

[2 May, 2003]

RAJYA SABHA

Private Members' Business at 5 o'clock, we will ask these three speakers to speak. On Monday, there will be the reply of the Minister and then the passing of the Bill. Okay, is that agreeable to everybody?

SOME HON. MEMBERS: Agreed, Madam.

PRIVATE MEMBERS' RESOLUTION

Wide - ranging reforms in judiciary

PROF. SAIF-UD-DIN SOZ (Jammu and Kashmir): -Madam, I beg to move the following Resolution:-

"That this House resolves to call upon the Government to ensure wide-ranging reforms in the judiciary so that among other things selection of Judges on the basis of merit and competence is fully assured and a good mechanism is devised to ensure accountability of Judges and no room is left for corruption in the judicial system of the country."

[THE VICE-CHAIRMAN (SHRI SURESH PACHOURI) in the Chair.]

Sir, the Press is agog with stories today that the judicial system has fallen to this level of criticism. When such eminent legal luminaries like Shri Kapil Sibal, Arun Jaitleyji and Mr. Anand and others are there, it is very difficult for me, because I am not a legal luminary, to speak on this very important question. But, to this august House and particularly to the hon. Law Minister and other luminaries here, I want to explain how common people in India think about the Judiciary. The Press, as I said, is full of stories on what the legal luminaries have said on Justice Mukherjee having been given in to custody to the CBI for seven days. Many people, including Shri Sibal and others, have said that it is a shame on the judiciary. But I say it is a shame on the whole nation that a judge should stoop to this level of corruption, including moral turpitude. We should bow our heads in shame that we have a system that is rotten, and we cannot produce competent and honest judges, it is a reflection on the whole process of

selection. But since it is a very important question, I have divided it into three elements. How do we organise reform in the judiciary? First of all, we have a plethora of laws. I am happy that we have legal luminaries in this House. They may choose, speak and express their ideas and I am safe, at least, in the hands of Shri Arun Jaitley, who has been a brilliant lawyer and who has excellent legal acumen to understand things. First of all, I want to say that there is a plethora of laws, which are confusing. Therefore, we must bring about cohesion in these laws and we must update these laws. People are not satisfied with some of the prevailing laws. Take, for example, POTA. It is being misused under our very nose. If you hold a referendum in this country, I think more than 99% of the people would vote against POTA. It should be removed from the Statute Book. There are so many laws that are not needed. This Government should do an exercise to update the laws. Today, I want to bring to the notice of this august House one such outmoded, archaic law called "the Official Secrets Act" of 1923. A copy of that Act is with me. I say with a sense of responsibility, subject to correction by these legal luminaries, that this Act is not needed at all. Mr. Vice-Chairman, Sir, you will be surprised to know that this Act has not been amended so far, since 1923. This Act is vague. It does not explain the word "secrecy"; it does not explain the word "espionage", और जब उर्दू या हिंदी में कहते हैं- "यह पुलिस के हाथ में दुधारी तलवार है, जिसको चाहेंगे मार डालेंगे।" Only yesterday, a very important body related to media had said that this should be, at least, amended. In fact, last year, the same body had said that it should be repealed. But, yesterday, it passed a resolution requesting the Government that it should be, at least, amended to safeguard liberty and human rights. This Act is very archaic. It refers to hand-written drawings, say, by people who may leak the secrets through espionage. Forget it. There is an institution in today's world, the Global Positioning System. That is in position. It is possible, today, through satellite, to make any drawing anywhere for any installation, and, still, the Government should rely on the draconian and archaic law of 1923. It is a British legacy and it must go. My information is that more than 200 people are languishing in jail under this Official Secrets Act of 1923 and they have no hope to get out of jail unless this is amended or the Government takes special measures to correct the situation.

Recently, under this very Act, a journalist was incarcerated for seven months and he remained in Tihar jail. The tragic aspect of the application of this law is that if there is a Judge who is not competent, or

who is intellectually dishonest, enormous harm can be done to a citizen. A great injustice was done to the journalist by the Chief Metropolitan Judge. Recently, I heard that it is a woman Judge who was trying him under the Official Secrets Act of 1923. Maybe she was intellectually dishonest, I do not know. This Government must delve deeper on facts that the Judge's general knowledge is poor, that the Judge's knowledge of geography is poor and that the Judge did not know that Gilgit was under the occupation of Pakistan. She, therefore, misread an e-mail that had been received by the journalist from across the border. The e-mail in question was actually a memorandum titled, and I quote, "Atrocities of Forces in Gilgit" and was submitted by Chairman, Balawaristan National Front to the United Nations. The very first line of the e-mail says, "our nation is under the stifling control of armed forces of Pakistan and its notorious intelligence service ISI for conducting terrorist activity in India". It further said, 'Pakistan's Intelligence Service, defamed intelligence agency ISI, have been forcibly and treacherously sending the innocent unemployed youth across the LoC for terrorism and religious cleansing."

Mr. Vice - Chairman, through that e-mail, United Nations had been approached and a demand was made by the said front to bring the then Prime Minister, President and Army Chief of Pakistan before the International Court of Justice as war criminals. And the Judge who is certainly not competent had no time to read the e-mail !

Misreading deliberately the e-mail or not caring to read it on the Internet - we wish the defence had suggested a number of times - she rejected the bail application of this journalist, saying and writing in her own hand, "the journalist had leanings towards liberation of Kashmir". Such is the incompetence or the intellectual dishonesty of this Judge. This is the mistake of the Government that this journalist was tried under this abject, archaic and draconian law, Official Secrets Act, 1923.

The same Judge even chided a very senior General of Army, Lt. General O.S. Lochap, then holding the charge of Director General of Army Intelligence. The General had been called there. In the General's clarifications, it was mentioned that the e-mail was on the internet and certainly it did not pertain to any leakage of the army secret. The Judge seems to have become angry and she did not behave with the General very properly as an hon. Judge should do. Lamenting perhaps - and I am

satisfied - the Judges' attitude, Lt. General Lochap - I salute his integrity, it goes on record - made a remark in the court which would have a bearing for the future, and, I quote, "we are not only the guardians of the frontiers of the country but we have also the basic responsibility towards the country's citizens". That Judge asked the Army General, "Why do you say that this is on the Internet and that the journalist is not involved in it?" Perhaps she wanted him to tell the court that he should be punished. But the General said, "No secret of the Army has been leaked. It was available on the Internet." The Judge did not care to read the e-mail on the Internet. She was hellbent on punishing the journalist. She rejected the bail application. Now some people say that Shri George has lost his conscience and he does not feel any prick of his conscience. Since I have tried to understand it very minutely, I feel that, maybe- he feels a little prick of his conscience. Maybe, Advaniji finally felt that things were going wrong. Whatever activities took place in the Ministry, ultimately, the Minister was responsible for that. Therefore, the Home Minister decided one day to withdraw the case against the journalist. The Government of India said that there was no case against him and the case was withdrawn from the court. Sir, he has already suffered for seven months in the jail. If this Army General had not done his duty, had not shown respect to the Constitution of India, if this Army General lacked courage and integrity, that poor journalist would have died in the jail. Nobody could seek justice on his behalf because he had been booked under the Official Secrets Act, 1923. It leaves no hope for the innocent citizens. This is what has happened in our country. Mr. Vice-Chairman, Sir, I make an earnest request to this august House and through you to the hon. Law Minister, to take appropriate measures. I leave it to the Government of India to compensate the innocent journalist. How will they compensate the innocent journalist? After seven months of incarceration, the case was withdrawn against him. How would you compensate his family, whose children have suffered, whose wife has suffered? I leave it to the Government of India to think of reparations, to think of doing justice to the journalist against whom the case has been withdrawn. Sir, I make an earnest appeal to this House and through you to the hon. Minister who is a very capable person, to seriously think of getting this draconian law, the Official Secrets Act, repealed. I leave it to his good judgement. I would like to put a question to the House, "If such a judge is promoted tomorrow and made a judge of the High Court, how can this nation be safe in her hands?". I leave it to the House and to the hon. Minister. The Government of India must go into this question. Although the

journalist has been released, but how he would be compensated and how the judge would be tackled. This is not the only case. There are a plethora of laws. These laws need to be updated. I think Shri Arun Jaitley is capable enough to make such an effort.

The second element of my speech is judicial misconduct and corruption. There are so many examples. The whole country is crying for reforms. It is partly because we have a lot of pending cases. Some time back the hon. Minister had given some figures. We should be thankful to the hon. Minister because he has now updated the whole pendency. According to the figures which he had quoted, as on 1st November, the number of criminal cases which were pending was 4,88,130 and the number of civil cases was 30,62,443. In the case of District Courts, we have 2,07,48,130 pending cases. This delay in disposal of cases breeds corruption in the judiciary. This is not the only reason for corruption. It must be adding fuel to the fire. And, this is one reason why there is corruption. Because delay will itself promote corruption. I hope hon. Minister will have a definite view on this because, there were some articles putting forward the arguments that more work, rather than more Judges, is the answer. So, I leave it to him how he shapes his thinking in future. It is open to him to appoint more Judges, and Supreme Court and High Courts should have the number of Judges that are required, and in District Courts, there is a chaos there and these figures also prove that there is chaos. So, because of pendency of cases, corruption in courts is promoted. But, the third and most important area of seeking judicial reforms is the accountability of the judicial system. Parliament has avoided, Mr. Vice-Chairman, Sir, this aspect. In fact, it should not have come as a Private Members' Resolution because Private Members' Resolution is not taken so seriously. That is our convention. I would say, and it should go on record, that we must have a very wide-ranging debate on judicial reforms. Things have gone wrong. A *Mukherjee* today in the lock-up is not a shame on judiciary alone; it is a shame on all of us. We address them as 'Your Lordships' all the time and we expect them to be above board and this Parliament had been passing Bills giving perks to Judges and we do it very generously. Often, Members of Parliament in both Houses have never looked into those Bills, giving perks and salaries to the Judges because we know that their job is very delicate. But *Mukherjees* have been doing it and my colleague, Shri Kapil Sibal, has raised the question that if you do not want many *Mukherjees* in the system, then you have to do some soul-searching and

come forward with reforms. I think, hon. Minister, Shri Arun Jaitley's mind is working on reforms of the judiciary and a suggestion for the National Judicial Commission. But, we must go into the whole question of accountability. And, I must say that Parliament of India has avoided its duty because I feel that in a way, Parliament is also on the decline. I have a lot of grouse against individual Members of Parliament, who do not feel committed enough to go into their own business, which the Constitution of India gives them. After all, where is the system of accountability in judiciary? Just now, I will be narrating to you 4-5 Chief Justices of India, the stalwarts, who, on the assumption of that high office or while leaving that office, had alerted the nation that we have no system; we have no mechanism for judicial reform, for accountability. Only Parliament can do it. And, we got a chance once and I did not know the circumstances, I am not a better judge, how the erring Judge was let off, but it remained a broader question in the minds of the people that there was something wrong with the Judge. And, the whole provisions of impeachment have remained in the Book. And, unless Parliament, as the law-giver, as the law-maker, also discharges its responsibility and creates a system of accountability, there will be corruption in the judiciary, because no Chief Justice of High Court or Supreme Court will be able to tackle the erring Judge. That is what they themselves have said. The supreme authority rests with the Parliament. Although, finally, when I conclude, I will come to Justice Krishna Iyer, who wants essentially harmony between the Judiciary and Legislature. I agree with him. But, here and now, I must say, Mr. Vice-Chairman, Sir, through you, to the House that how far the erring Judges can go; how corrupt they have become. Some years ago, and I said it in the other House at that time, regarding a Judge. Some Members here criticise the West Bengal Government, but I feel that it is the most efficient Government in the country. Sir, I refer to a judge who made five spectacles for his family; one for himself, one for his wife and three for his children. And, the West Bengal Government, the Minister concerned, did not sanction that amount. Do you know what the judge said? He said, "My financial position is equal to that of a Union Cabinet Minister. Incidentally, I happened to be a Cabinet Minister when he made that remark. I raised it in the other House: "What is a Cabinet Minister's position?" I cannot purchase spectacles for my whole family. I cannot get a spectacle for my own eyes. And the Judge wanted to be treated on par with that of the Union Cabinet Minister." And, I should mention one more thing here, which I said in the House at that time. When I learnt that my daughter could not travel with me on the

plane, I got her off-loaded, because I could not afford it. How many Ministers do it; I don't know. I don't want to go into that question. Now, a Cabinet Minister is equal to that of an MP. What are his perks? We do not want special perks for Ministers. And, nobody claims it here. But that Judge wanted it, and the West Bengal Minister - I must salute him for his stand -- rejected that bill and told him, "I have studied what perks are available to Cabinet Ministers."

