

**SHRI SHYAM SUNDER MOHAPATRA (Balasore):** Mr. Speaker, Sir, our Government has been no doubt confronted with a very serious problem. I am now reminded of a parallel situation in Russia during Stalin's time. I was reading a book written by Shri B. Mukerjee, a great journalist. There was a railway trouble there. Primarily the Assistant Station Masters and Station Masters or whoever they were were responsible. Their wardens were not allowing the movement of trains. In some parts of Russia, at that time, there was famine. But Stalin was informed by some Secret Service men about this. He ordered to shoot at the Station Masters. But, we cannot do that in a democracy like our country under the leadership of Shrimati Indira Gandhi. Our policy is to please everybody and to take the recalcitrant officials to task if need be.

Sir, I shall now bring before the hon. Minister one salient feature of the Railway Administration. Whenever any officer has been found guilty, they have been very lenient to him. The other day, while I was speaking on the Railway Budget, I brought it to the notice of the hon. Minister that the General Manager of the South Eastern Railways was primarily responsible for the death of the two workers. Could he not be suspended on the spot? He said 'No'. What action has been initiated against him? If this is not done, how can you expect to boost the morale of the workers? I say that the Government must set an example by showing that they are not for bureaucracy. Government primarily depends on the good wishes of the workers. If this can be done by Government, then the workers too would be with the Government. Could these Assistant Station Masters be arrested, and could not the General Manager of the South Eastern Railways be arrested on the spot?

The country is facing a grave problem. The other day there was a mass rally organised by the railwaymen. They wanted bonus to be included in the schedule. They also wanted change in the recommendations of the Pay Commission. Some 18,000 people have threatened a general strike all over the country. 27,000 Assistant Station Masters and Station

Masters too have threatened to go on strike. Last time while I was going to Orissa, at the Howrah Station I was held up because the loco drivers created some trouble. As a result, the passenger train which was to leave at 8-30 left at about 12 or so. When there is such a trouble, the Government must try to know the psychology of the workers. They should see that good labour-management relations are maintained. Otherwise, it will be a hyperbole to say that we can bring about a change in the social structure. Government should think of bringing about management labour relations on a socialistic basis. The Government should not only depend upon the recognised unions but also on unrecognised trade unions. I am saying this as a trade union leader. When a situation arises, then even the unrecognised unions should be taken into confidence. The Minister should have no illusion and must try to talk to them. In such an emergency, the Minister should see that he runs to the spot and talks to the labour leader and tries to have a rapport between the workers and the Government so as to solve this problem.

**SHRI L. N. MISHRA:** Two questions have been raised. One is about the arrest of one Mr. Pandey. I have already said that he was taken into protective custody and released on bail the same evening. The other question is about talking to unrecognised unions. Our policy is not to encourage mushroom growth of trade unions as that will be against the interests of the workers. It is time the workers united and no mushroom growth of trade unions should take place. So, I am not going to give this assurance that I will not talk to unrecognised unions. My effort is to talk only to recognised unions.

12.41 hrs.

RE: MOTION FOR ADJOURNMENT  
APPOINTMENT OF CHIEF JUSTICE  
OF INDIA

श्री मन्त्र त्रिहारी बाजपेयी (गालियर):  
अध्यक्ष महोदय, हमने सुप्रीम कोर्ट के मामले में ऐडजर्नमेंट मोशन दिया हुआ है। आप ने हमें खबर दी है कि आप कामरौको प्रस्ताव स्वीकर नहीं कर रहे हैं। शायद आप 377 के

अंतर्गत किसी मेम्बर को कुछ कहने का मौका देने जा रहे हैं। मेरा निवेदन है कि यह 377 का मामला नहीं है। परिस्थिति गंभीर है। सुप्रीम कोर्ट का जो चीफ जस्टिस का कोर्ट था वह आज फंक्शन नहीं कर रहा है। सुप्रीम कोर्ट बार ने एक प्रस्ताव पास करके चीफ जस्टिस से कहा है कि आज उन का कोर्ट काम न करे। चीफ जस्टिस ने वह रेजोल्यूशन नहीं लिया और वह अपना कोर्ट आज बन्द करके चले गए। सुप्रीम कोर्ट का काम ठप हो गया। यह नई बात है। अगर आप चाहें तो मे सारा रेजोल्यूशन पढ़ सकता हूँ। इसलिए मेरा निवेदन है कि आप हमें कामरोको प्रस्ताव पेश करने का मौका दीजिए।

**अध्यक्ष महोदय :** इस में कामरोको की बात तो नहीं है। आइजर्नमेंट आफ ए चीफ जस्टिस में तो कोई ऐडजर्नमेंट की बात नहीं है।

**श्री अटल बिहारी वाजपेयी :** सुप्रीम कोर्ट ने काम करना बन्द कर दिया तो यह पार्लियामेंट उसका नोटिस नहीं लेगी ?

**SHRI FRANK ANTHONY (Nominated—Anglo-Indians):** Sir, I have also given notice of adjournment motion because of the Government's failure to adhere to the salutary convention with regard to the appointment of the Chief Justice of India. Three Senior Judges of the Supreme Court have been superseded. It is a calculated attempt to destroy the independence of the Supreme Court. . (Interruptions).

