

[श्री डी० एन० तिवारी]

करोड़ रुपये की बचत हुई और कुछ मवों को छोड़ दिया गया। लोगों को यह झुझा हुआ कि किसी ने उन को इन्फरमेशन दी है — अन्दाजे से एक आदमी को इस का दोषी समझ कर कि इसी ने इन्फर्मेशन लीकआउट की है, दिल्ली के ट्राम्पोट विभाग के बड़े बड़े आफिसर और बिहार के हायेस्ट आफिसर मिल कर उस आदमी को पेनलाइज कर रहे हैं। अगर यह मही इन्फरमेशन है कि उसी आदमी ने खबर दी थी तो उस ने आप का चार करोड़ रुपया बचा दिया और अगर कुछ और छानबीन की जाय तो आप का पाच-छ करोड़ रुपया और बच सकता है। आप ने अपनी मर्जी में 2 करोड़ रुपये की छूट दी है, उस तरफ तो सब का ध्यान है, लेकिन जो दम करोड़ रुपया बच सकता था, उस पर किसी का ध्यान नहीं है।

सभापति महोदय . आप अपना भाषण कल जारी रखें। अब हम 19.3 के अन्तर्गत बहस को लेते हैं।

16.02 hrs.

DISCUSSION RE. APPOINTMENT OF CHIEF JUSTICE OF INDIA

श्री मधु लिवरे (वाका) : क्या इस के लिए कोई समय निर्धारित किया गया है ?

सभापति महोदय . इस के लिए 3 घण्टे एलाउट किये गये हैं।

THE MINISTER OF PARLIAMENTARY AFFAIRS (SHRI K. RAGHU RAMAIAH): Sir, about the time, I wish to submit that Mr. Samar Guha

has agreed to have his half-hour discussion postponed, and so we can sit till 7 p.m. today, which will give us three hours today. I met the Leaders of the Opposition also, and the desire is that we should have another three hours which will be on Friday and, if necessary, the spillover can be taken up to Monday.

MR. CHAIRMAN: On Monday, it will not be possible.

16.03 hrs.

[MR. SPEAKER in the Chair]

SHRI K. RAGHU RAMAIAH: I have just now mentioned that if you agree, it will suit us to have the discussion today till 7 O'clock. I have met the Leaders of the Opposition before you came. Shri Samar Guha is willing to have the half-hour discussion postponed. So, we could have three hours today, sit up to 7 p.m., and then, if the general desire is that the total time should be about six hours, we can take the rest of it on Friday and, if necessary, the spill-over on Monday.

MR. SPEAKER I thought that two hours would suffice.

SHRI ATAL BIHARI VAJPAYEE (Gwalior): The entire judiciary has been under-mined.

MR. SPEAKER: Three hours today, and three more hours on what day?

SHRI K. RAGHU RAMAIAH: Friday and Monday.

MR. SPEAKER On Friday we have private Members' business.

श्री अटल बिहारी वाजपेयी सरकार को भी डाई घण्टा मिलेगा।

SHRI K. D. MALAVIYA (Domaria-ganj): Sir, am I to understand that six hours have been allotted to this?

What will they speak on, for six hours, I do not know.

SHRI H. N. MUKERJEE (Calcutta—North-East): The Minister just now told the House about the timing, about which he did not take our consent as far as I can make out, because in this discussion the cogency and continuity would be lost in the way in which the programme is suggested. I quite concede that the Finance Bill requires serious consideration, but something ought to be done in order that the discussion of this motion does not lose its force on account of its being cut off in so many compartments.

MR. SPEAKER: The Finance Bill has to be passed tomorrow.

SHRI SHYAMNANDAN MISHRA (Begusarai): Another submission I want to make. We have got so many things in our minds on this subject that it is not good that this subject is cut like that.

MR. SPEAKER: We cannot postpone the Finance Bill.

श्री बदल बिहारी बाजपेयी : अध्यक्ष जी फाइनेन्स बिल कल लिया जा सकता है, लेकिन मैं नहीं समझता कि यह चर्चा आज समाप्त हो सकती है। विषय महत्वपूर्ण है, सब लोग इस पर अपने विचार व्यक्त करना चाहेंगे, इस लिए इस को परमा लिया जा सकता है, परमा समाप्त कर सकने है—यदि आवश्यक हो तो।

MR. SPEAKER: What I propose to do is this. On Friday I shall not admit any call attention motion. We can take the rest of the time before the commencement of Private Members' Business. We cannot postpone the Finance Bill tomorrow; it is already fixed and it would be a bad precedent if we did so. We can postpone the other business for one or two days and take it up on Monday next. You will have new ideas during the holidays....

(Interruptions) We shall finish it on Friday and I shall not admit any other motion on that day—no 377 motion and no call attention and if you allow me, no questions also... (Interruptions) No motions under 377 also; we will make up some other time; I shall admit one or two more.

श्री मधु लिंगे (बाका) : अध्यक्ष महोदय स्वतन्त्रता के बाद तीन ज्येष्ठ जयों का मुख्य न्यायाधीश पद के लिए विचार न किया जाना तथा उन के द्वारा इम्तीफा दिया जाना—यह एक अद्वितीय घटना है (व्यवधान) अद्वितीय का मतलब है कि ऐसा पहले कभी नहीं हुआ ... (व्यवधान)

श्री शंकर दयाल सिंह (चनरा) : अध्यक्ष महोदय, माननीय सदस्य एक-एक, शब्द का अर्थ हम को नहीं समझा सकते हम लोग इन से अधिक शब्दों का अर्थ समझने है, इसलिए अर्थ नहीं समझाएँ ...

MR. SPEAKER: After all this debate has to go on for quite a few hours. All of you will have to be quite serious and should not interrupt each other. Let it go on with dignity and grace. It is a very important debate that is going on; do not spoil it.

श्री शंकर दयाल सिंह : मान्यवर, आप ने जो कहा है, हम उसे स्वीकार करते हैं, लेकिन माननीय सदस्य को भी आप कहे कि अपने भाषण के क्षणों में कोई भी ऐसा शब्द, कोई भी ऐसा वाक्य, कोई भी ऐसी बात न कहे, जिस में हम लोगो को कुछ कहने के लिए बाध्य होना पड़े ... (व्यवधान)

अध्यक्ष महोदय : आप शान्त रहें। मैं देखता रहूंगा, जहां कोई ऐसी गड़बड़ होगी, मैं खाल रहूंगा।

की अटल बिहारी वाजपेयी ऐसा लगता है कि सत्तारूढ़ दल के सदस्य कुछ घबराये हुए हैं।

श्री जयु लिवरे : अध्यक्ष महोदय, मैं यह कह रहा था कि यह जो घटना हुई, यह एक अद्वितीय घटना है—तीन जजों के द्वारा त्यागपत्र दिया जाना और ऐसे जज जो भारत की किसी भी अदालत के सामने भविष्य में वकालत नहीं कर सकते हैं—ऐसे जजों के द्वारा त्यागपत्र दिया जाना—इस की हम लोगों को कद्र करनी चाहिए।

कानून मंत्री शायद इस त्याग के महत्व को न समझे, क्योंकि उन्होंने स्वयं इस लिए जज-पद से अपना इस्तीफा दिया था कि जजों के लिए वर्तमान जो बेंच आदि है वे मन्त्रोपजनक हैं मुझे पता नहीं मंत्री के नाने उन को जो बेंचन मिलना है वह उन के लिए सन्तोषजनक है या आमदनी के कौर्ट और श्रान भी बीच में उन्होंने बनाया है। इस लिए इन तीन जजा के द्वारा जो त्याग-पत्र दिये गये हैं उन की भावना की मैं कद्र करना हूँ।

गोखले साहब ने अपने भाषण में ला कमिशन की रपट का हवाला दिया। यदि इस पूरी रपट को हम पढ़ेंगे तो मेरी समझ में नहीं आता है कि यह ला कमिशन को रपट के आधार पर अपने कामों का कैसे समर्थन कर सकते हैं? ला कमिशन ने जो भी सिफारिशों की उनका मन्दर्भ में तोड़ कर और उसकी जो एतिहासिक पृष्ठभूमि है उससे उन सिफारिशों को अलग करके उसमें से एक जुमले को या आधी सिफारिश को लेकर यदि वह श्री ए० एन० रे की नियुक्ति का समर्थन करना चाहेंगे तो मेरा खयाल

है कि कोई भी निष्पक्ष आदमी इस तरह की बात को कबूल नहीं करेगा। ला कमिशन ने इसी रपट में सबसे पहले इस बात पर आपत्ति की है कि पिछले कुछ वर्षों में जजों की नियुक्ति में कार्यकारिणी के द्वारा ऊपर से प्रभाव डालने का प्रयास किया गया है। यह आरोप उन्होंने उस रपट में किया है और आगे चलकर सुप्रीम कोर्ट के जजों के बारे में और मुख्य न्यायाधीशों के बारे में उन्होंने दो मुद्दाव दिए हैं। एक—कानून के भाष्य में स्थिरता लाने की दृष्टि से उन्होंने यह मुद्दाव दिया है कि सुप्रीम कोर्ट पर ऐसे जजों की नियुक्ति की जाये जिनको कम से कम दस साल सुप्रीम कोर्ट पर काम करने का मौका मिले और उन्होंने कहा है कि लम्बी मियाद का जहा तक सबाब है, मुख्य न्यायाधीश के बार में यह दलील और तक और मजबूत हो जाता है। उन्होंने कहा है कि मुख्य न्यायाधीश को कम से कम 5 से ले कर 7 साल मिलना चाहिए ताकि सार्वधानिक मामलों का कानून को एक आकार देने का काम वह ठीक से कर सके। तो मैं जानना चाहता हूँ इसी कसौटी पर आप के तर्जिह कि लम्बी मियाद में तीन मुख्य न्यायाधीश हों। इस कसौटी पर भी देखा जायगा तो सब लोग जानते हैं जिन दोस्तों साहब का उन्होंने उदाहरण दिया मुख्य न्यायाधीश नहीं बताया उनकी मियाद श्री ए० एन० रे में भी शायद दो महीने अधिक थी। यानी मियाद की दृष्टि में भी देखा जायगा तो श्री ए० एन० रे की नियुक्ति श्री ए० एन० ओवर में कैसे अधिक अच्छी है? यह किसी की समझ में नहीं आयेगा।

गोखले साहब ने अपने वक्तव्य के दौरान में कहा कि ला कमिशन की सिफारिशों को सरकार ने 1960 में ही मंजूर किया था। मैंने ला-मिनिस्ट्री में आज दिन भर

जानने की कोशिश की, उन सिफारिशों के बारे में, कि मन्त्रालय का या सरकार का कोई प्रस्ताव है लेकिन अभी तक वह प्रस्ताव मुझे नहीं मिला है। वह प्रकाशित भी नहीं हुआ है। क्या उन्होंने अपनी गुप्त फाइल के ऊपर कोई प्रस्ताव बना कर 1960 में रख दिया था जिसको प्रकाशित करने की उन्होंने विगत 13 वर्षों में प्रयास नहीं किया। तो इसका यह कहना कि 13 साल पहले इस सिफारिश को स्वीकारा था उसका कोई सबूत मदन के सामने नहीं आया और मदन को तथा देश को उस पर बहम करने का मौका नहीं मिला और इस बात का उत्तर नहीं मिला कि विगत 13 वर्षों में इस सिफारिश पर कार्यान्वयन करने के लिए सरकार ने क्या किया। आज ही सरकार को यह बात क्यों सूझी? अगर 13 साल पहले ला कमिशन की सिफारिश को स्वीकारा था तो उन्हें मदन के सामने आना चाहिए था और कहना चाहिए था कि एक नया आदर्श, एक नयी परिपाटी लागू करना चाहते हैं और पुरानी परिपाटी को नांझना चाहते हैं। लेकिन यह भी उन्होंने नहीं किया।

ला कमिशन ने अपनी रिपोर्ट में मुख्य न्यायाधीश के बारे में त्रिन कमीटियों का उल्लेख किया है उनमें से एक ही पढ़कर मैं आपको मनाना चाहता हूँ। उसमें वह कहते हैं :

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

इसके ऊपर कानून भली धरने निर्णय को आधारित करने हैं। मगर कमिशन आगे कहता है।

"For the performance of the duties of Chief Justice of India, there is needed not only a judge of ability and experience but also a

competent administrator capable of handling complex matters that may arise from time to time, a shrewd judge of man 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."

यानी एक वाक्य को जो यह पकड़ रहे हैं, मन्दर्भ से अलग करके, उसको भी पूरा पढ़ा जाये तो पता चलेगा ला कमिशन को चिन्ता है कि ऐसा व्यक्ति मुख्य न्यायाधीश बने जो न्यायालय की पवित्रता और स्वतन्त्रता को रक्षा कर सके, कार्यकारिणी के दबाव के खिलाफ जो आवाज उठा सके। ऐसी टार्वरिंग पर्सनैलिटी होनी चाहिए। मैं श्री ए० एन० रे के खिलाफ कुछ भी बोलना नहीं चाहता हूँ। जैसे कि दूसरे कई जजों है वैसे वह भी है। उनके सामने भी दो बार अपना तर्क पेश करने के लिए मैं खड़ा हो गया था। तो उनके खिलाफ मुझे कुछ नहीं कहना है। लेकिन जो कमीटी मुख्य न्यायाधीश की ला कमिशन ने बनाई है उन कमीटियों पर यह उत्तर है—ऐसा मगर स्थान है हिन्दुस्तान का एक भी बकील या कुछ सान्न् के बारे में जो जानकारी रखना ही नहीं मानेगा कि अन्य नान जजों से वे उनका ज्यादा टार्वरिंग पर्सनैलिटी के आदर्श है कि उनकी नियुक्ति करना सरकार के लिए गलत आवश्यकता हो गया है 26 साल की परिपाटी को गौर कर—यह कोई भी नहीं मानता। या फिर कोई ऐसा होता चाहिए जिसके बारे में बहम की गुंजाइश ही न हो, कोई ऐसा नाम होता जिसके बारे में कोई बहम ही नहीं होनी तब तो मैं मानता हूँ ला कमिशन ने जो सिफारिश की है (व्यवधान) यह मेरी बात मूल नहीं रहे है। श्री ए० एन० रे इस तरह के व्यक्ति नहीं है यह मैं कह रहा हूँ? हेगडे क्या हैं, ओवर क्या हैं और शेलेट क्या है उसकी चर्चा मैं बाद में करूँगा। पहले मैं यह कहना चाहता हूँ—मैं रे के खिलाफ नहीं कह

[श्री मधु सिमर]

रहा हूँ—मैं इतना ही कह रहा हूँ जैसे दूसरे जजेज हैं वैसे वह भी है लेकिन ला-बमिशन ने जो कमीटिया बसाई हैं स्ट्रडी इंडेपेंडेंस, स्वतंत्र मति टावरिंग पर्सनलिटी, राक्षसी कहिये, उत्तुंग वरिये, व्यक्तित्व इस तरह का कुछ नहीं है। (व्यवधान) मैं अजब कर रहा था जब श्री रे की ऐसी कोई गुणगता नहीं है तो क्या बजह है कि तीन जजेज न्यायाधीशों को बरीयता को नजर अंदाज करके २ माहब को मुख्य न्यायाधीश बनाया गया? मेरा अपना खयाल है कि इन तीनों जजेजों का इमर्ला, सरकार ने नहीं चुना क्योंकि इन तीनों जजेजों ने समय समय पर सरकार के खिलाफ निर्णय दिए हैं। गायब माहब ने पूछा कि शेलट माहब ने और गायब माहब ने सरकार के खिलाफ कौन से निर्णय दिए हैं तो मैं कुछ सूची ही आपके सामने रखना चाहता हूँ। (व्यवधान) आप बार बार ये भी बात ले आ रहे हैं। मैं कहना रहा कि गायब माहब ने 1968 में ही एक इंडियन एपेंस के मामले में मेरे मामले में बहुत जानकारी निर्णय दिया था और उसमें कहा था संविधान की 22 जा धारा है उसका उल्लंघन सरकार कर रही है और जब कभी सरकारी अधिकारी कर्तव्य के नाम पर नागरिकों की स्वतंत्रता के साथ कोई छुट्टानी करने है तो उन्हें चाहिए कि जो कानून और संविधान की मर्यादा है उस के अंतर्गत रह कर वह काम करें। श्री गेवर का यह निर्णय सरकार को पसंद नहीं आया? उस मामले में विशेषाधिकार में भी उठाया गया तो लोक सभा हाउस ऑफ़ लॉर्ड्स ने वह मामला अगले नहीं चला।

अब जहां तक शेलट माहब का संबंध है वह भी 1970 में दो मामलों में मुख्य न्यायाधीश श्री हिदायतुल्ला के साथ हैबिसस कार्पस पेटीशन की सुनवाई के लिये बैंच पर

मौजूद थे मेरे ही मामले में, मैं जीता हूँ और सरकार हमेशा घलत साबित होती, है और इस निर्णय में जस्टिस हिदायतुल्ला और जस्टिस शेलट माहब ने यह कहा है कि जो मैजिस्ट्रेट है वह कानून की जानकारी नहीं रखता है, मैजिस्ट्रेट ने गैरकानूनी ढंग से इन्हें गिरफ्तार कर के नजरबन्द रखा और इसलिए उन को इस तरह से कानून की और संविधान की मर्यादा का उल्लंघन करके जेल में नहीं रखना चाहिये था। ऐसे मैजिस्ट्रेट के साथ सरकार ने क्या व्यवहार किया? उन को कोई सजा देने के बजाय, यह जो सिटी मैजिस्ट्रेट थे श्री मोहम्मद सिंह, उनकी पब्लिशिंग मिल गयी और वह गायबरेनी के डिस्ट्रिक्ट मैजिस्ट्रेट बना दिये गये, और मैं आज कहता हूँ कि जिस मैजिस्ट्रेट के बारे में कहा गया कि कानून की जानकारी नहीं रखता है, ऐसे मैजिस्ट्रेट को प्रधान मंत्री श्रीमती इंदिरा गांधी के चुनाव क्षेत्र में रिटर्निंग अफसर के पद पर नियुक्त किया गया।

