

[Shri Shah Nawaz Khan]

tion 619A of the Companies Act, 1956.  
[Placed in Library. See No. LT-4926/65].

Indian Veterinary Research Institute, Izatnagar.

11.36 hrs.

**ESTIMATES COMMITTEE  
MINUTES**

Shri A. C. Guha (Barasat): I beg to lay on the Table a copy of the Statement showing the reply to the recommendation noted in Chapter V of the Fifty-seventh Report of the Estimates Committee (Third Lok Sabha) which was not furnished by Government in time for inclusion in the report; and a copy each of the Minutes of Sittings of the Estimates Committee relating to the following Reports:

- (i) Sixty-seventh to Seventieth Reports on the Ministry of Transport—Calcutta Haldia, Madras, Visakhapatnam, Tuticorin and Paradeep Port.
- (ii) Seventy-second Report on the Ministry of Rehabilitation—Dandakaranya Project.
- (iii) Seventy-sixth Report on the Ministry of Food and Agriculture (Department of Agriculture)—Indian Agricultural Research Institute, New Delhi.
- (iv) Seventy-ninth Report on the Ministry of Food and Agriculture (Department of Agriculture)—Central Potato Research Institute, Simla.
- (v) Eightieth Report on the Ministry of Food and Agriculture (Department of Agriculture)—Indian Grassland and Fodder Research Institute, Jhansi and Soil Conservation Research, Demonstration and Training Centres.
- (vi) Eighty-first Report on the Ministry of Food and Agriculture (Department of Agriculture)—National Dairy Research Institute, Karnal and

11.37 hrs.

**COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS  
SEVENTY-FIRST REPORT**

Shri Krishnamoorthy Rao (Shimoga): I beg to present the Seventy-first Report of the Committee on Private Members' Bills and Resolutions.

11.37½ hrs.

**ESTIMATES COMMITTEE—contd.**

**EIGHTY-SIXTH REPORT**

Shri A. C. Guha: I beg to present the Eighty-sixth Report of the Estimates Committee on action taken by Government on the recommendations contained in the Fifty-third Report of the Estimates Committee on the Ministry of Finance erstwhile Department of Revenue and Company Law (Company Law Division).

11.38 hrs.

**JUDGES (INQUIRY) BILL—contd.**

Mr. Speaker: We take up the Judges (Inquiry) Bill. Shri A. S. Alva was on his legs but Government wants to bring a motion for reference to Select Committee.

Shri Hari Vishnu Kamath (Hoshangabad): For once they have done the right thing.

The Deputy Minister in the Ministry of Law (Shri Jaganatha Rao): I beg to move

"That the Bill to regulate the procedure for the investigation and proof of the misbehaviour or incapacity of a Judge of the Supreme Court or of a High Court and for the presentation of an address by Parliament to the President be referred to a Joint

Committee of the Houses consisting of 30 members; 20 from this House namely Shri S. V. Krishnamoorthy Rao; Shri N. C. Chatterjee; Shri Sachindra Chaudhuri; Shri Homi F. Daji; Shri R. G. Dubey; Shri Hari Vishnu Kamath; Shri Harekrushna Mehtab; Shri Shankarrao Shantaram More, Shri Gulzarilal Nanda, Shri Ghanashyamlal Oza; Shri Tika Ram Paliwal; Shri Raghunath Singh; Shri Shivram Rango Rane; Shri N. G. Ranga; Shri Sham Lal Saraf; Dr. L. M. Singhvi; Shrimati Tarakeshwari Sinha; Shri U. M. Trivedi; Shri T. Abdul Wahid, and Shri Jaganatha Rao and 10 from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee;

that the Committee shall make a report to this House by the 28th February, 1966;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees shall apply with such variations and modifications as the Speaker may make; and

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of 10 members to be appointed by Rajya Sabha to the Joint Committee."

**Shri Hari Vishnu Kamath:** Sir, may I congratulate the Government on their wise and correct decision on this matter?

**Shri Jaganatha Rao:** Government is always responsive.

**Mr. Speaker:** May I put this motion to the vote of the House? All the Members wanted it.

**श्री वात्सकी (शुद्धा) :** अध्यक्ष महोदय, एक शब्द मैं कहना चाहता हूँ। हाँ, कब तक तो केवल प्रश्न समिति की बात

था, आज फिर यह संयुक्त तर्क की बात एकदम कैसे पैदा हुई गयी?

