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Title: Discussion regarding need for harmonious functioning of three organs of State – Legislature, Judiciary and Executive.

SHRI GURUDAS DASGUPTA (PANSKURA): Hon. Mr. Speaker, Sir, I must thank you profusely for allowing to raise this discussion in the House, though belatedly. It is an important issue. It relates to the Constitution, provisions of the Constitution, functioning of the different organs of the State, the harmony and disharmony, the way in which we are running the Parliament and whether the Parliament is doing its job. It also relates to judiciary broadly. [R44]

Sir, the harmonious functioning of the three organs of the State as envisaged by the Constitution of India has of late become a matter of deep controversy, not that the concept is being challenged, but the point is that the harmony is in jeopardy in my humble view and that is why the subject needs to be discussed and deliberated upon to reiterate the respective role of the organs of the State to find out the implications of separation of power and to identify the centrality of the will of the people as expressed through the elected Members in the popular House.

Sir, if judicial over-activism is a matter of concern, it is, of course a matter of concern. Let us also admit very frankly that there is growing cynicism and growing criticism about the way the Parliament, the great institution of Parliament, seeks to function today. Therefore, there is need for introspection collectively by the Parliament as to find out if there is anything wrong that we must admit.

Sir, I must say that there are instances of popular approval of judicial intervention to restrain the arm of the State from doing something or to compel the Executive to do something. Therefore, the complexity of the matter, in any case, should not be over-simplified and under-estimated. I must confess before this august House that I am second to none in holding high the lofty role of the Judiciary. I am proud about the way the Judiciary is discharging its duties and obligations to the nation.

Sir, coming to the subject I must admit and frankly I admit that there is an inherent danger, underlying the word 'inherent danger', a potential danger of concentration of excessive power in either of the arms of the State. There is a possibility. Hence, there is a need for checks and balances in the constitutional governance of the country and also in the political regime. Separation of power is a part of the Indian Constitution. It has almost become a characteristic and the doctrine of separation of power is inseparable from the process of evolution of democracy in the country. I believe, as you also believe being an eminent jurist, that the doctrine of separation of power is an effective safeguard against aberrations that any of the arms of the State may perpetrate today, tomorrow or the day after. The vital question is the way in which the Fathers of the Indian Constitution conceived it, the way in which the first Prime Minister, Pandit Nehru had visualised -- the three organs of the State must have a joint participatory role. No exclusive primacy has been given to any of the arms of the State. It is also true that the popular will of the people finds a central place in the understanding of those who framed the Constitution. [R45]

15.00 hrs.

Centrality of the will of the people is expressed very eminently in the Preamble of the Indian Constitution. On the question of separation of powers, if I go a little further, let me begin by saying and I wish the House gives undivided attention to the most important question and the treasury bench is likely to cooperate with the discussion. Shri Bhardwaj, this is our concern for harmony.

THE MINISTER OF LAW AND JUSTICE (SHRI H.R. BHARDWAJ): I am listening very carefully....(*Interruptions*)

SHRI GURUDAS DASGUPTA : On the question of separation of powers, let me quote, to begin with, the former Chief Justice, Shri J.S. Verma. He aptly said: "The sovereign will of the people finds expression through the chosen representatives of Parliament." Therefore, the centrality of the question lies in the expression of the will of the people through the elected representatives who are there in the popular House. Sir, the preeminent position has been accorded to the Legislature is just to enable it to make laws, and to amend the Constitution and, if and when necessary, to ensure accountability of the Government to Parliament and lastly, to exercise control over the spending of the federal finance. These are the four vital functions that the Legislature is called upon to do under the provisions of the Indian Constitution. At the same time, while saying so, I say that the Constitution provides for an independent, neutral, effective Judiciary and judicial system. For what? For (1) interpreting the Constitution, (2) to do the judicial review (3) to act as the custodian of the rights of the people and (4) to uphold the Constitution. That is the fundamental task of the Judiciary.

Judicial system is a review of any act of Parliament or any action of the Executive to find out whether it is in consonance of with the provisions of the Constitution, whether it is within their competence, whether it impinges upon the fundamental rights of the people and whether it is in consistent with the mandatory provisions of the Constitution.

MR. SPEAKER: Not any and every act of Parliament.

SHRI GURUDAS DASGUPTA : Sir, I am coming to that. I am speaking in a generalized way. At the same time, I must say with, all my emphasis, that Judiciary is not the Third Chamber. Indian Parliament has two Chambers. Judiciary cannot act as the Third Chamber. Sir, the essential point is, how those who framed the Constitution had looked at the problem. There can be no basic quotation to understand the minds of those who framed the Constitution except to speak of the first Premier of the Republic of India, Pandit Jawaharlal Nehru. He was very cogent, very vivid and very concrete. What did he say? He said: "No Supreme Court, no Judiciary can stand in judgment over the sovereign will of Parliament representing the will of the entire community." This is what the Prime Minister of India had said when the Constitution was being enacted. Is that the situation now? Is this the situation which exists today?

The pointed question has been supplemented by many other luminaries in the legal world. Justice S.R. Das, one of the foremost former judges of India, who is no more, had said, "Constitution had preferred supremacy of legislation to that of the Judiciary. " There is no end to quotations. I will quote a few to clear the idea. It looks as if the Parliament is secondary and that somebody else is primary. Justice Krishna Iyer, who still lives, has said: "Court cannot act as a Third Chamber." Justice Katju – all of you are acquainted with the name – said: "I do not subscribe to the view that judiciary is running the Government." What is happening today? Is it not true that somebody else is running the Government, except the Government itself? Is it not true that somebody else is making the law, except the Parliament? Therefore, I feel constrained to raise the issue before the august House, to draw the attention of the entire nation, to say that the constitutional harmony is in jeopardy. Fali S. Nariman, one of the living theoreticians on the subject, said: "The constitutional scheme, social, economic and political aspects of justice are left to the law-makers."

Of late, I am sorry to say that there have been a number of cases of judicial over-activism, which is not entirely within the domain of judicial review and could be construed as judicial over-activism. If I refer to some of the violations, you will kindly understand the limit the judicial over-activism has reached in this country. Justice Verma has pointed out some violations in his lecture recently. I seek the indulgence of all my colleagues who are here in this House to kindly listen in detail. This is the list of violations that Justice Verma has made in his speech. He said that judiciary has intervened to question the mysterious car razing down Tuglak Road, Delhi. Even the Bench takes note of a mysterious car running about in Delhi! This is the point to which the problem has reached. Judiciary raises questions about allotment of a particular bungalow to a judge and about specific bungalows for Judges Panel. It intervenes in monkey menace, stray cattle on the streets, cleaning of public conveniences, levying congestion charges at peak hours in the airports with heavy traffic. There is misuse of contempt of judicial system. Should I laugh or cry? Should the House think where the Constitution has gone? The power of contempt of judicial system is being applied to force railway authorities to give reservation to a particular person or to a group of persons.

This is one side. On the other side is a comment made by a former Justice from the Bench. I do not want to disclose his name. From the Bench he is reported to have said: "The Legislatures in India has not done anything worthwhile in the last thirty years." Just reconcile the view of Justice Verma with the views expressed by a member of the Bench, saying that we had done nothing during the last thirty years. Justice Srikrishna has observed in a lecture, "In the name of judicial activism, modern judges in India had abandoned the traditional role of a neutral referee and have increasingly resorted to tipping the scales of justice in the name of distributive justice."[\[MSOffice46\]](#) These are only a few quotations that I thought it necessary to bring to your notice.

I raise a question. Government is accountable to the Parliament. Parliament is accountable to the People. To whom is the Judicial System accountable? Accountability is a basic tenet of democracy. There cannot be a free-for-all. There cannot be: " I do what I wish to." If accountability is a concept, Parliament is accountable to the people, Government is accountable to Parliament, what is the accountability of the Bench? To whom is the Judicial System accountable? I answer with humility that the Judiciary is accountable to the Constitution. Indian Constitution is a written Constitution. It is not a British Constitution which runs by conventions. It is a written Constitution.

There is a trend, I say, with dismay. There is a trend of over-activism trespassing the boundary of the constitutional propriety, seeking to tamper with the sovereignty of Indian Parliament.

My last quotation is of 14th April, 2007. It is a recent Judgement of April 14, 2007. The Supreme Court, while delivering a judgement observed:

"Court cannot interfere with Government policies on the ground that a better fairer, wiser alternative is available. Legality of the policy and not the wisdom or soundness of the policy is the subject of Judicial Review."

It is absolutely clear. But there is a digression, there is a violation. There is crossing of the road. There is breaking up the barrier. Despite this categorical statement of the Supreme Court, Judicial wisdom does not always prevail. That is my complaint.

There are two points and two aspects. Number one, there is a call of Judicial over-activism. There is a call for us to think. There is a note which you may consider. There is a problem which you must ponder over - Judicial over-activism. Is it not true, hon. Speaker, Sir, that there should be a little criticism, a little self-criticism by the Members of Parliament? Is it not true that we should sincerely deliberate upon the way in which we are functioning? How is it relevant? It is relevant because if the Parliament does not function in the way it is supposed to function, if the parliamentary values are devalued, if the Parliament loses its vitality, if there is parliamentary delinquency, deliberately I coin the expression "if there is parliamentary delinquency," if Parliament Sessions are interrupted off and on, if going to the Well becomes a practice, if violation of norms and rules becomes a pass time, if the exalted Office of the Speaker is brought down to controversy, then, Sir, I must say with a heavy heart that Parliament loses its dignity. We stoop low in the eye of the people. There is a growing criticism about the Parliamentarians and Parliament. If the parliamentary system is tampered with, the Judicial over-activism pokes its nose and interferes more frequently.

Recently, there has been arrest of four journalists. Of course, they were let off by the higher Court, but they were arrested. What for were they arrested? They had given a true picture, unchallenged picture and account about corruption in the Judiciary. The report was not challenged. But, the particular court or the particular State ordered for the arrest as if the honour of the court had been violated. Speaking the truth is a violation. If an untruth is spoken, they can be hauled up. But, for speaking the truth, they were harassed and arrested.

SHRI H.R. BHARDWAJ: They were not arrested. It is on the record.

SHRI GURUDAS DASGUPTA : They were hauled up. I am using word 'hauled up'. Hauled up is not being arrested. They were hauled up. I am saying, "They were hauled up." I change my words, "They were hauled up." I agree.

SHRI H.R. BHARDWAJ: There was a petition in Delhi High Court and they were convicted of contempt and ordered to some punishment. (Interruptions) You said that they were arrested. An arrest is something different from what happened....(Interruptions)

15.17 hrs.

(Shri Devendra Prasad Yadav *in the Chair*)

SHRI GURUDAS DASGUPTA : You did not allow me to finish, my dear friend. They were arrested, they were tried and they were convicted. I am right. Am I? ... (Interruptions) You do not want to listen to me. A Minister should have a little more patience. We are not to learn from you. You are also to learn from us. Anyway, the question is that they were arrested; they were tried and they were convicted. After that, they were let off. It is a most unfortunate thing. It is an extreme case of the misuse of the contempt power. Another thing I am saying is about this Parliament. For months, we are not being able to discuss the question of price rise. Supposing, tomorrow a person goes to Supreme Court and files a PIL suggesting that since the Government has failed, the Parliament did not discuss this issue. Hon. My Lord, you ask the Government to immediately issue orders to contain the price rise. What will he say? If this is done, it will be done because we failed. While judicial activism is a reality, the failure of Parliament is also a reality. Sir, I raised this issue. Let there be discussion. Let us put the record straight. Let us know what the constitutional position is. Let us know our limitations. Let us know what the boundary of judicial activism is and let us know how to work in harmony. I want harmony between three organs of the State. I plead for harmony between the functioning of the three organs of the State. I want Constitution to be upheld. I want the courts not to interfere in the job that the Parliament is to do. I want Parliament to function so that no opportunity is given to the Judiciary to intervene. We need an effective Parliament. We need an independent Judiciary. We want an efficient Executive also.

SHRI KHARABELA SWAIN (BALASORE): Mr. Chairman, Sir, I am very happy that you are in the Chair when I am speaking.

SHRI GURUDAS DASGUPTA : Could you please yield? I missed a point.

SHRI KHARABELA SWAIN : Yes.

SHRI GURUDAS DASGUPTA : Sir, I am sorry, I had not made one point very clear that it is the failure of the Executive which draws the attention of the Judiciary and Judiciary is given the opportunity to intervene. Therefore, the Executive must also function in a flawless way conducive with the provisions of the Constitution.

SHRI KHARABELA SWAIN : Sir, the subject of today's discussion under Rule 193 is: "Need for harmonious functioning of three organs of the State, that is, Legislature, Judiciary and Executive". I listened with rapt attention what hon. Member Shri Gurudas Dasgupta said and it was a very expected speech. There was nothing which we did not earlier deliberate outside the Parliament and there was nothing which we did not know. I very much anticipated what he will say and so I have also come prepared just to give vent to my feelings, contradicting basically what he generally said.

He basically made two or three points. He said that the Judiciary is overactive. That is what he said. He also said that probably there is concentration of excessive power in one organ of the State and that is basically – he did not say so, but he meant – the Judiciary. Lastly, the most important point of his argument was that the Judiciary cannot stand on the sovereign will of the Parliament and the sovereign will of the Parliament is represented by Members of Parliament because they are the representatives of the people. By saying so, he means that because Members of Parliament or Members of Legislature are being elected by the people, their voice is the *vox populi* or the will of the people.

Sir, I will give you one example here. If that be the case, I would like to refer to one Assembly election held long back. In 1983, there was an Assembly election in Assam where only 5 per cent of the people came and voted. Around that time, there was also another election in Punjab. There also, hardly 5 per cent people came and voted, but there was an Assembly, there was a Chief Minister, there were Ministers and there were MLAs. When only 5 per cent people come and vote, if anybody who has got elected in that election, he might have got 2 per cent or 3 per cent of the votes polled. If he says that he represents the will of the people and what he says is supreme, should anybody believe that or should we believe that? Otherwise, you forget those elections in Assam and Punjab. Take the case of this 14th Lok Sabha. How many of us have been elected by getting more than 50 per cent of the votes?

SHRI GURUDAS DASGUPTA : I got.

SHRI KHARABELA SWAIN : I know. Some of us have got. I also got around 55 per cent votes, but there are not many. Hardly 20 to 30 Members, out of the total of 543 elected Members of this House, might have won with a majority of votes. So, how can we claim that we actually represent the *vox populi*, the majority opinion of the country?[\[R47\]](#)

SHRI GURUDAS DASGUPTA : If you do not mind; I am not interrupting; I would just like to say – this is not my statement; this is the statement of the former Prime Minister of India on the floor of the House – that no Supreme Court, no Judiciary can stand in judgement over the sovereign will of Parliament.

It is not me; it is Nehru. It is not me; it is the former Chief Justice. A number of Justices have said like this. It is not me. I have only quoted them.

SHRI KHARABELA SWAIN : In a democracy, I have got my free voice. It is because the former Prime Minister of the country, the former Chief Justice of the country has said so; so I must go by that; I do not concede to that point. I concede to what I feel, and I feel what I said.

In countries with written Constitutions, the reach of the Judiciary is almost unlimited. Let us take the example of the mother of Parliamentary democracy, UK. UK does not have a written Constitution. It has no written Constitution. Then how does the country run? What is the law; what is the Constitution in UK? In UK or in most of the countries, the law is what the court says it to be. It is the convention, it is the judicial review, it is the judicial interpretations which define the contours of law.

Let me put a question. There are three organs under this Constitution, namely, Legislature, Executive and Judiciary. Cannot there be a conflict between these three organs? Is it not possible? In a family, all the time, conflicts arise between brothers and sisters, father and son and between everybody. If any conflict arises in between these three organs of the Constitution, who will decide what is correct and what is not? Who will decide it? It is the Constitution which has fully settled it. The Constitution has categorically told and settled that it is the Judiciary, it is the Supreme Court, which will settle everything. Whatever the Supreme Court says is final, and we will have to go by that.

Hon. Gurudas Dasgupta *ji* raised one point. He said that the Chair of the Speaker is being undermined. That is what he says. Sometimes it could be interpreted to be so because time arises when whatever the Speaker says is contradicted by the Supreme Court. I will not take the name, but there was one Speaker in one of the North-Eastern States in India, in Manipur. The Speaker

said: "I will become the Chief Minister and I will recognize only those MLAs who will support me. There are many of the Members who will not support me as a Chief Minister; I will expel them as Members."

SHRI KIRIP CHALIHA (GUWAHATI): Mr. Chairman, Sir, this refers to the Speaker of an Assembly of a State who is not here to defend. It should not be permitted here.

SHRI KHARABELA SWAIN : Sir, I have not taken any name.

SHRI KIRIP CHALIHA : You have said: "a Speaker of Mizoram".

SHRI KHARABELA SWAIN : Deliberately, I have not taken any name. I know that I cannot take names. [r48] Sir, if such a thing happens anywhere, can we say that what the Speaker has done is supreme and no court can intervene on it?

Take the example of Jharkhand. What had happened there? The Government of the day was asked to take the majority opinion of the House but the Speaker did not allow that. Can we say that whatever the Speaker had done was supreme and nobody could contravene or intervene into it? Rather, we are lucky that there is the Supreme Court in this country which can intervene and save us. Otherwise, most of the times, the so-called Speakers, the so-called Executive and the so-called Governments could create such an intolerable situation for the Opposition and also for the common man in this country and it would have been very difficult to remain in the country.

We had an Emergency. At that time, this House – it was elected only for five years – had passed a Resolution saying that the tenure of the House had been extended to seven years. ...(*Interruptions*)

SHRI MOHAN SINGH (DEORIA): Not seven years, six years. ...(*Interruptions*)

SHRI KHARABELA SWAIN : The Resolution was for extending the tenure to seven years but the House was dissolved after six years. ...(*Interruptions*) Anyway, even if it was for six years, I would like to know whether the House had the power and authority to extend its own tenure and then say that this was the sovereign will of the people. Then, a time will come where this House will pass a Resolution that anybody who has been once elected will remain the Member of Parliament till his death, and then we will say this is the supreme will of the people. So, my point is that it is always better that there should be an arbitrator.

Sir, I agree with some of the points raised by Shri Gurudas Dasgupta. Sometimes the Judiciary unnecessarily intervenes into the governmental activities. Hon. Shri Gurudas Dasgupta has mentioned that the judiciary has intervened into the allotment of bungalows, running of the car, stray cattle, levying concessional charges and things like that. Most of the times, the court should not intervene. On most of the occasions, somebody goes and files a PIL in the court. While replying to the PIL, the court sometimes intervenes and passes judgments like this. ...(*Interruptions*)

सभापति महोदय : मि. स्वाई, आपकी पार्टी से 5 सदस्य और बोलने वाले हैं जो लिस्टेड हैं।

श्री खारबेल स्वाई : नहीं, 2-3 मैम्बर्स ही हैं। अगर आप नहीं चाहते कि बोलू तो मैं बैठ जाने के लिये तैयार हूँ।

सभापति महोदय : नहीं, नहीं।

श्री खारबेल स्वाई : सभापति जी, मैं प्रिंसीपल अपोजीशन पार्टी का सदस्य बोल रहा हूँ।

सभापति महोदय : मि. स्वाई, आप अपनी पार्टी का पूरा टाइम ले सकते हैं, यदि पार्टी आपको अथोरइज़ कर दे।

SHRI KHARABELA SWAIN : Okay, this is the end of my speech.

सभापति महोदय : मैं आपको आपकी पार्टी की तरफ से पूरा टाइम दे दूंगा, यदि आप बोलना चाहते हैं।

SHRI KHARABELA SWAIN : Sometimes â€! *

सभापति महोदय : नहीं, आप चेयर के लिये इस तरह का रिमार्क्स नहीं कर सकते हैं। Shri Swain, this is not fair. You cannot make such a remark towards the Chair. How can you make such a remark towards the Chair?

...(*Interruptions*)

MR. CHAIRMAN: You want to establish a new precedent in the House. This is not fair.

...(*Interruptions*)

SHRI A. KRISHNASWAMY (SRIPERUMBUDUR): We are enjoying your speech. ...(*Interruptions*)

SHRI KHARABELA SWAIN : Okay, Sir. This is the end of my speech. You allow them to speak. ...(*Interruptions*)

सभापति महोदय : अगर आप नहीं बोलना चाहते हैं तो आपकी पार्टी की तरफ से जो माननीय सदस्य बोलना चाहते हैं, उन्हें समय मिलेगा। आप बोलना चाहते हैं तो आपकी पार्टी को और समय नहीं मिलेगा। हम तो आपको अलाऊ कर रहे थे। आप खुद नहीं बोलना चाहते।

वेद!(व्यवधान)

श्री खारबेल स्वाई : सभापति महोदय, सैंकेन्ड या थर्ड स्पीकर को बोलते तो अलग बात है, ..*

* Not recorded

सभापति महोदय : आप बोल लीजिए। आप अपनी पार्टी का समय ले लीजिए। आपके चीफ व्हिप लिखकर दे दें कि पार्टी का सब टाइम आपको दे दिया गया है तो हमें क्या दिक्कत है। हम लोग यहां न्याय के तराजू पर बैठे हैं, लेकिन आपके जो रिमावर्स हैं, वे बहुत दुर्भाग्यपूर्ण हैं। यह न्याय का तराजू है। इसमें न विपक्ष है, न सत्ता है, न कोई मैजबर है। न्याय के तराजू के आसन पर मैं बैठा हूँ। इसमें इंत भर इधर उधर नहीं हो सकते।

वेद!(व्यवधान)

श्री खारबेल स्वाई : ... *

सभापति महोदय : यही जस्टिस है, पर जो रिमावर्स आप कर रहे हैं, वे अनप्रिसिडेंटेड हैं, दुर्भाग्यपूर्ण हैं, अभूतपूर्व हैं। इस तरह से इजाज़त नहीं दी जाएगी।

वेद!(व्यवधान)

श्री खारबेल स्वाई (बालासोर) : ... *

THE MINISTER OF PARLIAMENTARY AFFAIRS AND MINISTER OF INFORMATION AND BROADCASTING (SHRI PRIYA RANJAN DASMUNSI): We are supporting you to speak in this discussion under rule 193. But you should not remotely even try to question the authority, *bona fide* of the Chair. That is the paramount parameter of Parliamentary democracy and this august House. My dear colleague and friend from the Opposition, Mr. Kharabela Swain is one of the knowledgeable and intelligent parliamentarians. I hope he will carry it.

