The Farmers' Right to Guaranteed Remunerative Minimum Support Prices for Agricultural Commodities Bill, 2018

SHRI K.K. RAGESH (Kerala): Madam, I move for leave to introduce a Bill to confer right on all farmers to obtain Guaranteed Remunerative Minimum Support Prices with minimum fifty percent profit margin over comprehensive cost of production, upon sale of agricultural commodities and for matters connected therewith or incidental thereto.

The question was put and the motion was adopted.

SHRI K.K. RAGESH : Madam, I introduce the Bill.

THE VICE-CHAIRMAN (SHRIMATI KAHKASHAN PERWEEN): Shri Sanjay Singh; not present. Now, we take up further consideration of the motion moved by Shri Sukhendu Sekhar Ray on the 2nd February, 2018. Now, Shri V. Vijayasai Reddy.

The Constitution (Amendment) Bill, 2017

(Amendment of Article 366) - *Contd.*

SHRI V. VIJAYASAI REDDY (Andhra Pradesh): Thank you very much, Madam, for the opportunity you have given to me. The objective of the Bill is to reduce the ambiguity. The term consultation prevents its multiple interpretations. The Bill aims to ensure homogeneity in terms of application of the term consultation to different provisions and interpretations by defining the term, as the action or process of formally consulting or discussing with another, is merely a consultative, advisory, and non-binding manner. Madam, in fact, I would like to refer to some of the Articles of the Constitution in this regard, and also the backdrop. Article 124 of the Constitution of India deals with the appointment of Supreme Court judges, and Article 217 of the Constitution of India deals with the appointment of judges of High Court. Article 222 of the Constitution of India deals with the transfer of judges. In fact, if we go through the status of appointments or the nature of appointments or the way the appointments that were being made prior to 1993, the President of India used to appoint the judges of the High Court as well as the judges of the Supreme Court. And in 1993, the Supreme Court had delivered a judgment saying that the appointment of judges by the President of India was being made with a political motive. Therefore, the Supreme Court has felt that there is a need to amend the procedure for appointment of Supreme Court judges as well as the High Court judges. Therefore, the Supreme Court has stated that a Collegium System has to be introduced, and the President of India can, in consultation with the Chief Justice of India, appoint the judges of the Supreme Court as well as the High Courts. Therefore, in 1993, the Supreme Court has introduced the Collegium System in this country. Now, what will happen, if at

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all, the CJI is not concurring with the President of India? That is the question. If the CJI is not concurring with the President of India, then, it will be referred to the Collegium, and if the Collegium reiterates the opinion of the CJI, the matter will be remitted to the President of India, and the President of India will not have any other option but to accept the recommendations of the CJI. Now, what is the word consultation? The word consultation, if you take it in the literal sense, it is not binding. When President makes an appointment in consultation with somebody, that consultation is nothing but advisory in nature. When the President of India consults the CJI, it is not binding on the President of India that the advice given by the CJI should be accepted. It is his prerogative whether to accept it, or, not to accept it. That is the meaning of it. However, what is happening now is this. See, there are two ways of doing it. Proposals can either come from the President of India, or, the proposals can go from the Judiciary to the President of India. There are two ways of doing it because the Constitution does not specify anything. So far, I don't think there is any precedent where the President of India is sending the proposals to the Judiciary. In fact, vice versa, it has always been that the Judiciary has been sending the proposals to the President of India, and it is for the President of India to consult the CJI in this regard. The Collegium decides, and the CJI sends the proposals to the President of India, and the President of India may, sometimes accept, and sometimes, may not accept it. This is what is happening. So, in the Private Member's Bill under discussion, the hon. Member seeks the word 'consultation' to be defined more by suggesting necessary Amendment to Article 366. That is the intention of the Bill, I think.

Madam, to impart the objectivity and transparency in the process, selection of judges should be on the basis of norms rather than the subjective choices. This is what my opinion is. Considering the pitfalls of the events, prior to 1993, the Executive decided, as I have already stated. Then, the Executive decided who are to be appointed and who are not to be appointed as judges. When the Executive decided the composition of the Judiciary, in the aftermath of Emergency particularly in Keshavananda Bharati case, the Supreme Court was of the opinion that it is unwise for the Parliament to decide on appointments since there could be political motives. Madam, I would like to make a reference to the statement made by the retired Chief Justice of India, Shri Sabharwal. Shri Sabharwal stated that it is always good for the democracy to have a little tension between the Judiciary and the Government so long as there is an acknowledgment of the Judiciary being left alone. It means that the independence of the Judiciary is to be maintained. That is the fundamental principle based on which the Constitution of India has been drafted.

Now, let me refer to the NJAC Bill. After the Parliament voted in favour of it, when the NJAC Bill was accepted by almost all the States, then the matter was referred to the Supreme Court. The Supreme Court fairly rejected. For what reason did the Supreme Court reject it? The Supreme Court quashed the NJAC Act on the pretext that it is against the basic fabric of the Constitution. According to me, the word 'consultation' has to be well defined. Otherwise, it would lead to so many complications. Further, any appointment of judges, whether by collegium system or some other system which would be introduced, there has to be transparency; there has to be a consultative process. At the same time, the independence of the Judiciary needs to be maintained.

Now that there are some allegations that the collegium system is not working properly since there are some loopholes and infirmities in it, definitely it should be revised. It must be thought of and the collegium system should be revised in accordance with the present structure and the situation.

Therefore, while supporting the Bill, I suggest that the word 'consultation' should be well defined. I support the Bill as a whole with the aforesaid observations. Thank you very much.

