

**CALLING ATTENTION TO A MATTER OF URGENT  
PUBLIC IMPORTANCE**

**The situation arising out of impasse in the appointment of Judges  
in the High Courts and Supreme Court**

SHRI VIVEK K. TANKHA (Madhya Pradesh): Sir, I beg to call the attention of the Minister of Law and Justice to the situation arising out of the impasse in the appointment of Judges in the High Courts and the Supreme Court.

THE MINISTER OF LAW AND JUSTICE, AND THE MINISTER OF ELECTRONICS AND INFORMATION TECHNOLOGY (SHRI RAVI SHANKAR PRASAD): Sir, after commencement of the Constitution of India, a fresh Memorandum of Procedure (MoP) for appointment of Judges to the Supreme Court and High Courts was framed. The MoP was revised in 1971 and 1983. This was further revised in 1994 and 1998 after the judgements in the Second and Third Judges' cases respectively with approval of the Chief Justice of India and the Prime Minister. Currently, all appointments to the Supreme Court and the High Courts are made as per the MoP framed pursuant to the Supreme Court Judgment of 6.10.1993, read with the advisory opinion of 28.10.1998.

The Supreme Court of India *vide* its order dated 16.10.2015 *inter alia* struck down the Constitution (Ninety-Ninth Amendment Act) 2014 and the National Judicial Appointments' Commission Act, 2014 as unconstitutional and void. The Supreme Court simultaneously revived the "Collegium System" for appointment of Judges to higher judiciary.

The Supreme Court later invited suggestions for the improved working of the Collegium. The Government of India submitted its suggestions for improving the system for Judicial appointments subject to its reservation about the correctness of the Judgment and it reserved its liberty to take such action as it may deem fit and the Parliament shall have the power within the parameters of the Constitution to govern the criteria and process for appointment of Judges to the Supreme Court and High Courts and nothing in these suggestions or participation should be construed as stopping the Parliament or Union of India from exercising such power.

The Supreme Court appointed two *amicus curie*; Ms. Pinky Anand, Additional Solicitor General and Mr. Arvind Datar, Senior Advocate, for compiling the suggestions received from the Advocates. However, as a large number of advocates prayed for further time to make suggestions, the Supreme Court directed the suggestions to be invited from the public by 1700 hours on 13.11.2015. The suggestions were

invited by Supreme Court in four categories, viz., (i) Transparency, (ii) Secretariat, (iii) Eligibility Criteria, and (iv) Complaints.

Accordingly, Department of Justice, *vide* a Public Notice, dated 06.11.2015 published in all major national/regional dailies, invited suggestions on its website. All the suggestions received by the Department in the time stipulated on its website were e-mailed to the two *amicus curiae*. The *amicus curiae*, in their report filed in the Supreme Court, have stated that about 1,450 suggestions were received within the deadline fixed by the Supreme Court. The suggestions received were classified into one more category apart from the four categories mentioned by the Supreme Court, that is, Miscellaneous category, and were placed before the Supreme Court.

The Supreme Court pronounced its Order on improvement in the “Collegium System” on 16.12.2015. *Vide* this order, they have *inter alia* decided that the “Government of India may finalize the existing Memorandum of Procedure (MoP) by supplementing it in consultation with the Chief Justice of India.” The Chief Justice of India will take a decision based on the unanimous view of the collegium comprising the four senior most puisne Judges of the Supreme Court.

The Department of Justice sought the views of the State Governments for improvement of the Collegium System of appointments *vide* letter dated 23.12.2015 addressed to all the Chief Ministers. The Department received response of 9 State Governments, viz., Meghalaya, Gujarat, Chhattisgarh, Arunachal Pradesh, Jharkhand, Mizoram, Rajasthan, Odisha and Goa.

In view of the importance of the matter, the Government of India constituted a Team of Ministers to deliberate upon on draft MoP for appointment of Chief Justice and Judges of the Supreme Court of India and for appointment and transfer of Chief Justices and Judges of High Courts.

The changes proposed in the draft MoP's were sent to the Hon'ble Chief Justice of India *vide* letter dated 22.3.2016. The response of the Chief Justice of India was received on 25.5.2016 and 01.07.2016. The Supreme Court Collegium has agreed with some of the suggestions made in the revised MoP while it has not accepted some other provisions. The Government, after careful consideration of the matter has sent its response to the Chief Justice of India *vide* letter dated 3.8.2016. The effort of the Government is to supplement the existing MoP by making the appointment process transparent, fair and accountable within the parameters set by various pronouncements of the Supreme Court and, at the same time, ensuring the independence of Judiciary.

While the case was being heard and till the Judgment was pronounced by Supreme Court, only those Additional Judges, whose terms were expiring, were given

[Shri Ravi Shankar Prasad]

extensions of three months as per the Supreme Court orders dated 12.05.2015 and 15.07.2015. No other appointments were made. During this period, 112 Additional Judges were given extension of tenure. As the process of finalizing the MoP is likely to take some time, at the initiative of the Government of India, the matter was taken up with the Supreme Court and the process of appointment of Judges has been resumed. During 2016, 110 Additional Judges have been made permanent and 52 fresh appointments of Judges have been made. The proposals for appointments have been received from High Courts from February, 2016 onwards. The whole process, as per MoP, takes six months as States/Intelligence Bureau and the Supreme Court Collegium are consulted and then the case is processed for approval.

Sir, this is my statement. I have to add only one more thing that about three Supreme Court Judges have also been appointed after this.

MR. DEPUTY CHAIRMAN: Now, Mr. Vivek K. Tankha. Put your questions within three minutes, or, maximum five minutes.

SHRI VIVEK K. TANKHA: Sir, it is my first speech.

MR. DEPUTY CHAIRMAN: That is not applicable here. This is not a speech. You can only put questions.

SHRI VIVEK K. TANKHA: I know that, but just give me a little more time.

MR. DEPUTY CHAIRMAN: No; you have to put the question within three minutes. At maximum, you can take five minutes.

SHRI VIVEK K. TANKHA: I will be as brief as possible. Five minutes are good enough for me.

Sir, this is a matter of utmost public importance. I am only conveying the feelings of the entire Bar of this country, and not only of the Bar but also of the people of India. There is a complete bottleneck which has been created in the appointment of Judges in the last nearly one-and-a-half years. I have the figures in this regard. These figures may be a little old. In this country, the sanctioned strength of High Court Judges, for instance, is 1,079, and 458 vacancies are there. Then, I will quote some more examples. In Allahabad High Court, out of the total sanctioned strength, 81 vacancies are there. In Hyderabad High Court, there are 36 vacancies. In Bombay High Court, there are 30 vacancies. In Calcutta High Court, there are 30 vacancies. In Delhi High Court, there are 24 vacancies. In Guwahati High Court, out of a total sanctioned strength of 24, there are 11 vacancies. In Madhya Pradesh, out of a total sanctioned strength of 53, there are 16 vacancies. Sir, the question which actually

concerns all of us is: Unless these vacancies are filled up, how do we conduct the cases that are being filed and the cases that have to be heard? Look at the figures of backlog. There are three crore cases pending in this country from the level of District Courts to the High Courts. There are more than fifty lakh cases pending in various High Courts. The worry of the system is that the system seems to have collapsed. Now, on the point of Collegium and the MoP, we have a judgement of the Supreme Court, which did not agree with the Constitutional amendment and the Act. Now, that is an issue which the Supreme Court and the Government at some point in time may tackle in a different way but till this law applies, the law has to be followed. Now, there is a problem about the MoP being drafted and finalized. Sir, we only read from newspapers; otherwise, the country does not come to know of it. I am told that it is because of some conditions that the Government is putting. You cannot have a veto power over the Supreme Court judgement. The Supreme Court judgement today says that it is the Collegium that decides. You can look at the parameters, before you send the matter to the Collegium, through the IB reports and other agencies. But once the Supreme Court has cleared the names, they have to be accepted or you give very cogent reasons to the Supreme Court so that the Supreme Court can have a review. For the Government to insist that in public interest, we can say 'no' to anything that the Collegium recommends is something which the Collegium, I believe, will never accept because that is not part of the judgement. Our worry is that instead of reforming the system, for the last one-and-a-half years, we are facing a case of a stalemate, a complete impasse. People are not getting hearing; the Judges are over-stressed. I know, in Madhya Pradesh High Court, five judges have been hospitalized. There, each Judge is hearing 200 to 300 cases a day. So, the problem is there. Where is the point of judicial reforms? As a country, instead of progressing towards judicial reforms, we are staring at a stalemate.

I have five, six points, which may be considered in a larger perspective. We had a system of fast track courts; it has disappeared. We had a system of *ad hoc* Judges; it is no more in vogue. There were proposals to modernize the judicial administration; it is not happening. What happened to the *Gram Nyayalayas*, where enactments had been made; they do not seem to be functioning. Sir, the Judicial Accountability Bill is another very important facet because I know, impeachment is not an answer. That also has not happened. The Law Minister has made so many commitments before this House. That also has not happened.

MR. DEPUTY CHAIRMAN: See, the simple point is, appointment of judges in the High Courts and the Supreme Court. Please confine to that. Otherwise, you will not get time. ...(*Interruptions*)...

SHRI VIVEK K. TANKHA: Ultimately, all this leads to accumulation of cases, all this leads to the system failing, and, today, we have virtually a collapsed system before us. Are we ready to accept this system? This is what I am asking.

MR. DEPUTY CHAIRMAN: Put your question.

SHRI VIVEK K. TANKHA: Otherwise, the Government should speak to the Supreme Court and come to a settlement at the earliest so that, at least, as per the law today, appointments are made and the work gets started. That is what I am trying to say. My question is: How early is the Government going to do this because without the Government finishing this work, it won't happen and the system will not start working? A collapsed system needs to work, and that is what I am saying, Sir.

MR. DEPUTY CHAIRMAN: Hon. Members, there are thirteen names before me. The total time is one hour. So, every Member is requested to please confine to three minutes' time. Now, Shri Satish Chandra Misra.

SHRI SATISH CHANDRA MISRA (Uttar Pradesh): Mr. Deputy Chairman, Sir, straightway I come to the issue of appointment of judges in the High Courts and the Supreme Court, vacancies of judges, and the Memorandum of Procedure (MoP). I believe, as is being said, the Memorandum of Procedure, which is presently there, is being followed. Till the fresh Memorandum of Procedure is finalized, further appointments would be done on that basis. But, as has been stated by the hon. Minister, there has been a stalemate and there were no appointments made during all this period except 52 appointments. It has been indicated here that only 52 new appointments were made. I would like the hon. Minister to inform as to how many vacancies arose during this period when these 52 appointments were made.

