

**GOVERNMENT BILL****The Constitution (One Hundred and Twenty-first Amendment) Bill, 2014**

THE MINISTER OF COMMUNICATIONS AND INFORMATION TECHNOLOGY AND THE MINISTER OF LAW AND JUSTICE (SHRI RAVI SHANKAR PRASAD): Sir, I beg to move:

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

Sir, I am grateful to you for having given me this opportunity to move the Constitutional Amendment Bill. Why is this amendment needed? It is not done in a hurry at all. It is the culmination of the efforts of the last twenty years. I want to make it very clear.

Sir, as we all know, under Article 124, there is a provision for appointment of Judges of the Supreme Court. Under Article 217, there is a provision for appointment of Judges of High Courts. The Constitution envisages very clearly and categorically that the President shall appoint a Judge in consultation with the Chief Justice of India and other Judges as he considers appropriate and in case of High Court the Chief Justice of the High Court.

From 26th January 1950, the same procedure continued till 1993. Then there was S.P. Gupta judgement in between in the 80s when the Supreme Court said that consultation does not mean concurrence and the Executive primacy is there. In 1993, the Supreme Court came with a Collegium judgement where they said, “No, we shall appoint in consultation with the Government.” That is the sum and substance of that judgement. They said that it would be the Chief Justice in consultation with two judges. The Government again sought a reference under Article 143 and then came the Second Judges Case. In the Second Judges Case, they said that instead of two Judges, they would have four judges in the Collegium headed by the Chief Justice and they would recommend for the Supreme Court and in the case of a High Court, apart from the Chief Justice, there would be two Judges.

Sir, the Government’s role was quite reduced. The Government’s only right was to seek a reconsideration and if the Collegium reiterates the previous view, the Government has no right whatsoever. In effect, the Supreme Court re-wrote the Constitution. That was never the intention.

Sir, in my reply I will elaborately explain it. Dr. Ambedkar in 1950 in a debate on Constitution formation rightly said, “There shall be no unbridled power to the President; there shall be no unbridled power to the Legislature; and there shall be no unbridled power to the Chief Justice.” The Chief Justice, as a human being, also has the same failings as others. Hence, the consultation mechanism came about.

[Shri Ravi Shankar Prasad]

Sir, this whole re-writing of the Constitution and the resultant Collegium system have been there for twenty years. But is the Government today making the only effort? No. Let me just tell the House very quickly and very briefly about the past efforts. There was the Constitution (Sixty Seventh Amendment) Bill, 1990. The Bill lapsed. Then there was the Constitution (Eighty Second Amendment) Bill, 1997. It could not be passed. Then there was the National Judicial Commission, 1998. Thereafter, there was the Constitution (Ninety Ninth Amendment) Bill, 2003 when Mr. Arun Jaitley, the present Leader of the House, was hon. Law Minister. Then there was the National Commission to Review the Working of the Constitution, 2003. Then there was the Second Administrative Reform Commission, 2007. And many other efforts were made. Then there was the Law Commission Report. I will reply to that. In 2013, the previous Government brought a Bill. Satish Misraji was right that they came with a single-line amendment in the Constitution and a view was taken that you have the architecture in the Constitution itself. The Standing Committee also said that. They brought the amendment in that House. Then the House lapsed.

Sir, I just want to convey this to the House that after this Government came to power, I held two levels of consultations. One, we called a meeting of all the eminent jurists known in the country. They include Mr. Fali Nariman, Mr. Parasaran, Mr. Venugopal, Mr. Shanti Bhushan, Mr. Anil Diwan and Mr. Tulsi who is also a Member of this House. I took the views of many Attorneys General. Shri Arun Jaitley as an eminent lawyer was there. Two former Chief Justices Shri V.N. Khare and Shri Ahmadi were there. Many Chief Justices wrote to me that though they were not able to come, they were fully supportive of it. Shri P.P. Rao, Shri Ashok Desai and others wrote to me that they could not come. But they were fully supportive of it. This was the first level of consultation at the jurist level.

Two, the Government wrote to 26 political parties. I personally wrote to them as Law Minister. They include Shrimati Sonia Gandhi, Shri Mulayam Singh Yadav, Shri Prakash Karat, Shri Sudhakar Reddy and Shri Sharad Yadav. Each one of them was included. I want to tell you that I received a letter from Shri Ram Gopal Yadav conveying their approval. I received a letter from Mayawatiji completely approving the proposal for National Judicial Commission. I received letters from Shri Prakash Karat, from Shri Sudhakar Reddy, from Shri Arvind Kejriwal, from Ms. Mamataji, hon. Chief Minister of West Bengal. Then I received a letter from the hon. Chief Minister of Tamil Nadu, Ms. Jayalalitha making certain suggestions, but in principle agreeing to replace the collegium system.

Even the Congress Party has conveyed to me that the party is in principle supportive of the Bill to replace the collegium system. Obviously they have moved the Bill earlier.

SHRI SITARAM YECHURY: We wanted a larger one.

SHRI RAVI SHANKAR PRASAD: I am coming back.

Therefore, the Government had the widest consultations possible, and just to allay the apprehension that something is being done in a hurry, I must say, no, it has been going on for the last 20 years. The former Chief Justice of India, Mr. Venkatachaliah who headed the National Commission on review of the working of the Constitution also recommended that. He has held the wide consultations. Similarly, the Law Commission had the widest consultations. Many other political processes also gave their feedback. Therefore, it is nothing new. पिछले बीस साल से यह काम चल रहा है, लेकिन कई कारणों से यह बिल नहीं बन सका। Therefore, this Government has taken cognizance of the efforts of 20 years by eminent jurists, leaders of all political parties, who have in principle stated that.

Sir, Shri Yechury is right that his party has suggested to make it a bigger one. That is a larger issue of the National Judicial Accountability Bill. But the Government took a conscious decision that first the existing structure has to be changed. We are equally committed to that aspect of yours. We will come back after holding wider consultations. But the first and foremost issue is to replace the existing system for which we have come with an amendment.

Sir, what is this architecture? The architecture is that the National Judicial Commission shall be headed by the Chief Justice of India. Two senior most Judges of the Supreme Court shall be Members. The Law Minister shall be a Member. Two eminent persons to be appointed by the Prime Minister, the Chief Justice of India, the Leader of the Opposition in the Lok Sabha, or, the leader of the largest political party shall sit together and select these two eminent persons, the highest level of authorities to appoint that. One of them shall be either a woman, or, an SC/ST, or, a minority, or, an OBC. Sir, I must clarify in their case it was by rotation. Why have we removed it? The reason is very simple. If we go by rotation, the number may come after 12 years. Suppose there is an eminent woman from minority community, there is an eminent woman from SC/ST community who can be taken into account. Suppose the Chief Justice of India is a distinguished woman, suppose the Law Minister of India is a distinguished person, therefore, if the flexibility is not given, maybe, the purpose to give diversity would not have been possible. Therefore, we have given that.

Sir, today, I have to appeal to this House, I will come to the Bill to be passed separately, and that the Government is firmly of the view that the Government has got the full legislative competence. As I said earlier, the right of the Government to bring the Bill is not conditioned upon the passage of this amendment. That summary exclusive right

[Shri Ravi Shankar Prasad]

flow from article 246 read with List 1, Entries 77 and 78 where the Parliament can pass any law, any day with regard to the Supreme Court of India, or, any High Court of the State. Therefore, it is not conditional. As far as this amendment is concerned, it is only an enabling one where the entire architecture of the Commission is coming into being as a part of the Constitution.

Sir, what is my last appeal to this House? My last appeal to this House is that for 20 years this Bill could not be passed. ...*(Interruptions)*... Hon. Leader of the House, Shri Arun Jaitley is right that we could not pass it for 24 years. We must realise that if there is a serious misgiving that the collegium system has not worked well, yes, there are issues undoubtedly. Let me categorically say that our Government is firmly committed to the independence of the judiciary. Our Government is firmly committed to the integrity of the judiciary. Today, I wish to say very clearly and categorically that we have fought for the independence of the judiciary during the Emergency and JP Movement, including individual freedom. I am very proud to say led by the Prime Minister, many distinguished members of this Government are those who have fought for the sanctity and independence of the judiciary. Shri Arun Jaitley, Shri Venkaiah Naidu and many others are sitting here, including me, small level workers and like that.

SHRI K.C. TYAGI (Bihar): Some of them are here also.

SHRI RAVI SHANKAR PRASAD: I really appreciate that. Yes, you are very right. Our commitment to independence of Judiciary is total and complete. That is one thing. There will not be any hurry at all. Thirdly, our Government fully respects the total jurisdiction, the constitutional right and the duty of the Judiciary. There is not even the slightest hint to interfere in that. But one thing I would like to highlight and then I would like to hear the views of my distinguished friends. The right of appointment is an executive act, the right of transfer is an executive act, and the Government has no intention at all to interfere, impede and transgress into the judicial right, obligation of the institution of Judiciary which we all hold in the highest respect. Therefore, what is my conclusion, today? Let the entire House say in one voice, let the entire House invoke the collective conscience of India's polity as reflected in this House today that this House is speaking in one voice that the National Judicial Commission must come into existence, the Collegium system must cease to exist, and that voice must go. I am making this appeal to the House to kindly ensure that this Amendment Bill is passed. That is all.

*The question was proposed.*

MR. DEPUTY CHAIRMAN: Before Shri Shantaram Naik starts, I want guidance

of the House. The Bill has been moved. Now it is for the House to consider it. What do we do today? For how much time do we sit today? What is the suggestion of the Government?

THE MINISTER OF STATE OF THE MINISTRY OF INFORMATION AND BROADCASTING; THE MINISTER OF STATE OF THE MINISTRY OF ENVIRONMENT, FORESTS AND CLIMATE CHANGE; AND THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS (SHRI PRAKASH JAVADEKAR): As per practice, we have already made arrangement for food from 8.00 p.m. onwards. We can sit up to 9 o'clock.

