

Seventeenth Loksabha

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Title: The motion for consideration of the High Court And Supreme Court Judges (Salaries And Conditions Of Service) Amendment Bill, 2021 (Discussion not concluded).

HON. CHAIRPERSON : The House shall now take up item No. 18 – The High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill, 2021.

Hon. Members, we are going to discuss this very important and sensible Bill. On behalf of the Hon. Speaker and also on my behalf I request that no comments be passed on the conduct of the judges. Members are requested to confine themselves to the subject matter of the Bill.

THE MINISTER OF LAW AND JUSTICE (SHRI KIREN RIJJU):

Sir, I beg to move:

“That the Bill further to amend the High Court Judges (Salaries and Conditions of Service) Act, 1954 and the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958, be taken into consideration.”

Mr. Chairman, Sir, the Bill has a very limited provision and it pertains to the pensions of the retired judges. So, I would not like to elaborate much in the beginning. I will be replying on the issues, queries and other suggestions to be made by the hon. Members. I will try to give replies within the time permitted to me by the hon. Chair. I will also explain properly why this Bill was required to be introduced. Thank you.

HON. CHAIRPERSON: Motion moved:

“That the Bill further to amend the High Court Judges (Salaries and Conditions of Service) Act, 1954 and the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958, be taken into consideration.”

DR. SHASHI THAROOR (THIRUVANANTHAPURAM): Mr. Chairman, thank you for giving me the opportunity to present my party’s views on the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill, which has been introduced on the floor of the House by my good friend, Union Law Minister Shri Kiren Rijju. Perhaps it is fitting that all of us are gathered here today to deliberate on this legislation just a day after the 65th death anniversary of his distinguished predecessor, a leader who was in many ways the principal architect of the Constitutional foundation which has firmly guided India since Independence, and that of course is the Late Dr. Babasaheb Bhimrao Ambedkar.

Such is his eternal legacy that the greatness of this extraordinary Indian cannot be reduced to one issue. He was both the holder of many distinctions but yet remarkably greater than the sum of each of his trailblazing achievements. A freedom fighter, a visionary jurist, a champion of social reform, our nation’s first Law Minister and, perhaps, above all, a colossus who had the vision and the intellect to anticipate the problems and challenges that newly independent India would soon have to confront. In the process, he drafted, with remarkable prescience, the best check and balance mechanism in the book of law, our Constitution, a bulwark that would protect the interests of our people for generations to come.

Of course, Dr. Ambedkar realised that it is perfectly possible to pervert the Constitution without changing its form, merely by changing the form of the Administration to make it inconsistent and opposed to the spirit of the Constitution. Our Constitution, he sagely warned, is only as good as those who work it. That is where India seems, sadly, to be falling short. And I will be remiss if I did not mention that we are debating this legislation a day after the anniversary of the demolition of the Babri Masjid, an incident

that remains a blot on our collective consciences and emblematic of the dangers that Dr. Ambedkar warned us about.

Turning to the Bill before us, to put it simply, the Bill proposes to amend the High Court Judges (Salaries and Conditions of Service) Act, 1954 and the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958 and seeks to bring clarity on when Supreme Court and High Court Judges are entitled to an additional quantum of pension or family pension on attaining a certain age. I appreciate the Bill and the legislative clarification that this pension benefit to a retired Judge shall be provided from the first day of the month in which the Judge completes the age specified and not from the first day of his entering the age specified therein. My Party has no difficulty in supporting this measure.

However, the title of this Bill refers to Salaries and Conditions of Service of Judges of the Supreme Court and High Courts. This points to other issues that could usefully have been addressed in this Bill, issues of far greater importance to the democratic foundations of our nation.

The Government should have considered using this Bill to address and resolve critical issues of the Judiciary relating to Conditions of Service such as matters of the retirement age of Judges, particularly High Court Judges, and the implications of that for the pendency of cases in the courts. I would like to ask the Minister whether there are any plans to increase the retirement age of the Judges of the High Courts from 62 to 65 years to bring them on par with the retirement age of the Supreme Court Judges who retire at 65. There have been important recommendations from experts to this effect. The 2002 Venkatachaliah Commission Report, for instance, had recommended that the retirement age of High Court Judges be increased to 65, though he then added that the Supreme Court Judges should retire at 68, while many felt, of course, that the two ages should be the same. The UPA Government sought to implement this age increase recommendation through

the Constitution (114th Amendment) Bill, 2010, which provided for increasing the retirement age of High Court Judges from 62 to 65. But unfortunately, the Bill could not be taken up for deliberations and it lapsed on the dissolution of the Lok Sabha in 2014. Even so, the importance of this measure was subsequently reiterated again by Justice Kurian Joseph of the Supreme Court who recommended in 2018 to increase the retirement ages of the Judges of the higher Judiciary to decrease the pendency of cases.

Despite such measures offering, at least, a partial solution to the alarming levels of pendency that plague our top courts, it is both surprising and worrying that the Ministry of Law and Justice has declared that there is neither a proposal as of now to increase the retirement age of Supreme Court Judges from 65 to 67, nor to bring those of the High Court colleagues to an equal footing from 62 to 65 and provide a uniform retirement age for Judges of High Courts and Supreme Court. This illogical position blatantly contravenes the recommendations made by the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice which has pointed out that there is a need to revisit the age of retirement of High Court Judges to compensate for the large number of vacancies existing in the High Courts. Surely, my good friend, the hon. Minister will agree that if we are discussing Conditions of Service of Judges, we need to urgently address the most fundamental impediment to the effective functioning of the Judges: the staggering vacancy rate in judicial positions across the country. This is the problem that once drove a sitting Chief Justice of India to tears in front of the Prime Minister. But even his tears appear to have left the Government unmoved.

As the old legal cliché goes, justice delayed is justice denied. How can we expect justice to be delivered in a timely manner when 406 posts of judges are currently lying vacant in 25 high courts around the country? Against the sanctioned strength of 1098 as of November 2021, 406 are

vacant. That is 41 per cent of the total strength. In all the high courts of Delhi, Allahabad, Kolkata, Gujarat, Madhya Pradesh, Patna, Punjab, Haryana, Rajasthan, Telangana, there are shortages of more than one-third of the total strength of judges.

This is not just an issue that affects the citizens of a country for whom, in these conditions, the process of seeking justice has in many ways become a punishment in itself. It also holds worrying ramifications for the governance of our nation. It will be a matter of grave concern for all of us in this House when we recall the warning issued by the Supreme Court which pointed out that the Government's administration will also come to a standstill if vacancies in the courts, and pendency of cases are not taken into consideration for immediate remedial action. There are staggering 4.4 crore cases pending in the country, that include over 3.77 crore cases in the subordinate courts, 57 lakh cases in the high courts, and 73,000 cases in the Supreme Court as of September this year.

Between 2010 and 2020, pendency across all courts has grown by 2.8 per cent annually. These grim numbers clearly imply that even if no new cases were to be filed starting from today, the time taken by the courts to dispose of just the currently pending cases at the current disposal rate, would be 1.3 years for the Supreme Court, and three years for each of the high courts, not to mention, even longer for the subordinate courts. Of course, we know the situation has been further aggravated by the pandemic which has resulted in a 20 per cent increase in pending cases in the high courts and 13 per cent in the subordinate courts. We all know that there is no chance that we can see a reduction in the rate at which new cases are being added to the dockets of our courts.

Respected Chairman, if one were to draw a comparison with the international front, it can be seen that the standard retirement age for judges is around 70 years in countries like Denmark, Belgium, Ireland, Australia.

In other top courts, such as the Supreme Court of the United States, and in constitutional courts in Austria and Greece, judges are appointed for life. The judge-population ratio in India, 21.03 judges per million population today, is among the lowest in the world. Whereas, countries like UK have 51 judges per million people. The US has 107 judges per million population and Canada has 75 judges per million people. We should, therefore, certainly want to look at the conditions of service of our judges, increase their retirement age in order to fill vacancies for a longer period and at the same time to reduce pendency.

There are overwhelming reasons for this Government to recognise that the establishment of a higher and uniform retirement age for judges in our superior courts would enable them to discharge their judicial duties not just independently, but also allow them to do their work without worrying that they will have to step aside when they are in their prime. It will also fortify the rule of law and protect the fundamental right to speedy justice assured under Article 21.

The worst pendency of cases at all levels can, therefore, be effectively tackled by increasing the number of working days available to a judge by increasing his tenure. It will be considerate if the Ministry would plan to address issues like increasing the retirement age of judges and reducing the huge arrears of cases along with some other vital challenges such as lack of transparency, particularly in the appointment of judges, the long detention of under-trials, and lack of information and interaction between people and courts. Our objective should always be to strengthen the Indian legal system and bring the best judicial benefits to the citizens of the country.

At the same time, in order to prevent an overt concentration of power in the hands of one supreme institution, it would be wise to examine other practices that have been found to have merit across the world. For instance, why not establish multiple courts of appeal as has been proposed recently by

the hon. Chief Justice of India. India can certainly benefit from the creation of Four Circuits of a Court of Appeal between the High Court and the Supreme Court. Not only will such an arrangement go a long way towards ensuring the distribution of power -- a central goal of democracy -- but also, will facilitate regional representation and access to justice to the higher judiciary with four courts of appeal situated in the North, South, West, and East of our country. These courts would reduce the burden on the Supreme Court which could then truly function as a constitutional court dealing only with cases carrying constitutional implications.

Now, Sir, the reason that we are discussing and debating proposals to strengthen our Judiciary even beyond the routine one under consideration in this Bill, is that decent conditions of service are a contribution to reinforcing the independence of the Judiciary and in doing so, to strengthening democracy itself. For instance, the earlier a Judge retires, the greater his need for a remunerative post-retirement activity and consequently, the greater his or her vulnerability to the blandishments of the Government of the day, which might be in a position to give him such a post-retirement job.

Aristotle famously said that the law should govern. Dr. B.R. Ambedkar said that democracy should rest on the rule of law. While democracy focusses on who exercises power, the rule of law determines how power is exercised. In fact, so intertwined are these two concepts that the United Nations General Assembly – a Forum representing all the States in the world – recognised that human rights, the rule of law, and democracy are interlinked and mutually reinforcing.

We all know that disputes are bound to arise between citizens and governments. That is normal in any State. This is where the Judiciary plays a pivotal role; settling disputes independently in accordance with the principles of the rule of law under the Constitution. That ensures that all individuals – regardless of background or gender or status – are equal under

the law. The hon. Supreme Court has done a great job on that since 1950. It is well-regarded; it is a prominent judicial institution across the globe. It has rendered several path-breaking judgments, defining legal discourse and settling, in many ways, prominent positions of law in independent India. But it is also true that its independence and transparency have come under scrutiny in recent years.

As Montesquieu had famously written, ‘there is no liberty if the Judicial power is not separated from the Legislative and the Executive Power’. We are increasingly witnessing this adage play out in the scheme of things in India today with the Executive’s overarching, sometimes invisible and occasionally indirect control over the Judiciary, contrary to the Directive Principles of State Policy provided under Article 50 of the Constitution to ensure the separation of the Judiciary from the Executive in the public interest. That is why, this debate is so important today.

The first problem has been the Government’s increasing influence over judicial appointments and transfers. Sir, it is interesting that in the Constituent Assembly in 1949, a speaker from your State said and I quote:

“It is of the highest importance that the Judges of the Supreme Court should not be made to feel that their existence or their appointment is dependent upon political considerations or on the will of a political party. Therefore, it is essential that there should be sufficient safeguards against political influence being brought to bear on judicial appointments. Of course, if a Judge owes his appointment to a political party, certainly in the course of his career as a Judge and also as an ordinary human being, he will certainly be bound to have some consideration for the political views of the authority that has appointed him. That the Judges should be above all these political considerations is essential.”

That is Dr. Pocker Sahib from the Madras constituency in the Constituent Assembly.

Now, given that basic understanding, it is unfortunate that the Executive has appeared to be wielding its apparent influence over the Judiciary going back to the very first term of this Government from 2014, its face-off over the National Judicial Appointments Commission in 2015, the tussles between the Judiciary and the Executive, and you will remember that an eminent senior advocate withdrawing from consideration for elevation to the Supreme Court given the implacable hostility of the Executive, because of his previous position as Solicitor General during the UPA-II and his role as the Amicus to the Supreme Court in the ... * encounter case. A number of judges were transferred inexplicably. I have the details with me. I have a number of examples. But I will omit them to save time today.

Even when their retirements were only a few months away or when their transfers implied a demotion. At least two of these transfers involved judges who had earlier ruled unfavourably from the Government's point of view in the

... * and ... *.

Now, sticks can be balanced with carrots. We witnessed the appointment of former Chief Justice of India as a Rajya Sabha MP.

संसदीय कार्य मंत्रालय में राज्य मंत्री तथा संस्कृति मंत्रालय में राज्य मंत्री (श्री अर्जुन राम मेघवाल): यह इससे रिलेटिड ही नहीं है । ...* केस और उससे पहले ...* के बारे में बोल गए । यह ठीक नहीं है ।... (व्यवधान)आपने अभी तो ऑब्जर्वेशन दिया है ।... (व्यवधान)

THE MINISTER OF PARLIAMENTARY AFFAIRS, MINISTER OF COAL AND MINISTER OF MINES (SHRI PRALHAD JOSHI): He is referring to the particular case. क्या पर्टिक्युलर केस रेफर करके उसके जजमेंट के बारे में बात करनी है? अभी मामला चल रहा है ।... (व्यवधान) That is going on. It is unfair.

HON. CHAIRPERSON: We will check the record. I will check the record. If anything has to be removed, it will be removed.

... (*Interruptions*)

DR. SHASHI THAROOR : That is only on the issue of transfers. Since we are meeting the day after 29th anniversary of the grievous act of demolition of a place of worship, it is only fitting to recall how that act of vandalism was in effect legitimized by the Court. There has clearly been a failure on the part of the Judiciary to stem the irresistible tide of militant majoritarianism.

We also know the Court obligingly deferred lawsuits challenging many Government actions. The Government was awarded a clean chit on the Rafale Jet investigation case on the basis of famous sealed covers containing evidence that the CJI exchanged between himself and the Government alone. This is utter disregard for following sound legal procedure and traditions of the institution which is also visible in the voice samples case, in which Article 142 was invoked to judicially authorise the mandatory collection of voice samples as preferred by those in power.

Now, we are seeing this ... * case. This is another well-known one. Eversince the Government has taken an overwhelming upper hand in filing draconian charges under the Unlawful Activities (Prevention) Act against any form of dissension, ... (*Interruptions*)

HON. CHAIRPERSON: Quote the rule.

डॉ. निशिकांत दुबे (गोड्डा): सर, मेरा पॉइंट ऑफ ऑर्डर है ।... (व्यवधान) Sir, Rule 352(1), चाहे **... हो, चाहे ...** या ...** केस हो ।... (व्यवधान) refer to a matter of fact on which a Judicial decision is pending. How can he refer? दोनों केस में ज्यूडिशियल डिसिजन पेंडिंग है ।... (व्यवधान)

SHRI GAURAV GOGOI (KALIABOR): He is referring to the conduct of the Government.

DR. NISHIKANT DUBEY: This is not the conduct of the Government.

श्री अर्जुन राम मेघवाल: सर, अगर कोर्ट में मैटर है तो आप रेफरेंस में भी नहीं ले सकते । अगर कोर्ट में मैटर है तो इसको रेफरेंस में भी नहीं डाल सकते ।... (व्यवधान)

SHRI PRALHAD JOSHI: How can he refer to that case?

HON. CHAIRPERSON: Mr. Nishikant, please read the rule.

DR. NISHIKANT DUBEY (GODDA): Refer to any matter of fact on which a Judicial decision is pending. ...* का सवाल हो, ...* का सवाल हो, ...* का हो, सब में ज्यूडिशियल डिसिजन पेंडिंग है । आप उसको रेफर नहीं कर सकते हैं ।... (व्यवधान) या तो इस रूल बुक का फाड़ कर फेंक दीजिए ।... (व्यवधान)

DR. SHASHI THAROOR : There is a fundamental misunderstanding on the part of those objecting.

श्री अर्जुन राम मेघवाल: सर, रूल्स इसलिए बने थे कि हाउस में बोलते समय उस केस में ज्यूडिशियल डिसिजन को प्रभावित नहीं करें, इसके लिए रूल्स बने थे ।... (व्यवधान) चेयरमैन साहब, रूल्स इसलिए बने थे कि यहां बोलते समय अगर किसी

केस को रेफर करोगे तो इसका मतलब है कि आप उसको प्रभावित कर रहे हो ।... (व्यवधान) आप ज्यूडिशियल डिसिजन को प्रभावित कर रहे हैं ।... (व्यवधान)

HON. CHAIRPERSON: Mr. Shashi Tharoor, you are a senior Member. Any case pending before the Court cannot be commented in the House.

DR. SHASHI THAROOR: But I am not entering into the merits of the case. I am not going into the merits.

HON. CHAIRPERSON: Nishikant Ji, please sit down.

श्री अर्जुन राम मेघवाल: यह मेरिट पर जा रहे हैं ।... (व्यवधान) इन्होंने इसको फेक एनकाउंटर कह दिया ।... (व्यवधान)

SHRI PRALHAD JOSHI: Sir, till the case is decided, how can he call it as a fake encounter? Is he trying to influence? Is he trying to influence the Judge or the Judgement? What do you want?

HON. CHAIRPERSON: It has already been observed by the Chair that if anything has to be removed, as per the procedure, it will be removed. I will check the record.

Mr. Shashi Tharoor, any pendency of the case cannot be commented in this House. You know better. Confine yourself to the issue on salaries and conditions of service.

DR. SHASHI THAROOR: Sir, let me give an example of a case that is not pending, which is another example in which the ...* has been the National Anthem's case.

HON. CHAIRPERSON: Please come to the provisions of the Bill.

DR. SHASHI THAROOR: Sir, the point is that we are seeing that decisions have been made one after the other which go beyond the questions of Separation of Powers, that we have talked about, between the Executive and the Judiciary. I was giving examples to substantiate a conclusion in the House.

The fact is that if you were to look very carefully at other matters, if you look, for example, at the abrogation of article 370, there is *an ipso facto* concern of the Executive influence which has seemingly constrained the Judiciary. The Court was seen as a constitutional instrument to define the limits of Executive control over the erstwhile State of Jammu and Kashmir and to answer a number of vital questions. Can article 356 be used to suspend an Assembly in a State and then alter the nature of the State itself? Can a State be down-graded to a Union Territory? These are constitutional questions. But by repeatedly delaying the hearing of petitions challenging the constitutional validity of this act by the Executive, the Supreme Court has abdicated... * its role as a protector of the Constitution. While the Court delayed consideration, our brothers and sisters from Jammu and Kashmir suffered from civil rights restrictions, the arrest and detention of many political leaders including a colleague from this House, as well as the unprecedented blackout of all means of communications and internet demonstrating after all disregard for citizen's Fundamental Rights. These are the rights that the Judiciary has the mandate to protect.

We have the same problem with *habeas corpus* petitions. The key constitutional tool to empower citizens on their Fundamental Right to Life is under threat. A majority of the large number of *habeas corpus* petitions were left pending for long periods of time before the Jammu and Kashmir High Court and it is noteworthy to note that Rule 8 of the High Court Case Flow Management Rules 2010 clearly states that the *habeas corpus* petitions should be disposed of within 15 days. Despite this, it took an average, for

the J&K High Court, 252.5 days to hear petitions which had to be settled in 15 days. It is a blasphemous number of days when compared to the urgency that is required by *habeas corpus* petitions. Many commentators have contrasted this with urgency with which the Bombay High Court dealt with a Writ of a certain editor of a television channel who claims to deliver news that the nation allegedly wants to know. Similar urgency on cases involving critics of the Government and ordinary citizens of the country would be the true sign of a court that carries out its functions independently.

We have also seen lassitude by the Judiciary in hearing cases challenging the Citizenship (Amendment) Act. Despite multiple petitions, the Supreme Court, for example has, till today, allowed the current dispensation to go about its business, hearing the matter only three times since the law was passed in 2019. It has not heard cases challenging Section 435 of UAPA, which has denied bail to dozens of defendants. I might add that the protection of civil rights has long been considered one of the key duties of the Judiciary.

Sir, as far back as 2013, the Guwahati High Court ruled that the CBI was, in effect, an illegal body since it was not established under any statutory authority. The SC stayed that judgement but has conducted no hearing into the matter with far-reaching implications for the nation. Then there are issues that are not pending before the court, but ignored by the courts, like demonetisation where a three-Judge Bench of the Supreme Court promised a larger Bench to consider the issue, but the larger Bench was never constituted. And the question of whether demonetisation was constitutionally valid, might now be at best an academic exercise, but that is not an exercise that our courageous Judiciary was willing to undertake. Several issues on the direct and indirect violations of article 300A on Right to Property, article 14 on Right to Equality, article 19 (i) (d) on Freedom of Movement, 19 (i) (g) on trade and business, article 21 on Right to Life

remained to be answered in relation to this. By its continued inaction, the court has just not allowed the Government's sins against the citizens of India to remain unpunished but led some critics to ask whether the Supreme Court should also be considered an accomplice to the violations of rights granted by the Constitution.

Sir, now, I would not go into more examples. You have got the picture as to why I have raised these matters. On the migrant tragedy when the COVID-19 struck, again the Supreme Court rejected several petitions challenging the sadness of the move.

16.00 hrs

Sir, the fact is the issue of judicial insensitivity is linked to the simple question of whether the conditions of service (*Interruptions*)

DR. NISHIKANT DUBEY: Sir, I am on a Point of Order. Rule 352 (v) says:

“(v) reflect upon the conduct of persons in high authority unless the discussion is based on a substantive motion drawn in proper terms.”

इन्होंने भी जितने तीन-चार क्वोट्स किए, सब सुप्रीम कोर्ट के ऊपर क्वेश्चन किए कि उसने आधी सुनवाई की, आधी बहस की, डिमोनेटाइजेशन पर कुछ नहीं किया ।... (व्यवधान)

HON. CHAIRPERSON: Dr. Dubey, you referred this Rule which talks about the conduct of persons in high authority. He did not mean any person. Of course, I heard him.

... (*Interruptions*)

DR. NISHIKANT DUBEY: Everybody knows कि यह चीफ जस्टिस के यहाँ पेंडिंग है ।... (व्यवधान)

HON. CHAIRPERSON: He did not pass any comments on any particular judge. Please understand it.

... (*Interruptions*)

डॉ. निशिकांत दुबे : ऐसे में इनको बहस में भी भाग नहीं लेना चाहिए, क्योंकि ... *... (व्यवधान) मोरली, इनको भाग नहीं लेना चाहिए । वे खुद एक कमेटी के चेयरमैन हैं ।... (व्यवधान) ...*... (व्यवधान)

श्री प्रहलाद जोशी: हाईकोर्ट में इनका केस है ।... (व्यवधान)

जल शक्ति मंत्रालय में राज्य मंत्री तथा खाद्य प्रसंस्करण उद्योग मंत्रालय में राज्य मंत्री (श्री प्रहलाद सिंह पटेल): कांग्रेस गलती कर रही है ।... (व्यवधान)

श्री प्रहलाद जोशी: यह कांग्रेस की गलती है, क्योंकि आप लोगों ने इनका नाम दिया है ।... (व्यवधान)

HON. CHAIRPERSON: Dr. Nishikant Dubey, hon. Member, Dr. Shashi Tharoor did not pass any comments on any individual judge. He criticized to some extent about the institution and the judicial delay. Even if it is so, I will check it again. If it is necessary, then I will remove it from the record. But do not interrupt now.

Dr. Tharoor, please continue.

... (*Interruptions*)

DR. SHASHI THAROOR: Now that we have heard the voice of the ... * we can continue with the substance of my argument which is that the conditions of the service have a serious bearing on the lack of separation for the Executive, for the Judiciary and thereby have a palpable effect on the conduct of our judiciary in delivering justice to the common citizen of India. That is my very simple argument. I was giving examples to substantiate this argument.

The fact is that we can find more examples. I will just take another five minutes and then conclude.

The Judiciary's complicity in the Government's actions have been manifested in all the examples that I gave. Then, the culpable involvement of the Electoral Bonds Scheme is a venture which has undermined the transparency of our electoral processes and the very foundation of our democracy. The fact is that the Supreme Court has had very few hearings over the issue over the last four years and it has refused to stay the implementation of the Scheme while ignoring the red flags waved even by the Election Commission of India.

It must be remembered that the inaction of the judiciary almost always favours those in power because it is their actions that are being challenged in the court. When the court fails to hear a case against the Government, it is effectively deciding by default in favour of the Government. That is the concern that we should all have.

To truly build a new India, we will need to separate the powers and roles of the Legislature, the Judiciary and the Executive to ensure that the first two do not become mere rubber stamps for the third. This requires a clear separation of powers in order to ensure both efficiency and democracy. By ensuring the status and conditions of service of our judges, we are giving them the opportunity to increase their productivity and exercise true judicial independence.

As Dr. Ambedkar famously pointed out,
“However good a Constitution may be, if those who are implementing it are not good, it will prove to be bad and however bad a Constitution may be, if those implementing it are good, it will prove to be good.”

We all know this famous line. The true success of our efforts today will only come if the Government proposes a larger Bill to increase the age of retirement of judges, fill vacancies, reduce pendency of cases, and eliminate

post-retirement appointments in Government or at least have a three to five year cooling off period before any such appointments can be made for judges, to guarantee the judiciary's independence. Until then, we must confront the kinds of problems I have outlined that plague our higher judicial system and hamper its effectiveness.

I, therefore, support this Bill while deploring its inadequacy in addressing the major challenges that our judges and judiciary must still overcome in the interests of our citizens and democracy. Thank you, Mr. Chairman.

SHRI P. P. CHAUDHARY (PALI): Thank you, Sir, for affording me the opportunity to speak on this important issue High Court and Supreme Court Judges (Salaries and Conditions Of Service) Amendment Bill, 2021. In the Bill, a very small clarification is there that, on the completion of a particular year of age, the Judge is entitled for the pension.

Sir, I rise to support this Bill. I would also like to say that as far as the salary part is concerned and pension part is concerned, this hon. august House always supports it. So far as the remuneration part of the judges is concerned – it may be High Court or it may be Supreme Court or it may be subordinate court – it is far less compared to the other countries. That is the reason that even after superannuation, some get employment elsewhere.

Now, regarding the question of conditions of service, as far as the conditions of service with respect to the appointment of the judges are concerned, it is there in the Constitution of India itself. It is for the High Court and Supreme Court judges. But for the subordinate judiciary, it can be

done by an Act of the State legislature or it can be provided under the rules framed by the Hight Court.

So far as the conditions of service are concerned, the conditions of service of the judges of the Supreme Court are framed under Article 125 of the Constitution of India and under 221 of the Constitution of India for the High Court judges. The Parliament is competent to lay down the conditions of service of the High Court and Supreme Court judges. Apart from their appointment, other conditions of service can be laid down by the Parliament.

Now, we talk about independence of judiciary and all these things. This part has been given by the Constitution to frame the conditions of service by the Parliament. So far as the appointment part is concerned, it is under Article 124. If we read the conditions of service, we can see that so many conditions of service in the Act 1954 and 1958. I will come later on to the exact issue of independence of judiciary.

When we consider about leave, even for leave, the condition of service is to be laid down by the law made by Parliament. Even for salaries and pensions, the conditions of service can be laid down by the law made by Parliament and other conditions of service are also contemplated regarding perks etc. Not only the salaries of the judges are protected, the tenure is also protected. So, we can say that the independence of judiciary is secured by the Constitution of India.