**MR. SPEAKER:** So far as the adjournment motion is concerned, I am not allowing it because the appointment of the Chief Justice cannot be the subject-matter of an adjournment motion. Adjournment motion is about "the failure of the Government". I am not convinced that there has been a failure on the part of the Government. You can invite attention and the Minister can make a statement. (Interruptions)

**MR. SPEAKER:** May I request all of you to please sit down? (Interruptions) Nothing is being recorded because there is too much of shouting ... (Interruptions).

**श्री अटल बिहारी वाजपेयी :** मेरा व्यवस्था का प्रश्न है कि आप ने सुप्रीम कोर्ट के मामले के ऊपर बल 377 के अंतर्गत विषय को उठाने की इजाजत दी है। इसका मतलब यह है कि आप स्वीकार करते हैं कि वह विषय इतना महत्वपूर्ण है कि इस पर सदन में चर्चा हो सकती है। (अवधान) अगर आप 377 में चर्चा का मौका दे सकते हैं तो उस पर ऐडजर्नमेंट मोशन भी आ सकता है।

**अध्यक्ष महोदय :** 377 में तो आप इतना ही कह सकते हैं कि :

I invite the attention of the Minister and request him to make a statement. In the appointment of the Chief Justice there is no failure of the Government.. (Interruptions).

**श्री अटल बिहारी वाजपेयी :** मेरे प्वाइंट आफ ऑर्डर के बारे में क्या फैसला दिया ?

**अध्यक्ष महोदय :** मैंने तो अभी कहा कि आप ऐडजर्नमेंट मोशन नहीं ला सक इस मामले पर।

**श्री अटल बिहारी वाजपेयी :** नहीं, क्यों नहीं ला सकते ?

**अध्यक्ष महोदय :** इस में गवर्नमेंट की क्या फेल्योर है ? ऐडजर्नमेंट मोशन तो किसी फेल्योर पर ला सकते हैं।

Where is the failure of the Government in the appointment of the Chief Justice?

At the most, you can invite the Minister's attention under Rule 377 as to who is the gentleman appointed and what are the details. It is not at all a matter for an adjournment motion.... (Interruptions).

SHRI FRANK ANTHONY: You have not even read my adjournment motion. The failure is in departing from the convention.... *(Interruptions)*.

MR. SPEAKER: I cannot listen when all of you are shouting. I can listen to only one Member at a time.

SHRI H. N. MUKERJEE (Calcutta—North-East): I have been asking for your ruling on my point of order, which is this that while it is reprehensible to make references to the Supreme Court Chief Justice or other Judges in terms which have been used by some of my friends here, would you please consider the desirability.... *(Interruptions)*.

MR. SPEAKER: There were so many Members speaking. I have not heard anything nor is it coming on record. Nothing is coming on record when all of you speak without my permission. I will call a Member and then listen to him.

SHRI H. N. MUKERJEE: I am asking for your ruling on whether it would not be desirable for the sake of parliamentary propriety and all that you held dear—I suppose, you do—that, even though we cannot discuss the Chief Justice or any other judge in the Supreme Court, if today the Supreme Court has not been able to hold its sitting, it is a matter on which Government should make a statement, so that we can go home with the knowledge that everything is lovely in the judicial garden.

MR. SPEAKER: The Minister will make a statement on it *(Interruptions)*.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): It is not correct to say that the Chief Justice's court or any other court is not sitting. All the four courts are working today. I have got the information.

MR. SPEAKER: The Minister has given the information that all the courts are sitting today, all the courts are functioning.

*(Interruptions)*

MR. SPEAKER: If all of you keep standing, I am not going to listen to any one. I will call you one by one.

Mr. Shamim. Only on a point of order.

SHRI S. A. SHAMIM (Srinagar): It is very unfortunate that we have to discuss the Supreme Court judges in this House. I am not a party to any vituperative language or any abusive language....

AN HON. MEMBER: What is the point of order?

SHRI S. A. SHAMIM: How can the point of order come just in the beginning of the sentence?

13 hrs.

The point of order is this.... *(Interruptions)* These people must have some quota of patience from the Prime Minister's own quota. They must first listen to the arguments and then come to the conclusion.

The point of order relates to the extraordinary situation whereby the Supreme Court Judges and the conduct of the Supreme Court are being discussed here. *(Interruptions)*.