MR. DEPUTY CHAIRMAN: What is the view of this side? What is your suggestion?

THE LEADER OF THE OPPOSITION (SHRI GHULAM NABI AZAD): It is okay.

MR. DEPUTY CHAIRMAN: Okay, the LoP agrees to it. ...*(Interruptions)*...

SOME HON. MEMBERS: Sir, tomorrow.

SHRIDEREK O'BRIEN (West Bengal): Sir, can we take it up tomorrow also? Instead of Question Hour, we start it at 11 o'clock, if everyone agrees. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: That I cannot decide now. That is something which the hon. Chairman has to decide.

THE MINISTER OF URBAN DEVELOPMENT; THE MINISTER OF HOUSING AND URBAN POVERTY ALLEVIATION; AND THE MINISTER OF PARLIAMENTARY AFFAIRS (SHRI M. VENKAIAH NAIDU): Sir, my request is this. We have to decide whether we are sitting for some more days or we are going to adjourn tomorrow. That being the case, suppose, we are adjourning tomorrow, then unless we extend...

MR. DEPUTY CHAIRMAN: He has already suggested that let us sit up to 9 o'clock.

SHRI M. VENKAIAH NAIDU: No, no. That is for today. Second thing is, allowing some more time even during the Question Hour tomorrow, then only it could be possible. Why am I saying this? I am not for scrapping of the Question Hour at all. Sir, normally on the last day people would like to leave by 2 o'clock. Sir, it is a Constitutional Amendment. You need to have the required number also. That being the case, I would request that to the extent possible, let us sit up to 9.00 or 10.00 p.m. and then tomorrow slip the Question

[Shri M. Venkaiah Naidu]

Hour and then complete the voting process before 1.00 p.m. That will be fine. Whatever the House decides, I have no problem. Otherwise, if you want long time, we can sit on 19th and 20th also.

MR. DEPUTY CHAIRMAN: The point is, doing away with the Question Hour tomorrow, it is for the hon. Chairman to decide. He will decide it tomorrow. Now the suggestion is to sit up to 9.00 p.m. ...*(Interruptions)*... Okay, at 9.00 p.m., I will put this question again. Now, Shri Shantaram Naik. ...*(Interruptions)*... We have to take one more decision. What is the total time for this Bill?

श्री नरेश अग्रवाल (उत्तर प्रदेश) : सर, इसके लिए कितना टाइम अलॉट किया है?

MR. DEPUTY CHAIRMAN: Yes, what is the total time? Two hours? ...*(Interruptions)*...

SHRI M. VENKAIAH NAIDU: The House has discussed it earlier also. That being the case, two hours should be sufficient. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: Is it okay? ...*(Interruptions)*... Then what is your suggestion? ...*(Interruptions)*...

SHRI NARESH AGRAWAL: Sir, three hours.

MR. DEPUTY CHAIRMAN: Okay, three hours. The consensus is three hours.

SHRI SHANTARAM NAIK (Goa): Sir, I welcome the fundamentals of this historic Bill. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: Silence in the House, please. Those who are in the passage, please go to your seats or go out. Those who are talking, including Ministers, please do not talk. Listen to the hon. Member who is speaking. It is such an important Bill.

SHRI SHANTARAM NAIK: Sir, I am repeating. I welcome the fundamentals of this historic Bill. I consider it as one of the steps towards the restoration of supremacy of Parliament. The supremacy of Parliament is being eroded by various Judgements pronounced by the Judiciary from time to time. Therefore, this is one step towards the restoration of supremacy of Parliament. It is unfortunate that as early as yesterday, the Chief Justice of India had said that the Collegium System was the best one and that there was a conspiracy against the Judiciary. It is surprising that a highest level officer should pass such remarks when it is known that Parliament is enacting a Constitutional Amendment and also a normal legislation to establish the National Judicial Commission.

If we see the history of the Constitutional provisions, Article 124 (2), laid down the procedure for the purpose of appointment of Judges. It reads:

“Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty five years: Provided that in the case of appointment of a Judge, other than the Chief Justice, the Chief Justice of India shall always be consulted:”

Sir, this was the fundamental article which was incorporated in the Constitution of India framed by Dr. Bhimrao Ambedkar and others. Who has played with this article? It was a logical, normal, ordinary legislation which was played with.

[THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE) *in the Chair.*]

If you go to the Supreme Court or a High Court, if you play with any provisions of the law, then, that Act is struck down. If somebody plays with an ordinary legislation, that Act is not accepted. And here, the Supreme Court of India was playing with an article of the Constitution of India which is a sacred document for the country. How did they do it? They sidetracked this very precious article by passing a Judgement which was called ‘Collegium Judgement’ and asserted the power of the Government of India, of the Executive, in their own hands by scrapping, virtually, a clear provision of the law. In most of the countries, the Executive has the Authority to appoint judicial officers by following a proper process of consultation. In most of the countries if you go and see, this procedure is followed and no where judges appoint themselves as judges. Therefore, this step of the Supreme Court of India to throw away Article 124 (2) into the dustbin and pass a judgment and grab the power of Parliament and of the Government was an act which I can say a judicial impropriety. But on account of various circumstances, which existed between this period of collegium judgment till today, the Government could not confront the Judiciary. Somehow in the Lok Sabha one party has got a considerable majority and we are also cooperating. Therefore, this could see the light of the day. Nobody should tell us. We are opposed to Judicial Commission. On the contrary, myself and many of my colleagues have always said that we have to control the actions of Judiciary in various fields which are going on. Therefore, this is one of the best steps that we have taken and we welcome it. Subsequently, why this collegium system has been criticized by various judicial luminaries, advocates and others? Collegium system is not perfect. It is a system which is rotten with nepotism and as everybody knows that judges among themselves, who have taken the power of Parliament and of the Government of India, recommend judicial officers. My brother, your sister, my brother-in-law, they try to adjust and if there is no unanimity on any of the relatives to be appointed to the judicial post, then, these vacancies remain. Some people are asking, Why vacancies are remaining? The major



[Shri Shantaram Naik]

reasons for the vacancies remaining in various courts, in the post of Judicial Officer, are this: they are not able to settle who should be appointed, and therefore, this is one of the biggest hurdle in the appointment of judges in various courts. Secondly, I would like to make a fundamental point. Appointment of judges comes in the category of ...(*Time-bell rings*)...

THE VICE-CHAIRMAN (SHRI V. P. SINGH BADNORE): You have two minutes more.

SHRI SHANTARAM NAIK: Sir, I am the initiator of the debate. Let me tell you very frankly. I am initiating the debate. Please don't ring the bell.

उपसभाध्यक्ष (श्री वी.पी. सिंह बदनौर) : आप बोलिए।

SHRI SHANTARAM NAIK: You should not ring the bell please, with due respect. The question is: what is this appointment of Judiciary? It comes in the category of basic structure of the Constitution. Will any authority in the country dare to change the basic structure of the Constitution? If the basic structure of the Constitution is changed, then, that action will be struck down by the court. Supreme Court will throw away that action because it goes against the fundamentals of the basic structure of the Constitution and there is no doubt that the appointment of judges is the basic structure of the Constitution.

As the Chairman of the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, the Attorney General of India appeared before me and made a statement that appointment to higher Judiciary is a part of the basic structure of the Constitution as it was at its enactment in 1950, and that it had to be considered from the point of view of basic structure doctrine of the Constitution by interpreting the word 'consultation' to mean 'concurrence'. So, there is no doubt that this structure amounts to the basic structure of the Constitution. Can you imagine the Supreme Court of India changing the basic structure of the Constitution? For whom? For usurping power to themselves! To get the power of appointment of judges to themselves; by passing a judgment they changed the basic structure of the Constitution, which is not pardonable. As I said earlier, in no country – I am mentioning most of the countries – judges appoint themselves. There was always a major role given to the Executive, as in the U.K., South Africa, Russia, Canada, Sri Lanka, Japan and many other countries. They follow the procedure where the Executive takes priority.

What is this 1993 judgment? The 1993 judgment, in short, is a coup against the Parliamentary powers. Why am I saying 'coup'? It is because you are passing a judgment and taking away the powers. You say that there shall be a collegium consisting of these



and these judges. No longer will the Government of India have a major role in the appointment of judges. This is contrary too. Therefore, I call it a coup.

Secondly, what are the roles, which are being played, at present, by the judges? I was told by a responsible Member of Parliament that one Supreme Court judge used to send files recommending a particular person as a judge and thereafter he used to phone up the Prime Minister and say, "Do not appoint this man, he is so and so.."

Then, Sir, one of the judges who has taken oath on the Constitution of India -- oath is to maintain secrecy -- saying it publicly, "If I were a dictator of India, I would have prescribed Gita in various schools." Gita is known by everybody. It is a very precious document, - a precious thing. But, can anybody, who has taken oath under the Constitution of India, say publicly in a meeting, "If I were a dictator of India..."? Is this how the judges should behave? ...*(Interruptions)*...

Sir, only auxiliary points I am mentioning. We have heard that in Madhya Pradesh, a High Court judge -- we have listened to this case when there was a Zero Hour mention by a luminary, Shri Tulsi, yesterday on how a lady Additional District Judge had to leave her job because she was asked to perform a dance in a particular place, and other things. That enquiry is being ordered by the Supreme Court Judge. Two members have been appointed. So, this is what is going on in certain places.

