

**STARVATION DEATHS (PRECAUTIONARY MEASURES AND RESPONSIBILITIES) BILL\***

श्री हुकम चन्द कछवाय (मुरेना) : उपाध्यक्ष महोदय, मैं प्रस्ताव करता हूँ कि भूख से मृत्यु को रोकने के लिये ग्राम तथा जिला प्राधिकारियों द्वारा पूर्वावधानी उपाय करने तथा तत्सम्बन्धी जिम्मेदारी का उपाबन्ध करने वाले विधेयक को पुरःस्थापित करने की अनुमति दी जाये ।

MR. DEPUTY-SPEAKER: The question is:

"That leave be granted to introduce a Bill to provide for precautionary measures by village and district authorities to avoid starvation deaths and for responsibilities therefor."

*The motion was adopted.*

श्री हुकम चन्द कछवाय : मैं विधेयक को पेश करता हूँ ।

**CHILD MARRIAGE RESTRAINT (AMENDMENT) BILL\***

*(Insertion of new section 13)*

SHRI M. C. DAGA (Pali): I move for leave to introduce a Bill further to amend the Child Marriage Restraint Act, 1929.

MR. DEPUTY-SPEAKER: The question is:

"That leave be granted to introduce a Bill further to amend the Child Marriage Restraint Act, 1929."

*The motion was adopted.*

SHRI M. C. DAGA: Sir, I introduce the Bill.

15.35 hrs.

**CONSTITUTION (AMENDMENT) BILL**

*(Amendment of article 124)—Contd.*

*by Shri Atal Bihari Vajpayee*

MR. DEPUTY-SPEAKER: We now take up further consideration of the Bill further to amend the Constitution of India by Shri Atal Bihari Vajpayee. Out of 4 hours allotted, we had taken 1 hour 55 minutes and 2 hours 5 minutes are left. Mr. Madhu Limaye, who was on his feet last time, may continue.

श्री मधु लिमये (वांका) : उपाध्यक्ष महोदय, मैं ने पिछली बार शुरू ही किया था । सब से पहले मैं इस बात का चर्चा करना चाहता हूँ कि जो सत्ताधारी दल के सदस्यों ने उठाया था मेरे कांग्रेसी मित्रों के द्वारा सर्वोच्च न्यायालय के ऊपर यह इल्जाम लगाया गया कि सर्वोच्च न्यायालय प्रतिक्रियावादी दृष्टिकोण से ग्रस्त है और उन के फ़ैसलों की वजह से हमारा जो निर्देशक सिद्धान्त है चौथे चैप्टर में, उन को कार्यान्वित करने में, उन पर भ्रमल करने में सरकार को कठिनाई हो रही है । लेकिन मैं यह अर्ज करना चाहता हूँ कि अकेले सुप्रीम कोर्ट के ऊपर इस तरह प्रहार करना यह बिल्कुल बेमतलब है । सरकार अपनी वेईमानी को सुप्रीम कोर्ट की आड़ में छिप कर दृष्टि से भ्रमल रखना चाहती है । क्या सर्वोच्च न्यायालय, क्या सरकार और क्या यह सदन, तीनों वर्तमान व्यवस्था के अंग हैं और प्रतिक्रियावाद का अग्र अभियोग करना ही है तो सब से पहले मैं कार्यकारिणी के ऊपर, इस सरकार के ऊपर करूंगा । क्यों कि हमारे संसदीय लोकतन्त्र में परिवर्तन के बारे में पहल करनी चाहिये सरकार को, क्यों कि सरकार का सदन में बहुमत रहता है, सदन के ऊपर नियंत्रण रहता है । तो क्या सरकार ने संविधान के उद्देश्यों को कार्यान्वित करने के लिये जो उन के ऊपर दायित्व था, उस को निभाया है ?

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[श्री मधु लिमये]

आज मैं यह पूछना चाहता हूँ कि आर्थिक सत्ता का जो हमारे देश में केन्द्रीकरण हो रहा है क्या उस के लिये सर्वोच्च न्यायालय जिम्मेदार है ? या सरकार का गलत आर्थिक नीतियाँ जिम्मेदार हैं ? उसी तरह मैं आप की मार्गदर्शक कानून मंत्री से पूछना चाहता हूँ कि स्वतंत्रता के बाद हमारे देश में विदेशी पूँजी का प्रभाव कम होने की बजाय जो बढ़ता चला जा रहा है, उसका दायित्व किस का है ? ऐस क्षेत्रों में जैसे तेल की खोज करने के लिये फ्रंटलाइजर के उत्पादन के लिये या ऐसी चीजों की पैदावार के लिये जिसमें हमारे पास 'नो हाऊ' नहीं है, उन क्षेत्रों में यदि आप विदेशपूँजी की सहायता लेते तो बात समझ में आती। लेकिन अचरज की बात है कि कंज्यूमर इंडस्ट्री में इन का मंत्रालय, आर्थिक विकास मंत्रालय और वित्त मंत्रालय लगातार विदेशी पूँजी को सहूलियत देने का काम करता चला जा रहा है जिस के चलते न केवल देशी पूँजीपतियों के हाथ में सत्ता का केन्द्रीकरण हुआ है बल्कि विदेशी पूँजी का और मल्टी कम्पनियों का भी असर हमारे देश की अर्थव्यवस्था पर बढ़ता चला जा रहा है, इन कामों में विदेशी पूँजी की और स्वदेशी जो बड़े इजारेदार और पूँजीपति लोग हैं, सरमायेदार हैं, उन की मदद कौन कर रहा है ? सत्ताधारी कांग्रेस के नेता और नौकरशाह। इन लोगों ने विदेशी पूँजी और एकाधिकारशाही जिन के हाथ में है वह स्वदेशी पूँजीपति इन के साथ सांठगांठ कर के देश में आर्थिक सत्ता के केन्द्रीकरण की प्रक्रिया को चालू किया है। अगर देश में गैर-बराबरी है, सामाजिक न्याय नहीं है तो उस का दायित्व भी सरकार के ऊपर है, अदालतों के ऊपर नहीं है।

आज ही प्रश्नोत्तर काल में यर्ड पे कमीशन का सवाल आया था। पिछली बहस में मैंने साबित किया था कि जहाँ तक चतुर्थ और तृतीय कर्मचारियों का सवाल है उन के साथ तो सीतेली मां का व्यवहार सरकार का रहा है। लेकिन जहाँ तक पहले वर्ग के अफसरों

का सवाल है उनकी संख्या में दो पे कमीशन के बीच में 228 प्रतिशत की वृद्धि हुई है। आप लोगों का अभियोग सुप्रीम कोर्ट के ऊपर है। मैं बताना चाहता हूँ कि कार्यकारिणी प्रतिक्रियावादी कैसे है—

SHRI K. NARAYANA RAO (Bobilli):  
 What is its relevance to the Bill?

MR. DEPUTY-SPEAKER: I was trying to follow you, Mr. Limaye, and find out the relevance. That is why I have given you a certain latitude. But this struck me also.

श्री मधु लिमये : मैं समझ नहीं पाया हूँ कि कैसे रिलेवंट नहीं है। डायरेक्टिव प्रिंसिपल को कार्यान्वित करने के रास्ते में सुप्रीम कोर्ट रोड़ा अटका रही है, यह प्रायः इनका मुद्दा है और मैं साबित कर रहा हूँ कि आर्थिक सत्ता का केन्द्रीकरण इनकी नीतियों के चलते हुआ, सुप्रीम कोर्ट के निर्णय के चलते हुए नहीं हुआ है, अगर आज देश में गैर बराबरी बढ़ रही है, सामाजिक न्याय नहीं है जोकि हमारे संविधान का उद्देश्य है, आप प्रिम्बल को देखिये उस में सामाजिक न्याय यह हमारा मौलिक उद्देश्य माना गया है लेकिन आज सामाजिक न्याय की प्रस्थापना क्यों नहीं हो रही है ? उसका कारण मैंने उदाहरण दे कर बताया है कि जहाँ तक अफसरों का सवाल है उनकी संख्या में 228 प्रतिशत वृद्धि दो पे कमीशन के बीच में होती है और उनके दो सो से लेकर सात सो रुपये तक वेतन में भी आप इजाफा करते हैं। इसलिए कानून मंत्री महज सुप्रीम कोर्ट के ऊपर आरोप और इल्जाम लगा कर बहस को दूर दिशा में ले जाने का प्रयास न करें। अगर किसी की जिम्मेदारी है तो सरकार की भी है, इस सदन की भी है, और अदालत की भी है, उसको मैं छोड़ना नहीं चाहता क्योंकि मैं जानता हूँ कि उनका दृष्टिकोण भी उतना ही दकियानूसी है जितना गोखले साहब का और ईंदिरा जी का। मैं इन

सभ के दृष्टिकोणों में कोई फर्क नहीं करता है—

**SHRI K. NARAYANA RAO:** What is the scope of the Bill? It says the senior most judge of the Supreme Court shall be made the Chief Justice of India. That is all. How is all this relevant?

**MR. DEPUTY-SPEAKER:** Relevancy of the debate is my responsibility. You can point out, it is true and you have pointed out. I have said I am aware of it myself. Any member can bring anything to my attention. In the first place, I would like to draw the attention of Mr. Madhu Limaye, I do not think anywhere it has been said in this House blaming the Supreme Court. Even if it has been said, it may be a little far-fetched. It is a constitutional obligation that we should not cast any reflection on the functioning of the Supreme Court or the conduct of the Judges. I am speaking without the record. Somebody might have said it.....

**श्री मधु लिमये :** वे आलोचना कर सकते हैं और वह बेरा आक्षेप नहीं है। लेकिन उनको सुनने में बड़ी तकलीफ होती है।

**MR. DEPUTY-SPEAKER:** But I would like to draw the attention of Mr. Rao that this submission has been made in this House and outside also that we must have a judiciary that is aware of the emerging social, political or economic forces in the country. That was the basic argument. It is not a question of casting reflection on anybody. It is in that context that Mr. Madhu Limaye was trying to build up his case that if there is anything that may suggest any kind of obstruction in the functioning of these emerging social, political or economic forces, it is not the Supreme Court but something else. The relevancy is there, but I think he should be a little more pointed.

**श्री मधु लिमये :** इसका इलाज क्या है ? इलाज यह नहीं है कि न्यायालय की स्वतंत्रता के ऊपर आप आक्रमण करें और न्यायालय में

ऐसे जंज पीठासीन करें जो सरकार के चमचे हैं। यह तरीका ग़रीब है। वाजपेयी जी ने जरा दूर से देखा था। यह बिल 1971 का है। आपने देखा किस दिशा में गोबले साहव, कुमारमंगलम साहव और इंदिरा जी जा रही हैं। इसको देखते हुए तथा 23 साल से जो परिपाटी चली आ रही थी उसको संवैधानिक रूप देने का उन्होंने इस में प्रयास किया है। कोई नई बात वाजपेयी जी ने नहीं की। 23 साल के सुप्रीम कोर्ट के जजों के बारे में जो एक नीति सरकार ने अपनाई थी उसी को वह संवैधानिक दर्ज देना चाहते हैं। लेकिन श्री फिलहाल जो घटनाएं घटीं और इस परिपाटी को तोड़ दिया गया है तो क्या सी हालत में जो बहस हम लोग मई महीने में कर चुके हैं उसी को दोहरा कर आज फिर वरिष्ठतम, सीनियर-मोस्ट जज को चीफ जस्टिस बनाएंगे ? इस तरह का संशोधन करके क्या काम बनेगा ? मुझे लगता है कि इस वक्त जो बहस चल पड़ी है इस बहस से न्यायालय की स्वतंत्रता के बारे में और उनकी प्रतिष्ठा के बारे में जनता के वह में सन्देह उत्पन्न हुआ है। साथ साथ कार्यभारण के बारे में भी यह सन्देह उत्पन्न हुआ है कि वह सारे अधिकार अपने हाथ में लेना चाहती है और न्यायालय को मूख सरकार की सह शाखा बनाना चाहती है। इसका निराकरण कैसे हो। मैं बड़े अदब के साथ अपने मित्र वाजपेयी जी से कहूंगा कि आज फिर सीनियर मोस्ट जज की बात करके अगर वह समझते हैं कि कोई हल निकलने वाला है तो वह नहीं निकल सकता है। इसलिए बुनियादी जो सवाल है उसके सभी पहलुओं को देख कर मैं एक रचनात्मक सुझाव इस सदन के विचारार्थ रखना चाहता हूँ और उसके बाद मैं अपना भाषण समाप्त कर दूंगा।

**MR. DEPUTY-SPEAKER:** May I draw the attention of the hon. Members that when a Member is speaking, they should not come between him and the Chair?

**SHRI S. A. SHAMIM (Srinagar):** Next time.

**श्री मधु सिन्घे :** ऐसा रास्ता निकालना चाहिये जिससे न्यायालय की स्वतंत्रता के बारे में कोई सन्देह न रहे और कोई सरकार के ऊपर यह अभियोग भी न लगा पाए कि ये लोग सर्वाधिकारशाह की ओर बढ़ रहे हैं। मेरा सुझाव यह है कि आप पांच लोगों की एक कमेटी बनाएं जिस में सुप्रीम कोर्ट के चीफ जस्टिस हों और उसके पहले वाले चीफ जस्टिस हो यानी अगर नया कोई चीफ जस्टिस बनाने की बात आ जाएगी तो उसके पहले सीकरी साहब थे और वर्तमान राय साहब हैं, ये दो और तीन सीनियर मोस्ट, वरिष्ठतम सुप्रीम कोर्ट के जज हों। इन पांच लोगों की कमेटी हो और ये लोग तीन नामों का सुझाव दें। इन तीन नामों पर बार काउंसिल तथा बार एसोसिएशन खुल कर चर्चा करें और अपने निष्कर्षों को चीफ जस्टिस के पास भेजें और बार काउंसिल और बार एसोसिएशन के सुझावों और टिप्पणियों की रोशनी में तीन नामों को अंतिम करके राष्ट्रपति जी के पास भेज दिया जाए और राष्ट्रपति जी तीन में से एक की नियुक्ति करें साधारण जजों के लिये सात नामों की सूची से लेकिन उस नियुक्ति पर अमल तभी होगा जब संसद की उस नाम के लिये मान्यता मिल जाए। हाई कोर्ट के बारे में भी ऐसी ही किया जाय अगर मुख्य न्यायाधीश की राय भी ले ली जाय।

मैं ऐसा सुझाव क्यों दे रहा हूँ ? इस लिए कि मैं नियुक्ति का अधिकार पार्लियामेंट को नहीं देना चाह रहा हूँ, और जुडिशरी को भी नहीं दे रहा हूँ। मैं चाहता हूँ कि कानून के जो पंडित हैं—वकील और जज, वे जानते हैं कि कौन अच्छे लोग हैं। इसलिए नामों का सुझाव उन की ओर से आये, नियुक्ति करे राष्ट्रपति अर्थात् कार्यकारिणी। लेकिन उन में कोई गड़बड़ आवमी है या नहीं, इस का पता कैसे चलेगा ? इस लिए उस पर संसद की रोक हो।

राज्य की जो तीन शाखायें हैं, कार्य-कारिणी, न्याय पालिका और कानून बनाने

वाला विधिमंडल—यह संसद, इन तीनों का ही कुछ न कुछ अधिकार इन नियुक्तियों पर रहेगा। जहां तक संसद को यह अधिकार देने का सम्बन्ध है, मैं कहना चाहता हूँ कि अमरीका में चूंकि सिनेट को यह अधिकार है, इस लिए उस के द्वारा बहुत से अव्यक्तनीय जजों की नियुक्ति की पुष्टि नहीं की गई। एव फ्रॉटेंस नाम के एक जज ने जो गलत काम किया था, उस को सिनेट ने एक्सपोज्डी किया। नतीजा यह हुआ कि एव फ्रॉटेंस को, जो जानसन साहब के मित्र थे, इस्तीफा देना पड़ा। इसी तरह निक्सन साहब ने एक नाम रखा; उस को बार एसोसिएशन ने भी और सिनेट ने भी रद्द समझा, इस लिए उस की नियुक्ति नहीं हो सकी।

अन्त में मैं श्री वाजपेयी को बताना चाहता हूँ कि "सीनियरमोस्ट" रखने में क्या खतरा है, क्योंकि ये लोग बहुत चालाक हैं, ये उन के सिद्धान्तों को ले कर उन्हीं पर हावी हो जाएंगे। इस लिए मैं पहले ही सचेत करना चाहता हूँ। सुप्रीम कोर्ट के जो साधारण जज हैं, प्युनी जज हैं, उन की तो वरिष्ठता के आधार पर नियुक्ति नहीं होती है, यानी किसी भी हाई कोर्ट की वरिष्ठता भी नहीं मानी जाती है। न हाई कोर्ट जजों की अखिल-भारतीय वरिष्ठता आज तक मानी गई है। तो जिस की कम से कम उम्र है और जो सरकारी पक्ष का है, सरकार उस जज को सुप्रीम कोर्ट में नियुक्त कर देगी।

मान लीजिए कि सरकारी राय से अगली राय को मिलाने वाला कोई कनिष्ठ जज सुप्रीम कोर्ट का जज बन आये, तो श्री वाजपेयी की सरकार बनाने के बाद भी वह पंद्रह साल तक रहेगा। इस लिए इस सरकार के बारे में बड़े सचेत हो कर सब सुझाव देने पड़ते हैं।

मैं चाहता हूँ कि राज्य का एक शाखा का नियंत्रण दूसरी शाखा पर, दूसरी शाखा का नियंत्रण तीसरी पर और तीसरी का पहली पर हो। सरकार इस तरह की व्यवस्था करे।

अगर श्री गोखले इस के बारे में सोचेंगे, तो उन को मानना पड़ेगा कि यह सर्वोत्तम हलाक है, हालांकि इन्दराजी उन को ऐसा काम नहीं करने दगा, जिससे उन के अधिकार कम हो जायें।

SHRI K. NARAYANA RAO (Bobilli): Mr. Deputy-Speaker, Sir, we had a very long debate in the last Session consequent upon the supersession of the judges, and the discussion at that time was of a very high order. Mr. Vajpayee has introduced this Bill and in the process we have to repeat now most of the arguments which were advanced earlier, though the context has totally changed.

