SHRI DATTATRAYA KUNTE : I do not understand this.

MR. DEPUTY-SPEAKER : I am taking you very seriously.

SHRI DATTATRAYA KUNTE : I want the House to understand because in this House, unfortunately, we are coming to the conclusion before any discussion is begun that somebody has so many on his side and somebody else has so many on his side. Here, it is presumed that the hon. Member, Shri Abdul Ghani Dar, is alone in this House because he is an Independent and, therefore, the rest might not be on his side. It has got to be decided in the House properly. All I am pointing out is that his amendment ought to have been brought before the House. We should not have gone in this hurried manner.

16 HRS.

MR. DEPUTY-SPEAKER : The hon. Member has made certain observations. I do not think anybody would take exception to it. About his second amendmend, it is out of order. As soon as the first amendment was brought to my notice, I did not declare my decision and I, immediately, called him. You need not say that the Chair was not vigilant enough. It was only a question that I ought to have declared it out of order at that time. Now, it has been brought to my notice, and I declare it is out of order. About the general observation that you have made, whatever is the hurry, whether he is an Independent or he belongs to a party, big or small, nobody is neglected when we sit together for debate and collective discussion and final decision. This is the law of the House. Nobody is neglected, whether he belongs to a big party or a small party. Every Member, so far as the Chair is concerned has equal standing within limits. The other observation that you made has no relevance on this occasion and I would say that you went too far. The only question was that I ought to have declared it out of order. This is out of order and, therefore, the question does not arise now.

SHRI DATTATRAYA KUNTE : I am beholden to the Chair.

श्री अब्दुल गनी डार : डिपुटी स्पीकर साहब, मेरी एमेंडमेंट नम्बर 8 यह है कि सिलेक्ट कमेटी की रिपोर्ट को उसके कम-से-कम दो तिहाई मेम्बर सपोर्ट करें । आप बेशक कह देते कि वह एमेंडमेंट जायज़ नहीं है, लेकिन आपने ऐसा नहीं कहा और मुझे भी कुछ कहने का मौका नहीं दिया ।

[شری عبدالغنی ڈار : جناب ڈپٹی سپیکر صاحب - میری ایمینڈمنٹ نمبر ۸ یہ ہے کہ سیلکٹ کمیٹی کی رپورٹ کو اس کے کم سے کم دو تہائی ممبر سپورٹ کریں - آپ بیشک کہہ دیتے کہ وہ ایمینڈمینٹ جائز نہیں ہے - لیکن آپ نے ایسا نہیں کہا اور مجھے بھی کچھ کہنے کا موقع نہیں دیا -]

MR. DEPUTY-SPEAKER : I have declared it out of order. That is all.

16.02 HRS.

JUDGES (INQUIRY) BILL

THE MINISTER OF HOME AFFAIRS (SHRI Y. B. CHAVAN) : Mr. Deputy-Speaker, Sir, I beg to move :*

"That the Bill to regulate the procedure for the investigation and proof of the misbehaviour or incapacity of a judge of the Supreme Court or of a High Court and for the presentation of an address by Parliament to the President and for matters connected therewith, be taken into consideration.'

As we all know, our Constitution provides for the removal of a judge of the Supreme Court under article 124(4) which reads thus :

"A Judge of the Supreme Court shall not be removed from his office except by an order of the President

*Moved with the recommendation of the President.

[Shri Y. B. Chavan]

passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on ground of proved misbehaviour or incapacity."

The article lays down that only on two grounds a Judge of the Supreme Court or, as a matter of fact, under article 217, a Judge of the High Court can be removed. One is the ground of proved misbehaviour and the other is incapacity. For that matter, sub-clause (5) of the same article provides :

"Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4)."

Now, clause (4) gives a right to Parliament for presenting an address and also lays down certain reasons for which he can be removed. Then, clause (5) gives authority to Parliament to legislate the procedure about two matters. One is about the presentation of an address to Parliament and the other is about the method of proving the misbehaviour or incapacity. The present Bill does exactly what sub-clause (5) of article 124 expects of Parliament to do.

16.05 HRS.

[MR. SPEAKER *in the Chair*]

I would like to give some history about this Bill. This Bill was drafted in 1964 and was presented to the Third Parliament and the Bill was referred to a Joint Committee which went very carefully into the clauses of the Bill, the provisions of the Bill, and presented a report, but before that report was further processed in Parliament, the life of Third Lok Sabha came to a close and, therefore, the Bill lapsed. Therefore, the Bill based on the report of the Joint Committee of 1966 is the one which I am presenting before this hon. House.

I would like to explain the very fundamental features of this Bill. But it can better be explained by a comparison of the Bill which was presented to the hon. House in its original form with the Bill as it emerged as a result of the report of the Joint Committee of both the Houses.

I must say that the Bill as it was reported by the Joint Committee is qualitatively different from the Bill which was presented in the beginning. I was not there either on the Joint Committee or to pilot the Bill at that time, but I have studied very carefully the Joint Committee's report and the very valuable evidence that was given before the Joint Committee. These are very valuable documents which deserve a study. I am very glad that the Joint Committee has made a valuable contribution in the legislation of a Bill like this.

