

**The National Judicial Appointments
Commission Bill, 2014 – Contd.**

SHRI RAVI SHANKAR PRASAD: Sir, I am grateful to all the hon. Members who have spoken substantially in support of the Bill. I am deeply touched by the kind words many of them have spoken about me.

MR. DEPUTY CHAIRMAN: All of them congratulated you.

SHRI RAVI SHANKAR PRASAD: Yes, Sir. I am deeply grateful and very, very profoundly touched. Sir, I know the pressure on time, but I will very quickly go to the point straightaway. I don't think Mr. Abhishek Manu Singhvi is here. His first objection was the likely supersession about the senior-most Judge as the Chief Justice because it says, 'if found fit'. I would like to inform him and the House that it is not my invention. It is there in the Memorandum of Procedure prepared in consultation with the Supreme Court since 1998 that the senior-most Judge, if found fit, shall be appointed as the Chief Justice. And this whole, apprehension that the two juniors will conspire to deny him, there will be Law Minister, the eminent persons are there to consider this. Therefore, I think, the same is there. He should not at all have any apprehension. He talked of regulations. Sir, again, I would like to tell the House the eligibility of a Judge for the Supreme Court is under Article 124(3). The eligibility of a High Court Judge is under Articles 271 (2) and (3). That is the Constitutional eligibility, Mr. Roy will know it. That is the eligibility which the Commission has to take into account. But how shall they recommend and what procedures will be followed will be in regulations. And who will frame the regulations? The Commission itself, headed by the Chief Justice and two senior-most Judges, will frame them. Mr. Abhishek said that the Supreme Court may strike it down. If the Supreme Court will strike down a regulation by a Commission headed by the Chief Justice, of which the two senior-most Judges are the Members, what do can I do? Therefore, I am surprised. Again, I say we have taken the maximum care to make it as flawless as possible and I think that is very clear. We should not be a little troubled about that.

Mr. Sukhendu Sekhar Roy talked of two members; Mr. Balagopal also talked of two members. Sir, why two members? Let me repeat, it is something where we are dealing with the appointment of Supreme Court and High Court Judges, not of clerks or lower-level grade officers, one of the highest Constitutional office in the country. Let us trust the element of maturity and decision-making of people at that level. And, as I said in the other House, if one is a dissenter, two is a voice of reason. This is not my invention. I would again like to read from the Supreme Court Judgement in the collegium case, 1998. And this is what was said by how many Judges? This was said by 1, 2, 3, 4, 5, 6, 7, 8, 9. Nine Judges said, "Similarly, if two or more members of the collegium dissent, the CJI should

not persist with the recommendation.” ...*(Interruptions)*... I agree with you there, and I am telling you a healthy balance has been ensured in the whole Commission and the Act which we have framed. Sir, let me share with this House today.

SHRI P. RAJEEVE: That is of three members or five members?

SHRI RAVI SHANKAR PRASAD: That was five.

Sir, let me share with this House. I just talked to Satishji because he is an eminent lawyer himself. A lot of suggestions came to me that the State Government and the Central Government should also nominate the Judges of High Courts and Supreme Court for consideration. We said, ‘No, we must maintain the sanctity of the institution of judiciary.’ Let the starting of the name be by the High Court Chief Justice in consultation with as many judges, as laid down by the regulation, and also eminent lawyers.

Mr. Tulsi, your concern as to how many eminent lawyers from which High Court has been addressed. These regulations will be framed by the Chief Justice. If there is a big High Court which has more than hundred Judges, then the regulation will postulate that you consult seven or eight lawyers. In a small High Court, they will say two or three lawyers. Even the exposure of the eminent lawyer or legal fraternity is also inbuilt in the whole scheme of the Act itself.

