through the system in the Defence Ministry?

Dr. D. S. Raju: This fact will be remembered. But the civil authorities have got to decide the quantum of compensation. There is actually some delay at that level. And there are generally appeals against the quantum of compensation also. That is another factor causing delay. But whatever that may be, whenever these things are brought to our notice, we always take very quick and very sympathetic action. There is nothing more for me to say in regard to this.

This measure is a very important one. As I have said, we are only making an amendment to include the areas which formerly belonged to the princely States. The other points which have been raised are not very relevant to this Bill. But I shall remember those suggestions and give effect to them as and when the need arises to do so.

I would request hon. Members to pass this Bill.

Mr. Deputy-Speaker: The question is:

"That the Bill further to amend the Indian Works of Defence Act, 1903, be taken into consideration".

The motion was adopted.

Mr. Deputy-Speaker: I shall now put the clauses to vote.

The question is:

"That clauses 1 and 2, the Enacting Formula and the Title stand part of the Bill".

The motion was adopted.

Clauses 1 and 2, the Enacting Formula and the Title were added to the Bill.

Dr. D. S. Raju: I beg to move:

"That the Bill be passed".

Mr. Deputy-Speaker: The question is:

"That the Bill be passed".

The motion was adopted.

23.17 hrs.

JUDGES (INQUIRY) BILL—*contd.*

The Deputy Minister in the Ministry of Law (Shri Jaganatha Rao): On behalf of Shri Hathi, I beg to move:

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

Article 124 (4) of the Constitution provides that:

"A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of the House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.".

Article 124(5) provides that:

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

The above provisions are also applicable to a High Court judge under proviso (b) to article 217 (1) read with article 218 of the Constitution.

The present Bill seeks to lay down the procedure for the investigation

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and proof of the misbehaviour or incapacity of a judge of the Supreme Court or of a High Court and the presentation of an Address by Parliament to the President.

There have been a few cases in the past where an inquiry against a judge might have been necessary. . . .

Shri Hari Vishnu Kamath (Hosangabad): Might have been? This is vague.

Shri Jaganatha Rao: . . . and there may be cases in the future also where it may be necessary to take action against a judge. Dr. L. M. Singhvi had also brought forward a resolution is this House which had not been discussed here. So, Government feel that legislation is necssary and accordingly they have brought forward this legislation to provide for a procedure for inquiry for investigation and proof of misbehaviour and incapacity of a judge of the Supreme Court or of a High Court.

This Bill seeks to provide for the appointment of a special tribunal, the powers being given to the special tribunal being the powers under the Civil Procedure Code to examine witnesses and then the submission of a report by the tribunal to Parliament to take action so that both Houses of Parliament can present an Address to the President for the removal of a judge on the ground of either proved misbehaviour or incapacity.

This is a simple Bill.

Sir, I move.

Mr. Deputy-Speaker: Motion moved:

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

Shri Hari Vishnu Kamath: On a point of order. Before the House proceeds to discuss this very important Bill one of the most important since this Parliament came into being, I would request you to see, though I have not been a stickler for quorum because of the emergency that discussion on this particular Bill should not proceed without quorum.

Shri Gauri Shankar Kakkar (Fatehpur): What is the time allotted?

Mr. Deputy-Speaker: No time allotted. The bell is being rung—Now there is quorum.

Shri Hari Vishnu Kamath: I beg to move:

"That the Bill be referred to a Select Committee consisting of 19 Members, namely:—Dr. M. S. Aney; Shri N. C. Chatterjee; Shri S. N. Chaturvedi; Shri K. Hanumanthaiya; Shri Jai Sukh Lal Hathi; Sardar Kapur Singh; Shri Madhu Limaye; Shri Harekrushna Mahatab; Dr. G. S. Melkote; Shri H. N. Mukerjee; Shri Krishna Chandra Pant; Shri Raghunath Singh; Shri N. G. Ranga; Shri Sham Lal Saraf; Shri Prakash Vir Shastri; Dr. L. M. Singhvi; Shri Sinhasan Singh; Shri U. M. Trivedi; and Shri Hari Vishnu Kamath with instructions to report by the last day of the first week of the next session."

Mr. Deputy-Speaker: Both the original motion as well as this motion are before the House.

Shri Hari Vishnu Kamath: This is one of those Bills about which I am constrained to say that the Government has suffered from a sort of amnesia. The Bill was introduced as far back as February, 1964 by the then Minister of State in the Ministry of Home Affairs, Shri Hajarnavis. He has left the Ministry, somebody else has come in his place, and it was almost being relegated to the limbo of oblivion. Then when a question

which I had tabled with respect to a Judge of a certain High Court was disallowed on the ground that there is no provision in the Constitution and no law on the statute book for initiating an inquiry into charges of incapacity or misbehaviour of High Court Judges or Supreme Court Judges the past was raked up and with the assistance of the Ministry and our very competent Library and Reference Section, I found that a Bill called the Judges Inquiry Bill had been introduced many many months ago soon after a resolution on the subject had been tabled by a colleague of mine on this side of the House.

That is the genesis of this Bill. But for that resolution introduced, which appeared in the Order Paper in November, 1963, but was not ultimately moved by Dr. L. M. Singhvi....

Shri Shree Narayan Das (Darbhanga): What do you mean by 'Introduced'?

Shri Hari Vishnu Kamath: Tabled, if you are a stickler for words.

It was not reached for discussion. I will put it very clearly. The resolution tabled by Dr. L. M. Singhvi appeared on the Order Paper. It became the property of the House and public Property. It appeared in the press and the information was known to the country. I would read relevant extracts from the Resolution. In the Order Paper it was put down 'To move the following Resolution'. It was actually not moved because it was not reached.

"Dr. L. M. Singhvi to move the following Resolution:

'Whereas Shri Justice Jaffar Imam, a Judge of the Supreme Court is suffering from mental and physical incapacity and the Chief Justice of India has not thought it proper or possible to allot him his regular work on the Bench;

'Whereas the said Shri Justice Jaffar Imam in spite of the request of the Chief Justice to that effect persisted in the first instance, in declining to undergo any medical examination to satisfy the Chief Justice that he continues to be fit and capable of discharging the functions of that high office;

'Whereas recently he was medically examined and the examination indicated that the said Shri Justice Jaffar Imam continues to suffer from incapacity; and

'Whereas the said Shri Justice Jaffar Imam is not prepared voluntarily"—even after the medical examination certified him to be unfit—

'to retire or to resign from his office or to remain on leave as Judge of the Supreme Court in spite of this known incapcity.

'Now therefore'—

the operative part of the Resolution which follows is very important; it shows where the Bill differs from what we would like it to be—

'this House hereby resolves to present the following address to the President of India under art. 124(4) of the Constitution, 'that the, President of India be pleased to order the removal of Shri Justice Jaffar Imam from his office on the ground of incapacity' and that

further this House requests Rajya Sabha to present a similar address to the president for the removal of the said

"Shri Justice Jaffar Imam, a Judge of the Supreme Court, from his office on the ground of incapacity, within the duration of the current session".

This was in the winter session of 1963. In 1964, in the next budget session, the Judges Inquiry Bill was introduced. It remained hanging fire uptil now. In September 1965, eighteen months later, this Bill has come up for discussion in the House.

While moving for consideration, the Minister said, if I heard him aright, that in the past there might have been cases where such inquiries were necessary, and may be—God forbid—

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in the future also there may be similar inquiries necessitated by circumstances. I am sorry he did not refer to any concrete instance in the past. As regards the future, of course, nobody can say what is in store. But certainly he knows what has happened in the past. I can understand, if not appreciate, his reticence inside the House. Outside, in the Lobbies he might tell me but naturally inside the House he is reluctant and reticent.

Shri Jaganatha Rao: I left it to you.

Shri Hari Vishnu Kamath: I do not think you should leave so much work to the Opposition. You should try and help the Opposition....

Shri Jaganatha Rao You are very alert.

Shri Hari Vishnu Kamath: ....and not hinder them. If there were instances where it was necessary to take some steps, yet Government did not because they thought they were helpless because there was nothing in the Constitution or law for that matter to proceed, they should not have taken over much time for moving for consideration and discussion of the Bill.

Now, Sir, apart from this particular instance of Shri Justice Syed Jaffar Imam of the Supreme Court who, even after the resolution was tabled in the House—it became known, it appeared in the press—even after that, as far as my knowledge goes, continued to sit on the Bench of the Supreme Court for some months more....

Shri Daji (Indore): Whether he could mentally comprehend the resolution....

Shri Hari Vishnu Kamath: My colleague Shri Daji's explanation is very plausible, that he could not mentally comprehend the resolution tabled in the House. I would not go as far as that, but I do not know the reasons. But he continued to sit on the Bench of the Supreme Court for some months—I do not remember the date on which he resigned his high office.

Besides that case to which I have referred, there have been some other cases where, though there was provision in law, though the Constitution had been amended for that purpose, yet the Government for reasons best known to them refrained from ordering an inquiry into that particular matter.

This Bill deals, I believe for the first time since independence, with high matters concerning our judiciary, high judiciary—the High Court and the Supreme Court Judges—and I do wish that the House seriously devotes its attention to this. Because, under the Constitution, under the separation of powers, each wing of the Constitutional set-up has got its own functions and powers; they are the executive, the judiciary and the legislature, that is Parliament; and Parliament is now taking up this matter with regard to inquiry into allegations of incapacity or misbehaviour of judges. We tread, may I say, on very sensitive ground; and Parliament, I hope, will give due importance to this matter, more importance to this matter than it has been pleased to give to other Bills during this Emergency. And we will certainly do our best to refrain from importing into the discussion matters, words or phrases, which might needlessly injure or adversely affect the sentiments of judges or their interests. Because, the judiciary, as has been well said, is the last bastion of democracy, and more so parliamentary democracy. Therefore, while we are anxious, Government must also see to it that the judiciary in our country functions in such a manner that it inspires the confidence of the people, that it is respected as an efficient, hard working, competent and incorruptible institution. Therefore, the Government, I would have thought, would have, on their own, suo motu, agreed or moved

for reference of this Bill to Select Committee.

They might argue that there are very few clauses here, it is a simple Bill and not controversial; they might in their usual style say that it is a non-controversial Bill. But, Sir, it is highly controversial, in my judgment; not judiciary, but the provisions, the manner, the *modus operandi* which we are going to devise for this purpose is a controversial matter.

Shri D. C. Sharma (Gurdaspur): It is very important.

Shri Hari Vishnu Kamath: And therefore I expected that of the Government.

Sir, I am sorry none of the senior Ministers is here; neither the Home Minister Shri Nanda nor the Law Minister Shri Sen is here. As a matter of fact, one of them should have been here to pilot this Bill. It is an important Bill. I have got great regard for the Deputy Minister, Shri Jaganatha Rao . . .

Shri Jaganatha Rao: I cannot pilot it?

Shri Hari Vishnu Kamath: He does not suffer from any incapacity.

Shri Jaganatha Rao: Nor Mr. Kamath.

Shri Hari Vishnu Kamath: But I would have been glad, and he perhaps would also have been glad if his senior Minister Shri Sen, if not Shri Nanda, had piloted the Bill.

Sir, there was an instance of another Judge, in whose case even when there was a provision in the Constitution, no action was taken. Even after some advocates of the Madras Bar had submitted a memorial to the President, even after Members of Parliament—twenty or twenty-five, I do not remember the exact number—had submitted a representation to the President in which that matter, the age of the Judge, was in question, and the allegation was that the Judge had given a false date of birth, he continued in office even after completing sixty-two years of age. In that case, to which even the former Attorney-General Shri Motilal Setalvad referred in one of his recent speeches, that where serious charges of having given a false date of birth were made against the then Chief Justice of Madras—he resigned last year—in that case no action was taken by the President even after petitions were presented to him by the Madras Bar and by Members of Parliament. The ex-Chief Justice resigned shortly afterwards, and the plea was taken by the Treasury Benches that "now that he has resigned nothing can be done, he is out of our clutches". Because, they said, the amendment of the Constitution says "a Judge", and the plea taken here was that a judge means a sitting judge, a judge who is in office; and they said "against a judge who has resigned, we cannot take any action."

Shri Jaganatha Rao: That is correct.

Shri Hari Vishnu Kamath: Correct or not, that is your view, and you have the majority, and you get away with whatever you like.

It is all the more important, therefore, that when you enact legislation of this kind, it is necessary that every word and every phrase should be scrutinized most carefully, for which there is no time or patience in the House. I know, the House will ultimately pass every Bill, but the time and the methods that are available in a Select Committee of the House are not available here in the House. And considering that the Judges of the Supreme Court and the High Court are affected by this Bill, I would even now plead in all humility but with all earnestness, plead with Government that it is not too late even now for them to accept a motion for reference to Select Committee. I do not urge that my motion should be accepted Let them bring forward their own motion, and as it has waited for eighteen months as it has been hanging fire for eighteen months it does

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not matter if it continues to hang fire for two or three months more. But we must have a sound piece of legislation, a sound Act, on the statute-book.

Mr. Deputy-Speaker: The hon. Member's time is up.

Shri Hari Vishnu Kamath: There is no time fixed for this Bill. It is an important Bill and we should not hustle these matters. If you do not permit me, I will sit down. But I have got much to speak upon. I have twelve amendments. You should not make short-shrift of it like this.

Shri Raghunath Singh (Varanasi): We are also going to speak.

Mr. Deputy-Speaker: There are a large number of speakers.

Shri Hari Vishnu Kamath: The Business Advisory Committee did not even think it fit to say how much time should be allotted for this. No time has been allotted.

Mr. Deputy-Speaker: Shall we allot now?

Shri Hari Vishnu Kamath: Yes, if the House so desires. I personally think that six hours should be allotted.

Shri Raghunath Singh: The interest of the House is very clear in that the House is not very full.

Shri Hari Vishnu Kamath: I shall raise the point of quorum again, then.

Shri Raghunath Singh: I do not say there is no quorum. I say the House is not full.

Mr. Deputy-Speaker: I think four hours will do.

Shri Hari Vishnu Kamath: If they accept the Select Committee motion, then I agree to four hours.

Shri Jaganatha Rao: No, no. *(Interruption)*.

Shri Hari Vishnu Kamath: My friend Shri Joachim Alva will have his chance.

Mr. Deputy-Speaker: Four hours.

Shri Hari Vishnu Kamath: It will be too little, Sir. You will see as the discussion proceeds.

Then, may I refer to the other case, of a judge of another High Court. I tabled a question during the last Budget Session. It was not taken up. I repeated it in this session, again it was disallowed, and the Minister pleaded inability to answer the question because there was no provision in law or the Constitution to proceed in this matter. Therefore, the supreme necessity of a statute like this becomes obvious.

The essential difference between the Constitution and the Bill before us is something which should be taken serious notice by my colleagues on both sides of the House, and I for one would venture to suggest that the Bill before the House violates the spirit of the provisions of the Constitution, is a departure from the spirit and letter of the constitutional provision. How? May I briefly explain what I mean?

Article 124(5) reads:

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

But the preceding clause, which was read out by the Minister also, reads:

> "A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority. ."

In my humble judgment, the initiative, therefore, must come not from the executive, of which the President is the head, but from the legislature, of which Parliament is the supreme symbol. The executive should not be in a position, even the President should not be empowered to initiate proceedings in this matter.

Mr. Deputy-Speaker: Is not the Minister a part of the executive?

Shri Hari Vishnu Kamath: Parliament must present an address. I am not talking of the Bill, I am talking of the procedure for removal of Judges.

