

Tulsi, Shri K.T.S.

Tundiya, Mahant Shambhuprasadji

Tyagi, Shri K.C.

Vadodia, Shri Lal Sinh

Varma, Shri Pavan Kumar

Vegad, Shri Shankarbhai N.

Vijila Sathyananth, Shrimati

Vora, Shri Motilal

Yadav, Shri Bhupender

Yadav, Shri Darshan Singh

Yadav, Prof. Ram Gopal

Yadav, Shri Sharad

Yechury, Shri Sitaram

Zhimomi, Shri Khekiho

#### **NOES-1**

Jethmalani, Shri Ram

*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.*

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#### **The National Judicial Appointments Commission Bill, 2014**

MR. CHAIRMAN: Now, we take up the National Judicial Appointments Commission Bill 2014. ...*(Interruptions)*...

श्री नरेश अग्रवाल (उत्तर प्रदेश) : सर, इसके लिए कितना समय है? ...*(Interruptions)*...

(MR. DEPUTY CHAIRMAN *in the Chair*.)

SHRI P. RAJEEVE (Kerala): Sir, I want to say one thing. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: I will allow you. How much time should be allotted to this Bill? Thirty minutes or one hour? ...*(Interruptions)*...

Everybody has discussed it and everybody knows what it is. ...(*Interruptions*)... I will allow you. Mr. Minister, please move the Bill. ...(*Interruptions*)...

SHRI P. RAJEEVE: Sir, actually we have raised this issue. This is the Bill which is on the basis of Article 124A of the Constitution.

MR. DEPUTY CHAIRMAN: After the Minister moves it, I will allow you.

SHRI P. RAJEEVE: Sir, I would request you to give a ruling.

MR. DEPUTY CHAIRMAN: I will give the ruling after he moves it.

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

That the Bill to regulate the procedure to be followed by the National Judicial Appointments Commission for recommending persons for appointment as the Chief Justice of India and other Judges of the Supreme Court and Chief Justices and other Judges of High Courts and for their transfers and for matters connected therewith or incidental thereto, as passed by Lok Sabha, be taken into consideration.

Let me explain it very briefly, as I stated yesterday. As I have already explained, under Article 246 of the Constitution, this House has got complete legislative competence to pass any law with regard to List 1. List 1, Entry 77 and Entry 78, is about the composition, etc. of High Courts and also of the Supreme Court. The full legislative competence is there. Secondly, I want to convey to the House that the Constitution (Amendment) Bill has been passed. This Bill shall be sent to the President only after the requisite State Legislatures have ratified that. Thirdly, once the Constitution (Amendment) Bill comes into effect, thereafter the assent shall be taken and then it will be notified in the Gazette. Therefore, all legislative competence is there. I would request the House to take this Bill into consideration.

What is this Bill? The Bill is very simple. The Bill says that in case of the Supreme Court judges, the senior most Judge shall become the Chief Justice. In case of other judges, apart from the consideration of constitutional eligibility, while promoting judges of High Courts, apart from seniority, ability and merit will also be taken into account. In case of High Court judges, it says that the names shall be started by the Chief Justice in consultation with two judges and as many other judges as the regulations may decide. The regulation is to be framed by the Commission headed by the Chief Justice. Why do I say that? Sikkim has got three judges. Allahabad of Misraji has got 100 plus judges. The regulation can say that apart from two judges, he will also consult five to 10 judges, if the

[Shri Ravi Shankar Prasad]

number is there and eminent lawyers also. We can take a view that eminent lawyers from all the classes and communities should also be factored in by regulations. Then for my AIADMK friends and others, the opinion of the Governor and the Chief Minister must be in writing on the recommendations made by the High Court Collegium. Therefore, the Governor, in the constitutional sense, is to act on the aid and advice of the Chief Minister. The National Judicial Commission can also recommend names for a particular High Court. But there also, the views of the Chief Justice and the Chief Minister shall be taken in the same manner. Thereafter, the Commission shall recommend. I have to say two things. If two members of the Commission oppose any recommendation, then that recommendation shall not be carried. Sir, Misraji will very well know that in the Judges' case, as the nine-Judge Bench did in the Supreme Court in 1998, similarly, if two or more members of the collegium dissent, the CJI should not persist with the recommendation. Therefore, if in the collegium, two members were reluctant to recommend, the CJI was to accept. The same principle we have followed here. What I told the other House is that one is a dissenter; two are voice of reason, which must be respected.

Lastly, Sir, the President can seek a reconsideration of the recommendations made, and the collegium has to consider, in the same manner, as they did on the earlier issue. Therefore, let me go one by one. The supremacy of the Chief Justice is maintained. The supremacy of the High Court Chief Justice is also maintained, but the consultation is to be wider. The importance of the State Chief Minister is maintained. His or her view is to be taken properly in writing on the nominations made. Thereafter, the view of the Commission is also there, and, then, Sir, I would like to mention about the thinking which I described in my earlier intervention also. कमीशन किसी पार्टिकुलर हाईकोर्ट के बारे में इस बात पर विचार कर सकता है कि हमारे डेटा बैंक में इतने अच्छे-अच्छे शेड्यूल्ड कास्ट के वकीलों के नाम हैं, ओ.बी.सी. के वकीलों के नाम हैं और हमें पता है कि वे अच्छा काम कर रहे हैं। हम इनके नाम भेज रहे हैं, इन पर आप विचार करें। अब वहां से नाम आएंगे। इस तरह इन सारी चिंताओं का ध्यान रखने की काफी कोशिश की गई है। मैं सदन को बताना चाहता हूँ कि इस कमीशन के सचिवालय को मजबूत बनाने के लिए चाहे रिसर्चर्स हो, डेटा बैंक हों, इन सब के लिए हम पूरी कोशिश करेंगे। इसलिए जब हम कैबिनेट के सामने गए थे तो हमने उससे यह भी आग्रह किया था कि इसको मजबूत करने के लिए आवश्यक पर्सनल्स की व्यवस्था होनी चाहिए।

उपसभापति महोदय, बेसिकली यह पूरा बिल National Judicial Commission के बारे में है कि वह कैसे काम करेगा। मुझे दूसरी बात यह कहनी है, as I said earlier, for enacting this Bill, the Parliament has got full legislative competence, but as the Law Minister, it is my assurance to this House that this Bill shall be sent for assent to the President after the Constitution Amendment comes into effect, and thereafter, it shall be notified in the

Gazette. Therefore, all the precautions have been taken and I think, Sir, this Bill has also been brought forward after wide consultations. I think, the House may, in its wisdom, would like to pass it.

*The question was proposed.*

MR. DEPUTY CHAIRMAN: Mr. Rajeeve, do you want a ruling now?

SHRI P. RAJEEVE: Sir, I am not questioning the legislative competence of the Parliament to make rules on appointment of Judges. My point is that we are discussing a law, which is on the basis of an Article, that is, Article 124A of the Constitution. Now, the Constitution does not have this Article 124A as of now. Only after getting the ratification of fifty percent State Assemblies and getting the assent of the President, this Article 124A will become part of the Constitution. So, how can we discuss a Bill on the basis of an article which does not exist in the Constitution at present?

MR. DEPUTY CHAIRMAN: The issue raised by Shri P. Rajeeve was also raised yesterday by some other hon. Members. I am giving my ruling now on this issue. The same point was raised yesterday also by some Members that the National Judicial Appointments Commission Bill, 2014, cannot be taken up in the House for consideration and passing until the Constitution (121st Amendment) Bill becomes an Act and it would be unconstitutional to pass both the Bills together. That is the point.