When we come to the judicial reforms, the judicial reforms are not limited only for dealing with the filling up vacancies and other issues. It is also related to the conditions of service of the judges. It is also related to the appointment of judges because the Constitution framers specifically provided under Article 124 that the judges of the Supreme Court shall be appointed by the President of India after consultation with the Chief Justice of India.

In this connection, as far as the High Court judges are concerned, the High Court judges are appointed by the President of India under Article 217 after consultation with the Governor and the Chief Justice of the High Court.

So, the consultation part is there. For 43 years, right from 1950 to 1993, this practice has been there. A large number of judges were appointed in the Supreme Court and High Courts. They were exceptional judges. They rendered quality judgements. Their judgements are referred everywhere. Even these days also, they are laying the basic principle of law.

So, we cannot say that the judges who were appointed before 1993 under Article 124 and 217 of the Constitution of India were lacking quality. Everybody knows what type of judges we are having after 1993. I am not saying that the judges are not good. They are equally rendering very good judgement. But we cannot say that when the Executive involvement was there, the quality of judges was less than the quality of judges that we are having today. All the judges prior to 1993 were equally competent.

Sir, the First Judges' Case was filed by Shri S.P. Gupta. In the judgement of this case, the word "consultation" appearing in Article 124 and 217 of the Constitution of India was defined that "consultation" means that no primacy can be given to the Chief Justice of India and apart from this, it stated that consultation does not mean concurrence. That was the judgement in the First Judges' Case which came in 1982 where it stated that consultation does not mean concurrence. So, the problem started from Second Judges Case, 1993, because it amounted to re-writing of the Constitution by this judgement. Then, a reference was made by the President of India under Article 143 of the Constitution of India. If we see Article 143 of the Constitution of India, it provides for seeking the opinion of the Supreme Court. Now the question is, whether the opinion rendered by the Supreme Court is binding on the President. We have to consider this very seriously. Whenever the "opinion" of the Supreme Court is sought by the

President of India, while exercising the power under Article 143 of the Constitution of India, that opinion can be binding on the Government as it happened in third Judges case in 1998.

So, Article 143 of the Constitution of India provides the power to the President to consult the Supreme Court. It says:

“If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.”

Now, we have to see the difference between ‘opinion’ and ‘consultation’. Whenever the President of India consults the Supreme Court under Article 143 of the Constitution, that opinion is binding as per third Judges case 1998. Keeping in view these facts, in 1998 the system of Collegium was created and the judges required to be appointed on the basis of the recommendation of the Collegium. The Collegium was required to be created at the level of the High Court and the Supreme Court. The procedure adopted by the Collegium is that three judges constituting the Collegium send the recommendation to the Government.

We all know that the Chief Justice of a High Court of a State is normally appointed from outside the State. Now, where the Benches of the High Court is situated at more than one place, then the Chief Justice need not necessarily know about all the candidates. Secondly, even the second senior-most judge is also from outside the State. He also may not know about the details of all the candidates. Then, the third judge, if he is not sitting in the Bench even for a single day, can also participate. Now, they do not have the information which the Executive is having.

SHRI BHARTRUHARI MAHTAB (CUTTACK): Justice J.S. Verma, who was the architect of the Collegium system, has later said that we have to do away with the Collegium system.

SHRI P. P. CHAUDHARY: Yes, I will come to that point later.

Now, we have seen that 40 to 80 per cent recommendations made by the High Court were declined by the Supreme Court. It shows that the procedure adopted by the Collegium of the High Court and the Supreme Court is not fool-proof and they do not have any mechanism to know the antecedents of the candidates. Once it was found by the Supreme Court later that there were serious issues against a candidate whose name was recommended by the Collegium of a High Court. So, it is not possible for a High Court to go into all the details because appointment has nothing to do with the independence of the Judiciary. Once a person is appointed, then only the independence of the Judiciary starts, not before that. Even when the names reach the Supreme Court, one list is sent to the Chief Minister, to the Governor, to the Law Ministry and also to the Chief Justice of India. Then, everything is processed there and the comments of the Law Minister is also there. But strangely enough, even those comments are not taken in the Minutes of the Proceedings of the Collegium of the Supreme Court. Now, the Law Minister is accountable to the Parliament. But with respect to the appointments of the Judges of the High Court and the Supreme Court, I cannot hold him accountable in view of the judgement of the Supreme Court rendered recently.

Sir, we are having a parliamentary democracy where all the Ministers are accountable. But it is very difficult to hold the Law Minister accountable because he has no role to play here. He has no role in filling up the vacancies available for the Judges in the High Courts and Supreme Court. The mechanism and process used to be started by the High Court Judges and completed by the Supreme Court Judges. So, there is no role of the

Ministry of Law in this connection. This is the reason that the NJAC was enacted, and the Parliament unanimously, except one vote, passed that law. But unfortunately, the Supreme Court declared it *ultra vires* on the ground that the independence of Judiciary is the basic structure of the Constitution.

But I would like to say that firstly, 'democracy' is the basic structure of the Constitution of India. Once we say that 'democracy', is the basic structure of the Constitution of India, the intervention with the functioning of the Executive should not be there. I can understand intervention with the functioning of the Judiciary. Though it is also a violation, but so far, it is the power of appointment, which has been given to the Executive by framing the Constitution. We are having a very unique type of Constitution. We do not have the Executive, which is exercising all the powers of Judicial appointment. The Judiciary as well as Executive, both are exercising their powers.

Now, if we see the entire scheme and intent of the Constitution, there are Articles 103 and 192. If a Member of Parliament is disqualified, an exception is there where the President is not required to act on the aid and advice of the Council of Ministers. The President is required to seek the opinion from the Election Commission and he is bound by the opinion rendered by the Election Commission. So, as per Constitution, wherever the President is required to act in accordance with the mandate of that opinion, a particular provision is there. This is the reason that under Articles 103 and 192, where a Member of Parliament or State Legislature is disqualified, that disqualification is required to be considered by the President of India only on the basis of the advice rendered by the Election Commission.

Sir, apart from this, I would also like to speak as to what has happened after the NJAC judgment. It is very strange. These opinions are required to be kept in mind by this hon. august House and also by the Government

while taking a view. I would like to quote from the judgment given by some of the Judges. On 16th December, 2015, when the NJAC was declared *ultra vires*, almost every Supreme Court Judge, on a 5-Member Constitution Bench hearing the case, made scathing comments on the opacity of the present collegium system and recommended changes in the collegium system making it more transparent and accountable. In the last two paragraphs of the consenting judgment of Shri Justice Joseph Kurian, now retired, he has agreed with the views of Shri Justice Chelameswar. I am quoting from the NJAC judgment where the NJAC was declared *ultra vires*. It says:

“The present collegium system lacks transparency, accountability and objectivity. The trust deficit has affected the credibility of the collegium system. Quite often, very serious allegations and many a time, not unfounded too, have been raised that its approach has been highly subjective. Deserving persons have been ignored wholly for subjective reasons. Social and other national realities were overlooked. Certain appointments were purposely delayed so as either to benefit vested choices or to deny such benefits to the next patronised. Selection of patronised or favoured persons were made in latent violation of the guidelines resulting in unmerited, if no, bad appointments with dictatorial attitude of the collegium seriously affecting the self-respect and dignity, if not independence of Judges. The Court, particularly, the Supreme Court often is being styled as the Court of the collegium. The looking forward syndrome affecting imparting assessment, etc., have been some of the other allegations in the air for quite some time.”

The observation of Shri Justice Madan B. Lokur in his consenting judgement wherein he stated: “Executive had an equally important

participative role in the integrated process of appointment of the Judges where I have stated even the dissent note of the Ministry or of the Government cannot be a part of the agenda. That the Executive adopted a defeatist or an 'I do not care' attitude is most unfortunate". Shri Justice Madan B. Lokur further stated: "The political executive has to share the blame equally if not more since it mortgaged its constitutional responsibility of maintain a check on what may be described as the erroneous decision of the Collegium."

Justice Joseph Kurian further, in his judgement, stated that the active silence of the Executive in not preventing such unworthy appointments was actually one of the major problems. Therefore, the Collegium system needs to be improved requiring a 'glasnost' and a 'perestroika'. Then, again in another Judgment dated 04th July, 2017, in the Supreme Court *suo moto* contempt proceedings against a Judge of Calcutta High Court wherein two then Judges of the Supreme Court Shri Justice J. Chelameswar and Justice Ranjan Gogoi, inter alia highlighted that there is a need to revisit the process of selection and appointment of the Judges. We have to take the note of these judgements. I request the Government to revisit the collegium system in view of Articles 124 and 217. The spirit and object of Articles 124 and 217 are required to be restored.

Apart from this, recently, the above two Judges judgement stated further that this case highlights two things. One is the need to revisit the process of selection and appointment of judges to the Constitutional Courts, for that matter any member of the judiciary at all levels; and secondly, the need to set up an appropriate legal regime to deal with the situations where the conduct of a Judge of a Constitutional court requires corrective measures – other than impeachment – to be taken.

The Judgement further states: "Obviously, there is a failure to make an assessment of the personality of the contemnor at the time of recommending

his name for elevation". It also states: "Our purpose is not to point fingers at individuals who were responsible for recommendation but only to highlight the system's failure of not providing an appropriate procedure for making such an assessment."

Sir, the hon. J.S. Verma was the Chief Architect of the 1993 Judgement. I would like to refer to him here. Shri Justice J. S. Verma, a former Chief Justice of India, who had written the lead judgment in the 2nd Judges' case, gave an interview to the Frontline Magazine published in its issue of October 10, 2008. When asked: "You said in one of your speeches that judicial appointments have become judicial disappointments. Do you now regret your 1993 judgment?", Justice Verma responded: "My 1993 judgment, which holds the field, was very much misunderstood and misused. It was in that context I said the working of the judgment now for some time is raising serious questions, which cannot be called unreasonable. My judgment says the appointment process of High Court and Supreme Court Judges is basically a joint or participatory exercise between the executive and the judiciary, both taking part in it. Broadly, there are two distinct areas. One is the area of legal acumen of the candidates to adjudge their suitability and the other is their antecedents, not only the legal acumen." So far as the antecedent part is concerned, it is the work of the Executive to find out from the intelligence. It may be a collegium system at the High Court level; it may be a collegium system at the Supreme Court level; they are not positioned to collect the antecedent of the candidate. This is the problem. So, as far as the legal acumen is concerned, we know better than the judges whosoever is a good lawyer or a good judge required to be promoted to the Supreme Court from the High Court. We can adjudge as to who is a good lawyer.

From 1950 to 1993, all the good Judges were appointed, and they have rendered remarkable judgments, and those judgments are still cited and

held the field.

So, according to the judgment, in the area of legal acumen, the Judiciary's opinion should be dominant, and in the area of antecedents, the Executive's opinion should be dominant.

Now, Sir, when we are talking about this, the reason is that it is a violation of the basic structure. When we are talking about the basic structure of the Constitution, in a democracy, there is separation of power. It is because separation of power between the Executive, Judiciary and the Parliament is the basic structure of the Constitution of India. Not only this, our Constitution provides for checks and balances. When we use the term 'checks and balances', we can understand the word 'balance'. It means distribution of power. But at the same time, 'check' means accountability. What is the accountability of the Judiciary? ... (*Interruptions*) Towards whom is the Judiciary accountable? The accountability is not towards the Parliament; the accountability is not towards the people. It is very safe to say that the Judiciary is accountable to the Constitution of India. Who will judge it? So, that it is why, I said that even our hon. Law Minister is not accountable to the Parliament with respect to the appointment of the High Court and the Supreme Court Judges. So, as far as the appointment of subordinate judiciary is concerned, it is within the domain of the State Government.

A reference was made by Shri Shashi Tharoor that about 3 or 30 lakh cases are pending in the subordinate courts. It is the State Governments who appoint the Judges, it is the High Courts which appoint the Judges in subordinate courts. How is the Government of India responsible for this? The Government of India can provide the infrastructure. Since 2014, more than Rs. 6000 crore have been paid under CSS. The hon. Minister has recently made a public statement. Around Rs. 9,000 crore are being disbursed for the infrastructure. A large amount of it is disbursed by the

Government of India, and the rest of it is by the State. So, the accountability is the major part. In view of this, we are having the balance but no check. The check comes only on account of accountability.

Sir, under the Constitution, we have read the service conditions. There are rules with respect to the payment of salary, payment of pension, and with respect to leave. All these are to be provided by the Parliament. As far as the appointment and the secured tenure of 62 years and 65 years are concerned, all these are the indicators of the independence of Judiciary. We have not seen any interference in the Judiciary these days by Parliament.

Sir, you see the other countries as far as appointment is concerned. Only if the Executive is appointee, can we say that democracy is not mature? If we see the United States of America, Canada, New Zealand, Australia, they are also democratic countries. In USA, in the States, the Judges are elected. Can we say that these are politicians? Can we say that the Judiciary is not independent there? ... (*Interruptions*).

श्री अर्जुन राम मेघवाल: शशि थरूर जी ने बोला था, ये उन्हीं का जवाब दे रहे हैं ।... (व्यवधान) यह बात आप भी मानते हैं । आप भी कई बार अमेरिका का उदाहरण देते हैं ।... (व्यवधान)

श्री पी. पी. चौधरी : मैं थरूर साहब को कम्पेयर कर रहा था ।... (व्यवधान)

I was saying, in a mature democracy like USA, so far as States are concerned, the Judges are elected. If they are not elected, then the legislative concurrence is required.

Insofar as the judges of the Supreme Court of America are concerned, the judges are nominated by the President of America. ... (*Interruptions*) Their confirmation is done by the Senate. So, this is the procedure. Nomination is done by the President of America and the confirmation is done by the Senate. This is purely done by the Executive and Legislature.

But in India, we have a proper check and balance. That is why, we have used the word, 'consultation' by executive with CJ.

In Canada, the judges are appointed by the Governor-General. In Australia, the judges are appointed by the Executive. In New Zealand, the judges are appointed based on the recommendations of Prime Minister by the President. Thereafter, some more procedures are there like going through the Attorney-General and all that. But it shows that merely because the judges were appointed by the Executive from 1950 to 1993, we cannot say that they were lacking in quality at that time. We cannot say that their judgements were not good. They were equally competent people.

Apart from this, regarding the accountability, I would refer to one more report. Even the Law Commission in its Eighty Fifth Report on Law's Delays: Arrears in Courts, has expressed the view – and these are very important – with respect to the accountability of the Ministry of Law.

“The Committee is aware that for this state of affairs, the Union Law Ministry is not blameworthy, as the entire process of initiation of proposal for appointment of new judges is no longer the responsibility of the Executive as a result of a decision of the Supreme Court. Though it was not contemplated in the Constitution, responsibility for judicial appointments now rests in the domain of the judiciary. The Union Law Minister is accountable to Parliament for the delay in filling up of the vacancies of judges but he has functionally no contribution to make. The Supreme Court read into the Constitution a power to appoint judges that was not conferred upon it by the text or the context. The underlying purpose of securing judicial independence was salutary but the method of acquiring for the Court the exclusive power to appoint judges by the process of judicial interpretation is open to question. Against this backdrop, the

Committee recalls a recent discussion in the Rajya Sabha in which the Government was asked regarding alternate arrangements to fill up the vacancies and whether there was any scope for having a fresh review of the Supreme Court's judgment."

Sir, I would also like to refer to the judgment of Justice J.S. Khehar. Justice J.S. Khehar has mentioned that since the Law Minister is on the Committee and because the Government is involved in so many litigations, the Law Minister of India being a member of NJAC Committee can affect the judicial independence. So, when the Law Minister is accountable to the Parliament, his presence should be very much there. I have already stated that how the recommendations sent by the Collegium was turned down by the Supreme Court.

Now, what is the way forward? ... (*Interruptions*) हमारा टाइम दो घण्टे है । दादा, आप बैठिए ।... (व्यवधान)

HON. CHAIRPERSON: According to the strength, they are having more than two hours' time.

SHRI P. P. CHAUDHARY: Sir, my suggestion is three-fold. In the NJAC Judgement, the Supreme Court has pointed out only a small mistake. It is not said that the Parliament is not competent to legislate it. It is only with respect to the constitution of the Committee. The constitution of the Committee can be corrected and we can bring a new Bill, where the eminent persons from the categories such as Scheduled Castes, Scheduled Tribes, Other Backward Classes, minorities and women may be appointed on the Committee for a period of three years.(*Interruptions*)

SHRI BHARTRUHARI MAHTAB Chairman, Sir, will the hon. Minister respond to the point the hon. Member is making?(*Interruptions*)

SHRI P. P. CHAUDHARY : Yes, and that is why I am making this request. My request is that we have to revisit the NJAC judgement and come out with a new Bill making the respective corrections.

When the Constitution of India was framed, Article 366, which was basically a definition clause, was there. It was there to provide various definitions. In my opinion, the word ‘consultation’, which appeared not only at one place but at many places with respect to the appointment and transfer of High Court and Supreme Court judges, like the Supreme Court is taking consultation from the Public Service Commission. Sir, at one place, with respect to the appointment and transfer of the judges, the word ‘consultation’ has been termed as “concurrence”. Even in Article 143, where the President of India is required to obtain the “opinion” while making the reference to the Supreme Court, whatever the opinions are rendered are not binding. So, by this analogy, it can be said that in view of the judgement of 1998, the third-judges case, the opinion rendered by the Supreme Court under Article 143 is also binding. Therefore, the word ‘consultation’ and the word ‘opinion’, both are required to be defined under Article 366. If these words are defined under Article 366, then, in my opinion, there is no need to bring in anything else except defining the word ‘consultation’ in five lines. Consultation does not mean “concurrence”.

We can also constitute a Commission and a period of six months’ time may be given. Complete hearing can be held. The hearing may be held by the retired judges as well as the lawyers, including all the stakeholders. The report may be obtained by the Government. But this issue is required to be settled because we are lacking the checks. Balance is there but the accountability is not there. Therefore, we have to again restore the original position under the Constitution.

Now, so far as appointment of the subordinate judiciary is concerned, this is within the domain of the State Government. The number of

sanctioned posts is around 25,000. About less than 20,000 posts are filled up and about 5000 posts are lying vacant in the subordinate courts. That is the responsibility of the High Court and the respective State Government. It cannot be a responsibility of the Central Government.

So far as creating an All-India Judicial Service is concerned, initially its mention came in 1958 and, subsequently, in 1978, it came up again. A recommendation was made for creation of an All-India Judicial Service by the Standing Committee in 2006 and the directions were also issued by the Supreme Court in 1992.*(Interruptions)*

SHRI KALYAN BANERJEE (SREERAMPUR): The matter regarding All-India Judicial Service is pending before the Supreme Court.*(Interruptions)* I appeared in the Court with regard to this matter. I argued this matter. That is why I know about it.*(Interruptions)* Therefore, you cannot raise this point.*(Interruptions)*

HON. CHAIRPERSON: Mr. Chaudhary, you yourself are a senior advocate and the former Law Minister. You cannot make any comment with regard to a matter which is pending in a Court of Law.

....*(Interruptions)*

SHRI P. P. CHAUDHARY: Sir, I am not making any comment with regard to that. I am making my submission only. It makes no difference whether I refer it or not.*(Interruptions)*

HON. CHAIRPERSON: Please continue.

SHRI P. P. CHAUDHARY : I am not making any comment with respect to that. Stating the facts and making a comment on that, both are different

things. I am making my submissions without any comments on that.
(Interruptions) Mr. Tharoor has made a comment on that.(Interruptions)

My suggestion is, for that purpose, an exam can be conducted at all-India level and the candidates may be allotted to respective State at the most, and after examination, the High Court can interview them and they can make the appointment.

On All-India Judicial Service, some of the critics are saying that it may impeach the separation of power. But it is not doing so because in our federal setup, we are having a separate Executive. The federal system is there. We are having a separate Legislature. The federal system is there. But in the case of Judiciary, it may be Supreme Court, High Court or subordinate court. They all deal with the laws made by the State Legislatures. They all deal with the laws made by the Parliament. Therefore, we cannot say that so far as the Judiciary is concerned, it is federal. If the critics are saying that there should not be an All-India Judicial Service, it is ill-conceived and unfounded. We can go further for creating an All-India Judicial Service at par with Indian Administrative Service and Indian Police Service. Like that we can create it and we can have a pool of talented people and we can attract more talented people and those people can be further appointed in High Court and Supreme Court. They can help in better justice delivery system.

Finally, I would like to say that in article 312 the amendment was made for creating an All-India Judicial Service. Under articles 334 and 333 no amendment is required because when this amendment was made in article 312, only on the basis of the resolution moved before the Rajya Sabha by 2/3rd majority present and voting, creation of the All-India Services can be there. There will be uniformity and unity by creating these services and it will help in reducing the arrears and we will have talented people. Quality judgement will be there. The time in dealing with the cases

will also be reduced. These are some of my submissions with respect to the Bill.

I also request the hon. Minister to see whether the word ‘consultation’ can be defined. The word ‘consultation’ was not defined in the Constitution under article 366. I think this is the reason why the Supreme Court has taken over it, that is, since the word ‘consultation’ was not defined, if the Parliament can define it – the word ‘consultation’ is not concurrent – then the whole problem can be solved. Today, just like in the 2021 we have issued the clarification by way of explanation, the same thing can be done for defining the word ‘consultation’ under article 366. Sir, with these words, I support the Bill.

Thank you very much, Sir.

SHRI DAYANIDHI MARAN (CHENNAI CENTRAL): Vanakkam, Chairman Sir. Thank you, for giving me this opportunity. Unfortunately, I do not think I fall in the category of the great speakers because all lawyers are addressing this subject.

SHRI BHARTRUHARI MAHTAB: Also, a lawyer is presiding the House.

SHRI DAYANIDHI MARAN : Yes, a lawyer is presiding the House.

The Bill seeks to amend the High Court Judges (Salaries and Conditions of Service) Act, 1954 and the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958. The major contention here is whether the additional benefits mentioned in the Bill will apply from the first day on the completion of the 80th year. I think most of the Members understand why this Bill is being brought by the Government. There was confusion because additional quantum of pensions and family pensions were given to the judges after their retirement. When they reach 80-85 years, 20 per cent

additional pay of the basic pay was given as the family pension. Similarly, from 85-90 years, 30 per cent was given of the basic pay as the family pension. If they attained 90-95 years, 40 per cent was additionally given to them. From 95-100 years, it is 50 per cent. And by chance if anyone went to live on for 100 years, it is 100 per cent.

I think the Government has made a right choice because there is confusion between the courts. Two judgements were contradicting each other. One said that on the completion of 79th year, you should start it. Another judgement said that it should start at the beginning of the 80th year. The Government has come forward to iron out the differences and make it clear by saying that the first month after completing the year will be considered. I appreciate it. Sometimes, the Government does bring good Bills fortunately.

Winston Churchill once said, "The service rendered by judges demands the highest qualities of learning, training and character. These qualities are not to be measured in terms of money, but according to the quantity of work done. A form of life and conduct far more severe and restricted than that of ordinary people is required from judges and though unwritten, has been most strictly observed. They are at once privileged and restricted. They have to present a continuous aspect of dignity and conduct." After rendering such services to the nation, it is the duty of the State to ensure that a retired Judge who enters the autumn of his life is adequately looked after. I am glad the Government is doing that good thing. However, there are certain questions which arise in my mind. As I said, I am not an advocate. But as a common man I am asking this. The ruling party speaker has made such a long speech. Especially my good colleague, Mr. Chaudhary, spoke about the carrot and stick theory being worked here. The Government is ready to accept the demand of the Judges. At the same time, he spoke so much about appointment of judges, the way the Law Minister is

deprived, and the way the Law Minister does not have any power in the appointment of Judges. In fact, he went on to say that Supreme Court Judges are appointed by the President of United States in America. Was he hinting that a similar system is going to come in India? Is it a prelude to that? What the ruling Government is trying to do is that indirectly they are threatening the present judiciary system through us. It gives me a doubt. I am sure that you will answer this. Are you planning to bring a Bill? If you are going to bring a Bill, please do that. You are the most powerful party here. In the last seven and a half years, you have done whatever you wanted to do and the Opposition is a mere spectator because you have been road rolling us. Do you have the courage to now road roll the judiciary? I very much doubt it. There is already a lot of suspicion in the minds of the people, I am speaking like a common man, that you are influencing the judiciary. You are getting all in your favour. Please do not do that. Do not intervene and unnecessarily rock the judicial system in which people believe.

There is a demand that there has been a differentiation between the retirement age of Judges of the High Court and the Supreme Court. The same High Court Judge has to retire at 62 years of age, but if he is elevated to the Supreme Court, he can stay up to 65 years of age. Why can you not have a uniformity? You should do that. Please bring a law in this regard instead of threatening the Judges through your colleagues. All Judges should have the retirement age of 65 years. If you want to make it 67 years, please do it. We will welcome it. In the Parliament, we will be happy to do that.

There has always been a long standing demand from the advocates and also from the State Governments and it is this. They are asking for a permanent regional bench in the Southern region. This has been the demand from the DMK for a very long time. Geographically, every lawyer situated in Delhi has got an access to the Supreme Court, whereas the lawyers who are born in other corners of the country do not get a chance. This is not

equality. If I am a litigant, I have to employ a lawyer far away from the region I reside. Since you have a brutal majority and if you want to do something good, I think we should look at this aspect, but by not threatening them.

There has been a demand from my party and I think from all the parties that there is no social diversity in the appointment of Judges. There is also no equal women representation in the appointment of Judges. Since 71 years, we are having the system. There is not even a single Scheduled Tribe who has been appointed as a Supreme Court Judge. Only five people are there from the Scheduled Caste community as Supreme Court Judges. I am not trying to go against any community, but only one community seems to be dominating the whole judicial system in the entire country. This has to change. I am not asking for social justice, but this has to change. Everyone should feel that they are part of the system.

When we have the utmost faith in our judicial system, the recent happenings of the ruling party, as I said earlier, has created a lot of suspicion. There should be a cooling off period. Judgements come in favour of the Governments, and then we find those Judges are elevated. No, one of them was demoted as a Governor! We have never seen that. Similarly, again, a former Supreme Court Judge is being demoted as a Rajya Sabha Member. I see an elevation! Sorry, it is former Chief Justice. I correct myself. In both the cases, it is the former Chief Justices who have been demoted. What does it mean? We see something hanky panky happening. That is what a common man will feel. Since we are not quoting anything, so you cannot jump on me. ... (*Interruptions*). An act of any Justice Department or the Government should be pure, or should look pure to the common man. When this happens, I ask a basic question and which is this. Today you have the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill, 2021. These two instances which were created by your

Government where a former Chief Justice has become a Governor and a former Chief Justice has become a Rajya Sabha Member, I want to ask from which service will they be getting the pension? Will they be getting Judge's pension or will they be getting the Governor's pension or will they be getting the Rajya Sabha pension? You should bring a clarity about it.

We, in India, have got utmost faith in the judicial system. I only request the Government that with your brute majority, please do not derail it.

With these words, I conclude my speech.

SHRI KALYAN BANERJEE: I rise to support the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill, 2021. Independence of judiciary is indispensable in a democratic system of governance. The general contention is that in any democratic county, the judicial system should be completely free from any sort of pressure or pull, both internal and external. It may so happen that the Government might abuse the political power that has been conferred upon it. An independent judiciary is required to maintain the balance between the interests of individuals and society.

