15.02 hrs.

RESOLUTION RE PROCEDURE FOLLOWED REGARDING PROMOTION OF A JUDGE

MR. CHAIRMAN: Mr. Stephen.

SHRI KANWAR LAL GUPTA (Delhi Sadar): I wrote a letter to the Speaker to say that I wanted to raise a point of order. I think that must be with you. I have informed him in advance.

My submission is that please see the language of the Resolution of my learned friend, the Leader of the Opposition:

> "Having considered the statement made by Shri Shanti Bhushan, Minister of Law, Justice, and Company Affairs on the floor of the House on 6th March, 1979 on the circumstances under which the promotion of Shri O N Vohra took place after the pronouncement of judgment in *'Kissa Kursi Ka'* case.
>
> This House records its displeasure .."

SHRI C M. STEPHEN (Idukki): I am on a point of order. This point of order was disposed of on that day and I had gone on with my speech. I am half the way through my speech.

MR. CHAIRMAN: He has spoken for nearly half-an-hour.

SHRI KANWAR LAL GUPTA: He had not spoken for half-an-hour He did not speak even for a minute.

MR CHAIRMAN: But the record shows that time taken by him is 29 minutes.

SHRI KANWAR LAL GUPTA: No, he did not speak. You kindly allow me to raise my point of order.

MR. CHAIRMAN: The point is that many points of order were raised and those points of order were disposed of. Mr. Stephen had started his speech while moving the Resolution. So, if you have got a point of order in relation to something he has said, that is pertinent at this moment. Now, once the Resolution has been taken up, I am sorry you cannot raise this point of order.

SHRI KANWAR LAL GUPTA: Kindly listen to me and then you decide. You are the final authority. I do not challenge your authority.

MR. CHAIRMAN: You were reading out the Resolution and you wanted to raise a point of order on this. Points of order on the Resolution were raised. They were disposed of and Mr. Stephen had started his speech. He has moved the Resolution. Therefore, are you raising the point of order on something he has said? Only that is pertinent at this stage. You cannot reopen something by continuous points of order.

SHRI KANWAR LAL GUPTA: What happened last time was that some points of orders were raised, but the Chairman at that time said that he cannot consider these points of orders, because the Speaker has admitted the Resolution. Therefore he said the question of raising the point of order does not arise I hope you will agree that when you are here as the Chairman, then you have every right to accept or reject a point of order, because you are here acting as the Speaker; so, you have all the powers which the Speaker has, when you are in the Chair. But at that time ,the Chairman said that he cannot entertain the point of order, whatever it may be because the Resolution was admitted by the Speaker. So, if it is your ruling that you will not entertain any point of order because the Speaker has admitted the Resolution, then I have nothing to say except to bow before

our verdict But if you think you can entertain the point of order, because you possess as much power as the Speaker possesses, then my humble submission before you is that you kindly allow me to raise the point of order. In fact, I wrote a letter to the Speaker so that he may think over it, because it raises a constitutional point, a matter of great public importance. Now if this thing goes on, then the judiciary cannot function freely; if the judiciary is attacked, it would demoralise the judiciary.. .(*Interruptions*) If you allow me, I will raise it. But if you say that the Speaker from his chamber has admitted this Resolution and so I have no right to raise a point of order, I will sit down.

MR. CHAIRMAN: You raised a point of order and the Chairman at that time ruled out your point of order. Then Shri Stephen started his speech. So, I think Shri Stephen may continue his speech.

SHRI KANWAR LAL GUPTA: Is it not a fact that I told you....

MR. CHAIRMAN: I have read the proceedings.

SHRI KANWAR LAL GUPTA: Perhaps you have not read it fully.

MR. CHAIRMAN: May be my capacity for reading through it is not the same as yours!

SHRI KANWAR LAL GUPTA: Shri Stephen spoke for a minute or a minute and a half. But that was after the Chairman had disposed of the point of order on the basis that we cannot raise a point of order, becuse it was admitted by the Speaker.

MR. CHAIRMAN: You may resume your seat.

SHRI KANWAR LAL GUPTA: If you also agree that I cannot raise a point of order, because the Resolution has been admitted by the Speaker....

SHRI C. M. STEPHEN: That was raised, that was over-ruled and that was buried over.

MR. CHAIRMAN: The Chairman has already ruled on the point of order. I cannot give a ruling over again.

SHRI KANWAR LAL GUPTA: You are also a member and you may have to face the same difficulty

SHRI C. M. STEPHEN: Madam, in the course of the Private Members' Resolution last time....

MR. CHAIRMAN: Mr. Gupta, I hope you did not mean that remark seriously, because I do not think that is a good remark to make about the Chair.

SHRI KANWAR LAL GUPTA: Every member will have to face the same difficulty. I have not made any adverse remark.

MR. CHAIRMAN: But do not make it against somebody who is here; do not make it when I am sitting here. I do not think that is a nice remark to make about anyone who is in the chair, because it is directed to the chair.

SHRI KANWAR LAL GUPTA: You are a member and you are acting as Chairman. What is wrong in mentioning it?

SHRI C. M. STEPHEN: Madam Chairman, the Resolution is very very limited in its scope and I would remain limited to it. I would ensure that my observations are limited to the scope of this Resolution. The operative part of this Resolution reads:

> "This House records its displeasure over the procedure adopted in connection with the said matter."

What exactly is the procedure which the Resolution seeks to impeach? The procedure I have in view is just this, that after taking a decision to promote Justice Vohra, after the Government took the initiative, and discussed it with the Chief Justice of the Delhi High Court, they decided to delay the notification in the Gazette, linking the act of notification with the conclusion of a case which was pending before the Judge. This is the procedure which I seek to attack by this Resolution.

I have nothing against the promotion of the Judge, I have nothing against the Judge as such. But I do consider that this position taken up by the executive, namely, that the promotion of the Judge, recommended by the Chief Justice of the Delhi High Court, recommended by the Chief Justice of the Supreme court, approved by the President of India, was to be put in cold storage, saying that the notification under article 217 will issue only after the Kissa Kursi Ka case is disposed of, the delay caused by this is, according to me, unconstitutional, unwarranted, against the public interest and amounted to an interference of the executive with the due judicial process, and has put the Judge and the judgement under a cloud of suspicion. This is, in short, the attack that I make on the procedure, and this is the procedure I have in view also.

There are just five points which I want to highlight, one by one: (1) Was this enforced delay warranted? (2) Was this delay in the public interest? (3) Was this delay in conformity with the provisions of the Constitution? (4) Was not the delay an interference of the executive with due judicial processes? (5) Did the delay not bring the Judge and the judgment under a cloud of suspicion, robbing the entire proceedings of acceptability, credibility, impartiality and detachment, which alone would make a judgment acceptable by the people and also the accused?

These are the five points which I wish to raise. In the first place, was the delay really warranted. One of the reasons which Shri Shanti Bhushan mentioned in his statement was:

> "It was felt that it would not be in public interest to elevate him till the case was concluded since any such step would necessitate re-examination of the witnesses by his successor, causing great inconvenience both to defence and to the prosecution.

I do not know which law he is relying upon in this regard. There is section 326 of the Criminal Procedure Code, a reading of which will convince anybody that merely because a new Judge comes in, the witnesses need not be called back.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): Are you reading the section before it was amended in December 1978?

SHRI SOMNATH CHATTERJEE (Jadavpur): It is before the amendment. So, the first point goes

SHRI C. M. STEPHEN: It is after the December amendment; it has incorporated Act No. 45 of 1978. So, the first point does not go.

SHRI SHANTI BHUSHAN: This provision was not there when his name was recommended.

SHRI KANWAR LAL GUPTA: Therefore, this goes.

SHRI C. M STEPHEN: It goes and comes. You may give the former section 326. After all, this amendment operated only in a very small portion of it. You can correct me. I have got the text before me, and the amendment that was brought in by Act 45 of 1978 as incorporated in this.

[Shri C. M. Stephen]

There it is stated:

"Whenever any Judge or Magistrate.."

The amendment was that in the place of Megistrate, "Judge" also was added in. That was the only amendment.

"Whenever any Judge or Magistrate after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein and is succeeded by another Judge or Magistrate who has and who exercises such jurisdiction, the Judge or Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor or partly recorded by himself."

Provided that he can, if he thinks necessary, call in the witnesses, re-examine and all that. Therefore, this Section does not make it compulsory on the Judge to call in or does not give a right to the accused to demand witnesses may be called in. Subject to the correction, this is all the text I have, which I am reading.

SHRI SHANTI BHUSHAN: Up to December it was compulsory.

SHRI C. M. STEPHEN: You give me that particular Section which was in force in December 1976 or 1978. You give me that.

This is the position. Therefore, this plea was not sustainable Even if it is sustainable, may I put a question: Was 'Kissa Kursi Ka' case the only case pending before Mr. Justice Vohra? There were other cases. There were other criminal cases pending before Mr. Justice Vohra, with respect to whom the evidence was half-way through or more than through. Why the speciality about 'Kissa Kursi Ka' case? You are saying 'Kissa Kursi Ka' case was taken up in order that inconvenience may not be caused to the witnesses and all that in 'Kissa Kursi Ka' case. In order that inconvenience may not be caused, this special solicitude was shown. What about the other cases? Were not the other cases there? Why the speciality about this one particular case? If the solicitude is showable with respect to this case. then you must concede that no judge can ever be promoted or transferred because at the moment of his promotion or transfer inevitably some case will be pending before the trying judge or magistrate. If this standard is accepted, then you are bringing the entire functioning of judiciary to a complete stop. This is the main thing. Therefore, the first point I raised is really relevant. I am raising the more important point now. Is it going to be the guiding principle which would mean that unless the slate is completely cleaned off, nobody can be promoted? Then he will say, now that bar is not here. But what about the previous one? Was it that no judge was ever promoted or transferred when a case was pending before him? I am again emphasising: Why this particular attitude about this particular case? I would here again say that looking into the records I find another very strange thing. When Justice Vohra was promoted as the Sessions Judge from what he was—that was Magistrate Judge or something like that—when that promotion was given to him, in that promotion order it was written that 'Kissa Kursi Ka' case also will go with him. I request my friend to repudiate this allegation I am making. In the appointment order, in the proceedings of the appointment order, it was specifically stated although he is going to be the District and Sessions Judge. Then there is a nothing there. Again, I come to 'Kissa Kursi Ka' case. 'Kursi' case, I will say from now on.

MR. CHAIRMAN: You say it in Malayalam!

SHRI C. M. STEPHEN: This 'Kursi' case also will be tried by Justice Vohra. Therefore, to begin with,

Justice Vohra tried this case along with many other cases. Justice Vohra is made the Sessions Judge and when he is made the Sessions Judge, a special mention is made that the 'Kursi' case will be tried by him. There are four notes added on. (*Interruptions*). The 'Kursi' case will be specially tried by him. And then he is about to be elevated as a High Court Judge. Then again, the 'Kursi' case comes in the way. May I point out, there are many other cases, there is no bar, but this case is a bar? Only this case is to be disposed of.

MR. CHAIRMAN: Which case?

SHRI C M STEPHEN: 'Kursi' case. Unless the 'Kursi' case is disposed of, Justice Vohra will not be elevated to the place. Is it a fair approach to the whole question? I am asking. Therefore, I may submit that this discriminatory case is violative in a sense that—I do not know what the legalistic aspect of it is- in spirit it is violative of Article 14; equal treatment, equality before law. Accusers are before the judge Here is a special treatment accorded to one particular case on one particular occasion and the case is taken care of. All are not equally treated. One is specially treated, may be to his advantage, may be to his disadvantage. That is violative of the spirit of Article 14. Mr. Shanti Bhushan, the eminent constitutionalist as he is, may be able to quote some judgement and say, within Article 14 it will not come But the spirit of Article 14, it will certainly violate A number of accusers are before a Judge and pick out one accuser, give him a special treatment. This special treatment is not available to other accusers—a special solicitude, that is what I say. Why that special solicitude to that particular accused so that his witnesses may not be inconvenienced; those prosecution witnesses may not be inconvenienced? A special treatment given to a particular accused in a particular case is violative of Article 14. The spirit of Article 14 has been violated. This is what I am submitting. Therefore, I say this plea of yours does not at all hold good. Then the question is: Was this delay in the public interest? Let us remember that the oppointment of this Judge comes under Article 224 of the Constitution. Article 224 comes when? When you are appointing additional judges. Article 224(1) says.