Now, Sir, another aspect is, law declared by The Supreme Court is a law which is applicable and binding on all courts. This is the Article 141, which is being used by the Judiciary not only to interpret but also for other purposes. If they only interpret vague provisions, ambiguous provision, it is welcome because that is their job. But in the guise of Article 141, what do they do? Today, they have taken the Departments of Government of India. There are Empowerment Committees appointed by the Supreme Court which are deciding matters which ought to have been decided by the respective Departments of the Government of India. You can imagine about it. I am only citing the case of the Ministry of Environment and Forests because I know about that. I don't know how much power Mr. Javadekar will be having after this. What is meant by 'law declared'? Does it mean that you can, just in the name of interpretation, lay down a new law? There are ample number of judgements; the Law Minister will be knowing that there are ample number of judgements, in which guidelines are laid down in various matters, as if they are Acts of Parliament. We have been following those guidelines as if they are Acts of Parliament, passed by Parliament.

Secondly, as it is said, ignorance of law is no excuse. If ignorance of law is no excuse, then, searching a law in a judgement is like searching a pin in a stack. If I want to know one proposition of a law, I have to read hundred pages or two hundred pages

[Shri Shantaram Naik]

**8.00 P.M.**

of a judgement to know what the proposition is. Therefore, judges themselves are not following or facilitating common men or even lawyers to understand the proposition of law.

Sir, another aspect is, supposing this Bill is violative of the Constitution, then, there are two criteria. One is that you have to go into the lists, namely, the Union List, the Concurrent List and the State List. That will decide whether the Parliament is competent or not to enact such a law. Second thing is violation of fundamental rights. Now, this is very vague. If you read the fundamental rights, you can stretch any fundamental right to strike down anything. ...(*Time-bell rings*)... So, these fundamental rights are very important. To interpret the fundamental rights in such a manner as it strikes down any normal legislation or normal Act of Parliament will be a superfluous thing.

Secondly, after the Judicial Commission is constituted, today we are showing our supremacy by passing this legislation, coupled with the ordinary legislation that we will pass, but while constituting the Commission, we have also to be transparent. We should not emulate the Supreme Court. Let that action of yours be transparent. You know what I mean. It should be transparent, and proper eminent persons of integrity should be made as members. I thank you for one thing that I made one recommendation in my Report and you have included that. In the recommendation, we said that one of the eminent persons should be from the SC, ST, OBC, minority, women, and you have accepted that. I welcome that. Therefore, I hope that you will implement this legislation as an ordinary legislation in the right spirit, in the overall interest of the Government of India and of Parliament, and take further steps, from time to time, to protect the interests of Parliament. Thank you very much, Sir.

SHRI SATISH CHANDRA MISRA (Uttar Pradesh): Thank you, Sir, for giving me this opportunity to make some observations on the Constitution (Amendment) Bill.

At the very outset, our party's view is that so far as the independence of the Judiciary is concerned, that has to be the first criterion to be kept in mind.

As I see, in this amendment, in the Constitution itself now the Judicial Commission has been included. It has been made a part of the Constitution itself. Therefore, at least, there cannot be any tinkering. I would not use the word 'tinkering' because the Legislature in its wisdom does it, but there may be a situation where if it is not in the Constitution, then there could have been changes today, tomorrow, thereafter again with regard to the constitution of the Commission which has to be the main body with respect to this.

We had made certain suggestions. Probably in the procedure part it is being taken care of that so far as the High Courts are concerned, it may be difficult for a Commission sitting in Delhi only to consider and find out the name from the High Court. In the procedure part, probably, some explanations have been given that how the High Court Judges would be appointed and the names initiated by the Chief Justice of the High Court. I would like the hon. Law Minister to definitely throw light on this because it may not be a system which may fail on account of this because today the vacancies as they are existing, it is known to all of us. If we take Uttar Pradesh itself, about 160 sanctioned strength is there. Out of this 160 strength which was sanctioned almost 12 years back, up to that extent, we have been able to fill up only 80 to 90 and reached, maximum 90 Judges' appointment in the High Court of Uttar Pradesh in Allahabad which is for Uttar Pradesh. The result has been pendency of the cases in the High Court. It is voluminous. About 16 lakh cases are pending in the Allahabad High Court itself.

But my party's concern has always been that in the representation in the selection of the High Court Judges, who come later on to the hon. Supreme Court, there has always been a discriminatory attitude to the extent that so far as women are concerned, and especially, so far as Scheduled Caste persons are concerned, there has always been a discriminatory attitude. We do not find number of women judges in comparison to the male judges, even though there are a large number of willing lawyers from the women category. But still we have only one or two. The first woman judge in Allahabad High Court we got only 20 years back. By bringing in this procedure and making it a requirement under the Commission there will be a member, maybe, a woman, maybe, of the other category, especially the Scheduled Caste category. The 'Scheduled Caste' category has been completely excluded from consideration. They have been totally discriminated against even through the minorities, the backwards got the chances to come into it. The women have also got it. But so far as Scheduled Caste is concerned, the result has been very bad because we do not have judges belonging to this category. Therefore, there is a feeling throughout the country that there is no representative of them. A judge will act in an independent manner, but still, if in the entire judiciary there is no Scheduled Caste person. In Uttar Pradesh, the Law Minister will find out from the records, for the last several years, no appointment has been made from the Scheduled Caste as a High Court Judge. The result has been that there is a complete vacuum and a zero per cent representation of the Scheduled Castes in the Bench of the High Court. Naturally, from the High Court only they come to the hon. Supreme Court. Recently, we have been able to get two Judges directly from the Bar after a very, very long time to the hon. Supreme Court. Otherwise, they are coming from the High Courts. So, this aspect we have been throughout saying in the Parliament and outside. So, this has to be taken into consideration. I hope that this Judicial Commission

[Shri Satish Chandra Misra]

which is now being constituted under the Constitution Amendment, even if there is no representative, because it is not being done as by rotation or all the members necessarily will be there or not be there, it will be decided later, when the constitution of the Commission is done. Even if there is no representative because it has not been said 'by rotation', the Scheduled Caste members would be there or not be there, will be decided later on when Commission is constituted. But even if it is not there, I would definitely request -- hon. Law Minister is also going to be a Member of the Commission -- that this aspect may kindly be considered that the representatives, at least, from the Scheduled Castes are there, and out of 160 Judges or 90 sitting Judges, you can think of, at least, one Judge from this community. Do not exclude them completely and give an impression that they will not be allowed to come into the Bench of High Courts. Their representation should be in the percentage that is due to them. I have raised this issue again and again, on several occasions, in this House. I had raised it before the previous Law Minister also when the UPA Government was there. But, for whatever reasons, the names have not been sent. To my knowledge, the names were sent earlier, during the UPA Government's tenure, when Mayawatiji was the Chief Minister. But, ultimately, when those names came to Delhi, some of them were dropped at the level of the Supreme Court and the rest were dropped at the Government's level. So, all these prejudices keep on adding in the minds of the particular community that they should not represent in the higher Judiciary and, therefore, they should be excluded. Therefore, we hope that this Commission will act independently and will get the best of the Judges, who will be appointed not on the basis of nomination, as is now being done. There are three members in the Collegium and they decide among themselves. One agrees to one name, the other say that this is his name and the third says this is his name and if you don't agree to my name, I won't agree to your names. Therefore, the entire names are either gone or get stuck. That is why there are vacancies. That is why there are pendencies. And, then, we stand here and request the Government to do something so that the cases are disposed of. You cannot burn the files. You can only dispose of them, after being decided. In the High Court of Allahabad itself, where I have been practising for the last 39 years, the pendency is about 16 lakh. In Lucknow itself, the pendency is about 4 lakhs. So, all these things add to the difficulties of the public, the litigants, who come to the court with high hopes that their cases will be decided. In the capacity of Advocate General of UP, when I was there, in the capacity of Chairman of the Bar Council of UP, in the capacity of the Government when the BSP was in power there, on all these occasions, I had raised this matter. I don't know when I will die and nobody knows it. But, at least, when a Judge is appointed, the day he is appointed, it is known to every one that this is the date when he will retire. And, when the date of retirement is known in advance why we fail to get the appointments done? I

have seen the other Bill. The other Bill, which provides the procedure, says that before the retirement, within this period, you will have to send the recommendations. It has to be considered and, hopefully, this will remove the anomaly of having a large number of vacancies. Recently, we heard that the strength will be increased in the High Courts. Once the strength of High Courts is increased by 25 per cent, it will go to 200 Judges in Uttar Pradesh. But what about 160? We have not been able to fill even 160. Rather, we have not been able to cross 100 in Uttar Pradesh because the procedure has failed. Therefore, the existing procedure -- which was not provided originally in the Constitution, where the consultation was to be done with the Chief Justice by the President -- has been reversed the other way. They will be informed that we are appointing so and so and if you don't agree I will reiterate and you will have to re-confirm that name. That procedure was not in the Constitution and it has miserably failed. Therefore, to have effective and honest Judges in the Bench, who decide the fate of 125 crore people and the litigants who come to the court, it is necessary that the amendment should be brought. We are in support of it. We are not going at length in mentioning the merits and demerits. This exercise was also done earlier when the UPA had brought the amendments. I had also spoken on that occasion for two hours. I do not want to reiterate all that. We support this, except one thing on which the hon. Law Minister would, probably, come out tomorrow and explain when he brings forward the other Bill. I brought Article 124 C, by an amendment in the Constitution, you have brought the power of Parliament to make the law. This power of Parliament to make laws is being brought through Article 124C which is presently not in existence. Whether the other Bill which would be coming tomorrow can be made a law as on date or it has to wait till the amendment, that, of course, we would consider when the Bill comes tomorrow. With this, I support the Bill. Thank you.