If it were possible for Parliament to move in the matter and present a petition to the President, which would automatically, *ipso facto*, be binding on the President, then it will be excellent. Such a procedure would be free from the taint or suspicion of the executive meddling with the judiciary or the judiciary being in any way a handmaid of or subordinate to, the executive. They should not be put into juxtaposition, I would not say conflict, in this particular matter. Parliament is sovereign under the Constitution and under article 124(5) is competent to regulate the procedure with regard to this matter. Therefore, the Minister has brought this Bill forward, and with the majority behind him. I am sure he will have his way; whether in this matter or in the Select Committee matter, he will have his way, but if there is no whip, I am sure the Select Committee motion would be accepted. Their own motion may be brought, but I do insist once again that the present motion should not be acceptable to the House. The House should reject this motion for consideration of the Bill and should instead prevail upon the Minister, the Government, to bring forward another motion for referring the Bill to the Select Committee, where all the issues, the very delicate issues, important issues, vital issues for the future of the judiciary can be thrashed out. I do not know whether the Government appreciates those matters as well as some of us do on both sides of the House, I wish they did. Once the judiciary is affected, adversely affected, badly affected, it will have repercussions on the . . .

Shri Raghunath Singh: It is being affected now.

Shri Hari Vishnu Kamath: Therefore, it is more necessary for Parliament to see to it that this rot is arrested, if at all there is a rot as he says. Therefore, I would insist that my friends of the Congress Party, who are arrayed in such vast majority, would even now persuade the Minister to accept a motion for reference to the Select Committee—not my motion, let him bring forward his own motion—and if that is done all the issues I have referred to can be discussed in the Select Committee. There are many amendments which I have given notice of. In private talk I find that many Members of the Congress Party would also welcome a reference to the Select Committee. I hope they will say in public what they have told me in private, that they will say inside the House what they have said outside the House.

Shri Sham Lal Saraf (Jammu and Kashmir): Why not?

Shri Hari Vishnu Kamath: I am glad that with the valiant, stout support of my friend Shri Saraf, there is one more addition to the ranks of those who want a Select Committee on this Bill. I do hope that the House by a majority decides that a Select Committee should be constituted for this Bill. Having waited for 18 months, the heavens will not fall if we wait for two months more and the next session passes this very vital Bill.

Shri Joachim Alva (Kanara): This is a very important Bill. I do wish that the Bill goes to the Select Committee, for this Bill deals with enquiries into the conduct and character and calibre of our Supreme and High Court Judges. I am also sorry that the senior Minister is not here because this is a Bill which deals with the conduct of Judges who are the most important part of our Constitution. The Judges are the symbols of the majesty of law, and if that is impaired, woe betide our country.

I do wish the Home Minister were here, because I want to make a certain statement about something which recently occurred in the Bombay High

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Court. I had tabled interpollations in regard to it, but it has so happened that the questions were shelved for one reason or other. I took up the matter with the Minister of State for Home Affairs and I thought he too at least would be here to-day.

We cannot afford to neglect any kind of incident involving our Judges. The Judges must be above suspicion; the Judges must not only be above suspicion, but they must give the impression that they are above suspicion. We want fair-minded Judges; we want independent Judges, we want Judges of character and competence. Unless these characteristics are embedded in our Judges, our High Courts nor our Supreme Court in the last round cannot deliver the goods. The man in the street cannot feel happy, nor even the big parties or big business or anybody, unless you have Judges who are impartial. After all, it should be remembered that a Judge or a magistrate or even the meanest judicial officer in the smallest town or village is in the place of God Himself. He holds the scales of justice in his hands, and he for good or evil decides the fate of people. A Judge or a magistrate or even a lawyer affects the destinies of innumerable people, much more than even a doctor, who disposes of only one party—the patient may die on the table; a Judge, magistrate or a judicial officer may work havoc on countless people, with a wrong and unjust decision and then it will be too late!

I heard from one of the most important ICS officers—he was the first or second Indian Secretary of the Home Department of the Government of India that in the old days you could make a foolproof case of murder in the Punjab against any person if you were not in the good books of the authorities, and he could be hanged. This is a very serious matter.

Sir John Beaumont, one of the ablest Judges of the British days—I had the pleasure of knowing him and discussing matters with him—said that when he came to this country he thought the record of evidence here was like King's evidence in England. He decided the famous Sholapur Patriots case in which four accused were hanged. The great Bulabhai Desai, whose voice used to be marvellously heard in this House, defended them, argued their appeal. Sir John Beaumont had just then come from England, and he confirmed the death sentence of these patriots and it was too late. Thereafter, when Sir John found that the evidence that was produced before the court was bogus, he went on hitting the police evidence in later cases in such a way that he was in the bad books of the British, but he did not flinch. As a result of it all, Sir John Beaumont refused to hand over Benjamin Guy Horniman to the tender mercies of the Allahabad High Court. What was the offence that Horniman, one of the greatest journalists, had committed? He only wrote a few lines in a very insenstive form, in a complaining form, in a humorous column, and the Judges of the Allahabad High Court were out raged and ordered that Horniman shall be produced before them, that he shall be hauled up for contempt of court. When the case came up before the then Chief Justice of Bombay, Sir John Beaumont, happened to successfully defend Horniman in half a dozen defamation cases; I did not go in this case, though I am grateful he asked me to assist him—Shri K. M. Munshi appeared for him; the Bombay High Court refused to hand over Horniman to the tender mercies of the European I.C.S. Judges of the Allahabad High Court.

I am mentioning to you this to point out how a judge who came to this country thought of the evidence that was rendered before him as being King's evidence. He later found that it was not so; that the evidence here could be false. We want to have a new line of judges in free and independent India, judges of character. We

have had great lawyers like Motilal Nehru, Deshbandhu Das, Bulabhai Desai, Dinshaw Mulla, Srinivasa Iyengar and others. I cannot recall just now to my mind other men who have left their stamp on our law and polity and law. Now it is time that we produced a great line of great judges. We tempt them into office; we tempt them out of office into a job; we tempt them out of retirement and put them on a job. That shall not be. Let judges be great educators of the youth. Our youngsters are not getting teachers that they need. Great judges have to be protectors and pioneers. When they fall out of grace, what can I say? If judges have not the decency to step down from office when there are scandals, what shall I say? They must know when to resign and how to resign, the moment there is something against them. Today this Parliament is called upon to enact a law by which we have to compel them to step down. The President is given the power, on receipt of a report or even otherwise, to constitute a special tribunal for the purpose of making investigations and remove the judge. What happened a few months ago in Bombay? I put my head down. I have been associated with the Bombay High Court on the appellate side. I was also to be hauled up before Madras Judges when Justice Byers shot a boy on the streets of Madras during Quit India Campaign days. He pleaded self-defence. There was a terrible uproar in Madras. I wrote pretty strongly about it in my paper Forum. Those were the days of the mighty British Government. The aggrieved European Judge felt that I should be hauled up for contempt of court and produced in Madras but the Government of India did not oblige him by refusing to amend the law. He thought that it was highly objectionable on my part to have written that article when he had shot a young boy because he declared that he had the right of self-defence. Judges shall not be touchy men; they shall not be sensitive men. We do realise that they are human. The present distinguished Chief Justice Gajendragadkar of the Supreme Court declared the other day that the Judges are also human beings and that they also have to view things from the human point of view and we should not fail to treat them from an human angle. The Judges shall not be sensitive as the Allahabad High Court Judges had been in the case of Benjamin Guy Horniman. We also want that judges should step down from office when there is suspicion about their conduct. I hold no brief for the *Blitz*, but take the *Blitz* case. There was Justice Tarkunda of Maharashtra High Court. Something happens. Allegations were made. The *Blitz* defamation case went on for a long time. It is one of the strangest cases, where the complainant or plaintiff is not called in the box. The Judge delivers a judgment putting a very heavy fine on the respondent? What do we say? In the course of the case the first cousin of the Judge Mr. Tarkunde a civil architect of Nagpur, takes a loan of Rs. 10 lakhs from the Bank of India in which the plaintiff is a Director. (*Interruptions.*)

Mr. Deputy-Speaker: No individual should be discussed.

Shri Joachim Alva: It has appeared in newspapers. I shall be the last person to do anything. (*Interruptions.*)

Shri Himatsingka (Godda): On a point of order. There has been an appeal and the case is *sub judice*. Can it be discussed here?

Shri Joachim Alva: I want to know whether any High Court Judge or any other judge who presides over a case, can come under the influence of his relative. I put a straight question to my hon. friend. Let him or the learned solicitor Shri Himatsingka answer. Let the Judge be A, B, C or Himatsingka; he does not call the complainant or plaintiff into the box in a case lasting days and weeks on end but levies a heavy fine of over a lakh and his cousin takes a big loan in the course of the case (*Interruptions.*)

Mr. Deputy-Speaker: It has been brought to the notice of the House that the case is *sub judice*.

Shri Daji: He is speaking about the conduct of a relative of the Judge.

Mr. Deputy-Speaker: Let us not discuss individuals.

Dr. L. M. Singhvi (Jodhpur): There is a well-known procedure for a Member to discuss the alleged misbehaviour of a judge and that is by way of a specific motion under the Constitution. Therefore, if the Member wishes to bring out these facts, he is perfectly within his right to bring these facts out but only on a specific motion. In no other way can this House really discuss any of these matters.

Shri Joachim Alva: Any Judge, A, B, C, or X or even Dr. Singhvi if he becomes a Supreme Court Judge should be above board. No judge shall give room for suspicion that he came under the influence of his wife or son or cousin or brother or friend in the administration of justice. No Judge should do anything which will create suspicion. He may be moved a little perhaps out of friendship with a man if he is about to be put on the gallows itself. But a Judge shall not take anything, shall not come under the influence of any kind of pressure, commercial, political, industrial, personal or monetary. That is how I have been striving to build up my case for clean and upright and independent Judges.

This Bill is very important. I have had a lot of experience of judges, British and Indian. I shall, if I may, mention one instance particularly. Once I met Sir George Spens, now Lord Spens of the House of Lords and I said: My Lord, I wanted to meet you; I am an old lawyer. He said: What is your name? Alva! Well, I know about you, he said. When I was President of the Delhi Gymkhana Club you were going to be admitted but they were blackballing you. I fought for you and brought you in. That great Judge was such good Samaritan! Why I am mentioning this is to show the character of the Judges. I compared them all to God himself and gave them a place of divinity. They should be above the influence of others. We want the Indian Judges to set up the highest standards so that they may live up to be guardians of the helpless, of the weak and these judges be the protectors of the innocent and it does not matter if even a hundred guilty ones are hanged but not one innocent shall be denied the protection of law.

श्री उ० मू० त्रिवेदी (मंदसौर) : उपाध्यक्ष महोदय, जब से मैं ने यह बिल पढ़ा है, तब से मेरे दिल में यह भाव पैदा हुआ है कि अगर इस प्रकार का महत्वपूर्ण बिल इस तरह से हाउस में लाया जाये कि उस पर सिलैक्ट कमेटी तक में चर्चा न हो और बगैर उस को पढ़े हुए, बगैर उस पर ध्यान दिए हुए, बगैर उस की इम्प्लीकेशन्ज को समझे हुए और बगैर उस का अर्थ निकाले हुए यहां पर उस के बारे में बहस की जाये और तीन घंटे के अन्दर उस को कानून बना दिया जाये, तो इस से पार्लियामेंट और डैमोक्रेसी को बहुत बड़ा धक्का पहुंचेगा ।

14 hrs.

पन्द्रह साल पहले से हमारे कांस्टीट्यूशन पर अमल शुरू हुआ । इतने समय तक हम इस बारे में चुप रहे और हम ने इस बारे में कभी कोई कानून बनाने की तरफ ध्यान नहीं दिया । लेकिन जब कोई कानून बनाने की तरफ ध्यान दिया, तो इस तरह कि अचानक एक बिल को हाउस में रख दिया और तीन घंटे की बहस के बाद उस को कानून बना दिया । यह बड़ी अच्छी बात है कि डिपुटी ला मिनिस्टर हाउस में मौजूद हैं, क्योंकि सुबह हम ने एजेन्डा में यह देखा था कि मिनिस्टर आफ होम एफेयर्ज की तरफ से इस बिल को पेश किया जा रहा है । जैसे कोई प्रस्ताव किसी चपड़ासी को नौकरी में से निकालने

का हो या किसी सुपरिन्टेन्डेन्ट को नौकरी में से निकालने का हो या किसी छोटे से मैजिस्ट्रेट साहब के ऊपर कोई कार्यवाही करनी हो, वैसे ही यहां पर होम मिनिस्ट्री की तरफ से सुप्रीम कोर्ट के जजिज के ऊपर इन्क्वायरी करने का बिल पेश कर दिया गया है । मैं अदब से कहना चाहता हूं कि ऐसा बिल जिस में हम सुप्रीम कोर्ट के जजिज या हाई कोर्ट के जजिज को निकालने का इंतजाम कर रहे हों और उस के लिये एक जाब्ता हम तैयार कर रहे हों उस जाब्ते को तैयार करने के वास्ते यह जरूरी है कि इस को सिलैक्ट कमेटी में भेज दिया जाए ताकि वहां इस पर पूरी चर्चा हो सके, पूरी बात को हम सोच सकें । कोई गलत बात उस में लिखी न रह जाए । आज मेरे पास यह बिल आ गया और मैं बोलने के लिए खड़ा हो गया । इस का मैंने अध्ययन किया कल और मैंने कुछ एमेंडमेंट्स भेजे और आपके रूल्ज के मुताबिक वे जरा आध घंटे देर से आप के पास पहुंचे इस वास्ते आपने कह दिया कि हम एमेंडमेंटस तो नहीं ले सकते हैं । ये सब मुश्किलात हमारे सामने पेश हो जाती हैं । गवर्नमेंट के पास सब साधन हैं । सरकार के पास दफ्तरों में आदमी बैठे हुए है । मिनिस्टर साहब हैं, उनके पास सेक्रेटरी साहब हैं, सेक्रेटरी साहब के नीचे डिप्टी सेक्रेटरी साहब हैं । उनके नीचे अन्डर सेक्रेटरी साहब हैं, फिर सैक्शन आफिसर हैं, फिर ला आफिसर हैं जो लीगल मैटर्ज पर एडवाइस देते हैं और नोट्स तैयार किये कराये आप को मिल जाते हैं । लेकिन मेरे पास कौन सा आदमी बैठा हुआ है । मुझे खुद को अध्ययन करना पड़ता है । मेरे पास एक साथ पांच पांच और दस दस बिल भेज दिये जाते हैं और आप अनुमान लगा सकते हैं कि मैं किस किस पर विचार करूं और किस किस पर विचार न करूं । किस पर मुझे अमेंडमेंट्स देने हैं और क्या देने हैं यह सारा काम मुझे व्यक्तिगत रूप से ही करना पड़ता है । ऐसे समय में यह बिल आया था । मेरा निवेदन है कि ऐसे बिल को जब तक आप कम से कम सिलैक्ट कमेटी में न भेजें तब तक आप को विचार नहीं करना चाहिये । यह एक छोटा सा निवेदन मैं आपसे करना चाहता हूं । मैं मानता हूं कि सरकार का एक रुख होता है । प्रेस्टीज का भी सवाल होता है । गलती भी अगर कोई हो जाती है तो उस पर चिपके रहने की कोशिश की जाती है ।

मुझे एक बार का एक किस्सा याद आता है । मनीपुर में पंचायत राज का बिल यहां आया था पास होने के लिए । उस बिल में लिखा हुआ था कि सारे अधिकार पंचायत को होंगे मुकदमे तय करने के । मैंने तब पूछा था कि एक लाख रुपये का मुकदमा होगा तो उसको भी पंचायत राज कानून के अन्तर्गत पंचायत को तय करने का अधिकार क्या होगा ? उस वक्त मुझे इस के जवाब में बताया गया कि वह इसको भी तय करेगी । बहुत दृढ़ता के साथ श्री दातार साहब इस बात को कहते हुए चले गए । आखिर में जब थर्ड रीडिंग आया तब वहां सेक्रेटरी बेचारे ने चिट लिख कर भेज दी कि सौ रुपये से ज्यादा के मुकदमों का फसला करने का अधिकार पंचायत को नहीं होगा । आप मिनिस्टर हैं । आप इस पर सोचें । मैं यह नहीं कहता हूं कि बिना सोचे आप इस बिल को भी ला रहे हैं । लेकिन फिर भी यह अधिकार हमें भी होना चाहिये कि हम सब मिल कर इस को सोचें और देखें कि वाकई में सही तरीके पर कानून बनाया जा रहा है या नहीं ।

मैं इस कानून की तरफ आप की तवज्जह दिलाना चाहता हूं । पहली बात मैं यह कहना चाहता हूं कि हमारे यहां एक ऐसा रिवाज हो गया है, एक ऐसा रवैया चला है कि जनरल क्लाजिज एक्ट का फायदा ले कर हम कानून बनाने की कोशिश करते हैं । इसमें प्रोवाइड किया गया है :

Clause 1(2): "It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint."