> "If by reason of any temporary increase in the business of a High Court or by reason of arears of work therein, it appears to the President that the number of the Judges of that court should be for the time being increased, the President may appoint dulry qualified persons to be additional Judges of the court for any such period not exceeding two years as he may specify"

This Judge was appointed as an Additional Judge. Clearly, it comes under Article 224 The appointment was justified by the fact that there are arrears, that the amount of work pending before the court demands that for a temporary period a judge may be appointed. Therefore, 4 5 judges are sanctioned. Appointment is to take place in a week. There is enough of work for 5 judges to look after and the Delhi High Court Chief Justice starts proceedings. He demands that an appointment may be made. He makes the recommendation. It comes to the executive, the eecutive puts it up, stalls the whole thing. For how long, God alone knows. Until 'Kursi' case is completed. There is no specific period. Only till such time as the 'Kursi' case is completed, this appointment will not be made, absolutely held up. And what follows? Not only one Judge, because this Judge is not appointed, the other judges are not appointed. Sanctioned posts are remaining vacant for an idenfinite period with accumulated work remaining in the court and the whole disposal being

[Shri C. M. Stephen]

stalled. Is it public interest? Is it in the spirit of Article 224? For a single case is this the thing to be done? Was it warranted? This is absolutely against public interest.

Look at the personal aspect of this matter. My friend Shri Shanti Bhushan has given a very good certificate to Justice Vohra, I do not want to differ from him. He says:

> "Mr Vohra had an excellent record, and the proposal to appoint him was in order in every respect. It was therefore approved by the President."

Here is enough work for the Judges, here is a Judge perfectly competent, a Judge with an excellent record. The appointment is recommended by the Chief Justice of the High Court and approved by the Supreme Court Chief Justice and sanctioned by the President Working is waiting, but the appointment is not made, and as a result of that four more appointments are delayed Work remains accumulated, that is one aspect. A deserving Judge is not given the posting, not because of his fault, but because he was too excellent. In the eyes of the Government, he was the only man who could dispose of the Kursi case. Therefore, he had to remain there. Because of his excellence and because of the confidence of the Government that nobody else could possibly do better in the Kursi case, he had to remain there indefinitely, and a person in the service is delayed his chance of assuming charge of the post to which he is promoted. Is it in public interest? It is absolutely, completely, against public interest. That is the second point I want to make.

Thirdly, was it in conformity with constitutional procedure? I would like to invite attention to article 217, according to which the appointment has to be effected in a particular manner. It says:

> "Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State . and the Chief Justice of the High Court...."

All, the preliminary proceedings are over, consultations are over, approval is over, and finally what do they decide? They decide that the appointment be made straightaway, but the notification may be held over. I submit this is against the spirit of this article which contemplates that the complete process must take place. I am raising this question. Once, in consultation with the Chief Justice of India, the Chief Justice of the High Court and the Governor of the State concerned, a decision is taken that the post has got to be filled and that such and such a person be appointed, is it in the contemplation of the Constitution that the issue of the warrant be delayed indefinitely? In this case it is only five or six months, but to put the argument in an absurd manner, would it be in the contemplation of the Constitution that you decide to appoint somebody and hold over the warrant for five or ten years? If it is proper to hold over the warrant for six months, it is equally legally proper to hold over the warrant for five years, it is equally legally proper to hold it over for ten years. Your consultation with the Chief Justice and everybody is over, the decision on the appointment is completed, but after ten years you issue the warrant. Strictly speaking you need not have a fresh consultation at all. So, is it not in the contemplation of the Constitution that the consultation, the decision and the issue of the warrant must be a compact and complete process? I can understand the consultation and the decision to appoint taking some time, I can understand your not deciding to appoint him at all but to keep the whole thing with you without discussing with everybody, but you take the step of going to the Chief Justice of the High Court, you

do not take the step of going to the Supreme Court. You went to the Chief Justice of the High Court, you discussed with him. The Chief Justice and yourself entered into a contract. Shri Shanti Bhushan says:

> 'The Chief Justice of the Delhi High Court, with whom I discussed this aspect, agreed with this view and was of opinion that while a decision on the proposal could be taken at that very stage, the actual notification might be held up till the conclusion of the 'Kissa Kursi Ka' case."

SHRI VINODBHAI B. SHETH (Jamnagar): That was in public interest.

SHRI C M STEPHEN: May be in Janata Party interest Is it proper for you? You collected up everything, the recommendations and everything. Was it proper for the Law Minister to meet the Chief Justice of the Delhi High Court and discussion with him with specific reference to a case which is pending before a court under his jurisdiction? Was it proper for you? It is an entirely different domain. How does the Law Minister go into the domain of a case pending before a court? You refer to the case, you go to the Chief Justice and tell him "Kursi" case is pending and there it may be difficulty if somebody "comes in." "Don't therefore insist that the man may be promoted" and they agreed. You say that the Chief Justice agreed that the matter may be kept pending but the Chief Justice insisted that the decision may be taken. The decision is taken that the case may be kept pending. Why did you not go to the Chief Justice of India? If appointment is to be made in consultation with the Chief Justice of India and if you consulted him, when you decided to delay the proclamation or the issue of the warrant, why did you not consult the Chief Justice of India? He was kept apart. You discuss it with the Chief Justice of Delhi High Court, under whose direct jurisdiction, this particular judge operates. You tell him about this particular case. What business had you to mention to the Chief Justice of Delhi High Court about a case pending before a subordinate court? How is the Law Minister concerned with a particular case pending before a subordinate court? Were you functioning in a proper way in discussing that case with the Chief Justice of Delhi High Court? You discuss that case with the Chief Justice of Delhi Court. You may not have said "you write the judgement". You showed enough of interest in that case. You said—"If you are going to promote Justice Vohra, the witnesses will have to be called again in this particular case, the thing will have to be delayed, inconvenience will be caused, early disposal will not take place." You have discussions about a particular case Is it proper for the Law Minister of India to discuss with the Chief Justice of the High Court with specific reference to a case pending disposal before a subordinate court? It is there that you completely erred.

My submission is, the moment the decision is taken, the lapse of time is not warranted at all. I again repeat, you could have kept the file with you, you could have taken the decision at a proper time. But this act of yours was not without a purpose and there it is that you come in to vitiate the entire proceedings.

15.33 hrs.

[SHRI N. K. SHEJWALKAR *in the Chair.*]

Therefore, in this whole procedure, you by-passed the Chief Justice of India, you violated the spirit of Article 217. You entered into an arrangement with the Chief Justice of Delhi High Court. He discussed the case with you and you took up a case for discussion with the Chief Justice of Delhi High Court. Who knows that this will not come up for an appeal

[Shri Somnath Chatterjee]

for the benefit of not only an accused but a convict, who was proclaimed as the crown prince of India, and before whom obeisance, had to be paid by all and sundry, including the Cabinet Ministers.

And, Sir, we had seen how the dictates of, not only the dictator but of a progeny, as I said, mature, half literate progeny who ransacked all the democratic values in this country, played with life of the pepole, how his wishes become the order of the day.

SHRI C. M. STEPHEN: I rise on a point of order. Here is a resolution about the procedure. I took care to remain exactly within the framework of the procedure. If he wants to attack our people who are not connected with this, he is free to do so. There is a procedure for that. But I would submit that this must be stopped. If he wants to carry on a very reasonable debate, we must remain and behave in a very reasonable manner. He has used words which are objectionable So far all right. I raise objection to the words cohorts of the dictator sycophancy and so many other things he was using unparliamentary, unmentionable things. These things are being used in reference to the Members of this House. He is doing all that I just want to know if this line of submission is permissible.

(Interruptions)

MR. CHAIRMAN: I think you should stick to resolution.

SHRI SOMNATH CHATTERJEE: The real object has come out I am coming to that.

SHRI C. M. STEPHEN: What real object has come out? Are you free to call names about person.

(Interruptions)

We know your loyality to this country, we know your loyalty to the Constitution. You are talking of Namboodiripad, the fellow who was convicted of the contempt of the court. You are coming here to teach us.

(Interruptions)

SHRI SOMNATH CHATTERJEE: I submit that the real object behind the resolution is to express their annoyance because they could not delay the disposal of the case which was pending and then the conviction came. They believed that the case could be kept pending for months and months and years and years. You will kindly remember that it was the hon. Supreme Court who intervened and directed the expeditious disposal of the case. And in the meantime, the accused had to go to the jail because he had been found guilty of tampering with the witnesses

(Interruptions)

SHRI C. M. STEPHEN: I rise on a point of order. The particular case he in referring to is *sub-pudice* now.

SHRI SOMNATH CHATTERJEE: I am not referring to any particular case.

(Interruptions)

SHRI C. M. STEPHEN: Dealing with the merit of the case is a different thing. *(Interruptions)* That case is *sub-judice*. *(Interruptions)*

MR. CHAIRMAN: Mr. Somnath Chatterjee, you should not refer to it.

(Interruptions)

SHRI SOMNATH CHATTERJEE: I have not gone into the merit of the case at all. What I am saying *(Interruptions)* is that I am entitled to say what is the reason behind this resolution.

SHRI C. M. STEPHEN: That is *sub-judice*, he is dealing with a case which is *sub-judice*.

SHRI SOMNATH CHATTERJEE: I do not yield. I have not gone into the merits of the case at all. I am entitled to say the reason behind his resolution,

that this is not 'a case' but this is 'the case.' This was mentioned to him and that his future depended on this case was also told. He realised it and acted according to that. I am not casting aspersions on Justice Vohra. But you did a criminal act with respect to the impartiality and the reputation of the judiciary in this country by resorting to this procedure, whereby you brought the judge and the judgement under a cloud of suspicion. A thing which could have been done normally, you brought it under a cloud of suspicion, and thereby you corroded, completely smashed the basis on which the judicial structure of this country must be reared up It is here that I am attacking the procedure. Originally, Mr. Sathe told that Mr. Ram Jethmalani or somebody has said: "The judgement is in my pocket" That was a wanton statement and could have been ignored. By your explanation you made the whole thing biased. Somebody disposing of a case, he is getting a promotion, nothing wrong about it, but now you have come forward and told us so many thing, which raised so many questions umpteen interrogation marks spring up out of the statement you have made before us. That has made the whole position completely vitiated. Therefore, I am attacking the procedure followed.

This is a black chapter in the judicial process of this country. This is a wrong step you took. I charge you with impropriety in discussing this matter with the Chief Justice of India I charge you with impropriety in taking a special interest in a case out of many cases which were pending before magistrates and judges of this country. I charge you with violation of article 14 in picking up a case and giving it a special treatment. I charge you with vitiating the judiciary and its reputation by bringing it under a cloud of suspicion and by robbing it of its credibility and respectability. I charge you, in the matter of appointment, with a procedure adopted in violation of article 217. I charge you with violation of public interest in this repect that for the purpose of serving your intentions with respect to 'Kissa Kursi Ka' case, you allowed accumulation of arrears to cary on in Delhi High Court for quite a month and kept about five posts unfilled so that this case may be disposed of

A greater violation of public interest canot be contemplated. The Law Minister of India by this conduct has dealt the heaviest, the most grievous and the cruelest blow on the judiciary of this country and it is on this basis I attack the procedure adopted in the whole process.

With these words, I commend the resolution for the acceptance of the House

MR CHAIRMAN. Motion moved:

"Having considered the statement made by Shri Shanti Bhushan, Minister of Law, Justice and Company Affairs on the floor of the House on 6th March, 1979 on the circumstances under which the promotion of Shri O. N. Vohra took place after the pronouncement of judgement in 'Kissa Kursi Ka' case.

"This House records its displeasure over the procedure adopted in connection with the said matter"

SHRI KANWAR LAL GUPTA (Delhi Sadar): Mr. Chairman, Sir, I heard my learned friend, the Leader of the Opposition, with rapt attention for about 45 minutes. After listening for 45 minutes, I found that he has absolutely no case. He is trying to find out a black cat in a dark room in which it does not exist. He has tried to build up the case and made an attempt to charge the Law Minister But, I must say, he has failed and failed miserably

His motive was to malign the judge, to demoralise judiciary and to tell the

[Shri Kanwar Lal Gupta]

people that this Government is not capable of running the country, is not capable of running the administration of the country well and to create a doubt in the minds of the public that judiciary is functioning in the same way, the way during Emergency it used to function. They want to equate us with them. That is his motive.

When the Law Minister, Mr. Shanti Bhushan, made a statement, I may quote Mr. Sathe on the basis of which he made a statement That is the real purpose behind this resolution. Otherwise, there is no case. Every procedure has been followed I do not want to waste time of the House by reading out all that. Every article specified in the Constitution for the appointment of a judge has been literally followed. The Chief Justice of India has been consulted; the President has been consulted. Every procedure has been followed. Still, my hon. friend says that the procedure followed was wrong

I quote:

> "During the course of discussion on the Special Courts Bill on 1st March, 1979, a reference was made to the 'Kissa Kursi Ka' case and in that context, the hon. Member, Shri Sathe, made the observation that an assurance had been given to the district and sessions judge Delhi to try that case, 'if you hand over the conviction, you would be made a High Court Judge." '.

This is the real purpose of Mr. Sathe and this is your real purpose also. When you say that the judge is under a cloud, the whole judiciary is under a cloud, what is the main purpose behind it?