MR. SPEAKER: How is it a point of order?

SHRI S. A. SHAMIM: I have not spoken two complete sentences as yet. I have to use some adjectives as well. I was saying that it is unfortunate and let us see whose responsibility it is. I am not opposed to the fact that the Law Commission has made a recommendation that seniority alone should not be the basis. But I would like to know as to when once a Judge has been elevated to the Supreme Court, who is the authority and which is the agency—because all Judges are supposed to be equal—what is the criterion and what is the agency which will determine that criterion....

MR. SPEAKER: I am sorry, it is not a point of order.

**SHRI S. A. SHAMIM:** I was not speaking on a point of order alone. I was explaining to you that I have tabled an adjournment motion. I have many valid reasons for that. While this convention has been broken, how is it that three Judges have been superseded? And an extraordinary situation has arisen that three Judges have gone on leave....*(Interruptions)*. Shri Ram Jeet Malani, President of the Bar Association, Bombay has called it as a shocking example of executive arrogance....

**MR. SPEAKER:** There is no point of order involved. Will you please sit down? You are not raising any point of order.

**SHRI FRANK ANTHONY:** My point of order is this,

What I want the House to consider is ....*(Interruptions)*. By the procedure adopted by the Government, it has brought the Supreme Court into disrepute. The Government has brought the Supreme Court into disrepute and contempt.....*(Interruptions)*. For obvious political reasons which were underlined by the *Times of India*, the Political Affairs Committee has approved \*\*

**MR. SPEAKER:** This is not a point of order. I am sorry, I am not allowing you any more.

All the remarks about the Chief Justice will not form part of the record. He rose on a point of order and I have heard him. I fail to understand how it is a point of order. I am not allowing any remarks about the Chief Justice or other judges to stand.

Now, Shri Madhu Limaye.

**श्री मधु लिमये (बांका) :** अध्यक्ष महोदय, मैं केवल व्यवस्था के प्रश्न पर बोलना चाहता हूँ। हम लोग जानते हैं कि संविधान की धारा 121 की तहत किसी भी जज के आचरण के बारे में हम लोग यहां बहस नहीं कर सकते हैं। उसके लिए जो प्रक्रिया है

\*\*Expunged as ordered by the Chair.

उसके अनुसार बहस हो सकती है। इसलिए किसी भी जज के बारे में या चीफ जस्टिस के आचरण के बारे में हम कुछ नहीं कह सकते हैं। इसमें 25 मिनट हमारे खराब हो गए, सवाल बिल्कुल सीधा था कि सुब्यवस्थित ढंग से इस सदन की कार्यवाही कैसे चलेगी। हमने कार्य स्थगन प्रस्ताव का जो नोटिस दिया उसके बारे में आज नहीं, जब सदन बना है यह प्रक्रिया रही है जब आप समझते हैं कि स्थगन प्रस्ताव की स्वीकारा नहीं जा सकता है तो आप मेम्बरान को मौका देते हैं एक एक, दो दो मिनट अपनी बात रखने का।

**अध्यक्ष महोदय :** जहां मुझे शक हो वहां जरूर देता हूँ लेकिन हमेशा नहीं।

**श्री मधु लिमये :** स्थगन प्रस्ताव नियम के अनुसार कैसे है, उस पर आपको दोबारा क्यों विचार करना चाहिए इसके लिए हमेशा ऐसा हुआ है, सदस्यों को सफाई क मौका मिला है, श्रीर शकधर साहब की किताब में भी लिखा हुआ है, दर्जनों ऐसे प्रिंसीपेण्डस दिए गए हैं। (व्यवधान)

सरकार की इसमें धीर असफलता है या नहीं, इसका आप निर्णय कीजिए और कार्य स्थगन प्रस्ताव के बारे में अपना निर्णय बाद में दीजिए।

**MR. SPEAKER:** How is it a point of order? It is not a point of order

**श्री मधु लिमये :** क्योंकि सरकार के निर्णय से सुप्रीम कोर्ट में संकट उत्पन्न हुआ है। (व्यवधान)

**अध्यक्ष महोदय :** प्वाइंट ऑफ आर्डर तो है नहीं। केवल सवमिशन कर सकते हैं :

**श्री मधु लिमये :** चूंकि सरकारी निर्णय से एक संकट उत्पन्न हो गया है, और जनता के मन में न्यायालय की पवित्रता और स्वतंत्रता

[श्री यशु मिलये]

के बारे में संदेह पैदा हुआ है, इसलिए काम रोकें प्रस्ताव को आप चर्चा के लिए स्वीकार कीजिए (व्यवधान)

SHRI SHYAMNANDAN MISHRA (Begusarai): Sir, I rise on a point of order. My point of order arises out of the observations that have fallen from the Chair. Now, the question is whether there has been a failure on the part of Government or not. The Chair seems to be of the view that there has been no failure on the part of the government warranting an adjournment motion.