[श्री उ० मू० त्रिवेदी]

आप क्यों नहीं साफ तौर से लिखते हैं कि कब यह लागू होगा। चौदह पन्द्रह साल से कानून आप बनाते चले आ रहे हैं। कितने ही कानून आप बना चुके हैं। क्या आप यह नहीं कह सकते हैं कि जिस दिन यह पास हो जाएगी उस दिन से यह लागू होगा? हमारे यहां प्राविजन है और ला कहता है कि जिस दिन प्रेजीडेंट का एसेंट किसी भी कानून को मिल जाए उसी दिन से वह कानून लागू होना चाहिये। क्यों आफिशल गजेट में फिर पब्लिश कर के डेट आप रख रहे हैं। तीन साल या चार साल या पांच साल तक किसी पोलिटिकल प्रेशर की वजह से आप इस को उस में नहीं छापते हैं तो वह कानून अमल में ही नहीं आ सकेगा। जब कानून आप बनवा रहे हैं और कानून पालियामेंट से बनवा रहे हैं तो क्यों नहीं उस को जिस दिन प्रेजीडेंट मंजूर कर दें, उसी दिन से अमल में लाते हैं। क्यों नहीं हमेशा के वास्ते आप ऐसा करते हैं। यह आप को कभी भी नहीं लिखना चाहिये कि जिस दिन पब्लिश हो तब से वह लागू हो। पब्लिश क्यों हो? बाद में आप क्या सोचेंगे? क्या आप उस में तरमीम कर सकते हैं? किसी भी तरह की रुकावट पैदा करने की आवश्यकता नहीं होनी चाहिये।

दूसरी बात की तरफ मैं अब आपकी तवज्जह दिलाना चाहता हूं। क्लाज 3 सब-क्लाज 2 जो है इस में स्पेशल ट्रिब्यूनल बनाये जाने की व्यवस्था है। इस स्पेशल ट्रिब्यूनल के बारे में आप ने लिख दिया है:

"The Special Tribunal shall consist of such number of members, being not less than three in number, as the President may think fit to appoint from among persons who are or have been Judges of the Supreme Court and one of them shall be appointed by the President as the Chairman thereof."

यह जो आपने एप्वाइंटमेंट रखी है सुप्रीम कोर्ट के जजों तक या वहां से जो रिटायर हो गये हों, उन तक, इसको इस तरह से महदूद करना मैं उचित नहीं समझता हूं। इसको आपने क्यों महदूद कर दिया है। आप ने दूसरे लाज भी बनाये हुए हैं। इसी प्रकार के और भी लाज आप ने बना रखे हैं। उन लाज में हमेशा आप ने यह लिखा है:

"Those who are qualified to be appointed as Judges of the Supreme Court."

जो आदमी क्वालिफाइड इस तरह से हों उनको भी हम क्यों न इस ट्रिब्यूनल में एप्वाइंट करें। संयोग ऐसे भी उपस्थित हो सकते हैं कि चूंकि सुप्रीम कोर्ट का दायरा लिमिटेड है, ग्यारह बारह वहां जजिज हैं, इस वास्ते उन में से आप किसी को एप्वाइंट करें और एक सुप्रीम कोर्ट के जज के खिलाफ ही इनक्वायरी हो और उस ट्रिब्यूनल में अभी जो वहां से जज रिटायर हुआ है, उसको ले लिया जाये और ये दोनों आदमी उसके दोस्त हों जिसके खिलाफ इनक्वायरी होनी है। हो सकता है कि ये दोनों आदमी उसके साथ उठने बैठने वाले हों, उसके साथ मिलने जुलने वाले हों, उसके साथ इन्होंने काम किया हुआ हो और आप जानते ही हैं कि मनुष्य का स्वभाव होता है एक दूसरे के साथ सामाजिक व्यवहार का और उस सामाजिक व्यवहार के आधार पर हो सकता है कि यह चीज न्याय-संगत प्रतीत न हो और हो सकता है कि यह उचित न हो कि उन आदमियों के ऊपर इसको छोड़ दिया जाये। लेकिन ये शब्द लिख देने से आप को एक बड़ा दायरा मिल जायेगा जिन में से आप उनका चुनाव कर सकते हैं

"Those who are qualified to be appointed as judges of the Supreme Court."

अगर यह लिख दिया जाये तो उस में रिटायर्ड हाई कोर्ट के जज भी आ सकेंगे, हाई कोर्ट का रिटायर्ड चीफ जस्टिस भी आ सकेगा, एमीनेंट वकील भी आ सकेगा, जुरिस्ट भी आ सकेगा और इसी तरह से दूसरे विद्वान लोग भी आ सकेंगे। ऐसी हालत में मेरा सुझाव है कि सुप्रीम कोर्ट के जजिज़ के वास्ते जब आप को ऐसा ट्रिब्यूनल बनाना है तो उस में यह फिकरा और एड कर दें

> "Those who are qualified to be appointed as judges of the Supreme Court."

अगर आपने यह फिकरा लिख दिया तो इससे कोई नुक्सान होने का अंदेशा नहीं है। दायरा हमारा बढ़ जायेगा। ईमानदार आदमियों को मौका दे कर हम ला सकेंगे।

आगे इसी क्लाज़ की सब-क्लाज़ 8 की तरफ मैं आप की तवज्जह दिलाना चाहता हूं। इस में लिखा हुआ है:

> "The President may, if he so thinks fit, appoint a person to conduct the case against the Judge."

परसन क्या चीज़ होती है? आप एडवोकेट क्यों नहीं रखते हैं। आप क्यों नहीं लिखते हैं कि सीनियर एडवोकेट आफ दी सुप्रीम कोर्ट . .

श्री रघुनाथ सिंह (वाराणसी): एडवोकेट होना चाहिये।

श्री उ० मू० त्रिवेदी: रघुनाथ सिंह जी चले जायें। अगर कोई वकील रख दिया जाये यहां पर तो मुझे कोई एतराज़ नहीं है। उसके वास्ते क्वालिफाइड आदमी होना चाहिये। सीनियर एडवोकेट रखें या दूसरा एडवोकेट रखें, मुझे कोई एतराज़ नहीं है। यह जो परसन यहां पर रख दिया गया है मैं समझता हूं कि यह किसी अज्ञान आदमी ने रख दिया है और अज्ञान आदमी की यह भाषा रची हुई मुझे मालूम पड़ती है। मैं समझता हूं कि अज्ञानतावश यह बात इस में लिख दी गई है। ऐसा मुझे प्रतीत होता है।

मैं यह भी समझता हूं कि मैडीकल बोर्ड का हौआ अभी तक हमारे यहां से, हमारे दिलों और दिमाग़ों में से नहीं निकला है। कहां तक यह बात सही है कि मैडीकल बोर्ड के जो आदमी होंगे, वही ईमानदार होते हैं, वही प्रामाणिक होते हैं। मेरा जो खुद का अनुभव है, मैं उसे आपके सामने रखता हूं। मैडीकल बोर्ड के पास जा कर सर्टिफिकेट ले कर पेंशन पर रिटायर होने वाले कई बेईमान अफसर आप को मिल जायेंगे। उन से पैसा ले कर मैडीकल बोर्ड उनको सर्टिफिकेट दे देते हैं . . .

श्री रघुनाथ सिंह: सोलह रुपये ले कर सर्टिफिकेट दे दिये जाते हैं।

श्री उ० मू० त्रिवेदी: अगर मैडीकल बोर्ड में तीन आदमी हुए तो सिक्सटीन इंटू थ्री। मैडीकल बोर्ड का हौआ निकाल दीजिये। सुप्रीम कोर्ट के जजिज़ के खिलाफ आप इनक्वायरी कर रहे हैं और अगर कोई जज बेईमान भी हुआ और वह कहता है कि मैं बड़ा तन्दरुस्त हूं लेकिन अदालत में आते जाते वह धुड़क जाता है, गिर जाता है, ऊंघने लग जाता है, उसको पच्चीस पच्चीस आदमी इस हालत में देखते हैं, वह चल नहीं सकता है, उसकी पत्नी उसको पकड़ कर गोदी में ले कर बिठाती है और इस तरह की चीज़ जब आप भी देख लेते हैं फिर ऐसे सुप्रीम कोर्ट के जज को निकालने में आप को क्यों तकलीफ होती है। मेरी आप से प्रार्थना है कि साहब, जब आप को ऐसा प्रतीत हो, आप जानते हों और चार चार हाई कोर्ट के जजेज़ इस चीज़ को देख चुके हों तो फिर उस को मैडिकल बोर्ड के सामने क्या भेजना है। मैडीकल बोर्ड का आसरा क्या लेना है।

श्री अल्वारेस (पंजिम): उस के बारे में और कौन कहेगा सिवा मेडिकल बोर्ड के कि उसका दिमाग ठीक नहीं है।

श्री उ० मू० त्रिवेदी : मेडिकल बोर्ड प्रिय गुप्ता के लिये होता है, लेकिन अगर हाई कोर्ट के जज का दिमाग ठीक नहीं है वह बकवास करता है तो उसको सौ आदमी सुनते हैं, उनकी शहादत ही बहुत कुछ होती है कि वह जो बोल रहा है वह हमारी समझ में नहीं आती है । इतने सबूत होने के बाद भी वह सुप्रीम कोर्ट या हाई कोर्ट का जज होने के लायक नहीं है, मेडिकल बोर्ड उसको जज नहीं बना सकता। इसलिये आपको इस पहलू पर भी विचार करना होगा कि अगर मेडिकल बोर्ड के किसी को सर्टिफिकेट दे देने के आधार पर कि फलां आदमी लायक है या नालायक है, उस को इस गद्दी के वास्ते ऐप्वाइंट कर दिया जायेगा तो वह बहुत बुरा रिवाज अमल में लाया जायेगा । आप इसमें एक आपत्तिजनक बात और क्यों पैदा करना चाहते हैं कि जब ट्राइब्यूनल ने एक बार तय कर दिया कि यह आदमी नालायक है, जब इस प्रकार की रिपोर्ट आ जाये कि यह आदमी इस लायक नहीं है और प्रेजिडेंट उस रिपोर्ट को मान लें, तब भी इस चीज को अमल में लाने के लिए There must be an Address presented by the House— यह बात तो आज भी है मुझे अधिकार है और मैं जब चाहूं इस तरह का रेजोल्यूशन ला सकता हूं । लेकिन इस प्रोसीजर की जरूरत क्या है । आपने इतनी रुकावटें प्रोसीजर की कर दी हैं, ट्राइब्यूनल आपने रख दिया, और अच्छे से अच्छे आदमी उस ट्राइब्यूनल में रख दिये, ट्राइब्यूनल की रिपोर्ट ले ली, उस को अपने डिफेन्ड करने की अपार्चुनिटी दे दी, शो काज का मौका दे दिया, सब कुछ करवा दिया और पता चल गया कि यह आदमी नालायक है तब यहां पर ऐड्रेस की क्या जरूरत है कि इस आदमी को रखना है या नहीं रखना है । इसके ऊपर तो सिर्फ यह प्राविजन होना चाहिए कि :

On the recommendation of the special tribunal, the man shall be removed by the President.

इसके लिये या तो आप कांस्टिट्यूशन को अमेंड कीजिये या इसे इस बिल में ही डालिये । यह लम्बी चौड़ी कार्रवाई करने की क्या जरूरत है ।

उपाध्यक्ष महोदय : आपका समय समाप्त हो गया ।

श्री उ० मू० त्रिवेदी: उपाध्यक्ष महोदय, यह बहुत लम्बा विषय है, इसलिये थोड़ा समय और लूंगा ।

Shri Hari Vishnu Kamath: This Bill should not be hustled. Let them accept the select committee motion and it will be easy for them.

