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Title: Further discussion on need for harmonious functioning of three organs of State i.e. Legislature, Judiciary and Executive raised by Shri Gurudas Dasgupta on 3.12.2007 (Not concluded).

MR. DEPUTY-SPEAKER: Yesterday, when the House was adjourned, Dr. Sebastian Paul was on his feet. He has already taken seven minutes. I would request him to continue his speech.

DR. SEBASTIAN PAUL (ERNAKULAM): Sir, an independent judiciary with power of judicial review is a prominent feature of our Constitution. At the same time, we are not subscribing to the extreme view of judicial supremacy. The harmonization which our Constitution has effected between parliamentary sovereignty and a written Constitution with a provision for judicial review is unique. An absolute balance of power between the different organs of Government is impracticable. It is only natural that the judiciary will assume supremacy under its power of interpretation of the Constitution. It is the safety valve or the balance wheel of the Constitution. The Constitution is what the Supreme Court says. Our Constitution wonderfully adopts a *via media* between the American system of judicial supremacy and the English principle of parliamentary supremacy. Our Constitution places the supremacy at the hands of the Legislature as much as that is possible within the bounds of a written Constitution. But that balance between parliamentary sovereignty and judicial review is seriously disturbed now, and that is why we are engaged in this serious discussion.

Before concluding, I earnestly urge upon this august House to take steps to restore the lost role of the Executive in the appointment of judges. Sir, nowhere in the world there is such a situation of the judges making judges. The present process of making a judge is opaque; it should be transparent. A National Judicial

Council to conduct inquiries into allegations of incapacity or misbehaviour by High Court and Supreme Court judges shall be constituted at the earliest by passing the Judges (Inquiry) Bill which is pending in this House.

[h28]

प्रो. रासा सिंह रावत (अजमेर): मान्यवर उपाध्यक्ष महोदय, मैं माननीय गुरुदास दास गुप्ता जी द्वारा प्रस्तुत प्रस्ताव कि लोकतंत्र के तीनों स्तंभों के बीच में सौहार्दपूर्ण संबंध होने चाहिए, उस संदर्भ में अपने विचार व्यक्त करना चाहूंगा। जैसा सभी जानते हैं कि भारत का संविधान एक पवित्र दस्तावेज है। हमारे देश के स्वाधीनता सेनानियों ने लगभग 200 वर्षों तक अंग्रेजों से संघर्ष करते हुए और उस समय जनता की आवश्यकताओं की जो-जो अनुभूति उनको हुई, उन सारी बातों को दृष्टिगत रखकर, उन्होंने भारतीय संविधान का निर्माण किया। भारतीय संविधान सभा ने काफी समय लगाकर सब बातों पर विचार करने के पश्चात् ही भारतीय संविधान को अंतिम स्वरूप दिया। आज हम गर्व के साथ कह सकते हैं कि भारत विश्व का सबसे बड़ा लोकतंत्र है। लोकतंत्र का मूल आधार भारत का संविधान है। भारतीय संविधान के अगर तीनों स्तंभ भली प्रकार से अपने कर्तव्यों की अनुपालना करें, तो मैं समझता हूँ कि तकरार की कभी नौबत ही नहीं आएगी। लोकतंत्र के तीन स्तंभ--कार्यपालिका, विधायिका और न्यायपालिका माने गये हैं। सबसे पहला स्तंभ विधायिका (संसद) है जो जनता के प्रति उत्तरदायी है। चूंकि जनता सर्वोच्च है, यदि हम कहें कि सर्वोच्च सत्ता जनता में अंतर्निहित है, तो इसमें तनिक मात्र भी अतिशयोक्ति नहीं होगी, क्योंकि जनता ही जन-प्रतिनिधियों को चुनकर विधायिका का निर्माण करती है। इसलिए सांसद हो या विधायक, उनको चुनने वाली जनता है। एक प्रकार से लोकतंत्र की पृष्ठभूमि जनता के अंदर निहित है और जनता द्वारा चुने हुए प्रतिनिधि संसद में आते हैं। इसलिए संसद के अंदर लोकतंत्र की पृष्ठभूमि निहित है। इसलिए संसद सर्वोच्च है। जब जनता सर्वोच्च है और जनता के द्वारा चुने हुए प्रतिनिधि भी सर्वोच्च हैं, तो विधायिका भी सर्वोच्च है। विधायिका कानून बनाने वाली संस्था है। उसे कानून बनाने का अधिकार दिया गया है। कानून बनाने के बाद उसे लागू करने का काम एग्जीक्यूटिव को दिया गया है, कार्यपालिका को दिया गया है। अगर उन कानूनों में कोई खामी रह गयी है, भली प्रकार से उनका पालन हो रहा है या नहीं, इसे देखने का काम न्यायपालिका को दिया गया है। इस प्रकार से लोकतंत्र के तीनों स्तंभ अपने-अपने स्थान पर भली प्रकार से कार्य करें, तो इस प्रकार के टकराव की नौबत ही न आये। महोदय, इससे कोई इंकार नहीं कर सकता कि लोकतंत्र के व्यापक दृष्टि में, सर्वोच्च राष्ट्र दृष्टि में और जनता के कल्याण के लिए जो तीनों स्तंभ हैं, जो तीनों महत्वपूर्ण आर्गन्स हैं, उनके अंदर भली प्रकार से समन्वय और सौहार्दपूर्ण वातावरण होना चाहिए। मुझे एक कवि की कुछ पंक्तियां याद आ रही हैं : "ज्ञान दूर कुछ, किर्या भिन्न है, इच्छा वर्यो पूरी हो मन की, एक दूरसे से न मिल सके, यही विडम्बना है जीवन की।" यह श्योरी हमारे संविधान में है कि जो ज्ञान है, वह अलग है और जो किर्या है, वह अलग हो रही है। मैं एग्जीक्यूटिव का एक उदाहरण देना चाहूंगा। कार्यपालिका के ऊपर सबसे अधिक जिम्मेदारी आती है कि वह विधायिका द्वारा बनाये हुए कानूनों का पालन करये, निर्णयों का पालन करये, किर्यानिवत करये। लेकिन जब से गठजोड़ सरकारें आने लगी हैं, खासकर अभी यूपीए की सरकार जब से आयी है, उसमें हरेक छोटे-छोटे दल बड़े दलों पर अपनी डिक्टेटोरशिप चलाना चाहते हैं। परिणामस्वरूप बड़ा दल कोई निर्णय नहीं ले पाता है और सत्ता में बने रहने के लिए जब वह कोई निर्णय नहीं ले पाता है, तो कार्यपालिका पंगु हो जाती है। वह कोई कार्य नहीं कर सकती है। जब कार्यपालिका अपने दायित्वों का निर्वहन नहीं कर पायेगी, तो विवश होकर मजबूरी के अंदर न्यायालय को हस्तक्षेप करना पड़ेगा, यानी न्यायपालिका आगे आयेगी। आखिर जनता की कोई न कोई

तो सुनने वाला हो। वैसे भी कार्यपालिका ब्यूरोक्रेट्स का सहारा लेती है, नौकरशाही का सहारा लेती है और नौकरशाही वातानुकूलित कक्षों में बैठकर जो कुछ लिख दे, जो कुछ निर्धारण कर दे, जो कुछ निर्णय कर ले और नीति का जो कुछ रास्ता अपनाये, ये उसके ऊपर विड़िया बैठा देते हैं। इनको सोचना चाहिए कि जो विधायिका है, जिसने सारा विचार-विमर्श करने के बाद हमको कार्य करने के लिए अधिकार प्रदान किये हैं, हमको चुना है, [MSOffice29] [R30] आज भी विधायिका में से चुने हुए जो लोग हैं, उनमें से और संसद में चुनकर आए हुए लोगों में से ही आप लोग लिए जाते हैं। इसलिए आपमें भी वह शक्ति निहित होनी चाहिए, शक्ति का भाव होना चाहिए। अगर वह भाव नहीं होगा तो कार्यपालिका निर्णय नहीं ले पाएगी, जैसा कि हो रहा है। परिणामस्वरूप जनता को पी.आई.एल. का सहारा लेना पड़ता है अथवा दूसरा कोई सहारा लेकर न्यायालय की शरण में जाना पड़ता है।

मान्यवर, आज इन तीनों अंगों के अंदर कमजोरियां आ गई हैं। इसका एक मुख्य कारण मैं बताना चाहता हूँ। व्यक्ति समाज में से ही आता है। चुने हुए व्यक्ति को भी देश की जनता यहां भेजती है। इसलिए उसके अंदर मानवीय मूल्यों के लिए, राष्ट्रीय मूल्यों के लिए, राष्ट्रीय मान-मर्यादा के लिए भावना और सम्मान होना चाहिए। हमारे कई क्रांतिकारी देश को आजाद कराने के लिए फांसी के तख्त पर चढ़ गए थे। कड़्यों ने गोलियों खाईं और अंडमान की काल-कोठरी में लाठियां सहीं। यह सब कुछ इसलिए किया क्योंकि उन्होंने सोचा था कि जब हिन्दुस्तान आजाद होगा तो हम अपने ढंग से उसे मजबूती से आगे बढ़ाएंगे और भारत को विश्व में सर्वोपरि राष्ट्र बनाकर रहेंगे।

जैसा अवसर कहा जाता है - Man is the major factor, मनुष्य जो है वह सबसे बड़ा कारण है। व्यक्ति में जब संस्कार नहीं बनेंगे, लोकतंत्रीय संस्कार नहीं होंगे, देशभक्ति के भाव पैदा नहीं होंगे, जनता के प्रति सेवा की भावना पैदा नहीं होगी, भारतीय संविधान के प्रति निष्ठा पैदा नहीं होगी, तो फिर वह उत-पटांग कार्य करेगा और अतिक्रमण के लिए तैयार रहेगा।

उपाध्यक्ष महोदय : कृपया समाप्त करें, क्योंकि आपकी पार्टी के अभी पांच और सदस्यों को बोलना है।

प्रो. रासा सिंह रावत : मैं यह कहना चाहता हूँ -जैसा पीएंगे पानी, वैसी बोलेंगे वाणी। जैसा करेंगे संग, वैसा चढ़ेगा रंग। जैसी होगी दृष्टि, वैसी करेंगे सृष्टि। जैसा होगा विचार, वैसा बनेगा आचार। जितनी करेंगे भक्ति, उतनी आएगी शक्ति। जैसी होगी मति, वैसी होगी जीवन की गति। जितना ज्यादा जानेंगे नीति, उतनी अच्छी होगी जीवन की रीति। जैसी करेंगे करनी, वैसी ही होगी भरनी और जैसा करेंगे काम, उतना ही अच्छा होगा नाम। लेकिन आज इन सब बातों को भुला दिया गया है, क्योंकि राष्ट्रीय मूल्यों के लिए, मानवता के लिए, राष्ट्रीयता के लिए, देशभक्ति के लिए हमारे दिलों में अब पड़ते जैसा भाव नहीं रहा। परिणामस्वरूप तीनों अंगों में एक दूसरे की लक्ष्मण रेखा का उल्लंघन करना शुरू हो गया है। मैं समझता हूँ कि भारत के संविधान निर्माताओं ने लोकतंत्र के तीन स्तम्भ बनाए हैं। अगर ये तीनों अंग अपना-अपना आत्मलोचन, आत्मनिरीक्षण करें कि हम क्या कर रहे हैं, कितने गहरे पानी में हैं, अपने कर्तव्यों का पालन हम भली प्रकार से कर रहे हैं और भारतीय संविधान ने जो अधिकार दिया है, उसके प्रति कितने समर्पित भाव से निष्ठापूर्वक कार्य कर रहे हैं, तब तो कार्य ठीक चलेगा। अगर एक अंग भी ढीला रहेगा तो आप जानते हैं कि दूसरे अंग में भी क्षिणिलता आ जाएगी।

विधि से ऊपर कोई नहीं है, यानी कानून सर्वोपरि है। उसका पालन करने के लिए चाहे न्यायपालिका हो, कार्यपालिका हो या विधायिका हो, तीनों को अपनी सीमा में रहना पड़ेगा। लेकिन आज प्रवृत्ति खराब हो रही है। जब हमारे पक्ष में कोई निर्णय आता है तो हम कहते हैं कि सर्वोच्च न्यायालय ने बहुत अच्छा किया, इसकी पालना होनी चाहिए। ज्यों ही सर्वोच्च न्यायालय हमारे विरुद्ध कोई टिप्पणी कर दे तो हमारा अहम टकराता है और हम एकदम न्यायिक सक्रियता का नाम लेकर न्यायालय को, न्यायपालिका को दोष देने लग जाते हैं।

उपाध्यक्ष महोदय: कृपया समाप्त करें।

प्रो. रासा सिंह रावत : ऐसा मातूम पड़ता है कि मुझे बोलने के लिए आपका आदेश प्राप्त नहीं हो पा रहा है।

उपाध्यक्ष महोदय: आप आतरेडी दस मिनट ले चुके हैं।

प्रो. रासा सिंह रावत : मैं दो मिनट और लेने की आज्ञा चाहूंगा। कानून की नीति बनाने का दायित्व न्यायपालिका को नहीं, बल्कि यह अधिकार विधायिका का है। हाल के दिनों में न्यायालय ने जिस तरह से विधायी कार्यों में अपनी दिलचस्पी दिखाई है, वह नैतिक लिहाज से भले ही सही हो, लेकिन संवैधानिक लिहाज से ठीक नहीं है। यह सही है कि न्यायपालिका को किसी भी कानून या नीति की समीक्षा का अधिकार है, लेकिन यह अधिकार सीमित है और संविधान की मर्यादाओं के अंदर बंधा हुआ है। असल में कुछ समय से व्यवस्था के तीनों अंग अपने-अपने दायित्वों को पूरा करने के बजाय एक-दूसरे के क्षेत्र में दखल देने का प्रयास कर रहे हैं। वे कोशिश कर रहे हैं कि मैं बड़ा, मैं बड़ा। इस में की लड़ाई के अंदर देश की जनता पिस रही है। [R31]

इससे बचने के लिए ही संविधान में विधायिका, कार्यपालिका और न्यायपालिका के कार्यक्षेत्र को स्पष्ट रूप से परिभाषित किया गया है, जिससे तीनों अंग अपने अधिकार क्षेत्र के अंदर, अपने-अपने कर्तव्यों का पालन करेंगे। संसद के विधायी कार्यों में कम दिलचस्पी या निष्क्रियता के चलते ही, जनहित में, सुप्रीम कोर्ट को विधायी या कार्यपालिका के कार्यक्षेत्र में दखल देना पड़ा है। हालांकि न्यायिक सक्रियता के लिए गठबंधन सरकार ही जिम्मेदार है, क्योंकि इस तरह की सरकार अवसर कमजोर होती है और उसमें राजनैतिक इच्छा-शक्ति की कमी होती है, जिसके कारण न्यायपालिका को हस्तक्षेप करना पड़ता है।

माननीय सभापति जी, संविधान-विशेषज्ञ लक्ष्मीलाल सिंघवी ने भी कहा है कि संविधान में विधान तो ठीक बनाया है लेकिन हम लोग एक दूसरे पर दोषारोपण करते हैं और आत्मलोचन नहीं करते हैं। परिणामस्वरूप, अहमदिया की टोपी मेहंदिया के माथे और मेहंदिया की टोपी अहमदिया के माथे करते रहते हैं। अगर तीनों अंग, अपने-अपने कर्तव्यों का ठीक से पालन करें, तो मैं समझता हूँ कि टकराव की कोई नौबत नहीं आएगी और लक्ष्मण रेखा का कोई भी उल्लंघन नहीं कर पायेगा। तीनों अंगों में सौहार्दपूर्ण संबंध कायम हों, इसमें कोई दो राय नहीं हो सकती। इसलिए हमें अपने-अपने क्षेत्रों में भारतीय संविधान के द्वारा दिये हुए मानकों के अनुसार कार्य करना होगा।

THE MINISTER OF PARLIAMENTARY AFFAIRS AND MINISTER OF INFORMATION AND BROADCASTING (SHRI PRIYA RANJAN DASMUNSI): Mr. Deputy-Speaker, Sir, I could not avoid my temptation to take part in the debate as the Motion has been moved yesterday by my distinguished learned friend of the Parliament, Mr. Gurudas Dasgupta. I am fully aware that I am a Minister of the Government and I cannot speak or I cannot say anything which is against the basic concept of the Council of Ministers in terms of its collective accountability to the House. I am not talking as an independent Member. I am fully aware of my responsibility. I will say nothing which creates problem for the harmonious functioning of three wings of the Constitution.

Mr. Deputy-Speaker, Sir, if we trace the history of our national struggle till this very 2007, marking the history of a glorious chapter of centenary year of Satyagraha led by Mahatma Gandhi who was a lawyer in South Africa, the movement of the country came from that very essence of Satyagraha, 100 years back, led by Mahatma Gandhi who was a lawyer, practising law. Later on, I can count a number of eminent leaders of the country, who came to the limelight of the national struggle, through Judiciary. Great, great stalwarts, legal luminaries, who led the national movement of the country, are no less competent to interpret the law, understand the passion of the people and brought freedom of the country.

Even the INA soldiers in Red Fort were defended by eminent lawyer and the first Prime Minister of the country, Pandit Jawaharlal Nehru. For the great revolutionary, Aurobindo, his prime counsellor in the case, in the great national struggle, was C.R. Das who was an eminent barrister, and he interpreted that everyone's birthright is to ask for freedom. 'If demanding freedom or asking for freedom of a country from foreign rule is a crime, let you try, my Lord.' This is the history of our legal luminaries who had been in the forefront of the national movement. [\[m32\]](#)

[\[k33\]](#)

The core competency of the leadership of the national movement was guided frequently by those eminent lawyers. I bow my head to them and their wisdom who provided the strength to free India. Take the Constituent Assembly. Who was not there? All eminent lawyers were there including Dr. B.R. Ambedkar, Shri Lakshmikanta Moitra etc.

Sir, I have the privilege to read the pages of the history of the Constituent Assembly how for each Article they used to debate and debate for hours together providing a vision for future. We may differ in the elections. We may differ on any small Bill in the Parliament between Party-A and Party-B, but collectively we are beholden to the great wisdom of those leaders who shaped the destiny of the nation. Today I can say that there is no substitute, no substitute excepting the parliamentary democracy which is there in India.

We have proved to the whole world. Take the Eastern Bloc – you can split and fight and divide; in the United States you can change your mind. But in the whole world you can say that 60 years of strong foundation of democracy and the Republic and the Constitution guaranteed by the people have helped in flourishing growth of parliamentary democracy. The occupants of the Treasury Benches can change. The size of the Parliament will never be changed. The will of the people will never be changed.

Therefore, the true spirit on which Shri Gurudas Dasgupta brought this subject of harmonious relation is good. Why the word harmony came? It is not all on a sudden.

रसा सिंह जी, मैं आपको बधाई देता हूँ। आपने बहुत अच्छा कहा है। लेकिन मैं दुःख के साथ कहना चाहता हूँ कि हर मुद्दे पर यूपीए-यूपीए मत कहिए। यह यूपीए या बीजेपी का मसला नहीं है, यह मसला बहुत लम्बा है। कुछ आदमी देश में ऐसे हैं, जो किसी पार्टी को सुबह से शाम तक गाली न दें, तो उन्हें रात का खाना हज़म नहीं होता है। मैं कहना चाहता हूँ कि इसमें न बीजेपी को दोष दीजिए और न कांग्रेस को दोष दीजिए, केवल विषय की बात कहिए।

Sir, I had the privilege to study law course in the University of Calcutta. I was highly blessed by the teachers who taught me. The teacher who taught me Hindu law, Shri Chittatosh Mukherjee, became the Chief Justice of Bombay High Court. The teacher, Dr. Pratap Chandra Chander, who taught me torts and contracts became the Education Minister of India. The teacher, Shri Mukul Gopal who taught me criminal law became the Chief Justice of Rajasthan High Court. He was my teacher. I was a blessed student in the class.

Shri Sabyasachi Mukherjee, Chief Justice of India taught me company law. All of them rose to the Benches of the Courts with high distinction. ...*(Interruptions)*

SHRI S.K. KHARVENTHAN (PALANI): And you have become the Minister of Parliamentary Affairs. ...*(Interruptions)*

SHRI PRIYA RANJAN DASMUNSI : The Minister of Parliamentary Affairs has to carry the knowledge of every subject. That is why I am the Minister of Parliamentary Affairs. ...*(Interruptions)*

THE MINISTER OF COMMUNICATIONS AND INFORMATION TECHNOLOGY (SHRI A. RAJA): You are blessed really by all. ...*(Interruptions)*

SHRI PRIYA RANJAN DASMUNSI : Thank you.

Sir, in my student life I was much inspired on one issue and I come back to that. What does the Preamble of our Constitution say? It is not 'We the BJP' or 'We the Congress', 'We the judges' or 'We the military Generals' etc. It is not 'We the High Court judges'. It is simple. It says – 'We the people of India'. It says – 'We, the people'. It refers to all of us from Kashmir to

Kanyakumari, we the people. The people are the last word of democracy. It is not an individual.

I am sitting here because of the people. I may not sit here and it is again because of the people. So, people are the last word. It happened in 1969. Shrimati Indira Gandhi fought in the Congress Party. It was a great fight. She took up the issue saying - the freedom fighters laid their lives to make the nation free; then why selective treatment is to be given to the Rajas and Maharajas of the country, to give them the *privy purses*? [\[k34\]](#)

Why should this money not be distributed to the Freedom Fighters? In that battle, she also said that people wanted the monopoly banks to be in the hands of the people so that the poorest of the poor people could get loan. They should carry a rickshaw and they should carry a bus, and it would be returned; thereby, they could feel 'I am not obligated to Birla, Tata or Goenka; I am obligated to my own bank – United Bank, Allahabad Bank etc.' How am I to do this? I remember that Congress Session held at Bangalore. She cried and asked "Will I be obstructed?" Yes, she was obstructed. She took it up. I was a student at that time. She lost in the Supreme Court. What did she say? She did not insult the Judiciary, she did not insult the judges. She believed in the constitutional parameters of the harmony, which was only right - 'we the people'. She said, let us go to the people to see whether the people give us strength to amend the Constitution in a manner, which will reflect the true will of the people. The will of the people is not the few ten or twelve individuals. People gave her strength and Shrimati Indira Gandhi amended the Constitution and also some other Executive orders by which banks got nationalised and it was not struck down also. If any party in the country - left, right or centre - had led such a battle first in the history of India for people in response to the words 'we the people', it was Congress Party. It was first Mahatma Gandhi and in the post-Independence era, it was Shrimati Indira Gandhi who did it for the down-trodden. Through whom was it done? It was done by the people through the Parliament.