SHRI KHARABELA SWAIN : What you said, I agree with you. I also expect that the first speaker from the principal Opposition Party should be given some time.

Sir, my point is that in 1973 there was one Kesavananda Bharati case. In the Kesavananda Bharati case, the Supreme Court decided that the basic structure of the Constitution cannot be altered by the Parliament. Later on, again it was challenged. No, how can the Supreme Court, how can the Judiciary intervene into the law passed by the Parliament? But again the Full Bench of the Supreme Court said that it did not want to alter the judgement of the Kesavananda Bharati case

* Not recorded

because it remains all the time. Till now it remains that the basic structure of the Constitution cannot be even infringed and changed by this Parliament itself. That is why, I say that there is nothing wrong. There is nothing wrong with regard to the judicial review and judicial interpretation of the law.

As a Member of the Opposition, I feel that had there been no Supreme Court, no independent judiciary in this country, the IMDT Act would have continued by now. It was later on made null and void by the Supreme Court. Probably, for the vote bank politics, the reservation on religious line would have continued had there been no judiciary in this country.

SHRI PRIYA RANJAN DASMUNSI: My dear friend, give me half a minute.

I just support you. But I remind you to expand your speech and wisdom. Is it also fair giving an affidavit before the Supreme Court and then violate it in the case of demolition of the Mosque in Ayodhya?

प्रो. रासा सिंह रावत (अजमेर): आप लोगों ने राम सेतु मामले पर क्या किया? केन्द्रीय सरकार ने एफिडैविट दिया और फिर वापस ले लिया।

MR. CHAIRMAN : No cross-talks, Prof. Rasa Singh Rawat. I am not allowing cross-talks.

...(*Interruptions*)

MR. CHAIRMAN: Please take your seat.

SHRI KHARABELA SWAIN : Had there been no judiciary in this country, the CBI would have been only a department under this

Government. I need not interpret what the CBI is doing now-a-days but it would have been a department under this Government had there been no judiciary. [m49]

[k50] Many of the hon. Ministers in this UPA Government who are having so many cases against them, I am not naming them, would have gone scot-free because they are in the Government. All their cases would have been closed. ...(*Interruptions*)

SHRI S.K. KHARVENTHAN (PALANI): What have you done then? ...(*Interruptions*)

MR. CHAIRMAN : Nothing else will go on record except the speech of Shri Kharabela Swain.

*(Interruptions) *â€*

SHRI KHARABELA SWAIN : He is a very good friend of mine. He knows what happened to that case. He will know it himself. I need not explain. He is a very good friend of mine. He is a legal luminary also. He is the President of the Bar Council of India. ...(*Interruptions*)

MR. CHAIRMAN : Shri Swain, please address the Chair.

SHRI KHARABELA SWAIN : Yes, Sir. Had there been no judiciary, probably, everything, every law in this country that would have been passed, because of vote bank politics, would have been put in the Ninth Schedule. The reservation policy would have been made for perpetuity. Had there been no judiciary, this would have happened in this country. I do not know how many 'Nandigrams' would have taken place inside this country had there been no judiciary. That is the only hope...(*Interruptions*)

SHRI ANIL BASU (ARAMBAGH): You are forgetting Godhra. ...(*Interruptions*)

MR. CHAIRMAN : Please take your seat. Nothing else will go on record.

*(Interruptions) *â€*

SHRI KHARABELA SWAIN : You take the example that we are saying. This House and the Assemblies reflect the will of the people. Most of the time, the so-called will of the people, they go for declaring 'Bandhs' for two days or three days when nobody can move anywhere, nobody can go anywhere. Even the judges cannot go anywhere. Had there been no judiciary, probably some of the political parties would have declared the 'Bandhs' day in and day out. Because there is a judiciary, that is why at least the people of the country have got respite. ...(*Interruptions*)

SHRI KIRIP CHALIHA (GUWAHATI): Nobody is objecting to judiciary. ...(*Interruptions*)

* Not recorded

MR. CHAIRMAN : Let there be no running commentary.

SHRI KHARABELA SWAIN : But, Sir, I also agree to a point that there is a *Lakshman Rekha* which the judiciary should not overstep. I also agree to that point. There are many many small things which hon. Member Shri Gurudas Dasgupta has mentioned. I also very strongly believe that the judiciary should not poke its nose into it and it should be totally left to the Executive.

Sir, I will take three to four more minutes only. Last week, in the Lok Sabha Television, there was a panel discussion where the former Solicitor-General of this country Shri Andhyarjuna and myself were there. The people were also allowed to put questions to us. In the debate, within the panel discussion for about an hour, about ten people put the questions to us on telephone. There was not a single person who has supported the contention of Shri Gurudas Dasgupta. All of them asked that – we fail to get justice from the judiciary, from the Government and even from the Opposition Parties, they do not raise our voice; where do we go. It is the judiciary which is our last resort which is the dispenser of justice. Then, why are you objecting to that?

All these questions were put to me and to the former Solicitor-General of this country. I agree with hon. Member Shri Gurudas Dasgupta when he said that because the Executive has failed to dispense justice, the Legislature has also failed, that is why the people are compelled to go to the court to seek justice.

Somebody, after his retirement, may not get his pension for about five years or ten years. He would have gone to everybody, every officer. Nobody would have listened to him. Then, what would he do? He would naturally go to these courts. Probably, sometimes, the courts give them some relief, some justice. We will have to really think of that also as to why this happens. [k51]

Last but not the least, I also very strongly feel that there is no accountability of the judges of the High Court and Supreme Court. If some judge is corrupt at the lower level of judiciary, then some action could be taken against him or her. Who can take action against a judge in the High Court or the Supreme Court if the same thing happens with them? All of you know that the only action that can be taken is through the process of impeachment, and you know that this process is totally impossible to be carried out. In the independent history of this country only once the process of impeachment was brought in this country, and I do not have to narrate how it was defeated as everybody knows about it. It is simply impossible to take any action against a High Court or a Supreme Court judge if he or she is corrupt.

Therefore, I appeal to the Government that the Judicial Inquiry Act must be passed. The judges should not appoint judges in this country, and there should be some mechanism to go into the corrupt charges of the judges of the High Court and Supreme Court, so that there shall be a level-playing field. The judges who dispense justice to others should not be kept above the law themselves. They are interpreting the law, but they should not be kept above the law.

Finally, I would like to state that Judicial Review and Judicial Activism is good to a great extent for this country, but still it should not cross the *lakshman rekha* by intervening in each and every small affair. There should be a mechanism, which should go into the corruption charges against the judges of the High Court and the Supreme Court.

SHRI V. KISHORE CHANDRA S. DEO (PARVATIPURAM): Thank you, Mr. Chairman, Sir. I rise to speak in a discussion that is very vital for the continuance of our Parliamentary system or our democratic system. But before I get into the main points, I would first of all like to dispel certain observations, which were made by my colleagues who spoke before me. I do not mean any offence, but the record has to be set straight.

My colleague who preceded me, namely, hon. Member Shri Swain, went into the percentage of votes that a Member got. This is certainly not an occasion for hurling charges at one another. We are discussing as to how we should make the Constitution function smoothly; how the three Organs of the State should coordinate with each other; and how there should be a harmonious relationship. Therefore, I do not think that getting into petty matters and hurling charges is going to help us in any manner. We all know that we follow the first-past-the-post system, and our country has followed the electoral system since 1952. There is no provision in the Constitution to make votes compulsory whether it is 5 per cent votes or 50 per cent votes, neither does our Constitution say that one has to get a majority of votes to get elected.

For instance, this provision is available in the French Constitution, but that is not so in our Constitution. Irrespective of whether you have got 50 per cent votes or 5 per cent votes or 100 per cent votes, the fact remains that once you are declared elected, then you are the representative of the people. If my hon. colleague feels that it is not so and it is not in accordance with the principles that he believes in, then there is no need for us to be here at all. All of us might as well wind up and go home. What will be the relevance of Legislature or Parliament if one is going to downsize ourselves by saying that we have no relevance since we have not got a sizeable percentage of votes -- which is not required. If it is so, then the Parliament is not relevant and none of the Assemblies are relevant. If he feels like raining these kinds of argument, then he should bring the same in another form of electoral reforms and then say that there should be 51 per cent votes polled by every candidate or a minimum number of votes polled to declare a candidate elected before he is given a certificate.[\[r52\]](#) But as long as the present system continues, it will continue, and we shall continue to be the Members of Parliament or of legislatures with the same powers and position that the Constitution has accorded to us.

My other colleague, Shri Dasgupta who initiated the debate said that certain organs of the State had failed. Therefore, the judiciary had started this business of judicial activism or encroachment. If one organ fails, it does not give license to another organ to take over. If the Judiciary fails, will it give a license to Parliament tomorrow to issue judgments or will the Executive tomorrow go and sit in the Bench or come here to Parliament to pass Bills? So, if something goes wrong with the system or if there is an aberration, you have to correct it. You have to take remedial measures to see that that is set right. You cannot upset the entire scheme of things which has been set by the founding fathers of our Constitution.

My colleague Shri Swain said that in UK, judicial pronouncements were the last word. I am sorry that as a student of political science, I would like to set the record straight I still remember what I studied 30 years ago; I would like to very humbly submit to this House that after all the British Constitution is an unwritten Constitution. It is a Constitution which is based on precedents, on conventions, on charters, and on legal pronouncements, but the powers of Parliament is absolute. So, the supremacy of Parliament is absolute as far as UK is concerned.

This is the case generally in a unitary system of Government. In UK, they have a unitary system; in a unitary system, Parliament has paramount and overriding powers, and even legal pronouncements can be struck down or can be vetoed by Parliament. We opted for a written Constitution, with separation of powers. We took examples of other Western democracies which have had this

experience.

The concept of separation of powers goes back to the 18th Century. Political philosopher, Montesquieu said that separation of powers will ensure that the liberty of a person is not in jeopardy. Taking clue from what had happened in various other countries of the world, we opted for a written constitution. Generally a written constitution is there only where there is a federal system of Government. In America, they have a federal system; in the erstwhile Soviet Union, they had a federation of unions. *Interruptions* I stand corrected. I would like to be interested as far as my thought is concerned. I am saying that the USA and the erstwhile USSR have written Constitutions. Generally in a pure federal setup with a written Constitution, the power to secede is also generally there. It is not a pure federation where there is no power to secede. Ours is actually what we have been referred to as a quasi-federal system of Government. Out of experience, I would say that ours is more of a quasi-unitary system of Government because of Concurrent List, because of certain overriding powers of the Centre and ours has evolved into being more of a quasi-unitary system of Government where the Centre has certain precedence over the States.

In this scheme of things, the separation of powers had taken place in our Constitution. Therefore, in India, according to our Constitution, Parliament has been accorded the status of being the supreme legislative body of the State. I do not think, anybody questions that. This status has been accorded to us a pre-eminent position in the Constitution to Parliament as the supreme legislative-making body.

If absolute supremacy is not there for Parliament, certainly the Judiciary is also not supreme. They have a role to play here. I agree with my colleague when he said that they have a power to review. They have a power to interpret also. But what is interpretation and what is review is a question that we have to answer ourselves.

I was going through some of the debates of the Constituent Assembly, and the discussions relating to Parliament in the Constituent Assembly. In those debates, it was observed that no Supreme Court, no Judiciary can stand in judgment over the will of the Parliament, representing the sovereign will of the people. [\[MSOffice53\]](#)

So, first of all, we have to ask ourselves a question as to whether we believe in the sovereignty and the will of the people or not. In a democracy, if the sovereign will of the people does not come first in respect of the judiciary or Parliament or whatever. After all we are claiming the kind of legislative powers we have because that right has been vested in us by the people. But ultimately sovereign right rests with the people and the composition of Parliament can be changed. They have the composition of Parliament when they get an opportunity once in five years. It is the people who are sovereign in a system which we have nurtured over the last 60 years. So, this concept of absolute supremacy of judiciary is certainly alien to our scheme of things. I would hasten to add, at the same time, that certainly our Parliament does not have absolute power but each one is sovereign in its own domain. So, the judiciary is sovereign and they have the last word as far as judicial review is concerned and as far as interpretation is concerned and the Parliament has the supreme right as far as legislative powers are concerned. So, each one has a role to play in our scheme of things.

Sir, I would like to just remind you of one incident which I am sure many Members of this august House would be aware of. In our early years after Independence when Pandit Jawaharlal Nehru was the Prime Minister, he had to amend the Constitution of India to implement land reforms in this country. If someone questioned land reforms and if the Constitution was against it or if judges did not want it, then we would not have had land reforms, I have no answer to that kind of contention. But otherwise, even for land reforms -- at that stage in a welfare State, in a State which had committed to a certain pattern to bring about an egalitarianism in all sections of our society -- ultimately Parliament had to make that constitutional amendment to enable land reforms to come.

SHRI H.R. BHARDWAJ: Sir, I would like to add to it. Let me take the House into confidence. Shri Gurudas Dasguptaji named Nehruji. The remarks which follow from Nehruji were exactly the same in Kameshwar Singh's case. When land reforms were struck down in Bihar, Nehruji came to Parliament, which was provincial Parliament then, and he sought first amendment of the Constitution on this very plea that no Supreme Court can come between my people and me because we have made promises during the freedom struggle that we will distribute land and the resources of the State as our socialistic pattern of our society. Exactly, this was the word which Panditji used in this august House during land reforms discussion. It was not an absolute decree against the judiciary but he asserted it.

SHRI GURUDAS DASGUPTA : Let us not pre-pone the debate. I had quoted the former Prime Minister in a way I believe it to be right and whether it is absolute or relative, it is a matter of difference.

SHRI H.R. BHARDWAJ: It is not out of context to quote Nehruji. Nehruji spoke of land reforms.

SHRI GURUDAS DASGUPTA : That is the issue. You do not qualify the statement. Hon. Minister is not a person to interpret Nehruji. At least, that is not I am going to accept.

SHRI H.R. BHARDWAJ: I am not fighting with you. Why are you in such a bad mood today?

SHRI V. KISHORE CHANDRA S. DEO : Sir, I would like to thank the hon. Minister for his intervention.

The Supreme Court had observed that the concept of separation of power is a basic feature of the Constitution. These days we talk about the basic structure of the Constitution. Though the basic structure is not yet specified in absolute terms, the Supreme Court has held that the concept of separation of powers is a basic structure of the Constitution. If that is so, each organ has to function within the separate area of functioning into which no other organ can intervene. If separation of power is the basic structure of the Constitution then the separation should not allow the Legislature to go and encroach upon the realm of the judiciary and *vice versa*^[RS4].

1[RS5]6.00 hrs.

This is applicable to the Judiciary also, not only to us alone. Therefore the Supreme Court, if they have to stand their own word that the concept of separation of powers is itself a part of the basic structure of the Constitution, then I think, it should be for their Lordships to set that example first.

Sir, there have been several instances recently which have brought this friction between the Judiciary and the Legislature to the fore. I do not want to go into the details. Some of them have been given by my immediate predecessors, like Shri Swain and Shri Gurudas Dasgupta. They have quoted some of the instances. There have been cases where the courts have been issuing notices to the Presiding Officers of the Legislatures and Parliament. Hon. Speaker of the Lok Sabha had received, on one occasion, one notice from the Supreme Court. After that a meeting of the Presiding Officers of all the Legislatures of the country was called and a unanimous decision was taken by all the Presiding Officers, belonging to all political parties, that such notices should not be accepted by the Presiding Officers of Parliament.

Sir, you may recall an incident that a court once directed the Speaker to send in a sealed cover to the court a report of a Standing Committee even before it was tabled in Parliament. If there could be contempt of the court, is there no contempt of Parliament? Would their Lordships like if both the Houses of Parliament were to pass a Resolution asking the courts to send a judgement in a sealed cover before it was delivered in a court of law? Therefore, we will have to counsel restraint. It is only out of respect for one another and it is after we realise our limitations that we can make the system work. Any game can be played only if one follows the rules. Democracy is a system and our Constitution, as many of our Members feel, is supreme. I am not saying no, but then you have to go by the rules and spirit of the Constitution. There are specific clauses in our Constitution. I do not want to quote them. There is article 105(2); there is article 122; there is article 121 which actually gives certain immunities to the Members of Parliament in their functioning over here and also to officers who help them in this work. These have been given by the founding fathers of the Constitution not for nothing, but unfortunately there is a feeling that MPs enjoy all kinds of privileges, which is not correct. These privileges relate only to the functioning as a Parliamentarian for work concerning Parliament and not for other personal matters which is outside the purview of their parliamentary activities.

Sir, just now my colleague quoted the instance of Jharkhand. The point is whether it is Jharkhand or whether it is UP, is it the job of the Supreme Court to direct the Legislatures about how the proceedings should take place and whether a video camera should be installed and whether everything should be recorded over there? This is the job of the Legislature. The hon. President issues Summons as head of the Legislature in our constitutional scheme of things. Here you have a court issuing directions in UP and Jharkhand, fixing the agenda for the House and also giving instructions for video recording of the proceedings. It is disgraceful and shameful. I cannot think of a more blatant encroachment into the realm of Legislature where this kind of a blatant direction has been given. What does it mean? If these things are let to happen as they were, then the system will crumble and crash.

Sir, I have great respect for the Judiciary. In fact, all of us, members of all political parties have always counselled extreme restraint while discussing the Judiciary or judicial activities. But sometimes or other when such things are going on happening, we have to take cognizance. ^[RS6] Today, the Supreme Court is appointing authorities without statutory backing. I will give only one instance. I do not want to take the time of the House by going on repeating instance after instance.

There is one instance. It is the Centrally Empowered Committee (CEC). The Supreme Court has appointed a Committee called the Centrally Empowered Committee which has no statutory backing. This Committee is performing Executive powers. As my colleagues who have spoken earlier said, the Parliament is responsible and accountable to the people. Executive is accountable to us. Whom will the Judiciary be accountable to? So, is the CEC appointed without any statutory backing by the Supreme Court not usurping the powers of the Executive without any kind of responsibility or accountability on those issues?

Then, you have something called the Wildlife Board where again two of the CEC Members are placed. They will refer it over there and the same people will adjudicate matters and pass on. There are the kind of things which are going on. I think this is a dangerous trend which needs to be controlled or stopped as it were because you cannot let each of the organs go berserk. Where will this end?

I will conclude shortly. Sir, my immediate predecessor, Shri Swain gave certain instances. I agree with him that certain mistakes had taken place. But those are aberrations and mistakes. Should we correct them or should we let the system break down? That is the question that we have to ask ourselves. In a certain case, the Judiciary had come up at the appropriate time to our rescue. It so happened and it is well and good. But it can happen the other way round. These are things which cannot be judged based on one or two instances here and there and we have to look at them. We have to look at them in totality.

One of my colleagues had mentioned about appointment of judges and postings. Sir, this is probably the only country in which judges appoint themselves. I do not know what is happening about the constitution of the Judicial Commission. I hope the hon. Minister, in his reply, will enlighten on this point.

As far as the judges are concerned, they have also to be accountable. We are aware that some Members were expelled from this House in the cash-for-query scandal. Shri Swain will appreciate the fact that they were not expelled by a court of law. This House took corrective measures. It was a self-corrective mechanism by which all the leaders authorised the hon. Speaker to do it at that time and Parliament took that position. It is not as if always somebody will have to come with a *danda* and issue some sort of a warrant or judgement. We have to correct ourselves. This was done on more than one occasion and Parliament has set an example. But today, the sting operation can be held against any Legislature or Parliament. Anything can be written or said. Of course later on, there are remedies. But if anything appears in the media or said about the Lordships, even if it is correct, that will amount to contempt of court. Is this a healthy thing in a democracy? We should all ponder over it. I have no problem if tomorrow somebody files a case of contempt against me. If I have committed contempt, it is all right, I have no problem about that. But should the judges be exempt from this? Are they not human beings? Are they not part of the system? When a matter is before a Parliamentary Committee and the judges start issuing direction, how will the Lordships like it when the Parliament passes a Resolution on a matter that is *sub judice*? We do not even discuss either in our committees or in the House a matter which is before the court. We have shown that respect and restraint. But what about the courts?

These are matters which we need to rethink about. Judicial review is something which our Constitution permits. Judicial interpretation is certainly the job of the judges. The judges can strike down a dozen times any legislation saying that it is unconstitutional but we can also legislate two dozen times until we feel that the Constitutional deficiencies have been corrected. The ultimate authority to amend the Constitution lies with the Parliament and not with the judiciary. Otherwise, the Parliament has no relevance at all.

I would like to say only one thing. Now, this term "judicial activism" has become very popular. "Judicial activism" is all right. But where do you draw a line between "judicial activism" and "judicial despotism"? There is a very thin line between the two.

"Judicial despotism", in my opinion, is the worst kind of tyranny that can be imposed on a civil society, which has a democratic process or a following anywhere in the world. Therefore, we should prevent this "judicial despotism" or tyranny from engulfing our system. This is where we need some protection.

Before I conclude, I would like to quote Justice V.R. Krishna Iyer, who said:

"The House in a large measure has a representative character and the court can never act as a Third Chamber of the House – ours is a bicameral Parliament and you cannot have a Third Chamber – even though it has the power to strike down an unconstitutional legislation and pronounce upon excesses outside the legislative chamber. The glory of our Constitution desires mutual reverence between the legislature and the judiciary in such a manner that comity and camaraderie become the majestic *modus vivendi*."

With these words, I conclude.

SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): Sir, we are discussing a very important issue. We have decided to follow the parliamentary democracy in India. For that purpose, we have the Constitution. After sixty years of experience, we have come to a stage wherein we will have to discuss the after-effects of this Constitution.

Now, at the outset, I have to mention that people are supreme. The Constitution is the creation of the people. Now, we have

come to a stage where the Constitution is supreme. After the Keshavanand Bharati case, we have enunciated the principle of not altering the "basic structure" of the Constitution. There are certain provisions in the Constitution which cannot be altered by this House or by anybody else. Those basic principles can be altered by constituting a new Constituent Assembly. That is possible only if dictatorship comes or something like that happens. So, that is the position we have now reached. There is no provision in the Constitution for changing the "basic structure" of the Constitution. That is the doctrine that we follow.