MR. SPEAKER: I have given my ruling on that.

SHRI SHYAMNANDAN MISHRA: You have not given the ruling on everything. Here is a failure on the part of the government to observe the Constitution and we are here, particularly the Chair is here, to see that the Constitution is observed. I will read 124(1) of the Constitution which says that Parliament has a say in the constitution of the Bench, and then according to 124(2) in every appointment of a Judge, which includes the Chief Justice, there would be consultations with such judges of the Supreme Court.

Article 124 (2) says:

"Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years," (Interruptions)

Since my hon. friend wants me to read the proviso also, let me read out that. It says:

"Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted:"

What does this mean?...

अध्यक्ष महोदय: अच्छा हुआ आपने यह प्रवीजीओ पढ़ लिया। इस से तो पोजीशन बिल्कुल साफ हो गई।

SHRI SHYAMNANDAN MISHRA: Let me argue my point. (Interruptions)

MR. SPEAKER: Let me listen to him for half a minute.

SHRI SHYAMNANDAN MISHRA: My submission is that according to article 124(2), consultation has to take place. It may be that your judgment is that the President may not have consultation with the judges at all; then that is something else. But my submission is that here the consultation is indicated only with the judges of the Supreme Court and of the High Court in the matter of appointment of every judge. Every judge means and includes the Chief Justice. My further submission is that nowhere is consultation required with the Government. Therefore, if the news which has filtered down to us is correct that it is the Political Affairs Committee of the Cabinet which has been consulted, then it is a clear violation of the Constitution. If at all consultation has to take place, it is not the Political Affairs Committee of the Cabinet... (Interruptions)

That is nowhere indicated. In fact, sometimes, the instance of the United States is mentioned. There, it is the Senate which has to approve of the appointment. Therefore, Parliament does have a place in this, because it is Parliament

[Shri Shyamnandan Mishra]

which determines the strength of the Bench.

What has been done by the political wing of the Government is in clear violation of the Constitution. We have not been told whether the President has held consultations with the Supreme Court Judges or the High Court Judges; we do not know it. Therefore, there has been a clear failure to observe the Constitution, and it is for Parliament to pull up the Government for their failure to observe the Constitution. I do not know how it is not a failure of the Government to observe the Constitution. Do you not owe a word to us about this?

MR. SPEAKER: Let him kindly sit down.

SHRI SHYAMNANDAN MISHRA: I shall. But the whole point is that my two submissions have to be met, namely whether the consultation have taken place as indicated in the Constitution and whether the Constitution has given any place to the political wing of the Government in having a say in the matter of appointment; and since we have come to know that the Political Affairs Committee of the Cabinet has recommended to the President for the appointment, I would like to know whether it is not a clear violation of the Constitution.

MR. SPEAKER: I am not here to interpret the Constitution. Shri Banerjee.

SHRI S. M. BANERJEE (Kanpur): I would like to get your ruling on a point of order whether this particular appointment of a Supreme Court Judges as Chief Justice of the Supreme Court is within our purview. According to the newspapers:

"The appointment of Justice Ray as Chief Justice is quite consistent with the relevant provisions of the Constitution and in consonance with the views of the first Law Commission which recommended as early as 1958 that the practice in India of appointing the seniormost Judge of the Supreme Court as Chief Justice deserved to be discarded".

Shri Shyamnandan Mishra has quoted various provisions of the Constitution. We have known and studied the Constitution for all these years. He has forgotten one thing; that we in this House do not decide which Judge should be made the Chief Justice of the Supreme Court.

We do not decide. Government decide. They have got a procedure or convention for that. We are following the various conventions of the House of Commons, not of the USA. I am told that in implementing this recommendation, Government have also fallen in line with the practice in countries like the UK, Australia and Canada where the judicial system is akin to our. We are not following the conventions of the USA. In this particular case, one of the Judges has been appointed as the Chief Justice. We are not concerned with Mr. Shelat, Mr. Grover or Mr. Hegde. They are all Judges; they are all good Judges. But what I am surprised is that we are discussing a matter which is entirely in the hands of the Government.

(Interruptions)

MR. SPEAKER: I will also dispose of your point under 377 along with it.

श्री सटल बिहारो बाजपेयी : अध्यक्ष महोदय, मेरा निवेदन है कि आज यह हुआ है कि सुप्रीम कोर्ट की बार एसोसिएशन की एक्जीक्यूटिव कमेटी ने एक प्रस्ताव पास किया है, जिस को मैं पढ़ कर सुनाना चाहता हूँ :

"The Executive Committee wishes to convey to the Chief Justice and his colleagues that there is a strong feeling in a large section of the Bar that they would like to abstain from appearing in the court today as a protest against the supersession of three seniormost, respected judges of this court for the appointment of the Chief Justice and request the Chief Justice and his colleagues to direct that the court should not function today."

