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Title: Further discussion on the motion for consideration of the High Court and Supreme Court Judges (Salaries and Conditions of Service Amendment) Bill, 1998.

15.48 hrs.

प्रो. अजित कुमार मेहता (समस्तीपुर) : सभापति जी, मुझे बोलने का अवसर दिया जाये।

उच्च न्यायालयों एवम सर्वोच्च न्यायालय के न्यायमूर्तियों की सुख-सुविधाओं को बढ़ाने के लिए यह विधेयक लाया गया है। लोकतंत्र के तीन मुख्य स्तम्भ हैं, विधायिका, कार्यपालिका और न्यायपालिका। कार्यपालिका और विधायिका को जगाने के लिए, उनको हमेशा सजग रखने के लिए न्यायपालिका की आवश्यकता है, इसलिए न्यायपालिका के सदस्य न्यायमूर्तियों को चिन्तामुक्त, तनावमुक्त रहना ही चाहिए। उनको ऊपर अपने परिवार के भरण-पोषण के लिए हमेशा चिन्तित नहीं रहना चाहिए, इसके लिए यह बिल लाया गया है। इस बिल का स्वागत किया जाना चाहिए था।

मगर कुछ कारणों से, कुछ बिंदुओं से, जिनको मैं आपके माध्यम से सदन के सामने रखना चाहूंगा, इस बिल का समर्थन करने से हिचकिचा रहा हूँ। पहली बात तो यह है कि यह बढोत्तरी हिन्दुस्तान के आम आदमी के वेतन की बढोत्तरी के अनुपात में होनी चाहिए थी। अगर ऐसा हुआ होता तो यह न्यायसंगत होता। इसके साथ-साथ अगर न्यायाधीश अपनी सुख-सुविधाओं में बढोत्तरी के बाद किसी प्रकार के पूर्वाग्रह से मुक्त होते तो यह न्यायसंगत होता। न्यायमूर्तियों की नियुक्ति की जो प्रक्रिया है वह इस प्रकार की है जिसमें सिफारिश और पैरवी की बहुत गुंजाइश है। जब सिफारिश और पैरवी से न्यायमूर्तियों की नियुक्ति होगी तो हमारी ही नहीं, लोगों की भी आशंका है कि पैरवी से नियुक्त न्यायाधीश पैरवी की ही बात सुनेंगे। यह पैरवी कई प्रकार की हो सकती है, मित्रों के माध्यम से हो सकती है, कभी-कभी अपने मनचाहे वकीलों के ब्रीफ लेने से भी हो सकती है।

एक कहावत है कि न्यायालयों में न्यायाधीशों के कान तो कानूनविद भरते हैं, लेकिन आंख भरने के लिए उनके प्रिय वकील ब्रीफ लेकर सामने आते हैं। इससे यह भावना बनती है कि भ्रष्टाचार का प्रवेश किस प्रकार से न्यायालयों में हो गया है। आज कई निचली और ऊंची अदालतों में भ्रष्टाचार का आलम यह है कि न्यायाधीशों के घर का खर्च उनके रजिस्ट्रार वगैरह चलाते हैं, यह मैं उनकी अवहेलना के लिए नहीं कह रहा हूँ, बल्कि तथ्यों के आधार पर कह रहा हूँ। आप किसी भी न्यायालय में चले जाएं, बिना खर्च किए हुए काम नहीं होगा। भ्रष्टाचार का प्रवेश एक और कारण से हो सकता है कि न्यायालयों में न्याय मिलने में जो देरी होती है, उससे भी भ्रष्टाचार को मौका मिलता है। किसी न किसी माध्यम से रूपए का आदान-प्रदान होता है। ऐसी स्थिति में न्यायालय में न्याय जल्दी मिल जाता है। हमने यह भी देखा है कि कई मामलों में तो रात में बैठकर तुरत-फुरत केसों का फैसला किया गया है। जबकि ऐसे भी केस हैं जिनमें दादा ने मुकदमा दायर किया तो पोते को भी फैसला सुनना नसीब नहीं हुआ, इतने बरस न्याय मिलने में लग जाते हैं। यह निश्चितरूप से रूपए के आदान-प्रदान के कारण ही होता है। अगर शहरी सम्पत्ति का सर्वेक्षण कराया जाए तो यह स्पष्ट हो जाएगा कि शहरों में न्यायालयों के न्यायाधीशों की कितनी अड्डालिकाएँ बनी हुई हैं और वे कितने मूल्य की होंगी, इससे भ्रष्टाचार का पता चल सकता है।

जहां तक मैंने पूर्वाग्रह की बात कही, तो स्वतंत्रता के पहले और आजादी मिलने के बाद तक यह व्यवस्था थी कि न्यायालयों में ज्यूरी हुआ करती थी। ज्यूरी के सामने मुकदमें पेश होते थे। अगर किसी केस को लम्बित करने का इरादा होता था तो सारी ज्यूरी को एक जगह रखा जाता था कि वे अखबार न पढ़ें, रेडियो न सुनें और आपस में डिसकस न करें, ऐसी व्यवस्था थी। परंतु अब सालों तक मुकदमा चलता है और जो माननीय न्यायाधीश होते हैं वे रेडियो भी सुनते हैं, टी.वी. भी देखते हैं, अपने मित्रों से विचारों का आदान-प्रदान भी करते हैं तथा जिन लोगों को मुकदमें का आधा-अधूरा ज्ञान होता है, उनके निष्कर्ष भी सुनते हैं और फिर केस के बारे में अपनी धारणा बनाते हैं। इससे मुझे आशंका है कि वे फैसला देने में पूर्वाग्रह से मुक्त नहीं होते। इसलिए जहां हम उनकी सुख-सुविधाएं बढ़ा रहे हैं, हमें इस पर भी रोक लगानी चाहिए।

आज न्यायालयों की जो मैंने चर्चा की कि जो मुकदमे लम्बित रहते हैं और उसके कारण बहुत पद खाली रहते हैं लेकिन मेरा कहना है कि न्यायालयों की लम्बी-लम्बी छुट्टियां भी इसके लिए कम जिम्मेदार नहीं हैं। स्कूल और कॉलेजों की तरह से न्यायालयों में भी लम्बी छुट्टियां देने का क्या तात्पर्य है? यह मेरी समझ में नहीं आता। जब सभी सरकारी कार्यालयों में साल भर काम चल सकता है तो न्यायालयों में छुट्टी की क्या आवश्यकता हो सकती है? इसलिए वहां पर छुट्टी की अवधि कम की जानी चाहिए। मैंने सुना है कि न्यायालयों के फैसले शीघ्र सर्वोच्च न्यायालय में आ जाएं, इसके लिए कम्प्यूटर की व्यवस्था की गई है। राज्य के उच्च न्यायालयों को सर्वोच्च न्यायालय से कम्प्यूटर के माध्यम से जोड़ा जा रहा है ताकि वहां के फैसले शीघ्र सर्वोच्च न्यायालय में पहुंच जाएं लेकिन इसका क्या मतलब है अगर फैसले देने में ही देर लग जाए?

मैं पी.आई.एल. के विरोध में नहीं हूँ। पी.आई.एल. सरकार और कार्यपालिका को जगाने का काम करती है परंतु एक दफा न्यायमूर्ति श्री ए.एस.आनन्द ने भी कहा था:

"The judiciary wakes up the executive ... It will continue to be the alarm clock."

सभापति महोदय (श्री के.प्रधानी): मेहता जी, अब समाप्त कीजिए।

प्रो. अजित कुमार मेहता (समस्तीपुर) : सिर्फ पांच मिनट और लगेंगे। अभी हाल में हमारे राष्ट्रपति के.आर.नारायणन जी ने भी कहा था:

"People's faith in judicial redressal would be eroded if justice delayed is seen as justice denied."

इस स्थिति के बारे में भी सोचना चाहिए। जस्टिस आनन्द के कथन पर मैक्स का कथन है:

'Periodic wake up calls are necessary in India not only for the dithering executive but also for the slow grinding judiciary.'