Justice delayed, often said, is justice denied. In India though, justice is often indefinitely kept pending. The result is that there are 4.5 crore pending cases across all courts in India as on September 15, 2021. In fact, in 2019, there were 3.3 crore pending cases, which means that in the last two years, India has added 23 cases every minute to its pendency list. The details of cases pending in Supreme Court of India during the last three years are given below. In 2018, the pending cases in Supreme Court are 57,346; In 2019, the pending cases are 59,859; In 2020, the pending cases are 63,146, and as on 8th November, 2021, the pending cases are 70,038. The Five Judges' Bench matters which are pending before the Supreme Court are

272. The Seven Judges' Bench matters which are pending before the Supreme Court are 15. The Nine Judges' Bench matters which are pending before the Supreme Court are 135. Independence of judiciary and rule of law are the basic feature of the Constitution and cannot be abrogated even by the constitutional amendments as observed by the Supreme Court in S.P. Gupta's case. All laws in India derive their authority from the Constitution of India. All powers of the State and its organs are contained in it and must be exercised within the limits set out by the Constitution which specifically directs the State to separate the judiciary from the executive in the public service.

The judiciary has a single pyramidal structure with the lower courts at the bottom, High Courts in the middle, and the Supreme Court at the top. Today, our justice delivery system is facing multiple challenges. Two of them are stark and need immediate attention, namely, appointment of Judges and managing the humongous number of pending cases.

Today, the website of the Department of Justice tells us that the sanctioned strength of High Court Judges is 1,098 and vacancies are 402 as on 01 December, 2021. The sanctioned and working strength of Judicial Officers in the District and Subordinate Courts has also increased. As on 31 December, 2013, the sanctioned strength was 19,518 and working strength was 15,115. As on 28 January, 2021, the sanctioned strength was 24,485, and working strength was 19,294.

Pendency problem is a long-standing issue across the Indian judiciary. At present, the High Court lists 5.8 million pending cases. Mr. Chaudhary was telling that all cases are pending because of lower judiciary. In the Rajasthan High Court more than five lakh cases are pending. ... *(Interruptions)* I am telling this to you since you were mentioning it. ... *(Interruptions)* Mr. Chaudhary, I am coming to it. I will also mention what

you have done. ... (*Interruptions*) You are also an ex-Law Minister and we know what has happened. Do not pass such comments.

The average rate of disposal between 2015 and 2019 was about 1.8 million cases per year. In most years, the number of cases disposed of is lower than the number of cases instituted. So, the problem keeps getting worse. In High Court, 41 per cent cases have been pending for five years or longer. In Subordinate Courts, nearly one in every four cases has been pending for at least five years.

I would like to mention some figures. The pending cases up to one year is 12,942,921; pending cases between one year and three years is 9,738,411; pending cases between three years and five years is 52,000,056; and pending cases between five years and ten years is 5,081,864. Kindly see and imagine the situation. I have all the figures with me. The cases filed by senior citizens pending is 2,225,587; and the cases filed by women pending is 3,163,776. This implies that if no new cases were to be filed, then the time taken by courts to dispose of all the pending cases at the current disposal rate would be 1.3 years.

Just one month back, Justice Sanjay Kishan Kaul -- while taking up a matter of criminal appeal arising out of Allahabad -- observed or commented that if no criminal appeals are filed in the Allahabad High Court, disposal of the pending criminal appeals will take 32 years. Therefore, where do we stand?

In two decades since Fast Track Courts were first setup, pending cases in both Subordinate Courts as well as these Fast Track Courts have continued to increase. As on date, over 9.2 lakh cases are pending in 842 Fast Track Courts across 28 States. What has happened to Fast Track Courts? What is their disposal rate?

17.00 hrs

Pendency of cases for long periods has resulted in large number of undertrials in India's prisons. As on January 31, 2019, almost 4.8 lakh prisoners were confined in Indian jails. Of this, over two-thirds were undertrials; 5,011 undertrials were confined in jails for five years or longer. In Uttar Pradesh, the figure was 2,124; and in Maharashtra, 394. This accounted for over half of such undertrials. This is the situation in the backdrop of huge backlog of cases.

As on 1st December, 2021, the Supreme Court had one vacancy, out of the sanctioned strength of 34 Judges. In the High Courts, 37 per cent of the total sanctioned posts of Judges are vacant. Out of the total 402 vacancies in the High Courts, majority of the vacancies are in Kolkata, 32 out of the sanctioned strength of 72; in Telangana, 23 out of the sanctioned strength of 42; in Patna, 27 out of the sanctioned strength of 53; in Rajasthan, 22 out of the sanctioned strength of 50; in Delhi, 30 out of the sanctioned strength of 60; in Andhra Pradesh, 19 out of the sanctioned strength of 37. Figures are more. In Allahabad also, the vacancies are more than 50 per cent.

Clearly, the Judiciary is failing in keeping the promise of speedy trial; with the result, things have come to such a pass. For several decades now, the courts have never been able to function with full strength resulting in huge vacancies of Judges against the sanctioned strength of 24,419 Judges in district and other courts.

Mr. Chaudhary has referred to the Supreme Court Judges case – the first case, the second case and the third case. Thank you, Mr. Chaudhary. But you have not referred to a case. I am sorry. I expected that you would refer to a three-Judges Bench case consisting of the hon. Chief Justice, Shri Bobde, hon. Justice J Sanjay Kishan Kaul and hon. Justice Surya Kant. This matter has been disposed of. Its first paragraph says: "The High Courts are in a crisis situation. There are almost 40 per cent vacancies in the High

Courts, with many of the larger High Courts working under 50 per cent of their sanctioned strength”.

I will come straight away to paragraph 11, which is more interesting. You will be surprised to hear. After stating it, I will make my statement on it. Paragraph 11 says: In the context of the aforesaid and in order to facilitate timely appointment, we are of the view that it would be advisable to follow the following timelines, in addition to the aforesaid.

Firstly, the Intelligence Bureau (IB) should submit its reports or inputs within four to six weeks from the date of recommendation of the High Court Collegium, to the Central Government. Secondly, it would be “desirable” that the Central Government forward the files or recommendations to the Supreme Court within eight to 12 weeks from the date of receipt of views from the State Government and the report or the inputs from the IB. Thirdly, it would then be for the Government thereafter to see to make the appointment immediately on the aforesaid consideration, and undoubtedly, if the Government has any reservations on suitability or in public interest, within the same period of time, it may be sent back to the Supreme Court.

17.04 hrs

(Shri N. K. Premachandran *in the Chair*)

Importantly, the last one is, if the Supreme Court Collegium, after consideration of the aforesaid inputs, still reiterates the recommendation unanimously, such appointment should be processed and the appointment should be made within three to four weeks. ... (*Interruptions*) I have got another learned lawyer, he is a very nice man, and he is very kind to me also. ... (*Interruptions*) The Supreme Court has categorically stated that – while reiterating the cases – it has to be implemented within three to four weeks.

Sir, in Calcutta High Court, Shri Joytosh Majumdar’s case was recommended on 24th July, 2019, and was reiterated on 1st September, 2021.

The hon. Supreme Court's order has not been implemented. Shri Amitesh Banerjee was first recommended on 24th July, 2019, and the recommendation was reiterated on 1st September, 2021. Shri Raja Basu Chowdhury was first recommended on 24th July, 2019, and the recommendation was reiterated on 1st September, 2021. Shrimati Lopita Banerjee was first recommended on 24th July, 2019, and the recommendation was reiterated on 1st September, 2021. Shri Shankar Sen was first recommended on 24th July, 2019, and the recommendation was reiterated on 8th October, 2021. Nothing has been done. If a lawyer is recommended by the Collegium and that lawyer belongs to the Bharatiya Janata Party, directly or indirectly, his case cleared at a rocket speed.

I am not questioning the suitability of the lawyers. I am questioning the discriminatory attitude of the Central Government. In the States, different political parties are there. In 2019, when the name of the Additional Solicitor General came, they gave the appointment immediately. But in the case of others, since others are the State Government lawyers, that has not been done. I am again saying that I am not questioning the competency of the judges. One of the judges, I am not going to take his name, was associated with the Andaman & Nicobar Islands Administration. He was doing the cases there. His case was recommended on 1st September, 2021, and it was cleared by the Central Government on 16th November, 2021. He is directly associated with the Administration of the Andaman & Nicobar Islands. It is not only in our case. In fact, for the Jammu & Kashmir High Court, two persons' names have been reiterated twice but their case has not been cleared. For the Karnataka High Court, two persons' names were recommended and reiterated but their case has not been cleared. For the Allahabad High Court, two persons' names were recommended but their

case has also not been cleared. For the Calcutta High Court, two women judges, Shrimati Ananya Bandyopadhyay and Shrimati Rai Chattopadhyay, were recommended and the recommendations were reiterated on 11th November, 2021, and another gentleman, Shri Subhendu Samanta, is also there. The hon. Chief Justice says that we want more women judges in the judiciary. See, I have given three names of the women lawyers whose names have been recommended but their cases have not been cleared.

Now, I want to ask, is this not a clear violation of the Supreme Court's order? Is the Central Government not violating the order of the Supreme Court which I have referred to in the judgment delivered by the Chief Justice Bobde? Does it not come within the ambit of Article 215 of the Constitution of India? Under Article 144 of the Constitution of India, all authorities, civil and judicial, in the territory of India, shall act in aid of the Supreme Court. Is the Central Government doing that? Is the Central Government not violating Article 144? Is the Central Government not creating discrimination? Is the Central Government not violating the rights protected under Article 14 of the Constitution which speaks about 'equality before law'. That is a total violation. Mr. Tharoor quoted it but I am quoting again.

The constitutional authorities, in flagrant violation of Constitutional laws, in flagrant violation of statutes, in flagrant violation of all norms, do not make these appointments. They do not appoint any person whose face is not liked by them. Only those people whom they like are being appointed.

Sir, Dr. Ambedkar said, "However good a Constitution may be, if those who are implementing it are not good, it will prove to be bad. However bad a Constitution may be, if those implementing it are good, it will prove to be good." If people are not implementing the Constitution with the right intent, the best Constitution is rendered waste and the most valueless Constitution can be made good if it is implemented with good

intentions and objectives. Dr. Ambedkar's views have been thrown into river Yamuna here and into river Ganga in our State.

I am not blaming the Central Government also. The hon. Minister had given an answer to my question, which I got yesterday. There are pending cases that the High Courts are not sending, the collegium is not sending. Sir, the work of the collegium is administrative in nature, as you know, and I have a right to criticise any administrative act. In terms of the judgment of Chief Justice Bobde, the collegium is required to initiate the process of filling up of vacancies six months prior to the retirement of a judge or occurrence of a vacancy. What are the collegiums, the High Courts doing? What steps have they taken? They are also answerable. It is not that they are not answerable. On the administrative acts of any High Court, the administrative acts of the Supreme Court, you are answerable to the Parliament also. It is not that they are not answerable. Why are they not acting in time? If a government officer does not act, the Supreme Court and the High Courts will thrash them like anything. They send them to the jail. But if the collegium does not act, what would happen? Is it not a mockery of justice now? Is it not a mockery of procedures? Everyone is responsible for this. ... (*Interruptions*) I know, the hon. Minister will state in his reply how many appointments have been made. He will say that eight Supreme Court judges have been appointed. But he will never say to the House how many cases have occurred in the last three years from 2014 to 2019 including in the regime of Mr. Chaudhary.

SHRI P. P. CHAUDHARY: Kalyan ji, let me set the record right. Between 2016 to July 2019, 400 judges were appointed to the Supreme Court and High Courts.

SHRI KALYAN BANERJEE: That is right. But you are not stating the number of vacancies.

श्री प्रहलाद सिंह पटेल: आप उसके पहले का रिकॉर्ड रैफर कर रहे हो । ... (व्यवधान) जब आप चौधरी साहब का नाम कोट कर रहे हो तो उनकी बात सुनो तो सही । ... (व्यवधान) यह तरीका सही नहीं है । जब आप नाम कोट कर रहे हो तो उनकी बात भी सुनो ।

SHRI P. P. CHAUDHARY: Kalyan ji, it depends upon the recommendation made by the High Court. You just give the facts about how many High Courts have made the recommendations. Vacancies are there in various High Courts. ... (*Interruptions*)

SHRI KALYAN BANERJEE: I can give the figures which have been given to me, yesterday. My answer is 'yes'. I can give the figures. Therefore, how many vacancies have occurred? It is not my job to find out the vacancies; it is your job to find out. My job is to point out that the vacancies are not filled up. It is your job. You must work it out. You have got a very good supporter, Mr. Chaudhary.... (*Interruptions*)

डॉ. निशिकांत दुबे: कॉलेजियम में जो लिखा है, उसको डायरेक्ट प्वाइंट कीजिए ।... (व्यवधान) पार्लियामेंट से एक आदमी कॉलेजियम में है ।... (व्यवधान)

श्री कल्याण बनर्जी: हाँ, कर दीजिए न ।... (व्यवधान) Mr. Dubey, you possibly do not know my background. That is the reason you are saying so. ... (*Interruptions*)

DR. NISHIKANT DUBEY: I know. मैं यह जानता हूँ ।... (व्यवधान)

SHRI KALYAN BANERJEE: My offer came in 1994. On record, I am telling it to you. Had I accepted it, I would have been CJI for nearly three years. Keep it in your mind and then pass comments.... (*Interruptions*) Yes, I have not gone there; I have chosen these pathways. ... (*Interruptions*) What is this? I have not disturbed you like this. ... (*Interruptions*)

HON. CHAIRPERSON: Nishikant *ji*, Chaudhary *ji*, please do not crosstalk. This is not good.

... (*Interruptions*)

HON. CHAIRPERSON: If the Member is yielding, I have no problem.

... (*Interruptions*)

SHRI KALYAN BANERJEE: I have not disturbed you even for a single moment. I have a request, today. ... (*Interruptions*)

HON. CHAIRPERSON: If the Member is yielding, you can speak. Otherwise, please do not interrupt.

SHRI KALYAN BANERJEE: Sir, in 2018, when Chief Justice of India Dipak Misra was there, four Judges went to the Press. They criticised this and said democracy has gone. There is no Supreme Court over the Supreme Court. If that is there, I do not know what would have been the fate in their cases. On the contrary, the first man who spoke became CJI later on. Later on, we have seen him in the Rajya Sabha. But with a very painful heart, I am telling – I have also completed 41 years of practice – that the way Chief Justice Sanjib Banerjee has been transferred from Madras High Court to Meghalaya is not acceptable. This is not acceptable. I know, you have not done it. Mr. Rijiju, I know, you have not done it. You have just implemented it. But it has been done by the Collegium. Why? He has criticised the Election Commission of India only. Then, if he has criticised the Commission, why did the Central Government not come forward for impeachment of those four Judges who criticised the Central Government, who said that there is no democracy in the country?

PROF. SOUGATA RAY (DUM DUM): Very right. ... (*Interruptions*)

SHRI KALYAN BANERJEE: Sir, I am telling you that Justice Sanjib Banerjee is losing nothing. Kindly allow me to speak. He is not losing

anything; he will remain. But I think – I have seen him coming out with remarks on so many matters against our State Governments – he is a Judge who is very straight-cut, a Judge who is really an erudite Judge. If we consider today about the last great Judge of the Supreme Court, that is Justice Nariman, he was not only a great Judge of this country, but a jurist of the country. I can tell you that amongst all the Judges of the High Courts of India, Chief Justice Sanjib Banerjee is the best Judge. But he has been transferred to Meghalaya. I would request from this Parliament, through you, to the Collegium to reconsider it. Justice Sanjib Banerjee is not losing anything. But you are really wasting a property of the nation. It is a property of the nation. It has been done; it is very shocking. I would request that these things have to be done.

I will end my speech with a request to the Central Government, please do not continue with the contempt of court. Do not violate the court orders. If you violate the court orders, what will be the consequences? You may not like the face of a particular person. You may not like a State Government. आप बोल के आए थे, इस बार दो सौ के पार । यह नहीं हुआ, मान लीजिए, मान लीजिए, मान लीजिए । यह मानने की बात है । ममता जी, ममता जी करके, क्रिटिसिज्म करके कुछ नहीं होगा । ममता जी ने दिखा दिया कि जिसे आना हो आओ, हम देख लेंगे, अकेले देख लेंगे । Good days are coming. हम लोग देख लेंगे ।

I have forgotten to tell one important point. Shri Tharoor was talking about the enhancement of the retirement age of judges, and that a Bill should be brought in the House in this regard. In 2012, possibly you were not a Member at that time, UPA-2 had introduced a Bill to increase the retirement age of the high court judges from 62 to 65 years and from 65 to 67 years of the Supreme Court judges, but it was not discussed. I do not think there is any requirement to increase the retirement age of the judges.

The Constitution says that 10 years of practice is sufficient enough to be a judge. Now, the collegium, in its own wisdom, has said that one cannot qualify to be a judge unless he is 45 years of age. They have developed their own mechanism. As a result of this, the good lawyers are being deprived of becoming judges and the country is being deprived of getting good judges. What will happen if they are between the age of 40 and 41 years? You know Justice D.Y. Chandrachud. He became a judge at the age of 41. What a great judge he is! The Chief Justice of Bombay High Court, Shri Dipankar Datta who was appointed as judge at the age of 41 years is doing a great job. Therefore, through you, Sir, I would request the collegium not to insist on the age of 45 years. They should be flexible. If they can get good lawyers, let us say at the age of 39 years, they should be elevated to the post of judge. Chief Justice Altamas Kabir became a judge at the age of 38 years. Since a number of comments have been made against me, I would like to tell the House that I got this offer at the age of 37 years.

Sir, I am grateful to you for having given me a chance to speak. Both you and your predecessor have given me a chance to speak. Whatever agony, pain or grievances were there in my mind, not only as a lawyer, as a Member of Parliament, but also as a citizen of India, I have expressed them before you. I have expressed my anguish. I have expressed my pain. I have expressed my sorrow with respect to this matter.

With this, I would like to convey my heartiest thanks to you. I convey my regards to you for giving me a chance to speak on this subject.

HON. CHAIRPERSON: Thank you very much Shri Kalyan Banerjee. He has got special permission from the hon. Speaker to speak for half-an-hour, and he has completed it within that time.

Next speaker is Shri Arvind Sawant.

... (*Interruptions*)

HON. CHAIRPERSON: Arvind Ji, you are interested in talking with other Members.

... (Interruptions)

श्री अरविंद सावंत (मुम्बई दक्षिण): माननीय सभापति जी, मैं उच्च न्यायालय और उच्चतम न्यायालय न्यायाधीश (वेतन और सेवा शर्त) संशोधन विधेयक, 2021 पर अपने विचार व्यक्त करने के लिए खड़ा हुआ हूँ। सब अंग्रेजी में बोले, मैं जान-बूझकर हिंदी में बोलूंगा। यह देश की भाषा है, संवाद की भाषा है, ऐसा मैं सोचता हूँ।

गरीब आदमी जब कोर्ट में जाता है तो उसे उस राज्य की भाषा में कोर्ट में बोलना पड़ता है। आप कह रहे थे कि ज्यूडिशियल सर्विस बनाओ। ज्यूडिशियल सर्विस में क्या होगा? ज्यूडिशियल सर्विस में अगर किसी को चैन्नई में काम करना है तो उसे तमिल भाषा आनी चाहिए। वह यहां से सलैक्ट होकर जाएगा और वहां तमिल भाषा नहीं आएगी तो वह क्या करेगा? यह भी तो सोचना पड़ेगा। मैं सोच दे रहा हूँ बाकी कुछ नहीं बोल रहा हूँ।

यहां पेंशन की बात आई है, मैं इसका स्वागत करता हूँ। मैं दो-तीन विषयों के बारे में बोलना चाहता हूँ, टीचर्स, प्रोफेसर्स और ज्यूडिशियरी। इनके वेतन, सेवा शर्त और पेंशन, इस मामले में जितनी जल्दी हो सके, उतनी जल्दी निर्णय लेना चाहिए। अगर टीचर दुखी है तो नई पीढ़ी नहीं बनेगी। जब यह बिल आया, आपने जो तत्परता यहां दिखाई है, उसका मैं स्वागत करता हूँ, लेकिन आप वही तत्परता ईपीएफ पेंशन के लिए दिखाएंगे तो सारा देश आपको आशीर्वाद देगा। मैं सरकार से कहना चाहता हूँ, अगर सरकार ने तत्परता पेंशन वृद्धि करने में दिखाई है कि 80 साल बाद पूरा होने के बाद पेंशन में वृद्धि होगी, कुटुम्ब पेंशन में भी वृद्धि होगी, इसी तरह से वहां भी दिखानी चाहिए। हम ईपीएफ पेंशन की बात करते-करते थक गए, उसी तरह से वहां भी होनी चाहिए।

मेरे पास जो डाटा है, सबने उसके बारे में बताया, अंग्रेजी में कितने लोगों को समझ में आया, मुझे नहीं मालूम, लेकिन देश में आज 4.60 करोड़ केसेज़ पैडिंग हैं, न्यायालयों में 5545 पद रिक्त हैं। अब ऐसी स्थिति में हमें न्याय कैसे मिलेगा, यह

सबसे पहली बात है । जब हम वेतन वृद्धि की बात कर रहे हैं, पेंशन की बात कर रहे हैं, तो न्याय की बात कौन करेगा? आज न्याय मिलता है कि नहीं?

अभी सबने आदरणीय परम पूज्य भारत रत्न बाबा साहेब अम्बेडकर जी का उल्लेख किया। There was also a mention about: 'Justice Delayed is Justice Denied' और यह भी कहा कि संविधान जिसके हाथ में है, अगर उसका इस्तेमाल सही ढंग से करते हैं तो संविधान अच्छा है । संविधान बुरा हो लेकिन अच्छे लोगों के हाथ में हो, वे इसका अच्छा इस्तेमाल करें तो भी संविधान अच्छा है । मुझे एक बात याद है, उन्होंने कहा था – अगर संविधान गलत लोगों के हाथ में गया और उसका दुष्परिणाम आने लगा तो मैं संविधान जला दूंगा । उन्होंने इतनी एग्री बताई थी । हम आज देश में देखते हैं कि न्यायालयों में पैडिंग केसेज़ हैं । सुप्रीम कोर्ट में 70,038 केसेज़ पैडिंग हैं । हाई कोर्ट में 58,79,285 केस और लोअर कोर्ट में 4 करोड़ 94 लाख 4 हजार 405 केसेज़ पैडिंग हैं । ये सब देखने के बाद ऐसा लगता है कि इतने केसेज़ पैडिंग हैं कि तारीख पर तारीख चलती रहती है । गरीब क्या करेगा? गरीब को न्याय कैसे मिलेगा? यह पहली बात है ।

यहां कुछ चीजें बनर्जी साहब जी ने बताई और कुछ चीजें शशि थरूर जी ने बताई । चौधरी साहब ने भी बोला और चौधरी साहब ने बाहर के देशों के उदाहरण दे दिए । सारे उदाहरण जब सामने आते हैं तो मेरा देश कहां है? सबसे पूछता हूं तो मुझे लगता है कि मेरा देश सबसे अच्छा है । जब कॉलेजियम की बात आई, बीच में कुछ साल के लिए गड़बड़ हुई थी फिर दोबारा कॉलेजियम आ गया । उसमें समय की पाबंदी कहीं नहीं है । इसकी वजह है कि हमारे पद रिक्त रहते हैं । जब भी पद रिक्त होता है, अगर कोई गवर्नमेंट सर्विस में है तो उसे डेप्युटेशन पर भेज सकते हैं । We either deploy or depute. We are doing either of the things. But we are not doing either of the things here. इसीलिए वेटिंग लिस्ट होनी चाहिए थी । कॉलेजियम के पास वेटिंग लिस्ट हो, stating the list of Judges who can be appointed as the Judges in the hon. High Courts and hon. Supreme Court and who desire to go for that. Let them take exams or the interviews. Let them take it.

लेकिन, क्या हमें न्याय मिलता है? मैं बहुत दुःख के साथ कहता हूं कि हमारे महाराष्ट्र का बोरगांव, करवार, निपानी, भालकी, बीदर से बॉर्डर इश्यू है । संविधान ने

बताया कि भाषा के आधार पर प्रांतों की रचना होगी । भाषा के अनुसार प्रांतों की रचना हुई, लेकिन महाराष्ट्र को लड़ना पड़ा । इसके लिए 106 लोगों ने अपने प्राणों की अहुति दी । 26 जनवरी 1950 को श्रद्धेय अम्बेडकर जी ने संविधान सौंपा और उसके बाद वर्ष 1960 में महाराष्ट्र बना । लड़ने के बाद बना, लेकिन फिर भी कुछ प्रदेश आज भी बाहर हैं । सुप्रीम कोर्ट की तरफ से न्याय नहीं मिलता है । ऐसा क्यों? क्या संघर्ष या आंदोलन रास्ते पर किया गया? उस तरह का आंदोलन नहीं किया गया बल्कि संविधान के तहत आंदोलन किए गए । हम सुप्रीम कोर्ट में भी गए । कितने सालों से हमारी केस पेंडिंग है, यह सदन में किसी को दिखता नहीं है । आप हां या ना कहिए, लेकिन कुछ कहिए तो सही । क्या आप कुछ भी नहीं कहेंगे? आप चुपचाप बैठेंगे? तब तक दूसरी सरकार, जो तुम्हारी है, उसे जो भी करना है, उसके लिए उसे अनुमति मिलती है । विधान सभा बनाई गई । बेलगांव को उप राजधानी बनाया गया । महाराष्ट्र में बॉम्बे को मुम्बई करने में सालों लग गए । लेकिन, बेलगांव से बेलगावी कुछ ही समय में हो गया । यहीं पर डिस्क्रिमिनेशन दिखता है । जिस डिस्क्रिमिनेशन की बात सभी कर रहे थे, वही बात मैं भी कर रहा हूं । अगर कानून है तो ये डिस्क्रिमिनेशन क्यों है? बॉम्बे को मुम्बई करने में डिस्क्रिमिनेशन क्यों हुआ? हम दिल्ली का स्पेलिंग Delhi क्यों लिखते हैं? जबकि हम दिल्ली कहते हैं । हम कहते हैं कि 'मैं दिल्ली में आया हूं' । अंग्रेजों ने जो गलती की थी, उसको हमने आज भी जारी रखा है । हम उसको ठीक क्यों नहीं करते हैं? ये संस्कार जो हमारे ऊपर गिरे हैं, उससे हम लोग आज भी बाहर नहीं आ पा रहे हैं । वह न्याय आज तक नहीं मिला । आपने देखा होगा हाल ही में एक नई स्थिति बनी । महाराष्ट्र में एक अलग सरकार बनी । जैसे ही अलग सरकार बनी, पिछले दो सालों से हम लोग जुडिशियरी का जो अनुभव कर रहे हैं, खासकर जो देश की संस्थाएं हैं, वे बड़ी संस्थाएं हैं, जिस पर देश को गर्व होता है, चाहे वह सीबीआई हो, ईडी हो, नारकोटिक्स हो या इन्कम टैक्स हो, ये सभी संस्थाएं वहां बैठी हुई हैं । वहां इनको जुडिशियरी की पावर है । ईडी अपनी मर्जी से किसी को भी अंदर डाल सकती है । उससे कौन पूछेगा? न्याय कहां है? उस व्यक्ति का न्याय कहां है, जिसको 40-40 दिन अंदर रखा जाता है? कोर्ट में आने के बाद कोर्ट कहता है कि इस केस में तो कुछ दम ही नहीं था, फिर 40 दिन तक अंदर क्यों रखा? उसके ऊपर क्या कार्रवाई होने वाली है, जिसने उसको अंदर रखा? तुम्हारे पास कोई प्रूफ नहीं था, फिर भी उसको अंदर रखा । यह जो विंडिक्टिवनेस चल रहा है, उससे जुडिशियरी से विश्वास उड़ जाता है । मेरे लिए यह सबसे गंभीर

बात है कि इस देश में जिस दिन जुडिशियरी पर से विश्वास उठेगा तो देश की जनतंत्र को, लोकतंत्र को ठेस पहुंचने वाली है । We have Parliament which is called Legislature, we have Executive. And then we say Judiciary. Fourth is the Press जनतंत्र के ये चार स्तंभ हैं । आज आप विश्वास के साथ कह सकते हैं कि चार स्तंभ ताकत के साथ खड़े हैं । क्या पार्लियामेंट ताकत से खड़ी है? एग्जीक्यूटिव खड़े हैं । 'His Master's Voice' are there in Executives. 'His Master's Voice' are there in Judiciary too. That is what is really offending. बहुत से लोगों को डर लग रहा है । अपाइंटमेंट किसकी होती है? यदि आप किसी पर चर्चा करेंगे तो कहेंगे कि ये इनके-इनके एफिलिएटेड लोग हैं । आप किसी भी क्षेत्र में जाइए, हरेक जगह चाहे वे बोर्ड के चेयरमैन हों या कोई और हो They are affiliated to some thinking. जो किसी थॉट से जुड़े हुए लोग हैं, वही लोग अपाइंट हो रहे हैं, बाकी लोग अपाइंट नहीं होते हैं । लोगों के मन में यह शंका आना भी सरकार के लिए अच्छा नहीं है । 'सबका साथ, सबका विकास और सबका विश्वास' Underline these words. Are we getting that? यह नहीं हो रहा है । जैसे, हमारे मुम्बई में एक पुलिस आयुक्त गायब हो गया । Commissioner of Police is absconding. अब यह कितनी गंभीर बात है कि वही गायब है, उसी ने इल्जाम लगाए और खुद गायब हो गए । फिर, जाकर वह सुप्रीम कोर्ट में हाजिर हो गया । सुप्रीम कोर्ट में हाजिर होने के बाद, सुप्रीम कोर्ट कहता है Do not arrest him. He is above the law. This is the judgement of the Supreme Court. These are the directives of the Supreme Court. Again, the date has been enhanced. वह जानते हैं कि यह गड़बड़ी की वजह से आया है, इसको पकड़ेंगे । फिर सुप्रीम कोर्ट कहता है कि 11 जनवरी तक अरेस्ट मत करो । वह कौन है? Who is guiding the Supreme Court? Is it an independent body? There lies discrimination and doubt about the functioning of the Supreme Court and the courts of the country?