In bringing forward this Bill, Mr. Vajpayee is motivated more by political considerations rather than to bring about rationalisation in the appointment of Chief Justice. It may be recalled that one of the arguments advanced by the Opposition, all those parties which opposed supersession of the judges, was that some of the Members who constituted the Law Commission which made the recommendation against seniority themselves condemned the departure from the convention. I want to advance the same argument in this particular instance. The three members, Mr. Sikri, Mr. Setalvad and Mr. Chagla differed with the decision of the Government. But, on principle, even to-day I am sure they have to agree with the departure from this convention and uphold that in future the appointment should not be on the basis of seniority. Therefore, my humble submission is that so far as the principle is concerned, it is nobody's case that we should give legal cover as Shri Madhu Limaye wants, to introduce. That only means that we have been differing and disagreeing with the findings of the Law Commission. Therefore, I humbly submit that this Bill has no relevancy now and much of the discussion might have had a relevancy soon after the supersession of the three Judges. In principle, there cannot be any difference of opinion about the acceptance of the recommendation of the Law Commission. Therefore, I oppose this Bill.

Another point I would like to submit is that if he believes and wants that only the seniormost Judge of the Supreme Court is to be appointed as Chief Justice of the Supreme Court, *prima facie*, the same should equally apply in the case of the appointment of the Chief Justices of the High Courts also. I want to know why he has not taken it up. It, therefore, indicates that the Bill is not directed towards rationalisation of the appointment of the Chief Justice but it is a politically motivated one.

Now, it is not the case of the Government or the policy of the Government that the Supreme Court has always been standing against the progressive policies of the Government. It is not the case but the real case has been: what has been the position so far as the property right is concerned. There is a constant struggle, as the other day, the hon. Law Minister ably enunciated, a conflict between the judiciary and the Parliament—I do not call it—Government, the real conflict is between the Parliament and the Judiciary.

The Parliament has been consistently and persistently trying to give a meaning and interpretation to the concept of compensation by amending the Constitution, but each and every time, the Supreme Court is giving an interpretation which is quite contrary and contradictory to the expressly stated intentions of the Parliament. My humble submission is that it is an accepted principle of jurisprudence that all the organs of the State, *viz.*, Parliament, the Judiciary and the Executive are co-equal bodies and they have to respect and give dignity to each other. Therefore, we should not approach the problem in the spirit of a gladiator. Each of the three organs have to treat the other two with mutual respect. But what do we find? So far as the property rights are concerned, it is now well established that the judiciary is bent upon undoing what the Parliament is doing. . . . .

MR. DEPUTY-SPEAKER: I do not know whether it is in order for you to say that. I think it amounts to a reflection. . . . .

**SHRI K. NARAYANA RAO:** I am not reflecting on anybody.

**MR. DEPUTY-SPEAKER:** You are reflecting on the functioning of the judiciary. How do we know that the judiciary is interpreting in a way to do away or violate the intention of the Parliament?

**SHRI K. NARAYANA RAO:** They are interpreting the constitutional amendment in such a way as to defeat the intentions of the Parliament....

**MR. DEPUTY-SPEAKER:** They may be in conflict, but they do not do it intentionally.

**SHRI K. NARAYANA RAO:** After the *Bella Banerjee* case, the interpretation given by the Supreme Court was to be clarified and the Supreme Court stated that compensation means 'market value'. We differed with that with due respect and we have inserted the Fourth Amendment that the adequacy of the compensation cannot be questioned in any court of law. How more clearly can the Parliament express its intention?

Again, in the Bank nationalisation case the Supreme Court once again stated that compensation meant market value. It is in that context that there is a confrontation between the Parliament and the Judiciary. Therefore, from that isolated incident we cannot bring out a justification for this Bill.

Therefore, I oppose this Bill.

**SHRI S. M. BANERJEE (Kanpur):** I rise to oppose this Bill laying down that the Seniormost Judge of the Supreme Court shall be the Chief Justice of India. On our part we have debated this matter for hours together. The words and the arguments advanced by hon. friends like the late lamented, Shri Mohan Kumaramangalam did really convince this house ..... (Interruptions) All of us are committed to some sort of a social policy. Can we say none of us is concerned? Everyone is concerned. It is a question of ideology and social change. What are

the provisions of the Constitution, Sir? This is what the provision says:

There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges.

Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary....

Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted.

16.01 hrs.

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

Sir, it has been argued that the senior-most Judge of the Supreme Court should always be the Chief Justice and once this Bill is accepted, what will happen is this. The seniormost judge of the Supreme Court will always become the Chief Justice. What happens to the amendment of the Constitution? Is it not a fact that in respect of both the cases, the nationalisation of the fourteen banks and the privy purse case, the judgments of the Supreme Court were not what we expected? I say this without casting any aspersion or any motive on the part of the learned judges. But I would respectfully beg to submit that those judgments were reactionary. Some political party or parties started saying right to property is there and it was infringement of fundamental rights and directive principles etc. Supreme Court upheld that. But, Sir, what happened afterwards? The question arose: Is this House supreme or the Supreme Court supreme? Parliament was dissolved and all the Members including Shri Atal Bihari Vajpayee got enough opportunity to go round the country and convince the voters about the judgment of the supreme court. But what happened? It was proved beyond doubt. It was proved beyond any sort of doubt in anybody's mind that

this House is supreme and not the Supreme Court. That was the position. That was the sort of mandate given by the people. Some of those who upheld the judgments of the Supreme court were routed; their party or parties were routed. So, I would like to submit that if one today does not understand the social changes which are likely to take place in this country along with other progressive countries,—he may be holding any high post, including highest post of the judiciary, whatever it may be,—he will be consciously or unconsciously obstructing and retarding the growth of the country towards a better direction. That was what was stated by the late-lamented Mohan Kumaramangalam and Mr. Gokhale. They quoted countries after countries. The quoted USA; they quoted Australia and other countries. The judge is committed; the judiciary has committed judges. But, after all, Sir, I do not believe for a moment that the judge has no politics. Judges have been in politics. That is why this has been decided upon. We should not forget one point that all the judges may not have the same feeling towards socialism. Regarding our march towards socialism there may be inherent difficulties in the way because of the class character. But that is a different matter.

What I say is that whatever progressive or radical decisions had been taken were undone by the Supreme Court. I do not say for a moment that they did it deliberately. It is we who have constituted the society. Who are those Supreme Court judges? Are they children of the peasants? Are they children of the workers? Are they children of the poorer classes? If any day the daughter of a peasant becomes the Prime Minister of India, then the socialism or communism will come to our country. When Dr. Lohia said this, Pandit Nehru got irritated and said the following in Hindi:

मुझे खुशी है कि यह बाजार बन रहा है। यह दरबार नहीं है। क्योंकि बाजार में कम से कम चर्चाएँ तो शुरू होती हैं।

This is exactly what he said. I am reminding my friend, Shri Madhu Limaye of what he said then. That is why I say that this is the society which you have constituted. And I know ultimately what is the difference between the Parliament of Today and the old Parliament. At that time, the Parliament was meant only for the sophisticated intellectuals. Shri Vajpayee could never dream that he would become a Member of Parliament and Shri Banerjee, a dismissed Government employee, could never dream that he would become a Member of Parliament. Similarly, Shri Kachwai could never dream that he would become a Member of Parliament.

Today, at least fifty to sixty per cent of the Members really come from the peasantry. They really come from the working-classes and the toiling millions. That is the difference of today's Parliament. What we have been asking for is the people's court. Why should we not ask for it?

अन्ततः का अदालत में सभा देनी चाहिए।

Today, the Supreme Court lawyers—Shri Hegde and others—say that this is a bad super-session when someone was appointed as Chief Justice. Hundreds of judgements had been delivered by the same Supreme Court judges. When a poor Section Officer or an Under Secretary or anyone goes to the Supreme Court and says that even though he is the seniormost man he has been superseded by others, the judgment of the Supreme Court is that seniority is not the only criterion for the promotion. Seniority subject to elimination of the unfit is the criterion for promotion. If somebody is superseded in the Supreme Court, heavens are not going to fall. Why should a seniormost judge be appointed as the Chief Justice? That is why, my hon. friend, Shri Limaye has warned Shri Vajpayee of the dangers which may arise after passing of this Bill. He had suggested a Committee. Are you going to appoint a departmental promotion committee for the judges? In the case of Government employees, confidential report is taken as the

[Sh. S. M. Banerjee]  
criterion. Sometimes even if a government employee has got a good confidential report, even for 20 years, he is not promoted. Though he has got a good confidential report, he is never promoted because he is not considered fit for promotion.

So, here the seniority is subject to elimination of the unfit, when it comes to Government employees. It is they who suffer the most. Why should not the Supreme Court judge or for that matter any citizen also suffer?

I would therefore request the hon. Member, Shri Vajpayee not to have this sort of idea of senior-most man for promotion. If seniormost people are to be regarded for this purpose, then Shri Vajpayee who is lesser in age should have never been elected in this House. These are selection posts and so, seniority should not be taken as the only criterion for the purpose of promotion. The other day, I was in Bombay and I was talking to a person whom I shall not name here. He was arguing for long on the question of appointment of judges to the Supreme Court, and he said that supersession was wrong and it was not convincing, and it was unredhand dealing, it was politically motivated and so on. But the same person told me that he was extremely happy that Mr. Krishna Iyer had been appointed as the Supreme Court judge. Why was he happy? He was happy because he relied on his calibre. People might have some political affiliations. But what we want today is that the Supreme Court should consist of those judges who have an open mind. By open mind I do not mean a vacant mind. By open mind I mean seeing things from a new angle in the light of how the world is progressing. Otherwise, we shall land ourselves in serious trouble. Whatever progressive legislation we may pass, the next day it will be unsettled and it will be declared *ultra vires* by the Supreme Court.

We have had three such instances already. First, we had the decision in the bank nationalisation case. Then we had the decision in the case of the abolition of privy purses. And thirdly, we found that suddenly the Supreme Court was interested

in raising the price of cars. How is the Supreme Court interested in raising the price of cars? How is it that they went to the factories to assess the cost of production of cars and then suggest that the price should be increased by Rs. 3000 and more? Still, we say that what the Supreme Court did was correct. That is why I, on behalf of my party, cannot support this Bill.

I am not supporting this, not because it has been moved by Shri Vajpayee—in fact, we support many good things which he has sponsored—but because this Bill is politically motivated and actually it is a sort of stumbling block in the selection of intellectuals and persons who have an open mind. I do not for a moment suggest that judges are committed. But what is meant by a judge being committed? We talk of committed parliamentarians. We talk of committed Ministers. What are they committed to? We shall have to see to which they are committed and what their commitments are to. For my part, I am committed to bringing in socialism in this country. Because I am committed to socialism, some people may say that I am a committed person. But my job is to bring in socialism, and I shall fight for it. Therefore, I oppose this Bill. We have already welcomed the decision that Government have taken in the matter of the appointment of the Chief Justice of the Supreme Court. We would only request that the hon. Minister should not be bullied by this Bill. He must bring in good people into the Supreme Court.

After all, the Supreme Court is the highest judiciary in the country and important decisions are given by them. A lot of amendments have to be made even today in the Constitution as a result of their decisions. There may come a time even when a Constituent Assembly may be summoned. So, I want that Supreme Court judges should be from among persons who have clear vision, who have clear ideas and who have an open mind to see reason. Let the Supreme Court judges also realise that the day is fast approaching when the toiling millions of the country are bound to bring in socialism. This Government cannot bring it



because of its class character. The class character of this Government has to be judged by us, and the class character of the Supreme Court judges has also to be judged by us.

With these words, I oppose this Bill.

**SHRI A. K. M. ISHAQUE** (Basirhat): I rise to oppose the Bill. Everyone is opposing the Bill, and even Shri Limaye who rose to support the Bill opposed the Bill like anybody else in this House.

**SHRI MADHU LIMAYE**: I support the principle behind the Bill.

**SHRI A. K. M. ISHAQUE**: He in his own turn enunciated a new principle that may be called the principle of appointment of judges. He suggested a tripartite conference between so many organs to make the appointment.

The issue had been raised long before and it had been answered by the Law Commission already. The question was gone through in all its aspects, and the Law Commission which consisted of so many intelligent sons of the soil and so many brilliant sons of the soil came to a decision that the appointment of the Chief Justice of the Supreme Court must not be on the basis of seniority, but the basis should be talent and the criterion should be one of merit. If the criterion of seniority had been selected as a criterion for appointment, it tended to act as a disincentive to the other judges to act according to their best. The Law Commission had made a review of the case, and I would like to quote from their report.

It says:

"This leads us to a related point upon which we have bestowed anxious consideration. It has been the practice till now for the seniormost puisne judge to be promoted to be the Chief Justice on the occurrence of a vacancy. It would appear that such a promotion has become almost a matter of course. We had referred to the high and important duties which the Chief Justice of India is called upon to perform. It is obvious that succession to an office

of this character cannot be regulated by more seniority. For the performance of the duties of the 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 watchdog of the independence of the judiciary".

**SHRI ATAL BIHARI VAJPAYEE**: Sturdy independence.

**SHRI A. K. M. ISHAQUE**: This is the criterion they have set forth for the appointment of the Chief Justice. A person who becomes the Chief Justice of India must get some time to know the subject. Therefore, they preferred that a person to be appointed Chief Justice should at least act in that capacity for five to seven years.

Shri Vajpayee has some praise for America. What is the practice there? There a young person is appointed as the Chief Justice of the Supreme Court. He will have enough time to know the subject and can function very efficiently if he gets more time. In the course of 150 years there were only 14 Chief Justices in the US. They have their own principle. Our Law Commission have not gone that far, but they have recommended that whoever becomes the Chief Justice must have at least 5—7 years. This is a very coveted post and enjoins a very heavy responsibility upon the incumbent. He has to discharge not only judicial functions but also administrative functions. He has to look after the day to day administration not only of the Supreme Court of India but of all the High Courts in all States. Therefore, the person chosen for the post must be chosen on the basis of whoever has the best ability.