**श्री भुपेन्द्र यादव** (राजस्थान) : सम्माननीय उपसभाध्यक्ष महोदय, आज माननीय विधि मंत्री मंत्री जी बधाई के पात्र हैं, क्योंकि वे देश के उच्चतम न्यायालय और उच्च न्यायालयों में न्यायाधीशों की नियुक्ति की व्यवस्था में सुधार हेतु संवैधानिक संशोधन लेकर आए हैं। हमने उच्चतम न्यायालय और उच्च न्यायालयों को लोगों की मौलिक रक्षा के अधिकार का दायित्व दिया है, लेकिन जहां इतनी बड़ी जिम्मेदारी हम लोगों ने तय की है, वहां यह विषय पिछले 24 सालों से चल रहा है कि जिन लोगों को वहां पर नियुक्त किया जा रहा है, उनकी नियुक्ति की कसौटी क्या है, उनकी नियुक्ति के मानक क्या हैं? कई बार यह कहा जाता है कि नियुक्ति की जो प्रक्रिया है, उसमें हमारे संविधान के निर्माताओं की मंशा क्या थी? हमारे संविधान के निर्माताओं की मंशा न्यायपालिका से परामर्श की थी, लेकिन यह परामर्श से सहमति की जो व्याख्या न्यायपालिका द्वारा की गई है, वह इस संविधान संशोधन का मूल आधार है। यह बहुत न्यायविदों का भी मानना है, न्यायिक क्षेत्र में काम करने वाले लोगों का भी मानना है और यह इस देश के लिए भी आवश्यक है कि परामर्श की प्रक्रिया के दो भाग अवश्य होने चाहिए। परामर्श जहां न्यायपालिका से होना चाहिए, वहां परामर्श सरकार से भी होना चाहिए, न्यायपालिका का एक क्षेत्र जो बार

[श्री भूपेन्द्र यादव]

एसोसिएशन है, उनसे भी परामर्श होना चाहिए, विपक्षी पार्टियों की भी परामर्श में भूमिका होनी चाहिए और देश के जो एकेडेमिक लोग हैं, गणमान्य लोग हैं, उनकी भी परामर्श में व्यापक भूमिका होनी चाहिए। उसके साथ ही साथ नियुक्ति की जो प्रक्रिया है, इसमें पब्लिक सीक्रेसी नहीं होनी चाहिए, बल्कि इसके लिए बेहतरीन व्यवस्था, बेहतरीन डेटा, बेटर क्राइटीरिया और बेटर ऑफिस सेट अप की व्यवस्था होनी चाहिए। इस व्यवस्था में लोगों का विश्वास तभी कायम हो सकता है, वह विश्वास तभी बना रह सकता है, जब हम उन सारी प्रक्रियाओं को पारदर्शिता के साथ पूरा करने का प्रयत्न करें। हम अच्छे लोगों को न्यायपालिका में लाने के लिए, उनको प्रोत्साहन देने के लिए अच्छी व्यवस्था का निर्माण करें। जो संवैधानिक संशोधन माननीय विधि मंत्री जी लेकर आए हैं, मुझे लगता है कि संवैधानिक संशोधन और इसके बाद जो बिल आने वाला है, जिस न्यायिक आयोग की बात वे कह रहे हैं, उसको देखने के बाद ध्यान में आता है कि यह जो व्यवस्था बनेगी, इसमें न्यायिक नियुक्तियों की प्रक्रिया ज्यादा पारदर्शी होगी, मजबूत होगी। इसमें एक उचित प्रतिनिधित्व की व्यवस्था करने का प्रयत्न किया गया है, एक उत्तरदायी न्यायिक व्यवस्था बनाने का प्रयत्न किया गया है। विभिन्न सामाजिक वर्गों को नियुक्ति की प्रक्रिया में स्थान देकर उनके साथ समन्वय बनाने का प्रयत्न किया गया है और इसके साथ ही साथ, देश में स्वतंत्र और निष्पक्ष न्यायपालिका के लिए जिस आधारभूत ढांचे को आर्टिकल 368 में हमने कहा है, उसको मजबूत करने के लिए और देश का जो संघीय ढांचा है, उस संघीय ढांचे का भी समायोजन इस बिल के माध्यम से किया गया है। कई बार न्यायपालिका में नियुक्तियों के समय में यह विषय उठता है कि इसमें फर्स्ट जेनरेशन लॉयर कितने हैं? यह प्रश्न भी उठता है कि जिस अनुपात में महिलाएं लॉ की शिक्षा प्राप्त करके आ रही हैं, उस अनुपात में उनकी कितनी नियुक्तियां जजों के रूप में हो रही हैं? जैसा कि मेरे पूर्व वक्ताओं ने भी कहा है कि दुनिया के किसी भी देश में ऐसा प्रावधान नहीं है, जहां न्यायाधीश स्वयं अपनी नियुक्ति करें, अपनी नियुक्ति के लिए प्रक्रिया भी खुद ही तय करें और उसके लिए कानून का भी खुद ही निर्माण करें। हमें उस प्रक्रिया से बाहर आकर अपने संविधान निर्माताओं की मंशा के अनुरूप न्यायपालिका के परामर्श को प्राथमिकता देनी चाहिए, लेकिन समाज के बाकी वर्गों की भी इसमें सहभागिता होनी चाहिए। हमने कोलेजियम के स्थान पर न्यायिक आयोग की जो कल्पना की है या कोलेजियम के आधार पर हम जो यह न्यायिक आयोग बना रहे हैं, उसमें मेरा यह मानना है कि यह न्यायिक आयोग कार्यपालिका और न्यायपालिका की समान सक्रिय भागीदारी को निर्धारित करेगा। समान सक्रिय भागीदारी को निर्धारित करके कार्यपालिका और न्यायपालिका, दोनों की परस्पर सहयोगात्मक और सहभागिता के आधार पर निष्पक्ष नियुक्ति हो, उसके लिए इस न्यायिक आयोग के गठन की बात की गई है, इसलिए इसका उद्देश्य मुख्य रूप से न्यायपालिका की स्वतंत्रता और निष्पक्षता को बनाए रखना है।

अभी सतीश चन्द्र मिश्रा जी खुद ये आंकड़े दे रहे थे कि उत्तर प्रदेश में न्यायिक नियुक्तियों की जितनी संख्या है, उसके 50 प्रतिशत से ज्यादा कभी नियुक्ति नहीं हो पाई है। इस समय देश के उच्च न्यायालयों में न्यायाधीशों के 800 से ज्यादा पद हैं, लेकिन कभी भी 60 परसेंट और 70 परसेंट से ज्यादा पद नहीं भरे जाते। न्यायाधीशों की नियुक्ति की जो प्रक्रिया है, वह एक लम्बी प्रक्रिया है। इस लम्बी प्रक्रिया को पूरा करने के लिए हमें एक परमानेंट इंस्टीट्यूशन की

आवश्यकता है। जब न्यायाधीश पूरे समय अपना निर्णय देते हैं, तो निर्णय देने के साथ-साथ अगर हम उनके समकक्ष न्यायिक आयोग के रूप में एक परमानेंट इंस्टीट्यूशन स्थापित करेंगे तो वे ज्यादा अच्छे तरीके से न्यायाधीशों की नियुक्ति करेंगे।

सर, अगर हम इसके साथ के बिल का अध्ययन करेंगे, तो पाएंगे कि हम लोगों ने जिन न्यायिक आयोग की कल्पना की है और इस न्यायिक आयोग में जिन पांच सदस्यों की बात कही गई है, उनमें से तीन सदस्यों में खुद ज्यूडिशियरी के चीफ जस्टिस और उनके दो सदस्य रहने वाले हैं, विधि मंत्री इसके सदस्य रहने वाले हैं और इसके जो बाकी के दो सदस्य नियुक्त होने वाले हैं, वे प्रधान मंत्री तथा प्रतिपक्ष के नेता हैं। उस पर भी वे उच्च न्यायालय के मुख्य न्यायाधीश की सहमति के आधार पर करने वाले हैं। लेकिन, ऐसा करने की आवश्यकता क्यों है? ऐसा करने से देश में जो न्यायिक नियुक्ति है, उसमें किस विषय से मजबूती मिलेगी? अभी भी न्यायाधीशों की नियुक्ति के समय हिन्दुस्तान में हम जिस लोकतंत्र की कल्पना करते हैं, उसमें सभी सामाजिक वर्गों यानी पिछड़े वर्गों की, दलितों की, आदिवासियों की और महिलाओं की समान भागीदारी की बात हम करते हैं। अगर हम नियुक्ति प्रक्रिया को अपनाते समय कम से कम उनके दृष्टिकोण और उनकी व्यावहारिकता को इसमें स्थान देंगे तो उचित होगा। वह एक चयन के लिए है, वह किसी मानदंड के निर्धारण के लिए नहीं है। लेकिन, जैसा मैंने प्रारंभ में भी कहा है कि उस चयन को हमें ज्यादा अच्छे तरीके से, व्यापक विचार-विमर्श के आधार पर करना चाहिए।