इसीलिए मैंने जिन संस्थाओं की बात की, सीमा प्रश्न की बात की, डिले जस्टिस की बात की है । मैं एक विषय को बहुत ही गंभीरता से ले रहा हूं, सभी ने वही कहा है । वैसे तो मैंने पहले भी देखा था, मैं किसी ट्रेड यूनियन में थोड़ा-बहुत काम करता था । अगर पब्लिक सेक्टर कंपनी का चेयरमैन रिटायर होता है, तो he should not join the company which is against the interest of the old company where he was working. But it did not so happen. ये बीएसएनएल से निकले और जो प्रतियोगी

कंपनी है, जिसके साथ बीएसएनएल की प्रतिस्पर्धा है, जाकर उसके अधिकारी बन गए। कूलिंग पीरियड होना चाहिए कि नहीं होना चाहिए।

The same thing should be made applicable to the Judges of the Supreme Court too. मुझे तो डिवैल्यूएशन लग रहा है कि ...* जी जैसे सुप्रीम कोर्ट के भूतपूर्व चीफ जस्टिस राज्य सभा के मेंबर बन जाते हैं। वह खुद यहां आकर कहते हैं, उनसे किसी मामले में पूछा गया कि क्या आप सुप्रीम कोर्ट में जाएंगे, तो उन्होंने कहा कि नहीं, मुझे नहीं लगता है कि मुझे वहां पर न्याय मिलेगा। It is his statement. The Chief Justice of India, after his retirement and being nominated to the Rajya Sabha, says, I do not have faith in the Supreme Court that they will deliver justice to me. That means he has experienced something else. He may not himself have delivered justice. There lies the issue.

इसीलिए मुझे लगता है कि इस विषय को गंभीरता से लेना चाहिए। आप इलेक्शन कमीशन को देखिए। अभी तो इम्पीरिकल डेटा की बात हो रही थी। कल भी सुप्रीम कोर्ट ने कहा कि वह डेटा लेकर आइए, तब ओबीसी का रिज़र्वेशन होगा। यहां से इम्पीरिकल डेटा नहीं, वहां से भी इम्पीरिकल डेटा नहीं। निशिकांत जी, जब हम सत्ता पक्ष में थे, तब भी हमने अनुभव किया था और हम आज भी अनुभव कर रहे हैं।

सभापति महोदय, इलेक्शन कमीशन के कितने केसेज़ कोर्ट में जाते हैं। जाति का झूठा प्रमाण पत्र, हिसाब ठीक नहीं है, खर्चा ज्यादा किया, it has been stated by the Returning Officer himself that this man Shri Arvind Sawant has crossed the limit of the expenditure and he should be expelled.

आप विश्वास नहीं करेंगे कि उनके कहने के बाद भी इलेक्शन कमीशन निर्णय नहीं लेता है। जाति का झूठा प्रमाण पत्र देने के बाद सारे दावे सुप्रीम कोर्ट में जाते हैं। फिर सुप्रीम कोर्ट तारीख पर तारीख देता है। पांच वर्ष निकल जाने दो, अगर राज्य सभा में होंगे, तो छः वर्ष निकल जाने दो, तो फिर आपको कोई नहीं हटाएगा, तो जस्टिस कहां है? इसीलिए मैं कहता हूं, आप जो बिल लेकर आए हैं, मेरा मुद्दा यही है कि न्याय मिलना चाहिए।

मुझे छत्रपति शिवाजी महाराज जी के समय की याद आती है। हमारे महाराष्ट्र में रामशास्त्री प्रभुणे जी का नाम लिया जाता है। हमारे महाराष्ट्र में क्या हुआ? वहां विधान परिषद है। सरकार को यह अधिकार है, जैसे राज्य सभा में 12 सदस्यों को मनोनीत किया जाता है, तो वह कौन करता है? केन्द्र की सरकार सिफारिश करती है और महामहिम राष्ट्रपति जी दस्तखत करके उसको पास करते हैं। समय की पाबंदी

है कि कितने दिन में करना है, कितने महीनों में करना है, कितने सालों में करना है । हमारे महाराष्ट्र की राज्य सरकार ने पिछले 8-10 महीने पहले ही 12 मनोनीत सदस्यों की सिफारिश की थी । आज उसको लगभग एक साल होने वाला है, लेकिन आज तक उनका अपाइंटमेंट नहीं हो पा रहा है । क्या यह संविधान का अपमान नहीं है?... (व्यवधान) इसलिए मेरी आपसे विनती है ।

अभी आप देखिए, यहां पर पेंडिंग केसेज़ के आंकड़े दिए गए हैं । बहुत से लोगों ने आंकड़े-आंकड़े किए हैं, इसलिए मैं उसको कट कर रहा हूँ । क्या आपने कभी लेबर कोर्ट में जाकर देखा है? अभी आप कहेंगे कि यह तो राज्य की बात है । ठीक है, राज्य की बात है । हाई कोर्ट के नीचे वाले विषय राज्य के हैं । अगर राज्य की सरकार उनकी नियुक्ति नहीं करती है, तो क्या केन्द्र सरकार की जिम्मेवारी नहीं बनती है? 'सबका साथ, सबका विकास, सबका विश्वास', उनको न्याय देना है, लेकिन उनको न्याय नहीं मिल रहा है । कोर्ट्स में जजेज़ ही नहीं हैं । सुप्रीम कोर्ट में भी तो 403 जजेज़ की सीटें खाली हैं । मेरी आपसे प्रार्थना है ।

मैं इस बिल को सपोर्ट करता हूँ, लेकिन मेरी आपसे यही प्रार्थना है कि आप इस संवेदना को ईपीएफ पेन्शन के लिए भी जताइए । आगे चलकर पार्लियामेंट में भी नई रिक्रूटमेंट्स होंगी, लेकिन वर्ष 2004 के बाद से गवर्नमेंट में रिक्रूट लोगों के लिए पेन्शन नहीं है । सर, वहां पर भी सुप्रीम कोर्ट ने निर्णय दे दिया, लेकिन आज भी उस निर्णय पर अमल नहीं हो रहा है । आप न्याय की बात कीजिए । मैं इस बिल को सपोर्ट तो करता हूँ, लेकिन यह भी कहना चाहता हूँ कि अगर आप इसी संवेदना को हर जगह दिखाएंगे तो यह सरकार और जनता के लिए अच्छा होगा ।

SHRIMATI VANGA GEETHA VISWANATH (KAKINADA): Sir, at the outset, I appreciate the efforts of the Government to improve the salaries and conditions of service for judges of the higher judiciary.

A salary hike for those sitting at the helm of our justice delivery system is a welcome move and I support it. At the same time, we must also reflect on the reforms that our judiciary needs urgently.

In this regard, on behalf of YSRCP, I have a few suggestions to make. Many issues are mentioned by hon. Members regarding collegium and

pending cases at all levels in courts. I will not touch those points but as a representative of the people, as a woman and as a lawyer, I will make some suggestions.

Regarding under representation of women in higher judiciary, currently the Supreme has just four women judges whereas the High Courts have about 81 women judges. Five High Courts have no women judges at all. Overall, the representation of women in the Supreme court and High Court is just nine per cent and eleven per cent respectively.

Given the fact that women constitute 50 per cent of our population, there is a need to provide women with equal representation in the benches of our judiciary.

Sir, as regards providing recognition to weaker sections and minorities in the higher judiciary, apart from lack of gender diversity, a glaring lack of special diversity is also persisting. During the period 1950 and 1990, close to 50 per cent of the judges of the Supreme Court were from forward castes. The total number of SCs and STs in the Supreme Court never crossed ten per cent in this period. The situation has not improved much since then.

It is shocking to know that since the formation of Supreme Court, there have been only five judges belonging to Scheduled Castes and only one judge belonging to Scheduled Tribes. The situation is no better in the High Courts. As per the report of the National Commission for Scheduled Castes of 2016, in 2011, there were only 24 judges belonging to SCs/STs against a total of 850 judges in all the High Courts. Fourteen out of these High Courts did not have a single judge belonging to SCs/STs.

I urge upon the Government to take necessary steps to promote higher representation of women and minority groups in our higher judiciary by introducing appropriate reservation policy.

I request the Government of India on the need for National Judicial Appointments Commission (NJAC). Several hon. Members quoted many cases. I will not quote them again but I would like to quote what late Shri Arun Jaitley had said. He said that democracy cannot be a tyranny of the unelected which means that reforms are needed in the judiciary so that judicial procedure does not become a punishment.

There have been reports that suggest that around 50 per cent of the judges of High Courts and 33 per cent judges in the Supreme Court are family members of those in higher echelons of the judiciary.

There is a strong need to replace the collegium system with a system similar to the National Judicial Appointments Commission whereby members outside the judiciary are also included in the process of making judicial appointments. This will ensure greater transparency and diversity in the selection process.

Sir, establishment of regional benches of the Supreme Court is urgently required. Hon. Chairman, Sir, establishment of regional benches of Supreme Court is required. To ensure that the Supreme Court is accessible to persons from all corners of the country, it is important that its unitary character be decentralised through the establishment of permanent regional benches.

The regional benches can handle the appellate matters whereas the main bench can handle the constitutional matters, thereby leading to the better division of functions and higher productivity of the apex Court.

Sir, this proposal has time and again been echoed by the Law Commission of India as well as by the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice. Hence, I urge the Government to consider establishing four permanent regional benches of the

Supreme Court (East, West, North and South), which will make justice delivery faster and more efficient.

Sir, finally, I request the Government to consider the need for All India Judicial Services. Our subordinate judiciary suffers from many defects including inefficiency, structural issues, such as, varying pay across the States, pending vacancies and lack of standard training across the States. To remedy this, constant demands have been made for the establishment of an All India Judicial Service along the lines of the Central Civil Services.

The centralised recruitment of judges at the level of district judges in all the States has been proposed by the Law Commission and the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice.

I urge upon the Government to take necessary steps for setting up the All India Judicial Service, which will ensure uniformity in the functioning of the lower judiciary across the States.

With these suggestions, I conclude. Thank you so much.

श्री महाबली सिंह (काराकाट): सभापति महोदय, यह जो उच्च न्यायालय और उच्चतम न्यायालय न्यायाधीश (वेतन और सेवा शर्त) संशोधन विधेयक सदन में रखा गया है, निश्चित तौर पर इसमें न्यायाधीश लोगों का वेतन उम्र और समय के हिसाब से होना चाहिए और सेवानिवृत्ति या उनकी मृत्यु के उपरान्त उनके कुटुम्ब को भी पेंशन का हकदार होना चाहिए, वह उनको मिलनी चाहिए । लेकिन इसमें एक बात का जरूर ध्यान रखना होगा, क्योंकि हम लोग देखते हैं कि कोई भी न्यायाधीश या जज जब सेवानिवृत्ति ले लेते हैं, उसके बाद किसी न किसी संस्था में उनको जोड़ लिया जाता है, किसी न किसी पद पर उनको बहाल कर दिया जाता है । जिस तरह से सांसद और विधायकों को हारने के बाद पेंशन मिलती है तो अगर वह एक ही जगह से किसी संस्था में चले जाते हैं तो पेंशन के हकदार नहीं होते हैं । उसी तरह से अगर

किसी न्यायाधीश को किसी संस्था में, कहीं से उनको वेतन मिलता है तो उनको भी पेंशन का हकदार नहीं होना चाहिए । इसको भी देखना होगा ।

अभी सदन में जिन माननीय सदस्यों ने चर्चा की है, हर माननीय सदस्य ने सुप्रीम कोर्ट और हाई कोर्ट की कॉलेजियम व्यवस्था पर कहीं न कहीं से टिप्पणी निश्चित तौर पर की है । इस व्यवस्था के बारे में, चाहे देश के कई सामाजिक संगठन हों, चाहे राजनीतिक संगठन हों, हाई कोर्ट और सुप्रीम कोर्ट के कई जजों ने भी रिटायरमेंट के बाद सवाल उठाने का काम किया है । इसे हम लोगों ने देखा है । यह जो कोलेजियम व्यवस्था है, जो कोलेजियम प्रणाली है, वह निश्चित तौर पर संविधान सम्मत नहीं है और न ही वह सदन से पारित की हुई चीज़ है । यह सुप्रीम कोर्ट की एक संस्था है । यह किसकी कमी से है? आज सभी माननीय सदस्यों ने यह बात कही है कि हाई कोर्ट में जजों की कमी से, सुप्रीम कोर्ट में न्यायाधीशों की कमी से, लोअर कोर्ट्स में जजों की कमी से लाखों केसेज़ ऐसे हैं, जो पेंडिंग पड़े हुए हैं । आखिर इसके लिए जिम्मेदार कौन है? हम लोग देखते हैं कि कितनों की तो सज़ा भी समाप्त हो गई और वे मरने की कगार पर हैं, लेकिन कोई उनको जेल से छुड़ाने वाला भी नहीं रह गया है । वे जेलों में बंद हैं और 15-15, 20-20 सालों से केसेज़ पेंडिंग पड़े हुए हैं ।

महोदय, मेरे कहने का मतलब है कि कभी सुप्रीम कोर्ट की यह टिप्पणी आती है कि केन्द्र और राज्य सरकारों की कमी के कारण जजों की नियुक्तियां, बहालियां नहीं हो पा रही हैं तो कभी केन्द्र सरकार कहती है कि सुप्रीम कोर्ट की कोलेजियम व्यवस्था के तहत उसका अधिकार है । आखिर किसमें कमी है और कहां कमी है? हमें लगता है कि यह एक-दूसरे के ऊपर रख रहे हैं । हमारी समझ से जब देश की सारी व्यवस्था नियम-कानून से चलती है, संविधान से चलती है तो क्या सदन में इस मामले को संविधान के तहत इस व्यवस्था को बदला जाए, ताकि वे कभी इस पर न टाले, वे उस पर टालें । संविधान में एक कानून बनाकर, संवैधानिक व्यवस्था के तहत इस व्यवस्था को रखा जाए ।

महोदय, आज देश की जो स्थिति है, इसमें देश के सभी लोगों का न्याय व्यवस्था पर विश्वास टिका हुआ है, लोग न्याय पाने के लिए दर-दर भटकते हैं । वे सुप्रीम कोर्ट और हाई कोर्ट से आस लगाते हुए पहुंचते हैं और 15-15, 20-20 सालों से उनको न्याय नहीं मिलता है । यह जो कोलेजियम व्यवस्था है, इस व्यवस्था की जो

प्रणाली है, वह इसके तहत नहीं हो रहा है। हमें जहां तक समझ में आ रहा है कि कोलेजियम व्यवस्था पर जो टिप्पणियां हो रही हैं, वे इसलिए हो रही हैं कि जिस तरह से इस देश की जो सामाजिक व्यवस्था है, वह गैर बराबरी व्यवस्था है, वह जाति पर आधारित व्यवस्था है। देश की जो वर्ण व्यवस्था है, जो सामाजिक व्यवस्था है, यह जाति पर आधारित व्यवस्था है। इस व्यवस्था में वर्ण में जो जितने बड़े हैं, उनको सम्मान मिलता है और इस सामाजिक व्यवस्था में जो निचले लोग हैं, वे अपमानित होते हैं, कहीं उसी तरह से कोलेजियम व्यवस्था तो नहीं है? कभी-कभी यह टिप्पणी होती है कि इस व्यवस्था में नियुक्ति और स्थानांतरण में भाई-भतीजावाद और परिवारवाद की भी बू आती है।

महोदय, न्याय का मंदिर, जहां से देश न्याय की अपेक्षा रखता है, संविधान भी विश्वास करता है, सारे लोग उस पर विश्वास करते हैं, अगर वहां पर भाई-भतीजावाद और परिवारवाद की बू आएगी तो हम समझते हैं कि यह न्याय के लिए उचित नहीं होगा। लोग कहा करते हैं और कई बार ये टिप्पणियां आती हैं कि उसमें अच्छे-अच्छे वकील और अच्छे जानकार लोगों को जज बनने का मौका नहीं मिलता है और जो लोग परिवार से आते हैं, उस खानदान से आते हैं, उनके पास कोई योग्यता नहीं होती है, उनको जज बना दिया जाता है। इसलिए हम सदन से यह कहना चाहेंगे कि जो भी पेंशन, वेतन और भत्ते का संशोधन विधेयक लाया गया है, हम निश्चित तौर पर इसको सपोर्ट करते हैं। सभापति महोदय, यह भी देखना है कि देश की 130 करोड़ जनता जिस न्याय की अपेक्षा से माननीय सुप्रीम कोर्ट और माननीय हाई कोर्ट पर विश्वास करती है, उनको जल्द से जल्द न्याय मिले। देश एवं प्रदेश की कोर्टों में जजों की बहाली जल्द से जल्द हो, ताकि केसों का निष्पादन जल्द से जल्द हो सके। जो लोग जेलों में बंद हैं, उनको समय-सीमा के तहत बाहर निकाला जाए, क्योंकि सजा खत्म होने के बाद भी बहुत लोग जेलों में बंद हैं। इन्हीं शब्दों के साथ मैं इस विधेयक का समर्थन करते हुए अपनी बात समाप्त करता हूं।

SHRI PINAKI MISRA (PURI): Mr. Chairman, Sir, I am thankful to you for giving me this opportunity to present my party, the Biju Janata Dal's views on this piece of legislation, which the learned Law Minister has brought in for passage in this House.

I am a little surprised that none of my predecessor speakers have expressed any concern about the wording of this Bill, the import of this Bill because I think, there is some concern in the manner in which the Government has brought this Bill. I am surprised that, including the Congress party, every party wholeheartedly has supported this Bill. Since everybody has spoken about everything else except the Bill, I think I should speak a little bit on the Bill, and try and enlighten the House as to what the Bill attempts to do.

The Government, in its wisdom, had brought about an amendment both in the Supreme Court Judges' Salaries Act as well as in the High Court Judges' Salaries Act, to insert Section 16B in the Supreme Court Judges Act and Section 17B in the High Court Judges' Act, to basically cater to ageing Judges, Judges who reach the age 80, 85, 90, 95 or after their death, their families. That was the import; that was the idea.

Now, the wording at that point was about that additional quantum of pension or family pension for Supreme Court Judges, High Court Judges, and their families, and that they are entitled to additional quantum from 80 years to less than 85 years, from 85 years to less than 90 years, from 90 years to less than 90 years. The word 'from' led to some disputes as to what does it mean. So, the Guwahati High Court and the Madhya Pradesh High Court -- both the High Courts -- said that 'from' will mean 'from the day you enter that age.' Now, very importantly, a writ of mandamus was issued to the Central Government, the Union of India. The Union of India challenged this in the Supreme Court. On 8th July, 2019, the Chief Justice had got three Judges where the learned Solicitor-General, Mr. Tushar Mehta appeared for the Union of India and attempted to have that mandamus set aside; and the hon. Supreme Court said:

“Delay condoned. Having heard learned Counsel for the petitioner and on perusing the relevant material, we are not inclined to

interfere. The Special Leave Petition is accordingly dismissed.”

So, the Guwahati High Court Judgment and the Madhya Pradesh High Court Judgment attained finality.

Now, what does the Government want? The Government wants to bring a validating Act to ensure that Parliament now nullifies the Guwahati High Court and the Madhya Pradesh High Court Judgments. That is what the Law Minister wants us to do.

I am not able to persuade myself to vote in favour of such an action, with the greatest respect.

HON. CHAIRPERSON: Has the matter not gone to the Supreme Court?

SHRI PINAKI MISRA: The Supreme Court, having already now, dismissed the Union’s appeal, I think, the Union Government should, in all grace, have accepted the mandamus that was issued, and have accepted the Judgment. Rather than that, they are bringing a validating Act and, as the hon. Chairperson, who is very, very knowledgeable in legal matters, knows very well -- this is the law for the last 50 years -- that Parliament cannot nullify a mandamus by an enactment. It would be an impermissible legislative exercise, and even an interim direction cannot be reversed by a legislative veto. These are two final Judgments of the High Courts.

The Parliament is now being persuaded to nullify a mandamus by an enactment by the learned Law Minister.

Sir, my party, the Biju Janata Dal, which is for an independent, vigorous and vibrant Judiciary, cannot countenance an action by which the final mandamus of the High Courts, upheld by the Supreme Court, is sought to be nullified in this fashion by a legislation by Parliament.

18.00 hrs

I do not think, that is the way forward for us. I think, most of my colleagues here, who are learned senior advocates, who know the law, would be persuaded to agree with me that this is possibly not a correct course of action. I would urge the Government to reconsider and not be churlish in these matters. We know that it is very difficult to get good members and earning members of the Bar to become judges. The lawyers who are earning handsome amounts in private practice do not want to become High Court Judges. What is the signal you are sending out? Do you want to slash a year's pension of the judges and their families by doing this? Is that the right signal we are sending out to the lawyers who are to be persuaded today? I know the fact that the Chief Justice of High Courts had, actually, called young lawyers into their chambers, who are in mid 40s and late 40s, and personally asked them virtually as a favour: "Look, this is a public service. This is a duty to the nation. You made enough money for you and your family. Please come and serve the nation."

HON. CHAIRPERSON: Pinaki Misra ji, we have to extend the time of the House. If the House agrees, we can extend the time of the House till 8 p.m.

SEVERAL HON. MEMBERS: Yes.

SHRI PINAKI MISRA: Therefore, Mr. Chairman, I would urge the Government very seriously that this ought to be relooked at, particularly, when we have a new Law Minister today. I am happy to say that he sent out all the right signals so far. The fact that nine judges were appointed to the Supreme Court in one go and very quickly after the Collegium had recommended those names sends out a very good signal. Three of them are lady judges. We have, now, been fortunate that hopefully we will have the first women Chief Justice of India when many other countries in the world

have had woman chief justices. So, the congratulations are in order for the Law Minister.

There has been a very bad stalemate that not a single Supreme Court Judge could be appointed through all of 2020. That is a very sad state of affairs. The manner in which the Collegium has functioned, I am one with my colleagues who have said that the Collegium system has many fault lines. Then, again, I want to request the Law Minister one thing. This House has passed the National Judicial Appointment Commission Bill unanimously. This House and the Rajya Sabha excepting –Mr. Ram Jethmalani, God blesses his soul, who is in his wisdom was always a dissenter – Mr. Jethmalani, everybody else, 750 odd MPs, voted for the NJAC. I believe and, I think, the Law Minister as well as many of my colleagues will agree with me on one thing. The Supreme Court would have, actually, upheld it but there was a little tweaking. We know what happened in the Supreme Court. If the Government had not dug its heels in and gone hell for leather in the Supreme Court or if they had been a little more accommodating, I think, the Supreme Court would have upheld this legislation. But, even today, there is no harm in us coming back with a fresh piece of legislation and with a fresh NJAC Bill in order to cure one or two of the defects which the Supreme Court felt. It is all well-known what had happened with the NJAC Act and why it was struck down by 4:1. I think, the Government, in its wisdom, should bring a fresh piece of legislation today which will be passed. I think, the Law Minister is mindful of this.

We have, fortunately, today a Chief Justice of India who is truly willing to take all stakeholders on board. He is willing to take all the players on board. He is going in for a very wide consultation. He and the Law Minister are in perfect sync with each other. Therefore, this is the right time, I believe, that the whole problem that this nation has of vacancy of judges can be solved. Your answer to the Rajya Sabha the other day, Mr.

Law Minister, was alarming that there are 406 High Court Judgeships vacant today. I mean, that is an astonishing number. It is almost 40 per cent vacancies. How can this country survive on 70 per cent judges when there are 56.42 lakh arrears in the High Courts? We have yet to fill up 40 per cent vacancy. I mean, somebody is answerable for this. I think, somebody, as young and dynamic as you, must persuade the Judiciary to set aside their differences and push the names. Names are already there but I do not know how many names are pending with the Government. I believe, more than 100 names are pending with the Government. I do not want to go into the individual names. Many of my colleagues have mentioned individual names but I do not believe, judges by individual names should be mentioned on the floor of the House.

That is probably not the correct course of action. But, please for God's sake, try and clear, regardless of what your personal anxiety sometimes is, in these matters of x, y and z. Try and clear as many names as you can, as quickly as possible because there are 56.42 lakh cases of arrears in High Courts. It is an astonishing number. There are 4 crore cases in the lower courts. The other distinction that we have, *vis-à-vis* China, is that ours is a nation governed by the rule of law. We say that India is an attractive destination because there is a rule of law here that obtains. What is the rule of law if there are going to be 4 crore cases in the trial courts, 56.7 lakh cases in the High Courts, and almost 70,000 cases in the Supreme Court? Therefore, Mr. Law Minister, you have to proactively push for vacancies in the High Courts and the Supreme Court now to be filled up.

The last thing that I have to tell you, and which I have been saying since 1996 is this. The age of the Judges must be at par. My friend, late Mr. Arun Jaitley, of course, did nothing when he was in power. But when he was in Opposition, he said the right thing. He asked why can the retirement age of all the Judges not be 67. The Supreme Court and the High Courts shall

make the retirement age as 67 but then, there should not be post-retirement sinecures. Let the Judges be elected. If they wish to serve in a Tribunal, if they wish to serve in any other institution, then let them be elected. Let them go and serve there but up to the age of 67. Please make it at par.

The High Court is a constitutional court under our system. As Justice Srikrishna very trenchantly said, most of the Chief Justices and senior Judges of High Courts are looking northwards, that is, towards the Supreme Court. Therefore, that is a very sad state of affairs. You are reducing the status of constitutional courts to subservient courts, which are constantly looking for approval from the Supreme Court. Therefore, please have all the Judges retire at the age of 67, and then, let them ensure that they get elected to whichever position they wish to serve on. If they wish to serve in a High Court, or the Supreme Court, or a Tribunal, or in any other institution, they should be allowed to do so but let them be elected.