Shri Vajpayee has not foreseen the contingent, circumstances were his suggestion accepted. He has merely said that the seniormost person be appointed as the Chief Justice. Suppose Mr. A is the

senior most judge. He is also a human being. He may fall victim to any disease. He may contract an incurable disease; he may be paralysed. He may suffer from mental incapacity and lose his lucidity, as happened in one particular case. He has not foreseen that contingency.

**SHRI ATAL BIHARI VAJPAYEE:** He will resign.

**SHRI A. K. M. ISHAQUE:** Supposing he does not, nobody can compel him.

**SHRI ATAL BIHARI VAJPAYEE:** He should be removed.

**SHRI A. K. M. ISHAQUE:** He can only be removed. He has not foreseen that circumstances as well. It is an impractical suggestion. Suppose one gentleman suffers from a chronic disease. There are various types of such disease which may render a man incapable of discharging his functions with cool breath. This is a post where the incumbent must have cool breath and must be capable of acting without prejudice and without temper. There are diseases to which a man is susceptible, and which cannot be detected from outside. Will those factors not be considered before making a person the Chief Justice of the Supreme Court? Therefore, in my view the amendment that Mr. Vajpayee has brought is quite impractical and unpragmatic.

The only question remains, as to who will select this person to be the Chief Justice of India. We cherish that our judiciary must be a very independent one. Therefore, we cherish the idea that the Chief Justice must continue the traditions of the High Courts and the Supreme Court and to retain the independence of the judiciary. Everyone will agree with this prerogative of the executive, of the President, and this is the minimum that the executive must exercise to be worthy of the name of the executive, to be worthy of the sovereignty of the country. Therefore, it would be the pleasure of the President to choose the person and whomsoever the President chooses on the advice of the Cabinet which in turn is representative of the people, he will be regard-

ed as the most competent man and he will occupy the post. Therefore, I do not think the amending Bill which Mr. Vajpayee has brought in is going in anyway to strengthen the Constitution or to safeguard the spirit of the Constitution.

Therefore, I oppose the Bill, and I request him to withdraw the Bill.

**SHRI G. VISWANATHAN (Wandiwash):** Mr. Chairman, Sir, I rise to support the spirit behind the Bill introduced by Mr. Vajpayee. This Bill was introduced on the 20th May, 1971 immediately after the massive mandate got by the ruling party. But I do not know how Mr. Vajpayee got the scent of the catastrophe that was going to come in 1973. I think he has got a better intelligent system which works into the government or the Congress party, the catastrophe of 24th May, 1973 when three of the Supreme Court judges were superseded.

The supersession of the three judges of the Supreme Court was the greatest blunder committed by this Government after Independence. It has shaken the foundations of democracy. Not only that. The faith of the people in the Supreme Court has been shaken to its foundations. The highest court of justice in this country, the citadel of justice, has become suspect in the eyes of the public. I need not dilate upon the importance of the independence of the judiciary, because all of us know that the independence of the judiciary is a *sine qua non* of democracy, and it is the foundation of democracy.

Sir, I would like to quote a few sentences from Mr. Winston Churchill. He said:

"The principle of complete independence of the judiciary from the executive is the foundation of many things in our Island life. The judge has not only to do justice between man and man—and this is one most important function considered incomprehensible in some large parts of the world—but has to do justice between the citizen and the State. It has to ensure that the administration conforms with the

law and to adjudicate upon the legality of the exercise by the executive of these powers."

Even Pandit Jawaharlal Nehru who has been quoted by the late Mr. Kumaramangalam has not failed to note the importance of the judiciary. I am quoting him for the benefit of the Congressmen. He said:

"As wise people—

He refers to the Supreme Court—

"of the judiciary, their duty it is to see that in a moment of passion, in a moment of excitement, even the representatives of the people do not go wrong. They might. In the detached atmosphere of the court, they should see to it that nothing is done that may be against the Constitution, that may be against the good of the country, that may be against the community in the larger sense of the term."

Hence, the Government and the ruling party has to accept the independence of the judiciary in this country. There are some honest people who think that when we are committed to socialism we have to go through the whole hog even if it threatens the independence of the judiciary. I think Mr. Sathe is one of them. My contention is that it is Parliament which should be committed, it is the ruling party people who should be committed.

**SHRI VASANT SATHE (Akola):** I never said he should be committed to the ideology. I said last time that he should be committed to the Constitution. The principles of socialism are enshrined in our Constitution.

**SHRI G. VISWANATHAN:** If you say so I agree with you, but it is the Members of the Congress ruling party or other parties which believe in socialism which should be committed to socialism and which should bring about a welfare State of socialist State. It is not the members of the Judiciary. It is the prerogative of Parliament to enact those Bills and pass laws which will bring a socialist welfare State. We should not expect the judiciary to do our job. . . . . (*Interruptions*). It

is our prerogative to amend or alter the Constitution.

Here I should like to quote what Shri Jayprakash Narayan says:

"Some Congressmen might feel that their commitment to socialism is as important as their commitment to democracy and, therefore, it might become necessary sometimes to deprive the people of their fundamental freedoms of speech, expression, association, movement etc. in order to establish a socialist society. I hope on second thought such friends will realise the fallacy, nay, the mischief of this argument. This is a slippery path which will end up not in democratic socialism but in dictatorial communism."

Atleast the political parties in the country which are committed to democratic socialism will have to stand by an independent judiciary. A number of members on the other side quoted the 14th Report of the Law Commission. Even the previous speaker Mr. Ishaque quoted a part of the Law Commission's recommendations. It is like the devil quoting the scriptures. They quoted only half of it and left the other half to be quoted by people like us. It says:

"In our view therefore the filling of a vacancy in the office of Chief Justice of India should be approached with paramount regard to the considerations we have mentioned above. It may be that the seniormost puisne judge fulfills these requirements. If so there should be no objection to his being appointed to fill the office. Very often it may not be so and it is, therefore, necessary to set up a healthy convention that the appointment to the office of the Chief Justice rests not on special considerations and does not as a matter of course goes to the seniormost puisne judge. If such a convention were established it would be no reflection on the seniormost puisne judge if he be not appointed to the office of the Chief Justice."

If you had established such a healthy convention there would be no harm, but for the last 15 years Government put the entire report into cold storage and

they were sleeping over it. All of a sudden one fine morning on the advice of some devils they superseded the judges. Mr. Gokhale belongs to this profession. In the last few months when we had debates in this House except Mr. Gokhale all the Congress members abused the Supreme Court judges. I want to know from them one information. If you want to abuse somebody, should it not be your own party-men who are not committed to socialism. Why put the blame on Grover, Hegde and Shelat? They are not expected to bring socialism. It is you people who claim a massive mandate. More than 360 Members are in this House and they have to bring socialism by passing legislation which will usher in a welfare State.

They argue that the Chief Justice should have a long time tenure of office and that is why they say they have been superseded. This is a fallacious argument because among the three Judges who have been superseded, I think, Mr. Justice Grover had a longer tenure than the present incumbent. So, this argument does not hold water.

They quoted a number of countries. It was surprising that the late Mr. Mohan Kumaramangalam quoted many a time in this House the appointments made in the United States of America. There, the system is entirely different. There are only two Parties, two effective Parties—the Republicans and the Democrats. Both of them believe in the constitutional philosophy. It is not the same case in our country. Here there are a number of Parties who do not agree with the Constitution at all. There, the tenure of the President of the USA is limited. He cannot continue after eight years. Here, it is different. It is not limited. One can continue for life. Even his generation can continue.....

**SHRI VASANT SATHE:** This is most uncharitable.

**SHRI G. VISWANATHAN:** That is what is happening in this country. There again, the nomination is made by the

President of the USA and should get the approval of the Senate. That is not prevailing in our country. Again, the President of the USA consults all the important Bar Associations. In this country, what are we doing about our Bar Associations? We try to ignore them and we try to suppress them. They tried to quote England also, which is supposed to be our model democracy. In England it is always offered to the Attorney-General to become the Chief Justice. That cannot be quoted in our country. Same is the case in Australia also. Almost, it goes to the Attorney-General and in case he refuses, then the juniormost is offered the post of Chief Justice. Hence we cannot quote other countries. We have to follow our own traditions and we have to set a healthy convention.

Mr. Mohan Kumaramangalam argued in this House and, his main argument was that the Government took into consideration the social philosophy of the Judges when they are considering the appointment of the Chief Justice of the country. I want to know from the Government whether they were going to consider this as a principle behind the appointment of the Chief Justice. If they are going to consider the suitable philosophy, I want to ask them whether it is the philosophy of the ruling Party or a part of the ruling Party or the entrance of the ruling Party or the original Congressmen belonging to the ruling Party. Which aspect of the philosophy you are going to consider? He again said:

“We want a Judge who can effectively work and help us in the Supreme Court.”

Help whom? I want to know from Mr. Sathe. To help the Minister who is in charge at a particular time? To help the Prime Minister of a particular time? To help the executive of the Congress Party of the particular time? To help whom?

**AN HON. MEMBER:** People.

**SHRI G. VISWANATHAN:** How? I would like to quote him.

**SHRI VASANT SATHE:** The elected people.

**SHRI G. VISWANATHAN:** All of us are elected. I am also elected. I would like to quote him. He said:

"We are entitled to come to the conclusion that the philosophy of this Judge is forward-looking and of that Judge, backward-looking and to decide that we will take the forward-looking Judge and not the backward-looking Judge".

Then, who is going to define, decide as to who is forward-looking and who is backward-looking?

**SHRI VASANT SATHE:** The President.

**SHRI G. VISWANATHAN:** Which President? The President of the Congress Party or the President of India?

This is how they want to deceive the people of this country. They want that the Judge should have a philosophy and that they want that the judges should conform to the philosophy of the ruling Party. This is not the case in any democracy. It is the concept of a dictatorial State.

The Chief Justice, they argued, should recognise that the Parliament is sovereign. In any written Constitution, in a country having democracy with a written constitution, neither the executive nor the judiciary is supreme. It is the constitution which is supreme. This should be accepted by everybody. But somehow some of our friends on the other side like Mr. Narayana Rao who happens to be a lawyer says that the Parliament is supreme and Parliament is sovereign.....

**SHRI K. NARAYANA RAO:** The Constitution, as amended from time to time, is supreme.

**SHRI G. VISWANATHAN:** Then, we are entitled to amend the Constitution. But that is not the argument of the Government when they argued the case here. They said the Chief Justice should be a person who accepted that the Parliament is sovereign and not the Constitution. This is a fallacious argument.

The arguments of the Government before the Supreme Court in the Fundamental Rights case would be shocking to hear. Our representative, who argued before the Supreme Court in the Fundamental Rights case, said:

"1. The Government have power to destroy the sovereignty of this country and make this country a satellite of any other country.

2. Substitute the democratic form of government by monarchical form or authoritarian form of government.

3. Break up the unity of this country and form various independent States.

4. Destroy the secular character of this country and substitute it by a theocratic form of government.

5. Abrogate completely the various rights conferred on the citizens as well as on the minorities.

6. Revoke the mandate given to the States to build a welfare State.

7. Extend the life of the two Houses of Parliament indefinitely."

I am sure the last point will make the ruling Party very happy. This will make them permanent Members of Parliament. Shri Raghuramaiah will continue to be the Minister of Parliamentary Affairs for his life. This is the agreement of the Government.

**SHRI ATAL BIHARI VAJPAYEE:** Who is that Government lawyer?

**SHRI G. VISWANATHAN:** It is the Attorney-General of India.

**SHRI ATAL BIHARI VAJPAYEE:** He should be dismissed.

**SHRI N. K. P. SALVE (Betul):** In all fairness to the Government counsel I should submit that he was dealing with the power of Parliament. If Parliament exercise that right, what havoc it will cause to the country is anybody's guess. You should appreciate that he was dealing with the extent of the powers of Parliament. Therefore, do not create the im-

pression that it would be the intention of any person who is possessed of his rational faculties, who is elected and who sits on the ruling Party. That is not our argument.

**SHRI G. VISWANATHAN:** Do not leave it to the discretion of the treasury benches; leave it to the Constitution...  
(*Interruptions*)

**SHRI VASANT SATHE:** This argument was advanced about the extent of the power. He never advocated that they should be used. Why do you misquote him?

**SHRI G. VISWANATHAN:** Why should they argue before the Supreme Court like that? (*Interruptions*)

It was also contended on behalf of the Government before the Supreme Court in the Fundamental Rights case that they have the power to amend the amending power in such a way as to make the Constitution completely ineffective. These were the arguments put forward by the Government advocate or the Attorney-General before the Supreme Court.

**THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE):** May I know the source of the book from which he is quoting?

**SHRI G. VISWANATHAN:** This is a book written by Justice Hegde.

**SHRI H. R. GOKHALE:** Since the hon. Member was reading something, I thought it fair that I should not interrupt him. Therefore, I have heard him patiently. But I think it is also fair that I should know the source of his quotation. Now that he has told me that it is from Justice Hegde's book, I will deal with it when I reply. I do not want to interrupt him.

**SHRI G. VISWANATHAN:** I want to know from the Government whether this is the view of the Government or the opinion of the Government. If this is so, then there is every reason for us to suspect the motives of the Government in superseding the three judges.

A number of hon. Members, including Shri Banerjee, were quoting a number of judgements, particularly in two or three important cases. Here I want to make it clear that we were one of those who voted for the Bank Nationalisation measure in this House. When the impugned Act was struck down by the Supreme Court, we were also unhappy. But at the same time, we have to admit that if we enact a wrong law, a wrong Act, we have to come forward again to amend it and we cannot blame the judiciary.

After all, what was the point before the Supreme Court when the Bank Nationalisation case was admitted? The point was whether the principles laid down in the Act for determining compensation to share-holders were relevant for the purpose of acquiring banking institutions. We made an Act under which we had to pay an equal compensation, whether a share-holder was rich or poor or he belonged to the middle class. If the Government really wanted—I want the Minister to reply to this argument—to pay the poor share-holders an equal amount or a better amount as compared to the big share-holders or the monopoly houses, they should have come with a scheme which had provided a lesser compensation to the richer sections of the share-holders. But the Government did not do it.

Again, we also voted for the abolition of the privy purses and the privileges of the princes. But, unfortunately, it was not passed in the Rajya Sabha. What did the Government do? Immediately, an Ordinance was promulgated. The Ordinance was challenged before the Supreme Court and the Supreme Court struck down the Ordinance. Now, here, our hon. Congress Members say that the will of Parliament was not taken into consideration by the Supreme Court. It is argued on the other side that it was not the will of the Parliament. If the Parliament had passed the Act, if they had abolished the privy purses and the privileges of the princes, then it was the will of the Parliament. But they failed to get a requisite majority in the Rajya Sabha. It was defeated in the Rajya Sabha. It was

the executive of the country, the Government of the country, which wanted to override the wishes of the Parliament and not the judiciary. I want the Minister to defend in this case how the Government is correct.

Further, they pointed out the Golaknath's case. I want to tell them that it is the same Supreme Court which ruled in the Golaknath's case against the Government, against the Parliament, and they reversed the judgment in the recent Fundamental Rights case. At the same time, I want to tell the Government, when there is power for Parliament to alter or amend the Constitution, there is no power for Parliament to abrogate certain basic features of the Constitution. For example, India is a Union of States. Can the Law Minister move an amendment to the Constitution and say, this country will become a Unitary State and that there will be no more States? Can we do it? Is there power for Parliament to do it? Can we say, "This country will become a theocratic State. It will be called a Hindu State and not a secular State." We cannot do it.

AN HON. MEMBER: It is only academic.

SHRI G. VISWANATHAN: You can bring any law which you want because you have got the two-thirds majority.

That is why I want to emphasize that if there is a wrong decision by the Supreme Court—and there may be a wrong decision which we may not accept—there is always a possibility of the Supreme Court over-ruling a wrong judgment or an improper judgment or a judgment that we do not like. It has been proved amply. Very often, the Supreme Court has defended the fundamental rights of the individuals.