शेलट माहब के बारे में और एक बात मैं कहना चाहता हूँ "ब्लिट्ज" अखबार जो प्रधान मंत्री का बड़ा प्रशंसक है उस ने ही शेलट माहब के द्वारा अभी जा एक नजरबन्दी कानून के बारे में निर्णय दिया गया है उस पर क्या कहा है? यह अखबार प्रधान मंत्री का प्रशंसक है जिसका यह प्रतिक्रियावादी अखबार नहीं कह सकते हैं। (व्यवधान) वह कभी कभी अच्छा काम कर देता है, लेकिन वह मेरे प्रशंसकों में नहीं है, जब आप की जमानत जब्त होना का पहल में उसका अनुमान लगा तो मेरी फोटो छाप दी। अध्यक्ष महोदय, मैं कह रहा था कि शेलट माहब के बारे में ब्लिट्ज अखबार कहता है

"The Supreme Court seven-Judge Bench with Acting Chief Justice J. M. Shelat presiding, deserves the gratitude of all lovers of human liberty for the historic judgment

striking down section 17A of the Maintenance of Internal Security Act, which authorised prolonged detention of a person without trial and even without the safeguard of the opinion of the Advisory Board" . . . The Court has at once struck a blow for individual freedom and its own reputation as an upholder of this freedom" (Interruptions)

इन के पेट में अध्यक्ष महोदय कौन सी बीमारी उत्पन्न हो गयी है कि इन जजों का नाम लेते ही यह लोग उछलने लगते हैं। मैंने पहले ही कहा कि जस्टिस ए० एन० राय के दूसरे जज हैं वैसे ही वह भी हैं। वहम इसलिये है कि इन तीन लोगों की बरीयता के अधिकार का आप ने ठुकरा दिया

"The Court has at once struck a blow for individual freedom and its own reputation as an upholder of this freedom"

अध्यक्ष महोदय, मवाल यह है कि उन दो जजों के बारे में सरकार को हमनिये गम्मा है कि समय समय पर एक बार नहीं, कई बार इन लोगों ने सरकार के खिलाफ निर्णय दिये।

अध्यक्ष महोदय, मैं यह स्पष्ट करना चाहता हूँ कि सुप्रीम कोर्ट के जो जज हैं उन की जो संवैधानिक भूमिका है खाम करके जायदाद के अधिकार के बारे में उसके बारे में उनके और मेरे मतभेद हो सकते हैं, लेकिन जस्टिस ए० एन० राय साहब भी कोई माक्सवादी ये त्रान्तिकारी नहीं है इसलिये उन का और मेरा मतभेद उसके बारे में ही सकता है। लेकिन अध्यक्ष महोदय हमारे मविधान की मैं यह गरिमा मानता हूँ कि 12 अनुच्छेद के तहत उसने माधायण नागरिक को सर्वोच्च न्यायालय के पास जाने का और अपनी व्यक्तिगत स्वतंत्रता को मनवाने का भीतिक अधिकार जनता को दे रखा है। और कोई सस्था मेरी नजर में नहीं

आती है इस के अलावा। एक जनता है, जनमत है, वह अलग बात है, लेकिन कोई सस्था नजर नहीं आती जो नागरिकों के मानवीय अधिकारों की रक्षा कर सके। इसलिये न्यायालय की पवित्रता और स्वतंत्रता के बारे में अध्यक्ष महोदय, मैं चिन्तित हूँ।

अब तीसरे जज को लीजिये, जस्टिस हेगडे। उन्होंने सरकार की निगाह में सब से बड़ा पाप यह किया, जिसका उल्लेख मेरे मित्र श्री मधु दण्डवते ने किया, कि उन्होंने प्रधान मंत्री की एक चुनाव याचिका के मामले में प्रधान मंत्री के खिलाफ निर्णय देने की हम्मत दिखायी। इसीलिये अध्यक्ष महोदय, इन लोगों को जस्टिस हेगडे के बारे में विशेष विद्वेष की भावना है। लेकिन यदि मैं सभी तथ्यों का यहाँ उद्घाटन करूँ तो आपको पता चलेगा कि श्री हेगडे महाशय ने प्रधान मंत्री के बारे में नरम रख ही अपनाया था, कोई मरुत रख नहीं अपनाया। माननीय गोखल जी मेरी बात पर विचार करे मेरी जानकारी के अनुसार प्रधान मंत्री के विरुद्ध की गयी चुनाव याचिका में कुछ मवाल पूछ गये थे और उन मवालों का जवाब देना प्रधान मंत्री नहीं चाहती थी उन के लिये वह आमान नहीं था। तो इन प्रश्नों का जवाब देना प्रधान मंत्री के लिये आमान नहीं था इसलिये प्रधान मंत्री सुप्रीम कोर्ट के मामले अपनी में चली गयी और उन में इन के वकीलों ने गैम हलफनामे पर हस्ताक्षर करवाया है कि यदि वह हलफनामा मदन के मामले आयेंगा तो हम से प्रधान मंत्री का सर झुक जायगा और दूसरे लोगों का भी झुक जायेगा। इस हलफनामे में प्रधान मंत्री ने यह कहा है कि यदि मैंने इन प्रश्नों का जवाब देने के लिये बाध्य किया जायगा तो मैं मिथ्या साक्ष्य देने के अपराध में फस जाऊँगी। हमारे मविधान में जो मौलिक अधिकार हैं उस का आधार उन्होंने लिया है कि किसी को भी मिथ्या अपराध में फसने वाली गवाही का बयान देने के लिये मजबूर

[श्री मधु लिमये]

नहीं करना चाहिये। प्रधान मंत्री के हलफनामों में.....

SHRI N. K. SANGHI (Jalore): Sir, he has brought in a matter of affidavit which is not before the House. This is highly improper. (Interruptions)

श्री मधु लिमये : हलफनामे तो सार्वजनिक शपथ पत्र होते हैं।

श्री सतपाल कपूर (पटियाला) : क्या इलेक्शन पेटिशन जो चल रही हो और उस के इश्यू क्रैम हो चुके हों उन को यहाँ डिस्कस किया जा सकता है? स्पीकर साहब, इस पर आप की रुचि चाहिए।

श्री मधु लिमये : अध्यक्ष महोदय, आप जानते हैं कि एफ़ीडेविट्स सार्वजनिक दस्तावेज हुआ करते हैं।

MR. SPEAKER: Mr. Limaye, the matter is already sub judice so far as this is concerned.

AN HON. MEMBER: Affidavit is not sub judice. (Interruptions)

MR. SPEAKER: The point raised is that the petition is pending..

श्री मधु लिमये : वह पेटिशन डिस्पोज हो चुकी है जिस का मैं जिक्र कर रहा हूँ।

श्री० मधु दंडवते (राजापुर) : आप सत्र-जुडिस के बारे में कह रहे हैं, और वह प्रजुडिस के बारे में कह रहे हैं।

MR. SPEAKER: There is a very thin line. I very much hope that you will avoid your comments, whatever the factual position may be.

श्री मधु लिमये : मैं कोई कमेंट नहीं करूँगा।

प्रधान मंत्री के द्वारा जो सर्वोच्च न्यायालय में अपील की गई थी कि मुझे इन प्रश्नों का

जवाब देने से छूट्टी दी जाये, मैं उस की चर्चा कर रहा हूँ। उस का तो निर्णय हो चुका है। जब वह एफ़ीडेविट सामने आया, तो हेगडे साहब ने मित्रता की दृष्टि से इन के वकील को सलाह दी कि यदि इस पर खुली अदालत में बहस होगी और पता चलेगा कि प्रधान मंत्री ने यह आघार लिया है, तो दुनिया के अखबार लिखेंगे कि.....

SHRI N. K. SANGHI: On a point of order. The informal advice of the ex-judge of the Supreme Court has been brought into the discussion by my hon. friend, Shri Limaye. It is highly improper and casting aspersion on the judge of having given informal advice.

MR. SPEAKER: In the normal debate, in routine business, such comments, perhaps, would not have been allowed. The very subject under discussion is about judges. (Interruptions) I am watchful. Leave it to me.

श्री मधु लिमये : अध्यक्ष महोदय, आप सभी लोगों के लिए वाचकल रहिये। आप स्पीकर हैं। आप पूरे सदन के लिए वाचकांग हैं, अकेले मेरे लिए नहीं। केवल मज्र पर निरीक्षण करने के लिए आप नहीं हैं, सभी के लिए हैं।

अध्यक्ष महोदय : अब आप खत्म करें।

श्री मधु लिमये : अध्यक्ष महोदय, मुझ इतना टोका जा रहा है कि मैं अभी अपने सब मुद्द सदन के सामने नहीं रख पाया हूँ।

अध्यक्ष महोदय : मैं आप को दो बार मिनट और दे देता हूँ।

श्री मधु लिमये : मैं कह रहा था कि हेगडे साहब ने इन के वकील से कहा कि..... (ध्वजवाज) मैं कोई गुप्त जानकारी नहीं दे रहा हूँ। यह घोषण कोर्ट में हुआ है।

MR. SPEAKER: I am seriously considering the observation made by Mr. Madhu Limaye. He is going on a very thin line. The moment he comes on this side, I will be very careful. Leave it to me. Do not worry about it.

श्री मधु लिमये : अध्यक्ष महोदय, आप अनजाने मेरे कौशल की स्तुति कर रहे हैं। मैं कोई थिन लाइन पर नहीं हूँ।

PROF. MADHU DANDAVATE: He will not fall down from the thin line.

श्री मधु लिमये : मैं बिल्कुल समदीय भाषा में और नियमों का पालन करने हुए बोल रहा हूँ।

खुली अदालत में हेगड़े साहब ने इन के वकील को सलाह दी कि इस अर्जी को आप वापिस ले लीजिए और वह अर्जी वापिस ली गई।

SHRI M. D. JAMILURRAHMAN (Kishanganj): On a point of order. My point of order is whether this fact has been mentioned in the order paper of the court. If it is mentioned, then he is entitled to refer to that; if, however, it is not mentioned, he should not be allowed to mention that.

MR. SPEAKER: I am interested to know that the judges also think like that.

श्री मधु लिमये : हेगड़े साहब ने जो दूसरा फ़ैसला दिया, उसी को ले कर इन लोगों की यह नाराज़गी है। मेरे पास यह निर्णय की नक़ल है।

SHRI VAYALAR RAVI (Chirayinkil): How many judges?

श्री मधु लिमये : श्री जगमोहन रेड्डी, श्री के० एस० हेगड़े और श्री ए० के० मेथ्यु।

SHRI VAYALAR RAVI: Both of them are still in the Court.

श्री मधु लिमये : तो क्या हुआ ? हेगड़े साहब ने जजमेंट लिखा और जब हमारे दो जजों ने अपनी सम्मति दी, तो वह सर्वसम्मति निर्णय यनेनिमम डिमिशन हो गया। मैं कहना चाहता हूँ कि जज साहब ने कितने मदों पर इन का आक्षेप है—शायद इस अनुच्छेद पर है :

"The allegations made in paragraphs 2, 5 and 6 of the petition, if read together, do show that the allegation against the respondent is that she obtained the assistance of Yashpal Kapur, a gazetted officer, to support her candidature by organising her electioneering work. These allegations bring out all the ingredients of the corrupt practice alleged though they are lacking in better particulars such as the date on which Yashpal Kapur was entrusted with the responsibility of organizing the electioneering work of the respondent. The absence of these particulars does not per se invalidate the charge. They can be supplied even now with the permission of the court. In this connection it is necessary to mention that the respondent in her written statement did not say that the allegations in question did not raise a triable issue."

अध्यक्ष महोदय, यह बहुत महत्वपूर्ण है :

"...In this connection it is necessary to mention that the respondent in her written statement did not say that the allegations in question did not raise a triable issue. No such objection appears to have been taken at the time of the framing of the issues or in any of her pleadings. It seems that the objection was taken up for the first time when the petition to set aside the interrogatories was heard. We are saying all these only to show as to how the parties understood the allegations at the earlier stages, of the proceedings."

[श्री मधु लिभये]

ऐसी हालत में मुझे तो लगता है कि हेगड़े साहब को मुख्य न्यायाधीश न बनाना एक द्वेषमूलक बात है और सरकार ने इस में सद्भावना नहीं दिखाई है।

एक सवाल यह आता है कि मुख्य न्यायाधीश को प्रशासकीय अनुभव भी होना चाहिए। इन तीन जजों में से दो जज ऐसे हैं, जो हाई कोर्ट के मुख्य न्यायाधीश रह चुके हैं, इस लिए उन को प्रशासकीय अनुभव है। मोलेट साहब गुजरात उच्च न्यायालय के मुख्य न्यायाधीश रहे हैं और हेगड़े साहब दिल्ली उच्च न्यायालय के मुख्य न्यायाधीश रहे हैं। अगर इन में से किसी को प्रशासकीय अनुभव नहीं है, तो वह श्री ए० एन० रे को नहीं है, जैसा कि श्री गोवर के बारे में भी कह सकते हैं कि उन को भी प्रशासकीय अनुभव नहीं है। इस लिए यदि यह तर्क है कि इन जजों को प्रशासकीय अनुभव नहीं था, जो मुख्य न्यायाधीश के काम के लिए आवश्यक है, तो यह तर्क भी बिल्कुल मिथ्या साबित हो जाता है।

गोखले साहब ने सविधान के विभिन्न प्रावधानों के जो भाष्य यहां पर किए, उन को मून कर मैं दंग रह गया। वह मेरे पुराने मित्र हैं और एक वकील के नाते उन के बारे में पहले से मेरी अच्छी राय रही है। लेकिन मुझे पता नहीं कि सरकार से आने के बाद वह इस तरह की बातें क्यों करने लगे हैं। श्री गोखले एक जमाने में हमारे दल के उम्मीदवार थे। वह 1967 में बम्बई से चुनाव लड़ने वाले विरोधी पांच पाइलों में से एक थे। जब 1970 में यह खबर आई कि बम्बई के एक हजार बुद्धिवादी नव-कांग्रेस में चले गये हैं, तो लोग इन बारे

में मुझे पूछने लगे। मैंने कहा कि एक हजार बुद्धिवादी न बम्बई में हैं और न समूचे भारत में हैं। श्री गोखले ने मुझे टेलीफोन पर कहा—और बयान भी दिया; वरना मैं टेलीफोन की बात न कहता—कि वह गोखले में नहीं हूँ, जो नव-कांग्रेस में गये हैं, वह बम्बई उच्च न्यायालय के सेवानिवृत्त न्यायाधीश, श्री बी० एन० गोखले हैं। वह, क्यों 1971 में इन के जाल में फस गये, यह मेरी समझ में नहीं आता। और नतीजा हुआ कि इस तरह के वक्तव्य देने लगे। इन्होंने कई बयान दिए :

"The power of the President in this matter is absolute."

ऐबसोल्यूट पावर की बात कहते हैं। अब जरा हम डा० अम्बेडकर साहब का भाषण देखें जो उन्होंने सविधान निर्माण परिषद के सामने किया था इसी धारा के ऊपर। उस का एक ही अनुच्छेद मैं पढ़ता हूँ। वह अमेरिका और ग्रेट ब्रिटेन की धाराओं की तुलना करने हैं

In Great Britain the appointments are made by Crown, without any kind of limitation whatsoever, which means by the executive of the day. There is the opposite system in United States where, for instance, offices of the Supreme Court as well as other offices of the State shall be made only with the concurrence of the Senate in the United States. It seems to me in the circumstances in which we live today, where the sense of responsibility has not grown to the same extent to which we find it in the United States it would be dangerous to leave the appointments to be made by the President, without any kind of reservation or limitation merely on the advice of the executive of day."

केवल गोखले साहब और इन्दिरा जी की सलाह पर जजों को नियुक्त करने का

अधिकार राष्ट्रपति को नहीं देना चाहिए यह अम्बेडकर साहब का भाषण है। अमेरिका की स्थिति अलग है यहां की स्थिति अलग है।

एक अनिवार्य सत्य : पास क्या हुआ ?

श्री मधु लक्ष्मणे : पास यही हुआ था जो अम्बेडकर साहब ने कहा था।

"Similarly, it seems to me that to make every appointment which the executive wishes to make subject to the concurrence of the Legislature is also not a very suitable provision. Apart from its being cumbersome, it also involve on the possibility of the appointment being influenced by political pressure and political consideration. The draft article therefore steers a middle course."

अब 26 साल पहले डा० अम्बेडकर ने यह कहा था। (व्यवधान) ... मैं इसलिए यह कह रहा हूँ कि राष्ट्रपति का नियुक्ति का अधिकार ऐसा नहीं है कि जिम को ऐबसोल्यूट कहा जा सके यानी जिम के ऊपर कोई मर्यादा की बात नहीं है। अमर्यादित अधिकार नहीं है।

अब 124 धारा और 126 धारा का जो भाष्य इन्होंने किया क्या वह सही है ? क्या हमारे संविधान में ज्येष्ठता और बरीयता के प्रश्न को कोई महत्व नहीं दिया गया है ? मैं सदन का ध्यान और कानून मंत्री का ध्यान संविधान की धारा 60 की ओर खींचना चाहता हूँ।

"Every President and every person acting as President or discharging the functions of the President shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of India or, in his

absence, the seniormost Judge of the Supreme Court available."