SHRI BHUPENDER YADAV (Rajasthan): Madam Vice-Chairperson, the present Bill brought by Shri Sukhendu Sekhar Ray raised some important issues. As we all know, the separation of power among the Legislature, Executive and Judiciary is a foundational pillar of the Indian Constitution. The most significant manifestation of the principle of separation of power is the independence of Judiciary, as we all know. But one of the issues plaguing the Judiciary is the legal controversies surrounding the appointment of High Court Judiciary.

This is not a new issue. Since 1969, there have been debates and legal arguments surrounding the process of appointments. As we all know, Article 124(2) of the Constitution says, "Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the State..." In simple words, the President has to consult with the higher judiciary to appoint Supreme Court Judges. A similar process is laid down in Article 217 for the appointment of High Court Judges. Now the fundamental problem, as it is mentioned in the present Bill also, is that it is the definition of consultation because the word 'consultation' is not defined in the Constitution. But it appears in the various Articles of the Constitution-Article 124, Article 217, Article 222, etc. Sometimes the

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absence of the definition of consultation creates an ambiguity. That is the reason the word 'consultation' still continues to haunt the Bar and the Bench to this day. To understand the meaning of consultation, we have to look at the previous decisions of the Supreme Court because this is the particular aspect of the Constitution which is every time dealt with by the Supreme Court. The definition of consultation started in 1969 judgement. In 1969, the Supreme Court passed a judgement in 'Chandermouleswar Prasad *vs.* Patna High and others on the issue of transfer of an Additional District and Sessions Judge by the State Government without consulting the High Court. With regard to the word 'consultation', the Supreme Court broadly observed and I quote, "Consultation or deliberation is not complete or effective before the parties make their respective points of view known to others and discuss and examine the relative merits of their views." After the judgement in 1977, a similar issue of the transfer of a High Court Judge by the Government of India without consulting the Chief Justice of India came up before the Supreme Court in Union of India vs. Sankalchand Himatlal Sheth. Even in this judgement the Supreme Court discussed the intention of our Constitution makers also. In this particular judgement, the Supreme Court explained that the word 'consult' implies a conference of two or more persons in order to enable them to evolve a correct, or at least, a satisfactory solution. It was further held, at the previous decisions of the Supreme Court because this is the particular aspect of the Constitution which is every time dealt with by the Supreme Court. The definition of consultation started in 1969 judgement. In 1969, the Supreme Court passed a judgement in 'Chandermouleswar Prasad *vs.* Patna High and others on the issue of transfer of an Additional District and Sessions Judge by the State Government without consulting the High Court. With regard to the word 'consultation', the Supreme Court broadly observed and I quote, "Consultation or deliberation is not complete or effective before the parties make their respective points of view known to others and discuss and examine the relative merits of their views." After the judgement in 1977, a similar issue of the transfer of a High Court Judge by the Government of India without consulting the Chief Justice of India came up before the Supreme Court in Union of India vs. Sankalchand Himatlal Sheth. Even in this judgement the Supreme Court discussed the intention of our Constitution makers also. In this particular judgement, the Supreme Court explained that the word 'consult' implies a conference of two or more persons in order to enable them to evolve a correct, or at least, a satisfactory solution. It was further held, and it was mentioned in the judgment which I quote. "The Consultation must be a real, substantial and effective consultation based on full and proper materials placed before the Chief

Justice by the Government. If the Government departs from the opinion of the Chief Justice of India, it has to justify its action by giving cogent and convincing reasons for the same, and if challenged, to prove to the satisfaction of the Court that a case was made out for not accepting the advice of the Chief Justice of India...." Broadly this principle was again upheld by the Supreme Court in 1981 judgement in S.P. Gupta vs. Union of India, this is the First Judges Case, as we know, relating to the issue of redistribution and transfer of the High Court Judges *vide* a notification issued by the Law Minister, the Supreme Court interpreting the term 'consultation' categorically held that the opinion of the Chief Justice of India is merely consultative and the final decision in the matter of appointment of judges is left in the hands of the Government. After this 1981 judgement and till the stages of S.P. Gupta case, it may be said that the consultation only meant non-binding opinion, discussion and there was freedom to disagree with the advice rendered by the Chief Justice of India so long as there were sufficient reasons to do so. What was required was consultation and not concurrence. After that, in 1991, in the case of Subhash Sharma versus Union of India, the Supreme Court observed that the S. P. Gupta versus Union of India case required reconsideration. This is the time when the Supreme Court changed the view. The Supreme Court had held in Sankal Chand case. The Supreme Court took a contrary view that the consultations with the Chief Justice of India was of vital importance and his views must play a decisive role in the appointment of judges. The Supreme Court also deprecated the practice of State Governments sending proposals directly to the Government of India, without reference to the Chief Justice of States and Chief Justice of India. After the first Judge's judgment, again the Supreme Court Advocates-on-Record Association versus Union of India (Second Judges Case) in 1993, — it is the Second Judge's case — which reaffirmed the concept of judicial primacy in the consultation process and over-turned the decision in S.P. Gupta versus Union of India. The Supreme Court held in the Second Judges case: "...in the choice of a candidate suitable for appointment, the opinion of the Chief Justice of India should have the greatest weight". The Chief Justice, in turn, was required to consult the senior-most judges of the Supreme court or the High Court in forming his opinion. The Supreme Court further held: "The selection should be made as a result of a participatory consultative process in which the executive should have power to act as a mere check on the exercise of power by the Chief Justice of India, to achieve the constitutional purpose." It is this judgment that led to the collegium system in judicial appointments. After that, in the landmark judgment, which related to the Special Reference No. 1 of 1998 (Third Judges Case), the collegium system was affirmed by the Supreme Court. They confirmed that consultation means concurrence