इसलिए ज्यूडिशियरी में मुकदमों के जल्दी निष्पादन पर भी ध्यान दिया जाना चाहिए। मेरी एक और शिकायत है कि ज्यूडिशियरी में अपनी जिम्मेदारी से भागने की प्रवृत्ति है।

पंजाब में जब आतंकवाद का दौर था और जिन आतंकवादियों या अपराधियों पर मुकदमे चल रहे थे तो उनके लिए लम्बी-लम्बी तारीखें तय की जाती थीं और कभी-कभी तो ऐसा लगता था कि न्यायाधीश ही बीमार हैं और इसलिए तारीखें आगे बढ़ती जाती थीं। लेकिन जब आतंकवाद का दौर समाप्त हुआ तो बड़े आश्चर्य की बात है कि हयूमन राइट्स वालों के अनुरोध पर लोगों को जल्दी-जल्दी जेल में भेजा जाने लगा, उनके ऊपर मुकदमे चलाये जाने लगे जिन लोगों ने आतंकवाद को वहां समाप्त किया था। उन लोगों को जेल में उन्हीं आतंकवादियों के साथ रखने का प्रयास हुआ जिसके कारण एक कर्तव्य-परायण पुलिस अधिकारी को आत्महत्या तक करनी पड़ी।

मैं कह रहा था कि न्यायालयों में शिष्टाचार का भी पालन करना चाहिए। जजों को बेमतलब दूसरों के ऊपर टिप्पणी करने का अधिकार केवल ज्यूडिशियरी में बैठने के कारण ही नहीं हो जाता। अभी आप लोगों ने देखा कि हमारे सहयोगी कल्पनाथ राय जी के ऊपर जब 'टाडा' का मुकदमा चल रहा था तो किस-किस तरह की अशोभनीय टिप्पणियां कोर्ट ने उनके ऊपर दीं। कभी-कभी ऐसा होता है कि जो इश्यूज उनके सामने नहीं रहते हैं, उनके ऊपर भी वे टिप्पणी देते हैं, जैसे बिहार के केस में कई बार ऐसा हुआ कि म्युनिसिपैलिटीज का चुनाव नहीं हुआ और उसका मुकदमा आया और हाइ कोर्ट ने टिप्पणी दे दी कि यहां तो कॉस्टीट्यूशनल फेलियर है।

16.00 hrs.

जिसके बारे में इस सदन में हंगामा हुआ था।

महोदय, एक्जिक्यूटिव्स में कोई व्यक्ति यदि भ्रष्टाचार में लिप्त होता है, तो उसकी जांच के लिए विजिलेंस कमीशन की व्यवस्था है। मैं चाहता हूँ कि यह व्यवस्था ज्यूडिशियरी में होनी चाहिए। ऐसा नहीं कि सारे का सारा मामला इम्पीचमेंट के ऊपर छोड़ दिया जाए। अगर ज्यूडिशियरी में विजिलेंस की व्यवस्था होती, तो इस तरह की बात नहीं होती और जज भी सावधान रहते।

अंत में, मैं एक बात कहना चाहता हूँ। हाल ही में एक ब्रिटिश एडिटर की वक्तव्य की ओर मैं सदन का ध्यान दिलाना चाहता हूँ।

Here I quote what the famous British editor, Mr. Richard Ingrams said:

"I have come to regard the law court not as a cathedral but as a casino where so much depends on the throw of the dice."

अगर इस तरह की बात होगी, तो लॉ-कोर्ट से हमारा विश्वास उठ जाएगा। हम लोग न्यायालय में न्याय पाने के लिए जाते हैं। हमारे यहां एक कहावत है - पंच परमेश्वर होता है। अगर न्यायालयों के न्यायाधीश भी इस तरह के हो जायें, तो हम कहां जायेंगे।

महोदय, इन्हीं कारणों से मैं इस विधेयक का पूर्ण रूप से समर्थन करने में अपने आप को असमर्थ पाता हूँ। मैं विरोध तो नहीं करूंगा। न्यायाधीशों का इस आमदनी में काम नहीं चलता है, तो आमदनी बढ़े, लेकिन वे न्यायप्रिय हों। मैं इस बिल पर न्यूट्रल रहते हुए, अपनी बात समाप्त करता हूँ।

SHRI S. MALLIKARJUNIAH (TUMKUR): Mr. Chairman, Sir, I wish to speak in Kannada. I have already indicated my desire to speak in Kannada if necessary arrangements were made. (Interruptions) You should also know that there is a language called Kannada in the South. You should be in touch with the languages which are existing in this country.

>SHRI S. MALLIKARJUNIAH (TUMKUR) : Mr. Chairman Sir, the Government has brought this High Court and Supreme Court Judges Amendment Bill, 1998 to enhance the salaries and other facilities of judges. This Bill enable the judges to get more facilities. Specially, columns 4, 6, 9 and 11 of Bill have to be implemented by the Government with immediate effect and without any further delay. I express my hapiness about the intentions of

this Bill. Pay Commissions are set up from time to time to look into and to improve the salary and other facilities of Government employees. There will be no representative of labour class and farmers in the Pay Commission set up by the Government of India. High officials and retired officials constitute the Pay Commission. They provide sufficient statistics and enable the white collared officials to get more and more facilities. The common people also would agree with the recommendations of the Pay Commissions. In fact, this is the tradition in our country. The Commission increases the salary of IAS, IPS and other highly placed officials.

The retirement age of Central Government employees has been extended by two years by the Pay Commission recently. This has created tension in the minds of educated youths in the country. The youths are feeling that they are losing their job opportunities because of the increase in the retirement age of Government employees from 60 to 62 years and from 58 to 60 years. These employees who enjoy all the facilities for about 25 to 30 will get another two years of extension. This logic of extension is not at all convincing to me. Unemployment problem is rampant throughout our nation. Some people are becoming naxalites. They are involving themselves in criminal activities. They are resorting to violence. What is the reason for this? Justice is not meted out to them. They feel that there is no justice for them. They are also feeling that the hapless youths are being exploited to the maximum extent. The higher officials are grabbing all the facilities and there are no job

* Original in Kannada

opportunities to the youths. This feeling in the minds of the younger generation is encouraging them to become revolutionary. They begin to indulge in so many anti-social activities. The Government should give a serious thought about this matter. The Commission has given its recommendation and the Government is implementing those recommendations. But who set up this Commission? It is the previous Government which has constituted this Commission. Most of the white collared officials and other Government employees who are responsible for the Constitution of the Pay Commission. This Commission benefits the Government employees.

But who will look after the poor man. He is residing in a hut. He cannot send his children to school. There is no cloth for him. There are no medical facilities for him. He does not feel that tomorrow is bright for him. Who will think about him? Major chunk of the money is being utilised for providing all kinds of facilities for the white collared officials. The poor man is becoming very poor and he ultimately will resort to begging. Now can you being in equality in the society? Some people say that we are all equal. But where is equality and where is equal opportunity in our society? Those who have got an upper hand in the society have equal opportunities (perhaps best opportunities). The poor and depressed person has no future. He cannot earn his livelihood. He cannot get two square meals a day. This is the pathetic condition of a poor man in our country. He cannot impart any kind of education to his children. Under these critical circumstances our own people are ignoring the need of poor people. They want everything on this earth for themselves. I call it as heinous crime which we are committing against the society. This is not at all proper. Judges should get more salary. They should be given jobs even after their retirement. They should also get all pensionary benefits including gratuity, family pension, etc. etc. On the other hand the poor man gets nothing if he dies in an accident. What facilities are we giving to children of a poor man who dies in an accident? What does his widow get? We cannot give a house to her to live. Even a site is not given to the widow and her children. A paltry amount of Rs 20,000/- is not sanctioned to the family of the dead. What type of equality is this? What type of society we have? We have the Constitution. People have the right to vote. Unfortunately, we forget the fact that the poor people are exploited. They are ignorant and we want them to continue like that. There is a proverb in Kannada. According to the proverb there is oil with the producer (Ganigitti) and it will be of no use to the child if it is not given to him. We discuss so many issues here. Unfortunately we have no time to help the poorer section of our society.

In the lower courts the condition of Bar Associations is pathetic. There is no library. If there is some kind of library there are no books in that library. There is no place to sit and read in that so called library. The judges of the lower courts do not have any facilities. The Government should do something in this regard. We have reminded the Government many times about these problems of lower courts. We have written to both Karnataka Government and the Government of India. But strangely nothing has been done in this regard. People say that justice should reach the doors of the people. There is a long pending demand for setting up a bench of the Supreme Court. Similarly, in South India there are from States like Karnataka, Andhra Pradesh and other States

for establishing High Court benches to enable the people to get justice. This matter has been discussed in greater details during the 10th Lok Sabha. Our former Chief Minister of Andhra Pradesh is here. In fact the agitation regarding this matter for a pretty long time in Andhra Pradesh. Even then the court benches were not set up.

MR. CHAIRMAN : Now you may please conclude.

SHRI S. MALLIKARJUNIAH: Sir, we give advance notices to ventilate our views during zero hour. We are not given any chance. So please let me continue.

SHRI NADENDLA BHASKARA RAO (KHAMMAM): Mr. Chairman, Sir, so far as establishing a Bench in South India is concerned, we are all for it. It has been demanded long ago and it is pending with the Government. Since the Law Minister is from South India, he can definitely consider it.

SHRI S. MALLIKARJUNIAH (TUMKUR): In Andhra Pradesh, an agitation was going on for a long time for establishing a Bench at different places, but it was not done. That is the point I would like to make.

MR. CHAIRMAN (SHRI K. PRADHANI): Please conclude.

SHRI S. MALLIKARJUNIAH : When we give a notice at 9 or 9.30 a.m. to speak in the Zero Hour, we are not given a chance. On other occasions also we are not given a chance to speak. Why should we come to the House when we do not get a chance to ventilate our grievances? I made this remark yesterday also. You are kind enough to give me a chance to speak because you have been in Parliament for so many years and you know the difficulties of the Members.