संविधान में सीनियरमोस्ट जज की चर्चा है। तो संविधान कुछ महत्व देता है ज्येष्ठता को। (व्यवधान) ... मैंने कहा कि संविधान ज्येष्ठता के सिद्धांत को भी कोई महत्व देता है तब जा कर 60वीं धारा में उम की उन्होंने चर्चा की है। अब 124 के बारे में :

अध्यक्ष महोदय : मैं आप से कहूँ कि पहला स्पीकर ज्यादा से ज्यादा धाधा धंटा लेता है। आप उस से ज्यादा बड़ गए हैं। अब आप खत्म कीजिए।

श्री मधु लक्ष्मणे : अध्यक्ष महोदय, मैं बहुत जल्दी समाप्त करूँगा।

124 धारा को हम लोग देखें। इस 124 धारा में इन का कहना है कि ए जज या एवरी जज, यह जो शब्दावली है उम में चीफ जस्टिस नहीं आते हैं। लेकिन इस के प्राविज्ञों को देखें—

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

"अदर दैन दी चीफ जस्टिस", इस का माफ मतलब है कि चीफ जस्टिस भी न्यायाधीशों में ही आता है। तो चीफ जस्टिस के लिए यह अनिवार्य बना दिया गया है, यदि हमारे किसी जज की नियुक्ति करनी है तो अनिवार्य रूप से आप चीफ जस्टिस की राय लेंगे, अनिवार्य रूप से, अविलिखण है आप के ऊपर। लेकिन इस का यह मतलब नहीं निकलता कि चीफ जस्टिस की नियुक्ति में चीफ जस्टिस की सलाह नहीं लेंगे। अनिवार्य बना दिया है दूसरे जजेज की नियुक्ति के बारे में। लेकिन चीफ जस्टिस के लिए भी कहीं भी

[श्री मधु लिमडे]

नहीं लिखा है कि चीफ जस्टिस जिस की मियाद समाप्त होने वाली है उस की सलाह नहीं लेनी चाहिए ।

अध्यक्ष महोदय गोखले साहब ने यह नहीं बताया कि किन जजों की राय राष्ट्रपति जी ने ली ? जरा पता लगे कि किन किन जजों की राय उन्होंने ली और इसका भी पता चले कि क्या वो भूतपूर्व एटार्नी जनरल श्री सीतलबाब साहब और श्री दफ्तरी साहब जो हैं क्या उन से इन्होंने राय ली थी ? सबिधान में नहीं है । लेकिन जब एक परिपाटी के विपरीत जा कर नई परिपाटी स्थापित करना चाहते हैं तो क्या इनका यह कर्तव्य नहीं था कि जो इस देश के माने हुए कानून-पंडित हैं उन का सलाह लेने ? इसलिए मैं जानना चाहता हूँ कि क्या सीतलबाब साहब की सलाह ली या दफ्तरी साहब की सलाह ली ? क्या जो भूतपूर्व तीन चीफ जस्टिस हैं जिन के साथ इन्होंने काम किया इन तीन जजों ने चीफ जस्टिस हिदायतनुल्ला साहब, शाह साहब और सीकरी साहब उन से राय ली ? (अध्यक्षान)

सुब्बा राव तो पहले के हैं । उनक समय में इन में से कोई जज उन के साथ काम नहीं किए होगे । तो व तीन जो भूतपूर्व मुख्य न्यायाधीश हैं क्या इन की भी सलाह ली है ? मुझे पूरा विश्वास है कि इन्होंने इस तरह का कोई कार्य नहीं किया क्या कि मनमाने ढंग से ये अपना काम करना चाहते थे ।

अब इस स्थिति में करना क्या चाहिए ? हम के ऊपर मैं अपने सुझाव देता हूँ । इस से कोई भी इनकार नहीं कर सकता कि हमूँके देश में बड़ी खलबली मची है (अध्यक्षान) वकीलों के द्वारा

(अध्यक्षान) बम्बई में 7 हजार लोगों का काम से दूर रहना, बम्बई में अहमदाबाद में काम काज ठप्प हो जाना और सभी शहरों के बार एसोसिएशन से प्रस्ताव पाम होना क्या पटना क्या दूसरी जगह, सभी जगहों से हो रहा है, ऐसी हालत में मेरी राय में आज हमारे न्यायालय की पद्धति में एक सकट की स्थिति उत्पन्न हो गई है ।

इसलिए मेरा यह सुझाव है (1) कि राष्ट्रपति जी श्री ए० एन० रे को सलाह दे कि इस सकट के निवारण के लिए वह मुख्य न्यायाधीश के पद से इस्तीफा दे । (2) राष्ट्रपति जी जिन जिन न्यायाधीशों से इस्तीफा दिया है उन को बुला कर कहें कि यह अपना इस्तीफा वापस ले और इस के बाद बरीयता के सिद्धान्त को प्रस्थापित किया जाय । चूंकि श्री ए० एन० रे से कहा जा रहा है कि वह मुख्य न्यायाधीश के पद को छोड़ें इसलिए मेरा यह भी सुझाव है कि चूंकि श्री ए० एन० रे की मियाद दो महीने कम है श्री ए० एन० घोबर से तो हम नहीं चाहते कि उन का भी कोई अपमान किया जाय इसलिए मैं चाहूंगा कि श्री ए० एन० घोबर 6 महीने पहले इस्तीफा दे दें ताकि श्री ए० एन० रे भी मुख्य न्यायाधीश बन सके । अगर कोई नई परिपाटी कायम करनी हा तो वह श्री ए० एन० घोबर और श्री ए० एन० रे की मियाद समाप्त होने के बाद की जाय और जो भी नियुक्ति हो वह दो तीन महीने पहले की जाय इस सदन को मौका दिया जाय उस पर बहस करने का । करना क्या होगा कि सभी जज सरकार को खुश करने का प्रयास करेंगे । (अध्यक्षान)

एन एन द्विवेदी साहब को इलाहाबाद से विदा किया गया तो यह भाषण उन्होंने दिया था कि मैं जा रहा हूँ गोल्कनाथ केम के फर्मलै को बदलने के लिए । यह उन का भाषण है । (अध्यक्षान)

इसलिए इस सकट को समाप्त करने के

लिए और मविध्य में कोई भी जज सरकार का ध्यान आकर्षित करने के लिए गले में वह पट्टा डाल कर न घूमे कि मैं बघा हुआ हूँ। कमिटेड जज हूँ, जैसे हमारे मित्र पीलू मोदी कुछ गले में डाला करने थे। मैं केवल सिद्धान्तों के प्रति बघा हुआ हूँ, प्रधान मंत्री ने भी बघा हुआ हूँ, उन के प्रति भी बफादार हूँ—हम पट्टा गले में डालकर न घूमे। इसलिये मैं यह सुझाव दे रहा हूँ।

श्री नरसिंह नारायण पाण्डेय (गोरखपुर): अध्यक्ष महोदय, मैंने बड़ ध्यान से अपने पुराने दोस्त श्री मधु लिमये माहब का भाषण जो उन्होंने सविधान के सम्बन्ध में और मुख्य न्यायाधीशों की नियुक्ति के सम्बन्ध में दिया मुना। उन्होंने सविधान की धारा 124 (2) को पढ़ कर मुनाया। भारतीय सविधान में कहीं भी इस बात की चर्चा नहीं मिलती कि राष्ट्रपति मुख्य न्यायाधीश का एप्वाइन्टमेन्ट किस की सलाह से करेंगे। जब इस बात की चर्चा इस में नहीं की गई है तो राष्ट्रपति जी ने जो नियुक्ति की है, वह नियुक्ति उस धारा के तहत की है—मेरी समझ में नहीं आता कि इस में कौन सी अव्यवस्था पैदा हो गई है। क्या इस के पहले हार्ड-कोर्ट्स में ऐसे एप्वाइन्टमेन्ट नहीं हुए हैं क्या जूनियर जजज चीफ जस्टिस के स्थान पर एप्वाइन्ट नहीं हुए थे। यदि नियुक्त किये गये थे तो क्या मान्यवर आज हमारे श्री मधु लिमये उन बातों को भन गये उस समय तो श्री मधु लिमये या उन की पार्टी ने इन बातों की चर्चा नहीं की।

मान्यवर आज इस बात को लेकर इस को एक राजनीतिक स्वरूप दिया जा रहा है, जो बड़ा दुर्भाग्यपूर्ण है। मैं चाहता हूँ कि इस देश में न्यायपालिका की इज्जत हो, हमारे सविधान के मुताबिक हमारी न्यायपालिकाये इस देश में चले

और हमारे सविधान में जो ऋचाये लिखी हुई है, उन डाइरेक्टिव प्रिन्सिपल्स के अन्तर्गत हम सारे देश की जनता को भोजन दे सके, मकान दे सके सुख—मुविधाये दे सकें। जब उन उद्देश्यों को पूरा करने के लिए एक कार्यक्रम शुरू हुआ जब सविधान में मशोधन शुरू हुए, तो इस देश की प्रतिक्रियावादी ताकतों, राजधन पसन्द ताकतों ने आज ऐसी स्थिति पैदा कर दी कि जिस स्थिति में आज हमारे समाजवादी नेता श्री मधु लिमये माहब भी बहने लगे और उन्होंने बहने के साथ साथ सारे समाजवाद को धो दिया बेमुरी बामुरी इस मदन में वजाने लगे। भारतीय सविधान की धाराओं को गलत तरीके से पेश करने लगे और मुझे दुख होता है आज इस तरह से भारतीय सविधान को पेश किया जा रहा है।

श्रीमान्, यदि इस ला कमीशन की रिपोर्ट को देखा जाये, जिस का जिक्र मधु लिमये माहब ने किया है। ला कमीशन की रिपोर्ट बहुत पहले तैयार हुई थी। इस के बारे में कान्ट्रीक्लैन्ट असेम्बली में लेकर 1954 तक लोक सभा में मधु लिमये जी और उन की पार्टी और सारी विरोधी पार्टियाँ कहा करती थी कि हम को इस पुराने स्ट्रक्चर को जो अग्रेजों का दिया हुआ है बदलना चाहिए ला कमीशन बनना चाहिए। ला कमीशन के मुताबिक इस देश में जूडीशियरी की स्थापना होनी चाहिए। अब मैं ला कमीशन की रिपोर्ट की उन धाराओं की तरफ आपका ध्यान दिवाना चाहता हूँ जिन के सम्बन्ध में मेरे मित्र श्री मधु लिमये ने अपने विचार आप के सामने रखे हैं। ला कमीशन की रिपोर्ट में साफ लिखा हुआ है कि यह कोई जरूरी नहीं है कि सीनियर जज को ही चीफ जस्टिस नियुक्त किया जाये।

[श्री नरसिंह मारायण पाडेय]

चीफ जस्टिस नियुक्त करने के लिए कोई जरूरी नहीं है कि सीनियर जज हो। बार-कान्सिल के काफी पुराने और तजुर्बेकार वकीलों को भी एप्वाइन्ट किया जा सकता है—उस धारा को मैं आप की इजाजत से कोट करना चाहता हूँ—

"It is, therefore, necessary to set a healthy convention that all appointments to the office of Chief Justice rest on special consideration, and do not as a matter of course go to the seniormost puisne judge. 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. If in the case of an appointment of Chief Justice of a high court, once such convention is established, it will be the duty of these responsible for the appointment to choose a suitable person for that high office, if necessary, from among persons outside the court."

श्रीमान् प्रश्न यह पैदा होता है कि आज जो स्थिति पैदा हो गई है यह क्या हमारे ही देश में है क्या और देशों ने हम का पालन नहीं किया? आस्ट्रेलिया ने पालन किया, कनाडा ने पालन किया, यूनाइटेड किंगडम ने पालन किया, यू० एन० ए० ने पालन किया सारी जगहों पर कहीं भी इनिशियेटिव को मान कर जजों का एप्वाइन्टमेंट नहीं किया गया है। मेरे पास यह बासु की कमेटी है आप की इजाजत हो तो मैं इस को पढ़ कर सुनाऊँ—लेकिन समय थोड़ा है, इसलिए मैं इस में नहीं जाऊंगा।

अध्यक्ष महोदय, हम ने भारतीय संविधान की धाराओं और देश की जनता की आकांक्षाओं के अनुरूप काम किया है। "ला कमीशन की रिपोर्ट के बारे में, हमारे

माननीय साथी कहते हैं कि 1960 में इस को एक्सेप्ट किया गया था, मैंने लॉ कमीशन से पूछा था, लेकिन मुझे कहीं उस का जवाब नहीं मिला" उस का जवाब हमारे कानून मंत्री जी देंगे। लेकिन मैं कहना चाहता हूँ—साफ़ बात है कि आज उम्र का इम्प्लीमेंटेशन किया गया है और इस लिए इम्प्लीमेंटेशन किया गया कि सही तरीके से उन का एप्वाइन्टमेंट हो और हमारे देश के जो डाइरेक्टिव प्रिन्सिपल्स हैं, जिन को हम गांव गांव तक पहुंचाना चाहते हैं, उस को हम पूरा कर सकें। अब यह नहीं कहा जा सकता कि स्टेटसको (Statusquo) कायम कर के इस देश की जनता को ज्यादा दिनों तक बरगलाया जा सकता है। इस देश की जनता स्टेटसको पसन्द नहीं करती। अगर हम ने राजाओं को खत्म किया, अगर हम ने भारतीय संविधान की उन धाराओं को बदन कर राइट आफ़ प्रापर्टी में ग़रब जनता के अधिकार को सुरक्षित किया, तो इस में ऐसी कौन सी बात हो गई है जिस के लिए इतना हुगामा मचाया जा रहा है। हमारे चीफ जस्टिस को प्रेमिडेंट एप्वाइन्ट करने हैं वह मंत्री परिषद् की राय से करते हैं जिन को योग्य समझने है, जिन का प्रशासकीय काम का अनुभव हो जो उस व्यवस्था को ठीक तरह से चला सके, ऐसे व्यक्ति को चीफ जस्टिस नियुक्त कर दिया तो कौन सी नई बात हो गई है।

मैं जानता हूँ कि इस के पीछे एक माजिज़ है। मैं उत्तर प्रदेश की विधान सभा का सदस्य रहा हूँ। श्रीमान्, आप को भी याद होगा—ये लोग बड़े होशियार हैं, बड़े माहिर हैं। उस समय इन्हीं के दल के लोग, सोशलिस्ट पार्टी के लोग—श्री केशो मिश्र, श्री श्यामनारायण सिंह और श्री खूब लाल—इन तीन

आदमियों ने मेरे खिलाफ ये पर्चे बाटे थे। मैं उस समय सोशलिस्ट पार्टी में था और विधान सभा का सदस्य था। मैंने इन की पार्टी में इस्तीफा दे दिया था और सोशलिस्ट कन्सोलिडेशन के लिए काग्रेस पार्टी में चला आया था और जब मैं आया तो मेरे माथ मेरे सब साथी भी चले आये। उस समय मधु लिमये जी वहाँ पहुँच गये, डा० लोहिया पहुँच गये, राजनारायण जी पहुँच गये और पहुँचने के बाद इन्होंने क्या किया? वहाँ मैंने एम्बेम्बली में भाग लिया था, प्रोमीडिग्स में भाग लिया था—इन्होंने पर्चे छपवा कर बटवा दिये कि मैं विधान सभा में मौजूद नहीं था और बाद में यह मामला बिरोधाधिकार समिति में लेकर प्रेजिडेंशनल ग्रेफ़्स तक पहुँच गया। यह वही केस है, मैं वही सदस्य हूँ और ये वही नेता है जो आज उधर बैठ कर देश की सरकार प्रधान मंत्री के रास्ते में रोड़ा भरकाना चाहते हैं, जो आज इस देश में समाजवादी विचारों को लाना चाहती है, करोड़ों आदमी जो भूख और तन्त्र है सही तरीके से इस गरीबी से निजात दिलाना चाहती है और भारतीय मविधान के आचरणों को सही तरीके से रचित करना चाहती है, इस देश की जनता की आकांक्षाओं को पूरा करना चाहती है। ये वही लोग हैं जो हर समाजवादी कदम का विरोध कर रहे हैं, होल-मेल ट्रेड का विरोध कर रहे हैं, समाजवादी कार्यक्रमों का विरोध कर रहे हैं, मविधान की धाराओं का विरोध कर रहे हैं और चाहते हैं कि जनता की इच्छाओं को पूरा न होने दे। इसी उद्देश्य को पूरा करने के लिए विरोधी पार्टी एवं सोशलिस्ट पार्टी के साथी आज ऐसा कर रहे हैं, श्री मधु लिमये जी और उन के नेता ऐसा कर रहे हैं, तो यह कोई भ्रष्टाचारी-गरीब बात नहीं है।

-15 hrs.