3.00 P.M.

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and it was held that the Chief Justice of India was required to consult four senior Supreme Court judges for appointments to the Supreme Court and two senior High Court judges for appointment to High Courts. The decision also laid down certain exempt situations where the decision of the collegium is not binding on the Government - where the Chief Justice of India does not consult with the senior Supreme Court or High Court judges, where the candidate lacks eligibility or where norms of the consultation process are not complied with. The Government was also empowered to convey to the Chief Justice of India, reasons for non-appointment of a candidate recommended by the collegium, and the collegium would be bound to reconsider their recommendation. The Three Judges Case led to intensive debate about the ambit and scope of consultation, ultimately vesting the privilege of judicial appointments exclusively in the collegium. After that, Parliament passed the NJAC case. The NJAC case was examined by the Supreme Court, titled The Supreme Court Advocates-on-Record Association versus Union of India (NJAC Case) and in that case the Supreme Court noted that consultation was a two stage process. The first stage involves the consultation between Chief Justice of India and his colleagues constituting the collegiums for making recommendations. This stage also involves participation of the executive for giving inputs on the eligibility of the candidate. At the second stage, after the recommendations are made to the executive, the executive may object to the appointment for strong and cogent reasons. The Supreme Court then states, and I quote, "What can be a more meaningful consultation postulated by Article 124(2) of the Constitution?" I mentioned all these cases because this debate started from 1969 till 2016. The famous Third Judges' case of the Supreme Court is related to the NJAC Act.

Though the question may have been rhetorical, there is still no clarity on the meaning of the term 'consultation.' The Supreme Court has interpreted and re-interpreted the term a number of times, often taking conflicting and contradictory views. The term 'consultation' is still ambiguous and remains to be objectively defined. As a result, significant time and effort have been wasted debating about what constitutes 'consultation', quite often creating an impasse between judiciary and executive, especially after striking down the NJAC Case. This has led to delay in appointments and it also affected the judicial process. Therefore, it is imperative that the term 'consultation' be defined.

Independence, integrity and transparency of judiciary in its truest form cannot be safeguarded unless there is an absolute clarity regarding appointments to the higher

judiciary. However, independence of judiciary means that we are living in a system of checks and balances. If the term 'consultation' is interpreted to be 'binding consultation' or if 'consultation' involves primacy of the opinion of judiciary over the executive, it would negate the principle of checks and balances enshrined in the spirit of the Constitution and confer unfettered powers on the judiciary, enabling it to tower over both the executive and legislature.

That is why the present Bill moved by Shri Sukhendu Rayji, as a Private Member Bill, requires more discussion. But, one thing is very much clear that judiciary is an institution whom we are giving power to protect our fundamental rights. The judiciary also has power to declare any Act or action taken by Parliament, if it is unconstitutional and against the basic structure of the Constitution, null and void. But, there may be so many other routes required for maintenance of integrity and independence of judiciary. In my view, the need of the hour is to establish a transparent mechanism for the purpose of appointment of higher judiciary which involves 'non-binding goodfaith consultation' between judiciary and executive.

We have already discussed about the independence of judiciary. Complete independence to judiciary, definitely, gives power to deliver free and fair judgments. We all believe in independence of judiciary. But, today, what is needed in our country is a strong democracy with an absolute independent judiciary. But, inter-dependence and coexistence between legislature, executive and judiciary is very important. For the purpose of this inter-dependence, the framers of our Constitution used the word 'consultation', although it is not defined under the Constitution.

The present Bill seeks to amend the Constitution and wants that the definition of 'consultation' be inserted as a new Clause in Article 366.

Madam, many things are not codified, but are governed through conventions. To make our democracy stronger, we have to make our conventions strong. Every institution — judiciary, executive or legislature — has to respect each other. Each of them put its own Lakshman Rekha, maintain checks and balances and, I think, if we do this, we will make our democracy stronger. That is the reason why I say that this is an important Bill brought by Shri Sukhendu Sekhar Rayji.. But, I feel, apart from this amendment, we must rely more on conventions which will be a healthy convention for democracy. This is my view. I think, the word 'consultation' is only defined by the Supreme Court in its own judgments from 1969 onwards. Whenever judiciary defines the word 'consultation', the

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scope of 'consultation' becomes wider. So, there must be a certain limit. And, that limit is *Lakshman Rekha.* Every institution must introspect and realize its *Lakshman Rekha.* That is an important aspect of this Bill. Though I think that this is a good Bill, yet apart from amendment of Constitution, the self-introspection and self-restrain is required by every institution.

Thank you very much.

SHRI D. RAJA (Tamil Nadu): Thank you, Madam Vice-Chairman. At the outset, I take this opportunity to congratulate my colleague, Shri Sukhendu Sekhar Ray, for introducing and discussing this important Bill. While introducing the Bill, he has raised several issues which had already been debated in the Constituent Assembly. It was really very enriching and enlightening on various problems that we are confronting today.