Sir, another piece of information, which we can gather from this, is that the discussion is going on with regard to the Memorandum of Procedure, and as it is a lengthy discussion, it is taking a lot of time to be finalized. I am not suggesting that it should be done very hurriedly. You need an independent judiciary. You made three points. There should be transparency in the entire appointment system. I would not use the phrase 'under the table', but there should not be a give and take where I would say this name and you would say this name and then all of them would be appointed. It should be done on the basis of merit. Those persons should be appointed who can give results to the persons who are looking at the Judiciary.

At the same time, I would like to know this from the hon. Minister. During this period, while the Memorandum of Procedure is being decided and the matter is still pending, what is the difficulty in clearing those names which belong to the persons who are in the lower Judiciary? That is 33.13 per cent. One-third is the

quota which is to be filled from the lower judiciary. The appointments are made on the basis of their seniority. They have a retirement age. When they retire at the age of sixty years, they cannot become a High Court Judge. As per the Memorandum of Procedure, which is already in existence, there should be at least one year for their retirement and only then would they be considered. These persons are losing their entire chance of becoming a High Court Judge only because of the delay, in your finalisation of MoP with the hon. Supreme Court, with respect to the procedure. The names have already come. What is the difficulty if the Collegium has cleared those names? If the names are pending with you and the Collegium has cleared those names, why are those names not being cleared? Can we put this category separately?

The other thing, which I would like to know from the hon. Minister, is this. In this country, as has been just pointed out, there are 1,079 posts of judges. Out of that, fifty per cent of the posts are vacant. In the Allahabad High Court, more than fifty per cent of the posts are vacant. Those could not be filled up. I believe that a large number of names, which are pending before the Ministry after being cleared by the Collegium, consist of those names who are from the lower Judiciary. Why are those names not being cleared? If you clear those names, then some backlog would be cleared. The impression that you are retaining those names should not be there.

The last thing which I would like to know from the hon. Minister is this. At present, how many judges are from the Scheduled Castes in the entire country? ...*(Time-bell rings)*... This is the last point. I would like the hon. Minister to clarify it and convey it further. The Memorandum of Procedure, to my knowledge and I am subject to correction by the hon. Minister, which is in existence, says that while names are being finalised, it would be kept into consideration that the Collegium considers the names of the Scheduled Castes, the backward classes and the minorities. The names belonging to the Scheduled Castes are missing throughout the country. There is no Scheduled Caste Judge presently in the entire Allahabad High Court and in the Supreme Court. I am subject to correction by the hon. Minister. And there is no High Court Chief Justice in the entire country. Therefore, this category has literally been excluded. When it reaches the final stage and comes to your end, at the end of the Ministry, does the Ministry send it back on this ground that you have not considered a name with respect to this category which you are otherwise bound to consider? I would like to know this from the hon. Minister.

MR. DEPUTY CHAIRMAN: That is to be noted. That is an important question. I agree that that is an important question.

**श्री नरेश अग्रवाल** (उत्तर प्रदेश) : माननीय उपसभापति जी, विवेक के. तन्खा जी और सतीश चंद्र मिश्रा जी ने बहुत सी चीजें बड़ी साफ की हैं। अब माननीय मंत्री जी कहते हैं कि जब तक एमओपी पेंडिंग है, तब तक हम बहुत सी चीजें नहीं बताना चाहते हैं। मैं माननीय मंत्री जी से दो-तीन चीजें जानना चाहता हूँ। पहला तो यह है कि अनुच्छेद 368, जो हमें संविधान में परिवर्तन करने का अधिकार देता है, क्या सुप्रीम कोर्ट का जजमेंट आने के बाद अनुच्छेद 368 अब संविधान का पार्ट रह गया या नहीं रह गया? यदि रह गया तो जो हमने अमेंडमेंट करके भेजा था, जो हमने सैक्शन 368 के अन्तर्गत लॉ बनाया, उस लॉ को अगर सुप्रीम कोर्ट ने टर्न डाउन कर दिया तो फिर पार्लियामेंट की क्या पोजिशन रह गई, मैं इस पर बड़ा स्पष्ट आपका ज्ञान चाहता हूँ। कम से कम यह ज्ञान दे दें। दूसरा, जो अभी लेटेस्ट पत्र 3.8.2016 को आपने सुप्रीम कोर्ट को भेजा, उसके कंटेंट्स क्या हैं, कंटेंट्स बताने में क्या कोई दिक्कत है? आखिर लोग यह तो जान जाएं कि डिस्कशन के बाद जो आपने लैटर भेजा है, उस लैटर के कंटेंट्स क्या हैं और आप सुप्रीम कोर्ट की कितनी बातों पर राजी हुए या नहीं हुए? मैं कहीं यह पढ़ रहा था कि कॉलेजियम सिस्टम के अंतर्गत देश में सिर्फ 160 परिवार हैं, जिसके ज्यादातर जजेज़ हुए हैं, क्योंकि उनको विशेषाधिकार प्राप्त है, जैसे हम लोगों के यहां नहीं होता है, बेटा, बेटे का बेटा, वह पारिवारिक होगा वैसे ही। तो क्या आप जजों की कमी देखते हुए जो डिस्ट्रिक्ट जज हैं, उनका 50 परसेंट कोटा हाई कोर्ट के लिए तय करेंगे? क्योंकि यह झगड़ा रहता है कि कॉलेजियम ने क्या नाम भेजे हैं और उसमें हाई कोर्ट, सुप्रीम कोर्ट तैयार हुआ कि नहीं या लॉ मिनिस्ट्री तैयार नहीं होगी। तो यह जो जजों की संख्या हाई कोर्ट में बराबर कम है, क्या आप 50 परसेंट डिस्ट्रिक्ट जज का कोटा फिक्स करने को तैयार हैं, जिससे कि वह ऑटोमैटिक भरता चला जाए और यह जो कॉलेजियम वाला झगड़ा है, वह झगड़ा भी निबट जाए।

आरक्षण की व्यवस्था के बारे में जो सतीश भाई ने पूछा है कि क्या हाई कोर्ट और सुप्रीम कोर्ट में आरक्षण की व्यवस्था होगी या नहीं होगी? इसको भी हम लोग बड़ा स्पष्ट जानना चाहते हैं, क्योंकि जब लोकपाल बना तब भी यह बात आई कि लोकपाल जिस दिन नियुक्त हो वहां पर आरक्षण की व्यवस्था होनी चाहिए। तो क्या एम.ओ.पी. में आपके आरक्षण का प्वाइंट है या नहीं? यदि नहीं है तो क्या आप उसको जोड़ने को तैयार होंगे, मैं यह भी जानना चाहता हूँ। जो Judicial Accountability Bill है, इसकी क्या पोजिशन है? क्या सरकार इस पर विचार कर रही है कि हम इसको लाएं, जिससे कि pendency घटे। जिस तरह तीन लाख मुकदमे पूरे देश में पेंडिंग हैं, उन पर जल्दी-जल्दी जजमेंट हो ताकि देश को सही समय में न्याय मिल सके। धन्यवाद।

MR. DEPUTY CHAIRMAN: Thank you very much for limiting within the time allotted to you. Now, Dr. K. Keshava Rao.

DR. K. KESHA RAO (Andhra Pradesh): Sir, I would be brief because both of them have said the same thing. But, there is a peculiarity in this. I may not agree with Mr. Vivek, who said as to how you can have a veto, which Mr. Naresh and Mr. Misra have already said. In respect of reservation to the Scheduled Castes, there should be a scope or a space for the Government to say 'no' when reservation to the Scheduled Castes is not given notwithstanding the fact that it is not there in the Constitution. The policy of the State is that we will have them.



Now, I am taking it back to the district level, which comes under the States. Since the entire thing comes under the monitoring system of the High Courts and also the Supreme Court, the reservations are not being looked into. Again, the Government comes in.

Sir, the second point is, the wind has been taken out of this entire thing because he said that he will not discuss MoP. It is the very item and the very basis of all these. We know the historic Bill brought forward by the same Minister last time here, on the appointment of Judges, which was passed. It has just been thrown to the wind, thrown into the dustbin. We have done nothing at all. Nareshji, every time, gets up and talks about the rights of this House. What exactly are our rights which are thrown to the wind? Now, against that background, they may take objection to the MoP. We have not read much. But, nonetheless, there are reports about the differences. Nareshji asked about the contents of the letter. Now, against that background, I am saying that the Government must stick, as per the paper reports, to the principles, which were reflected in the original Bill, the Bill which has been rejected. Now, it is high time that you stuck to the Bill. Sir, now I come to the last point. The Minister must understand that there is a peculiarity as far as my State, Telangana, is concerned. Regarding the appointment of judges, like Punjab and Haryana High Court, we have a High Court for two States. I will not go into the details. In the recent appointments to the High Court of Judicature at Hyderabad, 42 were to come from Telangana. The name is 'Andhra Pradesh High Court, Judicature at Hyderabad.' And, out of a total of 61, 19 are from Telangana. But, in the new appointments, only two are from Telangana. But I can't say anything because you are not accepting the existing two States, *vis a vis* the High Court. Now, it is time that the Government must realize that whenever you are thinking of appointments to Andhra Pradesh High Court Judicature at Hyderabad, you must think that they represent two States and do justice to both the States as the A.P. Reorganisation Act has said, *i.e.*, in the ratio of 42:58 for Telangana and Andhra Pradesh. This has to be looked into. The recent appointments are not what you have approved. Out of those 14, two are for Telangana and you have given 12 to Andhra Pradesh!