There are a number of cases, like, Shri A. K. Gopalan's case or Shri Madhu Limaye's case where they were put into jail under the Preventive Detention Act and, under the *habeas-corpus* petition,

they were released. Recently, we had a case of the M.I.S.A. under which the Government put into jails about 4000—5000 people. It is the Supreme Court which came to the rescue of individuals. I want to remind Shri S. M. Banerjee who often agitates about it that it is the people in the Opposition who very often go to courts for their release under the *habeas-corpus* petition. It is the Supreme Court which has helped the individuals as against the State or the Government. Hence the Supreme Court should remain as an independent judiciary and the ruling party should not think that it should be the organ of the executive.

What should be done now? The Government has already done the mischief. Now, I want the Government to take into consideration the views expressed throughout the country, by all the parties and other organisations and institutions. My suggestion is that the Government should agree to constitute a Committee which should go into all the aspects of the problem, which should consult both the Bar and the Bench and they should consult the eminent jurists. They should submit a report to Parliament which should be accepted by the Government regarding the method of appointment of the Chief Justice of the country. This unilateral action by the Government in the supersession of the three judges has been condemned by all sections of this country, and the unanimity of the opposition by the Bench and the Bar as a whole in this country is nothing short of a vote of no-confidence by the legal profession of this country.

SHRI N. K. P. SALVE (Betul): Mr. Chairman, Sir, I had hardly any intention of participating in this debate, but as I heard Shri G. Viswanathan, hon. Member belonging to the DMK Party, coming out with a very scathing indictment on the working of the Government and as he went on casting aspersions on my Party on supersession of judges. I was instantaneously provoked to seeking your kind permission to make a few observations.

[Shri N. K. P. Salve]

It is most unfortunate that my Party is most misunderstood and most maligned in respect of the matter of supersession of the three judges of Supreme Court. If Shri Viswanathan and Atalji think that we here in this Party ever support the philosophy that we should have a set of judges in the Supreme Court should be the stooges of the Government or who should be its underlings, they are entirely mistaken. It is absolutely necessary, if the Constitution with its democratic set-up and framework is to function with any degree of success and any degree of relief for the people, the Supreme Court Judges must be impartial and independent and in that sense I agree with the object enumerated by Netaji in his Bill. We do not want for a moment judges who would be bereft of their own convictions, who would be bereft of scholarship, who would be bereft of character and independence and would ever expect favours from Government or from those who manage the Government. If that is what opposition thinks my Party is supporting in supersession of the three judges, nothing is more tragic, more mistaken. And if we have been maligned on that account, it is purely emanating either out of political motives or out of gross misunderstanding. So far as DMK is concerned, I think it is emanating out of misunderstanding.

Before I come to the merits of the Bill and before I make my humble observations on the Bill there are two points which I should like to deal with arising out of what Mr. Viswanathan had said. The issue that was being fought in the Supreme Court in the Fundamental Rights case relates to question of Parliament's implied limitations. One of the points raised was that of elected representatives of the people were given absolutely untremelled authority, unfettered authority, to tinker with the Constitution in any manner they felt like, if the Parliament functioning as a Constituent Assembly, in exercise of its constituent powers, was allowed to alter the Chapter on Fundamental Rights in any manner they felt like, without implied limitations then some day it might bring havoc to this country. That was the argument of the petitioners, and the argument further

proceeded thus: imagine the havoc not only will democracy be ruined and democracy would be a thing of the past but it would be replaced by dictatorship; imagine the havoc where the secular values would be given a go-bye, would be kicked out, and in their place theocratic values might usher in. In fact, the argument went further and stated: assuming, for a moment, tomorrow monarchy was sought to be brought again, what would happen to this country! Therefore, the theory that was being advanced was that there had to be found implied limitations to the constituent authority of the Parliament to amend the Chapter on Fundamental Rights, and it was sought to be canvassed before the Supreme Court by the very able counsel of the petitioners that, unless such a limitation was found by the Supreme Court and clamped on this Chamber, functioning in exercise of its constituent power and authority, it was more than likely that some day this country would have taken to a direction which its people never wanted it to take. It was the argument of the petitioner which the Attorney-General was meeting and stated that if Parliament so chose it can amend the Constitution. Of course, so far as I am concerned, the whole argument is based on the possibilities. I do not accept the premise nor do I accept the conclusion of the argument. I have no doubt in my mind that the people and their will is supreme. However supreme the Constitution may be it can be supreme only if it manifests the supreme will of the people and the day it ceases to manifest the supreme will of the people, the constitution is not worth the paper it is written on. It will be taken care of in the Chandni Chowk, it will be taken care of in the public squares. We do not want this to happen nor that day to come. We do not want the democratic values in this country to ever diminish or be abridged. That is why it is necessary to ensure that the general will of the people is duly and properly respected. Maybe since we are human-beings and are liable to err, I am not for a moment suggesting that whatever we have done to amend the Constitution will not be recorded in history as an error by us. But I have no doubt in my mind that we have not committed an



error today but we have acted in a *bona fide* manner and have served the best interest of Parliamentary democracy. That I want opposition to understand.

The Attorney-General was forced into arguing as to what would happen if Parliament ran haywire. It was argued that the Parliament can do that. It is one individual's style of arguing. But Shri G. Viswanathan can have the assurance from me a humble member of my Party and add the members who sit on my side with utter confidence that this sort of an argument is not the apprehension of our Party. That matter could have been argued differently. The real argument which I would have taken or I would have advanced, was that the question of an elected Parliament acting against wishes of the people does not arise. If the people are capable of sending insane people who will kick out secular values and bring in theocracy, if the people are so absurd, who would not want the elected Prime Minister is responsible to the people and who is grilled day in and day out, to usher in monarchy and sit on the throne of the Rashtrapati Bhavan, then who is to be thanked? It is the people who are to be thanked. Can people elect such insane people in the country? The question therefore, was hypothetical.

The only question to be decided was whether or not in the constitution had been provided an inherent limitation. . . . (Interruptions) Thank God, I am not the Attorney-General because I would have been a poor Attorney-General and a poor politician. But this is the viewpoint. . . . (Interruptions) The Attorney-General has raised this plea in reply to an argument. It is correct that the Attorney-General has raised the plea that if Parliament ran amuck it could abuse the Constituent powers. It is one way of arguing. But as one who does know a bit of what happens in the court, when you are trying to convince a set of Judges, it is best that you take an extreme case in an extreme manner, take the whole thing to an absolutely logical end. Arguments can never be quoted in dribblets like this. They have to be seen as a whole and examined from the view

point of the issue involved. This argument of Attorney-General is a reply to petitioner's argument. That certainly is not the view of the Party. The view of the Party is clear and it is this that as long as the people are to be elected by a free and fair elections under this Constitution, in our country and so long as it is the will of the people which is to prevail *via* the elected representations of the people, they, the elected representatives, while exercising their constituent authority, will not tinker in any manner whatsoever with the Constitution as apprehended by Shri Viswanathan. Has it happened so far?

What happened in earlier years? He referred to the case of Golak Nath. What was the law before that case? was not in the days when decision in case of Sajjan Singh and Sankari Prasad held the field was it not held that the Parliament has untrammelled and unfettered authority for tinker, to amend any Article of the Fundamental Rights for 18 years? What happened? Did we run haywire? Did the Prime Minister do away with democracy and bring in the monarchy? Did we kick out the secular values and bring in the theocratic values? We did not and we shall not. . . . (Interruptions) Atalji, we also go to vote and we also go to the people and we come here with a particular mandate. It is that particular mandate in the implementation of which we have to amend the Constitution. . . . (Interruptions) I did not interrupt you. Why do you not listen to me patiently? . . . . (Interruptions) If my hon. friends disagree with me, they are entitled to, if they like; but I respectfully beg to submit that we are a maligned party, a maligned set of people on supersession of judges without rhyme or reason or for false reasons. We care two hoots for political opposition on this point but nonetheless it is necessary to clearly express our viewpoint so that others may agree or disagree, but must not misunderstand and give opposition parties a political handle. Therefore, please try to understand. There is basic difference in approach of each individual. All of us have come here with certain mandate and we have to work to

[Shri N. K. P. Salve]

implement that mandate. Is it not possible that because of my political philosophy I will read an Article of Constitution in a particular manner and because of his particular political philosophy Shri Atalji will read the very Article in a different way? Two of us have different political philosophies. Are judges not human beings? Are judges human robots? Are they mechanical being? Are they bereft of any political, social and other influences on their lives? We come with a particular mandate and we find some judges obsessed with a certain political philosophy and however sincere and honest they may be, if it is not compatible with our particular approach, which is not an approach of the Government as such or that of the party but the very approach of the directive principles of the Constitution, according to us, then, what are we to do about it? Can anyone say that even after 25 years of independence we are not in the throes of enduring disparities of a shameful variety? Can anyone deny that even today 40 per cent of the people are not in dire and appalling poverty? Certainly if we want to eradicate such poverty, certain drastic measures are necessary. If it impinges on individual liberty, for that purpose, it is necessary to amend fundamental rights. We have come with a mandate to amend them and we shall do so. What is undemocratic about it? This is not for a particular party alone; it is for the people. We do not want the judges to be stooges and lickspits. We want them to be independent. We want them to follow a philosophy whereby they can follow the aspirations of the people, they can understand the temper and the needs of the country and if this is not done, Sir, according to us, democracy would have become a thing of the past, as it has happened in several other countries. Afterwards, several countries have become independent and some of them took to democratic ways of working but one after another they all collapsed. After all, there are some basic values which a country follows. There are some cherished values of a country adhered to by the people as a result of which people behave in matured

manner. In our country that is the only guarantee for the proper functioning of democratic life and therefore we cannot just put X or Y or Z as the Supreme Court Judge merely by the years he has served the Supreme Court.

There is something in this country, and that is maturity and depth of the people. It is not in the hands of few politicians who are considering that the supersession of the judges had brought about a complete dislocation of the judiciary or it had brought about the bartering away of the independence of the judiciary and jeopardised democracy.

17 hrs.

We want an independent Judiciary—the only judiciary—which is capable of understanding the aspirations of the people, the aspirations of the representatives of the people. We have come here with certain responsibilities which we have got to fulfil. We have come here with a certain responsibilities which we have got to fulfil. We have come here with a certain mandate which we have to fulfil. Please understand this. We can fight those who opposed these principles at the polls. How can we fight a political battle at the Supreme Court? That is why it became necessary to resort to supersession and there was no way out to implement our progressive legislation. But, this Atalji's Bill has some more practical difficulties. He wants a new article 124(1A) to be inserted. By this he wants that the senior-most judge of the Supreme Court must be appointed the Chief Justice of India. If he is found to be imbecile or senile, after some time, he is found to be physically handicapped or is found to be corrupt then what will you do? If this amendment to the Constitution is accepted by Shri Gokhale, it will mean that we shall cut the hands of Government. Do you want a person who is thoroughly undeserving, merely by virtue of seniority or merely because he has misbehaved a large number of times must become the Chief Justice?

**SHRI ATAL BIHARI VAJPAYEE:** He may be impeached.

**SHRI N. K. P. SALVE:** You will have to make him the Chief Justice first as of right. Whether it is impeachment or something else, afterwards a conflict will come when we force him to resign. In that case will that not be a violation of the Constitution as it has happened in the fifties when a seniormost judge who was found to be physically handicapped from performing the duties of a Chief Justice was forced to quit. Surely, with great respect to Shri Atalji, I say that we will have to oppose this most impractical provision that by virtue of seniority a judge should be appointed as the Chief Justice of the Supreme Court. This sort of provision can never work fairly, properly and justly.

श्री एल० ए० शमीम : वीटर घव आप

**MR. CHAIRMAN:** Mr. Shamim you are nobody to say this.

श्री नरेन्द्र कुमार शाल्वे : यह इनकी बच्चों जैसा बर्ताव करने की आदत है । मालूम नहीं इन्होंने कांस्टीट्यूशन कितना पढ़ी ए से जेड तक ।

He has specialised in misbehaving. Let him make a name in that. But let him not carry on like this. You have rightly rebuked him.

**MR. CHAIRMAN:** This is not proper, Mr. Shamim. Don't behave like this. After all this is Parliament. (*Interruptions*).

**SHRI N. K. P. SALVE:** Let my learned friend, Shri Pilo Mody who is brilliant only when he is silent listen to me. Otherwise, if he starts speaking on the Constitution, he may expose his ignorance. So, be patient and listen to me. You may not agree with me. I may tell you one thing that I am always reasonable. This sort of provision will completely cut the hands of the Government and a person who is undeserving will be forced to become the Chief Justice by virtue of the fact that he has

been, for a number of years, working as a Judge in the Supreme Court.

My last point is this. Once again let it be reiterated clearly that let not the Opposition Members be under the erroneous and wrong impression that the supersession of judges is just to serve any private interest of our party or to aggrandise the interest of any Minister or Prime Minister. This has no political angle. We shall take care of ourselves at the polls and we do not want the help of the judges or justices for that. Whatever we have done in superceding the three judges is because we are interested in ensuring that we do discharge our obligations and the mandate with which we have been entrusted by the people and work within the framework of the Constitution. But if it is necessary for us the Constitution shall be amended but only to move in the right direction to implement the will of the masses and the people of our country.

**THE MINISTER OF PARLIAMENTARY AFFAIRS (SHRI K. RAGHU RAMAIAH):** May I just make a submission? This subject is a very important subject, and quite a good number of speakers are there who want to speak on this. I have consulted the leaders of the Opposition who are here and they have been good enough to agree that in view of this, the time for this Bill may be extended by one hour. That means that when we rise today at 6 p.m., we shall still have 40 minutes left over on the next occasion when Private Members' Bills would come up.

**SHRI MURASOLI MARAN (Madras South):** What about the other Bill?

**SHRI K. RAGHU RAMAIAH:** That will also come up.

**MR. CHAIRMAN:** I am in the hands of the House. If the House desires to extend the time, I have no objection.

**HON. MEMBERS:** Yes.

MR. CHAIRMAN: So, I extend the time by one hour. The House will adjourn today at 6 p.m., and the rest of the discussion will be carried over to the next day.