[श्री अटल बिहारी वाजपेयी]

यह ठीक है कि चीफ जस्टिस ने इस प्रस्ताव को नहीं माना है, लेकिन बहुत से वकील कोर्ट में नहीं गये हैं। कोर्ट का काम ठप्प पड़ा हुआ है।

श्री शंकर बयाल सिंह (चतरा) : अध्यक्ष महोदय, हम उच्चतम न्यायालय के सम्बन्ध में एक गम्भीर विषय पर विचार कर रहे हैं। मैं अनुरोध करना चाहता हूँ कि बड़े ही साफ़ और ठंडे दिल से और गम्भीरता के साथ इस पर विचार होना चाहिए।

बहुत से सदस्यों ने संविधान के उद्घरण दिये हैं। श्री श्याम नन्दन मिश्र ने अनुच्छेद 124 की ओर ध्यान दिलाया है। लेकिन उन्होंने अनुच्छेद 126 नहीं देखा है। उस में कहा गया है :

“जब भारत के मुख्य न्यायाधिपति का पद रिक्त हो अथवा जब मुख्य न्यायाधिपति, अनुपस्थित या अन्य कारण से, अपने पद के कर्तव्यों का पालन करने में असमर्थ हो तब न्यायालय के अन्य न्यायाधीशों में ऐसा एक, जिसे राष्ट्रपति उम प्रयोजन के लिए नियुक्त करे, उस पद के कर्तव्यों का पालन करेगा।”

SHRI SHYAMNANDAN MISHRA: That is in regard to the acting Chief Justice. That is not with regard to the permanent incumbent

(Interruptions)

SHRI DINEN BHATTACHARYYA (Serampore): Mr. Speaker, Sir, I am astonished to find that there is so much wrangling on the issue of appointment of a judge as the Chief Justice, I know why. There are so many problems in this country. I have not seen these members being so much perturbed over those issues as the present one. After all, the judges go by their class interests. Everytime a judgment is given to safeguard the interest of the ruling party. After all, the judges go by their own class interests. And

so, the whole thing has to be judged from this angle. The judges struck down M. I. S. Act, but all the detenus have not been released. The Government do not care to implement the judgment of the court when and where it does not suit their purpose.

MR. SPEAKER: This is not a point of order.

SHRI DINEN BHATTACHARYYA: The point is this. There should not be so much wrangling on this issue. There are so many other problems in the country and let the members think over the matter and try to solve them.

MR. SPEAKER: Now, Prof. Dandavate.

PROF. MADHU DANDAVATE (Rajapur): Mr. Speaker, Sir, I wish to make it clear that I am not rising on a point of order. With your previous permission I am raising an issue under Rule 377. I am happy that you have granted me permission to raise the issue.

MR. SPEAKER: In that case I can allow only one minute. You can just invite the attention of the hon. Minister and I can ask him to reply.

PROF. MADHU DANDAVATE. I sought your permission and so I should be given the time. Please do not say that there is no time.

Sir, I am one who is a firm believer both in the supremacy of Parliament as well as the sanctity of the judiciary. I would like to raise certain issues, not in a vociferous manner but, with the utmost restraint and I shall express my views in that manner and I am sure, they will be in the interest of our democratic norms as well as the sanctity of judiciary. The point that I would like to raise is this. Fortunately, the supremacy of Parliament has been upheld. And all the road blocks in the path of socio-economic transformation have been cleared. It is all the more necessary that this path having been cleared now, we must also maintain the necessary democratic norms. In relation to the judiciary in the country, it is all the more necessary. This path, having

been cleared now, we must maintain also the necessary democratic norms. I shall conclude by quoting what Shri Seervai says for those who want to have *status quo* for the judicial authority or legal authority who upholds the supremacy of Parliament. I am referring to what Shri Seervai has said in his book on Constitutional Law of India. This is what he says:

"...The provisions for the appointment of the Chief Justice of the Supreme Court and the Chief Justices of the High Courts do not call for any discussion since by convention the seniormost Judge is appointed (Chief Justice. The convention is based on the view that on the whole the interests of judicial administration are better served by eliminating the exercise of discretionary power in the appointing authorities, than by the search for the best man".

