judges are appointed. Very recently we know about the case of one hon. Chief Justice of a particular High Court. His letter addressed to the hon. President of India, his letter addressed to the Chief Justice of India, to the hon. Prime Minister of India has been leaked in the Press and we all know the contents of the letter. There the Chief Justice of that hon. High Court has categorically stated - no politician has alleged - that it is the Chief Justice of a High Court who is alleging that 'my candidature for a Judge of the Supreme Court was not considered only because when I was in the Collegium of the High Court, I raised an objection against the appointment of a particular close relation of the present Chief Justice of India'.

Not present Chief Justice of India, I mean, a former Chief Justice of India. Only because he, being a member of the Collegium, had raised objections, on valid grounds, against the appointment of a close relative of the erstwhile Chief Justice of India, his candidature was not considered. Till today, he is moving around without any result, crying in wilderness. This is the situation that our judicial system is

having today. Shame on the part of Judiciary! It is a shame on the part of our Judiciary that such things are being continued. The hon. Leader of the Opposition has said that the Constitution provides for consultation and he has given a very wider meaning of consultation and has appealed that its dictionary meaning should not be taken care of. I am sorry, with all respect to him, I disagree with him. I disagree because...*(Interruptions)*...

SHRI RAVI SHANKAR PRASAD: He did not say that.

SHRI SUKHENDU SEKHAR ROY: This is what I understood. I may be wrong. It was my perception.

SHRI RAVI SHANKAR PRASAD: He has said that the Supreme Court said like that.

SHRI SUKHENDU SEKHAR ROY: Okay. I am sorry. I stand corrected. 'Consultation' must not be construed as 'concurrence'. 'Consultation' cannot be 'concurrence'. Had it been so, there would have been the word 'concurrence' in the Constitution, not the word 'consultation'. As compared to our forefathers, who drafted the Constitution, we are pigmies. They visualized everything. They discussed everything in detail. And, ultimately, they chose the selected words at the right place. Therefore, 'consultation' cannot be construed as 'concurrence'. The nicety of our liberal democracy is that we are having checks and balances in our system. And, taking a cue from that principle of checks and balances, the Law Commission, while considering the Amendment in the present form, in its 214th Report, submitted in the year 2008, said that the Indian Constitution provides a beautiful system of checks and balances under Articles 142(2) and 270(1) for the appointment of Judges of the Supreme Court and the High Courts, where both, the Executive and the Judiciary, have been given a balanced role. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI BHUBANESWAR KALITA): Please conclude now.

SHRI SUKHENDU SEKHAR ROY: Sir, I will take just one or two minutes more.

THE VICE-CHAIRMAN (SHRI BHUBANESWAR KALITA): You have already taken five minutes more than your allotted time.

4.00 P.M.

SHRI SUKHENDU SEKHAR ROY: Sir, everybody has been given excess time.

THE VICE-CHAIRMAN (SHRI BHUBANESWAR KALITA): Yeah. That's why I have given you five minutes more.

SHRI SUKHENDU SEKHAR ROY: This balance has been upset by the second Judge's case and the original balance of power needs to be restored. The original balance of power needs to be restored and this Constitution (Amendment) Bill seeks to restore that balance. The law may be passed. Restoring the primacy of the Chief Justice of India and the power of the Executive to make the appointments, the amended procedure would be based on the principle of accountability and focus on the key factors, like, transparency, fairness, objectivity and equal opportunity. So, in order to ensure transparency, fairness, objectivity and equal opportunity, we need a mechanism which has been proposed in the other Bill, which we will discuss some other day, as the hon. Law Minister has stated. Therefore, this is the need of the Hour.

THE VICE-CHAIRMAN (SHRI BHUBANESWAR KALITA): Please conclude now.

SHRI SUKHENDU SEKHAR ROY: Okay, Sir. I am concluding. Neither the Judiciary nor the Legislature nor the Executive enjoys any temporal power. All powers have been derived from the Constitution.

This question was raised again and again as to which one is supreme — Parliament or the Judiciary. As a student of political science and law, there is no iota of doubt in my mind that Constitution is the supreme. The Executive, the Judiciary and the Legislature have to abide by the tenets of the Constitution without which our democracy cannot usher in a new era. What are we leaving for our next generation? A corrupt judiciary, a corrupt system! Son of a judge will be appointed, daughter of a judge will be appointed, close relatives of the judge will be appointed, even the Chamber juniors of the judge will be appointed as judges. No matter he or she has the quality or not. Therefore, I agree with the Leader of the Opposition that there should be some eligibility criterion, objective eligibility criterion for appointment of judges. There should be no pick and choose. Therefore, Sir, on behalf of my party, I fully support this Constitutional (Amendment) Bill. Thank you.

श्री राम गोपाल यादव (उत्तर प्रदेश): धन्यवाद उपसभाध्यक्ष जी मैं इस संविधान संशोधन विधेयक, 2013 का समर्थन करने के लिए खड़ा हुआ हूँ। हमारा देश अकेला ऐसा देश है जिसमें जजिज स्वयं जजिज को नियुक्त करते हैं, दुनिया में कहीं भी ऐसा नहीं है। हर जगह कार्यपालिका को यह अधिकार है, लेकिन हिन्दुस्तान में यह अधिकार जजों ने स्वयं अपने हाथ में ले लिया है। उसके बाद जजिज इस तरीके से बिहेव करने लगे, जिसकी बजह से कई बार कार्यपालिका और न्यायपालिका में बीच में **confrontation** जैसी स्थिति आने की स्थिति पैदा हुई है, कई बार व्यवस्थापिका और न्यायपालिका के बीच **confrontation** पैदा होने की स्थिति भी आई है, यह क्यों आई, इसके कारण क्या हैं? जब सरकार का इकबाल काम हो जाता है तब इस तरह की बातें पैदा होती हैं। मैं आपको उदाहरण देना चाहता हूँ कि जब प्रेसिडेंट फ्रेंकलिन रूजवेल्ट ने मंदी के दौरान, उससे उबरने के लिए **Deal Laws** बनाए और अमेरिकन फेडरल सुप्रीम कोर्ट ने एक-एक करके उनको रद्द करना शुरू किया, जो राष्ट्रपति फ्रेंकलिन रूजवेल्ट को यह कहना पड़ा कि अगर सुप्रीम कोर्ट अपना रवैया नहीं बदलेगा, तो हम इसको अपने लोगों से पैक कर देंगे। हालांकि सीनेट ने उस प्लान को कभी होने नहीं दिया, लेकिन उसका परिणाम यह हुआ कि 1936 से लेकर आज तक, लगभग 80 वर्ष होने जा रहे हैं, कभी भी अमेरिका में न्यायपालिका ने ऐसा कोई कदम नहीं उठाया कि कार्यपालिका से विवाद पैदा हो। हम 20 साल से यह तय नहीं कर पा रहे हैं कि जो शक्ति आपके हाथ में से ले ली गई, उसको हम वापस ले, जबकि हम सर्वशक्तिमान हैं। संसद जैसा चाहे वैसा कर सकती है। संविधान के अंदर ज्युडिशियल रिव्यू का उनको हक है, लेकिन कानून बनाने का, संविधान में संशोधन करने का अधिकार तो संसद को ही है। हमने तो वह वक्त भी देखा है जब आपकी कार्यपालिका इतनी मजबूत हुआ करती थी कि संविधान में ऐसे-ऐसे संशोधन कर दिए गए जो *prima facie* गलत थे, लेकिन न्यायपालिका की हिम्मत नहीं पड़ी कि वह उस पर अंगूली उठाए और स्वयं संसद को ही उसको बाद में **undo** करना पड़ा। **We have seen those times.** यह स्थिति है कि जब सरकार का इकबाल कम हुआ, तो इस तरह की मनमानी होने लगी। इसलिए यह संविधान संशोधन विधेयक लाया जाना बहुत जरूरी था। इसमें विलम्ब बहुत हुआ, इसके लिए गवर्नमेंट ही जिम्मेदार है, चाहे जो भी गवर्नमेंट रही है, इन दौरान कई गवर्नमेंट बदल चुकी हैं। कई बातें यहा पर हुई हैं, बहुत बड़े विद्वान लोगों ने बातें कहीं और बहुत अच्छी-अच्छी बातें कहीं, इसलिए मैं ज्यादा कुछ नहीं कह सकता हूँ क्योंकि सब बड़े-बड़े वकील हैं।

मैं वकील तो नहीं हूँ, हालांकि पोस्ट ग्रेजुएट क्लॉसेज़ को, वर्ल्ड कॉन्स्टिट्यूशनस को पढ़ाने का मेरा लम्बा अनुभव है। हमारे सामने सुप्रीम कोर्ट की यह स्थिति है कि हम जजेज़ के खिलाफ कार्यवाही नहीं कर सकते हैं। यहां महाभियोग दो बार आया है। एक बार तो आपने ही बचाया है। आप ही प्लीड कर रहे थे, **I was a member of Parliament at that time.** एक बार खुद एक जज साहब यहां आए थे। वह पास नहीं हो पाया। जजेज़ जानते हैं कि यह काम बहुत कठिन होता है। सवाल यह है कि जैसा राजीव जी ने और सतीश जी ने कहा है कि इतने बड़े पैमाने पर वेकेंसीज़ खाली हैं, जिसकी वजह से लोगों को न्याय नहीं मिल पा

[श्री राम गोपाल यादव]

रहा है। ये वेकेंसीज़ इतनी ज्यादा खाली इसलिए हैं क्योंकि इसमें गवर्नमेंट की भी कमी है। आपने यह व्यवस्था कर दी है कि चीफ जस्टिस दूसरे राज्य से आएगा। वह दूसरे राज्य से आता है तो न तो वह उस राज्य के बारे में समझता है और न ही उसको वहां के बारे में जानकारी होती है। वह तो इस चक्कर में रहता है कि वह कब सुप्रीम कोर्ट में पहुंचे। वह किसी वकील को नहीं जानता है। वह तो सुप्रीम कोर्ट में जाने की जुगाड़ में रहता है। इसका नतीजा यह है कि आज से दस साल पहले भी उत्तर प्रदेश के हाई कोर्ट में 80 वेकेंसीज़ थी और आज भी हैं। इतने बड़े पैमाने पर 15 लाख के करीब मुकदमें लम्बित पड़े हैं और वेकेंसीज़ खाली पड़ी हैं। जज मनमानी करते हैं और अपील सुनते नहीं हैं। अगर जूनियर को सरकारी वकील न बनाओं, तो किसी अधिकारी को बुलाकर कहेंगे कि आपको कंटेम्पट ऑफ कोर्ट में जेल भेज रहे हैं। इस तरह की दिक्कतें आ रही हैं। चाहे आप इसकी जांच करवा लीजिए। एक जज साहब नोएडा आए तो उनके साथ सिक्स्योरिटी के 28 लोग थे। उन्होंने कहा कि सबके लिए होटल में व्यवस्था कीजिए। प्रशासन ने कहा कि मैं इस काम के लिए पैसा कहां से लाऊं? इनकी सिक्स्योरिटी के लिए गाड़ी टाइम पर नहीं पहुंच पाई, तो कलक्टर और एसपी दोनों को तलब कर लिया गया। इसप्रकार की परिस्थितियां पैदा हो रही हैं। इस सीमा तक जाकर जजेज़ काम कर रहे हैं। वे PIL करवा देते हैं। इलाहाबाद हाई कोर्ट के एक जज ने PIL करवाकर लाल बत्ती लगाने का ऑर्डर कर दिया। Everybody knows that in U.P. उन्होंने इसलिए PIL करवाई, ताकि जजेज़ लाल बत्ती लगवा सकें। इसके बाद खुद ऑर्डर कर दिए। ...**(व्यवधान)**... दूसरे लोग लाल बत्ती नहीं लगाएंगे, लेकिन अपने लिए PIL के जरिए ऑर्डर कर रहे हैं, तो यह स्थिति पैदा हो रही है। मैंने एक दिन आपसे सप्लीमेंटरी सवाल में पूछा था कि आप पता करवाइए कि अपील के कितने केस डिसाइड हुए हैं? PIL के नाम पर, स्टे के नाम पर रिट पिटिशन आती हैं और कोटा पूरा हो जाता है कि मैंने इतने मुकदमें कर लिए। कोई गरीब आदमी आ नहीं सकता है। राजीव जी सही बात कह रहे थे कि चाहे जितना competent वकील हो, अगर उसका नाम बड़ा नहीं है, तो उसको कोई आदमी इसलिए engage नहीं करता है क्योंकि जजेज़ उसको सुनेंगे ही नहीं। चाहे जितनी बढ़िया बहस करे, उसको कोई नहीं सुनेगा। बड़े से बड़ा सम्पन्न आदमी भी न्याय के लिए नहीं लड़ सकता है। आज के टाइम में न्याय इतना मंहगा हो गया है कि बड़े से बड़े आदमी भी अब मुकदमा नहीं लड़ सकते। सुनील दत्त जी को अपना मकान बेचना पड़ा था। यह बात मुम्बई के लोग जानते हैं कि जो मकान उनकी पत्नी के नाम पर था, वह उनको बहुत प्रिय था। जब से संजय दत्त का मुकदमा लड़ रहे थे तो वकीलों को पैसा देने के लिए उनको अपना मकान बेचना पड़ा था। न्याय पाना इतना मंहगा हो गया है कि सुनील दत्त को इसके लिए अपना मकान बेचना पड़ा। यह स्थिति है, तो इसमें कोई विलम्ब नहीं होना चाहिए। मैं नहीं चाहता हूँ कि इसमें किसी तरह का कोई विलम्ब हो। यह बिल जितनी जल्दी पास हो सकता हो, उतनी जल्दी पास होना चाहिए।

एक ओर अजीब स्थिति है कि चाहे जिस तरह का मामला हो—अब यहां संसद में बैठे हैं, हालांकि सब कहने के लिए हैं कि ज्यूडिशियरी में किसी का नाम लेकर नहीं कह सकते हैं, मैं ज्यादा कहना भी नहीं चाहता हूं, क्योंकि सभी लोगों ने बहुत सी बातें कह दी हैं, लेकिन स्थिति यह हो गई है कि अब लोगों का ज्यूडिशियरी में विश्वास नहीं रहा है। तमाम आरोपों, जनता से लेकर, प्रेस से लेकर सबसे ज्यादा आरोप हम लोगों के ऊपर ही लगते हैं कि जबकि हम लोग ही सबसे ज्यादा उत्तरदायी हैं। आज भी जनता की सबसे ज्यादा बात आप ही सुनते हैं, रात-बेरात कोई भी आपका दरवाजा खटखटा दे, तो आप मिलते हैं, चाय पिलाते हैं, बिठाते हैं, उसकी बात सुनते हैं, काम चाहे हो, चाहे न हो सके, लेकिन आप बात सुनते हैं। जिन लोगों के दरवाजे तक कभी कोई आदमी नहीं पहुंच सकता है, वे 24 घंटे आपकी आलोचना करने के अलावा कोई काम नहीं करते हैं और कोई काम नहीं कर रहे हैं। ये तो स्कूटिनी करते हैं कि सांसद निधि से कितना काम हुआ या कितना नहीं हुआ। अगर इनमें पूछा जाए कि आपने कितने मुकदमों पर फैसले दिए हैं, तो कोई फैसला नहीं है। आज यह स्थिति हो गई है। इसलिए आप जो संविधान संशोधन विधेयक लाए हैं, यह निहायत जरूरी है, क्योंकि जब तक इन जजेज़ की नियुक्तियों पर आपका अधिकार नहीं होगा, तब तक इनकी नियुक्तियों में हो रही मनमानियों पर रोक नहीं लगेगी। जैसा अभी मिश्रा जी ने भी बताया है, यह सही बात है कि collegium में तीन लोग हैं, 9 जजेस अपॉइंट हो गए हैं, जो अंग्रेजी का एक सेन्टेन्स भी सही नहीं लिख पाते हैं और अपने ही खिलाफ रूलिंग ही दे देते हैं। वे जो जजमेंट देते हैं, उसका कुछ और अर्थ उनके दिमाग में होता है और जो लिखते हैं, उसका दूसरा अर्थ होता है। आज यह स्थिति हो गई है, क्योंकि कोई मेरिट नहीं है, कोई क्राइटेरिया नहीं रह गया है। आज क्राइटेरिया यह है कि कौन किसके नजदीक है। अगर अभी किसी स्टेट का मुख्यमंत्री मना कर दे कि मैं किसी से सहमति व्यक्त नहीं करता हूं तो ऊपर तक शिकायत हो जाती है कि मुख्य मंत्री सहमति नहीं दे रहे हैं। जैसा कि अभी मिश्रा जी ने भी बताया है और मैं भी पूछता हूं कि उत्तर प्रदेश के हाई कोर्ट के जजेज़ में कितने एस.सी. या ओ.बी.सी. के जजेज़ हैं?

श्री सतीश चन्द्र मिश्रा: एस.सी. का एक भी जज नहीं है और ओ.बी.सी. के भी बहुत कम हैं।

श्री राम गोपाल यादव: ओ.बी.सी. का एकाध जज है, शायद दो हैं, लेकिन एस.सी. का कोई जज नहीं है। उत्तर प्रदेश इतना बड़ा राज्य है, लेकिन इस श्रेणी से कोई जज नहीं है। अभी नाम का जो नया पैनल भेजा जा रहा है, उसमें एक भी जज न माइनेरिटी से, न ओ.बी.सी. से और न एस.सी. श्रेणी से है। हो सकता है कि उत्तर प्रदेश के मुख्य मंत्री उन सब पर अपनी असहमति व्यक्त करें और किसी को सहमति न दें।

SHRIMATI KANIMOZHI (Tamil Nadu): No women either.

PROF. RAM GOPAL YADAV: Yes, no women, यह स्थिति है। खैर, आपने कह ही दिया है और हमारे जेटली साहब ने भी कह दिया है कि नीचे जज, ऊपर खुदा, बीच में कोई नहीं। लेकिन आप इस बिल पर तारीख पर तारीख मत डालिएगा, जैसे ये लोग डालते हैं। इस पर तारीख पर तारीख मत डलवाइए, क्योंकि यह बिल बहुत जरूरी है।

महोदय, एक चीज और सोचिएगा कि न्याय सस्ता कैसे हो। इसमें वकीलों को अहम् भूमिका अदा करनी है, क्योंकि उनके बिना कोई सोच ही नहीं सकता है। हालांकि आदमी यह जानता है कि वह बच सकता है, मेरा जीवन बच सकता है, मेरी जमीन-जयदाद बच सकती है, लेकिन उसके पास न्यायालय में जाने के लिए पैसा नहीं है। वह जानता है कि अन्याय हुआ है, लेकिन वह कोर्ट में नहीं जा सकता है, **because he has no money to pay to the lawyers.** वकील बहुत ज्यादा मंहगे हो गए हैं, इसलिए कोई रास्ता निकालिए जिससे कि एक आम आदमी को भी न्याय मिल सके। आखिर न्यायपालिका क्यों है? हमारे संविधान निर्माताओं ने, हमारे **founding-father** ने तीनों की पावर्स का डिविजन कर दिया है। **Political Science** का स्टूडेंट होने के नाते कभी-कभी हम **separation of powers** और **division of power** में फर्क करते हैं। हमारे यहां पर **separation of power** नहीं है, डिविजन ऑफ पावर है, **Separation of powers** होता तो पार्लियामेंट के मेम्बर की जगह मिनिस्टर नहीं बैठ सकते हैं जैसा कि अमरीका में है। **There is Separation of powers**, लेकिन हमारे यहां पर डिविजन ऑफ पावर्स है। शक्तियों का विभाजन है, पृथक्करण नहीं है। संविधान निर्माताओं ने शक्तियों का विभाजन इस तरह से किया है कि हम एक-दूसरे के कार्य क्षेत्र में हस्तक्षेप न करें, अपना-अपना काम करें, लेकिन अब आप कुछ नहीं कर सकते और जजेज़ मनमाने तरीके से आपके हर काम में हस्तक्षेप कर सकते हैं। अभी यह भी हो सकता है कि जब सभी मंत्री छोटी सी गाड़ी में चलने लगे, तो इस पर न चल कर दूसरी किस्म की गाड़ी पर चलें किसी दिन यह भी जजमेंट आ जाए।

अब लोग वकीलों से यह कहने लगे हैं कि तुम कानून जानो या न जानो, इससे कोई मतलब नहीं, जज को जानो। जज को जानिए, कानून आता हो, न आता हो, इससे कोई मतलब नहीं है।

ये बातें हैं, अगर कहें, तो बहुत लम्बा हो जाएगा। आपकी बहुत कृपा है, आपने घंटी नहीं बजाई। मैं सारे लोगों से अपील करूंगा, आप लोगों से भी अपील करूंगा कि इसको पास होने दीजिए, क्योंकि बहुत दिक्कत है, अब तारीख पर तारीख मत लीजिए।

SHRI N.K. SINGH (Bihar): Mr. Vice-Chairman, Sir, as I rise to speak on this important historical legislation or this Constitutional Amendment which is in front of us, a poor economist like me of the dismal science cannot be both, over-awed and feel protected. Over-awed, as I turn to my right, there was distinguished Arun Jaitleyji, there is Ravi Shankarji, and, of course, the fabled Mr. Ram Jethmalani, who

has, of course, a reputation which is so formidable. Sitting next to me is Satish Misraji, another formidable person, and, of course, Parasaranji, who sits behind us, has been a guru of so many of us who have read judgements. And, of course, there is the Minister, Kapil Sibalji, piloting this Bill. There is Mr. Rajeev Shukla whose new dimensions of how much this is embedded in his gene particles, something which was exposed by one of his relations, both from his married side and from his paternal side. But, of course, Sir, while one is over-awed with this formidable kind of a thing, one is also well protected; whether one has the requisite money or not, we feel quite protected in whatever we are going to say.