After going through the records and the past precedents, I am of the opinion that it is a legal issue, on which the Presiding Officers do not give any ruling and I leave it to the wisdom of the House. Accordingly, when you discuss, you can raise the issue either way, and when the question is put forth, the House can decide. So, it is the decision of the House.

Now, the time allotted for this discussion is half-an-hour. Isn't it? So, I don't know how much time Dr. Abhishek Manu Singhvi can take.

DR. ABHISHEK MANU SINGHVI (Rajasthan): Sir, I do believe that this is the nitty-gritty; this is where the detail lies. We should have more than half-an-hour for the whole House. I would really request the Chair because both, God and the devil, lie in the details. That is the broad structure. This is the detailed one. If you want to have a meaningful discussion, we should have more time.

MR. DEPUTY CHAIRMAN: Okay, we will make it one hour.

DR. ABHISHEK MANU SINGHVI: Sir, I rise in support largely of the Bill. But I do intend to make some...

MR. DEPUTY CHAIRMAN: Just one point. I agree to one hour. But every Member should strictly adhere to the time. When the time is over, I will say, 'mike off'.

DR. ABHISHEK MANU SINGHVI: Sir, as I said, this is something on which both the God and the devil lie in the details, and this Bill details what the Constitutional structure provides for. Let me begin by congratulating the Law Minister for being the pilot on a momentous occasion, momentous for more reason than one. First of all because it is after a long time that we have brought a very substantive set of legislations dealing with the most powerful organ. Let us not kid ourselves; the Judiciary continues to be the *de facto*, most powerful organ of governance, not only having the power to interpret laws and to invalidate laws but also to invalidate even Constitutional Amendments. Within India, compared to other organs, this is the most powerful organ. And compared to its counterparts globally, the Indian Judiciary remains the most powerful. So, we are dealing with a law, dealing with the most powerful organ, the Indian Judiciary. It is also momentous because after over 20 years and after several failed attempts, we are now going through with these two Bills, most remarkably, with hundred per cent or 99.9 per cent approbation. And that is rare and remarkable momentously because you don't have your fractured mandates for ordinary Acts of Parliament. And here, you had a 100 per cent mandate for a Constitutional Amendment and, of course, also for doing it the fastest way; this is the fastest track court of less than two-and-a-half to three days over both the Lok Sabha and the Rajya Sabha, though, personally, I would have liked a little more time. Even though nobody is thinking of delay, but these are very important legislations.

Sir, I must begin by putting on record a comprehensive tribute to the Indian Judiciary. The Indian Judiciary has proven, historically, of being the bulwark of fairness, justice and objectivity in this country. That is the basis of inspiring faith, expectation, trust in the populism in India and that is no mean achievement. It has been the inventor of doctrine of 'Above God'. There are doctrines invented for the first time in this country globally and copied by other countries. And we must be proud that the Judiciary invented, although increased its powers immeasurably, the Basic Structure Doctrine. We invented in India the PIL. Our levels and scope and degree and depth of judicial review are unparalleled in any systems, civil law or common law systems. Therefore, we also do have the best and brightest in the judicial and legal sector compared to anywhere in the world. I think our Judges do dispose of within a week what other Judges dispose of in one year. Despite that, of course, we have this shameless, terrible spurge of backlog and arrears, but even then the disposal rate of our judges in a week is very high, whereas the other Judges in various countries take more than a year. Sir, if you were to ask yourself the question as to one principal reason why from a whole host of countries emerging from the 1930s to 60s, from the yoke of imperialism, - India was one out of twenty-to-thirty countries,

small and big countries, former colonies of Britain, France and Holland — India remains the only country which is a vibrant democracy. It is a remarkable achievement and what the reason is. One important reason is this bulwark of freedom, an independent judiciary. And you see the wrecks and ruins of Constitutionalism all over South Asia amongst our neighbours. You even see the wrecks and ruins of the absence of an independent judiciary amongst our more dynamic, economic neighbours, the East Asian tigers. And, I think, that is the main achievement.

[THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN) *in the Chair*.]

Before I come to the Bill, I must point out that we must remember that we are not making a change for the sake of change. What is the very brief history? The brief history is that prior to 1993, we had absolute executive primacy. But there is a very interesting conundrum. Judges, the Law Minister mentioned in his Lok Sabha speech about Judges like Shri B.K. Mukherjee from Bengal, etc. He was the only Judge who did not become a Chief Justice. Judges like Patanjali Sastri, Vivian Bose, Hidayatullah etc., were, all the product of an absolute primacy. In an interesting affidavit filed in the Supreme Court in the 90s, it was pointed out that the difference between the Executive and the Judiciary, the Chief Justice, in the appointment process, over the first fifty years of our Independence or forty-five years, was hardly in five or seven cases. So we must realize that there was a period of time when the system fell into debasement, fell down in quality, which is why from the 80s and then the early 90s we had the judges' cases, the five judges, the seven judges, the nine judges judgments, which converted Executive primacy to Judicial primacy. So from Executive primacy pre-93 to Judicial primacy from 1993-2014, we are now going, to use a economic metaphor, into a mixed economy, a mixed economy of a Judicial, Executive, citizenry mixture. It should be a real substantive change, not a new *kichuri* which doesn't function. It functions as badly as the previous one did and ultimately, that depends on how you administer it. Alexander Pope put it very well. It applies across the board although he was speaking of USA. He said, 'For forms of Government, let fools contest; whatever is best administered is best'. We have the capacity to destroy the system within a few months. We had the capacity to use the Executive primacy system much better. So it all depends on how we operate it and each time we change it, it is Newton's Law in operation. We are reacting because the other extreme has been reached in bad operation of the previous system, and I am saying this as a warning because there is no starry eyed desirability without any system. This system has to be operated very, very carefully. Now, as I come to the Bill, what was wrong with the existing system? And some of you are not lawyers, you would not have known it, you have heard it. But some of us are insiders, and I have happened to have the privilege of being an insider of that sector as well, apart from an insider of the Legislature and, to some extent, in the previous Government of

[Dr. Abhishek Manu Singhvi]

the Executive. The problems were, I will just give you a few examples and models. Why these models are important is, we have to guard against them recurring. Some of them can recur with the National Judicial Commission. Model (1) was (A) and (B) judges were together in the High Court. (A) gets promoted to the Supreme Court. (A) and (B) had problems when they were in the High Court. (A) stalls, stops and blocks the elevation of (B) in the Supreme Court. This is not an apocryphal story. We have had two very recent examples, one in the Supreme Court and one in the High Court. Example number two: (A) is the Chief Justice of a High Court. He is an average judge, not the best, but he has this huge funds available for running the legal aid or legal benefit system for Lok Adalats etc. He has impressive seminars. He has impressive functions where he invites the Chief Justices and Judges of the Supreme Court. Despite not being the best, he has a fast track passage to the Supreme Court because he is in the public eye, he is able to entertain a host of Chief Justices. This is important to give the rationale for why we are hankering for this change. Model (C) is when the Chief Justices of the Supreme Court or the Judges of the Supreme Court say that we will bring you the High Court Chief Justice up, only if you ensure that you recommend a few of our nominees for the High Court Bench. That is known as the indirect appointment process whereby the Supreme Court directly appoints a High Court Bench. These are all paradigm which some of you may not know about it, but these are the heart and soul of the problem of the previous system. Then, of course, we have the 'you scratch my back, I scratch your back' syndrome. It is the stalemate in the Collegium. I will agree to your nominee only if you agree to mine. Otherwise, I will block it. Remember, this last example is pregnant with possible recurrence in the new proposed Commission as well. We must guard against that. Incidentally, as I move on, there is one part the Law Minister of this House should think of in the future, which is left untouched and, that is, the Indian judges not only reproduce themselves—and obviously the worst part of it is the incestuous intra-breeding which we are now changing, hopefully. There is another aspect to the incestuous intra-breeding. They reproduce themselves even on every, virtually every, tribunal in this country. Perhaps, you are not aware, Sir, that there are vital important tribunals having more power than an ordinary judge may have—the head of the Commission on Telecom, which the Law Minister also holds a portfolio of and it is called TDSAT; the Competition Commission; the Consumer Forum. This has become a place where judges decide who the Chairman is. The Law Minister knows that he can't decide conclusively in most of the cases. There is a judicial element there and, I think, broad-basing should be looked at because, unfortunately—I must make it clear—all the bad examples I am giving are still in a very small minority which is why the Judiciary system is functioning. But they exist. Another bad example in the tribunal context is that if I happen to be lucky to sit with the Chief Justice in the Bench, then just before my

retirement, I am given the option of choosing the best tribunal I would like to go on. That could be the TDSAT, the Appellate Commission for Competition or anything else. But, that is a vast power which is also in the domain of the Judiciary.