Probably Balagopalji or you said about High Court Judges being not only considered for seniority but also for ability. Why have we given this? I would like to share it with the House. We want senior judges to come to the Supreme Court. We also want able judges to come to the Supreme Court. Again, I will take the shelter in Justice Krishna Iyer. Today, what is happening? Only senior-most judges, who are the Chief Justices, are coming to the Supreme Court. Justice Krishna Iyer was the seventh in the hierarchy. Yet he was picked up. And there were so many others. Therefore, the Commission is having only the enabling provision that apart from seniority, merit and ability will also be considered. There is no element of supersession at all. I would like to clarify it very clearly and categorically.

Certain other issues were there. One was related to time-frame within which the Commission must give its recommendations. That point is very well taken, Sukhendu Babu. I respect your suggestion. That is exactly the point to be decided by the regulation itself. Because some job we must give to a Commission headed by the Chief Justice himself. They will understand the heavy duty imposed upon them.

Nareshji said that there are many vacancies in the Allahabad High Court. You are right. नरेश जी, देश भर में हाई कोर्ट्स की लगभग 300 वैकेंसीज़ खाली हैं और मैं इस सदन को बताना चाहता हूँ कि ...*(व्यवधान)*...

श्री नरेश अग्रवाल : सौ से ऊपर तो यू.पी. में खाली हैं।

श्री रवि शंकर प्रसाद : सतीश जी ने बताया था कि कानून मंत्री बनने के बाद अब तक मैं भारत के हाई कोर्टस् के मुख्य न्यायाधीशों को तीन-चार चिट्ठियां लिख चुका हूं कि जल्दी से वैकेंसीज़ भरने की रिकमंडेशन कीजिए। किसकी कब रिटायरमेंट है, उन वैकेंसीज़ को anticipate करने की चिंता कीजिए। देश भर में लोअर कोर्टस् में 4,000 वैकेंसीज़ हैं। मैंने चिट्ठी लिखी है कि इनको भी आप भरिए। तो मैं कर रहा हूं अपने तरीके से, उसकी चर्चा कभी और करेंगे। That concern is very much alive. I am sure the great consensus, which has been shown in both the Houses, will also be reflected in the working of the Commission.

Certain other issues have been raised by Mr. Jairam Ramesh. Would the eminent persons' selection process be open to scrutiny in RTI? Sir, I cannot say this today. When they will sit, when other standards, norms and precedents will be available, they will take a call.

And the second thing which he stated was this. Will the eminent persons only be lawyers? How can I say that? Never. They can be jurists also. They can be eminent public persons also, but political men, certainly not. Again I say this. Trust the great trinity of the Prime Minister of India ... (Interruptions)...

श्री नरेश अग्रवाल : माननीय मंत्री जी, आपने 'non-political man' कहा, तो क्या पोलिटिकल लोग सबसे खराब होते हैं?

श्री रवि शंकर प्रसाद : नहीं... नहीं ... (व्यवधान)...

श्री नरेश अग्रवाल : मैं इसलिए कह रहा हूं कि यह हर जगह हो गया है।

श्री रवि शंकर प्रसाद : अच्छा, मैं उसको विदड़ों करता हूं। ... (व्यवधान)...

श्री नरेश अग्रवाल : अगर पारासरन जी योग्य हैं, अगर तुलसी जी योग्य हैं, तो ये क्यों हो सकते? आप इस शब्द को निकालिए, मैं इसको नहीं मानता हूं। ... (व्यवधान) ... Other than political क्या होता है? ... (व्यवधान) ... हमारे वी.पी. सिंह जी योग्य हैं, ये क्यों नहीं हो सकते? ... (व्यवधान) ... यह क्या बात कर रहे हैं आप?

MR. DEPUTY CHAIRMAN: You made your point.

श्री नरेश अग्रवाल : इस शब्द को मैं पसंद नहीं करता हूं। मैं इस पर disagree करता हूं। ... (व्यवधान)...

श्री रवि शंकर प्रसाद : सर, मैं एक बात क्लैरिफाई कर दूं। नरेश जी और त्रिपाठी जी ... (व्यवधान)...

श्री उपसभापति : हो गया.. हो गया। ... (व्यवधान)...