Sir, I think that on the broad issue of whether or not this important legislation should be taken in conjunction with the other Bill, which, we believe, should go to the Standing Committee, we would like to have an assurance from the Minister on the important point which had been raised by the Leader of the Opposition that there is no hiatus and that Parliament is not legislating a hiatus, the Parliament is legislating for continuity and not hiatus, and, of course, on the other important point that an important far-reaching legislation of this kind does not look to be an act of hurry, but looks to be a well-considered legislation in consultation with all other stakeholders.

Sir, broadly speaking, I have three points to make for the consideration of the Minister. First, who can doubt that this particular Commission should be based on the principles of not only equality, transparency, openness, impartiality but also efficacy and efficiency? These should be the overarching considerations of any Commission of this kind. So, we must address ourselves on this one important question before we come to the next question. The one important question we must ask ourselves is as to how India's legislative module, legislative architecture, a judicial architecture, compares itself with the best international practice. Looking at the existing literature, I came across one very important literature. It was a case of 1883 when a Superior Council of the Judiciary was created by the French Parliament acting as a Court of Cassation, in which they purged the existing Judge which existed and laid down a different procedure for appointment of Judges. Such was the extent of complaint.

This is a very famous quoted case. Nobody here is intending to purge any Judge, I think, but we intend to learn from the best international practices. Now,

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what are the best international practices? The best international practice broadly falls into four categories, category 1—nomination by the Executive, category 2—election, category 3—co-option by the judiciary, and, category 4—appointment by a Committee consisting of Judges and Academics. Broadly speaking, this is how countries have divided themselves. For instance, Italy, Spain and Sweden believe in a separate appointments commission. Israel and USA believe that the appointments must be confirmed by the Legislative. Canada, France, Germany, South Africa and United Kingdom have a recommendation or screening by a separate Appointments Committee. Indeed, Minister, we fall in a very unique category of some hybrid species called the ‘collegium’, which is incestuous in character, which nominates, which screens, which selects and which monitors. No other country in the world falls in this particularly absurd hybrid category which performs functions which are incestuous and which have inherent conflict of interest.

So, while we are undertaking this far-reaching important reform one of the things, I am sure, the Minister would like to do is to try and see how the new architecture, which you want to create, will conform to the best existing international practice.

Sir, I won't go into the need for judicial reforms, not merely because there are 13 million cases, 74 per cent of which are pending for more than five years, but I want to raise a more basic issue. The basic issue is that wherever I have gone, Minister, we have taken great credit for the fact that India believes in the rule of law, that India has a fiercely independent judiciary, which is not going to be influenced by anybody, and, say, investors, you please believe in us because of the independence of the judiciary. Yet, how is it, Sir, that in a Report like the Ease of Doing Business, 2013, India ranks at the bottom on sanctity of contract, on issues of insolvency, on inordinate delay and something which the investors believe that notwithstanding all your claims, you have serious deficiency. What are these important deficiencies? Mr. Minister, while the economy has evolved in the last sixty years—some of it was very well brought out by the Leader of the Opposition when he spoke—our politics has become more complex, our federal structure has become more complex, our economy has not only evolved but it has also become globally much more interdependent, the judiciary, Sir, remains locked up and frozen in a time

wall. They have not evolved. One other thing, which I strongly recommend, Mr. Minister, is that you must increase the domain knowledge and the domain speciality of Judges who will really be in the High Courts or who will be in the Supreme Court. Let me give you a few examples. International investors have told me that it is not that your judges are suffering from economic illiteracy. Nobody accuses them of that but they certainly accuse them of the fact that when it comes to transfer pricing policy, when it comes to interpretation of Intellectual Property Rights, when it comes to fixation of tariffs, when it comes to allocation of scarce natural resources, the practices and judgements do not really suggest that there is a degree of appreciation of what the best international laws on those subjects are. Therefore, as we become increasingly much more inter-dependent, we need to blend a degree of always avoiding moral hazard but a degree of pragmatism, when it comes to such important decisions, for instance, allocation of natural resources on which, Mr. Minister, there is so much debate, when it comes to issues which have really made India an inter-dependent power of the global economy, and, till we are able to do that, Sir, investors in this country, investors all over the world, will not be able to be assured that India genuinely believes in a rule of law which is comforting, which is predictable, and, which is certain. Sir, I think, as we travel all along, of course, the Prime Minister outlined many considerations which have led to the tardy slowness of the Indian economy. The Leader of the Opposition dramatically brought out some other cases. But, I think, some of the decisions have really contributed to this kind of a sluggishness of the Indian economy. Indeed, while the fierceness and independence of our Judiciary is something which makes us proud, we need to make sure that this independent structure is not an impediment, but is an accelerator in India's economic progress. We need to look at from the prism of a different kind, whether the practices, process, judgements and pronouncements conform to what the rest of the world express and hope for what is going to be and what we pride ourselves to be a new economic engine of power on the globe. This, Minister, must be our overarching consideration. This must be the vision which must guide the important features and architecture of a new judicial reform process for which today's Bill is one very, very important consideration.

Finally, Mr. Vice-Chairman, I agree with the Leader of the Opposition that when a judgement is pronounced by any Judge, particularly a Judge of the hon.

[Shri N.K.Singh]

Supreme Court, there is only one Judge who is above that and that is the Lord Almighty, who is above us, who will look to this much beyond our life. But we know one thing that the road to heaven is always paved with good intentions, but let us not make that pavement so tortuous, so meandering that we lose our path to go to the heaven. Thank you very much, Sir.

SHRIMATI VASANTHI STANLEY (Tamil Nadu): Thank you Mr. Vice-Chairman, Sir, for giving me this opportunity to register my views on this discussion on the Judicial Appointment Commission Bill, 2013 and the Constitution 120th Amendment Bill, 2013.

Sir, when I wanted to speak on this Bill, I was searching for the judicial history before the British period. When the judicial history of India is searched, 200 years of history from the British period is only available. But my language, Tamil, never fails me. Our poet, Thiruvalluvar, says our judge should be like*

It means, a judge should be like a needle in the scale who should not be partial to both the sides. He should be there like the scale.

Sir, a statue of Manuneechi Cholan adorns the premises of High Court of Madras, which is a Charter Court, Sir. This king is believed to have killed his own son to render justice to a cow. He had hung a giant bell in front of his palace. Whoever needed justice, could go and ring the bell. One day, to his surprise, there was a cow who lost its own calf. It was killed by the King's son, of course, without his knowledge, it is specifically mentioned, in the rear wheel of his chariot. But the King was so specific that he should give justice to the cow. So, killed his own son by his own chariot. That is why his statue is there adorning the High Court of Chennai. This is there in our epics Silappathikaram and Periya Puranam also. There is a mention about judges in English literature also when Shakespeare mentions about this in the Merchant of Venice. There is a reference in King James Version Bible in the Daniel 5.14. This is referred to by Shakespeare through his character Shylock in Merchant of Venice.

It says, "A Daniel come to judgement! Yea, a Daniel! O wise young judge, how I do honour thee!" Like this, we also have references. But we have failed in

* Hon. Member spoke in Tamil.

recording how we were providing justice to our people before the British came here. The rulers were revered, revered in idolatry. Their verdict was the ruling whether it was the local panchayat leader or a town leader or a king himself. They were the Judges during those days. They were the protectors also. The redressal also was quick through them. But during the British period, the members of civil services, the employees of the Executive also served as Judges. Seeing the undesirable degree of vulnerability to executive influence, the Constituent Assembly accorded judicial independence the highest priority in the construction of the Constitution. As far as our judiciary is concerned, so far, it has not misused the full independence given to it by the Indian Constitution. They are considered largely fair and incorruptible. Article 124(2) gives power to the President to appoint every Judge of the Supreme Court. Article 217 confers the authority to appoint High Court Judge on the President in consultation with the Chief Justice of India and the Governor of the State. In 1981, the Chief Justice of India initiated the appointment of Supreme Court Judges in consultation with other senior colleagues. For High Court Judges, the recommendation was made through the Governor. In 1982, we had the S.P. Gupta case. We have heard about it here. In this case, the seven-Judge Bench said that both for the Supreme Court and the High Court, only consultation is required and not the concurrence. During that period, judiciary's intervention became less. But in 1993, there was this Advocate-on-Record case before the nine-Judge Bench. It overturned the judgement in S.P. Gupta case, ensuring the role of the Chief Justice of India in the selection of Judges of the Supreme Court and the High Courts. In Special Reference No.1998, it reaffirmed the 1999 decision and added a few more points to that like 'not two Judges but four Judges.' Very often it is felt that the current system of appointment is not open to public scrutiny. The current system is faced with lack of accountability and transparency. It is not getting people of adequate ability. There is a significant delay in the appointment of High Court Judges. We felt that there was a need for these two Bills. For the first time in history, we have evolved a clear concept of how Judges of the Supreme Court and the High Court are going to be appointed.

The Judicial Appointments Commission Bill seeks to change the manner of appointment of Judges of the Supreme Court and the High Court. The Bill sets up a Judicial Appointments Commission (JAC) to appoint and transfer Judges of the Supreme Court and the High Courts. It would be headed by the Chief Justice of

[Shrimati Vasanthi Stanely]

India. In addition to it, the JAC would be composed of two judges of the Supreme Court, the Union Minister of Law and Justice and two eminent persons. The Law Secretary would be its convenor.

A Committee would be set up to nominate two eminent persons. It comprises the Chief Justice of India, the Prime Minister and the Leader of the Opposition.

At present, under the Collegium system of appointment of Judges, the Chief Justice and a few senior Judges of the Court make appointments. This system was evolved through three Supreme Court judgements. We have seen that.

The Constitution (One Hundred and Twentieth Amendment) Bill inserts a new Article 124A in the Constitution which proposes to constitute a Judicial Appointments Commission for making recommendations with respect to appointment of Judges of the Supreme Court and the High Court. It will also look at the transfer of Judges from one High Court to another. The amendment empowers the Parliament to make a law providing for the composition of the JAC, their appointment and tenure, functions of the JAC and the procedure to be followed for the selection of judges.

Here there is a provision for eliciting views of the Governor and the Chief Minister of the State for appointing High Court Judges. I would like to ask the Minister, when the Union Law Minister is part of the Commission at the national level, is it not natural that the State Law Minister should be made part of the process of the selection of the High Court Judges for his own State? Slowly this will be taking away the powers of the States. There is only a provision that the views of the Governor and the Chief Minister of the State will be taken. As of now, the Governors are making recommendations. If there is no provision for the State Law Ministers to be consulted before appointing Judges to the High Courts, that power also will be taken away. We are afraid of that. When the Prime Minister, along with the Leader of the Opposition, is to select two executives, I hope he will agree that the Chief Ministers of States should also have a say when there is a selection of High Court Judges. I would like the Minister to make some provision to ensure this. The same point was raised by my hon. friend, Mr. Balagopal and Mr. Satish Mishra too.

Regarding reservation in the judiciary, there has been a demand to consider appointing Judges from the Scheduled Caste, Scheduled Tribe and OBC categories. I would like to ask for reservation for women and also the minorities in the process of selection of judges.

The bill is being objected by the Bar Council of India and Advocates because they do not like the interference from the Executive in the process of selection. They suggest some seminars for this subject to be discussed between Judges and the media. But as Mr. N.K. Singh has pointed out, England and Wales, Canada, New York State, France, Germany, South Africa have laypersons as members in the Judicial Appointment Commissions. They have specifically mentioned that these laypersons should not be Members of Parliament, practising lawyers, judicial officers. So, I would like to ask the Minister who are going to be the Executives. There is a mention about this in the Bill. When they are going to frame the rules, I want them to be very specific about who these Executives are going to be. There is a provision in the Bill for two Executives. I suggest that instead of two Executives it should be three with one woman in the Commission. I hope the Minister will consider that. The Government should ensure that our demand for 33 per cent reservation for women is implemented in respect of the Commission also.

With these observations, on behalf of my DMK Party, I support this Bill.

SHRI SHASHI BHUSAN BEHERA (Odisha): Mr. Vice-Chairman, Sir, I thank you for giving me an opportunity to speak on the Judicial Appointments Commission Bill, 2013. This Bill is a very important piece of legislation. The way in which the Law Minister spoke on the Bill in his initial remarks; and the way in which the Leader of the Opposition and former Law Minister spoke so brilliantly, I saw, for the first time, in my four years as a Member of this House, a very interesting debate. It is the rarest of the rare debates. The Leader of the Opposition appreciated many of the points made by the Law Minister; and the Leader of the Opposition also appreciated many of the points made by the Law Minister in his initial remarks. Members of different political parties may have some differences on supporting the Bill, but that is immaterial. Today we are discussing about the Bill. The other eminent Members of this House discussed about the judicial system in the country. Nobody is ready to spare the lacuna in the judicial system. Even after 66 years of our Independence, all the three pillars of our democracy need reforms, whether it is the

[Shri Shashi Bhushan Behera]

Executive, or the Legislative or the Judiciary. The fourth pillar, which does not come under the Constitution, is the media. They are getting satire not only from the public, even the Press Council also speaks of the paid news. The former Chief Justice of India, Justice S.P. Bharucha, is of the strong opinion that out of five judges, one judge must be a corrupt one. These are all comments from the same tribe. Many of the legislators also speak in that way. Many of our statesmen also say what wrong is being done to the nation. It is a long process. This Bill has undergone a long process. The NDA has been talking about the Judicial Commission since 1993 onwards. Today, we are in 2013. Twenty years have already passed. As the hon. Minister stated, this has been consulted with the Law Commission, stakeholders, the Bar Council and others. This Bill may still require more consultations in order to get better results. So far as judicial reforms are concerned, or a constitutional amendment is concerned, these things involve a lengthy process which takes time. But so far as judicial appointments are concerned, there is no need of big changes. As per the present system, the Judges of the Supreme Court are appointed by the President under Clause (2) of Article 124 of the Constitution while the Judges of the High Courts are appointed by the President under Clause (1) of Article 217 of the Constitution. Then the transfer of judges is made under Clause (1) of Article 222. This system changes with a new collegium system. The collegium will consist of the Chief Justice, the Prime Minister and two other senior members will be chosen for doing these things. This is a not a very big change. I think it should have been done earlier. It has already been delayed a lot. As is said 'justice delayed is justice denied'. So many lawyers have spoken about many things, lacuna, a number of ills that clog the judicial system, pendency of cases for years together, vacancy of judges, etc. I am not an advocate, but being a client, I am also a sufferer. A civil suit continued for more than 40 years. The first appeal itself took 30 years, two generations, in the High Court. It is still pending in the Supreme Court. Thousands and thousands of cases are pending in different courts for years together. So, the Judiciary needs reforms. It needs changes. We have to expedite the reforms. We have to reform it in such a manner that justice becomes easier and accessible. As Shri Satish Chandra Misra said, 30 lakhs cases are still pending in different courts. Out 160 posts, 80 posts always remain vacant. In short, in all States, especially in my State, Odisha, though it is a small State, always five to six posts of

judges remain vacant. No judges are available for civil courts to deal with the civil cases.

And the bare truth has been discussed here as to how judges are having lobbies for their appointments in High Courts as well as in the Supreme Court. They have their own lobbies. But, even then, having such an independence in the appointment process and with a Collegium having no interference, when we are still lagging much behind in the judicial process, in the system to reach out to the poorer people, the Bill is very important. So, it should be passed. The total reforms of the judicial system may take more time, and a detailed, comprehensive Bill should be brought forward. Thank you, Sir.

THE VICE-CHAIRMAN (SHRI BHUBANESWAR KALITA): Shri D.P. Tripathi. Not present. Shri Parasaran.

SHRI K. PARASARAN: Sir, through you, I would like to raise a few aspects for the consideration of the distinguished Members of this hon. House. The hon. Law Minister said that the Supreme Court had re-written the Constitution. In supplement thereof, I would like to point out a few aspects. The power of appointment is only in the Executive under article 124. But, as a check, as a participation process, the article says, "After consultation with such of the judges of the Supreme Court and of the High Courts of States..." So, the High Courts' consultation has now been dispensed with by the judgement. For appointing Supreme Court Judges, President shall consult, "as the President may deem it necessary for the purpose". So, the President may consult such judges as he deems fit of the Supreme Court and the High Court in the State, and not Judge Nos.(2), (3) and (4) as per the judgement of the Supreme Court. By a Presidential Reference, it became Judges (2), (3), (4) and (5). What is important is the proviso which says that the Chief Justice of India shall always be consulted if you are appointing a judge other than the Chief Justice. The Supreme Court interpreted Chief Justice of India as the judiciary and constituted a Collegium. If that is the interpretation, then, article 124 (2), the main part is to consultation of judges, is rendered redundant. All the Collegium judges come under the proviso as per the interpretation. This is contrary to the speech made by Dr. Ambedkar, the architect of the Constitution who said, "With regard to a 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

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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.” So, he was referring to individual Chief Justice as *persona designata* and not judiciary. He said, “... 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 you were not prepared to give even to the President of India. Therefore, the process of consultation has to be really a consultative process and a joint deliberation. This is the first aspect of the matter. Secondly, what has been overlooked is that there has to be an accountability with regard to appointments. When the Executive appoints, it has an accountability to the Legislature, and the Legislature also has its accountability when going to polls. But when no Executive is involved, the accountability too is not there. More importantly, in appointments, by implication, the Legislature is involved because of the accountability of the Executive to the Legislature. The consultation is also a check by judiciary because the power is not vested in the Government of the day. The Constitution contemplates advice to President only under article 74 of the Constitution by the council of Ministers.

Similarly, when we come to the removal of judges under Article 124, which is very important, the Constitution provides that a judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament, supported by the majority of the total membership of that House and by a majority of not less than two-thirds of the Members of the House present and voting has been presented to the President in the same Session for such removal on the ground of proved misbehavior or incapacity and under Clause 124(5) Parliament follows a similar procedure for the presentation of the address as in Article 368. Therefore, what is important is, in the appointment process the Executive and the Judiciary are involved but power is in the Executive. It is a power of check given to the Judiciary. When you want to remove them again, all the three limbs of sovereign power are involved because by the Act passed by the Judges Inquiry Act, the power is given to either not less than 50 Members of the Rajya Sabha to give notice in the Council of States or not less

than 100 Members of the Parliament to give notice in the House of the people and then the Chairman or Speaker after consulting such persons as he thinks fit and the materials as may be available to him to admit or refuse the motion. If the motion is accepted by the Speaker of the Lok Sabha or by the Vice-President, then, the process of inquiry starts.

[MR. DEPUTY CHAIRMAN in the Chair.]

The Committee which is appointed will consist of members nominated by the Chief Justice of India, the chief justice or a judge of the Supreme Court, a Chief Justice of a High Court and a jurist. Therefore, it is like appointing *ad hoc* judges to Supreme Court. We had such a precedent when Hyderabad became part of the Indian Union. At that time, two judges of the Andhra Pradesh High Court were appointed as *ad hoc* judges of the Supreme Court and one judge of the Supreme Court sat at Hyderabad with them as the Bench of Supreme Court. The process starts from the two Houses of Parliament and from the Vice-President or the Speaker and then there is a judicial inquiry on his misconduct. Then it comes before both the Houses for address and for voting. Unfortunately, the Supreme Court, in the case of Justice V. Ramaswamy, in Sarojini Ramaswamy's case, holds that there cannot be a judicial review against the decision or the findings of the Committee before the address in Parliament but the Supreme Court may be moved for judicial review only after the address in both the Houses are over. So much so, even the removal of judges by an address by both the Houses is by a special majority. It cannot be subjected to judicial review after the address by both the Houses. The result is power of appointment and final say in removal by judicial review is vested in the judiciary. There is no advice by the Council of Ministers and whether you call it advice, concurrence, consultation, in truth it is only an advice. The Constitution contemplates only one type of advice under Article 74 and that is an advice by the Council of Ministers present. The advice of the judges is binding on the President. This is the way the Constitution has been re-written. Therefore, power of appointment has been vested and power of transfer has been vested in the judiciary. The removal of a judge after address is subject to judicial review by the Supreme Court. Therefore, it becomes a self-appointing machinery, a self-transferring machinery, a self-removal machinery. Therefore, I supplement what the hon. Law Minister said that it is rewriting the Constitution. What is more, I am not saying this

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as a lawyer, but I will only quote one of the outstanding retired judge of the Supreme Court who said this while delivering the V.M. Tarkunde Memorial Lecture. She says, “The insulation of the judiciary from executive interference in the matter of appointment and transfer of judges is now almost complete.”

