

ताज्जुब होगा, मझे खुद भी आश्चर्य है कि इस देश में कोई सरकार है या नहीं। आज जनता का विश्वास उठना बला जा रहा है। उस गांव में रात के 12 बजे दो सबर्बों की हत्या हुई। रात को 12 बजे से लेकर सुबह 7 बजे तक एक भी पुलिस कर्मचारी मोके पर नहीं पहुंचा जबकि पुलिस की चौकी वहां मौजूद है और थाना भी डेढ़ दो किलों मीटर दूर है।

श्री श्रीम मेहता : 12 किलोमीटर है।

श्री सरजू पांडे : अगर पुलिस रात के 12 बजे की उस हत्या के बाद मोके पर पहुंच जाती तो न ये दो हरिजन जान से मारे जाते और न सागा गांव जलाया जाता मगर पुलिस ने इस बात का पूरा मौका दिया कि उन हत्याओं के बाद एजीटेशन हो। वे सभी लोग वहां इकट्ठे हुए। जिस समय वे हरिजनों को जान से मार रहे थे, उस समय पुलिस का एक ब्रफमर वहां पहुंच चका था और डंड बाड़ी के पास खड़ा था।

इस तरह की घटनाएं ध्राये दिन सांरे देश में होती रकनी हैं। आज हरिजन हमारे देश में दूसरे दर्जे के नागरिक माने जा रहे है। न उनकी सुनवाई अदालत में होती है, न थाने में होती है और न उनके प्रति लोगों का ठीक व्यवहार होता है। उनकी बहुत सी समस्याएं हैं, उनको आज भी मंदिर में नहीं जाने दिया जाता, कुओं पर पानी नहीं पीने दिया जाता। आज भी कई क्षेत्र ऐसे हैं जहां हरिजनों से मुसामों की तरह काम निया जाता है।

आप जानकर ताज्जुब करेंगे कि हम लोगों के जिले में कुछ स्थान ऐसे हैं जहां सर हरिजकों को पूरे जीवन भर बन्धक रखा जाता है, उन पर कर्जा होने के कारण पूरे

परिवार को खरीद लिया जाता है और बोड़ा मजदूरी बेकर जानवरों की तरह उनसे काम लिया जाता है। यही बजह है कि बलियां में कोटवा नारायणपुर गांव में श्री हमारे इलाके के हरिजनों में मुख्य रूप से सैमशन और परेशानी पैदा हो गई है। वे समाज के वर्तमान हालात में रहने के लिये तैयार नहीं हैं। मगर अफसोस इस बात का है कि हमारे संविधान में सरकार को जो जिम्मे दारी दी गई है, उसको यह नहीं निभा पा रही है।

हमारे संविधान में यह बात कही गई है कि हरिजनों को मुट्टा रूप में जिम्मेदारी केन्द्रीय सरकार की है। केन्द्रीय सरकार को चाहिये कि इस समस्या को हाथ में ले। हमारे संविधान में यह भी कहा गया है कि हरिजनों के लिये मुख्य रूप से अगर राज्य सरकार काम नहीं करती है तो उनको केन्द्र से डायरेक्टिव दिया जा सकता है।

MR. CHAIRMAN: The hon. Member may continue his speech tomorrow. We will now take up Half-an-Hour discussion.

17.30 hrs.

HALF-AN-HOUR DISCUSSION

APPOINTMENT OF JUDGES OF SUPREME COURT AND HIGH COURTS

PROF. MADHU DANDAVATE (Rajapur): Mr. Chairman, Sir, when Justice A. N. Ray was appointed the Chief Justice of India superseding three eminent Supreme Court Judges, a great debate commenced in the country and joining that great debate, Shri Jaysprash Narayan had issued a statement and he had made a constructive suggestion. At a later stage, he wrote a letter to the Prime Minister on 9th June 1973 and appealed to the Prime Minister that she should sup-

