[Mr. Deputy-Speaker]

"That leave be granted to introduce a Bill further to amend the Code of Civil Procedure, 1908."

The motion was adopted.

SHRI NIRMAL CHANDRA JAIN: I introduce the Bill.

CONSTITUTION (AMENDMENT) BILL*

(Amendment of Article 352)

SHRI CHITTA BASU (Barasat): I move for leave to introduce a Bill further to amend the Constitution of India.

MR. DEPUTY-SPEAKER: The question is:

"That leave be granted to introduce a Bill further to amend the Constitution of India".

The motion was adopted.

SHRI CHITTA BASU: I introduce the Bill.

15.17 hrs.

CONSTITUTION (AMENDMENT) BILL

(Amendment of Article 124)
By SHRI P. K. DEO—*contd.*

MR. DEPUTY-SPEAKER: Now, we move on to further consideration of the motion moved by Shri P. K. Deo I think Shri Deo was on his legs.

SHRI P. K. DEO (Kalahandi): Mr. Deputy-Speaker, Sir, the other day while taking part in consideration of my Constitution (Amendment) Bill, I pointed out that though the Constitution of India provides for the procedure for appointment of the judges of the Supreme Court, the Constitution of India lays down no procedure or guidelines regarding the appointment of the Chief Justice of the Supreme Court. It is entirely left at the discretion of the President. You all know the President under the Constitution acts on the advice of the Council of Ministers. So, for all practical purposes, the Chief Justice of the Supreme Court is appointed by the Executive of this country.

Sir, while discussing this aspect, I suggested a very simple method in this Constitution (Amendment) Bill. It says:

> "Provided further that the senior most Judge of the Supreme Court shall be appointed as the Chief Justice."

'Shall be' is a mandatory provision. It further says:

> "Provided further that the senior shall be appointed the Chief Justice who has not served for at least two years as a Judge of the Supreme Court".

This is a simple provision and needs an amendment to Art. 124 of our Constitution. While discussing I had pointed out the sordid manner in which some of our eminent judges had been superseded by the previous Government which created an uproar throughout the country. And mostly, all the Bar Associations passed a near unanimous resolution condemning the Executive action of the Government.

It related to the supersession of Justice Shelat, Justice Hegde and Justice Grover who distinguished themselves as the upholders of the rule of law and citizens' rights. One day prior to that, in an important constitutional case, in Shri Keshavanand Bharati's case, they gave a judgment which was not to the liking of the Government. and the Attorney General had the cheek to speak in the Supreme Court that some political

*Published in Gazette of India Extraordinary Part II, section 2, dated 2-12-1977.

action is necessary and next day they were superseded and Justice Ray was appointed. Now, the question is that if they could fit admirably as the judges of the Supreme Court were they not fit to become the Chief Justice of the Supreme Court. The various spokesmen in the last debate in this House highlighted on the Fourteenth Law Commission Report and wanted to take shelter behind those recommendation. But, Sir, if you read carefully the Fourteenth Law Commission Report you will find that they suggested the 'most suitable person'. That does not mean the suitability from the point of view of the then Government but suitability from the angle of justice, administration and impartiality. All these aspects should have been taken into consideration. The Law Commission further said in their report and I quote:

> "For the performance of the duties of Chief Justice of India, there is needed, not only a judge of ability and experience, but also a competent administrator capable of handling complex matters that may arise from time to time, a shrewd judge of men and personalities and above all, a person of sturdy independence and towering personality who would, on the occasion arising, be a watch-dog off the independence of the judiciary....In our view, therefore, the filling of a vacancy in the office of the Chief Justice of India should be approached with parament regard to the considerations we have mentioned above. It may be that the seniormost puisne Judge fulfills these requirements. If so, there could be no objection to his being appointed to fill the office."

We all know that these qualities needed by the Law Commission were the criteria which makes the strongest possible case for not superseding these three judges of the Supreme Court. Because of their administrative competence and fearlessness Justice Shellat and Justice Hegde had the distinction of being the Chief Justices of Gujarat and Delhi High Courts respectively. There was not the slightest indication of administrative incompetence against Justice Grover. If he had been appointed the Chief Justice he would have retired after Justice Ray.

Sir, in that marathon debate which took place in this House I quoted last time and I would like to reiterate again because Government's main spokesman Late Mohan Kumaramanglam came out in his true colours and spoke out from the heart and said:

> "The Chief Justice should be one who would rather help the Government."

Further

> "Whose political philosophy would be most suitable from the Government point of view."

So, Sir, you can very well know what was the intention of the Government then to supercede these eminent judges of the Supreme Court. The Chief Justice is not to be selected from the viewpoint of the executive as today the Government of India is the largest litigant in the country. More cases have been filed against the Government of India than against any other party and if the litigant himself selects his own judge then it will be the end of the judiciary in this country. Mohan Kumaramangalam further stated the 'need for forward looking and not backward looking judges' Government virtually wanted judges not to subscribe to the philosophy of the Constitution but to that of the ruling party. Indirectly he wanted to have committed judiciary. In those days there was talk throughout the country of having a committed judiciary. Where is the judiciary committed not to the philosophy of the Constitution but to the philosophy of a political party in that country? It

[Shri P. K. Deo]

is a communist country where only one party is permitted to function and the judiciary functions only to help implement the government programme. It is to that abyss that this country was being led to. That is the philosophy of dictatorships.

You may call a dictator by the name of dictator of the proletariat or a military dictator or even a monarch who in those medieval days established star chambers and in medieval Europe had them to suit their own convenience and had judges according to their own liking. Mohan Kumaramangalam speak about 'prerogative' of the Government. The word prerogative itself is a feudal concept.

This country is a free country, different political parties function here and they have different political persuasions, besides there are various independents, eminent independents like my friend Mr. Mavalankar. There cannot be any monopoly of power of any party. it is impossible and it cannot be permitted to function here.

Mahan Kumaramangalam wanted a Chief Justice, a court which would be able to recognise Parliament as sovereign in this country. The Constitution is sovereign we have all taken the pledge to uphold this Constitution. That is how our Constitution is to be interpreted by the government themselves.

All actions had their reactions. Government could get anything passed in Parliament by their brute majority, by their requisite strength, they can amend the Constitution and it was okayed by the committed judiciary but it cannot be okayed by the people. Before the people's court they had to bow, they had to eat a humble pie. People had their final say. I should say that the last election was the biggest experiment of democracy in the world and the changeover that took place was a bloodless coup. People always react when there is injustice. Even in the elevation of on Justice Desai, though it is not very relevant but only corollary, from the Gujarat High Court to the Supreme Court superceding two senior judges, one of whom ultimately resigned, there was public resentment. A few days ago there was a noisy scene in the House and even M. C. Chagla a well wisher of the Janata Party expressed strong resentment at this action. Even my friend Shri Shyamnandan Misra to whom my congratulations go for having been elected as deputy leader of the Janata Parliamentary Party expressed his unhappiness said: "Every thing being equal, seniority should be the basis point." At the swearing in ceremony of Justice Desai, the Attorney General, the Solicitor General and the Additional Solicitor General abstained and boycotted that because of the resolution of the Supreme Court Bar. To avoid all this controversy, it is high time that some guidelines were provided in the Constitution. It should not be left to the discretion of the President, who acts on the advice of the Council of Ministers. Seniority, like maternity, is a fact whereas merit, like paternity, is a doubtful question. So, taking into consideration all these facts, I hope the Law Minister will not leave any loophole in the Constitution and will make it a completely foolproof and ideal Constitution.

With these words, I commend that this Bill be taken into consideration.

MR. DEPUTY-SPEAKER: Motion moved:

> "That the Bill further to amend the Constitution of India be taken into consideration."

डा० रामजी सिंह (भागलपुर) : उपाध्यय महोदय, अभी माननीय सदस्य, श्री पी० के० देव, ने सर्वोच्च न्यायालय के मुख्य न्यायाधीश की नियुक्ति के सम्बन्ध में जो विधेयक प्रस्तुत किया है, वह एक खास परिस्थिति में अपना महत्व रखता है। वस्तुत: न्यायालय के साथ अन्याय का प्रारंभ

उसी समय हुआ, जब सर्वोच्च न्यायालय के तीन न्यायाधीशों—श्री ग्रोवर, श्री शैलट और श्री हेगड़े—को अवक्रमित (सुपरसीड) किया गया था। जब न्यायालय विवाद का विषय बन जाता है, तो वह और सब कुछ रह सकता है, लेकिन न्यायालय नही रह सकता है।

देश में दस वर्षों से एक तानाशाही प्रवृत्ति की तैयारी चल रही थी और एक प्रतिबद्ध न्यायपालिका, प्रतिबद्ध शिक्षा और प्रतिबद्ध शासन का सिद्धान्त चल रहा था। यही कारण था कि बहुत जोर-शोर से न्यायालय के सामाजिक दर्शन—सोशल फ़िलासफ़ी आफ़ जजेज़—की बात चल रही थी। हम लोगों के सामने यह प्रश्न है कि क्या हम वरीयता को नियुक्ति का मापदंड मान लें। लेकिन, जैसा कि ला कमीशन ने भी कहा है, हम वरीयता को इसका मापदंड नही मान सकते है।

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

यद्यपि ला कमीशन ने कहा है कि वरीयता को आधार नही माना जा सकता है, लेकिन उसके बाद भी ला कमीशन ने कहा है कि उसके साथ-साथ तीन बातो को और ध्यान मे रखना पड़ेगा: वह व्यक्ति एक कुशल प्रशासक—काम्पीटेंट एडमिनिस्ट्रेटर, स्वतंत्र मति—स्टर्डी इंडिपेंडेंस और उत्तुंग व्यक्तित्व—टावरिंग पर्सनेलिटी का हो। हम ने देखा है कि जिन तीन न्यायाधीशों को सुपरसीड किया गया था, उनमे ये तीनों गुण उपस्थित थे। लेकिन जब प्रशासन अपनी स्वेच्छा की बात करता है, तो वह सही मापदंड को मान कर सब समाप्त कर देता है, और यही कारण है कि हमारे अनुभवी और विद्वान मित्र, श्री पी० के० देव, यह कहते हैं कि यदि हम कोई एक आबजेक्टिव मापदंड नहीं स्थापित कर सकेंगे, तो शायद हम इस तरह से बातें बराबर उठाते रहेंगे, और शायद न्यायपालिका कार्यपालिका की दासी बन कर रह जायेगी।