SHRI K. PARASARAN: The U.P. Assembly versus Judiciary came by a

reference to the Supreme Court. A Judge issued a notice for release of the politician. The Assembly issued a notice of privilege against the party. Can that Judge issue a notice. The U.P. Assembly sent a notice of breach of privilege to the Judges. Then the Chief Justice contacted the Chief Minister and asked, "What are you doing? What is happening?" Chief Minister Sucheta Kriplani was a politician. She said, "What are you talking? The remedy is in your hand." The Chief Justice said, "We issue a notice but we are getting back notices for breach of privilege." What do we do? She said that the remedy is in their hands and that they were not able to understand that. Then, she said that if all of them sat and issued a notice, would the House issue a privilege notice for breach of privilege and bring Judiciary to a standstill? All the 22 Judges sat. The Allahabad High Court has two Benches. In that Bench, only 22 Judges were there. All of them assembled and issued notice. The result was that the President made a Presidential reference to the Supreme Court and the problem was solved. It was a Chief Minister, a politician and a woman. Yesterday, we were talking about women. Women have knowledge and also wisdom. They have got native intelligence. She solved the problem. Don't say politicians.

MR. DEPUTY CHAIRMAN: Okay.

श्री रवि शंकर प्रसाद : उपसभापति महोदय, मैं नरेश जी से या त्रिपाठी जी से यह कहना चाहता हूँ कि मैं तो अपने छात्र जीवन से ही पॉलिटिकल एक्टिविस्ट हूँ जेल भी गया हूँ तो पॉलिटिकल एक्टिविस्ट्स और पॉलिटिकल लोगों का क्या सम्मान है, मैं जानता हूँ इसलिए आप कभी भी यह न समझें। मैं इस हाउस के सामने यह मानता हूँ कि एक पॉलिटिशियन देश को चला सकता है, प्रदेश को चला सकता है, मेरा जरा भी यह भाव नहीं था। आप मुझे क्षमा करिएगा, मैंने कहा, 'not a politician', in the sense कि पब्लिक मैन दोनों में होते हैं। कहीं ऐसा न हो कि पॉलिटिशियंस का इसमें काफी प्रभाव बढ़ जाए। मेरा और कोई दृष्टिकोण था। मैं तो यह मानता हूँ कि देश की डेमोक्रेसी को चलाने में हर पॉलिटिकल पार्टी के नेताओं ने, कार्यकर्ताओं ने मदद की है, यह मैं आपके माध्यम से कहना चाहता हूँ।

MR. DEPUTY CHAIRMAN: So, how many more minutes would you take?

SHRI RAVI SHANKAR PRASAD: Sir, two more minutes. Hon. Nareshji talked about PIL. His concern is quite well-founded. सर, मैं और कुछ नहीं कहूँगा, केवल सुप्रीम कोर्ट का ही जजमेंट कोट करूँगा। The Public Interest Litigation has become Paise Interest Litigation, Publicity Interest Litigation, etc. I think those concerns are there and the House is taking note of them.

श्री सतीश चन्द्र मिश्रा : पर्सनल इंटरस्ट लिटिगेशन।

श्री रवि शंकर प्रसाद : जी। It is also referred to as Personal Interest Litigation. सर, यह बात की गयी कि...

श्री नरेश अग्रवाल : डिस्ट्रिक्ट जजेज का भी मामला है।

श्री रवि शंकर प्रसाद : जी। यह बात भी सही है, मैं इस हाउस के सामने कहना चाहता हूँ कि लॉ मिनिस्टर बनने के बाद से मुझे देश भर के डिस्ट्रिक्ट्स जजेज की बहुत चिंता है कि हाई कोर्ट जज की प्रमोशन में उनके साथ न्याय नहीं हो रहा है। I would like to share with this House that there is a concern which I am hearing from many sources. Surely it is a matter to be looked into. Collegium system has a limited role. I think in the National Commission, this concern needs to be addressed.