I want the Supreme Court and the High Courts to be liberal. The Supreme Court judges and advocates do not like to leave Delhi. They do not want that a Bench should be established in South India. Likewise, senior advocates at Bangalore do not want that a bench should be opened at Dharward or Gulbarga.

MR. CHAIRMAN: Please conclude.

SHRI S. MALLIKARJUNIAH : Sir, this is the attitude. How can we impress our Government unless we are given sufficient time to speak out on the floor of the House. We write letters. Do they respond to these letters? Do they call us and ask us to sit down to discuss the issues? They have neither patience nor time. Then, why should we come to the House? I am sorry that I am wasting my precious time. I am a practising advocate and I am an agriculturalist also. If we are not given sufficient time, it is better to sit in our own places. We have studied the subject. We have come here to do justice to the subject.

Library facilities should be made available in the district courts and promotions should be given. Vacant posts of judges should be filled up. The Government should apply its mind to open a Bench in different provinces. The books available in the bar associations are meagre.

Another important point is that stamp duty is increased quite often. Who pays the stamp duty? An ordinary person who comes to court to seek justice is not in a position to pay the stamp duty. We speak about the common man; and we speak about the poverty in this country. We speak out our grievances in order to deliver justice to the common man. How far we are able to deliver justice to the common man? A few people sit here and pass some laws and resolutions; as a result, we are not in a position to deliver justice to the common man.

With these few words, I half-heartedly support this Bill.

>SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): Sir, at the outset, I support the Bill. While doing so, I wish to submit something about the judicial system that is working in India. The first thing I would like to emphasize is about the judicial accountability.

So far as our Constitution is concerned, we are lagging behind in judicial accountability. I do concede that the Indian judiciary has withstood the test of time. I applaud that the Indian judiciary has established some noble traditions also. There is no doubt about that. They have enlarged the doctrines enunciated in the Constitution of

India and the judiciary has come to the rescue of the poor man, the man in the street, in safeguarding his fundamental rights enshrined in the Constitution. All these things, I would like to submit in favour of the judiciary but there are certain fundamental defects facing the judiciary as a whole and that is why I want to emphasize about the judicial accountability.

The Contempt of Court Act now in force was passed by the colonial rulers. It gives blanket protection to the judiciary as a whole. They are not amenable to any kind of fair criticism. If anything is said about the judiciary, the person will be booked. Proceedings will be initiated against that particular person and the contempt proceedings have even gone to the extent of bringing the State machinery as a whole to the Contempt of Court Act. So, it gives them blanket protection. It has to be amended. We should allow fair criticism so far as judiciary is concerned. We are not above law. We are not above criticism. They must be made amenable to criticism. My learned friend Shri Thambi Durai should take measures to see that the present Contempt of Court Act be amended. This is my first point.

Now, I do not forget the fact that there is impeachment proceedings so far as the higher judiciary is concerned. We can bring them in the House. But that is not an effective system. We have our own bitter experience in the case of Justice Ramaswamy. In spite of the fact that this House decided against him with a majority, nothing could be done. The provision regarding impeachment of the judges of the High Court as well as the Supreme Court is so ineffective. The judicial accountability can be made available in other aspects also. We should have a statutory mechanism, a judicial mechanism, by which the actions of the judiciary will have to be examined periodically. They should also have the feeling that there is a machinery in the State to check up their doings, whether it be good or bad. There must be some authority to overlook the actions, deeds and misdeeds of the judiciary as a whole. I am sorry that our present system do not give us such a provision. We should have some machinery. What type of machinery it should be, I am prepared to discuss but not at this stage. It is because I do not wish to take much time.

We have three pillars in our Constitution. The Executive is accountable to the Legislature and the Legislature is accountable to the people. We presume that the people at large are sovereign. So, I would suggest that even the judiciary should be made accountable to the sovereign people. My suggestion is, though it may not be agreeable to many of us, that we should have an elected judiciary. The Americans and other Western countries have an elected judiciary.

I do not say that all the judges should be elected. But the judges of the High Courts and the Supreme Court can be elected by an electoral college of accredited lawyers, judges, Presiding Officers and the judicial staff. Our President is elected by an electoral college. So, the members of the higher judiciary, namely, the judges of the High Courts and Supreme Court should be elected by an electoral college. They should be accountable to a particular authority. In the United Kingdom, we know that the King is the fountain of justice. But in India, the people at large are the fountain of justice. The King can do no wrong. So, with that conception we were inheriting the British system. Even now we are having the same remnants of colonial system. How is it? I am a practising lawyer. I have 40 years of experience in the Bar. Even now I am forced to address the judge as 'My Lord'. As far as all of you are concerned, you all have only one Lord, namely, Lord Krishna. There is no other Lord. I can understand the King as the fountain of justice. But why should we address the judges of the High Court and the Supreme Court as 'My Lord'? Only after hearing that address, the Lord will be smiling and he will have some inclination to hear you. Each and every time, the lawyer will be forced to address judges as 'My Lord, My Lord' as if Lord Krishna or Lord Jesus is there. We have to address those people who are sitting in the Bench as 'Lord'. Why should we not change it? We should address them as 'Mr. Judge'. What is the difficulty in it? We are having the Republican Constitution. We are not the citizens of the United Kingdom where the King is the fountain of justice... (Interruptions).

SHRI NADENDLA BHASKARA RAO (KHAMMAM): Sir, the learned friend is not correct in saying that we are still addressing them as 'My Lord'. This has now been removed. They are now addressing them as 'Mr. Judge'.

SHRI VARKALA RADHAKRISHNAN : So, all these remnants of the colonial system should go. Hereafter, we, the Indian citizens and Indian lawyers, should have the courage to address the Chief Justice of Supreme Court as

'Mr. Judge'. That must be the motto. We are not slaves and we are not even the people of a colonial country. So, I would suggest that we should change all these systems. We should also change the procedure about the contempt of court.

Now, I may be permitted to put some other words. While accepting your suggestion, I would suggest another thing. Now, the cases are pending in lakhs in almost all the courts including the High Courts and the Supreme Court. Justice delayed is justice denied is the proverb. I would suggest that the Government at the Centre as well as the Government at the State should take prompt steps to fill up the vacancies that are available in different High Courts. I know that dozens and dozens of posts of High Court judges are yet to be filled. The Ministry of Law should take serious steps to see that these vacancies are filled up. That is one of the reasons for piling up of cases. Not only that. There is a fundamental reason behind this. There must be decentralisation of judicial powers.

There must be decentralisation of judicial powers. I would suggest that the cases which could be decided at the district level need not be taken to the Supreme Court. There are cases pertaining to a particular State which could be finally decided at the High Court level, such cases need not be taken to the Supreme Court... (Interruptions)

MR. CHAIRMAN : Shri Radhakrishnan, please conclude. There are many more speakers.

SHRI VARKALA RADHAKRISHNAN : There are issues concerning the nation that will have to be decided by the Supreme Court. All these matters are now taken to the Supreme Court and the Supreme Court will be happy to deal with all those cases but no decision will be given at the appropriate time. Therefore, there must be complete decentralisation of judicial powers. If there is a dispute between individuals, why should it go to the Supreme Court? There may be disputes with regard to a particular property, which need not go to the Supreme Court. If there is a question of law, then they will say that it has to be decided at the level of the Supreme Court. What will be the result? The poor man in the street is unable to get justice as justice is very costly for him. We all speak about the Welfare State; we all speak about the socialism; and we speak about the poor people, but can a poor man get justice at a cheap rate? It is impossible in India. So, I would suggest that there must be immediate steps taken to see that not only the executive powers but the judicial powers also are decentralised. Each and every case should be decided on merits at a particular lower level. It need not be taken to the Supreme Court... (Interruptions)

MR. CHAIRMAN: Shri Radhakrishnan, please conclude. You have taken ten minutes.

SHRI VARKALA RADHAKRISHNAN : Now I come to judicial activism. When the executive and other organs do not function or do not discharge their constitutional functions properly at the proper time, judicial activism may come in. But excessive judicial activism is not good. There are instances of excessive judicial activism. I will cite one example about the MP's quota for telephone and gas connections. A High Court Judge has decided about the procedure to be followed. Actually, we should decide about the procedure and not the Court. They have no right to interfere in our sphere. There is a clear cut interference of judiciary in the affairs of legislature to decide about the procedure to be followed in the distribution of gas connection. It is not for the Court to decide. That is one example of judicial activism and it cannot be encouraged. There must be clear cut guidelines about the powers of the executive, the powers of the judiciary and the powers of the legislature. They must be complementary and not contradictory. So, I would suggest that in all these cases, there must be a rethinking with regard to the functioning of judiciary in our nation. I request the hon. Law Minister to take effective measures so that something is done with regard to judicial accountability.

With these words, I support this Amendment.