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port the appointment of a Parliamentary Committee consisting of representatives of all the parties in Parliament whose function will be to consult opinion including the opinion of eminent jurists in the country, the Bar and other important personalities and experts in the country and after that, recommend to Parliament well-defined norms and guidelines to be observed in the appointment of the Chief Justice and Judges of the Supreme Court as well as High Courts Sir, on the basis of that very constructive suggestion, I had asked an unstarred question No 165 on the 18th February 1975 and I tried to find out from the Government, what was the response of the Government to this constructive suggestion that was made by Shri Jayaprakash Narayan I knew the allargy of the Government for Shri Jayaprakash Narayan, and therefore, I did not mention the name of Shri Jayaprakash Narayan I only out forward the contents of that suggestion and I was rather shocked and surprised to find that the hon Minister had said that the existing practice evolved in accordance with the provisions in the Constitution had worked satisfactorily, and that therefore, the question of accepting the proposal did not arise at all Sir I would like to point out at the very outset that there have been certain honoured conventions in the country as far as the appointment of Chief Justice of India is concerned Sir, in 1950, the Supreme Court of India was established All the previous twelve appointments were no doubt in conformity with the principle of seniority that was adhered to. There was, of course, apparently one exception and that was of Justice Imam who was incapacitated by a paralytic stroke, and therefore, resigned the day Justice Gajendragadkar was appointed But, in the case of the other appointments, this principle of seniority was rigidly adhered to. Sir, in a federal set-up where there are regional, communal and linguistic tensions where there are political

pressures exerted, I think, this principle of seniority is a sound principle that should have been adhered to. But, this particular principle was violated during the supersession of the Supreme Court Judges on the occasion of the appointment of Justice A N Ray as Chief Justice of the Supreme Court. Unfortunately, Government took shelter behind the recommendation of the Law Commission. I wish to point out to you, Sir, that the Law Commission's Report was quoted by the Government out of context. The Law Commission emphasised in its recommendations, on Pages 37 to 40 and pages 75 to 77 of Volume I of its Fourteenth Report on 'Reform of Judicial Administration', that succession to the office of the Chief Justice cannot be merely by seniority but a healthy convention can be established to appoint a suitable person—please note here the wordings, Sir and thereafter Government might act accordingly' Again, the Law Commission's Report emphasised that if the senior most puisne judge fulfils the requisites, there is no objection to his being appointed to fill up the post. The Law Commission's Report which was quoted by the Government on the occasion of the supersession, remained completely neglected for long 15 years They did not remember the Law Commission's recommendation at all, and sufficiently before the appointment of the new Chief Justice of the Supreme Court, they did not tell the country, they have accepted this recommendation of the Law Commission and that henceforward, the seniority principle would not be accepted, as the sole principle Sir, I am not one of those who would always insist that seniority alone is the sole criterion and the sole norm for appointment. But, in the absence of any other norm, it is better that the seniority principle is adhered to and if this particular principle had to be set aside, the country should have been taken into confidence so that even those who were superseded would not have felt that there was any animus against them and that as a result of that, the supersession had taken place.

I have not only quoted the Law Commission's Report but I will quote what Shri Seervai had written—probably the Hon. Minister would feel embarrassed by it—in his monumental book Constitutional Law of India. On page 1009 he says:

"The provisions for the appointment of the Chief Justice of the Supreme Court and the Chief Justices of the High Courts do not call for any discussion since by convention the seniormost judge is appointed Chief Justice. The convention is based on the view that on the whole the interests of judicial administration are better served by eliminating the exercise of discretionary power in the appointing authorities than by the search for the best man".

Shri Seervai is not considered a retrograde or right reactionary; in modern parlance he is an eminent jurist and this is his viewpoint. There is the danger of political patronage and pressure being applied. There is suspicion that appointments are based on favouritism and patronage. If that is so it would undermine the independence of the judiciary and the judiciary would get denigrated.

I would just like to quote a few instances. When the supersession of the Judges took place and Justice A. N. Ray was appointed as the Chief Justice, suspicions were expressed in certain quarters that probably Justice Hegde's claim was set aside because in the famous election petition case against the Prime Minister, he issued an interlocutory order in which he had made certain remarks which were damaging to the Prime Minister. Many people felt on that occasion that this was one of the factors that might have created an animus against Justice Hegde and as a result his claim might have been set aside.