श्री उ० मू० त्रिवेदी : मैं ऐसा अनुभव कर चुका हूं कि यह बीमारी आज भी चल रही है। इस में मैं गवर्नमेंट से नम्र निवेदन करूंगा कि इस कानून को बनाने से पहले हाई कोर्ट के जजेज के रिक्रूटमेंट के ऊपर भी उसको विचार करना होगा, क्योंकि आपने तो बना दिया, थोड़े दिन बाद उस की पोल खुलनी शुरू हो जायेगी । कोई हाई कोर्ट के जज साहब ऐसे होंगे जिनके यहां डाली चली आ रही है, शराब चली आ रही है, पापड़ चले आ रहे हैं । घर पर पापड़ पहुंच रहे हैं। कोई लेडीज के शौकीन होते हैं, लेडीज कम्पार्टमेंट में बैठ कर चलते हैं । ऐसी ऐसी शिकायतें बहुत आई हैं । ऐसी शिकायतें जिस आदमी के बारे में आ जायें, खास कर ऐसे आदमी के बारे में जिसको आप पहले से जानते हों कि वह ऐसी आदत का है, शराबी है, रंडीबाज है, झूठ बोलने वाला है, रिश्वत खाता है, उसको भी आप अप्वाइंट कर देते हैं। इसलिये कि आज जो अप्वाइंटमेंट का मैथड है वह इस तरह का है । मैं आपसे प्रार्थना करूंगा कि जहां जजेज को अप्वाइंट करने की बात कही गई है वहां इस बात का ध्यान रखा जाना चाहिये कि आज जो लोग लायक नहीं हैं वह क्यों अप्वाइंट हो रहे हैं ।

मैं बराबर 13 साल से, अर्थात् सन 1953 से लेकर 1965 तक देखता चल

आ रहा हूं कि आपके हाई कोर्टों के जजों का अप्वाइंटमेंट किस तरीके से होता है। किसी भी हाई कोर्ट के जज के अप्वाइंटमेंट के लिये गवर्नमेंट ऐडवोकेट को रक्खा जाता है। गवर्नमेंट ऐडवोकेट के लिए पब्लिक प्रोसिक्यूटर की नियुक्ति से दरवाजा खोला जाता है। आपको मालूम होना चाहिये कि पब्लिक प्रोसीक्यूटर जो अप्वाइंट किये जाते हैं वह कोई बहुत होशियार आदमी नहीं होते। हमारे यहां ऐसे भी पब्लिक प्रोसिक्यूटर हैं जो कि यह भी नहीं जानते कि आर्डर 9 के रूल 13 की दर्ख्वास्त कैसे दे। ऐसे आदमी अप्वाइंट होते हैं। जब एक दफे वह पब्लिक प्रोसिक्यूटर हो जाते है तो उसके थोड़े दिन बाद डिप्टी गवर्नमेंट ऐडवोकेट हो जाते हैं। उसके कुछ दिनों बाद वह गवर्नमेंट ऐडवोकेट हो जाते हैं और फिर थोड़े दिनों के बाद हाई कोर्ट के जज हो जाते हैं। मैं किसी व्यक्ति विशेष के बारे में नहीं कहता लेकिन मैं पूछना चाहता हूं बड़े अदब से कि जो आदमी लायक नहीं है वह गद्दी पर आकर क्यों बैठ जाते हैं। वह कुछ कर सकें या नहीं, भले ही वह पापड़ भेजने के भरोसे पर आ गये हों या अचार भेज कर उन्होंने अपना अप्वाइंटमेंट करावा लिया हो, लेकिन अप्वाइंटमेंट उन्होंने अपना जरूर करवा लिया है। ऐसे आदमियों के लिये जब हम एन्क्वायरी बिठलायेंगे और हमको मालूम पड़ेगा कि वह इस लायक नहीं है, सिर्फ अचार, पापड़ देकर यहां आ गये हैं तब फिर उनके लिये कौन सा ऐड्रेस प्रेजेन्ट करना होगा—करने की जरूरत है।

एक माननीय सदस्य : वकीलों के लिये भी एक बिल यहां लाना चाहिये।

श्री उ० मू० त्रिवेदी : मैं कहना चाहता हूं कि इस बिल में इस बात का संशोधन होना चाहिये और इस बात पर सम्पूर्ण रूप से विचार होना चाहिये क्योंकि इस बिल के पास होने के बाद हमारे पास यह एक नया तरीका होगा जो कि इस चीज को केवल दोहरायेगा कि :

An address must be presented by the House and then only he can be removed—political atmosphere—

यह एक ऐसा प्राविजन है जो कि बिल्कुल निरर्थक हो जाता है। पहले ही डबल अपार्चुनिटी दे दी गई अब तीसरी अपार्चुनिटी देने का मौका आयेगा। आज कल पोलिटिकल ऐटमास्फिअर भी हुआ करता है। पोलिटिकल एटमास्फिअर में बहुत ज्यादा ईमानदारी से काम नहीं होता। ऐसी हालत में मैं नम्रतापूर्वक निवेदन करूंगा कि अगर सचमुच इस बिल पर अमल करना है, अगर ईमानदारी से इस बिल को लाया गया है तो गवर्नमेंट इस बात पर विचार करे कि इस का एक ही रूप होना चाहिये, भले ही कांस्टिट्यूशन अमेंड किया जाये या कोई दूसरा तरीका निकाला जाये कि :

When the Tribunal has come to a unanimous finding that the man is quilty, action must be taken.

कोई दूसरा मौका नहीं होना चाहिये। ऐसे आदमी के ऊपर जरूर ऐक्शन लेना चाहिये।

श्री रघुनाथ सिंह : उपाध्यक्ष महोदय, यह जो विधेयक उपस्थित कया गया है वह बहुत उपयुक्त विधेयक है और मैं समझता हूं कि श्री कामत ने और श्री त्रिवेदी ने जो इस का विरोध किया है उस में उनकी लाजिक बड़ी सक्षम है। सक्षम लाजिक यह है कि श्री कामत यह चाहते हैं कि इस बिल को संयुक्त समिति के सम्मुख उपस्थित किया जाये और श्री त्रिवेदी यह चाहते हैं कि "पर्सन" की जगह "ऐडवोकेट" शब्द होना चाहिये। यह दोनों चीजें मान्य होनी चाहियें। क्योंकि जब आप ट्राइब्यूनल अप्वाइंट करते हैं तो उस में आप की तरफ से ऐसे आदमी होने चाहियें जो कानून को जानते हों। निरक्षर भट्टाचार्य न हों। जिन को कानून का बिल्कुल ज्ञान न हो ऐसे लोगों को

[श्री रघुनाथ सिंह]

ट्राइब्यूनल के ऊपर भेजना न्याय के साथ प्रवंचना करना होगा । इस वास्ते मैं श्री त्रिवेदी के सुझाव का जोरदार समर्थन करता हूं कि इस में जो "पर्सन" शब्द का प्रयोग किया गया है उसकी जगह "ऐडवोकेट" शब्द प्रयुक्त होना चाहिये । हिन्दुस्तान में कम से कम 20 या 25 हजार ऐडवोकेट होंगे । वे अच्छे से अच्छे लोग हैं । ईमानदार हैं । पक्षपात रहित हैं । इन 20 या 25 हजार लोगों में से पक्षपात रहित लोगों को लेना असम्भव नहीं है । कोई आई० ए० एस० या आई० सी० एस० हो तो इस के कारण उस में कोई विशेषता नहीं हो जाती ट्राइब्यूनल में रहने के लिये ।

दूसरी बात मैं संयुक्त समिति के सम्बन्ध में कहना चाहता हूं । जिस के लिये श्री कामत ने कहा है । हम एक बहुत बड़ा कानून बनाने जा रहे हैं जिस में सुप्रीम कोर्ट और हाई कोर्ट के जजों का सवाल है, उन की आनर का सवाल है । प्रेस्टिज का सवाल है । जब छोटे से छोटे लेजिस्लेशन के लिये संयुक्त समिति बनाई जाती है तब इस में तो इतना बड़ा सवाल है, उस में क्यों न बनाया जाय । अगर उन के लिये हम इस को संयुक्त समिति में नहीं भेजेंगे तो भारत की जनता ही सिर्फ नहीं बल्कि सारी दुनिया की जनता कहेगी । हम लोगों ने एक अच्छा कदम नहीं उठाया है ।

दूसरी बात मैं यह भी कहना चाहता हूं कि इस विधेयक की सीमा बहुत संकुचित है । इस विधेयक का इतिहास इलाहाबाद हाईकोर्ट के जज श्री शिवप्रसाद सिंह स्यो-प्रसाद के जीवन से जुड़ा हुआ है । इस के बारे में जो बातें कही गयी हैं वे डाइरेक्टली या इनडाइरेक्टली उनसे सम्बंधित हैं । 22 अप्रैल सन् 1949 को श्री राजगोपालाचार्य ने जो हमारे भूतपूर्व गवरनर जनरल थे, श्री शिवप्रसाद सिन्हा को इलाहाबाद हाई कोर्ट से हटाने के लिये कदम उठाया था । उस समय मैं भी इलाहाबाद में एडवोकेट था । मुझे भी बहुत सी बात मालूम थी । मेरी राय में उस समय जो कदम उठाया गया वह अच्छा था । उनको हटाया जाना चाहिए था ।

साथ साथ एक बात और भी है । जो मौजूदा कानून है उस में और इस कानून में कोई विशेष अन्तर नहीं है । इस बिल के द्वारा आप उस ट्राइबुनल को अपनी रिपोर्ट को इस पार्लियामेंट के सामने रखने का अधिकार दे रहे हैं । ट्राइबुनल कोई फैसला नहीं देने जा रहा है । ट्राइबुनल में तीन आदमी होंगे । उसका सिर्फ यह काम होगा कि वह चार्ज फ्रेम करे और दूसरी पार्टी को भी सफाई देने का मौका दे, और उसके बाद पार्लियामेंट के सामने उसकी रिपोर्ट पेश करे । इस प्रकार आप देखें कि किसी के साथ अन्याय नहीं होता । क्योंकि हमारे संविधान की धारा 124 (4) के अनुसार यदि पार्लियामेंट के सदस्यों का बहुमत और उपस्थित सदस्यों के दो तिहाई का मत इसके पक्ष में मिले तभी इस रिपोर्ट को स्वीकार किया जा सकता है । अगर दो तिहाई मत नहीं मिलते तो पार्लियामेंट इसको स्वीकार नहीं कर सकती । मान लीजिए कि अपोजीशन के सदस्यों की संख्या एक तिहाई है और कांग्रेस पार्टी चाहे कि किसी हाईकोर्ट या सुप्रीम कोर्ट के जज को निकाल दे तो वह ऐसा नहीं कर सकेगी । क्योंकि दो तिहाई मत मिलना आवश्यक है । हमारे संविधान ने यह गारंटी दी है । जब किसी हाईकोर्ट या सुप्रीम कोर्ट के जज के खिलाफ दो तिहाई मत पार्लियामेंट के मिलें तभी उसे निकाला जा सकता है । कांस्टीट्यूशन को बदलने के लिए भी हमको इसी प्रकार दो तिहाई मतों की आवश्यकता होती है । इसी प्रकार अगर कोई हाईकोर्ट का या सुप्रीमकोर्ट का जज इस सभा की दृष्टि में उपयुक्त नहीं है तो उसको निकालने के लिए भी दो तिहाई मतों की आवश्यकता है ।

मैं एक बात और कहना चाहता हूं कि इसमें एक जगह सेक्शन 3 सब सेक्शन 2 में कहा गया है कि तीन जज होंगे । इसमें कहा गया है :

"not less than three in number, as the President may think fit to appoint from among persons who are or have been Judges. . ."

मैं कहता हूं कि किसी वर्तमान जज को इस ट्राइबुनल में नहीं रखना चाहिए । क्योंकि यदि किसी ऐसे जज को आप ट्राइबुनल में रखेंगे तो उसके सामने एक धर्मसंकट उपस्थित होगा कि अपने एक भाई जज के खिलाफ फैसला दे । इसलिए व्यवहार की दृष्टि से जो रिटायर्ड जज हों, जो काम न करते हों उनको केवल इस ट्राइबुनल पर रखना चाहिए । अगर इसमें "वर्तमान जज" शब्द न हों तो अच्छा है ।

श्री हरि विष्णु कामत : प्रवर समिति इस पर विचार कर सकती है ।

श्री रघुनाथ सिंह : प्रवर समिति में हम बैठ कर इस पर अच्छी तरह विचार कर सकते हैं ।

एक बात मैं और कहना चाहता हूं । इस में दो कारण दिए हैं, इन एफीशेंसी और मेंटल इनकैपिसिटी । मैं इसमें एक चीज और जोड़ना चाहता हूं । और वह है पारशिएलिटी । अगर कोई जज पक्षपात करता है तो वह भ्रष्टाचार का सब से बड़ा अपराधी है । जैसे कि हमारा कोई साथी है.......

Shri Jaganatha Rao: It comes under "misbehaviour".

Shri Raghunath Singh: "Partiality" is not there. Partiality is more important. We are facing it every day.

श्री सरजू पाण्डेय (रसड़ा) : पार्शिएलिटी कैसे जांचेंगे ?

श्री रघुनाथ सिंह : पार्शिएलिटी ऐसे होती है कि जैसे मैं एक जज हूं और हमारा कोई साथी वकील है । वह बेल ऐप्लीकेशन ले कर आता है । हम उसको मंजूर कर देते हैं, चाहे दूसरे वकील के आरग्यूमेंट कितने भी अच्छे क्यों न हों । फौजदारी में बेल 50 पर सेंट केस होता है । बेल एप्लीकेशन पर वकील को आधी फीस मिल जाती है, और फिर केस तो बाद में चलता रहता है ।

एक माननीय सदस्य : वह ऊपर वाली अदालत में जा सकता है ।

श्री बाल्मीकी (खुरजा) : डा० लोहिया साहब को यह शिकायत है कि उनकी बेल एप्लीकेशन मंजूर नहीं की गयी ।

उपाध्यक्ष महोदय : आर्डर, आर्डर ।

श्री रघुनाथ सिंह : अगर डा० लोहिया के साथ पार्शिएलिटी की गयी है तो उसकी जांच होनी चाहिए ।

एक बात मुझे यह भी कहनी है कि जिस हाई कोर्ट में लड़का जज हो उस हाई कोर्ट के जुरिस्डिक्शन में उसके पिता को प्रेक्टिस करने का अधिकार नहीं होना चाहिए । संविधान की धारा 220 में यह विधान है कि सुप्रीम का या हाई कोर्ट का रिटायर्ड जज सुप्रीम कोर्ट की आज्ञा ले कर कहीं प्रेक्टिस कर सकता है, लेकिन मेरा यह सुझाव है कि पिता या पुत्र यदि किसी हाई कोर्ट में हैं तो उनको उस हाईकोर्ट के जुरिस्डिक्शन में प्रेक्टिस करने का अधिकार नहीं होना चाहिए ।

एक माननीय सदस्य : उसकी अदालत में नहीं ।

श्री रघुनाथ सिंह : मैं कहता हूं कि उस हाई कोर्ट में उसे बिल्कुल अधिकार नहीं होना चाहिए । अगर हमारा लड़का हाईकोर्ट में चीफ जस्टिस है, हम उसके सामने प्रेक्टिस

[श्री रघुनाथ सिंह]

नहीं कर सकते, लेकिन अगर हम दूसरी जगह भी प्रेक्टिस करेंगे तो इंडाइरेक्टली उसका कुछ न कुछ असर होगा। इसलिए मेरा यह सुझाव है कि अगर किसी का लड़का हाईकोर्ट या सुप्रीम कोर्ट का जज है तो उस के पिता को उसके जुरिस्डिक्शन में प्रेक्टिस करने का अधिकार नहीं होना चाहिए। अगर आप ऐसा कानून न बनावें तो यह कनवेंशन ही बना लिया जाए कि पुत्र के जुरिस्डिक्शन में पिता प्रेक्टिस न करे।

आपने जो ला बनाया है कि रिटायर्ड होने के बाद सुप्रीम कोर्ट का जज या हाईकोर्ट का जज अपने ही जुरिस्डिक्शन में प्रेक्टिस न करे। उसका उद्देश्य भी यही है कि पक्षपात न हो। इसलिए अगर पारशिएलिटी को दूर करना चाहते हैं तो आपको मेरा सुझाव भी स्वीकार करना चाहिए।

इन शब्दों के साथ मैं इस बिल को प्रवर समिति के सामने भेजने का और इसमें "पर्सन" के स्थान पर "एडवोकेट" शब्द रखने का समर्थन करता हूं।

Shri H. N. Mukerjee (Calcutta Central): Mr. Deputy-Speaker, Sir, I understand that my hon. friend, Shri Kamath has brought forward a motion for reference of this Bill to a Select Committee, and I do hope that my hon. friend, the Minister is agreeable to this suggestion. I say so because we are proceeding to legislate in regard to a matter which is not only difficult but also rather delicate and it is imperative that we give more thought to this matter than we have been able to do so far.

We have been accustomed to look upon our judiciary with a great deal of well deserved respect. There was a time when our judges would refuse, on principle, to have any contact, even innocent social contact, with leading persons in the executive. I remember an occassion when the Bar Library of Calcutta High Court had passed a resolution protesting against the Chief Justice having gone to a garden party in Government House. The judges of our country, especially the judges of the High Courts and the Supreme Court and even others lower down the ranks of our judiciary, did have a very great reputation which, unfortunately, seems to be going down somewhat. But our judges have had this reputation and I do hope that the generality of them would continue to have such a high reputation, because if we are going to maintain a decent socio-political system, our judiciary must be incorrupt.