And, Mr. Vice-Chairman, Sir, in Mangalore, a judge, on the weekends, went to his hometown, and he claimed his TA and DA. A Chief Justice of India told me this privately after he retired. He told me, "Sir, we could not do anything against him because there is no system. And, the Chief Justice, I tell you, tried to do some reform, some in-house reform. But that will not work. What would work is National Judicial Commission or something like that. What Mr. Arun Jaitley will devise, as the representative of the Government, as the representative of the people, this House will decide, and that will be the reform of the judiciary. They can't do anything themselves. The judiciary has gone wrong. It has become corrupt because Parliament has been in decline so far as this duty is concerned. We have got so many stories of corruption. We have not impeached a single judge, and the provision is in the Constitution of India. This is what the Judges themselves have to say. But, I must tell you; it is not that the entire judiciary has become corrupt. That will be totally wrong. We have had stalwarts in the judiciary who saved the system, without Parliament helping them. These stalwarts saved the system because they were men who had integrity, who were honest and who wanted to give respect to the whole nation. They represented the genius of the nation. And, there are so many judges who wanted reform. There is a category of judges, say, Tarkunde, Venkatachalaiah, Krishna Iyer, Rajinder Sachchar and many others; I cannot name all. They wanted to protect civil liberties. They wanted to protect human rights. They wrote continuously for protection of human rights. That is a separate category. And, there are some judges who wanted to grapple with that; Ahmadi and others; I cannot name all of them. For my satisfaction, I wanted to delve deeper and find out who are the judges who, ultimately, gave honour to the Supreme Court of India, who were feeling something inside, who had the burning sensation inside, that there is corruption before their very noses, and that nothing was happening. I have four or five names, and I have the satisfaction that I am speaking in the company of legal luminaries -- they can correct me wherever I go wrong

3.00 P.M.

-- and my other colleagues. Take, for instance, Justice Krishna Iyer; not only because he retired as a honest man, -- the whole country recognises him as a man of integrity -- but he continuously talked to judges, talked to lawyers, made discourses. The others were Justice J.S. Verma, Justice Bharucha, Justice Patnaik, and the present Chief Justice of India, Justice Khare. I salute all these judges. As I said, I have done some exercise in understanding what these judges were doing. They had no system of accountability because Parliament has not awakened to that need so far. But they continued their struggle. I call them crusaders of the integrity of judiciary, integrity of the nation. And, in between, when the debate was very hot, I want to remind you, Mr. Vice-Chairman, Sir, in the words of the then President, Shri K.R. Narayanan, who had warned the nation, " people will resort to extra judicial measures if the system fails to get them speedy justice." And such warnings have not gone waste. And, today, even if Mr. Mukherjee had not been taken into custody, who brought shame to the whole country, still we would have been discussing the issue of accountability because so many judges have gone corrupt, openly corrupt. I remember, because I was the Minister when Justice Verma was the Chief Justice of India. As a Supreme Court Judge, he had been talking about judicial accountability. But when he became the Chief Justice of India, soon thereafter, he made a categorical observation on certain vital matters that would reform the judiciary. He asked the judges to declare their assets and he did declare his own assets. He asked for a code of conduct for judges, and he made a suggestion that there must be a law to ensure accountability. In fact, my understanding was that he wrote to the then Prime Minister, and suggested that action on his three suggestions should be taken by the Government of India, whether through the Judicial Commission, or, whatever mechanism the Government may think fit. He raised the question that there was corruption in judiciary. Those letters may not be available; maybe, those letters are available with Shri Arun Jaitley and those letters will help him. And he was clear on India's judiciary and he said that Indian judiciary could never be independent, unless it was made fully accountable. 'Fully accountable' he said. I name these judges for your consideration because you are the apex court of the people. Actually judges cannot be before the bar of the people. We are a billion people. We are actually before the bar of the Parliament. And this will not go waste. Soon after Justice Bharucha became the Chief Justice of India,

he revealed that many judges were openly corrupt, and he had no hesitation in telling the nation that about 20 per cent of the judges were decidedly corrupt, and he said that we could dispense with them. In fact, he gave a broad hint to the Government that 20 per cent of the judges could be dismissed straightaway. Such a brave and capable judge! Justice Pattanaik, who took over after him, on becoming the Chief Justice of India, raised his voice against corruption in judiciary but he took recourse to in-house investigations and forced some of the judges to proceed on leave. He deplored the corroding impact of corruption on the watchdog of democracy. But, I do not know; Shri Arun Jaitley will know and my friends, Mr. Kapil Sibal and Mr. Anand, who are present here, will know better on this. He deplored the bad influence on the court, which is actually the watchdog of democracy. I do not know whether his in-house reform worked or not, but he sent so many judges on leave. I do not agree with Justice Pattanaik who said that, perhaps, the National Judicial Commission may not work better than the present system. As a citizen, I feel that the National Judicial Commission has to be there. And for that, these legal luminaries must be consulted. I request that when Mr. Arun Jaitley rises to reply - I do not know whether he will - he should take these suggestions into consideration, and devise a mechanism. It is a very onerous responsibility, Mr. Jaitley. The whole country will feel beholden to him if he finds a mechanism to make the judiciary accountable to Parliament and the people of India. I would suggest that he must consult these four, five or ten people. Maybe, he knows many honest judges. The present Chief Justice of India, Justice V.M. Khare has done a tremendous duty to the nation. Mr. Mukherjee wouldn't have been in custody, if Justice Khare weren't there. Not only Justice Khare, judges of this genre have integrity, and cannot be corrupted at all. मुझे पता है, मैं आपको उर्दू में दो-चार जुमालों में बताना चाहता हूँ कि जो चीफ-जास्टिस रिटायर हो गए हैं, मैं उनकी फकीराना जिंदगी देखता हूँ। उनके छोटे-छोटे मुलाजिमों ने बड़े-बड़े बंगले बनाए हैम मगर मैं देखता हूँ कि हाईकोर्ट के सुप्रीम कोर्ट के काफी जज, जिनको मैं जानता हूँ, उनकी जिंदगी अभी भी फकीराना है, because the system could not make them corrupt, because they were not ready to sell their souls for any money or favour. जास्टिस खारे को मैं ट्रिब्युट देता हूँ कि उन्होंने अभी राजस्थान के एक जज साहब को रास्ता दिखाया। Justice Khare made a judge of the Rajasthan High Court resign. He made the system go into the cases of corruption indulged in by Justice Mukherjee. There was something going on behind the scenes. There must have been many people who must have attempted to save the judge, thinking that it would bring dishonour to our judiciary. My point is that it will not bring dishonour to our judiciary; it will

bring dishonour to all of us because we are all a part of the system that selects these judges. Sir, ultimately, politicians have to be above partisan considerations when judges are appointed. I would like to refer to the case of that lady judge who sent a law-abiding citizen to the jail, and created a disaster. In fact, that journalist should have been given a reward for bringing out the ISI machinations in public. And he was sent to jail! The responsibility lies with that lady judge.

Finally, I want to say that I agree on one thing that Justice Krishna Iyer had said. But before I do that, let me say that I did not name the institution which had wanted this Official Secrets Act to be repealed, or, at least, amended. It was the Indian Press Council...

उपसभाध्यक्ष (श्री सुरेश पचौरी): मेरी गुज़ारिश है कि जो आपका रेज़ोल्यूशन है, जो आपके रेज़ोल्यूशन की लैंग्वेज है, उसी के मुताल्लिक बोलें। आप ऑफिशियल सीक्रेट्स एक्ट के मुताल्लिक ज्यादा न बोलें, जो आर्टिकल 121 है, उसको ध्यान में रखते हुए बोलें। जजों के कंडक्ट के बारे में आप ज्यादा प्रकाश न डालें। इन दोनों बातों को ध्यान में रखते हुए आप बोलें।

PROF. SAIF-UD-DIN SOZ: Sir, so far as the Official Secrets Act of 1923 is concerned, I can say with all responsibility that it must be repealed, because it impinges on the dignity of a citizen. It punishes him. And it gives no hope that the system will save him. I have said it. It has not been amended since 1923. If I did not say it in Parliament, where would I say it. If the hon. Law Minister convinces me, I will change my thinking, so far as the Official Secrets Act is concerned.

Sir, I was saying that I agree with Justice Krishna Iyer's suggestion that there should be no friction between the judiciary and legislature. And we are not for friction. We are for resolution of the friction. We want to give respect to the judiciary. We shall sustain that urge in ourselves. Sir, Justice Krishna Iyer said, and I quote, "The glory of our Constitution desires mutual reverence between the legislature and judiciary in such a manner that comity and camaraderie become the majestic *modus vivendi*". Thank you.

SHRI KAPIL SIBAL (Bihar): Thank you. Mr. Vice-Chairman, Sir, first of all, I would like to congratulate my good friend, Soz Saheb for having moved this Private Member's Resolution on a subject that needs immediate attention. Mr. Vice-Chairman, Sir, I really stand here today with a heavy

heart. I had no intention of actually getting up and speaking on this Private Member's Resolution because I am part of the system that is today being scrutinised and stripped off its cover. The entire system is bare for the people of India to see, and it pains me to stand here to participate in this discussion because the dream that we had at the time of the Independence, of men of integrity, of unquestionable integrity, being in public offices, manning not just the judiciary but the political system, at large, that dream seems to have been shattered. I think that we are all responsible for it. So, much against my wishes, I stand here to give vent what is in my heart.

Mr. Vice-Chairman, Sir, you mentioned article 121 of the Constitution. I was looking at it. It says, "No discussion shall take place in Parliament with respect to the conduct of any judge of the Supreme Court or of a High Court in the discharge of his duties, except upon a motion for presenting an address to the President praying for the removal of the judge as hereinafter provided." So, we cannot discuss the conduct of a judge in the discharge of his duties. My worry is, when judges influence Public Service Commissions to have their children appointed to public service, to executive jobs, is that in the discharge of their duties? When judges give favours outside the judicial system for the decision of matters within the judicial system, is that in the discharge of their duties?

Sir, in this debate, I am not going to take any names, because I don't think it provides any purpose for us to take names. But, I give you a small example, which just tells the state of the judiciary in this country. A particular Chief Minister was not in power in a particular State. I remember those days, every day, there was some proceeding filed in some court in that State, where either the Chief Minister was called, some kind of order was passed against her and the entire system was moving -- the judicial system, I mean was moving -- in a particular direction. Then, suddenly I found that that Chief Minister now is in power. So, that very same judicial system what was proceeding at breakneck speed against a particular Chief Minister, suddenly, I found that very judicial system not moving at all, when she became the Chief Minister. Now, the ordinary man in the street, who watches this, what are we to make of it? Was the judiciary right when they were moving at a fast speed, at the first instance, or the judiciary is right in not moving at all? Later on, what it tells you? It tells you how the judiciary seems to compromise itself when the situation demands, in whatever manner it demands. This tells you much more than individual issues of

corruption. It tells you about the state of our judiciary. So, as I was talking about article 121 of the Constitution of India. It is true, Sir, that we should not criticise the conduct of the judge in the discharge of his judicial functions. But, we find today that many members of the judiciary are doing things which are no part of their judicial function, which are bringing the judicial system into disrepute. I think, the time has come when this House should lift the veil, lift this protective veil and start discussing the conduct of those Judges who do things which are not a part of their judicial duty. Mr. Vice-Chairman, Sir, I personally have appeared in many matters in courts for and on behalf of politicians. I have no hesitation in publicly castigating the political class in saying that we have not been discharging our functions and we have not been doing what was expected of us within the political system; we are not fulfilling the dreams of those who set up the system. This is not what our forefathers had thought that we would be today as a country and as a political class. I have no hesitation in condemning those to whom I belong, and I have to say, Mr. Vice-Chairman, that whenever I have appeared in a court of law, I have never seen a Judge in circumspect when he passes judgements against members of the political class. Public statements are made "you people are corrupt; public statements are made that you do not care about the people of this country." We have never, as a political class, taken umbrage to that because, I think, we have failed the nation. How can we take umbrage to something, which, in fact, reflects the truth? But, Sir, in contrast to our conduct in this House -- my good friend, Mr. Jaitley is here; he and I together know many things that we keep within our hearts -- we do not publicly speak out. Why? It is because we believe that systems are more important than men; that institutions must be protected; that you may have a bad penny here and a bad penny there, but we cannot castigate the entire system for that. Therefore, when an issue comes up in this House about the conduct of any Judge, if any Member has risen to speak against the Judge in this House, we have together stood up and said, let us not discuss the conduct of a Judge because we want to protect the institution. This is not the kind of discretion, this is the kind of circumspection that Judges have displayed when they speak against politicians from the Bench. Look at the manner in which politicians are treated, sometimes unheard of in law. It is as if the moment a politician's matter comes to a court of law, the Judge in his mind thinks that he is guilty. It is a different standard of proof as far as politicians are concerned. If this is the way the Judges treat our politicians, we do expect that they should treat men of their tribe who, have transgressed the *Lakshman*

Rekha, in the same way. I do not expect the judiciary of this country to protect people of their own tribe when they know that they have committed acts which have nothing to do with the discharge of their judicial duties and acts which are punishable under the criminal law. But as we start, as we begin to reform the judicial system, Mr. Vice-Chairman, Sir, we must look at the root cause of this. The root cause of this is the process of appointment, which we have adopted in this country -- the process of appointment of members to the higher judiciary. I think, we, as a political class, have allowed the Judges, in a way, to snatch away the power of appointment and keep it with themselves. In this context, I would like to refer to article 124 of the Constitution. It 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 States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years." So, the appointment has to be by the Executive in consultation with the Chief Justice of India and such of the judges of the High Courts as the Executive wishes. When it came to the decision of the Supreme Court in the Advocates on Record Association Case, the Supreme Court interpreted Article 124(2) in a manner that mandated the judges to be the final authority in the appointment of members to the highest judiciary and that the consultation process, which was to take place with the judges, was now to take place with the Executive. In other words, it is the judges who decide who the final arbiter is. It is the judges who initiate the names. It is the judges who send the names to the Executive. The Executive can, certainly, give their comments but it is the judges who finally decide who is going to be appointed. Now, how can, in a Parliamentary democracy this be acceptable? In no Parliamentary democracy of the world, this is acceptable. The Executive is no longer the final arbiter as to who is going to be appointed as a judge to the higher judiciary. It is, ultimately, a Collegium of the Supreme Court or of the High Court, under the Advocates on Record Association Case, which decides as to who is going to be appointed. And, the logic is: the judges "know best" as to who should be appointed. I would request the hon. Law Minister to make a study of all the judges who have been appointed in the last twenty years in this country and find out whether they fall in any one of the following three categories. The first is how many of these are related to other judges. The second is how many of them have been juniors to other judges. And, the third one is how many of them belong to a particular caste or community who recommended

them. I am told -- I may be totally wrong -- that in a particular High Court, again, I am not going to name anybody, for the next 15 or 20 years, members of a particular community will be the Chief Justice of that court. We know -- again, we do not want to take names -- that the appointments made in the last ten years of young people to the judiciary, either they have been the juniors of sitting Supreme Court or High Courts, or, in some way or the other associated with them. Some may have settled their income tax returns and they are occupying that position. Now, if this is going to be the process of appointment - - and, of course, we want to correct the system --these facts must come to light.