SHRI RAJEEV SHUKLA (Maharashtra): Sir, everybody is aware about the massive pendency as far as judiciary is concerned. I think if all the cases are to be disposed of, it will take minimum two hundred years. The New York Times had once written that the wheel of justice has come to a standstill in India because of the pendency of the cases. अभी नरेश भाई, सतीश जी और विवेक जी ने जो बातें रखी हैं, उनसे agree करते हुए मुझे दो-तीन चीजें मिनिस्टर साहब से पूछनी हैं। इसमें उन्होंने एक तो



[Shri Rajeev Shukla]

यह लिखा है कि जब उन्होंने सब लोगों से सजेरेंस मांगे, उस बेसिस पर गवर्नमेंट ने जो सबमिट किया, उसमें कहा कि पार्लियामेंट की सुप्रीमेसी रहेगी। लेकिन, इसके पैरा 6 में है, “The Supreme Court pronounced its Order on improvement in the ‘Collegium System’”. *Vide* this order they have *inter alia* decided that the Government of India may finalize the existing Memorandum of Procedure by supplementing it in consultation with the Chief Justice of India. The Chief Justice of India will take a decision based on the unanimous view of the Collegium comprising the four seniormost puisne Judges of the Supreme Court.” Whatever the Government has suggested on that also, after taking the advice of everybody, if Collegium is supposed to have the final word, then where is the Parliament’s and where is the Government’s opinion? अभी यह चल रहा है कि पार्लियामेंट यूनैनिमस लॉ पास कर दे, सब कुछ कर दे, लेकिन वहां से turn down कर दिया गया। उसके बाद दूसरा लॉ लाना चाहिए था, लेकिन गवर्नमेंट भी डरकर बैठ गई। उससे एक सुप्रीमेसी कायम हो जाती, लेकिन आप खुद ही पार्लियामेंट को नीचे कर रहे हैं। इसमें यह सजेरेंस है कि कोलेजियम सिस्टम को इंप्रूव किया जाए, उसमें भी फाइनल वर्ड कोलेजियम का होगा, गवर्नमेंट का उसमें कुछ नहीं होगा। यह करेक्शन बहुत जरूरी है। जब आप उनसे MoP डिस्कस कर रहे हैं, तो यह बात वहां पर रखनी चाहिए।

दूसरा, हिन्दुस्तान अकेला ऐसा कंट्री है, जहां जज को जज तय करते हैं। अमेरिका में यह सीनेट में जाता है। वहां अगर कोई जज गवर्नमेंट को रिक्मंड करे तो पार्लियामेंट की कमिटी तय करती है और उसके नाम को कन्फर्म करती है। आपने सुना होगा कि वहां एक इंडियन जज अप्वाइंट होने वाले थे, पर वह सीनेट की कमिटी में गया हुआ है। यहां तो पार्लियामेंट की रही-सही कानून बनाने की जो पॉवर है, वह भी चली जा रही है, उस पर भी हम कुछ नहीं बोल रहे हैं। अगर कोई जे.एस. वर्मा ने flawed, judgment दे दिया, तो इसका मतलब यह थोड़े ही है कि हम लोग हमेशा उसको मानते रहें!

SHRI RAVI SHANKAR PRASAD: Sir, I have to interrupt; ‘fraud judgement’...  
...(Interruptions)...

SHRI RAJEEV SHUKLA: Sir, I said ‘flawed’ not ‘fraud’. ... (Interruptions)...  
सर, इसीलिए मैं कहता हूँ कि वकीलों को लॉ मिनिस्टर नहीं बनाना चाहिए। वे जजों से डरते हैं, क्योंकि उन्हीं के सामने केस लड़ने जाना है। वे जजों से इतना डरते हैं कि वे बात-बात पर झगड़ा करते हैं। ... (व्यवधान)...

MR. DEPUTY CHAIRMAN: Rajeev Shuklaji, is that applicable to him or to every lawyer? ... (Interruptions)...

**श्री राजीव शुक्ल:** हर गवर्नमेंट में यह myth बन गयी है कि लॉ मिनिस्टर वकील को ही होना चाहिए। यह बदला जाना चाहिए। ... (व्यवधान)... इस चीज़ को बदला जाना चाहिए। ... (व्यवधान)... सर, इसके बाद कोलेजियम के जितने डिसीजेंस हैं, वे जजेज़ के खिलाफ रहते हैं। उनमें सबसे ज्यादा जजेज़ की criticism आती है, उनमें nepotism की शिकायत होती है।

तमाम ऐसे जज, जिनके साथ injustice हुआ, वे इसलिए रो रहे हैं कि हमारे साथ सही न्याय नहीं होता और हमारे ऊपर तरह-तरह के अत्याचार होते हैं। कोलेजियम के बारे में जजेज यह बोलते हैं। ...**(समय की घंटी)**...

MR. DEPUTY CHAIRMAN: Time is over. ...**(Interruptions)**...

**श्री राजीव शुक्ल:** सर, लास्ट है। यह लास्ट है। सर, मेरा कहना यह है कि जजों की भी accountability fix होनी चाहिए, क्योंकि हमने यहां पर accountability का बिल पास किया था, लेकिन वह accountability fix नहीं हुई। उनके अकाउंट्स की कोई ऑडिटिंग नहीं होती है। वे दूसरों को कहते हैं कि वे आरटीआई के अंतर्गत आएँ, लेकिन वे स्वयं आरटीआई के अंतर्गत नहीं आना चाहते हैं। वे ट्रांसपेरेंसी की भी बातें करते हैं। ये चारों चीजें उन पर भी लागू हों, पार्लियामेंट पर भी लागू हो और देश के बाकी लोगों पर भी लागू हो, यह मेरा कहना है।

**श्री जयराम रमेश** (कर्णाटक): सर, बीसीसीआई पर आरटीआई लागू नहीं हुई है। ...**(व्यवधान)**..

**श्री उपसभापति:** श्री डी. राजा।

SHRI D. RAJA (Tamil Nadu): Mr. Deputy Chairman, Sir, I refer to point No.9 of the hon. Minister's statement. I quote, "The effort of the Government is to implement the existing MoP by making the appointments process transparent, fair and accountable within the parameters set by various pronouncements of the Supreme Court and, at the same time, ensuring the independence of Judiciary." Sir, the Indian Judiciary has a glorious history but the Indian Judiciary continues to be having class bias, caste bias. The Indian Judiciary can't claim to be free from corruption.

Sir, in our history, Dr. Ambedkar occupies a unique place. He was the prime architect of the Indian Constitution. He was the Law Minister. Now, you are the Law Minister. We have seen great names in Judiciary like Justice Krishna Iyer, Justice Bhagwati, Justice Chinappa Reddy, Justice Tarkunde, including lawyer Mr. Fali S. Nariman. We have great names but the Judiciary continues to have class bias, caste bias.

For instance, I will tell you about a place called Sundru, Guntur District, Andhra Pradesh; there was a massacre of 13 Dalits. The lower court convicted the accused persons. ...**(Interruptions)**... I stand corrected, it was 17 Dalits. But at the High Court level they were acquitted. In Bihar also 54 Dalits were massacred and in another case 26 Dalits were massacred. All the accused persons were convicted by the lower court. But they were all acquitted at the High Court level. I am asking the Government whether these people were killed or are still alive. Who has killed these Dalits? We talk about Indian jurisprudence, criminal justice system, but where is the justice? Dalits do not get justice. That is why I question the appointment process. Now the time has come for the Indian Judiciary that they must have adequate social

[Shri D. Raja]

representation. Hon. Member, Shri Satish Chandra Misra, has inquired as to how many Judges belonging to Dalits are there in the Allahabad High Court. I am asking in the whole country how many Dalits are there in the Indian Judiciary. How many Judges belonging to the OBC are there in the Indian Judiciary? Yes, including Tribals, Dalits and OBCs. On eligibility criteria, the Supreme Court has invited suggestions from the people. What is the eligibility criterion? Do you mean to say that Tribals, Dalits and OBCs are not eligible to be appointed as Judges?

MR. DEPUTY CHAIRMAN: Nobody has said like that. Time is over. Please conclude.

SHRI D. RAJA: I am concluding. In a society like ours, it is a very serious issue. The time has come for the Government to address this issue. They can't evade this issue for long. Otherwise, you will face revolt. Already there is a revolt. Even if there are one or two Dalit Judicial Officers, they are being harassed. I have complete cases with me. If you want, I can give it to you.

MR. DEPUTY CHAIRMAN: That is a different issue.

SHRI D. RAJA: Will the Minister tell us what the Government's thinking is on all these matters?

SHRI SUKHENDU SEKHAR ROY (West Bengal): Mr. Deputy Chairman, Sir, there are 477 vacancies in all the High Courts in the country. How it has been caused we all know. After this Parliament and State Legislatures passed the Constitution (Amendment) Bill, the 99th Constitution (Amendment) Act and the NJAC Bill... After the Parliament and State Legislatures passed the Constitution Ninety-nine Amendment Bill and the National Judicial Appointments Commission Bill, the Supreme Court set these aside declaring them as unconstitutional. Hon. Minister's statement is there with regard to that.

Now, over a period of time, it has been held that the meaning of the word 'consultation' in Article 366 is 'concurrence'. A new meaning has been imported into our Constitution, and not only in Article 366 but in several other Articles, namely, Articles 124, 127, 217 and 222. Everywhere there is the use of the word 'consultation'. And in all those cases, 'consultation' is binding, and the ordinary dictionary meaning is accepted. But only in case of Article 366, 'consultation' has been taken to be 'concurrence'. कभी हाँ, कभी ना, दोनों जगह यह change किया जा रहा है। Arising out of this situation, now the entire system of appointment of High Court Judges has come to a standstill. The hon. Minister says in his statement, and I quote, "It has been decided that the Government of India may finalize the existing MoP

**3.00 P.M.**

in ‘consultation’ with the Chief Justice of India.” Again, you have this expression of ‘consultation’! ‘Consultation’ again will be interpreted as ‘concurrence’. It would become ‘the concurrence of the Chief Justice of India’. So, it is not ‘consultation’; it is ‘concurrence’. It would have been better for the hon. Minister if he had used the word ‘concurrence’. We have reduced it to that level. The Parliament has been ignored like anything, Sir. When it is in Session, why should the MoP not be discussed here? Why should the Government discuss it only with the Supreme Court and others? Now, suggestions have been invited from the public in general, through the website of the Ministry of Law and Justice in regard to the MoP. But the Parliamentarians have been kept in the dark. Sir, this is a big attempt, according to me, to undermine the importance and the very existence of this Parliament. *...(Interruptions)...* Why shouldn’t the Members of Parliament discuss it? When the Parliament is in Session, it is incumbent upon the Government to discuss the MoP on the floor of the House. Otherwise, according to my Party’s thinking, the Government is willy-nilly giving a goodbye to one of the greatest traditions of this Parliament; the Parliament is now being kept in the dark about the MoP. Sir, this is a very serious issue because this is not a one-time affair; once this MoP is accepted, in some form or the other, this would continue for years together, and nobody would know how long it would continue.

My last point, Sir, is that there should be an interpretation of the word ‘consultation’, whether ‘consultation’ means ‘concurrence’ or not in each and every Article of our Constitution and, for that, the Government should bring in a legislation defining the word ‘consultation’. Thank you very much, Sir.

SHRI A. NAVANEETHAKRISHNAN (Tamil Nadu): Hon. Deputy Chairman, Sir, the Memorandum of Procedure has not yet been finalised. I hope the hon. Law Minister would protect the rights of State Governments and the Central Government because it is not known when the selection process would commence in High Courts and the Supreme Court. In the Memorandum of Procedure, it must be made clear and the Government must be informed as to when High Courts and the Supreme Court would commence the whole process. Then only, the State Governments and the Central Government can take part in the selection process properly. There is a general demand that the candidates must be from the oppressed and the most backward classes. In the Memorandum of Procedure, there must be some guidelines to that effect because, in our State of Tamil Nadu, 69 per cent reservation is followed in the process of selection of original side judicial officer appointments. Thanks to the efforts made by the hon. Chief Minister, Amma. It is only because of her efforts now that the oppressed community people, candidates, lawyers from

[Shri A. Navaneethakrishnan]

these communities are being selected. I would further like to inform this House that the hon. Chief Minister, Amma, is appointing the law officers ...(Interruptions)... I am not bothered about what you say. I am putting forward a very serious matter before this House. The selection of good judges from the lawyers, who know law, is very essential. We cannot get good judges just by magic. The hon. Chief Minister, Amma, is providing good opportunities to the lawyers belonging to the oppressed community and Backward Class community at the grass- root level, to perform as law officers, in the lower courts as well as in the High Court, and they are getting proper training. And their conduct is also being monitored effectively by the Government. So, very good law officers are now available in the State of Tamil Nadu, and because of this process and the good efforts made by the hon. Chief Minister, Amma, now, the Tamil Nadu Original Side Judiciary is properly represented, thanks to the 69 per cent reservation. Hence, I humbly request the hon. Law Minister, who is a very eminent lawyer, who knows the difficulties of lawyers who are from the rural areas or from the oppressed community, that he must protect the interest of the oppressed and backward communities properly, as has been done by the hon. Chief Minister, Amma.