When I said, 'qualitatively different', what is the qualitative difference ? The qualitative difference is this. I would like to make a reference to clause 3, sub-clause (1) of the original Bill as it was moved in 1964 : It says :

"If the President, on receipt of a report or otherwise, is of opinion that there are good grounds for making an investigation into the misbehaviour or incapacity of a Judge, he may constitute a Special Tribunal for the purpose of making such an investigation and forward the grounds of such investigation to the Special Tribunal."

The scheme of the Act as it was originally presented before Parliament was that the President, *i.e.*, the executive, can take initiative for good reasons to appoint a Special Tribunal to inquire into the conduct or the capacity of a judge and to get a report to come to some sort of a provisional decision and then come before Parliament for consideration. That was the whole scheme of work. But the Joint Committee of the Houses completely changed the whole structure. They took out the executive from every phase of the proceedings of the inquiry because

they said that the whole scheme of Constitution is that the higher judiciary will have to be completely independent of the executive and if Parliament needs to look into this matter, the Parliament should from the very beginning to the end of it look to all the aspects of the procedure of this inquiry and this Address. In the present Bill, therefore, at all stages wherever they suspected that there was some hand, direct or indirect, of the executive, they have tried to push it off. It starts, as we see, that a motion can be made by the Members of Parliament, and in order to see that it is not rather a light-hearted motion they have made it a condition that at least one hundred members of Lok Sabha or 50 members of Rajya Sabha will have to make a motion.

SHRI V. KRISHNAMOORTHI: (Cuddalore) : His Party itself consists of more than that.

SHRI Y. B. CHAVAN: That he can try to help reduce next time; he can try to reduce us to less than 100. Then possibly for presenting a motion like that, we will have to have a coalition. This is a different matter. Let him please not introduce politics into this. I am trying to get politics out of it.

The story does not end there. Merely tabling a Motion by 100 members of the Lok Sabha or 50 members of the Rajya Sabha is not enough. There again, the Speaker or Chairman, as the case may be, has been given a very important role in this Matter. The Speaker/Chairman has a very very important role. He does not automatically admit it. Just because 100 Members have tabled a Motion, the Speaker does not admit it. He will have to satisfy himself that there is a *prima facie* case. He can consult, he can write to other persons. He can write to the Chief Justice of the Supreme Court. He can write to the Chief Justice of the High Court from which the Judge concerned comes. This is a precaution that is taken.

After that, the whole scheme of the Bill is that if the Motion is admitted, the Speaker constitutes a Committee of Inquiry. The former Bill had authorised the President to appoint a Special Tribunal; as it was a Special Tribunal, it was consisting only of Judges, either serving or retired. Under the present Bill, they do not allow any retired Judge to come into the picture. This Committee of Inquiry will consist of (1) either the Chief Justice of the Supreme Court or a Judge of the Supreme Court, sitting; (2) one of the sitting Chief Justices of the High Courts, and (3) and one who is an eminent distinguished jurist whom the Speaker or Chairman, as the case may be, select in this matter. After that, the Committee of Inquiry goes into the matter.

What is the procedure for that inquiry? Certain rules have to be prescribed under the Act for the procedure of this Committee. That is also not left to the executive. A Joint Committee is to be appointed by the Houses to go into the matter of making rules.

If the Committee of Inquiry submits a report to the effect that there is no case, automatically the Motion lapses. If the Committee says that there is a case, on that basis a discussion can take place on the Motion, and if it is accepted, then an Address can be presented to the President on which he can take further action.

This, really speaking, is the entire process. This was some sort of a necessity. I would not say it was a lacuna, but it was a deficiency which Parliament expected us by law to fill in, which he have not done so far in the last 17-18 years. I think now it has become a necessity. An ex-Chief Justice has also expressed the view that such a law is necessary.

As I have explained, the Joint Committee of Parliament have gone into all aspects. I can say that the present Bill which has been based on their report is a perfect Bill.

SHRI RANGA: (Srikakulam) : Good Bill.

SHRI Y. B. CHAVAN: Good Bill. I must say it is completely consistent with the spirit of the Constitution. I

[Shri Y. B. Chavan]

therefore request the hon. House to accept it.

MR. SPEAKER : Motion moved :

"That the Bill to regulate the procedure for the investigation and proof of the misbehaviour or incapacity of a judge of theSupreme Court or of a High Court and for the presentation of an address by Parliament to the President and for matters connected therewith, be taken into consideration."

श्री अटल बिहारी वाजपेयी : (बलरामपुर) : अध्यक्ष महोदय, यह स्पष्ट नहीं हुआ कि यह विधेयक लाने की जरूरत क्यों पड़ी ? संविधान बना 1961 में । 1964 में पहली बार बिल लाया गया । क्या किसी प्रदेश में कोई ऐसी घटना हुई है कि जिसके लिए यह बिल लाने की जरूरत हुई है ?

SHRI V. KRISHNAMOORTHI : Because we have the power.

SHRI Y. B. CHAVAN : If I start answering that, it would amount to moving a motion against somebody. It was the view of a certain Chief Justice of the Supreme Court and also of certain Judges. I can only say that is our considered view also that such a law is necessary.

SHRI RANGA : What is the time for this ?

MR. SPEAKER : Two hours.