उन्होंने बहुत से उद्धरण दिए, न्यायाधीश सीकरी माहब के बयान को सुनाया, लेकिन हमारे देश की ऐसी परम्परा बन गई है कि जब तक न्यायाधीश रहते हैं, मुख्य न्यायाधीश रहते हैं तब तक उनके बड़े सन्तुलित विचार रहते हैं लेकिन बाद में बदल जाते हैं। बहुत से विचार उन्होंने प्रकट किए, इस सरकार के खिलाफ बहुत से केसेज में जजमेंट दिए गए लेकिन मैं कहना चाहता हूँ उस समय गवर्नमेंट ने कोई ऐक्शन नहीं लिया, गवर्नमेंट वहाँ कैसे आती है? गवर्नमेंट को क्यों घसीटा जा रहा है? इमनिंग घसीटा जा रहा है कि इसके पीछे पोलिटिकल मोटिवेशन है। यदि आज इस देश में श्रीमती इन्दिरा गांधी की इमेज खराब होती है तो विरोधी पार्टी के लोग समझते हैं वह मशक्कत हो जायेगी, इस देश की जनता वोट में उनको जिता देगी। मैं कहना चाहता हूँ इन को जनतन्त्र में ही विश्वास नहीं है। मीरबाई की इस किताब को पढ़ें, एक जमाना था जब फ़डामेन्टल राइट्स जिमका इन्होंने हवाला दिया है उसका विरोध किया जिम पर लोक सभा के चुनाव हुए और आज उनके बारे में इतने ज्यादा आधाग्रभून मिथान्तवादी हों गए। तो यह सब चीजें हैं जिनमें न्यायाधीशों को ला कर मारे देश में बाबेला पैदा करने की कोशिश की जा रही है। मधु लिमये जी बहुत मास्टर हैं, उन्होंने इस काम में मास्टरी हासिल कर ली है। वे इम्पीचमेंट की बात करते हैं भारतीय मविधान के अन्तर्गत, लेकिन प्रधान मंत्री जी का इम्पीचमेंट किस सेक्शन में होगा उसको जरा बतायें। क्या जनता की मीटिंग में वे प्रधान मंत्री जी को इम्पीच कर सकते हैं? हमारे पोलू मादी और मधु लिमये जी उत्तर प्रदेश में दौड़े जा रहे हैं (ध्वजवाहन)। आपका एक राजनीतिक उद्देश्य है जिसको

[श्री नरसिंह नारायण वोड्डय]

जनता अच्छी तरह से समझ चुकी है। विधान के अन्तर्गत जो आप आज स्थिति पैदा कर रहे हैं उसको जनता स्वीकार करने के लिए तैयार नहीं है। इसलिए मैं आपसे कहता हूँ (व्यवधान) राज नारायण जी की भी तो उमानत हमने जब्त करा दी, आप क्या बात करते हैं। मैं भी सोशलिस्ट पार्टी में रहा हूँ और आप का लीडर रहा हूँ। तो मैं निवेदन करना चाहता हूँ कि राष्ट्रपति जी ने जो कुछ किया है वह नियमानुकूल है। उन्होंने विधान के अनुसार ही किया है। उन्होंने भारतीय परम्परा की रक्षा की है और उसको करके इस देश में डेमोक्रेसी और जुडीशियरी को पवित्र किया है। जो इस प्रकार का चार्ज आज लगा रहे हैं उनका पोलिटिकल मोटिवेशन उसके पीछे है। इन लोगों से जनता को सावधान रहना चाहिए। इस देश के जज और वकीलों को सावधान रहना चाहिए और इस देश की करोड़ों जनता को भी सावधान रहना चाहिए। हमारी प्रधान मंत्री श्रीमती इन्दिरा गांधी संविधान को धमके देकर इस देश की सही रास्ता दिखाना चाहती हैं।

इन शब्दों के साथ मैं आपका बहुत शुक्रगुजार हूँ कि आपने मुझे अवसर दिया।

SHRI JAGANNATH RAO (Chattrapur): For the first time in the last 23 years, the appointment of the Chief Justice of India figures in Parliament by way of a discussion. So many appointments have been made earlier, but at no time did Parliament or the public take notice of such appointments. This appointment is criticised by a section of the Bar, by a section of the Judges retired and resigned judges and by a section of

Parliament as giving them surprise and shock. If this appointment had violated any of the articles of the Constitution and if the President had transgressed his limits in appointing Mr. Justice Ray as the Chief Justice, I could well appreciate any surprise or shock, that might have been caused to some of the people.

The question naturally arises. Under Article 124 the appointment of a judge of the Supreme Court as the Chief Justice of India by the President is done by warrant. Seniority is not the principle, though that practice was followed hithertofore.

A person may be senior today merely because he joined the court earlier than others. That does not give him the right to any claim over others who are equally meritorious or equally suitable.

When a judge of the High Court is promoted as a judge of the Supreme Court, does he not supersede his brother judges of the high courts who are senior to him? Has not Shri Hedge superseded his other colleagues when he was appointed Chief Justice of the Delhi High Court? Did not Shri Grover supersede his colleagues in the Punjab High Court when he was appointed as Justice of the Supreme Court and brought here from Punjab? So the seniority is not the principle on which the President should proceed.

Coming to the report of the Law Commission what does it say? It says that seniority is not the only principle to be adhered to. The suitability of the judge has also to be considered. A person who may be senior may not be suitable. Suitability is more important than mere seniority. The mere fact that a person joined the court a month or a year earlier than his colleagues does not confer on him the right to be made automatically the Chief Justice. Suitability has

to be decided by the President. The President appoints, by warrant, on the advice of the Prime Minister, who is head of the Government, a person as Chief Justice of India. In this case, the President appointed Mr. Justice Ray as the Chief Justice, on the advice of the Prime Minister who is head of the Government. I quite appreciate the feelings of those that are superseded. But, human nature being what it is, naturally they feel that they are hurt. That does not mean that any principle is violated and the Constitution is thrown to the winds.

What is the principle of seniority? Does seniority mean vested interest in a person. Even the Executive, when appointment of the Chief of Army Staff is made, appoints a junior officer and not necessarily a senior officer. The Chairman of the U.P.S.C. was not always a senior man. A senior is not automatically appointed as the Chairman of the U.P.S.C. There are several instances where seniority is not considered. What is considered is the merit or suitability of the person. Therefore, on the question of appointment of Chief Justice of Supreme Court there is nothing for any surprise. The merit of a judge or suitability of the judge alone is being considered for the appointment as Chief Justice. A judge's ability or merit or the aptitude or inclination can be seen from the judgments. Therefore, the person considered suitable, only is appointed as Chief Justice. The person appointed has to move with the times. He cannot sit in an ivory tower, unmindful of the changes that are taking place in the country. The judges are confronted with matters about fundamental rights versus the interests of the vast majority of the people which are enshrined in the Constitution. Therefore, it is the duty of the Government to see that the people who form the bulk of the community and who are underfed,

undernourished and who have no roof over their head and who have no light in their houses and who have no clothes to wear and who have no water to drink are looked after.

For the welfare of these people, it is the duty of Government to bring forward necessary legislation. When a case comes before the Supreme Court for Judicial review, is it not the duty of the Supreme Court Judges to apply the principle of harmonious construction and place no hurdles in the enforcement of the directive principles which benefit the larger sections of the people, instead of always clinging to the fundamental rights which benefit a few? The Judge has to discharge his duty to the society at large. So, the aptitude and attitude of the judge is more important. The Chief Justice of the Supreme Court sets the tone and he should see through the deliberations of the court that justice is meted out to the society at large.

It is said by a section of the Bar that the independence of the judiciary is undermined because a junior judge is appointed as Chief Justice. Under article 124, no judge of a High Court or Supreme Court can be removed except under clause (4) by a petition made to the President by both House of Parliament for proved misbehaviour or incapacity. A judge can continue till 65 years of age and he does not have to look to the executive for favours or patronage. So, the independence of the judiciary is not affected.

It is said that the confidence of the people is shattered by appointment of a junior judge as Chief Justice. The confidence of the people was shattered all these days by the recent judgments of the Supreme Court starting from the Golaknath's case in 1967 where the judges by a majority of 6 to 5 held that fundamental rights are inviolable, sacrosanct and trans-

[Shri Jagannath Rao]

cidental and cannot be touched even by Parliament. If one of such judges is made the Chief Justice of India, the confidence of the people will be really shaken. So, these arguments have no force. There is no point in the arguments put forward by the opposition parties who held the same view as a section of the Bar and the judges who have resigned. The President is well within his right to appoint Mr. Justice Ray as the Chief Justice.

I was really surprised and shocked to read what Mr. Hegde said in his press conference yesterday. I had due respect for him all these days, but it is gone since I read it this morning. His opinions reveal the mind of a politician, not of a judge. He was in politics earlier and of course, he is free to enter politics again and come to Lok Sabha. I was shocked to read his statements. He has said that after his judgment in the election petition case, the Prime Minister wanted to oust him. He says, Shri Mohan Kumaramangalam is a communist and there are fundamental differences between Mr. Kumaramangalam and himself. He says that Mr. Gokhale is a pathetic case and he has no ideas, etc. I say that Mr. Hegde is not only a pathetic case but a pathological case: He has lost the chance of becoming Chief Justice and I can understand his feelings. But it does not befit a person of the standing of a Supreme Court judge till yesterday to say these things.

Shri Piloo Mody is voicing the feelings of Mr. Hegde, who has described Shri Gokhale as a pathetic case. I can understand his feelings. He has been deprived of the chance of becoming the Chief Justice in June, 1974. So, it is a pathological case in the case of Mr. Hegde. These utterances do not help. He has come out with venom against the Prime Minister, against the Government, against the President and so on.

The independence of the judiciary is not shaken and the confidence of the people is not shaken by this appointment. The people have confidence in the Supreme Court and the Judges who have taken oath under the Constitution before entering on their offices.

We have to respect the fundamental rights of the many and not the fundamental rights of a cherished few. In the interests of a few you cannot override the interests of the many. The Government have to enforce the directive principles over fundamental rights, otherwise, they have no right to be in power. We have brought forward amendments to the Constitution. Fortunately for us, because of the latest judgment, we need not bring in another amendment to the Constitution. The latter part of article 31(c) has been struck down. If this is the attitude of the Supreme Court to what Parliament enacts, then the learned Supreme Court judges lose the respect of the people.

Shri Madhu Limaye said that no resolution was brought before the House when the 14th Report of the Law Commission was accepted. The 14th Report relates to reform of judicial administration. They are in two parts. One is amendment of laws to enforce certain recommendations. Some recommendations do not require any change in the law. The recommendations about the appointment of Chief Justice of Supreme Court and of High Courts are those which do not require any change in the law and so the Government can implement them by executive action. So, they need not come before Parliament for amendment of the law.

The other point raised by Shri Madhu Limaye is about article 60, which says that the President shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of India or, in his absence, the seniormost Judge of the

Supreme Court available, an oath. But that article relates to the administering of oath to the President. In the article relating to the appointment of Chief Justice, namely, article 124, there is no reference to the senior-most Judge. Under that article the President has wider powers. Article 126 speaks of the appointment of an acting Chief Justice. In that case the President is bound to select one of the Judges. But under article 124 he has a wide discretion. There is no bar or inhibition. Therefore, the President was well-advised by the Prime Minister to appoint Justice A. N. Ray as the Chief Justice and the objections raised, either here or by the bar association or by the resigned Judges have no force or validity.

Doubts and suspicion were created in the minds of the people because of the suddenness of the appointment of the Chief Justice. In fact, it caught them by surprise. But what could the government do? The judgment was delivered on the 24th. The Chief Justice was retiring on the 25th. On that day somebody had to be appointed as Chief Justice. So, there was no time to publish the norms etc. which they are going to apply in future. It is rather an accidental coincidence. Therefore, while I support the appointment of the Chief Justice, which might have caused some disappointment to some of the superseded Judges and some members of the Opposition, in order to avoid any confusion I would suggest to the Government that they may come forward with norms which they want to apply in those cases in future in the appointment of the Chief Justice to the High Court and the Supreme Court. That will set at rest any doubt or suspicion in any quarter either in Parliament or in Supreme Court or outside. That will create confidence in the minds of the people, judges and the Bar. For future, this at least should be done.

Mr. Hegde also said in the press conference that there should be an

independent authority to appoint judges. Under the Constitution, there is no member of any independent body. The executive advises the President and the President appoints judges. What is the independent authority which Mr. Hedge thinks of? He was a judge himself. He knows the Constitution. When the time comes when the Constitution has to be amended, not only this article but so many other articles which are found to be obsolete, which need any amendment, can be considered at a future date. Let him not question the validity or propriety of this appointment. I uphold the appointment.

The motion says that the situation created by the appointment of the Chief Justice may be taken into consideration. What is the situation? The situation is that four vacancies discuss this? The discussion is political have been caused. Are we going to discuss this? The discussion is politically motivated. I oppose the motion.

SHRI A. K. GOPALAN (Palgnat): Mr Speaker, Sir, the appointment of the Chief Justice of India superseding three senior Judges has justifiably roused wide-spread criticism in the country. The Government had not chosen to come before Parliament and taken it into confidence with cogent reasons before they chose to throw away the convention established since Independence.

I want to make it very clear that as far as we are concerned, we do not support this Judge or that Judge.

AN HON. MEMBER: No Judge.

SHRI A K GOPALAN: As far as we are concerned, all Judges are the same. Our party has never concealed its firm opinion that as between the propertied and privileged classes and the oppressed and exploited classes, all talk of justice is a myth. Neither the Government nor the Supreme Court had any uneasiness to deny to the most consistent fighters against the established order whatever perso-

[Shri A. K. Gopalan]
 nal freedom was enshrined in the Constitution on the achievement of freedom. Acts empowering detention without trial have been on the statute book almost without interruption since Independence although, before Independence, Congress leaders called such laws as lawless laws and even the late Pandit Jawaharlal Nehru once thundered that a Government which relies on detention without trial does not deserve to exist for a single day. From the time of Independence till today the detention without trial is there.

Today, after the Supreme Court struck down Section 17A of the MISA, the Government of West Bengal, with the connivance of the Central Government, far from rendering account for having detained thousands unconstitutionally and illegally, continues to keep them in jail under some pretext or other. The hon. Member, Mr. N. N. Pandey who spoke from the other side, said that they have respect for the Constitution and respect for the court. Where is the respect for the Constitution and the court? When the court has struck down Section 17-A of the MISA and said, "release all the people", they are not released. They are being kept in jail. The Advocate-General says, "Give us some time. We will make some alternative arrangement to see that they are put inside the jail." You do not have any respect for the Constitution or the court. When the court strikes down Section 17-A of the MISA as unconstitutional and illegal, the Advocate-General says, "Give us some time because we want to keep them inside the jail."

You have no respect for the Constitution and the court. Whatever you say, we respect you. But we want to say, don't do this. You may find fault with us. We don't understand this.

Sir, some years ago I had been a frequent visitor to the Supreme Court and the High Court....

AN HON. MEMBER: As a witness?

SHRI A. K. GOPALAN: Not as a witness, but as an accused.

I know something about Supreme Court and High Court. My own experience is there.

As for the Supreme Court, it laid down one case law when I challenged in 1951 the Preventive Detention Act. After following that case law for nearly 20 years my friend, Mr. Mohan Kumaramangalam, will please hear this it changed it without stating any reasons in the Bank Nationalisation Act case in 1970. Why? Why was a case law laid down for 20 years and why was it changed after 20 years? In my case, it was laid down because it was a question of personal freedom of a man. In the Bank Nationalisation case they changed it because the question of property right of the business people was involved in it. (Interruptions). I am explaining here about the court. You may agree when I come to the conclusion here, but you may not agree when I come to the last conclusion. As far as this is concerned, I entirely agree that the case law was there for 20 years; that was there because they wanted to keep me for five years inside the jail. And they changed it when I came out of the jail after five years. In the Bank Nationalisation case they changed it for some other reason; they changed it because it was not a question of personal freedom, it was a question of property rights.

When Shri E.M.S. Namboodiripad stated that 'judges do not function in the vacuum and their thinking and judgment are bound to be coloured by the class character', that simple, objective statement was held to be contempt of Court and the Supreme Court exceeded all bounds of judicial propriety—and the present Chief Jus-

tice was also one of them—and said that Shri E.M.S. Namboodiripad did not know Marxism and they asked Shri E.M.S. Namboodiripad to learn Marxism. He had only quoted what Marx has said about the class character of the court and that statement was held to be contempt of court and in the judgment they said, 'We ask Mr. Namboodiripad to learn Marxism because he does not know Marxism'.

Some of the Supreme Court judgments virtually decided that the existing property relations could not be radically altered by Parliament and assured greater security to big property holders. The Supreme Court, by its judgment on Bank Nationalisation Act and the Privy Purses Act, shocked progressive opinion. Its verdicts went in favour of the vested interests. It showed extreme solicitude for full compensation to the banks which made all talk of of nationalisation meaningless. The latest judgment also did not fully accept Parliament's right to bring about radical changes in the property relations.

It will be realised that, when the Court invalidated parliamentary legislation, its effect was generally to protect the monopolists and big property holders in the name of equality and the fundamental right to hold property. Always it has done it in the name of equality and the fundamental right to hold property.

Those who are talking in the name of independent role of the Supreme Court should ponder over these realities.

However, till now, within the bounds of these class limitations, there was some hope that the Supreme Court would protect, to some extent, the citizen against patently arbitrary acts of the Executive. But the present appointment has shattered even that hope.

It is futile for the Government to seek a resurrection of a 15-year old recommendation of the Law Commission. I want to ask one thing. 15

years ago there was a recommendation the Law Commission made. Why did you not at least take the Parliament into confidence and tell them, 'This is the recommendation of the Law Commission that seniority must not be the criterion. So, we are going to depart from that.' As Mr. Rao said, it is not saying that Mr. Hedge has been superseded or Mr. Grover is superseded. Why did you not say before that this is wrong and that is correct and why did you not follow it? You are saying something and they are saying something. You say Mr. Hedge superseded and Mr. Grover superseded. That is not the thing. Somehow, for 15 years you have not implemented it and you have been following seniority. Then the Law Commission has recommended something. I wanted to see the report. It was with my friend, Mr. Limaye. I could not see it. It was said there also that it should be stabilised. Not on one day you should come and implement it suddenly like an atom bomb. So, stabilise it. You have been following seniority for the last so many years. and to-day you want to change it. When did you do it? What is the occasion? A judgment was given where the three Judges went against the Government, and the next day you are doing it and you say 'Seniority will not do'. Will the people in this country believe it? Then the Judges come out and say, 'I gave a judgment against the Government. That is why I am superseded.' The people will believe it. Mr. Hedge says 'I gave a verdict against the Prime Minister in the election petition and because of that I am superseded' It is that which the people will believe. It is a question of how you do it and when you do it. What is the occasion you have taken? What is the propriety of it? What are the circumstances in which you have done it? Why don't you take the Parliament into confidence? Why don't you stabilise it? One day one criterion and other day the Law Commission's criterion! Nobody will believe it. It is certain that even the

SHRI A. K. GOPALAN: The Judges of the Supreme Court must toe the line of the executive so that whatever the executive say, they must be afraid and they must do what you say. You want to suppress the Opposition. When they interpret a legislation you do not respect them. You do not respect the constitution of the Supreme Court. When they strike off some legislation, you do not implement it. You by-pass it and then do something against it and when they do anything, you threaten them. That is what is being done. That is the meaning of it. Don't think the people of this country are fools. They can understand it. One day you say seniority and suddenly, after this judgment, you say there is a Law Commission's recommendation that seniority should not be the criterion, and you supersede the three Judges who have given a judgment against you. You say, 'We want good Judges and progressive Judges.' As far as we are concerned in my case they have said that the section, that was there, that section is taken away. That means that they are progressive now and the Government is reactionary. When Sec. 17A is struck off, that means that the Judges are reactionary and when the Government is not implementing it, then the Government is progressive. Why this circus of reactionary and progressive.....