It is a very great pity that on account of certain recent goings-on in our country it has been thought fit by Government to bring forward this kind of legislation. It is a matter almost of shame that we have to bring forward this kind of legislation supplementing the provision that there is already in the Constitution. The independence of the judiciary is a concept which has been achieved after a great deal of struggle in certain other countries and we were fortunate enough to be able to inherit that legacy. There was a time in Britain when judges were threatened by the Crown and there were very eminent judges who were constrained to say that they were "lions" no doubt, judges were "lions but lions under the throne"—but there were other cases of judges who stood up to the hectoring powers of the Crown and its satellites of those days and it is a wonderful chapter in the history of constitutional liberty where ultimately the independence of the judiciary was won. At that time the principle was enunciated—the principle which has come to be incorporated in our Constitution—that judges hold office on good behaviour as long as they are on good behaviour and not at the pleasure of the Crown or of the executive.

This was something which is a fact of history—the judiciary winning its independence—because it was very

necessary if a decent social set-up was going to be maintained. In our country the judiciary at every level had such a wonderful reputation; but, unfortunately, things began to change for the worse, particularly in recent decades.

We have seen appointments to the Bench to which I do not want to make any specific reference but which, on principle, certainly we have a right to mention—appointments made not on purely juridical considerations but on considerations which were rather derogatory to our self-respect as a functioning democratic country. There have been instances of the appointment of a person who is a minister of Government, who fights the election, is defeated and, after his defeat, is elevated to the Bench. There has been a case in Calcutta where there was a person who was set up as a candidate for election by the ruling party: he lost that election and he was appointed to the judiciary.

This kind of thing has gone on so far that we have found to our great regret and consternation instances of judges appearing at least to an outward appearance, to be misbehaving. Some time ago my hon. friend, Dr. Singhvi, had been constrained much against his will, I am sure, to bring up before this House the instance of a certain judge of the Supreme Court who, in spite of decrepitude, physical and mental, refused to leave his position on the Bench. He went so far that the Chief Justice had also to ask him to leave; but he would not leave. It was unimaginable, as far as we can understand the tradition of the old days, that such cases would take place.

Only recently the assiduity of my hon. friend, Shri Kamath, brought to the notice of Parliament a very extraordinary case of a person holding so elevated a position as the Chief Justice of the Madras High Court against whom there were petitions pending and very serious allegations were made. The rights or wrongs of it do not concern me, but in his case what happened was that a petition was submitted to the President on the 13th May, 1964; relevant documents in support of the petition were received by the President on the 31st August, 1964; a memorial by Members of Parliament was received by the President and the Prime Minister on the 23rd September, 1964. And this gentleman was merrily continuing as the Chief Justice of the Madras High Court. But then, just before the President could order an investigation in this matter, on the 1st November, 1964, he had a brainwave and he resigned his office and got away. I do not know—this gentleman might be completely innocent; possibly he was being persecuted by certain people who were after him for God knows what reason. I am not concerned about the merits or demerits of the matter, but here was an instance of a Chief Justice of the Madras High Court against whom serious allegations were pending, against whom a representation was made by Members of Parliament perhaps because they were preparing to have a motion in this House asking the President to remove him, and what happens is that he simply puts in his resignation and the Government says—I am quoting from Starred Question No. 127 answered on the 24th February, 1965, where it was said by the Minister of Home Affairs—

"The resignation was a bar to the inquiry under article 217(6)".

It is most amazing.

This one single instance pollutes the reputation of a judiciary which by and large is entitled to the highest renown. I am very sorry to have to say that some of these black sheep spoil the entire herd's reputation and the result is that all kinds of things are said and done. What has happened is that the executive sometimes treats the judges with impunity in a most cavalier fashion. The executive today is now in possession of the most ample provision of patronage and judges, being human beings, retiring at 60 or 62 these days or 65, who feel that they are fit enough for work—possibly, they do not want to rely on the next generation of breadwinners—look forward to getting some kind of assignment

[Shri H. N. Mukerjee]

under the Government and the Government having this power of patronage sometimes treate the judiciary with contempt taking advantage of the human failing on the part of certain judges, about one of whom I had once occasion to say in this House without mentioning his name that in his old age he was running about in the corridors of the Secretariate asking for an appointment to a labour appellate tribunal or some such enormity. Some of these people are driven to this kind of waiting upon the favour of Government. And, what is worse is that Government sometimes treats judges, who try to stand up for their rights, in a most cavalier fashion.

We have had the mortification in this House of having to listen to the Law Minister inveying against a former judge of the Calcutta High Court—I do not mind mentioning his name because he has won his case—Shri J. P. Mitter. We have had the mortification in this House of being told that we knew nothing of the judge, that he was misbehaving all the time. We have been told here—and whatever is said in this House becomes public property—that a particular judge was behaving in a manner which was unworthy of his office. Yet, that judge had to fight his case in the most strenuous imaginable fashion. He was being driven from pillar to post because the entire influence of the executive was being pitched upon the judiciary in Calcutta and elsewhere. The result is that he had to fight his case single-handed in an almost epic fashion before he won his point. He had a simple point which was that his age, as given in the matriculation certificate at the time of his passing that examination, was not his real age, that he had given his real age to the Chief Justice of the Calcutta High Court, that on the basis of that statement of age the Calcutta Gazette had printed a notification mentioning the year of his retirement to be some time in December 1964 and that he should be allowed to continue up to that point of time. But the Government had discovered the matriculation certificate which was being flourished against the word of this judge and this judge was being maligned all over the place till the judge by his own sole endeavour—he could hardly find counsel to take up his case; he appeared everywhere himself; he came to Delhi over and over again to appear before the Supreme Court and in Calcutta he had to ask the Chief Justice to form Special Benches in order to hear his case—fought it most heroically and ultimately got an order that the President will have to investigate in regard to his real age. He got his point. That was exactly what he wanted. I do not know whether the President has investigated. Possibly, the Government would say that the President has no means of investigating. I do not quite know what the Government will say. But the fact of the matter is, here was an instance of a judge who, after a heroic fight, after being driven from piller to post in the judicial sense, won his point. But during his fight, he was being maligned by the most important representative of the executive, the Minister of Law in the Houses of Parliament.

An hon. Member: Shame!

Shri H. N. Mukerjee: This makes the judges feel, "After all, they are the gods of creation and they can throw us out" and they can be maligned and defamed in Parliament and they have no answer because they are not present here. Here was a case of a judge who was malgined and attacked when he could not answer back. We, of course, did not get any protection because it was the high and mighty spokesman of the executive who was speaking on that occasion. I would not have referred to it. But I do so only in order to show that today the behaviour of the executive, at least on certain occasions—I do not say the executives always behave badly—in relation to the judges has been so egregious that even the judges are driven to conduct which is not proper.

It is a most unfortunate situation. We are confronted with an unfortunate situation where because of economic conditions, because of political apprehensions, because of the behaviour of the leaders of the Government in the Centre as well as in the States, judges also are behaving in a manner which is not quite up to the mark and that is why it becomes necessary to have some kind of inquiry in regard to the defaulting judges. Normally, I should say: let us not touch the judges at all. Let at least one category of people remain in our country who are beyond suspicion. Normally, I would say that they are beyond suspicion and I will not touch them. In a very extraordinary case, there would be a motion in Parliament and the man might be removed. That would be most exceptional and that would hardly ever happen as far as most of our lives are concerned. But the Government is responsible at least partly for having created an abnormal situation in which certain investigations occasionally have got to be made in regard to judges and, therefore, something should be done. But because judges are concerned, normally, I will not touch them just like that and pass a Bill here asking them to be investigated in a particular manner. I would treat them with a great deal more respect. I would plead with my hon. friend, the Deputy Minister, who is here: you may please consult our colleagues, hold up this matter for a little while and do not in a huff pass legislation of this kind. If I were a judge, I would interpret it as something which goes against the grain of my self-respect. I am sure the entire corps of judges in our country on whom we depend for the adjudication of the most important matters relative to the freedom of the citizen would look upon this kind of legislation with a great deal of distrust and indignation—they cannot express their indignation but they feel it. You should not let the judges feel hurt. The default of a few people like the ex-Chief Justice of Madras or the gentleman who used to adorn the Benches of the Supreme Court and would not quit, the misdeeds of a few black sheep, should not persuade you to tar the entire judiciary with the same brush. That is why I plead with the hon. Deputy Minister to hold his hand for a little while longer and refer this Bill to a Select Committee. If you do not like the composition of the Selct Committee as suggested by Mr. Kamath, you might change it or have another mechanism. But I say, don't go ahead with this kind of legislation.

I will not go into much detail in regard to the various clauses of the Bill. My point is that you should give the judges more time, consult the judges, speak to them and find out their mind. You would'nt expect the judges to come and give evidence before the Select Committee, but we must find out their feelings about this. The Law Ministry is there; that is their job. We can also do it in different ways. Many of us have some contacts with the Bar and we can do something of that sort. Let us not go ahead in a huff with this kind of legislation only because a few people have behaved badly here and there. If you do, at least you may try to make it as good a piece of legislation as possible and the composition of the tribunal and that kind of thing has to be gone into with a great deal of more care. I like the idea of Mr. Kamath in regard to having jurists who have not been judges of the High Courts or the Supreme Court to be the members of the tribunal. There have been many instances of jurists who have not cared to become judges of the High Court or the Supreme Court or whom the Government have, for some reason or the other, not wanted on the Bench. There are a few jurists like that and I need not name them. It becomes an invidious process. They are highly respected but they could be put on tribunals of this kind. But that is a matter of detail. I will not go into much detail.

I would make an appeal to the Deputy Minister though I know he is

[Shri H. N. Mukerjee]

in a difficult position—his principals are not here; he cannot give a decision here and now—but at least the channel of communication is still open. I do hope that he gets some kind of consultation with his colleagues and postpones the consideration of this matter so that this can be done in the only way in which a difficult and a delicate piece of legislation can be formulated by the House.

Shri Sham Lal Saraf: Mr. Deputy-Speaker, Sir, a number of aspects have been brought forward by the hon. Members who have preceded me. I personally feel that all of us, the Opposition as well as the ruling Party, have to pool our heads together and with a joint effort have to set up a judiciary that has the prestige and the name which commands the confidence of the people as a whole. Unless you do that, all our efforts will go in vain.

Keeping that in view, I would submit that it will be absolutely wrong if we hustle through a piece of legislation like this. There is no doubt that some occasions may have arisen or may arise now when the Government is bound to take some action and enact a law that will help the Government to do things in a proper manner. But, I personally feel, that when we try to introduce pieces of Legislation about the judges of the High Courts and the Supreme Court, we should be very cautious and very careful. Therefore, my submission is this. A number of aspects have been brought out by a number of hon. Members who spoke from either side. Firstly I absolutely agree with Mr. Trivedi and Mr. Kamath about the constitution of the tribunals that there may be others who may be equally qualified as far as their experience is concerned, their knowledge is concerned and their legal acumen is concerned and who may be fit to be elected or nominated or appointed to these tribunals. I know in a number of cases, also about some friends of mine, who have preferred to serve at the Bar and have refused to serve in the High Courts. Why? It is because they feel that they have a better position and prestige while they are practising their profession wherever they are. The hon. Deputy Minister also comes from the same profession and, I think, he perhaps might be knowing something more. Keeping that in veiw, with due deference to the judges of the High Courts and the Supreme Court, today that is not the only attraction. There are reasons for that. Firstly, as some of our friends have pointed out, the selection of judges needs the absolute impartial approach. The position that the judge of a High Court or the Supreme Court should get also needs to be enhanced in a number of ways. Then, as Mr. Trivedi pointed out, I know the cases myself—I do not want to name the cases—where people because of certain influence or because of certain opportunities that have been given to them, they could get into the profession and in no time they could rise as the High Court judges. That is one aspect of the matter.

The main aspect of the matter is that we must build our judiciary above board enjoying the confidence of the people as a whole in whom we can entrust the interpretation of our laws, of our Constitution and everything. Keeping that in view, it will be absolutely necessary that this piece of legislation which is very innocent to look at but full of implications if we go into it deeply, be referred to the Select Committee. I perfectly agree with the motion moved by my friend, Shri Kamath, that this be referred to the Select Committee. If Mr. Kamath would agree, let there be a Joint Committee of both the Houses of Parliament.

I know from experience as far as the upper House, namely, Rajya Sabha, is concerned, that there are eminent jurists there; there are eminent lawyers there; there are even retired High Court judges there. Keeping that in view, it would be absolutely correct to set up a Joint

Committee to go into this. We may, in that case, be able to examine the matter from more angles. My hon. friend, Shri H. N. Mukerjee, pointed out certain relevant facts; it is not only the mind of the government but the minds of all right-thinking people that should go into this. After all, in setting up a proper judiciary that will function properly, not only the interests of the ruling party but the interests of the whole nation are involved. The more we are successful in giving a proper judiciary to the country, the more our ambitions and aspirations will be fulfilled. Keeping that in view, I would again submit that this Bill needs to be gone into from a number of angles. I do not want to go into the details. These are the reactions that have come to my mind when I heard some of my friends and which were already in my mind. I do not want to take much of the time of the House. I would only say that it would be in keeping with the purpose of the Bill which the Government want to serve that a Joint Select Committee is set up on which Members from this House and from the Rajya Sabha can serve. Within a reasonable time, they will submit their report; then that report will come before this House and such of the hon. friends who may not get an opportunity to serve on the Committee may express their opinions again. And after it goes through a general discussion, let it be passed into a law. I personally want that our entire judiciary must feel confident that they are not being treated in a light manner. Let the judges, whether they are in the high or middle or low level feel proud about it. Keeping these points in view, I welcome the spirit of this Bill, but do not support it as it is now, but would support the amendment moved by Mr. Kamath with the addition, if my hon. friend agrees, that it be referred to the Joint Committee.

Shri Hari Vishnu Kamath: I agree wholeheartedly.