Now, the three pillars of the Constitution are executive, judiciary and legislature. It is an accepted principle that these pillars should work together, in a complementary way, helping each other, understanding each other, doing their job in their respective field with utmost care and caution. That is the principle enunciated in the Constitution. Each pillar is supreme in its respective field. There should not be any encroachment into the powers of these three pillars.

The functions and powers of these three pillars have been clearly defined in the Constitution. As per the provisions of article 124 (4), the Supreme Court was established and the Chief Justice is appointed. The Supreme Court is also provided with certain powers. [\[MSOffice58\]](#) Powers are enunciated in Article 124. Article 124, Sub-Clause (4) deals with impeachment of the Judges by this House. That is the only provision in the Constitution which makes the Judiciary accountable and no other provision in the Constitution is making the Judiciary accountable to any authority under the Constitution.

When we speak about Judiciary as an independent body, independent in every field –there is no doubt about that - independence must be followed by accountability. They are two sides of the same coin. One side of the coin is Judicial independence. The second side of the same coin is it must be accountable. When we take into consideration these three pillars of our Constitution, we will definitely see that the Executive is accountable to the Legislature, the Executive is fully accountable to the House and we, the Members of Parliament, are accountable to the people in every sense of the word. But, unfortunately, the Judiciary is not accountable to any authority under the Constitution except this impracticable Article 124 which deals with the impeachment provision. That impeachment provision is a black chapter in our Constitution. We had our bitter experience of the Ramasamy case. In that case, we found that we were helpless in bringing the Judiciary to accountability. There was an attempt at that time by the present Congress Government also.

In 1962, the Judges Inquiry Act was passed. But it proved to be an unworkable statute. Subsequently, in 2006, we were discussing the Judges Inquiry Bill making the Judiciary, to some extent, accountable. There is no other provision. If a man has taken oath, he is not accountable to anybody except to Article 124, Sub-Clause (4). That is the position in our Constitution. What is the result of that? There is no other country in the world where Judges appoint themselves, where Judges determine their conditions of service, where they determine when they should retire. Even the age of superannuation is determined by the Supreme Court. There is no other country in the world where such a situation exists. The power of appointment is fully with the Judges. They are appointing themselves. How did it happen?

In 1990, the Supreme Court decided that consultation means consent. There is no such definition even in the Chambers Dictionary about this thing. But, unfortunately, our Supreme Court has given the interpretation that consultation means consent. What is the result? The Contempt of Judiciary Act prevails to a very large extent. When Judges are appointed, father is a Judge. Son-in-law is a Judge. Son's son is a Judge; all members of one family. Once Justice Malimath appeared before my Committee to explain that that we reached such a situation that in the matter of appointment of Judges, there are so many irregularities. Natural justice is being denied. It has become a family matter. In the same family, we will find all these persons - father is a Judge, son is a Judge, son's son is a Judge, son-in-law is a Judge and nobody else. This is the position now prevalent in the country in this matter. They have expressly stated that the old system should be revived. Unfortunately, the Government at that time was involved in so many scams that it did not refer the matter to a larger Bench. Now, it has become a permanent law of the land and no other country in the whole world, I tell you, there is such a provision. Unfortunately, in our country, that is the position. They themselves decide it. They appoint themselves. They determine the conditions of service. No other provision in the Constitution determines such a matter. That is what we have experienced now. Should we not change it? We will have to change it.

You will see that recently, we have passed a Bill about the Contempt of Courts Act. There is the provision justification by truth.

It is only a small matter. When it came to High Court, they could not even tolerate that. Justification by truth is a defence but the Delhi High Court did not accept it. They are not even amenable to a statute passed by this House giving effect to an amendment to the contempt of court. This Contempt of Court Act was passed during British Rule some hundred years back to build up the colonial rule. This is a state where parliamentary democracy is supreme. For that purpose, a simple amendment came into effect and the Supreme Court and the Delhi High Court are not amenable to such an amendment. In that case, they were sent to jail. Now, the Supreme Court decides whether we have the power from Contempt of Court Act. This is an encroachment. We all know in our Constitution, we have been given some powers, privileges and immunities. They have been

given for the proper functioning of this House. There are provisions in the Constitution giving special powers to Members of Parliament as well as State Legislatures in matters of privileges and immunities. In our interest, if we exercise them, we will be inviting judicial intervention at every stage and privileges and immunities will become a mockery. Why do we stand for privileges? The reason is that for the proper functioning of the House, for the proper functioning of the democracy, we, the Members of Parliament, should enjoy some privileges just like in the case of courts, they get protection under the Contempt of Court Act. In the same way, we as Members of Parliament should also be given special powers, privileges and immunities of functioning in this House. Even that is being intervened and encroached upon by the courts. Now, they will look whether natural justice has been done or not. They will look into whether any right has been denied. That is the position now. Even the court is intervening in our proceedings.

We have our own Rules of Procedure. As per the Rules of Procedure, we have framed Rules for Conduct of Business in this House. Now, the Supreme

16.22 hrs.

(Shri Arjun Sethi *in the Chair*)

Court is trying to indulge in spite of the fact that there is a specific provision in the Constitution that the courts should not interfere in the business of the House. They should not consider the legality or otherwise of any decision taken by this House. But, the courts have taken a new position saying whether any natural justice was denied. When the case of disqualification of membership of the House came up, the Supreme Court went into the question and considered whether any natural justice was denied. They have no right. But, they have looked into that process – whether any natural justice has been denied, whether Fundamental Rights have been denied. There is a specific constitutional bar for the courts not to intervene in the proceedings of the House. Unfortunately, there is an encroachment into our rights. I submit that all these pillars should work together in complementary. Unfortunately, the Judges of Supreme Court think that they are supreme in the sense that nobody can control them. Even the President is helpless in the matter of appointment of Supreme Court Judges and Chief Justices where the Executive is only doing the job of a post man and the Law Minister of the Central Government is just a postman.

MR. CHAIRMAN : Have you concluded? Please conclude. [\[MSOffice59\]](#)

SHRI VARKALA RADHAKRISHNAN : If you want, I will stop. I am talking about the Legislature.

MR. CHAIRMAN : Please conclude, because there is another speaker from your party.

SHRI VARKALA RADHAKRISHNAN : I am concluding.

In our country, there is judicial activism now. Through Public Interest Litigation, the courts can decide anything under the Sun. They can decide whether the House is functioning properly. If a PIL is filed in the High Court or the Supreme Court, they can decide anything. So, judicial activism has gone to such an extent that they are always interfering in the functioning of this House. Therefore, I would request the Government to constitute a National Commission for Judicial Accountability and that must be an independent commission. We have our experience. In Pakistan, President Pervez Musharraf has dismissed the entire Supreme Court and all the judges of the Supreme Court of Pakistan were put under house arrest. A new Supreme Court was formed and with their approval, he is sworn in as the President of Pakistan for the second term. Such a situation will not come in India. The Judiciary is supreme in our country and it must be supreme.

Now, I would like to say a few words about corruption in the Judiciary. A retired Chief Justice of India has said that 40 per cent of the higher Judiciary in our country is corrupt. That is what he has said. So, what is the way out? The only way out is bringing a National Commission where the Judiciary must be made accountable and that is the need of the hour. The present Bill that is pending before the House, that is, the Judges Inquiry Bill is only an eye wash. During the NDA regime, a National Judicial Commission Bill was introduced in Parliament, but it got lapsed. Therefore, a new Judicial Commission Bill should be introduced in this House and the Judiciary must be made accountable to it with regard to all its irregularities and corruption.

Finally, I would like to say that all the three organs of the State should be supreme in their respective fields and there must be complete harmony between the three pillars of the Constitution. With these words, I conclude.

श्री मोहन सिंह (देवरिया) : सभापति महोदय, इतने महत्वपूर्ण विषय पर आपने मुझे बोलने का समय दिया, इसके लिए मैं आपका आभारी हूँ। भारत का संविधान दुनिया के लोकतांत्रिक संविधानों में एक अनोखा संविधान है। क्योंकि हमारा संविधान हमारे सौ वर्ष के राष्ट्रीय संग्राम की उपज है। हमारे देश के राष्ट्र निर्माताओं ने लोकशाही और संसदीय लोकतंत्र को सौ वर्ष के स्वतंत्रता आंदोलन के दौर में विकसित किया था और इसे सींचा था। इसीलिए जब हमने संविधान बनाया तो हमारे राष्ट्रीय आंदोलन के जो मूल मुद्दे थे - उनमें लोकतंत्र था, निजी स्वामीयता थी, राष्ट्रीयता थी, धर्मनिरपेक्षता थी, धार्मिक स्वतंत्रता थी। इन सारे विचारों को हमने एक साथ समाहित किया। जैसे हमारे सम्माननीय मित्र ने बार-बार नेहरू जी का हवाला दिया, वह सैफ्टरी थे। जो कांस्टीट्यूशनल रिफॉर्मर्स की लखनऊ में पहली बैठक हुई, जिसे ऑल पार्टी लखनऊ काँग्रेस के नाम से जाना जाता है [b60] उसमें मोहम्मद अली जिन्ना भी थे, मोतीलाल नेहरू भी थे, श्री तेज बहादुर सपू भी थे, पंडित मदन मोहन मालवीय भी थे और सम्मेलन के सचिव के रूप में जवाहर लाल जी थे। इसलिए मेरी राय में भारत के संसद की सर्वोच्चता के बारे में उनके जो बुनियादी विचार थे, वे सभी विचार भारत के औपनिवेशिक आंदोलन के दौर में विकसित हुए थे क्योंकि जब वे भारत की आजादी के संग्राम में सक्रिय हुए तो भारत की संसद होते हुए भी भारत की संसद एक तरह से गुलाम थी। इसके निर्णय के ऊपर वॉयसरॉय का अधिकार था। राज्यों की विधान सभाओं के निर्णयों के ऊपर वहां के गवर्नर का अधिकार था। संसद और विधायिका के लिये हुए फैसले को वॉयसरॉय और राज्यपाल निरस्त कर सकता था। इसलिए राष्ट्रीय आंदोलन के नेताओं ने बहुत ही मजबूती से भारत के विविध स्वरूप को देखते हुए संसद की मजबूती के ऊपर अपने विचार, अपने फैसले को दिया था। लेकिन आज मैं मानता हूँ कि जो 50-60 साल की हमारे संविधान की वर्किंग है, इसे देखते हुए यदि जवाहर लाल जी जीवित होते तो शायद वे अपने विचारों में परिवर्तन करते और उन्होंने संविधान बनाने के दौर में ही परिवर्तन किया तथा इस बात को रेखांकित किया कि भारत के लोकतंत्र को तेजस्वी, स्थायी और विरंजीवी बनाने के लिए किसी एक हिस्से की अधिकारिकता नहीं होना, उसका वर्तव्य नहीं होना चाहिए। इसलिए हमारे देश के संविधान को बनाने हुए सेपरेशन ऑफ पावर जिसे कहते हैं, ऐसा किया गया। यह जरूर है कि भारत की आम जनता के दुःख और दर्द का आइना संसद है, इसकी ओर से प्रतिध्वनित है, इसलिए हमारे लोकतंत्र की यह धुरी है। मैं इसे सर्वोच्च नहीं मानता लेकिन यह धुरी है।

हमारे जब संविधान निर्माताओं ने जब संविधान सभा में फंक्शन ऑफिशियल के बाद उसके ऊपर हस्ताक्षर किया तो सभी ने कहा कि इस संविधान को हम अपने ऊपर शासन करने के लिए आत्मार्पित करते हैं। उसको उन्होंने स्वयं को ही समर्पित किया क्योंकि वे अपने को जनता का प्रतिनिधि मानते थे और ऐसा मानते थे कि किसी की सर्वोच्चता नहीं है बल्कि विधि के अनुसार शासन हो, विधि सम्मत हुकूमत हो और विधि का नियंत्रण संसद के ऊपर हो, न्यायपालिका और कार्यपालिका के ऊपर हो। इस बात को सोचने के पीछे भावना थी कि न्यायपालिका भी संसद द्वारा बनाये हुए कानूनों से बाहर न चली जाए और संसद भी कानून बनाते समय हमारे संविधान की जो मूल भावना है, उसे बाईपास करके आगे न निकल जाए। इसकी निगरानी के लिए न्यायपालिका की स्वतंत्रता के ऊपर बल दिया गया है। इसलिए हम कहना चाहते हैं कि हमारे संविधान निर्माताओं ने बहुत ही दूरदर्शी ढंग से हमारे संविधान को इस रूप में बनाया कि कोई भी एक-दूसरे की शक्ति का अतिक्रमण करके उसके ऊपर हावी होकर इस देश के लोकतंत्र को समाप्त न कर दे। ऐसी हमारी वर्किंग थी, इसीलिए जिस तारीख को भारत की संविधान सभा विसर्जित होने को थी तो ड्रॉपिंग कमेटी के चेयरमैन बाबा साहब अम्बेडकर ने बहुत ही पते की बात कही। उन्होंने कहा कि कौन संविधान अच्छा है, कौन संविधान बुरा है, इसका निर्णय कार्य पूर्णाली से होता है, काम करने के ढंग से होता है। लेकिन उसके भी आगे चलकर कोई भी संविधान कितना अच्छा है या बुरा है, इसका फैसला तब होता है जब उस संविधान के अनुसार शासन चलाने वाले उसको बिल्कुल उसी रूप में पालन करते हुए संचालित करते हैं कि नहीं करते हैं, संविधान की अच्छाई और बुराई का फैसला उसके बाद ही किया जा सकता है। इसलिए मैं ऐसा समझता हूँ कि इतने दिनों की किर्याकलापों ने हमें यह गर्व के साथ कहने के लिए मजबूर किया है कि हमारे जो भारत के तीन अंग हैं, इन्होंने भारत के संविधान द्वारा दी हुई अपनी लक्ष्मण रेखा का कभी अतिक्रमण नहीं किया। [r61] अगर अतिक्रमण करने की कोशिश की गई, तो एक-दूसरे के ऊपर नियंत्रण स्थापित रखने में संतुलन का प्रयास किया। इसलिये आज तक भारत का संविधान उसी हिसाब से वर्किंग हालत में है। हमारे देश के आसपास के सारे देशों में तानाशाही हुकूमत होने के बावजूद हमारे देश में लोकतंत्र की धारें बहुत मजबूती के साथ इस देश में कार्यशील हैं, यह कहते हुये मुझे खुशी हो रही है।

सभापति जी, आप भारत के संविधान के पूरे किर्याकलापों के इतिहास को देख लें। माननीय मंत्री जी ने सही कहा है कि जिस दिन संविधान सभा समाप्त हुई, वह अंतरिम संसद के रूप में काम करने लगी। हमारे देश में पहला चुनाव 1952 में हुआ लेकिन बिहार सरकार ने उसके पहले ही 1949-50 में ज़मींदारी प्रथा का उन्मूलन कर दिया था। उस निर्णय के खिलाफ महाराजा कामाख्या प्रसाद सिंह, दरभंगा और रामगढ़ दोनों कोर्ट में चले गये। फैसला हुआ कि किसी को सम्पत्ति रखना उसका बुनियादी अधिकार है और उसके आधार पर जब ज़मींदारी प्रथा समाप्त कर दी गई, अंतरिम संसद ने भारत के संविधान के उस हिस्से में, जिसे हम बुनियादी अधिकार करते हैं, पहला संशोधन विधेयक आया। अंतरिम संसद में कहा गया कि फॉर द पब्लिक परपज़ पब्लिक इंटरैस्ट में किसी की प्रॉपर्टी को भी लिया जा सकता है, - यह भारत की एवजीव्यूटिव का अधिकार होना चाहिये, इसलिये यह संशोधन पास हुआ। सुप्रीम कोर्ट ने भी उसे स्वीकार कर लिया। यदि सुप्रीम कोर्ट चाहता तो संसद में पारित हुये कानून के बुनियादी अधिकार की धारा पर फिर से विचार कर सकता था लेकिन उसने ऐसा नहीं किया। इस देश में इमरजेंसी लगी। जब देश में एवजीव्यूटिव के पास दो तिहाई बहुमत था और वह पॉवरफुल हो गई तो दो-तिहाई बहुमत को अपने अधिकार के अंदर रखते हुये पहले न्यायपालिका को प्रतिबद्ध बनाया गया। सुप्रीम कोर्ट के तीन सीनियरमोस्ट जजेज का सुप्रीमेशन करके किसी चौथे जज को भारत का चीफ जस्टिस बनाया और उसके बाद इमरजेंसी घोषित की गई। मैं ऐसा समझता हूँ कि हमारे सी.पी.आई. के मित्र न्यायपालिका के विरुद्ध गुरुसे में क्यों रहते हैं? उसका कारण है कि सी.पी.आई. ऐसी पार्टी थी जो कांग्रेस के साथ गलबहैयां डालकर इमरजेंसी का समर्थन जितनी वह नहीं करती थी, उससे अधिक ये लोग करते थे। लेकिन हम गर्व के साथ कह सकते हैं कि उसके बाद केशवानन्द भारती केस आया। वह 6 जजेज की बैंच का निर्णय था। जब भारत सरकार ने फिर अपील की तो उसमें 12 जजेज हुये और सभी ने यह कह दिया कि भारत के संविधान की किसी भी धारा में परिवर्तन करने का अधिकार भारतीय संसद को है, यदि उसके बुनियादी ढांचे पर कहीं आंच न आती हो। भारत की संसद को बुनियादी ढांचे में परिवर्तन करने का अधिकार नहीं है। संसद ने उसे स्वीकार कर लिया।

सभापति जी, मैं आज कहता हूँ कि तीनों अंगों ने समय और परिस्थिति के हिसाब से लक्ष्मण रेखा को पार नहीं किया है। जब सुप्रीम कोर्ट का जजमेंट हो गया तो इसी संसद में श्री नाथपै का एक विधेयक आया जिसमें कहा गया कि भारतीय संसद भारतीय संविधान की किसी भी धारा में संशोधन कर सकती है। उस विधेयक में बहुत सारे संशोधन आये। उन्होंने कहा कि भारत के संविधान में जो मूल अधिकार का अध्याय है, उसे छोड़कर आप किसी भी धारा में परिवर्तन कर सकते हैं। लेकिन अंततः, सुप्रीम कोर्ट का जो निर्णय था, उसे भारतीय संसद ने स्वीकार कर लिया, और आज तक यह स्थिति चली आ रही है। संसद भारत की सुप्रीम कोर्ट की लक्ष्मण रेखा का पालन करती आ रही है। किसी भी हालत में संसद के भीतर बहस उठ जाती है कि अमुक लैजिस्लेशन पास करने से भारत के संविधान के मूल ढांचे पर असर पड़ेगा, इसलिये हम पास नहीं कर सकते हैं।

सभापति महोदय, 1964 में उत्तर प्रदेश के संबंध में भारत की न्यायपालिका और भारत की संसद के बीच में एक जबरदस्त टकराव हुआ। [s62] वहां की असैम्बली के एक माननीय सदस्य ने किसी दूसरे माननीय सदस्य के खिलाफ एक पर्चा छाप दिया जो डैरेगेटरी था। असैम्बली ने उसके खिलाफ प्रस्ताव पास करके उस व्यक्ति को अपने यहां तलब किया और उसको एक सप्ताह की सज़ा दे दी। सज़ा देने के बाद इलाहाबाद हाई कोर्ट के मुख्य न्यायाधीश ने उसकी सात दिन की सज़ा को दो दिन में समाप्त करके उसको

बेल आउट कर दिया। इसके बाद विधान सभा बैठी और उसने उन दोनों जजेज़ के खिलाफ असैम्बली का कंटैम्ट करने के लिए, जैसे हमारे मित्र कह रहे थे कि हमारा भी राइट होता है, जैसे कंटैम्ट होता है ज्यूडीशियरी का, वैसे ही पार्लियामेंट का भी कंटैम्ट होता है, दोनों जजेज़ को असैम्बली ने वारंट कर दिया कि जज साहिबान ने हमारा कंटैम्ट किया है, हमारे फैसले को मुलतवी किया है। भारत के इतिहास में सबसे बड़ी बँच उसी सवाल को लेकर बैठी। 36 जजेज़ इलाहाबाद हाई कोर्ट के बैठे और उन्होंने अपने ही दो जजेज़ के अरैस्ट वारंट को रट्टे करने का काम किया। लेकिन यह मामला सर्वोच्च न्यायालय में आया, भारत के राष्ट्रपति जी के यहां आया। सर्वोच्च न्यायालय को उन्होंने संदर्भित किया। सर्वोच्च न्यायालय ने एक लक्ष्मण रेखा खींच दी कि यह हिस्सा है संसद का और यह हिस्सा है ज्यूडीशियरी का। दोनों एक दूसरे के कार्यक्षेत्र में हस्तक्षेप नहीं कर सकते। ज्यूडीशियरी उसका अभी तक पालन कर रही है। जब इस संसद ने अपने ही पार्लियामेंट के 11 मੈम्बरों को एक प्रस्ताव पारित करके निष्कासित कर दिया तो सुप्रीम कोर्ट को कहना पड़ा कि यह पार्लियामेंट की अपनी पावर्स के अंतर्गत है, इसमें हम हस्तक्षेप करने को तैयार नहीं हैं।