SHRI SHANTARAM NAIK (Goa): Sir, judges are supposed to have allegiance to the Constitution of India, including, the principle of secularism. The Constitution nowadays is interpreted differently by different individuals, parties and organizations. One of the organizations in the country is the guiding force of the Ruling Party. This organization in the country is consulted at every step by the Government to understand this, and therefore, there is every possibility that views of this organization are going to be at the back of his mind when the Prime Minister is going to express his views in the matter of selection process. Now, recently, — why I am saying this, I am telling you — when the former HRD Minister started her consultation process with respect to the new Education Policy, the first organization she visited....

MR. DEPUTY CHAIRMAN: Mr. Shantaram Naik, you come to the point. What is this? You talk on this subject and put your questions.

SHRI SHANTARAM NAIK: Sir, why do you think that this is not the subject? I am asking this thing from you, Sir.

MR. DEPUTY CHAIRMAN: From what you said, I can infer that this is not the subject, and you have got only three minutes.

SHRI SHANTARAM NAIK: You will come to know. Recently, when the former HRD Minister started her consultation process as regards the new Education Policy, the first organization she visited was this organization ...(Interruptions)...

MR. DEPUTY CHAIRMAN: That is not relevant here.

SHRI SHANTARAM NAIK: How can you insulate these appointments from the organization? And you know what I mean.

MR. DEPUTY CHAIRMAN: What are you saying? This is all irrelevant.

SHRI SHANTARAM NAIK: If what I said is irrelevant, you expunge it. I am giving this offer.

MR. DEPUTY CHAIRMAN: No, I can expunge if it is unparliamentary, but I cannot expunge it if it is irrelevant. ...*(Interruptions)*...

SHRI SHANTARAM NAIK: I have expressed my views cautiously, and every word I have used cautiously, and you are casting aspersion on me.

MR. DEPUTY CHAIRMAN: You talk about the appointment of judges or the MoP....*(Interruptions)*...

SHRI SHANTARAM NAIK: I have not named that organization.

MR. DEPUTY CHAIRMAN: Don't name the organization. I am not asking you to name the organization.

SHRI SHANTARAM NAIK: \*

MR. DEPUTY CHAIRMAN: I am not asking you to name any organization. We are not discussing any organization. We are discussing the Judiciary. It is irrelevant. It is not going on record. It is irrelevant. ...*(Interruptions)*... Sit down. ...*(Interruptions)*... What are you doing?

SHRI SHANTARAM NAIK : \*

MR. DEPUTY CHAIRMAN: It is irrelevant. Why do you say all these?

SHRI SHANTARAM NAIK : \*

MR. DEPUTY CHAIRMAN: You have a subject for which there is ample scope for discussion and for asking questions. Then, why do you talk about some organization? And you took the name also.

SHRI SHANTARAM NAIK : \*

MR. DEPUTY CHAIRMAN: That is irrelevant. So, I come to the next Member, Shri Anubhav Mohanty.

SHRI ANUBHAV MOHANTY (Odisha): Thank you, Sir. Sir, I remember the first year of my presence in this Parliament. That was in 2014. The National Judicial Commission Bill was passed here in front of me in Rajya Sabha, and I was very disappointed that the Supreme Court had struck down it. Sir, the Collegium System, which was prevalent earlier for Judges, was very much appreciated by the Judges but not accepted by the people at large. Obviously, how can you choose yourself and your brother Judges? It is quite strange. Sir, will the Government open dialogues with the Supreme Court Judges and legal luminaries and solve this crisis? This is my first question. Then, I come to my second question. I will give you an example. I have seen a lot of people, in recent past, coming here from remote areas of Odisha. हमारे लिए दिल्ली पहुंचना बहुत बड़ी बात होती है। ओडिशा से, उसके रिमोट एरियाज़ से जो backward लोग हैं, tribal people हैं, they come to Delhi with a lot of difficulties. उनके लिए दिल्ली पहुंचकर lawyers को ढूँढ़ना और बड़ी बात होती है, उनको इतना पैसा देना और भी बड़ी बात होती है। उसके बाद कब की हियरिंग मिलती है, वह तो भगवान जानता है, उस पर जजमेंट भी महीनों, सालों तक चलता रहता है। जब किसी को जजमेंट नहीं मिलता, तो वह हताश हो जाता है। जिनको जजमेंट नहीं मिलता, उनमें से, फिर भी कुछ लोग ऐसे होते हैं, जो अपना हौसला रखते हैं, अपनी जिद को ठाने रखते हैं और आगे तक लड़ते हैं। But, Sir, I will not take any name here but, in the recent past, a very rich person filed a case on Monday, his case hearing was on Wednesday and the Judgement was on Friday and the brief of judgement was given on Saturday by two leading English magazines. Will the Government deny that the rich get preference in Supreme Court and in High Courts whereas for the poor, it is very difficult to get justice? In Supreme Court, as far as my knowledge goes, — if I am wrong, please correct me and I apologize before I speak anything wrong, — out of 30 Judges there is only one woman Judge and 29 Judges are men. As Shri Satish Chandra Misra also said, there has to be some understanding and some reservation for the Scheduled Castes and Scheduled Tribes. Then, Sir, Shri D. Raja also said about the MoP. So, will the Government consider having to have special reservation for women Judges in Supreme Court and in High Courts because, Sir, हम मानते हैं कि जो हमारे घरों को चलाती हैं, whether I talk about my mother; my wife; my sister or about any woman in this nation, they constitute fifty per cent of the population of India. जो हमारे घरों को इतने अच्छे तरीके से मैनेज करती हैं क्या हमें यह नहीं लगता, क्या हमें उनके मैनेजमेंट पर doubt है? हम हमारी जजमेंट में, जहां पर judges का नंबर है, वहां पर women को क्यों नहीं जोड़ सकते हैं? There is no doubt in their management capabilities. Why can't we have exemption for women, especially...

MR. DEPUTY CHAIRMAN: Time over. ...(Time Bell rings)...

SHRI ANUBHAV MOHANTY: And, the final thing which I would like to say



is that it is also a shame for us that India till today has not seen a woman Chief Justice in Supreme Court. We haven't seen a single woman Chief Justice. I urge upon the Government that they should really think very, very seriously on this because, जब हम बोलते हैं, "बेटी बचाओ, बेटी पढ़ाओ, बेटी को आगे बढ़ाओ" ...(व्यवधान)... then it is our responsibility and duty to honour woman through the core of our heart. I think I have asked all questions. I hope the Minister will consider them and reply. Thank you.

MR. DEPUTY CHAIRMAN: Okay You have asked very relevant questions. Now, Shri Ripun Bora.

SHRI RIPUN BORA (Assam): Thank you, Sir. I want to put only three questions to the hon. Minister. The first, we, the Members of Parliament, are the law-makers, and we, law-makers are accountable also. We, all the politicians, Ministers, MPs, are accountable. As law-makers, when we are accountable, then, why is the judicial accountability not there?

Why are the judges not accountable? Sir, in the High Courts and the Supreme Court, hundreds and thousands of cases — I am not speaking about the subordinate courts and lower courts where lakhs of cases are pending — are pending for years together. There is a proverb 'justice delayed is justice denied'. So, in view of that, I would like to know from the hon. Minister as to what steps the Government would take to make the judges accountable. This is number one.

Secondly, so far as the RTI is concerned, my friend, Shri Rajeev Shukla has rightly mentioned, in our country, all departments whether it is Defence or Police, etc., — only the sensitive Departments are barred from RTI — are covered under the RTI. All the judgements of the courts are in public domain. These are available on the Internet and in the social media. Then, what is the difficulty in bringing in the Judiciary within the purview of RTI? This is my second question.

Thirdly, ours is a big country and we have got a very good reputation in the world. But, Sir, 478 posts of judges are lying vacant in different High Courts; and, in the Supreme Court, which is the highest court of the country, three posts of judges are vacant. This is a very bad reflection of our country in the eyes of the world. Sir, my only question to the hon. Minister is this.

MR. DEPUTY CHAIRMAN: Okay.

SHRI RIPUN BORA: My final point to the hon. Law Minister is this. Since we are law-makers, what is the difficulty in making the Memorandum of Procedure known to us? Has the country no right to know about the Memorandum of Procedure? Should

[Shri Ripun Bora]

the Parliament not be taken into confidence about the Memorandum of Procedure? So, my question to the hon. Minister is. Would the Government allow a discussion on the Memorandum of Procedure and take the Parliament into confidence?