I would quote another precedent as far as the High Courts are concerned, because the subject matter of the discussion does not relate only to

judges of the Supreme Court but also relates to appointment of judges and also the Chief Justices of High Courts. I would quote one significant illustration in the case of Punjab and Haryana. Punjab and Haryana have a famous High Court. Shri Mahajan was Chief Justice from April 1974 to May 10, 1974. After him, the next seniormost person was Justice P. C. Pandit. His was the legitimate claim in term of the seniority principle, but because Shri Pandit and the Chief Minister of Haryana, Shri Bansi Lal, were not on good terms—in fact, there was almost enmity between the two—it was suspected by the entire legal fraternity of Punjab and Haryana and by all legal luminaries that the supersession of Justice P. C. Pandit and the appointment of Shri Narula, who was a comparatively junior judge, was motivated by political considerations. On the day the supersession took place, there was a total strike of lawyers in Punjab and Haryana. This is another instance which shows that sometimes political pressures and patronage completely destroy the independent character of the judiciary.

Now, I will quote a very happy instance. All of us should be proud about it; I am sure our friend, Shri Gokhale, would also be proud of it. On the occasion of the election of the President of India, on behalf of the Opposition parties I went to a Justice Hidayatullah. We wanted to ask him whether he would be prepared to be the Opposition candidate for the residential office. He modestly declined the offer, and at the same time, he told us about a very valuable experience which, I think, will heighten the glory of free judiciary in the country. Justice Hidayatullah told me on that occasion:

"When I was sitting on the Bench, the Chief Minister of Maharashtra, Mr. V. P. Naik, approached me and said that after my retirement, he would offer me the highest post of Lokayukta in Maharashtra. He told me, 'this is the highest post in our State and we would like it to be offered to you' "

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Justice Hidayatulla then told the former Chief Minister, Shri V. P. Nalk:

"Even when I was functioning as a judge, I had made up my mind that when I retire I would not accept any patronage from Government because if I decided to accept any job or post from Government, even while sitting on the Bench before retirement I would always keep my eye on the job I am likely to get after my retirement".

Hats off to this great judge who has maintained the high traditions of judiciary in this country. We would like that to be continued. If seniority is rejected and well-defined norms are not accepted, it is very likely that political pressures and elements of patronage would be introduced while appointing judges. It would not be relevant to point out that members of the Law Commission like Mr. M. C. Setalvad, former Attorney General and Justice Chagla have also condemned the supersession of judges.

On 24th June 1973, a very interesting news item appeared in the *Sunday Standard* given by UNI:

"Law Commission Member Justice V. R. Krishna Iyer, who is a Judge of the Kerala High Court, is to be appointed a Judge of Supreme Court soon. Disclosing this to newsmen here today, Kerala Chief Minister, Shri C. Achuta Menon said that the Union Government had sought the concurrence of the State Governor and the Chief Justice of the Kerala High Court in this matter."

Mr. Menon's disclosure was highly objectionable since it was improper on his part to anticipate the concurrence of the Chief Justice of the High Court even before receiving the concurrence of the Chief Justice of the High Court. This Communist Chief Minister supported by the Congress, had the temerity to announce to the press that he was likely to be appointed. When all the norms are flouted, these are the things that will take place.

In the book *Supersession of Judges* by Kuldip Nair, on page 82, a very interesting foot-note is there:

"At the oath-taking ceremony, Shri Kumaramangalam went to Justice Ray and told him jocularly "Such posts are a reward for political services rendered". Justice Ray replied: "I do not recall rendering any political service to anybody except to truth and justice."

Of course, Shri Kumaramangalam said it with a sense of humour, but I am more happy at the reply given by Justice Ray.

Justice Hidayatullah himself made a very interesting comment after supersession. He said, if supersession takes place at this speed and in this manner, we will have the category of judges in the country who will not be "forward looking" but who will be "looking forward". Since the Government is the biggest litigant, probably many judges would be keeping their eye on the jobs that Government is likely to offer and as a result, the very institution of a free judiciary will be completely destroyed.

What Shri Jayaprakash Narayan has suggested in a very constructive manner is the correct type of approach. Even the mention of his name evokes laughter in some people, but he has made a very constructive proposal. Even he does not say that seniority is the only principle. Even if you want to review seniority, do it, but some concrete principle has to be evolved so that the people and the judicial fraternity in the country have the confidence that all the appointments are not made in an arbitrary way but are made on the basis of well-defined guidelines announced sufficiently in advance, so that nobody will have any suspicions. Even after a parliamentary committee evolves well-defined norms and guidelines for the appointment of the Judges and Chief Justice of the Supreme Court as well as the High Courts, I would like the House to give thought to this

whether it will not be desirable to have one more safety valve, namely, that even when the appointments of judges are made on the basis of certain principles, it is better that these decisions are ultimately ratified by Parliament.