But the question remains has this almost complete insulation achieved the object for which the constitutional interpretation was strained to an extent never witnessed before or after?” Immediately, in fact, steps should have been taken to bring a Bill before this House. We have woken up exactly after twenty years—after 1993 to 2013. This is a statement made not by anybody else, because if somebody says it, they say, ‘you are a politician.’ All politicians join together. When I was nominated to this august House, a friend of mine jocularly said, ‘You have become a politician.’ I said, ‘Yes; I take this as a compliment.’ Politics is political science though word “politics” has acquired an odium. If somebody misbehaves, everybody is blamed. In every walk of life somebody misbehaves. Anyway, that has become the position. To continue what the retired judge said, she said, “One of the criticisms of the earlier law, to quote the Supreme Court: ‘the mystique of this process (of appointments) is kept secret and confidential between just a few individuals, not more than two or four as the case may be, and the possibility cannot therefore be ruled out that howsoever highly placed may be these individuals, the process may on occasions result in making of wrong appointments and transfers and may also at times, though fortunately very rare, lend itself to nepotism, political as well as personal and even trade-off.” This is what a retired Supreme Court Judge observed. The learned Judge further says, “The same criticism may be made with equal justification of the present procedure for appointment and transfer of judges.” She further said, “As I have said elsewhere the process by which a judge is appointed to a superior court is one of the best kept secrets in this country. The very secrecy of the process leads to an inadequate input of information as to the abilities and suitability of a possible candidate for appointment as a judge. A chance remark, a rumour or even third-hand information may be sufficient to damn a judge’s prospects. Contrawise a personal friendship or unspoken obligation may colour a recommendation. Consensus within the Collegium is sometimes resolved through a trade-off resulting in dubious appointments and disastrous consequences for the litigants and the credibility of the judicial system. Besides, institutional

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independence has also been compromised by growing sycophancy and 'lobbying' within the system.' What is important, as has been said by the learned Judge, is that lobbying which also leads to sycophancy. The learned Judge further says, "The solution as I see it lies not in a reversal to a *status quo ante* but in the setting up of a judicial commission with all the powers now vested with the Chief Justice of India and the Collegium of Supreme Court judges. This is at present the subject matter of intense public debate but the suggestion is not new. In 1981 the Supreme Court itself after noting the setting up of judicial Commissions by Australia and New Zealand to consider all judicial appointments including appointment of High Court judges." I don't want to waste the time of the House by reading the quotation further. Therefore, now, the House will see that a former Chief Justice of great repute, two outstanding Judges of the Supreme Court were all in the Commission for Review of the working of the Constitution. Justice Sarkaria, Justice Jeevan Reddy were there in the Commission. Justice Venkatachaliah was the Chairperson. And, there was a retired Judge of the Andhra Pradesh High Court. They were all Judges. I am not talking about any politicians news. And, now, a retired Judge of the Supreme Court who is respected very greatly and one of the most outstanding Judges very frankly she mentioned it. She was also a member of the Collegium for a short time. She says that it leads to sycophancy. And, I have personally seen that a Judge who is in the line of consideration receiving a Collegium Judge at the ladder of aircraft when he descends. The Constitution has been rewritten, both with regard to appointment as well as removal. There should not be a judicial review after the process of removal of a Judge after the address by both the Houses resulting in removal of the Judge. The address is by a similar majority as in Article 368. This is the exercise of constituent power. The removal under Article 124 also is exercised by the same procedure in Article 368.

I, therefore, strongly support the Bill. Thank you.

MR. DEPUTY CHAIRMAN: Thank you very much. Now, Shri D. Raja.

DR. YOGENDRA P. TRIVEDI (Maharashtra): Sir...

MR. DEPUTY CHAIRMAN: I will call you after Shri D. Raja has finished.

SHRI D. RAJA (Tamil Nadu): Thank you, Sir.

[Shri D. Raja]

The previous speaker is an eminent lawyer. Earlier, there were several eminent lawyers who took part in the discussion. Sir, I am an ordinary political activist representing the Communist Party of India.

MR. DEPUTY CHAIRMAN: You are not very ordinary, Mr. Raja; you are extraordinary. How can a 'king' be ordinary?

SHRI M. VENKAIAH NAIDU: How can 'Raja' be ordinary? 'Raja' and the expression 'ordinary' do not go together.

SHRI D. RAJA: Thanks!

So, I am representing the Communist Party of India which is fighting for the interests of the poor and the toiling people of this country. How I look at these Bills is more important.

Sir, I agree with the intent of these two Bills. I would like to make a few observations on the content of these Bills and how we are going to move forward on these.

Sir, Judiciary is one of the pillars of our democracy. A balanced, swift, affordable and a fair justice delivery system is central to the promotion of law and order in our society and in ensuring its stability and coherence.

Sir, in 1930s, Mahatma Gandhi, Father of our Nation, prepared a programme called the Non-Violent Mass Action. He wrote, "Reformation of Judiciary for giving quick and inexpensive justice to people is a part of the Non-Violent Mass Action programme." Establishment of Fast-track Courts embodies the vision of Gandhiji.

Sir, at this point of time, thanks to Dr. Ambedkar and the galaxy of leaders, we have the Constitution. Ours is a republican Constitution. Our Constitution gives us a vision of India, of new India. "We the people should strive for achieving justice—social, political and economic." There, I understand, the Legislature, the Executive and the Judiciary, as also the media, will have to work within their defined spaces to strive for achieving the larger goal which the Constitution has set before us.

In this regard, I think we have been talking about the judicial reforms for quite some time. Sir, my Party agrees to the fact that India should have a National

Judicial Commission, as it is there in several other countries, for instance, South Africa which fought against apartheid, which became a democratic republic after it has its National Judicial Commission, whereas India does not have.

Sir, this is right time when we should think of this and we should make all efforts to have a National Judicial Commission. Sir, when we talk of Judiciary, I think I agree with the LoP in one respect where he meant how Judiciary is now changing in tune with the time of the neo-liberalism. Sir, when we discuss the judicial reforms, we should discuss the situation before the '90s and the situation after the '90s. After the '90s, the Judiciary tried to interpret the laws in tune with the neo-liberal economic policies.

This is what created the problems. The Parliament, the Executive and the Judiciary, if we consider these three as three pillars of democracy, all these three draw power from the very same Constitution, but the Parliament occupies a unique position. Parliament has the power because it represents the will of the people to amend the laws, to make the laws, and even to amend the Constitution. There the Parliament has a unique place in our democracy. Now, what the Judiciary has been doing is this. In the name of interpreting the laws made by the Parliament, the Judiciary stretches itself. One may call it judicial activism, whether it is positive activism or negative activism, it is for people to judge. But in the recent days, the Judiciary made several pronouncements. For instance, after 1992, after the demolition of the Babri Masjid, when the whole question of *Hindutva* became a central theme in national discourse, the Judiciary tried to give a definition for *Hindutva*. I do not think it is the job of the Judiciary to give definition of a way of life. The Judiciary can interpret laws, the Judiciary can oversee how the Constitutional provisions are upheld by the Executive, by the Legislature. But, how can the Judiciary enter into defining certain life styles or ideological political positions because the Judiciary will have to work within the parameters of the Constitution? The Judiciary made pronouncements against the strikes. Many judgements are there. It said, 'strikes are immoral, illegal and they should be banned.' I do not think courts can give such pronouncements. The strikes are part of our Constitutional provisions. The people can express their dissent, and the Constitution provides that right to the people, and how come the Judiciary goes on to the extent of calling them illegal and immoral? That is one thing, Sir.

[Shri D. Raja]

Now, there is the recent Supreme Court judgement on reservation. It was a case between the Union Government and the AIIMS. But the judgement goes on to cover all the areas, all specialties, super-specialties of all Departments. It does not confine to AIIMS, but it goes to engineering, physical sciences and even to mathematics, I am telling you. There is no place for reservation and merit only matters. This is what the Judiciary says. How the merit is determined in Indian society, it is a different thing. I will not argue on that point. But I can say about the Chennai IIT. There is absolute discrimination against SCs, STs and OBCs. The Supreme Court judgement talks about mathematics. There is a woman mathematician, an outstanding mathematician. She has produced 81 books so far; more than 60 books were printed in the United States of America, and she has become one of the outstanding mathematicians in one particular area of mathematics, *i.e.*, how to divide zero. We all think zero cannot be divided. But she invented a theory how zero can be divided. I can take her name. She is Vasantha Kandasamy. She was denied promotion, and the case went to Chennai High Court. Then, the Chennai High Court ordered CBI inquiry. So, what I am trying to say is, let us discuss these matters. This Supreme Court judgement on reservation, in fact, denies reservation to SCs, STs and OBCs. Is it the job of the Judiciary to decide the policy of reservation?

MR. DEPUTY CHAIRMAN: You can correct it by legislation. Why don't you correct by legislation? You can do that.

SHRI D. RAJA: I think the policy of reservation is in the domain of Parliament. The quantum of reservation should be decided by Legislature. It is in the domain of Parliament and Legislatures. How can Judiciary enter such matters? That is where, I think, judicial accountability matters. Now this Bill addresses a limited question, that is, the Judicial Appointments Commission. Sir, when I say the Judges must know the social reality of our country, that is where the current Supreme Court Chief Justice before he took oath, made a statement that judiciary needs more representation from the oppressed sections and from women. This is the statement made by the present Chief Justice of India. Let me finish, Sir. But even before that this Parliament took note of that problem. The Standing Committee on Law and Justice when it was headed by the present Minister, Mr. Sudarsana Natchippan, gave a Report in 2007 which is known as the 21st Report of the Committee on Law

and Justice. The Committee says, "Such a coveted institution should also exhibit the reality of social milieu in which the Judiciary has been created. It cannot live in isolation, in ivory tower and remain outside the ambit of the Constitutional provision." (*Time-bell*) It goes on to say, "Judiciary is manned and operated by learned Judges and other judicial officers. When Executive and Legislature are brought under the ambit of Constitutional reservation, it is but natural that the Judiciary, the third pillar of democracy, should also be covered by the principle of reservation.' That is where I agree with my friend, Shri Satish Chandra Misra, who raised this issue and he referred to Uttar Pradesh as to how many Judges are there, how many Judges from SC are there, or not there, etc. It is a serious issue, Sir. The Government cannot ignore this point because after all we are an Indian society. We suffer from the problems of caste system, the pernicious, retrograde caste system which has to be fought. As Ambedkar said, 'the annihilation of the caste must be the task of all political parties.' In such a society, the Judiciary must be more sensitive. I think the Judicial Appointments Commission may do a lot of things in this regard. Finally, Sir, we had a discussion in the BAC on how to dispose of these Bills. To my knowledge, I understand the Constitutional (Amendment) Bill can be passed by the House and there is consensus. There is consensus if this can be passed. But on the Judicial Appointments Commission, it has been agreed that it can be referred to the Standing Committee. But I do not know whether there is any contradiction or any conflict, whether it will lead to some kind of Constitutional crisis in the appointments and transfers of Judges in this period. This point should be explained by the hon. Law Minister. He should clear this point. (*Time-bell rings*) You strive for a consensus among the Members of the House because all political parties agreed on this as a matter of principle. There are some differences and technicalities of dealing with this. Let there be a consensus on how the House can move about this Bill. Thank you.

DR. YOGENDRA P. TRIVEDI : Thank you, Sir, for giving me this opportunity to speak even though late.

MR. DEPUTY CHAIRMAN: Better late than never.

DR. YOGENDRA P. TRIVEDI: My name was overlooked. Sir, according to me today is the golden day in our Parliament. The level of debate, the high erudition, scholarships and overall oratorical skills will satisfy all those who are watching our proceedings from a distance that we are not always fighting.

[Dr. Yogendra P. Trivedi]

And, when we are not fighting, what an excellent intellectual arena we create amongst ourselves. Thanks to the Law Minister, who had to face a dilemma of what he had argued before the court and what he is canvassing now as a Minister, but he rose to the occasion. I think, it is very uncommon for the lawyers. I once appeared with Mr. Nani Palkhivala. And, when he was arguing something, a Judge told him that in your book you have written the other way. He said that that was his view as an author and this was his view as a lawyer. So, the lawyers know how to get over all these things. The Leader of the Opposition was also, as is usual, the best to demarcate the respective areas of the Judiciary, the Executive, and the Legislature as supreme under our Constitution. The Supreme court is not supreme merely because it is styled as 'supreme'. It is supreme in its own area, nothing more than that. 'Supreme' is not always supreme when it travels beyond its *lakshman rekha*. If I borrow an analogy from Ayurveda, there are *vata*, *pitta* and *kapha* in a man's body. If there is an imbalance amongst the three, one falls ill. And, if the Supreme Court also overlaps its own area or boundary, then, there is likelihood of a collapse. Now, let us have a closer look at the problem that has been created. It was a sad day for all of us and for our Judicial system when one Chief Justice reversed some of the orders of his immediate predecessors. These days the Judiciary or the courts very often criticize the parliamentary decisions. It is necessary to see that such criticisms come from a totally independent and unbiased forum. What we need is a totally unbiased and independent Judiciary. We have heard about corruption, nepotism and favouritism in the Judiciary. For appointment of Judges, we know, lobbying is taking place in a very big way. The hon. Law Minister mentioned about preference of some of the lawyers before some of the Judges. There are son-in-laws, there are cousins, there are sons who appear before the courts. But I can also tell you one thing, sometime it has a negative effect also. I know about some of the Judges who are very adamant in not giving adjournments. The best way to get adjournments was to appoint his own son-in-law as one of the advocates. The moment he appears the Judge will say in all humility, "I am sorry, I can't hear the case." The case is automatically adjourned. So, what I am pointing out is that all these types of favouritisms and nepotisms have to come to a halt. The issue became very hot in our midst when in this very House we impeached Justice Sen. A need was felt at that time that the method of appointing Judges should be made more transparent.

This Bill has been introduced to tackle this problem and my party heartily welcomes this Bill, especially the Constitution (Amendment) Bill and the Judicial Appointment Bill. The Collegium, envisaged in the Bill, is quite representative. There is the Chief Justice, the Law Minister, two Judges and two eminent Jurists. In the Bill, which was envisaged by Mr. Jaitley, there was only one eminent person to be appointed in the Collegium. Now, this number is six. But the Law Ministry has not provided as to who will have the casting vote if there is a tie. If there were five people, then, the majority would have prevailed. But, when there are six, there is every likelihood of being a tie there. If a tie happens, then, who is going to decide ultimately. The Law Minister should apply his mind to this. A selection of eminent members has also to be made. How would these eminent members be chosen? The Prime Minister, the Chief Justice and the Leader of the Opposition, and there he has made the Leader of the Opposition from the Lower House. I think, he is not right. He should say, "From either of the two Houses". It should be left to the discretion of the Opposition whether they want the Leader of the Opposition from the Rajya Sabha or the Lok Sabha.

MR. DEPUTY CHAIRMAN: Why not the Upper House?

DR. YOGENDRA P. TRIVEDI: Okay, the Lower House and the Upper House. There should also be personal interviews. I think, as pointed out by Shri Arun Jaitley, they must take into consideration how many papers he has written, what his judicial background is, whether he has attended legal seminars, how many juniors he has trained and what the level of his income is. All this is very necessary; otherwise, we will have a level of judges who are not worth talking about. There is also a story which I remember. In a small district, somebody went to the Magistrate and said कि साहब एक पिटिशन लिखवाना है, तो क्या आप ज़रा मदद करेंगे? मजिस्ट्रेट ने कहा कि तुम बाहर जाओ, 10-10 रूपए में तुमको लॉयर मिल जाएगा। वह बाहर गया और एक लॉयर को पकड़ कर बोला कि जज से ऐसा कहा है, तो उस लॉयर ने कहा कि जज को जाकर बोलो कि 10-10 रूपए वाले सब जज बन गये। इसलिए मेरा यह कहना है कि we don't want such types of judges. I am telling you that things are horrible in our courts. They are talking about three crore cases. I know about one judicial room in which one magistrate is sitting in Mumbai, in Ballard Pier, and there are 70 lakh cases and there is no place to keep the files. I think if this is the position, then, I think it is very necessary that the Law Minister, after this exercise is over, should apply his mind in

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having a Judicial Reforms Bill. Judicial reforms are very necessary in our country. We are talking about the judges and how they are to be appointed. Many criteria have been given. Misraji gave a long list of criteria about integrity and incorruptibleness. He also talked about intelligence and the type of erudition he has got. I think we need not go very far. I would like to say that in Maharashtra, we had the case of Justice Ramshastri who halted the entire army of Peshwas, because he fought for his principles. We require such bold judges, not the judges who cow down. (*Time-bell*) He was a very famous judge. So, what is required is that the Bill must be passed. But, at the same time, I am saying that the Constitutional (Amendment) Bill should be passed immediately. As far as the other Bill is concerned, I agree that it should be referred to the Select Committee because there is a demand that there are certain clauses that need to be changed. The same Bill can also be converted into a Bill which lays down certain judicial standards, which are very necessary. Nothing has been laid out therein as to how the judges are to be selected. So, with these remarks, my Party support the first Bill fully. As far as the second Bill is concerned, we believe that it should go to the Standing Committee.

MR. DEPUTY CHAIRMAN: Now, Shri Ravi Shankar Prasad.

SHRI PRAVEEN RASHTRAPAL (Gujarat): Sir, how has the order of the speaker been decided?

MR. DEPUTY CHAIRMAN: The order of the speakers is according to the order.

SHRI PRAVEEN RASHTRAPAL: From Congress, only one speaker has spoken.

MR. DEPUTY CHAIRMAN: Yes.

SHRI PRAVEEN RASHTRAPAL: Incidentally he was a Minister. I want to know the rule under which he has been allowed to speak.

SHRI RAVI SHANKAR PRASAD: You will speak after me.

MR. DEPUTY CHAIRMAN: Your party had given his name, so, I had to call him.

SHRI PRAVEEN RASHTRAPAL: That is all right. Now, he is the second speaker from the BJP.

MR. DEPUTY CHAIRMAN: That is like that only.

SHRI PRAVEEN RASHTRAPAL: What about the second speaker from Congress?

MR. DEPUTY CHAIRMAN: You wait and see. If you don't know how it works, I am sorry. First, BJP will speak. Only after that, Congress will be called. That is the tradition here. You should know that.

SHRI PRAVEEN RASHTRAPAL: Mr. Deputy Chairman, I am withdrawing my name.

MR. DEPUTY CHAIRMAN: Why? Nobody has changed your chance.

SHRI PRAVEEN RASHTRAPAL: All right. I am here for voting.

SHRI RAM JETHMALANI (Rajasthan): Sir, ...

MR. DEPUTY CHAIRMAN: Ram Jethmalaniji, I will give you time.

SHRI RAM JETHMALANI: You will give me time, but kindly bear one thing in mind that, today, I am a loner who is the only one who seems to be determined to oppose this Bill. Please allow me to speak.

MR. DEPUTY CHAIRMAN: Yes, I will, surely, allow you.

Now, Mr. Rashtrapal, since you have directly criticised the Chair, you should know that we have not completed one cycle. Only just now, one cycle has been completed. See, I am showing the courtesy to explain you and even then you are creating problem. See, the cycle starts with BJP, the main Opposition. Then, one cycle will be complete. Only one cycle has completed now. Then, the second cycle starts with Shri Ravi Shankar Prasad. The next speaker is from Congress, and if you are the speaker – here you are the speaker – I will call you. So, you must understand the procedure. Without knowing the facts, you don't ...*(Interruptions)*...

SHRI RAM JETHMALANI: Sir, ...

MR. DEPUTY CHAIRMAN: No, no; I will tell you. Your name in the 'Others' list is at No. 2. That means, in the 'Others' list, your name is last in the second

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cycle. However, there are not many speakers. We have Shri Ravi Shankar Prasad, Shri Praveen Rashtrapal, Shri H.K. Dua, and then you will be called.

SHRI RAM JETHMALANI: Of course, everybody has supported this Bill. They can go on .

MR. DEPUTY CHAIRMAN: No, I can only go by order. ...(*Interruptions*)...

SHRI RAM JETHMALANI: I am the only one who is opposing ...

MR. DEPUTY CHAIRMAN: No, I cannot give you preference because of that. No, No. You are a very senior lawyer. Simply because you are opposing the Bill, I cannot give you preference nor can I give you preference because you are supporting the Bill. That is no concern for the Chair. I go by the order only. Now, Shri Ravi Shankar Prasad. ...(*Interruptions*)... I will call you when your chance would come. I have not changed it. I will not change it unless I take your permission. Please. Yes, Mr. Ravi Shankar Prasad.