As I turn to the Bill, let me start by thanking the Law Minister and the Government for, again, continuing flattery through continuing imitation. You did it partly in the Insurance Bill. You did it wholly in the Budget. Again, this is our idea, broadly our structure and imitation continues to be very flattering. But, having said that, I must also add the fact that it is regrettable that when you imitate us, when you get into Government, you walked out on largely the same Bill when you were in the Opposition. That does not mean imitation, that means hypocrisy. But, let me not get contentious because I have risen to support the Bill.

I have a few points for the hon. Law Minister. This Bill styles itself as a procedure for appointment and we treat the Constitutional Amendment, which is passed just a short while ago, as the basic substantive one. That is a cardinal error because this Bill has several, several substantive provisions. Many of them were not in our model. I am not saying it out of negativity, but I am making a constructive sort of suggestions which may impinge on the Constitution validity of this Bill in the near future. That does not arise out of fear. It arises out of good sense. This House is not afraid of passing a Bill which might be invalidated by the Judiciary, but this House can't insulate that Bill for invalidation by a hundred per cent vote. This House can insulate the Bill from invalidation, if you make a good Bill and you remove every possible weakness of invalidation.

On the Bill, you have Section 5(1). It brings in a very substantive change. I don't know if you have noticed it. It, in a sense, provides for and legitimizes a supersession by the National Judicial Commission. For the first time, Mr. Ravi Shankar Prasad and his Government have added a small four worded caveat. The National Judicial Commission shall appoint the Chief Justice of India who is always by seniority. You know there is a huge outcry when Mrs. Indira Gandhi did a supersession way back in the 70s. The supersession is directly subversive of judicial independence and judicial independence is a core part of the basic structure. Now, there are four or five words which say, 'You shall appoint the senior-most but if he is fit.' That 'but if he is fit' has not been with the Executive's mixed bag. It may have been partly a consideration of the Judiciary. Formally, every outgoing Chief Justice of India recommends his successor. But, that is a formal recommendation. If this power—and I am saying it only for a future abuse—is used by the NJC to suggest that the senior-most Chief Justice of India is not succeeded by J1, then, there is in effect supersession. Would you be able to justify the supersession by using the words 'if he is considered fit'? I doubt very much.

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Dr. Singhvi, you have got only two more minutes.

DR. ABHISHEK MANU SINGHVI: Sir, can I ask for an extension of five more minutes, with a donation of somebody? I am begging for the time.

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Because even one-minute-speakers are there!

DR. ABHISHEK MANU SINGHVI: The second one is the problem that a large, vast array of details, and you know, the God and devil, both reside in the detail, are left in the phrase 'other criteria of suitability as may be specified by regulations'. Now I bring to the attention of the House, why did we pass the Constitutional Amendment? Because the idea was that you will insulate it from invalidation by putting the principles on the highest level. Now, here the criteria, for selection, by the Commission, is not in the Constitution, is not in the Act; it is to be made, still yet to be born, through regulations made by the Commission. Will the judges consider that a violation of judicial independence, that the power to make regulations, specifying even suitability and criteria, are left to a very low level of what we call delegated legislation, neither in the parent legislation nor in the Constitutional Amendment. The 'one person veto' we have talked about. We are happy. The Congress discussed it in detail in its meeting. We spoke about it, and the Law Minister was good enough to see the sense of what we said. The 'two person veto' is already passed in the Constitutional Amendment. I would have liked a seven-member Bill, without a two-person veto. You don't have a large degree of consensus on these things. To look for a 'two-person veto' means that you must have more than four people agreeing to something. That is not going to be easy. But, you have already passed that. A better thing would have been to have no veto at all, with a seven-member Commission.

The same problem of supersession arises in the case of a High Court Chief Justice. Now, remember, in the High Court Judges' appointment, there is no concept of seniority.

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Your time is over.

DR. ABHISHEK MANU SINGHVI: But, Sir, for a Chief Justice, it is going to be very strange. Even in this High Court where I sit, and he sits and she sits, a person who is junior to me in the same High Court is liable to be appointed the Chief Justice although I am senior to him in the same High Court. This provision provides for that, I am not saying it is going to be used, but it does provide for that. So, Clause 5 (1)(2) and (3) and Clause 6 (1) and (4) have to be seen very carefully, and there, of course, the catch all, in Clause 6(8), "such other conditions for selection as regulations may determine". This is selection of the judges themselves. No criteria are put. माननीय विधि

और न्याय मंत्री जी, मैं बहुत सकारात्मक रूप से यह बोल रहा हूँ। मैं यह इसलिए बोल रहा हूँ, क्योंकि मुझे कोई संदेह नहीं है कि निकट भविष्य में जिन लोगों ने न्यायपालिका का पच्चीस, तीस वर्षों से ब्लड टेस्ट किया है, वे इतनी आसानी से यह अधिकार क्षेत्र छोड़ने वाले नहीं हैं। आपके सामने याचिका होगी, उसमें मूल ढांचे की बात होगी। ये सभी मुद्दे उस मूल ढांचे में उठाए जाएंगे और ऐसा न हो कि 100 प्रतिशत सर्वसम्मति से पास किया गया है, वह निकट भविष्य में निरस्त किया जाए। मेरा यही उद्देश्य है ...(व्यवधान)...

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Okay, thank you. You have to conclude it.

DR. ABHISHEK MANU SINGHVI: Sir, two minutes more and I am done. सर, दूसरे सदन में रोटेशन की बात हो चुकी है। मैं समझता हूँ कि उसके बारे में सोचना चाहिए था। यह 6 महीने वाला प्रावधान बहुत अच्छा है, क्योंकि हमारे देश में जहां उच्च न्यायालय के सिर्फ साढ़े आठ सौ जजेज होते हैं, उनकी नियुक्ति में कम से कम 6-6 महीने, एक-एक वर्ष का विलम्ब होता है। इतना लम्बा विलम्ब होने के कारण एरियर्स बढ़ते हैं। किसी के सेवा-निवृत्त होने के 6 महीने पहले इस बात को बिन्दु बनाना, बहुत अच्छी बात लिखी गई है। मैं इसकी सराहना करता हूँ और स्थाई रूप से एक सेक्रेटेरिएट की आवश्यकता है। माननीय विधि और न्याय मंत्री ने जो डेटाबेस की बात की है, मैं चाहूंगा कि डेटाबेस नहीं, एक बहुत व्यापक सेक्रेटेरिएट चाहिए। हमारे कुछ वकील मित्र बाहर हैं। आप पार्टी के भी वकील हैं, आप जानते हैं, उनका यह कहना है कि ये सब चीजें बेकार हैं, क्योंकि एक परमानेंट कमीशन, स्थाई रूप का कमीशन होना चाहिए। मैं इससे सहमत नहीं हूँ, क्योंकि स्थाई रूप के कमीशन का मतलब है कि सिर्फ सेवा-निवृत्त जजेज बैठ सकते हैं। ...(व्यवधान)...