इसलिए हम आदरपूर्वक कहना चाहते हैं कि अभी तक इतने वर्षों में न्यायपालिका ने अपने काम को, हिन्दुस्तान की संसद ने अपने काम को, हिन्दुस्तान की एक्जीक्यूटिव ने कभी इन दोनों की पावर्स को एन्क्रोच करने का, ओवरलैप करने का प्रयास नहीं किया। इसलिए हम कहना चाहते हैं कि इस देश के तीनों अंग संतुलित ढंग से काम कर रहे हैं। हमारे मित्र कह रहे थे कि न्यायपालिका आदेश कर देती है कि हमारे लिए कोई रैड लाइट नहीं होगी, हमारी गाड़ियां जा सकती हैं। जज लोग आदेश कर देते हैं कि हमारी गाड़ियों के ऊपर ताल बनी रहेगी, और किसी की गाड़ी के ऊपर नहीं रहेगी, हमारी गाड़ी में एक झंडा रहेगा, बाकी में नहीं रहेगा। मैं विनमतापूर्वक कहना चाहता हूँ कि 60 वर्षों में ज्यूडीशियरी के मायने केवल इतने ही नहीं हैं। ज्यूडीशियरी ने यदि लाखों मामलों में निर्णय दिये हैं तो उसका छोटा सा यह भी एक हिस्सा है और उस एक छोटे से हिस्से के लिए यह मानना कि न्यायपालिका सक्रिय हो गई है, मैं ऐसा समझता हूँ कि यह संसद के निष्क्रिय सदस्य ही कह सकते हैं। न तो पार्लियामेंट को सक्रिय होने की ज़रूरत है, कार्यपालिका को सक्रिय होने की ज़रूरत है और उसी तरह न्यायपालिका को भी सक्रिय होने की ज़रूरत नहीं है। कोई भी पार्लियामेंट का सक्रिय मੈम्बर अपनी निष्क्रियता को छिपाने के लिए न्यायपालिका की सक्रियता पर अंगुली उठाने का अधिकार नहीं रख सकता, यह मैं विनमतापूर्वक कहना चाहता हूँ। इसलिए तीनों को अपने कार्यक्षेत्र में सक्रिय होना चाहिए। इसके लिए संविधान ने आपको अधिकार दिया है। कौन कहता है कि संसद की कार्यवाही को आप बाधित कर दीजिए और कोई कानून केवल ध्वनिमत से, हल्ला करने के बाद, बिना बहुसंख्यक के पास करा दीजिए। क्या ज्यूडीशियरी ने आपको ऐसा आदेश दिया? यदि आप अपने काम को ठीक से अंजाम नहीं दे सकते, बिना बहुसंख्यक-मुल्ले में किसी भी अधिनियम को तत्काल पारित कर देते हैं, तो उसके लिए ज्यूडीशियरी को कोसने की कोई आवश्यकता नहीं है। अंत में चार-पांच सुझाव देकर मैं अपनी बात खत्म करूँगा चूंकि हम समझते हैं कि आप हमको बंद कराने के लिए कहने वाले हैं।

पहली बात हम कहना चाहते हैं कि संसद का मूल आधार है इस देश का पार्टी सिस्टम। यदि आप दलीय व्यवस्था को दुरुस्त नहीं कर सकते तो संसद अपने आप कमज़ोर हो जाएगी और जब संसद कमज़ोर हो जाएगी और संसद कमज़ोर होने के बाद यदि ज्यूडीशियरी उसमें हस्तक्षेप करे तो आपको परेशान होने की क्या ज़रूरत है? यदि मनमाने ढंग से अपने घरों को जो पार्लियामेंट पूल में हैं, आप अलाट करें और पार्लियामेंट के मੈम्बर न रहें और उसके बाद भी उसमें जमे रहें और उसके बाद जज उसमें हस्तक्षेप करें तो कहें कि यह ज्यूडीशियरी की सक्रियता है, मैं ऐसा समझता हूँ कि यह हमारी निष्क्रियता और निकम्मापन है। इसलिए दोनों पक्षों को अपने हिस्से से देखने की आवश्यकता है।

इसलिए मैं निवेदन करना चाहता हूँ कि यदि पार्लियामेंटी सिस्टम को मज़बूत करना है तो तीन-चार चीज़ें करनी होंगी। इसमें इलैक्टोरल रिफ़ॉर्म करना होगा जिससे भारत की राजनीति में चोर-उत्तवके, बेईमान और धनपशुओं का राजनीति में प्रवेश कैसे रुके, इसके ऊपर भारत की संसद को बहुत गंभीर होने की आवश्यकता है। [h63]

महोदय, भारत के लोक जीवन को पवित्र बनाने के सारे प्रयास होने चाहिए। उसी के साथ-साथ भारत का जो पार्टी सिस्टम है, जिसमें चुनाव की पद्धति बिल्कुल समाप्त हो गई है, हम कहते हैं कि पीपुल्स की विल का रिप्लैशमन्ट भारत की पार्लियामेंट है, तो हम पूछना चाहते हैं कि राजनीतिक पार्टियां क्या अपने वर्कर्स की विल का रिप्लैशमन्ट करती हैं? सारी पार्टियों में दो-चार शीर्ष पर बैठे लोगों की तानाशाही का शासन है और वही चलता रहता है। मैं बहुत ही दुःख के साथ कहना चाहता हूँ कि किसी भी दल में लोक निर्वाचित, नीचे से ऊपर तक की संस्थाओं का अभाव हो गया है और वे समाप्त हो गई हैं। इसलिए पार्टी सिस्टम में तत्काल परिवर्तन की आवश्यकता है।

महोदय, मेरा तीसरा सुझाव है कि इस देश में चुनाव की जो पद्धति है, जिस पर करोड़ों रुपए सर्च होते हैं, उसमें सुधार होना चाहिए। कोई राजनीति में नहीं है, लेकिन यदि उसके पास 10 करोड़ रुपए हैं, कहां से आए, इससे कोई मतलब नहीं, लेकिन वह एक राजनीतिक पार्टी को एक करोड़ रुपए चन्दे की शक्ल में दे देता है, तो उसका टिकिट उसी दिन फाइनल हो जाता है और पार्टी में वर्षों से काम करने वाले कार्यकर्ता अलग कर दिए जाते हैं, निष्कासित कर दिए जाते हैं। इसलिए चुनाव की पद्धति में सबसे ज्यादा सुधार की आवश्यकता है।

महोदय, अगली बात हम कहना चाहते हैं कि जो सार्वजनिक धन है, जो पीपुल्स मनी है, उसके ऊपर सारे पावर्स इस पार्लियामेंट के हैं। मैं बहुत दुःख के साथ कहना चाहता हूँ कि जब मैं बी.ए. का छात्र था, तब हमारी यूनिवर्सिटी यूनियन का उद्घाटन करने के लिए पं. जवाहर लाल नेहरू आए थे। उनके खिलाफ डॉ. राम मनोहर लोहिया चुनाव लड़ रहे थे। लोहिया जी ने उनके ऊपर इल्जाम लगाया कि जवाहर लाल जी ने अपने लोक सभा क्षेत्र, फ़ूलपुर के लिए कुछ नहीं किया। उसके जवाब में जवाहर लाल जी ने हमारी स्टूडेंट यूनियन की मीटिंग में जो बोला, उसे मैंने बहुत निष्ठा पूर्वक सुना। उन्होंने कहा कि मैं भारत का प्रधान मंत्री हूँ। पूरे देश का विकास करना मेरी जिम्मेदारी है। पूरे देश में, पहले मद्रास का विकास होगा, तामिलनाडु का विकास होगा, पहले पूरे उत्तर प्रदेश का विकास होगा और सबसे अन्त में, जिस लोक सभा के लोग मुझे चुनकर भेजते हैं, उस क्षेत्र का विकास होगा। अब क्या हो रहा है, वह आप देख रहे हैं। हम कहते थे कि इस देश के नेतृत्व का इंटरनैशनल नजरिया है, अन्तर्राष्ट्रीय दृष्टि है। फिर हम कहते थे कि इस देश के नेतृत्व की राष्ट्रीय दृष्टि है। फिर हम कहने लगे कि इस देश के नेतृत्व की प्रान्तीय दृष्टि है और अब यह हो गया है कि इस देश के नेतृत्व की केवल अपने लोक सभा क्षेत्र तक ही दृष्टि रह गई है। जब ऐसी स्थिति है, तो इस देश की पद्धति को आप कैसे चला सकते हैं? इसलिए इसमें जबर्दस्त परिवर्तन की आवश्यकता है।

महोदय, ज्यूडीशियरी के बारे में हम कहना चाहते हैं कि भारत के संविधान में केवल एक धारा है 174, जिसके चलते यह संसद उन्हें इम्पीच कर सकती है, लेकिन हमने 10वीं लोक सभा में देखा था, श्रीमन् आप भी थे, तीन दिन बहुसंख्यक हुई, आधी-आधी रात तक बहुसंख्यक हुई और अन्त में जब इम्पीचमेंट करने के लिए व्हिप जारी करने की बात आई, तो यह संसद प्रान्तों में बंट गई और कोई व्हिप जारी नहीं हुआ और जज साहब छुट्टी पा गए। इसलिए हम कहना चाहते हैं कि भारत की ज्यूडीशियरी को पारदर्शी बनाने के लिए जजेज़ की नियुक्ति में पारदर्शिता लानी होगी। हमारे लिए तो हो गया कि हम चुनाव लड़ते समय, अपनी सम्पत्ति का ब्यौरा सार्वजनिक करें और जज साहब कहते हैं कि हम नहीं बताएंगे। हम बहुत सारे जजेज़ को जानते हैं कि किस-किस तरह उन्होंने अपनी सम्पत्ति को एववायर किया। इसलिए उनका भी जीवन पारदर्शी हो, उनकी नियुक्ति की पद्धति पारदर्शी हो और उनके खिलाफ इम्पीचमेंट का इस पार्लियामेंट को जो कांस्टीट्यूशनल राइट है, उसे कांस्टीट्यूशन से निकाल कर सिम्पल तैजिस्टोटिव तरीका होना चाहिए, जिससे सिम्पल मैजोरिटी से पार्लियामेंट किसी भी सुप्रीमकोर्ट के जज को इम्पीच कर सके। यह पार्लियामेंट का राइट होना चाहिए।

महोदय, इससे आगे हम कहना चाहते हैं कि केवल भारत का संविधान दुनिया में सब से नायाब इसलिए माना गया कि केवल इस देश के भीतर एक सिंगल इंडीविजुअल, अपनी लिबर्टी के लिए सीधे सुप्रीम कोर्ट में जा सकता है, सीधे हाईकोर्ट में जा सकता है। संविधान की 160 (17) धारा में, जब मैं विद्यार्थी की हैसियत से एक कार्यकर्ता था, तब मुझे आठ महीने जेल में बन्द कर दिया। मैंने नैनी जेल से सीधे सुप्रीमकोर्ट को हैबियस कार्पस दिया। जज साहब ने बुलाकर मुझे पांच मिनट में जेल से बाहर कर दिया और जिन

लोगों ने मुझे अन्दर किया था, उन्हें कड़ी डांट लगाई और सुप्रीम कोर्ट ने उनके खिलाफ मुकदमा करने के लिए लिखा। इसलिए सिविल राइट के इम्फोर्समेंट की जूडीशियरी सुप्रीम पॉवर रखती है।

The independence of the judiciary, for the larger interest of this democracy, should be preserved and it should be strengthened. ऐसी मेरी राय है।

MR. CHAIRMAN : Thank you very much.

श्री देवेन्द्र प्रसाद यादव (झंझारपुर): सभापति महोदय, आज बहुत ही महत्वपूर्ण विषय पर इस सर्वोच्च सदन में चर्चा हो रही है। माननीय गुरुदास दासगुप्त जी को मैं इस आशय के विषय को सदन में प्रस्तुत करने के लिए धन्यवाद देना चाहता हूँ।

हम सबसे बड़े लोकतांत्रिक देश हैं, यह सम्पूर्ण विश्व को मानना पड़ता है। आज मोहन सिंह जी का भाषण मैं सुन रहा था। सबसे बड़े लोकतांत्रिक देश में, लोकतांत्रिक व्यवस्था में किस तरह कार्य हो रहे हैं, किस तरह की हमारी कार्यपद्धति है, यह बहुत ही दुःखद है और इस पर बहुत गहराई से विचार किया जाये। मैं पहला आदमी हूँ और मैं एक सन्दर्भ लोकतंत्र पर देना चाहता हूँ। ज्यूडीशियरी, कार्यपालिका और विधायिका का कैसे सौहार्दपूर्ण कार्यकरण हो, उस पर तो हम बोलेंगे ही, यहां बहुत अच्छा विषय लाया गया है, किसी का पक्ष लेने की बात नहीं है। हम सबसे बड़े लोकतांत्रिक देश हैं और सबसे बड़े सर्वोच्च सदन में शायद आपको भी याद होगा, 2002 में एक एण्टी डिफ़ैवशन बिल यहां आया था। उस एण्टी डिफ़ैवशन बिल के तहत अब जो दो तिहाई मैम्बरों का दल होगा, तब विचारों की भी विभिन्नता होगी, तभी वह अलग हो सकता है। जैसे के बल पर या पद लेने के लिए, प्रतिष्ठा लेने के लिए कोई दल अलग करे तो छः साल ही नहीं, उसको हमेशा के लिए ही दल से निकाल देना चाहिए। लेकिन वैचारिक मतभेद दल में हो जाय तो हमें समझना पड़ेगा कि किसी दल में आन्तरिक लोकतंत्र है क्या? जब यह एवट सामने है तो क्या किसी दल में, किसी पोलिटिकल पार्टी में अब इण्टरनल डेमोक्रेसी महफूज़ नहीं है, यह मैं कहना चाहता हूँ। ठीक है, आज हम बड़े विषय पर विचार कर रहे हैं, संसदीय लोकतंत्र पर, ज्यूडीशियरी पर, न्यायपालिका पर, कार्यपालिका पर विचार कर रहे हैं, जब वैचारिक मतभेद हो जाये तो आप अलग होने को स्वतंत्र नहीं हैं। आप अलग होंगे तो आप डिसमिस कर दिये जाएंगे, यह एण्टी डिफ़ैवशन बिल में है।

16.52 hrs.

(Mr. Speaker *in the Chair*)

जिस दिन यह कानून बन गया, उसी दिन आन्तरिक जनतंत्र समाप्त हो गया। इण्टरनल पोलिटिकल डेमोक्रेसी, पोलिटिकल पार्टी की डेमोक्रेसी अब महफूज़ नहीं है और जब इण्टरनल डेमोक्रेसी महफूज़ नहीं है तो मैं यह बात कहने में हिचक नहीं रहा हूँ, मैं थोड़ा उदार होकर कहना चाहता हूँ, अध्यक्ष जी, आप आ गये, अच्छी बात है कि जो डेमोक्रेसी है, देश प्रेम है, डेमोक्रेटिक सिस्टम है, उससे ज्यादा खतरनाक डेमोक्रेटिक डिक्टेटोरशिप है। पोलिटिकल पार्टी की डेमोक्रेसी, डेमोक्रेटिक डिक्टेटोरशिप, यानी पता ही नहीं चलता है कि डिक्टेटोरशिप है, लेकिन सत्ताई यही है। मैं इस बात को यहीं छोड़ देता हूँ, तम्बी बहस इस पर करने की जरूरत है।

अभी न्यायपालिका, विधायिका और कार्यपालिका का कार्यकरण सौहार्दपूर्ण कैसे हो, इस पर हम चर्चा कर रहे हैं। मेरा मानना है कि इन तीनों अंगों, ये जो डेमोक्रेसी के तीनों स्तम्भ हैं, पितर्स हैं, इसमें सर्वोच्च भारतीय संविधान है। हम भारतीय संविधान के तहत काम कर रहे हैं कि नहीं? कई माननीय सदस्यों के द्वारा कहा गया है कि कार्यपालिका विधायिका के प्रति जवाबदेह है और विधायिका जनता के प्रति जवाबदेह है और न्यायपालिका भारतीय संविधान के प्रति जवाबदेह है, लेकिन हम क्या कर रहे हैं। इन तीनों स्तम्भों में, अभी एक काफी विद्वान सदस्य ने कहा कि जब हम संसदीय मोर्चे पर फैल्योर हो जाते हैं या कार्यपालिका फैल्योर हो जाती है, तो उसके चलते न्यायपालिका की सक्रियता बढ़ जाती है। संविधान में ऐसा है क्या, क्योंकि जब हम संविधान को सर्वोच्च मानते हैं तो संविधान इस बात की इजाजत नहीं देता कि अगर हम फैल्योर हो जायें तो हम उनके क्षेत्राधिकार पर एन्क्लेव कर जायें, हम उनके क्षेत्राधिकार में घुस जायें, जब हमारे क्षेत्राधिकार का सैपरेशन है, न्यायपालिका का अलग शक्ति है, कार्यपालिका की अलग शक्ति है, विधायिका की अलग शक्ति है। आर्टिकल 211 में साफ है, आप भी जानते होंगे, सभी माननीय सदस्य जानते होंगे। इसमें स्पष्ट लिखा गया है:

Article 211 regarding restriction on discussion in the Legislature states that :

"No discussion shall take place in the Legislature of a State with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties."[\[R64\]](#)

मतलब यह है कि हम सब-जुडिस मामले में कभी हस्तक्षेप नहीं करते, लेकिन कोर्ट द्वारा क्या होता है, सुप्रीम कोर्ट द्वारा क्या होता है? अध्यक्ष महोदय, इसका उदाहरण आप ही हैं, मैं इसे कहने में हिचक नहीं करना चाहता - क्या आपको नोटिस नहीं मिला था? संसदीय ववैधन का मामला कम्प्लीटली संसद का इंटर्नल मामला है। जैसे लेने के मामले में जब यहां 11 माननीय सदस्यों की सदस्यता समाप्त हुई तो उसमें कोर्ट ने रूति ले ली और नोटिस जारी कर दिया, वह भी स्पीकर साहब को। स्पीकर कोई पार्टी नहीं है, संसद किसी प्रस्ताव को पारित करती है, एक मूव होता है, चाहे लीडर ऑफ दी ओपोजीशन हो या लीडर ऑफ दी हाउस हो, कोई भी प्रस्ताव हो, संसद उसे पारित कर देती है। इसमें पार्ट एंड पार्सल स्पीकर कहीं नहीं हैं, लेकिन स्पीकर साहब को 11 माननीय सदस्यों की बरखास्तगी जो सदन करता है, उसके बारे में दिल्ली हाई कोर्ट से नोटिस आ जाता है।

लोक सभा की कार्य संचालन नियमावली के तहत एक समिति बनी थी और समिति ने अपनी अनुशंसा दी। उस अनुशंसा को पढ़कर सुनाया गया और सदन ने अनुमति दे दी, यहां 11 माननीय सदस्यों के जैसे लेने के पून में। मतलब यह हमारा इंटर्नल अफेयर है, यह संसद का आंतरिक कार्य है, लेकिन इस बारे में स्पीकर साहब को नोटिस आ गया। क्या यह बात सही नहीं है? इस तरह का एवटीविज़म कैसे नहीं है। मैं इस बारे में कई माननीय सदस्यों से सहमत हूँ। यह बिल्कुल ज्यूडीशियल एवटीविज़म है। संविधान उन्हें यह अधिकार नहीं देता। यदि हमारा फैल्योर है, हम कमजोर हैं, किसी काम को नहीं कर पा रहे हैं, क्या आज न्यायपालिका में चार करोड़ केस पेंडिंग नहीं हैं? माननीय लॉ

मिनिस्टर साहब यहां बैठे हुए हैं। यह सदन में प्रश्न के जवाब में डाटा देते रहते हैं। विगत दस-पन्द्रह वर्षों से चार करोड़ आपराधिक मामले कोर्ट में लंबित हैं।... (व्यवधान) चार करोड़ केस कितने वर्षों से पेंडिंग हैं - क्या यह फेल्टोर ऑफ दी ज्यूडीशियरी नहीं है? ज्यूडीशियरी के इतिहास में इस बात के लिए जवाबदेह कौन होगा? क्या हम लोग केस का फैसला संसद से कर दें? हमें अधिकार नहीं है, हम नहीं कर सकते। इसी तरह वह संसद की प्रोसीडिंग्स की जांच नहीं कर सकता। माननीय सदस्य बोल रहे थे। क्या झारखंड के बारे में सुप्रीम कोर्ट ने आदेश नहीं दिया था? वीडियो लगाएं, टेप रिकार्ड करें, डीजी को भेजें, चीफ सैक्रेटरी जाए और विधान सभा में उनका वोटिंग का पैटर्न देखें? क्या कोई संविधान उन्हें विधान मंडल में जाने का अधिकार देता है? नहीं दे सकता।

आर्टिकल 212 कहता है -

"(1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or Member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers. "

कोई विधान मंडल हो, चाहे संसद हो, किसी ऐसे काम में स्पीकर साहब सुप्रीम होते हैं, संसदीय लोकतंत्र में यह व्यवस्था है। लेकिन उसमें हस्तक्षेप किया गया या नहीं? यह सुप्रीम एवटीविज्म कैसे नहीं है। मैं जरूर कहना चाहता हूँ कि विधायिका, कार्यपालिका, न्यायपालिका, खासकर न्यायपालिका लक्ष्मण रेखा को लांघ रही है और उसके पक्ष में कई उदाहरण हैं। समय कम है, इसलिए मैंने केवल झारखंड का उदाहरण दिया है।

ओबीसी का मामला इस सदन द्वारा पास किया गया। आर्टिकल 15(4) पहले से है, आर्टिकल 15(5) के आधार पर सामाजिक और शैक्षणिक रूप से देश के अंदर जो 52 फ़िसदी पिछड़े लोग हैं, उनके बच्चों और बहिनियों को शैक्षणिक संस्थाओं, आईआईटी, आईआईएम और हारर एजुकेशन इंस्टीट्यूशंस, दिल्ली यूनीवर्सिटी में केवल नामांकन में, नौकरी में नहीं, 27 प्रतिशत रिजर्वेशन फॉर अपॉर्चुनिटी है। जिसकी आबादी 52 फ़िसदी होगी, उसे अपॉर्चुनिटी देनी पड़ेगी। आप छः साल में फेल कर देते हैं। कोई बच्चा मेडिकल और इंजीनियरिंग के लायक नहीं है, हारर एजुकेशन के लायक नहीं है, तो वह पांच साल में अपने आप स्कूटीनाइज़ हो जाता है, फेल कर दिया जाता है, लेकिन आप एडमिशन ही रोक देते हैं, एडमिशन में ही नहीं जाने देते। इस देश में एकतरफा 70, 80 प्रतिशत अनडिक्लेयर्ड रिजर्वेशन चल रहा है। [N65]

17.00 hrs.