Today, if, I, as a citizen, want to go to the Chief Justice of India or the Chief Justice of a High Court and find out how many cases are pending in a particular court how many cases have been decided, I cannot get that information. If I go to the Registrar of a court, he says, "I am not obliged to give you that information." If I want to find out how many judges in this country have not delivered judgments in the last six months or eight months or one year and I want that information from the Chief Justice of a particular High Court, the Chief Justice of that High Court writes back and says, "It is confidential information, to give this information; destroys the independence of the judiciary." This is part of the system. You have no access to it. ...which actually happened. ...(*Interruptions*)...

THE MINISTER OF LAW AND JUSTICE AND MINISTER OF COMMERCE AND INDUSTRY(SHRI ARUN JAITLEY): Yes, that happened.

THE VICE-CHAIRMAN (SHRI SURESH PACHOURI): Is that true?

SHRI ARUN JAITLEY: My Friend, Shri Kapil Sibal, has raised this illustration. About 2-3 years ago - I must share this information with the House -- a question was raised either in this House or in the other House as to how many judgements have not been delivered in the High Courts for more than one year. So, factual information had to be sought to file a reply. I got a response from some of the High Courts, not all. that the Judiciary is an independent body and this shared information cannot be given for being placed in Parliament.

SHRI KAPIL SIBAL: Can you imagine? This is the state of the Judiciary in this country! And, we are very circumspect; we don't discuss it.

Why? Because, we feel, if we discuss it in public, it will harm the institution; and, we, as Members of Parliament, do not want that, because this is the foundation of democracy. We have been crying hoarse, we have been tailing them, 'Please do something about the institution yourself, because, we do not want to interfere in the processes, you must take care of yourself.' So, I was saying that if you want information as to how many cases are pending, you cannot get it. If you want information as to how many judges have not given judgements, you would not get it. Indeed, I request the Law Minister that he must devise a system by which we must have a data bank, in this country. And, the data bank would be that whenever any judge, in any judicial proceeding, passes any order, it should be a part of that data bank, so that the public can access, qua a particular judge, what are the orders that he had passed in proceedings, in the last five years or ten years. What are the kinds of judgements that he has rendered? What are the kinds of issues that he has dealt with? Has he any experience in delivering judgements in the field of constitutional law? Or, has he experience only in revenue laws? Ultimately, when you pick up a judge from a High Court, to be taken to the Supreme Court, if the public has access to his judgements, the public will know what is his experience in the judicial field. What are the kinds of matters that he has dealt with? Is he fit enough to go to the highest court? What is the quality of judgment that he had rendered? What is his grasp of language? What is his grasp of the subject matter? We must know all that. But the fact of the matter is that we have no access to it. You can have access to any speech made in the Parliament. You can have access to any proceedings of Parliament. Every thing is transparent here. We are before the public eye. Whatever we say is reported. Our assets are to be disclosed. And, the Supreme Court says that our educational qualification must also be disclosed. Our educational qualification must be disclosed; our assets must be disclosed; criminal cases pending against us must be disclosed. But what judges' sons earn, that must not be disclosed. Why should that not be disclosed, if the son of a judge is practising, and he has practised for one or two years? Okay, don't disclose it to the public, at large, but surely reports of that fact as to how much he is earning should, at least, be sent at the minimum to the Chief Justice of India. Because, we must know what is happening. The fact of the matter, Sir, is that a son of a judge does not appear in his father's court, but appears in another court. And, the son of that judge appears in the other court.

SHRI PREM CHAND GUPTA (Bihar) : Uncle relationship.

SHRI KAPIL SIBAL: I don't say that there is any wrongdoing. But this creates doubts in the minds of the public that the judicial system is not what it ought to be. I am not attributing any wrongdoing, at this point. I am just telling you, what, in reality, is happening. When somebody is elevated to the Supreme Court, we find that his son's practice or his brother's practice or his daughter's practice -- I don't want to take any names -- in the High Court, in which he or she is practising, suddenly shoots up; suddenly everybody approaches him or her. And, suddenly, he is appearing in every court and he, overnight, becomes an extraordinary lawyer by the kind of orders that he/she gets in various courts. Are we to believe, Sir, that this is just because of sheer merit that this is happening? Should the public not know, and let alone the public, should not the judiciary tackle this situation? We had a transfer policy in place. Suddenly, there was so much opposition to this transfer policy. The fact of the matter today is that in the Chief Justices' Conference there has been a decision which has been taken. Now, the fact of the matter is, we need a transparent system, and we need the transparency to come from within. Extraordinary procedures are adopted as far as politicians are concerned, extraordinary comments are made from the Bench. When the lawyer appears before the Bench, naturally, he takes care of the interest of his clients. Therefore, he does not say much. But the fact of the matter is, the political class is brought into disrepute. Just as not all of us are guilty of misconduct, similarly, in the Judiciary, there are a few black sheep who have to be taken care of. Therefore, the entire judicial system should not be castigated because of those black sheep. Therefore, those black sheep should be dealt with by the Judiciary itself. We don't have anything to do with it. And, in this context, for example, because of all this, now, the Government has taken in the Cabinet, a decision... *interruptions*...

THE MINISTER OF STATE OF THE MINISTRY OF AGRO AND RURAL INDUSTRIES (SHRI SAN'GH PRIYA GAUTAM): Mr. Vice Chairman, Sir, he is giving a very good speech. I just want to know two or three things from him. The contents of the Resolution are: (i) method of selection of judges, (ii) fixing the accountability of judges, and (iii) how to curb the corruption. So, these are the three issues, and he may kindly enlighten us on those points.

SHRI KAPIL SIBAL: That is exactly what I am doing.

श्री प्रेम गुप्ता: यही तो कर रहे हैं।

THE MINISTER OF LAW AND JUSTICE AND MINISTER OF COMMERCE AND INDUSTRY (SHRI ARUN JAITLEY): Sir, may I say a few words? The subjects are very wide. I must say, my friend, Shri Kapil Sibal, is normally very good, but this is one of the most brilliant presentations that I have seen. So, we will continue to listen to him because he is discussing the subject, and, I think, there are a lot of people who would like to listen to what he is saying.

SHRI PREM CHAND GUPTA: Sir, we all want to listen to him.
...(Interruptions)... आप चुप रहिए, सुनिए जरा। You please keep quiet.
...{interruptions}...

THE VICE CHAIRMAN (SHRI SURESH PACHOURI): What about Judicial Reforms? ...interruptions)...

SHRI ARUN JAITLEY: He is speaking on that.

THE VICE CHAIRMAN (SHRI SURESH PACHOURI): Is he throwing light on Judicial Reforms? ...{Interruptions}...

SHRI KAPIL SIBAL: Sir, I will give you a small example. When the whole issue of prosecution of politicians came up before the Supreme Court, and the issue whether a Member of Parliament is a public servant or not came up before the Supreme Court, the Supreme Court, in a landmark judgement, said, "Yes, certainly, Members of Parliament and Members of Legislative Assemblies are public servants, and, therefore, for whatever wrong doing that they do, they should be prosecuted." We have no objection to that. I think, that all of us who are involved in any criminal offence, we should not seek any immunity, we should be prosecuted, if we are guilty or if there is a case against us. One of the issues that we raised before the Court was that just as all public servants must be subjected to sanction before prosecution, similarly, that protection should be given to Members of Parliament. After all, we also must be protected by the sanction process which an ordinary official in the Government of India is protected from. And, therefore, the Supreme Court said, "yes; yes, you are right. The sanction provision also applies to you." But the fact of the

matter is that in the Prevention of Corruption Act, there is no sanctioning authority as far as you are concerned, because under the Prevention of Corruption Act, it is the Appointing Authority which grants the sanction; it is the Removing Authority which grants the sanction. And, as you know, Sir, a Member of Parliament cannot be removed by anybody unless he suffers a disqualification through a declaration of law. There is no removing authority as far as a Member of Parliament is concerned. So, who is the authority that will grant sanction for the prosecution of a Member of Parliament? So, there was no law. The Prevention of Corruption Act did not have a provision. What did the Supreme Court say? It said, "it is true that there is no sanctioning authority, but we will give that power to the Speaker." They created law. Why? Because they wanted Members of Parliament to be prosecuted. That is fine, no problem, If they have committed an offence, they should be prosecuted. But they created a sanctioning authority, Speaker in the case of a Legislative Assembly, Speaker in the case of a Member in the Lok Sabha, Chairman of the House in the case of a Member of Rajya Sabha. They are the sanctioning authorities, but the fact of the matter is, today, Sir, that hardly any Speaker has been called upon to give sanction, but the same applies to judges. Now, who is the sanctioning authority to a judge? Sir, this is a very interesting point. As far as the judges are concerned, also, there is no sanctioning authority. Who removes the judges under the Constitution? They are removed only through the process of impeachment. Then only can a judge be removed. So, the sanctioning authority can't be Members of Parliament. So, what did the Supreme Court say? The Chief Justice of India will be the sanctioning authority. What does that mean? It means that no prosecution can be launched against any judge of the superior judiciary, unless the Chief Justice of India grants sanction. If we had a provision that no politician shall be prosecuted in this country unless the Prime Minister of India grants sanction, the Supreme Court would have struck it down because they will say, how can you be the arbiter of the fate of your own people? But that logic should also apply to the Supreme Court. Why should the Chief Justice of India have the power to grant sanction or not to grant sanction? Would it not mean that -- and I am not attributing any motives, because we hold their office in the highest respect-- there would be an inclination to protect the members of the judiciary? So, it is time Mr. Law Minister, that another authority is established to deal with the issue of sanction for prosecution of members of the judiciary. It is time we changed this system, it is time we made it more transparent, it is time we made it more accountable. It is in

this context that we talk about the power of contempt. The Cabinet seems to have taken a decision that as far as contempt is concerned, truth will be a defence. Now this is a double-edged sword because if truth is going to be a defence, as you know, Mr. Vice-Chairman, in every litigation one party succeeds and the other party loses. And the side that loses is most likely to make an allegation against the judge who decided the case, and the side that loses is likely to say that 'what I am saying is true'; when truth is a defence, how will the judge protect himself? What is the procedure to protect the judge? And, if a litigant makes an allegation of this nature, is the judge to give evidence? Is the judge to respond? How will you deal with that litigant? This is a very complex issue. Merely because if you give somebody the right to say that truth is a defence, it does not solve the problem; it creates more problems. That is why the power of contempt has hardly ever been used in England, because the power of contempt was meant to be used as a shield, not as a sword. The fact of the matter is, in this country, judges have used the power of contempt as a sword. You are not complying with a court order, I will issue contempt against you.

SHRI PREM CHAND GUPTA: There are 60,000 contempt of court cases in UP.

SHRI KAPIL SIBAL: You don't pay pension to somebody, I will call the Chief Secretary. Now, that also means that the executive is, in fact, not abiding by the law. So, the poor judges also are left with no choice because if a poor man's pension is not paid, what are the judges to do. When he comes to the court and says, "Pay my pension?" What is the judge to do? He has to ultimately use that power of contempt. But what happens is, in most cases it is well used; in some cases, it is used with disastrous consequences. One Principal Secretary, in some State, I believe, in Karnataka, had to suffer jail. It is because he misinterpreted the judgement of a court, and he went for 30 days behind bars. This is true. I am not taking any names here, in the course of this debate because, it is really not meant to criticise any individual. Here, we are seeking to reform the system. So, I request the hon. Minister that before taking a decision to make truth as a defence, please formulate a strategy as to how you are going to deal with the problem. The problem will emerge because, people will make allegations against the Judge because you make truth a defence. They will say, "What I am saying is true, and I have a right to prove it, and if I have a right to prove it, I will cross-examine the Judge to prove it."