श्री एस० ए० शर्मा (श्रीनगर) :  
 अभी साल्वे साहब जब तकरीर कर रहे थे तो मैंने यह गुसताखी की थी और यह दरखास्त की थी कि अब आप तशरीफ रखिये। वजह यह नहीं थी कि मैं उन्हें रोकना चाहता था बल्कि मुझे ऐसा लग रहा था कि साल्वे साहब अपना मुकदमा अपने आप तबाह कर रहे हैं। इसलिए मैंने उन से यह कहा, कि अगर आप तशरीफ नहीं रखते तो आप के खिलाफ डिक्री हो जाएगी। उन्होंने इसको बुरा माना, इसके लिए मैं माफी का ख्वास्तगार हूँ।

तकरीर सुन कर मुझे इस बात का यकीन हो गया कि ऐसे लोगों के हाथ में सुप्रीम कोर्ट के चीफ जस्टिस का ही नहीं बल्कि तमाम जजों की तकरीर का अख्तियार नहीं होना चाहिये। इनकी तकरीर सुन कर बार-बार मैं समझने की कोशिश कर रहा था कि आखिर क्या दर्लाल उनके पास है क्या लाजिम है, क्या राशनल हो सकता है कि सीनियारिटी के उमूल को तर्क करके अपनी मर्जी के जज को सुप्रीम कोर्ट का चीफ जस्टिस बनाया जाए। यह मेरी समझ में नहीं आया। सवाल यह है कि साल्वे साहब या और कोई मੈम्बर जो हाउस में हैं वे क्यों हैं। इसलिए कि बाकायदा एक कानून के तहत इलैकशन हुआ, प्रिंसाइडिंग आफिसर मुकर्रर हुआ, लोगों को वोट डालने के लिए कहा गया, अगर एक वोट भी ज्यादा आया तो मੈम्बर यहां के लिए चुना गया चाहे वह दूसरा आदमी कितना ही काबिल क्यों न हो, दयानतदार क्यों न हो, अगर उसके पास वोटों की एक मुकर्रर तादाद नहीं है तो वह इस एबान में नहीं आ सकता। इसके माने हैं कि यहां एबान में आने के लिए भी एक कानून एक सिस्टम एक इंस्टीट्यूशन कायम किया गया। बाज औकात सिर्फ कानून का अहतराम करने से ही कानून का सही अहतराम नहीं हो सकता। इस वक्त अमरीका के सदर निक्सन हर

मसले पर अपनी हर मुश्किल और उलझन के लिए कानून का और आईन का सहारा ले रहे हैं उन से कहा गया कि टेप सरेंडर करें उन्होंने कहा कि कान्फिडेंशैलेटी ग्राफ दी प्रेजिडेंट, उन से कहा गया कि आप वाटर गेट कमेटी के सामने आएँ, उस में भी कानून का सहारा लेते हैं। इसी तरह से सुपरटैशन में भी हुकूमत ने और हुकूमत की तरफ से बोलने वालों ने कानून और आईन का सहारा लिया है।

सवाल यह है कि शबहा क्यों पैदा हुआ। सब से पहली बात यह है कि यह शबहा इसलिए पैदा हुआ कि जिन हानात में सीनियर मोर्ट जज को नजरंदाज किया गया वह मुशकूक थे, जिन लोगों ने किया उनकी अपनी किरदार मशकूक थी। अगर यह काम किसी ऐसी हुकूमत ने किया होता जिन पर हमारा विश्वास होता तो यकीनन इतना हल्ला नहीं होता। यह इसलिए हुआ कि एक खास जजमेंट के फौरन बाद जबकि ला कमिशन की सिफारिशें पंद्रह साल पहले की थीं, खास एक मुकदमे में खास एक जज के सिलसिले में इस कानून का इस्तेमाल हुआ। मैंने उस वक्त भी यह बात कही थी और आज भी यह बात कहता हूँ। आप ने इस वक्त यह दलील दी कि सुप्रीम कोर्ट के कुछ जजेज कन्जर्वेटिव हैं और कुछ जजेज प्रोग्रेसिव हैं, इस लिये प्रोग्रेसिव जज को सुप्रीम कोर्ट का चीफ जस्टिस होना चाहिये। सब से पहले तो मुझे इन लोगों के ही प्रोग्रेसिव होने पर शक है, ये कौन से इन्कलाबी हैं, कौन से रिवाल्व्यूशनरी हैं जो बाया सुप्रीम कोर्ट, बाया सुप्रीम कोर्ट चीफ जस्टिस इन्कलाब लाना चाहते हैं। खुद इन का प्रोग्रेसिव होना मशकूक है। इन से ज्यादा प्रोग्रेसिव तो इस साइड में बैठते हैं। वे कहते हैं कि ये बिरला, टाटा के ठेकेदार हैं, उन को खुद इन की नीयत पर शक है। फिर ये लोग कैसे दावा कर सकते

हैं कि हम ज्यादा प्रोग्रेसिव हैं, हम एक्वाइन्ट करेंगे।

दूबरी बात—जब यह कहा जाता है कि इस वक्त सुप्रीम कोर्ट के कुछ जजज प्रोग्रेसिव हैं और कुछ रिट्रोग्रेसिव हैं तो उस वक्त क्या होगा जब ब्रदातल के सारे जजज प्रोग्रेसिव कहलायेंगे। जैसे उस वक्त एक आदमी को सुप्रीम कोर्ट का चीफ़ जस्टिस बनाना था, तो प्राइम मिनिस्टर, गोखले साहब और पोलिटीकल अफेयर्ज कमिटी ने फैसला किया कि फलां जज बड़ा प्रोग्रेसिव है और उसको एक्वाइन्ट कर दिया गया, लेकिन जब सारे जजज प्रोग्रेसिव होंगे, उस वक्त कौन सा क्राइटेरियन इस्तेमाल किया जायेगा ? क्या उस वक्त सीनियारिटी का ख्याल किया जाएगा ? और उस वक्त सीनियारिटी का ख्याल किया जायेगा तो उस वक्त कौन सा सिनियारिटी के सांप ने काटा होगा उन वक्त जो भी आदमी प्राइम मिनिस्टर की पसन्द होगा, कानून मंत्री को पसन्द होगा, क्यों पसन्द होगा—उस की अलग वजूहात हो सकती है—उस को बना दिया जायेगा। इस लिये मैं यह अर्ज करना चाहता हूँ कि आप एक सिस्टम को तबाह कर रहे हैं।

मेरी राय साहब से मुलाकात नहीं है—हो सकता है कि बहुत अच्छे आदमी हों। लेकिन सवाल आदमी का नहीं है, सवाल इंस्टीचूशन का है, सिस्टम का है। हम इस कन्ट्री में एक सिस्टम को, एक इंस्टीचूशन को परंपाचुट करना चाहते हैं। जैसा इन्होंने कहा कि वह सिस्टम खतरे में पड़ गया था, मुझे खतरा इस वक्त नजर नहीं आ रहा है, इस वक्त राय साहब अच्छे आदमी होंगे, लेकिन कल को यह हथियार मेरे दोस्त वाजपेयी जी के हाथ में चला जाय, तो वे भी यही मिसाल देंगे जो आज श्रीमती इन्दिरा गांधी ने दी है और वाजपेयी जी किसी आर० ए० ए० के माननेवाले को सुप्रीम कोर्ट का जज बना देंगे और कहेंगे कि मेरे नुक्ते-नजर में वह बड़ा प्रोग्रेसिव है—

Excepting Pilloo Mody, everybody is trading in progressivism.

SHRI ATAL BIHARI VAJPAYEE: He is the real progressive.

SHRI PILOO MODY (Godhra): I am grateful for the exception.

SHRI S. A. SHAMIM: Yes, he must be given credit at least for his follies.

सवाल यह है कि आपने इस इंस्टीचूशन को डस्ट्रूय कर के यह खतरनाक हथियार खतरनाक आदमी के हाथ में दिया है।

अभी जब मैं तकरीर सुन रहा था तो सालूम यह हो रहा था कि बाजार में कोई डाक्टर दवाई बेच रहा है, अपनी दवा की तारीफ़ और गुण गा रहा है। आप कहते हैं कि हम गरीबी को हटाना चाहते हैं, हम इन्फ्लाय लाना चाहते हैं। मुझ को घताइये—बैंकों का नैशनलाइजेशन हुआ, प्रीवी पर्स का मामला आया उस को सारे सदन ने सपोर्ट किया, आप ने गरीबी हटाने के सिलसिले में जो प्रोग्राम हमारे सामने रखा हम ने उस को भी माना—अब इस बात की एक साल हो रहा है, बतलाइये इस दौरान राय साहब ने कौन सा तीर मारा, कौन सी गरीबी खत्म की। आज वाजपेयी जी मजबूर हो कर कहने लगे—हमारी पुरानी गरीबी ही हम को वापस। दा। . . . .

श्री भूषे चन्व बागा (पाली) : सभापति महोदय, किमी मेम्बर के खिलाफ यह कहना कि दवा बेचता हुआ नजर आ रहा है—क्या यह उस मेम्बर पर एस्पेशन नहीं है ? एक मेम्बर दवा बेच रहा है—कुछ तो सही भाषा में बोलना चाहिये।

श्री एस० ए० शमीम : डागा साहब, आप बैठ जाइये, मैं आप को जवाब दूंगा।

**सभापति महोदय :** शमीम साहब, एक बात सुनिये। यह बात हम को भी अखरती है। एक दूसरे के लिये आदर होना चाहिये। आप के लिये उन को रेस्पेक्ट होनी चाहिये और इन के लिये आप को रेस्पेक्ट होनी चाहिये।

**श्री अटल बिहारी वाजपेयी :** सभापति जी, आप को याद होगा—एक बार प्रधान मंत्री जी ने मेरे लिये कहा था कि मैं ऐसा भाषण करता हूँ। जैसा रामलीला प्रऊड में इस में क्या फर्क है—आप दोनों बातों को कम्पेअर कीजिये। इस में कोई आपत्ति-जनक बात उन्होंने नहीं कही है।

**श्री मूल चन्द डागा :** इन्होंने कहा है कि दवा बैच रहे हैं।

**SHRI PILOO MODY:** I do not think he said anything objectionable.

**श्री एस० ए० झबीम :** मेरी समझ में नहीं आता—क्या दवाई बैचना कोई कंटेम्प्युअस एक्ट है। यहां बाकायदा लोग दवा बैचने का लाइसेंस ले लेते हैं, कभी किसी को पुलिस ने नहीं पूछा—“दवा क्यों बैचते हो।” मैं तो सिर्फ मीडिया स्प्रीच को एक्सप्लेन कर रहा था। जो दवा बैचते हैं वे इस किस्म की तारीफें कर के लोगों को जज्बालत उभारते हैं। वह यह सोचने का मौका ही नहीं देते हैं कि वह दवाई उन के हक में है भी या नहीं।

It was paying a compliment; I do not know why Dagaji has misunderstood it.

मैं अर्ज कर रहा था कि सुप्रीम कोर्ट के जज किस तारीख से रिट्रोप्रैसिव और कन्जर्वेटिव हो गये—यह साबल मैंने पहले भी पूछा था और आज भी पूछता हूँ? इन सुप्रीम कोर्ट के जजों को सुप्रीम कोर्ट तक लेजाने की जिम्मेदारी किस की थी। जज बनाने के पहले आप ने उन के बगल में और मुंह में थर्मामीटर रखा था कि ये

प्रोप्रैसिव टेम्परेचर के हैं और ये रिट्रोप्रैसिव टेम्परेचर के हैं। आप ने जज बनाया, चुन-चुन कर उन को हाई-कोर्ट से उठाया और इस कुर्सी पर पढ़वाया। 14 वर्षों से सुन रहे थे कि बड़े शान्दार जज हैं, उन के जजमेन्ट का बड़ा अहतराम होता है, कितना क्रेडिट उन को दिया जाता रहा है, हमारी जुर्मानियारी कितनी इण्डोपेन्डेन्ट है—लेकिन किस तारीख से उन जजों का पारा उतर गया, किस तारीख से शक हो गया कि वे रिट्रोप्रैसिव हो गये—यह पता नहीं है।

दूसरी बात यह है—इन को जज बनाने की जिम्मेदारी किस पर थी, मेरे पिता जी पर थी या आप के पिताजी पर थी। जज आप ने बनाया और अपने सिस्टम में उन को इज्जत दी तो आज उन की पगड़ी को क्यों छीन रहे हैं? वह भी एक इन्सान हैं, उन में कमजोरी भी हो सकती है, अब आप ने जिस को जज बनाया है क्या वह आदमी नहीं है? क्यों उन को इर्इ-क्लीन किया है, उन के जहन को इर्इ-क्लीन किया है, अब उन में कोई कमजोरी नहीं होगी?

चैरपमन साहब, अभी ता सिर्फ एक ही जज बदला है, लेकिन सुप्रीम कोर्ट में चीफ् जस्टिस के अलावा बाकी जो तेरह जज हैं उन के बारे में आप का क्या ख्याल है। इस के यह मायने हैं कि अभी तक सुप्रीम कोर्ट में कन्जर्वेटिव, जज, बैक-वर्ड-लुकिंग जज हैं, ये, लेकिन अब बड़े इन्कलाबी जज आ गये हैं और बड़ा भारी इन्कलाब करने वाले हैं। इन 13 जजों के बारे में आप क्या सोच रहे हैं? क्या इस का यह मतलब है कि जब तक इन में से एक-एक जज रिटायर न हो जाय तबतक इस मुल्क की जनता मुंतजिर बैठेगी, कब ये हटेंगे ताकि फावर्ड-लुकिंग लेजिस्लेशन पास हों।

आप के पास संविधान को तबदील करने के लिये तमाम अख्तियारत हैं। आप ने बहुत बार संविधान को तबदाल किया है—आप एक बार नहीं पचास बार, बल्कि 150 बार तरसीम कीजिये। यह जजमेंट अगर हमें सूट नहीं करता है या इन के अजमेंट प्रोप्रेसिव नहीं हैं तो अमेण्डमेंटस लाइये। आप ने ऐसा किया भी है—वात-वात पर किया है, अब क्या वजह है कि इतनी बड़ी इस्टीमेशन को इस्ट्राय कर रहे हैं। यह हमारी बदकिस्मती है कि इस बार सुप्रीम कोर्ट के चीफ जस्टिस के एम्पाइन्टमेंट पर सारे मुल्क में सुप्रीम कोर्ट के किरदार की तनकोद हुई, उन के लिये बैकवर्ड लुकिंग और कन्जर्वेटिव अल्फाका का इस्तेमाल हुआ। उसके बाद यहां पर मरहूम कुमारगलम साहब ने ऐसी बातों का इजहार किया जिन से मालूम होता था कि सारे-के-सारे जजैज निकम्मे हैं। जिस का नतीजा यह हुआ कि जूडीशियरी का सारे मुल्क में जो प्रेस्टिज था वह गिर गया, जूडीशियरी के विकास को खाक में मिला दिया। आज तक किसी को इन की तरफ उंगली उठाने की हिम्मत नहीं होती थी, मैं खुद भी उन के खिलाफ कुछ कहते हुए डरता था—क्योंकि उस में कन्टेम्प्ट आफ कोर्ट की बात आ जाती थी। लेकिन जब प्राइम मिनिस्टर और उनके साथियों ने, उन के चमकों ने ही कहना शुरू कर दिया तो उस का आनेवाले जमाने में क्या अन्जाम होगा। इस लिये आप ने चीफ जस्टिस की एम्पाइन्टमेंट ही नहीं की है, बल्कि सारे कन्ट्री को डिस्प्लाइन्ट किया है। मैं यह बात इस लिये कहता हूँ—अक्सर देहात में जब किसी के साथ ज्यादती होती थी, उस के साथ अन्याय होता था, तो वह कहता था कि मैं सुप्रीम कोर्ट तक जाऊंगा, तुम से सुप्रीम कोर्ट तक जा कर लड़ूंगा, इन्साफ हासिल करूंगा, लेकिन आज उसी देहाती से कहा गया है कि तुम जिस सुप्रीम कोर्ट को समझते थे कि इन्साफ का बड़ा मन्दिर है—वह तो नाइन्साफो का देन है, दूसरे मुल्कों में स्मर्गलिंग करने का अड्डा है। यह आपने बताया कि अब सुप्रीम कोर्ट से लोगों

का विश्वास उठ जाये। उसके पहले खयाल था कि कबो कोई ज्यादती करेंगे तो सुप्रीम कोर्ट के पास जायेंगे, आपने कहा सुप्रीम कोर्ट के पास मत जाइये, पार्लमेंट सुप्रीम है लेकिन पार्लमेंट का सुप्रासेंस किसी मैनर में, किसी मंथड में एक्सप्रेस होगी या जो भी कुछ आप चाहें वह हो सकता है? मेरी गुजारिश है कि मैं सीनियर-मोस्ट के असूल पर ज़िद नहीं करता लेकिन चूँकि मुझे अपने हुकमरानों की नियत, उनके चाल-चलन पर शुभा है, उनके करैक्टर पर शुभा है इसलिए मैं समझता हूँ कोई ऐसा तरीका पैदा होना चाहिए जिससे कि कम से कम इस बात की जमानत हो कि एग्जीक्यूटिव को वक्तन-फवक्तन अपना मर्जी का जज बिठाने की नीयत न आये।

Democracy is not the best system but which is the best system that one can think of. Therefore, seniority is not the best system. But can you think of a better system, foolproof system?