SHRI RAVI SHANKAR PRASAD : Sir, I am grateful that you have given me the chance to speak on such a historic Bill. Since morning, the debate on this Bill is of great calibre and scholarship, a fine blend of forensic ability and earthly wisdom. We saw the forensic wisdom of the Law Minister, of the LoP, which was also of great statesmanship, of my esteemed friend, Satish Chandra Misraji, and the earthly wisdom of Ram Gopal Yadavji whom I respect very much because it was a blend of his political experience and administration both.

SOME HON. MEMBERS: What about Shri Rajeev Shukla?

SHRI RAVI SHANKAR PRASAD: I leave it to you. ...(*Interruptions*)...

Sir, we are talking about Judiciary, the mode of appointment. We all stand up here to declare in categorical terms that we stand for independence of Judiciary, which we all respect, which should not be compromised.

Sir, before I come to other points, let me state one thing. Amidst all the degeneration and decay, this institution of Judiciary still retains its high respect among the people of the country. We have got murderers, mafiosis, terrorists who are given capital punishment by an Additional District Judge or a District Judge.

And when he retires and goes in the market with his wife, why is it that terrorist or his gang never tries to kill him? Maybe, some exceptions are there. Is it because of the power of law, is it because of power of contempt that they are there? It is the moral authority which the institution commands in our society, and we need to respect that moral authority. The Founding Fathers ensured that the constitutional power and the moral authority must blend together. Sir, when I stand up here, let me appreciate the leaders of the Government from 1950 onwards who respected the independence of Judiciary. I can name Pandit Jawaharlal Nehru as the Prime Minister who laid the foundation of that institution. Therefore, we have such eminent Judges from Kania to Patanjali Sastri to Gajendragadkar to Hidayatullah. They had no problem. He also adored the Chair as the Chairman of this House, being the Vice-President. There was never any problem. The problem arose post-1967 when the Golaknath case judgment was given, a wrong judgment in my view, that the Parliament can never amend the Fundamental Right. That would have been taken care of. But that was made a ground to oppose the Judiciary and it changed the concept of 'committed judiciary'. While going through the 1993 judgement, hon. Deputy Chairman, Sir, we find, there is a mention that the Executive's influence was sought to be created as the primacy of the Executive, so that people close to the ideology of the Ruling Party make a judicial appointment, and hence, the need to have primacy of the Judiciary; that is the reasoning given. We have already heard about the '70s, *-they were all superseded.* was then the Chief Justice, a Chief Justice of questionable intellectual integrity.

MR. DEPUTY CHAIRMAN: Now, please.

SHRI RAVI SHANKAR PRASAD: I am sorry, Sir.

MR. DEPUTY CHAIRMAN: I am expunging the names.

SHRI RAVI SHANKAR PRASAD: All right, Sir. I withdraw the names.

He was a Chief Justice of questionable integrity, intellectually speaking. Now, I said, intellectual integrity. Why did I say so? In the JP Movement—Ram Kripalji is here; he was with me there—fighting the Emergency, Sir, I remember, a judgement had come in the ADM, Jabalpur *Versus* Shukla case. A great Judge, H.R. Khanna, asked the then Attorney-General, 'if an accused is killed inside the jail, do you have any

* Expunged as ordered by the Chair.

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remedy?' The Attorney General said that the question weighed on his conscience, but he had no remedy. And in that judgement, while the Supreme Court upheld the argument, the dissent was that of H.R. Khanna. At that time, when the dissent came, we were all activists opposing the Emergency, the supersession of Judges, and fighting for freedom. The New York Times wrote a brilliant editorial saying, "If at all freedom will return to India, the Indians must erect a great golden statue for this great Judge, H.R. Khanna."

We have seen those times. Then, we saw the judgement in the S.P. Gupta case followed by the 1993 judgement. Hon. Law Minister, I was reading some literature on it when an interesting comment came to my notice. The S.P. Gupta judgement came when you had a powerful Government with a powerful Prime Minister. I need not say who the Prime Minister was during 1982-83. The 1993 judgement came when we had a weak Government with a weak Prime Minister. I don't know, what the commentators said, but I am very happy to, at least, declare it today that in a coalition government, Mr. Arun Jaitley took the first step towards having a collegium. I am sure, in a coalition Government, an attempt is being made to undo the impact of the 1993 judgement. I think, that is also one of the lessons from history that we need to know.

Sir, let me now come to specifics. The collegium system has been talked about. I went through the 1993 judgement and I would only quote paragraph 486 of the judgement. Now, why did the Supreme Court take over the power? The Supreme Court said that they need to select the best and the most suitable person as the Judge. It listed out the qualities. Hon. Satish Misraji made a reference to it; the qualities that the person must possess are—I want this to come in the record of this Parliament, Sir—high integrity, honesty, skill, high order of emotional stability, firmness, serenity, legal soundness, ability and endurance. Besides that, he must have moral rigor, ethical firmness, impervious to corruption or venal influences, etc.

Sir, as the system has been working today—hon. Law Minister, kindly correct me if I am wrong – now there is no Judge in India who has been appointed under the old system. All the Judges today, be it in the Supreme Court or in the High Courts of India, have been appointed as per the 1993 judgement, through a collegium system. Can we say that only the best have been appointed? Can we say

that people with high moral calibre, intellectual soundness and integrity have been appointed? No. Mr. Parasaran quoted what Justice Ruma Pal had said, in the same para from the lecture: “There is a belief nowadays that corruption in the Judiciary also is as damaging for the credibility in the independence of the Judiciary as the act of corruption.”

Now, hon. Deputy Chairman, we need to ask this question—how is it that the collegium of the Supreme Court under one Chief Justice says that a particular Judge is not fit to be promoted to the Supreme Court, and when that Chief Justice retires, the next Chief Justice says, no, he is fit to be promoted to the Supreme Court? How can there be such different yardsticks? In this judgement, Sir, there is a provision that the entire proposal shall be initiated by the Chief Justice of the High Court and the Supreme Court.

I remember when I was handling this portfolio in the Law Ministry in the NDA Government for some time, there was a Judge of a High Court, who was the Chief Justice, who had a problem with his friend who was in the Supreme Court. For three years, he did not initiate any proposal. मैं नाम नहीं भेजूंगा। And, for three years, that High Court had no appointments at all. This judgment says that the appointment process must be started one month before the vacancy arises. I would request Satish Misraji to kindly tell me if this is the mandate of law, why the Allahabad Chief Justices are not following it. Who is stopping them? Therefore, maybe we, politicians, commit some mistake, but there is a judicial mandate that should be followed. It has not been followed. There have been a large number of other infirmities and other inconsistencies. And, today, let us introspect very honestly. Do we have the best Judges in the country who have been appointed? We cannot say that. We have got senior Supreme Court Judges. We have got senior Chief Justices, eminent Judges who have retired, who have said that today, there are corruption allegations, substantially credible, not only in the High Court but, in some case, in the Supreme Court also. Surely, all of them have been nominees of the collegium system. Therefore, this system has not worked.

There is one issue I would like to flag here. At least, on two issues, our Judiciary need to be appreciated. Why are people trusting them in spite of all these weaknesses? The institution of PIL has been respected, though it has been abused also. As the Supreme Court has said, it has become ‘*paisa* interest litigation’. But, in

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exposing many of the infirmities, in having a kind of a check on corruption, the Judiciary has played a role and we need to respect the Judiciary for that because we have to be very honest about ourselves. India of 2013 is not the India of 60s and 70s. Today, no politician can dare impose emergency in India regardless of foreign majority. No politician can dare curb media and impose Press censorship. No politician or Prime Minister can dare supersede Judges. That is the stability of India and when we have this stability, we need to have a proper system which is transparent, which is accountable.

Sir, let me raise one important issue, which the hon. LoP has indicated. We need to respect the Judges. We need to respect their authority. We want the Judiciary to control corruption of Executive and politicians, and politicians must learn to respect that. But, the Judiciary also needs to understand certain clear dos and don'ts. One day, I learnt to my dismay that the Delhi High Court, by an order, had taken over the functioning of the Municipal Corporation of Delhi. They had appointed a retired Commissioner. They made lawyers as penal Commissioners and the argument given was that the Corporation was not functioning properly. I had an occasion to address a seminar. I said, "Fine, then, don't confine to Corporation only." You may recall, at that point in time, the Health Minister and the Director of the All India Institute of Medical Sciences were having a big fight. If Right to Health is a Fundamental Right, then appoint lawyers to run the All India Institute of Medical Sciences. The planes are not flying on time. Appoint a team of lawyers to oversee that flights are on time. Executive actions cannot be monitored by Judges. How many monitoring committees, sub-committees, super committees the Judiciary, all over the country, have taken upon themselves? In Gurgaon toll tax matter, I learnt that the Punjab and Haryana High Court wasted two months' time कि गुडगांव में toll tax लगेगा या नहीं लगेगा। Ultimately, they had to say that it was beyond their capacity. Everything cannot be good. But, the Constitution has given an institutional mechanism as to how those wrongs will be set right. And, if the Judiciary thinks that we have to set right everything, I am sorry, that is not what the Constitution has given. Sir, I have last two-three points and I will quickly conclude.

Ram Gopalji talked about accountability. We are also talking about accountability. We, politicians, have been condemned and for good measures. Many of our actions or inactions deserve to be condemned.

But, Sir, let me say something today in favour of my community, to which I belong. *..(Interruptions)..* Here, I am talking as a Member of Parliament. Sir, we, who are in politics, suffer accountability at how many processes. We win elections, we lose elections. We have accountability in the Parliament. We have accountability in the media. We have accountability in the courts; the courts can haul up for our wrongs including having an investigation done under their monitoring. We suffer accountability before the Election Commission. We suffer accountability before the CAG, and, lastly, if we do not do well, after five years, we are defeated by the people. There are seven, eight layers of accountability, yet it is talked about that we are not accountable. Maybe, there is a scope for improvement. We, the politicians, also need to understand it and I would like to quote a very eminent journalist of India. I need not take his name here but what he told me was very moving. He said, “Amidst all the chaos and confusion in India, it is the politician alone who keeps on giving access to people, it is the Parliament, the biggest *panchayat* of India, which raises the voice of people and leads to a self-correcting mechanism, which sustains the very polity and democracy of India”. And, when democracy was not there during Emergency, Sir, we have seen what has happened to India. Therefore, we, who are in politics in this democratic republican governance, should not be so uncomfortable when people raise these questions.

MR. DEPUTY CHAIRMAN: Please.

SHRI RAVI SHANKAR PRASAD: I am concluding, Sir. My last plea is, and, it is the point from where the hon. Leader of the Opposition began. Sir, we send to a Standing Committee even a smaller legislation. There have been recommendations by the Law Commission, by many other Commissions. We are going to have a Constitutional amendment of historic import, maybe for coming 50, 60 years. I would suggest that in the shortest possible time, let the main Constitution Amendment and the Bill go before the Standing Committee. Let us have the benefit of more consultation of Bar Council, Bar Associations, jurists, retired Chief Justices, law professors, people and media so that this Bill may get reinforced again and again. Therefore, my plea would be to kindly ensure this. I would appeal to the hon. Law Minister to ensure that this happens. It is not a matter of ego. I am sorry, I must clarify what Satish ji said. We all want to support this Bill, whether it is Mr. Kapil Sibal, Mr. Arun Jaitley or myself. When Mr. Jaitley brought the Bill, the Bill was sent to the Standing Committee but the House got dissolved. Therefore, there is a need

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to consider that, and, I am sure, the Law Minister will consider it with an open mind, and, lastly, Sir, I am really grateful to you for having given me time to speak. Thank you.

MR. DEPUTY CHAIRMAN: Thank you. Now, Shri Praveen Rashtrapal.

SHRI PRAVEEN RASHTRAPAL: Mr. Deputy Chairman, Sir, I withdraw my name in favour of next speaker from Congress Party.

MR. DEPUTY CHAIRMAN: Okay. Next is Mr. Shadi Lal Batra.

श्री शादी लाल बत्रा (हरियाणा): उपसभापति महोदय, कांस्टीट्यूट असेम्बली ने हमें 24 नवम्बर 1949 को एक संविधान दिया और पार्लियामेंट, जुडिशियरी तथा एक्जिक्यूटिव, ये तीनों संविधान के अंग थे। पार्लियामेंट सुप्रीम थी, पार्लियामेंट जनता की रिप्रेजेंटेटिव थी और जुडिशियरी को इंडिपेंडेंट बनाना था, जुडिशियरी को अपॉइंट करना था।

[उपसभाध्यक्ष (श्रीमती रेणुका चौधरी) पीठासीन हुई]

आज हमारे सामने एक समस्या यह आ रही है कि यह अपॉइंटमेंट किस तरीके से हो? पहले जो कोलजियम काम कर रहा था, वह ठीक था या आज जो जुडिशियल कमीशन आ रहा है, यह ठीक होगा हम ज़रा गौर से देखें कि वह कोजिलियम क्या था। उसमें तीन जजेज़ हाई कोर्ट के और पांच जजेज़ सुप्रीम कोर्ट के थे, जो जिसको चाहे अपॉइंट कर लें, पारदर्शिता बिल्कुल नहीं थी। एप्लिकेशंस आती थीं, वे अपने-आप डिसाइड कर लेते थे कि यह आपका, ये मेरा और इस तरह से जजेज़ अपॉइंट हो जाते थे। तब जजेज़ की क्वलिफिकेशंस क्या थीं? उनाका एक्सपीरिएंस क्या था? क्या उन्हें देश, संविधान या कानून की कोई चिन्ता थी या सिर्फ अपनी चिन्ता थी?

एक टाइम था जब जजेज़ को यंग इंडियन विडो से कम्पेयर किया जाता था। यंग इंडियन विडो का मतलब था कि अपने घर में अकेले रहो। उस समय उनकी कोई सोशल लाइफ नहीं थी, लेकिन जब जजेज़ चेंज हुए, तब उनकी सोशल लाइफ शुरू हो गई और हर शाम को पार्टी होने लगी। अगर वहां जज़ अंकल आ रहे हैं और जज़ अंकल से कल स्टे लेना है, तो वहां क्लाइंट को भी बुला लिया गया। कल क्लाइंट को ऑफिस में बिठा दिया गया, जज़ अंकल अंदर आए, उसको अटेंड किया और सवेरे स्टे मिल गया। ऐसे वकीलों की, ऐसे साथियों की क्या सहायता हुई, वे और ओवरनाइट मिल्टी मिलिनियर भी हो गए, सीनियर एडवोकेट भी हो गए और जजेज़ बनने की लाइन में भी आ गए, क्योंकि अंकल जज ने अपॉइंट करना था, वे एप्लीकेंट थे। बात और हो गई। बात यहां भी खत्म नहीं होती कि कितनी चली। बात तो बहुत आगे चलती है कि जजेज़ अंकल ने जो अपॉइंट किए, उनका क्या प्रोसीजर था,

उनके लिए वह कौन सी भावना थी और उनकी कितनी काबलियत थी, किसी ने जज नहीं किया। यह एक बात हुई। यहां बात हाई कोर्ट की कर लें, सुप्रीम कोर्ट की कर लें लेकिन आओ शुरू करें ट्रॉयल कोर्ट से। ट्रॉयल कोर्ट में क्या पोजिशन हो रही है? ट्रॉयल कोर्ट में जो जज जाते हैं, बनते हैं, आज देखिए कि जज को या तो 2 हिन्दी में, इंग्लिश में उनके बयान रिकार्ड हो रहे हैं तो जज को बोलना होगा, बोल कर रिकार्ड करवाना होगा। लेकिन अगर हिन्दी में लिख रहे हैं तो अकेले जज को अपने हाथ से लिखना होगा, लेकिन जज 10 मिनट बैठकर रिटॉयरिंग रूम में चले जाते हैं, वहां दूसरे जजेज़ भी आ जाते हैं। वहां चाय, कॉफी का काम शुरू हो जाता है और क्लर्क लिखना शुरू करता है। तो यह बात हुई। यह जड़ है भ्रष्टाचार की, यह जड़ है उस क्लर्क की, उस अहलमद की जिसने लिखा, क्योंकि गांव के जो आदमी आते हैं वे अनपढ़ होते हैं, वे समझते नहीं कि क्या है। उन्होंने कहीं हां लिख दिया और कहीं ना लिख दिया, आगे चलते गए। उसके बाद लंच में भी यही होता है और शाम को चले जाते हैं। महीने में कितनी जजमेंट देनी होती है, 30 जजमेंट देनी होती है और ये जजमेंट कौन सी होती है, जो कन्फेशनल स्टेटमेंट होती है, जिसमें लिखना नहीं पड़ता, कंटेस्टेड केस की जजमेंट नहीं आती और कंटेस्टेड केस की जजमेंट नहीं आती तो फिर क्या होगा? मैडम, जब वे जज फैसला कर देते हैं तो वह जज एकाउंटेबल नहीं हैं, उसके अगेंस्ट जो सेकंड अपील जाती है, वह सेकंड अपील हाई कोर्ट में जाती है, हाई कोर्ट में वह एडमिट नहीं होगी, एडमिट होगी तो वह बीस साल तक पड़ी रहेगी। इसका मतलब क्या हुआ कि जो पीछे पार्टी थी, उसने किसी भी कंसीडरेशन से जज को अपने साथ सहमत कर लिया था, तो उसके लिए वह प्रॉपर्टी को बीस साल तक एन्जॉय करेगा। प्रॉपर्टी आई, फिर बहस भी नहीं होगी और फिर वह यह देखेगा कि इस जज अंकल का भतीजा कौन सा है, भाई कौन सा है, उनको कुछ नहीं करना, सिर्फ वकालतनामा सबमिट करना है। वकालतनामा सबमिट करके वे कितनी फीस मांग लें, वह फीस हो जाती है तथा केस ट्रांसफर हो जाता है। केस एक बार भी ट्रांसफर नहीं होता, कई बार ट्रांसफर होता है। मैं इसके साथ एक अनुरोध करूंगा कि जहां मैं उनका वेलकम कर रहा हूं, उनकी सराहना कर रहा हूं कि वे बड़ी हिम्मत से जो यह बिल लाए हैं, यह बिल ठीक है, मगर थोड़ी इंकवायरी करा लें कि क्या ऐसे केसेज हैं जो सिर्फ वकालतनामा देने से केस ट्रांसफर हो जाते हैं। और क्या ऐसे केसेज हैं जिसमें सारे केस में किसी जज ने अपने हाथ से एक बयान भी नहीं लिखा। तो कहां होगा? हम चाहते हैं कि हमारी जुडिशियरी इंडिपेंडेंट हो, हम चाहते हैं कि वे जो फैसला करें, क्योंकि भगवान के बाद वे ही होते हैं, वह फैसला जायज हो, लीगल हो और एज पर लॉ हो। लेकिन कहां हो रहा है? वह हो तो नहीं रहे, लेकिन गरीब आदमी चुप करके बैठ जाता है और वह इसलिए सुप्रीम कोर्ट में नहीं आ सकता, क्योंकि वहां का खर्चा वह बर्दाश्त नहीं कर सकता। अगर ऐसे हालात हो गए, तो जो तीन करोड़ के ऐरियर्स हैं, तो क्या हम अनार्की की तरफ तो नहीं जा रहे हैं? जब उनको सोच आ जाएगी तो हमारे देश के क्या होगा? आज अगर हम देखें कि यह जो बिल लाए हैं, बिल में क्या है? आज ही मैं कहता हूं कि चीफ जस्टिस ऑफ इंडिया और

[श्री शादी लाल बत्रा]

दो सीनियर जजेज़ मंबर होंगे और उसके बाद प्राइम मिनिस्टर, लीडर ऑफ दि अपोजिशन और चीफ जस्टिस तीनों मिलकर दो ऐमिनेंट आदमी अपॉइंट करेंगे। जो 125 करोड़ लोगों का देश हो, उसमें जो प्राइम मिनिस्टर हो, लीडर आफ दि अपोजिशन हो, उनके पास कोई ऐसी पॉवर नहीं होनी चाहिए कि दो ऐमिनेंट आदमी, जज तो नहीं होंगे, कोई लॉयर कह दें या ऐमिनेंट पर्सनलिटि, वे इस बात के लिए दे दें कि आपको भी इस जुडिशियल कमीशन में पार्ट एंड पॉर्सल बनना है, और इस जुडिशियल कमीशन के माध्यम से आपने अपॉइंट करना है। जैसे मेरे सीनियर साथियों ने अभी कहा कि हमारे ऊपर बहुत ही प्रश्न चिन्ह लग चुके हैं। प्रश्न चिन्ह किस बात के लगे हैं? हम एकाउंटेबल हैं इसलिए लगे हैं? हम ओपनली बात करते हैं इसलिए लगे हैं? हम हर पांच साल बाद जनता के पास जाते हैं, उनका सहयोग, समर्थन और आशीर्वाद लेकर आते हैं, इसलिए लग रहे हैं? आज अगर मैं कहूँ कि ये जो पार्लियामेंट के मंबर बैठे हैं, इन्होंने अपनी जीवन कला में कितना संघर्ष किया होगा, जनता की कितनी सेवा होगी और किस तरह उनका सहयोग और समर्थन लेकर आए हैं। इनका हर काम जो 14 लाख, 19 लाख, 20 लाख की जनता है, वह देख रही है। तो ऐसी जो फोटो स्टेट कॉपीज आती हैं, वे ऐसी नहीं हो सकती जिसमें कोई त्रुटि हो। लेकिन आज हमें कोई शंका नहीं है। तो फिर इस कोल्लिजियम की क्या महानता थी ओर इस जुडिशियल कमीशन बिल के लिए क्या कमी है?