How will you work it out? Now, these are very serious issues and, as you mentioned, Sir, these have to be debated in this House.

Therefore, Mr. vice-Chairman, I request the Government to restore the process of appointment that was in place prior to 1993. This is first thing. Let the power of appointment be back with the Executive. At least, if the power of appointment is back with the Executive, there is a process of transparency and accountability which is inbuilt in the system because, names are sent to the Executive, they are public knowledge; the moment they go to the Executive, everybody knows about them. Then, people make representations to the Minister of Law, discussions take place. But if the discussions take place between the Minister of Law and the Chief Justice of the collegium of a court, there is no public scrutiny of this -- no Deputy Secretary, nobody gets to know about it. All that happens behind closed doors. That is unacceptable. If you want to set up a Judicial Commission, that is something that we will have to think about. The constitution of that Judicial Commission, who will be part of that Judicial Commission, is it weighted in favour of the judiciary, is it weighted in favour of the Executive, all those matters have to be discussed. I am sure, all those matters will be discussed threadbare. But, I would personally think -- and, this is my personal opinion; I have not dealt with the issue of Judicial Commission because the issue of Judicial Commission has not really come up because the matter is not being introduced. As and when it is introduced, we will discuss it threadbare -- that the best system as far as appointment is concerned is the old pre-1993 situation. However, the Judicial Commission can deal with all other aspects, namely, process of dealing with errant judges. We already have a Judges' Inquiry Act. In terms of the Judges' Inquiry Act, when a motion is moved for the removal of a Judge, as you know, the motion has to be signed by a hundred Members of the Lok Sabha or fifty Members, of the Rajya Sabha, and then, once it is admitted, only then is the matter referred to the Committee of Judges under the Judges' Inquiry Act. Then those Judges conduct an inquiry, render a finding, come back to the House, and then the motion is voted upon. So, instead of hundred Members of Parliament signing that motion, all complaints of this nature should be directly sent to the Judges' Committee under the Judges' Inquiry Act. So, all that you will need is not an amendment of the Constitution, or, perhaps, an amendment of the Constitution. I do not think the Constitution talks about a hundred Members; that is all part of the Judges' Inquiry Act. So, you won't need an amendment of the Constitution.

All you need is an amendment of the Judges' Inquiry Act. The complaint, instead of a hundred Members of Parliament singing it, can be sent straight to the Judges' Inquiry Committee. The Judges' Inquiry Committee can informally call the concerned Judge, ask for his explanation -- this need not be public -- and, if this explanation is not found satisfactory, the Judge can be asked to resign. If the Judge still does not wish to resign, then that Judges' Inquiry Committee should have the power to sanction prosecution, not the Chief Justice of India; and, once the prosecution is sanctioned by the Judges' Inquiry Committee, then the Judge should be dealt with in accordance with the law, as all of us are. Those are some suggestions, Mr. Minister, that I wish to place before you. I request you to contemplate about them and see what can be done, and let us also in this House certainly discuss acts of Judges which are not a part of the judicial function. If somebody goes to the railway station and pulls a chain and if a Judge's relative goes to the railway station and does not get a seat and he makes a scene of it at the railway station, that is not a part of the Judges' judicial function. I do not want to again take names. These are matters of public knowledge. This is not a part of his judicial functions. We have the right to discuss such conduct in this House. If our conduct is totally transparent and can be discussed by anybody and everybody, and it should be, then surely, when a Judge does certain things outside the performance of his judicial duties, his conduct should certainly be discussed. It is a shameful day that we are today standing here and I again request the hon. Minister that what has happened and what is revealed in the recent past is only a tip of the iceberg. After all, if some particular Judge has compromised in a particular High Court, I cannot believe that this has happened only in the year 2003. This is not something that has happened(*Interruptions*)...

PROF. SAIF-UD-DIN SOZ: That is happening.

SHRI KAPIL SIBAL: That is right. What is the Government going to do about it? The manner in which people appear before Judges also, that also must be looked at. So, these are very serious issues because these deal with the integrity of the system. If people lose faith in the judicial system, people will lose faith in democracy. We cannot afford that to happen. So, Mr. Vice-Chairman, this aspect must be looked at and, as I said, what has happened in the recent past is the tip of the iceberg. We know of instances in Punjab. We are aware of what has happened in Karnataka; we are aware of that happened in Rajasthan. Again I won't take

names. So, these examples are before us, and these examples are before us despite the fact that there is complete constitutional protection to the judiciary. God forbid, if that protection was not there, what would have happened to the judicial system and what would have come out! So if this is what is revealed when complete protection is afforded to the judiciary, then it is time that we took it upon ourselves to ensure that Judges are as accountable to the people of this country as the politicians of the country are. In the absence of that accountability, democracy itself is a danger. With these words, Mr. Vice-Chairman, I thank you for having given me this opportunity.

SHRI R. SHUNMUGASUNDARAM (Tamil Nadu): Sir, after the very, very illustrious and inspiring speech of Mr. Kapil Sibal, I would like to approach this problem in a different angle. Sir, the recent events are really shocking. A Judge of the High Court is involved in a very serious scandal. But, of course, this is not the first time that the Houses of Parliament are talking of impeachment proceedings. There were several incidents recently where some of the High Court Judges were involved either with women or in different wrongdoings. Sir, the reforms, particularly in judiciary, cannot be achieved unless there is a strong will of the Government. Sir, there should be a strong Bar; the Bar, which is the touchstone of the judicial performances, should be really strong, and the Government should do whatever possible to build a strong Bar. Only a strong Bar can question the Judiciary. Otherwise, it will be very difficult. So, let us build a very strong Bar. I only request the hon. Minister to put all his efforts to build a very strong Bar, as a Bar can alone question the Judiciary. A weak Bar can always correct the Judiciary. Sir, there should be transparency in the selection of judges. The judges selection, of late, after the two judgments of the Supreme Court, is entirely with the Judiciary. What happened earlier, prior to 1990, as Mr. Kapil Sibal was elaborating on that point? The earlier appointments, right from the introduction of the Constitution, cannot be faltered at all. There were good judges earlier, though they were political appointees. Let us call them political appointees. At least, I can give the names of three eminent judges of the Supreme Court, who were earlier belonging to one political party or the other, who reached Supreme Court; and who fared very, very well. There was no criticism of political favouritism or personal favouritism on them. One of the judges even revolted against the supersession of judges. I would like to name them. I believe, Justice K.S. Hegde, who was a member of the Congress Party, was a District

Secretary of the Mangalore District Congress, and he reached the Supreme Court. He really fared very well. Then, you all know, Justice V.R. Krishna Iyer, who was a member of the Communist Party, was Minister in Kerala. Then Justice Ratanavel Pandiyan was a District Secretary of the DMK party. Such judges, though were selected by the Government, and though they were called political appointees, had fared very well. Therefore, the earlier system cannot be faltered at all. So, I request the hon. Minister to do everything so that the selection process goes back to the Executive. Sir, I would suggest that for the selection of judges, the names should be called for, or the suggestions should be called for from the Bar. At least, the names should emerge from the Bar, and also from the appropriate Governments. The judiciary can also be requested to suggest the names, and once again, these names, which are considered for appointment, should be at least circulated, if not openly published in newspapers, to the local Bars. Eminent members of the local Bars and various Bar associations should be consulted their remarks should be obtained before finalising the names. Because, the Government has its own machinery, like its own intelligence agencies, the views from the Bar are very, very important. Their views must be valued. This only will prove that the appointments are transparent.

Sir, we know about the old Panchayat systems in the villages, which are practised even now in many of the villages, where local disputes are settled. The leaders presiding these Panchayats are responsible citizens of the locality. (*Time-bell*) They are accountable to the local people. They see them every day and any erring decision is found fault with by the local people. And if a person does anything wrong, if any decision is arrived at in a corrupt manner, the local people will definitely revolt and react against that decision. Therefore, persons who have some roots or mooring in the local Bars, if they are considered and the views of the local Bars are obtained and they are given prominence, I think we will achieve our goal to a certain extent. Thank you, Sir, for giving me the opportunity.

SHRI R. K. ANAND (Jharkhand) : Thank you, Mr. Vice Chairman, for giving me a chance to speak on this Resolution. I am thankful to you for reminding us of Article 121 of the Constitution. But I must say that it says, "No discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties, except upon a motion for presenting an address to the President

4.00 P.M.

praying for the removal of the Judge as hereinafter provided." I am not going to speak about the conduct of any particular Judge in this House. I will make a general reference about the conduct of the Judges as a whole. I will add to what Shri Kapil Sibal had said. In our Constitution, we have the Executive, the Legislature, and the Judiciary. The areas of all the three are demarcated, and they have to function independent of each other. Technically speaking, what I am going to speak here, and what Shri Kapil Sibal has said, if I had said it in an open court, might have amounted to contempt of the court. But when we speak here, in the Parliament, we are protected under Article 105 of the Constitution. In order to give independence to the Parliament, Article 105 was enacted, so that the MPs can speak freely in the Parliament and discharge their functions in a free and fair manner, without any pressure from outside. Lately, for the last about ten years, we allowed the privilege given to the Members of Parliament, under Article 105, to be breached. I recall that in breach of Article 105, certain cases were registered against the Members of Parliament at the instance of the Judiciary. After filing a writ petition, where all these questions under Article 105 were raised, and negated by the High Court, I know, myself and Mr. Kapil Sibal had to work very hard, and, ultimately, the Supreme Court ruled that the immunity given to us under Article 105 is absolute. But the interesting thing is that, I recall, one of the Judges who commented on the Parliament said, "It is a fish market!" We did not do anything about that remark; we were just mute spectators. We allowed them to say anything. For the last about ten years, Judiciary totally encroached upon our field. A number of Members of Parliament and Ministers were prosecuted at the instance of Judiciary! Many Members of Parliament could not contest elections only because the prosecution was launched at the behest of Judiciary! I am not speaking against them because we have become Members of Parliament now, and so, they are at the receiving end. I am saying this because they have crossed their limits; that is the main reason why I am saying that they must remain within their limits; they have to be checked. We have allowed the Judiciary to be used against ourselves. I remember the case of a Chief Minister who opposed the appointment of two Judges; a case was registered against him; those Judges sat in the Bench, and they were used for the purpose of putting the Chief Minister behind the bars for five times!

SHRI PREM- CHAND GUPTA: On the same charge!

SHRI R.K. ANAND: On the same charge, five times, under Section 120(b)! I am surprised.

I remember when the Hawala case was filed, Mr. Jaitley pleaded in one of the matters, and I also pleaded in one of the matters, and we both argued in the matter in the High Court. There was nothing in the case. But I know how the cases were started. It was only at the instance of the Judiciary at the highest level! They wanted to show on the face of the Members of Parliament, "You people are corrupt!" Ultimately, what happened to those cases? A sitting Judge of the High Court, in the face of the same Judge who was the Chief Justice of India, remarked in the open Court that the diary on the basis of which the cases have been registered is not a piece of evidence. It was to be thrown in the dustbin. Still, a lot of the Ministers lost their jobs. A number of Members could not contest elections. I remember Mr. Advani could not contest elections. He took it to the point, "No, I will not contest election till I am cleared by the Court." Ultimately, he was cleared. He had to lose five years. I remember a prosecuting agency will not arrest a man during the course of investigation. But the moment a challan is brought before the Court, the Court issues the warrant! I remember, at 5.45 p.m., after the Court time is over, the Court issues the warrant! At 5.45 p.m., against a former Prime Minister of India! I had to make a request to the Court to get him bail. Is there any reason for it? Is there any time-limit for it that they must sit till six and pass an order at 5.45? ...{Interruptions}... I am saying, he issues a warrant in the evening to arrest a man so that he can't have justice from the court! I understand Judiciary is an institution; its independence has to be maintained; honest judges have to be protected; their acts in the discharge of their official functions have to be protected. If they are not protected, of course, the institution will go. Prof. Soz said in the Parliament that Justice Barucha in a seminar of the Bar Council of India did say that 20 per cent of the higher Judiciary is corrupt. I am asking, when you say that 20 per cent of the higher Judiciary is corrupt, and if those 20 per cent judges decide cases of the clients, what is going to happen to those cases? Are they going to get justice or not? Has anybody thought of it? I am saying that this is the estimate of the former Chief Justice of India. It can be 30 per cent, it can be 10 per cent. Did we try to find out who are these judges? Did we try to find out what is the source of his information? We are just

keeping quiet for the last five years. We never tried to find out who are these judges. The standard of judges is going down day by day. I have been in the practice for the last over 35 years. We never used to see the judges visiting in the public or attending many parties. Now, out of 31 days, 30 days they are in parties. They are always at a dinner. The standard of legal profession has gone down.