(Interruptions) It is all wrong and you cannot fool anybody and the way it was done, as far as our stand is concerned, as far as the Supreme Court and its Judges are concerned, we have our own opinion. They belong to a class. Their judgment will help the propertied class. The exploited class will never be benefited. But here, in this appointment of Mr. Justice Ray, what is done is that it was done with a motive, with a purpose to threaten even the Judiciary and say, 'You be very careful. If you go against us at any time, this will be the result....' *(Interruptions)* We are opposed to it.

SHRI VAYALAR RAVI (Chirayinkil): Whenever the *status quo* is

changed, an uproar and panic is raised in this country. Just I was hearing the speech of Comrade AKG which provoked me to ask a question. The question is very simple. He said that the judges belonged to the property class. But he never said what the remedy for it was. I expected he would suggest a remedy. Unfortunately, he avoided that.

SHRI A. K. GOPALAN (Palghat): The remedy is that judges should not be appointed by the President or the cabinet. They must be appointed by Parliament where, though the ruling party has got a majority, at least there will be a discussion.

SHRI VAYALAR RAVI: I do not know how a discussion in Parliament will change the character of the judiciary. Unfortunately, he has tried to side with the reactionary group. Of course, that is the new line of the Marxist Communist party. I have no objection to it. The whole allegation in the country today is that, even judges and political parties say it, it is politically motivated. I do like to ask the question who injected politics into the judiciary. If you trace the whole history back to 1967 there was a Chief Justice named Subba Rao. Even during his tenure as Chief Justice he decided to contest the Presidential election in the country. I accuse Mr. Vajpayee and his party because they discussed with Subba Rao about his election and they decided in his presence to contest the election. Can they deny? Many of the political parties are a party to it. So, you injected politics into the judiciary and Subba Rao contested against Dr. Zakir Hussain. That is the political activity that you injected into it. Where is Mr. Subba Rao today? What has he been speaking all along? He has been justifying Golaknath's case which has been struck down day before yesterday. Then a word about B. P. Sinha. Let me refer to the book written by Setalvad in which he criticised Mr. Sinha. Mr. Setalvad also says that democracy is in great danger because same Judges have been superseded. Shri Justice B. P. Sinha delivered

a judgement in favour of a monopoly house just before retirement and he joined that black-listed monopoly house as a top man. Here democracy is protected because he protected and joined that monopoly house! Where is the moral courage of you gentlemen sitting on the other side to protest against Mr. Sinha? None of you protested. (*Interruptions*)

Then we go to Mr. Shah. After he delivered the judgement on bank nationalisation case where is he today? He is drawing more than Rs. 1 lakh now. So, who injected politics? Are not the monopoly houses and their interest protected every time? Then I come to Mr. Hegde's statement. Mr. Hegde says: "Mr. Gokhale is the greatest danger to the bar and the bench". He also accused Mr. Mohan Kumaramangalam as the super Law Minister and he has also said that the Prime Minister is prejudiced against him. Sir, his opinion has not been formed in a day. It is an opinion which he had been keeping in mind for long. He is admitting the fact by saying that "his supersession did not take him by surprise, that in a way he was prepared for it". It means he was expecting it. How can we expect justice from a prejudiced man sitting in the court and delivering judgement? Can we expect justice from a prejudiced man? He has made a very unbalanced statement today. You have to check up the whole history of this man. I heard the report that he has been offered a Rajya Sabha seat from Mysore. So, I accuse Mr. S. N. Mishra and his party. They instigated and injected politics into the judiciary by offering a seat in Rajya Sabha to a judge and instigated him to resign. He says he will fight politically. Against whom, Sir? So, the Rajya Sabha is better for him, and he can come there, and we would welcome him there. So, there is no doubt about who is in politics. It is these political parties sitting on the other side who are injecting politics in order to protect their vested interests.

Again, what has happened to the Fundamental Rights case? It was Mr. Hegde and his company who were inhuman and cruel on Mr. Justice Beg. When Mr. Justice Beg was in the hospital, they pressurised Dr. Caroli to give a certificate that Mr. Beg was mentally weak to sit and write any serious matter such as the judgment. For what purpose and for whom did they do this? With authority, I say that Dr. Caroli was pressurised to give such a certificate. Is this not politics? Is this not politically motivated? Who motivated all this politically? Was it Mr. Hegde and company or was it Government which got such a certificate from the doctor? It is high time that this kind of thing is put an end to. There was also a big and heated exchange which was not allowed to publish that happened between Mr. Palkhivala and his company with the judges and between the judges, that they wanted to avoid Mr. Justice Beg to come and sit on the Bench and give the judgment. This was what happened. I also allege with responsibility that there was a dinner at the house of the Chief Justice, to which he invited only seven judges, as though the other six were not judges who could be believed. He invited only seven of them. And who else was present? There was the leading advocate who argued the fundamental rights case, and leading man of a monopoly house present there. They discussed the matter there and decided. It all happened at that dinner, I know there was a dinner for this purpose. So who injected politics into this? Who injected politics into the judiciary? It was those people who were for the vested interests, Mr. Piloo Mody, the sole agent of monopolists, Shri Frank Anthony, who argued for the British and who was always behind the British.

Then, take the case of Shri M. C. Chagla. He has also become the Champion of these three judges now. But when Shri Jawaharlal Nehru was

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the Prime Minister, Mr. Chagla was prepared to supersede Shri Patanjali Shastri and come to the Supreme Court. So, where is the question of principle involved? No principle is involved, and there is no morality also involved here. He agreed to come to the Supreme Court as Chief Justice overriding the seniority of Shri Patanjali Shastri. Is there any principle in this? It is only the disgruntled elements who are injecting politics into the judiciary and making the noise.

Again, in my own State of Kerala, there was a law passed by our Government to give tenenacy rights to thousands of tenants. Our Government argued the case in the Supreme Court, and it happened that they were with the people and not with the vested interests. But who argued the case for the vested interests? We know who did so.

Then, there was reference to Shri Subba Rao also. We have seen Shri Subba Rao moving around and canvassing for votes. But we know that all those for whom he canvassed the vested interests lost their deposits too, because the people did not want them.

So far as this question of supersession of Shri Hegde and company is concerned, I do not want to say anything personal in regard to him. But I would like to read out just one sentence from his press statement, where he says that democracy is in peril. He says:

"If the test of merit depends on one's submission to the dictates of the Government, then undoubtedly the superseded judges do not possess these qualifications.... I know the record of my colleagues."

This means that all the judges remaining in the Supreme Court are subjected to the pressure of Government and the dictates of Government. Suppose after three years, Mr. Grover retires and somebody else becomes

the Chief Justice among the remaining judges, does it mean that democracy is in peril and that the remaining nine judges are subjected to the pressure of Government?

It has been suggested that there has been irregularity in the appointment of judges of the Supreme Court. But nobody has suggested any method for the selection of the judges of the Supreme Court. They are only objecting to the supersession and saying that three judges have been superseded and, therefore, democracy is in peril and democracy is in danger. I say, Sir, that this is nothing but politics.

My hon. friends have tried their best everywhere and they have failed. They have tried to fight everywhere, but they have been defeated by the people by and large. So, they are now taking Shri Hegde and company in a big procession, and wall-posters are coming up to say that they are holding a big reception at the Ram-lila Grounds where even my hon. friend Shri Atal Bihari Vajpayee is expected to speak. Sir, is this not politics? What do my hon. friends mean by this? Who is ridiculing the judiciary? It is these people sitting opposite who are ridiculing the judiciary.

They are making allegations against the Chief Justice, against the 9 Judges who are sitting in the Supreme Court today, that they are subjected to pressure. It means that if Mr. Hegde is not appointed Chief Justice, it is very bad; if we appoint him Chief Justice for three years, everything is all right. Is that not the meaning of this allegation? This is the allegation they make. They are agitated because it was Hegde who protected their interests everytime. Everytime he had been doing it.

We come here to protect the interests of the people. We are here

to give effect to the will of the people. We have been elected to this House to work for the betterment of the people. So this Government derive their authority from the people. This Government is here to protect the interests of the people. So we have to make legislation to serve the interests of the people. That is why we have been making progressive measures. Unfortunately, the Supreme Court had taken the stand that they were a super Government. They do not derive authority from the people. They are nominated by the President. We derive authority as the representatives of the people from the people for the welfare of the people. Therefore, the Supreme Court is not a super government. They have no such authority. They cannot challenge Parliament in this respect at all.

So we have to work for the betterment of the people. We must see that the will of the people prevails. It must always prevail.

Shri A. K. Gopalan said that the Supreme Court was changing its views every day. Even in regard to the Golak Nath case which was decided by Mr. Justice Sikri and Mr. Justice Shelat also, now they themselves say it was wrong. So they have changed their opinion. They cannot keep on holding to a consistent opinion.

Shri Madhu Limaye quoted what Mr. Hegde had said. He said 'I delivered judgment against the Prime Minister'. But along with him, there were also Justice Mathew and Justice Jagmohan Reddy. They also fully agreed to it. Now they say that Justices Mathew and Beg are subjected to pressure. This is a self-contradictory statement. If Justices Mathew and Reddy had also delivered that judgment against the Prime Minister, how can Mr. Hegde claim 'I did it'?

Reference was made to the question of majority. I ask a simple question. How many of the judges resigned?

Only three. Nine are still there. It means the majority are with the decision of Government in superseding the three Judges and appointing Mr. Ray as Chief Justice. They are not resigning. If they have a moral objection to this, they must have the moral courage to come out. But none of them was prepared to resign. I know it is because they have got the moral courage to show that the decision taken by Government is the correct decision. The majority of the Judges have taken this stand. I say it is for the betterment of the people, it is to protect the interests of the people, it is in furtherance of a progressive social society.

SHRI H. N. MUKERJEE (Calcutta North-East). It is understandable that there is something of a storm over the appointment of the Chief Justice of India superseding three of his colleagues who have resigned in chagrin. I feel there should be a limit to the indignation which some quarters apparently have been able to muster over this issue. There should be in Parliament at least a little effort to go to the root of the whole matter.

Apart from press reports of frenzied conferences held by the three Judges who have resigned, I get from far-away Bangalore and from a mock and mild old liberal, who I did not even remember was alive, Shri P. Kodanda Rao, a cyclostyled request for participation in a campaign asking the whole judiciary and the Bar Councils in India even to go on strike protesting against what has happened. There must be some method in this madness, some organisation of forces operating somewhere to goad an in-offensive old man, who retired perhaps 25 years or more ago, to send us this kind of circular.

I might also say that it is good that the mask of the judicial detachment which is paraded as a great

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virtue of bourgeois set we has fallen off. I feel sore in this connection, when I recall judges on the Bench moralising with unction. I had a very long time ago read in a book by the celebrated English writer, Somerset Maugham—I am quoting—who said:

"I have wished that besides the bunch of flowers at the Old Bailey, His Lordship had a package of toilet paper which would remind him that he was a man like any other."

These judges are men like any others, and I might even have a little sympathy with the three gentlemen who have been superseded, but now about the stupendous hullabaloo which has been raised over this incident? That is something which I wish at least to try to probe.

One has assumed that the Heavens are falling on account of the supersession. Supersession not only in the case of the judiciary, but in so many other spheres is happening everywhere all the time even at the highest judicial level. Lawyers from Calcutta—I am afraid my friend Mr. Ashok Sen is not here but some others are here—would recall that only a few years ago, Mr. Justice P. N. Mukerjee's claims were disregarded and, with the most dismal and drastic results to the detriment of the dignity of the judiciary, another Mr. Justice P. B. Mukerjee, was appointed, leading to many scandalous occurrences, to which I drew the personal attention of the Prime Minister and also spoke in Parliament in the presence of Mr. Gokhale. But nothing of course took place. This kind of thing goes on and I wish to remind my friends all over the place that supersession is something, right or wrong, which has been going on all the time. But the hullabaloo started on this particular issue.

SHRI PILOO MODY: So long as Mukerjee's there, it is all right.

SHRI H. N. MUKERJEE: I know the main brunt of the contention here is that power is being abused. One may disapprove of power with a big 'P', which I certainly do, because power concentrated in the way it is in the hands of the Government, which means the Prime Minister primarily and her crew very, very secondarily, this power, is a parlous proposition no doubt. Power has a tendency to corrupt as everybody knows. Without power, the machine of the State also cannot run and it is the purpose of Parliament to see that power is vested properly, and that can be only determined by the democratic process which has been tried to the extent possible in our country, and we can only try to see to it that power is not exploited in the wrong way.

In so far as judges are concerned, we have stated our position in our own election manifesto. It is not a decision which we have suddenly arrived at because of Government's difficulty over this supersession business. In our election manifesto we had asked for prior parliamentary approval to high judicial appointments. I wish we can all demand it. Mr. Gopalan has referred to it and a question was asked, and I wish everybody joins together, even from the Congress ranks, though Mr. Vayalar Ravi did not seem to appreciate the importance of the suggestion. But we can have some sort of parliamentary organisation, not consisting of the whole House perhaps, but some way of associating Parliament with appointments to high judicial posts, to appointments to Governorships, to appointments of Ambassadorships and that sort of thing. Our friend Mr. Limaye, who is working as a sort of a non official drain inspector, the other day gave us a very wonderful report about the misdeed of a particular Governor, who could not be

defended by Mr. Chavan on that occasion, because that Governor, the former Governor of Gujarat had been denounced in the strongest terms by the highest judiciary in the land. In regard to these appointments, we could have some kind of a parliamentary apparatus. To this Government should try to give effect.

But the real issue today as far as the motion is concerned, is not security and succession. The vital issue is that vested interests of landlords and monopoly capital have been successfully using the judicial process to defeat the measures of socio-economic amelioration. From the first amendment of 1951 to the 24th and 25th amendments of last year, it has been the same story. The battle has become more acute and serious since 1969 when the Government nationalised banks, abolished privy purses and decided to take over some of the assets of monopoly capital. The Government did not move as strongly as it ought to have done on that occasion to prevent the judiciary doing the sort of terrible damage to the economy of this country and to the moral spirit of our people when it could stop the judiciary hindering bank nationalisation by putting, I do not quite remember how many more crores into the pockets of bank magnates and then trying to stop the taking over of the privy purses and all that sort of things. But of course we found the judiciary performing a certain role. When the judiciary itself fights a political battle, as it is doing today, in the shape of the three judges and their campaign assistants in defence of vested interests, if a beginning is made at long last to ease out the reactionary occupants of the Bench, it is to that extent a good thing. That is why we support the Government's action. It is the beginning of a good thing, a very minor, very small, very preliminary step in order to weed the judiciary of those elements which stand in the way of socio-economic advance. We have

today the delicious spectacle of three judicial musketeers calling on the Bar and the public to fight the totalitarian trends. They have been shown the door politely. But the conduct especially of Ex-Justice Shri Hegde the self proclaimed crusader who has said he would not rest till the battle is won suggests that perhaps they really deserved the order of the boot. The proverbial wisdom of every people in the world called the law an ass. These learned ignorant muses are indeed the limit. Beyond their understanding is the dictum of Mr. Justice Oliver Wendell Holmes lying dead in the United States.

Mr Justice Oliver Wendell Holmes had given us the classic saying: "The inarticulate major premise of judges in the bourgeois set up is to appoint him Chief Justice for three inviolability of property." That exactly is outmoded in the world of today, outmoded in India which it should be the task of this Government to try to lead and mould. We have seen how after a kind of a mighty smirk on his face when the Golaknath case was over and propitious circumstances were available, the former Chief Justice Mr Subba Rao shed his judicial cloak in a hurry to don the robes of the President. It was a long term plan which fortunately went away on account of people becoming rather cautious at that point of time. For nine years the Golaknath judgment has been allowed to hold progress. Its belated and half-hearted striking down has little value today in view of the nullification by a majority of the present Supreme Court Bench of Article 31(c) of our Constitution.

18 hrs.

The alacrity with which the Courts admit writ petitions against Government measures of take-over, the way dishonest employers are treated leniently for attacking the workers and

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are given back factories in spite of proved fraud and misdemeanour of different descriptions, the way their dishonesty is sugarcoated when their cases are pleaded by black-money-grabbing and eminent jurists—some are occasionally found even in this House—all these vividly show that at last class policies are being cleverly quoted in velvet legal phrases and are being assisted by the 'judicial process' as is administered in our country to-day.

I find here the ex-Chief Justice, Mr. Sikri saying that the appointment is 'political'. Wasn't the Chief Justice Mr. Sikri's own judgment striking down Article 31(c) 'political'? Wasn't the Golaknath's case decision 'political' when Parliament had to take a very serious note of it? We could not do so because we were not sure of the reactions of the Government. Was this only a slight and unavoidable change of front which was being practised by the Supreme Court Bench? Was not the Chief Justice, Mr. Sikri, by meeting some of his colleagues separately from the rest, playing politics of a sort which, I should say, for a judge of his position, was a dastardly proposition? Didn't he, in issuing orders, which four of his colleagues have refused to sign,—rightly, according to a person so devotedly a seeker of juristic principle as Shri Seervai, Advocate General of Bombay High Court—show a peculiar variety of the most nefarious politics? Mr. Justice Hegde, till the other day perched on a judge's supposedly olympian height, hitting the headlines, howled like hell at press conferences and places. I suppose that is the prolegomena for entry into public life. If that is so, he is welcome to do so.