SHRI RANGA : I am glad that my hon. friend the Home Minister has made himself responsible for sponsoring this Bill. It is, as he said, based entirely on the report of the Joint Committee of the previous Parliament. I am glad to say that I was associated with that Joint Committee and I was also very much satisfied with the scheme that was evolved by them. This is one of the best possible Bills which we could have and anyone of us would be very happy indeed to sponsor it. The hon. Minister has said that the Joint Committee was very well advised in seeing to it that as far as it was humanly possible the executive was as far removed from the consideration of the career and conduct of the judges. Not that we do not have any respect for our executive. We do respect our executive. But we have got all kinds of executives just as we have got all kinds of Members. At the same time, we have got to cope with whatever executive we have for the time being. We know more about our executive than about the judges and we can talk much more freely about our executive than we can possibly about our judges. That is one of the reasons why we took care to see that so far as the tenure, career, etc. of the judges were concerned, the executive was not allowed to have any kind of control over them. One of our friends said that the executive enjoyed the support of the majority under the parliamentary system. Therefore, he said that they would be able to get up any kind of a charge against any judge. It is just because of the possible misuse of that power we have brought in the Speaker. One may say that he would also be at the mercy of the executive. Then, we have brought in once again the House. Without the consent of the House nothing can be done. In between we have got a tribunal of three people and all the three of them are sought to be kept as far away as possible from the executive or its control. I cannot think of a better scheme for the discharge of this very high and onerous responsibility because we should not like Supreme Court judge, from a political point of view, to be charged and arranged before parliament. If and when any such serious and dangerous contingency arises, all these safeguards have got to be taken in the execution of that responsibility which it cast on the Chair and on the Parliament and also on the ruling party as well as the other parties. I sincerely trust that in times to come Members of Parliament would act as wisely as we do at least or more wisely than we can possibly hope for.

MR. SPEAKER : Prof. Ranga has spoken. Two hours have been allotted. I think it is too much time. This Bill has received encomium from the Opposition spokesman also. The Home Minister has explained it. Prof. Ranga has supported it completely. There-

fore, I think we can finish it by 5 or 5.15 today. All of them need not speak on this Bill and take the time of the House. When we allot two hours for some Bills, we take 3 or even 4 hours sometimes. This time, appeal to the House so that we finish this Bill by 5 or 5.15. Ten minutes this side or that side may be allowed, and then we may take up the next business. I do not think all the Members should speak. Shri Narayana Rao. Please be brief.

SHRI K. NARAYANA RAO (Bobbili) : Mr. Speaker, Sir, just now, the hon. Home Minister has rightly placed the Bill in its proper perspective before the House. The way in which the executive's initiative has been taken away is a matter which is sensitive; it is a sensitive area to be touched. But in the highest judiciary, I think these are the provisions which the House should certainly welcome.

I would like to confine myself to two points where I feel there are doubts which are likely to be entertained, in regard to this Bill. For one thing, the Bill has anticipated, and has placed misbehaviour as well as incapacity on the same par. The Constitution also, as has been rightly pointed out by the hon. Home Minister, has mentioned these two grounds on which the question of removal of a judge can be raised. But misbehaviour and proved incapacity of a judge have different connotations. They should not be mixed together in the sense that they denote two different connotations. So far as incapacity is concerned, I feel that no consultation with the Committee need be called for at all. After all, if only incapacity is called in question, then the opinion of a competent expert or that of a competent Medical Board can be sufficient. Therefore, I feel that the association of a committee so far as incapacity is concerned, is not called for. Perhaps we may take it away from the purview of the Committee and keep the rest.

The second point is, the Constitution is silent and so does the Bill, in so far as the point whether a judge can function as a judge while the enquiry is on, is concerned. When once a certain allegation is made against a judge, is he to sit still or has he to function as a judge while the enquiry or investigation is going on ? This is a matter on which I have no guidance either from the Constitution or from the Bill. It would not be proper, once an allegation has been made against a judge, for the judge to continue in his work. And when the hon. House presents an address to the President and when an enquiry according to law and the Constitution is going on, it is a question to be decided whether it would be proper for the judges to continue to function as judges during that period. Therefore, my submission is that we must make a provision to see that while an enquiry is pending, the judges should not function as judges. On this point, I have a grave doubt, so far as the constitutionality of making such a provision is concerned, in the sense that in the absence of such a provision, whether we have competency to do so. I have my own doubts about it. I feel that this is a matter on which the hon. Home Minister should ponder over and see if such a thing is possible.

With these few remarks, I welcome the Bill.

श्री बृज भूषण लाल (बरेली) : अध्यक्ष महोदय, इस समय सवाल यह पैदा होता है कि यह सरकार 17–18 साल के बाद इस बिल को क्यों ला रही है ? जैसा कि संविधान के आर्टिकल 124(4) में प्रोवीज़न है कि बिल के द्वारा जजेज के बारे में प्रोसीजर लेड-डाउन किया जाये—इस वजह से यह बिल लाया जा रहा है। लेकिन सवाल यह है कि 17–18 साल के बाद ही इसको क्यों लाया जा रहा है—जैसा मंत्री जी ने बताया कि सुप्रीम कोर्ट के चीफ जस्टिस की तरफ़ से यह अनुरोध किया गया है कि ऐसा बिल बनाना जरूरी है इस वजह से इसको यहां पर लाने की जरूरत पड़ी। इसलिये इसके देर होने की सारी जिम्मेदारी सरकार के ऊपर है।