You want to see that people lose faith in the judiciary. You expect us to behave in the same manner as you did during the Emergency I say 'no'. You have failed and failed miserably. Here the procedure has been fully followed. He says that delay had been made in issuing the notification because he was conducting the 'Kissa Kursi Ka' case. Mr. Stephen is a good friend of mine. I want to tell him that there was no *mala fide* intention Even now there are vacancies in the Delhi High Court. It could have been delayed, the process need not have been started. Even the process, after starting it, could have been delayed. But the process was started in time; it was completed in time. That, by itself clearly shows that there was no *mala fide* intention. The only idea behind that was this; the case was in a very advanced stage; it was about to be completed, within a month or so; therefore, the judge who was dealing with it for two years should complete it. That was all. Nothing more than that. If you read in between the lines, then I would only say that you are in the habit of doing that like your leader and you have to dance to her tune .

AN HON MEMBER: He is himself a Leader.

SHRI KANWAR LAL GUPTA: He is Leader of the Opposition so far as we are concerned But he has a super leader. On her direction, he has to dance and he is dancing ... (*Interruptions*).

AN HON. MEMBER: What about your leader, Mr Deoras?

SHRI KANWAR LAL GUPTA: Mr. Deoras is not in the dock. It is Mrs. Indira Gandhi and her son who are in the dock. The whole attempt through this Resolution, the split of the Congress Party, the agitation, all these things combined together is a pre-planned, pre-calculated conspiracy to politicalise the whole issue and tell the world that the boy and his mother are innocent and that the Janata Party is vindictive. That is the attempt. This Resolution is a part of that attempt. This is all calculated, pre-

planned. Is it not to malign the judiciary and demoralise it and see that the faith in the judiciary goes? That is your attempt. You want to tell the people that, even under the Janata which claims that it follows the rule of law, the judiciary is a government department. It is not so.

What happened when the Emergency was there? I filed a writ petition. Mr. Stephen knows about it. I have told him. He is a very good friend of mine. I was sick and I was not given treatment I filed a writ in the High Court. There was a friend of mine who appeared on my behalf. No lawyer was ready to appear on my behalf. Only a friend of mine appeared. But on the same day he appeared, in the evening, a MISA warrant was issued against him. The next day when I appeared, he was not there. I was told that a MISA warrant had been issued against him and the fellow had to ask for forgiveness, he had to give in writing that he would not appear for me, it was a mistake and all that. The only plea of mine was that I should be allowed to be treated. The judge allowed me treatment. And what was the result? The Judge was transferred from Delhi to Orissa. This is the way you have been functioning.... (*Interruptions*).

SHRI M. RAM GOPAL REDDY (Nizamabad): You want to copy us?

SHRI KANWAR LAL GUPTA: This is the way you have been functioning. You see everything with the same eyes. Perhaps you are seeing your own face in the mirror. Is it not a fact? We do not believe in this type of things. We have allowed you to give all types of evidence that you have. Did we not? We could have put you under MISA, the MISA which was enacted by you. We did not. And you say that a lot of repression is going on, the MISA is still continuing and people are being harassed and arrested and all that. All sorts of charges are being levelled....

SHRI C. M. STEPTEN: Now the discussion is not on the Home Ministry. the discussion is on the resolution.

SHRI KANWAR LAL GUPTA: What I say is that the prescribed procedure is being followed in this case....

SHRI C.M. STEPTEN: I made many points—point No. 1, 2, 3. 4 and 5. Answer those points.

SHRI KANWAR LAL GUPTA: It is not in the public interest to delay the matter. Why? We have to settle that case at the earliest in the public interest. The whole country was interested in that. And what was Mr. Sanjay doing? He was spending lakhs of rupees in purchasing the people with the result that many witness became hostile That was going on and you know the Supreme Court verdict on that. The Supreme Court asked the High Court to put him behind the bar for one month. Only for that, because he was creating mischief. Is it not a fact?

SHRI C.M. STEPTEN: Even when he was in jail, the witnesses were turning hostile—the whole lot of them.

SHRI KANWAR LAL GUPTA: They were already paid.

सभापति महोदय, मेरा कहना यह है कि पब्लिक इंटरेस्ट में यह चीज थी कि इस केस को जल्दी खत्म किया जाता । अगर उस समय ही जज को बदल दिया जाता तो शायद और एक, डेढ़ साल लग सकता था । और यह चीज ही उनके सामने थी । इसके अलावा इनके मोटिव को चैलेंज करना, इंटेंशन को चैलेंज करना या यह कहना कि जज भी क्लाउड के अन्दर आ गया, यह बिल्कुल बेबुनियाद बात है, और इसका तथ्य से कोई ताल्लुक नहीं है ।

हमारे साथी ने यह कहा कि कांस्टीट्यूशन के खिलाफ़ है । कौन से कांस्टीट्यूशन के खिलाफ़ है । जो आर्टिकल हैं उसमें दी हुई सब चीजों को उन्होंने फ़ौलो किया है । जो डिसे भी हुई उस चीज के बारे में भी चीफ़ जस्टिस से बात हो गई, प्रेसीडेंट से भी बात हो गई । प्रेसीडेंट के इलेक्शन में आपका

[श्री कंवर लाल गुप्त]

भी साथ था। वह जनता पार्टी का [illegible] प्रेसीडेंट नहीं है। तो प्रेसीडेंट ने भी इसमें स्वीकृति दी, चीफ़ जस्टिस न भी स्वीकृति दी। अब चीफ़ जस्टिस और प्रेसीडेंट स्वीकृति देते हैं और आप दोष बताते हैं मंत्री महोदय का। जो काम किया जो आपका पेन है।

I can appreciate your agony and the pain because that boy has to be punished and he has been punished. You have a right to go to the High Court. Go to the High Court, go to the Supreme Court. But you think that in the eyes of law there should be two exceptions—

One is Mrs. Gandhi and the other is Sanjay Gandhi. They are above law.

जहां तक जनता पार्टी का सवाल है, जनता पार्टी की निगाह में चाहे प्रधान मंत्री हो या तांगा चलाने वाला, दोनों कानून में समान हैं, कानून की निगाह में अलग अलग नहीं हो सकते। आपने प्रधान मंत्री के लिये अलग कानून बनाया था। आपने कहा था कि प्रधान मंत्री के लिये अलग कानून होगा और बाकी लोगों के लिये अलग कानून होगा। जनता पार्टी इन चीजों में विश्वास नहीं करती।

आपने जो अत्याचार किया, 20 महीने जो कुछ इन्दिरा जी ने किया, संजय गांधी ने किया, वह चीज अगर पीनल कोड में आती है, और आज उन पर अगर केस चलाया जाता है, तो उसमें आपको अधिकार है, आप भी लाइयर करें। एक एक केस में 7,7 लाइयर आपके यहां से पेश होते हैं, यह पैसा कहां से आता है और कौन पैसा देता है, यह समझ में नहीं आता है।

तो इतना कुछ होने के बाद भी राइट आफ अपील है, आपको सुप्रीम कोर्ट तक जाने का अधिकार है। जब यह सब अधिकार हैं तो मैं नहीं समझता कि आप किसी एक जज को, जो बनाया गया है, उसके बारे में कुछ कहें।

अगर ज्यादा एरियर है तो एडीशनल जज बनाये जायेंगे। आज भी हाई-कोर्ट में बहुत केसेज हैं। मैं गलती नहीं करता, लेकिन शांति भूषण जी बतायेंगे कि अभी भी कई हाई कोर्ट के जज दिल्ली में और होने हैं। अगर इनकी नियत ठीक नहीं होती तो यह प्रासेज ही शुरु नहीं करते, यह तभी प्रासेज शुरु करते जब "किस्सा कुर्सी का" केस खत्म हो जाता। तब आपको कोई शिकायत नहीं होती। यह इनके हाथ में था। यह प्रासेज को इतना लंबा कर देते कि "किस्सा कुर्सी का" केस का फैसला होने के बाद उनको क्लीयरेंस मिलती। इसलिये स्टीफन साहब, आपका कोई केस नहीं है, लेकिन आपके अन्दर पीड़ा है, आजको बाहर से आदेश है, आपको नाचना है नाचिये, मुझे कोई एतराज नहीं है। लेकिन मेरा कहना यह है कि यह सारी कोशिशें सिर्फ पोलिटिक्लाइज करने की हैं।

जब कांग्रेस के दो टुकड़े हुए, मैंने कहा था कि इन्दिरा जी दो टुकड़े करेंगी और स्वयं अध्यक्ष बनेंगी क्योंकि जब उनको मजा होगी तो अखबारों में यह आयेगा कि कांग्रेस का प्रजीडेंट कन्विक्ट हो गया है। सो यह पोलिटिक्लाइज करने की कोशिश है आपकी। इसीलिये इन्दिरा जी ने कांग्रेस को तोड़ा। आखिर में जब कांग्रेस की यूनिटी की बात हो रही थी, वह क्यों टूटी? उन्होंने कहा कि आपको उन्हें और संजय गांधी को खुलेआम समर्थन देना होगा। अगर आप समर्थन देने के लिये तैयार नहीं हैं तो आप हमारे साथ नहीं आ सकते। तो लोगों ने कहा कि हम नहीं आ सकते हैं।

SHRI C. M. STEPHEN: He is making a political speech.

SHRI KANWAR LAL GUPTA: This is a political resolution. What else is it?

मेरा कहना यह है कि यह पोलिटिकल रैज्यूलूशन है और इनका उद्देश्य यही है कि जुडिशियरी पर से फैथ जाय, सरकार पर से विश्वास उठे और इस चीज को पोलिटिकलाइज किया जाये और यदि इससे भी देश में कुछ न हो तो देश में बद-अमनी पैदा की जाये और लड़ाई गलियों तक जाये। इंदिरा जी ने कांग्रेस कमेटी में कहा है कि लड़ाई के लिये तैयार हो जाओ। आहिस्ता-आहिस्ता गर्दन पर जब नैट चारों तरफ नजदीक होता जायेगा, तो घबराहट बढ़ती जाती है। स्पेशल कोर्ट बिल पास हुआ तो ऐसा लगा कि मार्शल-ला पास हो गया है। (व्यवधान) अगर माननीय सदस्या एक महीना भी मीसा में बंद रहतीं— मैं नहीं चाहता कि वह रहें मैं नहीं चाहूंगा कि हिन्दुस्तान में मेरी कोई भी बहन मीसा में बंद रहे, लेकिन अगर वह रहतीं— तो उन्हें पता लगता कि लोगों के साथ क्या व्यवहार किया गया है। जब इनके गले में चारों तरफ से फंदा आ रहा है, तो इस इश्यू को पोलिटिकलाइज करन और उसे गलियों में ले जाने की कोशिश की जा रही है।

16 hrs.

मेरा कहना है कि जनता पार्टी उसमें विश्वास नहीं करती है। जनता पार्टी रूल आफ ला में विश्वास करती है। जनता पार्टी का विश्वास है कि हर एक कानून को माना जायेगा, आई० पी० सी० और सी० आर० पी० सी० को पूरी तरह से माना जायेगा, उनकी कोई अवहेलना नहीं होगी, लेकिन चाहे इन्दिरा गांधी हो या मोरारजी

भाई, तांगेवाला हो या रेहड़ी चलाने वाला, हर एक को एक ही निगाह से देखा जायेगा। जनता पार्टी इसमें भी विश्वास करती है कि हमें किसी के प्रति डिसक्रिटिव नहीं होना चाहिए। हम डिसक्रिटिवनेस की भावना से कोई काम नहीं कर रहे हैं। जैसे, जब साठ लाख रुपये वाले केस के बारे में कमीशन ने कहा कि उसमें इन्दिराजी का हाथ नहीं है, तो गवर्नमेंट ने उसको एक्सेप्ट कर लिया, हालांकि श्री मोरारजी देसाई का बयान दूसरा था। किसी कमीशन या अदालत का जो भी हुक्म होगा, जनता पार्टी उसे मानेगी।

मेरा कहना है कि हमारे मित्र भी उसे मानें। अगर वे सचमुच जुडिशरी में विश्वास करते हैं, जनता के नुमायंदों पर विश्वास करते हैं, जनता पर विश्वास करते हैं, तो वे इस तरह की बातों को छोड़ दें। अगर किसी ने कोई कुसूर किया है, तो उसे सजा मिलेगी, और हमारे मित्र उसको सजा होने दें।

मैं समझता हूं कि श्री शान्ति भूषण ने जो प्रोसीजर अपनाया है, वह बिल्कुल ठीक है और ऐसा कोई कदम नहीं किया गया है, जिससे उस प्रोसीजर का वायलेशन हो। मेरे ख्याल से यह प्रस्ताव वाई इटसेल्फ अनकांस्टीट्यूशनल, अनवारंटिड, यूजलेस और मीनिंगलैस है और इसका कोई केस नहीं बनता। इस लिए मैं लीडर आफ दि अपोजीशन से प्रार्थना करूंगा कि अगर वह इस प्रस्ताव को वापस ले ले, तो बहुत अच्छा होगा। I think absolutely no case is made out and, as such, I oppose the Resolution.