इस तरह वे लोग मुख्य धारा से कैसे जुड़ेंगे। जो वंचित समाज है, वह राष्ट्र की मुख्य धारा से कैसे जुड़ेगा? अगर वह राष्ट्र की मुख्य धारा से नहीं जुड़ेगा, तो वह राष्ट्र कैसे मजबूत होगा? अब आर्टिकल 15(5) लोकसभा और राज्य सभा से पारित हो गया, लेकिन संसद की प्रसंगिकता पर ववेधन लग गया। इसलिए मैं इस सवाल को यहां उठाना चाहता हूँ। अब संसद को कानून बनाने का अधिकार है। यह पावर केवल संसद को ही है। हां, कानून की व्याख्या करने के लिए सुप्रीम कोर्ट जरूर सुप्रीम है। कानून को रिव्यू करने का उनको पूरा अधिकार है, लेकिन कानून बनाने का अधिकार हमको, यानी संसद को है। अब उस कानून पर एक साल तक रोक लग गयी। इस एक साल में ओबीसी के लड़के-लड़कियां एजुकेशन इंस्टीट्यूटशंस या अन्य टेकनीकल इंस्टीट्यूटशंस में एडमिशन नहीं ले पाये। अब कहा जा रहा है कि वह कानून बड़े संविधान पीठ में जा रहा है, यह सब काम दो जजों ने मिलकर किया। अब यह कैसे नहीं हो रहा है।

अध्यक्ष महोदय, मैं कहना चाहता हूँ कि जज भी अपनी व्यक्तिगत अवधारणा के अनुसार, उनका जो माइंड-सेट है, उसके आधार पर निर्णय और आन्वर्षेशन दे रहे हैं जिसके कारण यह परिस्थिति आज पैदा हो रही है। मैं साफ कहना चाहता हूँ कि यह बहस भी आज इसी कारण हो रही है।

अध्यक्ष महोदय, आप तो हमारे सबसे सीनियर कानून के ज्ञाता हैं। मैं एक सवाल जानना चाहता हूँ कि संविधान की धारा 312 में लिखा हुआ है कि ऑल इंडिया ज्यूडिशियल सर्विस कमीशन होना चाहिए, तो जो जज का एप्वाइंटमेंट हो रहा है, उसका आधार क्या है? जो व्यक्ति दस या पन्द्रह साल तक एडवोकेट रहा है, वह जज नियुक्त हो जायेगा और वह भी एक ही परिवार से। अब कितने ऐसे परिवार हैं, वह मैं गिनाऊं, तो इस देश में ऐसे 123 परिवार हैं, जो जज बनते हैं। महोदय, अभी समय नहीं है, नहीं तो मैं इसे विस्तार से कहता।

महोदय, मैं एक उदाहरण देना चाहता हूँ कि मुंसिफ मैजिस्ट्रेट की जो सैलेवेशन परीक्षा होती है, उसमें जो वकील फेल हो जाता है, वह वकील तुंत हाई कोर्ट का जज बन जाता है। अब मुंसिफ मैजिस्ट्रेट के अनुसार, प्रतिभा के अनुसार मैजिस्ट्रेट नहीं बन सकता, लेकिन उसको दस-पन्द्रह साल का अनुभव चाहिए। इस तरह वह हाई कोर्ट का जज बनकर चला आयेगा। यह देश कैसे चलेगा? इसलिए मैं भारी मन से इस बात का जिक्र करना चाहता हूँ कि ऑल इंडिया ज्यूडिशियल सर्विस कमीशन होना चाहिए। मैं मांग करना चाहता हूँ कि जिस तरह से आईएएस, आईपीएस का कम्पीटिशन होता है, उसी तरह से ऑल इंडिया ज्यूडिशियल सर्विस कमीशन भी गठित होना चाहिए।

अध्यक्ष महोदय, मैं कहना चाहता हूँ कि इलाहाबाद में क्या हुआ था? वहां उच्च न्यायालय ने निर्णय दिया था कि उत्तर प्रदेश में मुसलमानों का अल्पसंख्यक का दर्जा समाप्त किया जाये क्योंकि उनकी आबादी 18.4 प्रतिशत है। उल्लेखनीय है कि वर्ष 2002 में माननीय सर्वोच्च न्यायालय की संविधान पीठ ने निर्णय दिया था कि 50 प्रतिशत से कम आबादी वाले समुदाय को अल्पसंख्यक का दर्जा दिया जायेगा। सर्वोच्च न्यायालय के फैसले तों ऑफ दी लैंड की शवल में होते हैं। इसके बाद इलाहाबाद उच्च न्यायालय का फैसला कुछ और ही आ जाता है। मैं जो बात कह रहा हूँ उसके सम्पुष्ट में इस बात को कहना चाहता हूँ। जब सर्वोच्च न्यायालय का फैसला तों ऑफ दी लैंड है, तो उससे हटकर यह न्यायपालिका संवैधानिक दिशा को एक नयी दिशा देने का काम कैसे कर रही है। इसलिए मैंने आपसे इस बारे में निवेदन किया है, प्रार्थना की है।

अध्यक्ष महोदय, इतना ही नहीं हो रहा, कई ऐसी बातें हो रही हैं, समय के अभाव के कारण मैं सारी बातें यहां नहीं बता सकता। लोकतंत्र के लिए एक चिंता का विषय यह भी है कि पिछड़ों के आरक्षण को रोकना गया। और उसमें पेटिशनर के एपीटैन्शन को स्वीकार कर लिया गया। उस पर बहस भी विस्तार से नहीं हुई, केवल पेटिशनर के एपीटैन्शन को स्वीकार कर एकपक्षीय, एकदलीय आधार पर माननीय सर्वोच्च न्यायालय ने लोक हितकारी सूचना 19 मार्च, 2007 पर रोक लगा दी। विधायिका और कार्यपालिका के क्षेत्र में ऐसा कैसे चलेगा। इसलिए मैं निवेदन करना चाहता हूँ कि आज भारतीय संविधान सर्वोच्च है और भारतीय संविधान के मुताबिक विधायिका, कार्यपालिका और न्यायपालिका को अपने-अपने दायित्व का निर्वहन करना चाहिए। अपने-अपने क्षेत्राधिकार में संयम से काम लेना चाहिए तभी यह लोकतंत्र चलेगा, लोकतंत्र महफूज रह सकेगा। नहीं, तो मेरा यह कहना है कि कार्यपालिका, विधायिका, न्यायपालिका, इन तीनों स्तंभों का भारतीय संसदीय लोकतंत्र में कैसे समन्वय रहे, उनमें संतुलन बनाने के लिए संवैधानिक उपाय किये जायें [MSOffice66], जिससे कि भारत का संसदीय लोकतंत्र मजबूत हो सके। भ्रष्टाचार के बारे में माननीय सदस्यों ने सदन में चर्चा की है। भ्रष्टाचार तो इन्पीचमेंट या

महाभियोग का मामला है और उसका परिणाम भी मातूम है। मैं आपकी अनुमति से एक उदाहरण देना चाहूंगा। कुछ दिन पहले न्यायालय का निर्णय आया था कि "नो वर्क-नो पे" अर्थात् जो काम नहीं करेगा, उसे वेतन भी नहीं मिलेगा, लेकिन जब एम्स में हड़ताल हुई तो फिर फैसला पलट गया और जो लोग हड़ताल में शामिल थे, उनको भी वेतन देने का आदेश दिया गया। इसीलिए मैंने कहा कि व्यक्तिगत अवधारणा पर फैसले बदलते रहते हैं। इससे न्याय की व्यवस्था के बारे में लोगों के मन में संशय पैदा हो जाता है, न्याय की व्यवस्था पर पूर्णविश्वास लग जाता है। यहां तक कि केन्द्रीय मंत्रिपरिषद में कौन व्यक्ति रहेंगे, उस पर भी बहस हो जाती है, जो कि प्रधानमंत्री का विशेषाधिकार है, उस में भी हस्तक्षेप किया जाता है। मैं यह निवेदन करूंगा कि संविधान ने जो रेखांकित किया है, जो सीमांकन किया है, अलग-अलग क्षेत्राधिकार दिए हैं और संविधान में जो अलग-अलग कार्यक्षेत्र दिया गया है, तीनों अंगों को उसके अन्तर्गत रहकर कार्य करना चाहिए, आपस में नहीं टकराना चाहिए, लक्ष्मण रेखा नहीं लांघनी चाहिए, तभी देश का संसदीय लोकतंत्र महफूज रहेगा। जहां तक भ्रष्टाचार का सवाल है, कुछ ही समय पहले ग्यारह माननीय सदस्यों को संसद ने निकाल दिया। पहले न्यायालय उनके मामले में अभिरूढ़ि ले रहे थे कि संसद ने कैसे यह फैसला किया, लेकिन जब सुप्रीम कोर्ट ने निर्देश दे दिया कि यह संसद का निजी मामला है और संसद को इस बारे में निर्णय करने का अधिकार हासिल है, तो अब गुरसा निकाल रहे हैं। चूंकि उस समय आपने नोटिस नहीं स्वीकार किया, कोई भी पीठासीन अधिकारी स्वीकार नहीं करता है, मैं समझता हूँ कि यह आपकी बुद्धिमत्ता थी, ऐसा करके आपने संसद का सिर ऊंचा किया है, इसलिए अब कहा जा रहा है कि उन बर्खास्त ग्यारह लोगों के खिलाफ भ्रष्टाचार निरोधक अधिनियम के तहत मुकदमा चलाया जाए। इसीलिए मैं कह रहा हूँ कि यह जुडीशियल एवटीविजम है और सम्पूर्ण रूप से न्यायपालिका द्वारा टकराव की स्थिति खड़ी की जा रही है, विधायिका के अधिकारों पर अतिक्रमण किया जा रहा है। इसके लिए मैं निवेदन करना चाहूंगा कि न्यायपालिका, कार्यपालिका और विधायिका में जो भ्रष्टाचार के मामले सामने आएँ, उनकी जांच के लिए चुनाव आयोग की तरह का एक ऑटोनमस कमीशन बनना चाहिए। उस कमीशन का निर्णय ही सभी लोगों के लिए चाहे वे जनप्रतिनिधि हों, चाहे न्यायपालिका में कार्य करते हों या कार्यपालिका में कार्य करने वाले लोग हों, सभी के लिए अन्तिम होना चाहिए। यह कमीशन इन सभी लोगों की चल और अवल सम्पत्ति की जांच करे, उसकी रिपोर्ट अंतिम मानी जाए, उस कमीशन को ऑटोनमस पावर्स दी जाएँ, तभी भ्रष्टाचार पर अंकुश लग सकेगा।

भ्रष्टाचार गंगोत्री से निकलता है, भ्रष्टाचार छोटी-छोटी नदियों से नहीं निकलता है, इसलिए भ्रष्टाचार को यहीं रोकना पड़ेगा।

इसी के साथ मैं अपनी बात समाप्त करता हूँ।

SHRI VIJAYENDRA PAL SINGH (BHILWARA): Sir, are we going to get a chance to speak? I have not spoken at all in this Session.

MR. SPEAKER: Your name stands at number five in the list of speakers from the BJP. There are still about 26 names and if I allow five minutes to each one of them, then you can think how much time it is likely to take. Therefore, let Members from each party be called first.

SHRI VIJAYENDRA PAL SINGH : Sir, it is an important subject.

MR. SPEAKER: No doubt it is an important subject and that it is important is being realized.

SHRI A. KRISHNASWAMY (SRIPERUMBUDUR): Sir, today a very important and a very interesting debate is taking place in the House on the issue of separation of powers. [R67] Today, I hope this discussion will bring a full stop on the overlapping and over-reaching powers of the Judiciary over the Legislature. It is also an acknowledged fact that the Executive, Parliament and Judiciary are the three pillars of democracy. Each one of the pillars has defined powers under the Constitution of India. The Founding Fathers of the Constitution are fully aware of their importance. Dr. Ambedkar had enacted a very good Constitution for India and we are following it. Each one is to function not in conflict with and in collusion with the other but in consonance with each other. It is the right of every citizen as well as the Members of Parliament either in the House or outside or in the Press to make a statement or fair comment on matters of public interest. If the Executive and the Legislature go beyond or against the provisions of the Constitution, it is always their prerogative to correct it. But at the same time, development programmes and economic progress of the country cannot be stalled by motivated persons by filing litigations in the court. The courts must always pierce through veil, find out the motive behind them and take a serious view of the matter and take appropriate steps against the persons responsible for stalling the progress.

In this regard, I would like to register two points in this House. Regarding 27 per cent reservation in higher educational institutions in Southern India, earlier Dr. Karunanidhi and other leaders had protested and demanded the UPA Chairperson and the Government of India to enact a law. Our Minister for Human Resource Development brought a Bill and we unanimously passed the Bill in the House. This was the brain child of Shri Arjun Singh, the interest of the UPA Chairperson and the hon. Prime Minister and the request of our Chief Minister, Dr. Karunanidhi. But later on, it was sent to the court and the court stayed it. This was asked by our leader, Dr. Karunanidhi. This was regarding the 27 per cent reservation for the backward classes.

MR. SPEAKER: Let us not go into individual cases. This is not right. After all, they have the right to decide on it.

SHRI A. KRISHNASWAMY : Sir, the 27 per cent reservation was stayed by two judges in the court. We come here with the majority support of the people and we enact a law here in their interest, as is given in the Common Minimum Programme. We had promised the public that when we come to power, we will bring this amendment and protect the interests of the OBCs. But what has happened? Two judges sitting in the court passed orders to stay it. Is it in the interest of the public or is it in the interest of democracy?

MR. SPEAKER: We cannot go into all these pending matters.

...(Interruptions)

SHRI A. KRISHNASWAMY : We are law-makers and they are law-protectors. They can only protect the law whereas we make the law ...*(Interruptions)* When I was a practising advocate, I always spoke in the interest of individuals. When I was practising, I thought that the court has the supreme power and I used to fight for individuals. When anyone rises in protest, I used to highlight suitable points in the court as I was worried about the individual concerned. But when I have got the votes and got elected by a majority of the people, I think about the majority interest and not individual interest. I have to go by public interest, that is the verdict given by the people. We are making law only for their interest and not for any individual. In this case, the court has encroached upon the powers of Parliament. The powers are overlapping. This should be condemned. [\[MSOffice68\]](#) Another issue is the Ram Setu. It is 100-year old dream project of the people of Tamil Nadu. ...*(Interruptions)*

MR. SPEAKER: Hon. Members, let us not go into the pending matters. This is not right. After all, we have the highest regard and respect for the judiciary. The only issue is we have to function in harmony.

...*(Interruptions)*

SHRI A. KRISHNASWAMY : Today the issue is about the harmonious relationship between the three pillars. That is why we can speak. At least today we have to be harmonious.

In that project, the court interfered. ...*(Interruptions)*

PROF. RASA SINGH RAWAT : But this is not harmony....*(Interruptions)*

MR. SPEAKER : He has a point. Let there be respect for each other. It is not a one-way traffic.

...*(Interruptions)*

SHRI A. KRISHNASWAMY: It is a 100-year old dream project of the people of Tamil Nadu. ...*(Interruptions)*

MR. SPEAKER: That is a pending matter. We are not going to decide here on its merits.

...*(Interruptions)*

SHRI A. KRISHNASWAMY : When it was in progress, the court intervened and stayed it. In the all-party meeting we decided to go for a *bandh*. There is a right to strike in the country. In all the States and all over the world, *bandhs* are being conducted. ...*(Interruptions)*

MR. SPEAKER: Right to strike is not recognised.

...*(Interruptions)*

SHRI A. KRISHNASWAMY : The Supreme Court has given the stay. When *bandhs* were held in Kolkata and Kerala, it was not stayed, but it was stayed in Tamil Nadu. ...*(Interruptions)*

MR. SPEAKER: It depends on the hon. Judges.

...*(Interruptions)*

SHRI A. KRISHNASWAMY : They have not given even 24 hours. They stayed it before 18 hours. There were holidays on Saturday and Sunday. In-between on Monday, that is 1st October, the *bandh* was about to be held. So, there were holidays for three days, except 1st October. The officials and other sections of the people of Tamil Nadu were in a holiday mood. But before 18 hours the Supreme Court stayed it. But no one responded to it. The people were against the Court. No one respected the Court. Is it not wrong to give a stay in this way? ...*(Interruptions)*

MR. SPEAKER: It was on the basis of the decision of the hon. Judges. They are entitled to it.

...*(Interruptions)*

MR. SPEAKER: Shri Krishnaswamy, you please do not go into the merits of individual cases. I said that earlier also. Let us have a discussion on a very high level.

...*(Interruptions)*

SHRI A. KRISHNASWAMY : The judicial officers should have applied their mind. They should have thought whether such a stay, given 18 hours before, will be successful or not. This is the mindset of the judicial officers, which is prevailing now. As Shri

Varkala Radhakrishnan said, judgements are pronounced not on merits of cases, but on the basis of *â€* *

MR. SPEAKER: We should discuss basic issues, not individual cases. We should show fullest respect to the judiciary as they are entitled to. My only view is that it should be reciprocal.

...(Interruptions)

SHRI A. KRISHNASWAMY : The judicial officers are like that. How can they overlap and over-reach over the legislature and the executive? This is my question.

The Parliament is supreme. The temple of democracy, that is Parliament, should be protected at any cost. With these words, I conclude.

* Not recorded

SHRI SURESH PRABHAKAR PRABHU (RAJAPUR): Mr. Speaker, Sir, I seek your permission to speak from this seat.

MR. SPEAKER: Okay.

SHRI SURESH PRABHAKAR PRABHU : Sir, first of all let me thank you for allowing me to participate in the discussion on this very important issue. I thank my friend, Shri Gurudas Dasgupta for initiating the discussion on this important issue in the sixtieth year of India's Independence. We are today functioning as a democracy. Fourteen Lok Sabhas have been voted to power in the last 55 years, from 1952 onwards. We are, in a way, making ourselves proud and are also keep telling rest of the world that we are a great functioning democracy. That is an advantage over many other countries, including some of our neighbours. Therefore, this proud tradition of being a democratic country has been possible because of many things, including a very important fundamental decision.[\[MSOffice69\]](#)

The modern States world-wide have taken the decision which we have followed is to separate the functions of the State into three different functionalities – The Judiciary, the Executive and the Legislature. So, the harmonious functioning of these three guarantees that the institution of democracy will function in a proper manner to the satisfaction not only of those who really created the Constitution but also to the satisfaction of the citizens of the country. But, Sir, over a period of time, we have been seeing a lot of tensions developing among these three institutions. The question is: Who is really right in this? We always claim that Parliament is supreme. It is supreme. In a democracy, the people who vote the Government in, who elect their representatives and legislators, definitely they are supreme. Parliament is supreme. But who guarantees the supremeness of this Parliament? This supremeness can also be maintained, retained and at the same time, the citizens of the country will really feel assured that this Parliament as an institution, Parliamentarians as functionaries are also serving the cause for which they are elected. So, there has to be an institution independent of Parliament to ensure that it will make sure that Parliament functions as a sovereign body. That function has to be discharged by a Judiciary as per our Constitution, as per the wish of the people of this country. They very strongly feel that this is an institution which will actually guarantee it.

Let us look at many areas. In many areas, we are a very unique country. I know that in Delhi, for example, in the winter months of the year, we always see that there is a very big smog. Delhi was considered as one of the cities which is most polluted not only in the country but in the world. When a person called Shri Anil Agarwal went to the Supreme Court with a Public Interest Litigation saying that Delhi's air quality should be improved, because of that single petition, the Supreme Court directed the Government and the Government had to improve the pollution standards of this particular city. Sir, an ordinary citizen anywhere in the country can write one post-card of 50 paise – I do not know what is the cost. It may be 60 paise or one rupee now – and that post-card is considered by the Supreme Court and the High Courts in many States as a petition and they act on it. This is something which is very unique in India. I do not think there is any other country in the world where you will find that an ordinary citizen can straightaway go to the Supreme court and get justice for the plea he is making.

In the olden days, people used to say: "If you go to the Darbar of a Raja or a Maharaja, ring the bell, you will probably get justice." Nowadays, when we are being the Rajas and Maharajas, probably, if we fail to deliver justice, justice can be provided only by courts....(*Interruptions*)

MR. SPEAKER: Justice should be according to law. "Law" means what is constitutional.

SHRI SURESH PRABHAKAR PRABHU : That is right. Probably, we make the law and the justice is supposed to be dispensed through the institution of Judiciary. But, Sir, the point that I am making is that definitely Parliament is supreme. The Constitution has guaranteed that freedom to us. At the same time, we also have the right to change the Constitution. We have the ability to make laws but those laws once made have to be interpreted probably to ensure that according to this law whether the country is functioning or not. This is to be guaranteed by the Judiciary.

I want to make a little different point here about the relationship not only between the Judiciary and the Parliament – many of us have spoken on it – but also I would like to speak about the relationship between the Executive and the Legislature. What is the Executive? A Legislator becomes an Executive as per our system. In other countries like the United States of America, for example, a legislator cannot become an Executive. In fact, it has separated its power so much that a legislator cannot become a Member of the Executive. That is so by law. But in India, we are saying that the Executive Members, particularly the Ministers and the Prime Minister have either to be Members of Parliament when they become so or within six months, they have to become Members of Parliament. When we talk about a legislator becoming an Executive, the relationship between the Executive and the Parliament has to be revisited after sixty years of experience that we have gained. We have seen that in India, the Executive is very powerful. I had been a member of the Executive. I can say about that. I am not trying to blame the Executive presently sitting in the Treasury Benches. I am talking about the Executive as an institution. We have seen that Members of Parliament are relegated to the position of making noise in Parliament, they are not being heard. Their voice never gets heard by the Executive.

MR. SPEAKER: Why? You are making a point. I respect you very much. The question is that if the Members are alert, they can make the Executive accountable. You are a very senior and respected Member. [R70] Only to the Legislature, the Executive is accountable for its every functioning. Once a judicial executive order is passed, the Parliament cannot question that.

SHRI SURESH PRABHAKAR PRABHU : That is precisely the point that I am trying to make. The Executive is supposed to be presided over by the elected Members of Parliament. But, in reality, we are seeing that the Executive is being run not by the elected representatives, but by those who are appointed over a period of time and whose tenure is guaranteed by the Constitution. Therefore, what we are really seeing in reality is that we, the Members of Parliament, are not being able to represent. The Members of Parliament are not really becoming the Executive, but somebody else is executing the functions of the Executive. It is really a challenge before us. How do we make sure that in a democracy, the Members of Parliament should really become Executive and they will run the country? Many times, the Judiciary has held the Executive responsible for the actions for which I think they preside over it, but not necessarily responsible for it. I think we really need to demarcate. In my opinion, we have demarcated the responsibilities, we have separated the powers, but we have not codified the roles and the responsibilities of the individual functionaries of these particular different organs. For example, a Member of Parliament is expected not only to be a law maker, that we primarily are, but to play many other roles. The Constitution expects from a Member of Parliament to also fix the drainage line, to fix the water line and so many other things. But, now in the absence of a proper codification, it becomes extremely difficult for either a Member of Parliament to know what his real role is and also for the constituent to judge the performance of the elected representative. It is high time that we move not only for separation of responsibilities but we must also go into the issue of codification of responsibilities, roles and functioning of individual functionaries. All these three, particularly between the Executive and the Legislature, must be considered. In the absence of it, we will always find some conflict.