डा० राम मनोहर लोहिया (फर्रुखाबाद): उपाध्यक्ष महोदय, यह विधेयक जजों की योग्यता और सामर्थ्य को ठीक करने और बढ़ाने के लिये है। मैं मंत्री महोदय से और माननीय कामत जी से निवेदन करूंगा कि वे एक और दिशा से इस प्रश्न पर सोच विचार करें कि किस तरह से जजों की सामर्थ्य बढ़ाई जाए। इसीलिए मेरा संशोधन है कि एक नया उपबन्ध जोड़ा जाए कि संविधान की धारा 138, 139 और 140 की पुष्टि के आदेश से आवश्यक विधयक बनाने के लिए यह पंच अदालत सिफारिशों की एक रपट प्रस्तुत करेगी। 138, 139 और 140 संविधान की ये तीन धारायें जो हैं इनको पढ़ कर मैं नहीं सुनाता हूं। इनका सारांश मैं बता देता हूं। 138 में तो सर्वोच्च न्यायालय को वे सब अखत्यार और शक्तियां दिये जाने की बात हैं जो कि केन्द्रीय शासन की मातहती में हैं, मतलब दिल्ली की हुकूमत की मातहती में हैं, लेकिन जब संसद् उसके बारे में कानून बना ले। मतलब सर्वोच्च न्यायालय और संसद् दोनों बराबर के दायरों में और बराबर के अखत्यार हासिल कर लेती है अगर यह 138 धारा संविधान वाली लागू हो जाती है। उसी तरह से 139 धारा है जिस में कि संसद् अगर चाहे तो सर्वोच्च न्यायालय को वह अधिकार दे सकती है कि जिस से सभी मामलों में सर्वोच्च न्यायालय रिट इत्यादि दे सके। और धारा 140 है कि इन दोनों के अनुसार सर्वोच्च न्यायालय के अखत्यार बढ़ाये जा सकते हैं।

ये तीन धारायें संविधान की बड़ी महत्वपूर्ण धारायें हैं। पिछले 16, 17 या 14 बरस से संसद् ने इन धाराओं के सम्बन्ध में कोई कार्रवाई नहीं की है। यह कार्रवाई होनी चाहिये क्योंकि सर्वोच्च न्यायालय का जितना अखत्यार बढ़ेगा उतना ही ज्यादा वहां के जज लोग जिम्मेदारी की भावना हासिल करेंगे और अपना कामकाज ठीक तरह से चला पायेंगे। लेकिन मुसीबत एक यह है कि लोगों के मन मे डर बना हुआ है कि अगर

[डा० राम मनोहर लोहिया]

सर्वोच्च न्यायालय को इतना शक्तिसम्पन्न बना दिया जाएगा जो कि संविधान में लिखा हुआ है तो फिर एक तरफ संसद् और सरकार और दूसरी तरफ सर्वोच्च न्यायालय में द्वंद खड़ा हो जाएगा, झगड़ा चलता रह जाएगा। पहला तर्क मैं यह देना चाहता हूं कि इस तरह का द्वंद राष्ट्र के लिए अकसर स्वास्थ्यदायक हुआ करता है। यह नहीं समझना चाहिए कि झगड़ों से हमेशा नुक्सान होता है। स्वार्थी झगड़ों से नुक्सान होता है लेकिन परमार्थी झगड़ों से फायदा हुआ करता है। अगर संसद् और सरकार में एक तरफ और सर्वोच्च न्यायालय में दूसरी तरफ झगड़े हो जायें और वे स्वार्थी झगड़े न हों, परमार्थी झगड़े हों तो उस से राष्ट्र की तन्दुरुस्ती बढ़ेगी और संविधान का यह उद्देश्य भी था, नहीं तो 138, 139 और 140 धारायें क्यों रखी जातीं? लेकिन लोगों के मन में यह निरर्थक सन्देह बना हुआ है और उसका एक कारण भी है। हम लोग अभी तक जिस सभ्यता में पले पुसे हैं, उस में लोग यह समझते हैं कि अगर शक्तियों का बटवारा कर दिया जाता है तो शक्ति घट जाया करती है लेकिन आधुनिक सभ्यता एक दूसरी नींव के ऊपर खड़ी हुई है। शक्तियों का जितना बटवारा करोगे, अखत्यारात को जितने ज्यादा लोगों में बांट दोगे, अखत्यारात उतने ज्यादा बढ़ जायेंगे, घटेंगे नहीं। लेकिन डर यह रहता है कि अगर कहीं सरकार और सर्वोच्च न्यायालय में अखत्यारात इस तरह से बंटने लग जायेंगे तो सरकार कमजोर पड़ जाएगी या संसद् कमजोर पड़ जाएगी और कभी कभी यह बात सामने आई भी है इस रूप में कि संसद् सोचने बैठा करती है। उस के मान और अपमान का सवाल आ जाता है। इसके बारे में विधायिका वगैरह सोचने लग जाती हैं। लेकिन वास्तव में ऐसी विधायिका . . .

उपाध्यक्ष महोदय : बिल के बारे में कुछ बोलिये।

डा० राम मनोहर लोहिया: यही तो मैं आप से कहता हूं। कैसे मैं बिल पर नहीं बोल रहा हूं। बिल के बारे में ही तो बोल रहा हूं। समर्थ जज लोग कैसे बनें। जज लोगों को आज समर्थ नहीं बना कर रखना है? उन के अखत्यार कम हैं। संविधान में लिखा हुआ है कि वे समर्थ हों। 138, 139 और 140 धारायें इसी के बारे में हैं कि अखत्यारात बढ़ने चाहियें। संसद् ने पिछले चौदह बरस में यह काम नहीं किया है। जब तक यह काम नहीं होगा तब तक जज लोग समर्थ और जिम्मेदार नहीं बनेंगे।

मैं जरा इस सवाल को दूसरी दिशा में ले जा रहा हूं। लेकिन यह बिल के ऊपर है और किसी दूसरी चीज के ऊपर नहीं है। मुश्किल यह है कि . . .

उपाध्यक्ष महोदय : यह चीज इस बिल में नहीं है। यह अलग आती है।

डा० राम मनोहर लोहिया : इसी बिल में है। जो और लोगों ने कहा। जैसे आप देखिये न। मैं किसी का नाम नहीं लूंगा लेकिन यहां पर एक सदस्य ने कहा . . .

15 hrs.

Dr. L. M. Singhvi: May I submit that we do feel that in a general discussion at this stage, since other hon. Members have already had the liberty, Dr. Ram Manohar Lohia also should have the same liberty to discuss the place of the judiciary in a constitutionally democratic society? That is all that he is doing, from whatever point of view he may do so.

Mr. Deputy-Speaker: The distribution of powers has been defined in the Constitution. So, we need not go into that now.

Shri Shinkre (Marmagao): Dr. Ram Manohar Lohia's speech is not much different from the previous speeches. You did not object to the previous speeches.

Mr. Deputy-Speaker: I am not cutting him down, but he has said enough on this already, and I want him to speak on the Bill now.

डा० राम मनोहर लोहिया : उपाध्यक्ष महोदय, मेरा दुर्भाग्य है, लेकिन, खैर, ऐसी कोई बात नहीं है । सभी जगह मुझे इस दुर्भाग्य का सामना करना पड़ता है, इसलिये बहुत अफसोस की बात नहीं है । लेकिन जितने लोग यहां बोले हैं उन से मैं ज्यादा इस बिल पर बोल रहा हूं, खाली आप को इतना बतला दूं ।

अभी मैं बतलाऊंगा कि जैसे फ्रांसिस बेकन एक बड़ा भारी जज हुआ, आज से चार सौ वर्ष पहले । अंग्रेजों का जज । वह थोड़ा बहुत इधर-उधर गड़बड़ करने वाला लेकिन उस के जैसे जज कम हुए हैं । उस ने एक दफे बड़ा बढ़िया वाक्य कहा । जज तो शेर होते हैं, लेकिन ऐसे शेर जो तख्त के नीचे रहते हैं । यह चार सौ वर्ष पहले की बात है लेकिन साहब की जब कि महारानी एलिजबेथ थीं । पर चार सौ वर्ष में योरप में ऐसी सभ्यता बनी है कि बहुत से जज हो गये हैं जो शेर हैं लेकिन तख्त के नीचे के नहीं हैं बल्कि तख्त के बगल के हैं । मैं चाहता हूं कि हमारे देश में भी ऐसे जज बनें जो तख्त के नीचे न रहें बल्कि तख्त के बगल में हो जायें । और इसी लिये मैं आप के सामने यह सारी बातें कह रहा था ।

एक माननीय सदस्य : तख्त के ऊपर कौन रहेगा ?

डा० राम मनोहर लोहिया : तख्त के ऊपर तो आप जैसे लोग रहेंगे, लेकिन बगल में ही रह कर आप गर्दन पकड़ पायेंगे ।

15.02 hrs.

[SHRI THIRUMALA RAO *in the Chair.*]

श्री बाल्मीकी (खुर्जा) : ऐसी शिकायत हो रही है कि आप बगल की बातें ज्यादा करते हैं ।

डा० राम मनोहर लोहिया : हां, सरकार के बगल में क्योंकि शायद आज वह खत्म भी हो जाये । आज पौने चार बजे आप उसे खत्म भी कर सकते हैं ।

Mr. Chairman: The hon. Member should address the Chair.

डा० राम मनोहर लोहिया : इसलिये मैं आप से निवेदन कर रहा था कि संविधान के उन कालमों के अनुसार संसद् को कार्रवाई करनी चाहिये जिस से कि सर्वोच्च न्यायालय के अख्त्यार बढ़ा दिये जा सकते हैं, और इतने जितने पूरे केन्द्र की हुकूमत के हैं । डरना नहीं चाहिये कि द्वंद हो जायेगा क्योंकि यह द्वंद लाभदायक होंगे । आधुनिक सभ्यता का आधार है कि जितनी ज्यादा ताकत और अधिकार बांटोगे उतने ही ज्यादा वह बढ़ेंगे । अगर संसद् यह समझे यह सरकार यह समझे कि संसद् का अख्त्यार हम सर्वोच्च न्यायालय को दे देते हैं । तो वह घट जायेंगे, तो यह सोचना गलत होगा । सर्वोच्च न्यायालय को अगर अख्त्यार दे दिये जायेंगे । यह करीब करीब वही फर्क है जो भारतीय संगीत और यूरोपीय संगीत में होता है । भारतीय संगीत एक स्वर का संगीत है और बड़ा अच्छा होता है कभी कभी । आज एक तो सरकार सर्व-शक्तिमान है और एक संसद् सर्वशक्तिमान कही जाती है । मैं चाहता हूं कि जिस तरह से योरपीय संगीत है जिस में अनेक स्वरों को मिला कर काम काज हुआ करता है और बड़ा बढ़िया संगीत बन जाता है उसी तरह से यहां सर्वोच्च न्यायालय को अधिकाधिक अख्त्यार दिये जायें जैसा कि संविधान में दर्ज है । लेकिन संविधान के अनुसार कार्रवाई नहीं होती है । जितने ज्यादा अख्त्यार आप उन को देंगे उतना ज्यादा अच्छा हिन्दुस्तान का राज्य बन सकेगा ।

[डा० राम मनोहर लोहिया]

आज कल क्या हाल है। कई बार बहुत से ऐसे मामले आते हैं जिन पर जज लोगों को कह देना पड़ता है कि हमें उन के ऊपर दखल देने का अधिकार नहीं या इसमें हम कोई जांच नहीं कर सकते। अभी खुद मुझे अनुभव हुआ है। जब मैं ने यह सवाल उनके सामने उठाया कि संविधान तो खुद कहता है कि आप में और सरकार में झगड़ा है। तब उन्होंने मुझ से बतलाया कि बिल्कुल ठीक है। संविधान कहता है कि झगड़ा है, लेकिन पहले आप अपनी संसद् में जा कर अपना बहुमत बनाइये और हमारे अखत्यार बढ़ा दीजिये तब ऐसी बातें कीजियेगा। तब मैं ने उन से कहा कि जितना ज्यादा अखत्यार बढ़ा कर के काम काज चलेगा उतना ज्यादा अच्छा होगा।

सर्वोच्च न्यायालय कई बार ऐसे काम किया करता है—यहां वाला नहीं अमरीका वाला, क्योंकि यह संविधान तो बहुत कुछ अमरीका के संविधान पर आधारित है। जहां तक जजों का मामला है यह बातें अंग्रेजों के संविधान में नहीं हैं, फ्रांस के संविधान में नहीं हैं, अमरीका के संविधान में हैं। आप जानते हैं कि अमरीका में काले और गोरों का झगड़ा पिछले 80 वर्ष से चल रहा था। मैं शर्तिया कहता हूं कि वहां की कोई लोक सभा कभी इतनी हिम्मत नहीं कर सकती कि वह कानून पास कर दे जो कि जजों ने शुरू कर दिया। क्योंकि वहां जनमत ऐसा था। जमा हुआ था जैसे कि काई जमी हुई होती है। कोई लोक सभा ऐसा नहीं पास कर सकती थी। जजों ने 80 वर्ष के फैसलों को रद्द करते हुए एक फैसला किया कि बराबरी का मतलब है एक साथ। बराबरी का मतलब अलग अलग नहीं होता है। जहां जजों ने उस शब्द "बराबरी" का यह अर्थ लगाया, उस के बाद काई फटनी शुरु हो गई। जो काम अमरीका की कोई भी लोक सभा कभी नहीं कर सकती थी उस काम को जस्टिस वारेन और उन के दूसरे जजों ने सर्वोच्च न्यायालय में कर के दिखलाया। ऐसे ही यहां पर भी बहुत सी बातें हैं। मिसाल के लिये आज यहां एक संकटकालीन कानून है। संकटकालीन कानून में कई शब्द लिखे हुए हैं। उन शब्दों के बारे में जजों को अखत्यार होना चाहिये कि वह मतलब लगायें। एक शब्द लिखा हुआ है कि अगर आसन्न हमला हो या आसन्न अतिक्रमण हो, कोई बाहरी देश हमारे ऊपर फौरन आ जाने वाला हो तो संकटकालीन कानून बनाया जा सकता है। तो आसन्न का क्या मतलब होता है। जज लोगों को अखत्यार होना चाहिये कि वह आसन्न शब्द का मतलब बतलायें। लेकिन यह तभी हो सकता है जब कि आप सर्वोच्च न्यायालय के अधिकारों को बढ़ाने वाले संविधान के नियम को लागू करेंगे। और मुझे इस बात को कहते हुए बड़ा अफसोस हो रहा है कि चौदह पन्द्रह वर्षों से लोक सभा चल रही है लेकिन कभी इन धाराओं के बारे में किसी ने नहीं सोचा। लोक सभा को कभी थोड़ा उदार होना चाहिये, अकेले अपने मान अपमान की बात नहीं सोचना चाहिये, दूसरों के अखत्यारों के बारे में भी सोचना चाहिये। दूसरों के अखत्यार बढ़ाओ, न्यायालय के अखत्यार बढ़ाओ। नहीं तो लोग कहेंगे कि संसद् के पास अखत्यार तो कुछ है नहीं, खाली उस को अपने मान अपमान का घमंड रहता है। सारे अखत्यार तो सरकार के पास पड़े हुए हैं लेकिन अपनी शक्ति को बनाये रखने के लिए वह इधर उधर अड़ंगे लगा दिया करती है।

आप जानते हैं यह एक अद्भुत लोक सभा है। ऐसी लोक सभा संसार में कभी कहीं नहीं हुई होगी। एक लड़ाई चल रही है, बीस दिन से चल रही है। लोक सभा बैठी हुई है। लड़ाई शायद खत्म भी होने वाली है लेकिन हिन्दुस्तान की लोक सभा

इस बारे में कुछ नहीं बोल पाती है । इस का कारण यह है कि आज जितने भी अखत्यार हैं, राज्य के अखत्यार, न्याय के अखत्यार और न्याय के बारे में खाली एक स्वर का संगीत चल रहा है । सभापति महोदय, आप तो संगीतज्ञ हैं। मैं जानता हूं कि आप को संगीत से रुचि है । आप योरोप के संगीत को ले कर चलिये । तमाम स्वरों के संगीत से काम लो तब सम्भव है कि अपना देश सुधर पाये ।

इसलिये मैं आप से निवेदन करता हूं, बहुत कुछ उदाहरण है चाहे वह अमरीका के हों या अपने देश के हों, उन को सामने रख कर मैं फिर से माननीय मंत्री जी से और श्री कामत जी से निवेदन करता हूं कि इस चीज के ऊपर वह जरूर ध्यान दें । और कुछ करो या मत करो, लेकिन धारा 138, धारा 139 और धारा 140 जो संविधान की है, जो कि पिछले 14 या 15 वर्षों से इस लोक सभा में लागू नहीं की गई हैं उन को लागू करने वाला विधेयक इस लोक सभा में लाओ, तब तो मैं समझूंगा कि आप आधुनिक सभ्यता में कुछ कर पाये हैं, कुछ ताकतों का बटवारा सीधा है और कुछ करना चाहते हैं ।

Shrimati Tarkeshwari Sinha (Barh): As many hon. Members have pointed out, this Bill is a very significant Bill indeed. It may have only a few clauses but they are so significant not only to the relationship that we have established in the Constitution between the executive, judiciary and legislature but also to the preservation of our democratic traditions which clearly envisage the demarcation of responsibilities and functions of the executive, judiciary and legislature.