डा० रामजी सिंह (भागलपुर) सभापति महोदय, इतने खराब मुकदमे की इतनी अच्छी पैरवी श्री स्टीफन ने की है, इसके लिए मैं उन्हें बधाई देता हूं। जब कान्स्टीच्युएन्ट एसेम्बली में हाई कोर्ट के न्यायमूर्तियों की नियुक्ति के विषय में चर्चा हुई थी तो उसके मेंबरों में भी विचार वैभिन्य था। उस समय डा० पी० एस० देशमुख ने कहा था:

"The appointments of the judges of the High Courts have been left to the President and only in consultation with the Chief Justice of India and the Governor of the State has been provided for"

श्री पोकर साहब ने कहा था कि चीफ जस्टिस की अनुशंसा और राष्ट्रपति के अनुमोदन पर नियुक्ति होनी चाहिए।

अगर जज की नियुक्ति ठीक तरीके से नहीं होती है, तो उसकी इनटेग्रिटी भी एफेक्ट होती है और उसकी जजमेंट भी एफेक्ट होती है। श्री स्टीफन कहते हैं कि जजों की नियुक्ति के तरीके पर उन को एतराज है, मगर जज की ईमानदारी की तरफ उनका कोई इशारा नहीं है। जज के निर्णय का—"किस्सा कुर्सी का" के केस में जो भी निर्णय हुआ है, उसका—वह समर्थन करते हैं, क्योंकि संविधान उन को जज और जज के निर्णय पर कोई बात कहने की अनुमति नहीं देता है। लेकिन उन को तो कुछ कहना था और उन्होंने बहुत खबसूरती से कहा। संविधान की धारा 217 के उल्लंघन का जो उन्होंने जिक्र किया है, कई बार उन्होंने उस के उल्लंघन का जिक्र किया लेकिन यह नहीं कहा कि उस धारा का कहां उल्लंघन हुआ है। 217 वीं धारा इस प्रकार है—

Every judge of the high court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India

इस में कौन से शब्द का उल्लंघन हुआ, यह उन्होंने नहीं बताया।

फिर उन्होंने कहा कि 14वीं धारा का उल्लंघन हुआ, यानी डिस्क्रिमिनेशन हुआ, तो 14वीं धारा यह है—

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

तो यह कहा किस के साथ डिस्क्रिमिनेशन हुआ है, यह उन्होंने नहीं बताया। मुझे तो ऐसा लगता है कि संविधान की धारा का अगर हमारी सरकार ने उल्लंघन किया होता तो वह सुप्रीम कोर्ट का सहारा लेते कि यह अप्वाइंटमेंट गलत हुआ है, इस के लिए सुप्रीम कोर्ट में जाना चाहिए। संवैधानिक गलती हुई है तो उस के लिए हम ने संविधान का द्वार और न्यायपालिका का द्वार बन्द नहीं किया है। सचमुच में जब हम एप्वाइंटमेंट की बात करते हैं सुप्रीम कोर्ट या हाईकोर्ट के जज की तो यह बहुत महत्व रखता है। यह बात ठीक है कि—

Equality of justice is greatly affected by the quality of individuals who become judges Therefore the method by which we select our judges is crucial

तो कौन सा मसला जो संविधान में दिया हुआ था उस का उल्लंघन हमारी सरकार ने किया? *(व्यवधान)*

स्टीफेन साहब ने बहुत अच्छा सवाल उठाया। मैं यह कहना चाहता हूं कि उन को तो यह

[डा० रामजी सिंह]

ऐसा लगता है अपने बैकग्राउन्ड में, उन की अपनी जो पूर्व पीठिका है उसी में वह इस का समाधान की कोशिश कर रहे हैं। श्री मधु दंडवते जी ने एक हाफ एन अवर डिस्कशन उठाया था, उस का थोड़ा सा अंश मैं पढ़ना चाहता हूं—

In the book Supersession of Judges' by Kuldip Nayar on page 32 a very interesting footnote appears The footnote says

'At the oath-taking ceremony, Shri Kumaramangalam went to Justice Ray and told him jocularly Such posts are a reward for political services rendered Justice Ray replied I do not recall rendering any political service to anybody except to truth and justice

यह है जडिशियरी का पिक्चर। इसलिए सचमुच में वह तो वही देखते हैं। और यह जो मंत्री लीगल जर्नल है लाइयर्स का उस में से थोड़ा सा मैं पढ़ना चाहता हूं। जब सुपरसेशन हुआ था जजेज का उस सम्बन्ध में यह बात आई थी मैं ज्यादा नहीं पढ़ूंगा केवल उस का जो अन्तिम निष्कर्ष है वही पढ़ना चाहूंगा।

It would not be out of place to add that the Government, after the sixth Parliamentary election is willing to adhere to the policy of maximum respect for judiciary The due status of judiciary which was eroded during emergency period is being restored Let us hope the present Government will not follow the non-adherence policy of previous Governments and will appoint Jurists as Judges

मैं इतना ही कहना चाहता हूं कि इन का कोई एतराज नहीं है कि बाहरा साहब को जज नहीं बनाया गया जो कि सब से ज्यादा सीनियर थे जिन का रेकार्ड सब से अच्छा था। उन के विषय में कैसे कह सकते हैं कि नहीं बनाया है। उन के विषय में उन को आपत्ति नहीं है। उन्होंने यह भी आपत्ति नहीं की कि 'किस्सा कुर्सी का केस का गलत निर्णय हुआ। उन का केवल इतना ही आक्षेप है कि इतनी देर क्यों की गई' कभी कभी होता है कि हाथ करने से भी हाथ जल जाता है। अच्छा काम करने से भी कभी कभी कलंक लेना पड़ता है। यही हुआ।

We should not only be honest in public life but we should also appear to be honest

न्यायपालिका की पवित्रता को सम्पूर्ण राष्ट्र के सामने शुद्ध रूप से रखने के लिए जो किया गया उसके सम्बन्ध में उनको निराशा होती है। अच्छा होता अगर नहीं करते लेकिन नहीं होता तो उसके बाद भी कुछ और कहते। कर्मठ व्यक्ति तो अपने कर्तव्य को सामने रखकर काम करते हैं। स्टीफन साहब को कोई एतराज नहीं, केवल जो विलम्ब हुआ उस पर एतराज है। उन्होंने पब्लिक इन्ट्रेस्ट और यूटिलिटी की बात कही तो पब्लिक यूटिलिटी में यह भी एक बात है कि न्याय होना चाहिए तथा साथ ही दूसरों को भी लगे कि न्याय हो रहा है।

Selection and Appointment of Supreme Court Judges'

एक केस हिस्ट्री है उसमें जो बकग्राउंड किया गया है उसके जो निष्कर्ष हैं वह मैं पढ़ना चाहता हूं। कितना सुपरसेशन हुआ इत्यादि—उसके बारे में तो गुप्त जी ने बताया है।

The real problem that we face is that a highly competitive legal profession has been engrafted on a highly structured status-oriented society Judicial appointments excite thus competitive and at the same time reinforce the status-oriented structure No Government can change all this by itself

क्या आप सोचते हैं शांति भूषण जी इसमें कोई परिवर्तन कर देते? वे परिवर्तन नहीं कर सकते थे। उन्होंने केवल न्याय के दृष्टिकोण से, प्रोप्रायटी के दृष्टिकोण से किया और शायद कोई भी दूसरा कानून मंत्री यह नहीं करता। जिस व्यक्ति को संकोच होता है, जिसकी आखों में पानी होता है उसमें जनतंत्र के लिए लज्जा होती है इसीलिए उन्होंने यह काम किया है।

मैं और ज्यादा तो नहीं कहता लेकिन स्टीफन साहब की आजस्विता और प्रखरता उस समय कहां चली गई थी जबकि डि-वैल्यूएशन आफ जुडीशियरी हुआ था? यह समूचा चैप्टर जो है

"Supersession of Judges The supersession of 3 senior Judges and the appointment of A N Ray as Chief Justice of the Supreme Court on April 25 1973 and three and half years later, the supersession of Justice H R Khanna in favour of Justice M H Beg generated considerable heat in judicial and political circles"

इसके सम्बन्ध में जो सारे बड़े बड़े न्यायविद हैं उनका कथन एक जगह पर है

"It cannot be denied that the 3 Judges were passed over only because their rulings displeased the Government."

This was the structure of their Government.

"There can be no two opinions regarding calibre and total suitability of each of the three superseded judges; Two of them have already served with distinction as Chief Justice of High Courts."

इसलिए मैं कहूंगा कि उनको कम से कम सोचना चाहिए कि आज उनकी बातों पर किसको विश्वास आयेगा जब वे न्यायपालिका की प्रतिष्ठा की बात कह रहे हैं।

अन्त में मैं एक बात और कहना चाहूंगा कि आर्टिकल 14 और 217 के सम्बन्ध में वे एक शब्द भी बता दें जिसका वायलेशन हुआ हो। कम राष्ट्रपति की अनुमति नहीं ली गई है या किस विधान का उल्लंघन हुआ है ? हां, जहां पहले हिन्दुस्तान में जूडीशियरी की स्वतंत्रता बिल्कुल खत्म कर दी गई थी वहां अब लोगों के विश्वास में न्यायपालिका प्रतिष्ठित हो गई है।

Therefore, David Gwynn Morgan in the book titled "Asian Affairs" in his writings under "A Controversial Issue" says as follows:

"Restoration is the air in India today. The draconian quality of Mrs. Gandhi's Emergency coupled with the emphatic defeat which terminated it, has encouraged the new Government to say that it intends to expunge al the charges made during 18 months period."

तो मैं इतना ही कहना चाहूंगा कि इस सम्बन्ध में जो उन के विचार हैं This is a part of political conspiracy to denigrade judiciary. क्योंकि उन को विश्वास नहीं है आजाद न्यायपालिका पर, उन को विश्वास नहीं है आजाद संसद पर। ये बन्दी संसद में विश्वास करते हैं, बन्दी न्यायपालिका में विश्वास करते हैं और यही कारण है कि शाह आयोग को उन्होंने नाटक कहा और श्री बोहरा के एपान्टमेंट पर इस तरह से कुठाराघात किया न्यायपालिका पर। इस प्रकार से प्रहार करने वाला जनतंत्र का कभी पक्षपाती नहीं हो सकता है। मैं इस को एक राजनीतिक संकल्प मानता हूं। अगर इस में कोई बात रहती, तो मैं उस का स्वागत करता। चाहे इस पक्ष से आवे और चाहे उस पक्ष से आवे, मैं उस का स्वागत करता क्योंकि जनता पार्टी रहेगी या कांग्रेस पार्टी आएगी, यह तो आना जाना रहेगा लेकिन सर्वोच्च न्यायपालिका रहेगी, यह सदन रहेगा। इस को कभी अपमानित मत कीजिए, न्यायपालिका को कलंकित मत कीजिए, वह जो हमें रक्षा देती है, वह जो आप को रक्षा देती है, अपने शुद्ध स्वार्थों को पूरा करने के लिए न्यायपालिका के मूल्यों पर कभी कुठाराघात मत कीजिए।

इतना कह कर मैं समाप्त करता हूं।

श्री निर्मल चन्द्र जैन (सिवनी) : सभापति महोदय, यह प्रस्ताव श्री स्टीफन द्वारा इतने विलम्ब से क्यों लाया गया, यह चिन्ता का भी विषय है और इसका कारण भी ढूंढना बड़ा आवश्यक है। यह मौका श्री साठे को क्यों दिया गया कि सब से पहले बोहरा साहब पर वे लांछन लगाएं जबकि विपक्ष के नेता श्री स्टीफन हैं। यह अवसर नेता पद का साठे साहब को क्यों दिया गया, यह भी एक विचारणीय विषय है। कोई इसका विशेष मतलब है ? कंवर लाल गुप्त जी ने कहा कि किसी नेता ने आदेश दिया कि ऐसा सकल्प लाओ क्योंकि इस समय इन्दिरा गांधी कांग्रेस में संजय की राजनीति घूम रही है चाहे वह श्री उर्से और श्रीमती गांधी में मतभेद पैदा करने की बात हो, अथवा संजय को बचाने की बात हो या जिस समय पहला प्रस्ताव आया जो झगड़े हुआ उस झगड़े के बाद आदेश दिये गये स्टीफन साहब को कि इस प्रकार का प्रस्ताव लाओ और जूडीशियरी को, न्यायपालिका को बदनाम करो और इस के बारे में दूसरी साजिश यह है कि अभी यह मामला "किस्सा कुर्सी का" दिल्ली की हाई कोर्ट में चल रहा है। इसलिये बोहरा साहब को बदनाम कर के, न्यायपालिका को बदनाम कर के वे स्तंभित करना चाहते हैं, आतंकित करना चाहते हैं, इन्टीमिडेट करना चाहते हैं हाई कोर्ट के जजों को, जो उस अपील को सुनेंगे। यह इन की साजिश है जिस के कारण यह प्रस्ताव, यह राजनीतिक प्रस्ताव इस रूप में लाया गया है। अब इन्होंने कारण क्या बताया है। एक कहावत है कि सावन के अंधे को हरा ही हरा सूझता है।

A person who becomes blind in the autumn season has got always the image of greenary around him.