सचमुच में दुनिया के इतिहास में न्यायाधीशों की नियुक्ति के विषय में अलग-अलग तरह के सिद्धांत हैं। अमेरिका में राष्ट्रपति अगर न्यायाधीश की नियुक्ति करता है तो उसके लिए सिनेट की सम्मति प्राप्त करनी पड़ती है। लेकिन डा० भीमराव अम्बेडकर साहब ने विधान निर्मातृ परिषद में यह कहा था कि हमारा भारतवर्ष का जनतंत्र और हमारी न्याय-बुद्धि अभी इतनी परिपक्व नहीं है कि हम इसको इतने अधिक लोगों के सामने खुला रख सकें इसलिए कि वह एक विवाद का विषय हो जायेगा अगर सिनेट या पार्लियामेंट की बहस के अनुसार उसकी नियुक्ति हो। लेकिन विश्व के इतिहास मे एक दूसरा उदाहरण इंग्लैंड का है जहां क्राउन को ही न्यायमूर्ति की नियुक्ति करने का अधिकार है। हम समझते है कि भारतवर्ष के संविधान निर्माताओं ने मध्यम मार्ग का अवलम्बन किया। "मध्यम अभयम' वेद ने कहा है और "मध्यम प्रतिपदा" बुद्ध ने कहा है। इसीलिए शायद डा० भीमराव अम्बेडकर ने नव-बुद्ध होने के कारण न्यायमूर्ति की नियुक्ति के सम्बन्ध मे मध्यम मार्ग का अवलम्बन किया है।

जब मैंने श्री पी० के० देव के विधेयक को गौर से देखा तो उसमे मुझे बहुत बल मिला। एक बात यह भी है कि अगर सभी चीजें बराबर हों तो आखिर कौन सी चीज से तय करेंगे? इसलिए निश्चित है कि अगर कुशल प्रशासक होना, स्वतंत्र मति का होना और उत्तुंग व्यक्तित्व का होना, ये सभी चीजें बराबर हों तो हम समझते है कि उसमें वरीयता को आधार मानना ही चाहिए। वरीयता से ज्यादा कोई आबजेक्टिव क्राइटीरिया नही हो सकता। अभी जनता सरकार के समक्ष भी कुछ न्यायाधीशों की नियुक्ति के संबंध मे लोग चर्चा उठाते हैं। लेकिन निष्पक्षता के एक प्रबल समर्थक हमारे कानून मंत्री ने स्पष्ट किया है कि कार्यपालिका ने न्यायमूर्तियों की नियुक्ति मे किसी प्रकार

[डा० रामजी सिंह]

का भी हस्तक्षेप नहीं किया है। इसका मतलब है कि इस सरकार ने जो न्यायपालिका को सम्मान दिया है उसी का प्रतिफल यह है कि हम लोगों ने कोई भी अपना हस्तक्षेप नहीं किया है। लेकिन मैंने इस बिल के सम्बन्ध में थोड़ा सा संशोधन रखा है। शायद हमारे देव साहब भी मुझसे सहमत होंगे कि केवल वरीयता को स्वीकार करने से शायद हमारे सामने कठिनाई हो। वरीयता को केवल स्वीकार कर लेते हैं तो अच्छाई के लिए या कार्यकुशलता के लिए कोई विशेष प्रेरणा नहीं हो पाती है। इसीलिए मैं ने बहुत विनम्रता के साथ उनके भावों का समर्थन करते हुए एक थोड़ा सा संशोधन उपस्थित किया है कि हमारे मुख्य न्यायाधीश की नियुक्ति के संबध में यह ठीक है कि वह संसद की बहस का विषय नहीं हो, न कार्यपालिका की स्वेच्छाचारिता उसकी नियुक्ति में आए, उसकी नियुक्ति के लिए ऐसा करना चाहिए कि राष्ट्रपति, सर्वोच्च न्यायालय से भूतपूर्व मुख्य न्यायाधीश और जो हमारे लोक सभा के अध्यक्ष हैं, इन तीनों की राय से उसकी नियुक्ति होनी चाहिए। इन तीनों पर हम ने निष्पक्षता की मोहर लगा दी है। हम समझते हैं कि कार्यपालिका की स्वेच्छाचारिता का विषय तो यह नहीं ही होना चाहिए। लेकिन देव साहब मेरी इस बात को स्वीकार करेंगे कि अगर वरीयता को लेंगे तो फिर प्रतिभा कहां जा कर टिकेगी? प्रतिभा को कहां जा कर आश्रय मिलेगा?

श्री पी० के० देव : प्रतिभा की कसौटी क्या है?

डा० रामजी सिंह : प्रतिभा की कसौटी—ठीक है, कम से कम मुझसे तो आप ज्यादा प्रतिभाशाली हैं ही, यह सब जानते हैं। प्रतिभा की कसौटी वाह्यगत कसौटी होती है, वह तो स्पष्ट ही है लेकिन केवल वरीयता को रखने से मुझे लगता है कि प्रतिभा कुंठित होगी। हम लोग मावलंकर साहब की तरह शिक्षक हैं, हम देखते हैं कि अगर केवल वरीयता को स्थान दिया जायगा तो फिर शोध के लिए, प्रतिभा के निदर्शन के लिए कहीं कोई गुंजाइश नहीं रह जायगी। वरीयता के मुताबिक फिर कोई अनुसंधान की तरफ प्रेरणा नहीं रह जायेगी। इसीलिए मैं अपने माननीय मित्र देव साहब से आग्रह करूंगा कि उनकी इस भावना से मैं सहमत हूं कि इसमें कार्यपालिका की स्वेच्छाचारिता नहीं आवे और मैं अपने तथाकथित प्रगतिशील मित्रों की उस बात को नहीं मानता हूं कि संसद या कार्यपालिका के विचारों की रबर स्टैम्प न्यायपालिका बने। इसीलिए उन तथाकथित समाजवादी देशों में जहां न्यायपालिका केवल कार्यपालिका की रबर स्टैम्प रह जाती है, मैं उसको न्यायपालिका नहीं मानता हूं। मैं उसको न्यायपालिका नहीं मानता हूं जहां न्याय निष्पक्ष न रह सके।

पक्षपाते न मे वीरे नरागादि कपिलादिषु
"युक्तिमत वचनं"

युक्तियुक्त जो वचन होता है उसे न्याय कहा जायेगा। इसलिए देव साहब की जो भावना है वह उसे पूरी तरह से आनी चाहिए लेकिन उनको यह आग्रह छोड़ देना चाहिए कि केवल वरीयता को हम लें। मैंने निष्पक्षता और आब्जेक्टिव निष्पादन के लिए आपके सामने सुझाव दिया है कि भारतवर्ष के राष्ट्रपति जो निष्पक्ष माने जाते हैं, लोक सभा के अध्यक्ष निष्पक्ष माने जाते हैं और भूतपूर्व मुख्य न्यायाधीश जिनकी निष्पक्षता प्रमाणित है—इन तीनों की सम्मिलित राय से भारतवर्ष के मुख्य न्यायाधीश की नियुक्ति हो जिसमें सारी चीजें देखी जायेंगी, वरीयता देखी जायेगी, कार्यक्षमता देखी जायेगी और उनके उत्तुंग व्यक्तित्व को भी देखा जायेगा। इस प्रकार की सारी

चीजें देखी जायेंगी। मुझे विश्वास है कि रचनात्मक दृष्टि से मैंने जो सुझाव रखा है वह मेरे मित्र देव साहब को भी स्वीकार होगा और न्याय तथा निष्पक्षता के लिए लड़ने वाले हमारे कानून मंत्री, श्री शांति भूषण को भी स्वीकार होगा। धन्यवाद।

PROF. P. G. MAVALANKAR (Gandhinagar): Mr. Deputy-Speaker, Sir, I welcome the Bill of my good friend, Shri P. K. Deo, not because I agree with the course he has suggested in it and therefore I am supporting the Bill but because of totally different reasons. I think this Bill serves a very useful purpose of pinpointing the discussion on the importance of the independence of the judiciary at the highest level, particularly that of the Judges of the Supreme Court, and more particularly and obviously of the Chief Justice of the Supreme Court.

This debate is going on in our country, more acutely since 1973, when for the first time the supersession of three senior judges of the Supreme Court took place, and those three judges were all eminent people, competent people, one of whom happily is with us in our own House as our own Speaker.

But the point is, if you really go rigidly on the lines of seniority alone as the criterion because the other criteria are not concrete or specific according to my friend, Shri Deo, then my feeling is that the seniority criterion alone may not also serve the purpose. I see his point, of course, because this is not the difficulty of our democratic policy alone; it is the difficulty of many democratic countries of the world, where independence of the judiciary is respected and implemented, where political interference is disliked and discarded. I do agree that even the smell of political interference should not be there. But how do you ensure that even the smell of political interference is not there, or even the remote suggestion that one or two members of the Council of Ministers, much less the Prime Minister, had anything to do with the appointment to the exalted office of the Chief Justice of the Supreme Court in a democratic country is also not there?

Shri Deo's argument is that except seniority, all other criteria are not concrete and specific whereas this is the safest and most readily available and workable criterion namely to have the senior-most judge of the Supreme Court for appointment to Chief Justiceship. But, if you accept this principle, as my hon. friend, Dr. Ramji Singh was saying, we will be deprived of several talented individuals in various walks of life, judicial, educational, administrative and even diplomatic and political. Why is it that many people, very old and experienced, do not become Ministers of the Cabinet while younger people become members of the Cabinet, and the older people have to work as Ministers of State under the younger people? Why should you not say that it should also be on the basis of seniority? But you do not say that. If all other things are equal and seniority also helps, wonderful but if all other things are not equal, then the seniority of the Judge alone may not be a very helpful criterion. That is my honest view. Therefore, I am not able to agree with Mr. Deo's argument that seniority is the only criterion because the other criteria are vague, are not something on which we can lay our hands specifically and concretely. Dr. Ramji Singh was being asked: what is *pratibha*, how do you, locate it? I can tell Mr. Deo that where there is *pratibha* or genius, you do not need any light to show it to the people, they will find it out.