**अध्यक्ष महोदय :** मेम्बरों ने चाहा और यही बात कहें, और उसी के मुताबिक क्वोरममेंट न मान लिया। अब क्या कहने की जरूरत है।

**Shri Shree Narayan Das (Darbhanga):** When it is going to be referred to the Select Committee, hon. Members should be given an opportunity to express their views on the Bill for the benefit of the Select Committee.

**Shri A. S. Alva (Mangalore):** We may be allowed to speak on the Bill so that our views may be taken into account by the Select Committee.

**Mr. Speaker:** I will give some time. Now, there is no scope for discussion. The hon. Members wanted it and it was conceded.

Motion moved:

"That the Bill to regulate the procedure for the investigation and proof of the misbehaviour or incapacity of a Judge of the Supreme Court or of a High Court and for the presentation of an address by Parliament to the President be referred to a Joint Committee of the Houses consisting of 30 members; 20 from this House, namely Shri S. V. Krishnamoorthy Rao; Shri N. C. Chatterjee; Shri Sachindra Chaudhuri; Shri Homi F. Daji; Shri R. G. Dubey; Shri Hari Vishnu Kamath; Shri Harekrushna Mehtab; Shri Shankarrao Shantaram More; Shri Gulzarilal Nanda; Shri Ghanashyamlal Oza; Shri Tika Ram Paliwal; Shri Raghunath Singh; Shri Shivram Rango Rane; Shri N. G. Ranga; Shri Sham Lal Saraf; Dr. L. M. Singhvi; Shrimati Tarakeshwari Sinha; Shri U. M. Trivedi; Shri T. Abdul Wahid and Shri Jaganatha Rao and 10 from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the

[Mr. Speaker]

total) number of members of the Joint Committee;

that the Committee shall make a report to this House by the 28th February, 1966;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees shall apply with such variations and modifications as the Speaker may make; and

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of 10 members to be appointed by Rajya Sabha to the Joint Committee."

**Shri A. S. Alva:** Mr. Speaker, Sir, yesterday I was mentioning that the Bill which has now been brought forward is violative of the Constitution not only in letter but also in spirit. Because, under article 124(5), what has been contemplated is that Parliament can make laws so as to regulate how the address has to be presented to the President and the mode of enquiry. But as far as this Bill is concerned, it takes a different turn altogether. As a matter of fact, under article 124(4) it is for the Parliament to say whether a particular allegation of misbehaviour or incapacity is proved. It is not for any outside agency or a court. So, as for this Bill, there are lots of inconsistencies in relation to that particular article itself.

As I said yesterday, as far as clause 3 is concerned, it says that only the President can make a reference to the tribunal and he must appoint this tribunal. That means to say, nobody can move a resolution in this House or in the other House to say that a judge has to be removed. If the Government thinks that it is not necessary that an address has to be presented, the only thing they have to do is to see that the President does not make a reference. That is to say the rights of Parliament itself are curtailed.

What the Bill provides is, after the tribunal is formed—even about that I shall submit a few objections—the tribunal goes into the matter just like a court, with the powers contained in the Civil Procedure Code and gives a finding. Some charges are framed and they give the findings on these charges with a statement if necessary. They are not bound to give all the reasons; they can simply say that the charges are proved or not proved. Then these are sent to the President and the President lays them on the Table of the House. Let us consider one aspect. The Bill says that the tribunal should consist of Supreme Court judges, who had acted as such or who are sitting judges of the Supreme Court. Let us take an instance. Suppose—God forbid,—there is a charge against one judge that he is mentally incapacitated and this tribunal finds that it is so, and afterwards that finding is placed on the Table of the House. The House has no other material to come to a conclusion except that finding, but the House does not accept that finding and says, "We are not going to pass the motion by a majority of the House or by two-thirds of the total strength present and voting." Suppose this House or the other House says like that and does not pass such a resolution. Then the judge is not removed. That judge continues to serve along with the other members of the tribunal, if they are sitting members of the Supreme Court, and then he must decide cases along with them. What will be the position of that judge? These are some aspects which the Select Committee, I am sure, will have to consider seriously.