**श्री भुपेंद्र यादव** (राजस्थान): सम्माननीय उपसभापति महोदय, माननीय मंत्री जी ने अपने जवाब के पैराग्राफ नं. 9 में लिखा है कि सरकार का प्रयास है कि उच्चतम न्यायालय के विभिन्न निर्णयों द्वारा स्थापित मानकों के भीतर नियुक्ति प्रक्रिया को पारदर्शी, साफ-सुथरी और जवाबदेह बनाने के लिए वर्तमान प्रक्रिया ज्ञापन को अनुसमर्थित किया जाए और न्यायपालिका की स्वतंत्रता भी सुनिश्चित की जाए। सर्वोच्च न्यायालय में 15 साल वकालत करने के बाद उस पूरी व्यवस्था और प्रक्रिया में मेरा पूरा सम्मान है, लेकिन एक ग्रामीण क्षेत्र से सर्वोच्च न्यायालय में जाने के बाद, सर्वोच्च न्यायालय ने जो चार आधार लिखे हैं, पैराग्राफ नं. 4 में — पारदर्शिता, सचिवालय, पात्रता और शिकायत, मैं बड़ी विनम्रता से यह पूछना चाहूंगा कि विगत 70 वर्षों में जो नियुक्ति की प्रक्रिया रही है, जम्मू-कश्मीर, पंजाब, हरियाणा, राजस्थान, उत्तर प्रदेश, बिहार, झारखंड, मध्य प्रदेश, छत्तीसगढ़, महाराष्ट्र से एक भी दलित आज तक सर्वोच्च न्यायालय में जज बन कर नहीं आया है, एक ओबीसी जज आया है, 7 महिला जज नहीं आ पाई हैं। इसलिए सरकार Memorandum of Procedure के लिए बहुत विनम्रता और बहुत ईमानदारी से काम कर रही है। 70 साल की इस प्रक्रिया में सर्वोच्च न्यायालय को हमने अनुच्छेद 32 और 226 के अन्तर्गत दो अधिकार दिए हैं कि अगर कार्यपालिका नागरिकों के हितों पर कोई भी प्रतिकूल कदम उठाती है, तो न्यायालय को उसमें हस्तक्षेप करने का अधिकार है और अगर इस संसद में जो विधायी कार्य पारित किए जाते हैं, वे संविधान के खिलाफ हैं, तो सर्वोच्च न्यायालय और उच्च न्यायालय को उनको भी निरस्त करने का अधिकार दिया है। हम इसका सम्मान करते हैं, हम चाहते हैं कि देश की न्यायपालिका ने जो मानदंड स्थापित किए हैं, वे मानदंड आगे बढ़ें, लेकिन उन मानदंडों को पूरा करते समय भारत का जो एक व्यापक सामाजिक प्रतिनिधित्व का दृष्टिकोण है, भारत की जो एक व्यापक सामाजिक परंपरा है, उसका भी ध्यान रखा जाए। आखिर इस देश में झारखंड, छत्तीसगढ़, मध्य प्रदेश, राजस्थान, गुजरात एक बड़ा वनवासी इलाका है। जनजातीय समाज है, उनकी अपनी परंपराएं हैं। हमें उन सारे सामाजिक मूल्यों, मान्यताओं और परंपराओं को अपने भारतीय न्याय के दृष्टिकोण में आगे बढ़ाना होगा। हमें न्याय को अपनी उस परिकल्पना के द्वारा आगे लेकर जाना होगा, जो कभी हमारी अपने भारत की सदियों से परंपरा रही है। इसलिए मैं माननीय मंत्री जी के प्रति पूरा विश्वास रखते हुए यह कहना चाहूंगा कि जो उच्चतम न्यायालय ने चार श्रेणियों में सुझाव आमंत्रित किए हैं — पारदर्शिता, सचिवालय, पात्रता और शिकायत, उसमें एक बहुत व्यापक सहमति बननी चाहिए। जब अमरीका में जज नियुक्त होते हैं, तो सदन में उनके बारे में चर्चा होती है। इसलिए एक बार कम से कम वे सारे विषय नियुक्त होने के बाद सामने आने चाहिए और जो अभी न्यायिक नियुक्तियों में रिक्तता है, जिस तेजी से सरकार काम कर रही है, हमें लगता है कि सरकार अपने लक्ष्यों को हासिल करेगी, लेकिन इन लक्ष्यों को हासिल करने के लिए सभी सामाजिक वर्ग का भी उचित प्रतिनिधित्व होना चाहिए।

**SHRI C. P. NARAYANAN (Kerala):** Sir, Judiciary have created an insulation around themselves. We discuss this because we have brought in the legislation to have judicial accountability, but the Judiciary itself has said that it is *ultra vires*. But

we, the people, are concerned because there are lakhs of cases pending in various courts, and corruption and nepotism is rampant. It is also reported in the media and such things are prevalent among these people. We, in Parliament, always quote the Preamble, 'We, the People of India' but the Parliament, which is the creation of the people, does not have any right to touch the Judiciary in India. I think, this anachronism has to be overcome. I join with all my colleagues who have mentioned that the backward sections, whether it is the Scheduled Castes or the OBCs or the women, as a member from Odisha has also said, have all been kept away from the Judiciary; not by the Parliament, not by the Government, but because they have an insulated system. It is they who brought in, 25 years back, this system of a Collegium and they insist that the Parliament has to approve the Collegium. Collegium and the Parliament are to be balanced. A few people sit on one side. On the other side One hundred and twenty-five crores of people as represented by both the Houses. We are considered to be equals. This situation has to be put an end to. Sir, the Members here know more than the law. The aspirations of the people, their hopes and their concept regarding democracy and freedom, all these have all been put to a tangle by the court. I do not say that the court has not given very good judgments. But, all these good judgments come out of a judicial system which is mired in rampant corruption, nepotism, and social inequality. This has to be put an end to. I, and my party, request the Government that we have to take a very bold position on this issue.

SHRI D. P. TRIPATHI (Maharashtra): Sir, while agreeing broadly to the statement of the hon. Law Minister, since many distinguished Members, who are distinguished lawyers, beginning from Shri Vivek K. Tankha to Shri Satish Chandra Misra, Shri Rajeev Shukla, Shri Bhupender Yadav and Shri D. Raja, have made the points that I wanted to make, I would not repeat them.

I begin my questions with a few lines of a very popular Hindi poet who describes the Indian Judicial System.

"ओढ़ कर क़ानून का चोगा खड़ी चंगेज़शाही।  
न्याय का शव तक कचहरी में नज़र आता नहीं है।  
मुश्किलों का खर्च इतना बढ़ गया है ज़िंदगी में।  
जन्मदिन पर भी खुशी कोई मना पाता नहीं है॥"

This is the understanding about our judicial system!

The system about the appointment of Judges in the Supreme Court and High Courts raised by Mr. Tankha cannot be corrected; this impasse and deadlock will continue, I am telling you. It is because nowhere in the world, as far as I have studied, Judges appoint Judges. I am not a lawyer. But, I have studied and taught

[Shri D. P. Tripathi]

the Indian Constitution. So, even in the Indian Constitution and the debates in the Constituent Assembly, the limits or boundaries of the Judiciary are defined. Sir, the Supreme Court does not mean the most supreme in India. There is Legislature and there is Executive. Therefore, the point raised by Shri Rajeev Shukla is very important – where does the Parliament stands in comparison to the Judiciary. In more than four years of my presence in this House, I have not heard a single discussion on Judiciary of India. The time has now come and we should debate the standing, structure and position of the Indian Judiciary. If we do not reform our Judicial system, we are not going to advance and develop in the 21st Century as an important power in the world. That is my point. Therefore, that has to be debated.

My second point is about the procedural systems of jurisprudence in the country. How old is our I.P.C. and Cr.P.C.? They have not changed, substantially, according to the changing times. Therefore, it is not only appointments, even the execution of justice, delivery of justice is not possible without changing our structural jurisprudence procedures and penal system according to the changing times.

My third point for consideration of the hon. Law Minister is this. Sir, why can't, like other countries, our Parliament debate the recommendations of the Collegium System? Why cannot it debate? You have recommended someone, it is alright. Let us debate and then the Executive decide which recommendation is to accept and which recommendation is not to accept. I can tell you, with full authority of conviction, this kind of Collegium and absolutism continues, then no Dalit or tribal would ever be appointed. It is very difficult ...(Time-bell rings)... I want to inform this august House very briefly, I am telling you, because I witness to one occasion when one of the hon. Presidents of India had to return the recommendation marking a single question, 'Could you not find a single Dalit throughout the country to be Judge?' ...(Time-bell rings)... This is what was written. Then, of course, it came back. A Dalit was found somewhere in High Court in South India.

Last point is, as a Hindi poet said, about the functioning of our judicial system. It is my last sentence.

"जिन्दगी दीवानी मुकदमे की तरह चल रही है।  
और फ़ौजदारी मुकदमे की तरह सो रही है॥"

**प्रो. राम गोपाल यादव** (उत्तर प्रदेश): धन्यवाद सर, जब वकीलों के ऑफिसिज़ से लेकर चौराहों तक यह murmuring होने लगे कि अगर फ़लां जज के यहां मुकदमा है, तो फ़लां वकील कर लिया जाए, इसका मतलब यह है कि लोगों को यह एहसास हो गया कि judiciary में भी corruption rampant है। इसीलिए आप "The National Judicial Appointments Commission Bill" लाए थे और पास करवाया था, जिसे रद्द कर दिया गया था। मैं आपसे यह पूछना चाहूंगा

कि जिस तरह आपने जीएसटी पर इन लोगों को तैयार किया, उसी तरह से इनसे बात करके क्या दोबारा इस पर कानून बनाने और संसद की सर्वोच्चता को स्थापित करने के लिए आप इसे फिर से लाएंगे? मेरा दूसरा सवाल यह है कि जब हाई कोर्ट में judges appoint होते हैं और वहां का collegium अपना पैनल भेजता है, तो क्या आप यह mandatory करेंगे कि जो collegium भेजता है, उस पर संबंधित राज्य के मुख्य मंत्री की सहमति आवश्यक हो? अगर यह नहीं होता है तो वहां कोई यह देखने वाला नहीं है। जो वकील या जज deserving हैं, उनको supersede कर दिया जाता है और supersede करके वे जिसको बनाते हैं, उसमें यह भी नहीं है कि उसका character roll भेजें। I know. अपना भेज दिया। जब एमओपी पर आपकी चर्चा चल रही है, तो क्या आप इसको mandatory करने का प्रयास करेंगे?

अभी सतीश चंद्र मिश्रा जी ने कहा, कई और मेम्बर्स ने कहा, भूपेंद्र जी ने कहा, इसको कोई माने या न माने, लेकिन यह सच है कि दलित, ओबीसी या माइनोंरिटी, माइनोंरिटी के तो कुछ जजेज हैं, वे हो जाते हैं, लेकिन इन वर्गों के जजेज के न होने से कई बार इन वर्गों के लोगों के साथ अन्याय हो जाता है। इलाहाबाद हाई कोर्ट ने deliberately उत्तर प्रदेश के लोक सेवा आयोग के चेयरमैन को, जो कि constitutional post है, कहीं प्रोविज़न नहीं है कि कोई चेयरमैन को हटा सकता है, उसके लिए बाकायदा लिखा हुआ है कि उसको कैसे हटाया जा सकता है, लेकिन उनको सिर्फ इसलिए हटा दिया गया, क्योंकि वह चेयरमैन ओबीसी वर्ग से था। माध्यमिक शिक्षा आयोग और हायर एजुकेशन कमिशन के चेयरमैन और मेम्बर्स ओबीसी या दलित वर्ग के थे, उन सबको हटा दिया गया, जो नॉन ओबीसी या नॉन दलित थे, वे सब बचे रहे। इन वर्गों को राहत कैसे मिलेगी, लोग जिनका चेहरा नहीं देखना चाहते हैं? जिन लोगों को न्यायमूर्ति कहते हैं, अगर वे जाति के आधार पर discrimination करने लगेंगे, फैसला देने लगेंगे, तो यह मांग उठती है कि इसमें दलित और ओबीसी वर्गों को भी होना चाहिए। ...**(समय की घंटी)**... क्या आप इसको बनाते वक्त यह कोशिश करेंगे कि आइन्दा जब पैनल आए, तो उसमें इन वर्गों के भी लोग आए।