(Interruptions)

You may not like this. I do not want my hon. friends to disturb me. Let them listen to my point of view. Let me add here one more point. I want to make it clear that I am not in favour of a seniormost Judge alone. A democratic norm should be evolved so that the country will be assured that no one in the country including the Prime Minister is likely to misuse authority. Let me conclude in one second. There is one more reason. Particularly when the Prime Minister is in the House, I would like to quote the precedents in the House of Commons and the history of the British institution, in which the Prime Minister of England has always gone out of his way to dispel the fears in the minds of the members of the House of Commons that the Prime Minister is likely to misuse his powers. If there were some suspicions, they were always dispelled. I do not want to take sides but in one of the election petitions filed, in which the Prime Minister's name was involved, one of the judges, Mr. Justice Hegde, had given a judgment in which he said that corrupt practices were there. With this background, it is necessary that the Prime Minister should dispel the fear

in the minds of hon. members and say, "We are not going to misuse the power in the appointment of Judges."

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): Sir, I do not see any justifiable cause for all this excitements. I am sure what has been done in the matter of the appointment of the new Chief Justice of the Supreme Court by the President is fully in letter and in spirit in conformity with the Constitution of India... (Interruptions).

MR. SPEAKER: Besides points of orders, certain points have been raised, including that by Professor Madhu Danavate. So, the Minister can make a statement. It is very proper also. If certain objections have been raised, or criticisms levelled, do you mean to say that they cannot even explain them?

SHRI H. R. GOKHALE: I have said that the appointment which has been made by the President is strictly in conformity with the provisions of the Constitution of India. Since you have desired that in giving this reply I should deal with some of the points which have been raised by hon. Members so far, I would in the first instance make a reference to article 124, which has been referred to by Shyam Babu in the course of his speech. I was surprised how an attack on the validity of the appointment could ever be made by anybody after a reading of article 124. There is confusion in the mind of the hon. Member as to the difference between the appointment of a Judge and the appointment of the Chief Justice of India. So far as the first part of the article is concerned, it is no doubt true that when a Judge has to be appointed to the Supreme Court, the President, when he finds it necessary, has to consult such Judges of the Supreme Court or of the High Court as he may feel necessary and, in any case, he will have to consult the Chief Justice of India, excepting in the case of the appointment of the Chief Justice himself. Therefore, it leaves no doubt in my mind that, so far as article 124 is concerned, there is no validity to the objection raised.



[Shri H. R. Gokhale]

What is forgotten is that the new Chief Justice had already been appointed a Judge of the Supreme Court after following the procedure laid down in the first part of the article many years back. Here the appointment of Chief Justice is of a person who is already a Judge. A different situation may arise if, for example, a member of the bar had to be appointed. Then you have first to appoint him as a Judge before you can make him the Chief Justice of India, and there will be some validity in the argument that in such cases the procedure for consultation would become necessary for the appointment of a Judge, though not for the appointment of that person as the Chief Justice, because the proviso expressly says that in the case of the appointment of the Chief Justice no consultation is necessary.

Then, much has been said about the rule of seniority. Article 126 expressly mentions that even in the case of appointment of an acting Chief Justice—although this article refers only to the appointment of Acting Chief Justice, for the sake of argument I am assuming it is applicable to the appointment of Chief Justice—even there the President is entitled under the provisions of the Constitution to appoint any of the puisne judges of the Supreme Court as the Acting Chief Justice. So, there is power to the President to appoint any of the puisne judges of the Supreme Court as Acting Chief Justice. Therefore, in the absence of any express provision anywhere and, on the contrary, a provision in article 122, in my respectful submission, it is unarguable that the appointment of the Chief Justice cannot be made by the President under article 126, even though the rule of seniority has been followed. The power in the President in this matter is absolute. Article 124 supported by article 126, in my submission, fully supports the power of the President to appoint anyone, even a member of the Bar, if he thinks so necessary, or anyone who is a sitting member of the Supreme Court, as the Chief Justice of India.

These questions have come up for con-

sideration, not as it were for the first time in the case of the present appointment. This has been the subject-matter of considerations which are not based only on. In other countries—I am sure, even Mr. Frank Anthony will not dispute that; at least, he will admit—like Australia, Canada, England and America, and I assume, he will regard them as democratic countries, even in those countries, the tradition has been not to make the appointment of high judicial offices on the basis of seniority but on the basis of considerations which are not based only on seniority but on other relevant considerations of suitability and fitness for the appointment to that high office.

This had arisen in India as back as when the First Law Commission submitted the 14th Report in 1958. It was a high-powered Commission composed of members who are very respected and veteran as jurists and as members of the legal profession. Before I mention those names, I would like to invite your attention to the fact that this very relevant question was directly posed and answered by the Law Commission in their Report. The question posed was whether or not it is a proper thing to continue the practice and convention existing at that time of appointing the Chief Justice of India on the basis of seniority. Now, after considering the various pros and cons of this question, they are unequivocal in their recommendation. It was the Law Commission presided over by Mr. M. C. Setalvad, the former Attorney-General of India and a veteran member of the Bar...

