

an>

Title: Discussion on the Constitution (One Hundred and Twenty-First Amendment) Bill, 2014 (Insertion of New Articles 124A, 124B and 124C) and National Judicial Appointments Commission Bill, 2014.

HON. SPEAKER: Before we take up the combined discussion on the Motions for consideration of the Constitution (One Hundred and Twenty-First Amendment) Bill, 2014 and the National Judicial Appointments Commission Bill, 2014, the time has to be allotted for discussion. If the House agrees, we may allot two hours for this discussion. Is it sufficient for this?

श्री (व्यवधान)

श्री मल्लिकार्जुन खड़गे (गुलबर्गा) : मैडम, सफिशिएंट टाइम दीजिए। ... (व्यवधान)

शहरी विकास मंत्री, आवास और शहरी गरीबी उपशमन मंत्री तथा संसदीय कार्य मंत्री (श्री एम. वेंकटेश नायडू) : मैडम, तीन घंटे का समय दीजिए, उसमें डिस्कशन हो जाएगा और उसमें आधा घंटा कुशन के लिए होगा। ... (व्यवधान)

HON. SPEAKER: All right. Three hours are allotted.

THE MINISTER OF COMMUNICATIONS AND INFORMATION TECHNOLOGY AND MINISTER OF LAW AND JUSTICE (SHRI RAVI SHANKAR PRASAD):
Madam, I beg to move*:

*Moved with the recommendation of the President

"That the Bill further to amend the Constitution of India, be taken into consideration."

and

"That the Bill to regulate the procedure to be followed by the National Judicial Appointments Commission for recommending persons for appointment as the Chief Justice of India and other Judges of the Supreme Court and Chief Justices and other Judges of High Courts and for their transfers and for matters connected therewith or incidental thereto, be taken into consideration."

Madam, I am indeed very very grateful for hon. the Speaker, this House, all the Members, Shri Kharge and my other colleagues in the Opposition and hon. Members for permitting me to put this Bill of great historical importance for consideration of this august House.

I will come to the rationale of this Bill subsequently. But, I would like to make two initial observations, at the very outset. We all have the highest respect for the institution of judiciary. We all fully trust in the independence, in the integrity of the great institution of judiciary. Speaking for us, I would like to share with this House that many of us in our earlier student days' activism, have fought for the independence of judiciary. I am referring to seventies when there was a strain and stress on independence of judiciary, when there was a strain and stress on individual freedom and also on the freedom of the Press. I am very assured to share with this House that many Members of the present Government including hon. the Prime Minister himself have been in the forefront of that struggle which was basically designed to ensure the independence of judiciary, the media freedom and the individual freedom.

When we save the respect of the institution of judiciary, we not only want it to be really independent but we also share, applaud the courage of the institution of judiciary that let them be completely fearless too. It is because an independent judiciary is indeed the very bedrock of our constitutional scheme of governance and of our democratic polity.

When I am standing today as the Law Minister of India, initiating a debate on such a historic Bill, I need also to salute the great judgments of the Supreme Court and High Courts which have laid the foundation of the rule of law in India, the way they have developed many institutions to address the concerns of the poor and under-privileged, to the genuine use of public interest litigations and also if there have been excesses by any of the segments including the Executive, they have come whether in case of impropriety or corruption. These have been the real bedrock of our democratic credentials that today judiciary is there as an institution for respect. But why is this Bill? It is indeed very important. I would also like to share it.

I would like to dispel one more issue here, at the very outset. I have seen some of the observations that we are rushing through the Bill. I want to assure this House with all the emphasis and responsibility at my command that 'no', we are not at all rushing through the Bill.

13.00 hrs

What we are doing today, Madam Speaker, is basically the culmination of the exercise of the last twenty years. How many attempts have been made, let me count. There was the 67th Constitution (Amendment) Bill in 1990, the 82nd Constitution (Amendment) Bill in 1997, the 98th Constitution (Amendment) Bill in 2003, and the 120th Constitution (Amendment) Bill, a component of Judicial Appointments Bill 2013 which the then government was kind enough to bring. Therefore, there have been as many as four attempts in the last twenty years to have an amendment to the Constitution as far as the appointments of judiciary are concerned.

How many reports have been there in the past? Let me share it with this august House today. There has been Justice Venkatachaliah Commission in

2003. Justice Venkatachaliah was the Chief Justice of India, a very eminent judge. There has been the Administrative Reforms Commission in 2007 under the very distinguished Chairmanship of Shri Veerappa Moily, I do not know if he is present here, which recommended that a National Judicial Commission be established in whatever form and that the collegium system needs to be changed. The Law Commission of India in its 214th Report in 2008 made its recommendation. I will refer to that subsequently.

There have been Parliamentary Standing Committee's 21st Report on Judges (Inquiry) Bill, 28th Report on Supreme Court (Number of Judges) Bill, and the 44th Report on the Age of Retirement of Judges. Therefore, there have been four attempts for Constitutional amendment, and seven recommendations by various Committees over the years, all emphasising that the collegium system of appointment for the hon. Judges of the High Court, of the Supreme Court, and the Chief Justices, needs to be changed.

Madam, today I would like to share with this House as to how we have come here. It is very important that I do so. When the Constitution was framed, great debate occurred as to what should be done and what should not be done. Various modes had been suggested. Three modes came to great scrutiny. Should the President make the appointments himself? Should the President make the appointments in consultation with the Executive? Should the President make the appointments in consultation with the Parliament? Or should the President make the appointments in consultation with the Chief Justice of India? These were indeed the great issues which were matters of great concern and consideration.

Madam, ultimately Dr. Ambedkar in his very persuasive and very eloquent words stated that no, we need to consider that judiciary should be independent, due credit and importance must be given to the office of the Chief Justice, and also the Executive must have a say. Therefore, article 124 for Supreme Court, and article 217 for the High Court were enacted stating *inter alia* that the President shall appoint the Chief Justice and the Judges of Supreme Court, and while doing so he will certainly consult the Chief Justice. And while doing so for the High Court, consultation with the Chief Justice of the High Court was also postulated. Therefore, it was a proper balance of the Executive and the Judiciary.

Madam, I would like to quote Dr. Ambedkar here, it is very important, about the role of Chief Justice. I have great personal regard for Dr. Ambedkar, one of the finest visionaries India has ever produced. His outstanding ability, his understanding and his contribution in the working of the Constitution and creation of the Constitution is indeed legendary. And I would request many of the young members of the Parliament to please read the life of Dr. Ambedkar.

I would like to quote Dr. Ambedkar from the Constituent Assembly Debates. He said,

"With regard to the question of concurrence of the Chief Justice it seems to me that those who advocate the proposition seem to rely implicitly both on the impartiality of the Chief Justice and the soundness of his judgement. I personally feel no doubt the Chief Justice is a very eminent person, but after all the Chief Justice is a man with all the failings, all the sentiments, and all the prejudices which we common people have. And I think to allow the Chief Justice practically a veto upon the appointment of judges is really to transfer the authority to the Chief Justice which we are not prepared to vest in the President or the Government of the day. I, therefore, think that that is also a dangerous proposition." Therefore, Dr. Ambedkar, while framing the Constitution was very clear. Today, as the Law Minister of India, while moving this important Bill, I wish to salute Dr. Ambedkar, Shri Jawaharlal Nehru, Sardar Patel and Dr. Rajendra Prasad for understanding the real wisdom of India's polity that there must be a healthy blend, namely, the President must not have unbridled powers and the Chief Justice also must not have unbridled powers; there must be healthy co-ordination and consultation. It worked very well.

There were some ups and downs when we heard about committed judiciary. That is a separate chapter altogether. Today, the people of India have learnt how to trust the polity of India. They have the power and authority. They can unseat any political leader and any political party from power, be it in the States or at the Centre. Surely, the maturity of Indian democracy has emerged which also recognises the supremacy of Parliament, respect of Parliament and also the integrity and independence of the Judiciary. That is how it has grown over the years.

Now, today, I would like to share my experience. I had the privilege of working as a Minister of Law at a junior level in the Vajpayee Government. I have also been a practising lawyer in Patna High Court and then Supreme Court. I had the occasion to see the works of Judiciary over the years, apart from being an activist fighting in the JP Movement and anti-Emergency struggle. From 1950, till 1993, the system worked very well. Occasionally, there was stress.

Today, there is no pre-collegium appointee as a judge in India. Shri Kalyan Banerjee may correct me if I am wrong. All of them are appointed by the collegium system, after 1993. I will come to that separately. Today, I would like to ask a question in this hon. House. Why do we not have judges like V.R. Krishna Iyer? Why do we not have judges like H.R. Khanna? Today, this question has to be asked. The reason why I have taken the name of H.R. Khanna is this. Individual freedom was under great stress in the 1970s. In the ADM Jabalpur Shukla case, when the Supreme Court gave a judgement, I would say regretfully, that even if a detenu is killed in a prison there is no remedy, he held aloft the flag of liberty. I remember the *New York Times* writing about him, 'If ever democracy will return to India, India must erect a plaque of gold for H.R. Khanna'. That has been the tradition of judges of India. ...(*Interruptions*)

SHRI KALYAN BANERJEE (SREERAMPUR): First take the name of Justice Bijan Mukherjee.

SHRI RAVI SHANKAR PRASAD: Bijan Mukherjee, Vivian Bose, Patanjali Sastri, S.R. Das – they are legends. ...(*Interruptions*)

SHRI KALYAN BANERJEE: I am not objecting to it. But take the name of Justice Bijan Mukherjee first.

SHRI RAVI SHANKAR PRASAD: I agree with you. Therefore, we are very proud of the legend of judges.

When I am speaking here, let me share something with you all that there have also been flaws. Justice G.P. Singh was the Chief Justice of Jabalpur High Court for five years. I call him a *rishi* of modern jurisprudence. He has written books on interpretation of statutes and they are quoted like an authority. But it is also a fact that G.P. Singh could not come to the Supreme Court. Those are issues to be considered. Justice Mohammedali Currim Chagla was a Chief Justice for 11 years in Bombay High Court but he also could not come to the Supreme Court. A brilliant judge, I salute him here.

In 1993 a judgement came. What was the judgement? Article 24 says that the President shall appoint a judge in consultation with the Supreme Court Chief Justice and also the High Court Chief Justice in the case of High Courts. In fact, the substance of the judgement is, I say with great respect, that the Chief Justice will appoint the judges in consultation with the President. That is how it became reversed. I am sorry to say that. What was the message? It is that you will only have an informal arrangement to be communicated. You can seek a reconsideration of the proposals made, and if the collegium in its wisdom decides to reiterate the decision, it is binding on you. Therefore, the role of the Executive became very very limited. Yes, they have got the right to be consulted, namely, informed. But this was how it was re-read.

Madam, this issue has come about repeatedly. Today, I would like to share with you how this whole concern was expressed. The first concern came from the Government, which sought a reference to the Supreme Court, under Article 143, the 'Second Judges Case'. In 1998, what the Supreme Court did? It enlarged 'the Chief Justice with two judges' with 'the Chief Justice with four judges'. So, it became five. But the Collegium system said, 'For the independence of Judiciary, we are having these principles established'.

Madam, I say – and I think that the entire House is with me – that all of us want independence of Judiciary and give respect for that. But when I say 'independence of judiciary', I must reiterate that the sanctity of Parliament is equally important, which we all need to appreciate. Sitting in Parliament, we talk about it. We are the representatives of the people of India; we represent the diversity of India, the hope, aspiration and agony of India; and all of us come here with a view that when we reflect them, we seek accountability of the Executive, and we also reflect the concern of the people of India.

Surely, the supremacy of the Parliament is equally important. While I say that the independence of the Judiciary is important, separation of power is equally a basic structure; it is also a part of the Constitution. Therefore, with Parliamentary democracy, integrity, independence, supremacy of Parliament, and with integrity and independence of the Judiciary, and also by respecting the people's wish, the democracy functions.

I want to assure the hon. Members of this House that the Government has got no intention whatsoever to have any confrontation with the Judiciary – no, not at all. We respect the Judiciary as an article of faith. But when we have come to have this Bill, we are seeking to only reiterate that the Constitutional arrangement as envisaged, which has been reflected upon from time to time, by so many Commissions, Standing Committees with wider consultation possible, needs to be reflected.

Madam, let me share with this hon. House, how the whole issue has been articulated from time to time. There was the 85th report of the Law Commission. I want this to go on record for the information of the hon. Members and I quote:

"This Committee is aware that for this state of affairs, the Union Law Ministry is not blame-worthy. As the entire process of initiation of proposal for appointment of new Judges is no longer the responsibility of the Executive, as a result of a decision of the Supreme Court, though it was not contemplated in the Constitution, responsibility for judicial appointment now rests in the domain of the Judiciary. The Union Law Minister is accountable to Parliament for the delay in filling up of the vacancies of judges, but he has functionally no contribution to make. The Supreme Court read into the Constitution a power to appoint judges, that was not conferred upon it by the text of the context. The underlying purpose of securing judicial independence was salutary, but the method of acquiring for the court, the exclusive power, to appoint judges, by the process of judicial interpretation is open to question."

This is what the Law Commission report said.

Madam, late Justice J.S. Verma, a very eminent Judge, who wrote the judgment of 1993, clearly said this:

"My 1993 Judgment, which holds the field, was very much misunderstood and misused. It was in this context, that I said that the working of the judgment, now, for some time, is raising serious questions, which cannot be called unreasonable. Therefore, some kind of re-think is required. My Judgment says the appointment process of High Court and Supreme Court Judges is basically a joint or participatory exercise, between the Executive and the Judiciary, both taking part in it."

Justice J. S. Verma, who wrote the 1993 Judgment, establishing the Collegium system, himself was critical that his Judgment has been completely misread and not being properly used.

Madam Speaker, Justice Venkatchaliah, a distinguished Chief Justice, was heading the Constitution Review Commission formed by the Government headed by Shri Vajpayee. I would like to assure my friends from the Opposition that we in the BJP have been supportive of the National Judicial Commission right from day one. There have been views of some political parties to go to pre-1993 position but even during Vajpayee Government our commitment was that. Even in 2009 our commitment was that. Even during 2014 Lok Sabha election our manifesto clearly stated that we wanted a National Judicial Commission. Therefore, we have been quite consistent as far as this is concerned.

PROF. SAUGATA ROY (DUM DUM): Why are you then bringing a truncated Bill?...(*Interruptions*) This is a truncated Bill.

SHRI RAVI SHANKAR PRASAD: I will come to that.

Madam, I must acknowledge that Shri Kharge's Party, when the Congress was in power, also brought it as an enabling provision of a Bill and the rest was a separate ordinary Bill. It was passed by the other House and then it came to the Lok Sabha. When the Bill was referred to the Standing Committee, it recommended bringing the entire architecture into the Constitution itself and suggested not to bring an ordinary Bill. The Standing Committee also recommended improvement in the ordinary Bill by laying down the procedure for appointment, etc. In fairness again the previous Government brought an amendment to that Bill in the Lok Sabha but it lapsed because the House was dissolved. I have withdrawn that Bill.

In the present Bill, about which I will talk separately, all the recommendations of the Standing Committee have been substantially taken into account. I will reply to that elaborately once I hear all the points during discussion. But Madam, I must say in all fairness, when I became the Law Minister I started taking up this cause and the first thing I decided was that I will have proper fresh consultations with eminent people. The first consultation I did was with an eminent jurist. I called a meeting. Justice A. Ahmadi, former Chief Justice of India, Shri V.N. Khare, former Chief Justice, Shri Soli Sorabjee, Shri Fali Nariman, Shri Shanti Bhushan, Shri K. Parasaran, Shri K.K. Venugopal, Shri K.T.S. Tulsi, Justice A.P. Shah,

Chairman of the Law Commission, Prof. Madhava Menon, Shri Upendra Singh, Shri Anil B. Divan, the Chairman of Bar Council of India Bir Singh Ji, the present Attorney General, the present Solicitor General, Shri Arun Jaitley, in capacity of an eminent lawyer, all came and I presided over the meeting. All except one supported the National Judicial Commission. Many could not come but I remember the former Chief Justice, Shri G.B. Pattanaik rang me up saying that he could not come but he completely approve this proposal. Shri P.P. Rao, Shri Ashok Desai, Shri T.R. Andhyarujina, Shri Harish Salve and Shri G.N. Vahanvati, all supported it. This was the widest consultation possible. Thereafter, as a Law Minister I wrote personal letters to 26 Heads of political parties in India seeking their opinion. I am happy to announce, Madam, that both Shri Mulayam Singh and Ram Gopal ji were kind enough to support the initiative. Ram Vilas Paswan Ji's Party also supported it. CPI, CP (M), Sudhakar Reddy and Shri Prakash Karat wrote to me. Shri Tariq Anwar is here. Shri Sharad Pawar wrote to me. Madam Mayawati wrote to me. Madam Jayalalitha...(Interruptions)

SHRI P. KARUNAKARAN (KASARGOD): There are some reservations also. You just do not say that we have written to you.

SHRI RAVI SHANKAR PRASAD: I will come to that. You have a right to speak and I will reply to that. I am only telling what I did. I will come to that. Just give me five minutes more.

I have regards for both hon. Mamata ji and hon. Jayalalitha Ji. They have given certain suggestions. I have tried to address that. I will come to that separately. I also wrote to hon. Sonia ji. I am sure her Party's views will be known to me. I understand that she will be conveying her views. Shri Sharad Yadav wrote to me. Almost all major political parties wrote to me. Madam, I must tell you in all fairness that there have been some suggestions made. We have accepted the spirit of some suggestions and with regard to others I will reply when points are made by the Members. What is the architecture today and that is the last point I wish to say.

The National Judicial Commission shall be headed by the Chief Justice of India. It will have two senior most judges of the Supreme Court of India. Law Minister shall be there. Two eminent persons are to be selected by the hon. Prime Minister, the Chief Justice of India and the Leader of Opposition or the Leader of the largest Opposition Party in the Lok Sabha. One of the eminent persons shall be from Scheduled Castes, Scheduled Tribes, OBC, women and minority. This is the whole architecture.

The National Judicial Commission have got the right and duty to make appointments to the posts of Chief Justices of the Supreme Court and the High Court as also judges of the Supreme Court and the High Court. They will appoint men of ability and integrity. The senior most judge of the Supreme Court shall be appointed as the Chief Justice if he is able.

Then, the details of their powers and regulations have been framed in the other Bill which I have moved separately which is to be considered together with this Bill. What does it say? The National Judicial Commission shall make appointment of the judges of the Supreme Court. Apart from taking eligibility criteria in the constitution, if they appoint a High Court judge to the Supreme Court, apart from seniority, his ability and merit will also be considered. It has been mentioned clearly.

In case of the High Court, the name shall come from the Chief Justice, who will consult two senior most judges and as many other judges as can be framed by regulation. Why this? We have got Allahabad High Court with nearly 100 judges and we have got Sikkim High Court and other High Courts where the number of judges is small. We have got Calcutta High Court and Mumbai High Court where the number is big. Therefore, let regulation decide as to how many other judges, the Chief Justice must consult. The Chief Justice will also consider the eminent lawyers of that High Court as laid down by the regulation to be framed by the National Judicial Commission.

The law also says that the names recommended by the Chief Justice would also have separately the views of the Governor and the Chief Minister of that State which shall go to the Commission. When I say, 'the Governor', I mean the Governor in the constitutional sense who has to act on the aid and advice of the Chief Minister.

The Commission can also recommend names for a High Court but it also needs to be approved in the same manner from the High Court, the Chief Justice, the Governor and the Chief Minister.