It may be that the Prime Minister might have felt some personal pique against Mr. Justice Hegde who says that she based it on 'information and

inference', but the song and dance he makes about his exit from office is a disgraceful commentary on judicial behaviour. If in the Rajya Sabha someone from my party had said that he should not be Chief Justice of India, how right he was. Somebody gave me—I do not myself know him because I am sitting here and I got this note from him—the bio-data of Mr. ex-Justice Hegde, from the Rajya Sabha's Who is Who. I do not know him, particularly, though I know him by reputation that he was, on his own description, a Secretary of the Landholders' Association, a Director of several joint-stock companies and a Chairman of the Board of Directors in 1947. This is from the Rajya Sabha's Who is Who. Here is a man who comes forward and says that he is fighting for the principle of democracy. He is a paragon of excellence in so far as championship of democracy is concerned. I grant Shri Hegde the right to be angry—but again there are limits—his hypocritical politeness towards the new Chief Justice broke down as he told the press conference that the Prime Minister chose him because she wanted someone 'subservient'. He used the word 'subservient' to be exact. He acquired this hypocritical politeness to perfection, perhaps, when he was functioning on the Bench. I am not concerned with personalities but with principles. Even so, I must say one thing, because the name of Chief Justice Ajit Nath Ray has been mentioned very often. He and I have known each other nearly all our conscious lives. You may laugh at it. He is a conservative by temper, a liberal by training and a man of decent instincts—the law should be better known and better talked about by other people; the redeeming feature about him is his predilection for dignity and grace and a sense of judicial attachment, on account of which I can swear before anybody that he is the type of person who would not go and wait upon people

in high places, who would not even go and meet big people however highly placed they may be, let alone kowtowing to them. He is a man whose legal qualifications are a question to be decided by other people if they want to discuss it; I am not interested in that sort of thing. But here is a man about whom the accusation of subservience is completely wrong. He stands on dignity sometimes in an almost laughably exaggerated fashion. He would keep away and will not go and see the Prime Minister unless it is for some reason absolutely incumbent even for a man of a Supreme Court Judge's stature. This is the man whom the Hegdes of creation try to malign, whom in a moment of madness perhaps my long time friend Shri Frank Anthony, who had gone berserk the other day—unfortunately he is not here today—described in my presence as a communist stooge, a silly and senseless thing to say. As I said, he is a conservative in temper, a liberal by training, a man who is already in the Supreme Court and he is appointed as Chief Justice—a man who has dignity and grace about him and who has got judicial detachment—he was described by Mr. Anthony here and by Mr. Hegde outside as a communist nominee. If I am going to appoint anybody let alone as Chief Justice, even as a judge, I would not appoint Shri Ajit Nath Ray on the basis of his communist affiliation. On the contrary, I know he is absolutely allergic to any kind of politics, let alone radical or revolutionary politics of the sort that the communists and other people like them profess.

Mr. Madhu Limaye is entitled to make diatribes against Government. Whatever happens, he attacks the Prime Minister, the Nehru name and everything. He is entitled to do that sort of thing; I do not mind. But in so far as the supersession is concerned, I say to the Government, "Better late than never. Go ahead and reshape the judiciary if you want to

make sense of socio-economic changes under the Constitution." I am glad Mr. Vayalar Ravi said it. Mr. Seervai, than whom there is no better lawyer, no deeper scholar in law in this country, quoted that Latin saying which everybody knows and which you and I had to learn once upon a time—*salus populi suprema lex*—the welfare of the people is the supreme law. Go ahead on the basis of that and tell the people who are now shouting in unison on the side of the three superseded judges on account of certain politico-economic motives that Abraham Lincoln in his wisdom has said that the people have a contingent right of revolution and when they cannot change the Constitution by constitutional means, they have the revolutionary right to subvert it. Now you have to make sure that your Constitution works. That is why in bourgeois America, when the New Deal came in the early 30s, President Roosevelt made it very clear, openly and publicly, that the Supreme Court Judges would not be allowed to monkey with the changes which he had in view in order to secure a new life for his people. When that statement was made, then the Supreme Court of the United States fell in line because they knew that with the support of the people behind him and with the desire of doing something great and big for the sake of the people, President Roosevelt had given them a warning which they do not dare circumvent.

Tell our judges and everybody, tell the lawyers who are thinking of going on a strike—we know how far they can go—tell them it is not possible, nor desirable, nor a duty for them if only they think a little more seriously than they are accustomed to, and they should not do that sort of job which they are doing at this moment.

If this country, therefore, has to go ahead let us make sure that the

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attempts, judicial and other, to scuttle land reforms legislation, like the Kerala Act, or take-over of foreign and native monopolies are successful.

The three judicial resignations and the campaign around them must not be allowed to hide the design, the campaign the danger that is still there. The resignation was not in defence of someone's seniority rights, which never existed, which was never there at all, but they are in defence of men of property, not in defence of the overwhelming majority of our people who have no property at all. Let Parliament re-enact article 31C with suitable built-in safeguards against the judicial intervention of another sort so that they cannot be impugned and let this elected Parliament be enabled, if that is possible, to supervise how our country should be administered. Let not the wise men of the Bench, wise as they are in the lore of the law, let not those wise men of the Bench, in Delhi or elsewhere arrogate to themselves the power which vests in the representatives of the people in the sovereign Parliament. That is the principle which is at stake, and that is the principle for which the fight has to be conducted, not the footling little references irrelevant to the basic issues regarding the supersession of X, Y or Z for whom we might have personal sympathies.

Look into the basic things and find out what ought to be done in the condition of this country. Do not leave it to the judiciary, which has a record of always being on the reactionary side.... (interruptions)

I have my grouse against the Government and on many occasions I have expressed my views on the way in which the concentrated powers appear to be exercised from time to time. Even though I am ready and willing to join hands with whoever brings up a genuine reason for real dissatisfaction against the Gov-

ernment's activity, here is an occasion when on account of footling little trivial issues we should not forget our mooring and we should do our duty as Members of the Parliament of India. We should not kotow to a principle which has been linked up with the right to property. And that is why I say that even though we have many a grouse against the Government, many a contention to carry on, on this issue they have done nothing so particularly wrong. The supersession of three people is a very ordinary matter compared to so many other things which have happened before. It is time that Government continue this policy. This is only the first step, not the last step, a very small step, a preliminary step to make sure that the socio-economic reconstruction of our country is not going to be interrupted or upset by judicial pronouncements.

THE MINISTER OF STEEL AND MINES (SHRI S. MOHAN KUMAR MANGALAM): Mr. Speaker, Sir, perhaps the debate has been a trifle flat, certainly not reflecting the noise and the manner in which a campaign has been sought to be built up against the Government on this question during the last week. But while trying to deal with these matters, I shall try to do it in terms of the fundamentals. I do not think this is a trifling matter. It is a matter of very great importance, a matter which has, naturally, roused the interest of hundreds of thousands of people and, particularly, of members of the profession to which I have the privilege to belong.

I do not think there is any doubt on the question of power. I do not think anybody who reads the Constitution as it should be read in terms of the words which are used can doubt article 124 which vests the power to appoint Judges of the Supreme Court, including the Chief

Justice, in the President, advised by the Council of Ministers, as has been done in a number of cases. I do not propose to go into that now. I do not think it is necessary to do that. There is nothing about seniority, nothing about particular considerations which should guide the Government in making the recommendation to the President. Only there is the qualification that he must have been a Judge of the High Court for the last 5 years and an advocate for the last 10 years or, in the opinion of the President, a distinguished jurist. Therefore, there is no objective test or means to guide anybody as to how exactly a decision is to be arrived at regarding how the Chief Justice is to be appointed.

There is no duty laid upon the Government or the President to consult the Chief Justice on that particular appointment, namely, the appointment of his successor. I think, we should take it as such and I do not think that is really an issue today.

What is really the issue? It is: Why is it that we have departed here from the practice of appointing the senior most puisne Judge of the Court as the Chief Justice, a practice which by and large we have followed for the last 23 years? The only exception was that of Justice Imam—that is for other reasons.

We have been charged with raping democracy, destroying the independence of the judiciary so many other adjectives have been used, so many hyperboles have been wasted in the last one week. I do not think it is necessary for me to comment on that. Let us go to the crux of it. Is seniority a proper principle for us to observe? Is that the way in which we should arrive at a proper conclusion as to who is the most suitable person to be appointed? Are these the only considerations? What about the accident, as it were, of the appointment of a particular person on a particular date in the Supreme Court so that he crawls up the ladder of seniority and,

ultimately, reaches the floor of the Chief Justice? I do not think that we can answer this question if we do not take into consideration the background in which this appointment was made.

Let us not forget the last six years of background or what can only be described as a confrontation between Parliament and the Government on the one hand and the court on the other. I do not think we should forget that fact. Some hon. Members may feel that the court was right and we were wrong. That is not the point. The point is that there has been an atmosphere of confrontation. There has been an atmosphere in which the court looked at things in one way and we looked in another way. Let us not forget that ever since the Golaknath case judgment was delivered, we have had a difficult period. It was for the first time that in the Golaknath case the certainty with which all of us looked at article 368, interpreted as it had been done on two previous occasions, first by the unanimous decisions of the Supreme Court in the Shankari Prasad case and then by the majority judgment in the Sajjan Singh case, was turned into uncertainty.

There was a certainty that Parliament could amend each and every part of the Constitution, including Fundamental Rights. It stood the test of time for 17 years. When the Golaknath case was decided, by a narrow majority of 7:6, as it were, the whole trend was reversed and we were put into a climate of uncertainty. Apart from reversing the judgment and challenging the sovereignty of Parliament, we were put into a climate of uncertainty. We did not know what would happen next.

Then came the Bank Nationalisation Act. So far as the politics and economics of that decision of the Government was concerned, it was historic and it was welcomed throughout the length and breadth of the country. In framing the enactment,

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the Government, and later on Parliament in approving the enactment, proceeded on the basis of the decision of the Supreme Court itself in the Shantilal Mangaldas case, not straying elsewhere, not going on the basis of our own ideas, but taking the law as it stood, as interpreted by the Supreme Court. What did the Supreme Court do? It distinguished—that is the usual way when a judge does not want to say that the disagrees with the decision—the Shantilal Mangaldas case; in essence it reversed it and struck down the Bank Nationalisation Act.

So, we, again in a decile way, followed in the footsteps of the judges, reframed the Bank Nationalisation Act taking into account the new view, as it were, of the Supreme Court. I think, it cost the country quite a number of crores more.

Then came the order of the Government cancelling the recognition of princes. There again we proceeded entirely on the basis of an existing decision of the Court in Usman Ali's case where the Court had held that recognition and grant of privy purses was a political act and was not subject to judicial review. Once more, the Court distinguished Usman Ali's case and struck down the Government order. And that is what, ultimately, sent us back to the polls and the country sent us back to pass the 24th, 25th and 26th Amendments. This is the background, this is the history.

Therefore, the experience in the last six years has been an unfortunate one in these six years we have had this conflict throughout step by step, in which there are two aspects which we have to bear in mind; one, the uncertainty which was introduced into the very interpretation of the Constitution, so that we did not know whether tomorrow something else we did would or would not be set aside even where we proceeded on the very basis

of the judgments of the Court itself; and secondly, major decisions of the Government and of Parliament in relation to major economic matters being set aside by the Court one after the other. Was it not right for us to take these into consideration? Was it not right for us to think in terms of a more stable relationship between the court and ourselves? Is it not good that we should have as Chief Justice of India a man who will be able to help to put an end to this period of confrontation, a person who will be able to ensure stability, certainty about the state of the law, a person who would be able to give a certain continuity, a certain permanence, to the approach made by the Court to the important problems that come before it?

I listened with interest to the speech of my friend, Shri A. K. Gopalan; it had a certain dichotomy, on the one hand so vigorous in attacking the Supreme Court for its attitude in defence of property and on the other hand so weak in the end when it came to draw the conclusion regarding why it was that the Supreme Court did take this attitude of being against my good friend in 1951 when he came up asking for liberty and at the same time in reversing the view ultimately when men of property went in the Bank Nationalisation case and asked for the aid of the Supreme Court. But I want to say one thing right at the beginning.

When we try to think what consideration should move us in appointing a person to the high and exalted office of the Chief Justice of India, I think, we have to take into consideration—and we should not run away from that ordinary people, he is something life, his politics—not the party to which he belongs but what it is that makes the man—, through which spectacles he looks at the problems of India. To look upon a judge as something above the crowd, far away—to think that he is not like us, we are

ordinary people, he is something above, in the olympian heights he wanders, guided purely by the shining light of reason and nothing else—I think, that has no relationship to reality. And it is not I alone who thinks so. There are many others, and I quote now from one of the most brilliant jurists who sat on the Bench of the United States Supreme Court, Benjamin Cardozo, who put the matter in these words:

“There is in each of us a stream of tendency, whether you choose to call it philosophy or not, which gives coherence and direction to thought and action..

“....Judges cannot escape that current any more than mortals. All their lives, forces which they do not recognise and cannot name, have been tugging at them—inherited instincts, traditional beliefs, acquired conventions; and the resultant is an outlook on life, a conception of social needs, a sense in James’s phrase of ‘the total push and pressure of the cosmos’, which, when reasons are nicely balanced, must determine where choice shall fall.”

So also, our own Chief Justice, a former Chief Justice, Chief Justice Patanjali Shastri said on one occasion:

“It is inevitable that the Social philosophy and the scale of values of the Judges participating in the decision should play an important part”.

So you cannot run away from the fact that the way in which the Judges look at a matter, their philosophy and outlook, do determine the decision that they take. It would be foolish on our part to ignore it because the stress, the strain and the heat of controversy in our country over the resignation of these three Judges seems sometimes to blind our vision.

Let us go back 36 years, to 1935, 1936 and 1937 in the United States. The United States Supreme Court consisted of nine Judges. Now, it is so opened, in the United States in those days that four Judges, Justice M. C.

Reynolds, Justice Butler, Justice Sutherland and Justice Van Devanter continuously and consistently, without a single deviation, held against the New Deal legislation of President Roosevelt and three Judges, equally eminent—some consider them more eminent—Justice Cardozo, Justice Brandeis and Justice Stone continuously held that the New Deal legislation was valid, was right and proper and two Judges vacillated—Chief Justice Hughes and Justice Roberts. A commentator of those days described it this way:

“The basic cleavage between judicial oligarchy and popular power could no longer be concealed or circumvented. In one short term the Court had woven a tight constitutional web to bind political power at all levels....By the spring of 1936 it looked as if the Court had wrecked the New Deal on the shoals and rocks of unconstitutionality.”

Now, what moved the learned Judges—4 continuously and consistently to vote in favour of the New Deal and : equally consistently to vote in favour of the New Deal? All the seven were honest men. None of them had been sub-servient to the executive. Would anybody describe Justice Cardozo as subservient? Would anybody describe Justice Brandeis or Justice Stone as sub-servient? Anybody who knows the law and who knows the history of the law and who knows the history of the judiciary in the United States would not say that. On the one side you have four Judges who were very conservative, and you know their approach to life. It was a division in the minds of the Judges, not a division as it were in terms of their being paid to do this or influenced to do this. It is their own mind, how they looked at things in the United States. The conservatives who believed in going forward if at all they believed in going forward, honestly and sincerely were convinced that Roosevelt’s radical programme spelt disaster for the United States and were convinced that they were the final guardians of the demo-

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cratic order just like Justice Hegde who spoke yesterday, the same words you can find in some of those judgments there. On the other side, the liberals, Justice Holland Stone and others continuously said that it was for the political party in power to decide what the policy was and they showed a sympathy for the New Deal legislation that brought America out of the crisis and collapse of the Stock Exchange in 1929-30 where millions were unemployed and where millions were asking for bread, so on and so forth.

I do not want to go into details, but what I want to emphasize is only this that the outlook of a Judge does determine particularly in the highest court of the land where his vote will fall. It is not that it is something abstract, something separate. He is right there in the controversy and, when the controversy is going on, he is influenced by what happens in the country just like anybody else.