Parliament reflects the will of the people. I know that there can be shortcomings in the law we make. One can go to the court and get the law declared as *ultra vires*. We have to accept that. The day we say that we will not accept the Supreme Court, we will not accept the High Court, we will not listen to the judicial verdict, we will be wrong. We shall weaken the democracy and the concept of the Constitution. If we feel that something more is to be done, we have to seek the mandate of the people, translate it into action, convince the people, convince the Judiciary and come out with the right thing. That is what harmony is.

But sometimes, I feel that we, the Legislators, who are sitting here in the Parliament, are treated in a different manner, which is unfortunate. Out of 30 judges in a Bench, if one judge commits a mistake, it does not mean that the Judiciary is wrong. Out of 545 MPs in Parliament, if six MPs are caught in a wrong matter and expelled by the Parliament, it does not mean that Parliament as an institution is wrong and all Parliamentarians are wrong. But a picture is painted that Legislators and Parliamentarians are all wrong and all virtues come from two channels – Judiciary and Media. It is not correct. Therefore, let us understand the meaning of harmony. Harmony means that I should not offend your institutional glory and you try to preserve that glory, and others should not offend our institutional glory.

There have been so many functionaries in the Executive who did great jobs. The number one is no more alive. Who can deny the contribution made to this country by a man in the Executive, Shri P.N. Haksar? Who can deny the contributions made by such eminent officials in the Executive and their fellow-feeling? They may not sit inside Parliament, but they used to carry out the instructions of the Executive. I tell you about articles 139 and 140 of our Constitution. Article 139 relates to conferment on Supreme Court powers to issue certain writs.[\[s35\]](#)

It says :

"Parliament may by law confer on the Supreme Court power to issue directions, orders or writs â€;"

Who confers the power that the Supreme Court uses? It is done by the Parliament that is backed by the people. Ultimately, the people ask the Parliament and not the Supreme Court. We all make the law that can be conferred on the Supreme Court. Therefore, the deriving thing comes from the Parliament.

I again come back to article 140 of the Constitution dealing with ancillary powers of Supreme Court, which states that :

"Parliament may by law make provision for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the Court more effectively â€;"

A debate is always going on in Supreme Court about any power that the Supreme Court uses is on the ambit of the law derived from the Parliament, which is 'we the people'.

Gurudev Tagore composed a very beautiful song. I cannot interpret it in Hindi right now. हम लोग सब राजा हैं, हमारा राजकीय घराना है, अमरा सोबाई राजा अमदेर राजार राजो ते। It is a song of democracy that conveys the message that we are all equal. I do not like to name the Parties. Some Parties might have said that the last word of this country is by the Party; the last word of this country is by this leader; the last word of this country is by this system, etc. But Mahatma Gandhi said, No. He told Pandit Jawaharlal Nehru that the Indian National Congress can be in the forefront of the movement, but prepare the Constitution in a manner that it should not be that power will be with the Congress for 10 years and then it will come gradually because the Congress led the movement. No, it was not the case. He said : 'we the people', and gave the power to the people. If power says, then Pandit Nehru will sit here; if power says, Shrimati Indira Gandhi will sit here; if power says, Shri Morarji will sit here; and if power says, Shri Chandrashekhar will sit here. This is 'we the people', and this is the strength. If 'we the people's' will is interfered every time in a manner that is not in accordance with the very Constitution, then it is not good.

I come back to the Constitution article 16 of the Constitution. Sir, you will appreciate that article 16 is the battleground today, which deals with equality of opportunity in matters of public employment. नौकरी कैसे मिलती है, एजुकेशन से, एजुकेशन किस तरह होती है, मौका मिलने पर, मौका कैसे मिलता है, भर्ती होने पर, भर्ती कौन होगा, जिसके पास मौका होगा, मौका किसके पास है, जिसके पास पैसा है, जिसके पास थोड़ा बहुत है, जिसके पास नहीं है उसके पास मौका नहीं है और उनको लाने के लिए क्या करना चाहिए। It states that :

"(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State."

But the same Constitution says in article 16 (3) that :

"Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office [under the Government of, or 'even reservation to the Scheduled Castes and the Scheduled Tribes"]

Further, if the Parliament feels that some are still deprived, then Parliament can regulate. If this Parliament says that deprived millions of India could not go to professional institutions for education opportunities for last 30 years and let us open the door not by the order of the Prime Minister, but open the door by the will of the Parliament, then it is millions behind the Parliament who are saying that look after us as we are dying; we are not getting the scope; we are not becoming doctors, engineers, etc. If the Parliament comes with the wisdom that, Yes, we respect their will according to the Constitution, and in some wisdom at that point feel that this is not proper, then I agree with it. I am not talking about forward and backward castes.[\[r36\]](#)

I feel pained as a legislator, we have not done politics; we have not done to protect 'A' against 'B'; we only reflect the suffering will of the people, as Shrimati Indira Gandhi did during bank nationalisation. Sometimes, I feel so; I am not using the word 'supreme', but this Parliament's will, reflected by the people, within the ambit of the Constitution, has no value. Are you so small?

I can understand if we pass a law to benefit a party; I can understand if we pass a law to give benefit retrospectively to a group, where the court will definitely strike out. But a law passed for the benefit of teeming millions of the country, whose sons feel that for ten years my grandfather and myself toiled the soil as a farmer, should not my son, ever in life become a doctor or an engineer or a professor, just because he is a Scheduled Caste or backward and depressed? For that, if this very Parliament opens a new road and a law is passed, that law would be the will of the people and not a law of somebody's fashion or desire. When that get struck out or stopped, who shout? It is the teeming millions. When they should? Who handles it? It is the State. Through whom? Through the police. What is the casualty? At the end of the day, we have Calling Attention here. Day in and day out it happens; we keep quiet. We cannot do it because there is an injunction. We cannot do it because it is struck down or stopped.

Again I tell you that these kinds of things are not putting appropriate or desired glory to this institution. We should be respectful to everyone's glory, not just the glory of one or two. A Minister or a Member of Parliament is subject to the scrutiny of the people in terms of PIL, in terms of Prevention of Corruption Act, in terms of everything else. I agree with that. We have always been hounding.

I agree with Shri Swain when he said yesterday – I am glad that he said so – that the time has come when the judicial accountability should also be set in the eyes of the people. What is the harm in that? I am a Minister and I have retired; and if I am amassed wealth, should the nation ask me? The nation should ask me. I was a former Minister, how did I make property worth Rs.20 crore? You cannot make it from the income that is declared. If that scrutiny comes, I have to accept the scrutiny. Similarly, if a retired judge is questioned by the public, we know the salary of the judge; how could he have property worth that much with his salary and his family? Is that not a scrutiny? If a media correspondent writes with courage, should he be sent

behind the bars? We should be transparent and accountable to the system. We can evolve a system without disrespect to anyone.

Harmony can only be achieved if that accountability is set in motion. This is all I can say. We feel that judiciary has done tremendous work for this country, from the lower court to the highest court. Every appeal gives a room to the applicant how to do it; the Law Minister is also thinking of *gramin panchayat, nagar palika*, etc. to go down below, to ensure justice.

I would only like to submit with all humility that, many of us are lawyers here, we call the judges 'My Lord, Your Honour', etc. We are merely humble people's representatives; we are subject to scrutiny. So, My Lords and Your Honours also feel – since the Constitution starts with 'We, the people', they are among the people; if any one of us is under scrutiny, they are equally answerable when the scrutiny issue comes up. That is all I can submit to you. Thank you.

PROF. M. RAMADASS (PONDICHERRY): Sir, I rise to endorse the views that are expressed during the discussion moved by the hon. Member, Shri Dasgupta, on the harmonious relations between the Executive, the Judiciary and the Parliament.

We are living, as our hon. Minister has just now said, in a parliamentary democracy; this parliamentary democracy is expected to alleviate the sufferings of the people of this country. We are wedded to the democratic form of Government.

15.00 hrs.

It is because we thought it would be a form of Government for the people, by the people and of the people. All activities of the Government should be designed and should be diverted towards the promotion of the greatest happiness of the greatest number. The Minister was narrating in the historical sequences. I am also reminded of a very famous statement of Jawaharlal Nehru, the first Prime Minister of India. After unfurling the National Flag at the Red Fort on 15th August, 1947, he was coming down from the Red Fort. The Western pressmen were surrounding him and asked a pertinent question. "Mr. Nehru, you have suffered a lot. You are all imprisoned. You have sacrificed greater to the liberation of this country. What is the objective of your Independence? Why did you suffer so much? Jawaharlal Nehru did not say: "I want to industrialise this country, therefore, we wanted freedom. It is not that we wanted to bring revolutionary changes in agriculture, therefore, we wanted to have freedom." He said; "To wipe out every tear from every Indian eye has been our ambition." That may be beyond us but as long as there are tears our work will not be over. This was the quintessence of the Independence Movement. And, this was the quintessence of the development perspective of this country. This was the message, to translate which we embedded into a system of democracy, adopted a democratic form of Constitution. Therefore, it is the people who are at the centre of the stage, whether it is the Constitution of India or the democratic form of Government, whatever it is.

To accomplish this task of the greatest happiness of the greatest number, we have invented three organs of the State; the legislature, the executive and the Judiciary. Dr. Ambedkar, the fore runner of the India Constitution, the man who liberated the subjugated community of this country and who fought for the freedom for these people even when the Britishers were there on the ground that that liberation was a pre-condition for the Independence of India. He stood very firm on this delicate relationship between these three organs of the State. As the Minister has said, clause by clause it was discussed and they came to the conclusion that these three organs must work in unison. In this form of a Government if all the three organs are working, we will be able to satisfy the aspirations of the people.

After 60 years of Independence today when we take a retrospective look into what has happened to India, we still find 40 per cent of the people of this country are well below poverty line and 50 per cent of the people in the labour force participation do not get gainful employment. Half of the villages in the country do not have amenities. There are vast disparities in the country today. The process of economic liberalisation, the process of globalisation that we have willy nilly accepted in this country has given rise to not dualism in the country but tri-lism in the country. In this country I find not one India. It is true that we are united within the diversities – social diversity or cultural diversity is different – but we are now heading towards economic disparities and diversities.

Today, we have one part of the world which is not connected to the other part. Today, we have three parts in this country.

It is at this juncture that India is finding it herself. Today, it is not only a question of economic growth but it is a question of social justice and we find that half of the population of this country are denied of this social justice. It is the bounden duty of all the three organs of the State; the legislature, the judiciary and the executive, to work for the amelioration of the lot of the people by not only promoting growth but also by promoting social justice in this country. It is with this aspiration that the legislature or the Parliament will have to work. When it does so, it often happens that some of the social legislation to tackle the social challenges in the country come into conflict with the views of the judiciary more specifically.[\[R37\]](#)

Therefore, on those stages of conflict, friction develops and spoils the harmonious relation between these three organs of the State. Now, the Judiciary must be able to understand the social aspirations of the representatives of the people. They cannot mechanically interpret the rules and regulations and say that this rule will be cut down because this is not happening. No judge in this country – I am not casting aspersions on anybody – can impose his personal judgement on a legislation passed by the Parliament. And there are many occasions where this has happened and this has to be curbed by a suitable mechanism.

Today, you take the case of the Other Backward Classes. What are their aspirations? Sir, 60 years have passed since Independence. And even after 60 years, 50 per cent of the people do not have reservations in higher educational institutions. The House of People, the representatives of people, passed a historic legislation with the rarest sense of unanimity. All the parties in the Parliament agreed that this legislation must be passed but it was taken to the Supreme Court.

Now, what did the Supreme Court say? It has not understood the social aspirations, the social milieu and social background with which this legislation was brought but it has simply asked, "Where is your census data? Where is the Report of the Standing Committee? How did you arrive at the figure of 27 per cent?" What kind of questions are these? In what way this legislation is calling for all these data? Should not the Judiciary look into the various aspects of the aspirations of the people? Do they not know that the will of the people is reflected in the act of Parliament? They must be knowing it. If they had asked for a data of 1931, they must also know that there is a Mandal Commission Report which has said that 62 per cent of the Indian population are Other Backward Classes. What other evidence do they require? They are not able to interpret the law in a proper way. Maybe, the mind-set of the Judiciary is such that it is imposing its will on the Bill passed by the people of India.

Sir, without casting aspersions on anybody, I would quote that Parliament passed the AIIMs Bill and the concerned person went to the court. How can a judge say, "Factually, we are with you." How can they have this pre-conceived notion? The matter has not come before the court for inquiry. They have asked for explanation from the Central Government and before the Central Government could send it, they are saying that we are humiliating a respectable person. They have said, "Factually, we are with you. We will give judgement in the middle of January, before the end of your tenure." What are these statements? Are they not extraneous to the Act? The Bill passed here has got only a six-line statement and that statement is just to prescribe the age of the Director of an Institute. Don't you think that this House has the will of the people to fix that age? And they are saying that they are with him. How can the judge say that? How can a Judiciary come down to this level and say "Factually, we are with you."? What facts are available with them? If all the facts are available with them, why do they ask the Parliament and the Government of India to give the facts? And how do they rush to the conclusion that they will give the judgement by the middle of January?

Sir, when Sethu Samudram Project was not implemented, our leader, Kaliagnar Karunanidhi called for a *bandh* in Tamil Nadu, and somebody went to the Supreme Court to restrain the *bandh*. And on a Sunday, an unprecedented measure, the Supreme Court sat and issued the stay order to the *bandh*. What kind of a system do we have?

SHRI LAKSHMAN SINGH (RAJGARH): Sir, the role of Judiciary cannot be discussed here....(*Interruptions*)

PROF. M. RAMADASS (PONDICHERRY): Don't they think that they are exceeding their limits? Judicial activism is needed to promote the happiness of the people, to protect the fundamental rights of the people, to uphold the dignity of the people and to uphold human rights. We all agree that judicial activism is necessary but when a legislation is passed by the people, Judiciary must take into account the social perspective. That is what I want to say and if this sense of social perspective is lost, only frictions will remain and harmony will be lost.

Therefore, all the organs of the State[\[MSOffice38\]](#) must work in unison. All the three organs must understand their respective roles as enshrined in the Constitution. Ultimately, if any organ is more supreme than the other organs, then I would feel that it is Parliament which is more supreme than any other organ.

ADV. SURESH KURUP (KOTTAYAM): Mr. Deputy-Speaker, Sir, as pointed out by many eminent Members of this House, the concept of separation of powers between the judiciary, the executive and the legislature, is one of the basic features of

democratic polity. It is well defined in our Constitution that these three organs of our State should function separately and also harmoniously. There should be sufficient checks and balances for the functioning of these three organs. No organ is given the power of superintendence over any of the other organ. That is one of the basic features of our Constitution.

Our Supreme Court has also admitted it several of its judgements. But now, a peculiar problem has arisen. The Supreme Court or the courts, in their over enthusiasm, are repeatedly over stepping into the functions of the executive and the legislature.

If I may say so, in our neighbouring country it is the military which has appropriated the powers solely, and in our country the courts which have taken upon themselves the power to enter into the domain of the executive and the legislature in a most surreptitious way. By passing judgements in various cases, they are repeatedly doing it.

Take, for example, the demolition drive, which the Supreme Court was doing with much gusto. ...(*Interruptions*)

Mr. Deputy-Speaker, Sir, I seek the indulgence of the Minister of Law and Justice.

The Supreme Court had appointed a Monitoring Committee to monitor the demolition and report back to the Supreme Court every day. I do not know under what provision of the Constitution or under what law, the Supreme Court had appointed the Monitoring Committee and asked it to report back to it.

After all this happened, some eminent jurists came out openly, saying that the particular judge who monitored all these things, had personal interest in all these things. But till day no inquiry was done because there is no provision to inquire into the activities of a retired judge.

In Uttar Pradesh, in the Jagdambika Pal, case and in the Jharkhand Assembly case, it is quite clear that the Supreme Court had over stepped and entered into the domain of the legislature. Otherwise, how can a court say that every proceedings of an Assembly should be reported back to the court? How can the court supervise the proceedings of Parliament or of a State Legislature? This is not there in the Constitution. There are so many judgements like this.

The Kerala High Court, in its wisdom, which was hailed as a landmark judgement, had prohibited smoking in public places. Of course, that prohibition is good. It is for a good cause. But under what provision did it prohibit smoking? Under what law did it prohibit smoking in public places?

Again, the Kerala High Court had prohibited activities of the student organisations in college and university campuses. Our Constitution has given freedom to everybody in this country to organise themselves and ventilate their grievances. But the Court says that this particular section of the society, that is students, should not form any organisation and work in campuses. This is against the provisions of the Constitution. [\[MSOffice39\]](#)

Sir, under what provision they have issued this? Tomorrow, they may say that the trade unions are not good for the country. So, all the trade unions should be disbanded.

Sir, in every sphere by pronouncing various judgments in cases before it, they are overstepping into the functions of the Executive and the Legislature. All these things they are doing by making appointment themselves. In no other democracy, these judges are allowed to appoint their peers and successors and that too they have done by passing a judgment which came before the Supreme Court and appropriated all the powers to them for appointing the judges. Till this day, the Government of the country has not dared to correct it. The Executive had a say in the appointment of the judges. That has been the practice. One fine morning, the Supreme Court, passing judgment in a case before it, says that no, this is unconstitutional and judges alone have the right to decide who their peers should be and they are doing it. So, I request the Government to correct it. There should be a proper authority for the appointment of judges consisting of the representatives of the Government from the Opposition and also from the judges. Let such a Committee appoint the judges. Why should this right be given to the Supreme Court or the judges alone? Even in the United States of America, every appointment of the judge should be approved by the Senate Committee.

Sir, recently, as you all know, one judge of the Supreme Court, which was appointed by the President, was not allowed by the Senate Committee when they scrutinised. They rejected it. She was not appointed. ...(*Interruptions*)

MR. DEPUTY-SPEAKER: Shri Kurup, please conclude.

ADV. SURESH KURUP : Sir, I will conclude soon.

What about the corruption charges against the judges in various High Courts, Lower Judiciary and also in the Supreme Court? They themselves enquire about it. I would like to know as to what happened about the Judges Inquiry Bill which was presented before the Parliament in 2006?

Sir, when the country needed the help of the Supreme Court very much and when everybody looked to the Supreme Court, they did not come to the rescue of the democracy in this country. During the Emergency, they approved every action of the Government and every action of the Executive. They allowed the Government to extend the term of the Parliament. They allowed the Government to take away all the fundamental rights. Ultimately, it is the people of this country which rescued this country and not the judges.

So, Sir, I would like to say that it is the people who are the ultimate referee of the democratic principles in this country. So, I would urge the Government to take immediate steps to rectify some of the aberrations which have crept into the functioning of the Constitution and the appropriation of the powers by the Supreme Court from the Legislature and the Executive.

MR. DEPUTY-SPEAKER: Before I request the next hon. Members, I would like to make a submission that I have a long list of about 25 speakers who want to participate in the discussion. So, it will not be possible to allow all the speakers. Therefore, I would like to make a request here that those hon. Members who want to give their written speeches, they can do so. That will form part of the proceedings also.

SHRI A. KRISHNASWAMY (SRIPERUMBUDUR): Sir, it is a very important subject. Let it be discussed.

उपाध्यक्ष महोदय : आपकी पार्टी का टाइम तो समाप्त हो गया है।

SHRI BIKRAM KESHARI DEO (KALAHANDI): Sir, I would like to make a kind submission here. Since this is a very important subject, let it be discussed threadbare. ...(*Interruptions*)

MR. DEPUTY-SPEAKER: I will try my best to accommodate all the hon. Members.

...(*Interruptions*)

MR. DEPUTY-SPEAKER: Next, Shri Virchandra Paswan to speak. Please be very brief. You are requested to finish your speech within five minutes.