Therefore, on these terms, I would urge the hon. Law Minister to firstly kindly reconsider this piece of legislation. It is because I find this legislation absolutely unconstitutional. I really do not believe that this Parliament has the jurisdiction to pass this piece of legislation as a validating legislation. The Supreme Court having rejected your SLPs, there is no way that Parliament should be party to this.

I once again thank you very much for having given me this opportunity.

HON. CHAIRPERSON: Thank you very much, Pinaki Misraji for the brilliant speech.

Now, Shri Shyam Singh Yadav.

श्री श्याम सिंह यादव (जौनपुर): सभापति जी, आपका धन्यवाद कि आपने मुझे बोलने का मौका दिया । यहां पहले बोलने वाले वक्ताओं ने जो सुप्रीम कोर्ट, हाई कोर्ट

में एडवोकेट थे, अपनी बात कही। मैं भी इस मौके का फायदा उठाना चाहता हूँ और बताना चाहता हूँ कि मैं इलाहाबाद यूनिवर्सिटी से एमएससी, एलएलबी हूँ और जैसा कि मेरे पूर्ववक्ता ने कहा कि उनका नाम 37 साल में हाई कोर्ट के जज के लिए रिक्मेंड हो गया था। उसी संदर्भ में मैं कहना चाहता हूँ कि मेरी मजबूरी थी क्योंकि मैं नौकरी कर रहा था इसलिए प्रैक्टिस में नहीं जा पाया। वैसे मैं सुप्रीम कोर्ट का रजिस्टर्ड लायर हूँ। यदि मैं प्रैक्टिस करता, तो शायद मेरा नाम 35 साल में ही हाई कोर्ट के जज के लिए आ जाता।

महोदय, यह बहुत छोटा-सा बिल है। डिविजन बेंच के मध्य प्रदेश हाई कोर्ट ने एक जजमेंट दिया कि हाई कोर्ट और सुप्रीम कोर्ट के जो जज साहिबान हैं, इनकी पेंशन का स्लैब कब से शुरू होना चाहिए और उसमें यह देखा गया कि उनकी 80 साल की उम्र के बाद पेंशन लगेगी। पहले यह था कि 79 साल पार होते ही जैसे ही 80वां साल शुरू होता था, तब पहली जनवरी से पेंशन शुरू हो जाती थी। लेकिन उन्होंने अब क्लैरीफिकेशन दिया कि 80 साल पूरे होने के बाद पहली जनवरी से उनका पे स्लैब पेंशन का शुरू होगा। इसमें मैं सरकार से कहना चाहता हूँ कि जो एडिशनल क्वॉंटम ऑफ फैमिली पेंशन का पे स्लैब उन्होंने बनाया जैसे 80 से 85 साल, 85 से 90 साल और 90 से 95 साल 40 परसेंट बेसिक पेंशन और फैमिली पेंशन होगी। क्या सरकार यह नहीं सोचती है कि कोई जज 95 साल के बाद भी जिंदा रह सकता है?

इसको बनाने में थोड़ी भूल हो गई है। इतना ही लिख दिया जाता कि 90 वर्ष से अधिक आयु वाले जजेज जब तक जीवित रहेंगे, तब तक ऐसा रहेगा। मैं सरकार को यह सुझाव देना चाहता हूँ, क्योंकि जब 95 वर्ष से ऊपर की आयु वाले जजेज के लिए कुछ लिखा ही नहीं गया है, तो उनका क्या होगा?

18.11 hrs

(Shri Bhartruhari Mahtab *in the Chair*)

... (व्यवधान) महोदय, 95 वर्ष के बाद सभी के लिए 40 परसेंट एडीशनल पे-स्लैब होना चाहिए। मैं यह भी कहना चाहता हूँ कि उनकी पेंशन को घटाकर 01 जनवरी से 80 साल की जगह, 81 साल के आधार पर कर दिया गया है। मेरे हिसाब से यह बड़ा रेट्रोग्रेसिव स्टेप है। यदि बिल लाना ही था, तो उनकी पेंशन का एक साल घटाने की बजाय थोड़ा और क्यों नहीं बढ़ा सकते थे? उसको यह भी किया जा सकता था कि 75 साल पूरा हो जाने के बाद 76वें साल से ही उनको पेंशन दे दी जाए, तो यह जजों के लिए एक अच्छा कदम होता। जो सिटिंग जजेज हैं, उनकी बहुत तनख्वाह होती है और उनको बहुत पर्स मिलते हैं। जो बेचारे रिटायर्ड जजेज हैं, उनको मैं बेचारा इसलिए कह रहा हूँ, क्योंकि उनको जो भी पेंशन मिलती है, वह उनकी तनख्वाह से आधी या एक तिहाई होती है। सरकार ने महंगाई इतनी अधिक बढ़ा दी है, इतना इनफ्लेशन बढ़ा दिया है कि वे बड़ी मुश्किल से अपना गुजारा कर पाते होंगे, ऐसा मेरा मानना है।

महोदय, मैं सरकार से यह अनुरोध करना चाहता हूँ कि रिटायर्ड जजेज की पेंशन की स्लैब को और बढ़ा दिया जाए। जिस तरह से माननीय हाईकोर्ट के जज, जिन्होंने यह एक्सप्लेनेशन दिया, जिनका नाम श्री वीरेन्द्र दत्त ज्ञानी है, वह वास्तव में ज्ञानी हैं और उन्होंने इसका क्लैरीफिकेशन काफी अच्छा दिया है। जिस तत्परता से सरकार यह अमेंडमेंट इस जजमेंट के बाद लाई है, उसी तत्परता से अन्य कामों को भी करे। वैसे तो मैं इस सरकार की तत्परता की कभी-कभी तारीफ भी करता हूँ। चाहे पुलिस हो, ईडी हो, सीबीआई हो, इनकम टैक्स हो, नारकोटिक्स विभाग हो या कोई अन्य विभाग हो, इनको सरकार ने जकड़ रखा है और उनको नचाती है, तथा अपने हिसाब से घुमाती और अपने हक में यूज करती है। है। मैं एक-दो उदाहरण आपको देना चाहता हूँ। पहले कांग्रेस सरकार भी यही काम किया करती थी, लेकिन जब विरोधियों की कोई बात होती थी तो कांग्रेस महीना-दो महीना इंतजार करके यह काम करती थी। आपने कई जगह देखा होगा, जैसे कि कर्नाटक में एक पार्टी अपने विधायकों की खरीद-फरोख्त होने से रोकने के लिए उन्हें एक रिजॉर्ट में ले गई तो इनका इनकम टैक्स और ईडी विभाग के लोग उसी समय वहां पहुंच गए और तनिक भी देर नहीं की गई।

महोदय, कांग्रेस के जमाने में तो इसमें दो-चार महीने देर हो जाती थी, लेकिन इस मामले में वर्तमान सरकार काफी कुशल और तत्पर है। मैं सरकार से यह कहना

चाहता हूँ कि इतनी तत्परता और कुशलता बेरोजगारी, महंगाई, नौकरी और तमाम विकास के मुद्दों पर भी दिखाए। मैं इस बिल के माध्यम से यह कहना चाहता हूँ कि माननीय जजेज के ऊपर भी अंगुली उठने लगी है। कृपया कुछ ऐसा करें कि जनता का विश्वास उन पर बना रहे। केवल ज्यूडीशियरी ही एक ऐसा विभाग रह गया है, जिस पर जनता का पूरा भरोसा, विश्वास और यकीन है, लेकिन जिस तरह से ज्यूडीशियरी सिस्टम पर अंगुलियां उठने लगी हैं, उसे देखते हुए आने वाले समय में वह दिन दूर नहीं होगा, जब इस डिपार्टमेंट को भी जनता कोसने लगेगी। इनमें घुन, दीमक और टरमाइट लग चुके हैं। इसे बचाने और अपनी इमेज को सुरक्षित करने की जरूरत है।

मैं भारत सरकार से कहना चाहता हूँ कि आम जनता का यह विश्वास है, उसे यह संशय है कि जो शिकंजा सरकार ने अन्य विभागों के ऊपर कसा है, वैसा ही शिकंजा उसने जूडिशिएरी पर भी कसा है। सरकार अपने शिकंजे को हटाए और जूडिशिएरी इंडिपेंडेंट ढंग से काम करने लगे। इसी तरह से जूडिशिएरी जनता के अहम मुद्दों को, जैसे कश्मीर मुद्दा है, राफेल मुद्दा है या अन्य तमाम मुद्दे हैं, जो सालों से लटके हुए हैं, उन्हें जल्दी से जल्दी लाकर, उनकी तारीख लगाकर, उनकी जल्द से जल्द सुनवाई करके जनता को न्याय दे।

इन्हीं शब्दों के साथ न तो मैं इस बिल का समर्थन करता हूँ और न ही विरोध करता हूँ। मैं अपनी इस बात को कहता हूँ कि जजेज के लिए इतना दे दो, इतना दे दो और रिटायर्ड जजेज के लिए भी इतना दे दो कि वे कहीं इधर, उधर ना देखें और अपना काम स्वतंत्र और निष्पक्ष रूप से कर सकें।

महोदय, आपका बहुत-बहुत धन्यवाद।

SHRI MOHAMMED FAIZAL P.P. (LAKSHADWEEP): Thank you very much, Chairman, Sir, for allowing me to speak on this very important Bill. I am also thankful to my party for reposing faith in me to speak on the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill, 2021.

My learned friends and senior colleagues, who are also senior advocates, have gone very thoroughly into various aspects of the Bill. I am not going to repeat what my hon. learned friends have already elucidated here.

We all know that the legislative intent behind this Bill is to provide benefit of additional quantum of pension to a retired Judge from the first day of the month in which he completes the age specified in the first column of the scale and not from the first day of his entering the age specified therein. Shri Pinaki Mishra ji has very well put his points on the competency of the Bill with regard to that. There is no doubt that we should give them benefits to the possible extent for the kind of service the judges of the Supreme Court and the High Court render to the nation. But, at the same time, the Government should also think of the proportionate pendency of cases and the vacancies as of now in the country.

Justice should be delivered within the right time. But due to pendency of cases, it is not possible. Our Constitution also says that justice delayed is justice denied. This is directly attributed to the vacancies that need to be filled up. There are lakhs and lakhs of cases pending for want of justice in the Supreme Court, the High Courts, and the subordinate courts. This is an alarming situation and the Government of India should take a call on it. The sense of the House is that we should adopt the best method for filling up of vacancies of the judges in various courts so that timely justice is delivered to the common people.

We must also think of alternative dispute redressal forums. The Government must promote alternative dispute redressal system so that the common man can get justice before entering the court. The pendency of the cases can also be brought down to the minimum by technological upgradation and modernisation of the courts. The formalities of filing a case in the court like filling up lot many papers should be reduced. Though after

the pandemic this has become online, but a system should be developed in such a way that procedures in the court are made easy.

We must also think of the unnecessary executive orders which attract people to the court. For instance, in my constituency of Lakshadweep, nowadays people have started rushing to the High Court. You know what is happening. The Law Ministry has issued a circular saying very clearly that if any State or Union Territory wants to bring in a piece of legislation, the pre-legislative consultation process must be in place before making a law.

I am the lone Member of Parliament from Lakshadweep. What happened in Lakshadweep was, there were a slew of legislations which attracted wide protests from the people across the party. What was the reason? There was not a single pre-legislative consultation in these cases like the enactment of PASA regulation. What is the requirement of PASA regulation in Lakshadweep? The Home Ministry's National Crime Records Bureau says that there are zero cases in the island and no objectionable decisions have been taken. But all of a sudden, the Administration decided that PASA regulation should be implemented there. I am thankful to the Home Ministry that it has frozen that for now. But the point is, on that decision people are forced to approach the court, which again is adding to the pendency of cases in the court.

Lakshadweep has become an area where no one can protest. Even a case was registered against me when I protested against the price hike of helicopter ambulance. When the Government is not putting things in place in the hospitals, the patients are supposed to be evacuated by helicopter ambulance. The helicopter ambulance should operate on a free basis but there was 100 per cent hike in prices. A patient has to pay a minimum of Rs. 20,000 before he goes for the treatment. When we protest for such things, for which Article 19 gives us power under the Constitution, FIR is filed against us. For that again, we are going to the court. So, all these

unnecessary executive orders also need to be looked at by the Government. There was an attempt by the Lakshadweep Administration to change the jurisdiction of the High Court of Kerala to Karnataka, precisely, when the present Administrator took charge.

HON. CHAIRPERSON: Article 19 gives you the right.

SHRI MOHAMMED FAIZAL P.P.: Yes, Sir.

The most popular language and which the people of Lakshadweep speak is Malayalam. Proceedings will be easy for us to understand if the court is in Kerala. The name of the court is the hon. High Court of Kerala and Lakshadweep. An attempt was made to shift the court from Kerala to Karnataka. The hon. Law Minister has got a Starred Question on this. He has to answer that question. This decision was dropped because of the protests.

So, my point here is that unnecessary executive orders also contribute in piling up of the cases. I support this Bill on behalf of my party. Thank you so much, Sir.

SHRI KODIKUNNIL SURESH (MAVELIKKARA): Hon. Chairman, Sir, thank you for giving me the opportunity to speak on this important Bill, that is, the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill, 2021.

This Bill seeks to amend the High Court Judges (Salaries and Conditions of Service) Act, 1954 and the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958. These Acts regulate the salaries and conditions of service of the judges of High Courts and the Supreme Court of India. Further, the Bill provides for additional quantum of pension or family pension. Under the Acts, all retired judges of the Supreme Court and High Courts and their family members are entitled to pension or family pension.

They are also entitled to an additional quantum of pension or family pension when they attain a certain age in accordance with a specified scale. The scale contains five age brackets with minimum age of 80, 85, 90, 95, and 100 years, and the additional quantum increases with age from 20 per cent to 100 per cent of the pension or family pension.

This Bill clarifies that a person will be entitled to additional pension or family pension from the first day of the month in which they complete the minimum age under the age bracket concerned. So, the Bill is a piece of protective legislation that ensures economic wellbeing of the judicial fraternity in the country even at a time when the ongoing COVID-19 pandemic has caused immense unemployment, loss of jobs, and even suicides of several Indians who were unable to feed their children or were unemployed all of a sudden due to it.

When families are being decimated due to unemployment and economic hardship, the Government has chosen further to help and support the judiciary by a pension scheme and generous salary. While the decision is appreciable as it has been a long-standing demand of the judicial fraternity, lets look into matters that are equal and important in nature. There are four crore plus pending cases across all courts in India. Hon. Members who have spoken in this House have also mentioned about this issue. These figures further reveal that cases that are more than 3-5 years old form the largest number of cases that are pending.

I would like to quote former Chief Justice Markandey Katju who stated in 2019 : “Even if no cases were added, it would take at least 300 years to dispose the entire backlog of cases”. Who is the most affected party due to such backlogs? The Government should give a reply to this question. It is the poor, the Dalits, and the marginalised who will be affected as justice gets delayed and the process gets indefinitely lengthy. Therefore, the

judiciary must make sure that justice is not denied or delayed to the poorest even when it is ensuring its perks and emoluments.

I would like to bring your attention to the Report titled 'Landmark cases of caste-based sexual violence from 1985-2021' released by the National Council of Women Leaders. The Report exposes invisibilisation of cases by the judiciary and upper caste brutality against Dalit women. The Report that carries references of twelve major cases states further that : "... in none of the cases mentioned in its Report, a decision was taken within a year. Only in three out of the twelve mentioned cases, there was a conviction of the accused. Even here, the conviction in two out of these three was for murder, and the court chose not to apply the SC / ST Atrocities Act. The position is clear that the judiciary is not doing its duty when it comes to Dalits, and their rights are not honoured or maintained.

Now, I am very happy to note this Bill being discussed for such a long time in the House. I am saying this because during the BAC some of the Members asked the reason for allotting so much time for this Bill. But I argued that this is a very important Bill.

HON. CHAIRPERSON: You cannot say what transpired in BAC.

SHRI KODIKUNNIL SURESH: Yes, but there was such a suggestion.

HON. CHAIRPERSON: You have widely referred to it.

SHRI KODIKUNNIL SURESH: Yes. Of course, this Bill is related to salary and pension, but at the same time hon. Members have spoken on various aspects and problems being faced by our judiciary. Hence, I had made such a suggestion.

Now, I want to express the feelings of having Scheduled Castes and Scheduled Tribes in the judiciary.

What is the situation? Everybody knows about it. I am not going into the details. The fact is that in the 70 years of its existence, India's Supreme Court has seen only eight women Judges and one Dalit Chief Justice of India. This is the testament to the reality that the composition of our Judiciary is not representative of our population.

When, Shri K.R. Narayanan became the President of India.... ...
(Interruptions) ... *

HON. CHAIRPERSON: You don't have to say that. This will not go on record. Don't mention that.

SHRI KODIKUNNIL SURESH: I agree.

Anyway, I am very proud of that. I am from Kerala. I am very proud to say that the Dalit Chief Justice of India, Shri K.G. Balakrishnan, belongs to Kerala. After the Dalit Chief Justice of the Supreme Court, I think, there is no chance to have Dalit Judges in the Supreme Court or the Chief Justices in the High Courts. These kinds of disparities are going on in the country. After Independence, representation of the Scheduled Castes and the Scheduled Tribes in our Judiciary is going away from us.

Recently, on 17th August, 2021, a major landmark resolution was made by the Supreme Court Collegium, with a series of firsts, with the appointment of three women Judges. I am very glad to say that in 2027, we are expecting a woman Chief Justice of the Supreme Court. The Collegium has also proposed names of Judges from both the Scheduled Castes and the OBCs – Justice C.T. Sivakumar and Justice M.M. Sundaresh respectively.

The Judiciary has been slow in ensuring the representation of the Scheduled Castes and women as judicial officers as it took 70 years or so in making the wheels of an inherently biased system to approve the

representation of the marginalised and women move in a positive direction. The present decision in Judiciary even in a small fraction is appreciable. However, this does not mean that the longstanding demand of various lawmakers to ensure reservation of the Judges is taken up by the Government or the Judiciary debating this most sensitive matter as reservation is the only way for the SCs and the STs to ensure their rightful representation in the judicial system.

I demand once again that the Government should implement the reservation policy in judicial appointments in India so that the Dalits will get an opportunity in representing themselves in the highest forum of justice that is otherwise biased against them. Sir, you are aware of that. Among the SCs and STs, there are eminent lawyers, senior advocates but why is the Collegium not considering the SC and ST advocates for nomination as Judges of the Supreme Court and the High Courts. It is very unfortunate. This is an historic debate as far as the SC and the ST people are concerned. That is why, I am expressing my anguish and deep pain about the lack of representation of the SCs and STs in our Judiciary.

If '*Azadi Ka Amrit Mahotsav*' is to have any meaning, the Government must ensure reservation of Dalits in the Judiciary and make the 75th year of Independence truly meaningful. Are our Judges fair and transparent is a question that merits a discussion? There are instances where former Chief Justice of India Justice ... (*Interruptions*) ... * was rewarded with a nomination to Rajya Sabha, immediately after his retirement, for his support to the Government of the day, and Justice Kishan Loya found dead under mysterious circumstances.

Another former Chief Justice of India was appointed the Governor of Kerala immediately after he retired. His name is ... *. You are very much aware of it. Will the Loya's family ever get justice? Will the Dalits and marginalised get timely and fair justice? Will the pendency of cases ever be

reduced so that people do not have to spend a lifetime in courts waiting for judgments?

These are the questions that Parliament must ask while deciding on the salary and pension of the judges. I would also like to add that Chief Justice Ramana suggested appointment of a central agency, with a degree of autonomy, for overseeing infrastructure development of the subordinate courts in India which is an important aspect to increase the efficiency of the courts.

It is important to note that out of total of Rs. 981.98 crore sanctioned in 2019-20 under the Centrally Sponsored Scheme (CSS) to the States and Union Territories for the development of infrastructure in the courts, only Rs. 84.9 crore was utilised by the five States combined rendering the remaining 91.36 per cent of funds unused.

This underutilisation of funds is not an anomaly induced by the COVID-19 pandemic. This issue has been plaguing the Indian judiciary for nearly three decades when the CSS was introduced in 1993-94.

This is one of the reasons why the Chief Justice of India, Justice N. V. Ramana, recently proposed the creation of National Judicial Infrastructure Authority of India which will take control of the budgeting and infrastructure development of the subordinate courts in the country.

I would like to add that the Indian judiciary infrastructure has not kept pace with the huge number of litigations instituted every year as the total sanctioned strength of the judicial officers in the country is 24,280 and the number of court halls available is just 20,143 including 620 rented halls.

Hon. Chairman, Sir, we have to start from the basic that includes infrastructure development, dispensation of cases with effective speed and reduction in pendency. These matters are to be addressed, as the hon. Chief

Justice has pointed out, by means of a single institution or agency, the National Judicial Infrastructure Authority of India, which will take control of the budgeting and infrastructure development of subordinate courts in the country.

I would conclude by saying that justice delayed is not justice denied, but justice destructed and diminished also. The judicial system while deliberating on salaries and pensions must also ensure that justice is served on time.

HON. CHAIRPERSON: Suresh ji, you gave a very elaborate logic. Thank you very much.

Before I call on Mr. Rajendra Agrawal to speak, I just have to share an information which has been communicated to me from the hon. Speaker that whoever will be speaking after this will be speaking for only three minutes because we have to conclude by 7:30 pm in order for the hon. Minister to start the reply at 7:30 pm. I hope everybody agrees to it.

श्री राजेन्द्र अग्रवाल (मेरठ): आदरणीय सभापति जी, आपने मुझे “दी हाई कोर्ट एंड सुप्रीम कोर्ट जजेज़ (सैलरीज़ एंड कंडीशंस ऑफ सर्विस) अमेंडमेंट बिल, 2021” पर बोलने का अवसर प्रदान किया, इसके लिए मैं आपका बहुत-बहुत आभार व्यक्त करता हूँ। वैसे तो यह संशोधन बहुत छोटा है।

माननीय सभापति: परंतु महत्वपूर्ण है।

श्री राजेन्द्र अग्रवाल: यह महत्वपूर्ण तो है, डेफिनिटली महत्वपूर्ण है। संसद में कोई भी चीज आती है, तो वह महत्वपूर्ण ही होती है। जिस विद्वता के साथ, जिस अध्ययन के साथ हमारे साथियों ने बोला है, उसमें उनकी वकालत का भी अनुभव था, it was more of an experience rather than listening to all of them. यदि मैं अपने स्तर से बात करूँ, तो एक सामान्य नागरिक के नाते मेरी पृष्ठभूमि वकालत की नहीं है।

मेरे ध्यान में जो छोटी-मोटी बातें आती हैं, वह कहना चाहता हूं।

माननीय सभापति: मैं एक प्रश्न पूछ सकता हूं, आप लिटिगेंट तो रहे होंगे?

श्री राजेन्द्र अग्रवाल: महोदय, मैं वादकारी के नाते ही बोलूंगा। कहा जाता है कि वादी का हित सर्वोपरि है। मैं उस नाते ही पक्ष रखने का प्रयास करूंगा।

अगर हम पृष्ठभूमि की बात करें तो सरल है कि वर्ष 2008 में केंद्र सरकार ने छठे पे कमीशन के अंतर्गत एक निर्णय किया और सिविल सर्वेंट्स की पेंशन बढ़ाई गई। 80, 85 वर्ष के बारे में निर्णय किया, यहां उसकी चर्चा भी हुई है। तदनुसार एक महीने बाद एक क्लेरिफिकेशन भी जारी हो गया। जजों की सैलरी के बारे में भी इसी प्रकार एक्ट में संशोधन किया गया, परंतु उसमें कुछ क्लेरिफिकेशन नहीं था। मैं इसकी डिटेल्स में नहीं जाता हूं, गवाहाटी हाई कोर्ट में या मध्य प्रदेश हाई कोर्ट में, 80 वर्ष का अर्थ है कि जब 80 वर्ष शुरू होते हैं। एक प्रकार की एनोमली का निर्माण हुआ कि सिविल सर्वेंट्स के लिए 80 वर्ष पूर्ण होने पर और जजों के लिए 80 वर्ष शुरू होने पर, मैं समझता हूं कि इस विसंगति को दूर करने के लिए यह संशोधन लाया गया है।

इस बिल में संशोधन तो इतना ही है, जैसा मैंने कहा कि यहां बहुत पहलुओं पर चर्चा हुई है, विद्वान साथियों ने चर्चा की है, लेकिन वादकारी के नाते मैं कुछ बातों के बारे में निवेदन करना चाहता हूं। बहुत बार यह बात कही जाती है और यहां भी कही गई है – Justice delayed is justice denied. मैं उत्तर प्रदेश और पश्चिम उत्तर प्रदेश की बात करूं या सामान्यतः पूरे देश की बात करूं तो जो पैडेंसी इस समय है, वह वास्तव में बहुत अधिक है। लगभग साढ़े चार करोड़ के करीब केसेज़ सुप्रीम कोर्ट, हाई कोर्ट और अधीनस्थ कोर्ट्स में पैडिंग हैं। इनमें 41 परसेंट केस, खास तौर से हाई कोर्ट में हैं, मैं इस पर कन्सन्ट्रेंट करूंगा, जो कि पांच वर्ष से भी पुराने हैं। 21 परसेंट केस ऐसे हैं जो दस वर्ष से भी अधिक पुराने हैं। निश्चित रूप से ज्यूडिशियल सिस्टम की एफिशिएंसी बढ़ाने के लिए उपाय किए गए हैं। फास्ट ट्रैक कोर्ट भी बने हैं, कहीं पर विशेष कोर्ट भी बने हैं, ट्रिब्यूनल्स भी बने हैं, लेकिन ऐसा लगता है कि पैडेंसी की समस्या से मुक्ति मिलने में देर लग रही है।

मैं सामान्यतः उत्तर प्रदेश की बात करूं तो अपराधी के विषय में न्याय त्वरित नहीं होता है तो अपराध बढ़ता है और प्रत्येक स्तर पर अपराधी की हिम्मत बढ़ती है।

इसके साथ एक पहलू यह भी है कि आज देश के अंदर लगभग पांच लाख कैदी विभिन्न जेलों में बंद हैं। इनमें दो-तिहाई कैदी ऐसे हैं, जिन्हें अपराध के कारण जो अधिकतम सज़ा होती, उससे अधिक समय से जेलों के अंदर हैं। ये सब इस वजह से है कि कहीं न कहीं न्याय व्यवस्था के डिलीवरी सिस्टम में कमजोरी है या कोई कमी है।

मैं उत्तर प्रदेश और पश्चिमी उत्तर प्रदेश की बात करूँ तो हमारे यहां इलाहाबाद उच्च न्यायालय है। उच्च न्यायालयों में जितने केस लंबित हैं, उनमें आठ लाख इलाहाबाद हाई कोर्ट में पैडिंग हैं। आठ लाख केसेज़ में पश्चिम उत्तर प्रदेश का हिस्सा सर्वाधिक है। मैं मानता हूँ कि उत्तर प्रदेश में हाई कोर्ट बैंचेज़ की बहुत कमी है, इसलिए उत्तर प्रदेश के कैदियों को न्याय मिल नहीं पाता है। यहां हाई कोर्ट की बैंचेज़ होनी चाहिए।