हमने जिस न्यायिक आयोग की बात कही है, उसमें एक विषय और है। इसे उच्च न्यायालय और सर्वोच्च न्यायालय में वकालत करने वाले लोग भी जानते हैं कि उसके जो सेक्शन दो और तीन हैं, उनमें उच्च न्यायालय के मुख्य न्यायाधीश को तो नामों की संस्तुति करने का अधिकार है, लेकिन इसके साथ-साथ उसमें इस बात की व्यवस्था भी की गई है कि कमीशन के पास अगर ऐसा कोई नाम आता है, अगर कोई ऐसी प्रक्रिया तय की जाती है कि कोई व्यक्ति न्यायाधीश बनने के लिए पर्याप्त योग्यता रखता है, तो कमीशन को भी इस बात का अधिकार दिया गया है कि उसकी संस्तुति करे। सामान्यतः यह माना जाता है कि न्यायपालिका में किसी एक पृष्ठभूमि का नहीं, बल्कि जो भी व्यक्ति न्यायाधीश बनने की योग्यता रखता है, मतलब वह व्यक्ति कानून का जानकार है, वह व्यक्ति अपने आचरण में सत्यनिष्ठा का पालन करता है, वह व्यक्ति विश्वसनीय है, लेकिन अगर वह न्यायाधीशों की निगाह में नहीं भी आता है तो कमीशन के माध्यम से प्रक्रियागत रूप से उसका नाम संस्तुति के लिए दिया जा सकता है। और उसके बाद भी कार्यपालिका के साथ-साथ इसमें जो आगे उन्होंने प्रक्रिया को तय किया है कि जो नाम कमीशन के पास भी आएगा वह भी चीफ जस्टिस को उनकी संस्तुति के लिए दिया जाएगा। उसमें जो एक अच्छी प्रक्रिया है चीफ जस्टिस अपने सहयोगी सीनियर साथियों के साथ और जो न्यायिक कमीशन बनाया है इसमें भी लिखा गया है और उसमें स्टैंडिंग कमेटी ने भी कहा है कि 'उसके साथ-साथ वह जो नियुक्ति है, उसमें बार के वरिष्ठ वकीलों की भी सलाह ली जाएगी' न्यायिक कमीशन में उन्होंने सैक्शन-4 में प्रोविजन किया है। इसमें किसी भी नियुक्ति के समय अगर आपको पारदर्शिता लानी है, अगर व्यापक विचार-विमर्श करना है तो सभी संबंधित पक्षों की राय को जानने का आपको अधिकार होना चाहिए। मेरा यह मानना है कि हमारे देश में हमने संघीय ढांचे



[श्री भूपेन्द्र यादव]

की कल्पना की है। संघीय ढांचे की हमने इसलिए कल्पना की है ताकि भारत में सभी विभिन्न विचारों, वर्गों को और सभी क्षेत्रीय आकांक्षाओं को स्थान मिले। इसलिए न्यायिक कमीशन जब इस निर्णय को बैठकर करेगा तो न्यायिक कमीशन के सामने संबंधित गवर्नर और मुख्यमंत्री की राय को भी कम से कम लिखित रूप में लिया जाएगा। आखिर नियुक्ति की प्रक्रिया में एक व्यापक विचार-विमर्श हो, उसकी कसौटियां और मानक तय हों, उसमें किसी प्रकार से सीक्रेसी नहीं हो, क्योंकि इसको करने के बाद ही हम ऐसे व्यक्तियों का चयन कर सकेंगे, जो स्वतंत्र न्यायपालिका के आधार पर कार्य कर सकें। हम जानते हैं कि यह न्यायपालिका और न्यायाधीश का जो पद है इसमें कानूनी जानकारी के साथ-साथ, विश्वसनीयता के साथ-साथ करुणा का पक्ष भी बहुत महत्वपूर्ण होता है। हम जानते हैं कि भूमि अधिग्रहण के किसानों के केसेज सर्वोच्च न्यायालय तक जाते-जाते 30 वर्षों तक भी नहीं सुलझ पाते हैं। मैंने बहुत से ऐसे केसेज को देखा है जिन में 30 वर्षों के बाद लोगों को compensation मिला है, तो वे लोग बाद में rehabilitate भी नहीं हो पाए। इसलिए तत्परित गति से लोगों को किस प्रकार से न्याय मिले, इसमें अच्छे लोग किस प्रकार से आएँ, इस संस्था में लोगों का विश्वास पैदा करने के लिए, हम जिस नियुक्ति प्रक्रिया को चाहते हैं, उस नियुक्ति प्रक्रिया में पारदर्शिता के मानक कैसे हों, उसके लिए यह विधेयक लाने के ये सारे प्रयास किए गए हैं और इसके द्वारा एक संवैधानिक संशोधन करके हमारे संविधान निर्माताओं की जो आकांक्षा थी, उसके अनुरूप परामर्श की प्रक्रिया को ज्यादा अच्छे तरीके से बनाया गया है। इसके लिए परामर्श की प्रक्रिया में समन्वय को स्थान दिया गया है, परामर्श की प्रक्रिया में जो समाज के उच्च आदर्श हैं, उन उच्च आदर्शों को कसौटी पर कसने के लिए एक पारदर्शी प्रक्रिया जो सबके प्रति जवाबदेह हो, जो सबके प्रति उत्तरदायी हो, उस प्रक्रिया को बनाने का प्रयास किया गया है। इसलिए माननीय उपसभाध्यक्ष महोदय, मेरा यह मानना है कि आज आजादी के 65 वर्षों के बाद इस देश की जो न्यायपालिका है, जिसके ऊपर करोड़ों लोगों का विश्वास है, जो लोगों के मौलिक अधिकारों की रक्षा करती है, उसके न्यायाधीशों की नियुक्ति के मानक, पार्लियामेंट की जो कमेटी है उस कमेटी ने भी पूरी तरीके से उसकी संस्तुति की है, जिसको सभी लोगों ने माना है। मेरा यह मानना है कि यह जो न्यायिक आयोग है और यह जो संविधान संशोधन है, यह देश में स्वतंत्र और निष्पक्ष न्यायपालिका बनाने के लिए, न्यायिक नियुक्तियों में पारदर्शिता के मानक लाने के लिए और संविधान निर्माताओं ने जिस व्यापक विचार-विमर्श की प्रक्रिया को कहा है, उस परामर्श की प्रक्रिया में न्यायपालिका के साथ-साथ सामाजिक वर्गों को स्थान देने के लिए जो प्रयास किया गया है, मुझे लगता है कि आने वाले समय में यह देश के संविधान के लिए एक मील का पत्थर साबित होगा।

THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE): Thank you very much.  
Shri Sukhendu Sekhar Roy.

SHRI SUKHENDU SEKHAR ROY (West Bengal): Thank you, Sir. While speaking on the 99th Constitution (Amendment) Bill, 2014, I would like to make it clear that my Party, the All India Trinamool Congress, and our leader, Ms. Mamata Bannerjee, always

believe in the independence of Judiciary and the powers of judicial review. We don't believe in committed judiciary, as was propagated in the 70s. ...*(Interruptions)*...

SHRI VAYALAR RAVI (Kerala): Please don't say such things.

SHRI SUKHENDU SEKHAR ROY: I have the right to speak. ...*(Interruptions)*...

SHRI VAYALAR RAVI: We can debate that. At that time, it was your ...*(Interruptions)*...

उपसभाध्यक्ष (श्री वी.पी. सिंह बदनौर) : आप बैठिए। ...*(व्यवधान)*...

SHRI SUKHENDU SEKHAR ROY: When your turn comes, you may speak. Being a senior Member, you know the rules of this House. ...*(Interruptions)*... I have every right to speak. So, we have seen in this country how the judiciary was made to measure in the mid-70s and what was the resultant effect on our body polity. Therefore, we are very much cautious. It is true that we have learnt by lessons; it is true that our judiciary, particularly the High Courts and the Supreme Court, in plethora of cases, have given landmark judgements ensuring justice social – political and economic -- as enshrined in the Preamble to the Constitution of India. There is no doubt about it. But when we look at the process of selection of Judges, we feel disturbed, as rightly pointed out by Shantaramji few minutes back, because in no democratic country of the world such a Collegium system exists. He has mentioned a number of countries. I am giving the example of one country, that is, Switzerland. In Switzerland, the Members of the Swiss Federal Assembly appoint the Members of Swiss Federal Court. But, through this Amendment Bill or the other Bill, we are not seeking that power of Switzerland that the Members of Parliament will appoint the Judges of the Supreme Court. Rather we are trying to evolve a system. Why? Our hon. Law Minister, while introducing the Bill, has given a chronological account as to how we have dealt with this thing. We have been thinking of this for the past 24 years without arriving at any conclusion whatsoever. How long should we wait and why is it required, and why is it necessary? Everybody knows what is the effect of the Second Judges Case Judgement. The Supreme Court itself changed the basic structure of the Constitution by interpreting a particular article by importing a new interpretation. Although in several cases the Supreme Court has said that while interpreting a particular word, no interpretation other than the ordinary dictionary meaning should be imported. But in that case, the Supreme Court interpreted it in a manner which is prejudicial to the interest of functioning of the judiciary in this country. This is why I support it. And I think that this Bill is very much necessary. Sir, this balance has been upset by the Second Judges Case and the original balance of power needs to be restored. We need to restore the *status quo ante*. Otherwise, the very purpose of the Constitution goal will be frustrated; what the Constitution makers thought, what they perceived and what they made while enacting

[Shri Sukhendu Sekhar Roy]

the Constitution, that will also be frustrated, and it will be a disrespect to the framers of the Constitution, according to us. Sir, even the National Commission to Review the Working of the Indian Constitution said, “it would be worthwhile to have a participatory mode with the participation of both the Executive and the Judiciary in making such recommendations. The Commission proposes the composition of the Collegium which gives due importance to and provides for the effective participation of both the Executive and the judicial wings of the State as an integrated scheme for the machinery for the appointment of Judges. The Commission, accordingly, recommends the establishment of a National Judicial Commission under the Constitution.” Sir, this recommendation was of 2002 and we are in 2014 now, and still discussing it. I will conclude by quoting a remark of the very honourable Judge, who was one of the architects of the judgement of the Second Judges case, late Justice Verma. Kindly allow me to say two-three lines because that is very vital. He even appeared before our Standing Committee and we had the opportunity to hear him. What he said in other areas, he said the same thing, and I am quoting from his remarks. Late Justice Verma, who was one of the authors of the Second Judges case, on a later reflection, observed, “My 1993 judgment has been both misunderstood and misused. Therefore, some kind of rethink is required on my judgment and the appointment process of High Court and Supreme Court Judges is basically a joint or participatory exercise between the Executive and the Judiciary, both taking part in it.” But what happened in this Constitution (Amendment) Bill or the other Bill? When we will discuss that, we will discuss that also. Now, not only the Executive and the Judiciary have been empowered but even civil society has been included. Two eminent persons of civil society have been included in the process of selection. Then, what is the objection? Where lies the objection? I personally feel, I strongly feel, that the Government has tried to broaden and widen the scope of selection by way of introducing this Constitution (Amendment) Bill. I support this Bill on behalf of my Party.

