

बाद में उसको भी बदल दिया गया। मैं समझता हूँ यहाँ की जनता को सेफगार्ड चाहिए ताकि कभी हुकूमत में कोई ऐसा एलिमेंट न आ जाये जो डिमोक्रेटिक सिस्टम में लोगों की सुप्रीमेसी को खत्म कर दे। मैं इतना ही कहना चाहता हूँ कि इंटरनल इमर्जेसी की भी कोई जरूरत नहीं है। सिर्फ एक्सटर्नल इमर्जेसी की प्राविजन ही रहनी चाहिए। हमारे देश में ऐसे कानून हैं, जिनके मातहत हम डकैती और कत्ल करने वालों को सजा दे सकते हैं। ऐसे प्राईमरी कानून हमारे पास हैं लेकिन अगर उनसे काम नहीं चलता है तो कोई दूसरा इस तरह का कानून पास कर सकते हैं लेकिन मेरा कहना यह है कि इंटरनल इमर्जेसी लगाने की कोई जरूरत नहीं होनी चाहिए।

इतना कह कर मैं समाप्त करता हूँ।

SHRI P. K. DEO: I beg to move:

"That the debate on the Constitution (Amendment) Bill (Amendment of article 352) be adjourned."

MR. CHAIRMAN: The question is:

"That the debate on the Constitution (Amendment) Bill (Amendment of article 352) be adjourned."

The motion was adopted.

15.46 hrs.

CONSTITUTION (AMENDMENT) BILL

(Amendment of article 124)
by Shri P. K. Deo.

MR. CHAIRMAN: We will now take up Mr. P. K. Deo's Bill.

SHRI P. K. DEO (Kalahandi): I beg to move:

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

Sir, if you go through the Statement of Objects and Reasons, you will be convinced that no persuasion is required to accept this simple Bill. The Statement of Objects and Reasons says:

"The Constitution of India does not lay down any procedure for the appointment of the Chief Justice of the Supreme Court, though the Constitution is clear regarding the procedure of the appointment of other Judges of the Supreme Court. Any citizen of India who has been a Judge of a High Court or of two or more such courts for five years or has been an Advocate of a High Court or of two or more such courts for at least ten years and is considered by the President as a distinguished jurist is eligible for such appointment. The appointment of the Chief Justice of the Supreme Court is within the discretionary powers of the President who acts on the advice of the Council of Ministers. It is, therefore, high time that the procedure for the appointment of the Chief Justice of the Supreme Court is laid down."

You will agree with me, Sir, that there should be some guideline for the appointment of the Chief Justice of Supreme Court. I have said that the guideline should be in consonance with the practice that has been followed, and has been well accepted in this country. If you analyze the appointment of the Chief Justice of the Supreme Court, you will find that there have been only two occasions when there was departure from this established practice. The first was when Justice Gajendragadkar became the Chief Justice, superseding Justice Imam, because unfortunately, the latter was incapacitated. He simply could not function as a Judge,

[Shri P. K. Deo]

because of his physical disabilities and because he had several strokes which resulted in the deprivation of his speech and in loss of memory. At that time nobody raised his little finger. During the second occasion, it was a political decision. On the 25th April 1973, this country received the news of the Government's decision to supersede three eminent Supreme Court Judges viz. Justice Shelat, Justice Hegde and Justice Grover, with shock and disbelief. Those Judges were superseded. They, of course, resigned in the best tradition of the Judiciary, of public life and of propriety. But the reaction throughout the country was swift, spontaneous and almost unanimous. Probably no decision of the Government in recent years has aroused such a deep resentment and protest as was evident at that time. During the hearing of the great constitutional case, Keshavananda Bharati's case, in which judgment was delivered just a day before Justice Sikri retired, the Attorney-General, Mr. Niren De, appearing for the Union of India and as Counsel for Kerala State, expressly referred in open court, both orally and in writing, to alternative political action if the Supreme Court ruling did not favour Government at that time.

The passing over of the three senior, most Justice raised issues which far transcended considerations of injustice to three individuals. It evoked reactions from the Bar. With a few exceptions of committed lawyers like R. K. Garg, who is a Communist card-holder, and Rajni Patel, President of the Bombay Provincial Congress Committee and a few others, there was a unanimous vote in practically every Bar Association condemning Government's action. Never has the Bar shown such unanimity and reacted so strongly on an issue like this since independence. It was, I would say, their finest hour.