वही जज वहां थे, वही जज यहां होंगे। इस तरह एडीशन सिर्फ लॉ मिनिस्टर की हुई व प्राइम मिनिस्टर और एलओपी के ओपीनियन की हुई। अगर हमं प्रजातंत्र में विश्वास है और हम समझते हैं कि हमारे लीडर वाकयी पब्लिक के नुमाइंदे हैं, पब्लिक की भावनाओं की रक्षा करते हैं तो यह जरूरी हो जाता है कि ऐमिनेंट पर्सनलिटिज के नोमिनेशन के लिए प्राइम मिनिस्टर ओर एलओपी की राय भी ली जाए।

मैं एक बात और कहना चाहता हूँ। अगर हम चाहते हैं कि हमारी जुडिशियरी इंडिपेंडेंट हो तो उसके साथ थोड़ी कॉम्पिटेंसी भी होनी चाहिए। उनके पास जज बनने के लिए काबलियत भी होनी चाहिए। जज बनाने के पहले उनका रिकॉर्ड तो देखना ही चाहिए कि उनकी कोर्ट्स में पार्टिसिपेशन कितनी है, उन्होंने कितने ऐसे केस कंटेस्ट किए हैं, जिस से हम समझ सकें कि वे वाकयी लॉयर थे। उन्होंने इनोवेटिव आर्ग्यूमेंट्स किए और लॉ को इंटरप्रेट कर के केस अपने हक में कराए, लेकिन यह नहीं देखा जाता क्योंकि वहां चाचा-भतीजावाद चल रहा था। इसे खत्म करने के लिए यह जरूरी था कि यह बिल आए। अब इस के माध्यम से जो 5-6 आदमी बैठेंगे, वे वाकयी देखेंगे कि उनमें कितनी काबलियत है। वे लोअर कोर्ट, हाई कोर्ट या सुप्रीम कोर्ट में जज बनने के लायक हैं या नहीं? आप जानते हैं कि यूनियन पब्लिक सर्विस कमिशन इसलिए बना था कि वहां से आईएएम पास केंडीडेट्स निकलेंगे। फिर चाहे यूनियन पब्लिक सर्विस कमिशन हो, जुडिशियरी हो या एक्जीक्यूटिव हो, वहां से एक एकजाम

पास किया, एक इंटरव्यू दिया और उसके बाद बन गए, लेकिन यहां हमारे राजनीतिक भाई तो हर पांच साल बाद इंटरव्यू देते हैं, हर पांच साल बाद देखते हैं कि हमारी जनता की भावना क्या है, हमारा देश किस तरफ जा रहा है और हमें क्या करना है। इसलिए मैं समझता हूँ कि यह बिल हर तरीके से महान है। यह जुडिशियरी को इंडिपेंडेंट बनाने के लिए और जनता का विश्वास अर्जित करने के लिए मील का पत्थर साबित होगा। यह इस देश के विकास के लिए मील का पत्थर साबित होगा। सर, अंग्रेजी में कहा जाता है कि **justice should not only be done but it should also be seen to be done**. अगर प्रिंसाइडिंग ऑफिसर्स जो जज बनकर आए हैं, वे किस के समर्थन से आए हैं? उसके लिए एक चीज देखनी होगी कि जब कोई लिटीगेंट कोर्ट में आता है, तो वह सोचता है कि इसे किस ने जज बनाया है, मैं क्यों न इसे जज बनाने वाले के चहेते आदमी को वकील कर लूँ। यह एक शुरुआत होती है और फिर वह उसे लॉयर अपॉइंट कर लेता है। उससे वह जज भी खुश होता है। इस तरह वह लॉयर नहीं है, वह लाइजनिंग ऑफिसर है। उस के माध्यम से वह लिटीगेंट भी हर तरफ से सेफ हो जाता है। फिर उनकी अपील का मतलब नहीं होता। अगर अपील करते भी हैं तो केस डिंसाइड होने में कई साल लग जाते हैं। आज हमारी अनेक कोर्ट्स में 3 करोड़ केसेज पेंडिंग हैं। उसमें हमें उन पार्टीज के बारे में सोचना चाहिए जिनके केस पेंडिंग हैं और जिनकी करोड़ों की प्रॉपर्टी इनवॉल्वड है, लेकिन फैसला नहीं हो पा रहा है। हमें सोचना चाहिए कि फैसला न होने के पीछे क्या कारण हैं? सर, इसका कारण एक ही है कि जजेज की अकाउंटेबिलिटी नहीं है। जजेज फैसला नहीं करते और डेट लगाते रहते हैं जिस से एक पार्टी को फायदा होता है।

मैडम मैं यह भी कहना चाहूंगा कि जो लोग इस जुडिशियल कमीशन में आए, मैं लॉ मिनिस्टर से दरखास्त करूंगा कि आप जहां उनके अपॉइंटमेंट के लिए सोच रहे हैं, वहां जब उनकी डिस्क्वालिफिकेशन हो जाती है, तो उसे हटाने के बारे में भी सोचना होगा। उसके लिए कांस्टीट्यूशन में इम्पीचमेंट प्रोवाइडेड है, उसमें इतना डिफिकल्ट प्रपोजीशन है कि इम्पीचमेंट हो नहीं सकती और वह इसलिए नहीं हो सकती क्योंकि वे जज भी उस लेवल तक जाने तक काफी कोशिश कर लेते हैं। अब वे यहां आते भी हैं, तो यहां आने के बाद उनकी डिफरेंट ओपिनियन हो जाती है। अब अगर इस सदन की ओपिनियन एक हो और हम अपनी राजनीति छोड़कर, सिर्फ देश के लिए काम करें, तो मैं समझता हूँ कि दुनिया की कोई भी संसद इस से ताकतवर नहीं होगी और अगर इम्पीचमेंट होनी है, तो निश्चित तौर पर होगी। मैंने दो केसेज में देखा है कि इम्पीचमेंट रास्ते में रुक गयी, नहीं हुई क्योंकि हम इकट्ठे नहीं हो सके। हरेक की अपनी अलग-अलग ओपिनियन थी। इसलिए इस जुडिशियल कमीशन में यह भी जोड़ देना चाहिए कि डिस्क्वालिफिकेशन के बाद ऐक्शन लिया जा सके क्योंकि उसमें भी चीफ जस्टिस हैं, हाई कोर्ट के सीनियर जजेज भी हैं और एमीनेंट पर्संस भी हैं। अब और कौन आएगा? इसलिए आज मैं इतना ही कहना चाहूंगा कि आने वाले समय में यह बात बहुत जरूरी हो जाती है कि हम देश को कैसी जुडिशियरी दें, देश को कैसे जुडिशियल ऑफिसर दें और उसके लिए कैसी व्यवस्था करें।

[श्री शादी लाल बत्रा]

एक बात यह भी सामने आती है कि जो जज बनते हैं, उनके दिमाग में ऐसा होता है कि हम कुछ भी जजमेंट दे देंगे, हमारी जजमेंट पर कोई अकाउंटेबिलिटी नहीं है, हमें कोई कुछ नहीं कहेगा। एज पर लॉ जो जजमेंट ठीक नहीं होते, उसमें हाई कोर्ट भी सेट एसाइड करती है, कोई एक्शन नहीं लेती और सुप्रीम कोर्ट भी कोई एक्शन नहीं लेती। तो इस जुडिशियल कमीशन के थू कोई न कोई वे आउट निकालना होगा। उसकी बोनाफाइड इंटरप्रिटेशन होनी चाहिए। यदि बोनाफाइड हो, तो समझ में आता है और उस जज को प्रोटेक्शन मिलनी चाहिए लेकिन बोनाफाइड न हो और यह प्रूव हो रहा हो कि यह जजमेंट बोनाफाइड नहीं है, तो उसके लिए आप एकाउंटेबिलिटी कहां से रखेंगे, किसके पास रखेंगे? मैं मंत्री महोदय से अनुरोध करूंगा कि इसके लिए भी कोई न कोई प्रावधान आप देखें, ताकि जज की भी यह सोच बने कि अगर मैने गलत जजमेंट दे दी, आउट ऑफ द वे जजमेंट दे दी, गलत इंटरप्रिटेशन की, तो मेरे ऊपर भी एक्शन हो सकता है, मैं लॉ के ऊपर नहीं हूँ, मैं लॉ के नीचे हूँ। हम सब आज लॉ के नीचे हैं, लेकिन जज सोचते हैं कि हम लॉ के ऊपर हैं, हम लॉ की इंटरप्रिटेशन करने वाले हैं। यह तो भावना आ रही है कि *they are above law and we are under law*, इस भावना को खत्म करना होगा। इस तरह की भावना को खत्म करने के लिए हमें कोई न कोई समाधान निकालना है। इसके लिए हमें क्या करना है? यह भी सोचना होगा।

मैडम, मैं एक मिनट में खत्म कर रहा हूँ। आप थोड़ा इस पर भी सोचें कि मेम्बर ऑफ पार्लियामेंट भी रिटायर होते हैं और जज भी रिटायर होते हैं। ...**(व्यवधान)**... मैडम, आप देखिए, आज जजों के पर्स क्या हैं? इवेन आफ्टर रिटायरमेंट उनकी जो पर्स हैं, वह हम सोच भी नहीं सकते। ऐसी पर्स क्यों हैं? इसलिए कि वे इंडिपेंडेंट हैं, उनके अपने बजट हैं, वे अपने आप डिसाइड कर लेते हैं। वे यह भी नहीं चाहते कि प्राइम मिनिस्टर या नेता विपक्षी दल उस ओर झांक लें या देख लें कि उनके ये पर्स ठीक नहीं हैं। इवेन आफ्टर रिटायरमेंट उनको कोठी मिलेगी, कोई बात नहीं, उनको पर्सनल असिस्टेंट मिलेंगे, कोई बात नहीं, उनको विदेश यात्रा के लिए सुख-सुविधा मिलती हैं, स्टेनों मिलते हैं, ये किस बात के लिए मिलते हैं? मैं समझता हूँ कि लाइफ में अगर कोई एक बार जज बन जाता है, तो वह सारी उम्र का जज होता है, उस पर कोई भी हस्तक्षेप नहीं कर सकता, उसके खिलाफ कोई भी कुछ नहीं कह सकता। आप उनकी छुट्टियां भी देखें, तो जो अंग्रेजों के जमाने से छुट्टियां मिलती थीं वहीं आज भी मिल रही हैं। हम 1947 से आजाद हुए हैं, लेकिन आज भी अंग्रेजों के समय में जज के जो चाल-चलन थे, उनकी सोच थी, उनकी जो भावना थी, उसी को वे आज भी अपना रहे हैं। मैं समझता हूँ कि जब यह जुडिशियल कमीशन बनेगा, या उनके अपॉइंटमेंट की बात होगी, तो उनके पर्स पर, उनकी छुट्टियों पर भी चर्चा हो जाएगी कि उन्हें भी आम इंडियन की तरह ट्रीट करके सुविधा मिलें और वे इंडिपेंडेंटली फैसला करें, जो उनकी ड्यूटी है।

इस शब्दों के साथ आपका धन्यवाद।

6.00 P.M.

THE VICE-CHAIRMAN (SHRIMATI RENUKA CHOWDHURY): Thank you, Batraji. Next speaker, Mr. H.K. Dua. I have to request you to keep it crisp and short because of the time constraint.

SHRI H.K. DUA (Nominated): Madam Vice-Chairperson, I thank you for giving me an opportunity to speak although I wish you had not minded the clock too much. Nevertheless, Madam, *kachehri* is the last hope of the people. When other institutions fail and often they fail, Parliament, Executive even media, the lower judiciary fail the common man; he goes to the *kachehri* with some hope. I am afraid, the court also has developed all the weaknesses which mark the decline of the other institutions. Three crore cases are pending in the courts in the lower judiciary, High Courts and the Supreme Court. These are not just cases. Actually, three crore families are affected, that means, nearly 12 crore people are affected because of delay in justice. There also must be crores of people waiting outside for justice who do not go to the courts simply because they are not expecting fast justice. Or, because it is also costly. They do not have resources even to seek justice. It is not only the cases but the quality of justice is also important. Lately, the people are feeling disappointed with the courts for the kind of quality of justice that has come out. I will cite just a few notable cases the Jessica Lal case, the Priyadarshini Mattoo case. They have disappointed the people. They were raked up only because the media protested.

I cannot understand how a BMW car becomes a truck as the trial proceeds. There can't be greater travesty of justice. Six people killed by a BMW car, and the culprits get away with very light punishment after the lawyers were able to prove that it was not a BMW car, it was a truck. I don't think these people or witnesses were suffering from some kind of optical illusion that they can't make out a difference between a car and a truck. But that is what has happened during the trial. In many cases, it is happening like that. Recently, a Supreme Court Chief Judge retires, simply passes orders on the eve of his retirement and a new Chief Justice takes over and reverses those orders. Now reversal often happens in the Courts, but not after such a short duration. But the remarks of the now Chief Justice reversing the predecessor's orders were interesting: we are aware of the circumstances in which those orders were passed. Now it is not the media reporting, it is the remark

[Shri H.K.Dua]

of a new Chief Justice on the orders passed by a Bench headed by the previous Chief Justice. Now, which orders should the people believe? This is the kind of quality of justice which shakes the faith of the people in the Court, which is the last court of appeal. As the Leader of Opposition was saying, well, there is a finality about what the Supreme Court decides and after that there is God who is the final authority. If the peoples' faith gets shaken in a major institution, a watchdog-like court, I am afraid, they will be disappointed with the entire system. Like other institutions, the judicial system needs reform, a serious reform from top to bottom, and the reform must start from the top. The Collegium system is where the Judiciary has acquired for itself the power to appoint judges, which is very rare in the world's judicial system. I still cannot understand and many cannot understand, as it has been pointed out in the House earlier, the vocabulary; it is not the semantic difference, there is a vast difference between concurrence and consultation. If consultation is interpreted by the Court, there is self-interest of the Judiciary that was involved. Certainly, the Judiciary was fed up with the Executive's appointment of the judges to the Court. But so far as the new Bill is concerned, I am glad the Law Minister has changed his view he had held 20 years ago. Now he is on the other side. But I am very happy he has developed second thoughts. And second thoughts are also a fundamental right of the Law Minister, like it is of all of us. Now, he has interpreted, correctly, that we need to evolve a system where the Executive can't interfere with the appointment of judges and get away, as well as the Judges don't appoint themselves. We cannot give the right to the Generals in the Army to appoint their own colleagues at the top. He has to be appointed by the Executive. Here is a system that is being evolved where a Judicial Appointments Commission is being set up for appointment of judges to the Supreme Court and the High Courts. There is the Executive, the Chief Justice, there are two eminent judges from outside who will be selected by the Prime Minister and the Leader of the Opposition, etc. Everybody here knows the provision in the Bill by now. This system can provide us more independent-minded judges. This is an opportunity which needs to be utilized for judicial reform, but the Law Minister's Constitution Amendment Bill, which I will support, has only one aspect of the reform *i.e.* appointment of judges which is very important. I hope the Courts will take steps to reform the working of the High Courts. The image of the High Courts is very, very bad in the States. The image of

the lower Judiciary where touts are roaming around is worse. They are ready to do anything you want them to do. Justice is often bought and sold by them. Reform of lower Judiciary is urgently needed. I wish the Law Minister undertakes these reforms fast. I will now draw the attention of the Law Minister and the House to another Bill. A few months ago, I had brought a Private Members' Constitution Amendment Bill, which the entire House supported from each side of the House, every Party supported and that was on the Removal provision of an errant judge. Even Shri Ram Jethmalani supported that Bill although he said he is going to oppose the Law Minister's present Bill on the appointment of judges. I am very thankful to him for supporting my Bill on the removal of corrupt judges. This House almost unanimously approved of my Motion to remove Justice Soumitra Sen of the Kolkata High Court from the Bench. And it was unanimous in supporting the motion for his removal. Before the Motion could go to the Lok Sabha, Justice Sen resigned. Now where does the impeachment or removal provision stand when any judge, who is sought to be impeached by one House frustrates the entire removal process and gets away simply by resigning? Justice P.D. Dhinakaran, who was waiting for being impeached, judged the mood of Parliament and he also resigned. Now, since there was a removal provision, the entire House supported my Bill and Mr. Sibal's predecessor had no option but to promise that the Government would bring an official Bill forward on the Removal provision. I wish the new Law Minister could tell us as to when he is going to live up to the governmental promise and bring a Bill where the impeachment power of the President is translated into action. Sir, I support the present Bill before the House irrespective of what he says. Thank you, Madam Vice Chairperson.

THE VICE-CHAIRMAN (SHRIMATI RENUKA CHOWDHURY): Now, Dr. Bharatkumar Raut.

श्री एम. वेंकैया नायडु: मैडम, 6 बज गये हैं।

उपसभाध्यक्ष (श्रीमती रेणुका चौधरी): बस हो गया। आप लोग जल्दी से संक्षेप में बोल दीजिए।

SHRI M. VENKAIAH NAIDU: Madam, the normal practice is that when we sit up to 6 o'clock and, beyond that, the sense of the House is taken. If you want to extend the time, then, I have no problem. But the House should agree to it. And that will be for this Bill only.

THE VICE-CHAIRMAN (SHRIMATI RENUKA CHOWDHURY): I would like to take the sense of the House. If everyone agrees, we will extend the time and finish this business today. Dr. Bhartkumar Raut, you may start now. But please remember that you have a limited time.

DR. BHARATKUMAR RAUT (Maharashtra): Madam, I do remember that I have a limited time. But I would like to remind you that all my predecessor speakers, who are the front-benchers, had exceeded their time. However, I will not take a minute more than what is required.

Madam, at the outset, let me welcome the Bill because it was long, long overdue. Ever since I was a college-going student, I have been hearing repeatedly that a Judicial Commission is supposed to come. But it never saw the light of day. I thank Shri Kapil Sibal that, finally, he could bring the Bill before this House. Madam, this Bill is very important because nowadays the picture is that there is a bout between judiciary and legislature, between judiciary and bureaucracy and between judiciary and judiciary. So, at some point, it should stop. Perhaps, this Bill relating to judicial appointments will be a step forward towards that. It has been said by the Leader of the Opposition, the hon. Minister and many other speakers that each institution has its duties as well as limitations. When the Executive crosses their limits, it is the Judiciary which controls and checks. When the Legislature crosses its limits, it is the Judiciary which controls them. But when the Judiciary itself crosses the limits, which, more often than not, they do, then, who is there to control them? There is no mechanism in our Indian system which can control Judiciary. If that is so, then, God save us because there will be a time when instead of democracy there will be the Judiciary which will be ruling the nation. And that is happening now. Judiciary is not only interpreting the law but it is also making the law and executing it as well. The recent Judgement about the Legislators being unseated, that is execution of law, which is what the Judiciary is doing. Anyway, I do not want to get into that.

Madam, I would like to raise certain moot questions and then I will conclude. One question is, if judiciary is an important function, then, why does the cream of legal talent not get into the judiciary? Why is it that big lawyers, eminent lawyers, successful lawyers and I would say, with a pinch of salt, honest lawyers, do not like to enter judiciary? It is because to be called Mr. Justice is definitely more prestigious

than to be called Mr. Counsel or Mr. Advocate. But they do not want to be judges because of financial remuneration. I know a couple of cases, a barrister in Maharashtra—who is no more, I don't want to name him—was so named as judge of Bombay High Court. Within a year-and-a-half, he resigned the post and went back to legal practice. In a Press Conference he said, he was an Advocate-General before that in Maharashtra. He said that the salary which he earned as judge was his daily earning as a law practitioner. Sir, if we are paying such meagre salaries to judges, then, how do you expect talent to come? Talent will not come. This is one aspect. If a judge is found guilty, not in his judgment, but in corrupt practices, what types of punishment do they undergo? Just now, Mr. Dua gave reference on impeachment cases. Nothing happened. Why did they reach the stage of impeachment? It is because they were near found to be guilty in the cases. Nothing happened to the resigned people. That was all. In Maharashtra, senior lawyers would remember that four senior judges of Mumbai High Court were found guilty of corrupt practices. The media was agog with stories. That time television was not there, but media was full of stories about those four judges. Out of the four judges, one retired during this period and three resigned their posts. Once they resigned, everything was covered up. Everything was covered up and there was no action taken against them. I would like to ask the Law Minister what prevents the law from taking action against the guilty judges. If a Minister resigns on the charges of corruption, still a case goes on. If an MP resigns from his seat, the case goes on. If a bureaucrat resigns from his post or retires from his post, still the case goes on. When a judge resigns from his position, why should not the case of corruption continue? In the Judicial Commission, if at all there is a Clause by which we say that a judge is also a human being, then, he is a citizen and he should also abide by the law of the land. If that does not happen, then, it is not going to keep the judiciary in order. A judge in Maharashtra who was instrumental in unseating a Chief Minister of Maharashtra took the job so seriously that on a rainy day he went to the slum areas when the Chief Minister had ordered clearance of slums. He went to slum areas with an umbrella in his hand. Photographs appeared in all newspapers and he stopped the Government action against the slum dwellers. What happened later? Two weeks later, there was a landslide and twenty people died in the same slum. Who was responsible for it? Is it the Government, the municipal authorities or the judge who prevented the slum clearance operation? Nothing happened to the judge! He was

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sitting quietly in his Malabar Hill residence. What happens to them? My last point, Madam is, stop giving the olive branch of post-retirement jobs to the judges because, as LoP has mentioned, that affects their in-service duties also. So, there could be an enactment by which you should say that a judge after retirement for five years should not take any Government, semi-Government assignment because anyway they go as consultant in private institutions, in private business houses. Beyond that, they want to go on to Commissions. Many retired judges, though they go on to various commissions right from Information Commissioner to whatever...