Madam, in a country like ours, the jurisprudence is always in a continuous evolution. Our society is a class society; our society is a caste society. We should try to understand the dynamics between law, class and society. We should try to understand the dialectical relationship between law, class and society. I have certain points to explain. Our colleague, Shri Sukhendu Sekhar Ray, has tried to explain that we should be clear about consultation and concurrence. Whether amending the Constitution, Article 366, will set right everything or not, that is a different issue. But, it is in evolution and new problems are coming. Bhupenderji also spoke about Collegium and, at the same time, also about transparency. Very learned Judges of the country, very eminent advocates have very clearly said that there is opaqueness in Collegium System; there is no transparency. And, now, when we discuss the appointment of Judges at higher level, there is a kind of Memorandum of Procedure (MoP). That is between the Government and the Judiciary. Nobody knows the contents of the MoP. All the time, communications go from this side to that side and that side to this side. But, we do not know what exactly the MoP is and as to what is happening. Recently, the Law Minister made a statement that the retirement age would not be increased. We hope that is the decision of the Government. My point is at a different level. When we discuss the appointment of Judges, we should take into consideration the society as a whole. I have quoted in the past also, there are Judges who have pointed out that the Indian Judiciary does not have adequate social representation. There is a strong feeling that there is no adequate representation for women. Madam Vice-Chairman, you are sitting in the Chair.

We are happy. We want to see more women at such places.

उपसभाध्यक्ष (श्रीमती कहकशां परवीन): बहुत-बहुत शुक्रिया।

SHRI D. RAJA: But the point is, there is no adequate representation for women in Judiciary. How to do it? We need women. There is no adequate representation to SC, ST and OBC. ...*(Interruptions)*...

SHRI B.K. HARIPRASAD (Karnataka): Minorities also

SHRI D. RAJA: Yes, minorities also. How to provide adequate representation to these sections? There is an argument which is given all the time. That is a very cynical argument. That is, non-availability of suitable candidates and non-availability of meritorious candidates. I find it extremely difficult to buy that argument. After 70 years of independence, we should not give such cynical answer. Whenever a question is asked about adequate representation to all these sections, the reply that we get is non-availability of candidates and no meritorious candidates. This is nothing but a very cynical answer which we should reject. If we have the will, then, we can. There are people who are eligible and meritorious. So, Madam, what I am trying to say is that in our Judiciary, we should have adequate representation for (1) women and (2) all other sections, the Scheduled Caste, the Scheduled Tribe, the OBC and minorities. Then only, we can given confidence to our people because the last faith for our citizens is court or judiciary. Everything can fail but judiciary should not fail. We need to strengthen our Judiciary, we need to strengthen the independence of our Judiciary and we also need to strengthen the neutrality of our Judiciary, so that people get justice, justice in true sense. Why am I underlining this, 'justice in true sense'? After this two-member judgement on the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, what I see is that there is an increase in the atrocities or crimes commited against the SC/ST across the country. It does not confine to one State, it is across the country ...*(Time-bell rings)*... I am concluding, Madam. The problem is, *dalits* are killed and cases are filed. From Lower Court, it goes to the High Court, from the High Court, it goes to the Supreme Court, and, finally, in many cases, all the accused are acquitted and released. But people have been killed. What justice was given to them? ...*(Time-bell rings)*... This is the issue. I am concluding. Our colleague has brought this Bill. It is really a relevant Bill at this point of time. So, we can define or re-define many things in order to ensure true justice and justice delivery system to our citizens. That is my suggestion. The House should consider this. Thank you very much.

उपसभाध्यक्ष (श्रीमती कहकशां परवीन): प्रो. मनोज कुमार झा जी, मैं आपको चार मिनट का समय दूंगी।

प्रो. मनोज कुमार झा (बिहार): उपसभाध्यक्ष महोदय, आपका शुक्रिय। I have read the proposed Bill. I find these are the times when setting aside every concern, we need to look at this entire issue, all of us, maybe with fresh eyes and fresh ideas. When, in the month of January, four hon. Judges of the Supreme Court held a Press conference, they said a couple of things. Those things were very alarming in nature कि लोकतंत्र खतरे में है। I am reminded of Dr. Bhim Rao Ambedkar. In 1943, during Mahadev Govind Ranade's Memorial Lecture, उन्होंने एक बात कही थी कि लोकतंत्र सिर्फ वोटिंग का नाम नहीं है। संस्थाएं और संस्थाओं के बीच में vibrant collaborative mechanism लोकतंत्र को जिन्दा रखता है, वरना लोकतंत्र के बीमार होने में वक्त नहीं लगता है। उन्होंने एक बात कही थी कि अगर इन संस्थाओं का चरित्र हमारे समाज के चरित्र का प्रतिनिधित्व नहीं करता है, तो लोगों को, माफी के साथ कहूंगा कि लोगों को एक अहसास-ए-कमतरी होता है कि चूंकि फलाने संस्थानों में हमारा प्रतिनिधित्व नहीं है, तो हमारी बात नहीं समझी जाती है, हमारी संवेदनाएं नहीं समझी जाती हैं। किसी से यह शिकायत नहीं है, लेकिन हम सबके लिए यह प्रश्न है। कल भी मैंने एक संदर्भ में कहा था कि हम सबको दलों के दायरे से ऊपर उठ कर एक बार सोचना होगा कि judiciary, higher judiciary में ऐसे एक व्यापक बदलाव की जरूरत है, जिसको अम्बेडकर साहब कहते थे कि राजनीतिक लोकतंत्र का translation अलग-अलग sphere में होना चाहिए। आज मैंने अभी जब पढ़ा, मैं सुखेन्दु जी को मुबारकबाद देना चाहूंगा, क्योंकि हममें से बहुत लोग इस पर खुल कर चर्चा नहीं कर पा रहे हैं, लेकिन अब यह वक्त आ गया है।