Now, Balagopalji, Nareshji and Rajaji talked about the All India Judicial Service. That is a problem pending for the last 40 years. Satishji knows it very well. The debate goes on. There is an issue of federation, federal principles and the State judiciary. The State judiciary is opposed to that because if they will come from the All India Service, then the rights of the Additional District Judges and the District Judges would be curtailed. Therefore, that is a question to be considered and a consensus to be built upon. Sir, I think, I have met nearly all the points.

Sir, as far as the issue of reservation is concerned, Misraji knows that the issue of reservation in Judiciary is a larger question on which a national consensus has to be built. But as I said earlier, we need to make a collective effort to have the best talent available. By the way, Satishji, I have one more point. अगर सब कुछ रिजर्वेशन से ही होता तो अम्बेडकर जी रिजर्वेशन से नहीं आए थे। मैं मानता हूँ कि आज इस देश में बहुत योग्य दलित समाज के वकील हैं, जिन्हें खोजने की जरूरत है, जिन्हें अवसर नहीं मिलता और शायद कमीशन उस दिशा में प्रयास करेगा, इस संबंध में मेरी पूरी कोशिश होगी, यह मैं आपके माध्यम से कहना चाहता हूँ।

श्री सतीश चन्द्र मिश्रा : जैसा आपने कहा कि रिजर्वेशन की जरूरत नहीं है और डा. अम्बेडकर रिजर्वेशन से नहीं आए थे। मैं आपसे कहना चाहता हूँ कि आप उसके बाद का इतिहास देख लीजिए, कंस्टीट्यूशन बनने के बाद - हायर ज्युडिशियरी में रिजर्वेशन नहीं रखा गया तो आज वहां क्या प्रपोज़न है और जहां आपने रिजर्वेशन रखा है, लोअर ज्युडिशियरी में रखा है, कम्पलसरी रखा है, वहां पर वे मौजूद हैं, वहां पर appointment दिया जा रहा है, देना पड़ रहा है, लेकिन जहां पर आपने इसे रिलैक्स कर दिया है, जिस जगह पर भी रिलैक्स कर दिया और इसे कम्पलसरी नहीं किया, वहां वह शून्य तक पहुंच गया है। इलाहाबाद हाई कोर्ट उसका एक उदाहरण है।

श्री रवि शंकर प्रसाद : सर, सतीश चन्द्र मिश्रा जी को इलाहाबाद की बहुत चिंता है, मैं इस बात को समझता हूँ। इलाहाबाद हाई कोर्ट की चिंता कई मामलों में है vacancy के मामले में, डिस्पोजल के मामले में, पेंडेसी के मामले में - लेकिन मैं इतना कहना चाहता हूँ कि एडिशनल डिस्ट्रिक्ट जज के लैवल पर तो रिजर्वेशन है, लोग आते हैं...(व्यवधान)...

श्री उपसभापति : आप इसको एग्जामिन करिए।

SHRI RAVI SHANKAR PRASAD: Yes, Sir, we will examine the matter. I would request the House to show the unanimity which we showed while passing the Constitutional Amendment. Today is the occasion. Mr. Parasaran rightly pointed out the sagacity and foresight of Sucheta Kriplani. Today, when we are discussing this historic Bill, this Parliament has shown great foresight, that is, this House and that House, not even a single vote was put against the National Judicial Appointments Commission Bill. That is a great foresight the House has shown. By invoking that spirit, I would request the hon. Members of this House to pass the Bill.

MR. DEPUTY CHAIRMAN: The question is:

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.

The motion was adopted.

MR. DEPUTY CHAIRMAN: Now, we shall take up clause-by-clause consideration of the Bill. In clause 2, there is an amendment (No.3) by Shri P. Rajeeve and Shri K.N. Balagopal.

Clause 2 - Definitions

SHRI P. RAJEEVE: Sir, I move:

(3) That at page 2 line 3, the word “Appointments” be *deleted*.

Amendment (No.3) was negatived.

Clause 2 was added to the Bill.