I took the House back to the Roosevelt period only to underline the fact there is no such peculiar animal in the world as a non-political judge—a judge who has no opinion. Every man has opinions. He may be extremely fanatical as Mr. Hegde or he may be just normal as possibly Justice Grover. I do not want to go into it. One can analyse them if one goes into details. It is not necessary. Then hon. Members may ask how is one to judge what the opinions of a judge are, what his outlook is, what his philosophy is? So, I thought that if I answered myself hon. Members on the other side would find it difficult to accept it, and so I looked around and found that the great apostle of the democratic way of life—even hon. Members on the other side will accept him as such—Abraham Lincoln had given an answer to this. He had appointed his Secretary to the Treasury, Chase, as Chief Justice of the United States, and he was asked: "how did you decide that Chase is a

proper appointee? How do you decide what his opinions were? What is the basis of it?" He said: "We cannot ask what he will do and if he should answer us we should despise him for it. Therefore, we must take a man whose opinions are known". And when Lincoln advised people to take a man whose opinions are known, he meant how he expressed himself, how he looks at life, how he looks at the imponderables—the clash between the directive principles on the one hand and fundamental rights on the other, whether one should give greater weight to the directive principles or greater weight to the fundamental rights. Read the 1600 pages judgement of the Supreme Court that has recently been delivered and all of us will know the opinions of each one of these judges. The six judges who have upheld the 24th, 25th and 26th amendments, each one of them, puts directive principles a little higher, fundamental rights a little lower; the due rights of a society a little higher and the rights of an individual a little lower. Then you go to the other six who have, on the contrary, said that they are the basic essential features of the Constitution which should not be violated; fundamental rights are sacrosanct things which must be protected must be protected from the evil hand of the executive and everything must be done to implement the directive principles. You can see the philosophy, the outlook. Certainly, we as a government have a duty to take the philosophy and outlook of the judge in coming to the conclusion whether he should or he should not lead the Supreme Court at this time. It is our duty in the Government honestly and fairly to come to the conclusion whether a particular person is fit to be appointed the Chief Justice of the Court because of his outlook, because of his philosophy as expressed in his expressed opinions, whether he is a more suitable or a more competent judge. This is our prerogative as a Government and I say the Constitution has entrusted that to us. Undub-

tedly, the hon. Members opposite if they come over here and sit here may disagree with us. They have every right to do that. No doubt, what I think is good, in a particular judge in his outlook. Mr. Pileo Mody may not think is good. Well, we are entitled to differ. In a sense superseding a person does not involve any reflection on him because it is only through my spectacles that he has been judged and the gentleman who has been superseded may well say that he does not recognise those spectacles. It is upto him if he wants to take a position like that. What I want to say is that a duty is laid upon the Government that not merely must we take into consideration judicial integrity which we do, not merely the legal knowledge and skill which we do, but also the philosophy and outlook of the judge. We are denounced for wanting committed judges as though we want the judges to commit themselves. We do not want any committed judges. No judge has to commit himself. But we do want judges who are able to understand what is happening in our country; the wind of change that is going across our country; who is able to recognise that Parliament is sovereign, that Parliament's powers in relation to the future are sovereign powers. Yes, we do say that. Those who are able to see that, those who are able to give that importance to those areas of the Constitution which according to us are decisive for taking our country forward, such are the judges, we believe, who can effectively work and help us in the Supreme Court. This is how we look at it.

I do not want to go into too many details, but some facts are necessary to be put before this House. Is it the hallmark of a democratic system that a judge who sits on the Bench of a court must be non-political and must have nothing to do with politics? Is that the hallmark of a democratic system? I use the words 'democratic system' in the sense in which it exists in the United Kingdom, a demo-

cratic system as exists in Canada, a democratic system as exists in the United States, a democratic system as exists in Australia. I think even according to hon. Members on the other side who are so vociferous or so excited over the whole matter, these are countries where the democratic system does exist. What is the position in those countries? Why do we not examine it honestly and fairly? Let me give you these few figures.

In America, 26 judges were appointed to the Supreme Court between 1933 and 1971. 22 of these 26 belonged to the party of the President in power, whether he be Republican or Democrat, that is to say, were members and prominent members of that party. One of the most famous judges of the United States Supreme Court recently, Chief Justice Warren was the vice-Presidential candidate of the Republican party in 1948, and in 1952 one of most active campaigners for Gen Dwight Eisenhower when he was elected President, and in 1953 sat on the court as Chief Justice and indeed earned a very high reputation as Chief Justice in defence particularly of the rights of the Negroes on the one hand and the rights of the individual on the other. Justice William Douglas, who sat for 40 years on the Bench of the Supreme Court there was one of the strongest supporters of Roosevelt in 1933, 1934 and 1935, after which he was appointed to the Supreme Court.

This is the way in which it is summed up in a book. I would not go into it further but I would merely quote this:

"The reasons why Presidents have chosen particular men for the Supreme Court vary. Ideology has often played an important role in determining the nominee, though often other factors appear to have been just as decisive. Political rewards, personal friendship, party service, even prior judicial experience have been major

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justifications that Presidents have made for their Supreme Court selections from among the members of their own political party."

We also did it only in one case, and we appointed one on this side of the House, a Member of the Congress party, and we plead guilty for that; once, we appointed a Member of Parliament as judge of the Supreme Court, no less a person, that Shri Sadanandan Hedge himself.

Obviously, therefore, at least in the United States, politics does play an important part in the selection of judges to the Supreme Court. Now, let us leave America and let us go, let us say, to the United Kingdom, the home of democracy or the birthplace of the Anglo-Saxon judicial system. What do they do there? In his book *The Machinery of Justice in England*, Mr Jackson writes—this is a well known and authoritative book on English Justice—

"The best post of all, that of the Lord Chief Justice is virtually a reward for political service. It goes by way or right to the Attorney-General, "

who is a Member of Parliament, a very influential member of the Government and sometimes a member of the Cabinet. Jackson comments

"Hence politics may not only secure a greater change of judicial office but may lead direct to the more desirable offices. A system of promotion would perhaps lead to far worse result. Once a man is on the Bench, he should be as independent as possible; if by judicial conduct pleasing to the Government, he might secure promotion there would be the chance that he might be always thinking of his future career. The pressing of political claims to appointment in England does at least end when the appointment is made; the debt is paid and the political account is closed."

So, it is no more and no less.

What about Australia? For the last seventy years—I think the same gentleman continues as Chief Justice now since 1968—seven Chief Justices have been appointed. Out of them, two were members of the House of Representatives, that is, Parliament and also Commonwealth Ministers when they were appointed. One was a member of the House of Representatives and Minister before appointment, though later he was promoted Chief Justice. Still another two were members of the legislature before they became Chief Justices. Out of these, one was a Minister. So I think we cannot very well say there was a sharp dividing line in Australia between politics and the Bench.

Canada 44 judicial appointments between 1940 and 1960 to State High Courts, that is provincial Courts, and the Supreme Court of Canada. 23 had known political views 22 had elected political positions, many of them of provincial Cabinets. Five held major political positions in this period former federal Cabinet Ministers, that is the Union, as it were, Cabinet Ministers, and one a former provincial Premier. Out of 17 persons appointed to the Supreme Court of Canada, 10 were appointed directly to the Supreme Court most of them with previous political experience and career.

So let us not start from the position that the hall-mark of the democratic system is a Chinese wall, a sharp dividing line, between politics on the one hand the Bench on the other. But of course, our tradition is not the same. I do not recommend that more Hegdes should be put on the Bench, not at all.

SHRI ATAL BIHARI VAJPAYEE
Mr. Ray should be made Chief Justice

SHRI S. MOHAN KUMARAMANGALAM: Perhaps on a future occasion if some hon. members show merit in law and skill in it, we may even appoint one from there. Do not lose

hope. But we in India have not adopted this course. Barring Hegde, we have not. I do not think we probably will. But we are entitled surely to look into the philosophy of a Judge. We are entitled to look into his outlook. We are entitled to come to the conclusion that the philosophy of this Judge is forward-looking and of that Judge backward-looking and to decide that we will take the forward-looking Judge and not the backward-looking Judge. Surely that much of freedom at least should be given to us, without saying that we have raped democracy, that we have gone against all the principles of the democratic way of life. Surely that much generosity we can expect from your side. This is the way in which, I think, we should look at it.

Let me come finally, because I think I cannot keep away from it, refer to the very interesting statement made by our good friend, I must call him 'Mr Hegde' because I think he has now been elevated from 'Mr Justice Hegde' to 'Mr Hegde'. There is nothing about Hegde's statement, if you read it carefully and objectively. If anything it does, it breathes politics from the first to the last word, not law. That is very clear.

AN HON MEMBER Dirty politics

SHRI S MOHAN KUMARAMAN-GALAM None but a politician could have said what he has said

SHRI ATAL BIHARI VAJPAYEE After resigning

SHRI S MOHAN KUMARAMAN-GALAM He thinks that the Prime Minister has got an 'animus' against him because he decided a small interlocutory matter in an election petition, not an election petition, let us be clear.

SHRI SHYAMNANDAN MISHRA: Everybody understands it.

SHRI S. MOHAN KUMARAMAN-GALAM: I know my facts.

Now the trouble is—it is interesting to read what he has said:

"I cannot give any conclusive proof"—

he cannot give it—

"but I am convinced that she is quite piqued with me".

I am a bit worried, because listening to my good friend, Shri Madhu Limaye also, I was a bit worried because he has formed a high opinion of Justice Grover because Justice Grover decided a case in his favour. He thinks that the Prime Minister is piqued with him because he decided a case against her (Interruptions)

SHRI PILOO MODY Which makes both of them human.

SHRI S MOHAN KUMARAMAN-GALAM The trouble is that neither Mr Madhu Limaye nor Mr Hegde

PROF MADHU DANDAVATE In one case liberty was involved, in the other case, corruption was involved

SHRI S MOHAN KUMARAMAN-GALAM I think it will be helpful if you would advise your friend when you meet him next, because he is not here at the moment that he and his friend, Justice Hegde, should not judge the Prime Minister by that standard. The Prime Minister does not take a like or a dislike to a Judge on the basis of what the Judge decides. That is irrelevant, that is not in the picture. It is unfortunate that you should have descended to that level that you look at things in that way. It is a sort of hitting at the ground level, try to lift yourself up if you can.

I look also with a certain amount of sorrow at the way Justice Hegde has charged me and charged of course, my colleague, the Law Minister. I am supposed to have used 'democracy as a cover', whereas with him it is an 'article of faith'. I do

[Shri S. Mohan Kumaramangolam]

not quarrel with it. He has charged me with having the aim of 'sabotaging the present Constitution', that I have entered the Congress Party only—I quote—as 'an act of strategy to capture power from within'.

SHRI PILLOO MODY: Correct.

SHRI S. MOHAN KUMARAMANGALAM: Of course, I have been hearing this all along from Shri Piloo Mody and Shri D. F. Karaka, the two most valuable people on this question. I have enjoyed it. They hold these political views and so naturally they have been airing these views. But now I realise that apart from these two gentlemen whose prejudices always blinded their political vision, there is a third one. So, let him go. I have no objection; none at all. (Interruptions) Mr. Piloo Mody talks of four Marx brothers; I can now talk of three blind mice; D. F. Karaka, Piloo Mody and Sadananda Hegde. That is all I can say about it.

Anyway, to come to more serious things; leave alone all these petty, personal attacks which unfortunately drags Mr. Hegde down. I can only express my sympathy; I can sympathise with him. After all, he thinks he has been a little cheated out of the fruits of his job which he was expecting; the fruit of Chief Justice-ship to land in his lap which unfortunately we have taken away from him. Naturally, he is bitter. It is human nature. I do not quarrel with him for that. But the most important thing that he said was this; that India could only survive with a strong opposition; enlightened public opinion, a critical and independent judiciary. According to him, there is no strong opposition, with apologies to you all sitting there. There is no enlightened public opinion, because 50 per cent of our people are illiterate. I wish Mr. Hegde would go to the countryside and talk to the electors, and then he will rea-

lise how wise our people are, literate or illiterate. They know their interests much better than Mr. Hegde does.

Finally, Mr. Hegde says there is no press. The gentlemen up there, members of the fourth estate, will please understand that their only freedom in India is to praise Government; every day, we read the newspapers, and we find them full of praise for the Government; nothing else! What a lovely situation would it be? But this is how Mr. Hegde looks at things. What are we to do with a man who is not able to read the newspapers properly and says that newspapers are only full of praise for the Government. But fortunately or unfortunately, I do not go further into it, we like this controversy; we like the heat of controversy out of which truth emerges. But for Mr. Hegde to cheat himself and deceive himself, to what end? Ultimately, he says there is no opposition; so you are out. No press; they are out; No people; India is out. So, what is left? Mr. Hegde. Therefore, we have the judges. They are to protect you, because you are no use to protect yourselves. They are to protect the law; the people are also no use. They cannot protect themselves, and they have to protect the people. And now, because he cannot protect them, because he did not become Chief Justice—of course as Chief Justice he can but as a judge he cannot—here comes a Gala had of democracy to lead the great army that is going to protect it. But how can he protect them outside? Only judges can protect, according to him. How political is this approach? That is what I want to say. How political?

All the other things he said are products of bitterness; are products of disappointment; products of sorrow. I forget them. They do not matter. But it is not a question of forgiveness here. It is a question of understanding; of assessment of the matter, how political he is. Naturally, are we to be surprised that even *Hindustan*

Times, no great defender of the Government, no great supporter of the Prime Minister, should say that "the temperate and injudicious statement issued by Mr. K. S. Hegde on Tuesday leaves an objective reader"—I am naturally not an objective reader!—"with the feeling that perhaps it is just as well that this particular judge was passed over."

SHRI SHYAMNANDAN MISHRA:
Which paper is it?

SHRI S. MOHAN KUMARAMAN-
GALAM: I am entitled to read what I want; you are entitled to read what you want. It is *Hindustan Times*.

SHRI SHYAMNANDAN MISHRA:
The person who served the Prime Minister is the editor of that paper.

MR. SPEAKER: Mr Mishra, will you please sit down? It has been going very peacefully.

SHRI S. MOHAN KUMARAMAN-
GALAM: I adopt the argument in that paper. They say....

SHRI S. A. SHAMIM (Srinagar):
I take my hats off to that editor. Long live that editor. (Interruptions)

SHRI S. MOHAN KUMARAMAN-
GALAM: I hope you will be happy with that certificate. Keep it.

I have always been amused at watching Mr. Shamim because he gets up in the House in such a temper as if he is going to throw everything at us, and then sits down and smiles. That shows how seriously he takes himself. Why should we take him more seriously?

Anyway there is one last thing which I want to say. Shri Hegde in the course of his rather extended conference yesterday, expressed his apprehension. (Interruptions)

SHRI SHYAMNANDAN MISHRA:
Is it a personal discussion?

MR. SPEAKER: What else is there?

557 LS-13.

SHRI SHYAMNANDAN MISHRA:
This kind of observation coming from the Chair is wrong. Then we will also do so... (Interruptions)

MR. SPEAKER: It has been a very orderly discussion. If you want to do like this, I will not be able to help you. I requested you in the beginning to listen to each other without interrupting each other frequently... (Interruptions)

SHRI SHYAMNANDAN MISHRA:
Your observations are not in keeping with the dignity of the Chair.

MR. SPEAKER: When he has got nothing to say, he casts reflections on the Chair... (Interruptions). He has absolutely nothing to say. That is why he is fighting with the Chair without any reason. He should sit down.

SHRI SHYAMNANDAN MISHRA:
I cannot be browbeaten by you like this.

ए. सी. आनन नर आप की हलिंग नही
हट ज़िम्मा हमें प्राउड होता ।

SHRI SAMAR GUHA (Contn):
It is very unbecoming of the Chair to show his temper like this.

SHRI SHYAMNANDAN MISHRA:
You must observe some impartiality.

MR. SPEAKER: Everybody was listening to Mr. Madhu Limaye with patience.

AN HON. MEMBER: He was interrupted.

SHRI SAMAR GUHA: We have every right to express our judgements. He has no right to denigrate the whole Parliament in the manner he is doing... (Interruptions).

MR. SPEAKER: The debate was going on very peacefully I never interrupted. I never said a word about any speaker. It does not look nice to interrupt like this.

SHRI SHYAMNANDAN MISHRA:
Mr. Madhu Limaye was interrupted.

MR. SPEAKER: Don't behave like this.

SHRI G. VISWANATHAN (Wandiwash): On a point of order. There is nothing objectionable in the Minister taking such a long time. Even tomorrow or the day after tomorrow he can speak. Our objection is only this. He has taken 15 to 20 minutes on Mr. Hegde alone. Now he has proved his enmity towards Mr. Hegde. Why should he further waste the time of the House? Let him go to other points.

श्री मधु लिमये (बंका) : अध्यक्ष महोदय 5 मिनट हो गये मैं व्यवस्था के लिए खड़ा हूँ। मैं पहले कभी यह नहीं देखा कि कोई आदमी व्यवस्था के प्रश्न पर छाड़ा होता है तो उसको 5 मिनट इन्टरवल करना पड़े।

अध्यक्ष महोदय : 50वें का प्रश्न हमने कोई नहीं पूछा।

श्री मधु लिमये मेरा व्यवस्था का प्रश्न यह है कि जब श्री मोहन कुमार मगलम को एक दफ़ा इन्होंने टोका तो आप इतने उत्तेजित हो गए, श्री मुझे दर्जनों बार यह लीग टोक रहे थे। मेरा व्यवस्था का प्रश्न है उस पर आप निर्णय दीजिए। (व्यवधान) इन को आप चुप करवाइये।

मेरा कहने का मतलब यह है कि मदन में जिन लोगों की सझा कम है उस के अधिकारों की रक्षा करना मभापति का काम है। जब मैं बोलता हूँ तो लोग दर्जनों बार मुझ को टोकते हैं और आप उत्तेजित नहीं होते। तो इन को भी अनुशासित कीजिए। इन की बात भी हम सुनना चाहते हैं क्योंकि यह नर्क की जगह है, बहस की जगह है। इन की बात भी हम सुनना चाहते हैं। लेकिन जब हम बोलने के लिए खड़े हो जाते हैं

तो दर्जनों बार आप टोकते हैं, एक वाक्य पूरा नहीं होने देते। अगर यही तरीका होगा तो हम लोग भी हल्ला करेंगे।

अध्यक्ष महोदय : जो लोग इंटरवल करने लगे मधु मिलिये जी, शुरू में कहा था कि आप ऐसा नहीं कर सकते, बिल्कुल गलत है। अगर आप किसी के बारे में कोई बातें करेंगे इस तरह तो यह नहीं चलेगा। और यह देखिए बोल रहे थे कुमारमगलम माहब तो इन को जब कहा तो इन को और कोई सूझा नहीं मिला। चेंबर में लड़ने के।

श्री इय्यासन्नन्म मिश्र : हम कमजोर नहीं हैं, अकेले भी हम लड़ने के लिए तैयार हैं। (व्यवधान)

MR. SPEAKER: Please sit down. I am not calling you.