मैडम, मेरे समक्ष एक और संदर्भ है और वह संदर्भ यह है कि 2010-11 में हॉलीवुड की एक फिल्म आई थी - The Great Debters. मुझे पहली बार एहसास हुआ, मैं 'lynch' शब्द से वाकिफ़ नहीं था, इसका मतलब judiciary से है। पता चला कि Robert Lynch नाम का एक सचमुच का व्यक्ति था और 1960s में उसकी खाल उधेड़ ली गई थी। फिर वहां बदलाव की एक बयार चली। उन्होंने कुछ बदलाव मुकम्मल हासिल कर लिए। हमने भी कई बदलाव हासिल किए हैं, लेकिन कई बदलाव के लिए हमारा रवैया ढुलमुल रहा है। मैं आपके माध्यम से, सदन के माध्यम से मुबारकबाद को आगे तक ले जाते हुए सत्ता पक्ष से भी कहूंगा कि यह जो लोकतंत्र में एक व्यापक इंद्रधनुष बनाने की एक कला होती है, वह किसी की थाती नहीं है। यह सदन तय करेगा और जब सदन तय करेगा, तो सदन जनता के प्रतिनिधित्व के आधार पर यह बताएगा कि हमारी यह संस्था अब मकबूल हो गई है, हमारी यह संस्था हमारे सामाजिक चरित्र का प्रतिनिधित्व करती है।

मैडम, मैं आपके माध्यम से यह आखिरी टिप्पणी करूंगा। कई दफा जब हम अंधी गुफा से गुजरते हैं, जो judiciary रोशनी का एकमात्र सुराग होती है। उस सुराग को मकबूल रखने के लिए, जिंदा रखने के लिए, बरकरार रखने के लिए जरूरी है कि रोशनी के उस सुराग के सारे रंग हों, एक एकरंगा न दिखे। आज दिक्कत यह है कि यह थोड़ा एकरंगा है। इसको बहुरंगा बनाएं, ताकि हमारे मुल्क की जो विविधता है, वह उसमें आ सके। Thank you very much, Madam. बहुत-बहुत शुक्रिया। मैडम, मैंने बिल्कुल समय exceed नहीं किया।

उपसभाध्यक्ष (श्रीमती कहकशां परवीन): बहुत-बहुत शुक्रिया। Now, hon. Minister.

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE; AND THE MINISTER OF STATE IN THE MINISTRY OF CORPORATE AFFAIRS (SHRI P.P. CHAUDHARY): Madam Vice-Chairman, the hon. Member has brought forth an amendment Bill by bringing a definition under Article 366 of the Constitution of India by way of inserting the word 'consultation' under Article 366(5A). I appreciate it. The Bill is very good. There is no doubt about it.

I also extend my thanks to all the Members who have participated in this debate. Mr. Sukhendu Sekhar has raised a very important point. The hon. Member, Shri Ramakrishna, also spoke on the issue. Shri V. Vijayasai Reddy also spoke on the Bill. Hon. Members, Shri Bhupender Yadav and Shri D. Raja, also spoke on the Bill. All the Members, except two, Shri Ramakrishna and Shri Bhupender Yadav, supported the Bill.

Madam, so far as the word 'consultation' is concerned, it appears in various provisions of the Constitution of India and we see that the 'consultation' word has been defined by the Supreme Court so far as it relates to Articles 124 and 217. But consultation with the President of India while providing appointment to the High Court and Supreme Court Judges is provided in Articles 124 and 217 which means the concurrence. So, if we see the word 'consultation' appearing in various provisions of the Constitution, it also provided the word 'consultation' in Article 124 and it deals with the appointment of the Supreme Court Judges. Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such Judges of the Supreme Court and the High Court. So, there is no provision for a collegiums system under this Article. Again, in Article 127, which provides for appointment of *adhoc* Judges in the Supreme Court, it is provided that it is only with the previous consent of the President after consultation with the Chief Justice of the High Court concerned that the Judges of the High Court and the Supreme Court can be appointed. So, for this purpose, as per Article 127, the previous consent of the President is mandatory.

Sir, again, under Article 124, retired Judges of the Supreme Court can be appointed by the Chief Justice of India, that too with the prior consent of the President of India. Article 217 relates to the appointment of High Court Judges after consultation with the Chief Justice of India. Even in the case of transfer of Judges from one High Court to another High Court, it provides for 'consultation'. Consultation is required if the Chief Justice or other High Court Judges are transferred from one place to another. For appointment of

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additional and acting Judges in the High Court, again, consultation with the President, as also his consent, are required. So, retired Judges can also be appointed only with the prior consent of the President. There is a difference here. If they are appointing retired and adhoc Judges, then the 'prior consent' of the President is required, but for appointment of the Judges under Articles 124 and 217, 'consultation' with the President is required. So, use of the words 'consultation' and 'prior consent' of the President show the intent of the framers of the Constitution.