If these appointments are to be ratified by the Parliament, in that case, it may be possible that as a result of the debates and discussions that take place, those debates and discussions will act as a deterrent against those who want to introduce the elements of patronage, political pressure and manipulation. If this is eliminated, in that case the glory of free judiciary in the country can be restored and with that perspective I initiated this discussion. I hope and trust, the hon. Minister of Law who himself comes from the fraternity of judges, will be able to offer some constructive solutions to the problem that we have posed and he will not treat the entire problem merely in a partisan way. Thank you.

MR. CHAIRMAN: Shri K. M. Madhukar.

SHRI MADHU LIMAYE (Banks):**

MR. CHAIRMAN: Nothing will go on record except what Shri K. M. Madhukar says.

श्री कमला मिश्र मधुकर (केसरिया) :
सभापति महोदय, हमारे विद्वान माननीय उच्चतम दण्डकर्म जी ने सीनिबर सोशलिज्म की बात कही है और जय प्रकाश नारायण के झुंझवाड़, टोटल रेबोल्यूशन की बात भी उस प्रसंग में आ दी है.....

सभापति महोदय : आप केवल प्रश्न पूछिए, प्राचय मन कीजिए ।

श्री कमला मिश्र 'मधुकर' : मैं प्रश्न ही पूछ रहा हूँ । मैं यह कह रहा हूँ कि हाई

कोर्ट और सुप्रीम कोर्ट के जर्जेंट्स जा हुए हैं वह यह बताते हैं कि हमारी जूडिशियरी जा देश का सब है, देश की जा आवश्यकता है उसके अनुरूप नहीं चल रही है और इस लिए वह हाई टारिफ अपने देश के लिए क्यों नहीं इस बात पर विचार किया जाय कि जब समाजवाद का लक्ष्य आप ने रखा है तो जैसे समाजवादी मुम्कों में सुप्रीम कोर्ट के जर्जेज का या जूडिशियरी का सिस्टम चलता है उस ढंग से उम्मी सिस्टम को अपने यहाँ भी एलाऊ किया जा सकता है या नहीं ? अगर एलाऊ किया जा सकता है तो क्या सरकार इस बात के लिए कोई विशेषज्ञ कमेटी समाजवादी देशों का भेज रही है जिस के जरिए इस बात की जांच पड़ताल की जाय कि उन देशों का सिस्टम अपने देश के लिए कितना उपयुक्त है कितना अनुपयुक्त है ?

साथ ही क्या यह बात भी सही है कि सरकार का इस बात की जानकारी मिल चुकी है कि जा सामाजिक लक्ष्य हैं देश का उसकी पूर्ति करने में विभिन्न स्तरों पर आज हमारी जूडिशियरी बाधक हो रही है ? उदाहरण स्मरणों का छाड़ने के तिलसिले में आप का मिल चुका है । तो क्या ऐसी बात नहीं हो सकती है कि न्यायापालिका के लोगों का भी और सुप्रीम कोर्ट के लोगों का भी चुनाव ही हो ? जब बज्जवते जी कह रहे हैं कि व्यापक रूप रखा जाय तो सबसे व्यापक रूप में रख रहा हूँ कि चुनाव ही इनका क्यों न हा ?

दूसरी बात—न्याय पालिका की स्वतंत्रता का अर्थ यह होता है कि जा सामाजिक लक्ष्य हैं देश का उसके विपरीत फैसले दिए जाएँ और उसका हनन किया जाय ? क्या यही इनका मतलब होता है ? हब चाहते हैं कि माननीय मंत्री जी हमका समझाएँ कि इस

**Not Recorded.

[श्री कमला मिश्र 'मधुकर']

स्वतंत्रता का अर्थ क्या यही होता है कि जो देश के लक्ष्य हैं जिनकी ओर देश बढ़ना चाहता है उस में ये जज लोग बाधक हों ?