If the Government in a democracy appoints anyone with less of genius than his colleagues, it will be hauled up before the people, Parliament, press and everybody in the world. Therefore it should not appoint anybody who is less in terms of genius and

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ability. So, the reply to Mr. Deo is that genius is not difficult to locate, it can fairly and easily be located.

Prof. Harold Laski of the London School of Economics and Political Science in his writings, articles, lectures and books used to say that the members of the judiciary, particularly in the Western democratic countries, by habits of historical tradition etc., tended to be more or less conservative, were people of *status quo* mentality not trying to upset or disturb things too much. His argument was that if a democratic Government wants to do something radical in terms of social and economic justice without losing the basis of democracy and individual freedom, it cannot achieve it if it has too many conservative people in the judiciary.

15.47 hrs.

[SHRI D. N. TIWARY *in the Chair*]

Therefore, Government must see that they have in the judiciary people equal in terms of legal experience acumen etc., but that the programme which they want to promote through democratic parliamentary and constitutional means is not thwarted by the mentality and the social, political and class background of some of the important Judges, particularly the Supreme Court Judges and the Chief Justice of the Supreme Court. So, I want the Government to have a certain free hand in the appointment of the Chief Justice of the Supreme Court.

Of course, the Constitution does not mention anything except that the appointment will be made by the President of the Union in consultation with the Council of Ministers because he is aided and advised by them. It is here that I want to make a rather important point. If the Government is wedded to democracy—I am sure this Government has so far shown ample evidence that it is wedded to democracy—it must do three things. Firstly, it must not give even an impression that it is doing things hastily or on a basis of incomplete or inadequate consultation or consultation with a small number of people. I am sure my esteemed friend the Law Minister will agree with me when I say that the apopintment of two Judges to the Supreme Court recently did create a considerable stir in the country, not only among the general public but among the lawyers and advocates of the Supreme Court and High Courts. They were so much agitated that unfortunately they even decided to boycott the ceremony of the swearing in when the two Judges came. Why was it? I do not think it was any reflection on the two eminent judges who have been appointed as judges of the Supreme Court, Justice Desai from Gujarat and Justice Tuljapurkar from Maharashtra. I do not think the reflection was on the merit of the two judges concerned. It was mere a reflection or an anger directed against the *modus operandi* and the manner in which appointments were made and at least the Government of India gave such an impression at that time when the appointment of these judges was made. So, my first point is, let the Government be extraordinarily careful and be sensitive to this matter of *modus operandi* and the mode of doing things. Let not an impression go that the Government, in any way, directly or indirectly, remotely or in a very close way, is concerned or affected or bothered about this or that individual for this or that post, particularly of the judge of the Supreme Court.

Secondly, in regard to these two judges, Justice Desai and Justice Tuljapurkar, Justice Desai comes from Gujarat and I have been watching his performance as an Indian citizen from a distance in the High Court of Gujarat. He is one of the ablest judges of India. It is good that some of the ablest judges are elevated to the post of the judge of the Supreme Court.

But the point is that you cannot do it in a manner by which you give an impression that equally competent or even more able judges are sidetracked or left out. This was true in Justice Desai's case because the people who were superseded were some of the people who were punished during Emergency. Of course my hon. friend the Law Minister says, no, by shaking his head. But I can tell him that Chief Justice Diwan of our High Court in Gujarat was during Emergency wrongly transferred to Andhra Pradesh. Will he deny this fact? Will he say honestly that his transfer was motivated by genuine or *bona fide* considerations of transfer? Was it not a political act? Was it not like other transfers of judges in those days of Emergency? Here is a case where a good, capable, judge was transferred and, when Emergency is gone, when normalcy is restored, when rule of law is restored then the judge who was punished in abnormal circumstances, the same judge is not rewarded in normal circumstances!

I am mentioning this point by way of detail only to make my point clear, namely the Government must not give an impression of doing anything which may mean some kind of interest shown by the Government in 'X' and not in 'Y', in 'P' and not in 'Q'. That is a kind of impression which was created. Therefore, I say that the Government should be very careful about these things.

Lastly, I also feel that this debate has been very useful from another angle, that is, public opinion is made stronger by way of discussion in this House and outside in warning the Government, no matter how democratic it is on paper and even in spirit, that on such matters, every time, the Government takes a step it should make one hundred per cent sure of their step that they are contemplating to take so that the public credibility, public faith and public confidence in the hundred per cent total independence of judiciary is not damaged or impaired even in the slightest way, even upto 0.1 point or 0.01 point per cent. I hope, the hon. Law Minister, when he replies, will give an assurance which we need and, if he goes on giving such an assurance on the floor of the House, it will be binding on him and his Government and also for the future Governments of democratic India that no democratic Government, even though the appointment is in their hands, will do anything which has the slightest political touch or colour. That is my point. Otherwise I agree that the Government must have a final say. But all things being equal, they must give a chance to those who are competent legally, competent in terms of experience and competent also in terms of genius and scholarship.

SHRI SOMNATH CHATTERJEE (Jadavpur): Mr. Chairman, Sir, the Bill is a short Bill, but an important Bill. It raises a very fundamental question as to the method of appointment or selection of the Chief Justice of India which is the highest judicial office in this country. But, Sir, what is the solution? Is the solution to be obtained by appointing the seniormost judge always? Speaking for myself, I have been watching in my humble experience in the Bar that the level is going down both of the Bench and of the Bar. I am very unhappy to say that, although I am very much a part of the Bar, the profession itself.

Nowadays, judgeship has become, in many cases, a matter of recommendation. I do not know whether my hon. friends will believe me if I say that, when my father became a judge in 1948, I came to know of it from the newspaper that he had been appointed a judge. But now a days we know whose names are being considered, we know who is supporting which person for judge-ship, we know who are the persons to be approached. We know, as soon as the names are sent to Delhi, the prospective candidates come and request even the Members of Parliament thinking that even

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MPs can get judges appointed. Requests are made to us even: 'Please speak to the Law Minister if you can, I am a good person, I should be taken to the Supreme Court as a judge'. There is a downward trend in this, and this is the most unhappy state of affairs.

I know what prompted the hon. Member to move this Bill, because, we know what happened in this country in the year 1973—when a judge was selected as the Chief Justice of India not on merits as such. I am not saying that he did not have the merit, but the people of this country were satisfied that three hon. judges had been penalised and that the executive authority had been utilised for the purpose of inflicting a sort of condign punishment on three eminent judges of the Supreme Court for the simple reason that one of the learned judges or two of them had delivered judgments which did not suit the then Prime Minister of India in her personal case, or that some judgments were not to the liking of the powers that be at that time. Therefore, a judge who does not deliver according to the wishes of the Prime Minister or the ideas of the Prime Minister of India or of somebody or of, maybe, her progeny will not be entitled to hold the highest judicial office in this country! At that time you will remember, Sir—you were here then—we had strongly opposed this. We had said that the supersession was a motivated supersession, it was by way of inflicting punishment on three very eminent and capable judges. Those who try to keep track of the Supreme Court judges or judgments may now—nobody will dispute this—that Justice Hegde who is now with us was one of the ablest judges, the same can be said about the other two judges also—Justice Shelat and Justice Grover. From that point of time a doubt has arisen in people's mind that it seems that the Chief Justice-ship in this country is a matter of negotiation or is an office which has to be given to those only who behave like good boys, who subserve the interests of the executive in this country, sitting on the Bench. From that point of view, from that day, in this country the feeling has necessarily arisen. I am not saying that it was not justified. It was justified. That is way, on the recent appointment after the new Government has come, eye-brows were raised whether the same tradition was being followed. I have no manner of doubt that there is no comparison between what happened in 1973 and what happened in 1977. Speaking for myself I have the fortune or privilege of appearing before the Supreme Court often. In a very recent case I appeared before Justice Desai. I can unhesitatingly say this. He is the most fittest person to adorn the Supreme Court benches. Members of the Bar are very happy that he is there. But I am not making any comparison with anybody at all. His has been a very apt choice. But as Prof Mavalankar said, let the Government not do anything which leaves any doubt—any iota of doubt—in the people's minds. The point is whether the solution lies in getting the views of the different Bar associations especially in the matter of appointments to the Supreme Court is concerned. Is it better to take the Bar into confidence? In the United States what happens is this. There is no question of the senior person becoming a judge. It is purely the preprogative of the executive to appoint the Chief Justice. When appointment of judges come in the Bar associations send in their recommendations. In England it is not the seniormost judge who becomes Lord Chief Justice. It is not the seniormost legal and judicial functionary who becomes the Lord Chancellor. Therefore, seniority as such cannot be the only solution for it. I do not agree with my friend Mr. P. K. Deo fully but I do appreciate the spirit behind this Bill which he has brought before the honourable House.

16 hrs.

First of all, what is important is, we have to have, on the part of the Government, a commitment to the building up of and maintenance of an independent judiciary. This commitment must always be there. This was what was lacking in the previous administration. If the people have the confidence that this Government stands for the setting up of a strong judiciary they will not have any doubts in their minds. Therefore, what is important is, they will have to earn the confidence of the people of this country. The ordinary people can hardly afford to take recourse to judicial proceedings. Employees may have been retrenched; they may have the award in their favour. Those persons are dragged to courts. He has to go to the Supreme Court. These are more important things. Lot of delay in the dispensation of justice takes place. Litigation goes on for years and years together. There was a person who has got a writ for reinstatement in the Calcutta High Court, regarding the Philips Company, and for the last 10 years this matter is pending in the writ jurisdiction of the Calcutta High Court. He is not able to enjoy the fruits of the award which directed his reinstatement. These are matters which are more important. I request the Minister to have a look into such matters. You have to take the confidence of the people of the country. I have always said, I am not enamoured as such of the judiciary in this country. There are many people who should not have been in the Bench, but who are there. I have some humble experience of different high courts in India including the Supreme Court. I donot impute motives to anybody. Mr. Shanti Bhushan is as much a prisoner of the system that is functioning in this country as anybody else. The best judges are not attracted there. Their terms and conditions are such that nobody wants to become a judge. As in England for instance, the sense of involvement in the judicial set up in this country, has not developed. There, after three requests, a lawyer will not refuse to become a judge. That feeling is not there in this country. Because the alternatives are so much. Mr. Gokhale is an example. He was a judge; he resigned because the emoluments were not sufficient. That did not attract the competent people to the Bench. Look at these problems first. If you have a strong and competent judiciary, then there is no question of appointment of the Chief Justice. If Mr. Shanti Bhushan or ministers in this Government want to make motivated appointments, we cannot stop. We can only criticise.