Then I come to another aspect. This Bill takes away practically the entire responsibility of finding by this House the incapacity or misbehaviour of a judge. There are no intricate questions of law or of fact involved in an enquiry of this nature. The Constitution itself provides two definite grounds and they are really very simple

grounds. One is the proved misbehaviour and the other is incapacity. For that, is it necessary that the tribunal must go into the matter with all the evidence and so on? What is the position of the tribunal? When a tribunal is there, it gives a finding. That is to say, this House will be sitting as an appellate authority over those findings. Is it a desirable thing? They can come to a different conclusion; they need not agree with the finding. Is it proper that this House should sit as an appellate authority over the Supreme Court and should we permit the Supreme Court judges to give a verdict which may not be binding or which may not be accepted by this House? I submit that the Supreme Court certainly deserves our highest admiration and our respect, and they should not be placed in that position. As I said, under clause 5, it is clearly stated that this tribunal is only for assisting the House in respect of the procedure. The tribunal must be constituted by this House and for a specific purpose. It is not as though every day or very often we will come across cases for the removal of judges. I am sure as far as we are concerned, the Supreme Court judges or the high court judges are held by us in very high regard and it may be a very rare thing when cases of this kind may come up or allegations of this kind may be made. We must, therefore, take all the precautions, and for this very purpose, the Constitution-makers have clearly stated that it must be the duty of Parliament to find out whether they could remove a judge and that should not be questioned by anyone. Otherwise, the position will become anomalous.

Therefore, my submission is that the Select Committee should take into account whether this Bill does not go beyond the scope of article 124(5) and whether it is necessary that a tribunal of this type should be constituted. After all, if it is necessary, Parliament itself may constitute a committee of eminent people which may consist of either jurists or non-jurists. We can

always find in this country such eminent people to constitute a tribunal or committee for that purpose, people of international repute and of unquestionable character. They can always say whether a judge has misbehaved or is incapacitated; in the latter case they can always take the decision of a Medical Board or team of doctors.

I am sure that for the reasons stated by me the Select Committee will whittle down or strike down a lot of unnecessary things here and that a simple procedure will be adopted whereby the tribunal would be placed under the charge of Parliament and it must be under their jurisdiction. I finally submit that this Bill requires a lot of pruning.

श्री श्रीनारायण बास : अध्यक्ष महोदय, यह जजेज एनक्वायरी बिल जो अब संयुक्त प्रवर समिति को सौंपा जाने वाला है, एक मौलिक प्रश्न उपस्थित करता है। जैसा कि हमारे माननीय सदस्य ने मुझ से पहले कहा है, हमारे संविधान ने इस पानियामेंट को इस मामले में इनीशिएटिव लेने का अधिकार दिया है, लेकिन इस बिल के पास हो जाने के बाद वह अधिकार सरकार के हाथ में चला जाएगा। इस बिल द्वारा यह अधिकार प्रेसीडेंट के हाथ में दिया जा रहा है, जिसका अर्थ है कि यह अधिकार सरकार को सौंपा जा रहा है। सरकार को जब मान्य होगा कि किसी जज विशेष ने कोई ऐसा काम किया है जिसे मिगबिहेवियर कह सकते हैं, या कोई जज ऐसा हो गया है कि वह काम नहीं कर सकता, तो उस के सम्बन्ध में कार्रवाई करने का अधिकार सरकार को और सरकार के द्वारा प्रेसीडेंट का होगा। जैसा अभी हमारे माननीय सदस्य ने कहा कि इस के द्वारा पानियामेंट में जो यह अधिकार दिया गया था वह पानियामेंट का अधिकार एक तरह से छीना जा रहा है।