श्री वीरचन्द्र पासवान (नवादा): माननीय उपाध्यक्ष महोदय, आज हमारे लिए, इस देश की जनता के लिए बड़ी विन्ता का विषय है कि हमारी शासन व्यवस्था का एक महत्वपूर्ण अंग न्यायपालिका है, जिसके ऊपर संविधान निर्माताओं ने एक बड़ी जवाबदेही, जिम्मेदारी डाली थी और उसको एक बड़े कर्तव्य के निर्वहन के लिए अपना एक महत्वपूर्ण अंग मानती है। आज उनकी मर्यादा पर उंगली उठ रही है, उनके ऊपर उंगली उठ रही है, उनके कार्यकलापों पर उंगली उठ रही है, उनकी ईमानदारी पर शक किया जा रहा है, यह आज सब के लिए बड़ी विन्ता का विषय है। सिर्फ सरकार ही नहीं, तमाम दलों के नेताओं से तमाम माननीय सांसदों से और इस देश की जनता से हम निवेदन करना चाहेंगे कि देश के हित में दलीय भावनाओं से ऊपर उठकर, व्यक्तिगत भावनाओं से ऊपर उठकर, व्यक्तिगत स्वार्थों से ऊपर उठकर इस पर सोचने की जरूरत है, विन्ता करने की जरूरत है और इसका शुद्धिकरण करने की जरूरत है।

यदि आप देश को बचाना चाहते हैं, इस देश को अखंड रखना चाहते हैं, इस देश में सौहार्द और हारमोनियस वातावरण बनाये रखना चाहते हैं तो न्यायपालिका को परिष्कृत करने की जरूरत है और मर्यादित करने की जरूरत है। वहां पर जो भी इस देश के हित में है, चूंकि न्यायपालिका इस देश की जनता की है, हाई कोर्ट और सुप्रीम कोर्ट इस देश की जनता के हैं और हमारी व्यवस्था का महत्वपूर्ण अंग है, वहां पर बैठे हुए हों या यहां पर बैठे हुए हैं, हाई कोर्ट और सुप्रीम कोर्ट किसी की निजी सम्पत्ति नहीं है। इस देश की व्यवस्था का एक महत्वपूर्ण अंग है, इस देश की जनता का है, चाहे व्यक्ति कहीं भी बैठा हो, किसी पद पर बैठा हो, न्यायपालिका की गरिमा को गिराने, न्यायपालिका की जो गरिमा है, उनकी जो स्वतंत्र छवि है, उसको गिराने का किसी को हक नहीं बनता है।

उपाध्यक्ष महोदय, आपने बड़ी मेहरबानी की है, मैं जल्दी समाप्त करूंगा। आशा है कि हमें आपका समर्थन और आशीर्वाद मिलेगा। यह बहुत महत्वपूर्ण मुद्दा और सवाल है। जिन साथी ने इसे उठाया है, मैं उनको धन्यवाद देता हूँ। आज यह देश लोकतंत्र है, संप्रभुता जनता में निहित है और संप्रभु जनता अपने प्रतिनिधि के माध्यम से शासन करती है और तमाम जनप्रतिनिधि, चाहे माननीय सांसद हों, माननीय विधायक हों, जनता के प्रतिनिधि के रूप में काम करते हैं और ठीक उसी तरह से, जिस तरह से समाज के अन्य क्षेत्रों में इसी समाज से लोग जाते हैं। उसी तरह से समाज से ही एम.एल.ए. और एम.पी. भी बनते हैं। हो सकता है कि इसमें हममें से वीरचन्द्र पासवान जैसा व्यक्ति भी हो, जो अपराधी हो सकता है, लेकिन इसका मतलब यह नहीं है कि तमाम माननीय सदस्य अपराधी हैं। यदि मैं अपराधी हूँ तो मीडिया हो या ज्यूडीशियरी हो, उनको पूरा हक बनता है, कानून के आईने में, कानून के दर्पण में, जिसको संविधान ने बनाया है, जिसको पार्लियामेंट ने बनाया है, उनको पूरी और कड़ी से कड़ी सजा मिले, इसमें किसी को कोई एतराज नहीं हो सकता है, लेकिन आज बड़े दुख का विषय है कि बड़ी संकीर्ण भावनाओं से, बड़ी संकीर्णता के साथ न्यूज़ प्रसारित की जाती है, आज ज्यूडीशियरी बैठती है, कोर्ट जब बैठती है तो कोर्ट का कर्तव्य है, मैं उसको पावर नहीं कहूंगा, न एम.पी. को पावर है, न प्रधानमंत्री को पावर है, यदि संविधान ने या किसी लॉ ने पावर शब्द का, राइट शब्द का इस्तेमाल किया है तो मैं निवेदन करना चाहूंगा कि इसे एमेंड करने की जरूरत है, इस शब्द को विलोपित करने की जरूरत है और इसको कर्तव्य के रूप में दिखाने की जरूरत है, क्योंकि किसी को राइट या पावर डेमोक्रेसी में नहीं दी जाती है, उनको कर्तव्य निर्धारित किये जाते हैं, संसद जब कानून बनाती है तो वह कर्तव्य निर्धारित करती है कि किसके क्या कर्तव्य हैं, इसलिए यदि कोई हाई कोर्ट या सुप्रीम कोर्ट में जजेज़ बैठे हुए हैं तो उनको कोई पावर नहीं है, उनको कोई अधिकार नहीं है, उनके कर्तव्य निहित

किये गये हैं कि ऐसे हालात में आपको यह काम करना है। इस कानून के आइने में आपको कानून के दायरे में आपको ये काम करने हैं।[R40]

उपाध्यक्ष महोदय, मैं जल्दी ही अपनी बात समाप्त करूंगा। मैंने पहले ही कहा कि न्यायपालिका हमारी व्यवस्था का एक महत्वपूर्ण अंग है और उसके चरित्र को धूमिल करने का किसी का हक नहीं बनता है। न्यायपालिका का काम है या कोर्ट का काम है कि दो पक्षों के बीच में, हमारे और आपके बीच में या हिंदुस्तान के कोई भी लोग हों, जब दो पक्षों के बीच में कोई विवाद हो, तो कोर्ट उन दोनों पक्षों की बात को सुनने का काम करे और कानून जो कहता है, उसके अनुसार वह जजमेंट देने का काम करे। वह कोई भी ऐसी टिप्पणी नहीं करे, जिससे यह लगे कि यह कोर्ट नहीं बोल रहा है, बल्कि कोई पक्ष बोल रहा है। ऐसे सैंकड़ों उदाहरण हैं, जब कोर्ट के ऐसे आब्जर्वेशंस आए हैं, ऐसी टिप्पणियां आयी हैं, जब लगा है कि कोर्ट नहीं बोल रहा है, बल्कि कोई पक्ष बोल रहा है। इस बात को सुनकर बड़ा दुख होता है। न्यायाधीशों को इस तरह की टिप्पणी से बचना चाहिए।

यह बड़े दुख का विषय है। मैं दो-तीन बातें कह कर अपनी बात समाप्त करूंगा। यह डेमोक्रेसी है।

MR. DEPUTY-SPEAKER: Please conclude now. Your party time is already finished.

श्री वीरचन्द्र पासवान : डेमोक्रेसी में जनता मालिक है, संप्रभु है। यह राजशाही व्यवस्था नहीं है, जहां अपने उपाधिकारियों का वयन पहले राजा करते थे और उन्हें मनोनीत करते थे। यदि हाईकोर्ट और सुप्रीम कोर्ट के जज की नियुक्ति का सवाल है, तो इसके लिए राष्ट्रीय उच्च स्तरीय न्यायिक सेवा आयोग बनाने की आवश्यकता है। ऐसा नहीं है कि जो इस देश के सौ-डेढ़ सौ परिवार हैं, जिनका न्यायपालिका पर कब्जा है और वही लोग जज और चीफ जस्टिस बनते हैं। आप इसका सर्वे करवाकर देख लीजिए कि उस परिवार के या उसके नाते-रिश्तेदार लोग हाईकोर्ट और सुप्रीमकोर्ट में जजेज बनते हैं या उनके चमचे-बेलचे सुप्रीम कोर्ट के जज बनते हैं। इसकी कोई स्वच्छ और निष्पक्ष प्रक्रिया नहीं है, क्योंकि अनुशंसा राज है। अनुशंसा पर सुप्रीमकोर्ट और हाई कोर्ट के जजेज बनते हैं। इस व्यवस्था को समाप्त किया जाए। यह जो अनुशंसा राज है, नादिरशाही व्यवस्था है, राजशाही व्यवस्था है, यह डेमोक्रेसी में नहीं चलनी चाहिए। देश को यदि आप बचाना चाहते हैं, देश में भाईचारा लाना चाहते हैं, देश को खंडित होने से रोकना चाहते हैं, तो न्यायपालिका में देश की तस्वीर होनी चाहिए। इसमें सभी लोगों को समान अवसर मिलना चाहिए। आप एलएलबी और एलएलएम की डिग्री निर्धारित कर दीजिए, आप दस, पन्द्रह या बीस साल का अनुभव निर्धारित कर दीजिए और एक खुली प्रतियोगिता के तहत चाहे हमारे हिंदी स्टेट्स के लोग हों, चाहे साउथ के हों, चाहे नार्थ के हों, चाहे पश्चिम के हों, चाहे किसी जाति या धर्म के लोग हों, उनको समान अवसर मिलना चाहिए। यदि आपने शुद्धीकरण करने में, इस तरह की व्यवस्था लाने में, विधान लाने में विलंब किया तो यह देश नहीं बचेगा। ...(व्यवधान) न्यायपालिका में डेमोक्रेसी में किसी को कर्तव्य दिए जाते हैं, तो उसके उत्तरदायित्व भी निर्धारित किए जाते हैं, उसकी व्यवस्था हो।

मैं कुछ बातें और कहकर अपनी बात समाप्त करूंगा।

MR. DEPUTY-SPEAKER: No. I have already given you sufficient time.

श्री वीरचन्द्र पासवान : अभी बहुत सारे जजमेंट सुप्रीम कोर्ट और हाईकोर्ट के आए हैं। सुप्रीम कोर्ट ने एक जजमेंट पटना असेंबली के बारे में दिया। मैं उसे बताता हूँ। उसने जजमेंट दिया कि जो राष्ट्रपति शासन वहां पर लगाया गया है, वह गलत है। यदि राष्ट्रपति शासन लगाना गलत था, तो असेंबली री-स्टोर होना चाहिए था। यह कहां का इंसफ है कि मैं किमिनल हूँ, लेकिन मुझे फांसी की सजा नहीं होगी और मैं निर्दोष हूँ, लेकिन मुझे फांसी पर चढ़ा दिया जाएगा। यदि राष्ट्रपति शासन लगाना अनुचित था, संविधान के विरुद्ध था, तो असेंबली री-स्टोर होना चाहिए। जनता के संवित हजारां करोड़ रूपए चुनाव कराकर बर्बाद कराने का हक सुप्रीम कोर्ट का नहीं है। यदि तमाम जनप्रतिनिधि अपराधी हैं, तमाम एमएलएज अपराधी हैं, तो मैं तमाम दलों के नेताओं को चैलेंज करता हूँ, उनसे निवेदन करता हूँ कि जिस तरह से दुपुनार करके इस देश को खंडित करने के लिए, इस देश को बर्बाद करने के लिए, इस देश को गुलाम बनाने के लिए, तमाम लोकतांत्रिक संस्थाओं पर पूहार किया जा रहा है, तमाम जनप्रतिनिधियों पर आघात और प्रतिघात किया जाता है। यदि तमाम जनप्रतिनिधि इतना ही अपराधी हैं, तो उन तमाम लोगों को इस्तीफा देकर अपने घर चला जाना चाहिए और यहां पर किसी हाईकोर्ट और सुप्रीम कोर्ट के जज को बैठाइए, किसी धनपिपासू को जो चैनल दिखाने का काम करते हैं। संसदीय कार्यमंत्री जी यहां उपस्थित हैं। मैं उनसे एक चीज पूछना चाहता हूँ। ...(व्यवधान)[p41]

MR. DEPUTY-SPEAKER: Nothing will go on record now.

(Interruptions) â€*

MR. DEPUTY-SPEAKER: Nothing is going on record.

(Interruptions) â€*

MR. DEPUTY-SPEAKER: Shri M.P. Veerendra Kumar will speak now.

...(Interruptions)

MR. DEPUTY-SPEAKER: Mr. Paswan, nothing is going on record. Why are you speaking? Please take your seat.

(Interruptions) â€*

* Not recorded

SHRI M.P. VEERENDRA KUMAR (CALICUT): Mr. Deputy-Speaker, Sir, I thank you for giving me time to participate on this very important discussion which has been brought up here by Shri Gurudas Dasgupta.

Sir, the question is, who should be supreme? Ultimately, the Constitution must be supreme because the Constitution is for the people and that is why, the Preamble starts with the words "We, the people of India,". There are conflicts and there are complaints that there is over-activism by the Judiciary. I would like to quote the Chief Justice of India, Justice Balakrishnan who said:

"Like any other public institution, the judiciary can be subjected to fair criticism if and when occasion demands but if the criticism is not legitimate and irresponsible, it may lead to incalculable damage to the institution of the judiciary."

I will not talk much about it because there is no time. Sometimes clashes are bound to happen because there are conflicts of opinion. The famous Supreme Court lawyer Shri Rajeev Dhawan once said about the clash between the Judiciary and the Legislature. I quote:

"A polarity between the courts and the politicians is healthy. In truth, it is a tension between the rule of law and democracy. Both complement each other. But the present conflict is not just a minor power struggle. There is a clash of ideology about social justice – albeit with politicians seeking votes and the judges enjoying public attention. In this clash, the judges must be respected. But the judges too, cannot be anti-politician in their posture. The ultimate *lakshman rekha* is that they can never be anti-people in their pursuit for themselves and constitutional governance."

Sir, when a corporation filed a case and the case came up before the Division Bench of the Kerala High Court, a judge commented that the interests of the corporation must be looked into, not of the people. This is where the people's rights and legal rights clash. The courts have to interpret the laws.

I do not want to go in the detail now, but I would like to say that there must be harmony between all the three organs of the State. But the history says something else which is a pointer. What happened between 1977 and 1979? There was harmony? The fundamental rights were taken away by this very Parliament. The constitutional method was used to take away those rights, the Judiciary toed the line and the Executive became chimerical. What was the result?

Ultimately, the people had have to save the institutions. So, the institutions cannot become chimerical. There has to be complete harmony, within the constitutional frame.

The Parliament alone cannot sit in judgement over the laws that it passes. If there is an aberration, who will sit in judgement? The Supreme Court will sit in judgement because they have to interpret the laws that are passed by the Parliament. It is the duty of the judges to interpret the Constitution and the laws. This creates a controversy, we have to pay the price to live in the democracy. I quote Edmund Burke, the fire alarm at midnight may disturb your sleep but it keeps you from being burnt at night. Majority can be sometimes chimerical also. The fundamental rights are built-in in our Constitution and the Parliament has given the fundamental rights. Sir, Roberts Pierre hung Dante to the Dumas of France, same thing happened to Pierre also. This is all history. So, these things have to be carefully looked into.

Sir, Judiciary has gone a long way from A.K. Gopalan's case to Maneka Gandhi's case in 1978 in upholding human rights. Anybody could be killed by a policeman and he just says, 'he is no more'. How the human rights will be protected? The Judiciary has gone a long way in protecting the human rights.

One more point I would like to bring to your kind attention is about the media. Media is the Fourth Estate. It should be protected. Parliament has certain privileges. The Parliament or the Assembly can call anybody and convict him. There is no appellate authority. Suppose, the Parliament, by majority, convicts somebody for some action for life time. Where is the appeal?

Sir, I place before the House that we enjoy privileges and power to punish for breach of privilege, but in the absence of codification, the scope of that power remains unlimited. Just as we have defined and limited contempt power of the court by enacting the Contempt of Courts Act, we have to define our contempt power by enacting a suitable legislation. I am reminded of the famous Blitz case where the editor was called to the bar of this House and reprimanded for publishing an article derogatory to the dignity of a Member. Such unbridled and undefined power exercisable by Parliament is not conducive for a harmonious relationship with the media which is rightly described as the Fourth Pillar of democracy. It has to be looked into.

15.37 hrs.

(Shri Devendra Prasad Yadav *in the Chair*)

Sir, what about this Anti-Defection Law? Now, a Member is bound by this law. Suppose, my Party says that we go against professed policy this way, we cannot dissent it, otherwise, it will immediately become anti-defection. If that is the law, where is the dissent? How can a Member point out when the Party or the Institution totally goes out of the way from what they profess, how can we protest? If that is the law, then only Party leaders need come to the Parliament, why should we be here. They can themselves decide which Government should go or which Government should remain. They could decide everything. By this, what happened? The right of the Members is curtailed.

I remember, when the first Anti-Defection Law was brought before the House, Madhu Limaye objected to it. Then we never understood why he objected to it. He said that ultimately it would cripple the dissent. It would be a chimerical despotism of the political parties. Who brings fascism and dictatorship? Not individuals, but institution. When, internal democracy within a political party is dead now the external democracy will survive. This Anti-Defection Law must be looked into. If no Member has the right or freedom of expressions now can they function in Legislature. If my Party acts against the professed ideology and departs from it how can I agree to that. Here Sir, who is right and who is wrong?

As per the Anti-Defection Law, those members who went against the professed policy of the party and gave commitment to the right people, will be criticized and debarred from the House. This law must be looked into.

In the whole, the Judiciary, the Executive and Parliament have to function Constitutionally. Democracy can function only that way. Time is changing, laws are changing. Ultimately, it is the people's will which has to be vindicated. We cannot say in one sense Parliament is supreme because through Parliament many of the views are subverted, diverted and rights of the people are taken away. It cannot happen. So, for democracy's functioning, judiciary must be accountable.[\[r42\]](#)

Parliament must be accountable. In fact, the Executive also must be accountable. They can do anything they want. Suppose they do something very wrong, where is the recourse? Can we all come to the Parliament and get a recourse to that? You can go to a Court and can get a recourse to that. In this context, I also include Media. It is not because I come from Media; Media is the fourth pillar. Only on four pillars, a house can stand; a three-pillared house cannot stand properly.

SHRI PRIYA RANJAN DASMUNSI: Mr. Chairman, Sir, I would like to say, through you, to the entire House that it is a very important debate, and I am very glad that most of the Parties are taking part. But, it is short duration debate. We began it

yesterday; today also it is continuing. We have to ensure the passage of a legislation listed in the supplementary notice for which I have consulted the Deputy Leader of the Opposition. He agreed. Therefore, my humble submission to you, and through you to the House, is that the Parties who already have spoken, they should limit their speakers' strength and time strength. It will help business to complete and to reach to its final conclusion. The Law Minister has to reply in-depth. Thereafter, we can take the legislation.

सभापति महोदय : अगर कोई माननीय सदस्य अपना लिखित भाषण सभा पटल पर रखना चाहे तो वह रख सकते हैं।

SHRI VIJAYENDRA PAL SINGH (BHILWARA): Mr. Chairman, Sir, I stand to debate and discuss in the discussion which has been initiated by Shri Gurudas Dasgupta, which is the need for harmonious functioning of three organs of the State: Legislature, Judiciary and Executive. I will not go into the details because the speakers before me have said a lot of it. But, I would like to mention a few points only that it was our forefathers who in their wisdom had discussed what could be the separation of powers of the Executive, Legislature and Judiciary. It is only in the last ten years that the harmonious working of the three organs has been disturbed. I feel that it is also the over-activism of the Judiciary which is spoiling the entire harmonious functioning.

There has always been the harmony also, that we can talk of. I remember that about five-six years back when the Supreme Court wanted to celebrate the 50th Year of the Supreme Court, they did not have money for that. It is because the Supreme Court does not have that sort of money to celebrate it. Without naming, the Chief Justice took an appointment with the Prime Minister; he went to the Prime Minister and said: "This is our problem." I am talking about the harmonious relationship that can be created. He went to the Prime Minister and the Prime Minister said: "It is a very big occasion for the country, and we grant you Rs. 10 crore." Rs. 10 crore was given. After some time, the same Chief Justice went back to the Prime Minister, and the Prime Minister thought that he wanted more money because Rs. 10 crore is not good enough. When he went back, he said: "I am returning Rs. 8 point something crore, because I feel that that amount is not required for the celebration." That is the harmony that should be there. What is missing today is that there is an ego clash. In my State and in many States which have been referred about, there is such an ego clash that the judges want to give a stay order on anything which is against the Government. That has been the case in many States even in Rajasthan. There are some Judges, who are just waiting for it. They direct a PIL should be put forth so that they can embarrass the Government. Is that harmonious relationship?[\[r43\]](#) How can harmony come about like that? I am really surprised about it.

Sir, I would like the hon. Minister, when he replies, to tell us about the Shetty Commission for the pay-scales of judges. It says in that Report, which has been directed to all the States, that notwithstanding the financial status of the State, these payments have to be made to the judges of the subordinate judiciary. Is it because the Shetty Commission or is it what that the Additional Secretary in the Government of India who gets less payment than the District Judges? Is that true? Are they going to decide their own pay-scales? Has it been done like that?

Sir, there are guest houses of the High Court. When the Supreme Court judges visit the States, they do not wish to stay in the State guest houses and they say that they must stay in the five-star hotels. Is that not true?

Let me also ponder over another thing. It has also been said that they would get entertainment allowance. Now, do the High Court and the subordinate Judiciary need to entertain or they needed an entertainment allowance? That also was paid in retrospective. Is it not true that they said that this should be paid in retrospective? What is the need for an entertainment allowance? Even the parliamentarians do not need entertainment allowance. These are the points which are of importance.

Is there a code of conduct for judges? Even if it is in-house, there should be a code of conduct for judges. The Judiciary should say that these are the code of conduct and they should have their own code of conduct which they should adhere to.

सभापति महोदय : सभी माननीय सदस्यों से और खासकर सभी दलों के सचेतक और मुख्य सचेतकों से मेरा अनुरोध है कि वेयर के साथ कोऑपरेट करें, क्योंकि सभी दलों का आवांति समय समाप्त हो चुका है। अब जो माननीय सदस्य अपनी स्पीच टेबल पर ले करना चाहते हैं वे अपनी स्पीच ले कर सकते हैं और जो बोलना चाहते हैं वे समय का ध्यान रखेंगे, क्योंकि समय केवल पांच मिनट ही मिलेगा।

DR. THOKCHOM MEINYA (INNER MANIPUR): Sir, I rise to participate in the discussion on "Need for harmonious functioning of three organs of the State i.e. Legislature, Judiciary and Executive".

As this discussion is being held under Rule 193, the mover and the seconder Sarvashree Basudev Acharia and Gurudas Dasgupta have put forward beautiful conjectures on the issue. After we have practiced democracy for the last more than a half

century such an important issue looks very much like a non-issue. Is it not interesting?

Sir, I very respectfully seek your kind indulgence and that of this august House when I revisit some basic definitions while recording my opinion on the subject. We all know that we have adopted the democratic form of Government. It is a government of the people, for the people and by the people, we have given to ourselves a Constitution, the preamble of which is very clear about what should be practiced and followed, while running the government or otherwise.

Sir, our country is a Sovereign Socialist Secular Democratic Republic, to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all; FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation.

Sir, in our country rather in our system, **constitution** is supreme. The basic structure of the constitution is the **separation of power** among **Legislature, Judiciary and Executive**. There appears, at times, some so-called conflicts rather apparent conflicts in the working and functioning of these three vital organs of the

* The speech was laid on the Table.

state. The one and only way to avoid and to have these conflicts / aberrations resolved is to practice self restraint and self respect and to practice true professional ethics.