श्री मल्लबन्ध डिंगा (पाली) : सभा-पति जी, जब श्री ए० एन० रे की एप्वाइन्टमेंट के बाद हुए कुछ बुद्धि जीवी लोगों ने रिट पठौशन की और कहा कि यह एप्वाइन्टमेंट गलत किया गया है, कानून के खिलाफ किया है, उनका क्या परिणाम निकला ? इन लोगों के द्वारा जो बहुत बढ़ा-चढ़ा कर बातें कहीं गयीं, जिन पर यहाँ इस सदन में बन्टों चर्चा हुई, काफ़ी खर्चा हुआ, उसके बाद वह माना गया कि गवर्नमेंट ने जी कदम उठाया है, वह ठीक उठाया है—क्या यह वान सही है ?

दूसरा सवाल—अभी दण्डवत जी आर्म्बुमेंट्स कर रहे थे—में जानना चाहता हूँ कि जब ला कमीशन ने अपनी रिपोर्ट दे दी और यह बतलाया कि सीनियारिटी के आधार पर एप्वाइन्टमेंट नहीं होना चाहिये, उसकी पिछली सेवाओं, उसके नियम, उसकी मूल-बूल और दृष्टिकोण वह जो प्रायण देता है—इन सारी बातों को ध्यान में रख कर चीफ़ जस्टिस का एप्वाइन्टमेंट होना चाहिये—क्या आज भी वही प्रोसीजर लागू है या नहीं ? जब भी चीफ़ जस्टिस का एप्वाइन्टमेंट होता है तो क्या उसके पिछले जजमेंट का देखा जाना है, उसके तरह-तरह के भाषणों का देखा जाता है—इन सब बातों का देखने के बाद एप्वाइन्टमेंट किया जाता है या वह तरीका ठीक है जो इन्होंने बतलाया है कि पार्लियामेन्ट्री कमेटी बने ? क्या आपके सामने किसी पार्टी ने कोई ऐसा प्रोसीजर ले-बाज किया है जिसको आपन एग्जीशिवेट किया हो कि उस प्रोसीजर के आधार पर चीफ़ जस्टिस वा हाईकोर्ट के चीफ़ जस्टिस का एप्वाइन्टमेंट हो ।

तोसरी बात—प्रवर कहीं चोफ़ जस्टिस को सेवामे खरम हो जाती है और देश को उनकी सेवामे को जरूरत हो तो क्या उन्हें राफिस मडिस मे लिया जायगा, उनको मडिस में दोबाग नमाने मे क्या दिक्कत है ।

SHRI P. G. MAVALANKAR (Ad-medabad): Mr. Chairman, Sir, I am very glad this Half an Hour Discussion takes place today, because the subject under discussion is very vital and very topical, and I must congratulate my good friend, Professor Dandavate, for raising this question. As Henry Sidgwick has said, the place of judiciary in the scheme of things is more profound than prominent; because, the impact the judges make on the democratic polity is so great that whatever they do has a direct and indirect bearing on the lives of the people, their rights, their liberties and so on. Therefore, it is important that judges of the Supreme Court and of the High Courts in our country are upright, independent and impartial, because these judges are the custodians of our rights. And, indeed, when it is a matter of a written Constitution, as we have in this country because we are a federation, then under the written Constitution, the judges act quite often as the guardian angels, because it is they who really protect the fundamental rights of the citizens, as enshrined in the written Constitution.

Take the example of the United States, where they have a written Constitution and where the judges are appointed by the President. There one of the judges has said "We are guided by the Constitution, but the Constitution is what we judges make it". Therefore, when it comes to the integrity and sovereignty becomes of the written constitution, the role of the judges very very important. Sir, you will remember and the Minister and the House will remember that President Nixon during his presidency has had the opportunity of appointing

as many as, I believe, four judges, during his term of office to the Supreme Court of the United States. Though these appointments were made in a particular climate, the conventions in the judiciary were such that when it came to the question of indictment of President Nixon those very four judges were part and parcel of the entire judiciary and passed strictures and judgments against President Nixon and ultimately he had to resign.

Therefore, I want to ask the Minister whether the answer he has given is really the answer that he honestly believes to be true. The proposal in the question was:

"for obtaining opinion including opinion of the Bar and eminent jurists to recommend..."

The answer says:

"No Sir. The existing practice evolved in accordance with the provisions of the Constitution has worked satisfactorily."

How can Government be judges in their own case whether the appointments made by them so far are satisfactory or not?