THE VICE-CHAIRMAN (SHRIMATI RENUKA CHOWDHURY): Please conclude.

DR. BHARATKUMAR RAUT: I am completing, Madam.

In that case, I think, this Constitutional amendment is a must. I am happy that it has been brought in. Though it is too late, but it has come. I am happy about it. There is a Bill that also provides for 'dos' and 'dents' of the Commission.

My suggestion is: Let the Judicial Appointments Commission Bill go to the Standing Committee. The rest of the business we should pass today. Thank you.

SHRI RAM JETHMALANI: Madam, thank you; better late than never.

Sir, I wish to make two preliminary suggestions. If there is an assurance that the Constitution (Amendment) Bill as well as the subsidiary Bill will both be referred to a Select Committee of Parliament, I do not propose to address this House at all. But, I do not consider it suitable or proper that only the second Bill should be referred to a Select Committee. Both should be sent. And, I will give my reasons.

Sir, the second suggestion that I have to make is this. My main contention, which I am going to make, is that the Constitution (Amendment) Bill is wholly unconstitutional and, if passed, it will undoubtedly be set aside by the Supreme Court, because it interferes with a basic feature of the Constitution. Such amendments of the Constitution are outside the jurisdiction of this House. The amendment process prescribed by the Constitution requires 2/3rd majority and so on and so forth. That applies only to those amendments of the Constitution which do not touch what are called the basic features of the Constitution as understood in the

Kesavananda Bharati case. This Constitutional amendment, certainly, interferes with a basic feature of the Indian Constitution and it will not be sustained ever. But, if it is said that even if you pass it, it will not be brought into force until a Reference is made to the Supreme Court and the Supreme Court answers the question of the validity of this Constitution amendment in the affirmative. If that is done, I, again, need not speak. But, Sir, since I don't expect both these reasonable suggestions to be accepted, I intend to speak and speak my mind.

Sir, first of all,

AN HON. MEMBER: It is not 'Sir'; it is 'Madam.'

THE VICE-CHAIRMAN (SHRIMATI RENUKA CHOWDHURY): If you don't mind.

SHRI RAM JETHMALANI: We address our female Judges as 'My Lord.'

DR. NAJMA A. HEPTULLA (Madhya Pradesh): Don't call her 'my lady.'

SHRI RAM JETHMALANI: I could, with some justification; but, I won't.

Sir, at my age of ninety, I know that I am, today, living in the departure lounge of an airport waiting for the divine flight to be called.

SOME HON. MEMBERS: No, no. We want that divine flight be delayed, indefinitely.

SHRI RAM JETHMALANI: It is lucky that the flight is delayed for sometime. But, I can assure this House that I have no political ambitions of any kind.

Kapil is my great friend and is one of the Ministers in the Government whose work as the Law Minister I keep supervising and I am happy the manner in which he conducts his Ministry. But, Sir, I must declare today that my conscience, understanding and my duty towards the people of this country, which I regard as my paramount obligation, do not permit me to submit to this kind of legislation. Both the Bills, according to me are evil. The evil, first of all, consists in the misleading Statement of Objects and Reasons. You ought to have said with complete honesty that what you are trying to demolish is the Collegium System, which seems to be the object, and which is apparent to anyone. Some of the persons who have spoken have spoken on the assumption that that is the purpose of this particular piece of legislation.

[MR. DEPUTY CHAIRMAN in the Chair.]

Sir, the first point that I propose to make is that the 1993 judgment of Nine Judges is a judgment based upon the discovery of the basic feature of the Constitution, and upon devising a system to sustain that basic feature. Madam, I have myself appeared in that litigation and I claim that I had a tremendous contribution to make to the success of that judgment. In a sense, I claim to be the founder of the Collegium System. But that does not mean that I am an unmixed admirer of the Collegium System. The Collegium System has, doubtless, some faults. But the Collegium System came into existence on the basis of one main argument. That one main argument that we advance, and advance with great vigour and force, is that there is one article of the Constitution, article 50 of the Constitution, which is the shortest article in the Constitution, consisting of only one sentence. That article says that the Government shall strive to keep the Judiciary separate from the Executive.

Sir, we argued before the Supreme Court that this article does not mean that Judges and Ministers should not socially meet. This does not mean that they should live in separate towns, or that they should not live even in adjoining bungalows. The purpose of this article is to ensure that in the appointment of Judges, the Executive has no role to play, except the advisory role. In other words, the doctrine of primacy of the Executive in the appointment process was irksome to us because the whole nation of India has been the victim of the Judges appointed in the earlier system. I have been a refugee from my own country during the Emergency. Why was it? It was because four Supreme Court Judges—I am not talking of the fifth who earned the *New York Times* praise that the Indian nation will have to build a monument to his memory; I am talking of the other four who—disgraced the Judiciary, disgraced the Supreme Court and were parties to the destruction of Indian democracy and the demolition and the debasement of the whole Constitution of India. Sir, of which system were they the product? They were the product of that system which, in 1981, was ultimately supported by the Gupta Judgment but, after some time, there were people, intellectuals, who spoke up that this system would not work; the system requires change. Sir, the Indian democracy has been saved not by intellectuals; Indian democracy at its most crucial hour has been saved by the poor illiterates of this country.

"सितम के दौर में वे अहलेदिल ही काम आए,
जबां पे नाज था जिनको, वे बेजुबां निकले"

That is the tragedy of our country.

That is the tragedy of our country. Sir, the intellectuals of this country have continuously failed, and I regret to say that they are failing even today.

Sir, when ultimately the realization dawned on the Bar of this country, it is the Bar of this country, which went to the Supreme Court and said that the present system must go. The present system is a system in which the Executive has the greatest influence in the appointment process. It has the primacy, said the 1981 judgement. And we said; please discover the basic feature of India's Constitution, according to the Keshvanand Bharti Case. The nine judges sat; they heard arguments, and that I am proud of the fact that I made that argument that the separation of the Judiciary from the Executive means under the 50th Article of the Constitution that the Judiciary, under no circumstances, depends for its appointment on the will and the prerogative and the primacy of the Executive. The Supreme Court upheld it, and overruled the original judgment of 1981, the Gupta Judgment, and the nine judges delivered a judgment, which I want this House to know that the Collegium may be the creation of the Judiciary, it is the creation of judicial interpretation, again, of the Constitution, but whatever be the faults of the Collegium, the Collegium today represents some system which is consistent with the basic features of the Constitution, namely, the supremacy of the Judiciary and its freedom from any influence of the Executive in the appointment process.

MR. DEPUTY CHAIRMAN: Now, please conclude.

SHRI RAM JETHMALANI: What, Sir? ...*(Interruptions)*... Sir, I am very sorry that this is not done. Everybody has exceeded his time, and I am the lone speaker in this House. ...*(Interruptions)*...

SHRI T. K. RANGARAJAN: Sir, allow him to continue. ...*(Interruptions)*...

SHRI KIRANMAY NANDA (Uttar Pradesh): Sir, he should be allowed. ...*(Interruptions)*...

SHRI RAM JETHMALANI: Sir, I am speaking for those who are not irrevocably committed to voting for this amendment. There are some people who

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must have kept their minds still open. I am appealing to those minds today only. Those who are irrevocably committed are committed to the destruction of Indian democracy.

Sir, the key passage in the judgment of the Supreme Court of 1993 is the passage which I wish to share with the House. The question of primacy to the opinion of the Chief Justice of India in the matters of appointment and transfer and their justifiability should be considered in the context of the independence of the Judiciary as a part of the basic structure of the Constitution to secure the rule of law essential for preservation of the democratic system. The broad scheme of separation of powers adopted in the Constitution together with the Directive Principles of separation of the Judiciary from the Executive, even at the lowest strata, provides some insight to the true meaning of the relevant provisions of the Constitution relating to the composition of the Judiciary. The construction of these provisions must accord with these fundamental concepts in the Constitutional scheme to preserve the vitality and promote the growth of the essential of retaining the Constitution as a vibrant organism”.

Sir, the Constitution cannot survive, human freedom cannot survive, citizens’ human rights cannot survive, no development can take place unless, of course, the judges are independent first of the Executive power because don’t forget that every citizen has a grievance against the corrupt members of the Executive, or, errant bureaucracy, public officers misusing power, indulging in corruption, making wrong and illegal orders. The citizen goes to the court, knocks the door of the court and says, “Please give me a mandamus against this corrupt official, against this corrupt Minister”. And, Sir, the judges are supposed to decide upon the claims of the poorest who go to the Supreme Court... *...(Interruptions)*... ..and to the judges. It may be, and I am conscious... *...(Interruptions)*... Sir, this is not a laughing matter. Please listen, and then decide for yourself. *...(Interruptions)*...

MR. DEPUTY CHAIRMAN: Please. *...(Interruptions)*.. Order, please. *...(Interruptions)*...

SHRI RAM JETHMALANI: Sir, first of all, let me say this now that the whole judgement of nine Judges is based upon this principle that in the appointment

process, the Executive can never have primacy. This is principle number one. It has now become the basic feature of India's Constitution. My grievance today against this Constitution (Amendment) Bill is that you are slowly, slowly now creating a new method by which ultimately you will revert to the system which existed prior to 1993. In other words, the same system would produce those four Judges who destroyed the Indian democracy, human rights and freedom. Sir, kindly see, why. The Constitution Amendment looks very innocent. All that it says is that we shall have a new article 124(a) in the Constitution and article 124(a) merely says that there shall be a Judicial Appointments Commission. It lays down that the Judicial Appointments Commission will have these functions. It leaves at that. But, kindly see that after the first sentence, every thing is left to a Parliamentary will. After saying that there will be a Judicial Appointments Commission, every thing will be left, according to the second part of 124(a), to a parliamentary legislation which is capable of being removed if the ruling party has one Member majority in both Houses of Parliament. Not only that, I understand that Parliament is not likely to do it, but it can do it and by a majority of one in both Houses, you can demolish the whole thing and substitute it with a Judicial Commission which will consist of only the Law Minister.

MR. DEPUTY CHAIRMAN: You have taken double the time. Please finish.

SHRI RAM JETHMALANI: So, Sir, my first objection is that this Bill is a Bill which is intended to deal with the basic structure of the Constitution and, therefore, this Bill is void. (Time-bell rings) Second, if a Constitutional Amendment is not good enough for this purpose, surely, an ordinary piece of legislation cannot do it, which ordinary piece of legislation can be removed only by a majority of one in each House. It can be removed like the 30th July Food Security Ordinance and you can pass an Ordinance on that day and say that the whole Act is repealed and now the system will be that Judges will be appointed for the next six months by only the Law Minister of India. If there was Mr. Kapil Sibal, ...*(Interruptions)*... If Mr. Kapil Sibal becomes the Law Minister for ever, Sir, I will allow this Bill to go. (Time-bell rings) But I am not prepared to accept it for the future Law Ministers. ...*(Interruptions)*... Sir, let me take two more minutes and tell all those Members that this Bill is not intended to ensure the judicial character. This Bill has nothing to do with the improvement of the judicial character. So long as the Judges are also human, there will be some Judges who will go wrong, who may go wrong. But a great Bar can

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control them. Let me give you one illustration in my own life. Sir, having appeared in a case in the Supreme Court, a judgement was delivered—I do not wish to name the Judges— which I could not sleep with. I said, my God, how can two Judges of the Supreme Court say so? One of the decisions of that Court was that police can beat up a person to get the truth out of him which is an offence under the Indian Penal Code. I said that it may be the Supreme Court but I will make all sacrifice, I am prepared to face the law of contempt, but this must be exposed. I wrote an article in which I said that these two Judges deserve to be impeached for intellectual deficiency.

And, I sent that article first to those two Judges in the hope that they will take some contempt action against me. But they realized that what Jethmalani was saying was right. They kept quiet. (Time-bell rings) I say ...*(Interruptions)*... a copy of the judgement to every Judge of the Supreme Court, including the Chief Justice. Nothing happened. ...*(Interruptions)*... No action was taken. ...*(Interruptions)*... Then, I published it in the Asian Age, but no action was taken. That is the kind of intellectual that is required in this country to speak the truth. And, the Bill, which you want to refer to the Select Committee, which you are willing to, is a thoroughly useless ...*(Interruptions)*... A simple Bill passed by the Parliament can never take away ...*(Interruptions)*... the crux of the Constitution, the core of the Constitution.

MR. DEPUTY CHAIRMAN: Okay. Thank you. ...*(Interruptions)*...

SHRI RAM JETHMALANI: Sir, I hope, people will avoid this kind of a tragedy in the life of this country. You are today digging the grave of the Constitution of India and the freedom of this country. ...*(Interruptions)*... That's all I wished to say. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: Thank you very much. Now, the hon. Minister.

SHRI KAPIL SIBAL: Mr. Deputy Chairman, Sir, I, first of all, want to extend my gratitude to all the distinguished Members of this House who have participated in this debate, especially the Leader of the Opposition who has, in principle, fully supported both, the contents of the Constitutional Amendment and its purpose. Very distinguished Members have made very eloquent speeches in this House and because this discussion has been going on for too long, I will cut short my

comments and would just make some clarifications to set the record straight. I also thank Mr. Jethmalani for his impassioned plea, this evening. I know that he was also one of our counsel at that time when we argued this matter. The real problem with that Advocates on Record Association's judgement is that the appointment process of a Judge is considered to be a part of the basic feature of the Constitution because it impacts on the independence of the Judiciary. Now, the appointment of a Judge is an Executive act. The independence of the Judiciary applies only to judicial acts. And, this is the heart of the problem. The very assumption of that judgement was wrong because the appointment process has nothing to do with what the Judges say in the course of their judgements. Judges must have complete independence when they are deciding a particular case. But Judges cannot, invoking the principle of independence of the Judiciary, decide who should be appointed and who should not be appointed as a Judge. That's the problem with the case. And, that answers what my very senior and good friend Jethmalani mentioned just now. Secondly, a lot of debates have gone on in this House on the power of Judicial Review. This is a very limited Constitutional Amendment. It has nothing to do with the Judicial Review. What are we doing? There was a process under the Constitution, which stood the time of day till 1993. The power was with the Executive. That, through a process of judicial interpretation, has been changed. The power has been taken away from the Executive. And, the Judiciary, through a process of interpretation, has said, "We have the power to appoint Judges". All we are doing today is to set the clock right. We don't want to go back to the prior 1993 position. We want a participative process with the Judiciary to make sure that the right kind of people are appointed to the higher Judiciary of this country, which is the Supreme Court of India and the High Courts. That's all. What powers the Judiciary has in terms of the Judicial Review is not our concern today. We will discuss that on another day whether the extent of power that they have exercised is beyond the scope of their constitutional rights. That's not the debate today. We will have that debate on some other day. But, at the moment, we are only talking about an appointment process. So, I don't see why we have to talk about all these other things. Secondly, my very learned colleague, Mr. Jaitley, mentioned that the Judiciary has started asserting itself because of the Collegium system. And, that happened ever since 1993. We have seen these acts of assertion of the Judiciary over a period of time. They have expanded their right of judicial review because of the 1993

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judgement. Well, quite frankly, the greatest act of assertion was the 1993 judgement itself where they re-wrote the Constitution. There was no collegium system at that time. The collegium system came much later. The reason why they asserted themselves in 1993 was because they believed that the process of how judges were being appointed by the Executive was not consistent with the highest standards of appointment that were expected of the Executive when they made those appointments. The Leader of the Opposition mentioned that from 1950, through the 60's the system worked very well. The system worked very well even though the power was with the Executive. So, there was nothing wrong with the provisions of the Constitution; there was something wrong with us that having that power with the Executive, we did not exercise that power in the manner and in accordance with the standards expected of us, maybe, after the 70's and in the 80's. Whatever system you put in place today will also be subject to the same frailties. Why? Because it will all depend on the men who exercise that power. The Constitution worked well till the late 60's. Why? Because the men who exercised that power exercised it with responsibility. It did not work in the 70's and 80's, because the men who exercised power did not act responsibly. It did not work after 1993, because those members of the Judiciary who exercised that power have not exercised it responsibly. And, it may not work after 2013 even if we have the change in the Constitution, because we may still have men in power who may still not exercise this power responsibly. The problem, Sir, is not with the Constitution, the problem is with us. We need to make sure that the right people are in the right place to do the right thing. ...(*Interruptions*).. That is the heart of the problem, Sir. It is not a question of us changing our wisdom over the years. It is a question of us realising, as we evolve, that we need to improve the system. This is yet one attempt in the hope that the system will improve. I cannot offer a dream or a *panacea* but I can only tell you that we in Government intend to improve the system and I think this House must speak in one voice. The message to the outside world will be that we are here not to interfere in the independence of the Judiciary, but to participate with the Judiciary to have a better tomorrow. ...(*Interruptions*).. Therefore, I beseech the Leader of the Opposition it is not the time to seek an adjournment here. You criticize the courts for seeking adjournments from time to time and for trials not taking place for years. We

have, for 20 long years, tried to correct the system. At the end of the 20 years, please don't seek another adjournment. Because you will be then doing exactly what you castigate courts do on a daily basis. There has been some talk about a fear that we are trying to push this Constitutional Amendment and there will be a legislative hiatus because the other Bill will not be passed. I make a firm assurance in this House that once the Constitutional (Amendment) Bill is passed in this House and in the Lok Sabha, under Article 368 of the Constitution, it has to go to all the States for their consent. Unless half the States consent, it cannot become a law. Then, it has to be sent by the Government, after half the States' consent, to the President of India for his assent. I make an assurance on the floor of this House that I will not send those papers to the President of India till the composition of the Judicial Commission and the Bill relating to that is passed. ...(*Interruptions*).. Therefore, there is no question of any hiatus and there is no issue that can arise in that regard. I do believe that this will happen much earlier. Why? Because ratification by the States is going to take six months or eight months.

By that time, as you have indicated already that the Standing Committee shall give its Report within one month, the House will meet in the Winter Session and we will pass that Bill and both will be done coterminus.

SHRI M. VENKAIAH NAIDU: Then, what is the hurry?

SHRI KAPIL SIBAL: There is no hurry at all. We don't want to waste another six months, and things may change in between. History has a way of changing that neither you nor I can predict. As the Leader of the Opposition mentioned, 'who knows, there may be a dissolution of Parliament.' Well, they have been hoping for that for the last five years, and I wish him well, because I want him to continue to be the Leader of the Opposition, at least, till the end of 2013, and even afterwards. Why not?

Sir, the point that I am making is, the time has come for us to act collectively. We have seen the sense of the House. We have actually noticed that the will of the House is to actually get this done and send a message to the outside world. I want those on the other side to be equal participants so that the message outside is, 'we are together and we shall win.' Thank you very much.

MR. DEPUTY CHAIRMAN: I shall now ...