## [श्री श्रीनारायण दास]

दूसरी बात मैं यह कहना चाहूंगा कि अगर संविधान की जो 124 धारा है उसमें किसी जज को मिसबिहेवियर या अयोग्यता के लिए हटाने का जो विधान किया गया है वह ऐसा सख्त विधान है जिसमें किसी जज को हटाने के लिए जो एड्रेस प्रेसीडेंट के सामने उपस्थित किया जायगा उसके लिए प्रत्येक सदन की समस्त संख्या के बहुमत के द्वारा तथा उपस्थित और मतदान करने वाले सदस्यों में से कम से कम दो तिहाई के बहुमत द्वारा उस के समर्थन करने की आवश्यकता पड़ती है। इस का तात्पर्य यह था कि कोई ऐसा काम साधारण बहुमत से नहीं पास किया जाय। तात्पर्य इस का यह भी था कि जो कार्यवाही हो वह यह कार्यवाही सदन में ही उठाई जाये और सदन इस बात का निर्णय कर लिया करे। जो 124 की उप-धारा 5 है उस के जरिए पार्लियामेंट को अधिकार दिया गया है कि वह इस बात की जांच के लिए तरीका या नियम निर्धारण कर सकती है लेकिन इस का तात्पर्य यह नहीं है कि प्रेसीडेंट इस का निर्धारण किया करे। इस बिल के द्वारा प्रेसीडेंट को जो अधिकार देने जा रहे हैं मैं समझता हूँ कि यह संविधान के खिलाफ बात होने जा रही है। इसलिए मैं समझता हूँ कि इस बिल में ऐसा संशोधन किया जाना चाहिये, कि जब यह प्रश्न कभी आये, अगर सरकार के सामने आए तो सरकार का भी इस सदन के सामने उपस्थित होना चाहिए आवश्यक कार्यवाही के लिए या किसी माननीय सदस्य को इस बात की खबर मिले कि ऐसा कोई जज है जिसने कोई मिसबिहेवियर किया है या कोई ऐसा जज है जो अपना कर्तव्य पालन स्वस्थ ठीक न रहने की वजह से या किसी अन्य कारण से ठीक से नहीं करता है तो उस का सदन में सवाल उठाया जाय तो मैं समझता हूँ कि सचमुच में संविधान का पालन ठीक तरीके से नहीं हो सकेगा। लेकिन इस बिल में जिस तरीके से धाराएं दी गई हैं उन से यह अधिकार लिया जा रहा है। मैं समझता

हूँ कि प्रवर समिति इस बात पर गम्भीरता—पूर्वक विचार करेगी। इस बात के इनिशियेटिव लेने का अधिकार जो इस संविधान के जरिए इस सदन को मिला हुआ है वह उस अधिकार के अक्षुण्ण बनाए रखने का निश्चय करेगी। इस सदन को यह अधिकार होना ही चाहिए कि जब कोई ऐसा भ्रष्टाचार आये तो वह एक विशेष ट्रिब्यूनल इस काम को करने के लिए नियुक्त कर सके ताकि वह उसके प्रकाश में उपयुक्त निर्णय कर सके और यह ठीक ही होगा कि कोई भी जज बिना समुचित प्रमाण के अपने कर्तव्य पद से हटाया न जाए और इसके लिए सदन एक विशेष ट्रिब्यूनल द्वारा इस बात को जांच करा सकता है। इस बात का संरक्षण इस संविधान में दिया गया है कि इस रिपोर्ट के आने के बाद भी सदन में जब इस निर्णय के पक्ष में सदन का बहुमत होगा और जो सदस्य उपस्थिति रहेंगे उन के दो तिहाई का समर्थन मिलेगा तभी कोई जज हटाया जा सकता है।

इतना कहने के बाद भ्रव मैं कुछ सुझाव बिल की धाराओं के सम्बन्ध में देना चाहता हूँ। मैं समझता हूँ कि जो सब से पहली बात देखनी है वह इस बिल के नाम के बारे में है। दी जजज (इन्क्वायरी) बिल यह नाम इस विधेयक का ठीक नहीं है बल्कि इस का नाम दी जजज (रिमूवल फ्रॉम प्रॉफिस) इन्क्वायरी बिल होना चाहिए। दी जजज इन्क्वायरी बिल में कोई भाग माने प्रकट नहीं होते हैं। किसी भी विधेयक का नाम ऐसा होना चाहिए कि उस के नाम से ही यह प्रकट हो जाय कि इस बिल में क्या है। इसलिए मैं यह सुझाव देता हूँ कि इस का नाम दी जजज (रिमूवल फ्रॉम प्रॉफिस) इन्क्वायरी बिल रखना चाहिए।

दूसरी बात मैं इस सम्बन्ध में जो कहना चाहूंगा वह यह है कि न तो संविधान में और न ही जहाँ तक मुझे मालूम है हमारे किसी