सबको पता है कि उत्तर प्रदेश जनसंख्या की दृष्टि से सबसे बड़ा है। यहां 24 करोड़ जनसंख्या है। इलाहाबाद उच्च न्यायालय तो है ही, लखनऊ में बेंच है जिसके पास 12 जिलों का ज्यूरिस्ट्रिक्शन है, बाकी जिलों का न्याय इलाहाबाद हाई कोर्ट से ही होता है। यदि हम जनसंख्या की दृष्टि से तुलना करें तो उत्तर प्रदेश की पापुलेशन 24 करोड़ है और एक मुख्य न्यायालय और एक पीठ है। महाराष्ट्र में 11 करोड़ की आबादी है, औरंगाबाद, नागपुर और पणजी, तीन हाई कोर्ट की सीट्स हैं। तमिलनाडु में मुख्य हाई कोर्ट के अलावा मदुरई है। मध्य प्रदेश में सात करोड़ की आबादी है, इंदौर और ग्वालियर में एक पीठ है। वैस्ट बंगाल में जलपाईगुड़ी, पोर्ट ब्लेयर है। कर्नाटक में साढ़े छः करोड़ की आबादी है, हुबली, धारावाड़ और गुलबर्गा की सीट्स हैं। अगर हम कुल मिलाकर जनसंख्या की दृष्टि से देखें तो उत्तर प्रदेश की इतनी बड़ी जनसंख्या को कैटर करने के लिए हमारे यहाँ जो उत्तर प्रदेश के अंदर हाईकोर्ट और उसकी लखनऊ वाली बेंच हैं, उससे ठीक प्रकार से पूर्ति नहीं हो पाती है।

यदि हम क्षेत्रफल की दृष्टि से देखें तो स्थिति यह है, मैं पश्चिम उत्तर प्रदेश के मेरठ से आता हूँ कि हाई कोर्ट के लिए हमारे बहुत सारे शहर ऐसे हैं, जहां से 600, 700 तथा 750 किलोमीटर चलकर इलाहाबाद जाना पड़ता है। सहारनपुर से

इलाहाबाद की दूरी 752 किलोमीटर है, शामली की दूरी 720 किलोमीटर है, मुजफ्फरनगर 692 किलोमीटर दूर है, बिजनौर व अमरोहा 692 किलोमीटर दूर है और मेरठ, जहाँ से मैं आता हूँ, वह 637 किलोमीटर दूर है। मैं सभी के बारे में बता सकता हूँ। हमारे यहाँ से इलाहाबाद हाईकोर्ट की दूरी 600 से 700 किलोमीटर तक है। हमारे अन्य प्रदेशों के जो हाई कोर्ट्स हैं, वे तुलनात्मक दृष्टि से करीब हैं। अभी हम लाहौर की बात नहीं करें। हमारे यहाँ से दिल्ली हाई कोर्ट 70 किलोमीटर दूर है। मध्य प्रदेश में ग्वालियर का जो हाई कोर्ट है, वह 368 किलोमीटर की दूरी पर है। राजस्थान का जयपुर हाई कोर्ट 335 किलोमीटर की दूरी पर है। हिमाचल प्रदेश में शिमला हाईकोर्ट 336 किलोमीटर की दूरी पर है। चंडीगढ़ हाईकोर्ट 239 किलोमीटर की दूरी पर है और नैनीताल 249 किलोमीटर की दूरी पर है। मैं आपके माध्यम से यह ध्यान में लाना चाहता हूँ कि इतनी अधिक दूरी है कि 6-7 अन्य प्रदेश के जो हाईकोर्ट्स हैं, वे हमारे क्षेत्र से इलाहाबाद हाईकोर्ट की तुलना में करीब पड़ते हैं।

अब इसके कारण क्या होता है, आप अनुमान लगा सकते हैं। मेरे इलाहाबाद के मित्र कहीं नाराज न हो जाएं, मैं उनके विषय में कुछ नहीं कह रहा हूँ। परंतु, दूर का जो वादी होता है, उनका जिस प्रकार से वहाँ एक्सप्लॉयटेशन होता है, मैं उसके डिटेल्स में नहीं जाना चाहता हूँ, चाहे वह फीस का मसला है, चाहे कोई अन्य चीजें हो, वह वहाँ जाएगा, रात में रुकेगा, कहीं किराये पर होटल लेगा, कहीं कुछ अन्य साधनों का इंतजाम करेगा, यानी स्थिति यह होती है, हमारे यहाँ एक कहावत बन गई है कि खेत के मुकदमे के अंदर मकान बिक जाते हैं।

माननीय सभापति: क्या हम यह समझें कि आपकी तरफ से या पश्चिम उत्तर प्रदेश से ज्यादा लिटिगेंट नहीं हैं?

श्री राजेन्द्र अग्रवाल : सर, मैंने अभी आपको बताया है कि काफी हैं। वह बड़ा हिस्सा है। हमारा क्षेत्र थोड़ा सम्पन्न है, वह लड़ता भी है और मुकदमे भी करता है। इसलिए, उसको वहाँ जाना पड़ता है।

यह विषय उत्तर प्रदेश के अंदर हाई कोर्ट की बेंचेज का विषय है। यह विषय बहुत पुराना है। यह आज से नहीं चल रहा है। हमारी मांग पूरी नहीं हो पाती है, वह अलग विषय है। सबसे पहले वर्ष 1955 में जब उत्तर प्रदेश में आदरणीय संपूर्णानंद जी मुख्य मंत्री हुआ करते थे। उन्होंने एक प्रस्ताव भेजा था। बात हुई थी कि आप

हमको हाई कोर्ट दीजिए या प्रदेश को बांटिए, क्योंकि प्रदेश बहुत बड़ा है। उन्होंने कहा कि हम प्रदेश तो नहीं बांटेंगे, लेकिन हम हाई कोर्ट की बेंच दे देंगे। लेकिन, वह मंजूर नहीं हुआ। उसके बाद भी आप देखें कि लगातार वर्ष 1976, 1977, 1978 में इसकी मांग होती रही। आंदोलन भी चलता रहता है। परन्तु, किसी भी प्रकार से हाई कोर्ट की किसी बेंच के लिए निर्णय नहीं हो सका। श्रीमती इंदिरा गांधी जी जब प्रधान मंत्री थीं, तब उन्होंने जस्टिस जसवंत सिंह की अध्यक्षता में एक आयोग बनाया था। उसने रिक्मेंडेशन दी कि उत्तर प्रदेश में एक पश्चिमी बेंच भी बननी चाहिए, उस समय उत्तराखंड भी उत्तर प्रदेश का हिस्सा था, यह वर्ष 1985 की बात है, अन्य स्थानों पर भी तीन बेंचेज बननी चाहिए। लेकिन वह भी नहीं हुआ। इसके अलावा लॉ कमीशन की 230वीं रिपोर्ट है, उसने भी कहा कि उत्तर प्रदेश जैसे जो बड़े प्रदेश हैं, वहां और भी अधिक बेंचेज बनाये जाने की जरूरत है और अन्य प्रदेशों में भी कुछ बेंचेज बन सकती हैं ताकि न्याय की जो उपलब्धता है, वह त्वरित हो सके। इतना पुराना मसला होने के बाद भी हम इसमें सफलता प्राप्त नहीं कर पाए हैं।

मेरा आपके माध्यम से केवल यही अनुरोध है कि 'सस्ता न्याय और सुलभ न्याय' जहां यह सरकार की जिम्मेदारी है, वहीं यह वादकारी का अधिकार भी है। सभी जगह लिखा होता है 'वादी का हित सर्वोपरि है।' परन्तु, ऐसा लगता है कि उसका प्रजेंट सिस्टम के अंदर ध्यान नहीं दिया जा रहा है। मेरा यह अनुरोध है कि इस बात को ध्यान में रखकर जो संपूर्ण व्यवस्थाएं हैं, आज यहां बहुत सारे पहलू आए हैं, कहीं न्यायाधीशों की नियुक्ति का विषय आया है, हम लोग न्यायालय के भवनों के विषय को भी देखते हैं, न्यायालयों के अलग बेंचेज की बात भी आई है, मैं भी इस विषय को उठा रहा हूं, इन सबकी संपूर्ण रूप से समीक्षा करके इस विषय में निर्णय किए जाने की जरूरत है। उत्तर प्रदेश में खास तौर से मेरठ में, आगरा में और गोरखपुर में, अभी आगरा के माननीय सदस्य आगे बैठे हुए हैं, तीन माननीय सांसदों ने विभिन्न अवसरों पर नियमित रूप से रेगुलरली हाई कोर्ट की बेंच की मांग की है।

मैंने भी परिश्रम करके हमारे आदरणीय विधि एवं न्याय मंत्री महोदय को उत्तर प्रदेश का एक खाका सा बनाकर दिया है। उसमें इलाहाबाद हाई कोर्ट स्वयं, लखनऊ बेंच और इसके अलावा गोरखपुर, मेरठ और आगरा में तीन और बेंचेज बन सकती हैं। इसके अलावा भी 1-2 बेंचेज बन सकती हैं। मेरा यह अनुरोध है कि मेरठ और उत्तर प्रदेश की इस मांग को संज्ञान में लेते हुए, मैं यह मानता हूं कि यह एक

बड़ा विषय है। अन्य प्रदेशों से भी हाई कोर्ट की बेंचेज़ की मांग होती रहती है, इन सबको जोड़ते हुए कुछ निर्णय हो, संपूर्ण न्यायिक व्यवस्था की समीक्षा हो और हमें भी न्याय मिले। मैं इस निवेदन के साथ इस बिल का समर्थन करता हूँ।

माननीय सभापति : माननीय सदस्यगण, मैं दोबारा यह कहना चाहता हूँ कि आप लोग तीन-तीन मिनट्स में अपनी बात पूरी कीजिए। We have more than 12 Members to speak.

श्री हसनैन मसूदी जी।

SHRI HASNAIN MASOODI (ANANTNAG): This kind of a direction should come at the time of commencing the discussion.

HON. CHAIRPERSON: It never happens that way. As such, we have extended the time of the House till eight o'clock.

SHRI HASNAIN MASOODI: Thank you, Sir. The High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill, 2021 has come up after the day we joined the nation in paying tribute to Baba Saheb Ambedkar, the father of Indian Constitution. It was under his guidance that on 17th October, 1949 special status was granted to the erstwhile State of Jammu and Kashmir. This House, on 7th August 1952 approved the Delhi Agreement of 1952. This House also took a decision on 5th August, 2019. The decision on 17th October, 1949 was taken without a whisper of disagreement, without any dissent, amendment or any resignation. It was a unanimous decision. This is only one aspect of the case. I am mindful of the basic tenants, the spirit of the Constitution. I am mindful of the ambit and spirit of Article 3. I am also mindful of sweep of Article 356. The State was denuded of its special status.

When we speak about Constitution, you are aware that there is the letter of the Constitution. Then, there is the spirit of the Constitution. There are eminent lawyers sitting here. Then, there is the morality of the Constitution. There is the ethics of the Constitution. I am mindful of the spirit, ethics, and morality of the Constitution. The suspect law is being implemented. The principle is that whatever is under judicial scrutiny or whatever has been formally admitted and referred to a constitutional bench, it should not be implemented. By acting in that manner, we will be preempting the judgement that may come out of the Supreme Court. So, it is unfortunate and very sad that suspect law is being implemented.

Now, coming to the Bill, the hon. Members have voiced their concerns about alarming, monstrous pendency of cases before the courts. They have rightly voiced their concerns and have repeated the cliché 'justice delayed is justice denied'. They have also talked about the expeditious disposal of cases. I would like to remind the House that whatever is pending before different courts is not the only pendency. There is the pendency that has never seen the door of the court because most of the people live with the grievance. They live with the insult that is heaped on them. They live with the injury to which they are subjected, because they do not have enough resources to go to the court of law. They do not have access to justice. Access to justice is an integral part of right to justice under Article 21. There are eminent lawyers sitting here.

We have to ask a couple of questions to ourselves. What is the percentage of GDP that is spent on the judiciary? We say that judiciary is one of the three important organs of democratic polity. As per my information, it is not more than 0.7 per cent. Unless we increase the number of judges, the number of courts, how can we expect the system to deal with the alarming pendency that is right now awaiting disposal for the last so many years, and in some cases decades?

First is the manpower. Where is the trained manpower? I have given a closer look at it. I have been a part of the system. How can you deal with the pendency unless and until you empower the system and you provide sufficient resources to the system so that the system can gear up and meet the challenges? That is not being done.

As has been pointed out by other hon. Members, the second thing is with regard to the vacancies. Who will fill-up the vacancies? Unless we make the vacancy filling-up system an efficient mechanism and we set a benchmark and timeframe everywhere, we will not be able to fill up the vacancies. The effort must be to empower and strengthen the Judiciary and we must provide sufficient resources, manpower, modern-day gadgets, networking system and internet facility, etc., across the country. Then only, we will expect the Judiciary to come up and pull its socks up and meet the challenges.

Another thing is about expectations.

HON. CHAIRPERSON: Please wind up now.

SHRI HASNAIN MASOODI: Sir, please give me few minutes.

Mr. Suresh said that some segments do not get representation. I will speak about Kashmir. From Kashmir, there has been no elevation of an Advocate or a Judicial Officer as the Judge of the hon. Supreme Court. There have been such elevations from Jammu but for the last seventy-five years, there is not even a single elevation from Kashmir. We do not have a Judge.

Now, I come to the Bill. I think, this Bill only explains the ambiguity and tries to clear the ambiguity. But, I think, the baseline is that you should make judicial service attractive so that you can attract talent. We know what a Judge is getting as a salary; maybe, it is like a fee of a lawyer for one

appearance before the hon. Supreme Court. How can we attract talent unless and until we revise the salaries and give attractive terms? In this case, there was an ambiguity. There is no doubt about it. But I am in respectful agreement with Mr. Pinaki Misra. It is better to go ahead with whatever was held by the two High Courts and indirectly also, there was a seal of approval of the hon. Supreme Court. Go ahead with it. What are the financial implications? You did not get it on the completion of 79th year. You did not get it when you stepped into 80th year. You got it when you were in your 81st year. How does it matter? What are the implications? How much money are you going to lose? But you would make the service more attractive and you will attract more talent. So, unless and until you do that and you just make the service conditions much better, you cannot attract the talent. Thank you.

SHRI E.T. MOHAMMED BASHEER (PONNANI): Hon. Chairperson, Sir, thank you very much for giving me an opportunity to speak on the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill, 2021.

I fully agree with the contents of the Bill. In today's discussion, the eminent Members -- who are closely associated with the legal matters -- have explained it very well. Sir, it reminds the essentiality of regaining the credibility of the nation and the Judiciary, in particular.

Hon. Chairperson, Sir, while participating in this discussion, I commemorate a legal luminary and a proud son of India, Shri V.R. Krishna Iyer that the Judiciary has ever seen. Harish Salve, in his article titled,

Justice V.R. Krishna Iyer: Man who rescued Supreme Court from Supreme Shame, wrote and I quote:

“The Supreme Court of India was crystallised to become the Supreme Court of Indians.”

Justice V. R. Krishna Iyer had himself wrote an article published in the Hindu and the title was, ‘Who will judge the Judges?’ Justice V.R. Krishna Iyer made an appeal to the Parliament in the following words and I quote:

“Parliament should wake up and implement Glasnost and Perestroika in Judiciary. In the name of Independence, we cannot have Judicial absolutism and tyranny.”

19.00 hrs

Sir, now coming to the other points, the beauty and strength of the Indian Constitution is the Fundamental Rights enshrined in our Constitution. They are Right to Equality, Right to Freedom, Right against Exploitation, Cultural and Educational Rights, Right to Freedom of Religion and Right to Constitutional Remedies.

Sir, what is really happening? In this country, all these Fundamental Rights are under attack and the Judiciary is bound to intervene in such cases but it shows helplessness.

Sir, I wish to submit another important thing. Yesterday, we had a very big discussion on the Nagaland incident. How are these kinds of things taking place? It is a blatant misuse of laws. Everybody is talking about AFSPA.

Sir, I along with two Members of IUML, Dr. M.P. Abdussamad Samadani and Shri K. Navas Kani had given a notice for Adjournment

Motion. Unfortunately, it was not accepted.

Today's newspaper shows that the Human Right Commission has given a notice to the Government of India. Nagaland Chief Minister and Meghalaya Chief Minister have demanded that this AFSPA should be withdrawn. We all know about the historic struggle led by Irom Sharmila of Manipur. There was a lot of discussion on UAPA. I strongly appeal that this kind of draconian laws should be scrapped. That is the need of the hour.

Sir, human rights violations are taking place in a big way. We all know that Courts have got a responsibility. But unfortunately, they are taking talkative silence in the case of human rights violations.

I do not want to take much of the time of this House. I would like to talk about filling up of vacancies. I appreciate for the bold initiative taken by the Minister.

Sir, I am not a legal expert. I would like to say only one thing, that is about appointment of the Judges. I do not know whether I am correct or not. Nowhere in the world, appointments of the Judges are done by themselves. That seems to be a very bad thing.

I am concluding Sir. I have a last issue. That is, with regard to social justice. Most of my friends were saying about that. We are all talking about social justice. When it comes to the ground reality, that is denied. Inclusive participation of everybody-concerned, especially the downtrodden, should be there. But the denial of justice is there. What I am suggesting is that due participation should be given to the deprived sections in the appointment of Judges. This principles of natural justice and reservation should be adhered strictly in the Judiciary.

With these few words, I conclude.

Thank you very much Sir.

SHRIMATI APARUPA PODDAR (ARAMBAG): Thank you, Chairman, Sir, for allowing me to speak on this important Bill, the High Court and Supreme Court Judges (Salaries and Conditions of Services) Amendment Bill, 2021.

When I stand to speak in favour of this Bill, I make a small observation. Sir, just right above your head, it is written in Sanskrit, *Dharma Chakra Pravartanaya*. These are the Buddha teachings. It teaches us about justice and fairness.

HON. CHAIRPERSON: Dharma Chakra is righteousness. Righteousness must prevail.

SHRIMATI APARUPA PODDAR: Righteousness, justice and fairness.

Sir, our polity and governance are in support to follow the principles of Lord Buddha. But in reality, the picture is entirely different. The Bill that we are discussing today is a small amendment Bill and the Statement of Objects and Reasons states that it has been brought to provide clarity regarding interpretation of additional quantum of pension to Judges covered under this Bill. The Bill is small but the issues surrounding the Judiciary today are extremely worrying. Our ranking in the Rule of Law Index have fallen to 79 in 2021 from 69 in 2020 out of 126 countries which display the sorrow state of affairs of our system.

Now, as a student of law, in *Jurisprudence* we were taught about *Dharma and Manu Smriti* which forces the Rule of Law. The Registry of the Supreme Court of India has compiled data on the status of judicial infrastructure of court amenities, including the size of court rooms, basic medical facilities, drinking water with purifiers, library and toilets. As per the data, 26 per cent of the court complexes do not have toilets for ladies.

We talk about women empowerment and equal rights, but we do not even have adequate facilities for female lawyers. This is one point that I want to bring to the notice of the hon. Law Minister.

A proposal has been received from the Chief Justice of India for setting up of National Judicial Infrastructure Authority of India for making arrangements for adequate infrastructure for the courts. For this, there will be a Governing Body with the Chief Justice of India as Patron-in-Chief. The other salient features of the proposal are that the National Judicial Infrastructure Authority of India will act as the Central body in laying down a roadmap for planning, creation, development, maintenance and management of functional infrastructure for the courts in the Indian system. I would like to seek a clarity on this point from the hon. Minister.

Sir, a provision to create an All-India Judicial Service is provided in article 312 (1) of the Indian Constitution. This will provide opportunities for the qualified fresh legal talents selected through a proper all-India merit selection system and would help in inclusion of many law students who are from marginal and deprived sections of the society.

HON. CHAIRPERSON: Please conclude now. We have a very few women participants in this discussion and especially she is mentioning about women lawyers.

SHRIMATI APARUPA PODDAR: Sir, my next point is about setting up of *Gram Nayalayas*. The pace of setting up of the *Gram Nayalayas* has been very slow. Against the target of 2500 *Gram Nayalayas* under the Five-Year Plan, only 402 *Gram Nayalayas* have been notified by 12 States so far. Out of these, only 252 are functional. I would like to request the Government to conduct a third-party evaluation and make a proposal to re-launch the scheme with revised guidelines for its effective implementation.

Sir, my last point is this. The people to Judges ratio in the country is not very appreciable. While in other countries, this ratio is about 50 to 70 Judges per million, in India it is only 20 Judges per million of people. We are making laws in this House, but the number of Judges who are supposed to deliver judgements are very less in number. ... (*Interruptions*)

Sir, I would like to know one thing from the hon. Minister. Justice Jaymalya Bagchi was transferred to his parent High Court in Kolkata in September 2021 from Andhra Pradesh High Court where he was serving as a Judge since January, 2021. There was a delay of a month in notifying his appointment. What was the reason for which within nine months he has again been shifted from Andhra Pradesh High Court to Kolkata High Court?

Thank you.

श्री हनुमान बेनीवाल (नागौर) : सभापति महोदय, मैं सबसे पहले आपको धन्यवाद दूंगा, क्योंकि आपने मुझे उच्च न्यायालय और उच्चतम न्यायालय न्यायाधीश (वेतन और सेवा शर्त) संशोधन विधेयक, 2021 की चर्चा में भाग लेने का अवसर दिया ।

माननीय सभापति : आपके पास बोलने के लिए तीन मिनट हैं ।

श्री हनुमान बेनीवाल: सभापति महोदय, चूंकि आज न्यायाधीशों के वेतन की बात आई है और सदन के सदस्यों ने, जो विद्वान वक्ता भी हैं और कई सुप्रीम कोर्ट और हाई कोर्ट के अंदर बड़े लॉयर रहे हैं, उन सबकी बात हमने सुनी है । ऐसे में देश की न्याय प्रणाली और न्याय व्यवस्था के संबंध में कुछ बातें सदन के माध्यम से मैं सरकार और विधि मंत्री जी को अवगत कराना चाहता हूं ।

देश में सरकार के रिकॉर्ड के अनुसार 29 नवम्बर, 2021 तक जिला और अधीनस्थ न्यायालयों में न्याययिक अधिकारियों के 24,485 पद स्वीकृत हैं, जिनमें से 5,191 पद खाली पड़े हैं और 11 मार्च, 2021 तक के उन आंकड़ों की बात करें जो केन्द्र ने लोक सभा में प्रस्तुत किए हैं, तो उसके अनुसार देश के 25 उच्च न्यायालयों में 1,080 पद न्यायाधीशों के स्वीकृत थे, जिनमें से 419 पद रिक्त पड़े थे, वही मेरे

राजस्थान उच्च न्यायालय में मार्च 2021 तक 50 स्वीकृत पदों में से 27 न्यायाधीशों के पद रिक्त पड़े थे ।

माननीय सुप्रीम कोर्ट में 8 नवम्बर, 2021 तक 70,038 मामले, देश के माननीय उच्च न्यायालयों में 29 नवम्बर, 2021 तक 56,42,858 मामले और 29 नवम्बर, 2021 तक जिला और अधीनस्थ न्यायालयों में 3,79,42,466 मामले लंबित पड़े हैं और न्याय व्यवस्था की प्रक्रिया में कई लोग न्याय पाने से पहले ही दम तोड़ देते हैं । इस पर सरकार को ध्यान देने की जरूरत है कि संविधान की भावना के अनुरूप आम आदमी को न्याय कैसे मिले, उस पर गौर करने की जरूरत है । न्यायालयों में तारीख-पे-तारीख पड़ती रहती है और आदमी न्यायालयों की ओर टकटकी लगा कर देखता रहता है और मामला ऊपर तक जाते-जाते वह दम तोड़ देता है । इसमें कैसे सुधार हो, इस पर ध्यान देने की आवश्यकता है ।

न्यायपालिका में दलित, आदिवासी, पिछड़ों और अल्पसंख्यकों की बात नहीं सुनी जाती है, उन्हें न्याय नहीं मिलता है । जहां खुद पारदर्शिता नहीं है, वहां हम न्याय की अपेक्षा कैसे कर सकते हैं । लोकतंत्र के दो स्तंभ विधानपालिका और कार्यपालिका में आरक्षण है, तो न्यायपालिका में आरक्षण क्यों नहीं है? कॉलेजियम पद्धति में न्यायधीश ही न्यायधीश की नियुक्ति करते हैं । कई माननीय सदस्यों ने कॉलेजियम का विरोध किया है और कई लोगों ने इसका समर्थन किया है, लेकिन ज्यादातर की यह जानने की इच्छा थी कि देश में संविधान का अनुपालन सुनिश्चित करने के लिए बनी यह संस्था अपने यहां नियुक्तियों पर एकाधिकार क्यों चाहती है? माननीय हाई कोर्ट और माननीय सुप्रीम कोर्ट जजेज की नियुक्ति में सरकारी हस्तक्षेप भी होना चाहिए । आरक्षण जैसी समावेशी व्यवस्था को न्यायपालिका में तरजीह नहीं दी गई?

सभापति महोदय, बात सिर्फ आरक्षण की नहीं है, बल्कि सबके लिए अवसर होने चाहिए । शोषित, वंचित जातियों के साथ तो भेदभाव है ही, लेकिन गरीब सवर्ण या गरीब ब्राह्मण का लड़का-लड़की भी वहां तक पहुंचने का सपना नहीं देख सकता है । देश में कोई भी व्यक्ति संघ लोक सेवा आयोग की परीक्षा पास करके भारतीय प्रशासनिक सेवा, भारतीय पुलिस सेवा आदि में जा सकता है और देश की शीर्ष प्रशासनिक पद संभाल सकता है, लेकिन वह देश की शीर्ष न्यायपालिका का न्यायाधीश नहीं बन सकता है ।

सभापति महोदय, उच्चतर न्यायालयों में जजों की नियुक्ति में भाई-भतीजावाद, एक जज किसी चैम्बर से माननीय हाई कोर्ट का जज बनता है, तो वह अपने चैम्बर के व्यक्ति को किसी न किसी तरह से वहां खींचना चाहता है, यह व्यवस्था हावी है ।

सभापति महोदय, मैं 16 सितम्बर, 2020 के लोक सभा के एक सवाल का जवाब पढ़ रहा था, उसमें भारत सरकार ने कहा है कि माननीय उच्च न्यायालयों के न्यायाधीशों की नियुक्ति संविधान के अनुच्छेद 217 और 224 के अधीन की जाती है और उसमें यह अनुच्छेद महिला सहित किसी व्यक्ति की जाति का उपबंध नहीं करते, लेकिन सरकार माननीय उच्च न्यायालयों की न्यायमूर्तियों से अनुरोध करती रही है कि न्यायाधीशों की नियुक्ति के लिए प्रस्तावों को भेजते समय एससी, एसटी, ओबीसी, अल्पसंख्यक व महिलाओं से संबंधित उपयुक्त अभ्यर्थियों पर समयक विचार किया जाना चाहिए, लेकिन आप और हम सब यह जानते हैं कि उस कोई विचार नहीं करेगा । मैं अपने राजस्थान की बात करूँ, वैसे मैं जातिवाद की बात नहीं कर रहा हूँ, लेकिन दुर्भाग्य इस बात का है कि आज राजस्थान में जिस समुदाय से मैं आता हूँ, उस समुदाय से, ओबीसी, जाट गुर्जर, यादव, मेघवाल व मीणा सहित अन्य पिछड़े तबकों से एक भी जज नहीं है । कभी किसी ने यह विचार नहीं किया है । यह स्थिति पूरे देश की है । इस पर देश की संसद, प्रधानमंत्री जी और हमारे कानून मंत्री जी को गौर करने की जरूरत है । कल हम सभी कह रहे थे कि बाबा साहेब अम्बेडकर जी की पुण्यतिथि है, हमें उनके आदर्श पर चलना चाहिए, लेकिन न्यायपालिका में दलित, वंचित व पिछड़े वर्ग आज भी न्यायाधीश पद के लिए उपेक्षित हैं ।

सभापति महोदय, अभी राजेन्द्र अग्रवाल जी ने अपनी पूरी बात कही है । राजस्थान से लगे हुए इलाके आगरा के अधिवक्ताओं ने मुझसे मिल कर आगरा में हाई कोर्ट बेंच की स्थापना की मांग की थी । मैं भी इस मांग को दोहराता हूँ । जस्टिस जसवंत सिंह आयोग की रिपोर्ट भी इस बारे में पैरवी कर चुकी है । सरकार इस पर ध्यान दे । राजेन्द्र अग्रवाल जी ने मेरठ की बात कही थी । मेरठ में नई हाई कोर्ट बेंच बने और राजस्थान में भी यह बने । चूंकि, राजस्थान देश का सबसे बड़ा राज्य है । वहां जयपुर और जोधपुर में दो ही हाई कोर्ट बेंचेज हैं । उदयपुर के लोग लगातार 20 सालों से आंदोलन कर रहे हैं, तो उदयपुर में भी नई हाई कोर्ट बेंच की स्थापना हो ।

इसमें राजस्थान के लोगों को बहुत लाभ मिल सकता है । लोगों को त्वरित न्याय कैसे मिले, इस दिशा की ओर सरकार को निर्देशित करना चाहिए ।

SHRI N. K. PREMACHANDRAN (KOLLAM): Thank you, Chairman, Sir. I had come with a prepared speech to support the Bill. But after hearing Shri Pinaki Misra, my learned friend, I am also in utter confusion whether to support the Bill or to oppose the Bill. I think that the Government will clarify the position. The hon. Minister will clarify the position. Then we will make up our mind.