**प्रो. राम गोपाल यादव** (उत्तर प्रदेश) : श्रीमन्, प्रारंभ में ही मैं यह कह दूँ कि मैं इस संविधान (संशोधन) विधेयक के समर्थन में बोलने के लिए खड़ा हूँ। मुझे पोस्ट ग्रेजुएट क्लासेज़ के स्टुडेंट्स को कंस्टीट्यूशनल लॉ और वर्ल्ड कंस्टीट्यूशनल लॉ पढ़ाने का अवसर मिला है। जब मैं पढ़ाया करता था या पढ़ता था, तब एक सवाल सामने आता था कि भारत का संविधान वकीलों का स्वर्ग है। आज मैंने जब प्रारंभ में यहां चर्चा सुनी, तो मुझे लगा कि वह बिल्कुल सही बात है, क्योंकि किसी भी तरह से अपनी बात को अपने तरीके से रखने का, मनचाहे तरीके से भारतीय संविधान की व्याख्या करने का अवसर लोगों को मिलता है। हालांकि हमारा संविधान सबसे ज्यादा स्पष्ट है, दुनिया का सबसे बड़ा, सबसे क्लीयर, सबसे स्पष्ट संविधान हमारा है।

(श्री उपसभापति पीठासीन हुए)

उपसभापति महोदय, यहां मैं इतना जरूर कहना चाहता हूँ कि यह जो कॉलेजियम सिस्टम

है, जिसको हम बदलने जा रहे हैं, इसकी वजह से या यों कहिएगा कि दुनिया के किसी भी देश में जज स्वयं जज को अपॉइंट नहीं करते हैं। हमारा हिंदुस्तान अकेला ऐसा देश है, जिसमें जज स्वयं जज को अपॉइंट करते हैं, वरना एग्जीक्यूटिव अपॉइंट करती है, जैसा कहा गया कि स्विट्ज़रलैंड में लेजिस्लेचर अपॉइंट करती है और ब्रिटेन में तो जो अपील का सर्वोच्च न्यायालय है वह स्वयं अपर हाउस ही है, House of Lord है। यह बात अलग है कि जब वह अपील के सर्वोच्च न्यायालय के रूप में बैठता है, तब केवल Law Lords ही उसमें बैठते हैं, कोई और मेम्बर नहीं बैठता। हमारे यहां यह अजीब स्थिति पैदा कर दी थी, स्वयं जुडिशियरी के प्रति संविधान को डिस्टॉर्ट कर दिया गया था।

श्रीमन, इस तरह का अमेंडमेंट क्यों लाना पड़ा? आप देखिए कि अपॉइंटमेंट्स किस तरह के होते हैं? एक व्यक्ति जज है, उसका लड़का जज है, उसका दामाद जज है, किसी का भतीजा जज है। आप देखिए, आधे अपॉइंटमेंट्स ऐसे होते हैं और हर बार इसी तरह के अपॉइंटमेंट्स होते हैं। उत्तर प्रदेश जैसे बड़े राज्य से इलाहाबाद हाईकोर्ट, जो सबसे बड़ा हाईकोर्ट है, उसका मिनिमम रिप्रेजेंटेशन सुप्रीम कोर्ट में है। संभवतः एक जज उसमें होगा, जबकि ऐसा पहले कभी नहीं होता था। कोलेजियम सिस्टम आने के बाद जिस तरह से मनमानी की गई, हमें याद आता है कि संभवतः यही परिस्थितियां रही होंगी, जब अमेरिका के राष्ट्रपति फ्रैंकलिन डी. रूजवेल्ट को यह कहना पड़ा, जब उनके कानूनों को बार-बार फेडरल, सुप्रीम कोर्ट रद्द कर देता था कि अगर यही रवैया सुप्रीम कोर्ट के जजेज का रहा, फेडरल कोर्ट के जजेज का रहा, तो हम न्यायालय को अपने लोगों से पैक कर देंगे। यह बात अलग है कि सीनेट ने कहा कि हम पैक नहीं होने देंगे, लेकिन मान्यवर, उसका असर यह हुआ कि उसके बाद आज तक... यह 1936 की बात है, आज तक कभी भी अमेरिका के सुप्रीम कोर्ट ने इस तरह का कोई फैसला नहीं दिया, जो प्रैगमेटिक न हो, जो जनता की भावना के अनुसार न हो या जो संसद की जो कलेक्टिव विल होती है, उसके खिलाफ हो। कभी नहीं दिया। इसकी जरूरत है और इसीलिए यह जो बिल लाया जा रहा है, यह बहुत आवश्यक है क्योंकि हमारे यहां न्यायपालिका मनमाने तरीके से फैसले करने लगी है। एक बार एक साहब कह रहे थे कि अगर न्यायपालिका का वक्त हो, वह सब फैसले करने ही लगेगी। जो चाहे फैसला कर दे, जैसे चाहे नीतिगत फैसला करने लगे। एक बड़े वकील ने एक बार हमसे कहा कि न्यायपालिका का बस चले तो यह फैसला कर सकती है कि किसी महिला को डिलीवरी होने को हो, तो उस पर भी स्टे कर दिया जाए। इस सीमा तक स्टे करने का और यह सब करने का...माननीय कानून मंत्री जी यहां बैठे हुए हैं, तो एक और बहुत बड़ी दिक्कत यह हो गई है कि जुडिशियरी के बारे में यह कहा जाता है कि वह डिस्पैशनेट होकर सारा काम करेगी, लेकिन जब पोलिटिकल लोगों का मामला आता है, तो लोगों को ऐसा आभास हो गया है कि यदि राजनीतिक व्यक्ति का कोई मुकदमा है, तो वह राजनीतिक व्यक्ति के खिलाफ जाएगा, फैसला उसके पक्ष में नहीं होगा। यह धारणा अगर बन जाए, तो न्यायपालिका की निष्पक्षता पर आंच आने लगती है और न्यायपालिका जो फैसले देती है, उस पर लोग उंगली उठाने लगते हैं। Contempt of court की वजह से कोई कुछ कहता नहीं है, लेकिन चौराहे पर, बाजार में, सड़क पर न्यायपालिका के बारे में क्या-क्या बातें होती हैं, उनको न मैं यहां कह सकता हूं, न मैं कहना चाहता हूं, लेकिन आप भी सुनते होंगे, हम भी सुनते हैं और सारी जनता बोलती है। स्थिति इतनी खराब हो गई है। मान्यवर कानून मंत्री जी, आप तो बड़े वकील हैं और देश के कानून मंत्री हैं,

[प्रो. राम गोपाल यादव]

अच्छा काम करने जा रहे हैं, तो आप यह देखिएगा। आज ऐसे तमाम लोग बाजार में घूमते हैं, जो अगर किसी का मुकदमा है, तो उसके पास जाते हैं कि यह जजमेंट आपको मिल जाएगा, इतने करोड़ रुपए दे दीजिए। 'ओपन मैगजीन' में तो स्पष्ट रूप से एक जज का उल्लेख किया गया था और उसमें यह भी लिखा था कि वे जज दिल्ली हाई कोर्ट के जज थे और जो आदमी आया था, उसने कहा था कि यह जजमेंट आएगा और हूबहू वही जजमेंट दो महीने बाद डिलीवर हुआ, जो जजमेंट उस व्यक्ति को दिखाया गया था कि इतने पैसे दीजिए, तो यह जजमेंट आएगा। जब स्थिति यह हो जाए.. आरोप यह लगता है कि पोलिटिशियन बहुत बेईमान हैं, लेकिन स्थिति जो है, वह अदरवाइज है। मैं किसी को ब्लेम नहीं करना चाहता हूं, लेकिन यह सत्य है कि इस तरह की बातें हो रही हैं। इसलिए कोलेजियम सिस्टम को समाप्त करके संविधान संशोधन के माध्यम से आप जो यह काम करने जा रहे हैं, मैं यह समझता हूं कि यह बहुत ही प्रशंसनीय कदम है। एक बात जो ...**(समय की घंटी)**... मिश्रा जी ने कही थी, मैं आधा मिनट और लूंगा। मिश्रा जी ने जो बात कही थी, मैं उससे सहमत हूं कि जो वंचित वर्ग के लोग हैं, बहुत इंटेलिजेंट वकील या जजेज होने के बाद भी उनका नंबर आ नहीं पाता है। उनका रिप्रेजेंटेशन होना चाहिए, यह ध्यान रखा जाना चाहिए। चूंकि अब आप अपॉइंटमेंट का कमिशन बना रहे हैं और उसमें आप एक आदमी को रखने भी जा रहे हैं, जो महिला, शेड्यूल्ड कास्ट, माइनॉरिटी या ओ.बी.सी. का होगा, तो अच्छी बात है और हो सकता है कि इसकी वजह से कुछ लोग आएंगे... वरना *nominal representation* है, कहीं-कहीं *बिल्कुल representation* नहीं है। बहुत अच्छी बात यह है कि जो आप अप्वाइंटमेंट वाला बिल ला रहे हैं, उसमें 6 महीने पहले से ही, कौन कब रिटायर हो रहा है, कितनी वैकेंसीज क्रिएट हो रही हैं, उसके लिए तैयारी हो जाएगी और एक महीने के अंदर आप उन सबको फिल अप कर देंगे। अभी जो होता है कि जब चाहे, जितना विलम्ब होता रहता है, पहले से कोई तैयारी नहीं होता है, आधे हाई कोर्ट के जजिज को वैकेंसीज इलाहाबाद में लगातार खाली पड़ी हुई हैं। जब यह बिल पास हो जाएगा तो यह कमी भी दूर हो जाएगी। इन्हीं शब्दों के साथ, आपको बहुत बधाई देते हुए कि, आप एक प्रशंसनीय काम करने जा रहे हैं, जो *unbridled judiciary* है, उसको रास्ते पर लाने के लिए आप जो काम करने जा रहे हैं, इसके लिए मैं आपको बधाई देता हूं और इन्हीं शब्दों के साथ इस विधेयक का समर्थन करते हुए मैं अपनी बात समाप्त करता हूं। धन्यवाद।

MR. DEPUTY CHAIRMAN: Thank you, Prof. Ram Gopal Yadav. Now, Shri Majeed Memon. You have got only four minutes.