कानून में मिसबिहेवियर की परिभाषा दी गई है। मिसबिहेवियर क्या है यह एक ऐसी महत्वपूर्ण बात है जो कि साफ तौर पर डिफ़ाइन होनी चाहिए। ऐसे महत्वपूर्ण मामले में जो हमारे जजैज से सम्बंध रखने वाला है इस मिसबिहेवियर की प्रेसाईस डिफ़ीनीशन होनी बहुत जरूरी है। संविधान में भ्रगर नहीं की गई तो वह इस बिल में की जाय ताकि जो ट्रिव्यूनल नियुक्त किया जायगा उस ट्रिव्यूनल के सामने यह स्पष्ट भा जाये कि सदन ने जो यह बिल पास किया है उसमें मिसबिहेवियर का तात्पर्य क्या था? इसलिए मैं समझता हू कि मिसबिहेवियर की परिभाषा भी स्पष्ट शब्दों में हो जानी चाहिए ताकि इस बात में किसी तरीके की शक की गुंजाइश न रहे।

तीसरी बात मैं यह कहना चाहूंगा जैसा कि माननीय सदस्यों ने कहा है कि यह जो स्पेशल ट्रिव्यूनल बनाया जायगा वह हाई-कोर्ट के जजैज के प्राचरण या प्रायोग्यता की जांच के लिए या सुप्रीम कोर्ट की जज की जिसमें हमारे सुप्रीम कोर्ट के चीफ जस्टिस भी शामिल होंगे इस बात की जांच के लिए बनाया जायगा यह जो तीसरा क्लॉज उप-क्लॉज 2 से जोड़ दिया गया है मैं समझता हू कि यह इनकवाररी को बिल्कुल निरूपक्ष या भ्रच्छा नहीं बनायेगा। अब जहाँ तक कि हाईकोर्ट के जज के सम्बन्ध में जांच करने की बात है उसमें भ्रगर सुप्रीम कोर्ट के जज रखे जायें तो कुछ हानि नहीं है। लेकिन जब किसी सुप्रीम कोर्ट के जज या सुप्रीम कोर्ट के चीफ जस्टिस के सम्बन्ध में जांच करनी पड़े तो उसमें सुप्रीम कोर्ट के जज रखना मैं उचित बात नहीं समझता हू। यह बिल ऐसा है जिसकी कभी किसी खास समय में उसकी उपयोगता हो सकती है। मैं तो ऐसा सोचता हू कि हमारी सरकार जजों की नियुक्ति करते समय ही इस बात की प्रत्येक सावधानी बरतेगी और ध्यान रखेगी कि कभी हमें अपने देश में इस बिल का उपयोग करने का अवसर पेश नहीं प्राये। जज चाहे वह हाई कोर्ट के हों अथवा सुप्रीम कोर्ट के हों वे

ऐसे कैलीवर के होने चाहिए, वे ऐसे ईमानदार, सच्चे और कर्तव्यनिष्ठ होने चाहिए जिनके कि विषय में कभी किसी तरीके का शक करने की गुंजाइश ही पैदा न होने पावे। लेकिन अब कभी ऐसा मौका पेश प्राये तो मैं समझता हू कि चाहे वह सुप्रीम कोर्ट के चीफ जस्टिस हो या सुप्रीम कोर्ट के जज की जांच होनी हो उस में सुप्रीम कोर्ट के रिटायर्ड जजैज या सुप्रीम कोर्ट के एक्टिंग जज उस स्पेशल ट्रिव्यूनल में रखना यह उचित नहीं होगा। यह बिल्कुल पार्लियामेंट के हाथ में छोड़ना चाहिये कि जब जरूरत पड़े वह कोई ऐसा ट्रिव्यूनल बनाये जिसमें अच्छे से अच्छे जूरिस्ट्स हों, देश के प्रतिष्ठित लोग हों, कानून के विशेष जानने वाले हों तो भ्रच्छ है, कानून के जानने वाले न भी हों तो कोई बात नहीं लेकिन वह भ्रगर ईमानदार हों तो मैं समझता हू कि उनको इसमें रखें। इसलिए यह जो स्पेशल ट्रिव्यूनल कांस्टीच्यूट करने का अधिकार प्रेसीडेंट को इस बिल के जरिए दिया जा रहा है मैं चाहूंगा कि उसे नियुक्त करने का अधिकार संसद् को दिया जाय। जब भी कोई ऐसा ट्रिव्यूनल नियुक्त हो तो उसको संसद् के सामने प्राना चाहिये। संसद् के जरिए इस का निर्माण होना चाहिए। इसमें ऐसे लोगों को रखना चाहिए जो कि दरअसल में इस महत्वपूर्ण काम को करने के लिए ईमानदारी और सच्चाई के साथ काम कर सकते हैं।