सावन के अंधे को हरा ही हरा सूझता है। जिन्होंने यह पाप किया है न्यायपालिका को दबाने को, आज वे यह समझते हैं और आज वे यह बताना चाहते हैं कि बाकी के सब लोग भी न्यायपालिका को दबाना चाहते हैं, लेकिन ये बात सच नहीं है। न्यायपालिका को दबाने का काम पहले चलता था और माननीय कंवर लाल गुप्त ने उस का एक उद्धरण दिया है और मैं भी एक उद्धरण देना चाहता हूं। मेरी भी

[श्री निर्मल चन्द्र जैन]

हीबियस कोरपस की पेटीशन मध्य प्रदेश हाई कोर्ट में जब आई थी, तो मैं ने स्वत वहा जा कर बहस की और उन्होंने यह होल्ड किया कि यह जस्टीफियेबिल है। और मिस्टर जस्टिस पी० पी० सेन का वहा से ट्रांसफर कर के राजस्थान भेज दिया गया। यह क्यो भेजा गया था, किस कारण से भेजा गया था? आप यह समझते थे कि इंडयुसमेंट, थ्रेट्स, प्रामिजिज, धमकी काम करते है। आप उन्हे धमकाना चाहते थे। न्यायपालिका को धमकाना चाहते थे।

सभापति महोदय, सविधान की धारा 217 की बात कही गयी। इस धारा 217 में यह स्पष्ट है कि—

The President, in consultation with the Chief Justice, would make the appointments.

एवीडेंस एक्ट की धारा 114 में साफ है—यह प्रिज्युम किया जाएगा, यह माना जाएगा कि सब इसी प्रकार से हुआ है, इसी प्रकार से इसका निर्णय हुआ है जिस प्रकार से कानून है। यदि यह माना जाता है कि प्रजीडेंट ने, चीफ जस्टिस ने दो-दो जगह उनकी नियुक्ति को रिकमण्ड कर दिया तो फिर यह सब क्यो? कांग्रेस आई के दो मुह है, वह दो मह से बाते करती है। जसी कि अभी उसने उपवास के सम्बन्ध म की है। श्री मावलकर जी गप्त ने 18-4-79 को एक प्रश्न किया था और उसी दिन कांग्रेस आई के श्री बसत साठे ने यह प्रश्न पूछा था कि हाई कोर्ट के जजिज की जो वेकेन्सीज है उनको भरा क्यो नही जा रहा है। माननीय विधि मत्री जी ने उस के उत्तर में यह आश्वासन दिया था कि—

"Steps are being taken to fill up the vacancies expeditiously The State Governments and the Chief Justices have been reminded to expedite their recommendations They have also been asked to adhere to certain specified time scheduled in sending proposals"

अब उस में अगर बोहरा साहब का नाम आ गया तो आप कहते है कि जब नाम आया था तो तभी आपने उन्हे अपाइटमेंट क्यो नही दे दी। आप चाहते थे कि केस जो एडवास स्टेज पर पहुच गया था और प्रासीक्यूशन एवीडेंस कम्प्लीट हो गयी थी उस ट्रायल को फिर से शुरू किया जाता क्योंकि सजय गाधी को सजा हो गयी है, क्योकि उन्होंने आपके खिलाफ जजमेंट दे दिया है। आप इसलिए क्षुब्ध है कि सजय गाधी को सजा हो गयी है। एक केस को आपने मापदण्ड बना दिया है। राष्ट्रपति ने एक रिपोर्ट दी, सी० जे० ने एक रिपोर्ट दी, सुप्रीम कोर्ट ने रिपोर्ट दी और उस के आधार पर वह सब प्रारम्भ हुआ। आपने कहा कि वे बहुत अच्छे आदमी है और विधि मत्री ने जो कहा उसे मैं स्वीकार करता हू। अगर आप विधि मत्री ने जो कुछ कहा उसे स्वीकार करने को तैयार है और बोहरा साहब डिजर्विंग आदमी है और उनका प्रमोशन होना ही था तो इसे आपको कबूल करना चाहिए था। आपने तो इसे किस्सा कुर्सी केस से लिंक कर दिया। इस तरह से साजिस करके आप सारी न्यायपालिका को बदनाम करना चाहते है, इस तरह से आप अकेले प्रेजीडेंट को बदनाम नही कर रहे है। आपने शांति भूषण जी के ऊपर 6 चार्ज लगाये है। जिस तरह से आपने ये चाज लगाये है उस तरह से आपका इशारा इन चार्जों का भारत के चीफ जस्टिस पर भी जाता है, दिल्ली के चीफ जस्टिस पर भी जाता है।

आपको यह प्रस्ताव लाने से पहले इस बारे में गवनमेंट में विचार कर लेना चाहिए था। अगर आप विचार कर लेते और आपको यह बात लगती कि यह प्रमोशन पक्षपात के कारण हुई है तो आप यह सब नही कहते कि बोहरा साहब डिजर्व करते थे, उनको प्रमोशन देना चाहिए था और पहले क्यो नही दिया गया।

आपने आर्टिकल 14 की बात कही कि उनके प्रमोशन को क्यो नही रद्द कर दिया गया, उसे क्या रोके रखा गया, यह उनके साथ अन्याय हुआ है। आपने जहा यह कहा वहा फिर आपको यह नही कहना चाहिए था—

Any self-respecting Judge should throw away the case

आपने क्या इतना सस्ता समझ लिया है कि वे यह कह दें कि हम यह केस नही करना चाहते क्योंकि इस में हमारा सेल्फ रेस्पेक्ट इन्वाल्व हो गया है। जब सेल्फ रेस्पेक्ट या सेल्फ इन्टेरेस्ट होगा तो हर आदमी करना चाहेगा। जहा आपका स्वार्थ टकरायेगा, वहा तो आप करना ही चाहेंगे।

मैं आप से कहना चाहता हू कि अगर कोई जज ईमानदारी से काम करता है तो उसकी तारीफ करनी चाहिए, अलसेना नही करनी चाहिए। जिस तरह की आपने करने की चेष्टा की है। आपके विचारों में स्वत कन्ट्राडिक्शन है। एक तरफ आप तारीफ करते है दूसरी तरफ आप बात करते है—इट इज ए वीयेड आफ सेल्फ रेस्पेक्ट। बहुत दिनों से बहुत से स्थान खाली पड़े थे। एक बार कांग्रेस के शासन काल में जब श्री नीतिराज सिंह विधि मत्री हुआ करते थे तो मैं उनके पास गया और उनको कहा कि मध्य प्रदेश में बहुत से स्थान खाली पड़े है, आप भरते क्यो नही है? इसका जवाब उन्होंने यह दिया कि अच्छे आदमी मिलते नही है। मैं ने कहा कि अगर आप सचमुच में इंटैलैक्ट वाले भी चाहते है और यह भी चाहते है कि वह कांग्रेस वाला भी हो तो आपको कैसे मिल सकते है? दोनों एक साथ नही मिल सकते है। इसका नतीजा यह हुआ कि डेढ़ दो साल तक पाच स्थान खाली पड़े रहे। क्या यही स्थिति आप यहा भी पैदा करना चाहते है? पाच स्थान दो साल तक खाली पड़े रहे और फिर आपको शिकायत करने का मौका मिल जाए कि एरियाज बढते जा रहे है। यह नही हो सकता था। इस केस में सिर्फ इतना हुआ कि चीफ जस्टिस आफ इंडिया ने रिकोमेंड किया, चीफ जस्टिस आफ दिल्ली ने रिकोमेंड किया कि उनका एप्वाइंटमेंट कर दिया जाए, किस्सा कुर्सी का जो केस है उससे पहले

दिया जाए । आपने पब्लिक इंटरेस्ट की बात कुछ एक्सपीडियेंसी के कारण कही है । मैं आप से पूछना चाहता हूं कि क्या पब्लिक इंटरेस्ट इससे ज्यादा सर्व नहीं होता है कि केस जल्दी निपटे यह किस्सा कुर्सी वाला ? पब्लिक इंटरेस्ट को सर्व करने के लिए यदि कुछ दिन रुकना पड़ा और केस के निपट जाने के बाद उनका प्रोमोशन किया गया तो इस में आप क्यों छिद्र निकालना चाहते है ? इस में फ़ंस वास्ते आप छिद्र देखने की चेष्टा कर रहे हैं क्योंकि केस जल्दी निपट गया है अन्यथा न्यायपालिका के साथ न्याय हुआ है, न्यायपालिका ने न्याय दिया है और यह जो राजनीतिक प्रस्ताव है यह शरारतपूर्ण है । इस लिए यह भर्त्सना के योग्य है और मैं इसका विरोध करता हूं ।

MR CHAIRMAN: Before I call other hon Members to speak, I am seeking guidance from the House The time allotted originally for this item was 2 hours. Accordingly, the discussion will be terminated at 4 30 p.m What is the intention of the House: how much time should we extend, for the debate?

SOME HON MEMBERS: One hour.

SHRI SHANTI BHUSHAN: As far as I am concerned, it should finish to day

MR CHAIRMAN: So, we tentatively extend the discussion by one hour i.e. upto 5 30 p.m It can be upto a little before 5 30 p.m. so that another Resolution may be moved So, the time will be upto 5.25 p m

SHRI SHANTI BHUSHAN: I will require about 20 or 25 minutes

SHRI C. M. STEPHEN: There must be time for me to reply. The time I require will depend on what the Minister is going to say.

MR. CHAIRMAN: I think Mr. Stephen can have 10 minutes. Now Mr. Somnath Chatterjee.

SHRI SOMNATH CHATTERJEE (Jadavpur): Sir, I feel that it is rather unfortunate that this Resolution has been allowed to be discussed, because the object seems to be what it does not appear from the Resolution. The Resolution purports to refer to "the procedure adopted" in connection with the appointment of a Judge, but the object has been very patent and Mr. Stephen could not hide it, in spite of his great parliamentary skill. The object has been to create doubt and raise suspicion about the validity of a judgement delivered recently by a learned Judge. Therefore, I feel that this is a Resolution which has been unfortunately allowed to be discussed in the House.

However, since the matter has been allowed and there have been discussions already, I would like to say a few words. The Resolution refers to the statement of the Law Minister, and it has been brought with reference to that statements. The statement, it appears, became necessary because of a most reckless allegation made by a Member belonging to Mr. Stephen's party, that the Judge was told, "If you deliver a convicting judgement you will get the prize of the post of a High Court Judge" Now, naturally, it was the duty of the Law Minister to come forward and remove the impression that was sought to be created that there was something improper in the way the case was conducted and the judgement was delivered. Therefore, I don't think that in this case any impropriety has been committed by the Government On the other hand, they have discharged their function. When we find the persons who for months together and years together rebelled in castigating the judiciary and decimating the judicial system in this country showing great concern over the appointment of one single judge, one cannot help wondering that there is some other motive behind this than maintaining the tradition of the judiciary in this country On many occasions we have seen the crocodile tears shed from my hon. friends sitting on that side who have been the cohorts of the dictator during those 19 months. But today, I find sycophancy has reached the lowest depth. Mr. Stephen an hon. Member of this House, the Leader of the Opposition, I am sorry, was obliged to carry on command performance, and this is not only at the dictator of the mother, the greater dictator, but

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for the benefit of not only an accused but a convict, who was proclaimed as the crown prince of India, and before whom obeisance, had to be paid by all and sundry, including the Cabinet Ministers.

And, Sir, we had seen how the dictates of, not only the dictator but of a progeny, as I said, mature, half literate progeny who ransacked all the *democratic values in this country*, played with life of the pepole, how his wishes become the order of the day.

SHRI C M. STEPHEN: I rise on a point of order. Here is a resolution about the procedure I took care to remain exactly within the framework of the procedure. If he wants to attack our people who are not connected with this, he is free to do so There is a procedure for that But I would submit that this must be stopped If he wants to carry on a very reasonable debate, we must remain and behave in a very reasonable manner. He has used words which are objectionable So far all right. I raise objection to the words cohorts of the dictator sycophancy and so many other things he was using unparliamentary, unmentionable things These things are being used in reference to the Members of this House. He is doing all that I just want to know if this line of submission is permissible.

(Interruptions)

MR. CHAIRMAN: I think you should stick to resolution.