जो इस सारे सिस्टम को एक शरुस या दूसरे शरुस की मर्जी पर न छोड़ दे। आपने सुप्रीम कोर्ट के साथ अन्याय किया है। उसके मुतालिक और भी बहुत सी बातें कही गई हैं लेकिन मैं आखीर में इकबाल का ही शेर पड़ना चाहता हूँ क्योंकि साल्वे साहब ने एकबाल के शेर का गलत इस्तेमाल किया और मैं उसका सही इस्तेमाल करना चाहता हूँ :

खुदाबन्दो यह तेरे सादा दिल बन्दे किधर जायें।

कि दरवेशी भी ऐयारी है सुल्तानी भी ऐयारी।

अभी हम सोचते थे सुप्रीम कोर्ट के दरवेश जो हैं वह आपके हैं, सुल्तानों ने फौजला दिया उनकी नीयत भी ठीक नहीं है, उनकी नीयत आपने कहा ठीक नहीं है, आपके वारे में हम जानते हैं कि आपकी नीयत ठीक नहीं है और हम सोचते हैं इस मुल्क का क्या होगा, खुदा ही बचाये इस मुल्क की।

شری ایس۔ اے۔ شمیم (سرگرمگر)۔

ابھی سالوے صاحب جب تقریر کر رہے تھے تو میں نے یہ گستاخی نہیں کی تھی اور یہ درخواست کی تھی کہ اب آپ تشریف رکھئے۔ وجہ یہ نہیں تھی کہ میں انہیں روکنا چاہتا تھا بلکہ مجھے ایسا لگ رہا تھا کہ سالوے صاحب اپنا مقدمہ اپنے آپ تباہ کر رہے ہیں۔ اس لئے میں نے اسے یہ کہا کہ اگر آپ تشریف نہیں رکھتے تو آپ کے خلاف تگڑی ہو جائیگی۔ انہوں نے اس کو برا سناہ اس کے لئے معافی کی خواستگار ہوں۔

تقریر سن کر مجھے اس بات کا یقین ہو گیا کہ ایسے لوگوں کے ہاتھ میں سپریم کورٹ کے چوہے جسٹس کا ہی نہیں بلکہ تمام ججز کی تقرری کا اختیار نہیں ہونا چاہئے۔ ان کی تقریر سن کر بار بار میں سمجھ کر گوشہ کر رہا تھا کہ آخر کہا دلیل ان کے پاس ہے کیا لٹجک ہے کیا راشنل ہو سکتا ہے کہ سینہاڑی کے اصول کو ترک کر کے اپنی مرضی کے جج کر سپریم کورٹ کا چوہے جسٹس بنایا جائے۔ یہ ضروری سمجھ میں نہیں آیا۔ سوال یہ ہے کہ سالوے صاحب یا اور کوئی ممبر جو ہاؤس میں ہیں وہ کہوں ہیں۔ اس لئے کہ باقاعدہ ایک قانون کے تحت الیکشن ہوا ہے پرووائڈنگ آفیسر مقرر ہوا ہے لوگوں کو

روٹ ڈالنے کے لئے کہا گیا اگر ایک روٹ بھی زیادہ آیا تو ممبر یہاں کے لئے چلنا گیا چاہے وہ دوسرا آدمی کتنا ہی قابل کہوں نہ ہو، دیانتدار کہوں نہ ہو، اگر اس نے پاس ووٹوں کی ایک مقرر تعداد نہیں ہے تو وہ اس ایوان میں نہیں آسکتا۔ اس کے معنی ہیں کہ یہاں ایوان میں آنے کے لئے بھی ایک قانون، ایک سسٹم ایک انسٹیٹیوشن قائم کیا گیا۔ بعض اوقات صرف قانون کا احترام کرنے سے ہی قانون کا صحیح احترام نہیں ہو سکتا۔ اس وقت امریکہ کے انڈر ٹکسن ہر مسئلہ پر اپنی ہر مشکل اور الجھن کے لئے قانون کا اور انہوں کا سہارا لیرہے ہوں انہیں کہا کہ ٹیپ سرورڈ کریں۔ انہوں نے کہا کہ کونسل ڈیلٹی آف دی پریزیڈنٹ، ان سے کہا گیا کہ آپ واٹرگٹ کمیٹی کے سامنے آئیں، اس میں بھی قانون کا سہارا لیتے ہیں۔ اس طرح سے سپریمیشن میں بھی حکومت نے اور حکومت کی طرف سے بولنے والوں کے قانون اور انہیں کا سہارا لیا ہے۔

سوال یہ ہے کہ یہ شبہ کہوں پیدا ہوا۔ سب سے پہلی بات یہ ہے کہ یہ شبہ اس لئے پیدا ہوا کہ جن حالات میں سیلور مونسٹ جج کو نظر انداز کیا گیا۔ وہ مشکوک تھے۔ جن لوگوں نے کہا۔ ان کی اپنی کردار مشکوک تھی۔ اگر یہ کام کسی ایسی حکومت



نے کیا ہونا جن پر ہمارا وشواہس ہوتا تو یقیناً اتنا ہلا نہیں ہوتا۔ یہ آس لئے ہوا یہ ایک خاص ججہولت کے فوراً بعد جب کہ لا کوشن کی سفارشیں 10 سال پہلے کی نہیں خاص ایک مقدمے میں۔ خاص ایک جج کے سلسلے میں اس قانون کا استعمال ہوا۔ میں نے اس وقت بھی یہ بات کہی تھی اور آج بھی یہ بات کہتا ہوں۔ آپ نے اس وقت یہ دلیل دی کہ سہریم کورٹ نے کچھ جج کلرز ریٹھو ہیں اور کچھ جج پروگریسیو ہیں۔ اس لئے پروگریسیو جج کو سہریم کورٹ کا جج جسٹس ہونا چاہیئے۔ سب سے پہلے تو مجھے ان لوگوں کے ہی پروگریسیو ہونے پر شک ہے۔ یہ کون سے انقلابی ہیں۔ کون سے ریوکوشاری ہو جو وایا سہریم کورٹ جج جسٹس انقلاب لانا چاہتے ہیں۔ خود ان کا پروگریسیو ہونا مشکوک ہے۔ ان سے زیادہ پروگریسیو تو اس سائڈ میں بیٹھتے ہیں۔ وہ کہتے ہیں کہ یہ بولا۔ تاٹا کے تھیکیدار ہیں۔ ان کو خود ان کی نہت پر شک ہے۔ پھر یہ لوگ کھسے دعویٰ کر سکتے ہیں کہ ہم زیادہ پروگریسیو ہیں۔ ہم اپونہلت کریں گے۔

دوسری بات۔ جب یہ کہا جانا ہے کہ اس وقت سہریم کورٹ کے کچھ جج پروگریسیو ہیں اور کچھ ریٹرو گریسیو ہیں تو اس وقت کہا ہوا

جب عدالت کے سارے جج پروگریسیو کہلائیں گے۔ جیسے اس وقت ایک آدمی کو جج جسٹس بلانا تھا تو پرائم منسٹر کو کہلے صاحب اور پالیسیل آفیسرز کمیٹی نے فیصلہ کیا کہ فلاں جب بڑا پروگریسیو ہے اور اس کو اپنا ہیڈ کر دیا گیا لیکن جب سارے جج پروگریسیو ہونگے تو اس وقت کونسا کرائیسٹین استعمال کیا جائیگا؟ کیا اس وقت سہلبرٹی کا خیال کیا جائیگا؟ اگر اس وقت سہلبرٹی کا خیال کیا جائیگا تو اس وقت کونسی سہلبرٹی کے سانپ نے کاٹا ہوگا۔ اس وقت جو بھی آدمی پرائم منسٹر کو پسند ہوگا۔ قانون سازی کو پسند ہوگا۔ کھوں پسند ہوگا۔ اس کی اگر وجوہات ہو سکتی ہیں۔ اس کو بنا دیا جائیگا۔ اس لئے میں یہ صرف کرنا چاہتا ہوں کہ آپ اس سسٹم کو تہا کر رہے ہیں۔

میری رائے صاحب سے ملاقات نہیں ہے۔ ہو سکتا ہے کہ بہت اچھے آدمی ہوں۔ لیکن سوال آدمی کا نہیں ہے سوال انسٹیٹیوشن کا ہے۔ سسٹم کا ہے۔ ہم اس کنگری میں بڑے سسٹم کو ایک انسٹیٹیوشن کو پریپیریٹ کرنا چاہتے ہیں۔ جیسا انہوں نے کہا۔ کہ یہ سسٹم خطرہ میں ہو گیا تھا۔ مجھے خطرہ اس وقت نظر نہیں آ رہا ہے۔ اس وقت رائے صاحب اس آدمی ہونگے۔

[شری ایس۔ اے۔ شمیم]

لیکن کل کو یہ ہتھیار مہرے دوست  
 واجہتی جی کے ہاتھ میں چلا جائے  
 تو وہ بھی یہی مثال دیکھے۔ جو آج  
 شریعتی انداز گاندھی نے دی ہے۔ اور  
 واجہتی جی کسی آر۔ ایس۔ ایس۔ کے  
 ماننے والے کو سپریم کورٹ کا جج بنا  
 دینگے۔ اور کھیلنے کے مہرے نقطہ  
 نظر میں وہ بڑا پروگریسر ہے۔

Excepting Pillo Mody, everybody is  
 trading in progressism.

SHRI ATAL BIHARI VAJPAYEE:  
 He is a real progressive.

SHRI PILLO MODY: I am grate-  
 ful for the exception.

SHRI S. A. SHAMIM: Yes, he  
 must be given credit at least for  
 this follis.

سوال یہ ہے کہ آپ نے اس  
 انسٹیٹیوشن کو ڈیسٹرائے کر کے یہ  
 خطرناک ہتھیار خطرناک تر آدمی کے  
 ہاتھ میں دیا ہے۔

ابھی جب میں تقریر سن رہا  
 تھا۔ تو معلوم یہ ہو رہا تھا کہ بازار  
 میں کوئی ڈاکٹر دوائی بیچ رہا ہے  
 اور ایلی دوا کی تعریف اور کن گارنٹیاں  
 ہے۔ آپ کہتے ہوں کہ ہم غریبی کو  
 ہٹانا چاہتے ہیں۔ ہم انقلاب لانا  
 چاہتے ہیں۔ مسکو بتائیں۔ بیلکوں  
 کا نیشنلائزیشن ہوا۔ غریبی پیرس کا  
 معاملہ آیا اس کو سارے سڈن نے  
 سوڈرٹ کیا۔ آپ نے غریب ہٹانے کے  
 جلسے میں جو پروگرام ہمارے سامنے

دکھا۔ ہم نے اسکو بھی مارا۔ اب اس  
 بات کو ایک سال ہو رہا ہے۔ بتلائیں  
 اس دوران رائے صاحب نے کونسا  
 تہر مارا، کونسی فریبی ختم کی۔  
 آج واجہتی جی مسجور ہو کر کہلے  
 لگے۔ ہداری برائی فریبی ہی ہم کو  
 واپس دے دو۔۔۔۔۔

श्री मूलचन्द्र डागा (पार्ली) : सभा-  
 पति महोदय, किसी मेंबर को खिलाफ यह  
 कहना कि दवा बेचता हुआ नजर आ रहा  
 है—क्या उस मेंबर पर एस.शन नहीं है ?  
 एक मेंबर दवा बेच रहा है—कुछ तो सही  
 भाषा में बोलना चाहिये ।

شری ایس۔ اے۔ شمیم۔ ڈاگا  
 صاحب آپ بولتے جاؤ۔ میں آپ  
 کو جواب دوں گا۔

सभापति महोदय : शमीम साहब,  
 एक बात सुनिये । यह बात हमकी भी अच-  
 रती है । एक दसरे के लिए आदर होना  
 चाहिये । आपके लिए उनको रेस्पेक्ट हानी  
 चाहिए और इनके लिए आपका रेस्पेक्ट  
 हानी चाहिये ।

श्री प्रदल बिहारी वाजपेयी : सभापति  
 जी, आपको याद होगा—एक बार प्रयाग  
 मंत्री जी ने मेरे लिए कहा था कि मैं ऐसा  
 भावग करता हूँ जैसा रामलीला का अण्ड  
 में करता हूँ । इसमें क्या फर्क है—आप  
 दोनों बागों की कपेअर कीजिए । इसमें  
 कोई अतिजनक बात उन्होंने नहीं कही  
 है ।

श्री मूलचन्द्र डागा : इन्होंने कहा है  
 कि दवा बेच रहे हैं ।

SHRI PILLO MODY: I do not think he said anything objectionable.

شری ایس۔ اے۔ - شمیم۔ مہری  
سچے میں نہیں آتا کیا دوائی  
بیچنا کوئی کیلکولیشن اس ایکٹ ہے  
یہاں باؤنڈڈ لوگ دوا بیچنے کا  
لائسنس لینے ہیں۔ کبھی کسی کو  
پولس نے نہیں پوچھا کہ دوا کیوں  
بیچتے ہو۔ میں تو صرف مود آف  
سپلیج کو ایکسپلین کر رہا تھا۔ جو  
دوا بیچنے میں وہ اس قسم کی  
تقریریں کر کے لوگوں کے جذبے ابھارتے  
ہیں۔ وہ یہ سوچنے کا موقع ہی  
نہیں دیتے ہیں کہ وہ دوائی ان کے  
حق میں ہے یا کہ نہیں۔

SHRI PILLO MODY: I do not think he said anything objectionable. I was paying a compliment; I do not know why Dagaji has misunderstood it.

میں عرض کر رہا تھا کہ سہریم  
کورٹ کے چیف جسٹس کی تاریخ اسے  
ریٹروگریڈ اور انسٹیٹیوٹ ہو گئے۔ یہ  
سوال میں نے پہلے بھی پوچھا تھا اور  
آج بھی پوچھا ہوں۔ ان سہریم  
کورٹ نے ججوں کو سہریم کورٹ  
تک لیجانے کی ذمہ داری کس کی  
تھی۔ جج بل نے کے پہلے آپ نے ان  
کے بغل میں اور مدہ میں تھوڑا  
سٹیڈ رکھا تھا کہ یہ پروگریڈ ٹیمپریٹری  
کے ہیں اور یہ ریٹروگریڈ ٹیمپریٹری  
کے ہیں۔ آپ نے جج بل یا۔ جن جن

کر ان کو ہائی کورٹ سے اٹھایا اور  
اس کرسی پر پہنچایا۔ ۱۴ برسوں  
سے سن رہے تھے کہ بڑے شاندار جج  
ہیں ان کے جج۔ ملٹ کا بڑا احترام  
ہوتا ہے۔ کتنا کریدت ان کو دیا جاتا  
رہا ہے۔ ہماری جیوڈیشری کئی  
انڈیپنڈنٹ ہے۔ لیکن کس تاریخ  
سے ان ججوں کا پارا اتر گیا۔ کس  
تاریخ سے شک ہو گیا کہ وہ ریٹروگریڈ  
ہو گئے ہیں پتہ نہیں ہے۔

دوسری بات یہ ہے ان کو جج  
بنانے کی ذمہ داری کس پر تھی۔  
مہرے پتا جی پر تھی یا آپ کے پتا جی  
پر تھی۔ جب آپ نے بتایا اور اچھے  
سسٹم میں ان کی عزت تھی تو آج  
ان کی پکڑی کو کیوں چھین رہے  
ہیں۔ وہ بھی ایک انسان ہیں۔  
ان میں کمزوری بھی ہو سکتی ہے۔  
اب آپ نے جس کو جج بنایا ہے۔  
کہا وہ آدمی نہیں ہے۔ کہوں ان  
کو ڈرائی کلین کیا۔ ان کے ذہن کو  
ڈرائی کلین کیا۔ اب ان میں کوئی  
کمزوری نہیں ہوئی

چیرمن صاحب۔ ابھی تو صرف  
ایک ہی جج بدلا ہے۔ لیکن سہریم  
کورٹ میں چیف جسٹس کے علاوہ  
باقی جو تھوڑے جج ہیں ان کے بارے  
میں آپ کا کیا خیال ہے۔ اس کے یہ  
معدی نہیں کہ ابھی تک سہریم کورٹ  
میں کمزوری جج، بیکورڈ لکنگ جج  
تھے، لیکن اب بڑے انقلابی جج آئے

[شرعی احس۔ اے۔ شہیم]