Sir, I am not in favour of making the seniormost judge automatically the Chief Justice. There may be many cases; there may be physical handicaps. We know one of the judges in the Supreme Court who was the seniormost puesne judge, but for his resignation, there would have been a problem for the Supreme Court. He was persuaded to resign. Otherwise he was the seniormost judge. And in the normal course, if he did not resign and if he were to be superseded for *bona fide* reasons, would this law not stand in the way?

My submission is that the spirit behind the Bill should be kept in mind by the Government. They should try to see that in the normal course, the seniormost judges become the Chief Justice. That should be doing justice to them also and that maintains a particular system which will avoid Government's intentions which are sometimes motivated or which may not be motivated but that cannot be justified. Therefore, it is very necessary—an overhauling is necessary in the judicial system. The laws delay, as I have said, is also there. When the question of legal aid to the Poor comes, how do you help that? You try to minimise it by making the laws more understandable. Of course some of the laws that are passed are not understandable; some of them are of course cumbrus ones. These require attention.

Therefore, I request the hon Law Minister—only for that purpose, I

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am taking this opportunity to speak on this Bill—that when there is a change from the last administration and when there is a change in the outlook towards the judiciary, utilise this opportunity. I am sure that the people will be with you. And, speaking for ourselves, if we find that you are really trying to reorient the judiciary system keeping in mind the teeming millions of the people in this country, let them get some advantage of it. The disparity between litigants inside the courts is known to my friends. You are also aware of it. What is the good of asking Birlas and Tatas in engaging the best legal talents in this country and why are they pited against somebody if there are some people who are willing to help the ordinary people? Otherwise there is no match. Is this justice I want to know from the hon Law Minister. Is this the sense of justice of this Government? Is this the sense of justice that the people who after a good deal of trouble, get an order in their favour after waiting for years and years?

Sir, I will resume my seat after giving one instance. A peon in the Income-tax Department was dismissed. His basic and substantive salary was Rs. 40. After his dismissal, he appealed to the Calcutta High Court and he filed a writ petition there as a pauper. Even the judge requested me to appear for him. I had to argue for five days; Government lawyer argued for fourteen days before the the court of apeal. The judges differed. Then with another third judge I had to argue for three days. Then Government lawyer argued for 16 days to get the peon out of the job. And ultimately I won in the Calcutta High Court. The matter is now pending for four years or so. I wish I could produce here that gentleman. He comes to me running at my place in Calcutta when ever I go. He is a living skelton. I cannot get his matter heard. I have to mention this with great difficultly. After pendency for four or five years, the matter has come up. Does this not shock the conscience of the Government? Therefore if he is X or Y judge, if there is no motive, then I cannot go into the matter. Are the people of this country getting justice? This is the test. Therefore, I request the Law Minister that this opportunity is got through this Bill and we have placed our view points before the Government. Please look into them. If you take the people with you in this matter, it is all right. There has been no such complaint in the matter of appointment of Justice Desai. It is a very good appointment. More such things will arise in future.

SHRI G. M. BANATWALLA (Ponnani): Mr. Chairman, Sir, hon'ble Shri P. K Deo has piloted a Bill of great significance. The crux of the Bill is that the appointment of the Chief Justice of India should be on the basis of seniority.

Now, Sir, the anxiety—as everyone can understand—is the maintenance and strengthening of the freedom of judiciary. Here there can be no two opinions about it. Everyone who believes in Democracy ardently desires a free judiciary. We are very fortunate that we have a judiciary of a very high standard. But the standard has not only to be maintained but has also to be further promoted. This whole question about the appointment of Chief Justice of India and the fredom of judiciary arose because of the instance of supersession of judges in 1973. Till then, I believe, seniority was the convention that was followed in the appointment of Supreme Court judges. It was only in 1973 when seniority was bypassed that this problem and threat to judiciary came up.

There is no difference of opinion that the appointment of Chief Justice of India cannot be at the discretion of the Government. I understand that the appointment is made by the President, but as the Constitution stands,

the President of India has not only to take the advice of the Cabinet but is also bound by the advice of the Cabinet. In other words, the Chief Justice of India is appointed by the Cabinet or the Executive. This is a very undersirable feature and must be corrected at the very first instance.

Sir, the entire issue raises two points. In the first place we have to concede the desirability of having a convention, namely, a convention with the necessary legal sanctity with respect to the appointment of the Chief Justice of India and secondly we have also to decide as to what that convention should be. As far as the first point is concerned, namely, that there must be a convention with legal sanctity about the appointment of Chief Justice of India there could be no two opinions. Where there is no convention the arbitrary power of the Government creeps in. I am firmly of the view that the Government must have no say whatsoever in the appointment of not only the Chief Justice of India but also the other judges whatsoever in this country. The Government is the biggest litigant and a litigant cannot have the freedom to choose the judge. There must, therefore, be healthy norms for the appointment of the Chief Justice of India and the other Supreme Court and High Court Judges. I firmly believe that so long as the appointment of any judge whatsoever is at the discretion of any Government then we are far away from our concept of freedom of judiciary. Now this particular thing, this particular point, namely having a convention for the appointment of the Chief Justice of India is possibly agreed to by almost all sections of the House. As far as I understand everybody has conceded the desirability of having some convention or the other. When I say convention, I mean the legal sanction for the appointment of the Chief Justice of India. Otherwise arbitrary and discretionary elements creep in. What should be that convention?

Here is the difference of opinion. Hon. Member P. K. Deo wants that the senior-most judge of the Supreme Court should become the Chief Justice of India. Other Members have come forward with other suggestions. There is this particular point that seniority cannot be the sole criterion.

Here before pronouncing a judgement we must consider the point as to how the Supreme Court judges are appointed from among whom the Chief Justice is to be appointed? The Chief Justice of India must possess not only very high legal competence in the field of law but also a high degree of competence in the administrative field. He must have both legal and administrative competence. That is why this hitch comes up, namely, that seniority cannot be the sole criterion because a person with a very high legal competence may lack administrative competence or *vice versa*. So an element of pick and choose has to come in.

I must say that this is a misconception. In the appointment of judges of the Supreme Court, both those factors, both those elements, namely, a high degree of legal competence and a high degree of administrative competence are taken into account. It is this cream of talents, not merely the talent but the cream of talent that we have on the Bench in the Supreme Court. Every Judge appointed to the Supreme Court is supposed to possess not only a high degree of legal competence but also administrative competence. Therefore, there should be no heisitation whatsoever in having only seniority as the criterion for the appointment of the Supreme Court Chief Justice. Otherwise unhealthy trends do come in. However we may concede here that perhaps in no country of the world seniority is the sole criterion. I have been trying to read a lot on the subject since 1973; my articles have also appeared in the legislature journals and other places. Different countries have different conventions. As the situation in India

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is, I think that the best convention would be to have the seniormost judge of the Supreme Court as the Chief Justice of India. I am convinced about that.

Now a mere convention will not do because we have seen the fate with which those conventions are confronted. It is necessary that there should be a legal sanction, legal provision for this matter. Though there may be difference of opinion as to the mode of appointment to the office of the Chief Justice, at least one categorical assurance we must have from our hon. Law Minister. That is, to the effect that a proper guideline in the Constitution itself would be laid down in due course of time with respect to the appointment of Cheif Justice. In laying down these guidelines, I am sure the Law Minister will also give us a categorical assurance that in the appointment of the Chief Justice of India the Government should have no say whatsoever, not only not the final say but no say whatsoever. This is necessary in view of the position that the Government is the biggest litigant in the country and that litigant himself cannot have the choice of the judge on the Bench.

चौधरी बलबीर सिंह (होशियारपुर) : सभापति महोदय, श्री देव ने एक बहुत ही नाजुक और महत्वपूर्ण मसले की तरफ हमारा ध्यान खींचा है। हिन्दुस्तान की जनता द्वारा चुनी हुई सबसे बड़ी सभा को यह मौका मिला है कि वह इस पर अपनी बात कह सके। मोनियार्किटी से सुप्रीम कोर्ट के चीफ जस्टिस या दूसरे जजों को चुना जाये या इसके लिए कोई और तरीका इस्तेमाल किया जाये इस पर आज हम विचार कर रहे हैं। यह बड़ी खुशी की बात है कि इस वक्त ला मिनिस्टर यहां मौजूद हैं और वह बहुत सुलझे हुए व्यक्ति हैं और एमीनेंट लायर भी है। उनको प्रैक्टिकल एक्सपीरियेंस है कि इंसाफ कैसे मिलता है। इसको गहरी नजर से देखने की जरूरत है कि लोगों को जल्दी और सस्ता न्याय मिले। बड़ी अदालतों में 15-15 और 20-20 साल तक केसों का फैसला नहीं होता है और जब फैसला होता है तो व्यक्ति जिसने न्याय के लिए प्रार्थना की होती है मर चुकता है। उसके बाद उसको इंसाफ कैसे पहुंचाया जा सकता है। मेरे एक कर्नल दोस्त है। यू०पी० की हाई कोर्ट में उनका एक केस चल रहा है। 12-15 साल हो गये हैं अभी उसका फैसला नहीं हुआ है। छोटी अदालत में तो फैसला मिल गया था। इसके बाद हाई कोर्ट में सरकार ने अपील दायर कर दी और वह पेंडिंग पड़ी हुई है। अब आप बताये कि उसका फैसला तब होगा जब वह मर जायेगा? वह मरने के करीब पहुंचा हुआ है। जब डिक्री होगी तब वह उसके बच्चों को तो मिल जायेगी लेकिन उस बेचारे को तो न्याय न मिला। वह तो मुफीबत काट कर चला गया।