मैं ला-कमीशन के दो जुमले आपके सामने पढ़ कर सुनाना चाहता हूं जिससे साफ़ जाहिर होगा कि सरकार ने इसमें कोताही की है

[श्री बृज भूषण लाल]

जिसकी वजह से इस बिल को लाने की जरूरत पड़ी। हमारी जो टेलेन्ट्स हैं उनका ठीक तरह से इस्तेमाल नहीं होता है—जिस वक्त हाई कोर्ट या सुप्रीम कोर्ट के जजेज का एप्वाइन्टमेन्ट होता है, उस वक्त सिर्फ काबलियत को नहीं देखा जाता, बल्कि सरकार के सामने दूसरी कन्सीडेशन्ज होती हैं, जुदागाना तरीकों से गौर होता है। उस रिपोर्ट में कहा गया है—

"It is widely felt that communal and regional considerations have prevailed in making the selection of judges."

चूंकि सही किस्म के जजेज की एप्वाइन्टमेन्ट नहीं हो पाती है, इस वजह से इस बिल को यहां पर लाने की जरूरत पड़ी। इसमें आगे कहा गया है—

"It is undoubtedly true that the best talent amongst judges of the high courts has not always found its way to the Supreme Court."

इसमें शक नहीं कि जहां तक हमारी जुडीशरी का ताल्लुक था—गवर्नमेन्ट डिपार्टमेन्ट्स में या बाहर उसकी सबसे ज्यादा रेपूटेशन थी, सब तरफ़ उनको अच्छी निगाह से देखा जाता था। लेकिन आज वह रेपूटेशन कम हो गई है—इसकी वजह यह है कि हमारे जजेज भी कुछ जूनियर वकीलों के साथ फेवरेटिज्म करने लग गये हैं। इसी लिये मिस-बिहेवियर का सवाल पैदा हो गया है। अब इस नये बिल के मुताबिक जज के बारे में एन्क्वायरी होगी, मैडिकल एक्जामिनेशन होगा—लेकिन जज का रुतबा इतना रेस्पोन्सिबल होता है कि होना तो यह चाहिये कि अगर वह काम न कर सके, या काम करने के काबिल नहीं रहा है तो बजाय इसके कि मैडिकल एक्जामिनेशन के बाद उसको निकाला जाये, उसको खुद ही इस्तीफ़ा दे देना चाहिये। लेकिन यह ट्रैडीशन्ज कैसे सैट-अप हों, जब हमारे मंत्री लोग ही इस्तीफ़ा नहीं देते, कुर्सी पर बने रहना चाहते हैं चाहे हाथ कांपता हो, सिर कांप रहा हो, तो फिर ये लोग ही ट्रेडीशन्ज कैसे सैट-अप कर सकते हैं।

फिर भी, अध्यक्ष महोदय, मिस-बिहेवियर या इनकैपेसिटी के बारे में जो प्रावीजन किया है वह ठीक है और इस बिल का आना बहुत अच्छी बात है।

SHRI R. D. BHANDARE (Bombay Central) : Mr. Speaker, Sir, since this Bill has secured support from all sections of the House, I feel a little diffident in speaking on it. According to my opinion, this Bill militates firstly against the concept of sovereignty of both Houses of Parliament and secondly against the individual judge, who is sought to be impeached under this Bill. The third point on which I am diffident is, in case of conflict, what is the way out? The committee of inquiry submits its report which is laid before the House and discussed. In case of conflict between the two Houses on the one hand and the committee of inquiry on the other, what is the remedy? I think no remedy is suggested.

Let me explain first how it militates against the sovereignty of Parliament. So far as the procedure is concerned, I have no quarrel except at one or two places, to which I shall refer later. Have we no knowledge as to how the impeachment proceedings are carried on in different parliamentary institutions? If we have taken into consideration the procedures followed in different parliamentary institutions, we would not have introduced an innovation that after the allegations are made either in the Lok Sabha or in the Rajya Sabha, after hearing them, the matter is referred to an inquiry committee. Why is it that the impeachment proceedings taken out of the Houses of Parliament? Has it been done in any other country? I will give an illustration as to what happens under the American Constitution. If any particular judge is to be impeached, a resolution is moved in the House of Representatives. When it is passed there, it is sent to the Senate. The Senate then sits as the committee of inquiry and some individuals are selected by the House of Representatives to prosecute the person who is impeached before the Senate. In other words, in simple language, the matter is not taken

out of and beyond the precincts of the sovereign Parliament.

What is it that is sought to be done under the Bill? After impeachment proceedings are started the matter is entrusted to the Committee of Inquiry. Therefore, I say, it militates against the sovereignty of Parliament itself. The Constitution never contemplated that such an impeachment should be a matter inquired into and decided by a body outside both the Houses. Therefore, my point is that it militates against the sovereignty of Parliament. Let us go to the different Constitutions and find out the provisions thereunder.

SHRI Y. B. CHAVAN: Let us see our Constitution. Why should we go to other Constitutions?