There are some issues which we need to consider. For example, we need to consider primacy of Parliament. Policy making is whose responsibility. We normally feel that the Executive makes policy. Actually speaking, the Executive, by definition, has to execute a decision. It means that obviously the policy has to be made by somebody else. Now, in the absence of not codifying it and the vacuum being created, the Judiciary is filling the vacuum by saying that we will make the policy. If you codify it and say that it is the Parliament whose responsibility primarily it is to make a policy on any subject, if the Executive wants to make they are free to do it. Place it before the Parliament, but no policy can be finalized and can be implemented unless it has the approval of the Parliament. So, policy making is another area where we need a fundamental relook.

As I have been saying, failure of any institution gives rise to vacuum which is filled by whichever institution can do that job. In India, we are saying that Judiciary is overactive. But, in my opinion, Judiciary is actually filling up the vacuum. Sir, you have been an extremely great lawyer of the country and you have been the Speaker of the House. You have actually been

participating in all the three organs – in fact, not really participating in the Executive – but you have been actually supervising the Executive in some way. So, my earnest request to you in this 60th year of Independence would be that we should constitute a very high power committee of Members of Parliament to relook into all these issues and to see how to increase the efficacy of the Members of Parliament individually because as an institution, we are very powerful, but individually, we are very powerless. It is a real contradiction in itself. So, my request would be that codification is of extreme importance. Let me give you an example. In the United States, the President of USA, who is supposed to be the most powerful man in the world, cannot appoint his own Ministers. All the Ministers that he appoints have to be confirmed by the Senate.

MR. SPEAKER: Including Judges.

SHRI SURESH PRABHAKAR PRABHU : Including Judges and including Ambassadors. Why do we not think about moving away to a system where Parliament as an institution will be able to look into some of the functionaries? Why should we not look into these issues in a separate way? In our country, the Ministers are all elected Members of Parliament. But I talk about other important functionaries. This type of reform is really called for because maybe, we are succeeding as a democracy, but individual functionaries of these institutions are not able to perform their roles as effectively as they would have otherwise liked to perform.

Sir, the Standing Committees that we have are really important institutions through which we really operate and transact the business of the House in a very significant way. So, we really need to move towards second generation Standing Committees in which these Standing Committees then will be able to play a proactive role and that is what is really needed to be done.

Sir, I am very happy that, thanks to you, I could speak on a subject like this because my predecessor, who once contested the election from my constituency, Mr. Nath Pai also used to speak on this subject. Maybe I was not present at that time, but I hope I continue this tradition of speaking on a subject which was so dear to his heart. He is no longer living now. So, I am sure that my constituents will be happy if I can perform a role that they expect from me and that can happen only if we bring about a radical change in the way in which we really function.

MR. SPEAKER: You are already performing.

Hon. Members, the time allotted for all the parties is over long back except one or two parties and no more time is left except for those who will speak now. I will try to accommodate as many as possible. But please cooperate and be brief.

SHRI REWATI RAMAN SINGH (ALLAHABAD): Mr. Speaker, Sir, can you extend this debate for tomorrow?

MR. SPEAKER: Let us go on for a while more.

SHRI PRASANNA ACHARYA (SAMBALPUR): Mr. Speaker, Sir, at the outset, I would like to extend my thanks to you because you have allowed a discussion on this very important subject under Rule 193 which has been brought by Shri Gurudas Dasgupta and Shri Basu Deb Acharia. In my opinion, the wordings should have been a little different. Now, this is a discussion on the need for harmonious functioning of three organs of the State, that is, Legislature, Judiciary and Executive, though I would have liked to add media also here. Though our Constitution does not mention the media as an organ, this is one of the four pillars of our democracy and unless all these organs, including the media, function harmoniously, I think, things will not improve.

Sir, our Constitution clearly defines separation of powers. There is no confusion, there is no ambiguity and no organ of the State should take on itself the onerous responsibility of the other one as prescribed in our Constitution. No Constitution can function if the autonomy of each of the organ is not respected by other organs. The Judiciary, as much as the Legislature and the Executive, is dependent for its proper functioning upon the cooperation of the other two.

Our Constitution entails that none of these organs would be vested with unbridled power so that no organ or individual assumes power of despotic proportions. As you know, article 361 (1) of our Constitution very categorically states that the President or the Governor of a State shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties. Article 121, as you know, bars the Legislature from discussing the conduct of any Judge in the discharge of his duties except upon a motion of impeachment. It, likewise, bars the court from questioning any alleged irregularities of procedure in the Legislature according to article 122. By and large, the principle of separation of powers in this country has worked well in our country. Yet, there have been sometimes disputes concerning different issues creating doubt about the capacity of our constitutional set up to deal with such situations satisfactorily.

Sir, I want to quote one of your observations which you made in one of the seminars. You have very correctly stated that:[\[R71\]](#)

[r72]"The problem starts when a particular organ assumes that it has inherent superiority or a monopoly over other or that it alone can solve their problem."

Sir, it is your statement.

A few months back, hon. Chief Justice of India at a seminar, where the hon. Prime Minister was also present, stated that the tension between the three organs is an inevitable consequence of judicial review which is the power of Apex court to determine the constitutionality of the law made by the Legislature and to review the Executive's decision and such tension is natural, according to the hon. Chief Justice of Supreme Court. But in my opinion, sometimes, judicial review is not the only reason of tension or disharmony between the Legislature and the Parliament.

Shri Kishore Chandra Deo was correctly mentioning that the court came out with an order and asked the Attorney-General to submit the report of the Standing Committee on the Quota Bill, before it was brought in this House. Such orders also sometimes create disharmonious situation and that has to be avoided.

MR. SPEAKER: I would not have allowed it.

SHRI PRASANNA ACHARYA : Fortunately, the other day, I think, the court changed the order.

THE MINISTER OF STATE IN THE MINISTRY OF CHEMICALS AND FERTILIZERS AND MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS (SHRI B.K. HANDIQUE): Sir, the discussion can continue tomorrow.

MR. SPEAKER: All right.

SHRI PRASANNA ACHARYA : Sir, harmony is disturbed when one organ tries to encroach into the clearly defined area of other. But the onus also lies on the politicians. We, the politicians, should hold impartial and judicious view on this problem. When a particular judgement of the court or an interpretation of law suits us politically, we enormously welcome it, we congratulate the decision of the court. But if it does not suit us, we condemn it.

Sir, when the decision of the House, to expel the eleven Members of Parliament in a case of Cash for Query Scam, was taken, you refused to receive the notice of the court. The whole House appreciated it. This enhanced the image of the House. Then, ultimately, the court came out with an order approving what decision the House has taken, all sections of the House congratulated it. But what happened when the court came out with a judgement regarding the Jharkhand case? A section of the House opposed it and a section of the House, to whom the judgement suited, welcomed it.

Therefore, in my opinion, the opportunistic attitude towards the judgement of the courts by the politicians, the Members of the House, enables the court to interfere into our own affairs.

The political parties in this country, in my opinion, should broadly agree on the definition of what is judicial activism. In one case we define judicial activism in one way and in another case, we define judicial activism in another way. I think, this opportunistic stand of the Members of the political parties is encouraging the judiciary to encroach upon our areas, in my opinion.

Sir, nobody is a God in a democracy. We are all creation of this Constitution. This House is the creation of this Constitution. The Executive, sitting there, is the creation of the Constitution. Likewise, the court is also the creation of the Constitution. Nobody is above Constitution, except the people of this country. Sometimes, we forget that. All the three organs very conveniently sometimes forget this theory.

Sometimes the judges try to pose themselves as super human beings, who are above all the vices; all the sins and can solve all the problems on the earth by their orders and observations. They are in the habit of passing sarcastic remarks during the course of trials. Many examples are there. Against whom? Against the politicians, against the bureaucrats. They cast aspersions on their integrity and ability. Umpteen examples are there, I am not going to quote them.

Likewise, the politicians never hesitate to vomit our feelings as, to some extent, we are doing today against the judges whenever we get the platform immune from judicial scrutiny, like this House. That also, we sometimes do not forget to do. This cannot help in having harmonious relations.[r73]

My good friend, Shri Kharabela Swain is not here. He was mentioning that because there is a Supreme Court, the CBI is not functioning or the Court is restraining the CBI from functioning as an organ, or as a Department of the Government. It is because there is a Supreme Court, therefore, the Jharkhand Assembly thing was set to right.

I would like to remind that when the dark Emergency was declared in this country in the year 1975, there was also a Supreme Court. In 1973, just two years before declaration of the Emergency, the path-breaking ruling in Keshavanand Bharati case came way back in 1973. The Emergency was declared in 1975. In Keshavanand Bharati case, the Court propounded the doctrine of the basic structure of the Constitution. But, what happened after two years? Two years later, the historic atrocities of the Emergency days against the basic structure of the Constitution, and other great violations of the Fundamental Rights and the freedom of ordinary citizens, did not bother the conscience of the hon. Court. They did not bother the Court. Even though Keshavanand judgement was thrown to pieces by the Emergency regime, the Court did not bother. Of course, after the revocation of the Emergency, the Court rectified its own order. This was even admitted by one of our respected retired Chief Justices, Mr. Chandrachud, who said later on that during those days of 19 months, even Judges were acting under fear. Therefore, I said that nobody is a God. Nobody is above our Constitution. The Judges are also human beings. They are not Gods.

MR. SPEAKER: Very much so.

SHRI PRASANNA ACHARYA : Sir, the hon. Member was pointing out as to what should be the role of other organs. When there is inactivity on the part of the Parliament, when there is inefficiency and inactivity on the part of the Executive, the Court intervenes. That is the right of the Court.

MR. SPEAKER: Under what provision?

SHRI PRASANNA ACHARYA : Again, I would like to quote you, Sir. In one occasion you said this. Suppose – some Member was telling here – more than 2.5 crore cases are pending all over the country. I think a large number of cases are pending in the Supreme Court. A number of cases are pending in the High Court. If this House takes this plea that huge number of cases are pending, and the Court is unable to dispense justice to the people, can this Parliament take over the responsibility and the duty of the Court?

MR. SPEAKER: No, it cannot.

SHRI PRASANNA ACHARYA : It is like that. So, every organ should function under its limitation. It is okay that there are a number of Bills pending with the Government; the Government is sitting over the Bills. Can the court say that because the Parliament is unable to pass the Bills, the Court will take the right of the Parliament and pass judgement? This does not help harmonious relation.

Many hon. Members here were quoting that there are umpteen instances when the Judiciary has intervened in the matters entirely within the domain of the Executive, and entirely within the domain of the Legislature. I would like to cite a few instances. Even the Judiciary is coming out with orders determining age and other criteria for admission in nursery schools. Even the Judiciary is coming out with order fixing criteria for a free seat in school, supply of drinking water in school, number of beds in a hospital, the size of speed breakers in the Delhi roads etc. When there are larger cases, more important cases pending before the Judiciary, and when a matter is purely within the functioning of the Executive and when the court is interfering in such a matter, how can we expect that there will be harmonious functioning?

One another important factor is this. When Parliamentarians become corrupt, people go to the Court. There are ample examples when the Court has come out with strictures, orders and even has punished the politicians. When the Executive is corrupt, and when the politicians fail to deliver justice to the people, our electorate, people go to the Court. So, there is highest regard for the Court by the ordinary citizens in the country. But, when there are allegations of corruption against the Court, where will the people go? This is a very much turning point in our democracy. You go through the newspapers of the past six months. You will find a number of stories leveling allegations against hon. Judges. Who will rectify this situation?

According to a survey conducted by the Transparency International and Centre for Media Studies, every year, Rs. 21,068 crore change hands as bribe in 11 service sectors in this country. Do you know, Sir, what is the share of the Judiciary? It is, Rs. 2,630 crore; the under-table business that happens.[\[r74\]](#) This is not my opinion. This is the survey. ...*(Interruptions)*

MR. SPEAKER: No, no. Which survey?

SHRI PRASANNA ACHARYA : Sir, this is not my allegation. I am quoting the survey report. ...*(Interruptions)*

MR. SPEAKER: Who is the surveyor?

SHRI PRASANNA ACHARYA : This is the Transparency International and Centre for Media Studies, New Delhi. This is their survey. ...*(Interruptions)*

MR. SPEAKER: Are these figures of the world over?

SHRI PRASANNA ACHARYA : It is of the country.

MR. SPEAKER: Is it pertaining to India only?

SHRI PRASANNA ACHARYA : Yes, Sir, They have surveyed around 22 service sectors. ...(*Interruptions*)

MR. SPEAKER: I do not know as to what this group is.

SHRI PRASANNA ACHARYA : Sir, this is not my allegation. This is the survey report which I am quoting. ...(*Interruptions*)

MR. SPEAKER: Acceptability of the survey is there. Let us avoid that. You are giving a figure which nobody knows.

SHRI PRASANNA ACHARYA : Sir, as you know, a large number of cases are pending. ...(*Interruptions*)

MR. SPEAKER: Yes, there are allegations of corruption. The country is agitating how to solve that.

SHRI PRASANNA ACHARYA : The country is agitating how to get rid of these things.

Another point which I would like to mention is that there are a large number of vacancies in courts, and that is one of the reasons why justice is not dispensed to the people in proper time. The cases are pending for years and decades. ...(*Interruptions*)

MR. SPEAKER: Who selects the judges?

SHRI PRASANNA ACHARYA : Sir, I am coming to that. So far as subordinate court judges are concerned, I will hold the State Government and the Central Government responsible. But what is happening in the High Court, Sir? There are number of vacancies in the High Courts, around 26 per cent vacancies. What is the collegium of judges doing? Can the Government appoint judges without the approval and recommendation of the collegiums of judges?

MR. SPEAKER: No.

SHRI PRASANNA ACHARYA : Sometimes, Sir, judiciary accuses the Executive and the Legislature for not filling up the vacant posts of judges but the responsibility lies with the judiciary itself. There is a collegium of judges. Rather, I would like to ask the Judiciary as to what they are doing. Why are they not filling up their own vacancies and trying to dispose of the pending cases expeditiously? Therefore, the point – I will do one wrong and I will accuse others – is not a harmonious functioning. That is my point.

Sir, I would like to know from the hon. Law Minister as to why the Government is sitting over the Judges Equitable Bill. The Standing Committee has already submitted its Report. What debars the Government from coming with the Judges Equitable Bill? I hope, the hon. Law Minister will give answer to this when he gives his reply.

Sir, I am concluding. Therefore, Sir, my final statement is that we, the politicians, should have introspection, the Executive should have introspection and the Judiciary also should have introspection. We all, including the Media, have to introspect ourselves as to what we have done, where we are crossing the limit and why we are crossing the limit, what are the lacunae in the Legislature, the Judiciary and the Executive. That introspection should be there to solve this problem.

But, in spite of all these lacunae, we are leveling so many charges on the Judiciary. Sir, you will be surprised to note that in spite of the alleged judicial activism, interestingly the politicians and the bureaucrats are losing ground among the public. Sir, it is a fact. The judiciary is perceived to be doing better even though there is a huge backlog. Why is this happening? Therefore, Sir, introspection is required on the part of the politicians, the Judiciary and the Executive.

MR. SPEAKER: Hon. Members, it is going to be six o' clock soon. If you want, this discussion will continue tomorrow also. But there are a large number of names. If you all agree, we can continue this discussion till 7 p.m.

SHRI H.R. BHARDWAJ: Sir, I have a personal difficulty. There is a wedding of my son. ...(*Interruptions*)

MR. SPEAKER: Is it the wedding of your son?

SHRI H.R. BHARDWAJ: Yes, Sir. My brother's son - Gen. Bhardwaj's son – is getting married.

MR. SPEAKER: You can go.

SHRI H.R. BHARDWAJ: Sir, I need your permission. My colleague is here. I will reply tomorrow.

MR. SPEAKER: I think, we can continue up to seven o' clock.

SHRI B. MAHTAB (CUTTACK): Sir, what happens to the urgent matters of public importance?

MR. SPEAKER: It is at 7 p.m.

Now, Dr. P.P. Koya.

17.50 hrs.

(Mr. Deputy-Speaker *in the Chair*) [\[h75\]](#)

DR. P.P. KOYA (LAKSHADWEEP): This is a very, very important topic. All the hon. Members, who spoke before me, have highlighted the importance. It appears from the speech of everyone, who participated, that they have come fully prepared and they have expressed themselves in very, very clear terms.

We know everyone of us is proud that this is the biggest, the largest and the most matured democracy. It is in this country only, after Independence, the democratic process has gone on without any interruption. Every Member is happy that this is the country where a written Constitution is there. The Constitution was prepared. The Constitution has not suddenly fallen from somewhere. It was negotiated and discussed by eminent personalities of the day for months and years together. Then, they came out with one of the best Constitutions in the world. Even today this Constitution is a referral book to any country which is preparing a new Constitution for their own administration. Such beautiful Constitution we have got.

The Constitution gives us a Government. The Constitution has given us this system wherein the democracy prevails upon the three pillars. Of course, I will not be spared if I do not add the new one, that is, the Fourth Estate, that is, the media. The clear cut duties and responsibilities of each one of our pillars, namely, the Legislature, Executive and Judiciary, are well marked in the Constitution and other laws.

There is a *Lakshman rekha*. As many of my predecessors said, there is definitely a *rekha* which cannot be easily crossed unless somebody feels that he can do it. Without honouring the sentiment of the other section, if somebody crossed, it has to be checked. In this system, the Legislature, otherwise, the Parliament is supreme just because this is accountable, of course, for a maximum of every five years. Periodically, we go to the people, upon which this democracy or anywhere in the world's democracy is the form of the Government where the voice of the people is supreme. In that case, in India we go to people periodically and get their affirmation. They vote to us for a maximum of five years or sometimes even earlier also we are going to the people and get their assent. That means, indirectly, the whole nation is representing through the Parliament. So, in that case, the supremacy of the Legislature cannot be questioned in a democratic system just because this is the organ where it is checked periodically, and it reflects the ideas of the people.

Having come to these three particular divisions, our areas of duties and responsibilities are well marked in the articles of the Constitution, and very illustrious speakers have already highlighted the importance of the duties and responsibilities of each

wing. I am not going into the details because of paucity of time.

You know very often a decision is taken in Parliament means it is discussed well in the Parliament and it is participated by all the sections of the House. If so required, it will be referred to what is called the Standing Committee or sometimes even to a Joint Parliamentary Committee. They study the subject in depth. They interview the witness. They call the experts and finally come to a conclusion. Then, the Bill is presented here. The Bill is discussed. With majority or sometimes unanimously, the House passes the Bill. That means, it withstood the scrutiny of all the shades, colours of all shades. In that way, the Bill is passed.

But in the case of Executive, there may be erosion in their responsibilities. Parliament is there to check their responsibilities. If they erode the line, there is Parliament to check their responsibilities or duties. If the Executive crossed the line, there is Judiciary to check whether they are crossing it or not.

But as of today, I do not think there is any effective mechanism to check the hyper activism of judiciary. That should have been the reason why people are participating so much attentively and contributing their might.[\[m76\]](#)

Even the mover of the discussion, hon. Shri Gurudas Dasgupta has gone in full details, step by step, of the issue and he has come out with concrete solutions and suggestions as to how can we overcome these difficulties. If a person has to get elected to the Parliament, first of all he has to please the Party, then he has to please the people, his voters. My illustrious colleague Shri Kharabela Swain was very much anxious about the 50 per cent limit. In a multi-party democracy, an elected member need not get a simple majority of the electorate, that is 50 per cent; yet he is elected. Without the votes, he cannot walk into the Parliament. He has to meet everyone. If they are pleased they are voting for him and if they are not pleased they are not voting. But, we meet every individual, every citizen of this country before coming to this Parliament. There is always the check and balance. It is not a question of numerical number that we are getting. But we are exposed. We are meeting everybody. We are presenting our case. We are making our promises to them. Then only we are coming here.

Having come here, we are watched. As somebody has said, we are not Gods, we may commit some mistake. Then, immediately, it is questioned. Somebody has taken a little money knowingly or unknowingly for asking the Questions here. This House has taken up their case. We have discussed it threadbare. We have discussed it in detail. We have taken action. We have formed a Committee. They have gone into the details. We have taken appropriate action and today none of them is sitting in this House.

My friend Shri Prasanna Acharya was telling that there should be an introspection. We did it. When we realised that some Members were not behaving up to the mark of their membership, we have questioned them. We had our own introspection. We formed a Committee and they are punished. Upon this also, another organization should not have reacted, upon such a collective, well-thought out, well-discussed and well-taken decision. They should not have taken the decision that was taken.

We are questioned. The Executive, the hon. Prime Minister is questioned. The other Members of his Cabinet are questioned. When they selected they are undergoing scrutiny. But what about the judiciary? There is no scheme for questioning them. There were charges, there were allegations that somebody's son is having so many offices, so many connections, so many illegal contacts etc. This was brought about by the Fourth Estate, thanks to the media. It was well brought out. Even this maligned office was functioning from the official bungalow of the judge.

I will be failing in my duty if I do not bring out one more thing. Even for the appointment of a peon, appointment of a gazetted officer etc., there is something called police verification. Where is the verification for the appointment of a judge? There are instances where the judges were appointed where they were already having criminal cases pending in some court. There is no system to verify that because there is no need for a police verification. But for a clerical post, for the post of a peon, there is a provision for police verification.

Some time back, there was the unanimous decision of the Parliament that was commented upon by the judiciary. It is not good. As my illustrious colleague earlier said, there was a will to bring about rectification in all this. Where is the Judicial Commission? It has not come. That is a mistake of this House. There should have been a Commission. Now the judges are appointed by themselves. But not a doctor or an engineer is appointed by their own community. Here the judges are appointed. There are no formalities.

In so many election petitions, the Members are unseated. We accept it gracefully. We go to the higher court or otherwise some of them even go back to the people and get elected and then only come here and establish themselves. Like that, if somebody is not questioned, it is very unfortunate. The Parliament takes the decision and somebody else disposes the decision. This will not go together. This is the pillar of the same house. If one pillar is shaken, the whole house will shake. [\[k77\]](#)

18.00 hrs.

[r78]

Therefore, this is my warning. If the survival of the House of the country is required, then all the three organs should behave properly within their *lakshman rekha* limits. If somebody is crossing it, then it is a bad signal. This is my warning to all the existing pillars and to our media colleagues also. I call upon each one of them, especially, the Judiciary not to cross the *lakshman rekha*. Let it be taken as a message for one and all.