*(Interruptions)*

This is what in a short paragraph they have said. The Report was unanimous on this point.

The Law Commission said this with regard to the method of appointment. This is what they have said:

"This leads us to a related point upon which we have bestowed anxious consideration....."

*(Interruptions)*

Further, they have said:

"It has been the practice till now for the seniormost puisne judge to be pro-

moted to be the Chief Justice on the occurrence of a vacancy. It would appear that such a promotion has become almost a matter of course...."

(Interruptions)

"It is obvious that succession to an office of this character cannot be regulated by mere seniority....."

(Interruptions)

The Law Commission said categorically that it is obvious...(Interruptions) I am giving the information for the benefit of the whole House. You are not the only Member in this House. (Interruptions).

MR. SPEAKER: He has got the right to explain the full back-ground. You have raised all types of points and he has got the right to explain the whole position.

SHRI H. R. GOKHALE: This is very important.

"It is obvious that succession to an office of this character cannot be regulated by mere seniority. For the performance of the duties of the Chief Justice, there is needed not only a judge of ability and experience but also a competent administrator, capable of handling complex matters that arise from time to time, a shrewd judge of men and personalities and above all, a person of sturdy independence and towering personality who would, on the occasion arising, be a watch-dog of the independence of the judiciary. It is well accepted that the qualifications needed for a successful Chief Justice are very different from the qualifications which go to make an erudite and able judge. The considerations which must, therefore, prevail in making the selection to this office must be basically different from those that would govern the appointment of other judges of the Supreme Court.

In our view, therefore, the filling of a vacancy in the office of the Chief Justice of India should be approached with paramount regard to the considerations we have mentioned above. It may be

that the seniormost puisne judge fulfils these requirements. If so, there could be no objection to his being appointed to fill the office. But very often that will not be so...."

The final part of the recommendation of the Law Commission is:

"It is, therefore, necessary to set a healthy convention that appointment to the office of the Chief Justice rests on special considerations and does not as a matter of course go to the seniormost puisne judge....(Interruptions)

The final recommendation of the Law Commission is:

"If such a convention were established, it would be no reflection on the seniormost puisne judge if he be not appointed to the office of the Chief Justice. We are in another place suggesting that such a convention should be established even in the case of appointment of Chief Justice of the High Court. Once such a convention is established, it will be the duty of those responsible for the appointment, to choose a suitable person for that high office, if necessary, from among persons, outside the Court. Chief Justices of High Courts, puisne judges of High Courts of outstanding merit and distinguished senior members of the Bar should provide an ample recruiting ground..."

Sir, the Law Commission's recommendation leaves no doubt when they said that they were in favour of establishing a convention that seniority should not be the basis. Now, who are the Members? It is very interesting to see. (Interruptions) I said it was a high power commission. It is very interesting to see. The hon. Members will be very much interested to hear what a galaxy of eminent people constituted the Law Commission at that time...

(Interruptions)

I said in the beginning that this was a high-powered Commission presided over by Mr. M. C. Setalvad, former Attorney General and a veteran of the Bar; Shri M. C. Chagla, Shri K. N. Wanchoo, former Chief Justice of India, Shri P. Satyanarayana Rao, Shri G. N. Joshi, Shri N. C. Sen Gupta, Shri V. K. T. Chari,

[Shri H. R. Gokhale]

Shri N. A. Palkhiwala, Shri S. M. Sikri, former Advocate-General of Punjab, Chief Justice of India till yesterday, and Mr. G. S. Pathak, present Vice-President of India. They have all concurred in this recommendation.

14 hrs.

**SHRI SHYAMNANDAN MISHRA:** I rise on a point of order. Some time back you were pleased to say that there should be no reflection on the judges. You have allowed him to read out from the report of the Law Commission; that constitutes a reflection, because, it says that some judges do not have administrative experience, some judges do not have capacity and all that. Thereby there is an implied reflection on the three judges when you say why they have been superseded.

**MR. SPEAKER:** There is no reflection at all. He was only quoting from the report of the Law Commission. There is no question of any reflection. It is not a point of order.

**SHRI H. R. GOKHALE:** These recommendations were accepted by the Government in 1960. The recommendations were made by most eminent persons who constituted the Commission and they had no doubt in their minds that appointment of Chief Justice on the basis of seniority is not a healthy convention and they suggested that a new system should be set up on the basis of suitability and merit. In Australia, in Canada, in USA, these appointments are made on the basis not of seniority but on the basis of suitability and merit. Therefore, this is not something new, this is being followed in other democratic countries. Mr. Anthony said about attack on the independence of the judiciary. It is, according to me, a very wrong argument, unless he wants to say that Australia, Canada, England and America are not democratic where the seniority rule does not exist. Therefore, how can it be an attack on the independence of judiciary when it is done in India? We have not taken into consideration any factors which are extraneous to the point at issue. We have only done this in order to ensure that a machinery is

provided to the Supreme Court where there is a certain degree of the stability required, in order that the law of the land may be settled; in order that there should be no uncertainty, we must have a Supreme Court which will know its mind and give a clear verdict so that we know what the law of the land is.