SHRI R. D. BHANDARE: Could we not be rich by the experience of other nations? So far as our Constitution is concerned I am quite aware of the position under Article 124(5). That procedure could be laid down. When our Constitution speaks of the procedure it speaks of a committee which can inquire into when impeachment proceedings are started. It speaks of the Committee of Parliament, a Committee of the House of either of Rajya Sabha or Lok Sabha. It also lays down the procedure. It also speaks of laying down the procedure, how it should be proceeded, how a charge-sheet should be framed, whether copies should be given, whether a right to be heard is given to the accused or the impeached person, whether he is also allowed to call witnesses in his favour etc. That is all a question of procedure. But it does not speak of taking impeachment proceedings out of both the Houses. It does not give any opportunity for us to take the matter out of both the Houses. That is why I say that it militates against the sovereignty of Parliament.

Then, it militates against the individual judge, the person who is sought to be impeached. What happens if we are to accept the procedure, and I think the whole House is going to accept it since it has been supported by all the sides? The matter is sent to the Committee of Inquiry. The judge concerned has to face the Committee of Inquiry. After they report the report is placed before the House. The report is again discussed in this House. So the person impeached has to go through that process of agony two times. I hope I have made the point clear.

MR. SPEAKER: Yes, but only be short.

SHRI R. D. BHANDARE: The Business Advisory Committee was justified in allotting two hours.

MR. SPEAKER: Whether they are agreed to or not, they are good points. But I want you only to be brief.

SHRI R. D. BHANDARE: I am just taking into consideration the agony of an individual who has to wait for a long time. The individual who is sought to be impeached has to face the tribunal or Committee of Inquiry which is bound to take some time because he has a right to be represented and right to cross-examine the witnesses. The House has also a right to call for the witnesses. So it is bound to take some time. Then the report is placed before the House. The House is also bound to discuss the matter. Therefore, I am just visualising the agony of that individual who has to go through these two processes. I do not say that the person impeached will be called before the House. No. After the submission of the report or after facing the Committee of Inquiry his work is done. He is free. But what about the House. Therefore, I say it militates against the individual. Our Constitution says that a person should not be punished twice for the same offence. So, why should he be asked to go through the process twice for the same offence? But I am not treading on that ground at all.

Then there is the practical difficulty. The Committee of Inquiry submits the report and the report is laid before the House. The House debates it and comes to a different conclusion. What is the remedy? Has the House no right to discuss and come to a conclusion on a report submitted to it? What is the answer? I think no person in his proper senses will say that the House shall have no right to discuss or debate a report and come to a conclusion.

SHRI K. NARAYANA RAO : But the Bill does not say so.

SHRI R. D. BHANDARE : Laying the report before the House necessarily means considering the report by the House. I hope the hon. Home Minister will not go to the extent of saying that the House will be deprived of discussing the debating the report. Nobody will say that; I am quite certain.

SHRI Y. B. CHAVAN : Do not make arguments on certain presumptions. If you just read sub-clause (3) of clause 6, it begins thus : "After the motion is adopted by each House of Parliament". You should not forget that even this committee of inquiry starts functioning only after the motion is accepted by the Speaker. The motion is there. After the report is submitted, the motion will be discussed in the House.

SHRI R. D. BHANDARE : I beg pardon of the Home Minister. In order to complete my speech, I will eliminate the other process. I did not deal with the other clause at all. I know that when the proposition is accepted then the matter is referred to the committee of inquiry. I am aware of that clause. But my point is different. The report of the committee of inquiry is laid before the House. To obviate the difficulty. I may refer to the clause which says that the Speaker, or the Chairman where the Committee has been constituted jointly by the Speaker and the Chairman, shall cause the report submitted under sub-clause (2) to be laid on the Table as soon as possible.

SHRI Y. B. CHAVAN : What I read follows.

SHRI R. D. BHANDARE : I quite understand the position. In case there is some conflict between the Houses and the report, what happens ? Some provision ought to be there to cover that. These are my points.

AN HON. MEMBER : What are those points ?

SHRI R. D. BHANDARE : These are my doubts and suspicions on this point. Then I come to clause 7. Suppose a judge on grounds of incompetency or physical or mental incapacity is asked to face a medical board and he refuses.

SHRI Y. B. CHAVAN : Clause 7 is the rule-making clause.

SHRI R. D. BHANDARE : I am referring to clause 3, sub-clause (7). The clause says that if the judge refuses to undergo medical examination when asked, the board shall submit a report to the committee stating that the judge had refused to undergo the examination and the committee may, on receipt of such a report, presume that the judge suffers from such physical or mental incapacity. There may not be only one ground for his refusal, the ground of mental incapacity. On a number of grounds he may refuse. Then, should the presumption be against him? It militates against the very juridical concept. On some ground other than the ground of incapacity, mental or physical, he refuses but the point should be determined that he suffers from incapacity, mental disability !

SHRI ATAL BIHARI VAJPAYEE : Why should he refuse ?

SHRI R. D. BHANDARE : For thousand and one reasons. For that we can make a provision as to what happens if he refuses.

SHRI ATAL BIHARI VAJPAYEE : Then he should face the consequences.

SHRI R. D. BHANDARE : I do not know whether my hon. friends are practising advocates and know that the benefit of doubt should be given to the accused until he is proved guilty. It is the positive duty of the prosecution to prove a person guilty; till then he is presumed to be innocent. If he does not go to the medical board, he is presumed to be incapable or suffering from incapacity ! What a fantastic provision ! It does not admit to my mind.