ہوں اور بوا بھاری انقلاب کرنے ولے  
ہوں۔ ان ۱۳ ججوں کے بارے میں  
آپ کہا سوچ رہے ہیں کیا اس کا  
یہ مطلب ہے کہ جب تک ان میں  
سے ایک ایک جج ریٹائر نہ ہو جائے  
تک اس ملک کی چلتا منظر  
بہتر ہوگی؟ کب یہ ہتھیارے تاکہ فارورڈ  
لنگ لیجسلیشن پاس ہوں۔

آپ کے پاس سمودھان تبدیل  
کرنے کے لئے تمام اختیارات ہیں۔ آپ  
نے بہت بار سمودھان کو تبدیل کیا  
ہے۔ آپ ایک بار نہیں پچاس بار  
بلکہ ۱۵۰ بار ترمیم کیجئے۔ یہ  
جسمیلٹ اگر ہمیں سوت نہیں کرتا  
ہے یا انکے جسمیلٹ پراگرسو نہیں  
ہیں تو اسمبلڈ مینٹس لہئے۔ آپ نے  
ایسا کیا بھی ہے۔ بات بات پر کیا  
ہے۔ اب کیا وجہ ہے کہ اتنی بڑی  
انسٹی ٹوشن کو دسترائے کر رہے ہوں۔  
یہ ہماری بدقسمتی ہے کہ اس بار  
سپریم کورٹ کے چیف جسٹس کے  
اپوائنٹمنٹ پر سارے ملک میں سپریم  
کورٹ کے کردار کی تلفیڈ ہوئی۔ انکے  
لئے بہرورڈ لنگ اور کلرز ریٹو الفاظ  
کا استعمال ہوا۔ اسکے بعد یہاں مرحوم  
کمار منگلم صاحب نے ایسی باتوں کا  
اظہار کیا جلسے سے معلوم ہوتا تھا کہ  
سارے کے سارے ججز نکلے ہوں۔ سکا  
نتیجہ یہ ہوا کہ جڈیوشری کا سارے  
ملک میں جو پریسٹیج تھا وہ گر گیا۔

جڈیوشری کے وقار کو خاک میں  
ملا دیا۔ اجتک کسی کو انکی طرف  
انکلی اٹھانے کی ہمت نہیں ہوتی  
تھی۔ میں خرد بھی انکے خلاف کچھ  
کہتے ہوئے ڈرتا تھا کیونکہ اس میں  
ڈیٹیمینٹ آف کورٹ کی بات آجاتی  
نہی۔ لیکن جب پرائم منسٹر اور ان  
کے ساتھیوں نے ان کے چمچوں نے ہی  
کہنا شروع کر دیا تو اس کے آنے والے  
زمانے میں کیا انجام ہوگا۔ اس لئے  
آپ نے چیف جسٹس کی اپائنٹمنٹ  
ہی نہیں کی ہے۔ بلکہ سارے ملک  
کو آس اپائنٹ کیا ہے۔ میں یہ  
بات اس لئے کہتا ہوں: انٹر دیہات  
میں جب کسی کے ساتھ زیادتی  
ہوتی تھی اس کے ساتھ انہائے  
ہوتا تھا تو وہ کہتا تھا کہ میں  
سپریم کورٹ تک جاؤنگا۔ تم سے سپریم  
کورٹ تک جا کر لڑونگا انصاف حاصل  
کرؤنگا۔ لیکن آج اسی دیہاتی سے  
کہا گیا ہے کہ تم جس سپریم کورٹ  
کو سمجھتے تھے کہ انصاف کا بوا  
مندر ہے۔ وہ تو ناانصافی دین ہے  
دوسرے ملکوں میں سنگل کرنے کا  
اڈا ہے۔ یہ آپ نے بتایا کہ اب  
سپریم کورٹ سے لڑگوں کا وشواہ  
اٹھ جائے اسکے پہلے خہال تھا کہ کبھی  
کوئی زیادتی کرینگے تر سپریم کورٹ  
کے پاس جائینگے آپ نے کہا سپریم  
کورٹ کے پاس مت جائوئے پارلیمنٹ  
سپریم ہے لیکن پارلیمنٹ کی  
سپریمسی کسی مندر میں کسی

میتا ہوا ہے اس لیے اس پر کسی بھی  
بھی کچھ آپ چاہیں وہ ہو سکتا ہے؟  
مہری گزارش ہے کہ میں سبھی  
موسم کے اصول پر ضد نہیں کرتا۔  
لیکن چونکہ مجھے اپنے حکمرانوں کی  
نہایت اُنکے چال چلن پر شبہ ہے ان  
کے کیریئر پر شبہ ہے اس لئے میں  
سمجھتا ہوں کہ اس کی ایسا طریقہ پیدا  
ہونا چاہیئے جس سے کہ کم سے کم  
اس بات کی ضمانت ہو کہ اڈیٹیوٹو  
کو وقتاً فوقتاً اپنی مرضی کا جج  
بنانے کی نہایت نہ آئے۔

Democracy is not the best system but  
which is the best system that one can  
think of. Therefore, seniority is not the  
best system. But can you think of a  
better system, foolproof system?

جو اس سارے سسٹم کو ایک شخص  
یا دوسرے شخص کی مرضی پر نہ  
چھوڑ دے۔ آپ نے سپریم کورٹ کے  
ساتھ انہیں کیا ہے۔ اس کے متعلق  
اور بھی بہت سی باتیں کہی گئی  
ہیں۔ لیکن میں آخر میں اقبال  
کا شعر پڑھنا چاہتا ہوں کہ  
سالوے صاحب نے اقبال کے شعر کا  
غلط استعمال کیا اور میں اس کا  
صحیح استعمال کرنا چاہتا ہوں:۔

خداوندہ یہ تھوڑے

سادہ دل ہلکے کدھر جائیں۔

کہ درویش بھی عیاری ہے

سلطانی بھی عیاری۔

ابھی ہم سوچتے تھے سپریم کورٹ کے  
درویش جو ہیں؛ سلطانوں نے فیصلہ  
دیا ان کی نہایت بھی تھیک نہیں ہے  
ان کی نہایت آپے کہا تھیک نہیں  
ہے؛ آپ کے بارے میں ہم جانتے ہیں  
کہ آپ کی نہایت تھیک نہیں ہے اور  
ہم سوچتے ہیں ملک کا کہا ہوگا۔  
خدا ہی بچائے اس ملک کو۔

SHRI JAGANNATH RAO (Chatra-  
pur): I rise to oppose the Bill moved by  
Shri Atal Bihari Vajpayee. This Bill  
seeks to limit the powers of the President  
in appointing the Chief Justice of the  
Supreme Court to the senior-most judge  
of the Supreme Court. The power of  
the President to appoint Chief Justice of  
the Supreme Court is unlimited in the  
sense that he can make the choice from  
a wide circle. He can take eminent  
persons from High Court or the Chief  
Justice of the High Court or any judge  
or even a practising lawyer. In 1950 the  
Advocate General of Bihar was elevated  
to the post of the Chief Justice of the  
Patna High Court. The powers given  
to the President under the Constitution  
are so wide that he can make a good  
and proper choice in the appointment of  
the Chief Justice of the Supreme Court.  
To limit the powers of the President by  
amending article 124 and to say that  
he can appoint only the senior-most  
person would be doing harm to ourselves.  
Seniority is not a principle or the qual-  
ification. When a judge is appointed  
eminent persons who are at the top of  
the legal profession are chosen. It may  
be that the mere fact that one person is  
appointed two days earlier and, therefore,  
becomes a senior and in view of that  
should be chosen as Chief Justice whereas  
the other persons who are equally com-  
petent and equally efficient and who have  
long years to serve on the Bench should  
be ignored is not the principle underlying  
the Constitution. If we accept this  
amendment we would be putting the clock  
back.

[Shri Jagannath Rao]

The very object of the Bill, with due respect to my friend, is not laudable. The Constitution should be dynamic. We have amended the Constitution 31 times. The 32 amendment is before the House. It does not mean that we can make it retrograde. We should move with times. **Who is the person qualified to be the judge of the Supreme Court or Chief Justice?** I would even have Shamim if he qualifies these conditions.

SHRI S. A. SHAMIM: I will not accept, you will supersede me. What is the fun?

SHRI JAGANNATH RAO: A judge takes the oath by the Constitution before entering office. We, Members of Parliament, take such oath; the Ministers take oath.

SHRI PILOO MODY: None of you observe it.

SHRI JAGANNATH RAO: When somebody takes the oath, he should imbibe the socio-economic philosophy embodied in the Constitution. What is the philosophy? The preamble and the directive principles illustrate the socio-economic philosophy of the Constitution. More so article 39(a) and (b). Though the directive principles are directive and not fundamental, they are nevertheless fundamental in the governance of the country. Whenever a legislation is passed or some executive action taken, these principles should be given effect to. If a legislation is passed and the judges go on striking it down on the ground that it offends the fundamental rights in Part III, the country cannot go ahead. The fundamental rights of the poor, of the many, are embedded in Part IV, i.e. directive principles. A judge who thinks of the fundamental rights of a few and sits in an ivory tower, not seeing the aspirations and urges of the people should not adorn the Bench of the Supreme Court or High Courts, much less the coveted post of Chief Justice.

How do we know whether a person is suitable to be appointed as Chief Justice of India? Well, his judgments and utter-

ances in public reveal his mind, his thinking and his philosophy, whether he is progressive and moving with the times or he only confines himself to the law books he studied in college and the Constitution as framed in 1950, without taking into account the moving events and the aspirations of the people. Therefore, seniority is not the principle in itself. Maybe the seniormost judge if otherwise suitable also can be appointed. It is not that the seniormost judge should not be appointed.

I do not see any reason why article 124 should be amended simply because three judges were superseded. It is a coincidence. It so happened that the appointment had to be done on the next day after the judgement was delivered. Therefore, it gave raise to suspicious and doubts. The Law Commission has recommended that the Chief Justice should have five years of service left. The seniormost judge may have just one month to go. There are so many other considerations which should weigh with the President. If we limit the appointment to only the seniormost judge, I am afraid we would be putting the clock back. It is not correct to say that judges who have been appointed are stooges of the Government. Even after Justice Ray was appointed as Chief Justice, so many judgements have been delivered by the Supreme Court and many of them have gone against the government also. For instance, section 17 of MISA was struck down. So many detenus in West Bengal and other places were released. Therefore, to say that judges are appointed only to suit the convenience of government is not correct.

Mr. Limaya suggested that a committee of five consisting of the retiring Chief Justice, some eminent men of the Bar Council etc. should consult amongst themselves and give a panel of names to be approved by Parliament. It is a novel procedure. Our Constitution does not envisage this. The Constitution envisages that the executives advises the President and the President makes the appointment by warrant. That power should be left to

the President. Let it not be misunderstood that Government always wants to appoint as judge a person who toes the line of the Government. So many legislations have been struck down by the courts and Parliament as the sovereign supreme body can pass laws to correct the deficiencies pointed out in the judgment and get over the difficulties created by the judgment. We have done so in the past.

That power is still there. Therefore, Parliament is Supreme. The sovereignty of Parliament is there. The Supreme Court and the High Courts act as the guardian of the Constitution. They look into the legislations passed and strike down particular provisions of the Acts which in their wisdom contravene the provisions of the Constitution. I have certainly no grouse against them for doing that. I have nothing against the Judges who struck down, for example, the Bank Nationalisation Act or the enactment relating to abolition of privy purses. Yet, the Parliament has the right to pass suitable legislation, remedying the defects of the earlier legislation, and we did so.

Here I would again emphasize that seniority is not a qualification for appointment as Chief Justice. The appointment to that post will be of a person who is the most suitable man, an independent man, a man who is known for his honesty, integrity and wisdom, in the judgment of the Government. When such a judge is appointed to that high post, he would naturally like to prove himself to be independent, to be strong and honest because he wants to build an image for himself. He does not want to be a stooge of the Government which he will be if he always supports the actions of the Government. The principle that the senior-most judge should be appointed the Chief Justice is not a principle which should be embodied in the Constitution. So, I oppose this Bill.

**SHRI P. G. MAVALANKAR** (Ahmedabad): Mr. Chairman, Sir, at the outset I would like to congratulate my esteemed friend, Shri Vajpayee, for bringing this

Bill before the House. I congratulate him all the more because he anticipated way back in 1971 what will happen in 1972-73. It somehow his Bill had been brought into the statute book earlier, probably the later events would not have taken place. But after having congratulated Shri Vajpayee for bringing this Bill and for initiating this discussion, I would like to say that the remedy that he has given is not going to solve the problem which he has posed.

Before I come to the general discussion of this Bill, may I say one more thing at the outset? I am sorry to find that there is considerable political heat introduced into the arguments on both sides of the House, and that too, quite unnecessarily. I am not suggesting that any question regarding judicial matters can wholly be taken out of the political considerations or considerations of public life. But we should certainly consider such an important issue in a non-partisan manner as possible. What I am trying to suggest is, while political interests are bound to come in, why should party politics be injected into the discussion?

If you look at the 'Statement of Objects and Reasons', as given by Shri Vajpayee it is well-worded and it says very briefly and neatly what he wants to convey. He says that his object is "to ensure the independence and impartiality of the Supreme Court of India". I do not think anybody disputes that. But then he says that Government has "unlimited power in appointment of the Chief Justice of India". With all respect to my esteemed friend, I want to know whether this premise is wholly correct. If this premise is wholly correct and if under the Constitution the Government has unlimited power in the appointment of the Chief Justice, then of course the rest of his arguments automatically follow. But I am not so sure whether it is right to say that even according to the Constitution and according to our constitutional conventions and practices established during in the last 20 years and more, Government have necessarily got or used unlimited powers. A written Constitution is bound to say something which on paper sometimes may

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sound very dangerous, or over-powering or overwhelming or very comprehensive. But this is limited, as years pass by, as decades pass by, by a variety of constitutional practices and conventions that are built around the basic democratic values and principles. Therefore, I am not so sure that my esteemed friend, Shri Vajpayee, is quite right when he says that Government have an unlimited power in the appointment of the Chief Justice. If the Government has not got an unlimited power, then his next argument, his next premise, becomes somewhat weak.

He says:

"This power....

—which means it is an unlimited power—  
 "...may undermine....

—of course, he says, "may"—

"...the independence and impartiality of the highest organ of the judiciary....

—and, therefore, he says:

"...that only the senior-most Judge of the Supreme Court becomes the Chief Justice..."

On this point, "that only the senior most Judge of the Supreme Court becomes the Chief Justice", I have my own difficulties and doubts. To say that merely because he is the senior most Judge and, therefore he must automatically become the Chief Justice of the Supreme Court, would not hold good for all times and for all occasions.

Having said this, I can say that Shri Vajpayee's objectives and reasons, some of them laudable and some others tempting, taken them as a whole do not give us a correct picture of the whole situation in the democratic set-up of our country as it exists today. Therefore, I find, it is very difficult for a person like me to accept Shri Vajpayee's Bill as it is.

I am sure, even if he does not withdraw his Bill, it is not going to be passed because, unfortunately, we on this side have not got the majority. I have been

seeing in the last one year that even on matters which come up under Private Members' Bills and Resolutions, where a party whip need not prevail, the party whip prevails. That is why I am saying that this Bill is not going to be passed even though Shri Vajpayee does not withdraw it.

Now, I go to the next point that you cannot completely divorce political discussion from discussion on judiciary. After all, today, politics is very much a part and parcel of every walk or life, including judiciary. But because it is impossible to separate the two entirely, namely, politics and judiciary, it does not mean that judicial matters need necessarily be got mixed up with party warfares, party struggles and party interests. What I want to submit is that party warfare must not be there in matters relating to judicial affairs and that political considerations alone must not be there when you take judicial matters into consideration.

We all know, as is self-evident, that the place of judiciary in any scheme of governmental machinery is not only important but it is very fundamental.

One can say that the work of Judges, is particularly, at the highest level in the Supreme Court, in our country, is more profound than prominent. What they do, they do not do it in the limelight of publicity; what they do, they do not do it in glaring atmosphere with everybody watching them. But, at the same time, what they do affects the smallest man in the farthest end of the country because he is concerned with the basic tenets and philosophy of Indian Constitution.