Sir, a lot has been said—I am dealing with the points raised under this section and, as such, I am not covering the other grounds—about the independence of judiciary.

*(Interruptions)*

I have read the main points. There is nothing in the rules of seniority which makes the appointments undemocratic. There is a practice prevailing all over the world where appointments are made which are not based on the basis of seniority.

*(Interruptions)*

Sir, as you want me to conclude I will conclude but I want to refer to certain remarks which Mr. Madhu Dandavate made in the course of his speech. He made very disparaging remarks which I strongly refute. He said this has been done because Justice Hegde decided a case against the Prime Minister. I refute it with all the emphasis at my command. Have Justice Shelat and Justice Grover decided anything against government?

*(Interruptions)*

After taking into consideration all the factors and circumstances which are relevant for making the appointment of Chief Justice of India, the new Chief Justice of India was appointed. The Chief Justice of India, Mr. Justice A. N. Ray, has had a long and distinguished career at the Bar and in the Supreme Court of India. I may also mention he has shown a lot of independence in his judgements. I refute the allegation made by Mr. Anthony that.\*\*

It is an allegation which should never have been made and I am grateful to you that it has been expunged. He is the judge who has on more than one occasion decided cases against the Government of India. Hon. Members have

\*\*Expunged as ordered by the Chair.

perhaps forgotten that in the case challenging the validity of the Maintenance of Internal Security Act, Mr. Justice Ray was a member of the Bench which struck down section 17A of that Act. Do they not remember that some time back when the case relating to the newspaper price-page control policy came up before the Supreme Court, Mr. Justice Ray was one of those who came to the conclusion that the policy of the Government was not valid and in that case he delivered the judgment? So, I strongly refute the charge that has been made

I think I have met all the points that have been made.

(Interruptions).

14.11 hrs.

#### PAPER LAID ON THE TABLE

ANNUAL REPORT OF INDIAN TELEPHONE INDUSTRIES LTD., BANGALORE FOR 1971-72

THE DEPUTY MINISTER IN THE MINISTRY OF COMMUNICATIONS (SHRI JAGANNATH PAHADIA): I beg to lay on the Table a copy of the Annual Report (Hindi and English versions) of the Indian Telephone Industries Limited, Bangalore, for the year 1971-72 along with the Audited Accounts and the comments of the Comptroller and Auditor General thereon, under sub-section (1) of section 619A of the Companies Act, 1956. [Placed in Library. See No. LT-4877/73].

#### PUBLIC ACCOUNTS COMMITTEE

EIGHTY-THIRD, EIGHTY-EIGHTH AND NINETY-SECOND REPORTS

SHRI SEZHIYAN (Kumbakonam): I beg to present the following Reports of the Public Accounts Committee:—

- (i) Eighty-third Report regarding action taken by Government on the recommendations contained in their Forty-fourth Report relating to Union Excise;
- (ii) Eighty-eighth Report on Chapter V of the Report of Comptroller and Auditor General of India

466 LS—6.

for the year 1970-71—Union Government (Civil)—Revenue Receipts relating to Other Direct Taxes; and

- (iii) Ninety-second Report on paragraphs contained in the Report of the Comptroller and Auditor General of India for the year 1970-71—Union Government (Defence Services).

#### ESTIMATES COMMITTEE

##### THIRTY-EIGHTH REPORT AND MINUTES

SHRI K. N. TIWARI (Bettiah): I beg to present the following Report and Minutes of the Estimates Committee:—

- (i) Thirty-eighth Report on the Ministry of Works and Housing—National Water Supply Programme; and
- (iii) Minutes of the sitting of the Committee relating to the above Report.

#### COMMITTEE ON PUBLIC UNDERTAKINGS

##### THIRTY-FIFTH REPORT

DR. KAILAS (Bombay South): I beg to present the Thirty-fifth Report of the Committee on Public Undertakings regarding action taken by Government on the recommendations contained in their Twenty-sixth Report (Fourth Lok Sabha) on Trombay Unit of the Fertilizer Corporation of India Limited.

14.13 hrs.

#### CONSTITUTION (THIRTY-FIRST AMENDMENT) BILL\*

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): I beg to move for leave to introduce a Bill further to amend the Constitution of India

MR SPEAKER: Motion moved:

"That leave be granted to introduce a Bill further to amend the Constitution of India."

\*Published in Gazette of India Extraordinary, Part II, Section 2, dated 26th April, 1973.