Further, Articles 103 and 192 are very important Articles, about 'decision on questions as to disqualifications of Members'. So before giving any decision on any such question, 'the President shall obtain the opinion of the Election Commission and shall act according to such opinion'. So, here the President has no discretion. As per Article 103, it is only on the basis of opinion rendered by the Election Commission that the President has to pass the Order. Thus, the President has got no discretion under Article 103, but insofar as the analogous Article 192 is concerned, the Governor is again required to pass the Order as per the order of the Election Commission. So, reading all the provisions would make it clear that the word 'consultation' is appearing not only throughout the provisions, but also in so many other provisions like in Articles 98, 118, 148, 187, 208, 229, 233, 234, 324, 341, 342 and 370. Again, Article 143 provides for reference by the President of India to the Supreme Court for an opinion. If we read all the Articles together, then only under Articles 124 and 217 do we see that in subsequent judgements given by the Supreme Court, the word 'consultation' had been defined, but the word 'consent' has nowhere been defined with respect to the other Articles.

Then, in the First Judges case of Shri S.P. Gupta, the Supreme Court had taken the view that the word 'consultation' does not mean 'consent'. It is only an opinion. But in the 1993 judgement on the Second Judge case, the Supreme Court opined that the word 'consultation' means 'consent'. In the Third Judge case, reference was made by the President of India under Article 143 to the Supreme Court to give its opinion on whether the word 'consultation' meant consent or not. Also, many other issues were referred to the Supreme Court for its opinion. The Supreme Court gave its opinion in the year 1998-99 where it had given certain directions. Now, the question is whether the opinion formed by the Supreme Court under Article 143 is binding or not. Again, this opinion is basically consultation. Those opinions are basically consultation and, if those opinions are binding, then certainly the word 'consultation' is missing in the Constitution

under Article 366. While framing the Constitution, the word 'consultation' could not be defined. Thereafter the Government brought the National Judicial Commission Act. The Constitution was amended; provisions under Articles 124 and 217 were amended, and under that National Judicial Commission was constituted. But that was challenged before the Supreme Court and both the Act and the amendment were declared *ultra vires* and set aside by the Supreme Court. I would also like to refer to the observation of the framer of the Constitution, Dr. Ambedkar, with respect to the word 'consultation' because some of the objections were also raised at the relevant time with respect to the use of the word 'consultation' and the meaning of this word. I quote, "The first is, how are the Judges of the Supreme Court to be appointed? Now grouping the different amendments which are related to this particular matter, I find three different proposals. The first proposal is that the Judges of the Supreme Court should be appointed with the concurrence of the Chief Justice. That is one view. The other view is that the appointments made by the President should be subject to the confirmation of two-thirds vote by Parliament; and the third suggestion is that they should be appointed in consultation with the Council of States. With regard to this matter, I quite agree that the point raised is of the greatest importance. There can be no difference of opinion in the House that our judiciary must both be independent of the executive and must also be competent in itself. And the question is how these two objects could be secured. In Great Britain the appointments are made by the Crown, without any kind of limitation whatsoever, which means by the Executive of the day. There is the opposite system in the United States where, for instance, officers of the Supreme Court as well as other offices of the State shall be made only with the concurrence of the Senate. It seems to me in the circumstances in which we live today, where the sense of responsibility has not grown to the same extent to which we find it in the United States. The draft article, therefore, steers a middle course. It does not make the President the supreme and the absolute authority in the matter of making appointments. It does not also import the influence of the Legislature. The provision in the article is that there should be consultation of persons who are *ex* hy*pothesi*, well qualified to give proper advice in matters of this sort, and my judgment is that this sort of provision may be regarded as sufficient for the moment. With regard to the question of the concurrence of the Chief Justice, it seems to me that those who advocate that proposition seem to rely implicitly both on the impartiality of the Chief Justice and the soundness of his judgment. I personally feel no doubt that the Chief Justice is a very eminent person. But after all the Chief Justice is a man with all the failings, all the sentiments and all the prejudices which we as common people have; and I think, to allow the Chief Justice practically a veto upon

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the appointment of judges is really to transfer the authority to the Chief Justice which we are not prepared to veto is the President or the Government of the day. I therefore, think that is also a thankless proposition." So, in view of this, the word 'consultation' was used under Articles 124 and 217 of the Constitution, but the Supreme Court has given it the meaning because it seems that the word 'consultation' has not been defined under Article 366 of the Constitution of India. I would also like to refer about the Fourth Judges case and opinion of Justice Verma at the relevant time on the working of the collegium system. I quote, "In so far as the collegium system is concerned, there is no provision under Articles 124 and 217 of the Constitution of India for providing collegiums." At the relevant time, Justice Verma also spoke something which I would like to read. He was also of the view that, and he observed that, "the collegium system has completely failed." The NDA Government, headed by Atal Bihari Vajpayee, appointed a National Commission and that National Commission also gave a Report on this issue. I would also like to read the relevant part of that Report. It is pertinent to mention that, in its 21st Report the Law Commission of India under the Chairmanship of Justice D.A. Desai, submitted in July 1987, one of the aspects dealt with was a forum for judicial appointment.