It is also agreed that such a judiciary, specially of a country which has got a written Constitution where the judiciary has a particularly pivotal role to play, a crucial role to play, must have traditions of independence, impartiality and integrity. Now, in last 20 years and odd, these traditions were, one can say, by and large well-established. It is only during the last couple of years because of the interference of party politics into judicial matters, that people's faith in these three traditions of independence, impartiality and integrity



has been impaired. That is why this question has cropped up in the proportion in which it has.

What is important is that an ordinary citizen of the country is not bothered about as to whether the Chief Justice of the Supreme Court appointed in manner "A" or in manner "B". What he is bothered about is whether the justice that he is going to get....

**SHRI P. M. MEHTA (Bhavnagar):** On a point of order. The time allotted to this Bill will be over by 5.40..

**SHRI K. RAGHU RAMAIEH:** That has been extended by the House.

**SHRI P. M. MEHTA:** I was not aware of it.

**SHRI P. G. MAVALANKAR:** As I was saying, the common man is interested in seeing that he gets justice, that there is fairplay, that democratic values and temper are not only respected but practised increasingly, that democratic habits and behaviour get strengthened in the soil of Indian democracy. I also freely concede the point that, in a country like ours, and indeed in a world like ours, we are all living in an atmosphere of modernism, socialism and secularism, and each one of us, therefore, including the judges, of course, must be in a position, and must be willing, to absorb this atmosphere. Having said this, when I come to the question of Supreme Court's composition and powers and significance, as laid down by our Constitution, I want to suggest this. Ours is a written Constitution, and we have followed to an extent the American system, the American model. We have also established in our country a parliamentary system of Government and have tried to adopt certain conventions and certain practices that obtain in the British Parliamentary democracy. In both these countries or, in general in the western 'democratic' world, traditions and practices of judiciary and the institution of judiciary are well established. In a country like America, for example, appointments are made by the President. Late Shri Mohan Kumaramangalam was at pains in telling this

House some months ago, before his tragic death, in detail as to how many Presidents in the United States, in what manner, tried to make their own appointments for the U. S. Supreme Court. But the point to be noted is that, in spite of the fact that in a country like America appointments are made by the executive authority, there are other pressures and other restraints of public opinion, of the freedom of press, of the enlightened academic people in the universities, of writers, of dissenters, of people who criticise in as effective a manner as possible. In the absence of these checks, and factors of importance of public opinion here in India, you cannot merely say, 'Because in America, the President appoints the judges, here also we must appoint judges in a like manner'. You must first see that an effective public opinion is available in this country. Therefore, it is a difficult and a ticklish question.

I agree partly with some of my friends on the Government benches that this question of appointment of judges, particularly the Chief Justice of the Supreme Court, has to be considered in the light of certain situations, problems and strategies—the situation in India, the problem of India and the strategies for India. I agree that these are different, more difficult and often more depressing, for, the stark reality is that the vast millions of our people are very poor. But because the situation is different, we need not necessarily say, 'We will go all the way to the other side and see to it that we want everything according to our own ideas; therefore, even the judiciary must accept or must conform to our own points of view and to our own attitudes'.

On the question of appointment of judges and particularly of the Chief Justice, our Constitution has made certain provisions. As I said at the outset, those provisions have been well built by certain Constitutional practices. And, what is important, these Constitutional practices and provisions together have created certain Constitutional conventions. I want to suggest that these conventions have the same validity or even greater validity some times than the law of the land, the law of the Constitution, because here is something which has been built up brick by

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lick over a period of years and decades and you cannot throw away these conventions to the winds.

I was referring earlier to the upsurge in the last five years. There have been political pressures, economic compulsions and popular demands, people's demands, and, therefore, all kinds of ideas like judges in society, judges in polity, etc. are brought up for public discussion. During this debate also members have spoken about the philosophy, approach, mentality, ideology, opinions and comments and views of a judge. Inevitably all these factors are going to be injected into whatever a judge says or does and I would not say these are not important. But if you want to remove the dangerous practice which the Government of India are trying to adopt for the last couple of years, i.e. trying to put more of party politics into it rather than ensuring the independence and impartiality of the judiciary the remedies outlined by some of my friends on this side may not work, however attractive they may appear.

For instance, Mr. Vajpayee said that the seniormost judge should automatically become the Chief Justice; I feel seniority by itself has nothing sacrosanct about it. Because of my experience in the educational field, I have begun to feel increasingly that seniority does not work at least in two fields of human activity—education and judiciary. You must constantly have fresh ideas and a certain contact with the problems of the day, the aspirations of the people of the day. If Mr. Vajpayee says that seniority must be a major consideration, I agree. But if he says that seniority should be the only consideration, I am afraid I shall not be able to see eye to eye with him, because that will create more problems than those in the existing pattern.

Mr. Limaye's solution is equally tempting and attractive. He wants that the immediate past Chief Justice, the retiring Chief Justice and the three seniormost judges of the existing Bench of the Supreme Court should sit together and recommend a panel. Before that, the Bar Council of India will also give advice.

The President will then consider the recommendations and take the appointment. So far so good, if it works. But my main objection is to his suggestion that this Presidential recommendation must be brought before Parliament for approval. He says, if there is still some lacunae in the appointment, it will be exposed in Parliament. But he forgets that even if that exposure takes place, he cannot undo what has already been done by the recommendation of the President supported by the kind of machinery he has outlined, because parliamentary approval, is the last analysis, whether one likes it or not, means approval of the majority party. Therefore, it amounts to the same thing. Instead of in the beginning, you have it afterwards. Nonetheless, the Government say will be final.

As far as possible and as long as we can help it, let us, therefore, do our best to develop certain areas of public opinion, certain factors which are responsible for creating public opinion like a free press and radio—not All India Radio under the charge of Mr. Gujral, but a radio based on the BBC pattern, an autonomous corporation under the charge of no minister. I remember, in 1956, Sir Anthony Eden, the then British Prime Minister told BBC, "I want to speak to the British people and explain why the British Government has taken a particular stand at the time of the Suez crisis". The BBC told him, "You will get an opportunity provided you also agree that we will have to ask the leader of the Opposition to have his say on the same BBC channel!"

That is the position. What we want is an independent radio based on the lines of the BBC, being an autonomous corporation, and also of course, a free press. The world knows that the American press can throw the Presidential prestige and the Presidential influence to all kinds of winds, and yet nothing happens by way of damage for the press. They are allowed so much of freedom.

That kind of approach we should have in radio, in television, in our universities, on the part of our writers and intellectuals and if we can help to get public opinion articulated with the help of these factors we can certainly do something better. Of course, I agree, it is a long-term objective, it cannot be done quickly. I agree there. But, after all, democracy itself, Mr. Vajpayee will agree, is a long-term project. You can't say that because it is a long-term project you must not do something with regard to these matters. We must, day in and day out, both in the Parliament and outside, go on telling the Government that we want these various institutions to be developed in such a way that public opinion becomes strong, that democratic traditions and institutions just cannot be tampered with. Government cannot even think of doing it. That is the sort of approach which we want to create but that is a long-term objective.

Now, what is the short-term remedy which we can do? I agree that Shri Vajpayeeji has given one remedy. Shri Madhu Limaye has given some other remedy. If you will permit me, Justice Hegde, in his recent book 'Crisis in India Judiciary' has given a third remedy. I will not take time in reading the whole thing but I invite your attention to pages 92 and 93 of this book by Mr. Justice H.S. Hegde. I quote from his book 'Crisis in India Judiciary'. He says:

"The hopes of our founding fathers that our executive will respect the independence of the judiciary have failed. The Constitutional provisions relating to the appointment of Judges have not been honestly implemented. They have been perverted. Political and party considerations have been introduced in appointing judges to the superior courts. Therefore, new ways have to be devised to maintain the independence of the judiciary. Several suggestions have been made by various individuals and associations."

And then he himself gives one suggestion. He admits that this also could be one of the suggestions but he is not sure whether that suggestion also would be workable. I hesitate to give my own suggestion to this problem. But, Sir, nonetheless, if we want some kind of a safety-valve, some kind of ensuring that Government will not act in a completely arbitrary manner in its thinking and doing, then, I suggest that the immediate past Chief Justice of the Supreme Court, the present, that is, retiring Chief Justice, and the three seniormost judges, constituting a Committee of five, unanimously if possible or else by an order of preference, suggest names to the President, out of which the President would be at liberty to select one and make the appointment. But I admit honestly that this also may not work.

Therefore, I want to conclude by saying that although the present situation has got many difficulties and that Government are showing many dangerous trends, I am afraid, because of our anxiety to get rid of those dangers we may not do something or suggest something by way of a solution or remedy which may prove not only unworkable but may prove undesirable. It is just like a debate on unicameralism and bicameralism, whether you have one chamber or two chambers. All over the world, especially democratic world, everybody agrees that unicameralism is better than bicameralism, because it saves time, it saves reputation, it saves money etc. And, Sir, various arguments have been laid down. In this House also some months back there was a debate on that subject, but what happens in practice? Everybody says, after all, unicameralism is good in theory but *chalta nahi hai*; it does not work in practice; therefore, let us go back to Bicameralism. Similarly, with regard to appointment of a Chief Justice other methods are found and suggested but they do not work, but the one that obtains today works with some dangers and difficulties.

Sir, a very valuable debate has taken place. I request the Government to see to it that when they make all these judicial appointments to the highest bodies, persons

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or offices, they do so with all the care for ensuring democratic values, democratic temper and democratic traditions.

If they do it and if their doings are supported and strengthened by a free and independent press, vital radio network run by the autonomous Corporations, T. V., University Professors, Writers and Intellectuals then I am sure that in decades to come, we shall have established enough safeguards and enough warnings to any Government of the day that may be, that they dare not appoint people to chief justiceships who are not acceptable to the people, who are not acceptable to the bar and who are not acceptable to the judiciary and, what is more important, whose appointment may prove a kind of an impairing of the common man's faith in the integrity, impartiality and independence of the judiciary.

MR. CHAIRMAN: Mr. Mody.

SHRI PILOO MODY (Godhra): Sir, if you allow me I would like to finish my speech to-day because I may not be here,

MR. CHAIRMAN: No, please. You will have to continue next time if you take more time.

SHRI PILOO MODY: If you give me five more minutes, it will be all right.

SHRI G. VISWANATHAN: You can give him five more minutes.

SHRI PILOO MODY: Sir, when I hear this debate and when I see the way the party which has been operating, I see very little sense in having any sort of a debate at all. I see the hon. Minister for Law sitting there patiently hearing all the speeches that are made—sometimes listening and sometimes not listening—and collecting merely the materials for a rebuttal knowing ahead of time that nothing is going to change it. After all, they are the masters and they will rule as they like. But, when I heard the learned Professor—Prof. Mavalankar—coming here and giv-

ing us his professional lecture of all the pros and cons of every system and every suggestion that has been made and then ends us by saying that we are indeed in search of longterm solutions through his long speech, I am somewhat distressed what is it that has happened and that has called for this amendment. There was no need to discuss this problem but for the fact that a few months ago, the Government, but of sheer vindictiveness, sheer malaise and sheer *malafides* acted in a manner prejudicial to the interests of the country, prejudicial to the interests of democracy, prejudicial to the interests of the people of this country and also prejudicial to the interests of those that were not members of the ruling party.

This is a fact. I have not, so far, heard in the millions of words that have been strewed out any one logical and valid reason why this particular process was adopted at this particular time in order to supersede a particular judge and instal, in his place, another particular judge. Not one logical and sensible argument has been advanced at all. And therefore, when I see all my friends on the ruling benches getting up one after another—Mr. Salve, Mr. Jagannath Rao and Mr. Sathe, of course, I did not hear him but, I am sure, he did the same performance—and many others too getting up like those people orchestrated from somewhere behind the scenes and somewhere behind the dark curtains, coming and giving and trying to bring logic into a situation to justify the vindictive act of the Government, what are the reasons that had been advanced that seniority cannot be a principle or a healthy precedent for appointing a Supreme Court Judge? They have done it for 26 years and I think that the judiciary has survived rather well. They have been doing it all this time. Only on two occasions they did not do it because there were very valid and overriding reasons why they could not do it, in the case of Mr. Justice Imam who, unfortunately had turned the corner before he has reached that stage and, in the case of Justice Sen, who was not entitled to under his qualification, being an I.C.S. Officer, by occupying this

seat by seniority. But, for others this system is working well.

SHRI SHANKERRAO SAVANT (Kolaba): Where there no ICS Chief Justices in the Bombay High Court?

SHRI PILOO MODY: I do not know.

AN HON. MEMBER: What about Mr. M. C. Chagla?

SHRI PILOO MODY: Mr. Chagla was from the ICS?

SHRI K. NARAYANA RAO: Mr. Wanchoo was from the ICS.

SHRI PILOO MODY: I do not know why he is asking a question of me. I am not a Minister. He can ask that of the Law Minister.

What I am saying is that why this was done on this occasion has never been explained logically, except by Shri Mohan Kumaramangalam who was brutally frank. He gave his great oration. He had his great thesis which he expounded in this House, the thesis which he had learnt from his school—days or otherwise, a thesis completely foreign to our country, which he expounded. Therefore, I salute the man for his basic honesty. He was right when he said "We want to pick and choose people who will be sympathetic to our point of view". If that is an acceptable principle, I commend Mr. Mohan Kumaramangalam for his honesty because that was the only logically valid reason advanced in Parliament why this supersession took place. Therefore, if the House is prepared to accept the Mohan Kumaramangalam thesis, if this country is willing to accept the communist thesis of a society. I think what the Government did was logical, was in its own interest, although, may be, not in its wisdom.

The point, therefore, that arises is that this action must be judged in the context of certain circumstances, because there is no logical reason for it. There is no

logical reason why seniority on this particular occasion was bypassed. Yes, the Law Commission was brought out of the grave in order to justify it. But what did the Law Commission say? The Law Commission said that if seniority was to be bypassed, Government must make out a case; they must have certified the next in line to be either mad, senile to be of immoral character, of having loafed on the bazars or streets of the country or having indulged in black-marketing or having been a Minister of the Government of India. These disqualifications, to be brought before the country, would have created a credible case why this particular judge was bypassed.

SHRI SHANKERRAO SAVANT: Can he read the relevant passage from the Law Commission's report?

SHRI PILOO MODY : I am not a lawyer. I do not read the Law Commission's report. I have contempt for such reports, and I have contempt for the arguments that he is advancing.

Therefore, the only reason why this was done was *mala fide*. It is, therefore, that Shri Atal Bihari Vajpayee has brought forward this legislation so that at least when this Government is in power, the law of the land should be so framed that opportunity for such *mala fide* does not exist. Once this Government is thrown out and voted out by the people, a time will come when we adopt Mr. Purushottam Mavalankar's thesis and think in terms of long-term projections about the BBC and how to frame public opinion with intellectuals, writers and professors. But till that time, the Government has to be restrained in the excessive abuse of power, in order to see that this sort of thing does not happen again. This is really the logic of the situation.

Unfortunately now, these things have to be debated in Parliament, since, as I started off by saying, in Parliament, the whip operates on the left of me up to where Shri Raghu Ramaiah is sitting..

MR. CHAIRMAN: The hon. Member may continue on the next day....

SHRI PILOO MODY: I shall be finishing in a minute. I said that I would take just five minutes more.

MR. CHAIRMAN: I have already given him five minutes more.

SHRI PILOO MODY: But it is not yet five minutes.

MR. CHAIRMAN: Let him conclude.

SHRI PILOO MODY: Therefore, the whip that operates secretly, whether one-line or two-line or three-line, brings about

a performance here and an interrupter there who will go on chanting the same song which is examined either under logic or under philosophy or even just plain sportsmanship will not stand up at all. Therefore, I think that Mr. Vajpayee is doing the country a great service in bringing forward this amendment.

I hope that when this Government is out of office and I bring forward another amendment which will take care of the many features that Shri Purushottam Mavalankar has brought forward, he will support me in that.

18.05 hrs. <sup>6</sup>

*The Lok Sabha then adjourned till Eleven of the Clock on Monday, November 19, 1973/Kartika 28, 1895 (Saka).*