श्री मधु लिमये इस मदन में विवाद और नर्क चलने दीजिए, यह हुल्लडवाजी बन्द करवायी जाय।

अध्यक्ष महोदय अगर कोई मेम्बर किसी को छेड़ने वाली बात करेगा तो उस को छुड़ ममझना चाहिए कि उस को ऐसा नहीं करना चाहिए। और अगर आप करेंगे तो चेंबर हैम्पलैस हो जाती है।

माननीय मोहन कुमार मगलम जी विषय पर बोल रहे थे, श्री हेडगे के डिफ़ेंस पर बोल रहे थे तो किसी ने नहीं रोका। अब यह श्री हेडगे की दुमरी माइड पर बोलते हैं तो आप स्केते हैं। यह क्या बात है? अब और कोई काम नहीं है?

श्री इय्यासन्नन्म मिश्र : और जब प्राइम मिनिस्टर की बातें होने लगी तो मालूम होता है.... (व्यवधान) ..

अध्यक्ष महोदय : मैं दोनों तरफ की बात सोचना हूँ ।

I also represent the other side. I am speaking for both sides—not only for one side. Please sit down.

SHRI PILOO MODY: Mr. Speaker, Sir, if you will permit me for a moment, there is a difference between a legitimate interruption, interjection and the sort of barracking that you have been hearing of late. A person occupying the chair should be conversant with what is happening.

MR. SPEAKER: You please sit down. Won't advise me.

19 hrs.

SHRI SAMAR GUHA: There is a convention and also a rule that while speaking on the floor of the House, no member will point to the press gallery. In his exuberant mood to propagate a particular philosophy which should be the criterion for choosing a new Chief Justice, Mr. Kumaramangalam pointed to the press gallery not once, not twice, but thrice and you in your wisdom did not say anything about this violation of the convention and rules of procedure. I want to know whether a member is entitled while making a speech to point out to the press gallery.

MR. SPEAKER: This is no point of order. Some members are all the time looking at the press gallery while speaking.

SHRI S. M. BANERJEE (Kanpur): My point of order is this. Some hon. Members have raised the question why the name of Shri Hegde has been mentioned many times. After all, we are discussing the three Judges and one of them is Mr. Justice Hegde and his conduct has to be discussed. We cannot discuss the Judges who have not resigned. Secondly, I want your ruling on another point. Shri

Samar Guha has asked whether members could show their hands to the press or should they show their eyes?

MR. SPEAKER: In the subject we are discussing we cannot help mentioning the names. So far as looking at the press is concerned, sitting here I always see that some members all the time look at them. How can I help that? I do not like it. But I see that some members do it all the time.

SHRI K. S. CHAVDA (Patan): When I was speaking on President's Rule in Gujarat I pointed to the press. At that time the Deputy-Speaker, who was in the Chair, asked me not to point to the press. That was the ruling given at that time.

MR. SPEAKER: Then he pointed out in his speech to the Members of Parliament and he pointed out also to the press as part of it in his speech. He was not doing it to get his speech reported; he was mentioning it in the context of his speech.

श्री शंकर दयाल सिंह (बतारा) :

अध्यक्ष महोदय, मेरा वाक्या का पक्ष है । सभी माननीय सदस्य, श्री मधु निमबे ने कहा है कि हल्द्वारी नहीं होनी चाहिये । मेरा निवेदन है कि कार्यवाही से उस शब्द को हटा दिया जाये ।

SHRI S. MOHAN KUMARAMANGALAM: Mr. Speaker, may I continue after this interlude? I was commenting on Mr. Hegde's statement that he has no confidence in the Government. He has no confidence in the opposition, he has no confidence in the people and he has confidence only in himself and the Court. Therefore, only the courts can correct the executive; that is his theme. Now, if the courts alone are to correct the executive, then we will have continued confrontation. Is that the way he is looking at the future? I think that is the way he looks at it. That shows his philosophy and I think it is

[Shri S. Mohan Kumaramangalam] just right that we have done what we have done.

One final thing. Shri Hegde has charged "possibly my telephone was being tapped and my movements were being watched". He has used the word "possibly" because he seems to have that sort of feeling. Let me assure him and let me assure the Members of this House that his telephone is not bugged and his movements are not watched. We have better things to do in our country than doing all these things.

SHRI SAMAR GUHA: How can he say that the telephones are not being tapped? My telephone is being tapped, as also that of some other hon. Members.... (interruptions)

SHRI S. MOHAN KUMARAMANGALAM: What then are the conclusions that I press on the House in this matter? I would like to put before the House the final conclusions. Firstly, it is not an essential pre-condition to the proper working of the democratic system that the Chief Justice must be appointed on the basis of seniority, but on the contrary, such a practice can only lead to harmful consequences, as the wrong man may well be appointed by the accident of seniority, and seniority often means that no Judge will serve for a long enough period to give continuity and leadership to the court. Secondly, it is not an essential pre-condition to the proper working of the democratic system that a judge prior to appointment should be innocent of political views or convictions, if at all it is possible to find such a person, and certainly Shri Hegde does not belong to this category.

Thirdly, some knowledge of public affairs, of the larger things that move the minds and passions of millions, is an important qualification for appointment to the highest court of the land for such has to be the philosophy of

the Judge, his attitude to life and to the future of our country.

Fourthly, it is entirely within the discretion of the Government of the day to appoint the person considered in its eyes as the most suitable, as having the most suitable philosophy or outlook, to occupy the highest judicial office in the country.

Fifthly, the most important feature of the functioning of a court is its certainty and stability in relation to the major and vital questions of law. This is very important so far as the highest court of our country is concerned.

Sir, I have done. The heat and dust of controversy over the appointment of the present Chief Justice will die down and, I have no doubt in my mind, that this departure from an obviously wrong convention and practice later when the history of our country and of our courts is to be written, will be a landmark in the history of our country in the sense that it opened up a debate on the rightness and wrongness of the convention and uncovered the real reasons that must move a Government in making appointments to a high office of this kind.

The very character of this controversy will lead to a spread of knowledge regarding the matters at issue though, unfortunately, much of the arguments and passions being expended today is without studying the facts, what happens in a democratic system. (Interruptions) This is my view. I am entitled to express it before you.

One last quotation. This is very crucial in understanding the mind of any Judge. Justice Cardozo says:

"Deep below consciousness are other forces, the likes and the dislikes the predilections and the prejudices, the complex of instincts and emotions and habits and convec-

tions, which make the man, whether he be litigant or judge."

—or a Member of Parliament.

MR. SPEAKER: We had allotted 6 hours for this discussion. Up to what time do you want to sit? You want to finish today or continue it on Friday?

SHRI SAMAR GUHA: Sir, my Half-An-Hour Discussion on land reforms has been shifted to Friday. This discussion is to continue on Friday. I am afraid, my Half-An-Hour Discussion will be again postponed.

MR. SPEAKER: It is unfortunate. Every time your Half-An-Hour Discussion is put, something or other urgent comes up.

SHRI SAMAR GUHA: This land reforms is a very important subject.

MR. SPEAKER: When do you want it?

SHRI SAMAR GUHA: Let it be tomorrow.

MR. SPEAKER: I am sorry. Tomorrow, we have got the Finance Bill

SHRI SAMAR GUHA: If this discussion is taken up on Friday, my Half-An-Hour Discussion will be again shifted.

MR. SPEAKER: I am told the Minister will not be here on Friday. If the Minister is not there, there is no use of taking it up on Friday. I think, we should take it up next week, either on Monday or Tuesday.

SHRI SAMAR GUHA: May I seek your protection, Sir? This has been postponed twice. Why can the Minister not be present on Friday?

MR. SPEAKER: We had fixed it for today and the Minister is present today. And today we decide to postpone it.

SHRI SAMAR GUHA: It was not communicated to me that the hon Minister would not be present on Fri-

day. Land reforms is a very important matter....

MR. SPEAKER: I am sorry, we cannot have it on Friday because the Minister will not be here on Friday. We shall have to shift it to next week. (Interruptions) Or, we can take it up right now. Are you prepared?

SHRI SAMAR GUHA: Today, it is not possible. I was given the impression that it would not be taken up today. I cannot make an *impromptu* speech. (Interruptions) We can have it tomorrow.

अ यत्न महोदय : कल तो मुदिकन ह ।
मैं तो आधा रात तक बैठने को तैयार
हू । आप बैठने के तैयार हों तो
बैठ जाते ह । (यवधान)

Mr. Piloo Mody wants to speak. Will the Minister keep sitting for some more time? I will adjourn the House after Mr. Piloo Mody has finished his speech.

SHRI PILOO MODY (Godhra). I was considerably entertained by the performance put forward by the star performer of the Congress party. There is absolutely no doubt about it at all that he has received a life time's training in propagating his cause with the greatest erudition that perhaps this House has ever been fortunate enough to witness.

Nevertheless his arguments are somewhat transparent. I think, he has admitted in a very simple language that the Supreme Court as it existed in India was a moth-eaten institution which does not suit his philosophy, and, therefore, the time has now come, because of certain confrontations, certain differences of opinion, that have been held between the Supreme Court and Parliament, when we should change the structure of the Supreme Court and make it a mouth-piece of the Government. I think, he has made

[Shri Piloo Mody]

his case very clear, and I do not see any reason why he gets upset if Justice Hegde—even though he may not choose to call him justice any more—also happens to state the same thing. I think, this is all that the Opposition has been accusing the Government of—of having withdrawn the entire basis of the Supreme Court as enshrined in the Constitution of India and turned it into a mouthpiece, a performer on behalf of the Government. Now, that is his avowed attitude towards justice. He can quote from America, he can quote from Australia, he can quote from New Zealand, he can quote from Japan but he cannot quote from the Soviet Union. It is quite evident, that he cannot quote from there nor can he transplant it in India because none of these respectable countries that he has quoted had Mrs. Gandhi and the Congress Party functioning in them. And it is precisely because Mrs. Gandhi, supported by these three Marx Brothers on the Congress Benches, is functioning in this country and the influence they have had in shaping or mis-shaping the democracy of this country that it becomes even more incumbent that the Supreme Court should be scheduled isolated and kept out of the grabbing reaches of this Government."

Believe me, Sir, I believe in social change. But I believe in social change for the people and not for the masters and this is the basic difference of opinion that we have between these desk-thumpers on the one side and the people who try to oppose them on the other. When we want social change, we want a social change for the people and not for the masters. We believe, we may be right or wrong, that this change should be gradual, it should be orderly and it should be by democratic process—democratic process, and I repeat the word 'democratic process'—but how is Mr. Mohan Kumaramangalam to know what is democratic process? After all, social change, irrespective of the claims that may be made by the Treasury Benches, was not invented by Mrs. Gandhi nor was

it spurred by the three Marx Brothers....

AN HON. MEMBER: Who are they?

SHRI PILOO MODY: Two of them are present here and one of them was sent to Bengal.

It is not an invention of theirs. It started, and I remind the hon. Minister, at the time of the Magna Carta, as far back as 1215. It went through the first Parliament of Simonfort, it went through the French Revolution and it went through the American Revolution and through the Great Reform Bill and ultimately, the Code Nepelean and finally, the United Nations Charter on Human Rights, ultimately ending in the Constitution of India, the Constitution of India which for the first time gave to the nation a social philosophy and enshrined in that Constitution a chapter on the Directive Principles of State Policy.

It has been often argued by these gentlemen who talk a lot and read little that the Directive Principles have all of a sudden become supreme. Did you hear the antics of the hon. Minister over there who said that some Judges think it is here and some Judges think it is there? It is very simple why our Fundamental Rights differ from the rights guaranteed in the Directive Principles. Only because one is inherent and can be found in nature and the other requires work on the part of Mrs. Gandhi and her Ministers to bring it about. The Constitution guarantees us the right to work. How does the right to work just become inherent unless you, Mr. Mohan Kumaramangalam and Mr. Gokhale, work hard to see that everybody can get a job in this country? And this work does not depend on merely smearing Justice Hegde. This work does not depend on merely smearing the Opposition and calling them all manner of names. This means, work, hard work, in the fields, hard work in the

factories, hard work in the offices and most of all, hard work in the Ministries which will create the sort of jobs that the Directive Principles had in mind to provide for the people of this country.

We talk about social change. Social change will come in with or without Mr. Mohan Kumaramangalam and his colleagues.

But for a brief aberration of perverted totalitarian theory propounded by Mr. Karl Marx, picked up by the authoritarians to disrupt the social progress of eight centuries we would have been well on our way today of having a transformed society, with equality and justice for all. Well, I can say, in spite of the brave protestations of the Minister, that this country will not accept his theory and it will not accept his philosophy. He can go and find himself another Parliament. He can go and find himself another country; but it will not be India.

Sir, Mr. Mohan Kumaramangalam has said, "let us have committed judges." This is what he has really said.

SHRI S. MOHAN KUMARAMANGALAM: I rise on a point of order. It is not a question of committed judges, because that word is always misused. I did not say, "committed judges"

SHRI PILLOO MODY: I would like to correct the Hon. Minister. While I can grant him the word, I cannot grant the thought. The whole purpose of his speech was to explain, in the most likeable fashion, if I may say so, that this era has gone; we must have committed judges, judges "who believe in us" judges "who will do what we say," judges "who think what we do". What has actually happened, he has gone even beyond the scope of committed judges. What the Government really wants is, servants of their masters. That is what they want. They are so used to courtesies and having courtiers bowing and scraping in front

of them. They talk about socialism, while living in enormous mansions, enjoying a salary of over Rs. 12 lakhs. And they talk about us being "right reaction" and they being left adventurers and all the wisdom and knowledge through the quotations of Cardozo, all crammed into the head of the Minister himself.

I hang my head in shame. What sort of Parliament is this? I believe that on the Congress benches, there are something like 200 lawyers. Where are they? Have they forgotten their profession? Have they forgotten what is happening? Has some lightning hit them dumb? Where are these 200 lawyers? Where is their conscience? Where is their conviction? What is the use of life if it is to be without courage? What is the use of education, if it is to be without character? What is the use of social status, if it is without reputation, what is the use of privileges if they are to be without responsibility; what is the use of rights if they are to be without duties; and what is the use of a social philosophy if it is to be without a social conscience? Individually I can only say that they are ciphers; but collectively, they behave like a mob and this is even more tragic.

I have seen day after day the Prime Minister sitting in this very Parliament. Ministers of Cabinet rank, Ministers of State and Deputy Ministers, and then there are some others hanging at the back also. They sit here, including the Minister of Parliamentary Affairs, day in and day out and see this barracking section over here. And they do not think that this is damaging democracy. It is very tragic. Either they must admit that they have no control over their own members or they must admit that barracking is a very healthy parliamentary practice which,—just as they have perverted the Supreme Court—they have decided to use it to pervert Parliament itself. To say the least, it is a tragedy.

Now, why has this happened? Why has one judge been selected at

[Shri Piloo Mody]

the expense of another? I cannot understand why, because the judgment that the Supreme Court gave, the 13-Member Bench of the judiciary gave, was a great and historic judgment. It may be that there were many judgments and it may be that it took some time to sort them out, but in essence, it gave to Government almost 90 per cent of what it wanted with certain restraints; it also gave to the citizens 10 per cent of what they yearned for also with certain responsibilities cast on them. And yet, having got such a favourable judgment from the Supreme Court, these vultures of power were not satisfied; they had to hit back and to hit back with a sort of venom, vengeance and vindictiveness in the most vulgar display of all the arrogance of power that has ever been seen.

All that I can say is that if the collective responsibility of the Government does not exist in it, then I think that it may be that the Prime Minister who does not understand law or economics or anything else has been misled by the Marx Brothers who are constantly at her elbow. The judgement was a product of social change. There was a time when the same Justices would not have come up with the same judgment. Sir, judgments change as social changes take place. There was a time when Mr. Kaldor came to this country and recommended that the highest level of taxation should be 45 per cent. Ten or fifteen years later, a hesitant Justice Wanchoo, sitting on a hesitant commission suggested that it should be 75 per cent. This is a direct result of social change and social thinking. It was, you can call it in my language, intimidation. But it was change, and it was change called upon by society. They are not satisfied with this sort of change; they want to change it in the manner which Shri S. Mohan Kumaramangalam has received a life-time's training. All that I have to say is that he can sit where he is; he can sit even higher

than where he is, and he can become the Deputy Prime Minister of this country, and he can even become the Prime Minister of this country, but he will not be able to bring about that sort of change in India, and this is the challenge that I throw to him. He may accept it, he may believe me or he may not believe me.

Shrimati Indira Gandhi and the Ministers have apologised. They have said that after all it was not merit that they were considering, it was not seniority that they were considering, but Shri S. Mohan Kumaramangalam has been very honest, and, therefore, I thank him. I appreciate honesty wherever I see it, even if it is not part of the democratic process, because honesty has its own value, and it exists on its own.

The other day, in Lucknow or was it in Kanpur, the Prime Minister talked about how she wanted to bring justice to the poor but the big bad wolves like me in the form of right reaction consisting of three Members here were stopping this massive mandate of 350 joined by God knows how many from this side, we were stopping them from bringing about this, that is, bringing justice to the poor.

The same Law Commission which has now been made a victim of political manoeuvring suggested several methods by which justice could be made cheaper in this country, through court's stamp duties, methods by which lawyers were employed, the time element and so on. Has Government taken a single step in that direction? Where is this concern for the poor that I keep on hearing about night, day and afternoon?

SHRI MADHU LIMAYE: You find it in Maruti socialism.

SHRI PILOO MODY: Shri Madhu Limaye has found me the answer.

It has been proved—Shri Mohan Kumaramangalam instead of speaking for an hour and a half could have

taken three hours; I am sure he is capable of it, it would have made no difference—that this Government has gone mad. *Vinasa kale viparita buddhi*, those whom the God wishes to destroy, He first turns them mad. That is what is happening today in India.

MR. SPEAKER: The House stands adjourned till 11 a.m. tomorrow.

19.37 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Thursday, May 3, 1973/Vasakha 13, 1895 (Saka).