The report recommended the appointment of a National Judicial Service Commission for selecting and recommending persons for being appointed to the superior judiciary. The Law Commission recommended that the National Judicial Service Commission should comprise 11 members with Chief Justice of India as the Chairman and the three senior-most Judges of the Supreme Court, a retired Chief Justice of India, three Chief Justice of the High Court, according to their seniority, the Law Minister, the Attorney General and an outstanding academician as a member, with the provision to co-opt the Chief Justice of High Court concerned, in case of appointment to the High Court. Again, the NCRWC report stated that it would be worthwhile to have a participatory mode with participation of both the Executive and Judiciary in making such recommendations. The Commission proposes the proposition of the collegium which gives due importance to and provides for an effective participation of both the Executive and Judicial wings of State as an integrated scheme of the machinery for appointment of Judges. This Commission, accordingly, recommends the establishment of the National Judicial Commission under the Constitution for appointment of Judges of the Supreme Court which shall comprise the Chief Justice of India as Chairman, two senior-most judges of the Supreme Court as members, the Union Minister of Law and Justice as member, one eminent person

nominated by the President after consulting the Chief Justice of India. So, in view of this report, the 99th Amendment was brought in and Article 124(A) was introduced along with Article 217. But, this Constitutional Amendment for NJAC was struck down by the Supreme Court. But, after that, in one of the contempt proceedings pending before Justice Chelameswar and Justice Ranjan Gogoi, they observed that the collegium system had failed and we were required to re-visit the collegium system. So, in overall situation, we see that the word 'consultation' could not be defined at the time, when the Constitution was framed, when the Constitution was enacted, under Article 366 of the Constitution of India. I think, this is the reason that these judgments are there and the field has been occupied by the judicial pronouncements.

Now, this is a very important Bill, but this is a Bill which requires discussion with various stakeholders who are concerned about it, and we are required to discuss it with all the eminent persons. Thereafter, we are required to frame our opinion and view. Only then, we can bring the legislation. But, at this stage, I request my learned friend that he may withdraw the Bill. And, I assure him that certainly at an appropriate time, we will discuss with various stakeholders and, thereafter, we will come to a particular opinion. Thereafter, we can come with a legislation. Thank you very much.

THE VICE-CHAIRMAN (SHRIMATI KAHKASHAN PERWEEN) : Now, Shri Sukhendu Sekhar Ray.

SHRI SUKHENDU SEKHAR RAY (West Bengal): Thank you, Madam. In fact, when I initiated this Bill, I explained before this House as to what prompted me to bring out this Private Member Bill. I am grateful to Shri Ramakrishna, who has since retired, Shri V. Vijayasai Reddy, Shri Bhupender Yadav, Shri D. Raja, Prof. Manoj Kumar Jha and, of course, the hon. Minister. All of them have elaborately and eloquently dealt with the provisions of the Bill. This is a very simple Bill, but has got a very significant impact on the present situation which is prevailing in our judicial system. On the last occasion, I elaborated as to how the word 'consultation' has been used in different Articles of the Constitution and the hon. Minister has also reiterated it and explained the consequences, if, in each and every Article where this word 'consultation' has been used, that means concurrence, then there may be a stalemate in many areas when the Government may not function properly, if each and every article, which incorporates the word 'consultation', means concurrence. That is why, Madam, I believe in what the hon. Minister has said. I also concluded on the last occasion that this issue should be kept alive and more and more discussion should be held on the issue before arriving at a finality. It is a very

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serious issue. My limited point in moving this Bill was to bring an Amendment to Article 366 of the Constitution. After clause (5), the following clause shall be inserted, namely, 'consultation' means the action or process of formally consulting or discussing with another in merely consultative, advisory and non-binding manner. That is very important. If the President of India is bound every time by some other organisations or institutions, then the Head of the State, which is actually the Central Government, elected by the people of India, it will be a negation of the democracy because in a democracy, the will of the people is supreme. And, when that will is reflected through the elections, and the largest party or the largest group forms the Government, then if such compulsion is thrust upon the Government through an interpretation, which is *non est* even in the eye of the law, it is not good because the Constitution makers never opted for that. I mentioned this in my last speech and I would mention it today also. The hon. Minister has stated this. Now, I am just pointing out two, three things. I will not take so much of time.

Madam, what should be the approach while interpreting a word? First of all, in a nutshell, I would like to mention the Legal Research Methodology published by Allahabad Law Agency in 1997, which made a thorough research on this while referring to different court cases of the English Court as well as the courts of India. It says, "If the words given in the statute are lucid and explicit, it is not for the Judges to go beyond that language or words to try and establish what the Legislature might have meant by using that word. It is also known as a grammatical interpretation. The courts will have to follow this principle even if it results in irrationality or even if it is contrary to the policy or intention of the Legislature. It does not look — 'it does not' means the court does not look — beyond the *litera legis* which means letter of legislation. It just looks at what the law says. Words and phrases ought to be construed by the courts in their ordinary sense and the ordinary rules of grammar and punctuations have to be applied."

Then, again, I would like to quote two lines from what was said in our Supreme Court. In a matter of Bengal Immunity Company Limited vs State of Bihar, reported in the All India Reporter in the year 1955, page 661, the Supreme Court observed, "It is also well settled that in interpreting an enactment, the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation." Now, this is a different view. I stated earlier that there was one view. This is another view, which the Supreme Court has given. Now, the Supreme Court wants that not only the ordinary meaning, it should also take into