SHRI K. T. S. TULSI (Nominated): Sir, the question in the Calling Attention Motion is how to deal with the situation arising out of the impasse in the appointment of Judges. The impasse is not the creation of the Government. This impasse is due to insistence by the Judiciary that no one else can have any say in the matter of appointments. Suggestions have so many times been sent by the Government that if there is certain material against the nominated candidate for a Judge, Government may send that back to them collegium and they may examine that. They say, "No. Even if you have the weightiest reasons for not appointing somebody as a Judge, you cannot send that back." After all, what was the attempt in the National Judicial Appointments Commission? The point was, let there be wider consultation. The Supreme Court does not want the say of anyone in the matter of appointment. That is the impasse. For removal of impasse, there has to be a give and take from both sides. But, here, one side is sticking to its guns. There is no such system anywhere in the world. In fact, in Scotland, there is a Judicial Appointment Commission, consisting of about 24 persons. All of them are laymen. Last year, there was a proposition, let there be two Judges or lawyers. But, the people returned the verdict that they do not

[Shri K. T. S. Tulsi]

want even a single Judge or lawyer in the Judicial Appointment Commission. They are the consumers of justice; hence, they will decide. Here neither the Parliament can have any say nor the Executive can have any say. How is it going to work? The Constitution has been re-written by the Supreme Court. When the Constituent Assembly debated the matter of appointment, they said that the matter could not be left to the Chief Justice alone. The appointment will be by the President on the recommendation of the Government of the day. Now, when the Supreme Court is not willing to concede an inch, how is the Government going to be able to remove the impasse? This is an unfortunate situation. But that is the problem.

SHRI TIRUCHI SIVA (Tamil Nadu): Mr. Deputy Chairman, Sir, the utmost concern of any Government should be the common man. Because of the impasse on appointment of judges, the pendency of cases across the country is increasing and this should be taken note of. I think, none of us are taking serious note of it. Even in Tamil Nadu, the lawyers boycotted courts for about 60 days. So many cases are pending in courts. Litigants are waiting outside. The Government says that it is pending with the Judiciary, with the lawyers, but, actually, the people are being affected. The Government has to take some stand. Sir, every one of us agree that since the Collegium System did not work well with the appointment of judges, we enacted the National Judicial Appointments Commission Act, 2014, by way of amending the Constitution, but this was struck down by the Supreme Court and declared void. What did the Government do after that? We enacted a law by way of establishing the powers of the Legislature, realising the issues faced by the people, but the Supreme Court has struck that down and we are sitting calm! Then, we are discussing about the impasse on the appointment of judges. The population is increasing, the litigations are increasing, and the people are suffering because of the posts of judges lying vacant. So, what are you going to do with that? Sir, I have got two clarifications to seek. Before that, I would like to say that there is pendency of cases across the country. I don't want to quote all the statistics which the Law Commission has given in its Report. Because of the vacancy of judges, lakhs of cases are pending across the country. Sir, the Supreme Court, in order to finalise the existing Memorandum of Procedure, has advised the Government to take a decision. The Department of Justice sought the views of the State Governments for improvement of the collegium system by way of a letter addressed to all the Chief Ministers. Only nine States have responded - Meghalaya, Gujarat, Chhattisgarh, Arunachal Pradesh...

MR. DEPUTY CHAIRMAN: Now, put your question.

**SHRI TIRUCHI SIVA:** Sir, major States like Tamil Nadu have not responded to this very important issue. So, taking serious note of this matter, the Government must do something. My two questions are: While you are trying to set aside the impasse on appointment of judges, firstly, Sir, what are you going to do when the Supreme Court has struck down our efforts taken in enacting a law by way of amending the Constitution? And, while appointing the judges, as all other Members have suggested, follow the reservation policy for the Scheduled Castes, the Scheduled Tribes, the OBCs, women and minorities. Sir, people from South India are coming all the way to the apex Court in Delhi, the Supreme Court, for any appeal here, but they are taking a lot of time. We have been suggesting that a Bench of the Supreme Court has to be set up in Tamil Nadu for the benefit of the South Indian people. Sir, we have been suggesting this for quite a long time. The Government has to consider that. We need a Bench of the Supreme Court in Tamil Nadu for the Southern States and the reservation policy has to be adopted in appointment of judges. Thank you, Sir.

**श्री रवि शंकर प्रसाद:** माननीय उपसभापति जी, इस कॉलिंग अटेंशन मोशन पर जैसा मैं हमेशा मानता हूँ कि अगर सार्थक बहस करने का मूड बनता है तो राज्य सभा बहुत ऊँचाई पर पहुँच जाती है। पिछले डेढ़ घंटे में जो बहस हुई, इसकी शुरुआत तन्खा जी ने की। सतीश चंद्र मिश्रा जी, राम गोपाल यादव जी, डी. पी. त्रिपाठी जी, मेरे बहुत ही अंतरंग मित्र डी. राजा जी, के. केशव राव जी, भुपेंद्र यादव जी और शिवा जी, इन सभी ने अपनी बात कही, बाकी लोगों ने भी कही, मैं सब का नाम नहीं ले रहा हूँ, लम्बी लिस्ट है। माननीय सदस्य राजीव शुक्ल जी ने एक आपत्ति उठाई कि जब कोई वकील कानून मंत्री बनते हैं तो जज का नाम देख करके परेशान हो जाते हैं। वैसे न्याय की पारदर्शिता के प्रति उनकी चिंता को देखकर थोड़ा सा कौतूहल अवश्य हुआ है, उस विषय पर कभी बाद में चर्चा करेंगे, लेकिन हम उनको बहुत विनम्रता से यह बताना चाहते हैं कि नरेंद्र मोदी जी की सरकार में देश के कानून मंत्री के रूप में कॉलेजियम सिस्टम को बदलने का संवैधानिक प्रस्ताव इसी वकील कानून मंत्री ने लाया था, यह उनको ध्यान रखना चाहिए — यह बहुत विनम्रता से मैं बताना चाहता हूँ और शायद इस खरी बात का उत्तर समझने के लिए वे सदन में उपस्थित नहीं हैं। अगर होते तो उनका भी भला होता और कुछ मेरा भी भला होता। लेकिन यह कहानी कहीं और सही।

**MR. DEPUTY CHAIRMAN:** When he saw you speaking, he has come.

**श्री रवि शंकर प्रसाद:** अब वह रिकार्ड में आ गया है, वे बाद में पढ़ लेंगे। Now, Sir, let me make certain general observations. In fact, I will go issue-wise because issue-wise, a lot of concerns expressed would be allayed. Let me first make a very general point. This Government's commitment to the independence of Judiciary is complete and total, and I say so because this Government is led by the Prime Minister, Shri Rajnath Singh, Shri Arun Jaitley, Shrimati Sushma Swaraj, Shri Venkaiah Naidu, Shri Ananthkumar, Shri Kalraj Mishra and many others, including me, who have



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fought against the Emergency and suffered where three freedoms were involved — (i) individual, (ii) media and (iii) independence of Judiciary. Therefore, this Government today — it is very important to be conveyed to this House — is led by leaders starting from the Prime Minister who have fought for the cause of independence of Judiciary. It is good that independence of Judiciary today has become an integral part of India's polity. That is the first thing that I would like to say.

The second thing, Sir, is, regardless of all the limitations in gap areas, which hon. Ram Gopalji also alluded to, our Judiciary's record is indeed exemplary also, be it in terms of probity or be it in terms of concern for the poor and the underprivileged. Let us not forget that ultimately the Supreme Court led benchmark in many cases of gross impropriety by Governments of any party which led to a new commitment about probity. The same Supreme Court talked about the rights of the poor and underprivileged in various PILs. Therefore, there are gap areas. I know that. But the larger commitment of the Supreme Court to these issues needs to be appreciated. Now, Sir, why are we discussing it today? And I am happy that hon. Sukhendu Sekhar Roy and Mr. K. T. S. Tulsi very rightly pointed it out. Let me tell, hon. Deputy Chairman, Sir, that on 13th of April, 2015, the National Judicial Appointments Commission Act was brought into force. Thereafter, it was challenged. Now, once the law had come, — all the Members would realize immediately and obviously you being an eminent lawyer yourself, Navaneethakrishnanji — the Bill, this Constitutional Amendment has completely removed the Collegium System. For a new system, an Appointment Commission was to come into existence, consisting of the Chief Justice, two senior Judges of the Supreme Court, the Law Minister, two eminent persons, one of SC/ST woman or a minority category person, and those two eminent persons were to be selected by a Collegium of the Prime Minister, the Leader of Opposition or the biggest party in the Lok Sabha and the hon. Chief Justice. But before that could commence, it was challenged and all the appointments got stuck. Therefore, in stalling the appointments — I am grateful to the two hon. Members — the Government did not play any role at all. Thereafter, the judgement comes on 16.12.2015.

Now, Mr. Deputy Chairman, Sir, a lot of my distinguished friends had concerns about the rights of Parliament. I will immediately come to that; and Naresh Agrawalji just talked about Article 368 as well. But even before I could move this Bill — on 26th of May, 2014 I took the oath as a Minister in Shri Narendra Modi's Government and I am grateful he also entrusted me the Law Ministry then; and I would like to tell respected Ram Gopal Yadavji, Shri Satish Chandra Misra and my good friend, Mr. D. Raja, who also espoused this cause about the rights of the

marginalized communities — Mr. Deputy Chairman, Sir, the first letter I wrote to all the Chief Justices of High Courts of India was, on the 21st of July, 2014, and here, I am quoting from that letter. I quote, “The need for giving representation to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, minorities and women may also please be kept in view while making recommendations for fresh appointments in the High Court.” Therefore, one of the first initiatives I took after I became the Minister was to write like this. Not only me, Mr. Deputy Chairman, Sir, even thereafter, my distinguished successor, Mr. Sadananda Gowda, on 30th of December, 2015 when the whole process commenced again mentioned the same thing. “The need for giving representation to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, minorities and women may also please be kept in view while making recommendations for fresh appointments in the High Court.” Therefore, I hope, hon. Satish Chandra Misraji, Mr. Navaneethakrishnan, Sukhendu babu, Mr. Tulsi and all others know that the Collegium System is not there in the Constitution. It has also not been created by an Act of Parliament. The Collegium System is a Judge-made institution. This needs to be clearly understood. But then, they said, ‘now we would make recommendations.’

Sir, I would like to make two observations here, and I am not making these observations as the Law Minister of India; I am making these observations as a student of the Indian Constitution and Law. The crux of the judgement of the five-Judge Bench of the Supreme Court is that we are annulling the National Judicial Commission Act, because the Law Minister is a part of this selection process. The law Minister is there and, therefore, a litigant who is appearing before a Judge, who has also been appointed by the Law Minister in that process, will have doubts about the impartiality of that Judge. Therefore, it is violative of the basic structure. And coming to the second part, the ‘two eminent persons’ are also – the same – violating the basic structure.