Is it not a fact that today, one or two persons only decide the appointments of the judges of the Supreme Court? Is it not true that all kinds of abuse of power may, therefore, take place? When power gets concentrated in the hands of one or two, is it not dangerous, and more particularly when the Prime Minister appoints the Chief Justice and then says that she has consulted the Chief Justice? Will not leaving the prerogative of deciding the appointments of judges to one or two persons lead to the loss of health of democracy?

Therefore, is it not desirable to have some kind of reform, some urgent review of the existing practice? For example, will it not be more helpful if a Committee consisting of three people from the Government side and

three from the judicial side make these appointments so that checks and counter checks can work effectively? I understand that in some States of our country there is already some kind of an unwritten but well-established convention by which the Chief Justice of the particular High Court does consult two of his seniormost colleagues with regard to the selection of judges in that court. It only means that if, instead of one man deciding, more than one decides, it becomes better because then there is less concentration of power.

PROF. MADHU DANDAVATE: The Law Commission has actually recommended it.

SHRI P. G. MAVALANKAR: Therefore, an urgent review of the appointment of the judges is absolutely essential in the interests of the health of democracy and the fundamental rights of the citizens of this country whose rights are ultimately to be protected by an independent, upright, honest judiciary having impartiality and integrity.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): The discussion so far gave the impression, which I think is wrong, that the judiciary today is not independent. Actually, even after the appointment of Chief Justice Ray, of which so much was made, the Supreme Court as well as the High Courts have given a large number of judgements which show that the judiciary is as independent as it ever was before. It is not right to say, as Mr. Mavalankar said, if I understood him correctly, that it is in the hands of one person, either the Prime Minister or some other person, to make these appointments. It is not so. The practice which has been obtaining for the last 25 years and even before under a Government of India Act under slightly different conditions is in existence today, and hon. Members know that article 124 in respect of Supreme Court judges and article 217

[Shri H. R. Gophale]

in respect of High Court judges are the two articles which govern the appointment of judges and Chief Justices of the High Courts and the Supreme Court. On a mere reading of these articles it will be quite clear that no one person can make an appointment either of the High Court judges or of the Supreme Court judges. There is a built-in obligation to consult at various levels before an appointment is made.

16.00 hrs

In the case of appointment of a judge of the Supreme Court, there is an obligation to consult the Chief Justice of India. In the case of appointment of judges of the High Court, there is an obligation to consult the Chief Justice of the High Court, the Governor of the State, the Chief Justice of India, and then the Government of India recommends and appointment is made by the President.

There are no instances, as far as I know, in the Supreme Court, where an appointment has been made not only without consulting the Chief Justice of India, but against his advice. And this is not only after the appointment of Chief Justice Ray but has been so even before. Till now, all appointments have been made on the advice of the Chief Justice in the Supreme Court, and all appointments in the High Court are made in consultation with the Chief Justice of the High Court concerned, in consultation with the Government of the State, as the Constitution indeed requires, and in consultation with the Chief Justice of India, and finally by the President on the advice of the Government of India. All appointments are made after these elaborate built-in restrictions are strictly adhered to. Therefore, it is not right to say.... (Interruptions).

There was no such constitutional obligation in respect of appointment of the Chief Justice of India, and unfortunately, the hon. Member came

after the speech of Prof. Madhu Dandavate.

All these things have been raised. I am going to refer to it.

SHRI SHYAMNANDAN MISHRA (Begusarai). You want to say that you are strictly adhering to the Constitution.

MR. CHAIRMAN: He has no right to ask questions.

SHRI H. R. GOKHALE: All right I will not reply. I am sorry that I have replied. You have given the ruling earlier that no one should ask questions.

There was a petition in the High Court, Mr. Daga asked, challenging the appointment of the Chief Justice of India in which this point and other points were raised, and every one knows that the petition was dismissed by the High Court and there is an appeal pending in the Supreme Court and in course of time it will decide.

Sir, an attempt is made again to raise the whole discussion on the appointment of the present Chief Justice. This matter has been discussed at length in this House, in the other House, and if I recall, and I think I am right, this House had overwhelmingly supported the action which the Government had taken.

(Interruptions).

SHRI P. G. MAVALANKAR: No.

(Interruptions).

SHRI H. R. GOKHALE: Of course, you are not the House. This House had overwhelmingly supported it.