एक बात मैं यह कहना चाहता हू कि यह जो ट्रिव्यूनल होगा इसमें कम से कम मेम्बर कितने होंगे।

श्री हुकमचंद कच्छबाय (देवास) : अध्यक्ष महोदय, मेरा एक व्यवस्था का प्रश्न है और वह यह कि उसमें कौनसे होंगे।

अध्यक्ष महोदय : अब कोरम हो गया है। श्री श्रीनारायण दास अपनी स्पीच अब जारी रखें।

श्री श्रीनारायण दास मैं कह रहा था कि यह जो ट्रिव्यूनल होगा उसमें कम से कम मेम्बर कितने होंगे इसमें इसका जिक्र

[श्री श्रीनारायण दास]

किया गया है लेकिन मैं समझता हूँ कि इस बात का भी जिक्र इसमें आना चाहिए कि अधिक से अधिक कितने होंगे ? कभी कभी ऐम्स होता है कि जरूरत से भी ज्यादा सदस्य रख दिये जाते हैं इसलिए कानून में इस बात का निर्धारण होना चाहिए कि अधिक से अधिक इसमें कितने सदस्य हों ।

इस बिल में एक मैडिकल बोर्ड की भी व्यवस्था की गई है । कई माननीय सदस्यों ने कल कहा था कि मैडिकल बोर्ड की क्या आवश्यकता है ? खास कर हमारे माननीय सदस्य श्री उ० म० त्रिवेदी ने तो इस तरह के मैडिकल बोर्ड का मखौल उड़ाया था लेकिन मैं समझता हूँ कि अगर कोई जज फिजिकल इनकंपेसिटी या मेंटल इनकंपेसिटी की वजह से अपने काम को नहीं कर सकता और उसको जब हटाने की बात होगी तो डाक्टरों की जांच से होगी । हमारी और उनकी जांच से यह काम नहीं होने वाला है इसलिए अच्छे से अच्छे डाक्टरों की नियुक्ति इस में होनी चाहिए । इस तरह का मैडिकल बोर्ड होना बहुत जरूरी है ।

इसी डिस्कशन के दौरान में, कल माननीय सदस्य, श्री त्रिवेदी ने यह भी कहा कि जजों को डालियां पापड़ और न जाने क्या क्या दिया जाता है । उन के भाषण से यह मालूम होता है कि हमारे जज अपना काम करने में बहुत छोटी छोटी बातों से प्रभावित होते हैं । मैं समझता हूँ कि अभी तक हमारे देश में न्यायालयों का जो रिकार्ड है, वह इतना ऊंचा है, जितना किसी भी देश में नहीं है । हमारे देश के न्यायाधीशों ने अपने निर्णय देने में अपनी निष्पक्षता का बहुत अच्छा सबूत दिया है । इसलिए मैं समझता हूँ कि इस बिल पर विचार करते हुए हमें यह नहीं सोचना चाहिए कि हमारे न्यायाधीश बहुत ऊंचे स्तर के नहीं हैं ।

12 hrs.

**अध्यक्ष महोदय :** सिलेक्ट कमेटी में यह बिल जाने के बाद हाउस में क्लोजिङ पर बहस हो सकेगी । इसलिए इस वक्त इतनी तफसील में जाने की क्या जरूरत है ?

**श्री श्रीनारायण दास :** सिलेक्ट कमेटी इसलिए बैठती है कि वह क्लोजिङ पर विचार करे । मैं अभी खत्म कर देता हूँ ।

मैं यह भी कहना चाहता हूँ कि जब इस प्रकार के उच्च ट्रिब्यूनल का निर्णय इस सदन में आये और वह निर्णय इस सदन के बहुमत तथा उपस्थित सदस्यों के दो-तिहाई बहुमत से पास न हो सके, तो वह बहुत अच्छी बात नहीं होगी । इसलिए इस बिल में ऐसी गुंजाइश होनी चाहिए कि संविधान की आवश्यकता की पूर्ति भी हो जाए और साथ ही यह सदन बड़े अच्छे अच्छे आदमियों से बने हुए ट्रिब्यूनल के निर्णय की भी अपेक्षा न कर सके । इस बात का कोई जिक्र इस बिल में रहना चाहिए ।