इसका एक और पहलू भी है। जो बड़ा वकील कर लेता है, ज्यादा पैसा दे देता है आम तौर पर वही जीत जाता है। मैं एक बड़ा वकील कर लेता हूं और मेरा मुखालिफ जो गरीब है वह बेचारा इतना खर्च नहीं कर सकता है, बड़ा वकील नहीं कर सकता है या वह कर सकता है और मेरे पास इतना पैसा नहीं कि मैं कर सकूं तो इसका मतलब तो यह हुआ कि यह लड़ाई इंसाफ की तो न हुई, इसकी हुई कि दो में से कौन ज्यादा पैसा दे सकता है और कौन नहीं दे सकता है।

हाई कोर्ट और सुप्रीम कोर्ट में जा कर शान्ति भूषणजी या दूसरे वकील लोग इस तरह की भी दलीलें देते हैं कि 1912 में फलां जज ने यह फैसला दिया था और उसके खिलाफ नहीं जाया जा सकता है तो उस चीज

को मान लिया जाता है। अब आप देखें कि कहां 1912 और कहां 1977 कितना फर्क हो गया है। या 1888 से फलां जज ने जो बड़े एमीनेंट जज थे या फलां बैंच ने यह फैसला दिया था या सुप्रीम कोर्ट ने या हाई कोर्ट ने तब यह फैसला दिया था इस वास्ते उसके खिलाफ नहीं जाया जा सकता है तो कैसे जो छोटा जज है वह उसके खिलाफ जा सकता है। ये सब चीजें हैं जिनको आपको देखना होगा और कोई रास्ता निकालना होगा। जिस आम आदमी ने, जिस साधारण आदमी ने, जिस सीधे सादे आदमी ने वोट डाल कर हम को भेजा है उसके हक की नुमाइंदगी हम कर सकें, उस आदमी को इंसाफ कैसे दिला सकते हैं, उसको देख सकें तो

सभापति महोदय बिल तो दुरुस्त है।

चौधरी बलबीर सिंह मैंने पहले कहा था शायद आपने ध्यान नहीं दिया कि माननीय सदस्यों ने हमें मौका दिया है कि हम इस मामले पर अपनी बात आपके सामने रख सकें। सुप्रीम कोर्ट के चीफ जज के बारे में जिस ढंग से यह मसला आया है कि उनको किस ढंग से इन्साफ मिले, उस पर हम अपनी बात कर सकें। प्रीम कोर्ट के जो चीफ जज हों वह किस ढंग से बनें, उसके लिये हम यहां बहस कर रहे हैं जिससे लोगों को इन्साफ मिल सके।

इन्साफ किसको चाहिए? जो बाजार में छोटा गरीब जनता का आदमी है, उसके साथ अगर कोई बेइन्साफी है, तो उसे इन्साफ चाहिए। कल एक मामूली डाकखाने का कर्मचारी मेरे पास आया। 8 साल से उसका मुकद्दमा पेंडिंग रहा और अब उसके हक में फैसला हो गया सब-जज की अदालत में। लेकिन सरकार ने सैशन जज के यहां अपील दाय कर दी। बताइये 8 साल उसे मुकद्दमा लड़ते-लड़ते हो गये और जब फैसला हक में हो गया उसके बाद भी हाई-कोर्ट और सुप्रीम कोर्ट तक उसका मामला जायेगा। पता नहीं कितना समय इसमें लगेगा। लेकिन सवाल यह है कि इन्साफ मिल सके और इसके लिये जज किस ढंग से एप्वाइन्ट किये जायें और किस ढंग से उस पर इस हाउस वाले अपनी बात कर सकें ताकि उसके बारे में सरकार अपनी राय बना कर फैसला कर सके।

बेसिक सवाल यह है कि हर आदमी को इन्साफ कैसे मिल सकता है। अगर इन्साफ पैसे से मिलना है, तो जिसके पास ज्यादा पैसा है, जितना बड़ा वकील वह खड़ा कर ले उसका इन्साफ मिलता।

एमर्जेन्सी में हमारे सुप्रीम कोर्ट के जजेज ने गवर्नमेंट के सोशल फिलासफी का प्रचार करना शुरू कर दिया। उन्होंने यह कहना शुरू कर दिया कि जितने बाकी जजेज हैं उनको भी पढ़ाना चाहिए कि सोशल फिलासफी क्या है। सोशल फिलासफी के भी जज हों ऐसा होना चाहिये। मैं जानना चाहता हूं कि आज किस किस्म की सोशल फिलासफी जजों को पढ़ाई जायेगी। मैं शांति भूषणजी से कहना चाहता हूं कि वह यह देखें कि उस समय जो जज सारे हिन्दुस्तान में चक्कर लगा कर सोशल फिलासफी का प्रचार करते थे, हर बार हाई कोर्ट से सोशल फिलासफी की बात करते थे, उनसे पूछा जाये कि अब किस सोशल फिलासफी की बात करेंगे और किस सरकार की करेंगे। कोई और सरकार अगर आती है तो क्या जुडिशियरी उसी ढंग से बात करेगी।

बाहर के देशों में, अमेरिका में इलैक्टेड जजेज भी होते हैं। वह कैसे इन्साफ दे सकते हैं, यह उनकी बात है। लेकिन हमारे देश में इन्साफ मिल सके, जिस पर सरकारी, पोलिटिकल और पैसे वालों का दबाव न हो सके। यह होना चाहिए आज वे तीनों दबाव काम कर रहे हैं।

[चौधरी बलबीर सिंह]

मेरे साथी मुझे यह कहने के लिये प्राम्ट कर रहे है कि शराब से भी इन्साफ मिलता है। एक शराब की पार्टी कर दी गई, रंगीन महफिल बन गई तो रंगीन पार्टियो मे बैठ कर इन्साफ मिल गया। तो इस तरह के कुछ मसले है जिन पर शांति भूषण जी एक कमेटी बैठाये उसमे सिर्फ एमीनैन्ट वकील ही न हो बल्कि जो जनता के नुमाइन्दे है, उन की भी बात करे। जो एमीनैन्ट वकील है उन्हे तो अपना जेब की बात भी करनी होती है। अकबर इलाहाबादी ने एक शेर कहा था—

"रात रण्डी की, दिन प्लीडर का,
उसका पेशा है, उसकी पेशी है।।

इस बारे मे उन लोगो की भी राय लेनी चाहिये जिनका इससे डायरेक्ट ताल्लुक है, कि किस ढंग मे लोगो का इन्साफ मिल सके और उसके लिये सिर्फ जजो की सीनियोरिटी का ही ख्याल रखा जाय या कोई और क्राइटेरियन मुकर्रर किया जाये। यह बिल कंस्टीट्यूशन की अमेन्डमेंट की शक्ल तो नही ले सकता है लेकिन इसके जरिये सरकार का ध्यान इस मामले की ओर खींचा गया है और हाउस को इस पर चर्चा करने का मौका मिला है। यह जरूरी है कि लोगो को जल्दी और सस्ता इन्साफ मिल सके और जज बगैर किसी दबाव के इन्साफ कर सके। कहा जाता है कि कानून मोम की नाक है, जिधर चाहे मोड लो। वकील उसको अपनी-अपनी तरफ मोडना चाहते है और जज को उसे देखते हुए अपना फैसला करना पडता है। हिन्दुस्तान मे जिस मसले पर सन् 1973 से लेकर आज तक बहुत बडी बातचीत हो रही है उसके बारे मे बहुत संजीदा तौर पर फैसला करना चाहिए। बुनियादी बात यह नहीं है कि सुप्रीम कोर्ट का चीफ जस्टिस सीनियोरिटी के आधार पर बने या किसी और मैथड से, बेसिक पाइन्ट यह है कि इस देश मे आम आदमी को न्याय कैसे ठीक ढंग से मिल सकता है।

श्री निर्मल चन्द्र जैन (सिवनी) सभापति महोदय, माननीय सदस्य श्री पी० के० देव ने इस विधेयक के द्वारा जो भावना व्यक्त की है, मैं समझता हू कि सभी लोगो ने उसका समर्थन किया है। मैं यह भी समझता हू कि माननीय विधि मंत्री महोदय भी उसका समर्थन करेंगे। लेकिन सिर्फ श्री बनातवाला को छोड कर अन्य किसी सदस्य ने यह हिम्मत नही दिखाई कि इस विधेयक का स्पष्ट रूप से समर्थन करे। मैं इस विधेयक का पूर्णरूप से समर्थन करने के लिये खडा हुआ हू।

16·33 hrs.