Madam, in conclusion, I would like to say two more things. If two members of the Commission oppose a recommendation, it shall not be carried. Giving primacy to the judiciary, the Chief Justice, the two hon. judges, the Chief Justice is also a member of the three-member group to appoint eminent persons and also the Chief of the High Court.

There is one more provision in this. The recommendations made by the Commission shall be accepted by the Government. However, if the President of India makes a request, for given reason, to consider any proposal made, then the Commission will consider that and if the Commission considers and reiterates its previous opinion, then it must be unanimous. This provision is only to give due deference to the highest constitutional authority in India, that is, the President of India.

Madam, this is the brief architecture of the Bill. I will reply to other points when I hear the debate. Lastly, I have to make an appeal to this House. I am not a Member of this House though I am in the other House for the last 14 years. But I always consider that the Lok Sabha is the biggest panchayat of India. Apart from passing law and apart from giving majority to the Party to form the Government, as a panchayat it reflects the aspiration of India, the ecstasy of India and the urges of India. That is the glorious tradition of this House.

With that tradition, today I am appealing to this House to rise above all considerations and show a great unity of purpose that this House has a resolve to work in unison to ensure that the judiciary's dignity is properly maintained and we have a fair procedure for appointment of the High Court and the Supreme Court judges. That is my appeal to this House.

माननीय अध्यक्ष महोदया, मैं बहुत विनम्रता से इस महान सदन के विद्वान सदस्यों से अपील करता हूँ कि यह सदन देश की चेतना, राजनीति, लोकनीति और आशाओं का पूतीक है, आज का दिन ऐतिहासिक है, आप समर्थन करेंगे।

इतना ही कह कर मैं अपनी बात समाप्त करता हूँ।

HON. SPEAKER: Motions moved:

"That the Bill further to amend the Constitution of India, be taken into consideration."

and

"That the Bill to regulate the procedure to be followed by the National Judicial Appointments Commission for recommending persons for appointment as the Chief Justice of India and other Judges of the Supreme Court and Chief Justices and other Judges of High Courts and for their transfers and for matters connected therewith or incidental thereto, be taken into consideration."

DR. M. THAMBIDURAI (KARUR): Madam, we have given notice for some amendments to the Bill and they should be considered.

HON. SPEAKER: The House stands adjourned to meet again at 2.00 p.m.

13.25 hrs

The Lok Sabha then adjourned for Lunch till Fourteen of the Clock.

14.03 hrs

*The Lok Sabha re-assembled after Lunch at Three minutes
past Fourteen of the Clock.*

(Dr. M.Thambidurai *in the Chair*)

THE MINISTER OF URBAN DEVELOPMENT, MINISTER OF HOUSING AND URBAN POVERTY ALLEVIATION AND MINISTER OF PARLIAMENTARY AFFAIRS (SHRI M. VENKAIAH NAIDU): Mr. Chairman, Sir, I have a small request to make to the hon. Members. The President of India is coming for a function to Parliament House at 6.15 p.m. The Members are supposed to be seated in their seats by 5.45 p.m. The programme is about presentation of the best Parliamentarian Award. That being the case, we have to adjourn the House at 5.30 p.m. Keeping that in mind, the debate and discussion on the Bill has to be adjusted in that manner because it is a Constitution Amendment Bill which would mean that we will have to go for voting for four times, that too manually by distributing slips since seat allocation is yet to be completed. Keeping that in view, I would like to request all the political parties to field one speaker each and also keep the time constraint in mind. I have no problems otherwise. After the Bill is passed in this House it has to go to the Rajya Sabha and then to the hon. President for getting his signature and time left with us is very limited. So, I request the entire House to keep this fact in mind and accordingly cooperate.

SHRI M. VEERAPPA MOILY (CHIKKABALLAPUR): Mr. Chairman, Sir, in fact, these two Bills – one a Constitution Amendment and the other one a regular Bill – are very important and unique Bills. The hon. Law Minister has explained the scope and also the history of Judiciary in all these years.

Thomas Jefferson said that the judiciary independent of a king or executive alone is a good thing but independence of the will of the nation is a solatium at least in a Republican Government. It is quite unfortunate that such an important issue like this has become a controversy. In fact, there should have been a national consensus on this issue. It should not have been said on the background of political executive versus judiciary. This is not a good trend. This kind of a friction or a conflict between the political executive and the judiciary is an unfortunate development. Why has this proposal, particularly after 1993, not been pushed up? It is only to ensure that there is no conflict or no friction. We need to arrive at a certain consensus so that, by and large, it was acceptable both by the judiciary and the political executive.

I remember that in 2003 itself we have moved a Constitution Amendment and also a Bill in this regard. Right from 2008, we have been working on this Bill. In fact, when I was the Law Minister, I conducted a lot of national consultations which included an important consultation meeting of the political executive including the Prime Minister, the then Chief Justice of India, all the judges of the High Courts, all the Chief Justices of High Courts and also eminent jurists. A two-day conclave was held with regard to the judicial reforms which included the appointment of judges. By and large, a consensus really emerged out of that meeting.

Thereafter, we wanted to see that this consensus is evolved. We are not concerned with who is having an upper hand. We are not for upmanship. Ultimately, our concern is on the kind of appointment system which should prevail in the country which is good for the nation. That is why, I said that it should ultimately reflect the will of the nation and not merely the will of the judiciary and the political executive. It is the question

which we have to put to ourselves. Within ourselves, we have to think on whether we are thinking about the welfare of the nation or not. The judicial system ultimately depends upon the performance of the judges and access to justice. We were on the track of quest of justice not only after the Independence but even earlier also. That is where, this becomes very important. After the birth of the collegium system, it started in the first judge's case wherein, while presiding over that judge's case, the then Chief Justice of India, Justice P.N. Bhagwati said:

"The Chief Justice of India, the Chief Justice of the High Court and such other Judges of the High Court and of the Supreme Court, as the Central Government may deem it necessary to consult, are merely constitutional functionaries having a consultative role and the power of appointment resides solely and exclusively in the Central Government."

Justice P.N. Bhagwati has said this in that judgement when he was presiding over that case. But thereafter what has happened? In 1993, in the second judges case, the Supreme Court led by the former Chief Justice of India at that time, Justice J.S. Verma, overruled the first judges case. In fact, this was subsequently regretted by him. He said that it was not his intention. Our Law Minister has also mentioned this while introducing the Bill for consideration. He regretted it a number of times. I took him around the country for national consultation. In every platform, he did admit that he committed a wrong. Of course, some times he said that it was misinterpreted. There is no misinterpretation at all. It was clear that he committed a mistake. But he could not do anything because by that time he had laid down the office as Chief Justice of India. What could he do? It was late. In fact, he went on to hold that the selection should be held as a result of a participatory consultative process in which the executive should have the power to act as a mere check on the exercise of power by the Chief Justice of India, to achieve the constitutional purpose. The entire thing was diluted by that judgement.

I am looking at another judgement. Chief Justice of India at that time, Justice S.P. Bharucha, has really put the last nail in the consultative process. What has he said? He said: "Collegium system of appointing judges to the High Court is of particular relevance for our purposes. The collegium must take into account the opinion of the Chief Justice of India, which would be given the greatest weight – he gave the greatest weight – the views of other judges of the High Court who may have been consulted and the views of the colleagues on the Supreme Court bench who are conversant with the affairs of the concerned High Court." This is how the whole thing was reversed. Thereafter, all of us tried to undertake an exercise and this is where we are now. In fact, freedom and independence of judiciary were not just confined to appointments. It means that both the institution of judiciary and independent judges are separate and free from interference from other branches of the Government, namely executive and legislature. Be political parties, other powerful interest or individuals, that individual judge or magistrate is independent and at liberty to take a decision without pressure, inducement or promise from any source whatsoever. This is where they will have to be independent. They should not be interfered with.

In fact, the Constitution is very clear with regard to the power vested with the political executive. Article 124 vests the power of appointment of Chief Justice of India and the judges to the Supreme Court with the President. It is stipulated that the President shall appoint judge of the Supreme Court after consultation with such of the judges of the Supreme Court and of the High Court as the President may deem necessary. The appointment of judges of the High Court is also made by the President of India. The President has to consult the Chief Justice of India, the Governor of the State and the Chief Justice of the High Court concerned.

Earlier, I was also a Chief Minister. We used to be consulted by the High Court Chief Justices. We used to write a joint letter to the Governor and the Governor used to make a recommendation to the Law Ministry. Informally that has been followed. That was not done away with. We used to get such letters from the Chief Minister when I was the Law Minister in the Government of India. We used to give weightage, but at the same time it was not formalised. That is not quite mandatory. Chief Justices can write letters straightaway to the Law Ministry and get things done. Subsequently, the National Commission to review the working of the Constitution which was headed by the former Chief Justice of India Justice M.N. Venkatachaliah, also said that there should be a National Commission.

The National Commission should have the effective participation of both the Executive and the judicial wing of the State (integrated scheme for missionary for appointment of Judges). There is no question as to who should have the upper hand or who should have a better voice but they said that there should be appropriate balance.

Now, you have introduced a Bill, in fact, the 2013 Bill – both are Constitution Amendment Bills. In fact, the 2013 Bill was introduced by us, the UPA Government. You have not made many changes but there are two very important changes which is a matter of concern. One important change is about the veto power. If any one of the two Members of the Commission objects, then, you can go ahead. That is the veto power. This is what the Judiciary is worried about. It may end up with no decision at all. It may be impractical or this may give rise to a lot of conflicts between the Judiciary and the Executive. I think, a lot of consultation should have been gone into as this is an important component or element which you have introduced in this Bill in variance to our Bill or the Constitution Amendment Bill. Maybe this can work. Otherwise, some other formula would have worked if no agreement is arrived at because after all it is three versus three. The total Members in the Judicial Commission is six. Three sometime may take one side; and the other three may take the other side. It should have been an odd number. That would have saved the situation. It leads to no decision. Even if a decision is taken, the CJI as a Chairman could have a voice in this. That would have satisfied the Chief Justice of India.

I think, while preserving the integrity and independence of Judiciary, which is a must, we should ensure that that works. That has not been seriously taken into account. I don't know why veto power has been introduced. Veto power is not that democratic process, according to me. There is some sort of unilateral decision to be imposed on a system, which may not be taken well and that will lead to lot of problems. Who are these eminent persons who should be qualified themselves as the Members? Are there any guidelines? Maybe, you should provide guidelines. At least in the rules which would be framed you can define as to who are these eminent persons. Otherwise, anybody can be eminent person.

While selecting one of the Members, one of them should hail from the SC/ST/OBC, minority and women. In these days of gender justice, you should have made a woman compulsory as a Member of the Commission. I think, you are outdated. The system should not be an outdated one. I would put it in that way. You have to seriously consider this. It should have been mandated. Earlier, we have given some rotation system but even

that rotation system is given up, if I am correct. Consequently, the same category of people may be repeated continuously. One term, two term or any number of terms; of course, same person cannot be continued after three years. But the same category of persons can be continued, which would lead to some arbitrariness; that may lead to some denial of an inclusive society. Diversity should have been the core theme of this entire exercise. You have not considered that. You know it very well as the Law Minister. I have also functioned as the Law Minister. According to my reading, it does not provide for that. There should be some plurality which, I find, is totally lacking in this Bill, Maybe, the Minister can come out with some amendment. He should please think of that amendment.

In addition to that, in many conferences, I used to tell the Chief Justices of High Courts and also the Judges of the Supreme Court, including the Chief Justice, to get one SC judge, at least, in the Supreme Court. As regards women, there is a total bias, unfortunately, in the Judiciary against women. I struggled to get one woman Supreme Court Judge. There also, a lot of things were said against that particular lady. But still we could get her for the first time. We are not getting them actually.

If this is the kind of traditional approach to appointment of judges, how do we cure it? I thought that, when you considered this, you would definitely provide a solution to this problem to get plurality. Even Backward Classes are not getting adequate representation in the Judiciary, forget about adequate representation, sometimes they have no representation at all. With regard to minorities, it is very difficult to pick them up. They also have no representation. Women have no representation at all in many of the High Courts. Even in the Supreme Court, there is only one woman judge. Now, of course, the Government said that there should be one more.

I think these are all very serious matters. I would like to say that the Judiciary should reflect the plurality of society. You need to provide for that because this is the body which gives direct justice and if the composition of the Supreme Court and High Courts themselves is such that there is no proper representation to these classes of people, then it is not fair. Let us not talk about accessibility. I think there should be some in-built system for having plurality in the higher judiciary and to have social justice. According to me, any justice system without social justice is no justice at all. We need to provide that kind of redressal. I am not referring to every other aspect of it. But I know very well that even in the advanced countries like USA, UK, France, Germany etc., they have demonstrated their concern for social justice. There again, the appointment of judges are made by the political executive or by the Senate or by the Presidents of the respective countries or they are elected through the elected bodies. There is no comparison with our existing system wherein judges appoint themselves. It is only available in this country where the judges appoint themselves. This kind of a system is not there in any of these countries.

Sir, in fact, I was the Chairman of the Second Administrative Reforms Commission and I have illustrated how the systems work in many of these developed countries. So, the Judiciary should reflect the Legislature, should reflect the political executive because they reflect the society as such. There is no ghettoing the justice delivery system. We are accustomed to it. We are colonizing our mind, ghettoing it, making an exclusive society as such. I think we have to give up that. I thought, you will bring a comprehensive amendment taking advantage of your mandate. I am sorry to say, it is only a patch-up. It is not an integrated approach. In fact, I must tell you that even while selecting the Judges of the High Court, what is the kind of the quality? It is very selective. I know – I was a Chief Minister – how it was very selective. Forget about the various sections but at least some efficient people should be there. I can tell you, even the briefless lawyer ends up as a Chief Justice of India. That is our system. I am not exaggerating. A briefless lawyer can also become the CJI of this country. This is the great defect. How do you undo it? Forget about the Chief Justices of High Courts. This can happen. Then what kind of an efficient system is there? That is why, there is all this pendency.

I proposed one system; I brought in a Bill called the All India Judicial Service. You kindly look into that. The idea in bringing the All India Judicial Service is to appoint District Judges directly. Tomorrow, you can make those Judges directly as High Court Judges. After selection, they serve for some time. With a minimum service, you can make them High Court Judges directly. Otherwise, either you get the people who are at the verge of retirement or even the promotee Judges or the Judges directly also. I think this is a fresh category which can go up the ladder up to the Supreme Court. Best quality of lawyers will join as District Judges. Otherwise you cannot attract them. How do you attract them? There should be an incentive system to attract the best type of Judges, the best talents there just like IAS, IPS. Direct appointment of District Judges, of course, for some time, was opposed by all the Chief Ministers. But in the last meeting, I do not exactly remember the year, I think, may be in 2009 or 2010 when we convened a meeting of all the Chief Justices of the High Courts including the Law Ministers. Then, consensus emerged for the first time that the All India Judicial Services should be attempted to. That decision was there on record. I think we have to push up that to get the best quality of judges. Best men will be there in the Courts.

Some time, we never used to have people with the best academic education; now we have. We started the experiment in Bangalore with the National Law School University. We laid a lot of encouragement to that. Today it has ended with 14 such Law School Universities which includes the University in Kolkata. The best of the talent is coming. They are all again going abroad taking appointment. It is because, opening is there. I thought that I must have another 14 Law School Universities in the country. Every State should have one University. I think, this is how we can produce the quality. I think, they are much sought after, better paid than the graduates from the IITs and the IIMs. Everybody thought Law is not a good course. When we all joined the Law courses, everybody would say, this is the last resort. Now, this has become the first resort. Even the people who have completed MBBS, even the IIM, even the IIT, they would like to have another qualification; particularly they join the law profession. This has happened. There is a turnover. But thereafter what happens? Suppose you have provided for direct appointment of District Judges, they would have joined. There is a good avenue. It is not that everybody can very successfully commence the practice. Unless they get into a good, eminent, senior post, they may not get that ladder. That is why they go abroad. I think it is a brain drain. You need to contain that. This is what I wanted. There is an important statement given by a former judge of the Supreme Court that one of the best kept secrets in this country is the appointment of judges. That means there is no transparency at all. Whom are you appointing? With what background are you appointing a person? Nobody knows it. Ultimately you land up with a corrupt judge or land up with a judge who is most inefficient and cannot understand the law of the land. He will not reflect society's feelings and aspirations at all. This is what we need to look into.

Justice V.N. Khare was in favour of doing away with the collegium system and introduces it. I must say that the time has come when we should do it but we also need to address the concerns of the judiciary. Simply by drawing some conclusions and saying that all pre-collegium judges are bad, is not correct. The collegium has produced best judges for this country and for this world. Look at Justice Chandrachud or Justice P.N. Bhagwati, they were all produced by this pre-collegium system. Nobody could say that they were politically appointed. They were all culled out like

Justice Krishna Iyer. It is wrong to say that. At the same time, it is equally important to say that you cannot draw this inference that all those judges who are appointed by this present collegium system are bad. You are hurting them by doing this.

I know that there are some unfortunate recent developments. Some judges, who served as Chief Justices of the Supreme Court, start criticising it. You can criticise it but there should be a constructive criticism. At the time of giving up this collegium system, there should be a grace and honour. Do not condemn and dishonour it. We are all products of this collegium system. Do you want to say that it is bad? I do not think so. It is exceptional. Bad is exceptional. As far as our judges are concerned, I must tell you, by and large that we have the best judiciary system. We are proud of it. Let us honour it. Exception cannot be the rule. We have the best set of judges. Maybe a few black sheeps would be there, they are everywhere. Every judge is a reflection of society. The Parliament is a reflection of society. Every institution is a reflection of this contemporaneous society. You cannot say that every Parliamentarian is an ideal Parliamentarian. You cannot say that. Likewise, every judge cannot be an ideal judge. There will be inadequacy and deficit but that inadequacy and deficit will have to be made up by a system. There can be a system in the governance; a system in the electoral process; and a system in the judiciary. The judiciary cannot live without a system. There should be a governance system in the judiciary. This is what we need to do. That is why we have to address two or three concerns with regard to veto power, thinking of re-introducing the rotation and making at least one woman representation mandatory alongwith the representation of SC, ST, OBC and minorities in the collegium. But this is not at all an adequate provision, and it lacks. By this, you are definitely obstructing accessibility to the justice system. You need to address it and then again you need to define either by Rules or otherwise by amendment as to who should be those two eminent persons. They should not be mysterious persons. They should be certainly people with certainty, you will have to clarify it, and you need to define that. Everybody cannot be eminent.

When I was a Minister in Karnataka, I asked my Chief Secretary: "I want the best of the officers." He said: "Everybody is the best officer, and you choose anybody." This is what sometimes, you know, averaging or generalising people. We should not forget that ultimately there should be excellence. Those people are available. There should be excellence. There are people who have excellent performance, who can perform both academically and practically. Of course, at the same time, I can tell you a small story. When I entered my Bar at Karkala, which is a munsif or registered Bar, I found an elderly person sitting at a corner of the Bar room in a chair. He sits for the entire day. In the morning he comes and goes after the Court hour is over. I found out as to who that person was. They said: "He is a gold medallist." Getting a gold medal from the Madras Law University is the biggest thing. He studied in the Madras Law College, I think. In those days, he was the gold medallist but he was a briefless lawyer, continued to and died as a briefless lawyer. Can you imagine? Just because academically he is the best, it is not necessary that he will be an excellent lawyer. But who is to filter this? Something will have to be there. Some system should be there.

I thought that while bringing this Bill, you will have to evolve some system, by which there will be transparency, which is totally lacking. Mere selection will not do but he has to emerge from the system. But that system is totally lacking here.

I think, these are all the few things which I thought that I must mention here. Of course, this is very much needed but, at the same time, not exactly the manner in which you have brought out.