Sir, over and above this, none of these organs should try to give directional instructions to the other organs and vice-versa. To be precise, the moment one feels that there appears to be a slight aberration on his part, he should immediately restrain himself from going further in that direction. This will definitely go a long way towards harmonizing the smooth functioning of these vital organs of the state.

Sir, why I pause these conjectures. The reason is quite obvious.

Art. 52 of the constitution provides that there shall be a President of India. The President of India is the Head of the Executive.

Art. 79 of the constitution of India provides that there shall be a Parliament for the Union which shall consist of the President and two houses to be known as respectively as the Council of States and the House of the People.

The Parliament is the Legislature.

Art. 124 of the constitution of India provides that there shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven (now twenty-five) other Judges. The Chief Justice of India and all the Judges of the Supreme Court are appointed by the President of India. This is the Judiciary.

Sir, on the same line, Art. 153 provides that there shall be a Governor of each state. The Governor is appointed by the President of India and shall hold office during the pleasure of the President. Art. 168 provides that for every state there shall be a legislature which shall consist of the Governor and two Houses or one House as the case may be.

Art. 214 provides that there shall be a High Court for each State. The Chief Justice and other judges are appointed by the President of India. Then, perhaps, there should not be any difficulty whatsoever in the respective working of these three organs. One has to always note that the Constitution is Supreme. All the powers of the State are derived from it. So long as we preserve this sanctity of our constitution nothing to worry about.

Let us all preserve this sanctity of the Constitution of India.

Sir, May I now seek the indulgence of this august House when I draw the attention of the Hon'ble Union Law Minister that the constitutional obligation of having a High Court for every state of the Union is yet to be fulfilled. For example, my State, Manipur is yet to have a separate High Court of its own. It is still continuing under the jurisdiction of the Hon'ble Guwahati High Court. I strongly demand for a separate High Court for my state, Manipur. If the number of cases is a criterion for it, the number

of pending cases for the state is exceedingly large.

Sir, before I conclude, I am very grateful to you and to the initiators of this discussion for raising such an important issue for the healthy practice of democracy.

SHRIMATI JHANSI LAKSHMI BOTCHA(BOBILI): Sir, I thank you for giving me an opportunity to participate in the discussion on the harmonious functioning of three organs of the state, that is, Legislature, Executive and Judiciary.

There-is no doubt that there has been a growing tension between the Judiciary and the Legislature during the last few months. Much legislation has been questioned by the honorable Supreme Court.

Our constitution came into existence 58 years ago. As far as the Executive is concerned, there is accountability. So far as Legislature is concerned, there is accountability. Now the basic question before us is judicial accountability. In a democratic country where the rule of law is supreme, definitely the Judiciary must be independent. There is no doubt in that the Judiciary's independence must be maintained at any cost. But, at the same time, the judiciary is not accountable to the people. We all know that people have created constitution. Nearly all great ideas and the energy by which all the great services by which mankind has been benefited have come from the mass of the people. Legislature is the true representative of the people.

The Legislature has to pass laws which are constitutionally legal and valid. The Executive has to enforce such constitutionally valid laws without fear or favour. The supreme constitutional responsibility of the Judiciary is to ensure that the Laws of the Constitution are duly observed by both the Legislature and the Executive in letter and spirit.

The application to Judicial Review to determine constitutionality of the legislation and to review the Executive decision sometimes creates tension between the Judge, and the Legislative and the Executive branch. Such tension is natural and to some extent desirable. Moreover, the Judiciary's Independence is

* The speech was laid on the Table.

absolutely essential to ensure the Rule of Law. Judicial Review is an 'extraordinary legal invention' that seems 'deceptively simple', but it is. one of the most baffling of legal devices. Sometimes it is described mistakenly as a veto power over Legislation. The principles of Separation of Powers ought to be kept in the forefront and the Judge should make sure that each of the other branches operates within the boundaries of the Law and the Judicial Review.

As per clause(4) of the article 124 of the constitution, the only procedure available for judicial accountability is the impeachment proceedings. Is it a practicable solution? We have bitter experience in Ramaswamy's case. Of course, the procedure is somewhat cumbersome and it cannot be enforced all of a sudden. I think that is the only provision in our constitution. It may not warrant removal.

Recently we seen arguments being floated by different quarters, that retired judges of supreme court and high courts should be barred from arbitration by chairing different commissions set us by Central and state governments. The critics are saying that by appointing retired judges the executive is arms twisting the Judiciary, which severely eroded Judiciary's independence and accountability. But the recommendations of the commissions headed by retired^ judges are advisory in nature and only help in better discharge of duties by the executive.

All the three organs of the constitution should aware of their roles and responsibilities. The government may think of constituting a Judicial Council, at the earliest, with members of Judiciary, executive and legislature for bringing out co-ordination and reduce the rift. True Spirit of the constitution, for the over all development of the country, as envisaged by the framers of the constitution, should be aimed at harmonious relations among the three organs.

SHRI KIRIP CHALIHA (GUWAHATI): Mr. Chairman, Sir, I thank you for giving me this opportunity to speak on a very important subject though briefly.

Sir, I thank Shri Gurudas Dasgupta for giving us this opportunity to dwell in this Parliament on something concerning governance and perfection of democracy.

Mr. Chairman, Sir, as you yourself are aware, your rulings and the rulings of all the Chairmen usually show that Parliament does not have much time to discuss now-a-days serious topics. When we talk and discuss serious topics – it is an important one – we would like to share our views with our colleagues because these are vital questions about the perfect system of governance.

Sir, perfection, as you know, depends upon environment. What appears to be perfect today may not remain perfect tomorrow. [h44] That is the tragedy of a civilisation. But that has not stopped us from aspiring for perfection.

Now, as civilisation progressed, it has now come to a definite belief that democracy is perhaps the best form of Government. In a democracy, although there is strict separation of powers, the Montesquieu Theory is not applicable. Separation of powers, to some extent, is necessary. When we separate three organs of Government with specific powers, interdependence of one with another and a harmonious relationship between them is of vital interest if democracy has to succeed and flourish.

In this discussion, we have been hearing our friends mentioning some very conflicting opinions. We have heard about the constraints of the parliamentarians; we have heard about the judicial over-activism; we have also dwelt upon over-concentration of powers in particular branches of Government; and we have talked about judicial intervention – sometimes, we praise; sometimes, we say it with a little amount of hurt. We are talking about whether constitutional harmony is in jeopardy or not; and above all, we are talking about the judicial accountability with certain amount of offence in our mind.

Sir, as a young student when I wanted to choose a career -- it is not that I was a very dull student in my young life – my father said: "You choose a career." I wanted to be a lawyer. My sole ambition in life was to be a lawyer, a good lawyer, a successful lawyer. Even now, when I am standing before you as a parliamentarian, I still consider that it has been greatest tragedy that although, I passed my law and did my practice for about two or three years, I stopped practicing it. I cannot practice; I do not have the time once I am in politics. It is because you are in politics means, you are a parliamentarian, you represent people, you have to work 24 hours a day looking after problems of people, and you do your best to give whatever is possible, to the people. So, you hardly have any time to read. And, a lawyer, on the other hand has to close himself at 6 o' clock, come back from the bar, look into his briefs, call for his juniors, from 8 o' clock to 11 o' clock read through the points; next day morning, make the draftings; and go and present the cases. It is because, every single case involves the life of an individuals on very vital issues. It could be his property; it could be his liberty; it could be conflict of interests between him and his family. So, law is a very vital aspect; and rule of law is the only sign of a civilised society.

In fact, it would not be an exaggeration to say that where law ends, tyranny begins. Now, we are opposing the legal system, we are criticising the Judiciary for various deficiencies, over-activisms and various negativisms. It has become a fashion to talk negatively about the legal system.

There is a difference. Institution cannot be criticised. In the functioning of the Institution, there may be something wrong. I would say that in principle, till today after 60 years of Independence, among the three organs, even today, the Judiciary commands the greatest amount of respect; whether I like it or you like it, it does not matter; whether we have been acting very responsibly or not, a judicial personality, a lawyer or a Judge today occupies a higher position of honour than me or Minister. Why?

Sir, it would hurt but as Confucius said: " when you have faults, do not fear to abandon them." हमारी कोई गलती है, तो हमें मान लेनी चाहिए। वर्यो कहा जाता है कि मंत्री बन जाने के बाद कृष्ण करते हैं। सारे मंत्री तो गलत नहीं हैं, सारे एमपी तो पैसा नहीं खाते हैं। यह वर्यो कहा जाता है कि हम अपनी क्षमता का दुरुपयोग करते हैं। [r45]

[m46]

My father was a Principal of a college. As a young boy, I could see the local politics taking place there, how the governing bodies were manipulated and how he was about to be removed on false corruption charges. The only institution, which gave him succour at that particular point of time, was not the politician. It was not the Executive but the Judiciary. So, Judiciary also has a very vital role to play. I am not justifying by saying that...(Interruptions)

MR. CHAIRMAN : Mr. Kirip Chaliha, please conclude.

SHRI KIRIP CHALIHA : Sir, it is a very important subject. I will take two minutes.

MR. CHAIRMAN: It is important subject for all and not only for you.

SHRI KIRIP CHALIHA : I know and I have seen the standard of this Parliament. From 1991, I have been here. I have seen the

standard of the Parliament debates. I have seen luminaries talking and discussing issues. As a young boy, I listened to them with awe and admiration how Somnath Chatterjee, Inderjit Gupta, Atal Bihari Vajpayee and Arjun Singh and Narasimha Rao were arguing on very vital points in a very delicate manner with mutual respect. Does it prevail today? Can we say from our heart that we have the same standards? Are we not the people who elect the Ministers? Are we not the people to whom the Executive is accountable? Executive's accountability is there because the Parliament is there. Parliament has also the accountability to the people. It is a fact. But the Judiciary does not have that accountability. But in spite of that, let me make it very plain that till now they have been doing quite well. Yes, there have been aberrations. I admit there have been aberrations.

I do not have the data. It could be that about 100 families or 200 families are monopolizing the Judges' posts or the posts in the Judiciary. I definitely say, yes that we need a Judicial Commission. We need the best talents to come and become judges. We want the best talented people to become judges because judges are very vital for our democracy. But for that the mechanism has to be built by us, by the parliamentarians. We have to do or perform our duty. Have we performed that duty? Have we performed that duty till today? Is it not true that a very successful lawyer will not become a judge? I know of lawyers who earn so much of money. But if they are told to become Justice or judge of a High Court, he will not go because their salary is very minimal.

Till you do not give proper emoluments and opportunities to the judges, or the Judiciary, they will not come.

MR. CHAIRMAN: Please conclude.

SHRI KIRIP CHALIHA : This is my last one point.

I had the privilege, as a Member of Parliament to attend the Commonwealth Conference on 'Principles of Accountability and Relationship between the Three Branches of Government' in Maldives, very recently. Some suggestions were made there. I am sure the hon. Minister knows about them.

The trend today is also to have Judicial accountability, and I would like to quote this. Many of our friends have already mentioned it. I am just saying that while the Parliament's primary responsibility for law making on the one hand and for the Judiciary's responsibility for the interpretation and application of the law on the other hand are very paramount, Judicial accountability is a must. "People should have easy and unhindered access to courts, particularly to enforce their fundamental rights. Any existing procedural obstacles to access to justice should be removed." That is the operating part.

Now, this is very pertinent. All the Commonwealth countries are today talking about public criticism of judges.

MR. CHAIRMAN: Mr. Kirip Chaliha, please take your seat. I am allowing the next Member to speak.

SHRI KIRIP CHALIHA : Sir, my last point is that "legitimate public criticism of judicial performance is a means of ensuring accountability." Sir, this is a point that you also share as a Member. "The criminal law and contempt proceedings are not appropriate mechanisms for restricting legitimate criticism of the courts." Sir, we all want that there should be harmonious functioning of all the three branches. Somewhere, this harmony is lacking. This should be given a serious thought. Tyranny of Judiciary is bad but brute majority and majority decisions alone are always not good. History has shown that. Parliamentary democracy depends upon our exercising power. But limiting power is also equally important as exercising power....(*Interruptions*)

MR. CHAIRMAN: Please take your seat. Now, Shrimati Ranjeet Ranjan.

...(*Interruptions*)

MR. CHAIRMAN: Mr. Kirip Chaliha, please take your seat. No, nothing will go on record except the speech of Shrimati Ranjeet Ranjan.

(*Interruptions*)* â€

सभापति महोदय : कुछ भी रिकॉर्ड में नहीं जा रहा है।

...(व्यवधान)*

* Not recorded

श्रीमती रंजीत रंजन (सहरसा) : सभापति महोदय, एक बहुत महत्वपूर्ण विषय पर चर्चा चल रही है। आपने मुझे बोलने का मौका दिया, उसके लिए धन्यवाद। न्यायपालिका, कार्यपालिका और विधायिका तीनों को अपनी सीमा नहीं लांघनी चाहिए। हमने जो हालात पिछले दिनों देखे, सही मायने में बहुत से ऐसे उदाहरण देखने को मिले जिस में न्यायपालिका ने अपनी सीमा को लांघा है।[a47]

16.00 hrs.

यह सिर्फ इसलिए हुआ है क्योंकि हम एक नहीं हैं। कहीं न कहीं हम लोगों में ही कमी है। मैं सबसे महत्वपूर्ण बात कहना चाहती हूँ कि भ्रष्टाचार वही करता है, जिसकी नौकरी परमानेंट होती है। कार्यपालिका, न्यायपालिका और विधायिका में ये यदि किसी की नौकरी पांच साल नहीं है, तो विधायिका की नहीं है। कार्यपालिका और न्यायपालिका, जिनकी नौकरी परमानेंट होती है, यह एक उदाहरण हमारे सामने है। यदि हम खाना खा रहे हैं, तो किस तरह खा रहे हैं और यदि हम चल रहे हैं, तो किस तरह चल रहे हैं, हमारे पास कितनी सम्पत्ति है, घर में कितनी ज्वैलरी या सोफे रखे हैं, उसकी एक-एक जानकारी न्यायपालिका से लेकर कार्यपालिका तक होती है, लेकिन हमें न न्यायपालिका की जानकारी होती है कि उनके पास कितनी सम्पत्ति है और न कार्यपालिका की जानकारी होती है कि उनके पास क्या है?

मैं सबसे पहले आपको यह कहना चाहती हूँ कि माननीय अध्यक्ष महोदय ने हम लोगों को ईमानदार बनाने के लिए एक नियम पास किया कि हम लोग, मतलाब कोई भी एमपी गाड़ी पर रेड लाइट नहीं लगाएंगे, क्योंकि शासक इससे भ्रष्टाचार फैलता है। मुझे हैरानी होती है कि एक एसएचओ, इंस्पेक्टर रेड गाड़ी पर लाइट लगा कर घूमता है, लेकिन हम यदि रेड लाइट लगा लें, तो हम भ्रष्टाचार में लिप्त हो जाएंगे, लेकिन वे भ्रष्टाचारी नहीं हैं।

सभापति महोदय, मैं आपके सामने सिर्फ चार बिंदु रखना चाहूंगी। मैं पूछना चाहती हूँ कि क्या संविधान से ऊपर न्यायपालिका है या न्यायपालिका से ऊपर संविधान है? आज बहुत से उदाहरण मौजूद हैं। चाहे अध्यक्ष महोदय का कोई निर्णय हो या राष्ट्रपति शासन लगाने का कोई निर्णय हो, चाहे कोई सिविल मुद्दा हो, हर जगह न्यायपालिका ने हस्तक्षेप किया है। सिर्फ हस्तक्षेप ही नहीं किया है, बल्कि इस तरह से टिप्पणी की है कि हमें शर्म आ रही है कि विधानपालिका में इस तरह से हो रहा है। शर्म की बात यह है कि आज कोर्ट आफ कंडेक्ट के तहत इस तरह से आम व्यक्ति को, कार्यपालिका और विधानपालिका को इस तरह से चुप करा कर रखा गया है कि मीडिया की भी हिम्मत नहीं है कि अगर न्यायपालिका में कोई भ्रष्टाचार में लिप्त है, तो उसके खिलाफ बोल सके। मैं आपसे इतना कहना चाहूंगी कि अगर आप जज, ज्यूरी और वकील को ले लें, मैं आपको धरातल की बात बताना चाहूंगी कि सुप्रीम कोर्ट में केस लड़ने के लिए, किसी गरीब की बात छोड़िए, मिडल क्लास व्यक्ति को भी बैंक लूटना पड़ेगा, डकैती डालनी पड़ेगी, मतलाब एक क्राइम से बचने के लिए दूसरा क्राइम करना पड़ेगा, तब जा कर वह सुप्रीम कोर्ट की फीस चुका पाएगा। पचास हजार से लेकर छः लाख तक फीस लेते हैं क्या कोई ऐसा संशोधन होगा ताकि वकीलों की फीस को संशोधित किया जाए? जिससे आम व्यक्ति निर्णय पाने के लिए पैसे की यह न देखे। यह बहुत जटिल समस्या है, मैंने जेल में जाकर देखा है कि जो गरीब व्यक्ति है, जो 22 वर्ष से जेल में है सिर्फ इसलिए कि उसके पास वकील को पैसे देने की हेंसियत नहीं है। इसके साथ ही मैं कहना चाहती हूँ कि जजों की नियुक्ति आज तक जिस तरह से होती रही है, यह शर्म की बात है कि समस्त भारत में परसेंटेज में पांच परसेंट भी बैकवर्ड क्लास के लोग जज नहीं हैं। आज हमें यह संशोधन करना चाहिए कि जजों की नियुक्ति में प्लू कम्पीटिशन का नियम बनाएं ताकि लोग कम्पीटिशन से आएँ क्योंकि जो जज है उसी का बेटा या भतीजा जज न हो। यदि सर्वे करें तो पता चलेगा कि कुछ फैमिलीज हैं जिनके बच्चे, जिनके लोग जज की कुर्सी पर बैठ रहे हैं और दलित कम्युनिटी को इससे अलग रखा जा रहा है। हमें कहा जाता है कि हम सही मायने में राजनीति करते हैं लेकिन यदि सर्वे हो तो सही मायने में पता चलेगा कि उच्च कुर्सी पर बैठकर राजनीति होती है। अगर वास्तव में देखा जाए तो व्यक्ति को यदि कोई किमिनल बनाता है तो वह कम उच्च कुर्सी से शुरू होता है। यदि एक व्यक्ति बेगुनाह है और वह पैसे के कारण बेगुनाही सिद्ध नहीं कर पाता है तो वह व्यक्ति दोबारा किमिनल बनता है। मैं दोबारा कहना चाहूंगी कि यदि कोई व्यक्ति गलत जजमेंट के कारण किमिनल बनता है तो आखिर अपराधी कौन है? वह व्यक्ति है या जजमेंट देने वाला जज है?

मैं आपसे एक प्वाइंट और कहना चाहूंगी कि सम्पत्ति की सार्वजनिकता हमारे लिए अनिवार्य है। यदि हम पांच या दो साल बाद चुनाव लड़ते हैं तो हमें फीस से लेकर ऊपर तक एक-एक चीज को सार्वजनिक करना पड़ता है लेकिन चीफ जस्टिस ऑफ इंडिया की टिप्पणी आई कि हम भ्रष्ट नहीं हैं इसलिए हम अपनी सम्पत्ति को सार्वजनिक नहीं करेंगे। यह इस सदन का घोर अपमान है। मैं आपसे कहना चाहती हूँ कि जो तीन स्तम्भ मजबूत हैं, उनकी तरह हमें भी अधिकार नहीं है कि हमें भी जानकारी हो कि उनकी सम्पत्ति की सार्वजनिकता क्या है? [r48]

इसमें ट्रांसपैरेंसी बहुत जरूरी है। इससे यह सिद्ध होता है कि इस लोकतंत्र में हम किसको सुप्रीमो मानते हैं और आज इस देश में यदि कोई सुप्रीम पावर है तो वह ज्यूरी को माना जाता है। जजों के द्वारा बहुत सारे ऐसे डिजिजन्स आये हैं, जिनमें संविधान की धज्जियां उड़ाई गई हैं। एक ही केस में एक व्यक्ति, जो यह स्वीकार करता है कि उसने हत्या की है, उसे कह दिया जाता है कि नहीं, इसने हत्या गैरइरादतन की है और दूसरे को फांसी की सजा दी जाती है। यदि आप सर्वे करें तो आप बहुत सारे ऐसे केसिज पायेंगे जिनमें संविधान की धज्जियां उड़ाई गई हैं। मैं आपसे विनती करूंगी कि यदि हमें विधायिका, न्यायपालिका और कार्यपालिका में यह लाना है कि हर एक अपनी सीमा में ही रहे और कोई अपनी सीमा को न लांघे तो सर्वप्रथम इस लोकतंत्र में विधायिका में हम लोगों को युनाइटेड होना पड़ेगा और युनाइटेड होने के बाद हम लोगों को जजों की नियुक्ति में और उनकी सम्पत्ति की सार्वजनिकता पर एक कानून जरूर पास करना चाहिए कि कोड ऑफ कंडक्ट के कारण जो मीडिया को अखबार को या किसी को भी जजों के खिलाफ बोलने या लिखने की अनुमति नहीं है, इसके लिए नया संविधान बने, ताकि उनके जो भी भ्रष्टाचार के मामले हैं, उनके बहुत सारे सम्पत्ति के भ्रष्टाचार हैं, रेप केसिज में जज फंसे हैं, उन्हें भी सार्वजनिक करने का अधिकार मीडिया को होना चाहिए। आपने मुझे बोलने का समय दिया, इसके लिए मैं आपको धन्यवाद देती हूँ।

MR. CHAIRMAN: The next speaker is Shrimati Sangeeta Kumari Singh Deo.

SHRIMATI SANGEETA KUMARI SINGH DEO (BOLANGIR): Sir, I have already laid my speech on the Table of the House.

MR. CHAIRMAN: The next speaker is Shri N. Y. Hanumanthappa.