SHRI SOMNATH CHATTERJEE: The real object has come out I am coming to that.

SHRI C. M. STEPHEN: What real object has come out? Are you free to call *names* about *person*.

(Interruptions)

We know your loyality to this country, we know your loyalty to the Constitution. You are talking of Namboodiripad, the fellow who was convicted of the contempt of the court. You are coming here to teach us.

(Interruptions)

SHRI SOMNATH CHATTERJEE: I submit that the real object behind the resolution is to express their annoyance because they could not delay the disposal of the case which was pending and then the conviction came. They believed that the case could be kept pending for months and months and years and years You will kindly remember that it was the hon. Supreme Court who intervened and directed the expeditious disposal of the case. And in the meantime, the accused had to go to the jail because he had been found guilty of tampering with the witnesses

(Interruptions)

SHRI C. M. STEPHEN: I rise on a point of order. The particular case he in referring to is *sub-pudice* now.

SHRI SOMNATH CHATTERJEE: I am not referring to any particular case.

(Interruptions)

SHRI C. M. STEPHEN: Dealing with the merit of the case is a different thing. *(Interruptions)* That case is *sub-judice*. *(Interruptions)*

MR. CHAIRMAN: Mr. Somnath Chatterjee, you should not refer to it.

(Interruptions)

SHRI SOMNATH CHATTERJEE: I have not gone into the merit of the case at all. What I am saying *(Interruptions)* is that I am entitled to say what is the reason behind this resolution.

SHRI C. M. STEPHEN: That is *sub-judice*, he is dealing with a case which *is sub-judice*.

SHRI SOMNATH CHATTERJEE: I do not yield. I have not gone into the merits of the case at all. I am entitled to say the reason behind his resolution,

therefore I am referring to that matter The case was pending for long and the matter was almost coming to an end. We find from the statement of the hon. Law Minister that all the procedure under the Constitution had been followed before the appointment was actually announced, he had gone to the learned Chief Justice of the Delhi High Court and had got the sanction of the President to withhold the actual notification for a few days. How is the independence of the judiciary interfered with and how is it unconstitutional? My time is not unlimited and I am sure the hon. Law Minister will deal with it and during the little time that I have, I should like to make one or two submissions The object is that if somehow this case could have been prolonged further, the inevitable could have been postponed Secondly, today in the name of saying that Mr. Vohra is an excellent man but the judgement was not, as if he was persuaded to deliver this judgement by showing this lollipop, namely, the judgeship of the Delhi High Court—my hon. friend has stated that. That was the impression that is created in the minds of the people. I am trying to disabuse that That is not the impression that has been created in the minds of the people. The intention today behind this resolution is to create a doubt in the mind of the people: would it have been so? Therefore the attempt which has been made is not to uphold the judiciary but to denigrate the judiciary once more. This attempt should be resisted by all the right thinking people in this country. Therefore my hon. friend gets piqued, naturally when we referred to the emergency and what had happened in this country, how judiciary was dealt with in this country, how the judges were transferred and how the learned judge of the Delhi High Court was sent back as judge of the sessions court. I had to appear for Jyotirmoy Bosu in the Delhi High Court, I know what happened, what kind of plea was taken on behalf of government. Once Justice Rangarajan delivered the judgement that it was justiciable, the next day an ordinance was issued making it non-justiciable. That is the way they were treating judiciary at that time. The only crime that he committed was that he wanted to see the files of the Home department. They said: No, he cannot. This was the attitude taken by them. Today they are showing so much concern for judges and judiciary in this country. Therefore, my submission is that if anybody has suffered due to delay in the announcement of the notification, it was Justice Vohra himself, nobody else because it is his appointment which was delayed by a few days. Somebody else suffered by the expeditious disposal of the case but that is not the consideration that has to be brought here.

I am not referring to any matter which is *sub judice*. Probably one would have felt that when a longer period of sentence was there, whether that sentence could have been given or not. That is the matter which we are not discussing today.

My hon. friend referred to one point, whether it has any relevance or not, whether it was in public interest or not, he said that Article 224 provided for appointment of additional judges on the basis of clearance of arrears Arrears are there. Does it mean this should be done? This is a new interpretation given to article 224. That means that whenever there are arrears judges may be appointed. There are so many vacancies all over India, we put question to the hon. Minister and we are pressing him hard for appointment of judges, more and more judges have to be appointed. There are so many constraints. We understand, There are lacunae here and there. That does not mean that a few days postponement of the declaration of the appointment of Mr. Vohra has thrown to the winds article 224. Then, reference was made to Article 217. In this country the appointments of judges are made in a particular method. We

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may not agree with that method which has been laid in the Constitution. But so long as it remains in the Constitution, it has to be followed not only in letter but in spirit also. We have found that there have been gross breaches of that during the previous regime. We have seen that. There are many comments about the judicial appointments. I do not wish to go into the details here. But those comments and complaints are known. Here what has happened? The entire procedure has been followed and I believe whatever may have been the other things, I am not going into these things. The Law Minister himself showed great respect in going to the Chief Justice of Delhi High Court. Probably, they were used to calling the Chief Justices to their residence. Now he had gone to the residence, to the office of the Chief Justice of India, told him of the position, got his approval, got the approval of the President of India and thereafter it has been done. Therefore, we do not find any impropriety committed. We cannot help thinking the reasons which have prompted this Resolution. The reasons for which they have prompted this Resolution cannot be the maintenance of the dignity of the judiciary, upholding the dignity of the judiciary. The main reason behind this is one person in this country who was one of the accused in this case. He has now been convicted. It is subject to the appeal, nothing to do with the merit. But why the matter was delayed? Shri Vohra would have been promoted earlier. He would have been brought to the High Court earlier. *De novo* trial for another two, three years, another set of witnesses and all sorts of dilatory tactics would have been adopted. We should expose the motive behind this Resolution. Then we shall find that those persons who had voted in favour of giving immunity to one individual in this country, for he had occupied one seat in this country, are talking to-day of the sanctity of the criminal jurisprudence of this country and sancitty of the judicial process in this country. In this case it is admitted by the hon. Leader of the Opposition that the incumbent deserves the appointment from all points of view and that is the test. Was he or was he not suitable for that post? It is admitted by him. It is conceded by him that an eminent person has been selected. He has not been superseded by anybody, nor the Government has allowed him to supersede anybody. Therefore, the person in due time has been appointed. Because of the pending case, the appointment would have delayed the disposal of the criminal case. At that time it would not have been beneficial to the accused, because any honest accused, *bona fide* accused would have liked the trial of his case expeditiously so that justice may not be delayed even. If that is the real object, then my submission is that the object with which this Resolution has been brought is to try to get some political advantage out of the appointment of a judge, who should have been left alone in this matter. That is why I started by saying it is unfortunate that this Resolution was even allowed to be discussed here.

MR. CHAIRMAN: I would just like to call one Member provided he takes only five minutes time. Now the next name in the list is Shri Krishna Singh.

He is not here.

SHRI VAYALAR RAVI (Chirayinkil): You may call Shri Lakkappa.

MR. CHAIRMAN: I am calling in order. Shri Lakkappa has given his name just now.

SHRI VINODBHAI SHETH: Please finish in just five to seven minutes.

SHRI VINODBHAI SHETH (Jamnagar): The reservation is such that I will not take more than five minutes.

I would like to confine myself within the four walls of the Resolution of Shri C. M. Stephen. It is a very unfortunate thing that this politically motivated Resolution is coming from a

lawyer It is a very unfortunate thing. It should have been appreciated that we have restored judicial process in the country. We have restored the rule of law. Our Speaker has deemed proper the discussion of this Resolution in the House. I fully agree with Shri Somnath Chatterjee that it is a very sensitive resolution which casts aspersions on the judiciary of the country and the less it is discussed, the better. As per Mr. Stephen, article 217 is violated. But he does not give any reason and which are the principles governing article 217 which have been violated. The Chief Justice of Delhi High Court is consulted. He says, it is arrangement. It is not arrangement, but consultation. The Chief Justice of the Supreme Court is consulted. The Prime Minister endorses and the President makes the appointment. But unfortuntely, the leader of the opposition was not consulted: I would like to put a very pertinent question the leader of the opposition. Why did he not bring this resolution when the ex-Prime Minister was acquitted? At the time, we did not bring such a resolution because we uphold the dignity of the judiciary and we believe the judiciary in the country has remained impartial. In every case when there is some appointment, we should not cast aspersions. I do not know what makes Mr. Sathe say something as if he has overheard our hon. Minister Shanti Bhushan and Justice Vohra engaged in a dialogue with Mr. Sathe standing by, saying "You hand over the conviction and you would be made the Chief Justice", or something like that. Mr. Sathe can say anything which is blatantly incorrect, but for the leader of the opposition to bring forward this resolution casting aspersions on the judiciary is highly improper. Ours is a country in which truth is honoured. Our judiciary stands for truth and justice, unbiased and without any prejudice. During the emergency the position was different, but now the emergency is gone and the judges feel free. There is no sword of transfer hanging above them for giving a particular kind of judgment. Many of the Government decisions have been reversed by the judiciary, but still judiciary is respected because we respect the dignity of the judiciary in the country. On the contrary, I would argue that injustice has been done to Justice Vohra. Over and above that, you are putting some blame on the Ministry. I ask, why delay his promotion for 3 months? Why do injustice to Mr. Vohra? The delay was in public interest, not in personal interest. I would appeal to the Ministry to consider the promotion of Mr. Vohra with retrospective effect, if you want to do justice to him. Please go through the record of Justice Vohra, Has he superseded anybody? Has he got any connection with any Minister? I am told he is one of the senior most and most efficient judges. When Justice Desai was promoted from Gujarat, unfortunately because his surname was Desai, our Prime Minister's name was dragged in. But see the judicial pronouncements made by him. See his work. He has been appointed as the vacation Judge now. Under this Government, there will not be any favour nor any fear so far as the judiciary is concerned. With these words, I request the mover to withdraw his resolution.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): Mr. Chairman, Sir, a number of points have been raised by the hon. Leader of the Opposition on the Resolution which has been moved by him and I popose to deal with each of the points in its sequence. But before I start replying to the points which he has tried to make, I would like to start with two observations by way of a preface.

When I looked at the Resolution for the first time—I was keen to see as to who the mover of the Resolution was—I found the name of the Leader of the Opposition himself, Shi C. M. Stephen, on the Resolution. I was greatly

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surprised. I had to rub my eyes in wonder because I hold him in high esteem. After having checked up that he was the mover of the Resolution, I felt that there was a typing error in the Resolution because I felt and expected and it seemed to me that probably he had dictated something and his stenographer had written out something else. I felt that what he must have dictated was that after "having considered the statement made by Shri Shanti Bhushan, Minister of Law Justice and Company Affairs, etc. etc." The operative part in 'This House records its satisfaction and pleasure over the procedure adopted in connection with the said matter'. I tried to check up but I was told that it was not a typing error and the Resolution had, in fact, been dictated in this very form. So, initially, I was a bit shocked and surprised. But then, I looked at my own career. My eyes took my mind back to the days when I was a young lawyer, a junior lawyer and I started thinking: "Had not I argued vehemently a hopeless case, a case which had no merit?" I could not say no. I felt that even I had argued several hopeless cases and why had I argued those hopeless cases? In the initial years of my practice when a senior entrusted a brief to me finding that it was a hopeless case and that he did not want to stand himself, he instructed me 'argue with all your vehemence because this is your opportunity'. And, therefore, I found that if somebody entrusts a case to me and asks me to argue the case vehemently, then it is my duty. Sometimes, my clients, sometimes, my seniors ask me to argue a hopeless case.

SHRI KANWAR LAL GUPTA: He is not so junior.

SHRI SHANTI BHUSHAN: Not junior but as a Leader of the Opposition, he also does not have many years. As a Leader of the Opposition, he is fairly young. I mean, his grey hair might betray him, otherwise, he is young at heart and he is young with his indefatigable energy. The kind of energy with which he argues his cases here, one would think that he is the youngest Member of Parliament.

So, I thought that there was nothing wrong in arguing even a hopeless case.

Then, Sir, my mind went back to another incident which happened when I was a law student and when Sir Tej Bahadur Sapru had very kindly invited me to attend his conferences also because he was very kind to me. My mind went back to a certain day when I happened to put a certain question at the time of the conference and I said: "In a court of law where cases are supposed to be decided and judges come to conclusions on the basis of the facts and the law in a case, on the basis of the reasoning advanced by different counsels, what is the place of eloquence in a court of law; why is it that lawyers try to be eloquent in a court of law?" And the answer that was given to me was: "Well, sometimes, when a counsel is arguing a case in which the facts do not support him, the law does not support him, even commonsense does not support him, what does he do? In those cases, he has to rely upon his eloquence." I clearly saw today when Mr. C. M. Stephen was stating his case in support of this Resolution that he was relying only on his eloquence for which I have great respect because I do not think any other hon. Member of Parliament can match his eloquence. Of course, so far as I am concerned, I cannot match even one-hundredth of his eloquence what to say of his complete eloquence. So, he has relied upon his eloquence only to try to build up a case. So far as the facts are concerned, so far as the law is concerned, so far as, if I may say so with great respect, even commonsense is concerned, there is nothing to aid him in regard to the points.