Anyway, these are my few observations. In any event, since the measure has been accepted, if these three difficulties could be obviated, I think, there could be no difficulty.

One last point regarding the judges though it may be considered to be an extraneous matter. Let us not run away with the idea that the presumption that judges are impartial, are honest, has been reverted because of the present conditions. If there is a specific case, there can be impeachment proceedings. But let us not run away with the idea, let us not allow our imagination to be so wild as to consider that judges are not immune. Judges are immune. The presumption is in their favour. If the presumption is to be in their favour, they should also be paid so that they could, with honesty and impartiality, execute or discharge their functions.

With these words, I have done.

SHRI V. KRISHNAMOORTHI (Cuddalore) : Mr. Speaker, Sir, I shall be failing in my duty if I do not protest that the Bill is unwarranted, untimely and unnecessary. The hon. Home Minister, while piloting the Bill, said that the Parliament has been given the power under article 124(5) of the Constitution to enact a law in this behalf. But that power when there is a necessity then only the House can use; otherwise, if we use that power merely because the Constitution has given the power to Parliament, it is a misuse of power. It is not necessary at all.

I would like to point out that the judiciary should be kept above the approach of the executive; they must be independent of approaches. Already the judiciary is suffering enough. About the salary which has been fixed at the time of making the Constitution, already the Judges are fighting. They are at the mercy of the hon. Home Minister; also, about the tenure of office. We are following so many principles of the American Constitution. There the Judges can be in office till they are alive or till they resign; but here we have fixed the age as 60 years or 65 years. If a Judge has attained maturity and has still the capacity to serve, why must there be a provision that he should retire at the age of 60 or 65 ?

The lacuna, that the judiciary is dependent upon the executive, is already there. This Bill adds one more to that executive power. This provision in the Constitution is very, very extra-ordinary and it should be used only during extra-ordinary circumstances. Let the hon. Home Minister come before the House and tell us what the extra-ordinary circumstances are which warrant his bringing forward the Bill. Have we not managed the affairs of this country in the past 18 years without a Bill ? The Constitution already provides that if a motion brought forward by the hon. Home Minister, by the Government side, is passed by the required majority as has been stated in article 124(4), the President can remove him. Then what for is this Bill ? Does he want the Judges to be at the mercy of the Members of Parliament ? If 100 Members of Parliament put their signatures then the entire burden is shifted from the Members of Parliament to the Speaker. The hon. Home Minister is bringing forward this Bill in order to take a revenge against the Speaker as well as the Members of Parliament. That is all. There is no necessity at all for this Bill.

The Constitution says that Parliament may, by law, regulate the procedure for the presentation of an address. Now, if the Home Minister from the ruling Party brings forward a motion with the Speaker's permission, if he convinces about this motion, in order to remove a Judge for the misbehaviour and if the House considers that and votes in a prescribed manner, then who questions let a Judge be removed. But by bringing forward a Draconian Bill like this, saying 50 Members of Rajya Sabha can bring an allegation against a Judge of the Supreme Court or the High Court or 100 Members of Parliament can bring an allegation against a Judge of the Supreme Court or the High Court, it will be an end of judiciary and it will be an end of the independence of judiciary. I accuse the hon. Home Minister for putting an end to the independence of the judiciary. As a humble lawyer, I will be failing in my duty if I do not protect the independence of the judiciary. By bringing forward this Bill, he is following the policy pursued in China. He is following the policy pursued in the totalitarian countries. I

[Shri V. Krishnamoorthy]

say this Bill is unwarranted and unnecessary. It is not timely at all. So, I am opposing this Bill.

श्री भोगेन्द्र झा (जयनगर) : अध्यक्ष महोदय, मेरी बड़ी ख्वाहिश थी कि इस न्यायाधीश (जांच) विधेयक का मैं पूरा समर्थन कर पाता क्योंकि यह बिल हमारे जनतंत्र व गणतंत्र को एक क़दम आगे बढ़ाने का प्रयास मालूम देता है।

हमारे जनतंत्र की एक ख़ामी यह है कि क़ानून बनाने वाले चुने जाते हैं लेकिन क़ानून को लागू करने वाले कभी मतदाताओं के पास जाते ही नहीं। यही हाल कानून को तोलने वालों का है। क़ानून के तोलने वाले भी मतदाताओं के पास नहीं जाते हैं। यह कहा जा सकता है कि क़ानून को लागू करने वाले और यह क़ानून को तोलने वाले न्यायाधीश मतदाताओं से परे हैं और एक तरह से धरती से परे हैं। मेरी समझ में यह चीज कुछ उचित नहीं है। यह तो हम नहीं कह सकते हैं कि कार्यपालिका के सभी लोग बेईमान हैं और न्यायपालिका के सभी लोग ईमानदार ही हैं फिर भी कार्यपालिका वालों के मुकाबले में न्यायपालिका वाले अधिक ईमानदार हैं। लेकिन इसका यह मतलब नहीं है कि न्यायपालिका में सारे ही लोग ईमानदार होते हैं और यह कि मतदाताओं से उनका परे रहना ठीक है।