SHRI ARUN JAITLEY: Sir, as we had said in the course of the debate, my Party has always been fully supportive of the idea of a National Judicial Commission and along with some of the Left parties, we have been in the forefront for the last two decades advocating it. While being fully committed to it, we do believe that this is a Bill of extraordinary importance. We are switching over a system, and when we switch over from one system to the other, it is extremely important that all stakeholders also participate in the parliamentary process. Now that participation of the stakeholders is a well-established mechanism of Standing Committees. In Standing Committees, you will have Bar Associations, Bar Councils, former Judges, litigants, everybody heard. We may exactly come to the same conclusion; we may come to some different conclusion. We may come to some improvement. We may even go to the extent of accepting a suggestion which has been only made by one solitary Member, Mr. Jethmalani, that the composition itself should be reflected in the Constitution, and not by an ordinary legislation. Now, these are all options which are open to a Standing Committee when they hear all stakeholders because to hear people and then improve is a part of a parliamentary process. And all that we are suggesting is, you have a Standing Committee, a Member of the Ruling Party chairs it, please have the Standing Committee get into motion. Today, you don't have a Standing Committee Report on the Constitution Amendment; you don't have a Standing Committee Report on the Bill itself. The two are intrinsically linked. Speaking for myself, I have repeatedly said, I am in favour of both. My Party, with or without some amendments, may be in favour of both. But why are we denying ourselves the privilege of a procedure which Parliament has set up for the last two decades where all stakeholders are to be heard? The Minister made this entire argument. The Minister says, 'I give you a personal assurance that this will not be sent to the President.' Now, kindly appreciate, we are today in September, 2013. The Standing Committee ordinarily should discuss it and come up with the Report before the Winter Session. Since he is very confident that we will continue to be in the Opposition and he will continue to be in power, God bless him, I feel sorry for this country if that were to continue to happen. But that apart, assuming the Winter Session doesn't clear the Bill, we go by his scheme; we pass the Constitution Amendment. The Bill is not ready by the Winter Session and thereafter we go into an election.

Let Mr. Sibal not be so sure that he will still be the Law Minister, that this

assurance will hold valid for future parliaments. You will then have a situation, and I am reaffirming it without fear of any serious contradiction, where you would have amended the Constitution of India. The Constitution of India says, 'in consultation with the Chief Justice of India'. We would have taken away that power, but not created the alternative mechanism of a commission which is to be created by a Legislature. As a responsible body, Parliament should not legislate in a manner which is capable of creating a possible constitutional hiatus, where you repeal the existing body and you don't create the alternative set-up. All we are saying is, the requirement of a proper and effective legislation is to do it simultaneously. Do it simultaneously; do it in November. You have two months for the Standing Committee to function. So, do it simultaneously. As far as we are concerned, we are going to cooperate in the passage of both. You are a neo-convert to this idea; we have been traditional supporters of this idea. And, therefore, whatever suggestions come, even if they come from solitary exceptions, let the Standing Committee consider them. Why must the Government say that today is the day when I must take away this power? We are committed to this whole concept of a National Judicial Commission. We are saying so. So, the Minister's words, "take my assurance" even though State Assemblies will clear it, even though Parliament will clear it, the Executive withholds the consent of Parliament. Sir, constitutional amendments are not dealt with in this manner. Therefore, my respectful request once again would be—to use his words, I would beseech him, since he has beseeched us—do both of these simultaneously. That would be responsible constitutional conduct by this House. Don't do it in a piecemeal manner, which is capable of creating a constitutional hiatus. Maybe, the Standing Committee come to a conclusion that Mr. Jethmalani's suggestion that if you have to make an amendment, with or without alteration in the character of the collegium, put the collegium itself and its composition in the Constitution, is correct; Members may feel it that way. Why should we deprive ourselves of that great opportunity?

Therefore, we are not saying, wait till the cows come home. You have to wait only till the next Session, and I am sure, with your level of confidence, you will be here till the next Session of Parliament to make this amendment.

SHRI KAPIL SIBAL: Sir, I thank the Leader of the Opposition for his intervention and I would like to clarify some of the points that he has raised.

Let us deal with the last point first. Let us assume for a moment that we pass

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this Bill, it is ratified by the States and the other Bill does not get passed. That is the scenario that you painted before us. Well, as you know, after the constitutional amendment is ratified by the States, it has to come back to the Government. The Government has to send it to the President for his assent. It does not automatically become law. I would like to read article 368 of the Constitution. Article 368 of the Constitution is quite clear on this and there should be no misgivings. It says, "The amendment shall also require to be ratified by the legislatures of not less than one-half of the States by Resolution to that effect passed by those legislatures before the bill-making provision for such amendment is presented to the President for assent."

That presentation has to be done by us. And I am giving an assurance, not as the Law Minister, but as the Government. My assurance is that of the Government; it is the Government's assurance, that that Bill will not be presented till the other Bill is passed.

श्री भगत सिंह कोश्यारी (उत्तराखण्ड): सर, हम लॉयर नहीं हैं(व्यवधान)

SHRI KAPIL SIBAL: Just one second....(*Interruptions*) Please, do not interfere. I did not interfere. ...(*Interruptions*)...

श्री उपसभापति: कोश्यारी जी, प्लीज आप बैठिए।(व्यवधान)

श्री भगत सिंह कोश्यारी: मैं पार्लियामेंटेरियन हूँ(व्यवधान)

श्री उपसभापति: कोश्यारी जी, आप बैठिए।(व्यवधान) आप बैठिए।(व्यवधान) Let the Minister finish.

SHRI KAPIL SIBAL: Therefore, with the greatest respect to the hon. Leader of the Opposition, there will be no constitutional hiatus. Even the President is aware of the Constitutional provision. The President is quite experienced, as far as the Constitution is concerned. There is no way that any assent can be given to this Bill till the composition of the Judicial Commission is taken forward. So, this particular objection of his is a red herring because he has always said that this Bill should be passed in the terms that he wanted it to pass. We have had a discussion amongst the political parties. This has been placed before all political parties. No such suggestion ever came. It was agreed in the Business.....

SHRI RAVI SHANKAR PRASAD: Sir, I conveyed to the Minister this morning...

SHIR KAPIL SIBAL: No, this morning, I know because...

SHRI RAVI SHANKAR PRASAD: Please, the Minister should not make a statement which is wrong. I have conveyed to him.

SHRI KAPIL SIBAL: In the Business Advisory Committee, we all were there. You said that the Constitutional Amendment will be passed and the other should be...(Interruptions)... This is all that I have to say.

SHRI M. VENKAIAH NAIDU: There seems to be a hidden agenda. Otherwise, there is no meaning of this rushing through. We cannot be a party to this. We don't want to be a party to this. ...(Interruptions)... The message will go that the politicians are rushing through. That message is going and it is not acceptable to us at all. There seems to be some hidden agenda. We cannot be a party to this hidden agenda.

MR. DEPUTY CHAIRMAN: Let me make one point clear.

SHRI RAVI SHANKAR PRASAD: Sir, we are walking out.

(At this stage, some hon. Members left the Chamber)

SHRI DEVENDER GOUD T. (Andhra Pradesh): Sir, we are also walking out because we do not want to be a party to this. Our Party, TDP, clearly states that this should be sent to the Standing Committee.

(At this stage, some hon. Members left the Chamber)

MR. DEPUTY CHAIRMAN: No, please...(Interruptions)... When they walk out, don't say anything. Walking out is an instrument of Opposition that they are using. Don't create problem. Now, please, Mr. Ram Jethmalani, don't stand in the passage.

Is the Minister of Parliamentary Affairs going to say anything? However, I would like to make the position clear that if a Bill is to be sent to the Standing Committee, it is the prerogative of the Chairman. It is the Chairman who has to take that decision. Now, the Chairman has not referred it to the Standing Committee because in the BAC, there was a discussion and on the basis of that consensus in

[Mr. Deputy Chairman]

7.00 P.M.

the BAC, the Chairman did not refer it to the Standing Committee. Now, the Bill has already been moved here. Since it is already moved, unless the mover withdraws it, we have to dispose of the Bill. So, I am proceeding with this.

SHRI RAM JETHMALANI:*

MR. DEPUTY CHAIRMAN: No, you can't say that. That is expunged. That is an indirect aspersion on the Chairman. So, that is expunged.

I shall now put the motion for consideration of the House. The question is:

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

The House divided.

MR. DEPUTY CHAIRMAN: Ayes: 132

Noes: 0

Ayes - 132

Abraham, Shri Joy

Achuthan, Shri M. P.

Adeeb, Shri Mohammed

Agrawal, Shri Naresh

Ali, Shri Sabir

Anand Sharma, Shri

Ansari, Shri Ali Anwar

Antony, Shri A. K.

Arjunan, Shri K. R.

* Expunged as ordered by the Chair.

Ashk Ali Tak, Shri
Ashwani Kumar, Shri
Azad, Shri Ghulam Nabi
Bachchan, Smt. Jaya
Baghel, Prof. S. P. Singh
Baidya, Smt. Jharna Das
Baishya, Shri Birendra Prasad
Balaganga, Shri N.
Balagopal, Shri K. N.
Balmuchu, Dr. Pradeep Kumar
Bandyopadhyay, Shri D.
Batra, Shri Shadi Lal
Behera, Shri Shashi Bhusan
Bhattacharya, Shri P.
Bora, Shri Pankaj
Budania, Shri Narendra
Chatterjee, Shri Prasanta
Chaturvedi, Shri Satyavrat
Chiranjeevi, Dr. K.
Chowdhury, Smt. Renuka
Daimary, Shri Biswajit
Dalwai, Shri Husain
Darda, Shri Vijay Jawaharlal
Deora, Shri Murli

[Mr. Deputy Chairman]

Dua, Shri H. K.

Dwivedi, Shri Janardan

Fernandes, Shri Oscar

Ghosh, Shri Kunal Kumar

Gill, Dr. M. S.

Gupta, Shri Prem Chand

Gupta, Shri Vivek

Haque, Shri Md. Nadimul

Hashmi, Shri Parvez

Jain, Shri Ishwarlal Shankarlal

Jinnah, Shri A.A.

Jugul Kishore, Shri

Kalita, Shri Bhubaneswar

Kanimozhi, Smt.

Kannan, Shri P.

Karan Singh, Dr.

Karimpuri, Shri Avtar Singh

Kashyap, Shri Narendra Kumar

Keishing, Shri Rishang

Khabri, Shri Brijlal

Khan, Shri Mohd. Ali

Khuntia, Shri Rama Chandra

Kidwai, Smt. Mohsina

Kshatriya, Prof. Alka Balram
Kujur, Shri Santiuse
Mahendra Prasad, Dr.
Mahra, Shri Mahendra Singh
Maitreya, Dr. V.
Masood, Shri Rasheed
Miri, Prof. Mrinal
Misra, Shri Satish
Mukut Mithi, Shri
Mungekar, Dr. Bhalchandra
Naik, Shri Shantaram
Nanda, Shri Kiranmay
Nandi Yellaiah, Shri
Narayanan, Shri C. P.
Natarajan, Smt. Jayanthi
Natchiappan, Dr. E. M. Sudarsana
O'Brien, Shri Derek
Pande, Shri Avinash
Parasaran, Shri K.
Parida, Shri Baishnab
Patel, Shri Ahmed
Pathak, Shri Brajesh
Patil, Smt. Rajani
Raja, Shri D.

[Mr. Deputy Chairman]

Rajeeve, Shri P.

Ram Prakash, Dr.

Ramalingam, Dr. K.P.

Rangarajan, Shri T.K.

Rao, Dr. K.V.P. Ramachandra

Rao, Shri V. Hanumantha

Rapolu, Shri Ananda Bhaskar

Rashtrapal, Shri Praveen

Rathinavel, Shri T.

Ratna Bai, Smt. T.

Reddy, Dr. T. Subbarami

Reddy, Shri Palvai Govardhan

Roy, Shri Mukul

Roy, Shri Sukhendu Sekhar

Sadho, Dr. Vijaylaxmi

Sahani, Dr. Anil Kumar

Sahu, Shri Dhiraj Prasad

Saini, Shri Rajpal Singh

Saleem, Chaudhary Munavver

Sanjiv Kumar, Shri

Seelam, Shri Jesudasu

Seema, Dr. T.N.

Selvaganapathi, Shri T.M.

Sen, Shri Tapan Kumar

Sharma, Shri Satish

Shukla, Shri Rajeev

Singh, Dr. Kanwar Deep

Singh, Shri Amar

Singh, Shri Arvind Kumar

Singh, Shri Bashistha Narain

Singh, Shri Birender

Singh, Shri Ishwar

Singh, Shri N. K.

Singh, Shri Ramchandra Prasad

Singh, Shri Veer

Singhvi, Dr. Abhishek Manu

Soni, Smt. Ambika

Soz, Prof. Saif-ud-Din

Stanley, Smt. Vasanthi

Syiem, Smt. Wansuk

Tariq Anwar, Shri

Thakur, Dr. C.P.

Thangavelu, Shri S.

Tiwari, Shri Alok

Trivedi, Dr. Yogendra P.

Tyagi, Shri K.C.

Vasan, Shri G.K.

[Mr. Deputy Chairman]

Vora, Shri Motilal

Waghmare, Dr. Janardhan

Yadav, Prof. Ram Gopal

Yadav, Shri Darshan Singh

Yadav, Shri Ram Kripal

Noes - 0

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

MR. DEPUTY CHAIRMAN: Now, I shall take up clause-by-clause consideration of the Bill. The question is:

That clause 2 stand part of the Bill.

The House divided

MR. DEPUTY CHAIRMAN: Ayes: 132

Noes: 0

Ayes - 132

Abraham, Shri Joy

Achuthan, Shri M.P.

Adeeb, Shri Mohammed

Agrawal, Shri Naresh

Ali, Shri Sabir

Anand Sharma, Shri

Ansari, Shri Ali Anwar

Antony, Shri A.K.

Arjunan, Shri K. R.
Ashk Ali Tak, Shri
Ashwani Kumar, Shri
Azad, Shri Ghulam Nabi
Bachchan, Smt. Jaya
Baghel, Prof. S. P. Singh
Baidya, Smt. Jharna Das
Baishya, Shri Birendra Prasad
Balaganga, Shri N.
Balagopal, Shri K.N.
Balmuchu, Dr. Pradeep Kumar
Bandyopadhyay, Shri D.
Batra, Shri Shadi Lal
Behera, Shri Shashi Bhusan
Bhattacharya, Shri P.
Bora, Shri Pankaj
Budania, Shri Narendra
Chatterjee, Shri Prasanta
Chaturvedi, Shri Satyavrat
Chiranjeevi, Dr. K.
Chowdhury, Smt. Renuka
Daimary, Shri Biswajit
Dalwai, Shri Husain
Darda, Shri Vijay Jawaharlal

[Mr. Deputy Chairman]

Deora, Shri Murli

Dua, Shri H.K.

Dwivedi, Shri Janardan

Fernandes, Shri Oscar

Ghosh, Shri Kunal Kumar

Gill, Dr. M.S.

Gupta, Shri Prem Chand

Gupta, Shri Vivek

Haque, Shri Md. Nadimul

Hashmi, Shri Parvez

Jain, Shri Ishwarlal Shankarlal

Jinnah, Shri A.A.

Jugul Kishore, Shri

Kalita, Shri Bhubaneswar

Kanimozhi, Smt.

Kannan, Shri P.

Karan Singh, Dr.

Karimpuri, Shri Avtar Singh

Kashyap, Shri Narendra Kumar

Keishing, Shri Rishang

Khabri, Shri Brijlal

Khan, Shri Mohd. Ali

Khuntia, Shri Rama Chandra

Kidwai, Smt. Mohsina
Kshatriya, Prof. Alka Balram
Kujur, Shri Santiuse
Mahendra Prasad, Dr.
Mahra, Shri Mahendra Singh
Maitreyan, Dr. V.
Masood, Shri Rasheed
Miri, Prof. Mrinal
Misra, Shri Satish
Mukut Mithi, Shri
Mungekar, Dr. Bhalchandra
Naik, Shri Shantaram
Nanda, Shri Kiranmay
Nandi Yellaiah, Shri
Narayanan, Shri C.P.
Natarajan, Smt. Jayanthi
Natchiappan, Dr. E.M. Sudarsana
O Brien, Shri Derek
Pande, Shri Avinash
Parasaran, Shri K.
Parida, Shri Baishnab
Patel, Shri Ahmed
Pathak, Shri Brajesh
Patil, Smt. Rajani

[Mr. Deputy Chairman]

Raja, Shri D.

Rajeeve, Shri P.

Ram Prakash, Dr.

Ramalingam, Dr. K.P.

Rangarajan, Shri T.K.

Rao, Dr. K.V.P. Ramachandra

Rao, Shri V. Hanumantha

Rapolu, Shri Ananda Bhaskar

Rashtrapal, Shri Praveen

Rathinavel, Shri T.

Ratna Bai, Smt. T.

Reddy, Dr. T. Subbarami

Reddy, Shri Palvai Govardhan

Roy, Shri Mukul

Roy, Shri Sukhendu Sekhar

Sadho, Dr. Vijaylaxmi

Sahani, Dr. Anil Kumar

Sahu, Shri Dhiraj Prasad

Saini, Shri Rajpal Singh

Saleem, Chaudhary Munavver

Sanjiv Kumar, Shri

Seelam, Shri Jesudasu

Seema, Dr. T.N.

Selvaganapathi, Shri T.M.

Sen, Shri Tapan Kumar

Sharma, Shri Satish

Shukla, Shri Rajeev

Singh, Dr. Kanwar Deep

Singh, Shri Amar

Singh, Shri Arvind Kumar

Singh, Shri Bashistha Narain

Singh, Shri Birender

Singh, Shri Ishwar

Singh, Shri N. K.

Singh, Shri Ramchandra Prasad

Singh, Shri Veer

Singhvi, Dr. Abhishek Manu

Soni, Smt. Ambika

Soz, Prof. Saif-ud-Din

Stanley, Smt. Vasanthi

Syiem, Smt. Wansuk

Tariq Anwar, Shri

Thakur, Dr. C.P.

Thangavelu, Shri S.

Tiwari, Shri Alok

Trivedi, Dr. Yogendra P.

Tyagi, Shri K.C.

[Mr. Deputy Chairman]

Vasan, Shri G.K.

Vora, Shri Motilal

Waghmare, Dr. Janardhan

Yadav, Prof. Ram Gopal

Yadav, Shri Darshan Singh

Yadav, Shri Ram Kripal

Noes - 0

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

Clause 2 was added to the Bill.

MR. DEPUTY CHAIRMAN: Now, I shall take up Clause 3. In Clause 3, there is one Amendment (No. 1) by Shri K.N. Balagopal. Do you want to move the Amendment?

SHRI K.N. BALAGOPAL : Sir, I want to say one thing. While making the Judicial Appointments Commission, there should be specific provision about the criteria for selection. Some guidelines also should be there. I am saying that the manner and guidelines of selection should be there in the Judicial Appointments Commission Bill. And, since this is the enabling Act, it should be here. Otherwise, rule-making is the prerogative of the Executive. Executive will decide that these are the qualifications for appointment of judges.

MR. DEPUTY CHAIRMAN: Okay, okay. The Minister can react. He understood. *..(Interruptions)..*

SHRI K.N. BALAGOPAL: And tomorrow with the rules they can manage. So, it should be assured through the Bill itself. That is my point, Sir.

SHRI KAPIL SIBAL: Through you, Sir, I want to tell the distinguished Member of the House that that is already provided for in the Bill. In fact, the regulations in the Bill suggest the procedure for short listing candidates, the manner

in which the appointments are to take place; the short listing of those candidates will all be set up in the regulations and the regulations are going to be placed in Parliament. So, these are not rules. The regulations will be placed in the Parliament. Then only will the procedure move further.

MR. DEPUTY CHAIRMAN: So, Mr. Balagopal, are you moving the amendment?

SHRI K.N. BALAGOPAL : No, Sir, I am not moving.

MR. DEPUTY CHAIRMAN: I shall now put clause 3 to vote. The question is: That clause 3 stand part of the Bill.

The House divided

MR. DEPUTY CHAIRMAN: Ayes: 132

Noes: 0

Ayes - 132

Abraham, Shri Joy

Achuthan, Shri M.P.

Adeeb, Shri Mohammed

Agrawal, Shri Naresh

Ali, Shri Sabir

Anand Sharma, Shri

Ansari, Shri Ali Anwar

Antony, Shri A.K.

Arjunan, Shri K. R.

Ashk Ali Tak, Shri

Ashwani Kumar, Shri

Azad, Shri Ghulam Nabi

Bachchan, Smt. Jaya

[Mr. Deputy Chairman]

Baghel, Prof. S.P. Singh
Baidya, Smt. Jharna Das
Baishya, Shri Birendra Prasad
Balaganga, Shri N.
Balagopal, Shri K.N.
Balmuchu, Dr. Pradeep Kumar
Bandyopadhyay, Shri D.
Batra, Shri Shadi Lal
Behera, Shri Shashi Bhusan
Bhattacharya, Shri P.
Bora, Shri Pankaj
Budania, Shri Narendra
Chatterjee, Shri Prasanta
Chaturvedi, Shri Satyavrat
Chiranjeevi, Dr. K.
Chowdhury, Smt. Renuka
Daimary, Shri Biswajit
Dalwai, Shri Husain
Darda, Shri Vijay Jawaharlal
Deora, Shri Murli
Dua, Shri H.K.
Dwivedi, Shri Janardan
Fernandes, Shri Oscar

Ghosh, Shri Kunal Kumar
Gill, Dr. M.S.
Gupta, Shri Prem Chand
Gupta, Shri Vivek
Haque, Shri Md. Nadimul
Hashmi, Shri Parvez
Jain, Shri Ishwarlal Shankarlal
Jinnah, Shri A. A.
Jugul Kishore, Shri
Kalita, Shri Bhubaneswar
Kanimozhi, Smt.
Kannan, Shri P.
Karan Singh, Dr.
Karimpuri, Shri Avtar Singh
Kashyap, Shri Narendra Kumar
Keishing, Shri Rishang
Khabri, Shri Brijlal
Khan, Shri Mohd. Ali
Khuntia, Shri Rama Chandra
Kidwai, Smt. Mohsina
Kshatriya, Prof. Alka Balram
Kujur, Shri Santiuse
Mahendra Prasad, Dr.
Mahra, Shri Mahendra Singh

[Mr. Deputy Chairman]

Maitreyan, Dr. V.