With this preface, may I come to the points that he has tried to make out?

Now, Sir, perhaps even Mr. Stephen would agree with me when I say that when the name of Mr. Bohra was proposed by the Chief Justice of the Delhi High Court and supported by the Chief Justice of India this being a Union Territory the Governor or Chief Minister does not come into the picture so the only two authorities who are required to be consulted before an appointment is made, are the Chief Justice of the High Court and the Chief Justice of India. And both of them were unanimous that he is a fit person to be appointed. I hope he would agree with me that there were only four options open to the Government. One was not to appoint him at all, but even he has not advocated that particular option.

Mr. Vohra is not one of the seniormost as Shri Vinod Bhai said, but is the seniormost Judge of the Delhi Judicial Service, a very competent Judge because so far as all these judges are concerned, a Character Roll is maintained in which remarks are made by the Administrative Judge and even by the Chief Justice yearly. Chief Justice after Chief Justice had made outstanding entries on him uniformly. Never any kind of a different entry of that kind was made and this is the kind of a Judge, the seniormost in the service with an outstanding record, the Chief Justice of the High Court proposing his name and the Chief Justice of India supporting his name, the question of non-appointment, that is, not appointing him at all and rejecting him because he was hearing what the Leader of the Opposition had chosen to describe on many occasions as 'Kissa Kursi Ka' case or in many different ways, but ultimately we agreed that it should be called the 'Kursi' case, does not rise. Merely because he conducted the case in the 'Kursi' case there, he should not be disqualified for promotion in spite of being the seniormost judge, in spite of being a Judge who was always very highly spoken of by all the successive Chief Justices etc. That option was not available as the Leader of the Opposition himself has agreed. Therefore, that left three options. One is either to appoint him straightaway as soon as the recommendations of the Chief Justice of the High Court and Chief Justice of India were available. The second option was, all right, keep the matter pending and watch, i.e., all right, if he was not to be appointed straightaway, this part-heard case should have been allowed to go on. Then, this is the option that he has advocated, viz., that the matter should have been kept pending without taking a decision, a premature decision, viz., alright, he will be appointed, but the notification will be delayed till the trial was over. That was the second option. The third option was the one that was adopted in the present case, i.e., all right, take a formal decision at the highest level, an irrevocable decision, viz., that he will be appointed. Long before he gave a judgment, an irrevocable decision was taken that he will be appointed because he is deserving of the appointment irrespective of what happens in the case, irrespective of what is the final verdict in the case, whether the case results in an acquittal or whether the case results in a conviction, but an irrevocable decision so that the decision should not be made dependant upon what the decision in the case is, what the judgment in the case is The third option was the one which he has advocated, viz. keep it pending and thereafter, after the trial is over, after the judgement is available, then make up your mind as to whether he is fit to be appointed or not fit to be appointed And I would ask the Leader of the Opposition himself to consider the options carefully without prejudice and then come to a conclusion. And I am quite sure, if he does it without any prejudice whatsoever, he would be agreeable to changing the Resolution to the form which I have suggested, which I thought that he has dictated to his stenographer. Now, let us consider the first option. The name was recommended by the

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Chief Justice of the High Court and the Chief Justice of India long before the amendment was made to the Code of Criminal Procedure to which reference has been made by the Leader of the Opposition. That amendment was made by a Bill which was enacted some time in December 1978 so that at that time the name was recommended much earlier. At that time when this question was considered and at that time when I discussed the matter with the Chief Justice of the High Court, this amendment was not there and that was the position.

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What was the position? The position was one which had been examined by the Supreme Court as long back as 1960 and pronounced upon by them They had said that so far the trial before a magistrate is concerned, if, during the pendency of the trial a magistrate ceases to be available, then the successor magistrate will have the option to proceed with the trial from dure was not applicable to Sessions whole trial *do novo*. But this procedure was not applicable to sessions Judges. Therefore, the Supreme Court had laid down in 1960 that so far the trial before a Sessions Court is concerned, if for any reason that particular Sessions Judge ceases to be available, there is no option for the successor Judge but to start the whole trial de novo, to record the examination of all the witnesses etc

So, this was the option available at the time when these recommendations were made. Would the Leader of the Opposition apply his mind to this question, namely that in a long trial the position is not the same as in ordinary cases which come up before the courts every day. These are taken care of by the wording of the notification of the appointment of the Judge, by saying that it will take effect from the date of his assuming charge. The idea is that after the warrant has been issued, a few days are given to him to join as a Judge and to take oath as a High Court Judge, so that the practice has been that during those few days he disposes of all the part-heard cases, because in the ordinary cases there are very few witnesses, and the cases can be completed in a few days.

I will take the mind of the Leader of the Opposition back to the previous appointments which had been made in the Delhi High Court itself. During the time of the present Government, in Delhi two persons had been appointed from the services before Mr. Vohra. The first was Mr. R. N. Agarwal who had been reverted during the emergency. When he was appointed and he took charge as High Court Judge, he did not leave a single part-heard case behind him. Similarly, the other gentlemen, Mr. Siddhu, who was also a District & Sessions Judge, Delhi, when he was elevated to the post of a Judge of the Rajasthan High Court, completed all the part-heard cases and did not leave a single one behind him That has been the practice and the tradition.

But if in a particular instance a very long case is pending before the District & Sessions Judge, then the normal practice of stating in the notification "with effect from the date of his assuming charge" cannot be followed, because you cannot leave a gap of months and months between the date of the notification of the appointment and your actually taking charge Therefore, that is a special case. These special cases do not arise every day, because these long cases are very rare.

The Leader of the Opposition, himself knows that this Kursi case, as we now refer to it, had been going on before Mr. Vohra for a very long time.

SHRI C. M. STEPHEN: How long?

SHRI SHANTI BHUSHAN: For about a year.

SHRI C. M. STEPHEN: No

SHRI SHANTI BHUSHAN: A very large number of witnesses had been examined. The Supreme Court in January, 1978, had said that the trial must proceed from day to day In fact, they had passed a peremptory order that this case must be proceeded with from day to day, it must be tried on a writ petition basis.

SHRI C. M. STEPHEN: The trial started in April, and the prosecution evidence was over in October.

SHRI SHANTI BHUSHAN: The trial took almost a year.

SHRI C. M. STEPHEN: April to October.

SHRI SHANTI BHUSHAN: In October the trial did not come to an end.

SHRI C. M. STEPHEN: On 3rd November, the prosecution evidence was over.

SHRI SHANTI BHUSHAN: Thereafter, the statement of the accused had to be taken.

From April, under the direction of the Supreme Court, the Judge started dealing with the case on a day to day basis, unlike other cases. So far as this case was concerned, under the directions of the Supreme Court, the trial was proceeding on a continual basis before this judge. The Leader of the Opposition will not controvert that a very large number of prosecution witnesses had been examined. Therefore, if at that time, when the prosecution evidence was almost over or over, if at that stage, the judge had been elevated as a Judge of the High Court, then in that case, even the accused persons could have had a grievance that "look here, you are now compelling us to go through all the processes of trial once again by elevating a judge in the middle and when the successor judge comes and by the time the prosecution evidence is again recorded on a day to day basis, then that . . . judge might also be ripe for elevation and so on." This would have been a very extreme case of harassment and even the accused persons, in fact, both the parties could have taken serious exception to this procedure viz., when there is such a long case, when even the evidence on one side had to be recorded for six or seven months, then to deprive both the sides of the services of the judge by replacing him by another judge, at a time when the law is that there is no option in the matter and there had to be a complete *de novo* trial, even the accused person could have said:

> "so many prosecution witnesses have turned hostile, have not supported the prosecution case and in fact he might even claim that therefore, nothing is left in the case and at this stage, you are forcing a retrial so that those prosecution witnesses may get a chance of supporting the prosecution case again and so that the accused may be deprived of the benefit of their having turned hostile and not supporting the prosecution case. Is it fair to the accused persons?"

I am quite certain that if that procedure had been adopted, the Government would have been attacked. In some quaters, it would have been said that the Government was trying to be deliberately unfair by harassing them again and again with certain witnesses and so on and so forth. Therefore, I hope that even the Leader of the Opposition would not advocate that this is the procedure which should have been adopted in the present case. To be fair to him, I should say, he has not supported, argued or canvassed that he should

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have been appointed straightaway. On the other hand, what the Leader of the Opposition has told us that, this premature decision should not have been taken viz. that he will be appointed after the trial is over, because this, in his words, amounted to dangling a carrot before Mr. Vohra and what he had advocated is, you might have kept the matter pending without deciding, and after the trial was over, then you might have applied your mind as to whether he should be appointed or not and then only you might have got his appointment approved and so on. But the Leader of the Opposition may kindly consider, in that case it could have been said that alright, here is a case with some political overtones because a former Minister was also an accused person, it is not everyday that such cases come up in which former Ministers are also in the position of accused persons" and so some political overtones and political arguments can be raised and if in that case, the decision had not been taken, then this argument would have been perfectly correct and as I said facts and law or even common sense does not support the arguments which are sought to be built up because in that case, it could have been said that inspite of the fact that the Chief Justice of the High Court has recommended his name, in spite of the fact that the Chief Justice of India has supported his name, we are not taking a decision and that we first want to watch as to what the judgement is going to be, as to whether Mr Vohra is going to acquit or convict and then if you find that there is conviction, then you will say "he is a judge, who is fit to be elevated, you will elevate him" and if he is going to acquit, then you will say "he is useless, for some reason or other, his judgements could not be relied upon, he is not fit to be elevated". All these arguments which have been advanced in the present resolution would have been advanced and advanced with some merit in that case, if the procedure which is being advocated by the Leader of the opposition had been adopted in the present case. Here, when we take an irrevocable decision, long before we know as to whether a judgement is going to result in acquittal or conviction.

SHRI C. M. STEPHEN. What do you mean by "irrevocable decision"?

SHRI SHANTI BHUSHAN: Irrevocable in the sense the highest authority to take the decision, the President viz, the Law Minister, the Prime Minister and the President, these are the only three authorities who come into the picture so far as taking the decision is concerned, after consultation with the authorities specified in the Constitution is concerned, namely, the Chief Justice of the High Court and the Chief Justice of India Therefore, if all the three authorities have decided yes, he is fit to be appointed because he is the senior most, he has got an excellent record, and, after the decison has been taken by all these three authorities and they have approved the procedure also, for this reason, namely, here is a very sensitive case with some political overtones and, therefore, there should be no chance that anybody might have a feeling, "I do not know whether I will be appointed or I will not be appointed", etc, here is a final decision....

SHRI C. M STEPHEN: Are you stating that there is a written order by the President of India of a particular date specifying, so and so is appointed

SHRI SHANTI BHUSHAN: Not appointed The decision is that he will be appointed. The appointment is by a warrant, it is not by a decision.

SHRI C. M. STEPHEN: Is there an order by the President of India saying that so and so is appointed or will be appointed—I do not know what exactly it is—the appointment is hereby done but the warrant will be issued after such and such time? Is there such an order by the President?

SHRI SHANTI BHUSHAN: You are perfectly correct except with this distinction, not that he is hereby appointed. The appointment is by a warrant only. The warrant is signed by the President. The appointment does not take effect the moment the decision is taken. The decision to appoint a person is first taken and, thereafter, the appointment is made by the President by signing the warrant. The appointment is by means of signing the warrant. It is signed by the President. Before that also, the file in every case, goes upto the President namely, when the decision is taken to appoint a person, even that decision is finally taken at the level of the President of India. The law Minister takes a decision; that is approved by the Prime Minister and that is also approved by the President. Then the decision to appoint a person becomes final;

Thereafter, certain formalities are completed, namely, the specimen signature and certain declarations are obtained from the person who is sought to be appointed. Then, the matter once again, second time, is sent to the President, in every case, requesting him to sign the warrant and make the appointment by signing the warrant. Then, he signs the warrant. The first part of the procedure is done in every case. That was completed in this case also, namely the file reached upto the President with an observation that a decision should be taken to appoint him right now but the decision will be given effect to by the signing of the warrant and only after the case has been completed because of these complications.

It was not that the Government took this decision, namely, about the procedure, completely on its own. As I said in my statement, this matter was discussed with the Chief Justice of the High Court and the Chief Justice of the High Court fully agreed that, yes, this would be the right procedure. In actual life, the things are not absolutely theoretical. Even on a matter of deciding whether at what time a particular appointment has to be made, there are various matters of public interest which reflect upon that, even affecting the administration of justice. If the timing of a particular appointment is likely to create a lot of prejudice to the parties of a case, namely, the parties will be put to serious difficulties and serious inconvenience which they do not merit, that is also a legitimate matter to be taken into consideration in regarding to the timing of the appointment. That is why the Chief Justice of the High Court who was principally concerned with this matter was consulted for this reason.