श्री राम कृपाल यादव : सर, हमारी पार्टी का समय है।

सभापति महोदय : आपकी पार्टी का समय समाप्त हो गया है।

श्री राम कृपाल यादव : सर, अलग से समय दीजिए।

सभापति महोदय : यहां अलग से नहीं हो सकता है। वेयर न्याय से चलता है।

SHRI N.Y. HANUMANTHAPPA (CHITRADURGA): Thank you, Mr. Chairman, Sir, for having given me an opportunity to speak a few words about separation of power. Of course, it is a much discussed issue, but a definite conclusion has not been arrived at. It is such a wonderful and ticklish subject.

The separation of power between the three wings was not the brain-child of India. We have borrowed it from the American Constitution, that is, judicial separation. We gave to ourselves a Constitution whose main philosophy is social justice supported by equality, liberty and fraternity. ...(*Interruptions*) Therefore, the founding fathers of our Constitution thought that there shall be division of power instead of conferring the power of drafting or framing the law, interpreting the law, and executing the law in one and the same hand because it amounts to despotism or in some cases autocracy. In other words, the Constitution has given distribution of powers to the three wings, that is, the Parliament, the Judiciary and the Executive.

16.08 hrs.

(Shri Varkala Radhakrishnan *in the Chair*)

Which of these is supreme or otherwise? Nowhere did the Constitution say that Judiciary is superior to the Parliament or that the Parliament is superior to the Executive. They are the three wings of the State, and according to me they are something like Brahma, Vishnu and Mahesh. No one is great, and no one is inferior and each one has to do its own role. The duty of the Judiciary is to interpret; the duty of the Parliament is to frame the law; and the duty of the Executive is to execute it.

Fortunately, there is not much battle between the Parliament and the Legislature on the one side, and the Executive on the other because somehow or the other they are executing. Further, whenever they commit an error, then both the High Court and the Supreme Court are there, and they will correct it.

But I am afraid that there is much controversy regarding the role of the Judiciary, and the role of the Parliament. Both these wings should understand what the Constitution expects from them. As far as Parliament is concerned, I do not say that it has transgressed the limits at any point of time. No doubt, my experience is only three years or a little more.[\[r49\]](#)

I had an opportunity to go through the past record. I find that at no time Parliament transgressed its limits. On the other hand, Parliament has given the judiciary the respect due to it despite what the judiciary has said from time to time. At the same time, I do not want to say that judiciary is doing wrong. However, my experience says that judiciary - instead of doing what the Constitution dictates, what the Parliament says, what the law asks it to do - in some cases is going a little further into matters which is not its duty. Judiciary's duty is to only see whether a particular Act or law is unconstitutional or against the principles of natural justice. They have no right to comment upon what Parliament does. That is because judges are not legislators and they cannot legislate.

No doubt independence of judiciary is of paramount importance. At the same time judges must also understand that Parliament is a replica of the wishes and aspirations of the people of the country. People of the country have entrusted utmost powers to Parliament. Parliament, which is an elected body, has to come to the aid and rescue of the people whenever they need it. Laws are made here based on the wishes of the people. When we are making laws based on what the society needs, it is not for the judiciary to interpret. Judiciary can interpret law only when it is not in accordance with the statute or when it is unconstitutional

or when it goes against the principle of natural justice. Judiciary must stay within those limits. It cannot assume the powers of Parliament to itself and declare that such and such Act should not have been done like this way or that way. It is for us to do that. When an Act is not correct, we will rectify it, we will amend it. It is not for the judiciary to comment upon such things. Judiciary must interpret the law and that is all. Judiciary cannot go beyond that.

Coming to the work of judiciary, some of my colleagues said, the lady Member in particular has just said, that all is not well with the judiciary in certain aspects. Hon. Minister of Law is sitting here. Judiciary is meant to represent society's aspirations. They must understand the writing on the wall. They must understand that law is made by the people, that is, by all of us. It is not the law which has made us. The law is made by the people. If people want a particular type of law, it is not for the court to interfere in such laws.

It is enshrined in the Constitution that there shall be social justice. Ours is a socialistic society as dreamt by the framers of the Constitution, particularly by Pandit Jawaharlal Nehru. He said that there should be democratic socialism and ours should be a welfare society. Unfortunately, judiciary in some of the matters is transgressing its limits. That is one thing. Secondly, the frame of the judiciary is not reflecting the equality principle, the principle of social justice. We cannot find in the judiciary many people belonging to the weaker sections of the society – SCs, STs and OBCs - in the system of judicial administration.

It is more than sixty years after Independence but hardly have we had some ten or fifteen judges throughout the country from among the people belonging to SCs, STs and OBCs. So, it reflects poorly not only upon the judiciary but it reflects – with great respect I say this – poorly upon us also. If at all the Ministry has got power, if at all the Ministry has got commitment to the principle of social justice, let it select people belonging to SCs, STs and OBCs as High Court Judges and Supreme Court Judges. They are not doing it. They are only showing lip sympathy. It is nothing but hypocrisy I say. It is a great fraud on the Constitution. I can say that without caring for the consequences. [\[KMR50\]](#)

If at all, they have the concern, they must do it; there are good number of lawyers belonging to these classes who are more competent, though no opportunities were available for them. Let them think of enlisting these people. Of course, the Ministry can say that it has no powers. Definitely, it has powers. The Supreme Court cannot appoint judges directly; it has to consult the Government. The Government has to do this.

Regarding disposal of cases, people expect that justice shall be delivered immediately. Presently, cases are pending for years and years together. It is at whose cost? We have to see that. Moreover, delivery of judicial verdicts becomes very costly. It is purely meant for the rich and not for the poor sections of the society.

I am giving you one example. In the case of PIL, one can file PIL, challenging the tax levied by the Government, which is running into several hundreds of thousands of crores of rupees, by just writing one post card. But a poor man may have one or two acres of land and when that land is acquired, if the compensation given is not adequate, and if he wants to go to appeal to the court, he has to pay court fee. He would have lost his land in the meanwhile; so, just to get reasonable compensation, he has to pay court fee. What is the system? Is it in favour of the poor sections of the society, is it in favour of villagers, and is it in favour of the downtrodden people? It is not in favour of the common people; it is in favour of rich people. In spite of 60 years of Independence and accepting the Constitution, which say that there shall be equal justice, they are not doing it.

In none of the cases, the Supreme Court or the High Court has said that the system is incorrect; you must go and search the hearts of the people and deliver such judgments which go in favour of the poorer sections of the society. They have not cared for that.

So, my submission is that so far the Parliament has not interfered in the affairs of the Judiciary, not interfered in the affairs of the Executive, because it is respecting both Executive and Judiciary. But unfortunately the Judiciary has not understood what the nation needs, what the people need, and what the Parliament has said.

With these words, I conclude.

MR. CHAIRMAN : Hereafter, all the hon. Members will get only five minutes to speak. A lot of speakers have already participated in it. The hon. Minister also has to reply today.

Shri Mitrasen Yadav.

श्री मित्रसेन यादव (फ़ैज़ाबाद) : माननीय सभापति जी, सदन के वरिष्ठ माननीय सदस्य गुरुदास दासगुप्ता जी द्वारा प्रस्तावित नियम 193 की चर्चा में बोलने का मौका आपने मुझे दिया, इसके लिए मैं आपका आभारी हूँ। सदन की जैसी भावना है कि यह विषय बहुत महत्वपूर्ण है, इसमें कोई दो राय नहीं हैं।

आज संवैधानिक संस्थाओं में जो टकराव पैदा हो रहा है, उस पर विचार करने के लिए हम बैठे हैं। इस संविधान में कोई कमी है या इन संस्थाओं के क्रियाकलापों में कोई कमी है, कहां से ये विसंगतियां पैदा हो रही हैं, इसका हल हमारी संसद को करना है। माननीय मंत्री जी यहां बैठे हैं। ये बताएंगे कि आखिर निर्णायक शक्ति कौन है, कौन सी ताकत ऐसी है जो इसका निस्तारण करेगी। विधायिका, कार्यपालिका और न्यायपालिका, ये तीनों ऐसे संविधान के ऐसे अंग हैं जिनके द्वारा हमने संविधान की प्रस्तावना में ही देश को डेमोक्रेटिक, सोशलिस्ट, सैक्यूलर स्टेट बनाने का संकल्प लिया और कुल मूल अधिकार देने के लिए हमने लोगों को स्वतंत्र किया। इसके बाद भी 60 साल के बाद देश में इस प्रकार की विसंगतियां हैं कि संविधान के प्रति अंगुली उठ रही है। अभी कुछ दिन पहले हमने देखा था कि माननीय अध्यक्ष जी और न्यायपालिका के बीच कुछ ऐसे प्रश्न उठ गए और कुछ ऐसे भी प्रश्न हमने सुने हैं कि न्यायपालिका में बैठे बहुत से लोग हमारी इस ... (व्यवधान)* की परिभाषा देते हैं। [h51] इसलिए विसंगति होना स्वाभाविक है। आज किस की शक्ति बढ़ी है, जो विसंगतियां पैदा हो रही हैं, उनके प्रति जो असंतोष पैदा हो रहा है और उससे जो कानून-व्यवस्था भंग हो रही है और सामाजिक जीवन में जो असंगति पैदा हो रही है, उस पर विचार करने के लिए सबसे बड़ी संस्थाएं हमारी विधायिका हैं। समाज में किस प्रकार के लोगों को असंतोष है, उसके लिए हम चुनाव में जाते हैं। जनशक्ति से राजशक्ति बनती है और राजशक्ति सबसे बड़ी ताकत होती है। यह संस्था राजशक्ति की धोतक है और राजशक्ति राज्य में किस प्रकार का असंतोष है, उसे दूर करने के लिए नियम एवं कानून बनाती है तथा उस कानून के तहत हमारी जो कार्यपालिका है, वह उसका पालन करती है, उसमें विसंगति होती है तो न्यायपालिका उसका निर्धारण करती है, अब इसमें कौन गलती कर रहा है और किस कारण हमारे अंदर असंतोष हो रहा है। कानूनों एवं नियमों से बाहर कोई नहीं है, इसके बाद भी कानूनों के प्रति अंगुली उठ रही है, इसका मतलब उसके प्रति सही आचरण नहीं हो रहा है। न्यायपालिका कानून का सही ढंग से पालन नहीं कर पा रही है, वहां भी किसी न किसी प्रकार का स्वार्थ टकरा रहा है - चाहे वह आर्थिक, सामाजिक या राजनैतिक स्वार्थ हो। स्वार्थों से परे कोई नहीं है और स्वार्थों के आधार पर आज सबसे बड़ी ताकत पैसा है।

* Not recorded

"यशास्य वितम् सनराकुलीना, सएवम् वत्ता सत्वादरुनीया, सर्वे गुणा कांवनम् माशर्येन्ते।"

सभी गुण धन के आश्रित हैं, पूंजीवादी व्यवस्था का यह सबसे बड़ा अवगुण है और यही अवगुण आज हमारे देश में काम कर रहा है। धन की बढ़ती न्यायपालिकाएं बिक रही हैं, कार्यपालिकाओं में भ्रष्टाचार है और उसकी बढ़ती हमारी विधायिकाओं में भी कमजोरियां आईं। इस पर जब तक अंकुश नहीं लगेगा, आप जितनी भी बहस करते रहें, तब तक कोई नतीजा निकलने वाला नहीं है। यहां न्याय मंत्री जी बैठे हैं, वे बताएं कि इसका क्या नतीजा है, क्या हल है, आज जो हमारे संविधान के प्रति अंगुलियां उठाई हैं। हमने समय-समय पर संविधान में संशोधन किया, प्राकृतिक, सामाजिक एवं आर्थिक कोई भी दिक्कत पैदा हुई तो हमारी विधायिका ने उसमें संशोधन किया, उसके बाद भी यहां बीमारी बनी हुई है, दर्द बना हुआ है, नवसलवाद पैदा है, न्यायपालिका गलती कर रही है एवं कार्यपालिका में भ्रष्टाचार है - चाहे आईएएस, आईपीएस हो या जितने भी उच्च कोटि के आफिसर हों, सभी पैसे के पीछे भाग रहे हैं, सारी व्यवस्था को पैसे पर बेचा जा रहा है।

महोदय, लोग साफ-साफ कहते नहीं हैं, साफ-साफ कहना पड़ेगा कि अर्थ पर नियंत्रण और आर्थिक व्यवस्था पर जब तक अंकुश नहीं लगाया जाएगा, तब तक आपके सारे नियम एवं कानून बिकते रहेंगे और यह व्यवस्था चलती रहेगी। इसलिए विधायिका के सामने आज सबसे बड़ा प्रश्न है कि आप किस प्रकार से देश को, अखंड भारत और हमारी संप्रभुता को तथा हमारे देश की जो तमाम धरोहर है उसे कैसे बचाएंगे, यह सवाल हमारे संविधान के सामने है? माननीय गुरुदास दासगुप्ता जी ने यह प्रश्न ऐसे ही नहीं उठाया, अनायास यह प्रश्न नहीं आया है, सबके दिल एवं दिमाग में यह बात थी, यह प्रश्न आना चाहिए था, और अच्छे ढंग से आना चाहिए था, बहुत झूझबूझ के साथ अच्छे सुझाव आने चाहिए थे। आज इसका निस्तारण होना चाहिए कि किस प्रकार से इस विसंगति को दूर किया जाएगा, आने वाले दिनों में, ये हमारे तीनों अंग, जो हमारी संप्रभुता को बचाने वाले हैं और संविधान की रक्षा करने वाले हैं, इनमें किसी प्रकार का टकराव नहीं होगा और देश के अंदर बढ़ते हुए असंतोष की धारा को रोकना जा सकेगा। यही हमारी इस बहस का सबसे बड़ा मुद्दा है।

महोदय, इन्हीं शब्दों के साथ मैं आपको और गुरुदास दासगुप्ता जी को धन्यवाद करता हूँ और उम्मीद करता हूँ कि यह सरकार इस पर सही ढंग से निर्णय देगी और गंभीरता से विचार करेगी।

SHRI M. APPADURAI (TENKASI) : Sir, The discussion that has been taken up in this House under Rule No.193 on the resolution moved by Shri Gurudas Dasgupta is a very important debate that this body polity needs to ponder over.

Sir, in this country, the public at large repose their faith in the judiciary as a last resort. But the increasing number of pending cases and occasionally heard rampant corruption are eroding the faith, the public would like to have on judiciary.

Our Constitution has vested with powers and independent authority to the three organs of the State, namely, Judiciary, Executive and Legislature. Judiciary alone has been entrusted with the responsibility to interpret the functioning of the other two organs. Under the Article 226(2), when there is a failure on the part of the Executive, Judiciary can go into it to ensure the availability of justice to the public who may be at the receiving end. Whether the Executive and the Legislature uphold the laws and the rules prescribed for them can be interpreted by the Judiciary to a certain extent. As far as the Executive is concerned, whether its actions are violative of the Fundamental Rights can be reviewed by the Judiciary. As far as the Legislature is concerned, whether

its enactments are against the spirit

of the Constitution will be probed into. Except for these two aspects, Judiciary do not have any justifiable right to question the functioning of the other two organs of the State. But what is happening today is to the contrary. That is why, this House is now seized of this question whether there exists harmonious relations between these three Organs of the State provided to the People of India by the Constitution we have been given to ourselves. The prevailing trend is rather alarming, the Judiciary is perceived to be going beyond its brief interfering in the affairs of the Executive on the day-to-day basis. This trend needs to be arrested.

* English translation of the speech originally laid on Table in Tamil

As far as Legislature is concerned, it is answerable to the people because the Members of the Legislative Bodies have to meet the people, face the elections and seek their mandate as they are directly answerable to the people whom they represent. As far as the employees of the Government are concerned, they are responsible and answerable to the Administrative Authorities. The Administration or the Executive is accountable to the Legislature. Whereas, Judiciary is only Organ that is left free as it is not accountable to anyone. If when transparency too is not there, then Judiciary goes insurmountable and it goes scot-free even if there for its omissions and commissions. When about 2 ½ crores of law suits are pending various courts of law all over the country, and when Supreme Court alone has got more than 35,000 cases pending before it, we find certain high-profile cases are getting undue priority and heard even on holidays. People are not only surprised but are also shocked by this kind of admissions and observations by the courts. For instance, the case pertaining to the disproportionate assets of the former Chief Minister of Tamilnadu are pending for long whereas her moving the courts to question the validity of a public interest measure is admitted even in the highest court of the country with undue haste. The Fundamental Rights of the workers to express their protests was sought to be curtailed by the courts. Later on, the legitimate aspirations of the people was sought to be ignored when their declaration of stoppage of work for a day protesting against the hurdles created by the vested interests was also curtailed by the highest court of the country. The people are perplexed about the way in which our Judiciary is functioning according to its whims and fancies. There is no way to check this trend as of now.

Our Constitution provides for public interest litigation. In certain cases, some good has come about and people are appreciative of it. But, many a times genuine grievances have been ignored, so our courts must try to win the confidence of the poor and the deprived classes of the society. For instance, certain social justice measures resorted to by the popular Governments with a mandate from the people as part of fulfilling of their assurances at the time of the hustings are sought to be blocked by the courts of law with undue haste in the name of public interest litigations. There are certain instances where the courts are taking upon themselves the right to run the Administration under the guise of public interest litigation and discharging of their duties in the garb of rendering justice.

In the entire world, ours is the only country where Judges themselves will be appointing Judges. There must be a well laid out procedure involving people from all the constitutional arms and organs thereby evolving a viable mechanism in the form of a judicial panel for appointment of Judges unless and otherwise this step is taken, Judiciary may not be able to shape itself to be a more transparent Organ of the State. Judiciary must also uphold the essential spirit of the democracy that people are sovereign. This has been upheld by both the Executive and the Legislature as of now. Judiciary must also come to terms with the reality of the democracy in the light of the Constitution and more especially its Preamble. The reservation in jobs and appointments must be extended fully in Judiciary also, only then all the people in various strata will get justice in a dispassionate manner. Hence, there is a need to educate and appoint people from the deprived classes and socially, educationally and economically backward classes in the Judiciary for the purposes of appointment as judicial officers. I think, this will make the Judiciary to act in a balanced manner more than what it is today. With this I conclude.

श्रीमती किरण माहेश्वरी (उदयपुर): सभापति महोदय, आपने मुझे इस चर्चा में भाग लेने का अवसर दिया, इसके लिए मैं आपको धन्यवाद देती हूँ। श्री गुरुदास दासगुप्ता जी ने हारमोनियस रिश्तों बिटवीन लैजिस्लेचर, जुडीशियरी एंड एग्जीक्यूटिव विषय पर चर्चा शुरू की थी। मैं भी अपनी तथा अपनी पार्टी की ओर से उसी पर विचार पकट करना चाहती हूँ। मैं इसमें और जोड़ना चाहती हूँ। इसमें मेरा सोचना यह है कि पूजातंत्र के जो चार स्तम्भ हैं- विधायिक, न्यायपालिका, कार्यपालिका और मीडिया न इनके साथ-साथ पांचवां स्तम्भ सामाजिक संगठन को भी मैं इसमें जोड़ना चाहती हूँ। अभी जो चर्चा चल रही है, वह सिर्फ विधायिक, न्यायपालिका और कार्यपालिका के आपस के रिश्तों के ऊपर चल रही है। इस संदर्भ में यह बहुत ही स्पष्ट है कि इन तीनों के अपने-अपने दायरे तय हैं। इन दायरों के अंदर रह कर अगर इन्होंने काम किया, तो सारा सब कुछ ठीक

होता है, लेकिन हो यह रहा है कि जो इन तीनों के अधिकार और कर्तव्य हैं, वे आपस में एक-दूसरे के ऊपर ओवर लैप हो रहे हैं। यह जो ओवर लैपिंग हो रही है, इसी के कारण इनमें जो हारमोनियस रिलेशन्स होने चाहिए, वे नहीं हो पा रहे हैं। एक की गलती, दूसरा निकलता है। संविधान ने इन तीनों के काम को जिस तरह से बांध रखा है, जिस तरीके से उसे डिफाइन कर रखा है, वे अपने डिफाइन वर्क के अंदर नहीं रह कर, ओवर लैप करते हैं, तभी ऐसी स्थिति पैदा होती है और इसी कारण इन तीनों में आपस में रिलेशन्स में कटुता आ जाती है। आज जब हम यह चर्चा कर रहे हैं कि इन तीनों के जो संबंध हैं, वे बराबर से बनाए रखे जाएं, इसके मूल में यही है कि ये तीनों अपने-अपने कर्तव्यों को अच्छी तरह से जानें और अपने अधिकारों को भी उतने तक ही यूज करें, तो अच्छा रहेगा।

महोदय, मैं आपके माध्यम से सदन में एक उदाहरण न्यायपालिका के संदर्भ में ही देना चाहती हूँ और चूंकि मंत्री जी भी यहां उपस्थित हैं इसलिए उनका भी ध्यान आकर्षित करना चाहती हूँ। जब हम चुनाव लड़ने के लिए अपना फॉर्म भरते हैं, तो उस समय हम अपनी सम्पत्ति का ब्यौरा देते हैं। हम हर पांच साल में चुनाव के मैदान में जाते हैं और अपनी सम्पत्ति का ब्यौरा देते हैं। यह अच्छी बात है, लेकिन यह पाबन्दी केवल विधायिका के लिए की गई है। न्यायपालिका के लिए ऐसा कोई बंधन नहीं है। इसलिए मैं चाहती हूँ कि कोई ऐसा कानून बने, जिसके अन्तर्गत न्यायपालिका को भी, यानी जजों को भी हर पांच साल में एक बार अपनी सम्पत्ति का ब्यौरा देना जरूरी हो। इसी प्रकार से जो कार्यपालिका है, जिसके अन्तर्गत सभी बड़े-बड़े अधिकारी आते हैं, वे सब भी अपनी सम्पत्ति का ब्यौरा दें। इससे कम से कम यह स्पष्ट हो सकेगा कि कानून के सामने सब बराबर हैं और केवल विधायिका को ही समाज के सामने इस हेतु विवश नहीं कर रहे हैं, बल्कि न्यायपालिका और कार्यपालिका भी इसमें बराबर आते हैं। हम देखते हैं कि विधायिका के बारे में तो समाज में टिप्पणी की जाती है, लेकिन कार्यपालिका और न्यायपालिका के बारे में कोई टिप्पणी नहीं की जाती है। इसलिए समाज इनसे भी वतैरिटी चाहता है। इस तरीके से वह पारदर्शिता उन तक भी रहनी चाहिए। जब हम विधायिका के लिए ऐसा करते हैं, तो यह न्यायपालिका और कार्यपालिका के लिए भी होना चाहिए।