माननीय उपमन्त्री ने इस बिल को सिलेक्ट कमेटी में भेजने के लिए जो प्रस्ताव रखा है, इन शब्दों के साथ मैं उस का समर्थन करता हूँ ।

**Shri Himatsingka (Godda):** Mr. Speaker, Sir, a lot of discussion has taken place on this Bill which has become necessary in order to meet the provisions laid down in article 124(5). The genesis of this Bill has been very ably explained by Dr. Singhvi yesterday. He has explained why this Bill became necessary, and in that connection he stated that one of the judges of the Supreme Court who had lost mental control and who could not follow anything would not resign in spite of requests and therefore it became necessary to lay down the procedure which could be followed and observed in taking steps in accordance with article 124(4).

Sir, some of the hon. Members who spoke yesterday, rather disparagingly referred to the judiciary. I feel, Sir, the judiciary of this country is one which we can be very well proud of. They have maintained a very high standard. It may be that there may be very rare exceptions here and there, but otherwise the judiciary of this country has been behaving very well and the judges have shown excellent character and exemplary behaviour.

The hon. Member, Shri Mukerjee, always brings forward, by way of criticism, the appointment of a particular judge of the Calcutta High Court. I do not know what justification he has in doing that. Simply because a gentleman who was appointed as a judge was in politics before that does not take away his qualifications if he was otherwise qualified to be appointed as a judge. In fact, the judge in question has been doing very excellent work. He is one of the best judges that we have in the Calcutta High Court, and it is not very proper off and on to criticise a particular judge without the judge being given an opportunity to meet the allegation.

A criticism that was put forward by the hon. Member, Shri Trivedi, was that judges are appointed, rather, in a light-hearted manner and proper steps are not taken.

श्री हुकम चन्द कछवाय

प्रध्यक्ष महोदय, मेरा व्यवस्था का सवाल है। हाउस में कौरम नहीं है।

**Mr. Speaker:** The hon. Member may resume his seat. The question of quorum has been raised. The Bell is being rung.

I find there is quorum now. The hon. Member, Shri Himatsingka, may continue his speech.

**Shri Himatsingka:** As you know, Sir, the salary that is now being paid to judges is Rs. 3500, and with the deductions at the present rate of income-tax

and other deductions they are left with a very little sum. As a result, good practising lawyers, lawyers who have good practice, are generally not willing to accept judgeship. That is why there is the danger that gradually the quality will be deteriorating. Therefore, one point which should be considered by the Government is whether or not they should give more thought to the question of raising the salary of judges so that better class of lawyers who have good practice may be attracted and they may not find an opportunity or an occasion to decline an offer when it is made.

Another criticism that has been made is that it would be taking away the powers of Parliament. I have not been able to follow how the powers of Parliament is going to be taken away. Even when the Special Tribunal will have made its report, the report will be placed before the House and unless the House decides in accordance with the provisions of article 124(4) no action can be taken. As a matter of fact the whole idea of the Constitution is that it should be that the judges cannot be touched, they cannot be removed and no action can be taken unless it is a very grave matter of misbehaviour or a judge is incapable of acting as a judge. Therefore, any provision that stands in the way of any action being taken against a judge is welcome and there should be no objection to any provision that protects the office of the judge.

Therefore, the Bill merely provides what the procedure should be to enable Parliament to take action under article 124(4). After the report is available to the hon. Members of Parliament, it will be easier for them to a conclusion whether or not to support any Address that may be moved by any hon. Member or a group of Members in connection with a particular judge. I, therefore, feel that the Bill lays down a certain important procedure which should be observed, and in order that better class of people may be attracted, I also feel that the pension that is payable to a judge should



[Shri Himatsingka]

also be raised so that they may not have to look to any other work after they retire. One hon. Member said that judges after retirement move about in the corridors of the Secretariat. The judges have to live even after retirement. If they are not able to save anything, they are compelled to seek some other appointment. I, therefore, feel that the pension and other emoluments of the judges should be made such that they may live comfortably even after retirement. If these suggestions are taken into consideration, I feel that the high standard of the judiciary will be maintained.

Dr. M. S. Aney (Nagpur): First I think it is my duty to congratulate the hon. Minister who moved the Bill for having practically accepted in principle the amendment moved by Shri Kamath for reference of the Bill to a Select or Joint Committee. Therefore, much of the points that I wanted to refer to about the Bill need not be said now. There are, however, one or two points on which I would like to stress.