Sir, Nareshji asked about Article 368. Yes, we have got the right to amend the Constitution. But the hon. Judges say, ‘We have got the right to define what the ‘basic structure’ is. And if any Amendment violates the basic structure, we can annul that.’ And, here, they said, ‘Even though the Parliament has passed this law with a 99.99 per cent support’ — only one Member of the House walked out — ‘we say that it is violative of the basic structure’ That is how it stands. But what is the question that I am asking, Sir? Today, I would like to share it with this hon. House that if the mere presence of the Law Minister leads to doubt about the independence of the Judiciary, it is a loaded statement that is being made; it is a profound statement. We have obeyed the judgement. I will come to that separately. But since the House has asked a lot of questions, Mr. Deputy Chairman, Sir, let

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me say that even in the present regime, all the files that pass through me go to the Prime Minister and to the President. And today, the Prime Minister of India is the central figure in the appointment of the President, the Vice-President, the three Chiefs of the Armed Forces, the CAG, the CVC, the Election Commissioners and the Chief Election Commissioner, after a consultation process. The Prime Minister of India has been given the mandate, by the people of India, to defend India, to maintain the unity and integrity of India. When the Prime Minister can be entrusted with so much of a trust by the people and the polity of India, how is it that the Prime Minister or the Law Minister cannot be trusted in the appointment of a Judge? That is a larger question to be considered. At some point of time, the polity will have to do that. ...(*Interruptions*)...

Mr. Deputy Chairman, Sir, the second thing that I would like to highlight today is this. This judgement came in the year 1993. The Constitution came into being in 1950. From 1950 till 1993, for 43 long years, the Law Minister has been integral to the process. Many a time, the Chief Minister was integral to the process before even the Chief Justice came. That is past. But let me ask a question today. There have been problems, during the Emergency or during the regime of some particular Law Minister. But, Sir, some of the finest Judges of India, who are beacons of Indian Judiciary, were appointed through the same process, where the Law Minister used to play a part. Who are they? Patanjali Shastri, Kania, Gajendragadkar, Hidayatulla, Krishna Aiyar, Venkatachalaiah, Chandrachud, Bhagwati, who led to PIL, or J. S. Verma – all were appointed by the same process! And I would like to ask Satish Misraji, Mr. Tulsi and Sukhendu *babu*, has the Collegium System produced any Judge of that intellectual calibre or intelligence? That is a larger question to be considered at some time in future. But what I am saying today, Sir, is that we have accepted this challenge. Regardless of our reservations, lots of questions were asked: Are you willing to come again with this law? The polity will have to take a call; I cannot make any commitment today. माननीय राम गोपाल जी, GST पर एक सर्वानुमति के लक्ष्य पर पहुंचने के लिए डेढ़ साल तक कितनी मेहनत करनी पड़ी, फिर भी एक पीड़ा होती है। अगर कहीं न कहीं इस देश के राजनीतिक संदर्भ को उस सर्वानुमति की सीढ़ी पर चढ़ने का मन करेगा, तो रास्ता निकलेगा। अभी उसके बारे में कोई टिप्पणी करना मेरे लिए उचित नहीं होगा। But, Sir, we have accepted the Judgement in all humility. Here, I would like to tell, Mr. Vivek Tankha, — hon. Member is a distinguished colleague of mine in the profession; we have appeared together and opposed each other in many cases, but he is junior to me in the Parliament, — at least, allow me to make that indulgence in the Parliament; okay. I came in the Parliament in the year 2000. Now, it is seventeen years; you have come this year only. Therefore, I am

seventeen years senior to him in the Parliament. Having said that, let me say my basic point. We don't intend to have a veto on the Judiciary. Sir, I want to make it very clear with the full authority of the Government and the Prime Minister that we don't wish to have any veto on the Judiciary. *...(Interruptions)...*

SHRI MADHUSUDAN MISTRY (Gujarat): Sir, this statement of the Minister is not fair. *...(Interruptions)...* He may be senior, but *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: That is between them. *...(Interruptions)...* There is nothing wrong. *...(Interruptions)...*

**श्री रवि शंकर प्रसाद:** सर, अगर विवेक तन्खा जी को इस पर आपत्ति होगी, तो मैं withdraw कर लूंगा, लेकिन इस सदन में सीनियर वकील को जूनियर रखने की इजाजत नहीं है, यह मैं कहना चाहूंगा। Now, Sir, what I was trying to say is that we have accepted the Judgement in all humility. But I want to make it very clear to this House, and it is very important, that the right to reframe the MoP has been given by the Supreme Court to us. It is not a job which we are taking *suo motu*. The Supreme Court had said that the present Collegium System needs improvement. The Supreme Court had said, please take suggestions from the public of India. And, yes, hon. Sukhendu *babu*, you are right, if you have any specific suggestions to give, I undertake that I will convey it to the Judiciary that these are suggestions from some of my *...(Interruptions)...*

SHRI SUKHENDU SEKHAR ROY: Parliament should decide *...(Interruptions)...*

SHRI RAVI SHANKAR PRASAD: I will come to that. *...(Interruptions)...* I will come to that debate part. *...(Interruptions)...* Therefore, that point is fairly well taken. About 3,500 suggestions came. We collated them and 1,450 have been gone into. Now, Sir, why did the Supreme Court ask us to reframe it? My distinguished colleague, hon. Bhupender Yadav, has very rightly stated that they framed four issues. And, Sir, I have got the Judgement with me. Let me read from the Judgement itself instead of quoting it otherwise. The concluding part of the Judgement says, 'The Memorandum of Procedure may provide for any other matter considered appropriate for ensuring transparency and accountability including interaction with the recommendee by the Collegium of the Supreme Court, without sacrificing the confidentiality...' Earlier, they say, Sir, four issues, which they say very clearly. What the four issues are:, '...existing Memorandum of Procedure with the object of considering criteria or benchmark for the appointment of Judges of the higher judiciary, including widening the zone of consideration; to introduce transparency in the matter of appointment; to make the present procedure broad-based, by reducing supporting measures, etc.', and then they say, 'do like this'. Therefore, the Supreme Court itself acknowledges that the Collegium System has a lot of limitations, which need improvement. The second

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thing they did acknowledge is that the element of transparency may be missing or maybe not that prominent; therefore, reinforce the transparency mechanism. Thirdly, let the appointment process be more predictable; therefore, come with an eligibility condition in a more proper manner. These are the issues which they themselves stated. Sir, these are not my views. But out of five Judges, one, hon. Justice Chelameswar, was dissenting. Since he was dissenting, I am not reading that. But two hon. Judges of the Supreme Court, who formed the majority of the five Judges, have written in their Judgement, which is a public document, and, Sir, I would like to read that. Sir, this judgment is by hon. Justice Madan B. Lokur. These are not my words; I am quoting it, "But it must not be forgotten that the Executive had an equally-important participative role in the integrated process of appointment of Judges. That the Executive adopted a defeatist or an I-don't-care attitude is most unfortunate. The Collegium cannot be blamed for all the ills in the appointment of Judges. The political Executive has to share the blame equally, if not more, since it mortgaged its Constitutional responsibility of maintaining a check on what may be described as the erroneous decision of the Collegium." A Supreme Court Judge, who is part of the majority, has written this judgment. I want to make it very clear that these are not my words.

The second judgment is by Justice Kurien Joseph, again a distinguished Judge, and this is a little long. Mr. Deputy Chairman, Sir, he comes from your State and he is a very distinguished Judge of India. I have great personal regard for all the Judges. He writes, "All told, all was and is not well. To that extent, I agree with Chelameswar J. that the present Collegium system lacks transparency, accountability and objectivity. The trust deficit has affected the credibility of the Collegium System, as sometimes observed by the civil society. Quite often, very serious allegations, and many a time not unfounded too, have been raised that its approach has been highly subjective. Deserving persons have been ignored wholly for subjective reasons. Social and other national realities were overlooked. Certain appointments were purposely delayed so as either to benefit vested choices or to deny such benefits to the less patronised. Selection of patronised or favoured persons were made in blatant violation of the guidelines resulting in unmerited, if not, bad appointments. The dictatorial attitude of the Collegium seriously affecting the self-respect and dignity, if not, independence of Judges; the court, particularly the Supreme Court, often being styled as the Court of the Collegium, the looking forward syndrome affecting impartial assessment, etc..." These are not my words. These are the words of the Supreme Court and of the majority of the Judges. And, what does he write ultimately? He writes, "The active

silence of the Executive in not preventing such unworthy appointments was actually one of the major problems.”

I would like to remind Mr. Vivek Tankha that the serious concern over the creeping limitation of the collegium has never been expressed by us in such eloquent words, where there is a recurrent recognition by two senior Judges in the majority view that we have a role to play. We don't wish to exercise veto at all. But, in the consultation process, in the very nature of the limitations which the law has given to us, we are trying to emphasise, and we shall continue to emphasise, that MoP needs improvement for making it more transparent and more objective, so that it inspires more confidence. That is what I have to say because I want to make it very clear.

Sir, I will take ten minutes and finish. It is an important issue. Kindly allow me. Sir, the issue of reservation was raised by Shri Satish Chandra Misra. Sir, I recall that while moving this Bill, I had, while replying to a concern raised by him and Behan Mayawatiji, assured the House that a stage would come and we will maintain a proper catalogue of good lawyers of the *dalit* community and the OBC community, so that we can take a pool of those talented lawyers to be pushed up for consideration. Because the Law Minister was to be there, unfortunately, all had been struck down. I can only say that reservation in a single Constitutional post is a larger debate. My good friend, Mr. D. Raja, talked about reservation for the deprived. I am completely with him, as far as the rights of the deprived community are concerned. Yes, I had said this while moving the Amendment Bill in the House, and I repeat it today, that the Judiciary of the day had to acknowledge that today, the Judiciary has come into the focus of India's governance system where those who are marginalised, those who are poor, those who are SC, those who are ST, want to have a stake, and that stake must come for the minorities, who are also competent. I know, in this country, there are a good number of lawyers from these marginalised communities who are competent lawyers. Why are they not being considered? That is the question that has to be answered. I can assure you that it is the focus of this Government that in the whole process, those people, who are ignored, must be given a space. As the Law Minister of India in the Government, I will do whatever I can. I want to assure that this will continue to be our endeavour.

Sir, certain larger questions have been raised. One of them is about the role of the Chief Minister.

SHRI C. P. NARAYANAN: You mentioned nothing about 'women'.

MR. DEPUTY CHAIRMAN: That is also included.

SHRI RAVI SHANKAR PRASAD: Sir, I read it. In my letter itself, 'women' was mentioned. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: Yes, that is mentioned. ...*(Interruptions)*...