[MR. CHAIRMAN in the Chair]

We have a number of instances where the allegation of corruption have been levelled against a judge. I cannot tell a judge that you are a corrupt. If I tell him that you are a corrupt, he will haul me for contempt of court. But, here, when I speak, he cannot tell me. We have the tape-recording of the judges having incriminating evidence against them. We have seen a number of lawyers getting relief only from particular judges. Mr. Sibal did say that we have in the High Court, 'uncle judges'. I totally support him. Son of a judge, appearing before a judge and getting the orders. Stay is not granted by one particular court but the case is transferred from that court. Another lawyer appears and the stay is granted by the other court. Other lawyer is engaged. What are we doing for this? This is nothing but corruption. Judges and judges' sons are living in the same house. They regularly meet in the parties. They meet other judges, their sons and then get relief in the morning. I recall a number of lawyers engaging son of a former Chief Justice of India who is a very junior lawyer in the court to get the relief. We know that a particular former Chief Justice of India, his son being engaged by top lawyers. Seniors are sitting at the background, juniors appearing before the court and getting relief from the court and we are keeping quiet. We have allowed the institution to go down, go down the drain. Have we tried to make the inquiries about the wealth of the judges? Did you find how many houses they are owning? Have we ever examined the income tax returns of those judges and their sons? Please examine it in the context of today. What are their returns? We started practice and for the last 35 years we have been doing it. It took time of about five years to come up to a level just to understand the courts. Now, the judges' sons have a march over others. In just one or one-and-a-half year, see their practice, they are having big offices in all the big places. But we are just keeping quiet. I did appear for the particular judge. It was for the first time in the history of the country that a High Court judge had to appear before a Magistrate to get a bail. It is a shame on this institution. I

spoke to him and when the tape-recorder was played in the court, it was nothing but a dirt, dirt and dirt. I think the whole system of appointment is wrong. We should go back to 1990. We talk of the National Judicial Commission. The question will be: Who will be the Members of the Judicial Commission? If you make the members of the Bar Council as one of the members, you know and I know, how those members are elected. They have their own coterie to be appointed as judges. We find again, judges are the members, they will have their own people. I know as a fact, for the last about 6,7 or 8 years, the Chief Justice of India never carried on good relations with number 2 and number 3. So, whenever they had a collegium, when they met together, all will say, "One is mine, the second one is your and the third one is your's. So, three Judges are picked up by three Judges. This is what is happening. I think the time had come that we looked into ourselves. We must clean the system. We, as Members of Parliament, must exert our supremacy. We must have full protection under article 105 of the Constitution. We have given protection to the Judges. I recall that in this session I asked a question. I asked a question, whether any action is contemplated against the Judges whose kith and kin are practising in the same High Court. The answer came. I would like to read the answer. The answer is, "No action against any Judges of the High Court, whose kith and kin are practising in the same High Court, is contemplated at present". I think the answer had come without the knowledge of the Law Minister. I expected him to say, "Yes, we will think of taking some action". We cannot keep quiet because we see it every day that the son of a Judge pleading before another and getting orders, living in the same house. I have seen the signboard of a son of a Judge saying that all correspondences have to be sent to his father's house. We have to look at it from the angle of a common man. What does a common man think about the judiciary? He knows that he is the son of a High Court Judge. He can meet him there and he always keep meeting sons of the Judges so that he can get relief from the court. So, my request to the hon. Law Minister is, please take care of these things. It is a question of an institution. We have to protect the institution. You call for the return of all the Judges and see how they are behaving. You make an inquiry about their wealth so that we can clean the system. Thank you very much.

श्री अवनि राय (पश्चिमी बंगाल): सभापति जी, आज संकल्प का विषय है। इसमें न्यायाधीशों के चयन, गुणावगुण और सक्षमता के आधार पर न्यायाधीशों का चयन पूर्ण रूप से सुनिश्चित किया जाए और न्यायाधीशों की जवाबदेही सुनिश्चित करने के लिए उपयुक्त प्रक्रिया

तैयार की जाए तथा देश की न्यायिक व्यवस्था में भ्रष्टाचार के लिए कोई स्थान न रहे, का विषय है। सभापति जी, हाल ही में दिल्ली में जस्टिस सुमित मुखर्जी को लेकर जो बात सामने आई उससे ऐसा मालूम होता है कि आम जनता में जो थोड़ा-सा भी जुडिशियरी पर विश्वास था, वह विश्वास उठ गया है। इसके साथ-साथ तमाम भारत में कुछ ऐसी घटनाएं जगह-जगह हुईं, जिसमें जज, न्यायाधीश का कोई ऐसा मामला, जो नहीं होना चाहिए, वे उसके साथ भी जुड़े हुए पाए गए हैं। ऐसी घटना राजस्थान में घंटी, ऐसी घटना कर्नाटक में घंटी, ऐसी घटना एंजाब में घंटी और अब दिल्ली में घट रही है। हमें यह बात बहुत अफसोस के साथ कहनी पड़ती है। मैं लीगल साइड का नहीं हूँ लेकिन हमारे सदन के माननीय सदस्य, जो न्यायालय के साथ जुड़े हुए हैं, कपिल सिब्बल जी हैं, आनन्द जी हैं, अरुण जी सभी ने जिस ढंग से इसे सामने रखा और जिस ढंग से इसकी व्याख्या की, जितने विस्तारित रूप से व्याख्या को उतने, विस्तारित रूप से हम नहीं कर पाएंगे। हमारे सामने जो बात आई वह यह है कि जब जजों का नियोग होता है तो नियोग से पहले जैसे—कपिल जी ने तीन प्वाइंट की बात कही कि कितना जूनियर है, रिलेटिव कितना है, कास्ट और कम्युनिटी की बात कही है लेकिन इसके साथ—साथ एक चौथी बात भी है। यह कुछ पोलिटिकल एप्रोच है। पोलिटिकली भी कुछ है। मैं इसलिए कह रहा हूँ कि नियोग के साथ के सारे अगर हम न देखें तो जो एक चीज हमारे सामने है कि न्यायाधीश जजमेंट देने में जो डिल करते हैं, हैरासमेंट होता है इन सबको देखा जाए, बार कौंसिल में उनका पहले का इतिहास देखा जाए। वे किस ढंग से चले, किस ढंग से नहीं चले, इस विचार के आधार पर हमें इनको नियुक्त करना चाहिए। इनकी जांच होने के बाद, किस ढंग से ये चला रहे हैं, किस ढंग से ये निर्देश दे रहे हैं और सिद्धांत ले रहे हैं, इसके बारे में भी एक ऐसी कमेटी होनी चाहिए, जिस कमेटी के बारे में कपिल जी ने कहा है, उसके साथ मैं सहमत हूँ कि ऐसी एक कमेटी हो और जहां डाइरेक्ट अगर किसी जज के बारे में कोई ऐसी बात हो तो वही पर विचार हो। अब विचार हो तो उस समय कम से कम कुछ दिनों के लिए उसको उस पद से हटा दिया जाए। वह रिज़ाइन अगर न करे तो उसे उस पद से हटा दिया जाए ताकि सही ढंग से विचार हो। अब जैसे सुमित मुखर्जी का एक केस है, हालांकि जज के पद से उन्होंने रिज़ाइन कर दिया, वैसी उन्होंने काम भी गलत किया है, लेकिन जिस ढंग से उनको अदालत में पेश किया गया है, वैसी घटना भी नहीं घटनी चाहिए।

श्री प्रेम गुप्ता: वह अच्छा किया है।

श्री अवनि राय: अच्छा किया है, तो ठीक ही हैं, परन्तु आज जनता के सामने ऐसे आता है कि जैसे चोर, गुंडे, बदमाश के साथ हो रहा हों। इसको मैं इसलिए कह रहा हूँ कि इसमें जज की छवि बिगड़ती है। दूसरी बात है कि जिस बात को आर.के. आनंद कह ही चुके हैं, फिर भी मैं कह रहा हूँ कि बहुत सारे जज ऐसे हैं कि उसी जज के चैंबर में उनके रिलेटिव, चाहे पुत्र हो, पुत्रवधू हो या कोई भी हो, उन्हीं के वहां वे काम करते हैं। उनके वहां वकालत कहते हैं। इसलिए इसकी आरे भी ध्यान देना चाहिए। अगर ऐसा कोई जज हो तो उसका कम से कम दूसरी जगह ट्रांसफर कर दिया जाए ताकि उनके रिलेटिव उनके कोर्ट पर कुछ न कर पाएं।

मेरा एक और भी सुझाव है कि ऐसी कोई घटना कुछ दिन पहले मैंने पेपर में देखी थी कि किसी बॉर कौंसिल में किसी ने किसी की डिग्री को थोड़ा सा छीन लिया था लेकिन बाद में

वह जज भी हो गया था। यह एक पुरानी घटना है, जो मुझे याद नहीं है कि कहां की है। लेकिन ऐसी घटना मैंने एक बार पेपर में पढ़ी थी शायद यह नॉर्दर्न इंडिया में कहीं पर होगी।

माई लॉस्ट प्वायंट इज़ दिस कि रिटायर्ड जज के बारे में हम जो कमीशन वगैरह बनाते हैं उसमें रिटायर्ड जज को इतना ज्यादा प्रमोट करते हैं कि वह कुछ दिन पहले से ही अपनी एक लाइन बनाने की कोशिश में रहता है। इसमें वे इस ढंग से चलते हैं कि जिससे लेजिस्लेटिव के साथ, एग्जीक्यूटिव के साथ एक ऐसी लाइन बनाते हैं। मेरे ख्याल से यह भी एक भ्रष्टाचार है। हमें देखना चाहिए कि हमारी जनवादी व्यवस्था, जो तीन पिल्लर्स पर खड़ी है, एग्जीक्यूटिव, लेजिस्लेटिव और जुडीशियरी, इसमें हमारी एग्जीक्यूटिव के उपर आम जनता का विश्वास कम होता जा रहा है और लेजिस्लेचर पर भी कम हो गया है। इसलिए इसको हम पहले से ही अगर रोकें और इनको भ्रष्टाचार से बचाएं तभी वह विश्वास कायम रहेगा। तभी वे न्याय करेंगे जब एक अच्छी प्रक्रिया से चयन करके उनको हम नियुक्त करें।

श्री सभापति: बहुत-बहुत धन्यवाद आपको, बस हो गया।

श्री अश्वनि राय: वैसे खत्म ही हो गया है। इसलिए यह जो संकल्प है इसको हम सभी मिलकर ठीक ढंग से विचार करके पारित करें तो अच्छा है।

SHRI ASHWANI KUMAR (Punjab): Mr. Chairman, Sir, when I was reading the Resolution brought before the House by my esteemed colleague, Prof. Soz, I must confess that I was filled with a great sense of sorrow. There was a kind of sadness that I felt, which I feel while presenting my views on this crucial subject. The reason for that sorrow is that the highest forum of India's democracy should today be compelled to debate the question of corruption in the higher echelons of judiciary. Sir, a country whose motto is Satyamev Jayate, today, we are told and we are debating, "Should the truth be a defence to a contempt or not?" I cannot imagine a greater irony; I cannot imagine a greater tragedy. But Sir, I recall those days of my childhood when I was studying in the 5th Standard. On the Annual Day function, I was called upon to state what would be my ambition in life. I said, "I would like to be the Chief Justice of India". I got a standing ovation at the age of 10. I will tell you why I said that my ambition was to become the Chief Justice of India. Because till the time I joined the profession, as far back as 1974, a High Court judge was no less than a dummy god and the Supreme Court judge was a god himself for us. Even to date, when I hear of the tragic stories of corruption in the judiciary, my first inclination is to reject them until we see the sorry spectacle^{*w} of one of our former colleagues who was later elevated to the judge. ^{eh}P confessing to guilt. People like me who always gave the benefit of doubt to the

judiciary were forced to think afresh. Sir, I will tell you why I have sought your indulgence to speak for a few minutes. A distinguished Member of Parliament, Shri Kalpnath Rai, is not with us any more. I know he was dragged to the Patiala House Court. I know what judgement was written by the Sub-Judge of the judiciary and what sermons were given by the subordinate judge to the political establishment of this country, an establishment with which we have names of Mahtama Gandhi and Pt. Nehru. The whole political establishment, the Parliament, the executive, which are accountable to the people of this country, were tarred with the same brush. Who gave that right to which judge to write as part of his judgement an irretrievable denouement or an indictment of the entire political establishment in a democracy? Is that going to be the measure of our judicial system? I submit, not. Sir, we have seen and we are all privy to the history of hawala litigation. We all know how it had orchestrated. We all know how people paid the price and we also know how the serving Director of the CBI was summoned by the highest judicial functionary and told to proceed at a particular pace in investigation, irrespective of what his views on the investigation were. I know a serving Chief Minister of Bihar was put behind bars on the same offence in three cases in three different jurisdictions of Bihar. Is that the judicial system we justly feel proud of? We cannot feel proud of this judicial system. While I fully endorse the need to have a review of the entire system, I also would like to say that the much touted collegium of appointment has not stood the test of time. After the collegium was brought into being, one has seen a steady and consistent deterioration in the quality of judges and in the quality of the judgement. And the quality of judgement is even much more serious because if you were to read fine print of the judgements, you would see imprints of conscious biases in the judgement. That is the most invidious, the most insidious and the most dangerous challenge to the independence of judiciary. It is not coming from without, it is coming from within. It is not a question of Parliament being arraigned against the judiciary; it is not a question of the legislature being in competition for supremacy with the judiciary, it is a question of how we are going to sustain the three pillars, the vitals of democracy, the greatest democracy on earth, the largest democracy on earth, the most sensitive democracy on earth. That is what we are actually debating about.