SHRI SURAVARAM SUDHAKAR REDDY (NALGONDA): Thank you, Mr. Deputy-Speaker, Sir. I think that this is a very important discussion, and this was being postponed for quite some time. We were doubtful whether this discussion will at all come up for discussion. However, today we are discussing this important subject.

A discussion on the issue of harmonious relationship between the Executive, the Legislature and the Judiciary has become a necessity because the relationship in the recent period has not been that harmonious. There is a clash between the three organs of the State. Of course, it is not necessary to undermine one of the organs to prove that the Legislature is supreme.

I believe that there is a question of ideology and a question of politics involved when we discuss this type of issues. There are some sections in our society, who do not want change; who do not want reforms; and who would like to take shelter behind the rule of law and take shelter behind the courts. This is the reason that they are trying to argue that the Judiciary is supreme, and that the rule of law is more important than the rule of the people.

As we say that the Parliament is supreme and that the Legislature is supreme, it does not mean that this body is supreme. Actually, it is the people who are supreme, and the peoples' will is reflected through the Legislature. This is the reason that we say that the Parliament should be supreme. It is not that wiser people are sitting here than anywhere else. Perhaps, the learned judges of the High Court are more educated or more experienced. But the point is that besides the separation of power, there are separate responsibilities and duties for each organ. The Parliament and the Legislatures are given a responsibility to rule the country, and to take the country towards its destiny. We are responsible to the society; the Executive is responsible to the Parliament and the Legislature; and the Legislature is responsible to the people.

Here lies the most important thing. How are we held responsible? I am saying this because every five years the Legislators will go to the people. Sometimes, even the Parliament may do something wrong, and we will be punished if we do something wrong. I would like to refer here to a very famous Editorial published in the *London Times*. I have not read it myself, but through my friends I have heard about it. There was a discussion in Great Britain also about the question of supremacy of the Judiciary and the Legislature. In this Editorial, it seems, it has been referred whether the British Parliament has got the right to take a decision whether all the blue-eyed boys can be drowned in the river Thames. The Editorial say : "Yes, and if they are proved to be wrong, then these Parliamentarians will be thrown into the river Thames when they go in for elections."

What is the responsibility and accountability of the other organ?[r79] I do not undermine the judiciary, its rights and capacities. The founding fathers of our Constitution, apart from providing for separation of powers, have very carefully drawn checks and counterchecks in the Constitution. Every legislation made by our Parliament can go through the scrutiny of the court. They have this right of judicial review. But when it comes to the question of people's will, this Parliament will have the right to amend the Constitution if necessary, which has been done several times.

I would like to refer to one or two very important aspects. If this Parliament was not allowed to carry on the basic reforms, which has brought revolutionary changes in our society, we would have been still in the 19th century. Concentration of land in the hands of a few in the country was to be broken for which the land reforms were necessary. In the name of rule of law, in the name of defending the fundamental rights of people, the court said that possession of land was a fundamental right, it cannot be taken away without paying compensation. We can imagine what would have happened in the country if there were no land reforms! If huge amounts of money had to be paid to landowners in the name of compensation, would the land reforms have been successful? Of course, land reforms have not been completely successful and the land has not yet gone to the tiller. But the concentration of land in a few hands is broken.

Likewise, when the Parliament made some legislations on the question of reservation, the harmonious relations between the legislature and the judiciary entered dire straits. The judiciary in the name of merit wanted to halt it. It is, of course, so in this type of issues. Naturally there was a lot of discontent and dissatisfaction among various sections of the people. Let us see how the judgment will come in this type of issues now. I would like to refer to the issues like bank nationalisation, nationalisation of several other resources, the abolition of privy purses which was the demand of the people. On all these issues there were some

people who wanted to say that fundamental rights were being taken away by the Parliament. In Kesavananda Bharati's case it was stated that the basic features of Constitution still cannot be touched. Of course, it is very vague. The case itself is not very clear. Though they say there is clarity, there is no clarity about it. The Constitution of this country has been framed by the Constituent Assembly. The rights of that Constituent Assembly later passed on to Parliament. That is the reason why we could go for the amendments to the Constitution whenever necessary.

I do believe that judiciary has got a very big role to play in this country. The countercheck of the judiciary is also very useful for us also at the same time. But they should not cross the *Lakshman Rekha*. If they do that, that will be very dangerous for the country.

I would like to mention that criticism in the name of vote bank politics is a very uncharitable type of comment. However, Parliament is making every legislation only on the basis of politics and only the rule of law can defend this country. This, as I said in the beginning, is a question of ideology. How do you look at the destiny of the nation if you do not want any change in the society, if you do not want any change in the country. Then, in the name of rule of law, all these reforms, all this type of developments and everything can be stopped. [\[KMR80\]](#)

Now, the most important thing is this – there is a criticism that Parliament is not doing its job or the legislature is not satisfactorily working. It is true; we should make a self-criticism and we should discuss these things. Unfortunately, the number of days of working of Parliament is getting reduced; some sorts of problems do come up in the functioning of Parliament; and we are unable to discuss issues.

Around our country, in Pakistan, Bangladesh, Nepal, Myanmar, etc., people are fighting for democracy, but here in India, we have democracy, but in this supreme body of democracy, that is Parliament, we are unable to discuss most important issues of the people. That is the reason why, dissatisfaction creeps in.

I do not think this type of weaknesses should make somebody interfere in the will of the people. As our friend was telling earlier, pending cases of 2.5 crore does not mean that the courts are not functioning. That should be set right; the legislature should be set right; and the harmonious relationship should continue. But certainly it should be accepted that Parliament or the legislature is supreme.

श्री लक्ष्मण सिंह (राजगढ़) : महोदय, मैं गुरुदास दासगुप्ता जी और बसुदेव आचार्य जी का आभार व्यक्त करता हूँ। अच्छा होता यदि आप इन तीन संस्थाओं के साथ-साथ मीडिया को भी जोड़ देते, क्योंकि पृजातंत्र में मीडिया की अनदेखी नहीं की जा सकती। कार्यपालिका, विधायिका और न्यायपालिका के साथ-साथ उन्हें भी जोड़ देते तो चर्चा और भी सारगर्भित हो जाती। लेकिन मैं फिर भी आपको बधाई देता हूँ।

मैं सबसे पहले कार्यपालिका की चर्चा करूँगा। कार्यपालिका में अगर आज सबसे बड़ी समस्या कोई है तो वह भ्रष्टाचार की है। भ्रष्टाचार बढ़ता जा रहा है, वह सुरसा की तरह मुंह फाड़े खाड़ा हुआ है। जब हम भ्रष्टाचार की चर्चा करते हैं तो कई लोग उदाहरण देते हैं कि भ्रष्टाचार अर्थशास्त्र में लिखा है, कौटिल्य ने लिखा है, उस समय भी था। अर्थशास्त्र में यह जरूर लिखा है कि यह हिसाब लगाना बहुत मुश्किल है कि मछली ने कितना पानी पिया। उसी तरह यह हिसाब लगाना भी बहुत मुश्किल है कि राजकीय कोष से कितना धन निकला और कहां गया। मैं उनसे सहमत नहीं हूँ। हम अगर भ्रष्टाचार को पूरी तरह समाप्त नहीं कर सकते तो उस पर अंकुश जरूर लगा सकते हैं। जब हम अर्थशास्त्र की चर्चा करते हैं, तो कौटिल्य ने आगे यह भी लिखा है कि भ्रष्टाचार पर रोक किस तरह लगाई जा सकती है। हम केवल भ्रष्टाचार को बढ़ावा देने की बात करें और अर्थशास्त्र में भ्रष्टाचार कम करने की जो बात लिखी गई है, वह न कहें, यह न्यायोचित नहीं है।

एक समस्या यह आती है कि सत्ता में जो दल होता है, कुछ दल हैं सारे दल ऐसे नहीं हैं, उनमें सत्ता का केन्द्रीकरण हो जाता है। जहां सत्ता का केन्द्रीकरण होता है, वहां भ्रष्टाचार बढ़ता है। जहां सत्ता का विकेन्द्रीकरण होता है, वहां भ्रष्टाचार कम होता है।

अभी हमारे एक साथी ने कहा। उन्हें कहने का पूरा अधिकार है, मैं उनकी आलोचना नहीं कर रहा हूँ। उन्होंने कहा कि अभी हमने रायबरेली का इंस्टीट्यूट के लिए जो पैट्रोलियम बिल पास किया है, हम सबको उसमें एक-एक महीने की तनख्वाह देनी चाहिए। ठीक है, यह उनका मत है, मैं इस बारे में कुछ नहीं कहता। लेकिन अच्छा होता यदि वे यह कहते कि हम सब संसद सदस्य एक-एक महीने की तनख्वाह उन विधवाओं को दें जिनके पति देश के लिए सीमा पर लड़ते हुए शहीद हुए हैं, तो अच्छा होता। अगर वे यह कहते कि हम एक-एक महीने की तनख्वाह उन विधवाओं को दें जिनके पुलिस अधिकारी पति आतंकवाद से लड़ते हुए शहीद हुए हैं, संसद सदस्य एक महीने की तनख्वाह उन लोगों को दें जो गरीब हैं, शिक्षा प्राप्त नहीं कर सकते या जो बीमार हैं, इलाज नहीं करवा सकते, तो और अच्छा होता। [\[N81\]](#)

किसी ने कर्प्शन के बारे में कहा है कि - it is a low risk and high profitability venture. इस भावना को बदलने की आवश्यकता है तभी एक पारदर्शी कार्यपालिका हम दिखा सके। मैं आपकी अनुमति से चीफ विजिलेंस कमिश्नर मिस्टर मितल को कोट करना चाहूँगा। उन्होंने कहा है कि the problems with the executive are following. पहली बात वह क्या कहते हैं-- Scarcity of goods and services. जो संसाधन कार्यपालिका को चलाने और भ्रष्टाचार को मितलने के लिए जुटाने चाहिए, उनका अभाव है, कमी है। दूसरी बात वह कहते हैं कि red tape and delay. तालफेताशाही और किसी भी कार्य को विलंब से करने की जो आदत कार्यपालिका की डल गयी है, वह बहुत बड़ा योड़ा हमारी कार्यपालिका के कार्य करने और भ्रष्टाचार को बढ़ाने में है। तीसरी बात वह कहते हैं कि lack of transparency in

Government in spite of passing the RTI Bill. फिर वह कहते हैं कि Delay in departmental inquiries. अगर कोई डिपार्टमेंटल इन्वैस्टिगेशन होती है, तो उसमें बरसों लग जाते हैं, लेकिन उसका कोई परिणाम नहीं निकलता।

अंत में, वह बहुत बड़ी बात कहते हैं कि जो अधिकारी जांच करते हैं जैसे आईएएस अधिकारी, आईएएस अधिकारी की जांच करेगा, तो निश्चित रूप से उसको बचावेगा। इसी तरह कस्टम आफिसर किसी कस्टम आफिसर की जांच करेगा, तो वह कोशिश करेगा कि कैसे उसे बचायें। यह जो परम्परा कार्यापालिका में चली है, वह न्यायोचित नहीं है इसलिए इसमें बदलाव लाने की आवश्यकता है। फिर हमारे देश की जो 100 करोड़ जनता है, उसमें लगभग साढ़े बारह प्रतिशत जो जनता है, उसमें या तो केन्द्र शासन, राज्य शासन के कर्मचारी या अधिकारी, बैंकों और पब्लिक सैक्टर अंडरटेकिंग्स के कर्मचारी या अधिकारी हैं। ये जो साढ़े बारह प्रतिशत लोग हैं, उनका दायित्व होता है कि बाकी के जो 88 करोड़ लोग हैं, उनको किस तरह न्याय देकर, किस तरह कार्यापालिका चलाकर बतायें, यह उनकी जवाबदारी है। जब वे अपनी अर्थोपेक्षा बनाने लगते हैं, और जनता से जितने दूर होते जाते हैं, तो कार्यापालिका के ऊपर अंगुलियां उठाती हैं।

उदाहरणस्वरूप, आज से 30-35 साल पहले देखते थे कि एक गांव में जब चुनाव होता था, तो गांव में पटवारी और थानेदार घूमकर बताते थे कि यहां-यहां वोट डालना है और कुछ नहीं करना है। उस समय जनता इतनी डरी हुई होती थी कि पटवारी और कलेक्टर के कहने पर ही वोट डालती थी। लेकिन आज वह स्थिति नहीं है क्योंकि देश में परिवर्तन आया है। यह परिवर्तन पंचायती राज या शिक्षा की वजह से आया है जो बहुत अच्छी बात है।

उपाध्यक्ष महोदय, यहां सीबीआई की चर्चा हुई। अब सीबीआई का डायरेक्टर कौन चुनता है? जो सीबीआई का डायरेक्टर चुनते हैं, उस समिति में कौन-कौन सदस्य होते हैं? उस समिति में होम सैफ्टी, पर्सनल सैफ्टी और रेवन्यू सैफ्टी होते हैं। ये लोग सीबीआई के डायरेक्टर चुनते हैं और सीबीआई की जो जांच होती है, अधिकतर इन लोगों के खिलाफ होती है। यह उचित नहीं है। सीबीआई के डायरेक्टर का चुनाव होता है, वह पारदर्शी तरीके से होना चाहिए और कोई रिटायर्ड जज या रिटायर्ड फौजी, ऐसे लोगों को इस समिति में रखना चाहिए। फिर हमारी कार्यापालिका का यह दायित्व है और यह घोषणा है कि हम नौ प्रतिशत ग्रेथेट हासिल करेंगे। अब नौ प्रतिशत ग्रेथेट हासिल करने के लिए आपको क्या-क्या अड़चनें आ रही हैं? विश्व बैंक की अभी एक रिपोर्ट निकली है कि जो बिजनेस स्टार्टअप रिपोर्ट है, कोई व्यक्ति यहां आकर बिजनेस करना चाहे, तो उसे कितना विलंब लगता है? उसमें हमारा भारत कहां ठहरता है? उसमें हम 134 वें स्थान पर हैं। चाइना हमसे 71 प्वाइंट आगे है क्योंकि चाइना में भ्रष्टाचार को रोकने के लिए बहुत प्रभावी कदम उठाये गये हैं। वर्ष 2004, यानी एक साल में चाइना में 772 केस करप्ट आफिशियल्स के खिलाफ किये गये और उन्हें सजा दी गयी। चाइना में एक साल में 25 हजार ब्रह्मचारी के केस में सजा दी गयी और 500 जजों को कनिवट किया गया। इस तरह की कार्यापालिका यदि कार्यापालिका अपनाती है, तो बहुत जल्दी हम लोग अपने लक्ष्य की ओर चल सकते हैं वरना बहुत कठिन होगा। जो इनकम टैक्स डिफॉल्टर्स हैं, जो टॉप टैक्सपेयर्स हैं, जो बड़े-बड़े औद्योगिक घराने हैं, कारपोरेट हाउसेज हैं, जो बड़े-बड़े अमीर लोग हैं, उन पर केन्द्र सरकार का 61 हजार करोड़ रुपया बकाया निकल रहा है। [MSOffice82] केन्द्र सरकार क्या कर रही है? इस धन की वसूली क्यों नहीं की जाती है? ये 61 हजार करोड़ रूपए धीरे-धीरे बढ़कर एक लाख करोड़ रूपए तक पहुंचने वाले हैं। हमें इस मामले में सख्ती से कार्य करना चाहिए। फॉली नरीमन साहब ने कहा है :

We, the people and not the representative of the people.

नेताओं की आड़ में अगर ये कारपोरेट हाउसेज टैक्स बचाते हैं तो वह उचित नहीं है और इसमें पारदर्शिता लाने की आवश्यकता है। I would like to quote what Shri Aurbindoji said in 1938:

"Dishonest financial practices promise a bad look out when India gets Poorna Swaraj. Mahatma Gandhi is already having bad calls about Congress corruption."

This is what Shri Aurbindoji told in 1938 and unfortunately, it is coming out true.

यही स्थिति NGOs के बारे में है। मैं NGOs का विरोध नहीं करता हूँ, लेकिन बहुत-से ऐसे NGOs चल रहे हैं, जिनमें भ्रष्टाचार व्याप्त है। एक अनुमान के अनुसार लगभग 10 से 15 लाख NGOs चल रहे हैं। इनमें से कुछ अच्छे भी हैं, लेकिनकुछ में भारी भ्रष्टाचार व्याप्त है। NGOs के बारे में एक नियम यह है कि उनके पास जो सरप्लस धन होता है, वह टैक्सबल नहीं होता है, मैं कोई वित्त-विशेषज्ञ नहीं हूँ, लेकिन संभवतः बड़े-बड़े औद्योगिक घराने अपना टैक्स बचाने के लिए इन NGOs को चलाते हैं। वित्तमंत्री जी को देखना चाहिए कि ऐसा नहीं हो। NGOs के लिए भी कई नाम जैसे NPO – Not for profit; VO – Voluntary Organisation; CSO – Civil Society Organisation; and CBO – Community Based Organisation हैं। NGOs काम करें, लेकिन जो भ्रष्ट NGOs हैं, उनके खिलाफ सख्ती से कार्यवाही होनी चाहिए।

जुडिशियरी के बारे में बहुत कुछ कहा गया है। मैं आपके माध्यम से सदन का ध्यान ट्रांसपैरेंसी इंटरनेशनल की वर्ष 2007 की रिपोर्ट की ओर आकर्षित करना चाहूंगा जिसमें हमारे बारे में बहुत आपत्तिजनक बातें कही गयी हैं। मैं भारद्वाज जी को बधाई दूंगा कि उन्होंने इसका पुरजोर खण्डन किया है, फिर भी आज हमारी जुडिशियरी को और अधिक सार्वजनिक बनाने की आवश्यकता है। जजों की नियुक्ति के अगर चर्चा करें तो वर्ष 1993 तक जजों की नियुक्ति में संसद का कुछ कहना होता था, लेकिन वर्ष 1993 में सुप्रीम कोर्ट के सामने एक पीआईएल दी गयी और सुप्रीम कोर्ट की बेंच ने अपना निर्णय दिया। बेंच के सात जजों ने इसके पक्ष में और दो जजों ने निर्णय के विपक्ष में मत दिये। इसके बाद भारत विश्व में पहला ऐसा देश बना जहां जजों की नियुक्ति स्वयं जज ही करते हैं, विश्व में अन्यत्र ऐसा कहीं नहीं होता है कि जजों की नियुक्ति जज ही करते हों। यूएस में जजों की नियुक्ति के लिए राष्ट्रपति सीनेट के पास जजों के नाम भेजता है, जिसे सीनेट सिम्पल मेजोरिटी से पारित करते जजों की नियुक्ति करती है। यूके में वकील प्रोफेसर मिनिस्टर को नाम देती है और प्रोफेसर मिनिस्टर जजों की नियुक्ति करता है, लेकिन हमारे यहां ऐसा नहीं होता है। मैं कहना चाहूंगा कि नेशनल जुडिशियल काउंसिल के बारे में सेकण्ड एडमिनिस्ट्रेटिव रिफॉर्मस कमेटी की रिपोर्ट है, उसे तत्काल लागू करना चाहिए क्योंकि आज ढाई करोड़ मुकदमे हमारे जिला और तहसील न्यायालयों में चल रहे हैं, लगभग 35 लाख मुकदमे हाईकोर्ट में चल रहे हैं। इन मुकदमों का निपटारा कैसे हो? अगर जजों की संख्या और हमारी आबादी का अनुपात देखें तो स्थिति बहुत आश्चर्यजनक है। हमारे यहां दस लाख की आबादी पर दस या बारह जज हैं, जबकि यूएस में 107 जज हैं और यूके में 51 जज हैं। इसलिए जजों की संख्या बढ़ाना बहुत आवश्यक है। तेजस्विनी के बारे में माननीय सदस्यों ने कहा है। समय के अभाव में मैं तेजस्विनी के बारे में कुछ नहीं कहूंगा। मैं आपका ध्यान न्याय पंचायतों की ओर दिलाना चाहूंगा। वर्ष 1993 में हमने संविधान संशोधन करके पंचायती राज व्यवस्था लाए और यह बात कही थी कि न्याय पंचायतें जल्द ही गठित करेंगे। [R83] आज 14 वर्ष हो गए हैं, लेकिन न्याय पंचायतों का गठन अभी तक नहीं हुआ है। उपेन्द्र बवशी कमेटी की रिपोर्ट केन्द्र सरकार के पास विचाराधीन है। उसमें न्याय पंचायतों को शुरू करने की बात कही गई है। मैं चाहूंगा जल्द से जल्द इन न्याय पंचायतों को शुरू किया जाए।

हजारों वर्ष पूर्व हमारे आदिवासी अपने-अपने न्याय पंचायत करके वहीं फैसला कर लेते थे। अगर हम ऐसी न्याय पंचायतों का प्रावधान करते हैं तो 10,00 नए कोर्ट बनेंगे और 50,000 की आबादी पर एक न्याय करने वाला बैठेगा।

उपाध्यक्ष महोदय, आपकी अनुमति से मैं एक किताब 'Encyclopaedia of primitive tribes in India' से कोट करना चाहूंगा। इसमें बताया गया है कि किस तरह हमारे आदिवासी, अनुसूचित जनजाति के लोग न्याय करते थे। एक 'कोलम' जाति है, जो मध्य प्रदेश में, छत्तीसगढ़ में और अन्य प्रदेशों में भी पाई जाती है। उस किताब में लिखा है :-

"The headman formerly had considerable powers being entrusted with the distribution of land amongst the cultivators and exercise civil and criminal jurisdiction with the assistance of the Panchayats."

यहाँ नहीं हम लोग भी इस तरह से हजारों वर्षों से आदिवासियों की जो पंचायत चली आ रही है, उसे लीगल साइंटिफिक का रूप देकर न्याय पंचायत के बिल में इसका प्रवधान करें, जिससे आज जो न्यायलयों पर अधिक बोझ है, वह कम हो।

मैं इतना ही कहकर अपनी बात समाप्त करता हूँ और आपको धन्यवाद देता हूँ कि आपने मुझे इस गम्भीर विषय पर बोलने की अनुमति दी।

SHRI S.K. KHARVENTHAN (PALANI) : Sir, I thank you for the opportunity you have given me to participate in the discussion on the harmonious relations between the three organs of the state Legislature, Judiciary and Executive. Emphasizing the need for the same this resolution has been moved by our esteemed colleagues Shri Gurudas Das Gupta.