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Kindly conclude.

डा. अभिषेक मनु सिंघवी : या कोई और लोग जो जजेज नहीं हैं, वे बैठें। मैं समझता हूँ कि स्थाई कमीशन तो नहीं हो सकता, लेकिन स्थाई रूप का सेक्रेटेरिएट होना चाहिए और वह व्यापक होना चाहिए, बड़ा होना चाहिए तथा कम्प्यूटराइज्ड होना चाहिए।

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Sorry; I have to call the next speaker.

DR. ABHISHEK MANU SINGHVI: Sir, I have much to say, but I am grateful for the limited time given. I would only conclude by saying. Sir, that ultimately it depends on operation, it depends on the comma and full stop, it depends on the nitty-gritty. I would be the most hurt if this excellent initiative is struck down by the courts. I don't think it will be stayed; Constitutional Amendments are not stayed so easily; but it is liable to be struck down. So, we, as a House, should exert ourselves fully to ensure, to the extent possible, nothing is foolproof, a foolproof Bill, even if it takes longer, even if it takes some more effort. Thank you, Sir.

**श्री सतीश चन्द्र मिश्रा** (उत्तर प्रदेश) : उपसभापति जी, मैं लॉ मिनिस्टर साहब को धन्यवाद और बधाई देना चाहता हूँ। मैं उनको बधाई इसलिए देना चाहता हूँ, क्योंकि जो चीज़ पिछले चौबीस वर्षों से नहीं हो सकी थी, वह चीज़ हमारे लॉ मिनिस्टर साहब के कार्यकाल में हो सकी है। जब इन्होंने कार्यभार संभाला, तो सबसे पहले यह कार्य किया। यह बहुत ही जरूरी था। ये इस बिल को लेकर आए हैं, यह इनके कार्यकाल में पारित हुआ है अतः मैं इसके लिए इनको बधाई देता हूँ। जहां तक इस बिल का सवाल है, मैं इस बिल पर ज्यादा चर्चा करने की आवश्यकता इसलिए नहीं समझता, क्योंकि पिछला जो कांस्टीट्यूशनल अमेंडमेंट बिल था, उस बिल में सारी बातें कह दी गई थीं। इससे पहले जो चर्चा हुई थी, हमने लगभग दो घंटे की उस चर्चा में भाग लिया था। हमने उस चर्चा में सारी बातें कह दी थीं, इसलिए उनको रिपीट करने से कोई फायदा नहीं है। मैं लॉ मिनिस्टर साहब से इतना जरूर कहना चाहूंगा कि आप इस समय लॉ मिनिस्टर हैं और आज आपने सदन को यह आश्वासन दिया है कि हमारी पार्टी की लीडर सुश्री मायावती जी ने जो बात रखी है कि जो एक सोशल इनइक्वैलिटी है, वह इस देश में जिस तरीके से चल रही है, हमारा जो ज्युडिशियल सिस्टम है, जहां हायर ज्युडिशियरी है, यहां चाहे कोई कोर्ट हो या सुप्रीम कोर्ट हो, वहां पर शैड्यूल्ड कास्ट का एक भी व्यक्ति नियुक्ति नहीं पा रहा है। अभी हम जिस बिल पर चर्चा कर रहे हैं, आपने उस चर्चा में इस बात का आश्वासन दिया है कि हम लोग जो प्रोसिज़र बना रहे हैं, उसके तहत आप इस बात का ध्यान रखेंगे कि इस तरीके का जो एक डिस्क्रिमिनेशन हो रहा है, वह न हो और जो अच्छे लोग उपलब्ध हैं, वे चाहे शैड्यूल्ड कास्ट/शैड्यूल्ड ट्राइब्स वर्ग, बैकवर्ड क्लास या माइनॉरिटी से हों। उनको इसमें नियुक्ति दी जा सके। अच्छा यह होता कि आप इस बिल में इस तरह के प्रावधान पहले से लेकर आते, लेकिन यदि आगे चलकर आपको यह लगता है कि इस सिस्टम में आपकी जो मंशा है, वह पूरी नहीं हो पा रही है, तो आप आगे चलकर इसको बिल में लाकर, एक मंडेटरी प्रोविज़न बना दें कि इस चीज़ का ध्यान रखा जाएगा कि इनका रिप्रेजेंटेशन जरूर होना चाहिए। यह मैं इसलिए कह रहा हूँ, क्योंकि माननीय लॉ मिनिस्टर साहब जानते हैं कि अभी जो प्रक्रिया चल रही है, उसमें एक एडवाइज़री जाती है, जो इश्यूड भी है। उसमें यह है कि आप शैड्यूल्ड कास्ट/शैड्यूल्ड ट्राइब्स वर्ग से भी नाम भेजें, लेकिन आज तक उस पर कोई कार्रवाई नहीं हो पाई है, भेजने की बात तो दूसरी है। यदि नाम भेजे भी जाते हैं तो उनकी नियुक्ति नहीं होती है। यह एक बहुत ही गंभीर विषय है। इसके बारे में हमने कल भी चर्चा की थी। आज हमारी पार्टी की लीडर ने आपके सामने यह बात रखी है तो आपने आश्वासन दिया है। उस आश्वासन को मानते हुए इस कैबिनेट के साथ कि इसको एप्लाइ किया जाएगा, मैं इसकी प्रशंसा करूंगा। In fact, it will be operated upon and acted upon while the appointments are made with a further caveat that the present Government should ensure to us that the present Law Minister will remain Law Minister for five years, at least, so that in his period, we see that these appointments are done and this procedure is followed. I end by saying – Mr. Abhishek Manu Singhvi is not here- उन्होंने एक बात कही थी कि खिचड़ी वर्क नहीं करती है। मैं सिर्फ इतना बताना चाहता था कि जब शरीर में कोई प्रॉब्लम या परेशानी होती है तो डॉक्टर्स खिचड़ी खाने की एडवाइज़ देते हैं और कहते हैं कि खिचड़ी खाने से आपका शरीर स्वस्थ हो जाएगा, इसलिए मैं नहीं समझता

कि यह वर्क नहीं करेगा, यह वर्क करना चाहिए। With all those hopes, on behalf of our party, we are supporting the Bill.

SHRI SUKHENDU SEKHAR ROY (West Bengal): Sir, I rise to support this Bill on behalf of All India Trinamool Congress in as much as this Bill seeks to uphold the balance of power between the Executive and the Judiciary as enshrined in our Constitution. Looking at the Bill, Sir, I have two-three points to make very quickly. In Clause 5, sub-clause 2, in the second proviso, the Bill says that 'if two members do not agree'... What will happen and what will be the consequences? There would be a logjam. Nothing has been said about as to what will be the consequences. In the process, the majority view will be scuttled. Secondly, Sir, the Central Government has been given a certain time-limit to intimate the vacancies. But the National Judicial Commission has not been given any definite time frame within which it will have to make its recommendations. So, I suggest that the National Judicial Commission should make its recommendations within three months or so or whatever the Government deems fit and proper. This was clause 6, sub - clause 6.