One last point, Sir, and I am done. The truth will always be a defence. It must always be a defence. A country that claims to follow the

Father of the Nation cannot find any excuse or justification to deviate from the truth as the final measure, as the final parameter, by which you judge human conduct, by which you judge accountability, by which you judge performance in public office.

With these words, Sir, I commend my learned friend's Resolution. It is timely. It is a national imperative. And, I know that my distinguished friend, the Law Minister, with whom I have studied in college, shares the same view as most of us, and I do know that he will bring very urgently a comprehensive reform Bill so that this charade, a contest between the legislature and the judiciary, is not allowed to mask the real malady. And, the real malady is, the integrity and the quality of the people to man the judicial post have to be ensured. That is the feeling and that, Mr. Minister, is your mandate to correct.

श्री राजीव शुक्ल (उत्तर प्रदेश): सभापति महोदय, मैं जुडीशियरी के तीन पक्षों पर अपनी बात संक्षेप में कहना चाहूंगा, एक डिले इन जस्टिस, दूसरा करप्शन इन जुडीशियरी और तीसरा जुडीशियल एक्टिविज्म। जहां तक डिले इन जस्टिस का सवाल है, आज तकरीबन ढाई करोड़ से ज्यादा केस विभिन्न कोर्टों में लंबित पड़े हैं। अगर देखा जाए सुप्रीम कोर्ट में आज से तीन साल पहले 20 हजार केस पेंडिंग थे, 32 लाख केस हाईकोर्ट में और 2 करोड़ से ज्यादा केस लोअर कोर्ट में पड़े थे। तीन-तीन, चार-चार जनरेशन से लोग इसको भुगत रहे हैं। माननीय अरुण जेटली जी जब पहले ला-मिनिस्टर थे तो इन्होंने इसमें बहुत अच्छा काम किया था, फास्ट ट्रेक कोर्ट बनाए थे और उसके नतीजे भी सामने आए थे। आज गवाहों की वजह से, गवाहों के न मिलने से देरी के कारण उनमें भी फैसले देर से हो पा रहे हैं। इस मामले में मेरे कुछ सुझाव हैं। अगर इस तरह से, मान्यवर, देखा जाए तो इन मामलों को निपटाने में कम से कम 324 साल लगेंगे और 500 कोर्ट बनाने पड़ेंगे। इस तरह तो यह एक असंभव सा काम लगता है, बशर्ते कुछ कदम उठाए जाएं, जैसे कानून कम किए जाएं, छुट्टियां कम की जाएं, एक जज न्यूनतम कितने केस करेगा उसका कोटा फिक्स हो, अगर प्लेंटिफ सबूत न जुटा पाए तो उसे दंडित किया जाए, प्ली बारगेनिंग की इजाजत मिलनी चाहिए और सरकारी डिपार्टमेंट को बिना वजह अपील में जाने से रोकना चाहिए। इससे काफी कुछ राहत मिल सकती है। क्योंकि सबसे ज्यादा 70 प्रतिशत मामले दीवानी के हैं और इसलिए इनका एक रास्ता निकल सकता है कि जो डिले जस्टिस में हैं इसे बचा जा सकता है।

सभापति जी, यहां तक करप्शन इन जुडीशियरी की बात है, पिछले तीन-चार महीने या छह महीने में इस तरह की तीन-चार घटनाएं हुई हैं कि हरेक को इस ओर सोचने को विवश होना पड़ा है। कर्नाटक में जिस तरह से तनी जर्जों का मामला आया, होटल में जो कुछ हुआ, ...**(व्यवधान)**...सैक्स स्केंडल यह कह रहे हैं, मैं नहीं कहना चाहता, लेकिन जो कुछ हुआ, उसकी खूब अखबारबाजी हुई, पुलिस तक मामला गया और इसके बाद आज तक वह विवाद चल रहा है। पंजाब के पब्लिक सर्विस कमीशन में जिस तरह से तनी जर्जों के नाम आए कि वे उस

घोटे में शामिल थे, लेकिन उसमें कभी तक कोई जवाबदेही फिक्स नहीं हो पाई। फिर अभी दिल्ली हाईकोर्ट के जज का मामला सामने आया है कि एक व्यक्ति, जिसका कोई मतलब नहीं, उसके घर में फाइल पड़ी थी, जजमेंट डिकटेड हो रहे थे। इससे जुडीशियरी पर जो फेथ है वह निश्चित रूप से हिला है। यह बात मैं इसलिए कह रहा हूँ और यह बहुत जरूरी है कहना कि आजकल सबसे ज्यादा भाषण पोलिटिशियन को यही कोर्ट में देते हैं। जजमेंट में कॉमेंट नहीं लिखेंगे, लेकिन ऐसा कॉमेंट पास कर देंगे कि मीडिया उसको छाप देता है और नीचे की सारी जुडीशियरी उससे इन्फ्लुएन्स होती है। सबसे ज्यादा ये लोग जो हैं नसीहत देते हैं, प्रीच करते हैं और इसकी वहज से इतना माहौल बिगड़ता है कि पूछिए मत। मुझे इस बात की खुशी है कि जो इस समय चीफ जस्टिस आफ इंडिया है मिस्टर खरे, वे इस मामले में काफी गंभीर हैं, जुडीशियरी में करप्शन को लेकर। अगर माननीय केन्द्रीय मंत्री जी उनके साथ एक तालमेल बनाएं, जैसी इनकी मंशा है, तो काफी कुछ इसमें से निकल सकता है।

श्री सभापति: किस चीज का तालमेल बनाएं?...**(व्यवधान)...**

श्री राजीव शुक्ल : उसमें काफी कुछ हो सकता है। हालत यह है, मैं छोटा सा उदाहरण देता हूँ।

श्री सभापति: अब उदाहरण मत दीजिए, जल्दी से अपनी बात खत्म कीजिए।

श्री राजीव शुक्ल: सर, यह बहुत जरूरी बात है, जो मैं आपके सामने रख रहा हूँ। आप भी उससे सहमति जाहिर करेंगे। मैं कहता हूँ कि मैम्बर पार्लियामेंट को पब्लिक सर्वेण्ट क्यों होना चाहिए? उसके पास कौन सा आफिस है, कौन से फैसले वह ले रहा है? एक आईएस आफिसर के पास तो दस फैसले लेने का अधिकार होता है, आईपीएस आफिसर के पास होता है, मिनिस्टर के पास होता है, लेकिन एमपी के पास नहीं होता। मैम्बर पार्लियामेंट टेम्परेरी चार्ज हैं, लेकिन उसको पब्लिक सर्वेण्ट बना दिया गया। अभी जो सीवीसी की सिंगल डायरेक्शन आ रही है उसमें एमपी इन्क्लूड क्यों नहीं? ज्यायंट सेक्रेटरी एण्ड एबोव तो आपने उसमें इन्क्लूड कर लिया, एमपी को क्यों नहीं इन्क्लूड किया? मैं बता रहा हूँ कि एक इंदिरा गांधी थी जिन्होंने पोलिटिशियंस को पूरा प्रोटेक्शन दिया था। क्या सारे पोलिटिशियंस खराब हैं? 10-15 प्रतिशत खराब हो सकते हैं, 20 प्रतिशत खराब हो सकते हैं, लेकिन आजकल फैशन बन गया है पोलिटिशियंस की मज्जमत करने का और उनको तंग करने का।

श्री प्रेम गुप्ता: मान्यवर, कोर्ट में बुलाकर दो-दो घंटे एक ज्युडिशियल मजिस्ट्रेट पोलिटिशियंस को खड़ा रखते हैं।

श्री राजीव शुक्ल: अभी अश्विनी कुमार जी ने कल्पनाथ राय जी का उदाहरण दिया। एक गैस्ट हाउस दे दिया था, बाद में क्या हुआ? इतने दिन जेल में रखा। वह आदमी मर इसी वजह से गया और इसके बाद कोर्ट से छूट गए। मैं आडवाणी जी की बात करता हूँ, मोती लाल वोरा जी की बात करता हूँ कि सार्वजनिक जीवने में इनसे ज्यादा साफ-सुथरे लोग नहीं मिलेंगे लेकिन हवाला केस में क्या हुआ? 13 मंत्री, 3 गवर्नर और इस तरह के व्यक्ति, सार्वजनिक

जीवन में जिनका उच्च कोटि का रिकार्ड था, ऐसे सारे लोगों को कटघरे में खड़ा कर दिया गया और इसका जजमेंट क्या आया कि सब केस खारिज हो गए।* मैं नाम लेकर कहता हूँ कि उनकी क्या एकाउंटेबिलिटी फिक्स की गई ? क्योंकि* सीबीआई डायरेक्टर को खुद हरसमय डायरेक्शन देते थे कि आप इस केस की चार्जशीट बनाकर लाइए। उनको ह्यूमन राइट्स कमीशन का चेयरमैन बना दिया गया।

श्री प्रेम गुप्ता: बुलाकर थ्रेटन करते थे।

श्री राजीव शुक्ल: उनको,* इस बात का पुरस्कार दिया गया कि आप और पद पर बैठिए, टाइप-8 कोठियों में बैठिए।

श्री के. नटवर सिंह(राजस्थान): हमको फंसा दिया था।

श्री सभापति: इनको फंसा दिया था।

श्री राजीव शुक्ल: इस देश को सवाल पूछना चाहिए...

श्री सभापति: आप नाम मत लीजिए।

श्री राजीव शुक्ल: कि साहब उनकी क्या एकाउंटेबिलिटी हैं, उन्होंने क्यों ये डायरेक्शंस दीं सीबीआई के डायरेक्टर को ? इतनी चार्जशीट उन्होंने कराई, कहीं न कहीं उनकी एकाउंटेबिलिटी भी तो होनी चाहिए। तो, साहब, यह ज्यूडिशियल एक्टिविज्म का जो हाल है, पोलिटिकल इंटरफियरेंस को खराब शब्द माना जाता है। जब लोग किसी को इलेक्ट करके भेजते हैं और वह अपनी बात अगर कहता है तो पोलिटिकल इंटरफियरेंस क्या है ? इस शब्द को ऐसा बना दिया गया है कि जैसे सारा पोलिटिकल इंटरफियरेंस, माने गलत काम हो रहा हो और सबसे बड़ी चीज यह है कि पोलिटिशियंस ही यह मानकर चलते हैं। जो पदों पर बैठे हुए पोलिटिशियंस हैं, वे भी पोलिटिकल इंटरफियरेंस को खराब मानते हैं और कोर्ट्स में तो यह सबसे ज्यादा हो गया है कि पोलिटिकल इंटरफियरेंस है, मान लीजिए कि सब गलत हो रहा है। मान्यवर, ये सारी चीजें ऐसी हैं कि जिनकी तरफ ध्यान देना चाहिए।

मान्यवर, जज गवर्नर बन रहे हैं। यह भी तय हो जाना चाहिए कि कोई जज गवर्नर बन सकता है या नहीं बन सकता। आज ही दो जज गवर्नर बने। यह भी तय हो जाना चाहिए और इस मामले में कोड आफ कंडक्ट बन जाना चाहिए।

* Expunged as ordered by the Chair.

श्री सभापति: देखिए, आप नाम मत लीजिए ।

श्री राजीव शुक्ल: मैं नाम नहीं ले रहा ।

श्री सभापति: आपने जो पहले नाम लिए हैं वे भी माफ करना मैं एक्सपं करूंगा ।

श्री प्रेम गुप्ता: सर, नाम लेने दीजिए ।

श्री सभापति: हाऊस की कुछ परम्पराएं होती हैं, उन परम्पराओं के नाते नाम न लें तो ज्यादा अच्छा हैं ।

श्री राजीव शुक्ल: अकेले यू.पी. गवर्नमेंट के खिलाफ 13,000 केसिस कंटेस्ट आफ कोर्ट के हैं । कहां से वे निबटारा करेंगे ?

सर, मैं समझता हूं कि सरकार का दखल ज्युडिशियल ऐप्वाइंटमेंट में होना चाहिए । यह जो सरकार ने गेव-अप कर दिया था, वह वापिस लिया जाना चाहिए और जो ज्युडिशियल कमीशन बनाने की बात हैं, मैं उसका समर्थन करता हूं । दोनों ही जगह का प्रतिनिधित्व दे दें-चीफ जस्टिस का भी और सरकार की भी । यही मुझे कहना था । धन्यवाद ।

SHRI ARUN JAITLEY : Mr. Chairman, Sir, we have had a very elaborate discussion, and I must, first of all, both thank and congratulate Prof. Soz for having moved this Resolution, where the discussion has been of a non-adversarial nature. Most hon. Members, who have spoken, have given various examples and illustrations. But, they are seriously concerned, as I understand, about the state of the judiciary in the country. A judge, Mr. Chairman, almost performs a divine function -- when there are disputes between ordinary humans -- by the civilised code that we have in India and by (he rule of law that we are governed by. We make him the arbiter of our fate. He decides who succeeds, he decides who lives free and who goes to jail, and every word that he writes is treated with the same kind of authority and respect as though it was a divine dictate. And, therefore, for citizens of India, and the hon. Members of Parliament to expect Judges both in terms of intellectual inputs, scholarship, ethics, integrity, efficiency to be of the highest quality is but natural. If there is one institution, which we cannot afford that it fails, it is a judicial institution. And I take that it is out of those concerns that the views have been expressed by the hon. Members of Parliament. We, in the Government, are also very seriously concerned about the issues which have been raised. The issues relating to the judiciary are firstly with regard to the appointment procedure; then, they

are with regard to the quality of justice that is dispensed; then, they are with regard to the accountability of judges.