The first public expression of resentment came from the Chairman of the Bar Council of India, my distinguished colleague, Mr. Ram Jethmalani, who is not here at the moment, who described the action as the most shock-

ing display of executive arrogance. He has vindicated his stand and proved how true he was by trouncing the former Law Minister, Mr. H. R. Gokhale, in the elections from one of the most enlightened constituencies in this country. The country's eminent jurists like Setalvad, Chagla, Sha, K. T. Desai, V. M. Tarkunde and N. A. Palkhiyala condemned this attempt to undermine the court's independence.

On 26th April, the Supreme Court Bar Association by a resolution described the action as a political one when one considered the timing and the manner of the appointment. Then followed Bombay, Chandigarh, Bangalore, Madras, Srinagar, Patna, Allahabad, Jabalpur and Gauhati, and even the bar associations of the subordinate courts throughout the country.

On 3rd May lawyers throughout the country boycotted the courts. On 4th May the Supreme Court Bar Association served notice on the Union Minister of Steel, the late, lamented Mr. Kumaramangalam, and the then Law Minister, Mr. H. R. Gokhale, to show cause why they should not be expelled from the Bar Association of the Supreme Court for their perverse stand. This is the chronology of the entire events.

But here the question is one of principle. What is the question? Was it on considerations of calibre, merit or suitability that these three distinguished Judges were superseded or did they pay the price for their independence and intellectual integrity? On this point there was a marathon debate in this House on the 2nd and 4th May, 1973 and this House heard some of the best speeches barring the Treasury Benches and their communist friends. They came out in their true colours. The cat was out of the bag and the colour of the cat was red. Nothing could be more appropriate when Mr. Mohan Kumaramangalam started quoting from the 14th Report of the Law Commission in order to build the case. It reminds me of the phrase 'devil quoting from scriptures'. The very same

report totally destroys the Government's case. It is noteworthy that the Chairman of the Law Commission, Mr. Setelvad and three other signatories i.e. Mr. Chagla, Mr. Sikri and Mr. Nani Palkiwala, made public statements condemning the Government's decision. Their contention was "if Government have followed the recommendation in the report those three judges could not have been superseded".

Quoting from that Report of the Law Commission confirms Supreme Court's role as courageous protectors of citizens rights. I am quoting:

"It (the Supreme Court) was called upon to stand as a protector of the fundamental rights of the citizen against executive and legislative action. The importance of the Court as the unholder of the rule of law and as the bulwark of the citizen's rights in a democratic constitution containing a bill of rights was emphasised by Chief Justice Kania at its inaugural sitting...."

Justice Hegde, Justice Grover and Justice Shelat distinguished themselves upholders of rule of law and citizen's right. Now, if they admirably fit as judges of the Supreme Court, can they not fit to be Chief Justice? The Law Commission recommended that the most suitable person did not mean suitability from the view point of the executive. If qualities needed by the Law Commission were the criteria, this was the strongest possible case for not superseding them for their fearlessness, sturdy independence and administrative competence. Justice Shelat and Hegde had already served with great distinction as the Chief Justice of the Gujarat High Court and the Delhi High Court respectively and there has not been the slightest allegation that Justice Grover lacked administrative competence. Any way the

utterances in Parliament by the Minister were most shocking. Mr. Mohan Kumaramangalam further stated that we must have "forward-looking judges and not backward-looking judges" and the Chief Justice should be one who would "help" the Government and "whose political philosophy would be the most suitable from the executive viewpoint." I appreciate his boldness and I appreciate him for not mincing words, for having called a spade a spade, for painting the Government in their true colour. They wanted a committed judiciary—typical of communist countries—committed to the philosophy of one and only party.

18 hrs.

MR. CHAIRMAN: It is now 8'0 Clock. How much time will you take?

SHRI P. K. DEO: I will conclude in 5 minutes.

MR. CHAIRMAN: You can continue next time.

SHRI P. K. DEO: I will take only 5 minutes. I would like to conclude today.

MR. CHAIRMAN: I will have to ask the House. After 8'0 Clock, you cannot continue unless the House agrees.

SOME HON. MEMBERS: We do not want to sit beyond 8'0 Clock.

MR. CHAIRMAN: You may continue your speech next time. The House stands adjourned till 11 A.M. on Monday.

18.01 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Monday, November 21, 1977/Kartika 30, 1899 (Saka).