My next point is that in clause 6, sub-clause (5), the words are 'The Commission may recommend...' Here, I think, the word 'may' should be replaced by the word 'shall' because it is the duty of the Commission to recommend, while the word 'may' sometimes may be 'may not'. So, the Judicial Commission cannot withhold its recommendations for indefinite period. That is why I am suggesting that there should be a time-frame for the Judicial Commission and within that period the Judicial Commission will have to make its recommendations, otherwise, what we have experienced, the appointment of Judges is kept, on hold for years together. There are number of vacancies in different High Courts of the country. But, for years together, the vacancies are not filled.

So, Sir, this was my humble suggestion on behalf of my party. I must congratulate the Law Minister for the pain and trouble he has taken to bring forward this Bill. He has tried to give a broader consensus before drafting the Bill. As he told, he have had consultations with eminent Jurists, different stakeholders. Certain recommendations were given by our Standing Committee also. One recommendation was, as one of my AIADMK friend said in the morning, that there should be a State Appointment Commission. Though it is futile to discuss it now because the Constitutional (Amendment) Bill is going to be passed, yet the Government should keep it in mind for future.

Thank you very much.

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Thank you for confining yourself to the time limit.

Now, Dr. Anil Kumar Sahani. You have been allotted three minutes.

**डा. अनिल कुमार साहनी (बिहार) :** उपसभाध्यक्ष महोदय, आपने राष्ट्रीय न्यायिक नियुक्ति आयोग जैसे महत्वपूर्ण विषय पर बोलने के लिए मुझे समय दिया, इसके लिए मैं आभार व्यक्त करता हूँ। साथ ही मैं माननीय मंत्री आदरणीय रवि शंकर प्रसाद जी का स्वागत करता हूँ कि उन्होंने पहले से हम लोगों की जो चिर-प्रतीक्षित मांग थी, उसको स्वीकार किया। जब सन् 1977 में कर्पूरी ठाकुर जी बिहार के मुख्य मंत्री बने थे, तो वहाँ उन्होंने सबसे पहले नौकरी में आरक्षण देने का काम किया था। सन् 1989 में जब वी.पी. सिंह जी भारत के प्रधान मंत्री बने थे, तो उन्होंने इस देश को मंडल कमीशन देने का काम किया था। रवि शंकर जी, आज उसी कड़ी में आपका नाम भी जुड़ने जा रहा है, क्योंकि आप भी ओ.बी.सी., मोस्ट बैकवर्ड, दलित, शोषित, उपेक्षित, शैड्यूल्ड कास्ट्स और शैड्यूल्ड ट्राइब्स को इस विधेयक के माध्यम से हिस्सेदारी देने जा रहे हैं। यह एक सराहनीय काम है। आप भी उसी धरती से उपजे हैं, जहाँ से जे.पी. आन्दोलन उपजा था। आप जे.पी. आन्दोलन की देन हैं। जो गरीब, गुरबा, शोषित, उपेक्षित हैं, उनके घरों में भी न्याय पहुंचे, इसके लिए जे.पी. आन्दोलन ने संघर्ष किया। आज देश में माओवाद और नक्सलवाद क्यों पैदा हो रहा है, क्योंकि समय पर न्याय नहीं मिल पाता है। समय पर न्याय मिले, इसके लिए आप एक आयोग बना रहे हैं। मैं अपने दल की ओर से आपका हार्दिक स्वागत करता हूँ और आपको हार्दिक बधाई देता हूँ।

साथ ही, हमारे एक साथी ने कहा है कि पैराग्राफ 6 में यह दिया गया है-

"The Commission shall not recommend a person for appointment if any two Members of the Commission do not agree for such a recommendation." यह इस लोकतंत्र में सरासर बेईमानी है। जब इस देश में हर चीज बहुमत के आधार पर तय हो रही है, तो अगर इनमें से दो व्यक्ति ही कह देंगे कि यह व्यक्ति जज बनने के लायक नहीं है, यह व्यक्ति रिकमेंड होने लायक नहीं है, तो यह सरासर गलत है। इसमें ऐसा किया जाना चाहिए कि यह बहुमत के आधार पर तय होगा। इस आयोग के जितने मेम्बर्स हैं, इसमें बहुमत के आधार पर निर्णय होना चाहिए। इसमें हो सकता है कि किसी गरीब, गुरबा व्यक्ति का रिकमेंडेशन होना हो और अगर दो व्यक्ति न कह दें, तो उसका रिकमेंडेशन नहीं होगा। आप यहां से ओ.बी.सी., शैड्यूल्ड कास्ट, शैड्यूल्ड ट्राइब के अच्छे-अच्छे वकील की सिफारिश भेजिएगा, लेकिन अगर दो व्यक्ति कह देंगे कि इस व्यक्ति का नाम वहां नहीं जाना चाहिए, तो वह उसी जगह छंट जाएगा। मैं आपसे निवेदन करूंगा कि आप इसमें सुधार करें और इसे बहुमत के आधार पर करें। जजेज की नियुक्ति के लिए जो आयोग बनने जा रहा है, उसमें हर वर्ग के लोगों का प्रतिनिधित्व होना चाहिए। इसमें हर वर्ग को प्रतिनिधित्व न देकर और जिस प्रकार केवल दो व्यक्ति किसी के नाम पर विचार न करने के लिए कह सकते हैं, इससे आने वाले दिनों में आपको बहुत दिक्कत का सामना करना पड़ेगा।

अभी हमारे मिश्रा जी ने कहा कि इसके लिए नियम हैं, लेकिन वे छंट जाते हैं। इसमें जब तक उन व्यक्तियों का प्रतिनिधित्व नहीं होगा, ओ.बी.सी. का प्रतिनिधित्व नहीं होगा, एस.सी./एस.टी. का प्रतिनिधित्व नहीं होगा, तब तक हो सकता है कि वहां पर उनकी सिफारिश ही न जाए। आप ओ.बी.सी., शैड्यूल्ड कास्ट्स/शैड्यूल्ड ट्राइब्स के बड़े-बड़े वकीलों के नाम देख लीजिए, वे भी जज नहीं बन पाए। इसीलिए मैं आपसे निवेदन करना चाहता हूँ कि आप यह जो

आयोग बनाने जा रहे हैं, आप इस आयोग में ऐसे वर्गों का प्रतिनिधित्व करने वाले लोगों को भी सदस्य बनाएं। इन्हीं चन्द शब्दों के साथ मैं पुनः आपको हार्दिक बधाई देता हूँ। धन्यवाद।

THE VICE-CHAIRMAN (DR. E.M. SUDARSANA NATCHIAPPAN): Thank you for confining to the time-limit.

SHRI A. NAVANEETHAKRISHNAN (Tamil Nadu): Mr. Vice-Chairman, Sir, I thank our hon. Law Minister for making it very clear that the Governor has to act on the aid and advice of the Council of Ministers.

(MR. DEPUTY CHAIRMAN *in the Chair*.)

So, the Governor's views means the views of the Council of Ministers. My humble request to the hon. Law Minister would be that the views of the Governor and the views of the hon. Chief Minister must have the binding force. This is my humble request, my Lord. (*Time-bell rings.*) Sir, I would like to draw the kind attention of the hon. Law Minister to clause 5 (2), which says, "Provided that while making recommendation for appointment of a High Court Judge, apart from seniority, the ability and merit of such Judge shall be considered." I think in place of 'High Court Judge', it must be 'Supreme Court Judge'. Because clause 5 deals only with the Supreme Court Judge. This is subject to correction and approval of the hon. Law Minister. Thank you, Sir.

MR. DEPUTY CHAIRMAN: Now, Shri K.N. Balagopal. You have only two minutes.