Let me start with the first, that is, the appointment procedure. The Constitution, and Mr. Sibal elaborately read out from the Constitution, very clearly provides that it is the President -- and the President under our scheme of Constitution means the Council of Ministers, or, the Government of the day, which advises the President, except in certain functions which are reserved for the President -- who will make the appointment of judges in consultation with the Chief Justice of India and such other judges as he considers necessary. Consultation in the case of High Courts has to be done with the Chief Justices of High Courts and the Governors of the States. How did we come to such a situation? And when we try to find an answer to the problem, unless we address the right question, probably, we will not reach the right answer. This system, which started in 1950, at least, in the first two or three decades of constitutional functioning, did function well. Recommendations used to be made; initiation procedures used to be made by the judicial institution; views of the Government were communicated. The Government had the last say; the President had the last say. But after this process of consultation, when appointments were made, on account of respect for each other's opinions, we not only made appointments, but the quality of appointments which we made was also good. Therefore, nobody in the 1939s or 1960s ever thought in terms of a debate as to who has the last word in a matter of judicial appointments; is it the Supreme Court or is it the Government of the day? All views were accommodated and that is how harmoniously a democratic order functioned.

Sir, the problem started in the early 1970s. The problem which started in the early 1970s, was then on account of the ideological debate which was going on in the Indian system; there were some judgments of the Supreme Court which did not suit the Government of that time. We had the unfortunate supercession in 1973. We had a doctrine, which was put forward, which, I am sure, nobody today will talk about. We have all learnt. We have all learnt from our mistakes. So, nobody, today, will seriously suggest that the Chief Justice must have a political or a social philosophy. We have overcome that debate.

We then had the transfer of judges. For the first time, it was in 1982, that this issue got clinched in the matter of appointment of judges and

transfer of judges, as to who has the last say; is it the Chief Justice of India or is it going to be the Government of the day. The Supreme Court itself was divided on this issue and by a majority view, the Supreme Court said that it was their job to advise, but the last word was with the Executive. And that pre-1982 system continued. But the pre-1982 system, in 1982, sounded a note of caution, and an attempt was made that, to comply with that note of caution, the appointments are made. One experience, as a result of which we started -- and I think it was an aberration of that period, when we are thinking in terms of future course -- was that it was felt that some element of politicisation in the process of appointments also got injected. Mr. Sibal made a very interesting example today. He mentioned a Chief Minister, whom he did not name and said that when that particular person was¹ not the Chief Minister, everyday a judicial order went against that person, and the day that person got re-elected as the Chief Minister, the judicial attitudes also changed. Now, one of the first factors we have to keep in mind is that it is not the job of the judges to keep track, which way the ballot boxes go. Judges do not have to follow the ballot boxes. They do not have to follow the trend of the day. They must decide these issues independent of what the electorate decides. That is how the society is governed by the rule of law. But how come, during those periods, post-1982, when we had different Governments in power, at different points in time, the nature of recommendations between 1982 and 1993 also started depending upon the complexion of the Government in power? You had, during this period, at least, three different political formulations which had governed the Central Government. This issue again came up in 1993, and even though, strictly, the language of the Constitution was very clear that it is the President who appoints judges and consults the Chief Justice, in 1993, by a judicial construction, this power was taken away from the President and it went to the Chief Justice. It went to the Chief Justice because the word 'consultation' was now interpreted that it must now be taken to mean what it means in the constitutional context where it is used. The constitutional context is, how do you maintain the independence of judiciary. Therefore, consultation does not mean you take the opinion. Consultation means, when a Chief Justice advises you because independence of the judiciary is the paramount feature of our Constitution, the President¹ is bound by that advice of the Chief Justice of India. Therefore, the Government of the day, the President, they became in this consultation process marginal players. Therefore, the entire decision-making process leaned in favour of the Chief Justice.

SHRI RAJEEV SHUKLA: Who was the Chief Justice at that time?

SHRI ARUN JAITLEY: That is all right. Let us not go into name him. Once it went in favour of the Chief Justice, you had the second phase which started, where the primacy was given to the Chief Justice, and depending upon the personality, the preferences, the attitude of the Chief Justice, appointments were vested really with one person. Now the second question arose that irrespective of the constitutional office that you hold, should such function of a paramount importance depend and rotate around the personality, attitude, preferences of one person? The chair you occupy is very important, but people can err also. People may have fault lines in their preferences. Therefore, is it in the interest of the judicial independence and our democratic order that the power is vested with one person?

In 1998, we started the third phase. In this third phase, upon a reference made by the Government to the Supreme Court, a larger Bench of the Supreme Court decided that this power now will be exercised not by the Chief Justice alone, he only represents Supreme Court as an institution, there will be a collegium of judges, in the Supreme Court, a collegium of judges in the High Court, so, judges collectively will make recommendations, and this collective wisdom of the judiciary will be made binding, as far as the Government is concerned.

Sir, I just heard my distinguished friends, Shri Ashwani Kumar, Shri R.K. Anand and amongst the points that they raised was - Shri Ashwani Kumar, particularly said, Shri Sibal said, "Can we go back to the pre-1993 order situation"? We have now seen both the kinds of system function. We have seen a system function where the primacy was of the Executive; we have seen a system function where the primacy was of the judicial institution. There are questions which we have to ask ourselves, after having seen these systems function. The first is, if I attempt, since it is a Private Member's Resolution, and I will be candid in attempting an answer in my personal capacity, in the second category of system, it is generally felt that perhaps the political element in the process of appointments is slightly diluted. The second observation is that the process now is much slower than it ever was before because still consensus is reached, recommendations cannot be made. I even, today, have a situation, where for more than a 100 vacancies in the High Courts -- there are about 135 vacancies in High Courts -- I am giving the approximate figures -- I have

recommendations for 35; for 100, I don't even have a recommendation because consensus has not been reached. The consensus has to be reached both in the High Court and the Supreme Court, and because the power vests with the Supreme Court collegium, in relation to High Courts, in addition to the collegium, an important primacy also belongs to a judge of the Supreme Court, who belongs to that High Court because his views matter the most.

Now, with all these factors, the process is much slower. In fact, one former Chief Justice of India -- we were sharing our experiences -- he used a very interesting phrase. He said that every Judge has a constituency Judge in the Supreme Court. He is a Judge in the Supreme Court who was from that High Court, he has *bona fide* attachment to that High Court, he wants good appointments of what he considers to be good, therefore, he always keeps an eye on that High Court. The third factor is, and that is what some hon. Members have raised, whether the quality of appointments improved by a change over of the system. I must say that it is an issue which concerns all of us. I have to very candidly admit, perhaps, that is not the case. The quality has not improved. Now, do we go back to the pre-1993 situation which had its own strengths and which had its own weaknesses? Or, do we alternatively allow the present system to be experimented a little more? Or, do we think in terms of an alternative suggestion because the existing systems do not seem to have worked well? The second issue, Sir, which the hon. Members have raised, and I have to deal with the issue of quality and I must confess here one of the reason why quality has not improved. One of the many reasons why the quality has not improved is that in a number of High Courts particularly which are located in far important cities which have got commercial support behind them, very successful members of the Bar have stopped considering elevation to the Bench as a lucrative proposition. Therefore, in a number of High Courts you have the best quality in the Bar who have been declining offers of being elevated because they do not find the office attractive enough.

As far as the issue of accountability is concerned, there are several aspects. Mr. R.K. Anand dealt with at length on the problem of relatives. It is indeed a serious problem. In fact, I privately to myself call it the problem of '*Sons-stroke*' as far judicial institution is concerned. It is prevalent in various High Courts. It is a problem which the institution has to attempt to

tackle with. The second problem is, that is the cores of issue, without going into the individual cases, why do these aberrations are there. Sir, all human beings are born with a number of weaknesses. As we grow and as we get the experience of life and the responsibility of office, we try to capture some of those weakness or fault lines. Hon.Members were very concerned about that politicians are being frowned at as far as judicial institution is concerned. Sir, we, in public life, when it comes to accountability, we are perceived by people as an unaccountable community. But perhaps it is my faith that we are the most accountable community. Every day, as a Minister in the Government, when I pass an order on a file, I am scared what the newspapers will say the next day. I am conscious of the fact what my Party will tell me. I am conscious of the fact what the Parliament will tell me. I am conscious of the fact the impact of every decision that it will have on the electorate. These are different layers of accountability that we in public life have to go through. We are in gaze all the time. That is one of the reasons, because of this accountability factor that we try and capture the fault lines that lie within us and some of us even fail in that. Now, in the judicial institutions, the institutions are manned by people out of the same -social values that we all belong to. I must say the Judges as they grow are able to grow into exemplary ethics. Their ethics and their values are something which are given as an example. But there are some, the fault line on whose character gets strengthened because of the non-accountability that a Judge may be put into. A Subordinate Judge has a far higher level of accountability because he does not have a Constitutional protection. He can be transferred to an insignificant assignment. Mr. Rajeev Shukla asked whether the Subordinate Judges are expected to decide a particular number of cases every month. Yes, the subordinate court judges are expected to do that. His Confidential Report is very strictly written. His promotion depends on that. They compulsorily retire every year in a large number of batches. There are levels of accountability. And, let me tell you, in terms of work, even though we feel that in lower courts, the atmosphere, because of the infrastructure, is not good, you have - I do not think that there is any other judiciary in the world where it happens -- about 1.6 crores of cases filed every year in the subordinate courts. And the disposal in the subordinate courts is also about 1.5 crores of cases per year. So, you will find a judge without a stenographer writing with hand. His stenographer is taking down a separate dictation. They work from morning to evening then they go home and finish their judgments. They, at least, try and do that. In the case of judges, who

have the Constitutional protection and immunity, there is the absence of a situation where questions have to be answered.

Mr. Sibal has raised a very interesting issue and I shared that experience with him. In fact, I do not mind in sharing this with the House. A question was asked in the House as to how many judgments are pending for more than one year in High Courts. So, to reply to that question, the Government had to write to the Chief Justices of the High Courts. And, this is what one of the High Courts informed me. It said, 'That High Court has confided that information regarding the number of cases where judgments are reserved impinges upon judicial independence and institutional autonomy.' Accordingly, the High Court felt that information sought is not required to be furnished.'

SHRI PREM CHAND GUPTA: You name that High Court.

SHRI ARUN JAITLEY: That is all right. Let us not get into names because we are on the issues.

MR. CHAIRMAN: We need not to name the High Court.

श्री प्रेम गुप्ता: बताइए, देश को पता चलना चाहिए ।

श्री के.नटवर सिंह: आपने इसका जवाब क्या दिया ?

श्री प्रेम गुप्ता: सर, देश को पता तो चलना चाहिए ।

श्री सभापति: पता चल गया है । आज की डिबेट से सबको पता लग जाएगा ।

श्री प्रेम गुप्ता: सर, नाम तो पता चलना चाहिए ।

MR. CHAIRMAN : That is enough.