So, I think, the Minister will revisit some of these provisions and come out with solutions to some of the questions which I have raised.

I would like to thank the hon. Chairman for giving me this opportunity.

SHRI S.S. AHLUWALIA (DARJEELING): Hon. Chairman, Sir, I thank you very much for calling out my name. This is my first speech in the 16th Lok Sabha.

Although my parliamentary life is 24 years in the other House, through my speeches or through my help or through my opposition, many legislations were made or repealed or amended. But this is my first speech in the Lok Sabha as a Member of Parliament in the 16th Lok Sabha, and I am representing West Bengal. Of course, this is my 25th year in the parliamentary career.

Sir, I am basically a law graduate but never practiced because after my law graduation, I became a law maker. At the age of 35 years, I became a Member of Parliament, and since then I am here only.

Today is a fortunate day and that we are passing a historical Constitution (Amendment) Bill. We are thankful to our beloved Prime Minister Narendra Modiji and his team, especially the young Law Minister from Patna. I am his neighbour in Patna. He has given a wonderful introduction of the Amendments brought here in the Parliament.

14.40 hrs (Shri Arjun Charan Sethi *in the Chair*)

Sir, although there are two Bills to be discussed, one is Constitution (One Hundred and Twenty-First Amendment Bill, 2014 and the second is the National Judicial Appointment Commission) Bill, and I support both the Bills, yet I am going to speak on one Bill only, which is on the Constitution Amendment Bill.

Sir, this Constitution Amendment Bill talks about amendments to articles 124, 127, 128, 217, 222, 224 and 231. I am going to speak on them.

My learned and elder brother Veerappa Moilyji has spoken just now. He started his speech by saying as if we are bringing, by moving an amendment in the House, a confrontation between the Judiciary and the Legislature, which is not correct.

At the outset, I want to say that bringing amendment and making new legislation is the primary work of a legislature; and we are performing our duty.

There are three pillars in our Constitution that is guaranteed by the Constitution. One is the Legislature, who are law makers in Parliament and in Assemblies. Second is the Executive, who execute the law. Third is the Judiciary, who interpret the law and do the works of dispensing justice.

I am submitting before the House that it is not for any confrontation. But with the passage of time, everything needs amendment and development.

Now, while speaking, Moilyji was objecting to certain provisions. While preparing my papers, I saw his Ethical Framework, Chapter IV of ARC Report. He was the Chairman of the Administrative Reforms Commission. In the first paragraph, he said:

"The terms of reference of the Commission: The Commission may exclude from its purview, the detailed examination of administration of defence, railways, external affairs, security and intelligence as also subjects such as Centre-State Relation, Judicial Reforms etc., which are already being examined by other bodies."

But still in the Chapter of Ethics in Governance, he examined the whole matter of Judges' appointment, and ultimately he suggested. Now, he is opposing. But at that time, he suggested...(Interruptions)

SHRI M. VEERAPPA MOILY: I am not opposed to it.

SHRI S.S. AHLUWALIA: Your tone and tenor is different now...(Interruptions)

SHRI MALLIKARJUN KHARGE (GULBARGA): Do you not want that we should support this Bill?

SHRI S.S. AHLUWALIA: I want.

SHRI MALLIKARJUN KHARGE: He has analyzed and said it...(Interruptions)

SHRI S.S. AHLUWALIA: Khargeji, I also know how to take your support!â€ (Interruptions)

In the ARC, you said, "A National Judicial Council should be constituted". Your recommendation in the ARC was, "A National Judicial Council should be constituted in line with universally accepted principles where the appointments of members of the judiciary should be by a collegium having representation of the Executive, Legislature and Judiciary". You said this. Then, the Council should have the following composition. What is the composition you suggested? You suggested the Vice-President as Chairperson of the Council; the Prime Minister should be a member of the Council; the Speaker of Lok Sabha should be a member of the Council; the Chief Justice of India should be a member of the Council; the Law Minister should be a member of the Council; and then the Leaders of the Opposition in Lok Sabha and Rajya Sabha should be members of the Council. This was your suggestion. The only difference, if I see, is in the nomenclature. The name you said was, National Judicial Council. We are saying, National Judicial Appointments Commission. This is the only difference.

Actually, when did the problem start? Everything was going on the right path. There are three crucial phases relating to the judicial appointments. One is, three Constitutional discussions that took place from 1946 to 1950. The second phase of Executive-led appointments started from 1950-1993 and the third is, the current Collegium Board of Appointment of Judges from 1993 up to now.

In between what happened? As per article 124, when the first judge case came, its judgement came in 1982. The second judgement came in 1994. Then, on 23rd July, 1998, a Presidential Reference was sent to the President of India. The President of India sent it to the Supreme Court and the Supreme Court came out with another judgement. But in between in 1990 in the V.P. Singh Government, Shri Dinesh Goswami as the Law Minister introduced a Bill. He wanted to bring a Bill for Judicial Commission. But the Lok Sabha was dissolved.

Then, the second Bill came in. Then, your ARC Report and then in 2008, the Law Commission report came, and the Law Commission Report very categorically said, either you go for reconsideration of all the three judgements to the Supreme Court or bring a new law. They categorically said this and while sending this to Hansraj Bhardwaj Ji, the Law Commission Chairman said that the proposal for reconsideration of judges' case one, case two, case three, was considered. Various recommendations of the Parliamentary Standing Committee and law of foreign jurisdiction like America, Australia, Canada and Kenya where the Executive is the sole authority to appoint judges or the Executive appoints in consultation with the Chief Justice of the country have also been considered. Ultimately, he said in his concluding paragraph that two alternatives are available to the Government of the day. One is to seek a reconsideration of the three judgements aforesaid before the hon. Supreme Court. Otherwise, a law may be passed restoring the primacy of the Chief Justice of India and the power of the Executive to make appointments. So, this was in your time. The UPA Government was in power. Ultimately in 2013 you brought the Bill. The Bill was sent to the Standing Committee; the Standing Committee sent it back with some recommendations; and the recommendations were circulated in the month of February when you wanted to do something. As in the initial Bill of Shri Kapil Sibal the provision of reservation for women, SC and ST was not there – this was the recommendation of the Standing Committee – on the basis of the recommendation of the Standing Committee you wanted to bring an amendment Bill. Now, the Bill is before the House.

You said – I mean, many people and especially your opening speaker of the debate – that it will create a confrontation between the Judiciary and the Executive; nobody is interested to have confrontation because we are guided by the Constitution and a judicial system also. But, as parliamentarians we have our own domain where we can make laws. We are making that law as per the power given by the Constitution.

Who says that we are ghettoing it? Who says that we are insulting the Judiciary? If you see in our country whether the Judiciary does any justice or not, we accept it. It is our *dharma*. That is why a judge is called *nyaymurti*. It is connected with *dharma*. *Nyay* is also connected with *dharma* – *nyaydharma*. We explain and understand *nyay* as *dharma* and we accept it as the justice given by the *nyaymurti*. You tell me as to which officer is symbolic to *murti*. It is only the *nyaymurti* because it is connected with *nyaydharma*. Where did it start from? When we were under the British regime, we were guided by the British jurisprudence. We adopted that. But, prior to that, we were guided by the Kautilya jurisprudence. If you see the Kautilya jurisprudence, all sorts of systems were developed by the Kautilya, starting from the appointment of judges to impeachment, removal and even punishment. Everything was there.

In your ARC report itself, you mentioned about one more thing in paragraph 2.9.4 – I do not know why you mentioned all these things in your report

– "the Supreme Court of India, in its full court meeting held on May 7, 1997, unanimously adopted a Charter called Restatement of Values of Judicial Life, generally known as the Code of Conduct for Judges. It reads as under:â€". Then, you went up right from A to P and you have quoted. Of course, when we talk about the Judicial Accountability Bill, we will refer to this again. But, the point is, we never said that this system is bad or that system is bad. When we are bringing an amendment, we are not condemning anybody. That is why, at the outset, I said that I am not praising anybody.

I am also a law graduate. I also meet many judges. I have good contacts with judges. That does not mean I will praise one and if I do not take the name of the other, he feels I do not praise him. So, I am not on that ground. Here, we are not praising anybody or defaming anybody. We are bringing a law and passing it for the benefit of the future generation so that the lost trust in the appointment system or anywhere should go and ultimately it is restored and a good judiciary can serve the people of this country. That was my submission.

As you said, there should not be rotation of members in the Judicial Appointment Commission. ...(*Interruptions*) You said that there is a provision that one member cannot be repeated next time. After three years, he will not be repeated. The category you are talking about is that he should not be rotated again and again. It will not be there. I think, my learned friend Law Minister will take care of that thing also in the rules. He will bring in a provision so that a new person comes in.

You have also asked about the justification of eminent personality category. One of the members of the largest Opposition Party will be there. He will come to know who that eminent person is. He will also be a part of that decision. He will come to know that it is not from anybody's pocket, but certainly there is some criterion and some eminent personality is coming to join it.

With these words, I support the Bill. Thank you.

DR. M. THAMBIDURAI (KARUR): Mr. Chairman, Sir, we are discussing the National Judicial Appointments Commission Bill. First of all, I would like to tell why we have taken this issue seriously and why we are discussing this Bill. Recently, we have come across a news item where certain retired judges have given some opinion about how the collegium is functioning. That is the true history.

A former judge, Shri Katju, has raised the issue of interference of a political party in the appointment of judges and said that a political party pressurised that judge in regard to the appointment of one High Court judge. That is how this issue started. In that regard, the former Law Minister, Shri Bhardwaj, himself gave a statement that the DMK had sought extension of a High Court Judge. This is how the problem started. When some political parties took advantage of the system and pressurised the collegium, the collegium yielded to the pressure. That is what we have seen. That is the news. Therefore, we cannot say that collegium system is a superior one. It is not a superior one. That is our view.

Sir, I have also served as a Law Minister and you know it very well. Everyone knows very well about my experiences of those days. I know how collegium takes decisions and by-pass the Executive. You know very well how I suffered at that time. So, I want to make certain points. Our hon. Chief Minister has written a letter to the Law Minister about our party's view and I have to express that. This is our Party's stand.

As far as the AIADMK Party is concerned, we are firmly committed to upholding the independence of the Judiciary. This is our party's stand. Even our Law Minister said that Judiciary must be independent. We are for that because people must not think that Parliament is bringing certain rules and regulations, and a law with some vested interest. That feeling must not be there. Therefore, we are fully for the independence of the Judiciary. This is our Party's stand and that is what our Chief Minister has written to the Law Minister also.

15.00 hrs

As regards the role of the Executive, we are of the view that the extant procedure and practice regarding the appointment of Judges of the Supreme Court and of the High Courts is not in keeping with the spirit of the Constitutional provisions as the role of the Executive has been effectively taken away. This is the issue. We are saying that the Executive must play a role in the appointment of the Judges and in giving their opinion, and this is what our CM has written to the hon. Law Minister.

In no other democratic country of the world, do we have a situation where effectively the Judiciary appoints itself. The Judiciary is talking only about their own issue, and they are appointing their own Judges. As regards this issue, Shri Moily had mentioned about the All-India Judicial Service, which is a good suggestion made by him. I am saying this because what really happens is that in the collegium they are selecting people where certain Judges are recommending their brother-in-laws, sons, family members, etc. You can see that they are becoming Judges, and it is going on like this. Therefore, where are the talented people? Perhaps, these people are also talented and I am not denying it.

As Mr. Moily has stated that prior to 1993, when the role of collegium was not there, so many eminent Judges were there. So, it cannot be said that the system of collegium could produce better Judges than we previously had as regards the Judges appointment is concerned. Therefore, they cannot say that collegium system is a very superior thing; they are finding talented people; and that they are not giving any importance to this and that. Therefore, we are not fully accepting the approach of having collegium, and our Chief Minister has also written like this only. She has said that : "Experience since 1993 with the present practice of judicial primacy in judicial appointments has also shown us that the outcome in terms of quality of appointments is not significantly superior to what prevailed in the period prior to 1993 when the Executive had an important role."

Mr. Moily had suggested about having an All-India Judicial Service, which is a good suggestion. It is a good suggestion because when we are having a system of IPS / IAS, reservation will also be there and when reservation is there, then SC, OBC and all other categories of people can be taken into consideration at that time. But how they are appointing in this process? They are not taking cognizance of the rules. They are appointing some Judges, but we cannot find SC people, OBC people and women in it, and they are not able to get full representation with what the collegium is doing.

If at all the All-India Judicial Service on the lines of IPS is there, then promotion will be given, and when they are appointed at the District-level, then they would have full experience and after that they would be given promotion.

Presently, what is happening is that a lawyer is also appointed. For example, our Law Minister is also a practising lawyer. Suppose, he becomes a Judge, then what will happen? How will he give judgement at that time when he is sitting as a Judge to his juniors who have served under him, and his clients for some case? After all, we are all human beings and we cannot behave like God. Therefore, as regards practising lawyers, I am not making aspersions, but practically if you think as a human being, naturally, there may be some kind of influence on their judgement. Therefore, if you bring-in something like the All-India Judicial Service, then it is a good reform. On the other hand, if you are going to bring something like the National Judicial Appointments Commission, then it is not going to serve any purpose and it is a fact. You must bring fundamental changes in the system, and then only, we can get real judicial system in the country. Thereafter, they can become High Court Judges, Supreme Court Judges and get promotions automatically like the IAS / IPS officers. If the practising lawyers are made Judges, then their whims and fancies will also be there in it. This is a good system, and we will appreciate if you bring in that kind of a system.

Post retirement, judges must not be appointed as Governors because it creates problems. When you do that, they would also be influenced after some time. There may be some people or one or two people, I am not blaming everybody, who might play a role to satisfy the authorities in the existing Government so that they could get some posts after their retirement. Therefore, we have to put a total ban on such things. You have brought an amendment to appoint Shri Mishra, the former TRAI Chairman. Even in that amendment, when you have put a condition that they must not accept any post in the Government Service, post-retirement, what about the judges? They say that they are above everything else and if you are allowing these judges to get some kind of Government posts after retirement, then it is not correct. You can appoint them to committees or panels because that is a different thing, but you should not consider them for appointments with executive power. That kind of a power must not be given to them. Such posts should not become rehabilitation centres for them.

If you bring this kind of All India Judicial Services, such things could be stopped, and that is a good suggestion. Besides, as I said, issues like reservation and everything else will be implemented.

Further, judiciary is an important organ of the State and must reflect the diversity of Indian society in order to be sensitive to the socio-economic reality of the country. Hence, it must adequately represent different regions, classes and communities and in particular weaker sections, minorities and women. Such concerns are more effectively addressed only if the Executive also has an adequate say in the appointment of judges.

Sir, the Executive has to play a role because we are the elected representatives. The Parliament is supreme. Therefore, when we are making legislation, we are representing the aspirations of the common man who voted for us. It is only for that reason that we are giving our suggestions on the issue of appointment of judges.

What about the role of the State Governments? That is our concern. The State Governments must be given due or proper representation in the appointment of judges. It is the State Governments which are really implementing the programmes. Even though Parliament passes so many laws, they are all executed by the State Governments. If we are not giving proper representation to them to have their say in the appointment of judges, there is no meaning in bringing this kind of a National Judicial Commission. That is what our Chief Minister has written in her letter. I would, therefore, strongly recommend that the Judicial Appointments Commission should function at two levels – one at the national level, and another at the State level. At the national level, you can appoint judges to the Supreme Court and that is okay. We have no objection to that. The National Judicial Commission can do that. But what about appointment of judges to our High Courts where so many State-level issues are involved? The States are having Legislative Assemblies and also Legislative Councils and people are elected to those legislative bodies. At the State level, what we are requesting you is that the States must be given power in respect of appointment of judges to the High Courts. That is what we are insisting and that is what our hon. Chief Minister has written in her letter.

For the appointment of judges to the High Courts, a State-level Judicial Commission should be created. There is no mention about that in this Bill. As you have a National Judicial Commission, we want a separate State-level Judicial Commission where the Governor, the Chief Justice, the senior judges the Chief Minister and other representatives are members. This is our view and, therefore, we are not fully supporting this Bill. When you are not giving proper representation for the states, then there is no point on supporting this Bill. We are asking for decentralisation. That is why, our Chief Minister wrote a letter to the Law Minister. I am also expressing our views here. Unless you create State Level Judicial Commission, our party may not be in a position to support this Bill. I have already given amendments also. The amendment may come. Unless you accept our amendments, our Party is not in a position to support this Bill. Please take into consideration our specific amendments here. I would like to quote what is written in that amendment.

"The Members of the State Level Commission could be as follows:- Chief Justice of India, two nominees of the Judiciary that is a Supreme Court Judge nominated by the Chief Justice of India and the Chief Justice of the concerned High Court, the Chief Minister of the State or her/his nominee, two eminent persons who are not judges, selected by a collegium comprising the Chief Justice of the High Court, Chief Minister of the State and the Advocate General of the State. We are of the view that the composition of the commission should be provided for in the Constitution itself."

Now, you have brought this Bill. I do not know whether the UPA is going to support it or not. You cannot neglect the regional parties. You have to give an opportunity for us to say something in this Bill. For that only, I am insisting there should be State Level Commissions. I have given an amendment for that. ...(*Interruptions*) I am expressing the content of the letter. Hon. Minister is having my Chief Minister's letter. We have also advocated those things which you have said. We are also appreciating them. The Executive must play a role in the appointment. We are not denying. What is the role of the States? That is why, I am seeking a constitutional amendment.

Clause 5 of the Judicial Appointments Commission Bill provides for eliciting the views of the Governor, Chief Minister and Chief Justice of the High Court of the concerned State in the case of appointment of Judges of the High Court. However, there is no clarity on the manner in which these views would be treated. Now you are the Law Minister, and I was the Law Minister. File may come to the Minister. Thereafter, the file will go to the

Judges who will take the final decision. Here, the Law Minister acts merely as a clerk by signing and sending. The Law Minister has become a mockery from 1993 onwards. I do not know what Shri Veerappa Moily has faced till now. I have faced these things. So, I am telling. We are not clerks. We are elected people for the executive authorities. When we are demanding such kind of respect for us, in reality we are not demanding respect for us, we are demanding respect for the people. We were elected by the people. So, we are here. That is why, the State Governments' views also have to be considered. If you take a final decision without giving consideration to the Chief Minister's view, then there is no point. We are insisting for constitutional amendment or provision in the Constitution itself.

The State Government's view against any proposed appointment ought to be given due weightage and a provision in the legislation should be made to ensure that appointments which are opposed by the State Government are not proceeded with. Clause 5 should be further modified to provide that the Governor, State Government and the Chief Justice of the High Court of both the States to which a candidate belongs and the High Court to which the appointment is proposed, should be consulted before appointment. This has to be done. If it is not done, what is the use? This is also a serious issue that our Madam has raised.

The manner in which the Commission's recommendations will be made have not been indicated in the Bill. It is not clear whether the recommendations are to be based on unanimity, consensus or majority and in the case of majority, whether it would be a simple majority or a qualified or a super majority. I do not know that. It has not been made clear. It may be advisable to spell out such a rule in the legislation itself rather than have any confusion in interpretation at a later stage. Ideally, such a rule ought to be a super majority, wherein if any two members do not favour a proposed recommendation, it shall not be made.