>SHRI K. BAPIRAJU (NARSAPUR): Mr. Chairman Sir, I thank you very much for giving me this opportunity. I would like to make a few suggestions on High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill. I appreciate this initiative irrespective of whether the proposal has come from the judiciary to the Ministry or the Ministry itself has realised to bring this particular Bill. It is very much necessary to give all the privileges and required salaries to the High Court Judges as well as Supreme Court Judges. It is

the life of a judge which has to be taken into consideration because most of the judges who are selected or nominated, as the procedure may be, to the High Court or the Supreme Court have good practices prior to that and they have to forego their flourishing practices. At the same time, his social life is being cut off.

Shri Radhakrishnan is an elderly person. I had allowed him to speak. I am only a PUC-failed candidate. I am trying to struggle myself, taking inspiration from people like him and they should support, encourage and correct us whenever they get an opportunity, maybe in the House or outside the House.

Apart from that even after the retirement of a judge, his life remains isolated. It is really miserable. What I am trying to tell this august House is that it is a great sacrifice on the part of a High Court judge or the Supreme Court judge. It is not an ordinary sacrifice. After all, they have foregone their good practices and their social lives to come forward and become judges. It is not an ordinary decision of an individual. I appreciate the sacrifice done by them.

At the same time, I would like to say that the Constitution has given us three wings, namely, the Executive, the Judiciary and the Legislature. It is quite unfortunate that we have been discussing very commonly, maybe in the House or outside, who is the supreme of these three wings, whether it is the Executive, the Judiciary or the Legislature. Unfortunately, even after 50 years of independence, we are discussing it. If we go through the merits, strengths or powers, it can be pardoned, but we are fighting with our ego, at the cost of the common man. I feel that if any one is fighting with the other in this three-tier system, none of them is going to be the loser, the losers are going to be the people of this country. I think, we have spent 50 years discussing who is supreme.

Our learned senior Member, Shri Radhakrishnan, talked about the usage of 'My Lord' and other things. I do agree with his version. This usage of 'My Lord' kills the ego of a judge. It is very unfortunate that one has to struggle to kill the ego of a judge or the person who is in the Chair. Here also, it is very difficult for the ordinary Members like us to catch the eye of the Speaker.

Who is supreme in a democracy? It is the people who are supreme and not anyone of us. Our people are so great because they have so much tolerance.

We do not make a distinction while talking about the system. In films, they show the judges or the legislators or the parliamentarians or the bureaucrats in such a way that it becomes very difficult for Members like us to go and enjoy it with our family members. We feel guilty that we are Parliamentarians or Legislators. When we are commented upon in the films, people enjoy it very much. This is how it is going on. People never bothered about the salaries that the Government gives to the judges. When you see their sacrifices, you can give more salaries to them. But the point that should be stressed is what are their contributions and to what extent they are accountable. People like the Prime Minister, the Law Minister, the Chief Justice of the Supreme Court and other learned people can sit together and see where we lag behind, what type of cases are coming before the judiciary and whether justice is being done. Statistically, you can analyse as to what kind of cases come before the High Courts and the Supreme Court. Seventy per cent of the cases go to the Magisterial Courts, 20 per cent cases go to the District Courts, another eight per cent of the cases go to the High Courts and hardly one per cent of the cases go to the Supreme Court. The common man cannot dream of going to the Supreme Court. If at all anybody thinks in this august House that the common man can do so, then it is only a dream. The common man cannot afford to go to the Supreme Court because it is beyond his imagination.

The Supreme Court is the highest authority in the country, but the common man never approaches it. To remedy this, what steps are you going to take to see that the common man gets justice from the highest court? What efforts are being made in this direction? Before the hon. Minister asks us to vote in favour of the Bill -- anyway, we are giving support to you -- that he had introduced, will the Minister tell us how many poor people have approached the Supreme Court or the High Courts for getting the justice? We hardly expect anything. Please take some appropriate measures in favour of the common man. People are not bothered as to whether I am taking more salary or the bureaucrats are taking more salary. Eighty per cent of the money from the exchequer is utilised on the salaries, 20 per cent on developmental activities and hardly two per cent or five per cent of it reaches the common man in the country. I am really pained when I know how much amount reaches the common man from the exchequer. People are never bothered about the salaries that we take.

The people want that the judges in their capacity and with their authority should deliver justice to them. The people want them to be accountable. Unfortunately, none of us here is able to face the people due to lack of accountability. In a democracy the people are supreme and nobody else, and the people are waiting for that.

Sir, before I conclude I would like to say something about which Shri Radhakrishnan has said. Though I am not as accomplished as Shri Radhakrishnan to mention it yet I would like to submit that he wants elections for the judges of the High Court. We go through the process of elections and we know how many methods are involved in it. I am afraid that the system has to be changed but we have the experience that one suggestion of the Election Commission of providing photo identity passes to the voters for checking electoral malpractices could not be implemented fully. Now, he wants elections to be held for the judges of the High Courts. It is beyond imagination. Let us first have a systematic pattern of elections before we make a suggestion to the Judiciary about it. Let the Judiciary be little bit aware. The election process there is not so bad. Let it continue. Let us strengthen the Judiciary and at the same time let us not allow them to encroach upon the territory of the Legislature. The case of the gas and telephone coupon has rightly been pointed out by an hon. Member. It was unnecessary for the High Courts to have thought about that. Lakhs and lakhs of other cases are pending before the Judiciary.

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>>1642 hours (Dr. Laxmi Narayan Pandey in the Chair)

>PROF. SAIFUDDIN SOZ (BARAMULLA): Mr. Chairman, Sir, after so many people have spoken here on this Bill, I think, I also have something very important to say on this Bill. I did not care to look at the Bill to find out as to how much money is going to be paid as salary to the Judges because I do not grudge that. Whatever has been considered necessary by the Government has come before us and we shall vote it. The Judges should live honourably and they should have the perks they want. We are prepared to give them that. But there are very serious questions before us.

Sir, only recently, the President of India inaugurated a Seminar and the Chief Justice of India was also present in that Seminar. In the news bulletin, in the evening, a lot of time was allotted by the private TV channels like the STAR TV, the ZEE TV and our own Doordarshan to telecast what was said by the hon. President, the Chief Justice and the Attorney General, Shri Soli Sorabjee.

Sir, after all, what is the composition of the Parliament? It is the President of India and the two Houses -- the Lok Sabha and the Rajya Sabha. The hon. President, in that Seminar, commented on the backlog in the courts. Even the Chief Justice mentioned about having some reforms and Shri Soli Sorabjee came to say something about accountability. But this is a recent happening.

Sir, through you, I would like to request Shri Thambidurai, our hon. Law Minister to kindly go through what the President has said in that Seminar. That was a very important speech. I would, however, like to remind you of what one of the outgoing Chief Justices of India had said after he superannuated. What he said at that time was very important. We remained busy and sometimes I feel -- I do not know whether I should say this or not -- the Lok Sabha in a way has declined. He said a very important thing. We did not take notice of that. Shri Verma told the country -- when he was no more the Chief Justice of India, the day next of his retirement perhaps -- that our system has no provision for punishing a corrupt judge. He was sharing his agony with his countrymen. He said that there was no system whereby you could punish a judge. This Parliament got a chance to punish a corrupt judge. But some of my friends from the South stood by him though the cases of corruption were proved before the whole country.

Sir, we are the law-givers and we are the law-makers. The hon. judges go on indulging in corrupt practices. But we, as Members of Parliament, who are representing on behalf of the people, do not have any sense of proportion. This is the last voice of the people. We had a chance to punish a judge who was corrupt but we allowed him to go scot free. Justice Verma said that we had nothing in the system to punish a corrupt judge. I collected certain details. I am not a student of law but I have some interest in the judiciary. I have given notice

on the subject of judicial reforms. The country is crying for judicial reforms. When that subject is discussed I will speak about the corruption in the judiciary.

In a High Court in the South, a judge went to his home on a Friday and claimed TA and DA for Saturday and Sunday when he came back on Monday. He has gone scot free. Till a voice was raised here and in the Vidhan Sabha of West Bengal, a judge who had charged about Rs.35,000 for purchasing spectacles for his family members, could not be restrained. He said in Calcutta that he was equal to a Cabinet Minister in rank. I was a Cabinet Minister myself and I wondered what the perks of a Cabinet Minister were. When the judge said that he was equal to a Cabinet Minister he had no sense of proportion to consult somebody on what the perks of a Cabinet Minister were. He purchased spectacles worth about Rs.35,000 for his two sons and one daughter. That payment was not cleared by the Minister. Credit goes to the Minister concerned in West Bengal who refused to clear the payment. The Minister said that it was not permissible. Then the judge raised a hue and cry. The judge did not have his way because of an able Government in that State. I would like to put it on record that the Government provided by Jyoti Basu in West Bengal, in my opinion, is the best in the whole of my country. The Minister did not allow that money to be paid. In the South, a judge charged TA and DA, it is on record, and he did so continuously.

Chief Justice Verma wanted to punish a judge. I know that what I am saying is going on record. Justice Verma wanted to punish a corrupt judge but there was no system under which he could do it. He called the judge and advised him to reform himself. The judge refused to get reformed. That is the situation.