Legislature, Judiciary and Executive are the three organs of the state with powers to operate as three separate entities as provided for in the constitution. These three can not impose themselves on one another. There are certain other constitutional bodies like Union Public Service Commission that are there independent of these three organs of the state. Election Commission and Chief Election Commissioner are entrusted with the responsibility of conducting elections in the country.

Our constitution has demarcated the role with defined powers for these three organs of the state. One can not and should not overstep in to other's domain. They can not exchange their role and powers also. It is very clear that the Executive normally never interferes in the functioning of Judiciary. But we have been witnessing the trend of Judiciary interfering in the functioning of both the Executive and even the Legislature. For instance, when the Modern Architect of the country Pandit Jawahar Lal Nehru was the Prime Minister of this country, there arose a need to bring about Land Reforms Act. Judiciary came in the way of that legislation. At that time our Prime Minister Nehru said that there can not be a third Chamber of Parliament to discuss on a legislation as we have only a bicameral Parliament to frame laws of the land as per the aspirations of the people.

The interference of Judiciary in the functioning of Legislature is not happening only now at present. The need for our first Constitution Amendment in 1951 came about because of the judiciary's interference in the functioning of the executive. If I may elaborate it, I may have to cite a law suit between the State of

* English translation of the speech originally delivered in Tamil

Madras and one Mr. Shenbagam Durairaj. It is a reported Judgement in AIR 1951 Supreme Court 226. When the then Government of Madras issued a G.O to provide for reservation in Educational Institutions for students hailing from depressed classes and other socially and educationally backward classes including economically backward sections of the society, a petition was filed before Madras High Court claiming that the reservation was violative of Article 29 (2) of the constitution.

Though the Government of Madras advanced argument reiterating that it was the duty of the Government to provide educational facilities to the backward classes according to Article 46 of the constitution the plea from the Government was turned down by both the High Court and the Supreme Court. Since the G.O. was struck down by the Courts of Law, there arose a need to make the first ever amendment to our constitution. The then Union Law Minister Dr. Ambedkar, moved a Bill for that amendment of the constitution. Judiciary has been giving directions to Executive and Legislature because it has some jurisdiction over their functioning. Under Article 226 (1) failure on the part of the Administration can attract writ of mandamus. Judiciary has that power. In case when the law enacted by the legislature is against the interests and welfare of the people, law courts are empowered to call the foul. But the Judiciary can not interfere in the functioning of the Executive frequently in every matter. Similarly Judiciary can not overstep in to the affairs of legislature almost on a day to-day basis. People have a general feeling that the Judiciary has been interfering in the affairs of Administration and Legislature.

Let me point out to the suit Jagamdabika Pal Vs Union of India in 1988 and Anil Kumar Sahu Vs Union of India 2002, through which it was painfully felt that Judiciary was overstepping too much in the affairs of the Executive. Recently the Courts of Law raised a moot question whether the Parliament has the power to debar and remove the erring Members of Parliament. As

early as in 1951 there was an instance when Shri H.C. Mudgal a Member of Parliament reportedly took money to raise a question on the floor of the House. The Prime Minister of the day Pandit Jawaharlal Nehru himself moved a resolution to strip him of his membership from the House. A committee was set up to inquire in to the conduct of the Member whether he had obtained pecuniary benefits for discharging his duty as a Member of Parliament. Later on a 227 page report was submitted to the House. Based on which, the action was ratified by the House and Shri Mudgal was removed.

In our present Lok Sabha, in the year 2005, eleven Members of Parliament belonging to several parties were to be removed for their misconduct in misusing their privileges. Our Presiding Officer, Hon. Speaker constituted a committee of members of Parliament to go in to the question of their misconduct whether they had taken pecuniary benefits for the normal discharging of their duty as Members of Parliament. On 21.12.2005 a report was received from the committee. On 23.12.2005 those members found guilty were removed. A litigation came up as a suit between Raja Ram Pal Vs the Speaker of Lok Sabha. Judiciary was found to be transgressing in to the jurisdiction of the legislature in taking up this petition and they went to the extent of issuing a notice to the Speaker. The Presiding Officers of all the legislative bodies of the country met and resolved to declare that Judiciary has no power to intervene in the functioning of Legislature. Our Hon. Speaker Shri Somnath Chatterjee took initiative to uphold the rights and powers of our Legislature. We were able to hold our heads high because we upheld our right to establish the measures ourselves. I would like to place on record my deep appreciation for his action in asserting that Judiciary can not overstep in to the domain of the Legislature. At that time our Hon. Speaker quoted in his observation the opinion of Shri Alladi Krishnaswamy Iyer, "Judiciary is not a Super-Executive or a Super-Legislature".

It is only because of Judiciary going beyond its brief on certain occasions which is becoming rampant now, the need for this kind of discussions arise. At the same time we can not belittle the commendable job done by the Judiciary in their allowing certain public interest litigations. So many of our public transport vehicles were withdrawn from our roads and were run on CNG as per the directions of the higher Courts to overcome the problem of pollution in our National capital. We can not ignore. Similarly the judicial pronouncements on ensuring the safety of the pedestrians on the road needs to be remembered and appreciated. But when Judiciary fails to know its limits, we can not but condemn it. There are about two and a half crores of cases that are pending before the Courts of Law. In Supreme Court alone about thirty five thousand suits are pending. For instance, the case filed by a contractor who constructed our India Gate and other official buildings as early as in 1960 has not been taken up as yet. Atleast about ten such cases are pending for long. In Delhi alone, 15 lakh criminal cases are to be disposed off still. Due to Judicial enthusiasm some cases get undue priority. So Judicial officers must concentrate on to their jobs and must not overstep. Then alone all the three organs of the state can function effectively and independently.

In our democratic country, all the officers, staff and employees are selected by a body. Legislative Assembly Members and Members of Parliament are elected by the people. But Judges are appointed by Judges themselves. Judicial officers are selected and appointed by themselves. A Judge can get his ward or kith and kin appointed by influencing his fellow Judge. We must change the judicial appointment procedures where there is scope for one Judge getting his son elected in lieu of other Judge getting his ward or daughter or kin selected. The appointment of Judges must be based on reservation system where the depressed classes and other backward classes are also represented. As such the Judiciary is not accountable to anyone. Government employees are answerable to the Government. Executive is accountable to Legislature and Legislators are accountable to the people. But, Judges go scot free even if they commit unfair things. They are left to themselves. This must be checked and regulated. There must be a panel to enquire in to the conduct of Judges against whom charges are levelled. Only when the Union Government initiates suitable action in this regard, we can make our Judiciary a responsive and accountable one. Only then we can save our Judiciary. All the three organs of our state must be accountable to our constitution and through which our people of the country.

Reiterating my view that Judiciary must not overstep and all the three organs of the State namely Legislature, Executive and Judiciary must have harmonious relations, let me conclude my speech.

श्री रामदास आठवले (पंढरपुर) : महोदय, आज बहुत ही गंभीर विषय पर चर्चा चल रही है। श्री राजेन्द्र प्रसाद की अध्यक्षता में कांस्टीट्यूशनल असेम्बली का निर्माण किया गया था। इसी सेंट्रल हाल में बहुत से माननीय सदस्यों ने बहुत गंभीरता से, भारत के नवशे को अपने सामने रखते हुए, भारत की पार्लियामेंटरी डेमोक्रेसी को मजबूत करने के

लिए, डॉ. अम्बेडकर की अध्यक्षता में ड्राफ्टिंग कमेटी बनाई गई थी। लोक सभा, विधान सभा, न्यायपालिका और एडमिनिस्ट्रेशन का आपस में कैसा रिलेशन होना चाहिए, यह जिम्मेदारी कांस्टीट्यूशन ने हर एक को सौंपी है। 15 अगस्त 1947 को हमारा देश आजाद हुआ था और 26 जनवरी 1950 को हम लोगों ने संविधान को स्वीकार किया और इसे 57 साल पूरे होने जा रहे हैं। आजादी प्राप्त होने को 60 साल पूरे हो गए हैं। यह अभिमान की बात है कि हमारे देश में बहुत सी भाषाएं, जातियां हैं। इसके बावजूद भी हमारी पार्लियामेंटरी डेमोक्रेसी को कोई भी खत्म नहीं कर सकता है। बहुत से लोगों ने देश को बदनाम करने का प्रयत्न किया होगा, हम आपस में झगड़ते भी हैं, लेकिन भारत के नागरिक होने के नाते हम एक दूसरे का आदर भी करते हैं। भारत की डेमोक्रेसी बहुत मजबूत है। पाकिस्तान में हमने देखा है कि बहुत बार आर्मी का रुत होता है। जनरल मुर्शफ जी ने अभी-अभी आर्मी का पद त्यागा है, लेकिन हमारे देश में कोई आर्मी वाला पद पर होते हुए राष्ट्रपति नहीं बन सकता है। अगर रिटायर होने के बाद राजनीति में आए, तो बात दूसरी है। पार्लियामेंट सबसे सुप्रीम है। कानून बनाने का अधिकार पार्लियामेंट को है। कानून को अमल में लाने की जिम्मेदारी प्रशासन की है। अगर कानून को ठीक ढंग से लागू नहीं किया जाता है, तो न्यायपालिका को भी अधिकार है। लेकिन आज कल हमने देखा है कि पार्लियामेंट द्वारा कानून बनाने के बाद भी न्यायपालिका पार्लियामेंट पर सुप्रीम बनने की कोशिश करती है। इस कारण हमारी पार्लियामेंटरी डेमोक्रेसी को बहुत बड़ा खतरा है। हम न्यायपालिका का आदर करते हैं, लेकिन न्यायपालिका की भी जिम्मेदारी है कि जो कानून हमने बनाया है, उस कानून के दायरे में उस पर जजमेंट देने की आवश्यकता है। [R84]

सभी लोग कोर्ट में जा सकते हैं और सभी को वहां जाने का अधिकार है। बहुत बार एजुकेटिड लोगों को कोई कुछ नहीं समझता है। हम सभी एक दूसरे पर डिपेंडेंट हैं। एक दूसरे का आदर करने से लोकतंत्र मजबूत हो सकता है, देश मजबूत हो सकता है। भारत का संसदीय लोकतंत्र सबसे अच्छा है और इसकी चर्चा पूरी दुनिया में है जिस पर हमें बहुत अभिमान है। जब पूना पैवट महात्मा गांधी और बाबा साहेब अम्बेडकर जी में हुआ था तो हमें इलैवशन मिले। बाबा साहेब अम्बेडकर जी ने सैंपरेट इलैवटॉरैट की मांग की थी लेकिन गांधी जी का कहना था कि अगर हिन्दू समाज का बंटवारा जो जाएगा तो उसे नुकसान हो सकता है। इसलिए गांधी जी पूना में अनशन पर बैठे थे। ऐसे समय बाबा साहेब जी ने कंप्रोमाइज किया था। यह विषय इससे संबंधित नहीं है। दलित समाज में जन्म होने के बावजूद भी उन पर संविधान लिखने की जिम्मेदारी आई। उन्हें ड्राफ्टिंग कमेटी के चेयरमैन के पद पर नियुक्त करने का बहुत बड़ा काम महात्मा गांधी जी के आदेश पर हुआ था, उसमें पंडित जवाहरलाल नेहरू जी, राजेन्द्र प्रसाद जी थे, ये सब संविधान सभा में थे। जब राजेन्द्र प्रसाद जी, पंडित जवाहर लाल नेहरू जी, सरकार वल्लभभाई पटेल जी, राजा जी को संविधान लिखने का काम दिया था तब राजेन्द्र प्रसाद जी ने कहा था कि संविधान के सही शिल्पकार बाबा साहेब अम्बेडकर जी हैं, संविधान लिखने में सभी का पार्ट तो है लेकिन सबसे ज्यादा भारत का संविधान लिखने की जिम्मेदारी अम्बेडकर जी ने निभायी थी। इसका हमें बहुत अभिमान है। जिस समाज को शिक्षा लेने का मौका नहीं मिलता था ऐसे समाज में पैदा होकर बाबा साहेब जी बैरिस्टर बन गए, लंदन में कोलम्बिया यूनिवर्सिटी में शिक्षा ली। उन्होंने सर्वधर्म समभाव का संदेश दिया - चाहे कोई हिन्दू हो, मुसलमान हो, ईसाई हो, क्रिश्चियन हो, बुद्धिस्ट हो, जैन हो, सभी को उन्होंने संविधान में न्याय देने का प्रयत्न किया। हमें बहुत गर्व है कि देश का संविधान लिखने का काम बाबा साहेब अम्बेडकर जी ने किया है। यह आज का विषय नहीं है।

दलित समाज को बहुत बार अपमानित करने का काम होता है लेकिन हम अभिमान के साथ कहते हैं कि रामायण लिखने वाले वाल्मिकी हमारे थे, महाभारत लिखने वाले व्यास हमारे थे, देश का संविधान लिखने वाले बाबा साहेब अम्बेडकर जी भी हमारे समाज के थे। संसदीय लोकतंत्र को मजबूत करने की जिम्मेदारी हम सब लोगों की है। हम सब बाबा साहेब अम्बेडकर जी की बढौलत यहां आए हैं, आप भी डिप्टी स्पीकर हैं। हम आगे बढ़ रहे हैं। एक प्रेस कॉन्फ्रेंस में मुझ से एक पत्रकार ने पूछा था कि हमारे साथ ब्राह्मण लड़कियां क्यों शादी करती हैं, मैंने कहा कि ब्राह्मण लड़कियों को हम अच्छे लगते हैं। ... (व्यवधान) कहने का मतलब यह है कि बाबा साहेब अम्बेडकर जी ने देश का संविधान लिखा जो हमारे लिए बहुत अभिमान की बात है। अगर हम एक दूसरे के साथ अच्छे संबंध रखेंगे तो भारत का लोकतंत्र बहुत मजबूत हो सकता है। इसके लिए हम सब को काम करना चाहिए। यह बहुत महत्वपूर्ण विषय है। एक दूसरे के साथ अच्छे संबंध रख कर हम भारत को वैभवशाली बनाएं और काम करें।

SHRI ABDUL RASHID SHAHEEN (BARAMULLA): At the outset of my brief submission about this subject, I would like to place on record my thanks to the Mover of this Resolution and thanks to the hon. Speaker who has permitted the discussion. In this august House today, about this important subject, there were many thought-provoking speeches and some of the very important points have been highlighted by hon. Members who spoke before me. Mr. Mohan Singh has spoken about the subject. I associate fully myself with his speech, his suggestions and the concerns he has shown about the disharmony of the three organs of democracy. Shri Kishore Chandra Deo has also spoken very well and drawn certain very important issues before this House and his concern about the despotic activity of Judiciary, judicial despotism as he has mentioned here. That is very unfortunate because the equilibrium in the three important branches of the State – Judiciary, Executive and Legislature – in my opinion, they are not parallel. Parallels cannot meet anywhere. Our Parliament is not supreme. Our Parliament is subject to judicial review in certain matters.

The Judiciary can look into the law we make whether it is strictly according to the Constitution or not. We can make it again and we can improve upon it. Judiciary also is not supreme. Judiciary has also certain limitations and the Executive also cannot be supreme. So, in my opinion, this is a triangle. This is an equilateral triangle which meets to do a bigger function and performance of running the State. If one of the sides of the triangle shortens or does not perform the function, then another side plays a bigger role and that puts some sort of disharmony or sort of inequilibrium. So, one of the leading jurists has mentioned about this and I quote, "Separation of powers are poised on the liquid boundaries. When the balance is rocked, controversies arise and efforts are made by the polity as a whole to put the balance right." My concern is that the three pillars are equal and they have to keep their lengths and their angles equal. If they change, the equilibrium goes wrong. So, the question is in case something happens, as we have seen recently referring to, then the balance is disturbing. Luckily, we had Shri Somnath Chatterjee as our Speaker, when something happened between the courts and Parliament he put his foot down and he did not allow the boat to rock. Otherwise, it could have been a bigger controversy, but there are possibilities that sometimes, in case all the three branches are not functioning in harmony, disharmony can lead to a problem. I must remind this august House about our neighbouring country. What an unfortunate thing has happened about the Judiciary and the Executive in Pakistan and that has put the whole country in a problem. We are lucky enough to have democracy and we are lucky enough to have it stabilized, but the question is whether all the three branches perform their functions properly. Sir, the Executive is a very important branch.

It is the front pillar of democratic system.

18.49 hrs.

(Shri Varkala Radhakrishnan *in the Chair*)

If Executive does not perform, who will take care. What has happened recently, as some of our colleagues have just now mentioned, that in case of Delhi where there was a lot of pollution, the Executive did not take appropriate action in time? Judiciary had to step in and everybody appreciated it. Once they (the court) got encouragement in this case, it meant that Executive is not performing its function properly. Procrastination, unfortunately, has shortened its performance, shortened its height. So, Judiciary has stepped in. If Judiciary steps in and you encourage it that way, then, unfortunately, equilibrium can tilt. The equilibrium should not tilt. My respected colleague Shri Suresh Prabhu talked about another aspect and he probably wants a total transformation of the system. It is my feeling that we are not at a level where we can totally transform the system because we are not America and we should not be America. We cannot go for Presidential form of Government and we cannot make the pillars parallel. So, the system which has been given to us by the founding fathers of our Constitution is good, we have to take care of this and keep the balance intact.

During this debate in this august House, the important question which has cropped up is that if one of the pillars does not perform its job according to the requirement so that the equilibrium remains intact, who can look after that and what can we do? In our democratic system, over a period of time, another pillar has steadily cropped up, as one of my colleagues has mentioned here and that is the media. The media is also an important pillar. The media has to oversee the functions of all the three pillars of this democratic system and they have to perform their job properly because transparency is very important. Now, transparency is there in the case of Parliament and transparency is also there in the case of Executive, but transparency is not available in the case of Judiciary. So, we have to very respectfully, without rocking the boat, without rocking the balance, we must think, the Parliament must think, and outside the Parliament also we must keep this debate alive till we come to a decision as to how we can set it right. How can the Judiciary also be made answerable so that we do not have any threat of the balance going wrong? We have to find an answer to this question.

Sir, we have taken up this very important discussion today in this august House and some points have cropped up with regard to what the Executive has to do. The Executive, being the front pillar, has to do its job very carefully and they have to deliver. In case they do not deliver, what will happen? That will be an accident and that accident should not happen.

We have got democracy in this country out of the sacrifices of the people. There are certain aberrations. Shri Suresh Prabhu mentioned here that we are now at a stage where we can just send a Post Card to the Supreme Court about our case and it will be taken care of. I would like to say to my hon. colleague that 2.5 crore cases are pending in different courts of our country. If a petitioner among them sends a Post Card to a Supreme Court Judge or any other Judge, what will the Judge answer to him? If somebody is languishing in jail for more than 14 years or 16 years without any trial or the trial is dragging on, if he sends a Post Card to a Judge of the Supreme Court or any other Judge, what answer will the Judge give to him?

We have a lot of problems, but we should not think that we can have crash with the system. We have to maintain the equilibrium. For maintaining the equilibrium, all of us have to think as to how we can set it right. If we can give some valuable suggestions to set it right, it will be better. One good suggestion which has come up here in this discussion is that a Judicial Service Commission must be constituted immediately. In case the Judiciary goes wrong somewhere, what is the forum where we can talk about it? In the Parliament also, we are highly careful. We do not talk about *sub judice* matters and we do not talk about judges, if they do something wrong.

So, we have to find out a solution for this because the judges cannot be supreme, as Parliament cannot be supreme and Executive cannot be supreme. Let all the three pillars keep the balance and let all of us think as to how we can solve this problem.

DR. SEBASTIAN PAUL (ERNAKULAM): Mr. Chairman, Sir, we are discussing a very important matter touching upon the constitutional scheme of our Republic. The three branches of the State are functioning under the well known principle propounded by Montague which is separation of powers and that is one of the basic structures of our Constitution also.^[R86] That means the three branches of the Government should function independently, within the parameters and limitations prescribed by the Constitution. In that way, a very beautiful, sophisticated and delicate constitutional principle has been evolved, that is checks and balances. By checking each other, you are maintaining a balance and with that balance our Republic is moving ahead.

But, of late, especially after Emergency, we witnessed a new phenomenon, that is, judicial activism, first in the form of

Public Interest Litigation and then judicial activism found many new pastures. Now, we feel that our Judiciary is heading towards judicial despotism that has to be checked. Naturally, some occasion may arise where some over-stepping may happen, but we have to be careful, we have to be responsible and we have to learn from our experience. There is certainly -- it is natural also -- a grey area in between these three branches and I think that grey area is intentional. That grey area provides the much needed leeway for constitutional manoeuvring avoiding friction, avoiding acrimony and ensuring harmony.

An important feature about Judiciary, which disturbs us of late, is the changing attitude of Judiciary. The philosophy of the judges has changed, especially in this age of globalisation and liberalisation, the attitude of our judges has changed. The attitude of the Judiciary itself has undergone a great transformation and we feel or the general public feels that the Judiciary is lacking in public accountability as well as commitment to the people, commitment to the society.

What is the root cause of this trouble? The constitutional scheme provides a role for the Executive to play in the selection and appointment of judges. But the Judiciary has *suo motu* changed that rule or misinterpreted that also in a way enabling the Judiciary to make appointments. Now, the judges are making appointments of judges. As has been pointed out by my colleagues, even in the United States the appointment of judges is subject to the scrutiny of the American Congress. So, we have to do something. We have to restore the constitutionally prescribed role of the Executive in the selection of judges. At the same time, corruption, inefficiency, backlog and all those things are disturbing us. So, we have to make our judges accountable.

Our theme is harmonious relationship among the three branches of the Government. But here we are concerned only with the Judiciary. What about the other organs? Is there any harmonious relationship between the Executive and Legislature? What is the importance of Parliament? We are all saying that Parliament is supreme, but day by day the credibility and role of Parliament is being eroded.

MR. CHAIRMAN : If you wish, you can continue tomorrow.

DR. SEBASTIAN PAUL : If permitted, I will continue tomorrow.

MR. CHAIRMAN: All right.

MR. CHAIRMAN: The House shall now take up Special Mentions.[\[r87\]](#)

Shri Lonappan Nambadan.

19.00 hrs.