(Interruptions).

PROF. MADHU DANDAVATE: ... (Interruptions). There will be darkness....

(Interruptions)

MR. H. R. GOKHALE: All light is on that side and there is darkness on this side! That is the presumption.

SHRI SHYAMNANDAN MISHRA: Constitutional obligation does not lead to.... (Interruptions)

SHRI H. R. GOKHALE: As far as constitutional obligation is concerned, it means that so far as this House is concerned, all decisions are taken by a majority, as far as possible, by consensus; if not by consensus by a majority. That is the constitutional obligation.

(Interruptions)

SHRI SHYAMNANDAN MISHRA: By a majority which is a simple majority?

(Interruptions)

SHRI H. R. GOKHALE: Excepting in the case of constitutional amendment where also it is a majority, although special majority, it is a majority and nothing else.

Sir, I do not know what transpired between Mr. Nayar and Mr. Hidayatullah in their private conversation, and I do not wish to comment on that.

(Interruptions)

PROF. MADHU DANDAVATE: Are you not proud of the comment....

(Interruptions)

SHRI H. R. GOKHALE: I am proud of the fact that it is not looking forward to anything afterwards. I am sure it does not apply only to Chief Justice Hidayatullah; it applies to all other judges. Therefore, it is not necessary to single out Hidayatullah for that purpose.

Sir, there is a reference made to some observations regarding this and what transpired between late Mr. Kumaramangalam and the present

Chief Justice Ray. I am sorry that Mr. Kuldip Nayar has referred to this after Mr. Kumaramangalam's death, who was not there to confirm or contradict this. But I can say this because I have read the book, and there are so many things which are said about me and about other developments at that time. And the least that I can say is that the narration of events contained in Mr. Kuldip Nayar's book is by no means all accurate. I can definitely say because he has referred to so many things, which, to my knowledge, did not happen particularly, when they refer to my participation in certain parts of the controversy. References to those acts of omissions on the part of the Law Minister are not at all accurate.

PROF. MADHU DANDAVATE: Chief Justice Ray has not contradicted.

SHRI H. R. GOKHALE: Chief Justice Ray, rightly, replied at that time, "I only believe in justice and truth." It is right that he does not enter into a controversy by denying reports made by a journalist or reports appearing in the press. It is a very wise policy that he has not contradicted by going to the press, I am proud of the fact that Chief Justice Ray has not entered into the controversy.

It is said that appointments are made by favouritism and patronage. It is absolutely incorrect. The practice is that all proposals for appointment of High Court judges are initiated by the Chief Justice of the High Court. We from here do not initiate the names. We do not propose any names.... (Interruptions). The Chief Justice's appointment is made by the President.... (Interruptions). The constitutional obligations have been fully followed as it appears from the fact that the writ application has been dismissed and only an appeal has been pending.

Coming to the suggestion made by the hon. Member with regard to the appointment of a Committee, it is not possible to accept the suggestion. This and many other alternatives were discussed in the Constituent Assembly. One of the alternatives was, precisely,—not a Committee,—bringing it before the House and doing it by two-thirds majority. I have got an extract from the speech of Dr. Ambedkar. He rejected all the three alternatives on valid grounds. The constituent Assembly also rejected all the three alternatives....

PROF. MADHU DANDAVATE: Is it because the suggestion has been made by J. P. that it is not acceptable to you?

SHRI H. R. GOKHALE: The hon. Member is obsessed by a belief that we are allergic to J. P.'s name. We are not. I did not even refer to J. P.'s name. I have got great respect for him personally. All suggestions made by him may not be ac-

ceptable. Some of them may be acceptable; some of them may not be acceptable. It is not necessary to bring his name in this controversy. I am considering the matter as it has come from the hon. Member during this Half-An-Hour discussion that he initiated. For the very good reasons which Dr. Ambedkar had given in the Constituent Assembly and which applied to the matter being brought before the House—with greater force, they apply to the appointment of the Committee—I cannot accept this suggestion.

Under the circumstances, I am afraid, the Government will not be able to accept the suggestion made by the hon. Member. I stick to the answer that I had given that the present procedure is very satisfactory and it is working satisfactorily for the last 25 years or even more.

18.08 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Wednesday, May 7, 1975/Vaisakha 17, 1897 (Saka)