महोदय, न्यायपालिका के अंदर जो न्यायालयीन प्रक्रिया है, उसमें कितना भ्रष्टाचार है, इसे कहने की कोई आवश्यकता नहीं है। फाइल्स को ऊपर लाने के लिए वया-वया कुछ करना पड़ता है। यह बात बहुत स्पष्ट शब्दों में कहने की आवश्यकता नहीं है। कानून की जो व्याख्या न्यायपालिका में होती है, उससे बहुत कष्ट होता है। जो कानून बने हुए हैं, न्यायपालिका उनके दायरे में काम करे, कानून को सही रूप से इंटरप्रेट करे, लेकिन ऐसा नहीं होता है और अनेक बार देखा गया है कि कानून की गलत व्याख्या की जाती है। कभी स्टेट गवर्नमेंट्स के ऊपर हस्तक्षेप किया जाता है, उनके ऊपर कानून की गलत व्याख्या कर के टिप्पणियां की जाती हैं। इससे किसी स्टेट गवर्नमेंट के बारे में एक आम धारणा बन जाती है किसी स्टेट गवर्नमेंट के बारे में कि शायद वह स्टेट गवर्नमेंट कुछ गलत काम कर रही है, जबकि ऐसा नहीं होता है। जब सुप्रीम कोर्ट, डिजीजन की गलत व्याख्या करती है, तो ऐसा लगता है कि न्यायपालिका शायद अपने अधिकारों से और आगे बढ़कर इस प्रकार की बात कर रही है।

महोदय, इसके अलावा मैं एक बात और कहना चाहती हूँ कि न्यायालयों में न्यायाधीशों की जो नियुक्ति होती है, उसके अधिकार स्वयं न्यायपालिका ने अपने अंदर ही समाहित किए हुए हैं, जबकि यह अधिकार दूसरी जगह होने चाहिए। मुझ से पूर्व बोलने वाले माननीय सांसद ने भी यह विषय उठाया था। मैं उन्हीं की बात का समर्थन करते हुए कहना चाहती हूँ कि किस प्रकार से बहुत सारा भ्रष्टाचार इन विषयों में हो रहा है। जजेज बनाने में कई जगह भ्रष्टाचार उजागर भी हुआ है।

महोदय, विधायिका को भी न्यायपालिका के निर्णयों को तवज्जुह देनी होगी। वह उसका भी मान-सम्मान करे, लेकिन ऐसा बहुत बार नहीं होता। मैं एक उदाहरण इलाहाबाद हाईकोर्ट का देना चाहती हूँ। उसने वर्ष 1975 में जब श्रीमती इंदिरा गांधी के इलैवशन को अवैध करार कर दिया, तब वे चाहतीं, तो सुप्रीम कोर्ट जाकर इस्तग़ासा पेश कर सकती थीं, आगे जा सकती थीं। [r52] लेकिन वे सुप्रीम कोर्ट में नहीं गईं और उन्होंने इस देश के अन्दर आपात काल लागू किया, जिससे एक काला अध्याय इस देश के अन्दर शुरू हुआ। मेरा यह कहना है कि अभी वर्तमान में भी पार्लियामेंट के ऊपर जो बम विस्फोट हुए, उसमें अफजल गुरू को फांसी की सजा सुप्रीम कोर्ट के द्वारा सुनाई गई, लेकिन उसके बाद भी उसे फांसी नहीं दी जा रही, यह जो चीज़ होती है तो मैं यही बार-बार कह रही हूँ कि जब हम हारमोनियस रिलेशंस की बात करते हैं तो एक दूसरे का हम सम्मान करना सीखें। एक दूसरे के अधिकार के बारे में वे लोग स्पष्ट होकर बात करें, तभी ठीक होगा, क्योंकि बार-बार जनहित याचिकाओं के माध्यम से भी, जैसे सांसदों के सरपेंशन का मॉटर आया, अगर सांसदों का सरपेंशन यहां इस जगह पर हुआ है, यहां लोक सभा में, संसद में हुआ और उसके बाद में वे कोर्ट में याचिका को एवसैट करते हैं तो हमें पता नहीं चलता है कि विधायिका द्वारा लिए गये किसी निर्णय को कैसे कोई कोर्ट उसके ऊपर प्रश्नविहिन लगा सकती है। ये चीजें तो स्पष्ट होनी चाहिए कि अगर हमने कोई पावर्स इस इलैविटड विधायिका को दी हैं तो वे पावर्स कहां तक ले सकते हैं, कितने तक उनकी पावर्स हैं, हमारा कोई निर्णय कभी कहीं पर चेलेज हो जाये, उनके द्वारा कोई निर्णय लिया है, न्यायपालिका ने कोई डिजीजन दिया है, उसको हम किस तरह से तोड़ मरोड़ सकते हैं, यह जो सारा सब कुछ चल रहा है, इसीलिए हारमोनियस रिलेशंस के अन्दर बहुत खटाई आ गई है। यह जो गुरुदास दासगुप्त जी ने शुरू किया, यह वास्तव में बहुत ही अच्छी चर्चा थी, जिसमें हमारे इतने सारे सदस्यों ने भाग लिया था।

सैवशन 355 और सैवशन 356 के संदर्भ में भी मैं कहना चाहूंगी कि जिस तरीके से सैवशन 355 केन्द्र सरकार राज्य सरकार को किसी बारे में संविधान के अन्दर अगर उसने कोई पालना में त्रुटि की है तो उसके बारे में केन्द्र सरकार सीधे-सीधे राज्य सरकार को निर्देश दे सकती है, लेकिन होता वया है कि जब उन निर्देशों की पालना नहीं होती है तो राष्ट्रपति शासन भी लागू किया जा सकता है। ऐसा भी किया गया, लेकिन जब केन्द्र सरकार राष्ट्रपति शासन लागू करती है तो सम्बन्धित सरकारें कोर्ट के अन्दर जाती हैं और फिर उसके बाद कोर्ट से स्टे आ जाता है। इसीलिए मैं बार-बार कहना चाहती हूँ कि यह जो ओवरलैपिंग हो गई है, उसको किसी तरह से बन्द करने के लिए कोई उत्त्-स्तरीय समिति बनाई जाये, जो उत्त्-स्तरीय समिति इन सारे मैटर्स को लेकर कोई अच्छा डिजीजन ले सके, जिसकी वजह से जो हारमोनियस रिलेशंस हम सोचते हैं कि इन तीनों के अन्दर होने चाहिए, वे रिलेशंस प्रोपर वे में हो सकेंगे।

मैं आपके माध्यम से आप सबसे और सरकार से इसके अन्दर सिर्फ विनती कर रही हूँ कि न्यायपालिका, विधायिका और कार्यपालिका एक दूसरे का सम्मान करते रहें और एक दूसरे के अधिकार क्षेत्र के अन्दर अतिक्रमण से बचना चाहिए और इनके बीच इस तरीके के अच्छे सम्बन्ध बने रहें ताकि हमारा लोकतंत्र जीवित रहे। लोकतंत्र के ये जो स्तम्भ हैं, अगर इनमें से एक भी गड़बड़ा गया तो लोकतंत्र बिल्कुल ध्वस्त हो जायेगा। जब हमने इस देश के अन्दर लोकतंत्र लागू किया है तो यह लोकतंत्र तभी जीवन्त और सही माना जायेगा, जब हम इन सभी को बराबर प्रोपर वे में निर्धारित कर सकेंगे।

आपने मुझे बोलने का अवसर दिया, बहुत-बहुत धन्यवाद ।

SHRI BRAHMANANDA PANDA (JAGATSINGHPUR): Mr. Chairman, Sir, I extend my hearty thanks for giving me an opportunity to raise a few points on this important issue. I am grateful to my hon. colleague, Shri Gurudas Dasgupta for highlighting the issue, taking into consideration the chaos and the instability which is now mounting up on these three important organs.

Sir, as you know, ours is the largest democracy and we should feel proud of it because here is a country where each and every citizen is safeguarded with his right and liberty.

So far as Parliament is concerned, Parliament has to frame law; the judiciary, which is the custodian of law has to interpret the law; and the executive has to administer the same. In this context, it is found that there is frequent judicial activism and as a result of which, all the hon. Members are expressing their concern in this august House time and again.

In this regard, I would like to highlight certain aspects. So far as the elevation process is concerned, the ex-Chief Justice of Orissa High Court, Shri Hanumanthappa has highlighted many important issues.[\[MSOffice53\]](#) Those important issues were noteworthy because nowadays the elevation process is very defective.

Sir, there was a hue and cry that a Judicial Commission will be set up and it will decide how best the talented lawyers are to be elevated as judges. But it is found during this decade that best and talented lawyers are never picked up to be elevated as judges of the High Court. It is known as to what is the process for such selection and rather it is found that near and dear ones are very often picked up to different High Courts. As a result, there is a hue and cry everywhere that this judicial system may collapse at any point of time.

Sir, as you know, we are here to administer justice to the poor, downtrodden and *aam aadmi*. It is found that a poor person hardly gets justice within the scope and ambit that is provided either under the Constitution or under the various provisions.

Sir, as you know, a person if he is sentenced to life imprisonment, his appeal is never disposed of within a decade. They say that there is a lack of infrastructure. There are no adequate judges and the delivery system of administration of justice itself is very defective. So, I would like to highlight and draw the attention of this House that there should be a change in the elevation system when judges are appointed and the best lawyers must be picked up.

Sir, in view of my practice as a lawyer for about 31 years and as a senior Advocate of the Orissa High Court, my experience goes that the best and talented lawyers are often bypassed for elevation to the High Court or to the Apex Court. That is why, I would like to draw the attention of the hon. Minister of Law that when actually this Judicial Commission is set up, the President/Secretary of the Bar Association and persons from different other aspects should be taken as members of this Judicial Commission. As a result, there will be no impartiality or we will be able to maintain the independence of the judiciary.

Sir, we feel proud that the Indian Judiciary is independent, impartial and it administers justice at the doorstep of the poor people. It is to be seen whether actually the poor people get justice at the doorstep or they are being harassed by going to the courts for years together. In such circumstances, unless the harmonious relationship between the Judiciary, Legislature and the Executive is maintained, the entire system may collapse. It may lead to chaos and instability.

Sir, as it has been already decided, the Parliament is supreme. The Parliament has to frame law and it is the duty of the judiciary to find out whether there is anything wrong or anything bad so far as the interpretation is concerned. To interpret the law, they should not have over activism so far as the other system is concerned.

Sir, I hope and trust that in this regard, as all hon. Members have expressed their concerns, judiciary must maintain its independence, impartially and it should administer the justice within the short span of time. That should be maintained and democracy needs that the three important pillars should have a harmonious relationship to maintain the glory and the sanctity of the democratic system for which we feel ourselves proud.

Thanking you for giving me this opportunity.

SHRI BIKRAM KESHARI DEO (KALAHANDI): Mr. Chairman, Sir, I thank you very much for giving me this opportunity.

The Discussion under Rule 193 is initiated by our learned Member, Shri Gurudas Dasupta. It is a very welcome measure.[\[a54\]](#) It is necessary that the three major pillars of our democracy, that is, the Judiciary, the Legislature and the Executive as also the fourth pillar, the media have to work *in tandem*. If they do not work *in tandem*, our democracy will be in danger.

Here, I would like to cite the case of A.K. Gopalan *versus* the State of Madras wherein the learned Judge said about it and defined the powers of the Legislature, the supremacy of the Legislature and, at the time, erred. Human nature is to err. Judges are not God. They are human beings. But they have erred in the Jagadambika Pal case in Uttar Pradesh and in the Jharkhand

case in 2005. In these two cases, Justice Verma said that judicial interference should not have been there. So, Sir, it has been seen that this is a clear instance of judicial activism.

The Judiciary is to interpret the law. The law made by this august House should be interpreted by the courts – by the Supreme Court or the High Courts or any lower courts. But if you go to see the structure of the courts, a question arises now. How autonomous is the Judiciary? I say this because their financial capability and financial power is controlled by the Legislature. The Judicial Commission has been set up with Shri Natchiappan as the Chairman to inquire into the matters. It has put the questions on the website also. The point is whether more autonomy is to be given regarding the financial liabilities, financial applications in respect of the Judiciary or not. So, this has to be seriously considered.

Besides this, as legislators, we are the law-makers of this country. We should get our due. The important point is that the Supreme Court is overloaded with PILs. There are genuine PILs and frivolous PILs. So, you must have a system whereby these things can be sorted out. Already, in the Constitution, there is the demarcation of the duties of the Judiciary, the Legislature and the Executive. The duties have been clearly demarcated in our Constitution. But it is sad that because of the failure of the Executive, more and more PILs are piling up and landing in the courts. In connection with a small, frivolous matter like the provision of a drain or drinking water or in respect of any other case like cattle grazing rights, people are going to the Supreme Court with PILs. So, these things have to be properly scrutinised. At present, there are about 2.5 crore cases which are lying pending, which are yet to be decided. I appreciate the statement by the hon. Chief Justice today. He said that we should follow the Gujarat pattern in clearing the cases. They are having the evening courts and paying them some more remuneration. In Gujarat, they are doing it today. So, I think, our pillars of democracy should be strengthened. We have to maintain probity in public life. It not only applies to the Legislature but it also applies to the Executive and the Judiciary. It is high time that an Ombudsman or Lokpal is established. It has been hanging fire since long. The main question is whether the Office of the Prime Minister should come within the ambit of the Lokpal or not. It was there during the NDA rule. Previous to that also, it was there. The late hon. Dr. L.M. Singhvi, when he was a Member of Parliament, had introduced a Bill in the Rajya Sabha. Then, it was subsequently introduced in the Lok Sabha also. It had elicited public opinion. In every manifesto of the political parties, we see that it finds a place. Whether it is the Congress manifesto or the BJP manifesto or the manifesto of any other political party, it finds a mention. I am talking in a non-partisan manner. Is not the Lokpal necessary to lessen the pressure of workload on the Judiciary? We talk of maintaining probity in public life. Everywhere, we find it. Actually, is there true transparency in the Judiciary or the Legislature or the Executive? So, some type of an Ombudsman has to be brought to this country. It is there in some States. But the Lokpal, which the political parties are promising during elections, has not been initiated till now.[\[R55\]](#)

Last time, when it was introduced, no discussion could take place and then the elections came. Therefore, my suggestion is that the Ombudsman or the Lok Pal can play a major role in harmonising these three or four pillars of democracy on which this great country, Bharat, stands and which we strive that it will continue as long as we live or beyond that also. It has been proved that democracy is the best form of Government any country can have. It was the Crown in England who used to decide financial matters, but when the revolt came, when King Charles was beheaded and Cromwell became the Lord Protector in England, during that time, the King was also guillotined. As we are the creatures of the will of the people, that will has to be sustained and it is our duty to carry out the will of the people. Therefore, to carry out the will of the people, we require a strong Judiciary, a strong Executive and a strong Legislature. A legislator is the most powerful person because he is elected by the people. The job of the Judiciary is guaranteed; the job of the Executive is guaranteed. But, we are the representatives of the people who come to this Lok Sabha and have to go back to the people again after five years to tell them what has transpired in the country and what we have done for them. We have to come back again. Therefore, the Legislature is supreme. That supremacy was proved during that 'Cash for Query' case where the hon. Speaker and hon. MPs exercised their powers as legislators and which was appreciated by the hon. Supreme Court also. That should be the spirit. With that spirit only, we can forge ourselves ahead in this democracy.

MR. CHAIRMAN : Now, let us hear the Law Minister.

श्री राम कृपाल यादव : महोदय, मुझे भी बोलने की अनुमति दीजिए।...[\(व्यवधान\)](#)

MR. CHAIRMAN: There are many demands which we cannot accede to.

...(Interruptions)

श्री राम कृपाल यादव : महोदय, मुझे एक मिनट बोलने की अनुमति दी जाए। आपने सभी को बोलने का मौका दिया है, मुझे भी बोलने का मौका दीजिए।...[\(व्यवधान\)](#)

MR. CHAIRMAN: Now, the hon. Minister will speak. There is no time. So many people are there. I cannot go on like this. It is not possible. Please excuse me.

...(Interruptions)

श्री राम कृपाल यादव : महोदय, यह बहुत महत्वपूर्ण सवाल है, इसके बारे में मुझे भी बोलने का मौका दीजिए।...(व्यवधान)

MR. CHAIRMAN: We have heard so many of you about this matter.

...(Interruptions)

श्री राम कृपाल यादव : महोदय, माननीय मंत्री जी तो बोलेंगे ही, उनकी बात हम लोग सुनेंगे, लेकिन मुझे भी बोलने का मौका दीजिए।...(व्यवधान)

THE MINISTER OF LAW AND JUSTICE (SHRI H.R. BHARDWAJ): Let me speak. Please let me speak.

MR. CHAIRMAN: My predecessor has also refused to give you a chance.

...(Interruptions)

श्री हंस राज भारद्वाज : राम कृपाल यादव जी, मुझे जवाब देने दीजिए।...(व्यवधान)

MR. CHAIRMAN: When my predecessor was in the Chair, he had refused. I am only following him. Shri Devendra Prasad Yadav himself has refused to give you a chance. I am only following him.

श्री राम कृपाल यादव : महोदय, दूसरी पार्टियों का भी समय काफी पहले खत्म हो गया था, लेकिन यह परम्परा रही है कि पार्टी समय से ज्यादा समय माननीय सदस्यों को बोलने के लिए दिया जाता है।...(व्यवधान)

MR. CHAIRMAN: My dear friend, I will give you time many times. You have been given ample chance. Let us finish it now.

...(Interruptions)

SHRIMATI SANGEETA KUMARI SINGH DEO (BOLANGIR): Sir, the Fathers of the Constitution framed the Constitution based on two considerations. Firstly, to preserve and protect the freedom and democratic rights of the people and secondly to maintain the supremacy of the popular will. A system of functional distribution of powers between the 3 organs of State Feature of our Constitution where the powers, jurisdiction, responsibilities of each organ is specified in such a manner in order to avoid overlapping and each organ functions independently within its own sphere, free from interference by the other two.

The Grey areas meant to be covered by healthy conventions based on mutual respect keeping in mind a common goal. It also ensures that power is not concentrated in any one particular organ to the extend of assuming tyrannical proportions.

The 18C French Philo Montesquieu contended that individual liberty could be guaranteed best only through a separation of power.

The Indian Parliament is a sovereign law making body. But now with unlimited powers unlike the Westminster model, which believes in Parliamentary supremacy. It is a creature of the Constitution of India and its powers, rights, privileges and obligations has to be found in the relevant Article of our Constitution.

It has been empowered by the Constitution to enact laws relating to matters specified in the appropriate places and schedules of the Constitution, while its rights and powers have been curtailed under certain Article in Part 3 of the Constitution relating to fund rights.

Parliament cannot discuss the conduct of judges except in matters of impeachment it cannot discuss matters which are sub judice.

* The speech was laid on the Table.

Constitution. The framers of the Constitution took great care to create an independent and impartial judicial system. However, its scope is limited to the interpretation of laws formulated by the Legislature which represents the general will of the people.

Though the Constitution has provided the power of judicial review to the Supreme Court and High Court to hold unconstitutional. Any law or official action that it deems to be in conflict with the basic law or Constitution.

However, its scope is limited to ensure that a law falls within the competence of the authority that has framed it and secondly whether it is consistent with part of the Constitution dealing with fundamental rights.

Our Supreme Court unlike its American counterpart cannot become an instrument of judicial despotism because our Constitution does not believe in judicial supremacy.

Our Constitution substitutes the phrase 'Due process of law' as obtained in the U.S. Constitution by the phrase 'Procedure Established by law' Therefore, the Constitution binds the Courts to follow the procedure laid down by law as made by the Legislature.

The Judiciary does not have the right to inquire into the validity of parliamentary recordings or evaluate the wisdom and policy of the Legislation. It can merely examine the merit and demerit of a Law where the Constitution does not limit to do. The present Government enjoy immunity from prosecute to Article 361.

The turf war between the Parliamentary Judiciary from the implementation of the Court but became more pronounced with Golak Nath Case(1967). It was like a regular matter with judgments by the Courts and Amendments by the Press each trying to curtail the powers and inference of the other organ eg. Golak Nath Case, 24th and 25th amendment, Keshavanand Bhati Care, 42nd amendment the Muniera Mills Care.

Then the era of individual began with the judiciary trying to emigrate into the jurisdiction of the Legislative Jagadumtiba Pal Case (1998 and the Jharkhand Case(2005).

Now, Judicial Activism has reached a peak or crusade that it is decided

- (i) Where industries should be located what industries should be set up.
- (ii) Height of dams and their location
- (iii) Broadcasting rights of Sports events
- (iv) Deterioration or ceiling of Commercial in Delhi.

It is also the era of PILs which infringe upon the right of Parliament, the sovereignty of the people.

The excuse given by the judiciary activism is that:-

- (i) We interrupted because Parliament
- (ii) Was Parliament Sleeping
- (iii) Parliament no longer represents the people. Will the people due to commercialization of ethics.

I would quote Justice Krishna Iyer who said that in the name of judicial activism modern day judges in India have abandoned the traditional road of neutral reference and have increasingly resorted to tying scales of justice in the name of destructive justice. The legitimacy of such actions made to be critically appraised at the level of judiciary.