Accountability of judges is necessary. We have to amend the law. But before that, I request the hon. Law Minister to set up a National Judicial Commission, whether the judges or the Chief Justice agree or not. It is we who have to decide and not the judiciary. It is the Members of Parliament, it is the Lok Sabha, Rajya Sabha and the President of India who have to decide. Together, this constitutes the voice of the people. We want a National Judicial Commission. But, there must be a discussion before that. Mr. Chairman, since you are the Presiding Officer now, you can decide about the time. We want to discuss the reforms that are needed in the judiciary. There is a backlog.

They are indulging in PILs. In this case of gas and telephone coupons, if one hon. Member of Parliament has erred some day, the judges cannot sit in authority and decide that all Members of Parliament have gone wrong. The judge in Kerala has said that it should be given due publicity. He does not seem to have understood the seriousness of the issue. He does not seem to have analysed the issue while saying that it should be given publicity. These judges have to be told about these things. In fact, Shri Radhakrishnan has questioned our addressing them as 'My Lord'. Because of some colonial thinking one may feel that it is wrong. But we do not lose anything by calling them 'My Lord'. ...(Interruption) We may call them 'Mr. Justice'. I do not quarrel with you on that.

MR. CHAIRMAN : Please conclude. The time allotted for this Bill is only two hours and we have already taken three hours and fifteen minutes.

PROF. SAIFUDDIN SOZ : I am concluding, Sir.

Sir, if we have no provision to ensure their accountability, if we do not reform the law, if we do not discuss judicial reforms, and if we do not move towards forming a National Judicial Commission, we would be committing a very grave mistake. People are suffering miseries. They tell us their problems. The courts are unable to mitigate the miseries of the people because there are backlogs of lakhs and lakhs of cases. Our esteemed President has commented upon that. We must move immediately and provide justice to the people because we are directly accountable to the people.

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श्री भगवान शंकर रावत (आगरा): मान्यवर, जहां तक जजेज की सैलरी बढ़ाए जाने की बात है, वह बढ़ाई जानी चाहिए, क्योंकि रुपए का अवमूल्यन हो रहा है। उनकी भी आवश्यकताएं हैं और आवश्यकताओं की पूर्ति के अनुरूप उन्हें भी वेतन मिलना चाहिए। लेकिन मैं यह कहना चाहूंगा कि ज्यूडिशरी भी संविधान की भावना के अनुरूप काम करे, वादकारियों को सस्ता न्याय उपलब्ध कराए। दुर्भाग्य है कि ऐसा नहीं हो पा रहा है। जसवंत सिंह आयोग की सिफारिशों को लागू करने

में न्यायपालिका बिना वजह टांग अड़ा रही है, उसको डिले कर रही है। मैं न्यायपालिका से कहना चाहता हूँ कि उसे जनभावनाओं का सम्मान करना चाहिए। जिस वंत सिंह आयोग ने जिस तरह से देश के विभिन्न भागों में खंडपीठ स्थापित करने का सुझाव दिया था, उसको लागू करना चाहिए। राज्य सरकारें चाहती हैं, लेकिन चूंकि चीफ जस्टिस साहब नहीं चाहते इसलिए वे रुक जाती हैं। इसलिए वे भी जनभावनाओं के अनुरूप चलें और उन्हें संविधान की संप्रिट के अनुरूप चलना चाहिए, जिससे वादकारियों को सस्ता न्याय ठीक प्रकार से मिल सके।

उन्हें उदारीकरण का दृष्टिकोण लाना चाहिए, जस्टिस डिलेड इज जस्टिस डिनाइड नहीं होना चाहिए। आज भी हमारे यहां हाई कोर्ट में बड़ा बैकलाग पड़ा है। मुकदमों समय पर सैटल नहीं हो पाते और लोग प्रैक्टिकली न्याय से वंचित हो जाते हैं।

उपभोक्ता न्यायालयों की व्यवस्था को भी सुदृढ़ किया जाना चाहिए और उनकी संख्या बढ़ाई जाए। उनकी जो पीठ हैं, उनके सदस्यों की सुविधाएं भी बढ़ाई जाएं, जिससे हाई कोर्ट में न जाना पड़े और वहीं पीठ के अंदर लोगों को, उपभोक्ताओं को न्याय मिल सके।

लोअर ज्यूडिशरी के सदस्यों की सेवाओं और वेतन में सुधार किया जाना चाहिए। हम लोग हाई कोर्ट, सुप्रीम कोर्ट की चिंता तो कर लेते हैं, लेकिन लोअर ज्यूडिशरी की चिंता नहीं कर पाते, जबकि उनकी हालत काफी खराब है। जजों को सेवा निवृत्ति के बाद जितनी तनख्वाह देनी है, वह दें, लेकिन रिटायरमेंट के बाद पोलिटिकल एक्टिविटीज में आने से उनको रोकना चाहिए। इससे यह लाभ होगा कि ज्यूडिशरी को किसी प्रकार से कोई सत्ताधारी दल या विपक्षी दल प्रभावित नहीं कर सकेगा, कोई मन में वैराग्य या अनुराग का भाव पैदा नहीं होगा। यह न्यायपालिका के अंदर गरिमा और विश्वास बनाने के लिए बहुत आवश्यक है।

मैं एक बात पब्लिक इंटरैस्ट लिटिगेशन के बारे में भी कहना चाहूंगा। कभी-कभी ऐसा होता है कि नाम तो पब्लिक इंटरैस्ट का होता है, लेकिन एक-दो पक्ष को सुनकर वे अपना पक्ष रख देते हैं और जनसामान्य का पक्ष नहीं रखा जाता है। इस तरह से पब्लिक इंटरैस्ट के नाम पर पब्लिक का उत्पीड़न हो जाता है। ताज ट्रिपीजियम के मामले में, ताजमहल को पर्यावरणीय प्रदूषण से बचाने के नाम पर यही स्थिति बनी है। वहां पर जो रिट पीटिशन फाइल की गई, उसमें कुछ मांग मानी गई और बाद में किसी ने बहस कर दी, उसके अनुरूप जो वास्तविक रिट पीटिशन थी, उसके कंटेंट्स में और फैसले में कोई तालमेल नहीं है। इस कारण वहां सारे उद्योग-धंधों को चौपट करने की तैयारी की घोषणा कर दी गई है। पब्लिक इंटरैस्ट लिटिगेशन में यह व्यवस्था होनी चाहिए कि कोर्ट एक बार कोग्नीजेंस लेती है किसी लिटिगेशन में, तो उसके बाद पब्लिक एटलार्ज को यह मौका हो कि वह उसके अंदर हस्तक्षेप कर सके, अपना पक्षकार बनाकर अपना पक्ष रख सके, जिससे इंटरैस्ट के नाम पर उसके उत्पीड़न की शुरुआत न हो सके।

कोई ऐसी प्रक्रिया अपनाई जानी चाहिए जिससे पब्लिक इंटरैस्ट लिटिगेशन के जो फैसले होते हैं, उनकी अनुपालना एक्जीक्यूटिव ने ठीक प्रकार से की है या नहीं, इस बात को देखा जाए, स्कूटनाइज किया जाए। होता यह है कि फैसले हो जाते हैं, मुझे याद है १९८४-८५ में मैंने सुप्रीम कोर्ट में यमुना रिवर में प्रदूषण के लिए पब्लिक इंटरैस्ट लिटिगेशन दायर की। वहां से वर्डिक्ट हो गया कि सरकार रोके, लेकिन सरकार ने आज तक उसकी परवाह नहीं की। हालांकि बाद में जब मैं यहां संसद सदस्य चुनकर आया तो मैंने उस मांग को उठाया। उसका कुछ असर हुआ, यमुना कार्य योजना बनी तो है, लेकिन सुप्रीम कोर्ट ने पब्लिक इंटरैस्ट लिटिगेशन के अंदर उस वक्त जो फैसला दिया था, उसका क्या हुआ। इसलिए ऐसी व्यवस्था बनाई जाए, जहां सुप्रीम कोर्ट भी मानिट्रिंग करे। उत्तर प्रदेश में यमुना एक्शन प्लान के खिलाफ और ताज ट्रिपीजियम के मामले में पब्लिक इंटरैस्ट लिटिगेशन चल रहा है। उसमें उत्तर प्रदेश की तत्कालीन सरकार ने ऐसे फैक्ट्स दिए जो सुप्रीम कोर्ट के तथ्यों के विपरीत हैं, गलत हैं। उन्हीं के आधार पर सारा मुकदमा चल रहा है। राज्य सरकार जो पक्ष रख रही है, उसमें कितनी विश्वसनीयता है, कितनी तार्किकता है, कितनी सत्यता है।

इसकी देखभाल करने के लिए पब्लिक इंटरैस्ट में पब्लिक को भी यह राइट होना चाहिए, उसका कोई नियम बना दिया जाए। पब्लिक इंटरैस्ट में पब्लिक एट लार्ज का रिप्रेजेंटेशन कौन कर सकेगा, उस प्रकार से उस प्रक्रिया के अन्तर्गत यह काम होना चाहिए।