As has been rightly pointed out by Pinaki Misraji, if it is to invalidate the judgement of the Supreme Court, then the law cannot be said to be a good law. The benefit of the eligibility of the additional quantum of pension to the retired judges and, that too, at the age of 80-85 years, 85-90 years, 90-95 years and even 100 years and after that is available. That is the pertinent question to be discussed.

In this case, it is from the date by which the judge entering into the age of 80 or after the completion of the age of 80. That is the only simple question to be discussed for which the Guwahati High Court had made a judgement. Against that judgement, a SLP was moved by the Government of India in the Supreme Court. The Supreme Court rejected it. The rejection of SLP means it is subject to correction. I am also saying, subject to correction, if the opinion is correct, then definitely, this is a bad law. It has to be reconsidered. That is my first point which I would like to make.

Invalidating a law passed and that too, through a Mandamus by the Supreme Court is being nullified by this Parliament. To give benefit to the retired judges at the fag end of their life is not fair. It is not good enough for such a legislation. That has to be reconsidered.

Sir, I would like to speak about some points about separation of powers. I am not going into the details of it. Power tends to corrupt, and absolute power corrupts absolutely. This is the basic principle by which Doctrine of Separation of Powers has been debated since long. The separation of powers was extensively discussed in the Constituent Assembly but it was not given any constitutional status. Nowhere is there in the Constitution of India, an explicit provision to deal with the separation of powers, except in Article 50 of the Constitution, that is, the Directive Principles of State Policy, where the separation of Judiciary from Executive is explicitly explained.

Sir, I would like to quote Justice Frankfurter. He has said: “Enforcement of rigid concept of separation of powers would make modern Government impossible. Strict separation of powers is theoretically absurdity and practical impossibility.” I feel that this is a pragmatic version because separation of powers is theoretically an absurdity and a practical impossibility for a modern Government.

I am not going into the details of all these things. The President of India is the Executive head of India and he is also having the legislative powers when he summons the House. That means separation of powers in a rigid manner is not possible as far as the modern Government is concerned. That has to be kept in mind.

Sir, Indian perspective of separation of powers is the harmonious balancing of powers among the various organs. The functions and powers of the three organs are well defined and demarcated. All the three organs are supreme in their own spheres as to how to act in accordance with the provisions of the Constitution.

Keeping this in mind, the Indian judicial system has a big tradition of independent judiciary. Indian judiciary has played a very important and

significant role in strengthening the democratic system of our country. The landmark judgements of our judiciary reform the democratic fabric of our country.

The credibility of Indian judiciary was the highest once upon a time. But it is quite unfortunate to say that now-a-days, the credibility of Judiciary is under suspicion. It is being questioned from various corners. I can cite so many examples. I am not going into the examples.

Sir, Parliament is the will of the people. Hence the Legislature of Parliament is accountable to the people. The main question which I would like to pose is, the Judiciary is accountable to whom.

The Executive is accountable to the people of India through the Parliament. The Parliament or the Legislature is directly accountable to the people of India, because they are being directly elected by the people and they have to go back to the electorate for subsequent elections. So, the accountability of the Judiciary has to be earmarked; that has to be defined.

Now, I come to the point relating to the National Judicial Appointment Commission Act, 2014 which was struck down by the Supreme Court. I fully appreciate that it was one of the landmark Acts which was brought by this Government and enacted by the Parliament. The entire House appreciated it. What was the accountability of the National Judicial Appointment Commission? Was it accountable to the Constitution? Both the Houses of Parliament had passed the legislation, 20 States had passed the legislation, the President had given assent to it and it had become an Act of Parliament. After it became an Act of Parliament, the Supreme Court struck down the law only on the ground that it was changing the basic character of the Constitution. What was the logic in that? ... (*Interruptions*) That is why, it was being said by the Solicitor General and late Arun Jaitley that it is the tyranny of the unelected.

The Parliament and the Government should rise to the occasion to protect the legislative supremacy of Parliament. So, I appeal to the Government to please bring back the legislation. The National Judicial Appointment Commission Bill should be brought back and it should be passed by the House. The Government should have the political courage; the Government should have the political will to pass that legislation again and constitute the National Judicial Appointment Commission. Otherwise, these things will go on.

Sir, finally I would like to say that four members of the Judiciary simply struck down that law. What is their accountability? It means they are not ready to respect the will of the people. That is why, I am saying that Parliament represents the will of the people. The will of the people has to be respected. Judicial reform is the need of the hour. So, I appeal to the Government to come out with a comprehensive legislation so as to implement judicial reforms in our country.

With these words, I conclude.

SHRI LAVU SRIKRISHNA DEVARAYALU (NARASARAOPET): Mr. Chairman, Sir, I thank you for giving me this opportunity.

The hon. Minister has been making all the right noises during the last few months after taking charge of the Law Ministry. He has appointed nine new Judges to the Supreme Court and there are also four women Judges in the Supreme Court now. It is a commendable job. There is nothing much to say about this Bill. Everybody is ready to support this Bill except for the fact what Shri Pinaki Misra has pointed out as to whether this House can actually pass the National Judicial Appointment Commission Bill again. I hope the Minister will clarify this point when he replies to the debate.

I have three points to make on this Bill. The first one is regarding the cooling off period which many Members have mentioned. This needs to be

taken seriously because all the senior officers working in the public sector undertakings and the scientists working in ISRO also have cooling off period after they retire. So, how can the Judiciary not have it? During the last few months, I have seen the hon. Minister trying to revive the Arbitration Panel across the country. If we have this cooling off period and push them towards arbitration, the dream of the Minister will come true.

My second point is regarding the system of Collegium. There is nothing wrong with the people behind the Collegium. But the problem is with the opaqueness of the Collegium. The point is, even the people who had worked behind it also had been exposed. They conducted an unprecedented a Press Meet three or four years ago and they also asked for the revival of the system behind the Collegium. Most of the Members are also saying that there should be transparency in the Collegium. This Parliament passed the National Judicial Appointment Commission Act. I hope that Bill would again see the light of the day under the leadership of the hon. Minister.

Now, we have brought this Bill and we are going to pass it now. There are many other institutions which have also served the country extremely well like the Army. The Armed Forces are really looking for 'One Rank One Pension' scheme. I hope the Members of the Treasury Benches would keep that in mind. I would like to say that other institutions have to be given preference like the Army.

With these words, I conclude.

***DR. D. RAVIKUMAR (VILUPPURAM):** Hon. Chairman Sir. Vanakkam. Thank you for this opportunity to speak on an important Bill. I do not want to raise any issue creating confrontation between the Judiciary and the Parliament which has the power to legislate. Democracy will be

protected only when the Judiciary and Parliament work hand in hand together. That is why, our revolutionary leader Dr. B.R. Ambedkar who framed our Indian Constitution, accorded the highest power to the Judiciary, the power to review the laws legislated by this Parliament. I want to say a few points on this Bill. The Experts who worked on the revision of salaries of Judges in India made a comparison with the per capita income existing in USA and Europe, came to a conclusion that the Judges in India are drawing more salary in comparison to these two countries. We should also take into consideration this aspect of comparison made by the Experts while arriving at a decision. Post retirement, the Judges are nominated to several Posts by the Union Government. As the Retired Judges are appointed as Chairpersons of the Tribunals and Commissions, there is an accusation that these Judges pronounce favourable judgement for the Government. The Law Commission headed by Justice Setalvad in its 14th Report had stated that the Retired Judges should not occupy or hold any Posts. That recommendation has not yet been accepted by the Union Government. Earlier some of the Judges who retired from Hon Supreme Court such as Justice Chelameswar and Justice Khehar have voluntarily announced that they would not accept any Post after retirement. But we have witnessed that some Judges are even nominated to Rajya Sabha post retirement. Therefore, the Government should take a clear stand on this aspect. There is an accusation that by allowing such post retirement appointments of Judges of High and Supreme Courts, the Government controls the Judiciary indirectly. As per the Article 50 of the Constitution, the Directive Principles clearly describe the aspect of protecting the freedom of the Judiciary. There should be any intervention from the Government in the affairs of the Judiciary either directly or indirectly so as to protect the freedom of the Judiciary. Many MPs who spoke here mentioned about NJAC which is a welcome step. Many people criticize the present Collegium system to be undemocratic. Therefore, we should have a system which is truly democratic. Since 25 years have passed

after the introduction of Collegium system in the Judiciary, this should be reviewed. I therefore urge upon the Union Government to distinctly decide while making post retirement appointments after taking into consideration the points expressed on this subject. Thank you.

श्री बालूभाऊ उर्फ सुरेश नारायण धानोरकर (चन्द्रपुर): धन्यवाद सभापति महोदय, मैं सदन में हाईकोर्ट एंड सुप्रीम कोर्ट जजेज सैलरी एंड कंडीशन ऑफ सर्विस अमेंडेमेंट बिल-2021 पर अपने विचार रखने के लिए खड़ा हुआ हूँ। इस बिल के माध्यम से हाईकोर्ट के न्यायाधीशों के वेतन और सेवा शर्तों संबंधी अधिनियम-1956 और सुप्रीम कोर्ट के न्यायाधीशों के वेतन और सेवा शर्तों संबंधी अधिनियम-1958 में संशोधन करने की व्यवस्था की गई है। इसके माध्यम से धारा-16(बी) और 17(बी) में संशोधन किया जाना है।

महोदय, इस बिल में न्यायाधीशों की मृत्यु के बाद अतिरिक्त पेंशन प्राप्त करने के मापदंड को भी स्पष्ट किया गया है। इस बिल के माध्यम से इस तरह की कुछ अन्य छोटी-छोटी कमियां भी दूर करने की कोशिश की गई है। इसमें महीने के पहले दिन से स्वीकृत की जा रही अतिरिक्त पेंशन की हकदारी का मसला भी शामिल है, जिसमें पेंशनभोगी 80 वर्ष, 85 वर्ष, 90 वर्ष, 95 वर्ष और 100 वर्ष की आयु पूरी करता है।

महोदय, गुवाहाटी हाई कोर्ट ने, जिसके दायरे में असम, अरुणाचल प्रदेश, नागालैंड और मिजोरम भी आते हैं, अपने एक रिटायर न्यायाधीश द्वारा दायर रिट याचिका पर 15 मार्च, 2018 के अपने आदेश में कहा था कि पहले स्लैब में उपरोक्त हाई कोर्ट न्यायाधीश अधिनियम की धारा 17बी के अनुसार अपने 80वें वर्ष के पहले दिन से एक सेवानिवृत्त न्यायाधीश को उपलब्ध होगा।

महोदय, मध्य प्रदेश हाई कोर्ट ने भी सुप्रीम कोर्ट और हाई कोर्ट्स के रिटायर न्यायाधीशों के संघ द्वारा दायर रिट याचिकाओं पर पारित 3 दिसंबर, 2020 के अपने आदेश के माध्यम से संघ को निर्देश दिया था कि वह “से” शब्द का अर्थ बताए, क्योंकि यह वर्ष 1958 के अधिनियम की धारा 16बी के तहत स्लैब पर दिखाई देता है

और वर्ष 1954 अधिनियम की धारा 17बी न्यूनतम आयु के पहले दिन के रूप में दर्ज करता है। स्लैब यानी 80, 85, 90, 95, और 100 साल। इस नाते इसे लेकर कई भ्रांतियाँ थीं, जिनको इस बिल के द्वारा दूर करने का प्रयास किया गया है।

हालाँकि इस बिल में दोनों हाई कोर्ट्स के आदेशों के विरुद्ध जाने का प्रयास किया गया है, जिसमें उस महीने के पहले दिन से ही कसौटी मानी गई है, जिसमें वह पहले कॉलम में निर्दिष्ट आयु को पूरा करता है, न कि उसके प्रवेश करने के पहले दिन से, जैसा कि न्यायपालिका द्वारा व्याख्या की गई है। फिर भी कुछ पहल तो की गई है।

महोदय, लेकिन इसके साथ मैं यह भी कहना चाहूँगा कि सुप्रीम कोर्ट, हाई कोर्ट्स और निचली अदालतों में आज भारी संख्या में मुकद्दों पेंडिंग हैं और जजों तथा उनके सहयोगी स्टॉफ के पद भी बहुत बड़ी संख्या में खाली हैं। जजों की कम संख्या का सीधा संबंध अदालतों में बढ़ते जा रहे मुकद्दों से है। इस दिशा में ठोस पहल की दरकार है। इस बारे में कुछ कदम उठे हैं, लेकिन वे नाकाफी हैं।

महोदय, इन सारे मामलों पर गंभरता से विचार कर यह तय करना चाहिए कि किस तरह गरीबों को जल्दी से न्याय मिले। आई.टी. और संचार क्रांति का उपयोग कर मुकद्दों के जल्दी निपटारे की व्यवस्था होनी चाहिए। न्यायिक प्रक्रिया में देरी और महँगा होने के चलते गरीब सबसे ज्यादा परेशान होते हैं। इस दिशा में सरकार ध्यान दे।

महोदय, आपने इस महत्वपूर्ण विषय पर मुझे बोलने का समय दिया, इसके लिए आपका धन्यवाद।

श्री सुरेश पुजारी (बारगढ़): महोदय, आपने मुझे बोलने का अवसर दिया, इसके लिए आपका धन्यवाद।

महोदय, मैं इस बिल के समर्थन में बोलने के लिए खड़ा हुआ हूँ। वर्ष 2008 में दोनों, सिविल सर्वेंट के लिए भी और हाई कोर्ट जजेज के लिए भी यह व्यवस्था की गई, क्योंकि सिविल सर्वेंट वे लोग हैं, जिनके लिए कोई कानून की व्यवस्था नहीं है। ऑफिस मेमोरेण्डम में उसका ऑर्डर हो गया, 20 परसेंट, 40 परसेंट, 50 परसेंट और

100 परसेंट वाला । उस समय जो बिल लाया गया, उसमें शब्दावली के गलत व्यवहार के कारण यह कंप्यूजन हो गया । मैंने गुवाहाटी उच्च न्यायालय का भी ऑर्डर पढ़ा और वकील होने के नाते उसका भी पूरा मैंने इंटरप्रिटेशन करने की कोशिश की । मैंने मध्य प्रदेश का भी ऑर्डर पढ़ा और सुप्रीम कोर्ट में भी जो एसएलपी खारिज हुआ, मैंने उसके बारे में भी पढ़ा । मुझे लगता है कि गुवाहाटी उच्च न्यायालय का जो इंटरप्रिटेशन था, वह एकदम सही था । लिटरेरी मीनिंग अगर आप ढूंढोगे, 80 ईयर्स बोलने से 79 ईयर कम्प्लीट होने के बाद शुरू होता है, लेकिन that was not the intention of the Government. मुझे लगता है कि लिटरेरी मीनिंग को छोड़कर इंटेन्शन ऑफ़ दी गवर्नमेंट देखते, इंटेन्शन ऑफ़ दी लेजिस्लेचर देखते तो शायद ऐसा ऑर्डर न गुवाहाटी उच्च न्यायालय में होता, न सुप्रीम कोर्ट में होता । इस विषय के बारे में यहाँ सभी माननीय सदस्य बोल चुके हैं । उसमें बाइफरकेशन ऑफ़ हाई कोर्ट के बारे में भी बात हुई है । मैं बोलना चाहता हूँ कि मैं जिस क्षेत्र से आया हूँ, माननीय मंत्री जी, 50 साल हो गए हैं ओडिशा के पश्चिम क्षेत्र से और आज संयोग देखिए कि जो आसन पर माननीय सभापति बैठे हुए हैं, वे कटक से हैं । कटक में जो हाई कोर्ट है, उसका बाइफरकेशन हम लोग चाहते हैं । इस विषय को 50 साल हो गए हैं ।

सर, पाँच-पाँच पीढ़ी से यह चल रहा है । हमने आपके पूर्ववर्ती मंत्री जी को भी इस बारे में लिखा था । मुख्यमंत्री जी ने खुद भी ईस्टर्न पार्ट ऑफ़ ओडिशा और साउदर्न पार्ट ऑफ़ ओडिशा में हाई कोर्ट करवाने के लिए लिखा था, लेकिन आपके पूर्ववर्ती मंत्री जी ने मुख्यमंत्री को चिट्ठी लिखी कि कहाँ बनाना चाहते हो, जगह, लोकेशन बताओ, ज्यूरिस्टिक्शन बताओ और अंडरटेंकिंग लिखो कि रेकरिंग एक्सपेंसेज आप देने के लिए तैयार हो । मुझे लगता है कि उसके बाद कोई जवाब नहीं आया । उसके बाद चीफ जस्टिस को भी आपके पूर्ववर्ती मंत्री जी ने लिखा था । 10 साल हो गए हैं । ... (व्यवधान)

श्री पिनाकी मिश्रा: आप बिल्कुल सही कह रहे हैं, यह चीफ जस्टिस के डोमेन में है ।... (व्यवधान)

श्री सुरेश पुजारी: ठीक है, अगर चीफ जस्टिस के डोमेन में है, लेकिन मैं यह बोलना चाहता हूँ कि एक लॉ मिनिस्टर के चिट्ठी लिखने के बाद, एक मुख्यमंत्री के चिट्ठी लिखने के बाद 10 साल हो गए हैं । क्यों 'हाँ' या 'न' नहीं हो रहा है? या तो 'हाँ' होना

चाहिए, नहीं तो 'न' होना चाहिए । दस साल हो गए । अगर गवर्नमेंट ऑफ इंडिया की बात सुनने के लिए और चिट्ठी का उत्तर देने के लिए हाई कोर्ट तैयार नहीं होंगे तो मुझे लगता है कि if we are not in a position to do justice to the Central Government and to the Chief Minister, how can we render justice to the common people? उसके बारे में भी मैं यह चाहता हूँ कि आप दोबारा लिखिए । मुख्य मंत्री को भी लिखिए और चीफ जस्टिस ऑफ ओडिशा को भी लिखिए । मुख्य मंत्री को यह बताइये कि कहां करना है? क्या वेस्टर्न ओडिशा कोई जगह का नाम है? वह एक अंचल का नाम है । वेस्टर्न ओडिशा में कहाँ करना चाहते हैं, उसका जूरिस्टिक्शन क्या होगा? इंफ्रास्ट्रक्चर के लिए, जमीन के लिए और बाकी जो आनुषांगिक व्यवस्था करने के लिए, रिकरिंग एक्सपेंसेज के साथ-साथ आप उनको चिट्ठी लिखिए और हाई कोर्ट को चिट्ठी लिखिए ।

मुझे लगता है कि माननीय सांसद क्वालिटी की बात कर रहे थे । जब आप तालाब में टैलेंट ढूँढोगे तो आपको छोटी मछली मिलेगी, लेकिन अगर आप समुद्र में ढूँढोगे तो आपको बड़ी मछली भी मिलेगी । उसका भी एक्सपेंशन होना चाहिए । आप जजेज की अपॉइंटमेंट के बारे में बोल रहे थे । हमें भी मौका मिलना चाहिए, अगर आप हमें हाई कोर्ट दोगे तो हम लोग बेहतरीन जजेज प्रोड्यूस करके पूरे हिन्दुस्तान को दिखा सकते हैं । मुझे लगता है कि वेस्टर्न ओडिशा में टैलेंट है । जसवंत सिंह कमीशन का पैरामीटर मैंने पढ़ा है और नापा भी है । पश्चिमी ओडिशा में हाई कोर्ट की परमानेंट बेंच करने के लिए जसवंत कमीशन भी राजी है, सेंट्रल गवर्नमेंट भी राजी है, मुख्य मंत्री जी का भी कहना है कि वह भी तैयार हैं । अगर आप सब तैयार हैं, तो देर क्यों हो रही है? मेरा आपके माध्यम से मंत्री जी से यही अनुरोध है कि कृपा वेस्टर्न ओडिशा में ओडिशा हाई कोर्ट की परमानेंट बेंच करने के लिए आप व्यक्तिगत स्तर पर स्पेशल इंट्रेस्ट लीजिए । आपका बहुत-बहुत धन्यवाद ।

माननीय सभापति: यह एक लॉन्ग पेंडिंग डिमांड है । ज्यूडिशियल कमीशन भी बैठा है, कमेटी की रिपोर्ट भी है और राज्य सरकार की तरफ से अपनी मंजूरी भी दे दी गई है । केन्द्र सरकार की तरफ से भी यह मंजूरी हुई है ।

श्री पिनाकी मिश्रा: महोदय, हम अपनी तरफ से आपको पूरा आश्वासन देते हैं कि बीजू जनता दल की तरफ से, सरकार की तरफ से इंफ्रास्ट्रक्चर के लिए जो भी

चाहिए, वह मुहैया कराया जाएगा । मैं इस हाउस के साथ एकमत हूँ और मैं अपने मित्र के साथ एकमत हूँ ।

SHRI SURESH PUJARI: Perhaps, it is a golden day for me as we have got the support from the Biju Janata Dal, we have got the support from the House, and we have got the support from the hon. President. Thank you.

KUNWAR DANISH ALI (AMROHA): Thank you very much, hon. Chairperson Sir, for allowing me to speak on the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill, 2021.

मैं जिस बात को आखिर में बोलने वाला था, मैं उसको पहले शुरू कर लेता हूँ, क्योंकि माहौल ऐसा बन गया है ।

माननीय सभापति : आपके पास तीन मिनट है ।

कुंवर दानिश अली: सर, मेरे तो आठ मिनट है, यह पहले से तय है ।

माननीय सभापति : ऐसा नहीं होगा । आपकी पार्टी की तरफ से कोई बोल चुके हैं ।

कुंवर दानिश अली : सर, पार्टी की तरफ से एक सांसद बोले हैं और वह कम बोले हैं ।

माननीय सभापति : आप सैकेंड स्पीकर हैं ।

कुंवर दानिश अली: सर, आप बैठे हुए हैं इसलिए आप मुझे प्रोटेक्शन देंगे । मैं यही कहना चाहता हूँ कि पश्चिमी उत्तर प्रदेश के अंदर हाई कोर्ट की बेंच की डिमांड एक लॉन्ग पेंडिंग डिमांड है और दशकों पुरानी डिमांड है । वह डिमांड फुलफिल होनी चाहिए । वेस्टर्न यूपी का आदमी, सहारनपुर से 800 किलोमीटर चल कर हाई कोर्ट से न्याय लेने के लिए इलाहाबाद जाता है । मेरी सरकार से यह मांग है, मैं जानता हूँ कि यहां जितने लोग डिस्कस कर रहे हैं, सरकार इतनी कमजोर भी नहीं है, क्योंकि हम लोग बैठे हैं तो कह रहे हैं कि साहब सुप्रीम कोर्ट सुनता नहीं है । मुझे मालूम है कि जब सरकार की विल होती है तो सुप्रीम कोर्ट के कॉलेजियम के कई डिसिजन्स को या तो वह इम्प्लिमेंट नहीं करती या कॉलेजियम पर दबाव बनाती है कि फलां जज को आप रिकमंड करेंगे तो हम कोई भी रिकमंडेशन नहीं मानेंगे । पूरा देश जानता है कि जस्टिस ... * जो हाई कोर्ट की लिस्ट में सीनियर मोस्ट थे, जिनको सुप्रीम कोर्ट जाना था,

लेकिन कॉलेजियम के ऊपर सरकार का दबाव था कि अगर उनका नाम इन्क्लूड करके आपने भेजा तो हम एक भी नाम पास नहीं करेंगे ।... (व्यवधान)

माननीय सभापति : जस्टिस का नाम निकाल दें ।

... (व्यवधान)

कुंवर दानिश अली: कॉलेजियम ने पिछले डेढ़ साल तक रिकमंडेशन नहीं की । डेढ़ साल तक कोलेजियम की रिकमेंडेशन नहीं होने दी गई । सभापति महोदय, मैं आपके माध्यम से इतना ही कहना चाहता हूँ कि देश में न्याय की क्या स्थिति है? 50 लाख से ज्यादा केसेज़ हाई कोर्ट्स में पेंडिंग हैं और चार करोड़ से ज्यादा केसेज़ लोअर कोर्ट्स में पेंडिंग हैं । इसमें बड़ी संख्या इस देश के गरीब समाज की है । जो दलित है, पिछड़ा है, अकलियत है, आदिवासी है, उनके केसेज़ पेंडिंग हैं । महोदय, मैं आपके माध्यम से यह भी कहना चाहूंगा कि पिछले कुछ दिनों में यह देखने को मिला है कि जो रिप्रेजेंटेशन एससी, एसटी, ओबीसी, माइनोरिटीज़ का होना चाहिए, मैंने अभी एक एग्जाम्पल दिया कि सरकार को जहां चाहिए होता है, वहां सरकार दबाव बना लेती है । लेकिन जब एससी, एसटी, ओबीसी, माइनोरिटीज़ के रिप्रेजेंटेशन की बात आती है तो सरकार दबाव नहीं बनाती है । सरकार कई-कई महीनों तक, साल-साल भर तक फाइल पेंडिंग रख कर उस पर बैठ जाती है, उसको क्लियर नहीं करती है । सर, मैं कनक्लूड कर रहा हूँ । मैं आपके माध्यम से कहना चाहता हूँ कि ऑनरेबल कोर्ट्स आजकल जो हैं, आप देख रहे हैं, हम देख रहे हैं कि जो इम्पोर्टेंट केसेज़ होते हैं, यूएपीए में जो लोग बंद हैं, जो दूसरे केसेज़ हैं, जो कंस्टिट्यूशन बेंच के पास हैं, सरकार की विल होती है, सरकार अगर चाह लेती है कि इस इश्यू को अभी नहीं टेक-अप करना है तो ऑनरेबल सुप्रीम कोर्ट में पेंडिंग चला जाता है । ... (व्यवधान)

माननीय सभापति: दो सालों से तो कोर्ट्स बंद पड़े हैं ।

... (व्यवधान)

कुंवर दानिश अली: सर, मैं यह भी कहना चाहता हूँ कि कोर्ट्स बंद नहीं पड़े हैं । पिनाकी जी कहेंगे कि लॉयर्स जो हैं, कई बार हमने क्लिपिंग्स भी देखी हैं कि बड़े लॉयर्स किस तरीके से, किस हालत में बैठ कर ऑनलाइन हियरिंग में शामिल रहते हैं