consideration the antecedent history of the legislation. Then, what is the antecedent history of the Constitutional provision? On what premise, the framers of the Constitution incorporated the word 'consultation' in different Articles of the Constitution? Just now, the hon. Minister has explained, right from Alladi Krishnaswamy Iyer, an eminent lawyer of Madras who was a Member of the Constituent Assembly, he actually proposed that the Judges of the Supreme Court and High Courts should be appointed by the President of India in consultation with the Chief Justice or senior two Judges. Now, there are contrary views, as rightly pointed out. Some said that not only consultation, but there should also be concurrence. The third view was two-thirds majority in both the Houses of Parliament. It will be decided and they will be appointed by the Parliament by way of two-thirds majority of both the Houses of Parliament as it is prevalent even today in Switzerland where the Swiss Federal Assembly appoints the judges of the Swiss Federal Court. So, that was the third view. Ultimately, Dr. Ambedkar said that there should be a participating process between the executive and the judiciary, and, therefore, consultation is required, not concurrence. Therefore, this is antecedent history of the legislation, this is antecedent history of the provisions of the Constitution and the word consultation. Finally, it is a settled principle. This is reported in the Halsbury's Laws of England, IV Edition, Volume 44, Para 864. I quote two, three lines "It is a settled principle of interpretation that the court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do". Therefore, Madam, in good faith, the words are to be interpreted, and, even if there is some mistake, the intention of the legislature should not be questioned. If the result of the interpretation of a Statute by this rule is not what the legislature intended, it is for the legislature to amend the Statute rather than for the courts to attempt the necessary amendment by investing plain language with some other than its natural meaning to produce a result, which it otherwise thought the legislature must have intended. Therefore the court cannot import another meaning, ordinary meaning of a word which is relevant in the context. Therefore, Madam, the way in our country, things are being interpreted, things are being dealt with, it is not only reprehensible but it is dangerous for our democracy to run and no authority can function. In our democracy, powers have been given to different authorities, not to enjoy for themselves but to exercise that authority for 'common good', and, therefore, that 'common good' factor to be kept in mind. But I am sorry to say that in some cases, this 'common good' factor is absent and the authorities are exercising the powers in their own interest. I am against that. So, once this Bill is accepted today or tomorrow, and, if the Government brings in a comprehensive legislation on this matter, I shall be the happiest person that, at least, I tried to invite

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the attention of this august House that something should be done. The time is ripe and something should be done. Based on the assurances given by the hon. Minister in this regard, I would like to withdraw the Bill with the permission of the august House. Thank you, Madam.

DR. SASIKALA PUSHPA RAMASWAMY (Tamil Nadu): But, Madam, there is no quorum in the House.

SHRI V. VIJAYASAI REDDY: I would like to know whether this has been recorded or taken as an assurance and referred to the Assurance Committee, in case if it is not adhered to. ...(Interruptions)...

DR. K. KESHAVA RAO (Andhra Pradesh): There is no quorum in the House. ...(Interruptions)...

SHRI SUKHENDU SEKHAR RAY: Ask the House whether to withdraw the Bill. ...(Interruptions)...

श्री जयराम रमेश (कर्णाटक): मैडम, मेम्बर्स नहीं हैं। ...(**व्यवधान**)...

श्री बी.के. हरिप्रसाद: मेम्बर्स नहीं हैं। ...(**व्यवधान**)...

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS; AND THE MINISTER OF STATE IN THE MINISTRY OF STATISTICS AND PROGRAMME IMPLEMENTATION (SHRI VIJAY GOEL): The Minister of Parliamentary Affairs is here. ...(Interruptions)...

PROF. MANOJ KUMAR JHA: We should be grateful to the Minister.

THE VICE-CHAIRMAN (SHRIMATI KAHKASHAN PERWEEN): Shri Sukhendu Sekhar Ray, are you withdrawing the Bill or should I put the motion to vote?

SHRI SUKHENDU SEKHAR RAY: As I have already stated, since the hon. Minster has promised that the matter will be discussed threadbare and some action will be taken, I may be allowed to withdraw the Bill.

THE VICE CHAIRMAN (SHRIMATI KAHKASHAN PERWEEN): Does he have the leave of the House to withdraw the Bill?

The Bill was, by leave, withdrawn.

THE VICE CHAIRMAN (SHRIMATI KAHKASHAN PERWEEN): Now, the Bill is withdrawn. ...(Interruptions)...

श्री जयराम रमेशः मैडम, कोरम नहीं है। ...(**व्यवधान**)...

श्री विजय गोयलः पालिर्यामेंटरी अफेयर्स मिनिस्टर यहां बैठे हुए हैं।

SHRI B.K. HARIPRASAD: There is no quorum to withdraw the Bill. ...(Interruptions)...

श्री जयराम रमेशः Withdraw करने के लिए कोरम नहीं है। ...(**व्यवधान**)...

श्री विजय गोयलः जयराम रमेश जी, आप तो जानते हैं, अगर आपको कोरम का इश्यू उठाना है, तो उसको आप पहले उठाइगा। ...(**व्यवधान**)...

श्री जयराम रमेशः रूल के मुताबिक जब withdrawal होता है, तो कोरम होना जरूरी है। अभी कोरम नहीं है। ...(**व्यवधान**)...

श्री विजय गोयलः पहले कोरम का इश्यू उठेगा, तब यह होगा। अभी withdrawal हुआ है, अब आप कोरम का इश्यू उठा रहे हैं, तो काउंट कर लेते हैं। ...(**व्यवधान**)...

DR. SASIKALA PUSHPA RAMASWAMY: Madam, there is no quorum in the House. The House should be adjourned. The entire country is watching us. Without quorum, how can we proceed?

श्री संजय सिंह (राष्ट्रीय राजधानी क्षेत्र दिल्ली): मैडम, मुझे अपना बिल introduce करना है, आप एक मिनट का समय दे दीजिए। ...(**व्यवधान**)...

उपसभाध्यक्ष (श्रीमती कहकशां परवीन): चूंकि सदन में कोरम नहीं है, अतः सदन की कार्यवाही सोमवार, दिनांक 23 जुलाई, 2018 को 11.00 बजे तक स्थगित की जाती है।

The House then adjourned at forty-nine minutes past three of the clock till eleven of the clock on Monday, the 23rd July, 2018.