SHRI MAJEED MEMON (Maharashtra): Sir, I wish, this is a very important subject where I can throw light on most relevant aspects of the matter, Your Honour would excuse me for a couple of minutes more.

'Who will judge the Judges' is the question, in fact, and that precisely is at the backdrop of the entire discussion. People believe that the Judges, particularly of the higher Judiciary, must be like Caesar's wife, beyond doubt. I have been saying for years that when an allegation is made against a Judge, unlike our general system, where benefit of doubt

is always extended to the accused, in the case of Judges, the benefit of doubt should not be extended to such Judge, but it be extended to the fair name of administration of justice and immediate steps must be taken to identify a black sheep and fast steps be taken to see that such people do not survive in our system. People in this country are losing faith in the past few years in political organizations, politicians and other institutions. They only feel that the last resort is the court of law. It is only the court where they believe that next to God, sanctity would be there, honesty would be there, integrity would be there, fairness would be there and they would go with some justice that they are seeking. Unfortunately, this faith is tottering. It is not the fear of contempt of court which should make a person respect a Judge, but it should be the respect that must flow from within every individual. A Judge must not feel that I am protected because there is a law like contempt of court that nobody can raise a finger at me. Public must respect a Judge and the Judge must command respect, and all this is possible if we have a good system in place and we have right people on the Bench. Now, the hon. Law Minister himself being an eminent lawyer and a friend of mine, I must say that one of the reasons why people are losing faith in the system is, of course, the great backlog, pendency, delay, etc. Therefore, the Commission will have a great job to speed up the matters of filling up vacancies immediately. Our friends have spoken before me and they said that when a Judge is appointed, immediately, on the date of his appointment itself, we know his date of superannuation by virtue of his age and, therefore, we need not wait till the last two months or three months, as you suggest. You can be in preparedness a year before. If there are 50 vacancies or 100 vacancies likely to fall in the next one year in various High Courts, why can't we keep people in stand-by, duly selected? All right, they would not change in two or three months. If you have tested their credentials and if they are through the test that you have laid for the purposes of elevation to the Bench, that would not change in a matter of three or four months. You can again on the day of his appointment have another verification. But the whole process begins after a Judge relinquishes his office and that is the reason why so many vacancies are existing. Sir, we have 55,000 pending cases in the Supreme Court alone. We have got sixty million cases pending in courts all over the country. People have lost faith. The father takes up the litigation; the son fights the litigation; and the grandson gets the verdict and the fruit of litigation.

MR. DEPUTY CHAIRMAN: Advocates are also responsible for that. Do not blame only Judges. Advocates are also responsible for that.

SHRI MAJEED MEMON: Lawyers and everybody ...*(Interruptions)*... but lack of Judges. Why are we not increasing the requisite strength of Judges? Why are we having deficiency in the number of Judges? Don't we have funds? Are we considering judiciary as a non-money generating institution and therefore it should be considered a secondary

[Shri Majeed Memon]

thing? It is the primary institution. A country's civilisation can be best gauged by the effectiveness with which its justice system functions. And if we do not have our justice system upright and if we do not make the people happy and satisfied with regard to its operation, we would be called uncivilised in terms of that expression. I would only suggest that vacancies need to be filled up fast and transparency, as far as possible, should be there.

My friend, the Law Minister, has already spoken about the outline of the procedure that we are going to adopt through this Commission. The Supreme Court appointments are fewer in comparison. The Supreme Court appointments are more or less automatic in the sense that Chief Justices from various courts step in by virtue of their seniority. In exceptional cases, they are sidelined. There is no difficulty with regard to appointment of Supreme Court Judges. What matters more is the appointment at the level of High Courts. We have 24 High Courts and 906 Judges in our country. All these seats are never filled up. There are vacancies. If you look at the strength, probably the strength or the number has to be enhanced. Why should we not rush up to see that we can only restore the faith of the people and enhance the confidence of the common justice seeker if we have sufficient number of courts and sufficient number of judges who should command respect not out of the fear of contempt of court or law but by virtue of their integrity, by virtue of their ability and by virtue of their performance? Therefore, when we are judging the Judges, we will have to have a very careful scrutiny. I am sure that the Commission, which will come in place, will take care of all these things. Thank you very much, Sir.

SHRI K. PARASARAN (Nominated): Sir, I fully support this Bill. I congratulate the Law Minister for choosing the route of amending the Constitution instead of an ordinary legislation, as was done on the previous occasion, which we all debated. No one in this House is against the independence of the judiciary. Every Member of this House is for the independence of the judiciary. Independence of the judiciary means institutional independence of the judiciary and is not related to each individual Judge at the time of appointment. At the time of appointment, there can only be a prognosis as to whether he will be independent or not. There is a great error in the approach of many of the Judges and even some people who speak about it thinking if the Executive has the say, he will not be independent, but he will obey the Executive. This is a wrong conception. If this is true, if he owes his appointment to Judges, then he will not be independent of those Judges. Therefore, this is a wrong logic. The Constitution originally vested the power of appointment in the President on the advice of the Council of Ministers only after consulting such Judges of the Supreme Court as the President may deem fit and also Judges of the High Court and in case of appointment of puisne Judge, the Chief Justice of



India shall always be consulted. The Supreme Court re-wrote Article 124 and substituted concurrence for consultation. They overlooked Article 233 of the Constitution where the founding fathers used two different words for the appointment of District Judges which is also part of the judiciary. In Article 233(1), they said consultation with regard to posting and promotion of district judges. But in Article 233(2), they said that the Government shall appoint on the recommendation of the High Court. Neither Article 124 nor Article 217 uses the word 'recommendation.' Now, the next aspect of the matter is there is clearly, already, an observation of the Supreme Court for going with an amendment to the Constitution. We must see that the Nine Bench judgement was consequent to a reference by a Bench of three Judges in Subhash Sharma's case. The Supreme Court said in 1991 "We are aware of the position that the setting up of the National Judicial Commission through a Constitutional amendment is in contemplation. 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 on 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. In case the Commission is not appointed, the two questions indicated above which are vital had to be decided by a larger Bench." Therefore, they say, if you have a Judicial Appointments Commission by the amendment of the Constitution, this entire exercise of the primacy and Chief Justice's powers become academic and infructuous. The learned Judges said, whatever we have decided by the three Judges, are all final, except two questions, namely, the position of the Chief Justice of India in relation to the primacy and justiciability of fixation of Judges. The nine Judges expanded their jurisdiction. I do not want to explain because my time is very limited.

The next is about the experience of the two Judges, each at different times as members of the Collegium. Therefore, they are not outsiders but insiders who knew the working of the collegium of the Supreme Court. I am not referring to the unnecessary controversy raised by a learned Judge which has rightly caused anguish to the Chief Justice of India. One of them after her retirement said in a memorial, lecture in memory of the great jurist who practised in the Supreme Court, after he has retired as the Mumbai High Court Judge. She said and I quote, "Consensus within the Collegium is sometimes resolved through a trade-off resulting in dubious appointments with disastrous consequences for the litigants and the credibility of the judicial system. Besides, institutional independence has also been compromised by growing sycophancy and 'lobbying' within the system." The sycophancy necessarily means the sycophancy to the members of the collegium to get appointed and lobbying. "Besides institutional independence has also been compromised".

MR. DEPUTY CHAIRMAN: Parasaranji, are you quoting?

SHRI K. PRASARAN: Yes, Sir, I am quoting.

MR. DEPUTY CHAIRMAN: From where are you quoting? ...*(Interruptions)*... Even if it is a quotation.

SHRI K. PARASARAN: I am not discussing about the conduct of a Judge. I am not offending article 121. This is in the context of the appointment of Judges. We are not adjudicating jurisdiction. I know that. It is by a retired Judge. It is an open speech. If she can do it openly outside the House, I can do it inside the House.

MR. DEPUTY CHAIRMAN: What you are saying, or, what you are going to say will be part of the record of the House. Now, you are directly attacking the Collegium and say that ...*(Interruptions)*...

SHRI SUKHENDU SEKHAR ROY: He is referring to a remark of Justice Ruma Pal of the Supreme Court. It is not his words....*(Interruptions)*...

MR. DEPUTY CHAIRMAN: My point is, even if he is referring to a judgement of x or y or z, if it is derogatory to a judge, then, how can I allow? That is my point. ...*(Interruptions)*... You are on a constitutional amendment by which you want to enable the Government to bring another Bill. That is okay. You can justify that. Here the hon. Member is directly attacking the Collegium and saying that Collegium ...*(Interruptions)*... That is the point.

SHRI P. RAJEEVE (Kerala): He is quoting. ...*(Interruptions)*...

SHRI D. RAJA (Tamil Nadu): He is quoting, Sir. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: Even if it is a quotation. That is what I am saying. ...*(Interruptions)*...

SHRI ANAND SHARMA (Rajasthan): Sir, that is a psychic judgement. He is not saying anything wrong. As a Member, he has every right. This is in public domain. ...*(Interruptions)*...

SHRI P. RAJEEVE: Sir, this is in public domain. ...*(Interruptions)*...

SHRI JAIRAM RAMESH (Andhra Pradesh): Let him speak, Sir. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: See, all that is in the public domain, you cannot come and say here. ...*(Interruptions)*... Please ...*(Interruptions)*...