In the Judicial Standards and Accountability Bill, the Scrutiny Panel is proposed to be an exclusive team of Judges, whereas in the Oversight Committee, three members are serving or retired Judges; one is the Attorney General, who is also closely connected with the legal and judicial fraternity and the last member is an eminent person nominated by the President. The oversight Committee is vested with the power to choose the Investigation Committee. In these circumstances, such an overwhelming representation to the Judiciary in the crucial panels intended to exercise oversight, most of whose proceedings will be shielded from public gaze, appears to be a violation of an elementary principle of natural justice, that is, no man shall be a judge in his own cause. Hence, it is essential that there should be more persons of high integrity and eminence from civil society in both the Scrutiny Panel and in the Oversight Committee so as to eliminate any impression of bias.

Therefore, our Chief Minister hopes that the views of the AIADMK Party will be taken on board and necessary further official amendments made in the three Bills before they are passed in Parliament. This is our view.

SHRI KALYAN BANERJEE (SREERAMPUR): Hon. Chairman, I express my highest regards and my grateful thanks to the hon. Law Minister. Within a very short time, he has brought this Bill. It was needed for long years together.

During the UPA-II regime, one of the hon. Law Ministers wanted to bring a Bill, akin to this. I had a talk with him and at that time also I supported it. I had expressed our Party's view at that time. My Party is having the highest respect for the judiciary. We believe that because of the Supreme Court's functions during the last 64 years, by interpreting various constitutional provisions, the democracy of this country has been strengthened. I believe in that.

I can remember and I can recollect the first judgment of the Constitution Bench, in the A.K. Gopalan's case, wherein the Supreme Court has interpreted Chapter-III of the Constitution of India. What are the Fundamental Rights of the citizens of the country? I feel proud, being a Member of the Calcutta Bar that in the first Constitution Bench, two Judges, one a great Judge Justice Biren Mookerjee and the other one, the great Judge, Justice S.R. Das were the Members of that Constitution Bench. I feel proud when the judgment of the second Constitution Bench has come for interpretation of extradition. The Bench had Justice Biren Mookerjee, Justice S.R. Das and Justice Vivien Bose. Great judges have come and great judges have discharged their functions. It is this august institution's preliminary duty and Constitutional obligation to legislate laws. That is the will of the people of the country. The Supreme Court is there to interpret the provisions of the statute and the Constitutional provisions. By reason of article 141, it is binding. But never was it the expectation of the makers of the Constitution that judiciary will, by the process of interpretation of the Constitution or other provisions, legislate laws. However, of late, in great number of matters, not only the Supreme Court but even the High Court judges have started doing that.

Collegium system was not introduced by this Parliament. Collegium system is an introduction of the Supreme Court. It is a law laid down by the Supreme Court, not by reason of its interpretation of Constitutional provisions but with an idea that there may be political influence in the appointment of judges pre-1993. Therefore, the collegium system was born. And collegium system has really usurped the entire set of functions of the political executive. With great respect to Supreme Court I would say that it has reduced the status of the political executive to that of a mere clerk. This system has been going on right from 1993.

We were greatly shocked when a judge like Chittatosh Mookerjee was superseded and was not brought to the Supreme Court. We are greatly shocked when Justice Bhaskar Bhattacharjee, who is the Chief Justice of Gujarat High Court, has not been brought to Supreme Court. The reason is that when the then CJI was visiting an institution in Gujarat, being the Chief Justice of Gujarat High Court Justice Bhattacharjee did not attend that function. Therefore, the collegium had rejected his case. But Justice Bhattacharjee's argument was, how could he go when he was dealing with a case relating to that institution?

A judge who never met any lawyers after he became a judge, who never attended a social function after he became a judge, a judge who was all the time in Kolkata was the most impartial, one of the most honest judges of the country, has been superseded because of the whims of the collegium.

This collegium system should go. The time is ripe for this. We have to substitute it. We have to substitute it under compulsion. Our experience

shows that this is needed to be done. Not only that, there is not a single area where you will find that the law would be laid down by me for my appointment or my colleagues' appointment. But the Supreme Court has laid down the law as to which way their appointments would be made. It is very unfortunate.

Sir, I have seen a judge who was appointed to Calcutta High Court, Mr. Moily was talking about briefless lawyers becoming judges. I am talking about a judge who never delivered a judgment in open court, not at all during his tenure as judge. Whenever a big matter is being heard, a lawyer used to sit all the time and used to take notes. That judge used to deliver judgment after preparing for it at home. He never delivered a single judgement in open court. This is a product of the collegium system.

Sir, I wanted to know earlier also what the system for appointment of Supreme Court judges was. Is it by seniority? Is it by merit? Is it by quota? What is that, I could not understand at any point in time. What is the Supreme Court trying to say regarding their appointment, I never understood that. ...*(Interruptions)* I do not mind if a Judge from Guwahati High Court is appointed; I do not mind if a Judge from Punjab and Haryana High Court is appointed but I am asking a question. If a 2001 Judge of Guwahati High Court is appointed to the Supreme Court, why is a 1996 Judge of the Calcutta High Court being superseded? What is the basis? Is it all-India seniority? Is it all-India merit? Why would one High Court have four or five Judges in the Supreme Court when another High Court would have even a single Judge in the Supreme Court? It depends who is the CJI. If I am the CJI, I will bring Judges from my State; if you are CJI, you will bring Judges from your State. This is not the idea and concept ever dreamt by the Constitution of India.

Courts criticise the appointments every day and strike down appointments every day. Why is there a non-transparent system for appointments of the High Court Judges? Why is it that sometimes a Judge or advocate who is most junior – maybe able, maybe sincere, maybe educated – is appointed first and other seniors are not given appointment? Those seniors are accepting the appointment of that Judge. That is the practical position in our country. I have a great respect for Shri Moily. He was asking why these persons are appointed. There is no transparent system. If I know the senior Judges and if I enjoy the blessings of the Chief Justice and senior Judges, my name will be recommended. If someone does not enjoy those blessings but is a good lawyer, his name will not be recommended. One has to run and one has to keep a good relationship with the Judges; then his name will be recommended. This system has to be changed and the change has been brought in.

I am really happy. Today is a historical day in this country when this Bill is being introduced. It is a historical day. I am appreciating the way the things have been taken up so urgently. It has been felt urgent by the hon. Law Minister and I felt it.

I spoke about Bhaskar Bhattacharya. Do you know, hon. Law Minister, that when he was superseded the Gujarat High Court Bar Association went on strike? He belonged to our institution but after going to Gujarat, within one year, he earned that much of respect from the Bar that the Gujarat High Court Bar Association went on strike. Why was Justice M.B. Shah of Bombay High Court who belonged to the Gujarat superseded? Can anybody tell the reason? Has anybody even known why competent judges have been superseded? Nobody knows whose case will be considered; nobody knows whose case will be rejected. Nobody knows about it.

I talked about Bhaskar Bhattacharya whose reputation is very high. Nobody can say why he was superseded. That is the reason I am asking this. Is there a quota? Do you have any quota for Kolkata, Mumbai, Delhi and Gujarat and so on? Is there any quota that when a Judge is being superseded another Judge from that very State is being appointed to fill that position in the Supreme Court? Is there any quota? What is your idea to fill up the post of Supreme Court Judges? Is it on the basis of all-India seniority? Is it on the basis of merit? If merit, how will you consider merit? We have to understand that.

I have read in the newspaper that the hon. CJI was in great shock regarding the attack on the collegium but I must humbly put a question here. Why has the CJI not risen to the occasion when there are large number of complaints against judges. Why has the CJI not risen to the occasion when lawyers have said that judges are not discharging their functions? The CJI is not only for discharging his functions from 10 a.m. to 5 p.m. in the Judiciary. If he is the custodian of Indian Judiciary, his obligation is to see whether all the Judges of the Supreme Court and the High Courts are functioning properly or not. Today what is happening? This institution is being attacked by the Judiciary every day, without any rhyme or reason. I do not mind, if an MP with a criminal background is proceeded against, according to the Cr.P.C. I have no objection to that. If there is no issue and if a judge goes on commenting that the MPs should discharge their functions in one way or the other, what should be the role of an MP and what should be the conduct of an MP, then I am shocked. I am not to be treated like that; I am not to be said what I have to do. Whatever I have to do, I have to do as per the Constitution and as per the rules; and I am not to do as per the diktat of any Judge of the Supreme Court or the High Court.

My experience is this. It has become a fashion of the day, from the High Court to the Supreme Court, without any rhyme or reason, to attack this institution, as if we have committed lot of crimes by coming into politics, as if we have committed crime by becoming a Member of Parliament. Black sheep is everywhere; a few black sheep is there in the Judiciary and a few black sheep is there in the politics too; black sheep is not only in politics; black sheep is in Judiciary also; but the number may differ.

If one institution does not give respect to another institution, then that institution should also not command respect from the other institution. Respect should be mutual; respect should be given respect and taken. It is based on reciprocity; one has to reciprocate it.

So far as the legislation of a law is concerned, supremacy and primacy is there with the Parliament and it is not with others; they should not travel beyond their jurisdiction. It has become a fashion now. All are going on the basis of imagination. For example, I am saying this. If an MP or an MLA of the Ruling Party commits any crime, then the assumption is that the Prime Minister is involved or the Chief Minister is involved. Everything is imagination. If that is so, why the people at large will not think that if someone who has worked with me as a junior and if I argue before him, then the Judge is also influenced, because of my appearance. Dr. Thambidurai was speaking on this.

Mr. Minister, you have brought a very historical Bill. If you really want to improve the performance of the Judiciary and if you really want to strengthen the Judiciary, please do not keep any Judge who are appointed to the High Court in that State, and make a transfer. Transfer should be not for name-sake. Transfer would be there, after every 3-4 years. â€¦ *(Interruptions)* Today, kindly give me some more time. Kindly allow me to

speak.

Nobody is there in a sensitive post for more than 3-4 years; then, why in a sensitive post in a High Court, a judge would be there for 10-12-14 years together? Is this an analogy? If highly responsible IPS and IAS officers are being transferred, if they remain in a sensitive post, after every three years, why a judge will not be transferred? He should be transferred.

In the name of Public Interest Litigation, what is going on? Today, the judges do not discharge their original function of disposing of the civil and criminal matters. If there is a PIL, they are very happy because their names would appear in the first page of the newspapers, with photographs. I will request the Law Minister to bring a law to regulate the PILs. I am not against PIL. But he should bring a law having a provision which should state that in the case of PIL, neither the name of the party, nor the name of lawyer nor the name of the judge would be published and none of their photos would be given; then you see how the PILs are responded to.

I am shocked when this institution is attacked by the Judiciary without any reason. The hon. Law Minister in his speech has given an idea. Our hon. Chief Minister, the Leader of our Party, has communicated and appreciated your will *in toto*. She has given a small rider. Kindly consider that rider. Under the Constitution of India a Governor cannot function independently except under Article 356 of the Constitution where it has been provided that the Governor would submit a report to the President of India. Except under Article 356, the Governor has to act with the aid of the Council of Ministers headed by the Chief Minister. You have made a provision here. A Governor cannot function independently. It will be *ultra vires*. You are going beyond the Constitution. You cannot touch the Constitution like this. The Governor has to act with the aid of the Council of Ministers. You have come across cases where the Governor has acted without the advice of the Council of Ministers.

AN HON. MEMBER: The only exception is Telangana.

SHRI KALYAN BANERJEE: I am not on Telangana Bill. I am on a very larger issue. Kindly do not try to mislead me today. I have said that today is really a historic day for this country when the total system of the judiciary, which was required to be changed by passage of time, by decades of our experience, is going to be changed. The time has come to change and you are coming up with that. I am very happy today. I have so many things to say but I have a little time at my disposal.

My institution is being criticized by the Indian judiciary every moment simply because we are politicians, we are Members of Parliament or Members of the Legislative Assemblies. I have hundred reasons to criticize the judiciary but I am not doing that. I have respect for the system. I want the Indian judiciary to be strengthened. I want the Indian judiciary to maintain its dignity. I want Indian judiciary to get respect from 130 crore people of this country because our democracy is based on that. Therefore, I would request you to go into the details as to how the appointment of Supreme Court judges would be made. What is the merit? Is it inter-State seniority, All India seniority or State-wise seniority that would be considered? If it is State-wise seniority, the system will be broken. I do not mind All India seniority but you will have to strike it somewhere. I do not mind if advocates are appointed directly to the Supreme Court. It is a great product. I am very candid in saying that Justice Nariman is one of the best constitutional interpreters of our country. I do not know whether justice Lalit has become a judge or not but he is one of the best criminal lawyers that we have produced. I would like to know how many posts you are keeping for direct appointment. Does it depend on the CJI? One CJI will say that six posts may be filled directly. The other may say there will be no appointment made from the Bar Council. I would like to know the guidelines in this regard. You can specify the number of appointments to be made from the Bar Council. Let it be 4, 10 or all. I do not mind but people must know how many judges will come from the High Court or how many will be recruited directly from the Supreme Court Bar.

I have another small request to make. You come from Patna, the State of Bihar. I know you are having the same pain that I have. The Supreme Court of India at Delhi has become a very costly affair for the litigants. The fee of the Supreme Court lawyers varies from Rs.5 lakh to Rs.15 lakh. What is this? Kindly destroy their monopoly. Please set up Circuit Benches in different regions. If you do it, you will be achieving two objects. One of the objects is that justice has to be delivered at the doorstep of the litigant. You will achieve this objective. You will be achieving another object that the litigation is not expensive for the litigants. I will not be minding it if you bring a law for regulating the fees of the lawyers. I have not made a research in this regard but I need it. In my State what I have to do is that with the blessings of my leader, Kumari Mamata Banerjee, I had fought cases for my Political Party and for my litigants. In one year, I had to do 2000 cases in criminal courts. I know the pain of the litigants better than anybody else here. I know what the real problem is when they have to go to judiciary. Therefore, you bring a law for regulating the fees of the lawyers.

With this, I am grateful to you. At the end, I will say that I have the highest regard for the judiciary. I pay my respect to the judiciary and I hope our judiciary would be respected more in the near future.

SHRI BHARTRUHARI MAHTAB (CUTTACK): Mr. Chairman, Sir, I stand here today to participate in the deliberation relating to a Constitution (Amendment) Bill and also on the formation of the National Judicial Appointment Commission.

The immediate speaker before me was very candid about his profession and about the activities that are going on in different courts of this country. The other speakers before me have also made a mention on the functioning of the judiciary. When the Minister piloted the Bill, he also referred to 1992-93 judgement and also subsequently what had happened in between. सिवसटीज में एक फिचम आयी थी -- 20 साल बाद और यह बिल आ रहा है करीब 21 या 22 साल बाद।

What has happened in between? We should also understand the logistics. It was in 1989 that the country gave a fractured mandate. It was in 2014 that the country gave a clear mandate. That is the change that we are seeing today. That is how democracy functions. It was also mentioned here in this House that there are three pillars of democracy and that is the beauty of democracy when one pillar is weakened the other pillar gains strength and maintains the equilibrium. I think today, it is a historic day in that sense that the pillar of legislature is regaining its strength and is bringing equilibrium in democratic fever.

When I would want to dwell into the aspects of the Bill, I would start saying that there is now a consensus amongst judges, lawyers and legislators that the present system of appointment of judges to superior courts by a collegium of the Supreme Court judges requires to be changed for a better one. There are sound reasons for this move.

First, the appointment of judges by the Supreme Court collegium has no foundation in our Constitution. Article 124 of the Constitution provides that every judge of the Supreme Court is to be appointed by the President after consultation with the Chief Justice of the Supreme Court and other judges of the Supreme Court and the High Courts. Similar power is given by article 217 to the President, in consultation with the Chief Justice of India, the Governor of the State and the Chief Justice of the High Court, for the appointment of judges in the High Courts. In 1981, in what is known as the First Judge's case, the Supreme Court held that the power of appointment of judges of superior courts resided solely and exclusively in the President, that is, with the Union Government subject to full and effective consultation with the constitutional functionaries as referred to in articles 124 and 217. As far as I remember, if I am correct, it was Justice Bhagwati who was instrumental in giving this judgement.

However, in 1992, the Supreme Court in the Second Judge's case professing to safeguard the independence of the Judiciary reversed the first verdict and re-wrote the constitutional provisions to hold that the primacy in the appointment of a judge of a Supreme Court was with the Chief Justice of India who would make his recommendations to the President after consultation with two of his senior judges. That made the difference. One can very well understand, the Legislature, the Parliament, was weak. There was a fractured mandate; the Government then was a minority Government and that is when the blow was struck. The President would only have the limited power of expressing his doubt. The President's doubt, however, would not prevail if the Chief Justice of India reiterated his recommendation on the appointment of the judges.

In a later judgement, which is known as the Third Judge's case, the Supreme Court diluted the primacy of the CJI and gave the power of appointment to a collegium of the Chief Justice of India and four of his senior-most colleagues. The judgements in the Second and the third judge's case are an extraordinary *Tour de Force* in the name of securing independence of Judiciary. The Court re-wrote the provisions of the Constitution for the appointment of judges. The process of Executive's function in the appointment of judges was reduced to formal approving recommendations made by the Chief Justice of India and his collegium. Consultations within court with the Chief Justice of India in the Constitution have been transmuted into an original power to appoint by the Chief Justice of India and the collegium.

I would also like to mention here what the Constituent Assembly had debated during that period. The view of Assembly at the time of enacting the constitutional provision was that the Chief Justice of India should not be the final appointing authority. This was disregarded by the court and in the meantime during the last 20 to 21 years, this issue was never raised in the court of law.

In the first instance, the collegium system lacks transparency and is secretive. The public is not aware of the selection of a judge until his or her name is forwarded to the Government by the Collegium. Second, there have been instances of judges being selected or not selected due to favouritism or prejudices of members of the collegium. Third, selection on competitive merit of the appointees is disregarded and judges are generally appointed to the Supreme Court on their seniority of rankings in the High Courts. Therefore, one may say that like the earlier system of the Executive appointing judges after consultation with people be restored, but paradoxically from 1950 till 1973 some of the most outstanding judges of our Supreme Court were appointed through that system. It was only during the period of Emergency that this system was subverted which led to the Judiciary appropriating the power in the Second Judge's case and at that time a word was newly coined, namely, 'Committed Bureaucracy, Committed Judiciary'.

Even today, in Australia and Canada, it is the executive which appoints judges after proper consultation. What we have today before us as the Constitution Amendment Bill is a fundamental change in the Constitution. It is important to know that, except for the Judicial Appointments Commission of the United Kingdom introduced by the Constitutional Reforms Act, 2005, such a Commission has not been successful elsewhere. We have not debated what has happened in other countries. But it is only in the United Kingdom where it is functioning in a better way.

The South African Constitution provides for a Judicial Appointments Commission but its working is far from satisfactory and at times, appointments have been influenced by the Government.

When the Constitution Amendment is passed, Judicial Appointments Commission has to make appointment for 31 judges in the Supreme Court and over 800 judges in 24 High Courts. Perhaps that was in the mind of Dr. Thambidurai when he was mentioning of having two separate Commissions. This will be a workload over the Commission. I hope, when the hon. Minister will be responding to the discussion of today, he will explain to us the type of workload on that Commission because this is the amount of work which will be on that Commission other than transfer and posting of judges. That will be an added burden on this Commission.

The collegium system was put in place by a judgement of the Supreme Court in *Supreme Court Advocates on Record versus Union of India* (1993) 4 SCC 441. In this judgement, the Supreme Court interpreted article 124(2) and article 217(1) of the Constitution. The Supreme Court of India held that no appointment can be made unless it is in conformity with the final opinion of the Chief Justice of India.

On reading of the majority judgement authored by J.S. Verma, one comes to a conclusion that he has given two main reasons. It is necessary to read those two reasons. Firstly, primacy of the opinion of the Chief Justice of India will ensure independence of the judiciary from the executive - these are his words - and eliminate political influence. Secondly, the collegium of CJI and other judges are best equipped to know and assess the works of the candidate and his suitability for appointment as a judge to the higher judiciary.