फाउंडरीज को बंद किया गया लेकिन फाउंडरीज एसोसिएशन, आगरा की चिल्लाती रही कि हमें बंद किया जा रहा है। हमारी भी दरखास्त सुन लीजिए लेकिन उनको पार्टी नहीं बनाया गया। मैंने एक उदाहरण के लिए यह बात कही, इसलिए इस प्रकार की प्रक्रिया बनाकर यह व्यवस्था की जाए।

अंत में, मैं एक बात और कहूंगा कि युवा अधिवक्ताओं और गरीब लोगों के हितों के लिए शासन को भी व्यवस्था बनानी चाहिए और हाइ कोर्ट के जजों को भी यह देखना चाहिए कि किस प्रकार से गरीब लोगों को न्याय मिल सके और युवा अधिवक्ता, जिनमें बड़ी भारी बेरोजगारी है, उनके हितों को संरक्षण देने के बारे में हम सोचें और उसे न्याय प्रक्रिया का अभिन्न अंग बनाकर, उनके हितों का संरक्षण करके किस प्रकार की प्रक्रिया बनाई जाए, इसके बारे में भी विचार किया जाना चाहिए।

इन्ही शब्दों के साथ मैं अपनी बात समाप्त करता हूँ और आपका धन्यवाद करता हूँ।

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श्री रघुवंश प्रसाद सिंह (वैशाली): सभापति जी, हाई कोर्ट और सुप्रीम कोर्ट के जजों का वेतन और सहूलियतें बढ़ाने का यह बिल है, इसका मैं समर्थन करता हूँ।

जजों की सुख-सुविधाएं और सहूलियतें बढ़ानी चाहिए लेकिन बहाली की जो प्रक्रिया है, हम देखते हैं कि किसी चीज के चुनाव में हम लोग, वोट से जीतकर आते हैं अथवा कमीशन से भी बहालियां होती हैं, परीक्षाएं होती हैं लेकिन जजों की बहाली, जिसमें पैरवी से बहाली होती है। उसमें जज जो होते हैं, उनके खानदान तक एक के बाद दूसरा और दूसरे के बाद तीसरी बहाली होती है, इसलिए हमारा सरकार से अनुरोध है कि संविधान में इस तरह का प्रावधान और संशोधन किया जाए कि जजों की बहाली में भी मेधा के आधार पर अथवा जैसा राधा कृष्णन जी ने कहा था, उसके आधार पर उनकी नियुक्तियां हों और सारी नियुक्तियों में हम देखते

हैं कि आरक्षण लागू है तो जजों की नियुक्तियों में आरक्षण क्यों नहीं लागू हो सकता? इसलिए मेरा कहना है कि जजों की नियुक्ति की प्रक्रिया में संशोधन होना चाहिए और उसमें भी रिजर्वेशन का प्रावधान होना चाहिए। पिछड़ा वर्ग और दलित आदि के लिए आरक्षण की जो सब लोग मांग कर रहे हैं, जजों की बहाली में भी प्रावधान होना चाहिए।

ज्यूडिशियल एक्टिविज्म समाप्त होना चाहिए। पब्लिक लिटिगेशन, पी.आई.एल. जो पब्लिसिटी लिटिगेशन हो गया है, बंद होना चाहिए और ज्यूडिशियल एक्टिविज्म बंद होना चाहिए। ज्यूडिशियल ट्रांसपेरेंसी होनी चाहिए और कोर्ट्स में जो मामले लम्बित हैं, '

justice delayed is justice denied.'

वाली जो बात है, जो देर होती है, उसे सुधारने का प्रबन्ध होना चाहिए।

इन्हीं शब्दों के साथ मैं अपनी बात समाप्त करता हूँ।

>>>DR. SUBRAMANIAN SWAMY (MADURAI): Mr. Chairman, Sir, I have also had the privilege of being a Law Minister for some time and I was struck by the extraordinary load that the judges of India, specially at High Courts and Supreme Court have, compared to their counterparts in other parts of the world. For example, in the US Supreme Court, in the entire year, the judges hear only 200 cases and the lawyers presenting the pros and cons cannot speak for more than 20 minutes and the plaintiff who comes in is given a ten minute rebuttal in the end. Here the judges every day are looking into 200 cases and they have to hear oral arguments which are very long and, therefore, I have complete sympathy with the judges today who are in the High Courts and Supreme Court and they have indeed contributed a great deal in sharpening and deepening democracy in India.

17.00 hrs.

If the scope of article 21 under Fundamental Rights has been so much widened today, we owe it to the Judiciary. I would like the Government not only to raise the salaries of the Judges but also to reduce the load factor through the creation of a series of Benches.

There has already been a Commission, the Jaswant Singh Commission. It has got nothing to do with their Jaswant Singh; it was headed by another Jaswant Singh. That Commission had already gone into this matter. Take for example the State of Tamil Nadu. The High Court is in one end of the State, namely on the border of Andhra Pradesh, in the city of Chennai. For long, there has been a demand for a Bench. In fact, as the Minister of Law, I had initiated correspondence in 1990 and even today it has not been established. I do not know what the problem is and why the Minister of Law has not been able to give effect to this popular demand that there should be a Bench in the middle of the State. The people have to go all the way, for instance from Kanyakumari, to Chennai for their cases. The same is the case in other States like Maharashtra. Madhya Pradesh is such a large State that even though the Court is in Jabalpur, still there is so much travelling that has to be done.

I do not know what is it that stops them from establishing Benches. I understand, of course, that the senior lawyers would lose some of their practise and their income would come down if the Benches start coming up. But this is what we need to do. Therefore, I would like the Minister of Law to tell me in particular reference to the Madurai Bench, why is it that this Government has not been able to give effect to it.

My second point is that the law is written here and the Judges can only interpret it and see whether it is within the framework of the Constitution. But I find recently that partymen who have been in a political party for long years are being appointed as Judges. I think, there should be a law that if anybody has been a member of a political party for more than three years or five years, he should not be appointed as a Judge. In the State of Tamil Nadu, again, we find partymen being appointed as Judges of Special Courts and this is creating serious doubts whether justice can be dispensed. I think, an amendment is necessary. (Interruptions) Why is it troubling him? (Interruptions) It is troubling him because they are doing it and they are the culprits. (Interruptions)

MR. CHAIRMAN : Do not use such words.

... (Interruptions)

MR. CHAIRMAN: Do not use such words like 'culprits'.

... (Interruptions)

High Court. This is only at the instance of Dr. Subramanian Swamy. (Interruptions)

MR. CHAIRMAN: Dr. Subramanian Swamy, kindly give only your suggestions.

DR. SUBRAMANIAN SWAMY : I am giving only my suggestions but he is provoked. What does it mean? This means that they are doing it. (Interruptions)

MR. CHAIRMAN: Please address the Chair.

... (Interruptions)

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS AND MINISTER OF SURFACE TRANSPORT (DR. M. THAMBI DURAI): Sir, if the hon. Member yields, I want to make a point.

After the judgement of the Supreme Court and also the President's reference, it has become a well known fact. The nine Judges have given a unanimous judgement. It is well known to hon. Members who takes the initiative for transfer of judges and who takes the initiative for appointment of judges. (Interruptions) He says that the Minister of Law is responsible for that. It is a sweeping remark on the Minister of Law. He is saying that I am doing it. (Interruptions) Let him change that. (Interruptions) Give some powers to me to do what you want. (Interruptions) Therefore, simply making some remarks is not good. (Interruptions)

MR. CHAIRMAN: Dr. Subramanian Swamy, kindly try to conclude now.

DR. SUBRAMANIAN SWAMY : I was only saying that there should be a law that anybody who has been a member of a political party for more than five years cannot be a Judge.

PROF. SAIFUDDIN SOZ : It is a good suggestion for future.

DR. SUBRAMANIAN SWAMY : I say this only because there is a practice that if you want to harass your political opponents, you appoint a Special Court and appoint a partyman as a Judge of that Special Court. (Interruptions)

MR. CHAIRMAN: Please do not interrupt. He is not yielding. Please sit down.

... (Interruptions)

... (Interruptions)

MR. CHAIRMAN (DR. LAXMINARAYAN PANDEY): Please sit down.

... (Interruptions)

MR. CHAIRMAN: Shri Baalu, please sit down.

... (Interruptions)

MR. CHAIRMAN: This is not going on record.

(Interruptions)*

MR. CHAIRMAN: Please sit down.

... (Interruptions)

MR. CHAIRMAN: This is not going on record.

(Interruptions) *

MR. CHAIRMAN: Please sit down.

DR. SUBRAMANIAN SWAMY: Sir, I was only making a general comment.

MR. CHAIRMAN: You have made your point. Please conclude now.

DR. SUBRAMANIAN SWAMY : I was only making a general comment. I thought that they would welcome it.

... **

Therefore, I would conclude by saying that the Minister should answer about the Benches with particular reference to Madurai; and secondly, he should answer as to whether he would consider bringing forward a law which would say that anybody who has been a member of a political party for more than five years cannot be appointed as a Judge.