SHRI SUKHENDU SEKHAR ROY: It did not attract contempt of court. Why shouldn't he read it here? He is just quoting.

MR. DEPUTY CHAIRMAN: As long as it is a direct criticism of judges, and as long as it is derogatory to the Collegium, how can I allow? Collegium is a group of judges. Can I allow? ...*(Interruptions)*...

SHRI JAIRAM RAMESH: He has been a distinguished Attorney General. Let him speak. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: You are not to teach me that. ...*(Interruptions)*... That you cannot teach me. That is not the way.

DR. K. KESHAVA RAO (Andhra Pradesh): Sir, what he has said is this. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: No, no ...*(Interruptions)*...

SHRI K. PARASARAN: Mr. Deputy Chairman, Sir, I leave it at that. I leave it at that and go to the next point. I have got too many good points. Please don't bother about this.

MR. DEPUTY CHAIRMAN: Okay, leave it at that and then proceed.

SHRI K. PARASARAN: Another judge, who has been a member of the Collegium -- I am not going to talk anything derogatory; it has appeared in today's newspaper -- has said, "As the years passed, burgeoning criticisms that the present system did not remedy the drawbacks of the erstwhile mechanism have eventually become more strident. At least, in a few instances, unsuitable persons have found their way to seats of judges in the High Courts. It is, of course, a matter of relief that the number of such persons has not swelled to alarming proportions. "That was the need for this amendment so that it does not swell to alarming proportions. He further says, "At the same, it would not be true to say that no unsuitable person has reached the Supreme Court bench through the collegium system." I am not casting aspersions on judges. Here a judge who has been a member of the Collegium says, "It would not be true to say that no unsuitable person has reached the Supreme Court bench through the collegium system. The lesson to learn is that however much improvement is sought to be achieved through changes to the appointments process, the efficacy of its working depends on the vision and dedication of the persons empowered to manage the system." This system, many judges, many members of the Bar, several other people have said, has failed. Therefore, the need for this amendment. What is more to say? Let us not go into this controversy whether I am criticising a judgement or not. But I am sure, I have worked at the case law, I am not attacking the conduct of a judge and that too in the discharge of his judicial functions. I am on a system of appointment, and it can never be said to be a derogation of a judge. But I will go to the next point. What is more? They not only appropriated the entire power of appointment in themselves, which was in the Executive, which is the collective responsibility of the Council of the Ministers to the House, because the principle is, ours is a democratic sovereign, so the three limbs have to function in such important matters, namely, the Judiciary...

MR. DEPUTY CHAIRMAN: You have taken much more time.

**9.00 P.M.**

SHRI K. PARASARAN: Sir, I will take two minutes more. It is a very important issue. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: Okay. ...*(Interruptions)*... No problem, I will reduce your time and give him more time. ...*(Interruptions)*...

SHRI K. PARASARAN: Sir, I will take only two minutes. Not only the power of appointment has been taken over...

MR. DEPUTY CHAIRMAN: I will reduce your time. ...*(Interruptions)*... Please don't get angry. I only said that I will reduce his time. Please continue, Mr. Parasaran.

SHRI K. PARASARAN: Sir, I always obey the Chair. The moment you say, 'sit down', I will sit down.

MR. DEPUTY CHAIRMAN: The whole House wants you to speak. Why should I stop you? The whole House wants you to speak.

SHRI K. PARASARAN: Not only the Supreme Court appropriated the power of appointment, many of us have not noted, they have appropriated to themselves the final say in the matter of removal of judges. All of us know, how the removal of a judge starts, through a notice by 100 MPs of the Lok Sabha there or 50 MPs here. The Speaker or the Vice-President then makes a reference. The Chief Justice constitutes a Committee of a sitting Judge of the Supreme Court, a Chief Justice of a High Court and a jurist. If that Committee finds him guilty, it comes before that House or this House.

This is after an Address by both the Houses, and that too, with a special majority right enshrined under the Constitution. Therefore, it is an exercise of the constituent power. The Supreme Court says, "He cannot come by a judicial review" against the finding of the Committee. But, after both the Houses had the Addressed and the Judge is removed, the Government has the power of judicial review. Therefore, even the removal of judges, after Address by both the Houses, the Supreme Court can have a judicial review. To add a rider, against the Committee's findings, it is in a narrow area – you know what that narrow area is – the power of appointment of judges was taken over. The power of final say in removal of judges, though with Parliament, has been taken over. This is the position in which we are. And the Supreme Court, today exercises, 'extensive jurisdiction'. Therefore, it is all the more necessary that there has to be a check and balance, in appointment of Judges and that check is given by this Amendment. Sir, if you give me permission, I can take two minutes more. Otherwise, I will sit down.

MR. DEPUTY CHAIRMAN: Everybody wants you to speak.

SHRI K. PARASARAN: I do not want to disobey the Chair. I have the discipline.

MR. DEPUTY CHAIRMAN: Please continue.

SHRI K. PARASARAN: Now, one thing is very important. It consists of the Chief Justice and two Judges of the Supreme Court. And the judgement of the Supreme Court said, "If the Chief Justice is to be the Chairman, then, that is a very good safeguard. His very presence, his personality, will be a control." There are the three from the Judiciary. Then, the Law Minister. That is, the Executive must have the say. And, correctly, the Law Minister is included. The next is, which is very often argued, that the Government are litigants before the Court. This is the criticism. The fact that the Government is bound to be a litigant was known to the founding fathers of the Constitution. They gave fundamental rights under Part III and also gave Article 32. That is, State will violate our fundamental right. The Supreme Court is sentinel on the quiver to protect this right. And article 32 is a very unique provision which is nowhere in the world. It is both a right and a remedy. And the founding fathers knew it. Therefore, it is a wrong criticism to say that the Executive should not have the powers.

Now, Lord Simon said, "The power of the Court is a referral to the people. The power of the people to decide has been delegated to the Judges." This is what he said. And, therefore, people also must have a say because citizens are also parties before the Court. So, the Government, as a litigant, is represented by the Law Minister. People, who are litigants before the Court, are represented by two eminent persons. And we all know how they are to be constituted; the Bill says so. Therefore, it consists of the Judiciary, the Executive, and citizens who are also litigants. There could not have been a better position than this.

Even though I have a lot to say, I do not want to be mistaken that I am holding a low class. Somebody was remarking that I talk as if I in a low class. It was not my intention. I wanted to ensure that these Amendments are not vulnerable to any attack by the Court. That I reserve for the Bill. I thank you for the extended time.

MR. DEPUTY CHAIRMAN: Hon. Members, we had extended the time up to 9.00 p.m. I want to take the sense of the House. ...*(Interruptions)*...

SHRI D. RAJA: We will continue tomorrow.

SHRI TAPAN KUMAR SEN (West Bengal): Let us continue tomorrow. ...*(Interruptions)*...

SHRI ANAND SHARMA: It was agreed only upto till 9.00 p.m.

SHRI TIRUCHI SIVA (Tamil Nadu): The Government said that we should sit up to 9.00 p.m., and we agreed to that ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: No, it is not three hours. Out of three hours, one-and-a-half hours are already over. What is the Government saying?

SHRI PRAKASH JAVADEKAR: Sir, we can continue.

SHRI ANAND SHARMA: It was agreed up to 9 o'clock and we accepted it.

AN HON. MEMBER: Nine o'clock means 9 o'clock.

MR. DEPUTY CHAIRMAN: The Government is not saying anything.

SHRI ANAND SHARMA: Initially, the LoP had said, 'eight'.

MR. DEPUTY CHAIRMAN: The Government is keeping quiet. That is why...

SHRI ANAND SHARMA: It was decided. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: What does the Law Minister want to say?

SHRI TIRUCHI SIVA: Sir, we are very tired.

SHRI GHULAM NABIAZAD: Sir, we have decided to pass it tomorrow. Nobody is going to push it for the day after tomorrow. So we can start tomorrow, early morning and today we can have it up to 9.00 o'clock. It is enough now. Everybody is tired. Everybody is going to support this Bill. Where is the problem?

MR. DEPUTY CHAIRMAN: What does the Parliamentary Affairs Minister want to say?

SHRI M. VENKAIAH NAIDU: Sir, tomorrow is the last day. Then people will leave by 2 o'clock. What I am trying to suggest to the House is, normally on the last day, people leave in the afternoon. So if you are able to pass it before afternoon, we have no problem. Otherwise, extend the time now and then take the remaining time tomorrow. Either way, we have no problem.

MR. DEPUTY CHAIRMAN: The Government is acceptable to both suggestions, either tomorrow morning or now. In the forenoon it should be passed. If not, we have to sit further. If all of you agree, tomorrow morning it has to be passed. That means in the forenoon it has to be passed. ...*(Interruptions)*... All of you agree to that?

SOME HON. MEMBERS: Yes.

MR. DEPUTY CHAIRMAN: That is almost the decision of the House that tomorrow in the forenoon it has to be put to vote. It will be passed or not is up to you. But it will be put to vote. The Chair will see to it that it is put to vote in the forenoon itself. ...*(Interruptions)*...

SHRI P. RAJEEVE: We can skip the lunch hour, and, if the Government and the Chairman agree, we can suspend the Question Hour also. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: How much time have we spent already on this Bill? I think we need only one hour more, I think. Let me check up from the Secretariat. How much time have we spent on this Bill? I will announce that also. We need only one hour and twenty-five minutes more. One Hour and thirty-five minutes is already over. That means we can pass it in any case before 1.00 p.m. and the question will be put before 1.00 p.m. Voting will be there before 1.00 p.m. That is what I said. The House stands adjourned to meet on Thursday, the 14th August, 2014 at 1100 hours.

*The House then adjourned at seven minutes past nine of the clock  
till eleven of the clock on Thursday, the 14th August, 2014.*