SHRI ARUN JAITLEY: The issue, therefore, is how many judgments do you write? What are the value systems that you have? And, even in some of the recent cases, facts, which have come to light, are not facts that have come to light because of any in-house mechanism of the judicial institution. The view of the judicial institution has been and the broad conceptual debate is, there is independence to judiciary, which is a vital

component of democracy, and on the other hand there is autonomy. So, if there is accountability, will that accountability impinge upon the principle of judicial independence? Therefore, the judiciary has suggested in the past that they will try and involve an in-house mechanism. The ultimate mechanism only is a removal. And, removal through an impeachment is very difficult and is almost a near impossible procedure. So, what happens to such a deviant behaviour which does not call for impeachment or removal but for which somebody has to understand the nature of complaint. Somebody has to understand as to what the problem is. And, therefore, levels of accountability will have to be there as far as the issue is concerned. If the accountability is to be the Executive then, perhaps, an imbalance can be created and the judicial independence can be compromised. Therefore, the via media is, independence can be preserved and an element of accountability is injected into the system because the accountability will ensure justice of good quality. It will ensure judges of good quality. And, perhaps, will add to the judicial independence as far as the institution is concerned. Now, in such a situation, I was mentioning that in most of the cases, the facts, which came to light, came to light as a result of some fortuitous investigation being carried on by somebody against somebody else. And, incidentally, they discovered a judge in the middle. It was not a result of any in-house investigation that some eye or watch was being kept that this situation has come to surface. What then is the answer to this issue? An answer on which there is a broad convergence, I would not say unanimity of view even in circles of eminent jurists. I have read editorials in the media. I have seen the manifestoes of a large number of political parties that we must have some form of a body which is, now, popularly come to be known as 'National Judicial Commission.' The Commission's composition must be a balanced one. It cannot be lopsided in favour of one or the other. The principal purpose of this institution must be to ensure that judicial independence and judicial dignity are maintained; and, there is some element of accountability. Accountability helps. Mr. Sibal raised a very important point in relation to the recent decision the Government has cleared to make the truth as a permissible defence in contempt. There is good reason why we have done so. I, for one, believe that our law always understand the truth to be a defence in contempt. If I, as a politician, indulged in a misdemeanour, and somebody wrote against me, the defence is the truth. The truth is a defence in defamation. In a contempt action, even to write the truth about a misdemeanour, will not be a defence. This was not so in the original law. This has come to be made

by a process of judicial construction. He made a point; what will happen if people start disgracing the institution? If you disgrace the institution, if you take up defence of the truth, then, you better be sure of your facts that you will succeed. If you do only to scandalise an honest judge, then, perhaps, the punishment you will invite will get compounded. But, then, Sir, how can honest judges be protected against such allegations? I take the example of what Mr. Sibal said. There is an honest judge against whom wrongful allegations are made. Does he live under the cloud for ever? Or, is there a mechanism which clears him of the cloud, and restores his public confidence? A body like a National Judicial Commission has to be properly balanced. It has to deal with appointments. It has to deal with all such deviant behaviours, which otherwise do not merit a removal. In such a case, it may merit a transfer, it may merit a case of withdrawal of judicial work, and it may merit even a case where recommendation is made to Parliament that this is a very serious case, please take some more serious action in this case which is within the parliamentary jurisdiction. And, we, in the Government, are seriously concerned with this issue. I am grateful to Prof. Soz, who raised this issue, and to a large number of other Members, who have spoken on this subject in a dispassionate, non-adversarial manner. All I can tell him is that our consideration of this matter is at a very, very advanced stage. It is only a matter of few days or few weeks. My friend, like Prof. Soz, should wait to hear what the Government is going to decide on this issue in order to seriously address this particular issue. I would request the hon. Member to seriously consider this, and, in view of this, to consider withdrawing the resolution that he has proposed.

श्री प्रेम गुप्ता: आप इस सेशन में क्यों नहीं रख देते हैं ?

श्री सभापति: अभी सोज साहब बोलेंगे ।

श्री प्रेम गुप्ता: आप इस सेशन में रखिए ।

PROF. SAIF-UD-DIN SOZ: Mr. Chairman, Sir, I am very much satisfied with the explanation that the hon. Minister has given in response to my resolution.

MR. CHAIRMAN: Not only hon. Minister, but every Member in the House.

5.00 P.M.

SHRI PREM CHAND GUPTA: The whole House has supported you.

PROF. SAIF-UD-DIN SOZ: Thank you very much. Sir, I was particularly happy that it was above party considerations that we participated in this debate. But, I would like to seek a couple of clarifications from the hon. Minister. I am so happy that he has given a broad hint that the Government is applying its mind, and the National Judicial Commission is on the anvil.' Perhaps, that will resolve the question of accountability. Many hon. judges are waiting for that. As I quoted, one or two judges of the Supreme Court say that they themselves feel that the Judiciary can never be independent, unless it is made accountable. And, one of the judges said that it should be made accountable fully. So, I am happy that the hon. Minister *has taken the House into confidence. But, I would like to say one or two things. Would you take this House, this time, into confidence on the composition? Would you also respond to the Press Council of India? Earlier, it said that the Official Secrets Act of 1923 is a British legacy. Last year, it said that it should be repealed. This year, it said that it should, at least, be amended. I am anxiously waiting to know if you could come forward to repeal it. And, then, would you also recommend, as Law Minister, -- because there is something wrong in the legal system,-- to the Ministry concerned, and would you consider writing to the Ministry concerned for giving compensation to the journalist who was incarcerated in the Tihar Jail for seven months? The Government of India withdrew that case, ultimately, finding that there was no case against him. And, if you kindly clarify it, then, I will withdraw my Resolution.

MR. CHAIRMAN: It needs to clarification. At this stage, it needs no clarification.

PROF. SAIF-UD-DIN SOZ: I say, there is no need for pressing my Resolution, and I will withdraw it, but I leave it to you, Mr. Chairman, that he must clarify these one or two points.

MR. CHAIRMAN: If you want to clarify, then, do it. Otherwise, it needs no clarification.

SHRI ARUN JAITLEY : Mr. Chairman, Sir, as far as the composition of the National Judicial Commission is concerned, the hon. Member will appreciate that since the matter is at a very advanced stage before the Government for a consideration, I won't really be able to tell my learned friend the composition till the Government has taken a final view. But, this is such an important issue that I can only tell the hon. Member that on the need and desirability, I see a larger consensus. I am quite conscious of the fact that there may be some difference of opinion as to what the composition would be, and the Government would always be willing to have a dialogue with the parties in the Opposition and all other parties which are a part of the Government to finalise what the composition should be. The underlying consideration being, the composition should be balanced, which should not either lead to over politicisation or complete elimination as far as the Executive say is concerned. So, we will have a balanced composition.

About your second and third queries that are not directly relatable; the Official Secrets Act is not relatable to the functioning of the judicial institution, and, therefore, I am not in a position to make any direct clarification or a comment. But, I would only urge Prof. Soz, he is a man of scholarship, who keeps watching all these events, the Official Secrets Act has two principle provisions, section 3 and section 5. Section 3 deals with areas relating to national security and defence. And for those friends like him, even out of good motivation who suggest that it should be repealed altogether, the disclosure of prohibited information which relates to national security, if the disclosure of that is not even made a penally punishable offence, it, perhaps, may have some bearing as far as national security issues are concerned. Therefore, section 3 is an important provision. I don't think there is a political consensus in this country that secrets relating to national security etc. could be done away with. As far as the second provision is concerned, it relates to section 5. It relates to areas other than national security matters. I would urge upon him and this is purely my personal view, I can't even say that it is my view because this is not related to the issue, and I have not taken instructions from the Ministry which deals with this Bill. But, after the enactment of the Freedom of Information Act, to get a large part of information contained in Government files has now become a statutory right. And, therefore, to that extent, after the enactment of that Act, section 5, in its rigour has been considerably loosened altogether.

PROF. SAIF-UD-DIN-SOZ: Sir, with your permission, I withdraw my Resolution.

MR. CHAIRMAN: Does the hon. Member have the permission of the House to withdraw the Resolution?

The Resolution was, by leave, withdrawn.

श्री सुरेश पचौरी (मध्य प्रदेश): सभापति महोदय, मेरी प्रार्थना है कि कोरम नहीं है ... (व्यवधान)....

श्री सभापति: डिप्टी चेयरमैन आ रही है, इसलिए अब वह प्रार्थना उनसे करिए।

श्री सुरेश पचौरी : महोदय, मेरा एक निवेदन है। सदन की एक परंपरा रही है कि नियम 56, 59, 68, 81, 91 में जब भी कोरम का इश्यू हुआ है और यह बात उठाई गई है तो हाउस एडजर्न हो गया है। यहां तक कि 5 मार्च, 1991 को जबकि प्रधानमंत्री को नेपाल विजिट के संबंध में अपना वक्तव्य देना था तो उस समय भी कोरम का विषय उठ गया और तब फिर हाउस एडजर्न किया गया। अभी भी कोरम नहीं है। इसलिए मेरी आपसे प्रार्थना है कि हाउस को एडजर्न करें।

श्री सभापति: तो कोरम की घंटी लगा देता हूँ।

श्री सुरेश पचौरी: लगा दीजिए, सर।

श्री के.नटवर सिंह: आप घंटी लगा दीजिए, कोई नहीं आएगा। ... (व्यवधान) ... जब कोई है ही नहीं तो फिर कैसे कोई आएगा। कोई नहीं आएगा। (व्यवधान)

(उपसभापति पीठासीन हुईं)

श्री सुरेश पचौरी : महोदय.... (व्यवधान)....

उपसभापति: कोरम का इश्यू क्यों उठाते हैं।

श्री सुरेश पचौरी : नहीं, महोदय.... (व्यवधान)...

उपसभापति : कोरम का कोई नहीं उठाता। ऐसा है देखिए, खाली दो स्पीकर्स हैं जिन्हें बोलना रह गया है।

श्री सुरेश पचौरी: मैडम, उन स्पीकर्स का भी यही सजेशन है कि मंडे का ज्यादा ठीक रहेगा।

उपसभापति: मंडे को दोबारा से डिबेट नहीं खोलेंगे। Let us close the debate today. I agree that I have allowed the Members to speak beyond time, though they did not have time. So, you should also cooperate. He has been sitting in the House for the whole day. Consider his condition. That day also, Mr. Borgohain kept sitting the whole day. Let him speak.

श्री सुरेश पचौरी: मैडम, उस से कोई एतराज नहीं हैं। मंडे को वह और इफेक्टिवली और सारे लोगों की उपस्थिति में बोल पाएंगे।

THE DEPUTY CHAIRMAN : Come on, Mr. Pachouri, let us finish the debate.

श्री सुरेश पचौरी: अब चूंकि कोरम का इश्यू उठ चुका है, अगर कोरम का मामला नहीं उठता तो बात अलग थी...

उपसभापति: नहीं मामला कुछ नहीं हैं।

श्री सुरेश पचौरी: मैडम, एक परंपरा बन जाएगी कि कोरम का इश्यू उठने के बाद वह टर्न डाउन हो गया।

उपसभापति: टर्न डाउन नहीं हुआ, पर उठना नहीं चाहिए था। I think, it is wrong and I would have...

श्री सुरेश पचौरी: नहीं मैडम, यह तो सदन में हम लोगों का अधिकार है कि कोरम का इश्यू हम उठा सकते हैं।

उपसभापति: आप ने क्यों नहीं उठाया जब आप के मेंबर बोल रहे थे।

श्री सुरेश पचौरी: उस समय कोई और उठा सकता था, यह कोई बात है। मैडम, मेरी गुजारिश है कि यह एक परंपरा बन जाएगी।

THE DEPUTY CHAIRMAN: If you want, I will close the debate today. It will be an injustice ...*interruptions*)... I am telling you...*interruptions*)...Please, just one minute. Let us not argue on this. I will close on the issue of quorum and I will say the debate is concluded and the Minister will reply to it on Monday...*(Interruptions)*...No, it is not that...*(Interruptions)*... Mr. Pachouri, please, just listen to me. It was agreed during lunch time that the discussion would be completed today, and the hon. Minister will reply on Monday. Voting or passing of the Bill, whatever it

is, would be done. Now, we should stick to that. You should also stick to that, because he has been waiting for the whole day; otherwise, he would have gone. He did not speak on the Private Members' Resolution. Let us have consideration for the Members of the House. Let him finish his speech. And, let us close the debate. Because two people are not there, so, I won't have to call them. Only Mr. Borgohain is sitting here. Day before yesterday also, he kept sitting.

श्री सुरेश पचौरी: नहीं, तो फिर एंड ऑल यह तय हो जाय कि कोरम का इश्यू इस हाउस में नहीं उठेगा।

THE DEPUTY CHAIRMAN : I am not going into that.

श्री सुरेश पचौरी: नहीं, मैडम।

THE DEPUTY CHAIRMAN : I am sticking to the agreement. Sureshji, let us not start new things. Let him finish. Have some consideration for him.

श्री सुरेश पचौरी: वह तो ठीक हैं, लेकिन हाउस में कोरम नहीं है और इतने महत्वपूर्ण बिल पर इस तरह कंटीन्यू नहीं होना चाहिए।

THE DEPUTY CHAIRMAN: I am telling you that I will take it that you don't want the two Members whose names have been given to speak. I will take it that and I will put it on record that agreement was done that we will finish it. I could have also said that I won't preside in a House when there is no quorum, but I still presided. I allowed as much time the party wanted. Everybody, even Shrimati Saroj Dubey spoke for more time than what was allotted to her, considering the importance of the Bill. It is not that either anybody is interested or not. The Bill is, definitely, going to be passed but the thing is others also should be considered^a Let us not do these things. Shri Drupad Borgohain.

श्री सुरेश पचौरी: नहीं, मैडम।

THE DEPUTY CHAIRMAN: He would have finished by now.

SHRI SURESH PACHOURI: Madam, I am insisting for quorum.

THE DEPUTY CHAIRMAN: If you insist, I would say the discussion is closed...(*Interruptions*)...I will say this and I will put it on record that when the Congress Members were speaking, they were speaking in a House which was not having the proper quorum.

SHRI SURESH PACHOURI: No problem, Madam.

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS AND MINISTER OF STATE IN THE MINISTRY OF DEFENCE (SHRI O. RAJAGOPAL): And, there was also an agreement that...

THE DEPUTY CHAIRMAN: Now, we will see that.

SHRI O. RAJAGOPAL: ... debate will be completed today.

THE DEPUTY CHAIRMAN: The House is adjourned till eleven o'clock on Monday.

The House then adjourned at nine minutes past five of the clock till eleven of the clock on Monday, the 5th May, 2003.