After this judgement, appointments of judges have been in accordance with this collegium system. Yet, many, with merit and integrity, have been overlooked and those with lesser merit have been appointed as judges of High Courts. The collegium however, has ensured an independent judiciary which only can protect - we have to admit this - and enforce the constitutional rights of the people against executive excesses and majoritarian legislation. However, after 1993, though the collegium system has been able to ensure that judges are independent of the executive, they could not ensure that the best and the honest are appointed as the judges of the High Courts and Supreme Court after 1993. To change the view of nine-judge bench of 1993, it was essential that this type of constitutional amendment be moved by the Government. The simple amendment is to amend articles 124 and 217 of the Constitution which is being moved today.

Let us not forget what Granville Austin had said. He said: "An independent judiciary begins with who appoints and what calibre of judges." There ought to be enough safeguards to insulate the judiciary from political interference. Let us not take credit that we are giving more powers to ourselves and thereby creating an impression that the independence of judiciary can be trampled upon. Our Party and myself will not be a party to that type of design. I sincerely hope that the present dispensation which sits in the treasury benches also does not believe in that.

This Bill envisages a 50-50 break-up between judicial and non-judicial members. The Chief Justice of India, two senior most judges of the Supreme Court, the Union Minister of Law and Justice, and two eminent persons nominated jointly by the Prime Minister of India, the Chief Justice of India, and the Leader of Opposition or single largest Opposition party will be members of the Commission.

I would very humbly conclude by saying that it is necessary to ensure the individual independence of those appointed as judges and to maintain the collective independence of the judiciary, to ensure that it retains its ability to act as a check on the executive. That should be the essence. Yet, we cannot forget that while the judiciary is vocal on these themes, its silence on accountability is deafening.

I would like to ask the Government and the Minister four questions. I would request the House also to think over these questions. I hope he would respond to these four questions. First, has not the time come to give the legislature a role in judges selection? Today, it is executive and the judiciary which have the powers. Does the legislature have any role or will have any role in future? Has not the time come to do that because in many democratic countries there is a provision? Second, are the cases going to be settled fast? This morning when I was coming out from my home, I told somebody that there is this Bill which is going to be discussed today. A very rustic person asked me: Will the number of cases come down? Will there be lesser delay? Will the number of cases in different courts lessen? That is the basic question because when we are deliberating on the appointment of judges, accountability of the judiciary also needs to be looked into. Third, will nepotism end? I need not explain that further. Finally, will the new system ensure the best and the honest persons are appointed as judges?

SHRI ANANDRAO ADSUL (AMRAVATI): Hon. Chairperson, I rise to support this important Bill, called the National Judicial Appointments Commission Bill, 2014.

I would like to bring to the kind notice of the hon. Law Minister the amendment which is sought to be moved by Dr. M. Thambidurai, which I have got just now. It seems to be a valid one. He has suggested that the title of the Bill should be National Judicial Appointments and State Judicial Appointments Commission for the High Court Bill instead of the National Judicial Appointments Commission Bill. I think this is a valid one because this Bill is not limited to Supreme Court only, but this is applicable to High Courts also.

Then, right from the small causes court to the Supreme Court, somehow we are getting decisions, but not justice.

16.00 hrs

Delaying justice is denying justice. And the reason is that the corrupt, not totally, judicial machinery is the reason behind it. After long experience, our very intellectual Law Ministry has brought this Constitution amendment Bill and we have to pass the same. Along with the article 124, there is insertion of new articles 124 (a), (b) (c).

Earlier, there was a Collegium constituting five Members within the judicial machinery. But now for the sake of ensuring greater transparency, accountability and objectivity in the appointment of the Judges in the Supreme Court and the High Courts, the said National Judicial Appointment Commission Bill consists of the Chief Justice of the Supreme Court, two senior Judges of the Supreme Court, the Law Minister himself, the Prime Minister, the Opposition Leader and two eminent Members suggested by the Prime Minister, in consultation with the Opposition Leader. Out of this composition, if any two Members oppose any appointment, the said appointment would be null and void. I think, it is definitely a democratic decision in this new amendment. Definitely, this Bill would eradicate corruption, and in future, whatever appointment of Judges is made, it will be proper because Judiciary and the Prime Minister, along with the Law Minister are there in the Commission.

Another aspect is about having more transparency, and avoiding corruption. We have experience about the same in the past in many cases - I will not quote any case here. That is why this amendment is very much essential and the Commission by way of amendment in the Constitution is very much essential. Hence, I support this Bill wholeheartedly.

SHRI B. VINOD KUMAR (KARIMNAGAR): Sir, at the outset, I welcome the introduction of this Bill by the hon. Minister. I, on my own behalf and on behalf of my Party, Telangana Rashtra Samithi, support this Bill wholeheartedly. My leader, the Chief Minister of Telangana, Shri K. Chandrasekhar Rao *Garu*, had expressed his view, when the Government asked about his Government's opinion. This Bill is replacing the Collegium system through this National Judicial Appointments Commission Bill. I am not going to make any comment on the Collegium system which existed for the last two decades in this country.

16.05 hrs (Dr. Ratna De (Nag) *in the Chair*)

However, seven Commissions, as stated by the hon. Minister and also the Parliamentary Standing Committee, after due deliberations, have recommended for enacting a legislation particularly for establishing a National Judicial Appointments Commission. Many suggestions were made in these Commissions as well as in the Standing Committee. I hope the hon. Minister has taken all those suggestions into consideration before bringing this Bill here.

Madam, I will confine myself to the clauses of the Bill. Clause 12 of the National Judicial Appointments Commission Bill says that the Commission may, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of

this Act. At the same time, in Clause 4 of the Bill it is mentioned that the Central Government shall, within a period of 30 days from the date of coming into force of this Act, intimate the vacancies existing in the posts of Judges in the Supreme Court and in High Courts to the Commission for making its recommendation to fill up such vacancies. So, a specific time period is mentioned to intimate the vacancies in various High Courts and in the Supreme Court. I would suggest to the hon. Minister that he should also provide a time frame to the Commission for making regulations at the earliest so that we can fill up the vacancies in various High Courts and in the Supreme Court without any delay.

Similarly, in Clause 13 of the Bill it is mentioned that the regulations which are framed by the Commission will be laid before the Parliament. It is also mentioned in this clause that such rules or regulations will be laid on the Table in both the Houses of Parliament and in the event of Parliament not agreeing to them, we can also suggest modifications to them. Here I would like to say that in the other Bill, that is, in the Constitution (Amendment) Bill we are inserting a new article 124C to the effect that the Parliament may, by law, regulate the procedure of the appointment of the Chief Justice of India and other Judges of the Supreme Court and the Chief Justice and other Judges of the High Courts and empower the Commission to lay down, by regulations, the procedures for the discharge of its functions, the manner of selection of persons for appointment and such other matters as may be considered necessary. So, I would like to submit that ultimately the regulations are going to be important. What sort of regulations are we expecting? This Parliament should be informed about it.

Of course, it is mentioned in Clause 12 that the National Judicial Appointments Commission will frame the regulations. But what is going to be the mode of selecting persons to be appointed as Judges? Presently, in the Collegium system, the advocates who are practicing in the respective High Courts are being appointed as Judges. The Chief Justice and two senior-most Judges of the High Court, who are part of the Collegium in the High Court, pick and choose persons from the practicing advocates. But in the forthcoming regulations, what is going to be the mode selecting persons from the advocates' community? This House should be informed about it. I would like to know from the hon. Minister what are the regulations that are going to come in the near future.

Shri Veerappa Moily talked about all India judicial service. I would request the Government to bring a Bill for the creation of an all India judicial service. It is because, now we have National Law Schools in almost all the States and meritorious students are coming into these Schools. New laws are coming up; because of the economic reforms corporate laws have come up. The litigation has increased. So, all the meritorious students who are coming out of these schools are being picked up by multinationals. As there is non-existence of the Judicial Service, we are losing many good and meritorious graduates. So, I request that at the earliest let us bring the All India Judicial Service. At present, we have direct recruitment of District Judges by the Public Service Commissions of our various States. The All India Judicial Service can be brought at least in the lower judiciary, as we have IAS and IPS officials in the States. Though they are being recruited by the Union Public Service Commission, they are allocated to their respective States. If Indian Judicial Service persons are recruited by any Commission, may be the Union Public Service Commission or any other Commission, whatever the Government proposes, such Judicial Service candidates can be allocated to the States. They can be recruited as the District Judges initially and in the coming days, definitely, through promotions, they will go to the High Courts as we have now also. Some quota is given to the lower Judiciary people as Judges of the respective High Courts. So, I would request the hon. Minister to bring this enactment at the earliest.

DR. A. SAMPATH (ATTINGAL): Thank you, Madam Chairperson. Madam, as some of my colleagues have already stated – our hon. Minister can take pride – this may be one of the historic days of this Parliament. I am afraid that some of our 'My Lords' and 'Your Honours' may not be happy with the discussion in the House when the amendment is being carried out in this House on the Constitution and this Bill gets passed.

I support the intention of the hon. Minister, because he is a very senior and an eminent lawyer. I am very much junior to him even though I am in the same profession. I come from the State of Justice V.R. Krishna Iyer and I belong to the same party of Comrade A.K. Gopalan. Our Constitution begins with the words, 'We, the people'. But, our Judiciary has been criticized as a 'casino judiciary'. In the corridors of Judiciary, I have heard the comments from the people, from persons of the Bar, my colleagues, my brothers and sisters. I am not saying about the MPs of this House alone. This is a call to our country and our Constitution that this Bill has to be passed. But, at the same, I would like to seek some clarifications from the Minister and I would like to put forth some suggestions, through you, Madam, with your permission.

I agree that the Chief Justice of India should be the *ex officio* Chairman. But I have a suggestion that may be considered by the hon. Minister. One of the Judges of the Supreme Court should be nominated by the collegium of all the Judges of the Supreme Court and the other person from the Judicial side may be the Chief Justice of one of the High Courts nominated by the collegium of the High Court Chief Justices. It is because, our High Courts are not below the Supreme Court. It has a separate entity. Both of them have the Constitutional status. So, on the one side, the Supreme Court should be given its due weightage and on the other side the High Courts also should be given their due weightage because we are a federation. Our Constitution says that we are a federal State.

While our hon. Minister is also an *ex officio* member, I accept the proposal moved by him. I accept the proposal regarding two eminent persons to be nominated by a collegium consisting of the Prime Minister and the Leader of the main opposition party in the Lok Sabha. Why can we not make a proposal that out of these two persons, one person should be a jurist? Even in the Constitution, for the appointment of judges to the Supreme Court, jurists can be considered. But it is rarest of the rare, that here jurists are not considered. We, as students of law, used to study textbooks, research papers and other writings of the jurists. By doing this, some of us have become legislators and some of our old friends went to the Bar or to the Bench.

My other suggestion is that there should be a nominee from the Bar Council. Our advocates and practicing lawyers should also have a say in this process. That is my humble suggestion. Why can't we look into this matter also? Our judiciary is held in high esteem both by the people and the system. I agree with that. So the integrity, honesty and merit are very much essential.

This House has to look into another aspect also. When we speak of the merit, we all speak about women. Discussions have taken place in this

House regarding the representation of women. How many woman judges are there in the Supreme Court and in the High Courts? Can we say that they do not have any merit, integrity and honesty? What happen to the women advocates; why are they not elevated at all to the judiciary?

What about the minorities? Not only SC, ST and OBC but minorities should also be given proper place. In this nation of diversity, why are we not considering this aspect? Respected Paswanji is also here. He should take up this matter. We speak of merit. But I would like to know what is the criteria for merit. I still remember the speech delivered by Paswanji in my constituency where he said, 'this is an era of Paswans.' Paswanji, you came to my place and spoke like that. I still remember those words. At present, what is happening in our judiciary? Everybody is saying that there is corruption in the Legislature and the Executive. We are the only people who wash our dirty linen in public. I can oppose you and you can oppose me. I can criticise you and you can criticise me and we can criticise each other. Everybody knows it. Our media people will be present here sometimes before noon and not in the afternoon. As the fourth estate, they will say that these corruption charges have been levelled. But just because the corruption charges have not been levelled against anybody in the judiciary, can we say that they are holy cows?

Hon. Minister, I hope you may remember that day when the impeachment motion was moved in the Rajya Sabha. But just because an impeachment motion was not passed in the Rajya Sabha, can we say that other judges are right? Our judiciary has the power of life and death. We do not have that power. We do not even have the power to provide life as enshrined in Article 21 of the Constitution. I am not saying about Article 19 of the Constitution. It is all up to them. As advocates, we address them 'My Lord' and should not criticise them. If you criticise them then you have to face contempt of court proceedings and the ball starts rolling. The Contempt of Court Act should be repealed. It is my humble suggestion to you. Nobody should be above the law. Nobody should be above the criticism level. We have a right to freedom of speech and expression. We have the right to criticise also.

Madam Chairperson, we are proud of our Constitution. Regarding the seat of Supreme Court, Article 130 says: "The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President of India, from time to time, appoint." This also has to be amended. This point should be looked into by the Commission that we are now going to form.

Diversification does not take place in judiciary, and neither decentralisation is there. We talk about decentralisation of powers from the Centre to States, and from States up to the level of Gram Panchayats.

Madam, I am going to conclude quickly. Please allow me to speak for one more minute.

When we speak about decentralisation of powers, decentralisation should happen in judiciary also.

Last but not least, the role of this Commission should not be limited to just like an interview board of the Union Public Service Commission. This Commission is a statutory body, and it should have its own mechanism and its own officers. At the same time, there are quite a lot of tribunals, and they are very powerful. Many of the judges when they attain the age of retirement say that they are not at all tired even though they are going to be retired, and they are searching for some green pastures.

This Commission should have jurisdiction and powers which it is going to exercise on the High Courts and the Supreme Court. It should also have jurisdiction on the Tribunals. Unless and until the tribunals are brought under the purview of this Commission, those judges and government officers who are at the verge of retirement will be having their own say, and those tribunals may become the pastures for corruption, and that corruption will not be unearthed.

We want a clean judiciary, a judiciary with integrity, a judiciary which we are proud of.

We are a nation, where the largest numbers of cases are pending in the whole world. Shall we take pride of that? So, this point should also be taken care of.

There are a lot of vacant posts of judges in the High Courts, the Mofusil Courts and also in the Supreme Court. Hundreds of vacancies are there. There are young people who are meritorious. Why should we appoint all these retired judges again on *ad hoc* basis? There are many young and meritorious people, and you appoint them. Madam, through you, I would like to make an appeal to the hon. Minister, as there are young and meritorious people, they should be given an opportunity to serve.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्री (श्री राम विलास पासवान) : सभापति महोदय, राष्ट्रीय न्यायिक नियुक्ति आयोग का जो बिल आया है, मैं उसका समर्थन करता हूँ। हमें इस बात की खुशी है कि संविधान की धाराएं, चाहे 124(2) हो, 127(ए) हो, 128 हो, इसमें न्यायाधीशों की नियुक्ति है, एड-हॉक जजों की नियुक्ति है, रिटायर्ड जजों की नियुक्ति है, धारा 217 में हाई कोर्ट के जजों की नियुक्ति है, धारा 222 में हाई कोर्ट के जजों का ट्रांसफर है, 224 में जजों की एड-हॉक नियुक्ति है, 224(ए) में हाईकोर्ट में रिटायर्ड जजों की नियुक्ति है और 231 में दो या तीन से अधिक जजों के लिए कॉमन हाई कोर्ट की स्थापना का मुद्दा है। इसमें संशोधन लाने की बात हो रही है। मैं दोहराना नहीं चाहूंगा, हमारे सभी साथियों ने कहा है कि यह प्रयास आज से नहीं हो रहा है, यह प्रयास काफी समय से हो रहा है। हमारे संविधान में विधायिका, कार्यपालिका, न्यायपालिका, तीनों का मद्दत है और संसद को सर्वोपरि माना गया है। आप देखें कि इसी से संसद की सर्वोपरिता है कि संविधान की धारा 72 के अनुसार यदि सुप्रीम कोर्ट किसी को फांसी की सजा भी दे देता है तो राष्ट्रपति को यह अधिकार है कि उसे क्षमा दान करे। इसका मतलब है कि संविधान में संसद को सर्वोपरि रखा गया है। माननीय राष्ट्रपति का चुनाव संसद सदस्यों द्वारा होता है। वर्ष 1993 के पहले न्यायाधीश की नियुक्ति में कार्यपालिका और विधायिका को थोड़ा बहुत अधिकार था। As per Article 124(2) of our Constitution, "Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States"

मतलब संविधान के अनुसार राष्ट्रपति सुप्रीम कोर्ट के जज से सलाह लेकर एप्वाइंट करेगा, लेकिन हो बिल्कुल उल्टा रहा है। यह वर्ष 1993 से शुरू हुआ और वर्ष 1993 के बाद वर्ष 1998 में मुहर लगा दी गयी। वर्ष 1993 के पहले कोलेजियम नहीं था, यह कोलेजियम शब्द वर्ष 1993 के बाद आया। मैं सर्वप्रथम यह कहना चाहूंगा, मैं पक्ष और विपक्ष के सभी साथियों को धन्यवाद देना चाहूंगा और खड़े साहब को भी मैं धन्यवाद देना चाहता हूँ। मैं स्टैंडिंग कमेटी का मेंबर था और कांग्रेस के सदस्य उस कमेटी के चेयरमैन थे। सब लोगों की इस पर एक राय थी, आप भी इस बिल को लाना चाहते थे, दिसम्बर में आपने कैबिनेट में पास भी कर दिया था। इसके पहले भी 4-5 बार प्रयास हुए, लेकिन जब-जब प्रयास हुए, तब-तब चुनाव आ गए और नतीजा यह हुआ कि यह संविधान संशोधन नहीं हो पाया। यह कोई पक्ष और विपक्ष का मामला नहीं है, मैं सब सदस्यों को इसके लिए धन्यवाद देना चाहता हूँ। मैं देख रहा हूँ कि इसमें सारा सदन, कुछ एकाध बात को छोड़कर कि इसमें हमारा अमेंडमेंट कर दीजिए, स्टेट में अलग से एक स्टेट कमीशन भी बने, अदरवाइज सारे के सारे लोग, सभी पक्ष के संसद सदस्य इसके साथ में हैं।

मुझे सुशी है कि किसी भी माननीय सदस्य ने, जो जुडिशियरी है, न्यायपालिका है, उसके प्रति बॉयस्ड ओपिनियन नहीं दिखाया है। सब लोगों ने यह माना है कि जैसे हमारी पार्लियामेंट सर्वोपरि है, अपने क्षेत्र में न्यायपालिका भी सर्वोपरि है। यह जो कमीशन है, यह जज के जजमेंट में इंटरव्यू करने का नहीं है। यह एक एजीव्यूटिव बॉडी है, जो यह तय करेगी कि जजेज का एवाइंटमेंट कैसे हो और कैसे उनका एवाइंटमेंट हो, जिसमें एक पारदर्शिता हो? अभी जो आरोप लगाया जा रहा है और सबसे ज्यादा आरोप तो भूतपूर्व जस्टिस लगा रहे हैं, तो उसे सुधारने की दिशा में यह एक कदम है जिससे न्यायपालिका की गरिमा कायम रहे। अमेरिका डेवलाप कंट्री है, यू.के. डेवलाप कंट्री है, आस्ट्रेलिया है, कनाडा है, कहीं भी एक तरफा पॉवर जज को नियुक्ति करने की नहीं दी है। जज, जज को नियुक्त करे, यह अधिकार दुनिया में कहीं नहीं है। सिर्फ भारत में यह अधिकार है कि जज की नियुक्ति जज करेगा।