* Not recorded

** Expunged as ordered by the Chair

PROF. SAIFUDDIN SOZ: Sir, I am on a point of order.

MR. CHAIRMAN: What is your point of order?

PROF. SAIFUDDIN SOZ : Sir, your immediate predecessor in the Chair observed that - I had raised the question - the Foreign Minister would make a statement on the situation in Iraq. He made an observation - it is a sort of a judgment - that after the matters under Rule 377, the Foreign Minister will come and make a comprehensive statement. So, that is the business before the House now.

This is what he observed and you can see the record. I raised that question. Therefore, now, Shri Jaswant Singh, the Foreign Minister should come and make the statement. Avoiding the situation at home, America has done this vulgarity and indulged in vandalism.

It is his observation that a comprehensive statement will be made by the Foreign Minister. That is the business before the House now. ... (Interruptions)

MR. CHAIRMAN: I request the Government to say something. ... (Interruptions)

PROF. SAIFUDDIN SOZ : He made a statement like that. ... (Interruptions) I understand that it is on record. ... (Interruptions) If Shri Advani is prepared to make a statement, it is okay. ... (Interruptions)

MR. CHAIRMAN: I requested the Government; they will come forward with that.

PROF. SAIFUDDIN SOZ : The hon. Home Minister should know what happened. The Chair observed that a comprehensive statement would be made after the matters under Rule 377.

... (व्यवधान)

गृह मंत्री (श्री लाल कृष्ण आडवाणी): मैं उस समय वहां पर था।

... (व्यवधान)

प्रो. सैफुद्दीन सोज़ : इस वक्त आपकी गैर हाजिरी में कहा।

श्री लाल कृष्ण आडवाणी : सुबह जिस समय प्रधानमंत्री जी बोल रहे थे तो मुझे नहीं लगा कि उस वक्तव्य के बाद कुछ ओर कहने की जरूरत है।

PROF. SAIFUDDIN SOZ : I raised it and the Chair said so.

SHRI L.K. ADVANI: I do not know. I am not aware.

MR. CHAIRMAN: I will convey your comment.

PROF. SAIFUDDIN SOZ : That is the business now. He said that after the matters under Rule 377, the Foreign Minister will come and make a comprehensive statement.

MR. CHAIRMAN: Now, the hon. Speaker has to decide.

PROF. SAIFUDDIN SOZ : That is on record.

MR. CHAIRMAN: Hon. Speaker has to decide. Now, the Law Minister.

>>THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS AND MINISTER OF SURFACE TRANSPORT (DR. M. THAMBI DURAI): Mr. Chairman, Sir, the Bill that is before the House for consideration and passing is a very simple one.

In the last Session, we had increased the salaries of High Court and Supreme Court Judges. Based on that, we had promulgated an Ordinance giving effect to their pension also. In connection with that, I have brought forward this Bill for consideration and passing. That is a simple one.

When we had increased the salaries of Judges, proportionately, we had increased the pension for the Judges. Secondly, it is regarding rent also. You know as to what is the prevailing rent of houses in Delhi and in most of the cities. Therefore, in order to enhance the rent, I have brought forward this Bill.

While the Members were expressing their views, Shri Motilal Vora started expressing his concern about the existing judicial system, the prevailing conditions in our country, how common men are facing problems with regard to judiciary, etc.

At the outset, I would like to express my gratitude to the hon. Members for rendering their whole-hearted support to the Bill. Their suggestions would be utilised in the policy planning and its implementation by the Department of Justice in the future. During the debate, Shri Motilal Vora, Shri Ajoy Chakraborty, Shri Prabhunath Singh, Shri Chandrasekhar Sahu, Prof. Kurien, Prof. Jogendra Kawade, Shri P.C. Gehlot, Shri N.K. Premachandran, Shri K. Rosaiah, Shri S.P. Jain, Shri T.R. Baalu, Shri B.M. Mensinkai, Prof. Ajit Kumar Mehta, Shri Mallikarjunaiah, Shri Varkala Radhakrishnan, Prof. Saifuddin Soz, Shri K. Bapiraju, Dr. Subramanian Swamy and others gave their valuable suggestions. They have raised certain issues. The issues that were focussed during the discussions mainly relate to the pendency of cases, shortage of judicial officers and judges, modernisation of courts and providing infrastructural facilities to the judiciary, alleged encroachment by the judiciary in the domain of Executive through Public Interest Litigations, establishment of Supreme Court Benches at three different places in India, provision of High Court benches at least in the State Capitals, due attention to be given by the Central Government for revision of pay and other facilities of subordinate judiciary, corruption in judiciary, providing accommodation and transport facilities to the members of subordinate judiciary, improvement in the conditions of the court rooms including the provision of stationery etc., punishment for false evidence, review of transfer policy of High Court judges, providing expeditious and inexpensive justice, introspection by the judiciary, and restriction on re-employment of judges after retirement, especially after joining politics.

Apart from these issues, some hon. Members spoke of my functioning as Law Minister. They said that I am transferring judges and I am appointing lawyers due to certain reasons. I would like to repeat what I have said in

my intervention. After the judgement of the Supreme Court, my power is very limited. If I can say, just like a clerk I am passing on the suggestions given by the collegium of the Supreme Court to the authorities concerned. I would like to put the facts before the august House. Parliament will get some authority only when the Members come forward and make changes in the judicial system. It can be done only through you. Then, that authority can be entrusted to the Minister concerned because the Minister is answerable to Parliament.

Some hon. Members spoke about making some changes in the appointment of judges. They said that importance should be given to Backward Classes, Minorities, Scheduled Castes and Scheduled Tribes. We are living in a democratic country and we are very much concerned about them. We have to give respect to the aspirations of these sections also. This is what hon. President also said in a Conference which I attended two weeks back. Nearly 25 per cent of our community are Scheduled Castes, Scheduled Tribes and Minorities.

They are not able to get representation in the judicial system. I am just sharing all that has been expressed. I am conveying these things to the concerned authorities who have to take the decision. That is all I can do. It is left to them to take decision. I cannot discuss further as to how they should function as my hands are tight there. We have committed in our National Agenda to bring a National Judicial Commission. That is a fact and we are giving it an active consideration.

PROF. SAIFUDDIN SOZ : We support that.

DR. M. THAMBI DURAI: If all the Members have the same feeling, I can convey it to the Cabinet and see to it that the matter is expedited.

PROF. SAIFUDDIN SOZ : The whole House is one on that.

DR. M. THAMBI DURAI: Various Leaders have also expressed the same thing when they have personally met me. Most of the Members feel that we have to do something in this regard. We are considering it.

Now, I would like to highlight other steps taken by the Government to find solution or to rectify the defects that are there.

The Government is aware of the difficulties faced by the litigants basically due to delay in the disposal of cases. In view of the recommendations of the Chief Ministers' and Chief Justices' Conference held in 1993, the Government has taken various measures in this regard. These measures include, amendments of Civil Procedure Code and the Criminal Procedure Code, increase in the number of posts of Judges of High Courts, provision of a statutory base to Lok Adalats and vesting it with the powers of a Civil Court after the extension of provisions of Chapter III of the Legal Services Authorities Act, 1987 to all the States and Union territories, appointment of Special Judicial Metropolitan Magistrates and adoption of other alternative and locally appropriate methods of resolution of disputes.

In addition to this, various High Courts have taken a number of steps for expeditious disposal of cases. Groupings and classification of cases involving similar questions of law, setting up of specialised Benches, computerisation of records etc. The High Courts have also issued instructions to their subordinate courts to reduce frequent adjournment of cases. Shri Vora has also raised this point regarding frequent adjournment of cases saying that judges adjourn the case as and when they like and as a result, the litigants suffer a lot. We are requesting them not to adjourn cases frequently. We are also going to put certain stipulations for that.

The pendency of cases in the Supreme Court has come down from 1,04,936 cases as on 31st December, 1991 to 19,561 cases as on 1st May, 1998. Despite the increase in the disposal of cases in the High Courts, the backlog of cases pending in the High Courts has increased due to change in the pattern of litigation. Regarding the High Courts, as on 31.12.93, 26.51 lakh cases were pending and now on 31.12.97 the number has increased to 31.5 lakh cases. If you take the leading courts, in Allahabad High Court, the number of pending cases is 8,65,455, in Madras High Court the number is 3,20,619, in Calcutta High Court 2,82,290 cases are pending and in the Kerala High Court, the number of pending cases is 2,50,261.

SHRI K.S. RAO (MACHILIPATNAM): Why do you not open Benches in the States also which will reduce the pendency of cases?... (Interruptions)

DR. M. THAMBI DURAI: You have given the answer also. Shri Swamy has mentioned about the Jaswant Singh Commission. We have to get a proposal from the State Governments along with the recommendations of the Chief Justices of the High Courts. Then only we can take action.

DR.M. THAMBI DURAI: There is some controversy in that. Members are saying that they want permanent Benches.