Clause 3 was added to the Bill.

Clause 4 - Reference to Commission for filling up of vacancies

MR. DEPUTY CHAIRMAN: Clause 4, there is an amendment (No.4) by Shri P. Rajeeve. Are you moving it?

SHRI P. RAJEEVE: Sir, I move:

That at page 2, *after* line 22, the following be *inserted* namely:-

“(4) The Central Government shall within three months of the receipt of a complaint relating to misbehaviour of a Judge of the Supreme Court or the High Courts refer it to the Judicial Commission.”

Amendment (No.4) was negatived.

Clause 4 was added to the Bill.

Clause 5 - Procedure for selection of Judge of Supreme Court

MR. DEPUTY CHAIRMAN: Clause 5 there are seven amendments. Amendment Nos.5 to 8 by Shri P. Rajeeve and Shri K.N. Balagopal. Are you moving it?

SHRI P. RAJEEVE: Sir, I am not moving it.

MR. DEPUTY CHAIRMAN: Nos. 11 to 13 by Shri Sukhendu Sekhar Roy and Shri Derek O'Brien. Are you moving it?

SHRI SUKHENDU SEKHAR ROY: Sir, I am not moving it.

MR. DEPUTY CHAIRMAN: Okay, amendments not moved.

Clause 5 was added to the Bill.

Clause 6 - Procedure for selection of Judge of High Court

MR. DEPUTY CHAIRMAN: Clause 6, there are three amendments. Amendment (No.9) by Shri P. Rajeeve and Shri K.N. Balagopal. Are you moving it?

SHRI P. RAJEEVE: Sir, I am not moving it.

MR. DEPUTY CHAIRMAN: Amendment Nos. 14 and 15 by Shri Sukhendu Sekhar Roy and Shri Derek O'Brien. Are you moving it?

SHRI SUKHENDU SEKHAR ROY: I am not moving it.

Clause 6 was added to the Bill.

Clauses 7 to 9 were added to the Bill.

MR. DEPUTY CHAIRMAN : Clause 10, there is one amendment (No.10) by Shri P. Rajeeve and Shri K.N. Balagopal. Are you moving it?

**Clause 10 - Procedure to be followed by Commission
in discharge of its functions**

SHRI K.N. BALAGOPAL: Sir, I move:

(10) That at page 3, *after* line 43, the following be *inserted* namely:-

“(3) The Commission shall consult with different sections of Judiciary, Bar and Jurists in the society regarding the credentials of the proposed names for appointments.”

Amendment (No. 10) was negatived.

Clause 10 was added to the Bill.

Clauses 11 to 14 were added to the Bill.

Clause 1 - Short title and commencement

MR. DEPUTY CHAIRMAN: Clause 1, there is one amendment by Shri P. Rajeeve and Shri K.N. Balagopal. Are you moving it?

SHRI K.N. BALAGOPAL: I am not moving it.

Clause 1 was added to the Bill.

The Enacting Formula was added to the Bill.

Long Title

MR. DEPUTY CHAIRMAN: In Long Title there is one amendment by Shri P. Rajeeve and Shri K.N. Balagopal. Are you moving it?

SHRI P. RAJEEVE: I am not moving it.

The Long Title was added to the Bill.

SHRI RAVI SHANKAR PRASAD: I move:

That the Bill be passed.

The question was put and the motion was adopted.

MR. DEPUTY CHAIRMAN: Now, Special Mentions to be laid on the Table.

SPECIAL MENTIONS*

Demand to give financial assistance to the family of Chamel Singh, murdered in Pakistani jail

श्री अविनाश राय खन्ना (पंजाब) : महोदय, पिछले दिनों पाकिस्तान की जेल में चमेल सिंह, जो जम्मू का रहने वाला था, उसकी वहां के अधिकारियों ने पिटाई करके हत्या कर दी। उसकी मृत देह लाने के लिए संसद में इस विषय को उठाया गया था, तब उसकी मृत देह वापस आ

*Laid on the Table.