अभी यहाँ बाबा साहब अम्बेडकर जी की चर्चा हो रही थी। बाबा साहब अम्बेडकर जी ने 24 मई, 1949 को संविधान सभा में कहा था कि भारत का मुख्य न्यायाधीश भी एक आम आदमी की तरह है। उनके भी अपने सेंटेंमेंट्स हैं, उनके भी होप प्रोजेड्युस हो सकते हैं, इसलिए पूरा अधिकार मुख्य न्यायाधीश को ही क्यों दिया जाए? जबकि हम यह अधिकार पूर्णरूपेण से राष्ट्रपति को नहीं दे रहे हैं, हम यह अधिकार पूर्णरूपेण से संसद को नहीं दे रहे हैं तो फिर एक व्यक्ति विशेष को या एक संस्था विशेष को यह अधिकार क्यों? इसलिए उन्होंने कहा था कि जुडिशियरी अवाइंटमेंट में एक कलेक्टिव रेस्पॉसिबिलिटी होनी चाहिए। यह जो संविधान संशोधन बिल आया है, इसमें आप देखेंगे कि इसमें 6 मॉडर्न हैं। इन 6 मॉडर्न में से जो चीफ जस्टिस ऑफ इंडिया है, वे उसके वेयरमैन होंगे और दो सीनियर मोस्ट जज मॅबर होंगे। तीन मॅबर तो सीधे जुडिशियरी के हो गये। लॉ मिनिस्टर उसके सदस्य होंगे और दो पदेन सदस्य होंगे। दो पदेन सदस्यों का चुनाव चीफ जस्टिस ऑफ इंडिया, प्राइम मिनिस्टर और तीसरा ऑफ दी अपोजीशन या जो बड़ी पार्टी का नेता होगा, वे मिलकर दो पदेन सदस्यों का चुनाव करेंगे। हम लोग उस स्टैंडिंग कमेटी में थे और स्टैंडिंग कमेटी में हम लोगों ने रखा था कि दो एमिनैन्ट पर्सन की जगह पर तीन एमिनैन्ट पर्सन रखे जायें, जिसमें शेड्यूल कॉन्स्ट, शेड्यूल ट्राइब्स, बैकवर्ड, माइनोरिटी या महिला में से एक होना चाहिए। बाद में हम लोगों ने उस पर डिसकशन किया कि यदि हम तीन कर देते हैं और फिर उसमें एक प्रधान मंत्री रहेंगे, उसके बाद विधि मंत्री रहेंगे तो यह इंबैलेन्स हो जाएगा। यदि चार इधर हो गए - एक विधि मंत्री और तीन एमिनैन्ट पर्सन्स तथा दूसरी तरफ एक चीफ जस्टिस और दो सुप्रीम कोर्ट के जज, इस प्रकार तीन हो गए तो यह बैलेंस बिगड़ जाता है। यूपीए की तरफ से भी जो बिल आया था तो उन्होंने भी तीन के बदले दो किया था जबकि हम लोगों ने स्टैंडिंग कमेटी में कहा था कि तीन हो। अब उसके बाद मामला है जो आपने भी कहा और हम लोगों ने भी यही कहा कि तीन में से एक अनुसूचित जाति, जनजाति, पिछड़ी जाति, महिला या अल्पसंख्यक - इसमें से एक होगा। हमारे सदस्य मोदली साहब ने कहा कि उसमें आपने रोटेशन की बात कही थी, इसमें रोटेशन नहीं है। यह एक मुद्दा है। हो सकता है कि कभी महिला भी हो और माइनोरिटी भी हो, कभी महिला भी हो और बैकवर्ड वलास भी हो, कभी शेड्यूल कास्ट हो, ये कुछ चीज़ें हैं लेकिन वह बहुत बड़ी चीज़ नहीं है। मुख्य मुद्दा एक ही है कि जजेज की नियुक्ति जज स्वयं करे या जजेज की नियुक्ति एक कलेक्टिव रिस्पॉन्सिबिलिटी के मुताबिक हो। जो दो एमिनैन्ट पर्सनैलिटी के चुनाव का सवाल है, उसमें जो तीन हैं, उसमें चीफ जस्टिस रहेंगे, प्रधान मंत्री भी रहेंगे, तीसरा ऑफ अपोजीशन या अपोजीशन की जो बड़ी पार्टी के हैं, वे भी इसमें रहेंगे। इसमें जो सबसे बड़ी चीज़ है, जो ट्रांसपैरेंसी है, वह जजेज के चुनाव में और नियुक्ति में बिल्कुल नहीं है। वह पारदर्शिता इसमें आणी। हम नहीं कहना चाहते हैं लेकिन आप जजेज की संख्या देखें, उसमें कितने शेड्यूल कास्ट के जज हैं, कितने शेड्यूल ट्राइब्स के लोग हैं, कितने बैकवर्ड वलासेज के लोग आते हैं, कितने माइनोरिटी के लोग आ जाते हैं। कभी-कभी कह सकते हैं कि एक जस्टिस चीफ जस्टिस बन गए या माइनोरिटी के बन गए, बैकवर्ड वलासेज के हुए या नहीं। इसलिए मैंने कहा कि इन सारी की सारी चीज़ों में हमने इस बात का बहुत ख्याल रखा है कि कहीं हम लोगों के बीच में आपस में कोई सरकार और विपक्ष का मामला नहीं उठे, कन्फ्रंटेशन नहीं हो, विधायिका और न्यायपालिका में कोई कन्फ्रंटेशन नहीं हो। अभी मोदली साहब ने एक बात कही, मैं उनसे सहमत हूँ, लेकिन जन्म भर के कोढ़ को एक बार में कैसे साफ करेंगे! आपने इंडियन ज्यूडीशियल सर्विस की बात कही।

HON. CHAIRPERSON: Paswan Ji, listen to me. How much more time will you take?

SHRI RAMVILAS PASWAN: I am concluding.

संविधान की धारा 312 में कहा गया है कि "Parliament may by law provide for such a creation of one or more all-India services, including an all-India judicial service." 312 के मुताबिक सीधे कहा गया है कि यह कमीशन मत बनाओ, ऑल इंडिया ज्यूडीशियल सर्विस रखो। ऑल इंडिया ज्यूडीशियल सर्विस का मतलब हुआ कि जैसे इंडियन एडमिनिस्ट्रेटिव सर्विस है, इंडियन फॉरेन सर्विस है। उसमें ऑटोमैटिक रिज़र्वेशन हो जाता है। आज कोई नहीं कह सकता है कि आई.ए.एस. और आई.पी.एस. से निकलने वाले शेड्यूल कास्ट, बैकवर्ड वलास, माइनोरिटी या महिला अधिकारी एफिशियन्ट नहीं हैं, सब एफिशियन्ट हैं। उसी तरीके से होना तो यह चाहिए था कि कमीशन के बजाय इंडियन ज्यूडीशियल सर्विस होनी चाहिए थी जिसमें सीधी नियुक्ति हो। लेकिन सब लोगों के चूँकि इसमें मतान्तर हो सकते हैं, अलग अलग राय हो सकती हैं, इसलिए बीच का रास्ता निकाला गया है - इंडियन ज्यूडीशियल कमीशन निकाला गया है। मैं समझता हूँ कि यह जन-भावना है, आपकी भी भावना है। मैं देख रहा था कल्याण जी जब बोल रहे थे तो कितनी तातिलियाँ बर्जी। कितनी तातिलियाँ बर्जी, यह पूरे सदन की भावना है, यह सदन सर्वोपरि है, यह ऐतिहासिक दिन है और इस ऐतिहासिक दिन के अवसर पर मैं विपक्ष को भी धन्यवाद देता हूँ, मैं अपने प्रधानमंत्री माननीय नरेन्द्र मोदी जी को बहुत-बहुत धन्यवाद देना चाहता हूँ और लॉ मिनिस्टर को धन्यवाद देना चाहता हूँ, जिनके प्रयास से आज यह संविधान संशोधन विधेयक सदन में आया है। मैं समझता हूँ कि आज एक ऐतिहासिक तिथि है, 12 अगस्त है, जो कि इतिहास के स्वर्ण अक्षरों में लिखा जाएगा और सर्वसम्मति से हम इस संविधान संशोधन विधेयक को पास करने का काम करें। धन्यवाद।

श्री धर्मोत्तम यादव (बदायँ) : सभापति महोदय, मैं आपका आभारी हूँ कि इस महत्वपूर्ण विषय पर आपने मुझे बोलने का मौका दिया।

महोदय, मैं सबसे पहले विधि और न्याय मंत्री जी को धन्यवाद दूंगा, क्योंकि इस बिल की आवश्यकता देश बहुत दिनों से महसूस कर रहा था। धन्यवाद इसलिए भी देना चाहता हूँ कि बहुत दिनों से चर्चा थी कि देश की संसद की सर्वोच्चता, संसद की राय से कोई भी क्षेत्र अछूता नहीं रह सकता है, इसलिए न्यायपालिका में भी माननीय न्यायाधीशों की नियुक्ति में इस सदन की राय ज़रूरी थी। जहां तक नियुक्तियों का सवाल है, कोलेजियम सिस्टम के बारे में बहुत से माननीय सदस्यों ने चर्चा की है, मैं उसमें जाना नहीं चाहता हूँ, लेकिन इस बात को ज़रूर कहना चाहता हूँ कि देश की तमाम लोकतांत्रिक संस्थाएं और लोकतांत्रिक व्यवस्थाएं हैं, उनमें सभी की राय-मंथिरा ज़रूरी है। मुझे सुशी है कि आपने उसमें कुछ ढट तक सुधार किया है।

महोदय, मेरे कुछ महत्वपूर्ण सुझाव हैं। माननीय पासवान जी भी कह रहे थे और मैं भी कहना चाहता हूँ कि आप जो संशोधन अधिनियम लाए हैं, इसमें कुछ बातें अस्पष्ट हैं। सर्वोच्च न्यायालय के न्यायाधीश के लिए प्रान्तों के उच्च न्यायालयों के न्यायाधीशगणों में से जो बेहतर है, ईमानदार है, उसको आप चयनित कर सकते हैं, इसमें कोई शक नहीं है। लेकिन 31 सर्वोच्च न्यायालय के न्यायाधीशों और आठ सौ से ज्यादा उच्च न्यायालयों के न्यायाधीशों की नियुक्ति करनी हो तो वहां यह चुनिन्दा छः लोग नियुक्ति कर पाएंगे, इसमें मुझे शंका है। कश्मीर से लेकर कन्याकुमारी तक देश में 26 माननीय उच्च न्यायालय हैं, उनमें आठ सौ न्यायाधीशों के पद हैं। क्या आप आठ सौ न्यायाधीशों की स्फूटनी कर पाएंगे? इन आठ सौ पदों के लिए आठ सौ से ज्यादा दावेदार भी होंगे, तो क्या उनमें से चयन कर पाएंगे, उनकी स्फूटनी कर पाएंगे, इस बात में मुझे पूरी शंका है? इसलिए मेरा सुझाव है कि जिस तरह से आप राष्ट्रीय चयन आयोग बना रहे हैं, उसी तरह से प्रदेश स्तर पर हर हाई कोर्ट के लिए भी एक चयन आयोग ज़रूर बना दें, जिससे उन हाई कोर्ट्स में बेहतर से बेहतर न्यायाधीशों को नियुक्त किया जा सके।

महोदय, मंत्री जी जो बिल लाए हैं, इसमें प्रदेश सरकार के मुख्यमंत्रियों का रोल न के बराबर है। जब देश के प्रधानमंत्री और विधि मंत्री की राष्ट्रीय न्यायपालिका नियुक्ति आयोग में महत्वपूर्ण भूमिका है तो प्रदेश स्तर पर नियुक्ति आयोग बना कर मुख्यमंत्रियों और राज्यपालों की भूमिका को भी महत्वपूर्ण करें, वहां के स्थानीय विधि मंत्री की भूमिका को भी महत्वपूर्ण बनाएं, यह हमारा आपको सुझाव है। आपने केवल दो सदस्य नामित करने का प्रवधान किया है, जिसमें प्रधानमंत्री, नेता विपक्ष और मुख्य न्यायाधीश मिलकर के केवल दो सदस्यों को नॉमिनेट करेंगे और नॉमिनेट करने के लिए जो वर्ग आपने तय किए हैं या उस आयोग को बनाने के लिए आपने जो अर्हताएं तय की हैं, जिनमें अनुसूचित जाति, अनुसूचित जनजाति, पिछड़ा वर्ग आयोग, अल्पसंख्यक और महिलाएं हैं। आपने पांच वर्ग तय कर दिए हैं, लेकिन सदस्यों की संख्या केवल दो रखी है। मेरा सुझाव है कि आप दो सदस्यों की संख्या को बढ़ा कर पांच कर दीजिए। पासवान जी कह रहे थे कि इम्बैलेन्स हो जाएगा। इम्बैलेन्स कैसे हो जाएगा, क्योंकि जब उनमें चयन होगा तो उसमें देश के सर्वोच्च न्यायालय के माननीय मुख्य न्यायाधीश मौजूद होंगे, जो तीन लोगों का चयन करेंगे। जब तीन लोगों के चयन के समय सर्वोच्च न्यायालय के मुख्य न्यायाधीश मौजूद होंगे तो इस तरह का कोई इम्बैलेन्स नहीं होगा। बहुत से देशों ने बड़ा आयोग बनाया है, जहां एक-एक आयोग में 17-18 तक सदस्य हैं। इंग्लैंड में 18 सदस्य हैं। छः की जगह सात, आठ या नौ हो जाएं तो कोई बड़ी बात नहीं है। लेकिन देश का वह व्यक्ति जो अपने को उपेक्षित महसूस कर रहा है, विशेष कर न्यायपालिका में। सर्वोच्च न्यायालय में पिछड़े वर्ग, अल्पसंख्यक और अनुसूचित जाति के लोग हैं ही नहीं।

अगर उच्च न्यायालयों की बात करें तो माननीय मंत्री जी, आज आप सर्वे करेंगे तो मैं कहता हूँ कि इन वर्गों के पांच फीसदी से ज्यादा लोग उच्च न्यायालयों में न्यायाधीश के रूप में मौजूद नहीं हैं।

देश का जो बड़ा वर्ग है, बहुसंख्यक वर्ग है, अगर पिछड़े, अल्पसंख्यक, अनुसूचित जाति, अनुसूचित जनजाति, महिलाएं सब को इसमें मिला देने तो ये शायद 80-85 फीसदी लोग होंगे, ये लोग भी देश की न्यायपालिका में अपनी भागीदारी चाहते हैं। इसलिए हम आपसे प्रार्थना करेंगे कि शायद आप इस में सदस्यों की संख्या बढ़ा दीजिए लेकिन सभी वर्गों को इसमें समान रूप से प्रतिनिधित्व देने का काम करें। माननीय मंत्री जी, यह मेरा आपको सुझाव है। प्रदेश सरकारों के मुख्य मंत्रियों और राज्यपालों की भी भूमिका को बढ़ाएं। यह भी मेरा आप से निवेदन है।

श्री राजेश रेज्ज (मधेपुरा) : सभापति महोदया, मैं माननीय मंत्री जी को बहुत-बहुत बधाई देता हूँ। यह एक ऐतिहासिक दिन और ऐतिहासिक पल है। सर्वोच्चता और स्वतंत्रता दोनों अपने आप में बहुत महत्वपूर्ण शब्द हैं। जिस विधेयक को आपने लाने का काम किया है, और यदि आप मजबूत लोकतंत्र को ध्यान में रखकर आने बढ़ते हैं तो इससे इस देश की सभी संस्थाओं का सम्मान खुद-ब-खुद बढ़ेगा। हिन्दुस्तान के ऋषि-मुनियों के काल से लेकर आज तक इस देश की सर्वश्रेष्ठता दूसरों का सम्मान करने की रही है। मंत्री जी, आपने लगातार दूसरों का सम्मान करने की बात तो की है, पर क्या अपना सम्मान खो कर अमेरिका का सम्मान किया जा सकता है? मैं बार-बार कहता हूँ कि दूसरों का सम्मान करना हमारे देश की संस्कृति रही है, यह हमारे देश की श्रेष्ठता है। लेकिन अपने अस्तित्व और सम्मान को समाप्त कर दूसरों के सम्मान की बात हमेशा करते रहना अच्छा नहीं है। जब इस देश की सर्वोच्चता की बात आती है तो मुझे सोमनाथ दादा का चेहरा नज़र आने लगता है। सोमनाथ दादा ने इस कुर्सी पर बैठ कर इस सर्वोच्चता को हिन्दुस्तान में जिस मजबूती से पहचान दिया, वह आज तक किसी माननीय स्पीकर ने नहीं दिया। हिन्दुस्तान के प्रधान मंत्री के रूप में इन्दिरा गांधी जी ने पहचान दी। यदि हम सरदार पटेल और इन्दिरा गांधी की बात लाएंगे तो उन्होंने इस सदन की सर्वोच्चता को हिन्दुस्तान में लाया... (व्यवधान) आप की सरकार ने इस सदन की गरिमा, सर्वोच्चता और माननीय न्यायालय के सम्मान को ध्यान में रख कर यह जो न्यायिक गठन का प्रयास किया है, इसके लिए हम आपको बधाई देते हैं, धन्यवाद देते हैं।

महोदया, मैं बस दो-तीन सुझाव दूंगा क्योंकि समय कम है। मंत्री जी, निचले कोर्ट में क्या होता है, कोई चीज़ आप से छिपी नहीं है। वहां भ्रष्टाचार की जो स्थिति है, वह कोई चीज़ आप से छिपी नहीं है। आपने जिस आयोग का गठन किया है, उसमें मेरा आग्रह है कि पब्लिक सर्विस कमीशन की तरह इस आयोग की पारदर्शिता न हो। यह आयोग हो, लेकिन पब्लिक सर्विस कमीशन की तरह न हो। मेरा इसमें स्पष्ट रूप से कहना है कि हाई कोर्ट के जो विद्वान, व्यावहारिक और अनुभवी लोग हैं, ऐसे गंभीर, अनुभवी और विद्वान व्यक्तियों को लेना चाहिए। यदि हाई कोर्ट और सुप्रीम कोर्ट के जज पब्लिक सर्विस कमीशन के तहत आएंगे तो फिर इस देश का सम्मान और भला नहीं होगा। इस देश की सर्वोच्च संस्था का सुप्रीम उस व्यक्ति को होना चाहिए जो सर्वगुण सम्पन्न हो। इसके लिए ऐसे कमीशन की आवश्यकता नहीं है।

दूसरा, इसमें ट्रांसपैरेंसी का होना बहुत आवश्यक है। बिना ट्रांसपैरेंसी के किसी भी आयोग का कोई मतलब नहीं है। तीसरा, इसमें बार एसोसिएशन के, बार काउंसिल के, कुछ निष्पक्ष विद्वान और सामाजिक लोग हों। सामाजिक लोग और निष्पक्ष विद्वान की नियुक्ति को कौन तय करेंगे?