The Judges (Inquiry) Bill which is before us has got some precedents not of law but of incidents. I assume that Government were probably facing some difficulty about some resignations or something of that kind and that has compelled them to bring forward this Bill.

While considering the Bill, I accept the basic spirit of it that there should be a special tribunal to inquire into the conduct of Judges so that from the point of view of judges, they must have ample opportunities to defend their case before their name is tarnished or reputation completely ruined. I agree with my hon. friend, Shri Raghunath Singh, when he said that this is beneficial to the Judges more. I feel that any allegation without proper channelisation and without an opportunity afforded to the person concerned to defend oneself is allegation which is very unfortunate, whether it is at the judicial level or at the political level. You probably have known how these allegations are made and what is the fate of those allegations once they are left to the discretionary power of one authority or one department, whether the allegation is right or wrong. I have been a victim of that when there was no opportunity for me to defend myself.

Shri Raghunath Singh: Quite correct.

Shrimati Tarkeshwari Sinha: I was under this limitation in not being able to find out how to defend my own name and reputation.

Mr. Chairman: I hope you are not a Judge of any High Court.

Shrimati Tarkeshwari Sinha: No, I am not. I raise a basic, fundamental issue, that any allegation, if it is left to the discretion or subjective satisfaction of one authority, one person or one department or a few persons, if it is not inquired into properly, and if the person against whom the allegation is made, is not given proper opportunities to defend himself or herself, is an allegation which is not fair to the person concerned. Therefore, when Shri Raghunath Singh mentioned that this is beneficial to the Judges, I said;

[Shrimati Tarkeshwari Sinha]

yes, I do accept that the tribunal will give an opportunity to the Judge concerned to defend himself and vindicate his name, honour and reputation. That was how I brought in my own case. I asked all leading lawyers in the country, 'How can I defend myself against those allegations?'. They said, 'You have no opportunity to defend yourself. The whole allegation is on the basis of suspicion. It may be in the mind of one person or department'. There was no legal sanctity available and I have not afforded the opportunity to defend my reputation, I was compelled to accept this kind of humiliation. No law was there to answer my plight. Therefore, I welcome this tribunal which is contemplated for the Judges. This will give an opportunity to the Judges to defend their own case when, as Shri H. N. Mukerjee pointed out, the Judges are also treated in a cavalier manner.

But my own apprehension is that this bill is not quite clear on some fundamental issues arising out of the point. A good suggestion has been made, and I hope you will ask the Law Minister, by taking the consensus of the House, to refer the Bill to a Select Committee, because there are many fundamental issues which have been raised. For instance, what will be the procedure to level any charges against a Judge, whether it will be within executive discretion or whether it will be on the strength of some complaint received, if so, who would be the complaining authority, on what basis would that complaint be entertained and deemed worthy of consideration by Government or the President? Who is going to be that authority? Is it going to be at the discretion of one individual who would make a complaint? What will be the background of the complaint which will get the sanctity of the authority to be inquired into? These are things on which the Bill is completely silent.

Referring to the Commissions of Inquiry Act, the Law Commission has clearly warned the Government, so to speak, that the history of liberty has been largely the history of procedural safeguards. What will be the procedural safeguards if a conduct of misbehaviour is alleged against a Judge, who would be the competent authority to exercise discretion? This Bill is silent about that.

We would like to have a full analysis and explanation from the Government, a satisfactory assurance, that no discretion would be exercised prejudicing the very traditions which we have in our country of the relationship, between the legislature, the executive and the judiciary.

The second point on which this Bill is silent, for which I would like this Bill to go to the Select Committee, is regarding the powers and regulations by which the Tribunal will be guided. It is mentioned that the Tribunal will be guided by certain procedures and rules which will be made by the Government, and they will be laid on the Table of the House. I strongly feel that the Tribunal should have independent regulatory powers. In England, a Commission under the Commissions of Inquiry Act is quite independent to lay down its own regulations. If you are creating a high power Tribunal, do not harness or load it with your rules and regulations.

Shri Sham Lal Saraf: It will not be a permanent Tribunal.

Shrimati Tarkeshwari Sinha: I am coming to that. I feel that there should not be a temporary Tribunal, but that there should be a permanent Tribunal to look into these cases, a permanent Tribunal which should not be influenced by the various recommendations and choices of the nominees. Shri Trivedi raised this point that while appointing the members of the Tribunal, enough consideration should be shown to the qualifying capacity of the members. That is a very vague term. What will be the qualifying capacity of the members to be competent to be members of this Tribunal?

Again, that leaves wide discretionary powers with the Government. Probably it may be fair today, but tomorrow it is pregnant with so many dangers, if we really leave the discretionary powers with the Government. Therefore, there should be an exceptionally high power Tribunal; if there is no work, it need not function; it need not be a whole-time fully paid body.

If you are there to choose or nominate the members of the Tribunal, they would necessarily be retired Judges. I am one of those who are convinced that this tendency of co-opting retired Judges, offering them loaves and fishes, is a practice which should be strictly discontinued. There are so many commissions, and I have before me a record of them, on which Supreme Court or High Court Judges have been asked to preside. In other countries, they follow the convention that the Judges do not retire, they continue as Judges for their lifetime, till they are competent to act as Judges, because nobody should offer them the temptation of an alternative job.

What is happening in the case of our election tribunals? Only the other day it was said in answer to a question that they were thinking of asking the High Courts to deal with election petitions directly. I know the basic background of this decision which is likely to be taken in the near future by Government. I know why delay takes place. The tribunal members get very handsome pay, and they are not interested in finishing the cases quickly. Let us not hide this fact from anybody. I do not doubt the *bona fides* of any Judge, but I feel that it is not desirable to tempt them with high salaries and handsome appointments and really make them susceptible to public suspicion. Like Caesar's wife, they should be above public suspicion. Nobody should be able to point a finger at any Judge that he is unreliable or dishonest. Therefore, I think it should be a permanent Tribunal.

A Supreme Court Judge may come as a member of the Tribunal, but he should not be a retired Judge, he should be a Judge in office. He should be a permanent member. Then also who would be the counsel to assist the tribunal? The attorney general is the legal adviser of the government. I accept the independent position of that office. Still he is the legal adviser of government and there is an intimate relationship between the client and the lawyer. Lawyer-client relationship is conditioned by a very subjective phenomenon. A lot of members are lawyers and know, how lawyer-client relationship goes on. Attorney general is lawyer to the client which happens to be the government. Therefore, there should be independent assistance, whatever may be the shape of that assistance provided for any tribunal which is to enquire into the misbehaviour of judges.

The appointment of the tribunal should not be made by the government. I accept what the hon. Minister says that the President is competent to appoint a tribunal but the tribunal must get a mandate from the House; it should be created after getting the mandate of the House. If it is a permanent tribunal, it is still necessary to get the mandate of the House to create a permanent tribunal. If it is a temporary tribunal, it is all the more necessary that while that tribunal is being constituted the membership should be accepted by a mandate of the House. I also suggest that if the Tribunal's report has to come to the House, it should be with this reservation. If a judge had been released with no guilt, that report should not come to the House; otherwise it will damage the reputation of the Judge which nobody would be able to give him back. If the charge of misbehaviour is proved against him, only that report should be laid on the Table of the House and proper action should be taken. With these

[Shrimati Tarkeshwari Sinha]

words, I thank you for giving me this opportunity.

Shri Ranga (Chittoor): Mr. Chairman, I am in agreement with this Bill. But at the same time I support the demand of so many Members that it should be sent to the Select Committee. Member after Member from all political parties including the ruling party had given cogent reasons why it should go to a select committee and I hope the government would be good enough to agree to this demand. It stands to the credit of the Law Minister that though he has taken such an untenable and unfair attitude in regard to the Judge from the Calcutta High Court sometime ago, he has made himself responsible for bringing forward this Bill to fulfil the assurance given by the Constitution that such a tribunal would come to be constituted. Who is to take a final decision as to the fact that there should be a tribunal, what sort of a tribunal it should be, who should be its members? According to this Bill it appears that the government wants itself to have that power, at any rate, with the President. Seeing the manner in which the government has behaved towards the judges of the High Court and Supreme Court on the rare occasions when it had the opportunity of expressing itself, I feel that it would be much better to reserve that right to this House so that whenever Government makes any decisions they would be only provisional and they would have to place those decisions before Parliament.

Mr. Chairman: Order order, I request hon. Members to maintain silence.

Shri Ranga: It is quite possible that Parliament would accept the advice of the Government, but it would be a salutary check on the manner in which the Government would be making its own preliminary decisions, because it knows that whatever decision or provisional decision it makes, it is likely to be examined by Parliament and it is liable to be accepted or be thrown out by Parliament. Once there is that check, it would be possible for us to expect the Government to be a little more circumspect than ordinarily it is, in making those decisions.

We are all very keen, and so many of our hon. Members have already made it quite clear that the honour, the prestige and independence of the judges of the high courts and of the Supreme Court should be maintained and respected. Yet, they also are human beings and they are likely to make mistakes and they may also become incapacitated owing to age or some other ailment. They may also go wrong sometimes and behave atrociously. It is to ensure ourselves against such mishaps that the Constitution has given the power to Parliament to take up legislation like this so that whenever the need arises, the country may be saved from such of the judges who really deserve to be removed from office.

As long as there is this power in the possession of this Parliament, the Government may not do much mischief in undermining the independence of the judges, but if this power were to be left with the Government, the power to decide when a tribunal should be appointed, against which judge and for what purposes and so on, it would act as a kind of inhibition, as a kind of fear in the minds of the judges, and to that extent, the judges' exercise of their spirit of independence would be undermined and would be likely to be weakned. Therefore, it is most essential that to the extent that the Government has to make its own preliminary decisions, Government should be extremely careful and should be unwilling to resort to this means frequently or easily. Only on very rare occasions, when it must and it has no other choice and in its judgment the inte-

rests of the country are likely to be jeopardised, that it would be willing to come to the decision that there should be a proper enquiry and they should think of getting a tribunal appointed under this kind of legislation. Even then, I would not like to leave this power entirely in the hands of the Government. It is only when the judges know that there are all these safeguards provided by this Parliament in this legislation that we can expect them to feel and entertain that degree of independence of the executive as is desirable and as is most essential.

15.28 hrs.

[MR. SPEAKER *in the Chair*]

It is nothing special with this Government—it is the usual thing with every government—to be cavilling at the independence of the judges, because it is inherent in the very process of law, the use of it, and the enjoyment of it. Whoever is in charge of power, whoever is entitled to enjoy and exercise power, would like really to have no restraint at all and to be subject to no other revision. Therefore, he is more likely to make more mistakes with a greater sense of impunity than anyone else. The same fear can also be expressed in regard to judges also. They can also not only go wrong but they can also be considering themselves as being so supreme as to become autocrats; and they might also try to create trouble for the citizens as well as for the Government, and that is why there is this theory and the spirit of checks and balances and the separation of powers. All these are inherent in that very principle of separation of powers. I would like the government to keep that very much in their mind and try to see that they show as much respect to the Judges as they expect the Judges to be cognizant of the responsibilities, troubles and tribulations of the executive. All this is theory, but coming down to brass-tacks here, I would like the Minister to give fresh thought and agree to send this Bill to a select committee. Our party associates itself with the principle underlying this Bill.

Mr. Speaker: I have to make one announcement, unexpected though it might be. The Prime Minister is not making a statement at 3.45. That would probably be made tomorrow, not today.

Dr. L. M. Singhvi: Sir, while I welcome this Bill, which has been brought forward in fulfilment of the promise that has been conveyed by the government, I cannot help saying that this is one of those instances of ministerial forgetfulness or legislative amnesia in which the Bill was introduced on the 14th February, 1964 and it is now being brought before the House more than a year thereafter.

As one who has been most intimately connected with this matter, I should like to tell the House briefly what the genesis of the Bill is. You would recall, Sir, that it all started with a question, which you were not pleased to admit, but in respect of which you directed the Home Minister to convey the necessary information to me. That done, the Home Minister wrote to me to give the necessary facts in respect of the various queries I had raised about an honourable Judge of the Supreme Court.

15.33 hrs.

[SHRI KHADILKAR *in the Chair*]

The Home Minister wrote to me saying,

"It has been reported by the Chief Justice of India that Shri Justice Jafar Imam of the Supreme Court has not been in good health for some time past now. The Chief Justice, therefore, has been directing him at times to sit as the sixth Judge on the Bench and at other times Justice Jafar Imam having no regular work on the Bench has only been sitting in his Chambers. The Chief Justice of India requested Shri Justice Imam to undergo a medical exa-

[Dr. L. M. Singhvi]

mination, but Shri Justice Imam has declined to do so. There is no provision of law under which he can be compelled to do so. A Judge of the Supreme Court cannot to compelled to resign from the Bench either. He can only be removed under the provisions of article 124(4) of the Constitution."

The Home Minister went on to say:

"Before any action under article 124(4) of the Constitution can be undertaken, Parliamentary legislation in terms of article 124(5) will be necessary. The question of undertaking such legislation is engaging our attention."

This was on 20th September, 1963.

After this, I wrote to him expressing the point of view that I did not think that the absence of a specific legislative enactment under article 124(5) suspended or effaced the procedure and remedy provided in article 124(4) of the Constitution. My view was and still is that in spite of the fact that there is no legislation under article 124(5), Parliament has every right to proceed in respect of the impeachment of a Judge.

Answering various queries I had raised, the Home Minister on the 11th November, 1963 said:

"Shri Justice Imam was off and on away from Court work either on leave including leave on full pay and leave on half allowances or because the Court was closed for vacations, between 31st January 1961 and 15th July, 1962.

On the 15th July, 1962, the Chief Justice of India advised Shri Justice Imam that he should not resume work until he had fully recovered and that he should get a certificate from his attending physicians that he was fit for work again. Shri Justice Imam declined to accept this advice and joined the Court on the 16th July, 1962. He sat as the sixth Judge on a Constitution Bench for a month and a half after that and after another couple of months' leave he joined the Court again and he heard criminal appeals as the fourth Judge on a bench for a period of about four months and 12 days.

After short periods of leave Shri Justice Imam returned to the Supreme Court on the 4th February 1963. But after that date he was not allotted any regular court work, but continued to sit in his chambers."

Mr. Chairman, the Home Minister went on to add that more recently Shri Justice Imam had on the advice of the Prime Minister undergone a medical examination which showed some improvement and which also showed, at the same time, that there was a marked degree of impediment in his speech resulting in difficulty in expression of certain words and to a lesser extent comprehension of the spoken speech.

Sir, in view of this situation and the great concern and anxiety all of us had in the legal profession in respect of a matter like this, I was constrained, much against my wishes, with the utmost reluctance, to table a resolution for the removal of Mr. Justice Imam, as he then was. Mr. Justice Imam was a distinguished judge in his own time. I had the pleasure of knowing him personally and when I brought this resolution before the House it was in sorrow and with the utmost reluctance, as I have already stated. But it seemed that in spite of my having taken up the matter at the highest level—the President of India, the Prime Minister and also the Home Minister—there was no remedy available at that time.

15.37 hrs.

[MR. DEPUTY-SPEAKER *in the Chair*]

It was unfortunate that in consequence of this resolution, as has happened in other countries of the world, Mr. Justice Imam thought it appropriate to resign his office as judge of the Supreme Court. But the problem was not altogether solved, because the Government had taken the view that in the absence of an appropriate legislation under article 124(5) proceedings could not be started in this respect.