SHRI K.N. BALAGOPAL (Kerala): Sir, I congratulate the hon. Minister for bringing forward this Bill within such a short time span. But I fear even after the tricky ruling that the Presiding Officers will never go into the legal details, some issues may arise later because the Constitutional (Amendment) Bill is formally not yet finalized. So, this is one thing I want to say, Sir. Earlier, when my friend, Shri P. Rajeev, spoke, he also mentioned about this. It should be a Commission for ensuring the quality of the judicial system in the country and for inquiring the misbehavior of the judicial officers in the country. Sir, about the public domain, there should be a provision for notifying the vacancies. Now, this is a private business because through some consultation, names will come. So, it should be notified and the people should get the chance, which means the people who are eligible should get the chance to apply for the post.

Then, I come to the Tribunal Judges. A lot of Tribunal Judges are there. High Court Judges, the Supreme Court Judges, same category of judges are there. They should also come under the purview of this. Then, clause 5(1) which deals with the procedure for selection of Judge of the Supreme Court says, "The Commission shall recommend for

[Shri K.N. Balagopal]

appointment of the senior most Judge of the Supreme Court as the Chief Justice of India if he is considered fit to hold the office." 'If he is considered fit to hold the office' is a subjective aspect. If the Commission thinks that he is not fit to be the Supreme Court Chief Justice, then, without any proper criterion, they can decide that he should not be a Judge. So, the senior most Judge in the Supreme Court cannot be the Chief Justice. So, we have to clarify that aspect through some regulation or something; otherwise, it will be misused. (*Time-bell rings*)

Then, with regard to veto power, two Judges can veto. There are some other issues and concerns that other Members have raised; I also join with them.

With regard to Bar Council membership, hon. Member, Shri Ram Jethmalani, also spoke here. The Bar Council should also be represented in the Commission. These are my points, Sir.

**श्री नरेश अग्रवाल (उत्तर प्रदेश) :** माननीय कानून मंत्री जी, पेशे से मैं भी वकालत करता हूँ। यह ठीक है कि मैंने बहुत दिनों से अदालत जाना छोड़ दिया है। मैं जिस समय डिस्ट्रिक्ट कोर्ट में वकालत करता था, 1972 से 1980 तक, उस समय ऐसे जजेज़ होते थे कि अगर जिरह या बहस में कहीं भी हम लोग गलत हो जाते थे, तो वे खुद बताते थे कि आप इस लाइन पर चलिए। लेकिन आज जो आपने फास्ट ट्रैक या तेज वाला सिस्टम किया है, उसने कहीं न कहीं वकालत पर उंगली उठाई है। एक जमाना था कि एक निर्दोष को बचाने के लिए अगर दो दोषी भी छूट जाते थे, तो उसको जजमेंट कहा जाता था, लेकिन आज तो एक दोषी को फंसाने के लिए दस निर्दोषों को भी सजा दे दी जाए, तो उस पर सी.आर. अच्छी लिखी जाती है। मैं आपसे कहूंगा कि हाई कोर्ट का जज बनने में डिस्ट्रिक्ट जजेज़ का जो कोटा है, वह बहुत कम है। आप देखिए कि हर जगह प्रमोशन में, आई.ए.एस. में भी 50-50 परसेंट का कोटा होता है, लेकिन डिस्ट्रिक्ट जजेज़ के प्रमोशन का हाल बहुत बुरा है। वे लोग हाई कोर्ट के जज बनते-बनते 60 साल की उम्र क्रॉस कर जाते हैं। उनको अपोर्चुनिटी नहीं मिलती है। तो मैं पहली बात आपसे यह कहूंगा कि उनका कोटा बढ़ाया जाए, क्योंकि वे लोग तजुर्बे से आते हैं, योग्य हो कर आते हैं, नीचे से जिन्दगी के बहुत साल गुजार कर आते हैं।

दूसरा, आपने जो सिस्टम बनाया है, वह ठीक है। हम इसका स्वागत करते हैं। लेकिन मैं आपसे कहता हूँ कि आप हाई ज्युडिशियरी सर्विस एग्जाम क्यों नहीं लागू कर देते हैं? आप एग्जाम लीजिए और आप जो कमिशन बना रहे हैं, वह एग्जाम पास होने वालों को enlist करे, उनका गाइडलाइन बनाए और उनमें से बनाकर यह काम करे, तो कहीं उँगली नहीं उठेगी। क्योंकि जितने योग्य वकील होंगे, वही हाई ज्युडिशियरी सर्विस एग्जाम में पास होंगे और उसके माध्यम से आपको देश में, आप जो कह रहे थे कि अय्यर टाइप के जज क्यों नहीं मिलते हैं, आप जो नाम ले रहे थे, उस टाइप के जज मिलेंगे।

मुझे आपसे एक और बात कहनी है। हाई कोर्ट के जजेज पर इस कारण उँगली उठती है कि तमाम जजेज के बेटे उसी कोर्टस् में या उसी हाई कोर्ट में प्रैक्टिस करते हैं। श्रीमन्, हम इसे रोक नहीं सकते। अगर नेता का बेटा नेता है, तो वकील का बेटा वकील बनेगा और डॉक्टर का बेटा डॉक्टर बनेगा। तो जज साहब भी क्या कर सकते हैं? लेकिन कहीं न कहीं इसमें उँगली उठने लगती है। यह ठीक है कि वह लड़का अपने पिता की कोर्ट में नहीं जा सकता है, लेकिन यह भी एक जो सिस्टम है, उसमें उँगली उठती है। ...**(समय की घंटी)**... सर, अब मैं खत्म कर रहा हूँ। इस सिस्टम को आप कैसे ठीक करेंगे, इस पर भी आपको एक गाइडलाइन बनानी चाहिए।

मैं अंत में इतना कहूँगा कि पी.आई.एल. के लिए भी आपको गाइडलाइन बनानी चाहिए। आज अगर किसी नाली में पानी बह रहा है, तब पी.आई.एल., चौराहे पर गाड़ी खड़ी है, तब पी.आई.एल., तो फिर सरकार किस बात की है? यह जानते हुए कि कुछ लोग पी.आई.एल. के प्रोफेशनल हो गए हैं और पी.आई.एल. के माध्यम से वे जो कर रहे हैं, वह किसी से छिपा नहीं है। तो मैं यह कहूँगा कि अगर आप सिस्टम में बदलाव चाहते हैं, अगर आप सिस्टम से करप्शन हटाना चाहते हैं और अगर आप वाकई लोगों को जस्टिस दिलाना चाहते हैं, तो कम से कम इस पी.आई.एल. पर भी विचार कर लें, जिससे कि देश को सही रूप मिल सके और लोगों को सही न्याय मिल सके। बहुत-बहुत धन्यवाद।

MR. DEPUTY CHAIRMAN: That point is very correct. Now, Shri Bhupinder Singh. Your time is only two minutes.

SHRI BHUPINDER SINGH (Odisha): Mr. Deputy Chairman, Sir, I would like to congratulate the Law Minister. The premier duty of every Parliamentarian is to make law and to make legislation. Sir, I think, the hon. Minister and the House should not feel shy that the amendment of the Constitution is with the requirement of time. We are in the 21st Century. The time is going very fast. We have to cope with the time. Now what you like, the Government likes or I like or any other person likes is not important. For us, in a democracy what is more important is, what the people want, what is the people's perception outside about the Judiciary or about our activities. That is more important.