सभापति महोदया, मेरा आपके माध्यम से मंत्री जी से आग्रह है कि जज की नियुक्ति की प्रक्रिया के छः महीने पहले आप इसको लोगों के बीच लाएं ताकि लोग उन जजों के बारे में जानें और कोई तयार हो, अपनी राय दे सके। छः महीने के अंदर वह अपनी राय दे, तीन महीने के अंदर आप सभी की राय सुन कर यदि आप किसी बात को लाएंगे तो ट्रांसपैरेंसी बनी रहेगी। आप जिस जज की नियुक्ति करेंगे, उस पर इस देश में कोई चैलेंज नहीं होगा, अंगुली नहीं उठेगी। तीसरा मेरा कहना यह है कि शिकायत का भी मौका देना चाहिए। मेरा आपसे आग्रह है कि कम से कम तीन महीना शिकायत का मौका देना चाहिए, इस बात को भी ध्यान में रखना चाहिए। चौथी बात यह है कि वेबसाइट पर इन बातों को लाएं, जब आप नियुक्ति करें, जो शिकायत आए... (व्यवधान)

HON. CHAIRPERSON: Hon. Member, please conclude now.

श्री राजेश रेज्ज: सभापति महोदया, मैं कंवलुड कर रहा हूँ। जब आप शिकायत का निपटारा करेंगे तो वह लिखित रूप से वेब साइट पर आए ताकि इसको दुनिया देखे कि आपकी ट्रांसपैरेंसी कितनी सुंदर है। आप जो नियुक्ति करने जा रहे हैं, उसमें किसी भी तरह का आपकी निष्पक्षता पर कोई चैलेंज न करें, चाहे जिसकी भी सरकार हो, उस पर अंगुली न उठे... (व्यवधान) मैं नरेन्द्र मोदी जी और आपको बधाई देता हूँ कि आप लिखित रूप से इस देश की सर्वोच्चता के लिए यह बिल लाए हैं। ... (व्यवधान) एससी, एसटी माइनोरिटी की महिला भी इसमें होनी चाहिए, इसमें महिला की अनिवार्यता आवश्यक है... (व्यवधान) क्या कारण है कि एक ही वर्ग के जज आज तक आते रहे?... (व्यवधान) दलित आदिवासी और बैकवर्ड क्लास के जज नहीं आए। ... (व्यवधान)

HON. CHAIRPERSON: Hon. Member, please conclude now.

श्री राजेश रेज्ज: सभापति महोदया, मैं जल्दी ही खत्म कर रहा हूँ। क्या कारण है कि इसमें आज तक हिन्दुस्तान की आजादी के बाद आदिवासी और दलित महिला नहीं आई? ... (व्यवधान) एससी, एसटी के लोग नहीं आए और आप तो बहुत कम आए... (व्यवधान) क्या कारण है कि एक ही वर्ग के लोग आए?... (व्यवधान)

सभापति महोदया, मेरा आपके माध्यम से मंत्री जी से आग्रह है कि लिखित रूप से जब आप कमेटी बनाएंगे तो उसमें एससी, एसटी, माइनोरिटी की महिला जरूर हो, इसका ध्यान रखा जाए।

डॉ. अरुण कुमार (जहानाबाद) : माननीय सभापति महोदया, इस ऐतिहासिक मौके पर जो महत्वपूर्ण बिल ज्यूडिशियरी रिफॉर्म के लिए आया है, वह लिखित तौर से इस बात का द्योतक है कि अच्छे दिन आने वाले हैं। पिछले कुछ वर्षों में लोकतंत्र की बुनियादें हिल गई थीं, उसी के कारण न्यायपालिका भी प्रभावित हुई है। नरेन्द्र मोदी जी के नेतृत्व में एक बड़ा मेंडेट मिला है। देश आज परिवर्तन चाहता है। हम माननीय विधि मंत्री जी को, जो विद्वान न्यायविद भी हैं, मैं उन्हें बधाई देना चाहता हूँ कि आज इस ऐतिहासिक बिल से एक नये परिवर्तन की ओर देश बढ़ रहा है। जनता की आकांक्षा के अनुरूप एक नया ऐतिहासिक दिन आज बना है और हम इसके लिए सरकार को हृदय से बधाई देते हैं।

सभापति महोदया, इस बिल को इंद्रोड्यूस करने समय जो स्ट्रक्चरल फॉर्म पर इन्होंने एक संक्षिप्त परिवर्तन की और पूर्व कानून मंत्री, श्री मोइली साहब ने भी बहुत बेबाक तरीके से इस बिल के प्रभाव का इस दिशा में उन्होंने जो कदम उठाया, देश के अंदर विभिन्न संगठनों एवं एजेंसियों से सम्पर्क करके जिस अनुभव को कंटीब्यूट किया, लिखित तौर से वह भी स्वागत योग्य है। उन्होंने जनता की आवाज को समझने की कोशिश की।

महोदया, हम दो मिनट में अपनी बात समाप्त कर देंगे। हमारे यहां पहले से भी यह मान्यता रही है कि पंच परमेश्वर होता है। प्रेमचन्द की कहानियों को यदि हम पढ़ते हैं तो पता लगता है कि गांव में बड़े लोग कानूनविद नहीं होते थे, लेकिन जब वे पंच की कुर्सी पर होते थे तो अपने जीवन की कीमत पर भी न्याय दिया करते थे। लिखित तौर पर पिछले कुछ वर्षों में जो घटनाक्रम हुआ है, टिटिगेण्ट लोग भी इस बात को जानते हैं कि किस कोर्ट में, कहां, कौन सी घटना हुई है? माननीय सदस्य कल्याण बनर्जी जी ने जिन सवालों को खड़ा किया है, लिखित तौर से यह बात जनता के मन और ज्ञान में है। एक बड़े संकल्प के साथ सरकार जो ये दोनों बिल लायी है, हम पार्टी की तरफ से पूरी तरह से इसका समर्थन करते हैं।

SHRIMATI ANUPRIYA PATEL (MIRZAPUR): Thank you, Madam, for allowing me this opportunity to participate in the deliberations on the Constitution (One Hundred and Twenty-first) Amendment Bill as well as the National Judicial Appointments Commission Bill introduced by the Government.

Madam, I wish to begin by drawing the attention of this august House towards the statement of the Chief Justice of India, Justice Mr. R.M. Lodha,

which has been published in an English daily today wherein he strongly came out in defence of the earlier flawed Collegium system. It appears to me that the CJI has been making a deliberate and conscious effort to undermine and demoralize the highest law-making institution of the country which is the Parliament. It is expected of the CJI to understand and realize that the role of the court is only to interpret the law and not to create and make laws. That is the responsibility of the Parliament. And also, judiciary cannot create a mechanism for its own appointment. If judges are appointing judges, the system is not fair. So, in that light, the step that the Government has taken is worthy of admiration and appreciation. I truly welcome the effort or the initiative that has been made by the NDA Government to introduce these two Bills.

Madam, the Government's intention is crystal clear that it is committed to transparency, accountability and objectivity in the appointment of judges in the Supreme Court and the High Court, which is the need of the hour in the wake of rampant corruption which is plaguing our judicial system. We have had incidents of appointments made on considerations other than merit and a number of deserving and honest persons have been ignored on several grounds ranging from political to commercial to caste and gender biases. Also, there have been delays in filling up the vacancies with the old system of Collegium. So, it is important to replace the Collegium system by the National Judicial Appointments Commission.

However, I wish to assert that the reflection of social diversity in the National Judicial Appointments Commission is extremely important because the SC, ST, OBC, women and the minority rights have to be protected and it is an unfortunate and sad reality that caste, class and gender based prejudices and biases do exist in our judiciary and this problem must necessarily be addressed.

I heard our hon. Law Minister say that one of the eminent personalities who is going to be a part of the National Judicial Appointments Commission is going to be from the SC, ST or the OBC strata of society. However, I feel that if you just pick one member, it has to be either an SC or an ST or an OBC or a woman or a minority. So, one member is not sufficient. There should be more number of members and the size may be expanded. We have such examples in the world. We have the Judicial Commission of England wherein the size of the Commission is bigger. So, it is important for India also because our society is very diverse and it is important that we have a member from the ST, we have a member from the SC, we also have a member from the OBC, including a woman from these sections. So, it is very important that we create a Commission in totality. That is why I request our hon. Minister to take care of these suggestions. It will be in the interest of the nation and in the interest of the exploited sections of society.

With these words, I would like to end.

श्री कौशलेन्दु कुमार (नालंदा) : माननीय सभापति महोदया, आपने मुझे राष्ट्रीय न्यायिक नियुक्ति आयोग पर बोलने का मौका दिया है, इसके लिए बहुत-बहुत धन्यवाद। सरकार इसके द्वारा भारत की मुख्य न्यायमूर्ति, उच्चतम न्यायालय के अन्य न्यायाधीशों, न्यायालय के मुख्य न्यायमूर्तियों और अन्य न्यायाधीशों की नियुक्ति एवं स्थानांतरण के लिए आयोग का गठन कर रही है, यह स्वागत योग्य है। पिछले वर्षों में कई वरिष्ठ न्यायाधीशों की नियुक्तियों पर विवाद हुए हैं, इसके फलस्वरूप आयोग के गठन के लिए पिछली सरकार ने प्रक्रिया शुरू की थी और अंत में मोदी सरकार इस पर कार्यान्वयन करने का कार्य कर रही है। वैसे तो, दशकों से पुराने कोलेजियम सिस्टम के द्वारा ही जजों की नियुक्ति एवं स्थानांतरण की प्रक्रिया चल रही थी लेकिन इस प्रक्रिया में कुछ त्रुटि, अपारदर्शिता और गोपनीयता के कारण कोलेजियम सिस्टम सवालों के घेरे में आ गया है। अतः इस आयोग के द्वारा आशा है कि हम उससे बाहर निकल पाएंगे।

सरकार से मेरा निवेदन है कि इस समय देश में बहुत अधिक संख्या में जज के पदों की रिक्तियां हो गई हैं, जिसके फलस्वरूप उच्च न्यायालयों में मुकदमों का दबाव काफी बढ़ गया है। अतः आयोग की प्रक्रिया प्रारंभ होते ही, जैसा कि उसमें प्रावधान है कि किसी भी रिक्ति के बाद तीस दिनों के अंदर उस पद पर जज की नियुक्ति हो जाएगी, इससे न्याय प्रक्रिया में तेजी आएगी और आम नागरिकों को समय से न्याय मिल जाएगा। आयोग इस पर पूर्णतः सफल रहेगा। मेरा मानना है कि अभी भी अनुसूचित जाति, अनुसूचित जन जाति, पिछड़े वर्गों, अकलियतों और महिलाओं का प्रतिनिधित्व बहुत ही कम है, आयोग उस पर भी ध्यान देगा। जैसा कि इस बिल में मात्र नियुक्ति एवं स्थानांतरण का ही प्रावधान का अधिकार आयोग के पास होगा। ... (व्यवधान)

16.57 hrs (Shri Hukmdeo Narayan Yadav in the Chair)

अगर, आयोग के पास जजों के खिलाफ शिकायतों से निपटने का भी अधिकार होता तो आयोग की एक अहम भूमिका होती। पिछले एक-दो दिनों से सरकार की इस प्रक्रिया के प्रारंभ होने के बाद, माननीय मुख्य न्यायाधीश ने कुछ आशंका व्यक्त की है कि न्यायपालिका को बदनाम करने का सुनियोजित अभियान चलाया जा रहा है। वे कोलेजियम सिस्टम को अभी भी उचित मानते हैं, क्योंकि, उसके द्वारा न्यायपालिका को उनकी स्वायत्ता मिली हुई है। अगर कोई दूसरी व्यवस्था होती है तो उससे राजनेताओं और अफसरों की दखलअंदाजी बढ़ सकती है। मेरा मानना है कि सरकार का यह दायित्व है कि न्यायपालिका को यह भरोसा दिलाए कि सरकार उसके अधिकार क्षेत्र में कभी भी दखलअंदाजी नहीं देगी और उसको पूर्णरूपेण स्वतंत्रता प्रदान करेगी। क्योंकि न्यायपालिका हमेशा संविधान की संरक्षक रही है। मैं इन्हीं शब्दों के साथ मैं अपनी बात समाप्त करता हूँ।

SHRI C.N. JAYDEVAN (THRISSUR): Sir, I support this Amendment Bill in the name of Communist party of India. My party's view on this subject is to establish a National Judicial Commission for appointment of Chief Justice of India and Judges of the Supreme Court of India and also Chief Justices and other judges of High Courts. This is a very important issue which is being discussed for more than two decades. It is necessary to discuss and finalize it as soon as possible. The method of appointing judges and their accountability was never satisfactory for the last few decades. Earlier, the executive had played more important role. A system of collegium was introduced for appointments, promotions and transfers of judges by the Supreme Court which led to the unilateral usurpation of the appointment of judges by the Supreme Court. The position has not improved much except limiting the role of the executive to some extent. It is proved that it is not foolproof. In recent years, there have been more allegations about the ethical values of judges with allegations of corruption, misuse of power etc. There was a shocking allegation about the integrity of a former Chief

Justice of India by a prominent advocate and former Law Minister Shanti Bhushan and his son Prashant Bhushan, who is also a prominent lawyer. The recent comment of former Justice of Supreme Court, Justice Markandey Katju on the pressure of executive regarding promotion of judges generated a big controversy though his allegation has come ten years later for no reason.

17.00 hrs

This should be changed. The appointment of Judges should be done by the National Judicial Commission. It should be based on merits, integrity and social and gender justice. We propose the composition of the Commission in the following way. The Vice President of India must be the Chairperson of the Commission; second is the Chief Justice of the Supreme Court of India; third, two former Chief Justices of India should be there; fourth, two senior-most Judges of the Supreme Court of India; fifth, the Union Minister of Law and Justice should be there; sixth, one judicial member should be appointed by the Leader of Opposition or the Leader of the biggest Opposition Party in Lok Sabha; seventh is, eminent jurists should be nominated by the President of India after consulting the Chief Justice of India. Except, the sitting Judges and the Law Minister, others should be barred from taking up any other judicial or quasi-judicial post or political post after retirement from the National Judicial Commission.

माननीय सभापति: अब आप अपनी बात समाप्त कीजिए।

â€¦(व्यवधान)

SHRI C.N. JAYADEVAN: I am concluding. A person shall not be qualified to be a Member of the Commission except the *ex-officio* Members unless he is 55 years of age. With this I conclude.

SHRI N.K. PREMACHANDRAN (KOLLAM): Sir, yesterday, around this time, I was on my legs to vehemently oppose the Railway (Amendment) Bill. Today, I am on my legs to fully support the views expressed by the hon. Minister in piloting this Bill for the consideration of this House.

I also take this opportunity to congratulate the hon. Minister the way in which the Bill is presented before the House. I do appreciate that he has maintained the balance between the Judiciary, the Legislature as well as the Executive. But, unfortunately, on hearing the arguments or the debate that took place in the House, I hope that it is giving a bad message to the people of our country and outside as though we are going to encroach on the functions and powers of the Judiciary. That is not the actual position. I do fully endorse the views expressed by Shri Mehtab ji that we are trying our level best to keep the balance between Judiciary and the Legislature for which the Bill is being presented before the House.

The main question to be considered is the pre-1993 situation in our country. It is very strange to see that the interpretation of Articles 124(2) and 217(1) in relation to the term 'consultation' means concurrence. The Judiciary unilaterally took over the functions of other agencies. They were having excess powers that were being exercised during that time.

Separation of powers is one of the cardinal principles of the basic, salient features of the Indian Constitution. Executive is supreme, Legislature is supreme and Judiciary is also supreme in its own sphere. At the same time, they are all independent. What is the present position? Due to paucity of time, I am not able to explain or elaborate this point. I may kindly be allowed to speak for a few minutes.

The legislative functions, the executive functions as well as the judicial functions are distinctly defined in the Constitution. Unfortunately, if you go through the judicial functions, most of the time, they are encroaching on the functions of the Executive and the Legislature. Why? I would very humbly appeal to this House that self-introspection is also required in this respect. Why is it so? It is because the Legislature is not discharging its functions properly. The Executive is not functioning properly. When the Executive and the Legislature become ineffective and dysfunctional, definitely, a vacuum will be created and that vacuum was filled by the Judiciary. That is what is meant by the judicial activism. I am not supporting the judicial activism. The main point that I would like to highlight is that the Parliament as well as the Executive should be strengthened. We should correct ourselves so that the judiciary can do nothing in taking away the rights of the Executive as well as the Legislature.

I have one suggestion to make to the hon. Minister. This Constitution (Amendment) Bill is only having an enabling provision as far as the composition of the Commission is concerned. The procedure to be followed is as per the National Judicial Appointments Commission Bill. Under the Constitution (Amendment) Bill the entire authority is being vested upon the Commission. You go through the regulations. Under clause 12 of the Bill, powers are almost being vested with the Commission. So, that has to be looked into.

My next point is on how to improve the quality of the judiciary. In order to improve the quality of the judiciary, Indian Judicial Service should be brought in. The lower judiciary is not coming within the purview of this Bill. So, a comprehensive legislation is required in respect of judicial service through which Indian Judicial Service should be set up and judicial accountability should be ensured.

With these words, Sir, I conclude.

SHRI ASADUDDIN OWAISI (HYDERABAD): Mr. Chairman, Sir, I have strong objections to this Bill, which has been moved by the hon. Minister. Let me enlighten the Treasury Benches why I have objections to it.

The hon. Member who spoke just before me mentioned the concept of separation of powers. What we have seen is that after this Government assumed power, of the hon. advocates who were sought to be promoted to the post of Supreme Court judge, one was not accepted by the Government because the IB had given an unfavourable report against that advocate. My objection to this Bill is related to this. How do you control IB? By passing this law, we are giving a blank cheque to the Executive, to the government of the day, to have its own people in the judiciary in the name of IB reports. It has happened recently and it has hurt the separation of powers. An hon. advocate of Supreme Court was not promoted. That has hurt the separation of powers very gravely.

How do you control the IB? IB is not accountable to this august House. Let me bring to the notice of the hon. Minister certain provisions of the Constitution (121st Amendment) Bill. Section 124B subsection C says, 'â€ ensure that the person recommended is of ability and integrity'. Let me quote to you, Sir, the National Judicial Appointments Commission Bill. Section 5, subsection 2 of the Bill says, 'The Commission shall on the basis of ability, merit and any other criteria â€ Where is integrity mentioned here? The Constitutional amendment talks about integrity, but the NJAC Bill does not talk about integrity.

When we come to the NJAC Bill, I have strong objection to the word 'seniority' because you are making it very inflexible. In a lighter vein, this government has forgotten seniority when it came to their own Prime Ministerial candidate. This is in lighter vein, do not take it seriously. ...(*Interruptions*) I am saying it in lighter vein. Do not take it to your heart. I know it hurts you.

Our country runs on the principle of federalism. By bringing this Bill, you are making the concept of federalism topsy-turvy. Why not the Chief Minister of the State? Are you not hurting the federalism of our country? And moreover, when the names are being given, why cannot these names be made public? Why cannot we invite applications? And, will RTI apply to this JAC? The judiciary conveniently has said that RTI does not apply to them. How would I know whether my name has been accepted or my name been rejected? That is why this Commission has to be a full-time Commission. Will the hon. Minister have time to sit down and decide on all these issues? When will the Supreme Court judge sit? Where is the secretariat? That is why there is no transparency. ...(*Interruptions*)

सर, मुझे केवल आधा मिनट दीजिए, हम रिटिवेंट बात कह रहे हैं। इसके बाद हम अपनी बात मुकम्मल कर रहे हैं।

माननीय सभापति : ठीक है, बोलिए।

â€(व्यवधान)

श्री असादुद्दीन ओवैसी: शॉर्टलिस्टेड कैंडिडेट्स का एलान कीजिए... (व्यवधान) बताइए कि कौन हैं वे लोग, उनको क्यों रिजेक्ट किया जा रहा है? उसमें ट्रांसपैरेंसी नहीं है, यह गलत होगा। इसीलिए मैं हुकूमत से मुतालिबा करता हूँ कि इसे स्टैंडिंग कमेटी या सेलेक्ट कमेटी में भेजा जाए।

ADV. JOICE GEORGE (IDUKKI): Thank you, Chairman.