Masood, Shri Rasheed

Miri, Prof. Mrinal

Misra, Shri Satish

Mukut Mithi, Shri

Mungekar, Dr. Bhalchandra

Naik, Shri Shantaram

Nanda, Shri Kiranmay

Nandi Yellaiah, Shri

Narayanan, Shri C.P.

Natarajan, Smt. Jayanthi

Natchiappan, Dr. E.M. Sudarsana

O Brien, Shri Derek

Pande, Shri Avinash

Parasaran, Shri K.

Parida, Shri Baishnab

Patel, Shri Ahmed

Pathak, Shri Brajesh

Patil, Smt. Rajani

Raja, Shri D.

Rajeeve, Shri P.

Ram Prakash, Dr.

Ramalingam, Dr. K.P.

Rangarajan, Shri T.K.
Rao, Dr. K.V.P. Ramachandra
Rao, Shri V. Hanumantha
Rapolu, Shri Ananda Bhaskar
Rashtrapal, Shri Praveen
Rathinavel, Shri T.
Ratna Bai, Smt. T.
Reddy, Dr. T. Subbarami
Reddy, Shri Palvai Govardhan
Roy, Shri Mukul
Roy, Shri Sukhendu Sekhar
Sadho, Dr. Vijaylaxmi
Sahani, Dr. Anil Kumar
Sahu, Shri Dhiraj Prasad
Saini, Shri Rajpal Singh
Saleem, Chaudhary Munavver
Sanjiv Kumar, Shri
Seelam, Shri Jesudasu
Seema, Dr. T.N.
Selvaganapathi, Shri T.M.
Sen, Shri Tapan Kumar
Sharma, Shri Satish
Shukla, Shri Rajeev
Singh, Dr. Kanwar Deep

[Mr. Deputy Chairman]

Singh, Shri Amar
Singh, Shri Arvind Kumar
Singh, Shri Bashistha Narain
Singh, Shri Birender
Singh, Shri Ishwar
Singh, Shri N. K.
Singh, Shri Ramchandra Prasad
Singh, Shri Veer
Singhvi, Dr. Abhishek Manu
Soni, Smt. Ambika
Soz, Prof. Saif-ud-Din
Stanley, Smt. Vasanthi
Syiem, Smt. Wansuk
Tariq Anwar, Shri
Thakur, Dr. C.P.
Thangavelu, Shri S.
Tiwari, Shri Alok
Trivedi, Dr. Yogendra P.
Tyagi, Shri K.C.
Vasan, Shri G.K.
Vora, Shri Motilal
Waghmare, Dr. Janardhan
Yadav, Prof. Ram Gopal
Yadav, Shri Darshan Singh
Yadav, Shri Ram Kripal

Noes - 0

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

Clause 3 was added to the Bill.

MR. DEPUTY CHAIRMAN: Now, we shall take up clauses 4 to 6. The question is:

That clauses 4 to 6 stand part of the Bill.

The House divided.

MR. DEPUTY CHAIRMAN: Ayes: 132

Noes: 0

Ayes - 132

Abraham, Shri Joy

Achuthan, Shri M.P.

Adeeb, Shri Mohammed

Agrawal, Shri Naresh

Ali, Shri Sabir

Anand Sharma, Shri

Ansari, Shri Ali Anwar

Antony, Shri A.K.

Arjunan, Shri K. R.

Ashk Ali Tak, Shri

Ashwani Kumar, Shri

Azad, Shri Ghulam Nabi

Bachchan, Smt. Jaya

Baghel, Prof. S.P. Singh

Baidya, Smt. Jharna Das

[Mr. Deputy Chairman]

Baishya, Shri Birendra Prasad

Balaganga, Shri N.

Balagopal, Shri K.N.

Balmuchu, Dr. Pradeep Kumar

Bandyopadhyay, Shri D.

Batra, Shri Shadi Lal

Behera, Shri Shashi Bhusan

Bhattacharya, Shri P.

Bora, Shri Pankaj

Budania, Shri Narendra

Chatterjee, Shri Prasanta

Chaturvedi, Shri Satyavrat

Chiranjeevi, Dr. K.

Chowdhury, Smt. Renuka

Daimary, Shri Biswajit

Dalwai, Shri Husain

Darda, Shri Vijay Jawaharlal

Deora, Shri Murli

Dua, Shri H.K.

Dwivedi, Shri Janardan

Fernandes, Shri Oscar

Ghosh, Shri Kunal Kumar

Gill, Dr. M.S.

Gupta, Shri Prem Chand
Gupta, Shri Vivek
Haque, Shri Md. Nadimul
Hashmi, Shri Parvez
Jain, Shri Ishwarlal Shankarlal
Jinnah, Shri A.A.
Jugul Kishore, Shri
Kalita, Shri Bhubaneswar
Kanimozhi, Smt.
Kannan, Shri P.
Karan Singh, Dr.
Karimpuri, Shri Avtar Singh
Kashyap, Shri Narendra Kumar
Keishing, Shri Rishang
Khabri, Shri Brijlal
Khan, Shri Mohd. Ali
Khuntia, Shri Rama Chandra
Kidwai, Smt. Mohsina
Kshatriya, Prof. Alka Balram
Kujur, Shri Santiuse
Mahendra Prasad, Dr.
Mahra, Shri Mahendra Singh
Maitreyan, Dr. V.
Masood, Shri Rasheed
Miri, Prof. Mrinal

[Mr. Deputy Chairman]

Misra, Shri Satish

Mukut Mithi, Shri

Mungekar, Dr. Bhalchandra

Naik, Shri Shantaram

Nanda, Shri Kiranmay

Nandi Yellaiah, Shri

Narayanan, Shri C.P.

Natarajan, Smt. Jayanthi

Natchiappan, Dr. E.M. Sudarsana

O Brien, Shri Derek

Pande, Shri Avinash

Parasaran, Shri K.

Parida, Shri Baishnab

Patel, Shri Ahmed

Pathak, Shri Brajesh

Patil, Smt. Rajani

Raja, Shri D.

Rajeeve, Shri P.

Ram Prakash, Dr.

Ramalingam, Dr. K.P.

Rangarajan, Shri T.K.

Rao, Dr. K.V.P. Ramachandra

Rao, Shri V. Hanumantha

Rapolu, Shri Ananda Bhaskar

Rashtrapal, Shri Praveen

Rathinavel, Shri T.

Ratna Bai, Smt. T.

Reddy, Dr. T. Subbarami

Reddy, Shri Palvai Govardhan

Roy, Shri Mukul

Roy, Shri Sukhendu Sekhar

Sadho, Dr. Vijaylaxmi

Sahani, Dr. Anil Kumar

Sahu, Shri Dhiraj Prasad

Saini, Shri Rajpal Singh

Saleem, Chaudhary Munavver

Sanjiv Kumar, Shri

Seelam, Shri Jesudasu

Seema, Dr. T.N.

Selvaganapathi, Shri T.M.

Sen, Shri Tapan Kumar

Sharma, Shri Satish

Shukla, Shri Rajeev

Singh, Dr. Kanwar Deep

Singh, Shri Amar

Singh, Shri Arvind Kumar

Singh, Shri Bashistha Narain

[Mr. Deputy Chairman]

Singh, Shri Birender

Singh, Shri Ishwar

Singh, Shri N. K.

Singh, Shri Ramchandra Prasad

Singh, Shri Veer

Singhvi, Dr. Abhishek Manu

Soni, Smt. Ambika

Soz, Prof. Saif-ud-Din

Stanley, Smt. Vasanthi

Syiem, Smt. Wansuk

Tariq Anwar, Shri

Thakur, Dr. C.P.

Thangavelu, Shri S.

Tiwari, Shri Alok

Trivedi, Dr. Yogendra P.

Tyagi, Shri K.C.

Vasan, Shri G.K.

Vora, Shri Motilal

Waghmare, Dr. Janardhan

Yadav, Prof. Ram Gopal

Yadav, Shri Darshan Singh

Yadav, Shri Ram Kripal

Noes - 0

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

Clauses 4 to 6 were added to the Bill.

MR. DEPUTY CHAIRMAN: Now, we shall take up clause 1, the Enacting Formula and the Title. The question is:

That clause 1, the Enacting Formula and the Title stand part of the Bill.

The House divided.

MR. DEPUTY CHAIRMAN: Ayes: 132

 Noes: 0

Ayes - 132

Abraham, Shri Joy

Achuthan, Shri M.P.

Adeeb, Shri Mohammed

Agrawal, Shri Naresh

Ali, Shri Sabir

Anand Sharma, Shri

Ansari, Shri Ali Anwar

Antony, Shri A.K.

Arjunan, Shri K. R.

Ashk Ali Tak, Shri

Ashwani Kumar, Shri

Ayes - 132

Azad, Shri Ghulam Nabi

Bachchan, Smt. Jaya

[Mr. Deputy Chairman]

Baghel, Prof. S.P. Singh

Baidya, Smt. Jharna Das

Baishya, Shri Birendra Prasad

Balaganga, Shri N.

Balagopal, Shri K.N.

Balmuchu, Dr. Pradeep Kumar

Bandyopadhyay, Shri D.

Batra, Shri Shadi Lal

Behera, Shri Shashi Bhusan

Bhattacharya, Shri P.

Bora, Shri Pankaj

Budania, Shri Narendra

Chatterjee, Shri Prasanta

Chaturvedi, Shri Satyavrat

Chiranjeevi, Dr. K.

Chowdhury, Smt. Renuka

Daimary, Shri Biswajit

Dalwai, Shri Husain

Darda, Shri Vijay Jawaharlal

Deora, Shri Murli

Dua, Shri H.K.

Dwivedi, Shri Janardan

Fernandes, Shri Oscar

Ghosh, Shri Kunal Kumar

Gill, Dr. M.S.

Gupta, Shri Prem Chand

Gupta, Shri Vivek

Haque, Shri Md. Nadimul

Hashmi, Shri Parvez

Jain, Shri Ishwarlal Shankarlal

Jinnah, Shri A.A.

Jugul Kishore, Shri

Kalita, Shri Bhubaneswar

Kanimozhi, Smt.

Kannan, Shri P.

Karan Singh, Dr.

Karimpuri, Shri Avtar Singh

Kashyap, Shri Narendra Kumar

Keishing, Shri Rishang

Khabri, Shri Brijlal

Khan, Shri Mohd. Ali

Khuntia, Shri Rama Chandra

Kidwai, Smt. Mohsina

Kshatriya, Prof. Alka Balram

Kujur, Shri Santiuse

Mahendra Prasad, Dr.

Mahra, Shri Mahendra Singh

Maitreya, Dr. V.

Masood, Shri Rasheed

[Mr. Deputy Chairman]

Miri, Prof. Mrinal

Misra, Shri Satish

Mukut Mithi, Shri

Mungekar, Dr. Bhalchandra

Naik, Shri Shantaram

Nanda, Shri Kiranmay

Nandi Yellaiah, Shri

Narayanan, Shri C.P.

Natarajan, Smt. Jayanthi

Natchiappan, Dr. E.M. Sudarsana

O Brien, Shri Derek

Pande, Shri Avinash

Parasaran, Shri K.

Parida, Shri Baishnab

Patel, Shri Ahmed

Pathak, Shri Brajesh

Patil, Smt. Rajani

Raja, Shri D.

Rajeeve, Shri P.

Ram Prakash, Dr.

Ramalingam, Dr. K.P.

Rangarajan, Shri T.K.

Rao, Dr. K.V.P. Ramachandra

Rao, Shri V. Hanumantha

Rapolu, Shri Ananda Bhaskar

Rashtrapal, Shri Praveen

Rathinavel, Shri T.

Ratna Bai, Smt. T.

Reddy, Dr. T. Subbarami

Reddy, Shri Palvai Govardhan

Roy, Shri Mukul

Roy, Shri Sukhendu Sekhar

Sadho, Dr. Vijaylaxmi

Sahani, Dr. Anil Kumar

Sahu, Shri Dhiraj Prasad

Saini, Shri Rajpal Singh

Saleem, Chaudhary Munavver

Sanjiv Kumar, Shri

Seelam, Shri Jesudasu

Seema, Dr. T.N.

Selvaganapathi, Shri T.M.

Sen, Shri Tapan Kumar

Sharma, Shri Satish

Shukla, Shri Rajeev

Singh, Dr. Kanwar Deep

Singh, Shri Amar

Singh, Shri Arvind Kumar

Singh, Shri Bashistha Narain

Singh, Shri Birender

[Mr. Deputy Chairman]

Singh, Shri Ishwar
Singh, Shri N. K.
Singh, Shri Ramchandra Prasad
Singh, Shri Veer
Singhvi, Dr. Abhishek Manu
Soni, Smt. Ambika
Soz, Prof. Saif-ud-Din
Stanley, Smt. Vasanthi
Syiem, Smt. Wansuk
Tariq Anwar, Shri
Thakur, Dr. C.P.
Thangavelu, Shri S.
Tiwari, Shri Alok
Trivedi, Dr. Yogendra P.
Tyagi, Shri K.C.
Vasan, Shri G.K.
Vora, Shri Motilal
Waghmare, Dr. Janardhan
Yadav, Prof. Ram Gopal
Yadav, Shri Darshan Singh
Yadav, Shri Ram Kripal

Noes - 0

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

Clause 1, the Enacting Formula and the Title were added to the Bill.

MR. DEPUTY CHAIRMAN: Now, the Minister to move that the Bill be passed.

SHRI KAPIL SIBAL: Sir, I move:

That the Bill be passed.

The House divided.

MR. DEPUTY CHAIRMAN: Ayes: 132

Noes: 0

Ayes - 132

Abraham, Shri Joy

Achuthan, Shri M.P.

Adeeb, Shri Mohammed

Agrawal, Shri Naresh

Ali, Shri Sabir

Anand Sharma, Shri

Ansari, Shri Ali Anwar

Antony, Shri A.K.

Arjunan, Shri K. R.

Ashk Ali Tak, Shri

Ashwani Kumar, Shri

Azad, Shri Ghulam Nabi

Bachchan, Smt. Jaya

Baghel, Prof. S.P.Singh

Baidya, Smt. Jharna Das

Baishya, Shri Birendra Prasad

Balaganga, Shri N.

Balagopal, Shri K.N.

Balmuchu, Dr. Pradeep Kumar

[Mr. Deputy Chairman]

Bandyopadhyay, Shri D.

Batra, Shri Shadi Lal

Behera, Shri Shashi Bhusan

Bhattacharya, Shri P.

Bora, Shri Pankaj

Budania, Shri Narendra

Chatterjee, Shri Prasanta

Chaturvedi, Shri Satyavrat

Chiranjeevi, Dr. K.

Chowdhury, Smt. Renuka

Daimary, Shri Biswajit

Dalwai, Shri Husain

Darda, Shri Vijay Jawaharlal

Deora, Shri Murli

Dua, Shri H.K.

Dwivedi, Shri Janardan

Fernandes, Shri Oscar

Ghosh, Shri Kunal Kumar

Gill, Dr. M.S.

Gupta, Shri Prem Chand

Gupta, Shri Vivek

Haque, Shri Md. Nadimul

Hashmi, Shri Parvez

Jain, Shri Ishwarlal Shankarlal

Jinnah, Shri A.A.

Jugul Kishore, Shri

Kalita, Shri Bhubaneswar

Kanimozhi, Smt.

Kannan, Shri P.

Karan Singh, Dr.

Karimpuri, Shri Avtar Singh

Kashyap, Shri Narendra Kumar

Keishing, Shri Rishang

Khabri, Shri Brijlal

Khan, Shri Mohd. Ali

Khuntia, Shri Rama Chandra

Kidwai, Smt. Mohsina

Kshatriya, Prof. Alka Balram

Kujur, Shri Santiuse

Mahendra Prasad, Dr.

Mahra, Shri Mahendra Singh

Maitreya, Dr. V.

Masood, Shri Rasheed

Miri, Prof. Mrinal

Misra, Shri Satish

Mukut Mithi, Shri

Mungekar, Dr. Bhalchandra

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Naik, Shri Shantaram

Nanda, Shri Kiranmay

Nandi Yellaiah, Shri

Narayanan, Shri C.P.

Natarajan, Smt. Jayanthi

Natchiappan, Dr. E.M. Sudarsana

O Brien, Shri Derek

Pande, Shri Avinash

Parasaran, Shri K.

Parida, Shri Baishnab

Patel, Shri Ahmed

Pathak, Shri Brajesh

Patil, Smt. Rajani

Raja, Shri D.

Rajeeve, Shri P.

Ram Prakash, Dr.

Ramalingam, Dr. K.P.

Rangarajan, Shri T.K.

Rao, Dr. K.V.P. Ramachandra

Rao, Shri V. Hanumantha

Rapolu, Shri Ananda Bhaskar

Rashtrapal, Shri Praveen

Rathinavel, Shri T.

Ratna Bai, Smt. T.
Reddy, Dr. T. Subbarami
Reddy, Shri Palvai Govardhan
Roy, Shri Mukul
Roy, Shri Sukhendu Sekhar
Sadho, Dr. Vijaylaxmi
Sahani, Dr. Anil Kumar
Sahu, Shri Dhiraj Prasad
Saini, Shri Rajpal Singh
Saleem, Chaudhary Munavver
Sanjiv Kumar, Shri
Seelam, Shri Jesudasu
Seema, Dr. T.N.
Selvaganapathi, Shri T.M.
Sen, Shri Tapan Kumar
Sharma, Shri Satish
Shukla, Shri Rajeev
Singh, Dr. Kanwar Deep
Singh, Shri Amar
Singh, Shri Arvind Kumar
Singh, Shri Bashistha Narain
Singh, Shri Birender
Singh, Shri Ishwar
Singh, Shri N. K.

[Mr. Deputy Chairman]

Singh, Shri Ramchandra Prasad

Singh, Shri Veer

Singhvi, Dr. Abhishek Manu

Soni, Smt. Ambika

Soz, Prof. Saif-ud-Din

Stanley, Smt. Vasanthi

Syiem, Smt. Wansuk

Tariq Anwar, Shri

Thakur, Dr. C.P.

Thangavelu, Shri S.

Tiwari, Shri Alok

Trivedi, Dr. Yogendra P.

Tyagi, Shri K.C.

Vasan, Shri G.K.

Vora, Shri Motilal

Waghmare, Dr. Janardhan

Yadav, Prof. Ram Gopal

Yadav, Shri Darshan Singh

Yadav, Shri Ram Kripal

Noes - 0

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

SHRI D. RAJA: Now, Sir, please adjourn the House for the day.
...(Interruptions)... Take the sense of the House.

SHRI P. RAJEEVE (Kerala): Sir, the next Bill should be introduced and sent to the Standing Committee.

MR. DEPUTY CHAIRMAN: Now, let us take up the next Bill. *..(Interruptions)..* Would you like to introduce the Bill? *..(Interruptions)..* Hon. Members, please be seated.

SHRI SATISH CHANDRA MISRA: Sir, what happens to the Judicial Appointments Commission Bill? *..(Interruptions)..*

SHRI KAPIL SIBAL: Sir, that goes to the Standing Committee. *..(Interruptions)..*

MR. DEPUTY CHAIRMAN: Okay. *..(Interruptions)..* So, the position is that the Judicial Appointments Commission Bill goes to the Standing Committee. *..(Interruptions)..* Yes, hon. Chairman is referring that Bill to the Standing Committee. Now, which is the next Bill? *..(Interruptions)..* Now, let us take up the Representation of the People (Second Amendment and Validation) Bill, 2013. Shri Kapil Sibal to move. *..(Interruptions)..*

Representation of the people (Second amendment and Validation) Bill, 2013-
Under Consideration

THE MINISTER OF COMMUNICATIONS AND INFORMATION TECHNOLOGY AND THE MINISTER OF LAW AND JUSTICE (SHRI KAPIL SIBAL): Sir, I move:

That the Representation of the People Act, 1951 be taken into consideration.

Sir, this Bill has a very limited scope and the issue has arisen because of a recent judgement of the Supreme Court in which the Supreme Court has stated that by virtue of Article 102 of the Constitution of India, the Parliament does not have the legislative competence to have enacted section 8(4) of the Representation of the People Act.

Let me come to the circumstances under which this arose before the Supreme Court. There was a Public Interest Litigation in which the issue raised was that there are many Members of Parliament who have a criminal background, trials against whom are pending, or, even where there is a conviction, after they are convicted,