This trend

- i) Model theory of separation of powers
- ii) Status of judiciary getting undermined
- iii) Judiciary is at its overrural
- iv) It cannot perform legislature functions without accountability

In conclusion, I would like to say that the judiciary through judicial activism could establish judicial dictatorship and create disbalance between the three organs of the State thereby to chaos in society.

Both the Legislature and judiciary should behave in a responsible manner and each should follow the path shown by the Constitution which is Supreme

The Constitution has provided for a close relationship between the three organs but not in a manner of controlling each other but rather complementing each other. Like the Executive and the Legislature, the Judiciary must also be accumulate in order to have a healthy democracy. They should not be above the law then.

THE MINISTER OF LAW AND JUSTICE (SHRI H.R. BHARDWAJ): At the outset, I would thank you for allowing this discussion on a very important subject, namely, the harmonious functioning of the three organs of the State, namely, the Legislature, the Judiciary and the Executive. I would also like to thank hon. Shri Gurudas Gupta for moving the motion.

SHRI GURUDAS DASGUPTA (PANSKURA): My name is not Gurudas Gupta, but it is Gurudas Dasgupta.

SHRI H.R. BHARDWAJ: Anyway, Gurudas Dasgupta. There are two Dases. I thank him for moving this motion in which so many hon. Members participated. This is the vibrancy and success of democracy that this House has given so much importance to this discussion. I will be very forthright in saying that all the hon. Members spoke objectively with the concern that the Constitution must function in its proper perspective and no organ of the State should try to usurp the turf of another organ.

16.50 hrs.

(Mr. Speaker *in the Chair*)

This is really the harmony which we expect. Normally speaking, all the pillars of the State are independent because the Legislature does a different job, the Executive implements and the Judiciary adjudicates. These are different functions under the scheme of the Constitution and there can be no doubt that they must do their jobs within their spheres.

Sir, we are a proud country and I am not a pessimist. Sometimes, on some small issues people go the Supreme Court with Public Interest Litigations and the Supreme Court directs that a CRZ must be created or CNG must be given. This is a very recent phenomenon which started when the scope of article 21 of the Constitution has been expanded. But the basic foundation of democracy has been successfully laid by our founding fathers, by those great leaders who were occupying these seats here in this House. In our childhood, we have listened to the debate which this House has witnessed and we are proud that each point, as we have done in this debate, was objectively discussed without any acrimony, without any prejudice because we are discussing our own fate, whether you take the issue of article 14, article 15, article 16 or any other article of the Constitution, as the hon. Minister of Parliamentary Affairs said, ultimately we are discussing the fate of the people of India. That is the dignity and importance of this House that we are the representatives of the people of India.

In that context, I tend to agree with Pandit Jawaharlal Nehru when he brought the first amendment to the Constitution. If I am not wrong, it was a Provisional Parliament and at that time he brought that amendment when the land reforms were challenged in Bihar. Perhaps the Maharaja of Dharbanga and some others challenged and there was some argument within this House that it is the right to property, it is very sacrosanct and we must preserve the right to property because it is a fundamental right. At that time, Panditji used very harsh words, perhaps, in anger that thousands of people are waiting for us, I have made promises during the freedom struggle, I cannot break my promises which I made to my people and I would not like any interference in the policies and programmes and social and economic reforms which we want to usher in the country. In that context, as Shri Gurudas Dasgupta said, Pandit Nehru said that no Supreme Court can come in my way; no judges can come in my way because I made promises and I have to fulfill them. This very august House was a witness to that and that amendment was passed. Sir, you will kindly recall with your vast experience as an eminent lawyer that that was an era where the Parliament was supreme.

The Parliament amended the Constitution in Pandit Nehru's time not once, but many times. Justice Patanjali Shastri, the great Chief Justice had, said: "Parliament had plenary powers. There is no limit on the powers of the Parliament". That was the Parliament which was supreme, although we all know that our founding fathers did not have that concept of supremacy of Parliament which is there in Britain because there is no power of judicial review of statutes passed by the British Parliament and

the Parliament is supreme there. Perhaps, we have borrowed more from the United States of America where the power of judicial review of statutes has been vested in the Judiciary. This must be one of the reasons of tension because we sincerely feel, when we work here in Parliament, that we are doing the right job. We argue so much for or against a statute and in passing it, we go through many stages namely the first reading, the second reading and the third reading. But then, there is a basic principle. The power of judicial review must be understood in its correct perspective. The power of judicial review can be exercised only in limited circumstances and courts must also note it. The power of judicial review is available and the statute must conform to the Constitution. [R56] If we pass a law, which is *ultra vires* of the Constitution, certainly courts can go into it. The judges alone will have the power to say whether it conforms to the Constitution.

[r57] Finally, Sir, this area is allotted to the Judiciary alone to say what the law is. With your permission, I will just remind the hon. Members that as early as in 1803, the great jurist and a great judge, there was a conflict in the United States of America in *Marbury vs. Madison*, John Marshall said – these are words which are often repeated by Indian judges and sometimes you will feel surprised from where they have been borrowed, but as you do research, you will find – "It is emphatically the province and duty of the Judicial Department to say what law is." This phrase has been bodily lifted and perhaps put into the operation in the Indian courts.

Now, day in and day out, the judges say the law is, what we say is law. But it is certainly not correct to say so. A law is what the Parliament passes. Once it is assented to, it becomes a law. Court can go only into a limited area to see whether it is constitutionally valid. The policies enshrined in the Constitution, in the law have to be provided by the Government and Parliament alone can pass it. There can be no dispute about these propositions. Every person is aware of it.

There is another important thing. We are talking of democracy. We must also remember, there is one such thing as rule of law. It is here, as you all know, that actions of the Government must conform to law. No Minister can do anything which does not conform to law. So, the rule of the hour demands that the Government shall exercise its power in conformity with law and procedure established by law. The courts must decide the cases impartially and independently. These are the basic requirements of democracy. I will take this opportunity, with great respect, that we are a proud country that we have, by and large, succeeded in doing this.

Sir, you remember, with your vast experience, how this House has witnessed history. There may have been some shortcomings here and there, but, by and large, this House has exhibited the strength and resolution to deal with the responsibility entrusted to it. Recently, some of the Members, in this side, raised the issue when there was a question about the probity of certain Members. You rose to the occasion, Sir, this House rose to the occasion and all the Parties rose to the occasion to deal with the issue. When it was taken to the Supreme Court, it was not taken by any stranger, it was taken by some of the hon. Members who were expelled from this House. When the court ventured to issue notice to the Parliament, it was emphatically told to the court in no uncertain terms that the Presiding Officers do not respond to the notices of the courts. It was one of the submissions which was raised and the Parliament and the Executive responded to the occasion and told the Chief Justice and his companion judges that the Parliament is supreme in its own area.

I need not cite the cases. You take the *Broad Clause* case onwards. The decision of this House was upheld because whatever happens in this House is beyond the purview of the jurisdiction of the court.

I had argued another case of *Jharkhand Mukti Morcha* as a lawyer. There it was very difficult to argue that voting is protected by article 105. But, nonetheless, we must give credit to the independence of Judiciary, Justice S.P. Barucha brought down from three judges to two and said, 'Yes, whatever happens in the four walls of the House must be preserved and immunised from all this'. This also goes to the credit of Judiciary. Therefore, in order to say that some aberrations have taken place, we will take cognisance of them. But institution-wise, this is not the first occasion. [r58]

17.00 hrs.

Controversies have arisen earlier also. In the first reference which was made by the President of India in 1965, the Supreme Court gave its verdict. I would just like to quote, with your permission, para 40 of the judgement. It gives a very clear picture of what is the Constitutional position and what is the scope of various organs of the State. I quote:

"Our Legislatures have undoubtedly plenary powers but these powers are controlled by the basic concept of written Constitution itself and can be exercised within the legislative field allotted to their jurisdiction by three Lists under the Seventh Schedule. But beyond the Lists, the Legislature cannot travel. They can no doubt exercise their plenary legislative authority and discharge their legislative functions by virtue of the powers conferred on them by the relevant provisions of the Constitution, but the basis of power is the Constitution itself. Besides the legislative supremacy of Legislature including Parliament is normally controlled by the provisions contained in Part III of the Constitution. If the Legislature step beyond the legislative fields assigned to them or acting within their respective fields, they trespass on the Fundamental Rights of the citizens in a manner not justified by relevant articles dealing

with the said Fundamental Rights, their legislative actions are liable to be struck down by the Courts."

This is the difficulty. If we tread in an area where even angels dare to tread, then Courts are likely to strike it down.

MR. SPEAKER: Nobody has questioned that the laws must be in conformity with the Constitution.

SHRI H.R. BHARDWAJ: In a democratic country, governed by a written Constitution – I would end by saying this – it is the Constitution which is supreme and sovereign.

That concludes the whole thing. The Legislature, the Executive and the Judiciary, they have to do exactly what has been assigned by the Constitution. If they go out, they go out of the Constitution, which is the supreme law of the land. We have to make laws which are in conformity with the Constitution. All these duties are again, as we said, for the people of India. We are all in the service of the country. Whatever we do here as MPs, it is to serve our country. Whatever the Judges do, it is to serve the countrymen. Lawyers and Judges are also meant to serve the country. Therefore, on this, the whole House stands united.

Yesterday, after a long time, I heard a very refreshing speech from Shri Mohan Singh, a very senior Member. He put the things in the correct perspective that the country has seen several problems and we have tide over them because we are a matured democracy. We are not a small democracy or a small republic. We are a Continent. Problems are too many. Some voices are there on some very important issues like reservation, and representation to Scheduled Castes, Scheduled Tribes. They are very burning topics of our society. It is because, even after 60 years of Independence of our country, the progress achieved is not the same which we expected. So, it has to be taken up by this House. This House is supreme. The policies and programmes which are being brought before it must reflect hopes and aspirations of our people of India as Nehru did during his time. One era, as you said, is the Nehru's era where there was no conflict with Legislature. The courts also co-operated. Not only Justice Patanjali Sastri, later on all the Chief Justices right up to Golak Nath's case, the Constitutional validities were upheld. It really came to the second phase of Shrimati Gandhi where you will remember, Sir, when certain socialistic programmes were ushered through 42nd Amendment, really where privy purses were abolished, where certain other things were there like bank nationalization. Then, there were these two types of

theories in the country, socialism *versus* capitalism. There was a tense fight in this very Parliament, and we made no secrets at that time that we stand for socialism because this is the promise. Their good fight was fought here. There is no reckoning. There was another Swatantra Party, this party or that Party. They represented the big money.[\[r59\]](#)

They opposed it but our socialist friends stood by it, those days witnessed that, and Mrs. Gandhi came on the tide of her victory in the polls on socialist programmes. So, those were another days but the courts did not cooperate at that time. What was brought at that very time, several issues – the Kesavananda Bharti case and the Minerva mill case - were involved. After that, Sir, you know very well that no Parliament has been able to restore the glory of the Nehru's days. I do not know what the reason is. Still I am not able to understand why we feel so helpless about it that we cannot say that our Indian Parliament is supreme, not the Supreme Court of India. From my heart of heart, I wish I could say so but we need the muscles in our body. The body is the one organic whole. The Constitution is one organism. You need the power in your hands, in your mind, and everywhere. If this House resolves that we have to restore this power, it can do within two minutes by resolving unitedly. . . .(*Interruptions*)

SHRI GURUDAS DASGUPTA (PANSKURA): Hon. Minister, does it mean that Parliament has been diluted? ...(*Interruptions*)

SHRI H.R. BHARDWAJ: Yes. Is there any doubt? I would advise you to go into the Kesavananda Bharti and the Minerva Mill cases. Now, the law, as it stands today, if I am correct ...(*Interruptions*)

SHRI GURUDAS DASGUPTA : In the same way, will you accept that there have been deviations in the fundamental functions of the Judiciary?

SHRI H.R. BHARDWAJ: I cannot criticize the Judiciary. A Law Minister cannot but I am telling you the facts, and with the Speaker of his eminence on the Chair how can I distort one second comma or full stop, and he is an encyclopedia of law. I am saying with full responsibility that the supremacy of Parliament is not the same as it stood before the Kesavananda Bharti's case. The Ninth Schedule is in question now-a-days. The other things are in question. Your resoluteness will be required. It is the firm voice of this House that is required. The hon. Speaker on many occasions highlighted it but we do not pay full attention to that. ...(*Interruptions*)

SHRI GURUDAS DASGUPTA : Your statement makes Parliament more vulnerable. ...(*Interruptions*)

SHRI H.R. BHARDWAJ: No, I do not. I am first a Member of Parliament and then a Minister, you see. ...(*Interruptions*)

MR. SPEAKER: No. He is saying what is supposed to be the present day thinking of the Judiciary.

SHRI H.R. BHARDWAJ: Yes, Sir.

MR. SPEAKER: The only thing is that I have two questions, if you can reply.

SHRI H.R. BHARDWAJ: Sir, I am a very small man and I cannot answer your questions. Let me answer the questions of the hon. Members.

Sir, kindly just give me four to five minutes. I will not take much time. All the Members have supported one thing. I am very happy that no Member from this side or that side has attacked the Judiciary. ...(*Interruptions*)

MR. SPEAKER: The Judiciary is entitled to the highest respect. There is no doubt about it.

SHRI H.R. BHARDWAJ: Yes, Sir. I have been three times the Law Minister of this country. I do see that they are overstepping some jurisdictions and I do feel that. But as you say, Sir, as I also say, what is the remedy? After 1993, they had given a law to this country, and Justice Verma was a party to that judgment that the power of the Cabinet which advises the President in appointment of judges is circumscribed by the judicial opinion, and you can give only that advice to the President which we suggest. It is re-writing the Constitution. But I do not have that kind of cooperation, that kind of strength from Parliament to amend it and do it. In the last Government we suggested to them but nothing had happened. Similarly, we cannot do this. Two-thirds majority is required for that. We want to restore pre-1993 position. I am a witness to S.P. Gupta's case. I am committed to that. In the S.P. Gupta's case, the Government had a major say in appointment of judges, and primacy of the Chief Justice was denied there. It was in the case of Subhash Sharma later on, Justice Venkatachaliah and Justice Ranganath Mishra told me, "Why can you not give supremacy to the Chief Justice of India?" I said: "No problem. The Chief Justice deserves all the highest regards. I have no problem." But what happened thereafter? In addition to giving primacy to the Chief Justice of India, the primacy was given to his colleagues of the Supreme Court, and today the Chief Justice himself is helpless because if three of his colleagues veto his power he is helpless. So, appointments are not being made in that proper spirit as it should be and something will have to be done at the proper time.[\[h60\]](#)

But what I am submitting is that we again require a lot of discussion. It is a very touchy subject to touch upon, because this is a judgement, which has been in force for long.

Sir, another issue is accountability. I think, one hon. Member from this side, just now said that this is a recent phenomenon. Would you ever imagine, Members of Parliament being expelled for corruption! Never. It was colossus, one after the other. This is a disease, which has crept into our body politic, and we have taken cognisance. I gave a full page interview the other day...(*Interruptions*)

SHRI GURUDAS DASGUPTA : There is an instance of expulsion from the Membership of the House earlier also. Please do not say that we did it for the first time. There is an instance.

SHRI H.R. BHARDWAJ: My dear friend...

SHRI GURUDAS DASGUPTA : Secondly, may I ask you: "Have you ever approached Parliament for the amendment?"

SHRI H.R. BHARDWAJ: Sir, you give me five to 10 minutes.

MR. SPEAKER: Mr. Dasgupta, let him finish his speech. If you have any clarification, you may ask it later on.

SHRI H.R. BHARDWAJ: I am only saying that I am not that kind of a Minister, who would not know it. I am aware of that. Mudgal Swamy was the first case here and this was in Panditji's time. There have not been many instances. You must give credit to this House, which has produced parliamentarians, whose photographs we worship everyday.

It is a great institutions and we should maintain the standards. We have to maintain the standards of our parliamentary life. I have seen so many great parliamentarians. I read their speeches to get proper idea of the law. Each word is like a jewel studded in a necklace. But as the time travels, things change.

Similarly, in the Judiciary, Sir, never was heard that there is any corruption. But it is a fact of life that there are some complaints, which have come to light. I have raised this issue with three Chief Justices that 'now it is time, you should put your house in order.' This House itself has pleaded that the Judiciary must set up a mechanism to correct its house in order, as we

have done so in the Parliament. We have done it, we have demonstrated it. Unitedly and resolutely, each leader of the House stood up and said: "No more such Members." I have told in the same words to the Chief Justice of India, who is the leader of the Judiciary: "Please, for God's sake, do something."

Finally, Sir, we have put things, in place. What I could think, may not be the best measures. I consulted some eminent Jurists, I consulted some people from Canada, United States and Australia, where there are concepts of Judicial Commission to deal with the complaints against Judiciary, and their own Peers Committee. I have introduced that Bill. It had gone to the Standing Committee. Now, the Standing Committee has reported back. So, sooner, we would be back to Parliament to pass that Bill. It would be a beginning. With experience gained, you can strengthen over it. If something more is required and if the blessings of the House are with me, we can improve upon it to make it a foolproof. We have done it in the Parliament. The Executive is already on the job.

So, these wings of the State will have separate mechanisms to introduce probity in the public life. We are a democracy, and in democracy, your legs are always in water, but you sail smoothly. We are sailing in a correct direction because we take cognizance; we do not adopt partisan attitude in running the House and democracy. So, on accountability, on corruption we are cognizant of it, and we are committed to see that a mechanism is placed in position to deal with the complaints where an ordinary citizen can approach. There would be no contempt against this. I have already amended the Contempt Law. This very House had passed it. Truth is a proper defence now. I have already got it passed from both the Houses. It is a law in force. In fact, anybody can take a plea that whatever I speak is the truth – *Satyamave Jayate*. This can be pleaded today.

Therefore, slowly and steadily, these things, viz., transparency, accountability, probity are being introduced in the system.

Now, Sir, wherever the Judiciary oversteps, it becomes a cause of concern. What happened during the last days in Delhi? It was a demolition of that nature. I have never seen so much of public outcry. Everyday, we had problems, and this very House came to the rescue of the Government by passing a law. Fortunately, it is not stayed.[\[r61\]](#)

MR. SPEAKER: The earlier one was stayed.

SHRI H.R. BHARDWAJ: No, Sir. On both the occasions, they did not stay. They said, "Beyond this, we will not allow." Even yesterday's case in pending matter, with my 45 years of experience at bar, I cannot submit on pending matters. You excuse me for that. But Judiciary is now recognizing that if they will not do their duty properly, the other organs of the State are much more powerful. You cannot restrain it. It is by mutual discipline and respect that we have come 60 long years in democracy whereas democracy has faded away in rest of the world. We are a unique and a pluralistic democracy.

MR. SPEAKER: Can any organ discharge the role of another organ because the other organ is not functioning?

SHRI H.R. BHARDWAJ: Certainly not. That would be the death of democracy. Organ transplantation is not permitted in this Constitution, whatever you may do, however brilliant surgeon you bring. I said and I started with this. There is a prayer in Bible. "Oh! God, this whole body should work in

unison." In Westminster Abbey, they repeat it on every annual day of the courts. I think the Supreme Court will also do the same thing. Do not think of transplantation.

Sir, you have answered my question. This 1973 judgement is just to avoid so that there should be no transplantation of any organ on the basic features of the Constitution. Now, we have adopted it as our rule of law. Now judicial review is the basic feature of the Constitution. Rule of law is the basic feature of the Constitution. Finally, after so much debate on Ninth Schedule, the Supreme Court has laid down now that you cannot put everything in the Ninth Schedule. Ninth Schedule is meant only for reforms, agrarian reforms and land reforms. The latest judgement is on that. So, slowly and steadily, transplantation of organ is prohibited. We will have to live with this. Finally, I may submit that after *Minerva Mills* case, even Parliament cannot really amend it. You will have to go for referendum of the people. That is what the Supreme Court has laid down.

Finally, when we go back we are fascinated by that strong observation of John Marshall. Courts have learnt that now in turn. We should be happy with this but court cannot do what a police man can do. Police cannot do what a Municipal Commissioner can do. The court cannot do what an executive can do because they do not have the machinery. They will have to ask us that you do it within 10 days. You do it in 20 days. If they are asking us to do it within 10 days or 20 days, then give us the opportunity. We will do it. So, this is where the tension is arising between the Executive and the Judiciary whenever there are orders of this nature, and we feel that they are overstepping their jurisdiction. But what to do? I never thought that Article 21 will

be stretched that far. Everything comes under the purview of Article 21 because it deals with life and liberty and procedure established by the law.

But there is a vast section of people, particularly intelligentsia of this country, who said that the Judiciary is doing better than all of you. This is what they are telling on our face. You people have failed. They are better than you. I do not agree with this. With all the handicaps, with all the limitations on the Parliament, this is the forum on which people have faith. When elections take place, then it is up to us what we should do because money is with us. It is this House which grants every single pie for being spent from the financial cake of this country. So, it is supreme. Then, this is the House which passes the laws. The Executive only implements them. We are accountable to the Lok Sabha. I am a Minister so long as you are happy with me. If the MPs are not happy, the Government is no more there. We are accountable to the Lok Sabha. Therefore, this accountability is better.

Judiciary is not accountable to Lok Sabha. Judiciary is accountable to the Constitution of India. This is the difference between the two organs. Therefore, what we have said in the House is, I agree with you 100 per cent that we should maintain harmony, equilibrium, restraint as well as open eyes in dealing with our own powers and yet see that how we can serve our country the best.

One or two things were said about arrears of cases.[\[m62\]](#)

Sir, you would ask me that question. I know it very well. There are three crore or four crore arrears of cases. But, you can blame the judiciary if their disposal rate has fallen down. I deal with the Supreme Court and the High Courts. In the High Courts, a judge is required to decide 1,300 cases in a year. They are deciding more than that. They want more judicial manpower. We are increasing it every second year by 100 or 150 judges in the High Courts. We cannot expand beyond that because they are superior courts.

The real problem is that some 400 crore cases are pending in the trial courts. India is a vast country. Every State will have to devote attention to this aspect, give more funds and modernise the judicial manpower, find ADR methods to dispose of cases. Sir, a beginning has been made. Our courts are becoming modernised. More judicial manpower is coming. The Chief Ministers have agreed now to give more funds to the courts. The trend is good. We will have to maintain it.