So far as the conduct of cases, the litigation under the charge of the High Court is concerned, because supervision over the subordinate courts is done by the High Courts under the Constitution itself, it was the Chief Justice of the High Court who was primarily responsible to balance these considerations. I agree that so far as the arrears were concerned, certainly, this delay was likely to affect the position of arrears to some extent, to whatever extent, whether it was 0.1 per cent or 00.1 per cent, that is immaterial. That was one consideration, namely, the matter should not be dalayed. But at the same time, there was the impact it would have on the process of justice, namely, here are two parties, prosecution on the one side and defence on the other side, who have been fighting a case tooth and nail for a long time before the sessions court which, under the direction from the Supreme Court, was to conduct the trial expeditiously on a continual basis, that is to cost away all the other cases and apply its full time to the trial of this case. In that case, whether the parties should be deprived of the service, of a judge so that they may have to start a trial *de novo* before another judge was the option. I submit, very rightly, the Chief Justice of the High Court immediately agreed with this and said

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that "it would not be right and yet, in order to maintain the confidence of the people, a decision should be taken, there is no reason why taking of the decision should be postponed because, otherwise, that would smack of this that you want to take even the decision after you know whether he is going to acquit or convict; so, take the decision now so that the judge also, with a clear conscience and without pressure of any kind on his mind, can decide the case either way, if he feels that the evidence is sufficient he can convict of if he finds that the evidence is insufficient, he can acquit; and, of course, the right of appeal is always there" Therefore, I submit that this was the only proper procedure which could have been invoked in such a sensitive matter The carrot was not kept dangling because the carrot was absolutely out of the picture as soon as a final decision had been taken and it had been approved even at the stage of President the carrot was away because then the Government had no choice in the matter; the decision had already been taken that he would be appointed, he was the seniormost person, very eminently spoken of by succeeding Chief Justices, eminently deserving of this appointment, and so on After that, it would not be possible for the Government to say if, suppose, the case had resulted in acquittal, "He has acquitted this case; even though upto the stage of the President, the decision has been taken to appoint him, we shall reverse that decision and not appoint him" That would not have been possible.

If, on the other hand, there had been *mala fides* on the part of the Government, this is the precise procedure, which has been advocated by the Leader of the Opposition, which would have been invoked on some pretext or the other the matter would have been delayed—no time, this and that and the file would have been kept lying I have seen many files which used to lie on the table of individual functionaries for months and months. Therefore, this file also would have just lain unattended, and after the judgment was available, then it would have been said, "All right, look here; there might not have been anything on the record, but I have heard something against this judge, if, R N Agarwal, who had been appointed a judge could be reverted, namely, his term might have been extended, in the case of another judge in Bombay the same could have been done " If there was any *mala fide* in the matter, this was the procedure which would have been applied, namely, keep the matter hanging without taking a decision to appoint him even before the judgment had been delivered Therefore, I submit that the most proper procedure was invoked in this case Therefore, I would again appeal that there is still time for the Leader of the Opposition—he has a high reputation of being straightforward, and so on--to correct his Resolution by removing the word 'displeasure' and substituting it by the words 'satisfaction and pleasure'

These are the points which have been raised namely, whether the delay was warranted I have made it clear.

Another point that the Leader of the Opposition might say is this This was the legal position when his name was recommended by the Chief Justice of the High Court and supported by the Chief Justice of India: but in December the legal position underwent a change because Parliament amended section 326 of the Code of Criminal Procedure and thereafter it was not obligatory on a successor judge to re-start the whole process of trial; at that stage at least you could have changed the decision and you could have said, 'All right; although at that stage it was not proper to appoint him, at least now we can decide to appoint him'. But even after this change of section 326, what is the posi-

tion as it would be applicable to the present case? The position is that, while it is not completely obligatory on the successor judge to try the case *de novo*, he has been given a discretion in the matter, namely, either he can proceed with the trial from that stage or he can re-examine the witnesses who have already been examined. Here was a special case in which a large number of prosecution witnesses had become hostile. In these kinds of cases where prosecution witnesses become hostile and it is a very controversial case, and so on, the demeanour of the witnesses, as the Supreme Court itself has pointed out on a number of occasions and various High Courts have followed that ruling-watching the demeanour of the witnesses is very important; in a controversial case which might be balanced, it is very important for a judge. Otherwise, how do you arrive at the truth? How the witnesses have given the evidence is also very important. Therefore, what could be the reasonable expectation in a case like this? The reasonable expectation would be that a successor judge would say, 'How do I decide such a controversial case unless I have seen the demeanour of the witnesses? Merely reading the evidence in cold print...will not create the same impression in my mind if I heard their evidence myself' It is a controversial case. I hope the Leader of the Opposition will also be charitable to agree that it is a controversial case. In a controversial case, therefore, there would have been a very big risk even at that stage and even at the later stage when the Criminal Procedure Code was amended and when the case advanced even further and it was almost going to be over, to deprive the accused persons of the benefit of all this trial and cause harassment to both the parties and risk of the witnesses being recalled and re-examined on the plea 'Well, their demeanour is very important. I cannot judge this controversial case unless I hear the witnesses giving evidence myself.' This risk could not have been avoided. Therefore, I submit this was the proper procedure and this delay was completely warranted by the circumstances of the case....

MR. CHAIRMAN: Only 8 minutes are left now.

SHRI SHANTI BHUSHAN: So, I have touched only the main points. I will, therefore, again plead with the Leader of the Opposition not to press his resolution and, after all this clarification, I hope he will withdraw it.

SHRI C. M. STEPHEN: Mr. Shanti Bhushan and myself belong to, if I may say so, the same mutual admiration bureau. I do hold him with very high respect. But, unfortunately, he has not been able to persuade me that the position of the government was correct. He was more eloquent to-day than usual. He is generally not eloquent, he is generally very factual, but to-day he was very eloquent. May be for the reason that Mr. Agarwal told him that eloquence is needed. He knew that the case was not strong, therefore, he has to be eloquent.

Now certain points I made remain. I am sorry the points have not been replied to I am not concerned about this aspect or that aspect. The question is whether the conduct of the government has brought the judge and the judgment under cloud and suspicion.

(1) When Mr. Vohra was elevated as a regular District and Sessions Judge there was a noting to the effect that he will try the Kissa Kursi case. He has not denied it. I presume he is admitting it. All this took place within one month of his taking over the trial There was no reason why he should have been charged with continuing the trial of this case more than any other case.

(2) There were cases pending before him--not only this case but there were other criminal cases pending before him. He referred to the previous

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judges, not to Mr. Vohra thereby conceding that there were other cases pending before him. If the other cases were also pending before him, would it not be violative of the principle of equality before law if you are to pin out one particular case and decide your administration policy or promotion policy to hang on that particular case?

(3) Mr. Vohra came to know and was told that he was to be appointed and elevated as a High Court Judge. It would have been a different matter if it had remained a confidential matter between him and the President of India. No, Mr. Vohra was told and he understood that and in that process, by passing on that information, he brought into the picture the Chief Justice of Delhi High Court, the Chief Justice of the Supreme Court, the President of India—the whole lot of them. And Mr. Vohra was told, Mr. Vohra was given to understand that "the President of India is interested, the Chief Justice of Delhi High Court isinterested, the Supreme Court is interested-all of them are interested and that the Kissa Kursi case is a special case." If that information goes and the Judge goes on conducting trial, how will he behave? That is the question. Could you take him to be absolutely unaffected? That is why I said that if a trial Judge is given to understand by persons who count that there are persons in a particular case, that is tantamount to influencing the Judge and any self-respecting Judge will immediately take umbrage and say, 'I will not deal with the case any further.'

Therefore, the vitiation starts then and what does then happen?

The appointment is there. That is what I was told. I do not know the irrevocability about it. We know the Constitution; we know what the Government does; we know what the President does. The President does not decide specifically any of these things. That is not a constitutional position. Government decides; the President signs. The President does not exercise his volition in this matter at all. This is the real constitutional position.

Therefore, there is no irrevocability about it. Then, what remains? As was pointed out by Mr. Somnath Chatterjee and other friends here is the date on which a judge who is due for promotion gets his promotion. That is material. Any officer will be interested to assume the promotion post the earlier. Therefore, the element of hustling the case comes in. As also the element of hastening the case comes in from that day onwards. If you look at the case diary, you will find that many petitions were being summarily rejected. Recall of a witness was asked—rejected; recall of a particular witness was asked for—rejected. Why? Because allowing that means delay and delay means delay not only in the matter of disposal but delay in the matter of getting promoted and assuming charge of it. That is the vitiation of the judicial process that was attempted. You have the hanging of a carrot on the judge; you are interested in speedy disposal. This was the only manner in which you can get the speedy disposal.

Now, they asked whether Mr. Vohra was entitled to be appointed or not. Far from me to say either 'yes' or 'no' to that because I do not know what his records are; I do not know the man. Why should I comment about it? But, Mr. Vohra continued to try that case after all these developments, seeing a carrot hanging before him and after having been told that so and so, so and so and so and so is interested in this case and putting in that proposition he hurries the case forward. Otherwise his promotion will be delayed. If Mr. Vohra continues to try that case, whatever his merits for the previous performance, he forfeits his merit to be promoted as a judge. That is because that impartiality is taken away from him. You have done it. Mr. Vohra has now become a scapegoat for that. Government have done it Mr. Vohra has been put under suspicion. This is what I have got to say. Other things, I do not want to refer to at all. But, my main point remains

ernment interfered in the judicial process; the Law Minister interfered in the judicial process; the Law Minister discussed with the Chief Justice of India the case which was pending before the Subordinate Court. The Law Minister promoted him and kept his promotion pending saying that the promotion can be had only after the case is disposed of.

This is an atrocious interference in the judicial process. It is absolutely inconceivable. Therefore, the judgment becomes suspect; the judge becomes suspect. That is the product of connivance and conspiratorial arrangement under the carpet, under the temptation in hustling a thing. This is the circumstance under which thi has been done. It is most atrocious of all persons, Mr. Shanti Bhushan should not have done this.

That is all I have got to say. I am sorry that the clean hand of Mr. Shanti Bhushan became soiled as a Minister in the matter of judicial process. I am sorry about it. This is all I have got to say. I do not want to reply to many things, to the vituperative fulminations and the characteristic way Mr. Chatterjee indulged in. He could have the pleasure of doing it. I do not want to reply to that. This is not the time to do that. (*Interruptions*). He has developed a great fascination for the judiciary. I only want to remind him of what the great leader, Shri E. M. Shankaran Namboodripad said, namely that the judges in India are the product of a Bolshevik. He had to stomach it. That was the certificate he had given. (*Interruptions*) I have seen enough of the great performance; I have seen enough of the brand democracy; I have seen enough of his love for democracy; I have seen enough of your love for the country; I have seen enough of your love for the judiciary; I have seen enough for the partiality of the judiciary. That is all I want to say.

MR. CHAIRMAN: Now we have to take the Half-an-Hour Discussion.

SHRI C. M. STEPHEN: I will conclude.

MR. CHAIRMAN: It is 5-30 P.M.

SHRI C. M. STEPHEN: I will just take two to three minutes more You may put it to vote next time. I do not want to delay the Half-an-Hour Discussion. At 5-30 P.M. it nas got to be taken up.

MR. CHAIRMAN: It is already 5-30 now. Now, we take up the Half-an-Hour Discussion.

17.30 hrs.

HALF AN HOUR DISCUSSION

Alleged irregularities in Indian Institute of Technology, Kanpur

डा० रामजी सिंह (भागलपुर) : सभापति महोदय, यह आई आई टी, कानपुर के सम्बन्ध में जो विभिन्न प्रकार की अनियमितताये और भ्रष्टाचार के आरोप आए है, उनके सम्बन्ध में आधे घंटे की चर्चा है ।

"The crisis of confidence in the IIT Kanpur has reached a point where only a full-fledged inquiry will satisfy the warring factions. The reluctance of the Ministry of Education to institute a probe even when a large number of alleged financial and administrative irregularities—some of them apparently serious—have been brought to the notice of the President, Mr Reddy who is the Visitor of the Institute is not understandable."

सभापति महोदय, इसके पहले कि और बातें मैं रखूं, मैं कहना चाहूंगा कि आई आई टी कानपुर राष्ट्र की कितनी बडी सम्पत्ति है यह इस इंस्टीट्यूट की एनुअल रिपोर्ट, 1977-78 से प्रकट होता है कि :

इक्वीपमेन्ट	. .	852 लाख
फर्नीचर	. .	854 लाख
बुक्स वगैरह	. .	164 लाख