Mr. Deputy-Speaker, the genesis of this Bill which is before us is, in short, this particular case, which I believe was the only case in the history of this Parliament, where a resolution or impeachment of a sitting Supreme Court Judge or any other judge was admitted. It seems to me that in spite of the fact that this is a piece of legislation which is brought forward in fulfilment of an article of the Constitution, which says that such a legislation would be brought into existence, it is rather ill-conceived. Article 124(4) says:

"A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity."

Sub-clause (5) says:

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

Of course, as I said, I was of the view, and I am still of the view that this is an enabling provision of the Constitution. It says that "Parliament may by law regulate the procedure". If, however, there does not exist any specific piece of legislation, then Parliament can also regulate the procedure of such inquiries in an *ad hoc* manner.

Having said this, I should like to say that the Bill that has been brought before us is a departure from all known institutions and all known procedures and also all known instrumentality in this respect. It seems that inspiration has been derived perhaps from the Burmese Constitution for bringing forward this device of a special tribunal to be appointed and constituted by the President of India on a report or *suo motu*. It is a very poor Constitution to take inspiration from. Ours is one of those Constitutions which enjoy great respect in the entire world. It is an exercise in ecletic scholarship. It is also an exercise in statesmanship. It is a constitution which, I think, derives a great deal more, so far as constitutional liberties are concerned, from the golden chapters of constitutional liberty in the West.

This Bill derogates in a very wilful or negligent and cavalierly manner from the entire tradition in respect of judicial tenure. Judicial tenure, in our Constitution and in our society, is considered sacrosanct. As far as possible we are not supposed to interfere with judicial tenure in a casual manner. What is sought to be done through this Bill, with all respect, is to interfere with judicial tenure—at least to give that impression that interference with judicial tenure is possible at the will of the executive and at the will of the President.

I would invite the attention of this august House to clause 3 of the Bill which says:—

"If the President, on receipt of a report or otherwise, is of opinion that there are good grounds for making an investigation into

[Dr. L. M. Singhvi]

> the misbehaviour or incapacity of a Judge, he may constitute a Special Tribunal for the purpose of making such an investigation and forward the grounds of such investigation to the Special Tribunal.".

This Special Tribunal is then provided and armed with all the powers of investigation and in so far as the alleged misbehaviour or incapacity is concerned, it is this tribunal which would tender its finding. After this the House would, of course, go through the formality of passing a Resolution. Naturally, after a judicial finding is recorded, this House would either be committing an omission or a serious commission if it did not accept that advice. This, as I said, derogates from the privileges of this House. This derogates from the parliamentary tradition known all over the world and I wish presently to show that this is so.

Before I do this, I should like to draw the attention of this House to what this judicial tradition has come to mean in the great countries from which we drew this inspiration, in the countries which we have tried to emulate in respect of constitutional liberties in our country. This is what Sir Winston Churchill said speaking of Great Britain:—

> "Judges are appointed for life. They cannot be dismissed by the executive Government. They cannot be dismissed by the Crown either by the Prerogative or on the advice of Ministers. They have to interpret the law according to their learning and conscience. They are distinguishable from the great officers of State and other servants of the Executive high or low, and from the leaders of commerce and industry. They are also clearly distinguishable from the holders of less exalted judicial office. Nothing but an Address from both Houses of Parliament, assented to by the Crown, can remove them."

My hon. friend, the hon. Deputy Law Minister, would say that this is what we are also providing; that, ultimately, it is this House which would present an Address to the President. But what is proposed to be done through this Bill is to wrest that initiative, that explosive prerogative, from this Parliament and this, I think, is certainly improper. It is unconstitutional.

I should also like to draw the attention of the House to another statement made in respect of the independence of the judiciary which we have enshrined in our Constitution.

> "The principle of the complete independence of the Judiciary from the Executive is the foundation of many things in our island life".

says Sir Winston, speaking of the Constitution of Great Britain.

> "It has been widely imitated in varying degrees throughout the free world. It is perhaps one of the deepest gulfs between us and all forms of totalitarian rule. The only subordination which a judge knows in his judicial capacity is that which he owes to the existing body of legal doctrine enunciated in years past by his brethren on the bench, past and present, and upon the laws passed by Parliament which have received the Royal assent. The judge has not only to do justice between man and man. He also —and this is one of his most important functions considered incomprehensible in some large parts of the world—has to do justice between the citizens and the State......The British Judiciary, with its traditions and record, is one of the greatest living assets of our race and people and the independence of the

Judiciary is a part of our message to the ever-growing world which is rising so swiftly around us.".

Obviously, such independence of the judiciary would not be continued or preserved in our country if we allow such power to be vested in the President either on receipt of a report or *suo motu*.

The position in America is also not different. But before I go to the position of America. I would like to say that what this Bill seeks to do is to take us back to the pre-history of the Act of Settlement of Great Britain. It is definitely a retrogressive step and a step which this Parliament in asserting its privileges must strongly resist. If I may be permitted to cite an authority on the British Constitution, it says:

"....Anciently, the judges held their commissions during the King's pleasure and under the Stuart kings the Bench was systematically packed with partizans of the Crown. As early as Lord Coke's time, indeed, the Barons of the Exchequer were appointed during good behaviour and at the restoration of Charles II, the Commissions of the Common Law Judges were in this form. But there was no statutory restriction on the Crown's pleasure until 1700, when the Act of Settlement provided that "judges' commissions be made *quamdiu se bene gesserint*, and their salaries ascertained and established....".

The very doctrine of judicial independence is founded on the fact that the tenure is protected; it is founded on the fact that the salaries cannot be altered. It is founded on an accepted customary doctrine in all the democratic countries that they cannot be interfered with except in specified manner. By investing the President, which means, in effect, the executive, with the power of appointing tribunal on a report, or *suo motu*, what we are trying to do is to abandon the doctrine of judicial independence and supremacy which we adopted in our Constitution.

I would like briefly to make a reference to the procedure in the American Constitution. This is what it is:

"Constitutional authority to impeach is vested solely in the House; power to try impeachment cases rests with the Senate alone....

Shri D. C. Sharma: You are referring to U.S.A.; there they are elected.

Dr. L. M. Singhvi: My hon. friend has been to the United States several times. Normally, I would not contest his statement. But perhaps here he is not well-informed. The judges of the Supreme Court are not elected in the United States but they are appointed. It further says:

"...The House usually refers a motion proposing impeachment of an officer to the appropriate standing committee or to a specially created investigating committee. If an impeachment motion is adopted by the House, a committee may be set up to draft articles of impeachment. After their adoption, managers are chosen in whatever manner the House directs. The Senate, upon being informed of House action, sets up a committee to prepare for the trial.".

The initiative is that of the legislature.

I would like to make a brief reference to the Australian Constitution in this context.

Mr Deputy-Speaker: The hon. Member should conclude now.

Dr. L. M. Singhvi: As I submitted earlier, this is a technical subject and you might have a fewer speakers. You should give an opportunity and latitude to us to speak on this subject on which we have taken great pains to study.

Shri Hari Vishnu Kamath: You should not hustle the discussion.

Dr. L. M. Singhvi: The provision in the Australian Constitution is analogous to that of our own. Section 72 says:—

"The Justices of the High Court and of the other courts created by the Parliament—

(i) Shall be appointed by the Governor-General in Council;

(ii) Shall not be removed except by the Governor-General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity...."

These are the very words which we have used in our Constitution.

Now, I should like to draw your attention to the procedure in the Australian Constitution. It is not the Governor-General who takes the initiative either on the report received by him or on his own motion to appoint a tribunal. The initiative, the entire powers and privileges, rests with the legislature and the legislature alone. I quote from the Annotated Constitution of the Australian Commonwealth. On p. 731, it says:—

"Parliament is 'limited by restraints' which require the proof of definite charges; the liability to removal is not 'a qualification of, or exception from, the words creating a tenure,' but only arises when the conditions of the tenure are broken; and though the procedure and mode of proof are left entirely to the Parliament, it would seem that, inasmuch as proof is expressly required, the duty of Parliament is practically indistinguishable from a strictly judicial duty".

He goes on to cite:

"The matter is discussed and the proper procedure indicated by Todd where it is laid down that 'no address for the removal of a Judge ought to be adopted by either House of Parliament except after the fullest and fairest enquiry into the matter of complaint by the whole House or a Committee of the whole House, at the Bar; notwithstanding that the same may have already undergone a thorough investigation before other tribunals'—such as a Royal Commission or a Select Committee."

It seems to me that, after having cited the Constitutional precedents of countries from where we have derived much of our Constitutional provisions, there should be no need for me particularly to insist that a similar procedure should be adopted in our country. At this stage what I am trying to add, Mr. Deputy-Speaker, is to emphasize that this is an important piece of legislation; this is a piece of legislation which is brought forward here because the Constitution enjoins upon us the enactment of such a legislation. Of course it is unfortunate that this Parliament has not passed, and the Government, who have the legislative initiative in the matter have not passed, many such pieces of legislation which the Constitution specifically enjoins upon us to pass.

That apart, it seems to me that such an important legislation should not be passed in a hustle; it should be entrusted not only to a Select Committee as my esteemed and hon. colleague Mr. Kamath, suggested, but to a Joint Committee of both the Houses.

Shri Hari Vishnu Kamath: I have already agreed to the Bill being referred to the Joint Committee.

Dr. L. M. Singhvi: This is a matter of utmost importance. Let it not be said that the Parliament acted

in haste; let it not be said that we were hustled into passing an enactment merely because of the composition of Parliament which has the majority of a Party.

Mr. Deputy-Speaker, you have witnessed the unanimous consensus on this matter. My friend, Shri Raghunath Singh spoke rather strongly regarding the need for making a reference of this Bill to a Select Committee, which should bring out the Bill properly and after a detailed study of the comparative Constitutional provisions.

Mr. Deputy-Speaker, great concern and anxiety have been voiced in respect of judicial standards. I do not think it is necessary for me to go into this, but it must be emphasized that judicial standards will not be maintained unless we are willing to sacrifice our prejudices; judicial standards will not be maintained unless Government is willing to act in an entirely above-board manner, in a manner which does not allow any suspicion whatever. There have been lapses—these have been pointed by some hon. Members, especially Prof. Mukherjee—which have given room for some kind of denigration of the judiciary. It would be most unfortunate if this shining part of our Constitution, the shining part of our great Constitutional armour, is allowed to be tarnished, if its image is allowed to suffer. Mr. Deputy-Speaker through you I would like to plead and entreat the hon. Minister of State in the Ministry of Home Affairs who is now back in the House and Shri Jaganatha Rao who was holding the fort until Shri Hathi came back, to accept the unanimous recommendation of this House, the sentiments of this House, and agree to make a reference of this Bill to a Joint Committee.

Shri A. S. Alva (Mangalore): The Bill as it has been brought out, seems to offend the provisions of the Constitution itself because under Article 124, clause (4), it is the privilege of Parliament to present an address to the President by a majority of the total membership of the House and by a majority of not less than two-thirds of the members present and voting, for the removal of a Supreme Court judge, and by Article 217, the High Court judge could also be removed in the same manner. It has been said that the Chief Justice of a High Court was sought to be removed by a petition to the President or by a number of Members of Parliament writing to the President. There is absolutely no provision in the Constitution under which the President can act in such a case. The grounds given in clause 4 of article 124 are only two, namely proved misbehaviour or incapacity. So, we have to see whether the tribunal which is sought to be brought into being by this Bill would answer that purpose.

One thing is to be made clear in the beginning, namely that the tribunal is not the final authority but it is Parliament. Of course, any judge must be given all the powers and all the rights to defend himself and to repel the charges. But at the same time, it must be seen whether the Bill could be enacted as it is or whether any modifications are necessary and whether the constitutional provision is observed. So, this matter must be thoroughly gone into.

One criticism which has been voiced by some of my hon. friends is that under this Bill it is only the President that can refer a case to this tribunal and nobody else can do it. In that case, let us see whether there will be any power left to the Parliament itself. Supposing the President does not take any action, that is to say, if the executive does not take action against a judge, then whether Parliament itself can take action against the judge is a point to be considered. Under clause 4 of article 124 of the Constitution you will see that it is Parliament alone which could pass a resolution. Unless that article is amended, I am afraid that this particular provision in the Bill will offend the Constitution.

[Shri A. S. Alva]

Clause 3 (1) of the Bill reads thus:

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

Under this clause, the power has been given only to the President. If the President does not refer the case to a tribunal, then no action can be taken against the particular judge. The question is whether that is consistent with the provision in the Constitution. My submission to you is that it is not consistent. As a matter of fact, it will be open to any Member to bring forward a motion to say that a judge should be removed from his office, and then the matter could be investigated under clause (5) of article 124, which reads:

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

Even the verdict of the tribunal is not final. What is final is the satisfaction of the Houses of Parliament that a judge has committed misbehaviour or is incapable of doing his functions. So, my submission is that ultimately Parliament has the authority, and as such clause 3 which is incorporated in the Bill will clearly be a violation of the constitutional provision.

Mr. Deputy-Speaker: The hon. Member may continue his speech tomorrow.

Now, we shall take up the half-an-hour discussion.

16.00 hrs.

RISE IN PRICES OF ESSENTIAL COMMODITIES

श्री हुकम चन्द कछवाय (देवास) : उपाध्यक्ष महोदय, यह ग्राधे घंटे की चर्चा ग्रत्यावश्यक वस्तुग्रों की कीमतों में वृद्धि के बारे में पूछे गये तारांकित प्रश्न संख्या 512, दिनांक 9 सितम्बर, 1965 के बारे में दिये गये जवाब से उत्पन्न हुई है ।

ग्राज देश के ग्रन्दर जो मूल्य-वृद्धि हो रही है उस के तीन कारण हैं । (क) चीजों का स्वाभाविक ग्रभाव, (ख) मुनाफाखोरी, ग्रौर (ग) घाटे की ग्रर्थ व्यवस्था ।

मूल्य वृद्धि के सम्बन्ध में हमारी सरकार ने कभी इस बारे में विचार नहीं किया कि उसका वैज्ञानिक विश्लेषण किया जाये । दरग्रसल मूल्य वृद्धि का वैज्ञानिक विश्लेषण किया जाना चाहिए ग्रौर वह वैज्ञानिक विश्लेषण इस ग्राधार पर किया जाय कि वस्तुग्रों के ग्रभाव से कितनी मूल्य वृद्धि हुई, घाटे की ग्रर्थ व्यवस्था के कारण कितनी मूल्य वृद्धि हुई ग्रौर मुनाफाखोरी के कारण कितनी मूल्य वृद्धि हुई ? हमारी सरकार ग्रगर इस ग्रोर विचार करती तो निश्चय ही इस सम्बन्ध में कोई हल निकल सकता था ।

मूल्य वृद्धि मुनाफाखोरी के कारण हुई उस का पूरा बोझ व्यापारियों पर पड़ना चाहिए उपभोक्ताग्रों पर नहीं । उपभोक्ताग्रों पर केवल उतना ही बोझ पड़ना चाहिये जितना कि चीजों के स्वाभाविक ग्रभाव के कारण मूल्य वृद्धि हुई है । सरकार द्वारा इस प्रकार का विश्लेषण नहीं किया गया जो बड़ी भारी भूल हुई है । सरकार इस सम्बन्ध में पहले से ग्रगर विचार करती तो हो सकता

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*Half-An-Hour Discussion.