After all, for so long nothing was done for this great institution. We did not improve the manpower. We were working from old courts. Now the limelight is there. It is necessary that we get the strength from here and to tell that whatever is to be done for judiciary, in judicial manpower and infrastructure we should not lag behind in it. Unless you give more judicial manpower, how can you expect the courts to deal with this kind of the docket explosion? So many cases are being filed in the courts. This is a continued effort on the Centre as well as the States, the court officers and judges.

I have succeeded in West Bengal where people were opposing when they brought this ADR system at grassroot level. Without that you cannot grapple with your arrears. Now, you cannot put judges in every town. You will have to have a cost-effective justice system. After all, your other programmes will suffer if you invest everything in courts. Therefore, cost-effective justice in lower courts, the ADR methods, the arbitration methods etc. will have to be introduced and some laymen also to work and to assist them. This is what we are introducing.

Sir, I have already got permission from the Cabinet to appoint 7,000 Grameen Courts for the villages. I think, if these 7,000 Grameen Courts are accepted in the country, they will initially be funded by the Central Government and slowly and steadily they will start working and the poor people will get speedy justice and inexpensive justice. This is my vision of the future.

I am very happy that my old friend, a senior Member, Shri Gurudas Dasgupta has drawn the attention of this House and all Parties, with one voice, have supported that the three limbs of the State should be strong, vibrant and they should work in harmony. I cannot add anything more. This House has given me strength. With due respect, I thank you very much.

MR. SPEAKER : Shri Gurudas Dasgupta, you wanted to seek a clarification.

SHRI GURUDAS DASGUPTA : With no malice to anybody, I am only suggesting to the hon. Minister, who is himself a lawyer, that if he states on the floor of the Parliament that people are saying that it is only the judiciary which is doing the right thing and everyone else is not doing the right thing, if it is the meaning by implication of what you have said, it is not right.
...(Interruptions)

MD. SALIM (CALCUTTA – NORTH EAST): A section of intelligent people, not all. ...(*Interruptions*)

SHRI GURUDAS DASGUPTA : You are saying about a section of intelligent people. If you say like this, then unfortunately, whether you intend or do not intend, it gives a fillip to the tendency of departure from the normal practice by the judiciary. It may not be as a whole, but partially. You are, after all, the Law Minister of the country. If you do not coin your words, if you speak in the way people outside are saying, then that gives a wrong signal to the country. ...(*Interruptions*)

MR. SPEAKER : It is not fair. He said some sections of the people are saying this.

MD. SALIM : That is there. ...(*Interruptions*)

MR. SPEAKER : He has not said it as his own view.

SHRI GURUDAS DASGUPTA : Sir, that is the way to speak in Parliament. ...(*Interruptions*)

MR. SPEAKER : You may know better.

SHRI GURUDAS DASGUPTA : When I want to speak something in Parliament I will say that some friends came to me in the morning and told me like this; although I do not believe, but this is, of course, the perception....(*Interruptions*)

MD. SALIM : He said so, I did not know that. ...(*Interruptions*)

SHRI GURUDAS DASGUPTA : This is the perception. This is the way to speak in Parliament.

MR. SPEAKER : Undoubtedly it is the perception amongst the media.

SHRI GURUDAS DASGUPTA : Sir, I am deeply concerned. ...(*Interruptions*)

MR. SPEAKER : In the media, that is the perception which is very assiduously articulated that you are not functioning and, therefore, they have to discharge our functions.

...(*Interruptions*)[\[k63\]](#)

SHRI GURUDAS DASGUPTA : I said it very openly and frankly that if the Parliament does not function, the Judiciary will definitely intervene.

MR. SPEAKER: Not always. They cannot do that.

SHRI GURUDAS DASGUPTA : I am deeply distressed and anguished at this comment. Maybe I am wrong; maybe he is right, but I am deeply anguished.

Sir, helpless is no virtue. You are pleading helplessness. Helplessness is no virtue. If truth is the reality, let us establish the truth in order to find the remedy. Therefore, I put forward before you two simple questions. When are you going to constitute the tribunal to look after the accountability of the Judiciary? There was a talk like that. Is it true that you are considering it and if, at all, you will consider it. Will you approach the Indian Parliament with an amendment of the Constitution to ensure proper and neutral basis for appointment of judges?

SHRI KHARABELA SWAIN (BALASORE): Mr. Minister, I thank you for bringing out the truth that actually it is the common man on the street for which we are just saying that he feels very much let down by the Executive and the Legislature and he thinks that it is the Judiciary which is actually dispensing him justice. I thank you very much for this comment. Secondly, you say that we consider the will of this House, the will of Parliament as the will of the majority. Then, will of the majority cannot be bulldozed and cannot be imposed on anybody also.

SHRI GURUDAS DASGUPTA : Sir, you just see the inter-connection.

MR. SPEAKER: Do not impute anything. He has very fairly put it.

श्री मोहन सिंह (देवरिया) : मेरी समझ में दोनों ने उनकी बातों को नहीं समझा।

SHRI H.R. BHARDWAJ: Sir, I am a very humble person. I will not mind it. I may draw his attention to one thing. He is one of the most outstanding parliamentarians and I am not. I am telling you that there is something like Article 105 which says that a Minister has the same right of speech in Parliament as the hon. Member has. Do you deny it? You gave me that chance to say whatever I liked. If you gag my mouth, it will be travesty of justice and the Constitution.

Secondly, I am with you that there should be immediately a law in position to fix accountability and control corruption, and I am giving you the exact information. The Report which the Standing Committee has sent back suggested some very wide-ranging amendments in that, including the one that Parliament's powers should not be touched in impeachment procedure. So, you have to deal with another mechanism of complaints. So, we are trying to dissect that. I think, soon I am taking those amendments to the Cabinet and sooner we get an opportunity, I will bring it here.

So far as appointments are concerned, I cannot assure you, Sir, today that I will be in a position to amend the Constitution. We are trying to develop a consensus amongst various political parties. It is not that we alone can amend the Constitution. We will first talk to our allies, our supporting parties and then, even the Opposition which is also a part of the governance. The Opposition is always consulted on major issues. After that, we can definitely do it. I promise one thing that if there is a consensus, then we can immediately do that. There is no harm in doing that.

श्री देवेन्द्र प्रसाद यादव (झंझारपुर) : मेरा एक सीधा प्रश्न है। माननीय मंत्री जी ने जो कहा और सदन में जो चर्चा हुई है, उससे स्पष्ट निकलकर आया है कि संविधान सर्वोपरि है। क्या भारतीय संविधान किसी भी डैमोक्रेटिक पिलर को इजाजत देता है - कार्यपालिका, न्यायपालिका या विधायिका को, किसी भी स्तम्भ को, फिर न्यायपालिका को ही यह अधिकार कहाँ से हासिल होता है कि वह दूसरे स्तम्भ के कार्यक्षेत्र में, जहाँ सीमांकन किया हुआ है, एक सीमा रेखा खींची हुई है, उसमें हस्तक्षेप करे। क्या संविधान इसकी इजाजत देता है? यदि संविधान 121 के तहत अधिकार नहीं देता है या 212 के तहत राज्य में अधिकार नहीं देता है या 222 के तहत कहीं अधिकार नहीं देता है तो यदि कोई अंग काम नहीं भी करता है तो न्यायपालिका उस अंग में किस धारा के तहत हस्तक्षेप कर सकती है, यह मुझे समझ में नहीं आ रहा है। यहाँ बहुत विद्वान और टेलेन्टेड लोग हैं, लेकिन भारतीय संविधान ही सर्वोपरि है और सबने माना है कि भारतीय संविधान सर्वोच्च है, और संविधान के तहत ही हम तीनों अंगों को काम करना है। संविधान की व्याख्या भी न्यायपालिका के अधीन है।[\[h64\]](#)

हम यह जानना चाहते हैं कि जब संविधान के किसी भी अनुच्छेद की व्याख्या का अधिकार न्यायपालिका को दिया गया है, क्योंकि संविधान के तहत जो कार्यक्षेत्र का बंटवारा हुआ है, सीमांकन किया गया है, रेखांकित किया गया है, उसमें हस्तक्षेप करने का किसी को कोई अधिकार है, यदि हस्तक्षेप होता है, तो ऐसी स्थिति में क्या सरकार कोई समाधान निकालेगी? क्योंकि यहाँ पूरी बहस हुई है। पूरी लक्ष्मण रेखा लांघने की परिपाटी यदि चलती रहेगी तो इस डिबेट का अर्थ क्या होगा। इसलिए मैं जानना चाहता हूँ कि सरकार कोई संवैधानिक प्रावधान, समाधान या कोई ऐसा संशोधन लाएगी कि एक स्तम्भ दूसरे स्तम्भ के कार्यक्षेत्र में किसी भी तरह से हस्तक्षेप नहीं करे, एन्क्रोच नहीं करे, क्या ऐसा कोई समाधान आप करेंगे?

SHRI H.R. BHARDWAJ : Sir, I have made my submissions, and the whole House has also spoken now. I have not been given a list where this *lakshman rekha* has been violated. वह होगा। आपने जो कहा है मैं उसे जरूर पढ़ूंगा और फिर उसका इलाज बताऊंगा। आप लोगों ने छोटी-छोटी बातें कही हैं कि उस गाड़ी को ठूँडने के आर्डर करिए। आप वह बेसिक चीज बताइए, जिससे कांस्टीट्यूशन ऑफेंड हुआ है और हमें वहाँ कार्य करना है। जजसे के एपाइंटमेंट के बारे में मेरी जरूर धारणा है कि उस आर्डर को हम सब को मिल कर ठीक करना चाहिए, क्योंकि कैबिनेट की पावर सबसे ऊंची होती है और वह राष्ट्रपति को एडवाइज़ करती है। ज्यूडिशियरी को कोई अधिकार नहीं है, वे अपनी रिजोमेंडेशन भेजते हैं। इस पर हमने कई बार गौर किया है, बहुत सारे सजेशन आए हैं, उन पर आज भी निरीक्षण हो रहा है - चाहे कांस्टीट्यूशन अमेंडमेंट हो या नेशनल ज्यूडिशियल कमीशन बने, इस पूरे वेप्टर को निकाल दें। ये सारी चीजें बहुत सबरटेंशियल नेचर की हैं, जिनमें जब तक आम सहमति नहीं बन जाती, तब तक इसे नहीं किया जा सकता। मैंने यह कहा कि हर गवर्नमेंट को सेंसिटिव होना पड़ता है पार्लियामेंट की न्यूज़ भी देखनी पड़ती है और ज्यूडिशियरी की भी देखनी पड़ती है। इस देश को चलाने के लिए कोई कफ़्लन्टेशन न आपने किया है और न मैं चाहता हूँ। हम जो भी कर सकते हैं वह सब मिल- बैठकर करेंगे। इस पर एक-दो बार फिर बहस होगी। आप विद्वान लोग हैं, आप और अच्छे सुझाव दीजिए, हम वहीं करेंगे।

श्री देवेन्द्र प्रसाद यादव : उस पर आम सहमति के लिए कोई पोजीटिव बात करें। मैं माननीय मंत्री जी से जानना चाहता हूँ कि भारतीय संविधान के अनुच्छेद 312 के तहत ऑल इंडिया ज्यूडिशियल सर्विस या जो भी सर्विस कमीशन आप बनाना चाहते हैं, उसके लिए आम सहमति की कोई प्रक्रिया एवं कोई प्रयास सरकार की ओर से होगा या नहीं? क्या इस पर सहमति होगी या नहीं? अपने आप तो सहमति नहीं बनेगी उसके लिए कोई सकारात्मक प्रयास करेंगे, तभी सहमति भी होगी। आप जो कन्सेंसस चाहते हैं, उस कन्सेंसस की कोई प्रक्रिया, आपके मन में है, कोई कार्य योजना है या नहीं? क्योंकि मुनिसिफ मजिस्ट्रेट, जो परीक्षा फेल हो जाता है, हाई कोर्ट का जज हो जाता है। जो वकील दस-पन्द्रह साल तक कामयाब रहे, वह मुनिसिफ मजिस्ट्रेट की परीक्षा में फेल होता है। आप दस-पन्द्रह साल का अनुभव देख लीजिए। जो हाई कोर्ट का जज रहे, वही डिसेंजन देता है, संविधान को इन्टरप्रेट करता है, पूरे भारतीय संविधान की व्याख्या करता है, यह बहुत दुर्भाग्यपूर्ण स्थिति है। यहाँ टैलेंट और प्रतिभा की बहुत चर्चा होती है। मैं आपसे निवेदन करना चाहता हूँ कि क्या इसके लिए कोई प्रयास आप करेंगे?

श्री हंस राज भारद्वाज : जो विवाद आप शुरू कर रहे हैं, वह छः घंटे भी चलेगा तो खत्म नहीं होगा। हमने कहा है कि हम पूरा प्रयत्न करेंगे। ...[\(व्यवधान\)](#)

MR. SPEAKER: He has said it. You can understand his position.

...(Interruptions)

MR. SPEAKER: The Court can nullify whatever we do.

...(Interruptions)

SHRI H.R. BHARDWAJ : We will continue whatever we are doing, and we will inform you about the same. ...[\(Interruptions\)](#)

MR. SPEAKER: Shri Yerrannaidu can ask his clarificatory query, but first of all he has to come to his allotted seat.

SHRI KINJARAPU YERRANNAIDU (SRIKAKULAM): Mr. Speaker, Sir, I would like to know this from the hon. Minister. We have three organs according to our Constitution, namely, the Legislature, the Executive and the Judiciary.

We have reservations in the Legislature. Why have we given reservation in it? It is because everybody should know about the social fabric of the country; everybody should know about the situation of the country; everybody should know about the grievances of the people; everybody should know about the living standards, etc. Therefore, everybody is representing from their own spheres.

We have given reservation in the Executive. For example, it has been done in the Indian Administrative Service (IAS) and even in the State Services, etc. But we have not given reservation in the Judiciary. How can they know about the social fabric; the living conditions of the poor people; the living conditions of the OBC; the living conditions of the minorities; the living conditions of the Scheduled Castes; and the living conditions of the Scheduled Tribes as we have not given reservation in the Judiciary?[\[r65\]](#)

In every sphere we pick up people from those sections of the society. It is only then that their interests can be taken care of. However, that is not followed in the case of judiciary. Why is the judiciary given a separate status? In our democratic country every organ of the state has to be treated equally. Is the Government willing to bring an amendment to provide reservations for SCs, STs, OBCs, and minorities in the judiciary?

SHRI H.R. BHARDWAJ: Sir, there is reservation in the lower courts but there is no reservation in the superior judiciary. We can have a debate on this. This House is competent.

MR. SPEAKER: The learned judges decide who will be judges. I believe this is the only country in the world where judges select judges. Am I correct?

SHRI H.R. BHARDWAJ: Yes, Sir. Lord Cook had observed, "Where angels fear to tread, fools rush". This is an area which nobody appreciates that they have taken the power to appoint themselves. But unless the judgment is set aside or reviewed by a larger bench, the situation remains like that. This needs to be effectively ...*(Interruptions)*

SHRI GURUDAS DASGUPTA : Am I correct in saying that the hon. Minister has said that the Government will take initiative to change the process if there is a consensus among the political parties represented in the Parliament? Correct me, if I am wrong.

SHRI H.R. BHARDWAJ: I cannot announce anything unless the Cabinet discusses it.

SHRI GURUDAS DASGUPTA : You take the initiative.

SHRI H.R. BHARDWAJ: You cannot get these words from me.

MR. SPEAKER: Why should you leave it to the Government only? Are the Members of Parliament concerned or not?

SHRI KINJARAPU YERRANNAIDU : Mr. Speaker, Sir, every organ of the state should have some check over it. We are elected by the people. If we do indulge in wrongdoings, the people will dethrone us. In the case of executive, the Government can suspend the people involved in wrongdoings. So, some mechanism should be evolved for the judiciary also. That is what all the hon. Members feel. If the Government comes forward with good amendment, all the political parties will support it.

MR. SPEAKER: That has to be approved by the Supreme Court!

SHRI A. KRISHNASWAMY : Sir, the Minister has stated that judges of High Courts and the Supreme Court are picked up based on merit. However, some advocates who are practising in High Courts and the Supreme Court do not know the ground reality. They do not know how a case is tried in Magistrate court or in the District level court. Without knowing how a case is tried in the lower courts they are practising in high courts and then going on to become judges of High Courts and the Supreme Court. How can they decide upon cases that come in appeal when they do not know how the trial of cases takes place in lower courts?

MR. SPEAKER: By their supposed knowledge!

SHRI H.R. BHARDWAJ: Sir, I do not think the hon. Member ...*(Interruptions)*

MR. SPEAKER: You need not respond to this.

I have reduced my questions to just one because I do not want to embarrass anybody. My question to the entire House is which is the authority under the Indian Constitution to decide as to what is in the public interest? What is in the public interest is policy. Who can decide what policy is?

...*(Interruptions)*

श्री देवेन्द्र प्रसाद यादव : अध्यक्ष महोदय, विश्व में इस प्रकार की व्यवस्था कहीं नहीं है, जहां जज, स्वयं जज की नियुक्ति करता हो। अकेला हिन्दुस्तान ही ऐसा देश है, जहां जज, स्वयं जज की नियुक्ति करता है। यह बहुत गम्भीर सवाल है।

SHRI A. KRISHNASWAMY : We are ourselves degrading the power of Parliament. ...(*Interruptions*)

MR. SPEAKER: Therefore, I believe the hon. Law Minister appreciates that certain sections of the House believe that the matter needs to be looked into.

...(*Interruptions*)

MR. SPEAKER: That he has agreed.

...(*Interruptions*)

SHRI K.V. THANGKABALU (SALEM): We should ensure that the importance of this House is established. ...(*Interruptions*)

MR. SPEAKER: As Mr. Swain has said we should also project ourselves in a better manner. That is what he has said.

SHRI S.K. KHARVENTHAN (PALANI): Sir, lawyers facing disciplinary cases in the Bar Council are appointed as High Court judges. Disciplinary cases are pending against them even after they became judges.

MR. SPEAKER: I have no such information.

Okay, thank you very much. I think we have a very illuminating discussion.

...(*Interruptions*)[\[KMR66\]](#)

SHRI BRAJA KISHORE TRIPATHY (PURI): Sir, your question has not been replied by the hon. Minister. ...(*Interruptions*)

MR. SPEAKER: I do not wish to insist. I asked, who decides the policy. I wanted to know whether the elected representatives of the people understand what is in the public interest, what is good for the people or some other agency not an elected body, which is not accountable to anybody. This was my simple question.

...(*Interruptions*)

MD. SALIM : Sir, this question deserves a response. â€¦ (*Interruptions*)

MR. SPEAKER: May I say that this is a poser before all of us?

Okay, thank you very much for a very illuminating discussion. We come to the Supplementary List of Business. Hon. Minister, Shrimati Purandeswari.

â€¦(व्यवधान)

अध्यक्ष महोदय : सबकी बात आ गई है। Okay, otherwise, you will make my life miserable! Please go ahead!

श्री राम कृपाल यादव : मेरा एक सैंकिण्ड का एक क्वेश्चन था।

अध्यक्ष महोदय : ठीक है, बोलिये, आपका क्या क्वेश्चन है।

श्री राम कृपाल यादव : पूछन यह है कि कई माननीय सदस्यों ने यह क्वेश्चन किया कि अभी जो न्याय की प्रक्रिया है, वह लम्बी तो होती ही है, लेकिन कई ऐसे लोग हैं, जिनकी आर्थिक रूप से तंग हालत है, उनको प्रोपर ढंग से न्याय नहीं मिल पा रहा है, वे जेलों में पड़े हुए हैं। क्या न्याय प्रक्रिया को सरल करने के लिए, जैसे मान लीजिए कि किसी को सुप्रीम कोर्ट में जाना हो और अगर उसकी आर्थिक हालत मजबूत नहीं है, अगर उसके पास पैसा नहीं है, तो निश्चित रूप से उसे न्याय नहीं मिल पाता है। क्या सरकार कोई ऐसा प्रवधान करेगी, ताकि वे गरीब तबके के लोग, जिनके पास हाई कोर्ट या सुप्रीम कोर्ट में जाकर न्याय पाने के लिए पैसा नहीं है, क्योंकि दोनों जगह खर्च बहुत ज्यादा आता है, वहां खर्च करने में वे सक्षम नहीं हैं, वैसे आदमियों के लिए विशेष तौर पर वहां अधिवक्ताओं की नियुक्ति करेगी, उन गरीब तबके के लोगों को न्याय देने का कोई प्रवधान करेगी, ताकि उनको सहज रूप से न्याय मिल सके?

MR. SPEAKER: Then, there will be more litigations! He has said about alternative dispute redressal mechanism.

SHRI H.R. BHARDWAJ: We have the National Legal Aid Authority in the country at all levels and we provide legal aid to them; there is that law also; and we have achieved quite a good success in this. ...(*Interruptions*)

MR. SPEAKER: No. I cannot make it another discussion here.

...(*Interruptions*)

MR. SPEAKER: No. So many questions will come up again. I am sorry. We can have another discussion in the next session, and not in this Session.

...(Interruptions)

SHRI K.V. THANGKABALU : Sir, the hon. Minister was telling, whether the House is willing to accept the proposal for reservation for the Judges. In this country, time and again, all the political parties are requesting for reservation in the judicial system also. If the hon. Minister is willing to bring a Bill to have reservation for that, then the House will certainly approve. I appeal to him to please bring forward that Bill for reserving some posts of Judges.

MR. SPEAKER: One Bill for reservation is held up; do not bring another Reservation Bill.

SHRI K.V. THANGKABALU : That is why, this House should bring forward that Bill.

MR. SPEAKER: Okay; it is over; your issue has been noted by the learned hon. Minister.

We come to the Supplementary List of Business. Hon. Minister, Shrimati Purandeswari.

17.44 hrs.