। ... (व्यवधान) सर, मैं बस कनक्लूड ही कर रहा हूँ । ... (व्यवधान) सर, मैं कहना चाहता हूँ कि गरीब को हायर ज्यूडिशरी में न्याय नहीं मिल रहा है, क्योंकि जो रिप्रेजेंट करने वाले लोग हायर ज्यूडिशरी में हैं, जो एडवोकेट्स हैं, उनकी फीस इतनी ज्यादा होती है कि गरीब आदमी उसको अफोर्ड नहीं कर पाता है । मैं इसी बात के साथ अपनी बात समाप्त करना चाहता हूँ कि हाई कोर्ट की बेंच पश्चिम उत्तर प्रदेश में, मुरादाबाद मंडल में, मेरे यहां गढ़मुक्तेश्वर है, ब्रज घाट इतना बड़ा तीर्थ स्थल बन रहा है, कम से कम आप वहीं दे दीजिए । माननीय लॉ मिनिस्टर साहब, आपकी सरकार उत्तर प्रदेश में भी है, केंद्र में भी है और आप अगर चाहें तो यह कर सकते हैं । ... (व्यवधान)

Thank you very much Hon. Chairperson Sir, for (इति) کنور دانش علی (امروہ): allowing me to speak on the High Court and Supreme court Judges (Salaries and Conditions of Service) Amendment Bill, 2021 میں جس بات کو آخر میں بولنے والا تھا، میں اس کو پہلے شروع کر لیتا ہوں، کیونکہ ماحول ایسا بن گیا ہے۔

جناب، آپ بیٹھے ہوئے ہیں اس لئے آپ مجھے پروٹیکشن دیں گے۔ میں یہیں کہنا چاہتا ہوں کہ مغربی اتر پردیش کے اندر ایک ہائی کورٹ بینچ کی ڈیمانڈ ایک لونگ پینڈنگ ڈیمانڈ ہے اور دسیوں سال پرانی ڈیمانڈ ہے۔ وہ ڈیمانڈ پوری ہونی چاہیے۔ مغربی یوپی۔ کا آدمی سہارنپور سے 800 کلومیٹر چل کر ہائی کورٹ سے انصاف پانے کے لئے الہ آباد جاتا ہے۔ میری سرکار سے یہ مانگ ہے، میں جانتا ہوں کہ یہاں جتنے لوگ ڈسکس کر رہے ہیں، سرکار اتنی کمزور بھی نہیں ہے، کیونکہ ہم لوگ بیٹھے ہیں تو کہہ رہے ہیں کہ صاحب، سپریم کورٹ سنتا نہیں ہے، مجھے معلوم ہے کہ جب سرکار کی ول ہوتی ہے تو سپریم کورٹ کے کاليجيم کے کئی ڈیسیزنس کو یا تو وہ امپلیمینٹ نہیں کرتی یا کاليجيم پر دباؤ بناتی ہے کہ فلا جج کو آپ ریکمینڈ کریں گے تو ہم کوئی بھی ریکمنڈیشن نہیں مانیں گے۔ پورا ملک جانتا ہے کہ انصاف (کاروائی میں شامل نہیں) جو ہائی کورٹ کی لسٹ میں سینر موسٹ تھے، جن کو سپریم کورٹ جانا تھا لیکن کاليجيم کے اوپر سرکار کا دباؤ تھا کہ اگر ان کا نام شامل کر کے آپ نے بھیجا تو ہم ایک بھی نام پاس نہیں کریں گے۔

کاليجيم نے پچھلے ڈیڑھ سال تک ریکمنڈیشن نہیں کی۔ ڈیڑھ سال تک کاليجيم کی ریکمنڈیشن نہیں ہونے دی گئی۔ چیرمین صاحب، میں آپ کے ذریعہ سے اتنا بیکہنا چاہتا ہوں کہ ملک میں انصاف کی کیا حالات ہیں؟ 50 لاکھ سے زیادہ کیسز ہائی کورٹ میں پینڈنگ ہیں اور 4 کروڑ سے زیادہ کیسز لوور کورٹس میں پینڈنگ ہیں۔ اس میں بڑی تعداد اس ملک کے

غریب سماج کی ہے۔ جو دلت ہے، پچھڑا ہے، اقلیت ہے، آدی واسی ہے۔ ان کے کیسز پینڈنگ ہیں۔ چیرمین صاحب، میں آپ کے ذریعہ سے یہ بھی کہنا چاہوں گا کہ پچھلے کچھ دنوں میں یہ دیکھنے کو ملا ہے کہ جو ریپریزینٹیشن ایس۔سی۔، ایس۔ٹی۔، او۔بی۔سی۔ اقلیتوں کا ہونا چاہیے میں نے ابھی ایک مثال دی کہ سرکار کو جہاں چاہیے ہوتا ہے وہاں سرکار دباؤ بنا لیتے ہے۔ لیکن جب ایس۔سی۔، ایس۔ٹی۔، او۔بی۔سی۔ مائوریٹیز کے ریپریزینٹیشن کی بات آتی ہے تو سرکار دباؤ نہیں بناتی ہے۔ سرکار کئی مہینوں تک سال۔سال بھر تک فائل پینڈنگ رکھ کر اس پر بیٹھ جاتی ہے۔ اس کو کلیئر نہیں کرتی ہے۔ جناب، میں اپنی بات مکمل کر رہا ہوں، میں آپ کے ذریعہ سے کہنا چاہتا ہوں کہ آنریبل کورٹس آج کل جو ہیں، آپ دیکھ رہے ہیں، ہم دیکھ رہے ہیں کہ جو اہم کیسز ہوتے ہیں، یو۔اے۔پی۔اے۔ میں جو لوگ بند ہیں، جو دوسرے کیسز ہیں جو کانسٹی ٹیوشن بینچ کے پاس ہیں سرکار کی ول ہوتی ہے، سرکار اگر چاہ لیتی ہے کہ اس ایشیو کو ابھی نہیں ٹیک اپ کرنا ہے تو آنریبل سپریم کورٹ میں پینڈنگ چلا جاتا ہے۔

جناب، میں یہ بھی کہنا چاہتا ہوں کہ کورٹس بند نہیں پڑے ہیں۔ پناکی جی کہیں گے کہ وکیل جو ہیں کئی بار ہم نے کلپنگس بھی دیکھی ہے کہ بڑے لائرس (Lawyers) کس طریقے سے کس حالت میں بیٹھ کر آن لائن ہیرنگ میں شامل رہتے ہیں۔ سر میں بس کنکلوڈ ہی کر رہا ہوں (مداخلت)۔ سر میں کہنا چاہتا ہوں کہ غریب کو ہائر جیوڈیشری میں انصاف نہیں مل رہا ہے کیونکہ جو ریپریزینٹ کرنے والے لوگ ہائر جیوڈیشری میں ہیں، جو وکیل ہیں ان کی فیس اتنی زیادہ ہوتی ہے کہ غریب آدمی اس کا افورڈ نہیں کر پاتا ہے۔ میں بات کے ساتھ اپنی بات مکمل کرنا چاہتا ہوں کہ ہائی کورٹ کی بینچ مغربی اتر پردیش میں مرادآباد منڈل میں میرے یہاں گڑھ مکتیشور ہے، برج گھاٹ اتنا بڑا تیرتھ استھان بن رہا ہے کم سے کم آپ وہیں دے دیجیئے، محترم قانون منتری صاحب، آپ کی سرکار اتر پردیش میں بھی ہے۔ مرکز میں بھی ہے اور آپ اگر چاہیں تو یہ کر سکتے ہیں (مداخلت)

ختم شد

SHRI THOMAS CHAZHIKADAN (KOTTAYAM): Respected Chairperson Sir, thank you very much for giving me an opportunity to participate in the discussion on the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill, 2021.

Sir, upon reading the Bill, I had the impression that this is just to clarify on the effective dates on which the revised pension is to be provided to the retired judges. But after hearing hon. Member, Shri Pinaki Misra and hon. Member, Shri N.K. Premachandran, I have a doubt whether it was necessary for the Government to bring in such a Bill because we should always appreciate that the services of judicial officers, especially in the High Courts and in the Supreme Court, are very good. They are giving a very good service to the community and to the society and we should appreciate that by giving proper monetary benefit for that.

However, I would like to point out three serious deficiencies in the judicial system in our country. One is the insufficient judicial infrastructure which was mentioned by some of our Members. Second one is the large number of cases pending, and the third one is the absence of a branch of the Apex Court in South India.

First of all, coming to the insufficient judicial infrastructure, we have a majestic building for the Supreme Court and most of the High Courts have very big buildings. But should not we examine whether these infrastructures have modern facilities with the latest technology? This was evident during the COVID-19 pandemic when all the courts had to resort to virtual hearing mode. Most of the High Courts do not even have sufficient court rooms to accommodate the offices of the courts and the litigants.

Upgradation of the judicial infrastructure with modern facilities is an urgent need of the hour.*(Interruptions)*

HON. CHAIRPERSON : Please conclude.

SHRI THOMAS CHAZHIKADAN: Sir, I will just conclude in a minute.

The next issue is with regard to the huge number of pending cases. Every year the number of cases instituted are much more than the number of

cases disposed of. This results in piling up of the undisposed cases in every court. This backlog leads to a situation where most of the important questions of law do not receive timely answers.(Interruptions)

HON. CHAIRPERSON: Please conclude it with the last line.

SHRI THOMAS CHAZHIKADAN: Important constitutional law cases, many of them relating to the fundamental rights of the citizens, have been pending for years and even decades. In criminal cases, delays create great hardships, as the accused, many of them housed in jail, often must wait years for justice.(Interruptions) Thank you. Sir.

श्री एम. बदरुद्दीन अजमल (धुबरी): चेयरमैन साहब, आपने मुझे इस विषय पर बोलने का मौका दिया, इसके लिए मैं आपका शुक्रगुज़ार हूँ ।

सर, चूंकि अभी टाइम की कमी है । इसे मैं अच्छी तरह से समझ रहा हूँ । इस वजह से मैं मिनिस्टर साहब से डायरेक्टली कहना चाहूँगा कि आप जजों का पेंशन बढ़ाए, कोर्ट के जितने भी लोग हैं, उनको आप इतनी सुविधा दे दीजिए कि उन्हें रिटायरमेंट के बाद किसी दूसरी नौकरी को नहीं देखना पड़े और किसी के पास अपने ज़मीर को बेचना नहीं पड़े । इस प्रकार आज जजों के मामले में पूरे मुल्क में बहुत सारे केसेस पेंडिंग हैं । अभी सारे लोगों ने बताया कि सुप्रीम कोर्ट में करीब 75 हजार केसेस पेंडिंग हैं । इसी तरीके से लोअर कोर्ट में भी है । हाईकोर्ट्स के अंदर तकरीबन लाखों केसेस पेंडिंग हैं । लोअर कोर्ट्स में करीब 4.5 करोड़ केसेस पेंडिंग हैं । आज इस पूरे मामले को देखने की जरूरत है ।

चेयरमैन सर, मैं मिनिस्टर साहब से कहूँगा कि देश में जस्टिस इतनी डिले हो जाती है कि लोगों की पूरी जिंदगी गुजर जाती है । लोग जेलों में मर जाते हैं । जेलों में उनको कोई पूछने वाला नहीं होता है । उनको बाहर भी कोई पूछने वाला नहीं होता है । आप जितना जल्दी हो सके, केसेस को डिस्पोज़ करने की कोशिश कीजिए । इसको खत्म करने के लिए ऑर्डर दीजिए । आप जजों की संख्या बढ़ाए । आज हर जगह जजों की कमी है । सुप्रीम कोर्ट, हाईकोर्ट और लोअर कोर्ट्स में जजों की

संख्या बढ़ाने की जरूरत है, ताकि केसेस जल्दी से जल्दी डिस्पोज़ हों। हमारे एक साथी अभी बता रहे थे कि अगर ये केसेस नॉर्मल तरीके से चलें तो डिस्पोज़ होने में कम से कम 300 साल लगेंगे। इस प्रकार हमारा मुल्क किस तरफ जाएगा।

सर, हमारे मंत्री जी अभी नौजवान है। यह काम इनके हाथ में है। इसको जितना जल्दी हो सके, आप डिस्पोज़ कीजिए। आज कोर्ट्स में इंफ्रास्ट्रक्चर की काफी कमी है। जब हम अपने यहाँ कोर्ट्स में जाते हैं तो हमें शर्मिंदगी होती है। हमारी एक महिला साथी ने बताया कि महिलाओं के लिए यूरिनल का भी इंतजाम नहीं है। इसी तरीके से कोई ऐसा इंफ्रास्ट्रक्चर नहीं है, जिसके ऊपर डिपेंड होकर वकील लोग अपनी सहूलियत लें। हमारे लोग भी कोर्ट में जाते हैं, उनको भी सहूलियत मिलें। अपने यहाँ ये चीजें नहीं होती हैं, इनका आप ख्याल रखेंगे।

बहुत-बहुत शुक्रिया।

***DR. THOL THIRUMAAVALAVAN (CHIDAMBARAM):** Hon. Chairman Sir. Vanakkam. I wholeheartedly thank you for this opportunity to speak on an important Bill. Judiciary is one among the important pillars upholding our democracy. We should find ways and means to ensure the freedom of Judiciary in our country without any political interventions or interference. The number of Judges in Hon High Courts and Hon Supreme Court is very less. That is why several thousands of cases are pending even in these appellate Courts, the High Courts and the Supreme Court. Therefore, my demand is that the number of the Judges in the Hon High Courts and Hon Supreme Court should be increased.

A reservation policy is to be adopted while appointing Judges for the Hon. High Courts, Hon. Supreme Court and other Courts. I urge that a separate legislation should be brought in ensuring reservation for SCs, STs, OBCs, Women and Disabled persons as regards appointments of Judges. Hon. Supreme Court is located in New Delhi. As we know India is a country

with vast area, it becomes more critical as it needs lots of time and energy to travel a long distance to reach New Delhi from Tamil Nadu if an appeal is to be made on a particular case in the Hon. Supreme Court of India. Therefore, I request that a Bench of Hon Supreme Court should be set in the southern part of this Country, particularly in Hyderabad.

There are so many vacant posts in Hon. High Courts and Hon. Supreme Court. The Government should act swiftly to fill up all these vacant posts. As Collegium system is undemocratic, it should be discarded and a more transparent and democratic system should be evolved replacing the Collegium system.

There are political interventions in the transfer of Judges, as they face injustice in some cases. Hon Chief Justice of Madras High Court Justice Sanjib Banerjee was transferred recently from Madras High Court to Meghalaya High Court. Justice Banerjee was working in a large State of Tamil Nadu. But as gross injustice, Justice Sanjib Banerjee was transferred to a small State Meghalaya with less powers. Therefore I urge that the undemocratic Collegium system should be replaced with a new transparent system which can be truly democratic.

Thank you.

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श्री अरूण साव (बिलासपुर): माननीय सभापति महोदय, मैं विधेयक के पक्ष में बोलने के लिए खड़ा हुआ हूँ। यह विधेयक उच्चतम न्यायालय और उच्च न्यायालय के न्यायाधीश एक निश्चित आयु प्राप्त करने पर कब पेंशन या पारिवारिक पेंशन की अतिरिक्त मात्रा पाने के हकदार होंगे, यह स्पष्ट करने के लिए लाया गया है।

माननीय सभापति महोदय, यह विधेयक यह स्पष्ट करता है कि एक निश्चित आयु प्राप्त करने के बाद सेवानिवृत्त होने वाले न्यायाधीशों की पेंशन में वृद्धि उस

महीने के पहले दिन से लागू की जाएगी, जिसमें वे निर्दिष्ट आयु पूरी करते हैं, न कि उनके द्वारा निर्दिष्ट आयु में प्रवेश करने के पहले दिन से ।

माननीय सभापति महोदय, भारत के उच्च न्यायालयों के न्यायाधीशों के वेतन, ग्रेच्युटी और पेंशन, उच्च न्यायालय न्यायाधीश (वेतन और सेवा शर्त) अधिनियम, 1954 के द्वारा शासित होते हैं । इसी प्रकार उच्चतम न्यायालय के न्यायाधीशों के वेतन, ग्रेच्युटी और पेंशन उच्चतम न्यायालय न्यायाधीश (वेतन और सेवा शर्त) अधिनियम, 1958 के द्वारा शासित होते हैं । केंद्र सरकार के द्वारा छठवें केन्द्रीय वेतन आयोग की सिफारिश पर पेंशन एवं पेंशनभोगी कल्याण विभाग के ज्ञापन दिनांक 2/9/2008 के द्वारा सेवानिवृत्त सिविल सेवकों को पेंशन की अतिरिक्त मात्रा प्रदान की गई । इस संबंध में केंद्र सरकार ने 3/10/2008 को एक स्पष्टीकरण भी जारी किया और स्पष्टीकरण जारी करके यह कहा कि 80, 85, 90, 95 और 100 साल पूर्ण होने पर अतिरिक्त पेंशन की मात्रा प्राप्त होगी । इस संबंध में अधिनियम, 1954 और अधिनियम, 1958 में धारा 16(बी) और 17(बी) अंतःस्थापित की गई, जिसकी अधिसूचना 16/3/2009 को प्रकाशित की गई, जो 1/1/2006 से लागू की गई ।

सभापति महोदय, गुवाहाटी उच्च न्यायालय, मध्य प्रदेश उच्च न्यायालय और तत्पश्चात सर्वोच्च न्यायालय के द्वारा जो आदेश पारित किए गए, उससे केंद्र सरकार की मंशा और केंद्र सरकार के 3/10/2008 के जो स्पष्टीकरण हैं, उसमें असमानता और अस्पष्टता आ गई । उसे दूर करने के लिए यह संशोधन विधेयक लाया गया है । इस संशोधन के फलस्वरूप पेंशनभोगियों और पारिवारिक पेंशनभोगियों को पेंशन की अतिरिक्त मात्रा प्रदान करने में समानता आएगी और अस्पष्टता दूर होगी ।

माननीय सभापति महोदय, पूरे सदन में लोगों ने इस बात की चिंता जाहिर की है कि न्यायालयों में प्रकरणों की जो पेंडेंसी है, वह बहुत अधिक हो गई है । प्रधान मंत्री माननीय नरेन्द्र मोदी जी के नेतृत्व में देश में हर क्षेत्र में क्रांतिकारी परिवर्तन हुए हैं । खेल मंत्री के रूप किरेन रिजीजू जी जब काम कर रहे थे, उनके नेतृत्व में और माननीय प्रधान मंत्री मोदी जी के मार्गदर्शन में जिस प्रकार से ओलम्पिक और पैरा-ओलम्पिक में इस देश ने इतिहास रचने का काम किया, आज ऐसे ही सक्षम नेतृत्व को न्याय विभाग की जिम्मेदारी है । न्याय प्रणाली में आमूल-चूल परिवर्तन करके देश के लोगों को सस्ता और सुलभ न्याय दिलाने का काम हमारे माननीय मंत्री जी करेंगे ।

मुझे यह पूरा विश्वास है । मैं एक बात और कहना चाहता हूं कि मेरा संसदीय क्षेत्र बिलासपुर छत्तीसगढ़ की न्यायधानी है । वहां उच्च न्यायालय स्थापित हुआ है, भव्य भवन का निर्माण हुआ है । हम चाहते हैं कि सारे न्यायाधिकरण और जितने प्रकार के ट्रिब्यूनल्स हैं, उनकी स्थापना भी बिलासपुर में हो तो बिलासपुर एक न्यायधानी के रूप में सर्व सुविधा का स्थान बन जाएगा । बहुत-बहुत धन्यवाद ।

SHRI ADHIR RANJAN CHOWDHURY (BAHARAMPUR):

Chairperson, Sir, I rise to make a brief intervention in the discourse pertaining to the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill, 2021.

It appears that these amendments are not substantive changes to the law, but are instead clarificatory amendments to clearly state when retired Judges or their families in the case of a Judge's death are entitled to additional quantum of pension in accordance with the scales as mentioned under the respective Parent Acts. In 2009, the Parent Acts were amended to provide for pension or family pension to retired Judges or to the family of a Judge after his death.

So, it appears innocuous. However, the lucid argument made by our esteemed colleague, Mr. Pinaki Misra, has triggered a great confusion, if not controversy, on this legislative document. Therefore, I think that it is prudent to suggest our hon. Law Minister that he should make it a ...
(Interruptions)

HON. CHAIRPERSON: Facts do not confuse.

SHRI ADHIR RANJAN CHOWDHURY: Yes, a little. So, the Minister himself should make it clear so as to diffuse any kind of remaining confusion, if it is so.

The motto of our judiciary is यतो धर्म ततो जय -- where there is righteousness there will be victory. Since, 28th January, 1950, the odyssey of Supreme Court was set off and still the caravan has been going on, which ensures justice in our country even if deficiencies or lacunae are observed. It is a different kettle of fish. However, we all believe that our Constitution is the supreme law of our country. Our Constitution consists of regulatory law, common law, statutory law and not only that the system basically is based upon, to a larger extent, an advisory assistance whereby a neutral Judge would offer his judgement after hearing deliberations by both the parties. So, this kind of institution we have in place.

I would like to know this from the hon. Minister. Can we not explore an institutional mechanism to have a permanent pay matrix in so far as the salaries and other issues with the judicial system are concerned? It is because the bedrock of our country's democracy is the rule of law and that means that we have to have an independent judiciary, judges who can make decisions independent of the political winds that are blowing. I quote it from Caroline Kennedy.

I am good at only to plead for our subordinate judiciary because being a representative of people from an aspirational District, I have been witnessing during my political career the trials and tribulations being confronted by the poor and marginalised people of my District and my State.

20.00 hrs

I want to quote Shri N.V. Ramana, the Chief Justice of India.

HON. CHAIRPERSON: Just a minute. The time was extended up to 8 o' clock. I believe, Shri Chowdhury is going to take another five minutes. If the House agrees, the time of the House would be extended till Shri Chowdhury completes his speech.

SEVERAL HON. MEMBERS: Yes.

SHRI ADHIR RANJAN CHOWDHURY: I would simply highlight two or three issues, before concluding my speech.

There is a perception which has been growing in the country that Judiciary is also infected by corruption. We cannot defy the perception. Even in the year 2011, this Parliament has impeached Judge Soumitra Sen for some sort of corruption cases.....

HON. CHAIRPERSON: Misdemeanour.

SHRI ADHIR RANJAN CHOWDHURY : Misdemeanour.

So far as corruption in Judiciary is concerned, there must be some system of accountability because the media also do not give a clear picture on account of the fear of contempt. There is no provision. I do not know whether there is any provision is in existence for registering an FIR against a Judge for taking bribe, without taking the permission of the Chief Justice of India. I do not have any idea. The Minister may clarify.

Everybody has expressed their apprehension and concern in regard to the huge pendency of cases. Virtually, the country has been sitting on the 'pendency' bomb. The victims are the ordinary and the poor people. While the rich can afford an expensive lawyer like Shri Pinaki Misra, and change the course of dispensation of law in their favour, the poor cannot. This also creates a big blockade for the international investors also.

About the lack of transparency, I do not know how much accessibility is enjoyed by the common people through the instrument of the Right to Information Act in the justice system of our country. I do not have the elaborate idea of it but I think, the RTI Act should be given due priority in our judicial system so that the common people can have the information

about the functioning of the Judiciary, about the substantial issues like the quality of justice, accountability, etc.

Hardship of the undertrials is a well-known fact for all of us because most of the MPs are hailing from the countryside. I personally have a bitter experience in regard to the undertrial prisoners of our country. In my State, West Bengal, hundreds of poor, common man and innocent people are being lodged in the jails on fabricated charges. They have been languishing for years together inside the jails because they have been implicated in such a case, which is unbailable, such as, cases under the Narcotic Drugs and Psychotropic Substances (NDPS) Act. A number of cases under the NDPS Act are slapped against those innocent political workers. Their only offence is that they belong to the opposition parties, much to the disapproval of the ruling dispensation.

Rijiju ji, how can we get rid of this kind of situation? I do not know whether we have any mechanism in the judicial system which can provide any kind of succour to those poor and innocent victims of our country.

I would like to draw the attention of the House and of the hon. Minister that, still, judiciary has been inheriting the colonial hangover of the British imperialism. The reason is that they still live in a secretive society. They do not have any direct interaction with the mainstream society of our country. Naturally, we do not have any idea about them and they also do not have any idea about us. More and more interaction of the judiciary with the mainstream society certainly will give a little fillip and impetus of the judicial system because then can have the idea about the nitty gritty of the existing society also.

HON. CHAIRPERSON: Please conclude now.

SHRI ADHIR RANJAN CHOWDHURY: Sir, I have only two or three points that I will narrate very briefly. Actually, sometimes, I came to learn

something from our friends from legal field like lawyers. I used to ask them about the deficiencies being suffered by our judicial system. They drew my attention on three to four points that I think should be expounded here. First, the infrastructure is pathetic. They do not get proper coats, chambers or even good chairs. The courts do not have air conditioners. There is no room to even store records. This is the state of judicial system at a subordinate level. This needs to be corrected.

Use of technology is at a minimum level. They do not have even high-speed internet to upload daily data. The system needs to be revisited and revitalised. Even in the covid situation, when hybrid mechanism was explored, I do not know whether it has succeeded or not, but numerous courts tried hybrid mechanism, half physically and half virtually. The shortage of judges and court staff is causing huge pendency. Scope of innovation is also very little. No one is taking care of new research in judiciary at the district level. The salary is not at par with the 7th Pay Commission. Even the trial court judges nowadays are scared and afraid of their security as one incident took place in Jharkhand also. So, security of trial court judges also needs to be whipped up. Transparency in policy for transparent posting is urgently required.

I am simply referring a few observations made by a judge of our country. Former Chief Justice of India, Sharad Bobde, had made it clear to the States and Union Territories that the recommendation made by the second National Judicial Pay Commission to nearly triple the pay and allowances for subordinate judiciary should be implemented proactively. The hon. Supreme Court highlighted in its order of 28th February, 2020, that a financially self-sufficient subordinate judiciary was pivotal for the existence of an independent judiciary. Self-reliance is the foundation of independence. The society has a stake in ensuring the independence of the judiciary, and no price is too heavy to secure it to keep the judges for want

of essential accoutrements, and thus to impede them in the proper discharge of their duties is to impair and whittle away justice itself.

Sir, I would like to draw the attention of the hon. Minister to the review verdict of 1993 in which the Supreme Court made an observation that judicial service is not a service in the sense of employment, and judges are not employees. I am proud of our hon. Law Minister Shri Kiren Rijiju ji because he is now holding the position which was once adorned by Dr. Babasaheb Ambedkar, the first Law Minister of independent India. We expect to get more elaboration on various points from his reply. Thank you.

20.11 hrs

(Hon. Speaker *in the chair*).

माननीय अध्यक्ष : सभा की कार्यवाही बुधवार दिनांक 8 दिसंबर, 2021 को प्रातः 11 बजे तक के लिए स्थगित की जाती है ।

20.11½ hrs

*The Lok Sabha then adjourned till Eleven of the Clock on Wednesday,
December 8, 2021/Agrahayana 17, 1943 (Saka)*

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* The sign + marked above the name of a Member indicates that the Question was actually asked on the floor of the House by that Member.

* Available in Master copy of Debate, placed in Library.

* English translation of the speech originally delivered in Bengali

* English translation of this part of the speech originally delivered in Bengali.

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- * English translation of the speech originally delivered in Tamil.
- * ...* English translation of this part of the Speech originally delivered in Bengali.
- * Not recorded
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- *....* English translation of this part of the speech originally delivered in Bengali.
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- * English translation of the speech originally delivered in Tamil.
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- * English translation of the speech originally delivered in Tamil.

- * Treated as Laid on the Table.
- * Expunged as ordered by the Chair.
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