Sir, I have very less time. So, I would just submit before the Law Minister a couple of things. रवि शंकर प्रसाद जी, मैं आपसे निवेदन करूँगा कि लोअर कोर्टस् में बहुत से कॉम्पिटेंट वकील हैं। आप भी एक वकील हैं। मैं भी उसी प्रोफेशन से आया हूँ। आप जानते हैं कि वहां पर डिस्ट्रिक्ट लेवल पर जो एडवोकेटस् हैं, वे क्रॉस-एग्जामिन करते हैं। हाई कोर्ट और सुप्रीम कोर्ट में आने पर वह मौका नहीं मिलता है, इसलिए उसकी तरफ भी ध्यान देना है। जो प्रेजेंटली एग्जिस्टिंग सिस्टम है कि केवल हाई कोर्ट में जो प्रैक्टिस करता है, वही हाई कोर्ट का जज बनेगा, तो लोअर कोर्ट से भी या डिस्ट्रिक्ट कोर्ट से भी अच्छे वकील हैं उनको भी उसमें लाइए। यह सिर्फ मेरा ही निवेदन नहीं है, बल्कि पूरे देश की आवश्यकता है, ऐसा सब चाहते हैं।

इसके साथ ही मैं आपसे यह निवेदन करूँगा कि जो शैज्यूल्ड कास्टस्, शैज्यूल्ड ट्राइब्स और जो बैकवर्ड कास्टस् हैं, इस मुद्दे पर बहुत चर्चा हो चुकी है। मैं आपसे निवेदन करूँगा कि

[Shri Bhupinder Singh]

अपने कमिटमेंट पर आपने जिस हिसाब से हाउस को आज कन्वेंस किया है, मुझे उम्मीद है कि आप उस पर खरे उतरेंगे। ...**(समय की घंटी)**... मैं उम्मीद करता हूँ कि उसको ध्यान में रखते हुए आप इसमें उनको भी मौका देंगे। धन्यवाद।

MR. DEPUTY CHAIRMAN: Now, Shri D. P. Tripathi. Your Party time is one minute. You may take two minutes; only two minutes.

SHRI D.P. TRIPATHI (Maharashtra): Thank you, Sir. I would abide by the time.

Sir, I first congratulate the hon. Law Minister for restoring the law in the appointment of Judges, because nowhere in the world except India, Judges appoint Judges. Therefore, this collegium system is being done away with and I welcome the Law Minister and the Government for this endeavour.

Sir, the point that I wanted to make has been made by the hon. Member, Shri Sukhendu Sekhar Roy. When the Government is to advance the Commission six months in advance about the possible vacancies, the Commission should not take more than 90 days in recommending the appointment of Judges. There should be a time limit.

Secondly, a point was made by hon. Member, Shri Naresh Agrawal, that the District Courts have many experienced lawyers. In appointments, the provision is mentioned in this Judicial Commission that the Commission will pick up the names once they know about the vacancy. If there is a Commission for Appointment, why cannot there be application? There should be a provision for people who can give their applications from District Courts onwards. And, therefore, it is for the Commission to choose, to select the proper kind of persons. I must mention one anecdote, told to me by one of the distinguished lawyers of the Allahabad High Court, late Shekhar Sharan. He told me an anecdote about Sardar Patel. A lawyer from Allahabad High Court went to Sardar Patel and said that he should be made a Judge of the High Court. The great Sardar looked at him and said, "Judgeship is neither sought nor requested for. The time for your appointment is over. You can leave now." So, this was the standard and approach as far as the appointment of Judges is concerned, and that approach should be restored.

Sir, in conclusion, I must say — this is not to dishonour the lawyers; I have great regard for lawyers —that even among the lawyers, even among the judicial fraternity, there are all kinds of people. Therefore, without saying much, I would just quote an Urdu couplet about lawyers, which was mentioned by the late Kushwant Singh, who was a lawyer himself. He quoted this Urdu couplet, which means that when the lawyer was born, the *Satan* said, 'I am thankful, God; you have blessed me with a progeny!'

"पैदा हुआ वकील तो इबलीस ने कहा,  
अल्लाह ने आज हमको बाऔकात कर दिया।"

Thank you, Sir.

MR. DEPUTY CHAIRMAN: Thank you. Now, Shri K.T.S. Tulsi. Tulsiji, I know you are a legal luminary, but you have only two minutes. You can speak in two minutes. There are three-four Members. Everybody must stick to two minutes.

SHRI K. T. S. TULSI (Nominated): Sir, we want to say that the real issue in the matter of appointment of Judges is not who will appoint, but how we will appoint. And, there needs to be transparency, there needs to be wider consultations, in the matter of establishing data. The Law Minister was saying that there will be a pool of Judges for the whole country. Now, even at that stage, there could be some mechanism through which the Bar can be consulted, or the Bar Council can be consulted, because we know the quality of Judges better; we appear before them. Just as they know about our ability or lack of it, we also know about the level which they possess. And I would commend to this House the American system whereby the name is proposed by the Attorney General. The Attorney General sends the name to the President. The President first sends that to the FBI and another one to the American Bar Association. The American Bar Association considers the validity of that name. They put up ballots in every State Supreme Court. In those ballots, there are three options recommended, strongly recommended, not recommended. In 230 years, there has not been one appointment in the United States where the Bar has not recommended the proposal and not endorsed it. There should be some process and consultation. The Bar can summon the nominees, can cross-examine them, can find out about their integrity. So, I believe that eventually we must have a mechanism where we can broaden the conspectus of examination of the suitability of Judges.

MR. DEPUTY CHAIRMAN: Shri K. Parasaran, I know you are a luminary, but I am constrained by the time limit.

SHRI K. PARASARAN (Nominated): Sir, I only say that I support the Bill.

MR. DEPUTY CHAIRMAN: You can take two minutes.

SHRI K. PARASARAN: No, I am happy. I don't want to add anything.

MR. DEPUTY CHAIRMAN: There are two minutes for you. I feel guilty. ...*(Interruptions)*... There are two minutes for you. I feel guilty. ...*(Interruptions)*...

SHRI K. PARASARAN: Give it to somebody else.

MR. DEPUTY CHAIRMAN: Okay. Now, Shri D. Raja; you have only two minutes.

SHRI D. RAJA (Tamil Nadu): Sir, my congratulations to our Minister, Shri Ravi Shankar Prasad. While supporting the Bill, I share the two concerns expressed by many of our colleagues. One, about the tenability of this Bill. Second, about the procedure for selection of Judge of High Court, that is, clause 6(6). Hon. Minister may clarify these two. Then, Sir, in this regard, I would like to ask one question from the hon. Minister. The Constitutional Amendment in 1977 in Article 312 qualified to get all-India Judicial Service. It is mentioned under Article 312 (3) that Judicial service shall not include any post inferior to that of a District Judge. It means that there should be a separate selection process for the District Judges. I want the hon. Minister to respond because it gives an opening for you to get representations from diverse cross-sections of our society. This is very important. If not now, in future, the Government will have to address this issue and question. Having said that, I once again congratulate you for taking this initiative.

MR. DEPUTY CHAIRMAN: Even D. Raja confined to the time! That is a revolution.

SHRI NARESH AGRAWAL: Sir, D. Raja means 'Disciplined Raja'.

MR. DEPUTY CHAIRMAN: Now, Shri Tiruchi Siva; you have two minutes.