[SHRI DHIRENDRANATH BASU *in the Chair*]

मुझे याद है 1973 की वह घटना जिसमे हमारे 3 न्यायाधीशो की सीनियारिटी को नजरन्दाज कर, किसी और को मुख्य न्यायाधीश बनाया गया था। उस समय काफी बवन्डर मचा था और जनता पार्टी, जो आज बहुमत मे है, ने अधिकाश लोगो ने उसका विरोध किया था। बार काउंसिल ने उसका विरोध किया था और हमारे यहा की हाईकोर्ट की बार एसोसियेशन और डिस्ट्रिक्ट बार एसोसिएशन ने भी उसका विरोध किया था। उनका कहना था कि परम्परा का निर्वाह करने जो सीनियर जज है, उसे चीफ जस्टिस बनाया जाना चाहिये था। हम सब ने दुहाई दी परम्परा की। आज भी लोग दुहाई देते है कि परम्परा तो बनी रहनी चाहिए, लेकिन कानून नही बनना चाहिये। मैं यह कहना चाहता हू कि परम्परा तोड़ी जा सकती है, और तोडी गई है। इस सदन मे जो आश्वासन दिये गये, उन्हे भी कई बार

तोड़ा गया है। इस सदन में यह आश्वासन दिया गया था कि मीसा का दुरुपयोग राजनीतिक बन्दियों के खिलाफ नहीं किया जायेगा, लेकिन कितने विस्तृत रूप में मीसा का दुरुपयोग राजनीतिक बंदियों के खिलाफ किया गया।

जब मैं गिरफ्तार हुआ, तो हैबियस कारपस की पैटीशन की थी। मैं ने स्वयं वहां उस पर बहस की। मैं भी पेशे से वकील हूं। उसके बाद जब सुप्रीम कोर्ट में वह आई तो मैंने निवेदन किया कि इंटरवीनर के नाते भी मुझको सुन लिया जाय लेकिन वह खारिज कर दी गई। शांति भूषण जी ने उस पर बहस की और हम लोग उस समय जेल में थे, हम लोग समाचार पढ़ते थे बड़ी अच्छी बहस उन्होंने की, बड़े योग्य तर्क उन्होंने दिए मगर उस बाद जो फैसला हुआ वह फैसला राजनैतिक रंग रख कर किया गया। मैं स्पष्ट रूप से यह कहना चाहता हूं कि यहां पर जो फैसला हुआ था वह राजनैतिक फैसला था और वह सिर्फ इसलिए हुआ था कि तीन जजेज की सीनियारिटी को दबा कर उनके बाद 4 जज को यहां पर मुख्य-न्यायाधिपति बनाया गया था। इस तरह की परम्परा चली जिस लिए संस्कृत में एक बड़ा श्लोक है—अहो रूपम अहो ध्वनि वाली बात हुई। एक गधा था और एक कौवा था। दोनों ने एक दूसरे को देखा तो सोचा कि कैसे तारीफ की जाय। तो गधे की आवाज सुन कर कौवे ने कहा कि क्या मधुर ध्वनि है और कौवे के रंग को देख कर गधे ने कहा क्या अच्छा तुम्हारा रंग है? जब-जब यह विवेक की बात, डिस्क्रीशन की बात आती है तब-तब यह अहो रूपम अहो ध्वनि का वह श्लोक चरितार्थ होता जाता है। एमर्जेंसी के दौरान यह सब हुआ जिसको शांति भूषणजी ने भुगता है, जिसको हम सब लोगों ने भुगता है। यह बात समाप्त होनी चाहिए।

मैं इस सरकार के लिए नहीं कहता हूं। मैं जानता हूं कि यह निष्पक्ष सरकार है। लेकिन यह सरकार पांच वर्ष रहेगी, दस वर्ष रहेगी, पन्द्रह वर्ष रहेगी। आखिर कहीं न कहीं तो यह सरकार बदलेगी और अगर उसमें गलत व्यक्ति प्रधान मंत्री और विधि मंत्री बन जाते हैं तो फिर वह अहो रूपम अहो ध्वनि: की कल्पनाएं फिर से दोहरायी जायेंगी। तो जिसको हम परम्परा के रूप में मान्यता देते थे उसको कानून के रूप में मान्यता देने में हमको क्या एतराज है, यह बात मेरी समझ में नहीं आती।

परम्पराएं और बतायी जाती हैं कि विदेशों में यह नहीं होता। विदेशों में तो और भी बहुत सी चीजें नहीं हुआ करती जो हम यहां पर करते हैं। विदेशों में गांधी नहीं हुए जिनकी हम यहां दोहाई दिया करते हैं। हम कहते हैं कि गांधियन फिलास्फी होनी चाहिए तो हम यह नहीं कहते कि चर्चिलियन फिलास्फी होनी चाहिए क्योंकि इंग्लैंड ने चर्चिलियन फिलास्फी को स्वीकार किया है। हमारी जो बात है हम उसको अपने ढंग से रखना चाहते हैं। हमारी जो परम्पराये हैं, प्रजातंत्र की ताकत जिस प्रकार से चलती है उसको यदि हम उस ढंग से देखना चाहते हैं तो हमें पुराने सबक सीखने चाहिए और यह सबक मिला है हमें यहां कि जब-जब नीचे से गलत आदमियों को उठा कर ऊपर बैठाया गया है तब तक कुछ गलतियां हुई हैं।

यदि इस विधेयक को ध्यानपूर्वक देखा जाय तो यह जज के एप्वाइंट होने का नहीं है, यह चीफ जस्टिस के एप्वाइंट होने का है। जज बहुत अच्छा होगा। एमिनेंस की जो बात कही गई, किसी जज की प्रतिभा की बात कही गई, उसका उत्तर मैं यहां पर देना चाहता हूं। आप उसकी प्रतिभा मान कर उसे

[श्री निर्मल चन्द्र जैन]

हाई कोर्ट से सुप्रीम कोर्ट में लाते हैं या उसे डायरेक्ट सुप्रीम कोर्ट मे जज बना लेते हैं। यहां पर वह जज रहता है। उसकी अपनी प्रतिभा है, उसके अनुसार वह अपने फैसले देता है। लेकिन यहां पर एक चीफ जस्टिस बैठ कर चाहे वह प्रतिभा का धनी हो या प्रतिभा का धनी न हो, दूसरे जजेज के समान उसकी प्रतिभा हो, लेकिन मुख्य न्यायाधिपति का काम कर सकता है और यह करते चले आना चाहिए। बीच में किसी को किसी प्रकार का रिवार्ड देने की बात समाप्त होनी चाहिए। रिवार्ड देना समाप्त होता है तब तो स्पष्ट रूप से हम ने जिसको प्रतिभाशाली समझा और जिसको सुप्रीम कोर्ट का जज बनाया वह यदि वरिष्ठ वहां पर होता है तो वरिष्ट जज को सुप्रीम कोर्ट का चीफ जस्टिस बनाने मे वह अपने विवेक, संयम, न्याय, प्रतिभा, प्रशासनिक प्रतिभा, सब को स्थिर और कायम रख सकेगा।

श्री बनातवाला साहब ने एक बात कही कि सरकार को यह अधिकार नही होना चाहिए। मैं इसका विरोध करना चाहता हूं। विशेष तर्क की बात नही है लेकिन यदि सरकार अभी तक करती चली आई, 1973 तक तो शायद न्याय की प्रतिभा पर कोई कलक नही लगा हुआ था जबकि सरकार ही नियुक्त करती रही है, कलंक तो उस समय लगा जिस समय एक को छोड़ कर दूसरे को चुनने की चेष्टा की गई। यह चुनने की प्रथा बन्द हो, उसके लिए यह विधेयक है और मैं इसका पूर्ण रूप से समर्थन करता हूं।

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): I have keenly heard the very important speeches which have been made by so many hon. Members of this House on this Bill on a very important subject. I fully respect and appreciate the sentiments which lie behind this Bill and behind the various speeches which have been made in this House because the position of the Chief Justice of India is a very important one and in a way he can be said to be the pivot of the whole functioning of the judiciary on account of the fact that he plays a very crucial role not only in the working of the Supreme Court but also in the manning of the various High Courts of the country.

As the House knows, in the matter of appointment of judges in the High Courts, not only the Chief Justice of the High Court concerned, not only the Governor of the State which obviously includes the Chief Minister of the State also has to be consulted. But the Chief Justice of India has also to be consulted in those appointments. The Chief Justice of India's advice is a very important piece of advice to which very great importance has to be attached by the Government in all those cases. Therefore, it is evident that the Chief Justice of India plays a very crucial and pivotal role in the functioning of democracy in which judiciary has a very important role to play. But so far as the Bill is concerned, I am sorry to say that it is not possible to accept the terms which are contained in the Bill.

Before I mention the more important objections to the Bill, while appreciating the sentiments behind the Bill, may I invite the attention of the mover himself to the two provisos which he seeks to add to article 124. The first proviso provides as a positive and mandatory requirement:

> "Provided further that the senior most Judge of the Supreme Court shall be appointed as the Chief Justice;"

It does not leave any discretion, in any circumstances whatsoever, that anybody whoever happens to be the senior most Judge of the Supreme Court at the time a vacancy occurs has got to be appointed as the Chief Justice. I have not been able to understand what is then the functioning of the second proviso, namely:

> "Provided further that no one shall be appointed the Chief Justice who has not served for at leazt two years as a Judge of the Supreme Court;"

If there had been alternative provisions, I would have been able to appreciate them. On the one hand, it says that the senior most Judge shall be appointed as the Chief justice at the time a vacancy arises, on the other hand it says that no one shall be appointed the Chief Justice who has not served for at least two years as a Judge of the Supreme Court.

Now, supposing at one time a large number of Judges of the Supreme Court, almost all happen to be of the same date of birth, or all of them retire roundabout in the same year with the result none of those persons who are appointed to take their place has two years standing, in that case, neither the senior most person nor the junior most person will be of two years standing, who is to be appointed as the Chief Justice? Perhaps, there will be a constitutional break-down in that contingency and nobody will be appointed at all. In any case, if the senior most judge has to be appointed in every case, what is the function of the second proviso, namely, why insist on two years service? Obviously, the senior most person would have put in more than two years service. I have not been able to quite appreciate the second proviso. Perhaps, it might have been just a case of over-sight; perhaps, the mover himself was not serious about the second proviso; maybe, he himself entertained doubts about the propriety of the proviso and he was thinking that at some stage, he would surrender the first proviso; he would accept that the first proviso will not be workable and, therefore, he must have the second proviso, namely, some other limitation must be imposed that anybody who is to be appointed as the Chief Justice must be a Judge of the Supreme Court for two years. I do not know whether he was really thinking that there should be no direct appointment to the office of the Chief Justice from the Bar. Maybe, he wants that there should be no direct appointment from the Bar to the office of the Chief Justice. Of course, under the Constitution, it is permissible. We have had the occasions when a person has been appointed as a Judge of the Supreme Court directly. There has been no case so far of a direct appointment from the Bar to the office of the Chief Justice. I do not know whether the Bar will appreciate that. In any case, I understand the feeling or the spirit behind that proviso.

Now coming to the first proviso itself, namely, treating it as if the second proviso had not been suggested, whether it would be right to adopt it, it is very important that the independence of the judiciary in this country must be maintained at all costs if democracy is to function; we have to an independent judiciary. So far as the present Government is concerned. I submit that its commitment to the independence of the judiciary is total and complete; if it is possible to have more than a total commitment, then it is more than total. So far as independence of the judiciary is concerned, the present Government attaches a great importance to that because we can have a balanced democracy only if we have an independent judiciary.