मेरे एक मित्र ने अभी चीन की मिसाल दी तो मेरा कहना है कि चीन की तो हवा भी नहीं लगती है और बातों को तो जाने दीजिये। लेकिन हम सभी लोग इस बात को जानते हैं और मैं अपने जाति अनुभव के आधार पर कम-से-कम 17 मिसालें ऐसे जजों के बारे में दे सकूंगा जिन्होंने कि अपने कर्त्तव्य पालन के दौरान क़ानून की अवहेलना की है। कौन नहीं जानता है कि जमींदार तबक़े के जज लोग पट्टेदारी क़ानून को लागू करने में कैसे क़ानून की हत्या करते हैं? मैं अपने कथन के पक्ष में सबूत दे सकता हूं और सर्टिफ़ाइड कौपी भी दाखिल कर सकता हूं कि क़ानून की किस तरह से इन जजों के द्वारा अवहेलना की गई है।

हम लोग जो कि लेजिस्लेचर्स आदि में जनता द्वारा चुन कर आते हैं हम लोग भी इसके गिल्टी हैं लेकिन हमारे बारे में मतदाताओं को अधिकार प्राप्त है कि वह हमें उस हालत में हटा सकते हैं। यह बिल इस माने में स्वागत योग्य है कि वह सही दिशा में एक क़दम आगे बढ़ाता है और इसके द्वारा जनता के जो चुने हुए प्रतिनिधि हैं उनके हाथों में एक मौक़ा मिलता है जिससे कि वह ऐसे मिसबिहेवियर और इनकैपेसिटी वाले जजों का मामला उठा सकें। इसके द्वारा जो एक क़दम आगे बढ़ाने का प्रयास है वह स्वागत के क़ाबिल है।

इस में बहुत सी अड़चनें दी गई हैं। कुछ अड़चनें स्वाभाविक और मुनासिब भी हैं जबकि कुछ गैरमुनासिब भी मालूम देती हैं और उनके लिए मैं गृह मंत्री महोदय से आग्रह करूंगा कि अभी भी अगर सम्भव हो सके तो उन पर विचार करें। उदाहरण के लिए मैं बतलाऊं कि इसमें जो यह कहा गया है कि 100 सदस्यों द्वारा ऐसा आवेदन किया जा सकेगा तो 100 सदस्य तो उसी के होंगे जिसकी कि सरकार रहेगी। अब आज को उनकी सरकार है कल को किसी दूसरे की हो सकती है, कोलिएशन की गवर्नमेंट हो वह भी दे सकें लेकिन बाक़ी लोगों के लिए यह आसान नहीं होगा और आज की स्थिति में मुनासिब यही प्रतीत होता है कि आप इस 100 की संख्या को घटा दें और यह 100 की संख्या अनिवार्य न हो। राज्य सभा के लिए आपने संख्या पचास रखी है। यहां के लिए भी आप पचास कर दें। दोनों की संख्या बराबर-बराबर कर दें।

जो इनक्वायरी कमेटी बिठाने की बात है उसमें आपने कहा है कि जुरिस्ट लिये जायेंगे। इस सम्बन्ध में मेरा आग्रह यह है कि संसद में से ही इन जुरिस्टस को आप लें। बाहर से आप लेंगे तो दो मुसीबतें होंगी। एक मुसीबत तो यह है कि अगर आप न्यायाधीश को लेंगे, चाहे

वह उच्च न्यायालय का न्यायाधीश हो या सर्वोच्च न्यायालय का हो, उसको अपने ही एक सहयोगी के खिलाफ दिमागी तौर से खराब होने का या अयोग्य होने का निर्णय देना पड़ेगा, जो बहुत ही अप्रिय काम होगा। दूसरी बात यह है कि ममता से कोई परे नहीं हो सकता है। उस ममता के कारण न्याय करने में भी कठिनाई हो सकती है उनको। इन दोनों ही दुविधाओं से बचने के लिए यह मुनासिब है कि उनको आप इससे बरी कर दें। मेरा आग्रह होगा कि सदन के दोनों सदनों में से, दो लोक सभा में से और एक राज्य सभा में से ही आप इन जुरिस्टस को लें। अध्यक्ष को इनको मनोनीत करने का अधिकार दिया जा सकता है। इसमें मुझे कोई एतराज नहीं है। दोनों सदनों में से अगर इनको लिया जाए तो बेहतर होगा और बाहर से न्यायाधीश लाने की परेशानी से आप बच जायेंगे। ऐसा अगर आपने किया तो लोगों में कुछ ज्यादा विश्वास की भावना पैदा हो सकती है। अन्यथा यह सत्य है कि अगर कोई अपने सहयोगी के खिलाफ जाएगा तो कहा जाएगा कि इसके मन में सहयोगी के लिए कुछ मुहब्बत नहीं है।

मैं चाहता हूं कि इन दो सुधारों को आप कर दें और इन परिवर्तनों को आप कर दें तो सही दिशा में यह बिल जाएगा।

SHRI RANDHIR SINGH (Rohtak): I congratulate the hon. Minister for having brought forward this Bill. It was the need of the hour, and this was a sort of lacuna so far as inquiry against judges was concerned. In the absence of this Bill, it was an unfettered power that the executive, that the Home Ministry or any other agency of the Government, enjoyed; they could have done away with a judge outright. But this Bill lays down a procedure and this is going to take the shape of a statute. Under article 124, if a motion is moved against some judge before this august House, then there is a clear-cut procedure laid down which has to be gone through, and this procedure is independent of the executive; the Home Minister or the Home Secretary or any other executive under them has nothing whatsoever to do with the machinery created under this Bill.