SHRI TIRUCHI SIVA (Tamil Nadu): Sir, the Law Minister in his reply to a Starred Question in the Lok Sabha on 11th August, 2014 stated: There are more than 250 vacancies of High Court Judges which have not been filled. I think the Bill, which you are introducing, once comes into effect, these things will not be a disturbance. Sir, there are increasing number of litigations — maybe lakhs in the Supreme Court and millions in the High Courts. These litigations are because of the vacancies in the Courts. I think the Judicial Appointments Commission will take care of that. I have just one more observation to make. Why is it an imperative need for bringing in this Bill? According to a Report by the United States Institute of Peace, the system of judicial self-appointment is seen as providing very little accountability. Many of these judiciaries have become extensively involved in politics in ways that can undermine their own legitimacy. So, Sir, I think that it is a right move. It is the need which we have felt for quite a long time. I would like to appreciate the Law Minister and his team in the Ministry. Sir, in the absence of the LOP in the Lok Sabha, he said, 'the leader of the single largest party'; so also, Sir, 'Governor may be consulted' is substituted with 'eliciting views of the Chief Minister and the Governor.' That is to be appreciated. I thank him. I think, it is a very important Bill.

MR. DEPUTY CHAIRMAN: Now, Shri Anil Desai. You have two minutes.

SHRI ANIL DESAI (Maharashtra): Whatever minutes are left by others ...*(Interruptions)*... I am the last speaker, Sir.

MR. DEPUTY CHAIRMAN: No, no. I cannot do that. So many minutes are left but you have only two minutes.

SHRI ANIL DESAI: Mr. Deputy Chairman, Sir, first of all, I thank you ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: No, no. ...*(Interruptions)*... You speak. Your time will be lost. It has already started.

SHRI ANIL DESAI: Sir, at the outset, let me congratulate the hon. Law Minister, Ravi Shankar Prasadji, for having this National Judicial Appointments Commission Bill, 2014 in place. I am confident that the new system, that is, the National Judicial Appointments Commission will stand the test of time, and prove, beyond doubt, to be the best commission ever in selection of meritorious judges of Supreme Court and the High Courts, on whom the people of India repose their faith for delivery of justice.

Sir, the system which was prevailing prior to 1993, where the Executive supremacy or primacy was there, and, which had the deficiency and defects in it, was replaced by the Judicial Collegium system. From 1993 onwards, after this Collegium system was put in place, seeing the way things have happened, people have started thinking whether to continue reposing their faith in the judiciary. There was a huge question mark on the judicial system itself. To replace that, now the Judicial Appointments Commission Bill, which is broad based, has come in. Here, I would say only one thing. In the procedure for selection of High Court Judges, it says that the Commission shall elicit, in writing, the views of the Governor and the Chief Minister of the State concerned, before making such recommendation in such a manner as may be specified. This needs a little clarification by the Law Minister.

Secondly, the vacancies in various courts which are coming up, should be identified beforehand so that the vacancies are not piled up. Another thing is relating to the data base of the Judges. Sir, it should be there not only of Judges in the High Courts but also of Judges in the District courts or the lower courts, where really talented Judges are working because if their data base is also in place, then, more transparency and accountability will be there. With these words, I support the Bill. Thank you.

श्री नरेश अग्रवाल : उपसभापति जी, मेरी एक आपत्ति है। इस बिल के लिए आधा घंटे का समय तय हुआ था, लेकिन इस पर समय बढ़ता जा रहा है। हमारी फ्लाइट्स मिस हो रही हैं। ...*(व्यवधान)*...

4.00 P.M.

MR. DEPUTY CHAIRMAN: What do you want? ...*(Interruptions)*...

श्री नरेश अग्रवाल : लॉ मिनिस्टर बताएं कि हम लोग कब तक बैठेंगे? हम कितनी फ्लाइट छोड़ेंगे? इस बिल पर चर्चा साढ़े 3 बजे समाप्त हो जानी थी, लेकिन ऐसा लग रहा है कि यह चर्चा तो शाम 6 बजे तक चलेगी। ...*(व्यवधान)*... लॉ मिनिस्टर जवाब दें और आप इसे पास करा दें।

श्री उपसभापति : नरेश जी, मेरे पास श्री वी.पी. सिंह, श्री जयराम रमेश और प्रो. सोज के नाम हैं। इन्हें दो मिनट और एक-एक मिनट बोलना है। ...*(व्यवधान)*... Why not? ...*(व्यवधान)*... आज साढ़े 4 बजे के पहले सारा बिजनेस समाप्त हो जाएगा। ...*(व्यवधान)*... अरे, आपको कहां जाना है? मुझे तो केरल जाना है।

श्री नरेश अग्रवाल : मेरी पार्टी के बहुत से मेम्बर्स जाना चाहते हैं, हम उन्हें बिल के लिए रोक रहे हैं, लेकिन यह कब तक चलेगा? हम कितनी फ्लाइट्स और छोड़ेंगे? ...*(व्यवधान)*... ठीक है, आप नाराज मत होइए।

SHRI V.P. SINGH BADNORE (Rajasthan): Mr. Deputy Chairman, Sir. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: Okay, Mr. V.P. Singh Badnore, ...*(Interruptions)*... So, you do not speak. ...*(Interruptions)*... Mr. Jairam Ramesh. ...*(व्यवधान)*... आप नाराज मत होइए, बैठिए।

SHRI JAIRAM RAMESH (Andhra Pradesh): Sir, I do not want to speak but I just want to put two questions to the hon. Law Minister. My first question is whether the activities of the Commission and the selection process for the eminent persons will be subject to the RTI or not. That is my first question. My second question is relating to the expression 'eminent persons'. Will the domain as to who constitutes 'eminent persons' be restricted to the legal fraternity or will it also extend to professions outside law? These are my two questions.

MR. DEPUTY CHAIRMAN; Thank you very much. Now, Prof. Soz. There is only one minute for you.

PROF. SAIF-UD-DIN SOZ (Jammu and Kashmir): Sir, it is so kind of you that you have allowed me. What prompted me to speak out of turn is a situation of my mind that I must congratulate the hon. Law Minister as it is a celebration. I want to remind this august House that we have been together irrespective of our political affiliations for comprehensive judicial reforms. I am a layman; I am not a lawyer. Today, it is a major step towards that. But there have to be comprehensive judicial reforms. My Private Members'

Bill came here for discussion and Members, cutting across party lines, supported that. The then Law Minister, for whom it is a celebration, Arun Jaitleyji, came to my seat and said, 'kindly don't press it because there is harmony in the House'.

MR. DEPUTY CHAIRMAN: Now, you can support.

PROF. SAIF-UD-DIN SOZ: No, no. The remark he made was – I don't have papers, I am speaking from my memory — 'next week or within ten or fifteen days, we shall get the Bill'. *(Time-bell rings)*

MR. DEPUTY CHAIRMAN: Okay, okay.

PROF. SAIF-UD-DIN SOZ: So many years have passed. Now, through you, Sir, I congratulate the hon. Law Minister.

MR. DEPUTY CHAIRMAN: It is better late than never.

PROF. SAIF-UD-DIN SOZ: He has come forward for comprehensive judicial reforms. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: That is okay. ...*(Interruptions)*... Now, Message from Lok Sabha.

PROF. SAIF-UD-DIN SOZ: The retiring Chief Justices ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: Okay. Sit down. ...*(Interruptions)*... Mr. Soz, please sit down. ...*(Interruptions)*... Please sit down. ...*(Interruptions)*...

PROF. SAIF-UD-DIN SOZ: Therefore, for comprehensive judicial reforms ...*(Interruptions)*... For this major step, I congratulate the Government.

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## MESSAGE FROM LOK SABHA

### The Apprentices (Amendment) Bill, 2014

SECRETARY-GENERAL: Sir, I have to report to the House the following message received from the Lok Sabha, signed by the Secretary-General of the Lok Sabha:-

"In accordance with the provisions of rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose the Apprentices (Amendment) Bill, 2014, as passed by Lok Sabha at its sitting held on the 14th August, 2014".

Sir, I lay a copy of the Bill on the Table.

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