But then sometimes when we have a bad experience, we are inclined to think of a remedy without comprehending other things. It is human experience that, when we have too much anxiety to find out a remedy in respect of a bad experience that

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we have had we do not sometimes comprehend as to whether that remedy itself will not bring in other factors which we have not comprehened at that time because we rely upon past experience and somehow projection about future is not possible

I would like to stress at this stage that Constitution is a document which is supposed to be for a very long time, and it would not be quite correct to merely rely upon a certain instance and then bring forward a remedy without projecting the various other possibilities which can arise in future. Thirty years of experience would not be adequate to think, 'Allright; difficulties of other kinds cannot arise at all'. In fact, even during these 30 years of experience we have had occasions when, if a provision had been there like the first proviso, there would have been a very difficult situation.

There was a case to which reference has been made. Soon after the Constitution was framed, a vacancy had arisen in the office of the Chief Justice. The senior-most judge was a judge who was physically not in good health, who was not in a position to discharge properly the onerous functions of the office of the Chief Justice of India and yet he had not resigned. It was also, perhaps, not possible or feasible or advisable to do anything because, as the House is aware, a judge can cease to be a judge only by the process of impeachment. And so far as the process of impeachment is concerned, only two grounds are mentioned under the Constitution—and very rightly. So far as judges are concerned, the termination of the office of a judge is possible only on very very limited grounds which are provided in the Constitution, namely, proved misbehaviour or incapacity. Otherwise, the independence of the judiciary would come under an onslaught—if it was made wider, and so on. So far as incapacity is concerned, what happens if a persons is in a bad health and he has himself not resigned? Well, he can sometimes, off and on, come to the court and so on. But then so far as the functions of the Chief Justice are concerned, as I have said, they are so crucial that it is necessary that a person should be in a fit state of health. One difficulty which can be easily envisaged is this. What will happen if this absolutely mandatory provision is added that only the senior-most person must, on every occasion, be appointed as the Chief Justice of India? What will happen if one or two senior-most judges were in the same kind of health—as I have mentioned—at some future point of time? Would those persons who are not in a position to function properly at all have to be appointed as Chief Justice of India in such a large country, in such a big country, where there are so many problems and so on? That is a matter which requires a very deep consideration of the hon. Members of this House.

Then another point, which it does not take into account, is this. I know from my old experience that such occasions have arisen in the High Court that a Chief Justice was retiring whose date of birth was, say, 17th May, and the senior-most judge's date of birth was 18th May. On 17th May the Chief Justice was retiring and the question was whether the senior-most judge who was going to retire the very next day, should be appointed as the Chief Justice—give him the 'welcome' in the morning and the 'farewell' in the evening on the same day'! There were such rare occasions within an interval of one or two or three days. Should the office of the Chief Justice be brought to such a pause that a rigid mathematical formula has to be introduced in the constitution? It is said that able and eminent persons get born because of the conflagration of the stars, etc. The conflagration of stars is such that very eminent judicial people must be born during that period. Therefore, there will be large number of eminent people who get born within on interval of two days or three days.

The senior most judge is born on a particular day, the next judge two days after, the third judge three days after and so on. Would the office of the Chief Justice to be changing with every such frequency in every two days or three days?

I am very happy to say that we can very well be proud of the judicial system of this country and the judiciary of this country. So far as independence is concerned they are not behind any judiciary anywhere else in the world. But the point is this. After all judges are also human. In a distant point of time, a situation may arise when there may be a senior most judge. There may be a vacancy arising at that time. The country as a whole may be of the view that he may not be the desirable person to occupy the post of Chief Justice. Would our Constitution to be such that even when there may be a general consensus throughout the country that he is not desirable, he should be appointed? There is no politics involved. There is a general consensus in the country that he is not a fit person or a desirable person to occupy such a glorified office as the Chief Justice of India. He cannot bring any lustre to the office. Should the constitution compel us saying that he should be appointed to that high office?

Therefore, if the independence of the judiciary of this country is the very important objective to be achieved in every sphere that can be thought of, it is necessary that there should be safeguards that this prerogative,—in whomsoever it is vested of making appointment to the Chief Justiceship,—cannot possiby be abused or misused, cannot be used for any extraneous considerations, and only the best possible person must be chosen for the office of the Chief Justice of India. The Supreme Court has an important and a vital role to play. It has to see in which direction the law develops, how legal principles are evolved, so that justice can be done to the people and it must be manned by the best available talent in the country.

And, therefore, in the matter of appointment of the judge in the Supreme Court, it has never been advocated by anybody; nor anybody has ever applied the principle of seniority to the matter of appointment of a judge of the Supreme Court.

But, so far as the Chief Justice is concerned, I quite agree that, normally, a person who, by virtue of his ability, his independence, his brilliance and so on, has been chosen to be a judge of the Supreme Court. It would be a very rare case that he would not be suitable for being a Chief Justice of India also. And that is why we find that except in case when the seniormost judge did not possess sound health—upto 1973—this principle had been applied in the matter of selecting the Chief Justice because most of the functions of the Chief Justice are also the same which are the functions of the Puisne judge, an ordinary judge of the Supreme Court or the High Court. It is true that, so far as the administrative matters are concerned, they are the special prerogatives of the Chief Justice unlike the other judges. Well, on that ground, the Law Commission had said that in the matter of appointment of Chief Justice also, since the administrative principles are important and relevant, seniority alone will not do. They had therefore advocated that there should be some convention, some principles that may be laid down. These are the matters which are posed; they are very difficult ones. On the one hand it is said that a fit and appropriate person must be the Chief Justice and on the other hand it is also said that there shall be no politics; there shall be no favouritism and that the matter shall be decided objectively. Therefore, there should be safeguards. These considerations are certainly important and they can be thought of. Objectivity in the matter can be ensured. That of course is one thing. Something has happened in 1973. Even though

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in the matter of appointment of Chief Justice of India, there are no constitutional requirements of consultations etc. in the case of appointment of a judge, for instance, in the appointment of a judge in the Supreme Court, the Chief Justice of India has to be consulted; the Government cannot make an appointment without consulting the Chief Justice of India.

श्री सुरेन्द्र बिक्रम (शाहजहांपुर) : सभापति महोदय, अभी हम लोगों को पता चला है कि नागपुर के पास एक रेलगाड़ी का एक्सीडेंट हो गया है और 6 डिब्बे पटरी से उतर गये हैं । इस ट्रेन में 9 संसद्-सदस्य भी ट्रवल कर रहे थे । हम उन सदस्यों और जनता जो सफर कर रही थी, उसकी सेफ्टी के बारे में जानना चाहते हैं ।

THE MINISTER OF PARLIAMENTARY AFFAIRS AND LABOUR (SHRI RAVINDRA VERMA): We have no information on this. We shall enquire and find out. If we receive any information, the House will be informed of what we learn.

SHRI SURENDRA BIKRAM: A Minister from M.P. was also traveling in that train.

MR. CHAIRMAN: You will please carry on.

SHRI SHANTI BHUSHAN: What I was saying was that so far as appointment of judges of the high courts is concerned, because some reference was made in regard to that also, the constitutional requirements appear to be fairly adequate, namely, that the Chief Justice of the High Court has to be consulted; even the Governor has to be consulted; then the Chief Justice of India has also to be consulted so that the process of selecting them obviously cannot be regarded as an ideal formality. In a recent judgment of the Supreme Court, it has been indicated therein that the principle has to be laid down that the authority has to be consulted. Its view is not completely binding on the authority. They have also said that the requirement of consultation means that if the authority wants to differ, then it has got to be on very adequate grounds, objective grounds. It can be said that his opinion could be disregarded so that if that is the concept of consultation, as has been explained, then, in that case, the fact that not only the Chief Justice of the High Court; but the Chief Justice of India is also required to be consulted in the matter of appointment of the judges of the High Court and the Chief Justice of the High Court, and, in that case, it is not possible for any Government to misuse that power and to make the appointment on political grounds or on extraneous grounds and so on.

So far as the appointment of judges of the Supreme Court is concerned again, such judges of the Supreme Court or the High Court can be consulted as the Government considers appropriate namely the President considers appropriate.

But the Chief Justice of India has got to be consulted now. It was said—I think it was said by Shri Mavalankar—by an hon. Member and he gave expression to something namely there was in the recent times, in the Supreme Court some consternation. I had an occasion to refer to the fact on an earlier occasion also in this House. I am very happy to say that yesterday, this matter came up in the other House. Rajya Sabha and one hon. Member there belonging to the Opposition, in his speech, congratulated me for the appointment of that judge, Justice Desai. He said that he was one of the brilliant man who had been appointed. He said that he would like to congratulate the Law Minister for that appointment. Sir, I said that if he were to congratulate, he should congratulate the Supreme Court for this selection. Here also I am very happy that Mr. Mavalankar and Shri Somnath Chatterjee have also expressed the same view that a

very able and eminent judge has been selected in the Supereme Court.

17 hrs.

But, Sir, Mr. Mavalankar said that perhaps even in selecting the best people more caution has to be exercised so that public misgivings might not arise. Sir, although Article 124 permits the President not only to consult the Chief Justice of India but also to consult other judges on prior occasions no other judge had been consulted. Only the Chief Justice of India was consulted. In recent years a feeling had been growing that not only the Chief Justice but senior judges should be involved in the process so that the selection can be more objective. Sir, for the first time this process was applied. The process of consultation was widened. It was not confined to the Chief Justice but was extended to two senior judges also. For the first time the process of consultation was extended and I am very happy that a unanimous recommendation of the three judges including the Chief Justice was received and on the basis of that those appointments had been made. What further safeguard is possible.

I am very happy to say that both these appointments have been received very well in the country. I had an occasion earlier also to say as to why is it if some protest is received it comes from one State only. This matter requires to be looked into. If somebody is interested in organising some kind of protest and gets hold of one or two convenient facts a protest can be organised. The protest was organised but it remained confined to a particular State.