I do not agree with my hon. learned friend, Mr. Krishnamoorthi. This Bill gives the fundamental right to a judge to defend himself. This is a right available to every accused, to any person who is charged with such an offence, to defend himself. According to this Bill which will be passed into an Act, this fundamental right will be available to a judge to defend himself before an independent sort of inquiry committee consisting of judges and jurists of high eminence who will arrive at a certain finding independently, of their own, without any pressure from the Home Minister or from the Government or from the executive. I do not agree with my hon. friend, Mr. Krishnamoorthi. I do not know how he says that this Bill is going to act as a dictatorship. (*Interruptions*). That is not so.

SHRI V. KRISHNAMOORTHI: Article 21 of the Constitution is already there. You must be aware of it.

SHRI RANDHIR SINGH: He said that there was no need for this Bill. In that case, there would have been enormous powers enjoyed by the Home Minister, by the executive to do anything they liked. They would have come with a proposal before this House and would have condemned any judge outright—the majority is there. This is something which is in the interest of a judge and I fail to understand how my hon. friend is not appreciating it.

I would like to make some humble requests if they could be considered. I would first refer to clause 3, sub-clause 2 (a), (b) and (c). Here what I find is that if a judge is accused, then the Tribunal which will try, which will make inquiry into the conduct of the judge, also consists of judges. The accused is a judge and the Tribunal also consists of judges. Is there any dearth of talents or independent jurists in this country? No. There is no dearth. The hon. Home Minister should consider this seriously. I agree that clause 3(2)(a) —one shall be chosen from the Chief Justice and other Judges of the Supreme

[Shri Randhir Singh]

Court—may remain as it is. But about (b)—one shall be chosen from among the Chief Justices of the High Courts—, suppose the Judge is the Chief Justice of the Supreme Court or is a Judge of that Court. The Chief Justice of a High Court is to sit in judgment in an inquiry to be held against the Chief Justice or a Judge of the Supreme Court. This is something which will cause embarrassment to the Chief Justice of the High Court. Certainly, a Supreme Court Judge is senior to a High Court Chief Justice.

SHRI Y. B. CHAVAN : No.

SHRI RANDHIR SINGH : This is my view. Instead of that, the hon. Home Minister should think of having the President of the All India Bar Council as one of the members of this Committee.

SHRI Y. B. CHAVAN : He may be considered as a jurist.

SHRI RANDHIR SINGH : Just as the Bench is very important, the Bar is no less important and if the President of the All India Bar Council is taken as a member of the Inquiry Committee, it will give more authenticity and sanctity to the Committee.

As regards (c)—one shall be a person who is, in the opinion of the Speaker or, as the case may be, the Chairman, a distinguished jurist—the hon. Home Minister will appreciate that there will be no harm if a jurist member of this august House is taken on the Committee.

SHRI V. KRISHNAMOORTHI : That is still worse.

SHRI RANDHIR SINGH : My hon. friend said something about cl. 3(7). Suppose the judge suffers from a physical or mental incapacity. This is something very serious. I do not know why he is not appreciating it. If he refuses to make a statement under sec. 342 Cr. P.C., it means he is guilty. The law of presumption is available in such cases. This is something, according to law, which should remain a part of this Bill. I feel there is great and urgent necessity for this. With these observations, I fully support the Bill.

MR. SPEAKER : It is 4.58 P.M. now. I think one more hour is necessary for this. We shall postpone it tomorrow and take up the next item now.

As for the next item we have only one hour for the discussion. It is not as if every Party must have its say. The debate need not necessarily be on party basis. Whoever is ready may get up and speak.

16.58 HRS.

DISCUSSION *RE.* HINDUSTAN STEEL LIMITED

SHRI D. N. PATODIA (Jalore) : By this discussion this afternoon, the House is provided an opportunity to go into this most important prestige public sector project which has an investment of Rs. 1,000 crores, 36 per cent of the total investments in the public sector. These three plants, controlled by Hindustan Steel Ltd., Bhilai, Durgapur and Rourkela, are blessed by three most important countries with their technical and financial assistance, namely, Russia, UK and West Germany. In the course of the last twelve years these plants have already incurred a loss of Rs. 120 crores. There is no improvement in sight yet. We are faced with an imminent situation by which 1968-69 may close with another loss of Rs. 20 crores.

The Hindustan Steel Ltd. has been discussed on the floor of the House on various occasions in the form of debates, but mostly in the form of questions. Various enquiries have been made and reports submitted containing useful recommendations and there had been repeated assurances from the Ministry to improve the things. In spite of those assurances that they would implement those recommendations and the wastage of so much time in investigations, reports and recommendations no improvement is in sight and the steel plants continue to be in the grip of serious crisis and there is labour indiscipline and the persons in the managerial cadre are unable to control the working of the mills while the situation is deteriorating. According to the hon. Minister Mr. Sethi, the situation in