I rise to support this Bill. This is an attempt to ensure transparency and accountability in the entire judicial system. We all know how the Judiciary has grabbed power to make appointments in the judicial system. I do not want to elaborate on those things. I only want to make some suggestions here.

As per these amendments, we are having a system to appoint eminent persons for the purpose of selecting the judges. For that purpose, we have a mechanism provided in the amendments. Here, I have a suggestion. There are three persons – the President, the Chief Justice of India and the Opposition Leader. There should be a unanimous decision between all these persons while selecting these persons. That clarity should be made in that section.

As per the Judicial Appointments Commission Bill, there is a provision to select the High Court Judges. There is a provision to consult with the eminent advocates of the High Court too. There should be some provision to select these eminent advocates of the High Courts also. For that purpose, the Bar Association should be taken into confidence. There should be some provision to consult the Bar Association for the purpose of selecting these eminent advocates of the High Court for the purpose of having consultation before making recommendations for the purpose of selecting High Court Judges.

This is an endeavour on our part to ensure accountability and transparency in the entire Judiciary. I hope so and I am very proud to say that I belong to the Bar Association of the High Court of Kerala which presented the great Jurist V.R. Krishna Iyer to the entire nation.

SHRI R. RADHAKRISHNAN (PUDUCHERRY): Hon. Chairman, Sir, thank you for giving me this opportunity to speak on the Judicial Appointments Commission Bill. I may not be qualified enough to talk on the technical aspects and the minute details of the Bill but I would like to go into the general aspects whether this Bill is essential.

In a democratic set up, the responsibility of the people is ultimate and that responsibility is shown only when they elect the representatives. So, ultimately, the elected representatives are the people who are responsible to the people. The other bodies of democracy, the Executive and the Judiciary are not directly responsible to the people of the country; nor can the people question the Judiciary or the Executive in any of their functioning. So, any power or control should be vested only with the people directly elected by the people, that is, the Parliament or the Legislature.

In this broader logic, I feel the changes brought in by the Law Minister and the Government are welcome. I would suggest that the Parliament should have a say in the appointment of Judges and in any body of regulation, whether it be any regulatory body, any commission, CBI or IB or anything. The ultimate control definitely should vest with the elected Members. No body can be autonomous of the Government. So, I fully support the Government's initiative and the Government in bringing forward this Bill. I extend my hearty congratulations to the hon. Minister for bringing this Bill.

SHRI S.P. MUDDAHANUME GOWDA (TUMKUR): Thank you, Sir.

We are discussing a very sensitive matter. The hon. Law Minister has brought this Bill which was brought by the earlier UPA Government. I am happy that apart from being a legal luminary, you have also consulted a lot of legal luminaries. You have read out some names. So, we are confident that it will withstand the test of the Judiciary.

Very recently, the hon. Supreme Court has made its stand clear. They have expressed in open court, about how this Bill is being treated by them. The Bench headed by the hon. CJI, while disposing of a PIL, has stated clearly – you are aware of that – that an attempt is being made to defame the Judiciary and to lower the image of the Judiciary in the country; he has also mentioned that an impression is created among the general public that – he has not mentioned who is doing that, but stated – an attempt is being made to defame the Judiciary and to lower the image.

You are aware that every piece of legislation that we make here will be subjected to judicial review and scrutiny. We have to withstand that. That is why, we must be extra careful while dealing with the Constitutional Amendment Bill.

I would like to bring to your notice one more thing. You have mentioned about the two eminent members to be appointed who are going to pick up the judges. Who are going to be these two persons? As Dr. Sampath rightly pointed out, they should be eminent persons with judicial background. They are needed. Who could be a person who could be a better judge? A person who can deliver justice, a person with integrity and honesty, can only deliver better judgment. So, it is the responsibility of this Government to see that clarity is made while appointing these two members.

Finally, to update my knowledge, I would like to pose one question before you. Suppose a judge has been found to be guilty of corruption and is removed from service; prior to that, he has delivered hundreds of judgments. What is the fate of those judgments delivered by that corrupt judge? If a judge, who has been removed on ground of corruption, has delivered hundreds of judgments, what is the fate and value of the judgment? What is the propriety that we can attach to such judgments? That is the question.

Ultimately, the need of the hour is this. A common man of this country or a common litigant of this country wants that the case to be decided on merit and not otherwise.

That is why, keeping all these things in mind, I welcome this Constitution Amendment Bill, which was brought forward by us. Thank you.

संवार और सूचना प्रौद्योगिकी मंत्री तथा विधि और न्याय मंत्री (श्री रवि शंकर प्रसाद): आदरणीय सभापति महोदय, मैं पूरे सदन को हृदय से धन्यवाद देता हूँ। इतनी सार्थक चर्चा हुई है। मैंने अपने 14 वर्ष के संसदीय जीवन में इस स्तर की चर्चा बहुत कम देखी है। मैं पूरे सदन को आज हृदय से धन्यवाद देता हूँ। उसका कारण यह भी है, जैसा मैंने अपनी आरंभिक टिप्पणी में कहा था, कि आज हम इतिहास बनाते जा रहे हैं। मैं समझता हूँ आज इसे पूरा देश देख रहा है। यह महत्वपूर्ण संविधान संशोधन है। पूरी बहस का जो स्तर रहा, उसमें वीरप्पा मोइली जी ने बहस की शुरुआत की, उनका भाषण बहुत ही विद्वतापूर्ण था। अन्य पार्टियों के नेताओं ने भी अपनी बातें कहीं। मैंने आज धर्मेन्द्र जी को इतने गंभीर विषय पर बोलते हुए पहली बार सुना, मैं उनको बहुत शुभकामनाएं देता हूँ। मैंने राम विलास पासवान जी से आग्रह किया था कि उनको भी बोलना चाहिए, उनका भी सजेशन था। प्रेमचंद्र जी ने भी बहुत अच्छी बात कही। मैं सजेशन रंजन जी को पप्पू यादव कहता हूँ, उनका भी भाषण मैंने सुना, उसमें भी बहुत गहराई दिखाई पड़ी। I particularly congratulate Shri Kalyan Banerjee. Where is he? I do not see him. What a level he rose to? I also wish to congratulate him and all the other friends who spoke so-brilliantly. मुझे मालूम था कि अन्य बहुत से लोगों की इस विषय पर बोलने की इच्छा थी, यह विषय भी ऐसा था कि उन्हें इस पर बोलना चाहिए था, लेकिन समय की कमी है। आपको मालूम है कि महामहिम राष्ट्रपति जी छः बजे आने वाले हैं, उस कार्यक्रम में हम सभी को जाना है। मैं भी केवल दस मिनट में अपना उतर दूंगा, बाकी बातें मैं कल विस्तार से बोलूंगा, फिर आपको वोट देने का अवसर मिलेगा। मैं अपनी ओर से अपनी व्यक्तिगत कृतज्ञता भी रखना चाहता हूँ। मेरे बारे में कई माननीय सदस्यों ने अच्छी बातें कही हैं, पता नहीं मैं उसके लिए पात्र हूँ या नहीं। I am really grateful for the hon. Members who have stated so many good words about me and about the way the whole thing was presented. I am extremely touched and my warm regards to all the hon. Members who have spoken in my favour.

सभापति जी, मैं कुछ जनरल बातें कहना चाहता हूँ। एक बात मैं इस सम्माननीय सदन को बताना चाहता हूँ और इस सदन के माध्यम से देश को बताना चाहता हूँ कि माननीय न्यायपालिका के कार्य क्षेत्र में हस्तक्षेप करने का हमारी सरकार का कोई इरादा नहीं है। The Government has got no intentions whatsoever to intervene in the rights, jurisdiction, authority, Constitutional powers of the Supreme Court and High Courts of India. Their powers are well known. Their independence is well known. Their rights and duties are well known. Their respect, institutional integrity is also well known. This has to be clearly dispelled at the very outset.

मैं दूसरी बात कहना चाहूंगा कि सदन में जो सर्वानुमति बनी है, अभी किसी ने नाम लिया कि मैंने किसी ज्यूरिस्ट का नाम लिया था, बिल्कुल लिया था। कई लोग हमारी मीटिंग में नहीं आ पाए थे। आज मैं इस सदन में सुभाष कश्यप जी का नाम लेना चाहूंगा। वह लोक सभा के महासचिव रह चुके हैं और देश के बहुत बड़े संविधान विशेषज्ञ हैं। उन्होंने भी अपनी सहमति दी थी। वह वेंकट चेलैया कमीशन के सदस्य थे। कई लोग रहे हैं। सबने अपनी सहमति दी है कि नहीं, यह बदलाव होना चाहिए।

जब मैं सारे सदन की बात करता हूँ तो मैंने कई नेताओं को पत्र लिखा, सोनिया जी को भी लिखा था। मुझे मालूम था कि वह थोड़ी अस्वस्थ थीं इसलिए पत्र का उतर नहीं आया। इसलिए पार्टी का भाव आज स्वयं वीरप्पा मोइली जी ने प्रकट किया है। मैं उनका भी साधुवाद करना चाहता हूँ, धन्यवाद करना चाहता हूँ।

श्री मल्लिकार्जुन खड़गे : आप शायद 17 जुलाई के पत्र का जिक्र कर रहे हैं। वह लैटर आपने लिखा था।

श्री रवि शंकर प्रसाद : यह कोई इश्यू नहीं है, मुझे मालूम है।

श्री मल्लिकार्जुन खड़गे: उसके बारे में हमने मीटिंग करके यह निर्णय लिया कि यह बिल हमारा है, इसका पूरा समर्थन करना चाहिए।

श्री रवि शंकर प्रसाद: यही मैं कह रहा हूँ।

श्री मल्लिकार्जुन खड़गे: इसलिए आपको टैटर लिखने की आवश्यकता नहीं थी। हमने यह स्पष्ट किया और हमारे ओपनिंग बैट्समैन मोइली जी ने सारी बात बता दी।

श्री रवि शंकर प्रसाद : मैं तो आपका सम्मान कर रहा हूँ। आपका भी सम्मान किया और आपकी नेता के निर्देशन पर आपने पार्टी का स्टैंड लिया, इसलिए मैं उनका भी सम्मान करता हूँ। मैंने तो सम्मान के लिए पत्र लिखा था। मैं बहुत विनम्रता से कहना चाहूँगा कि अगर मैं देश के कानून मंत्री के रूप में देश की 26 पार्टीज के अध्यक्षों को पत्र लिखूँगा, तो प्रमुख पार्टी, कांग्रेस पार्टी के अध्यक्ष को निश्चित रूप से पत्र लिखूँगा। मैंने बड़ी विनम्रता से लिखा है और आपने आज जो स्टैंड लिया है, वह एक अच्छी बात है। मैं उसका भी सम्मान करना चाहता हूँ।

Today, I am only making the opening remarks because by 5.30 p.m. we have to conclude today. Hon. President is coming and we must give due deference to hon. President. When we talk of judiciary we often ask as to what is the power and authority of the judiciary. There is one important thing that I would like to share with this hon. House. Someone talked about the power of contempt. Is the power of judiciary flows only from the power of contempt? Is the power of judiciary flows only from its capacity to write judgement? Yes, their authority is important. Yes, contempt also may be needed. But let me share one thing in the House. What is the real authority of a judge?

श्री मुलायम सिंह यादव (आजमगढ़): गुरुसे में अंग्रेजी याद आ गई।

श्री रवि शंकर प्रसाद: गुरुसे की बात नहीं है, ऐसा नहीं हो सकता। मैं तो कभी गुरुसा करता ही नहीं, आप तो मुझे जानते हैं। ठीक है, मुलायम सिंह जी आपका निर्देश है तो मैं बाकी भाषण हिन्दी में दे देता हूँ। मैं तो मिलीजुली भाषा में बोल रहा था, क्योंकि दक्षिण भारत से हमारे कई मित्र हैं इसलिए मैं अंग्रेजी भी बोल रहा था। I will speak in both the languages.

Hon. Chairperson, let me ask a question today. I would like this House to ponder on what I am saying. An Additional District Judge, who has given 20 years punishment to big mafia leaders or big criminals, has given capital punishment of hanging to many criminals, after his retirement when he moves with his wife in a market why and how you expect that mafia supporters will not attack him? Have you ever heard of it? No, we have not. In some rare cases, we have heard it. It is the moral authority of the judiciary and it is the driving force of the judiciary, which enhances the respect of the judiciary. यह नैतिक आधार बहुत जरूरी है जो न्यायपालिका का सम्मान बढ़ाता है। जब मैं यहां खड़ा हूँ तो माननीय सभापति जी, बहुत विनम्रता के साथ ज्यूडिशियरी के उस नैतिक अधिकार का पूरा सम्मान करते हुए कहता हूँ कि अगर यह संसद अपनी परम्पराओं और गरिमा के सम्मान की बात करती है तो इस देश की न्यायपालिका की गरिमा, संस्थागत नैतिक अधिकारों का भी सम्मान करती है और हम चाहते हैं कि वे बढ़ें, यह हम कहना चाहते हैं। कभी कोई टकराव का इसमें जरा भी संदेश नहीं है, जो मैंने अपनी आरम्भिक टिप्पणी में कहा था। यह हर्ष का विषय है, संतोष का विषय है कि सदन के हर क्षेत्र में इस मामले पर सर्वानुमति थी कि इसमें बदलाव होना चाहिए। कुछ लोगों के स्वर अलग थे तो संसद में हरेक को अपनी बात कहने का अधिकार है, वियोग करने का भी अधिकार है। एक-दो लोगों को कहा था लेकिन आज मुझे लगा कि सरकार की ओर से हम स्पष्ट कर दें।

एक बात यह भी आई कि आज एक बहुमत की सरकार आई है, इसलिए हिम्मत दिखाई जा रही है। माननीय सभापति जी, मैं बहुत विनम्रता से कहना चाहता हूँ कि इस बार जो देश ने मत दिया है वह एक बदलाव का मत है। तीस वर्षों के बाद हमारे दल को बहुमत मिला है, एक दल को बहुमत मिला है। हमें प्रधान मंत्री आदर्शनाथ नरेन्द्र मोदी जी की लोकप्रियता और जनता के बीच उनकी स्वीकार्यता को देखकर हृदय से प्रसन्नता होती है कि देश ने यह बदलाव किया है। लेकिन एक बात हम सदन को बहुत विनम्रता से बताना चाहते हैं कि जहां हमें इस अभूतपूर्व ऐतिहासिक विजय पर आनंद होता है, वहीं हमें अपने दायित्व का भी बोध है और विनम्रता का भी अहसास है, यह हम कहना चाहते हैं। हमारे अंदर जरा भी यह बात नहीं है कि आज अगर हमें इतना भारी बहुमत मिला है, जैसा कि माननीय मेहताब जी ने संकेत दिया कि आज रविशंकर प्रसाद यह बिल इसलिए लेकर आये हैं कि शायद हमारा बहुमत का दल है। यह हमारी प्रामाणिक प्रतिबद्धता है कि जो संविधान में माननीय सुप्रीम कोर्ट के न्यायाधीशों और माननीय उच्च न्यायालय के न्यायाधीशों की नियुक्ति की प्रक्रिया थी उसमें जो संविधान की मर्यादा रही है, जिसमें बदलने का अधिकार संसद का है, उसके अनुरूप ही हमने कार्यवाही की है, जिसका पछले 20 वर्षों से प्रयास चल रहा है। इसे उसी रूप में देखना चाहिए। हमने अपने घोषणापत्र में भी इसका विस्तार से जिक्र किया है, आप सभी इस बात को जानते हैं और बाकी लोगों ने भी इसका जिक्र किया है। जैसा मैंने कहा कि यह केवल बीजेपी का घोषणापत्र नहीं है, यह सिर्फ एनडीए का नहीं है, पांच प्रयास हुए हैं संविधान को बदलने के और 6 रिपोर्ट्स आई हैं जिनकी चर्चा मैंने अपनी आरम्भिक टिप्पणी में की है।

आज जब हम यह ऐतिहासिक बिल पास करेंगे तो हम इतिहास बना रहे हैं और उसके तीन कारण हैं। पहला, आज लोक सभा ने देश को दिखाया है कि जब अवसर आता है तो देश की राजनीति एक स्वर में कैसे बोलती है। दूसरा, संसद ने यह भी दिखाया है कि जब लोक सभा और पार्लियामेंट के बारे में चर्चा होती है, जिसके कुछ संकेत कल्याण बाबू ने दिये कि जब अवसर आता है तो संसद की बहस, संसद का स्तर किताबी ऊंचाई पर जाता है। सभापति जी, तीसरा संकेत यह गया है कि यह संसद राजनीति के माध्यम से आती है लेकिन जब विषय देश का आता है तो यह संसद राजनीति के भेदभाव से ऊपर होकर एक स्वर में भी बोलने का संकल्प रखती है। आज हमने बहुत बड़ा मैसेज दिया है। इस हाउस में मुझे इन आरम्भिक टिप्पणियों को इसलिए कहना जरूरी था कि जो हमने आशा की थी, जो हमारी अपेक्षाएं थीं उनके अनुरूप आज का सदन उपस्थित हुआ है। अब मैं कुछ स्पेशिफिक टिप्पणियों पर आऊंगा, मेरे पास पता नहीं समय किताना है, चूंकि अगले कार्यक्रम में जाना है।

I will only address one issue which Veerappa Moilyji has stated. I will just take five minutes. Shri Veerappa Moily ji stated as to how the two eminent persons will be selected. Shri Veerappa Moily, you are a person of great experience, you had been the Chief Minister and the Law Minister of India. What do you think? The Prime Minister of India, the Chief Justice of India and the Leader of the largest Opposition party cannot select the two best eminent persons! Trust their wisdom. Regulations are there, but trust their wisdom. I am sure, if a person is the Prime Minister of India, if a person is the Chief Justice of India, if the third person, the Leader of the Opposition – who knows it may be you as well on behalf of your party – ultimately decides to sit and exchange note, then let us trust their collective wisdom. This collective wisdom would reflect upon the quality of appointment being made. It is one of my serious concerns that I would like to share with this House today that we, who are in public life, have started to distrust our abilities. Please reclaim our abilities. You, who are in politics, are quite capable of selecting the best.

SHRI M. VEERAPPA MOILY: I have not referred to personalities. You must go through my speech.

SHRI RAVI SHANKAR PRASAD: I have gone through your speech.

SHRI M. VEERAPPA MOILY: You have to go through my speech completely, not in isolation. I have said that persons are not important. The system is important. So, you will have to leave a system so that they can operate on that.

SHRI RAVI SHANKAR PRASAD: Hon. Shri Moily, I will reply later on tomorrow. I have heard you. I take long hand notes. My officers also give their own comments, but I take long hand notes.

I come to the second part. You mentioned about the norms for selecting the eminent judges. It is there under article 124 (c) itself – the Parliament may, by law, regulations etc – which I will read tomorrow in detail. That norm will come. This is my last submission to you and to the House today that let us trust the innate maturity, political ability and sagacity of the hon. Prime Minister, the Chief Justice of India and the Leader of the Opposition to select the best that they will do. That is what I want to highlight. With all this, I will conclude for the day. The rest I will do tomorrow. I am extremely grateful for the opportunity.

शहरी विकास मंत्री, आवास और शहरी गरीबी उपशमन मंत्री तथा संसदीय कार्य मंत्री (श्री एम. वैकरया नायडू) : अभी हाउस को एडजर्न करके राष्ट्रपति महोदय के कार्यक्रम में जाना है,