The proposal is for Circuit Bench only. The proposal which I received duly recommended by the Chief Justice of Madras High Court is only for Circuit Bench. If the Members are satisfied with that we can proceed further... (Interruptions).

from Tamil Nadu. Why can you not interact with them and see that it is done. It is in your own interest. Are you not interested in providing the Bench in Madurai or somewhere in Chennai?

SHRI M. THAMBI DURAI: I have written letters. As per the reply received by my predecessor, the Chief Justice of Madras High Court felt that the facilities available in Madurai area are not sufficient. It is according to their version. Therefore, they are not interested to move that. Let the State Government give all the facilities which are required by the Chief Justice of Madras, then it can be done... (Interruptions)

matter... (Interruptions). We are very much interested to provide a Bench of the High Court at Madurai in Tamil Nadu. But at the same time, why can he not interact with the State Government... (Interruptions). The Law Minister can go and interact with the people in the State. What is wrong in it?

SHRI M. THAMBI DURAI: I want to interact. But they are putting somewhere ten kilometres away where I cannot interact. That is how they are creating the problems... (Interruptions).

DR. SUBRAMANIAN SWAMY : Now, we know that the Chief Minister... (Interruptions).

High Court Bench at Madurai in Tamil Nadu.

SHRI C. GOPAL (ARAKKONAM): You are not in a position to understand the position... (Interruptions)

SHRI M. THAMBI DURAI: I am still assuring the House as well as the hon. Members including Shri Baalu and Dr. Swamy that we are ready to take action immediately provided that the Chief Justice of Madras High Court writes a letter saying that the facilities provided by State Government are sufficient. We will take action immediately.

this... (Interruptions)

MR. CHAIRMAN : The Minister is replying categorically.

SHRI N.K. PREMCHANDRAN (QUILON): Sir, now we are having discussion about Madurai Bench. Similarly, a demand has come from Kerala. The State capital of Kerala, namely, Trivandrum, is lacking Division Bench with the filing facilities. Will the Government consider the proposal to have a Bench at Trivandrum?

SHRI VIJAYASHANKAR (MYSORE): Sir, I would request the Minister to say something about Karnataka also.

SHRI M. THAMBI DURAI: I would speak about all the States including Tamil Nadu, Madhya Pradesh, Karnataka, etc.

SHRI MOTILAL VORA (RAJNANDGAON): Sir, the hon. Law Minister said that Jaswant Singh Commission gave a recommendation for the creation of a High Court at Raipur. But the capital of Madhya Pradesh, namely,

Bhopal, is not having a Bench at all. We have requested for creation of a Circuit Bench at Bhopal. Kindly consider that.

SHRI M. THAMBI DURAI: I am for establishing either Circuit Bench or a permanent Bench in all parts of the country. I am not against that.

We are taking all steps in this regard. If a proposal from the State Government along with the concurrence of the Chief Justice of that State is sent to us, we will take all steps. There is already some controversy in some States. For example, in Uttar Pradesh, the previous Government had selected certain places. Then they had local problems. They had suggested Meerut as one of the places but then people of Agra started agitating. There has been some agitation going on here or there. They cannot pass on this kind of a blame on to the Central Government. We are not in a position to sort out the local issues. That must be sorted out by the State Governments. If they send a proposal, definitely we will take all steps to establish a Circuit Bench or a Permanent Bench to serve the people. That is the intention of the Government. We are taking all steps in this regard. In Karnataka also, the same problem is going on where some people have been agitating over the shifting of place. What Dr. Subramanian Swamy said is a correct thing that there may be certain local problems. Let them sort out the problem. I am for establishing not only this kind of a Permanent, Circuit Bench but also for a Bench of the Supreme Court also. I am for that. But the initiative should come from the Chief Justice of the Supreme Court of India. If that comes, I will definitely take a view.

The pendency of cases in Subordinate Courts has decreased from 2.18 crore as on 31.12.1995 to about 2 crore as on 31.12.1997. We are still having the pendency of cases in crores at the level of the Subordinate Courts. We are taking all steps to see how it can be reduced. For that, the Government has already introduced a Bill on Judicial Reforms for the amendment of the Civil Procedure Code which will prove to be a milestone in the field of tackling vexatious and frivolous litigation. The Bill inter alia contains the provision not to allow more than three adjournments to a party in a case. We intend to bring this Bill. The Bill is under active consideration of the Departmentally related Parliamentary Standing Committee on Home Affairs.

The Law Commission has recommended in its 154th Report for comprehensive amendment of Criminal Procedure Code. The Code of Criminal Procedure (Amendment) Bill, 1994 was introduced in the Rajya Sabha which contains a number of measures for quick disposal of cases. The 154th Report contains inter alia setting up of a separate and exclusive cadre of investigating agencies, ensuring timely attendance of witnesses. These are some of the measures we are taking.

Apart from that, I want to say something about the Lok Adalats. Most of the Members have asked for providing free legal services to common man. That is the intention of this Lok Adalat. The Lok Adalats have proved an effective mechanism for alternative resolution of disputes through persuasive and conciliatory efforts with the enforcement of the Legal Services Authorities Act, 1987. We have taken so many steps in this regard. Lok Adalats have been provided a statutory base and are now vested with the powers of a civil court.

By providing legal aid to the poor and the needy people, the Act of 1987 is a step forward in the direction to provide inexpensive justice. In 1997-98, 9352 Lok Adalats were held and 9,45,090 cases were disposed of.

As regards, appointment of more judges to the High Court, it has been decided to create 31 new posts of judges in the courts and the next review of the judges' strength is due.

The High Courts have already been provided with various modern office equipments like telex, Fax, electronic typewriters etc. The various High Courts and State Governments have informed that they are providing electronic typewriters, photo-copier machines etc., to Subordinate Courts in a phased manner. For modernising and streamlining the judiciary in the country through computerisation, we have taken up so many projects and we are trying to implement all those things. So far, about 253 District Courts have been provided with computer hardware. This will help quick delivery of justice to the litigants.

In reply to my letter sent in August 1998, the High Courts have informed that they are already taking these steps for expeditious disposal of cases.

- (a) More practical categorisation and grouping of cases;
- (b) As far as possible cases scheduled to be taken up for hearing on a particular day are listed for that day;
- (c) No accumulation of defective matters;
- (d) Reservation of more and sufficient time slot for old pending miscellaneous matters so that they are listed in chronological order.
- (e) Streamlining of administration and manpower of the Registry staff through computer network.

The decrease in pendency of cases appears inter-alia due to the direction given by the Supreme Court in its judgment dated 1.5.1996 in Writ Petition (Civil) No. 1128 of 1996 for closing of cases involving minor offences pending for two years or more in which proceedings have not commenced and also due to appointment of Special judicial Magistrates under Section 13 and 18 of the Cr. P.C. for the disposal of traffic and petty cases.

It is to inform the Members of the House that the subordinate Judiciary is under the administrative control of the High Court as per the Constitution of India. My Ministry has been communicating with the High Courts and State Governments regarding filling up of vacancies. However, most of the vacancies in the Subordinate Courts are being filled up through respective State Public Service Commission where the representatives of the High Courts are also present. As regards system of checks and balance in our polity and increase in number of public litigations entertained by the High Courts, I would say that the self-constraint imposed by the High Courts under the direction of the honourable Supreme Court is the only way to resolve this problem. As regards creation of All India Judicial Service, the matter is under consideration of the Government of India. Few State Governments have not agreed to this proposal. As regards transfer policy regarding High Court Judges, the matter is covered by the recent Supreme Court judgment. The High Court Judges are appointed and transferred on the recommendations of the Chief Justice of India and are covered by the Supreme Court unanimous verdict on the Presidential reference dated 28th October, 1998.

As regards setting up of more Benches of the Supreme Court, the matter requires recommendation of the Chief Justice of India. No proposal has been received from the Chief Justice of India in this regard as per Article 130 of the Constitution. Whenever the proposal comes, the Government will take all the steps.

I am very grateful and thankful to all the hon. Members who have joined and tried to pass the Bill.

I want to mention also regarding the Shetty Commission which are already going to give their various recommendations for Subordinate Judicial Commission, what are the pay scales etc., which the Government has to consider.

Therefore, once again, I request the hon. Members for whole-hearted support to the Bill.

... (Interruptions)

SHRI AJAY CHAKRABORTY (BASIRHAT): What about constitution of Benches of the Supreme Court?

SHRI M. THAMBI DURAI: The present Chief Justice has to give the proposal. As soon as it comes, we will take that up.

MR. CHAIRMAN : The question is:

"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."

The motion was adopted.

MR. CHAIRMAN: The House shall now take up clause by clause consideration of the Bill.

MR. CHAIRMAN: The question is:

"That clauses 2 to 11 stand part of the Bill."

The motion was adopted.

Clauses 2 to 11 were added to the Bill.

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

MR. CHAIRMAN: The Minister may now move that the Bill be passed.

SHRI M. THAMBI DURAI: I beg to move:

"That the Bill be passed."

MR. CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.