AN HON. MEMBER: What about reservation for women? ...*(Interruptions)*...

SHRI RAVI SHANKAR PRASAD: I was coming to that. Since you have raised this issue, I must reply to that. As far as the reservation in the higher Judiciary is concerned, all the distinguished Members, Sukhenduji, Tulsiji, Misraji, Tankhaji and others having knowledge of Constitution, know it very well that as of now, in higher Judiciary, there is no reservation. The view is that, it is a Constitutional post, and, if you think of reservation in a Constitutional post, you can't stop only at the High Court Judges or the Supreme Court Judges, there is the Public Service Commission, there is the Election Commission, there is CAG, there are many other posts, you will have to think about that. But, there must be consistent endeavour to ensure that these marginalized communities are there. Yes, women should also be there. Why not? We will keep on thinking about that.

SHRI TIRUCHI SIVA: What about 'minorities'?

SHRI RAVI SHANKAR PRASAD: My great friend, Siva, in my letter itself, I had mentioned that when I became a Minister in July, 2014. Obviously 'minorities'; why not? Definitely, they should be there.

प्रो. राम गोपाल जी ने मुख्य मंत्रियों की भूमिका के बारे में एक विषय उठाया। मैं आपको बहुत विनम्रता से बताना चाहूंगा कि MoP में अभी मुख्य मंत्री से सलाह का प्रावधान है। हम इस बात की विशेष चिन्ता करते हैं। यह भूमिका राज्यपाल से होकर आती है। आपकी बात बहुत ही सही है, यह चर्चा आई है कि नियुक्ति की प्रक्रिया में मुख्य मंत्रियों को एक प्रभावी भूमिका मिलनी चाहिए, चर्चा होनी चाहिए। यह विषय आगे चल रहा है।

I think, hon. Members will have to acknowledge one thing. Sukhendu *babu*, I am not running away from debate in the Parliament. But you are a very seasoned man who understands the Constitution. When I am discussing the whole MoP with the hon. Judges, it is a process. Let that process be complete. I am dealing with something sensitive. You must understand that, and I want to tell all the Members that we are alive to the concerns that you have reflected here. Let that process be complete. Surely, we will do our best.

SHRI SUKHENDU SEKHAR ROY: Thereafter, it can be discussed.

SHRI RAVI SHANKAR PRASAD: A lot of questions have been asked about accountability and the role of this House. How can I run away from that? As a



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Member of this House, I want to convey to the hon. Member that when the judgement came, the first comment, which I made as a Minister, was, "While upholding the majesty of independence of Judiciary, the judgement has given a go-by to the majesty of the supremacy of Parliament." I said it publicly. Some time or the other, this Parliament will have to debate that larger issue. Our Constitution has given a very specific role of law-making, governance, accountability to the Parliament; it includes the fact that I am replying to this Calling Attention Motion moved by Mr. Vivek Tankha; and, on behalf of Judiciary, the good points as also the minus points, I am acknowledging. That is the degree of accountability, and I do not think this constitutionally-recognized supreme power of the Parliament can be mitigated. But, yes, one thing is there, the law passed by the Parliament or amendments are subject to scrutiny by the Supreme Court. That is what they have done.

Now, I come to last three quick points. A lot of issues have been raised.

MR. DEPUTY CHAIRMAN: You need to reply in brief.

SHRI RAVI SHANKAR PRASAD: Mr. Tulsi raised the issue of impasse. I want to assure him that there is no impasse.

SHRI SATISH CHANDRA MISRA: Sir, let the reply come. It is a very important issue.

MR. DEPUTY CHAIRMAN: I know it. That is why, two hours have been given. Let us look at the watch. *...(Interruptions)...* How much time was allowed? *...(Interruptions)...* In place of one hour, I have allowed two hours.

SHRI SUKHENDU SEKHAR ROY: Sir, we want to listen to the Minister. *...(Interruptions)...*

SHRI SATISH CHANDRA MISRA: Sir, we will sit one hour extra. *...(Interruptions)...*

SHRI RAVI SHANKAR PRASAD: Sir, I want to assure hon. Member, Shri K. T. S. Tulsi, that there is no impasse. As I said, there is no veto, there is no impasse also. But, yes, if the Supreme Court has asked us to frame this particular MoP, like the previous judgement, in consultation with them, keeping the issue of accountability, objectivity and fairness in mind, it is my duty to convey it in that consultation process keeping that in mind, and, you will continue to have that. *...(Interruptions)...*

Sir, Mr. Raja mentioned about certain acquittals. It is a serious matter. Mr. Raja, with your wide parliamentary experience, I hope, you are aware that in India, we have a principle called 'presumption of the innocence of the accused'. And we have

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a Judicial process. It has conviction, acquittal or reversal. But, yes, I take your point that the Judiciary needs to have sensitivity in the case of a massacre. If *Dalits* have been massacred, there has to be certain accountability of fixing the guilt on some persons. That is important. Not only the trial but the investigation should also be free and fair by those who are conducting the investigation. I think these issues will have to be taken into consideration. Sir, I think I have by and large addressed all the issues. *...(Interruptions)...* Dr. K. Keshava Rao mentioned about the issue of Telangana. In his own inimitable style, he has always been espousing the cause of Telangana whenever I have had the occasion to hear him on legal issues. I want to assure you that we are in discussion. Your point that Telangana needs to have representation both in the subordinate and higher Judiciary is well taken. We are looking into it. Allow us to have that process. That is all I can assure you. I think with this I have addressed all the issues. *...(Interruptions)...*

SHRI SATISH CHANDRA MISRA: Sir, I had raised a question. *...(Interruptions)...* Since it was raised in the beginning, it has been left over. You have said that there are more than 450 vacancies. The judges in the lower Judiciary retire at a particular age. Why are their names not being cleared? Two, you have said that the hon. Supreme Court had said that the Executive cannot sit silently when unworthy appointments are being made. Can the Executive sit silently when worthy appointments are not being made? We appreciate your stand and your action of sending letters to them asking to send this category names and their subsequent successors also. But have you returned the names saying that these names do not find place? The Executive cannot sit silently if worthy appointments are not being made.

SHRI RAJEEV SHUKLA: Mr. Deputy Chairman, Sir, just one small question. *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: No, no. *...(Interruptions)....* I cannot allow all this. *...(Interruptions)...* I have to start the debate on the Bill. *...(Interruptions)....* No, no. *...(Interruptions)...* If I allow...*...(Interruptions)...*

SHRI RAJEEV SHUKLA: Sir, the hon. Minister has said that if there is consensus in Parliament, he is willing to bring this Bill again. *...(Interruptions)...*

SHRI RAVI SHANKAR PRASAD: I did not say that. *...(Interruptions)...*

SHRI RAJEEV SHUKLA: Who is preventing you from doing that? *...(Interruptions)...* You can always bring a Bill. There was consensus in Parliament. Ninety-nine per cent people voted *...(Interruptions)...* You bring it again. *...(Interruptions)...* We are ready for that.

MR. DEPUTY CHAIRMAN: I have to take up the Bill now. ...*(Interruptions)*...

SHRI RAJEEV SHUKLA: Secondly, if the independence of the Judiciary does not mean surrender to Judiciary ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: That he has explained very well.

SHRI RAJEEV SHUKLA: Judiciary is ensuring probity in public life. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: The Minister has explained it very well. ...*(Interruptions)*...

SHRI RAJEEV SHUKLA: What about probity within the Judiciary? ...*(Interruptions)*... Your comments should also be on that. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: He has already explained it. There is no need for doing that. I have to take up the Bill. ...*(Interruptions)*... No, no. I have to take up the Bill. ...*(Interruptions)*...

**श्री राजीव शुक्ल:** सर, इसका जवाब आ जाए, इसका जवाब नहीं आया है। ...*(व्यवधान)*... आप इसके लिए बिल तो लाइए। ...*(व्यवधान)*...

SHRI VIVEK K. TANKHA: Sir, what I am saying is this. ...*(Interruptions)*... My intent was to ignite a debate. And I have succeeded in doing that. Because nobody was debating this in the country. ...*(Interruptions)*... Two, I am saying that ...*(Interruptions)*...

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

SHRI VIVEK K. TANKHA: Today, the judgement of the Supreme Court as it stands is final. Whatever we have to do, we have to do within the framework of the Supreme Court. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: He has explained that very well. ...*(Interruptions)*...

SHRI VIVEK K. TANKHA: What I am saying today is this. ...*(Interruptions)*... The hon. Law Minister does not have that elbow room of a public interest ...*(Interruptions)*... which the newspapers have been supporting. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: Do you have to say anything? ...*(Interruptions)*...

**श्री रवि शंकर प्रसाद:** सर, माननीय सतीश चंद्र मिश्रा जी ने जो बात कही है, मैं उसकी पूरी चिन्ता करूँगा। मैं आपसे यह भी कहना चाहता हूँ कि जो निचले डिस्ट्रिक्ट जज के नाम आते हैं, उसमें भी काफी समस्या होती है, वरीयता को छोड़ देते हैं, but I would look into it and expedite it. Sir, today, 478 vacancies are there. About 200-plus appointments are in process. The rest also I am expediting. Kindly don't forget that the judgement came in December and in January we told the Chief Justice to kindly initiate the

[Shri Ravi Shankar Prasad]

appointment again. We have taken initiative ourselves. I know that regardless of the reservation of the House, there is a judgement of the Supreme Court which we have accepted in all humility and we are working according to the parameters set by them. Sir, I am deeply grateful to you for providing me this opportunity.

MR. DEPUTY CHAIRMAN: Thank you. I actually congratulate every Member who participated in the discussion. The discussion was of high level. It was very informative for me also. I congratulate the Minister on explaining it very well.

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### GOVERNMENT BILL

#### **The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016**

MR. DEPUTY CHAIRMAN: Now, we will take up the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016. Shri Arun Jaitley to move.

THE MINISTER OF FINANCE, AND THE MINISTER OF CORPORATE AFFAIRS (SHRI ARUN JAITLEY): Sir, I move:

That the Bill further to amend the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Recovery of Debts due to Banks and Financial Institutions Act, 1993, the Indian Stamp Act, 1899, and the Depositories Act, 1996, and for matters connected therewith or incidental thereto, as passed by Lok Sabha, be taken into consideration.

*The question was proposed.*

DR. T. SUBBARAMI REDDY (Andhra Pradesh): Mr. Deputy Chairman, Sir, I rise to speak on the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016, which was passed by Lok Sabha on 1st August, 2016. Earlier, it was referred to a Joint Committee of both Houses for examination, and the Committee submitted its Report in July, 2016.

I am very happy in welcoming this Bill. The Bill aims to strengthen the hands of the banks and financial institutions to recover the money from the debtors, to whom they have given loans, making the banks strong and also taking the initiative to facilitate new investments, which will ultimately lead to higher economic growth. We appreciate that.