Then a reference was made earlier about the Supreme Court resolution and the law officers of the Union, namely, the Attorney General, Solicitor General and the Additional Solicitor General. Mr. P. K. Deo made reference to that. In the Supreme Court the appointments had been notified several days back. On a particular day when the two judges were supposed to take the oath at 1030 hours—because the Supreme Court starts work at 1030 hours—obviously when the Supreme Court starts work at 1030 hours the members of the Bar come at 10.30 or a little before. Only a very few people come long before 1030 hours. The Supreme Court lawyers are very busy people and they start coming between 1015 and 1030 and many of them who do not have work in the beginning come much later. If there had been prior notice that there would be a meeting of the Supreme Court Bar Association. I can understand; on this very important matter members of the bar association would have taken care to come earlier. If a notice is put up on the notice board earlier, one would have understood. But there was no move at all. The move developed the same morning. Few people got that idea and they put the notice on the notice board only that very morning, just before 10 O'clock and held the meeting at 10 O'clock. The few who did this met at 10 O'clock and passed a resolution which had already been cyclostyled before hand. As and when other members of the bar started coming at 10.15 or 10.20, they were handed over a copy of the resolution said to have been passed by a few persons who met together at 10.00 a.m. half an hour before the Supreme Court started work. What is the value to be attached to a resolution of this kind? I should like to leave it to the hon. Members themselves to judge. The law officers like the Attorney-General, Solicitor General, Additional Solicitor General, as they arrived were handed over a copy of the resolution by somebody and told: here is a resolution which had been adopted by the Supreme Court bar association, what can they do? Straightaway at 10.30 a.m. the swearing in ceremony is held. They happened to be members of that association. They were put in a very difficult situation. I can assure the hon. Members of the House that there was no intention on the part of the *law officers to protest; in their view* there was nothing wrong in the

[Shri Shanti Bhushan]

appointment. They were put in this difficult situation, that as they arrived in the court they were handed over a copy of the resolution and were told: you are a member of the Supreme Court bar association and therefore this resolution is binding on you. There was no time for them to find out facts and therefore at 10.30 they could not go to attend the ceremony. I should like to assure the Members of the House that there was no intention on their part to protest; there was no dissatisfaction in their mind about the selection of the two judges. You listened to various Members giving their experience of the working of the two judges; there is complete satisfaction, I am very happy to say, about their selection, now that facts are coming to light. It was in those circumstances subsequently a larger number of members of the bar gave a requisition for annulling that resolution. That took place, the matter was discussed in the meeting for two hours and thereafter the meeting was adjourned; that meeting did not complete nor could it conclusively discuss this matter. These were the circumstances in which the appointments were made.

One of the reasons given by Shri P. K. Deo for adopting seniority was that seniority, like maternity, was certain and merit was like paternity and there was uncertainty; it was wholly uncertain. So far as this country is concerned, we have traditions where paternity is also very much certain. Now about this Bill, I do not know whether the hon. Member regards himself as the mother of this Bill or as the father of this Bill because there is no uncertainty so far as whoever is the person responsible for this Bill. Shri P. K. Deo is responsible for this Bill. Of course if there is uncertainty about that, it is a different matter.... (*Interruptions*) I am happy about this information and I request him to give it to the House.

STATEMENT re. REPORTED ACCIDENT TO G.T. EXPRESS

THE MINISTER OF PARLIAMENTARY AFFAIRS AND LABOUR (Shri Ravindra Varma): We made some enquiries from the Railway Ministry and our information at the moment is that the G.T. Express which left New Delhi yesterday evening met with an accident near Narkhed, about 90 km. from Nagpur, in the Amla-Nagpur section of the Nagpur division. Seven bogies are reported to have derailed. Eight M.Ps. were travelling in the train; none of them has been injured. Six other passengers received minor injuries. No death has been reported. This is the information we have at the moment.

CONSTITUTION (AMENDMENT) BILL (*AMENDMENT OF ARTICLE* 124) BY SHRI P. K. DEO—*contd.*

SHRI SHANTI BHUSHAN: Shri Somnath Chatterjee said something about the administration of justice. In fact, somebody pointed out that it was not relevant to the Bill. But I consider it very relevant. We are indulging in this exercise about the crucial appointment of the Chief Justice because the administration of justice is so important for a democratic country. If the system of justice does not play its proper role, whatever may be the reason and if people do not get justice, all this exercise as to how the Chief Justice should or should not be appointed becomes futile. It is said, the rule of law is the very foundation of democracy. Therefore, whenever the right of a person to approach a court for the enforcement of his rights is suspended, democracy is in peril, as we saw recently. This is quite true, but is the rule of law ensured merely by restoring the theoretical right of a person to approach a court of law to vindicate his legal rights? I would like hon. members to devote some thought, to this. Merely recognising or restoring the theoretical right of

a person to approach a court to vindicate his legal rights is not enough. It must be ensured that the system of justice would give him justice within a reasonable time and at a reasonable cost.

SHRI SAMAR GUHA (Contai): The time allotted for this Bill is 2 hours. More than 2 hours have been spent on it. I want at least five minutes to move my Bill.

SHRI K. LAKKAPPA (Tumkur): After that, I want 5 minutes for moving my Bill.

SHRI SHANTI BHUSHAN: I shall conclude in a couple of minutes. It is said that justice delayed is justice denied. Also, justice hurried is justice buried. We want that thought should be devoted to this problem so that the whole system of justice can be made to work in a manner without sacrificing the essentials of justice and yet it should be ensured that people are able to get justice not only within a reasonable time but also those who may not have the financial capacity to obtain justice are also enabled to get justice. This will be the primary concerned of this government.

Mr Banatwalla said that the government should not have any say in making judicial appointments. After all, why are powers given to the government in a democratic country? It is true that there must be safeguards against abuse or misuse of those powers by the government. But the government is responsible to the House and through the House it is responsible to the people. The people are entitled to supervise the functioning of the government and the exercise of the powers by the government. That is the essence of democracy. Th safeguard against abuse of powers is a vigilant House. If there is a vigilant House and a vigilant public opinion, no government can get away with the misuse of power. We saw how in 1973 the whole country stood as one man in protest against the supersession of the judges.

Nobody had criticized it when there was a supersession i.e. when the seniormost Judge was in failing health.

SHRI K. LAKKAPPA: The some thing happened in Gujarat.

SHRI SHANTI BHUSHAN: The same thing did not happened. The hon. Member is not correct.

SHRI SAMAR GUHA. The time for the consideration of this bill has not been extended. This is going on without the sanction of the House.

SHRI SHANTI BHUSHAN: I have only to submit that the Government has decided that the whole question—it is a very difficult and delicate question—should be referred to the Law Commission for studying whether some method can be devised and something evolved which will serve the purpose which is the sentiment behind the introduction of this bill. Government fully recognizes that if possible, there should be a method which ensures that things are done in such a manner that no public criticism arises in the matter of appointment of the Chief Justice of India, even of the Judges. I am happy to say that a reference will be made to the Law Commission for studying the matter in depth, so as to see whether the existing provisions can be further improved upon for the purpose of achieving the objectives which are behind this bill I am grateful to you Sir, for giving me all this time

SHRI SAMAR GUHA: I have to make a submission. In the Agenda Paper, it has been written categorically that at 5.30 p.m., the half-an-hour discussion will be taken up. I want your clear direction—Mr. Deo will no doubt get some time for reply—and I want an assurance that before I start speaking on my bill, the discussion on the half-hour-discussion will not be taken up. The reason is that to-day is the second day my bill is here. If I do not get even one minute to day

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this bill will lapse, which I don't want; I think you should also not want it. For that reason, at least few minutes should be given to me; and then the half-an-hour discussion can be taken up.

MR. CHAIRMAN: There is one amendment.

AN HON. MEMBER: There is no amendment.

SHRI P. K. DEO: Mr. Chairman, Sir: I am extremely grateful to all the colleagues who have participated in this debate—and particularly to the Law Minister. This bill has stimulated a good deal of interest; and some new light has been thrown on the subject.

Sir, 'Once bitten twice shy' is the proverb. The experience of 1973 has compelled me to bring in a Constitution (Amendment) Bill. Though I know very well how difficult it is for a private Member, especially an Independent Member, to get his bill passed, I have still made an effort to focus the attention of the nation to this important aspect and to make the House give its thought to this matter; and to bury for all times any controversy that might arise in regard to the appointment of a personality like the Chief Justice of the Supreme Court, I wanted to have a statutory guideline, so that the matter will not be left to the discretion of the President, or of the President acting on the advice of the Council of Ministers.

The Law Minister expressed his doubts regarding the two provisos that have been mentioned in this Bill. Every country has its own conventions. In the United Kingdom, generally the Attorney-General is first offered the Chief Justiceship of the Supreme Court there. So, I wanted to bring a legislation which will be in consonance with our accepted practice.

In the Third Lok Sabha, when Justice Imam was the senior-most puisne judge at that time, who should have succeeded as the Chief Justice, Dr. Singhvi and I invoked sub-clauses (4) and (5) of article 124 and started collecting signatures from Members of Parliament so that we can address the President, because Justice Imam had a stroke and he had lost the power of both hearing and speaking. So, taking into consideration the practice that has been followed so far, in 1973 we had to think of this step, which created a great hullabaloo in the country.

In order to put an end to this controversy, I brought this Bill. My purpose has been served, because the Law Minister in his reply has stated that they are going to refer this matter to the Law Commission again and that they are going to have second thoughts on this.

I also know very well that a Constitution Amendment Bill cannot be passed very easily. Even the present Government, in spite of their best efforts, have not been able to repeal the Constitution (Fortysecond) Amendment Bill, because there are so many constitutional safeguards against the amendment of the Constitution. Such a Bill should get the support of more than half the total members, at least 273 in our case, and two-thirds of the members present and voting. At the fag end of Friday, when we ring the bell even for quorum, it would be a futile exercise on my part to seek an amendment of the Constitution Therefore, since my purpose has been served, I want to take the leave of the House to withdraw my Bill. So, I seek leave of the House to withdraw my Bill further to amend the Constitution of India.

MR. CHAIRMAN: The question is

"That leave be granted to withdraw the Bill further to amend the Constitution of India".

The motion was adopted.

SHRI P. K. DEO: I withdraw the Bill.