This Bill relates to the removal of Judges from office. A Bill of that importance was brought here by the hon. Law Minister with a view to getting it passed at one and the same sitting. The Bill was introduced and immediately the consideration motion was moved. I thought that as we were dealing with a very important question we should not do it in a light-hearted way.

If anybody reads the Constitution he will find that the sovereignty of India is practically vested in three major institutions which the Constitution has created; one of them is President, another is Parliament and the third is the Supreme Court. I do not want to go into relevant sections to explain how the relations between these three bodies are maintained. Article 141 says that the law declared by the

Supreme Court shall be binding on all courts within the territory of India. Similarly, article 142 refers to the enforcement of decrees and orders of Supreme Court. Similarly, President has ultimate power. The sovereignty of Parliament is an undoubted fact. When you are dealing with one of the three institutions on which the sovereignty of India is vested and you are drafting a Bill dealing with one institution you must see to it that the Bill is drafted in such a way that all the implications of the provisions are considered by the whole country. As sovereignty is vested specially in these three institutions, if any fundamental change is sought to be made as regards one of these institutions, it is very necessary that the opinion of the country is obtained on the Bill before it becomes law. Therefore, it would have been better if we had accepted a motion for circulating the Bill for obtaining public opinion, as originally proposed. However, as the hon. Minister has agreed to refer it to a Select Committee, I shall not say anything further on that point. Having heard the arguments he perhaps thought that there is a good deal of feeling in favour of its reference to Select Committee.

Article 124(4) lays down certain rules for the removal of a judge of a Supreme Court. It says:

"A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity."

It means that so far as the removal of a Supreme Court Judge is concerned, the other two sovereigns have to

come into the picture. At the same time, sub-clause (4) says:

"Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4)."

While referring to this clause, one hon. Member suggested that word "impartiality" should also be added. I think it is better that no reference is made to impartiality. The very fact of appointment to the Supreme Court as Judge presupposes that he is impartial and has outstanding qualities. So, it is better that we make no comment about character and impartiality. In my opinion, the two words mentioned there, namely, 'misbehaviour' and 'incapacity' are sufficient for considering the question of removal of a Judge from office. There is no need to adding more disqualifications like 'impartiality'. That would open up the record of his whole service, whether he has been partial or impartial.

There is one more point. Some members feel that by means of the mechanism of the appointment of a Special Tribunal the powers of this House are being taken away. I do not think it is correct. In a way, you can say that power is diluted. Yet, the House will have to consider the findings of the Special Tribunal. I think we have to look at it from a somewhat different point of view. We are providing for a Special Tribunal consisting of eminent persons to go into the conduct of Judges. In view of that the report of the Special Tribunal will make proper material for the members of the House who are more or less lay men. Parliament is a supreme body, no doubt, and Parliament collectively has the right to do anything. But Parliament consists of people like myself who are very ill read and others very well read. When a collective body like that has to consider a question like that it should have before it material properly sifted. Otherwise, it will not be in a position to take fair

and impartial decisions. So, the Tribunal should have persons of eminence and their report should be considered by Parliament.

Regarding the qualifications of the members of the Tribunal etc., they will be considered by the Select Committee in detail. When a Bill of this importance goes to the Select Committee, it should receive proper consideration. In the meanwhile, if possible, opinions on the Bill should be invited from all those who are competent to give opinion on this question.

With these remarks, I once again congratulate and express my gratitude to the hon. Minister for having accepted the suggestion for reference of the Bill to the Select Committee. I support the substitute motion.

श्री हुकम चन्द कछवायः अध्यक्ष  
महोदय. सदन में गणपूर्ति नहीं है।

Mr. Speaker: The bell is being rung . . . Now there is quorum. Shri Kakkar.

Shri Gauri Shankar Kakkar (Fatehpur): Mr. Speaker, Sir, at the very outset I would say that I am very glad that the Minister, who has now conceded the Bill being sent to the Joint Committee, has reacted favourably to that. But I fail to understand as to what is the necessity for bringing forward any Bill of this sort which impliedly casts a sort of aspersion on the highest judiciary and, if I may be allowed to say so, even casts aspersion on the President of the Indian Union.

Sir, in accordance with the provisions of this Bill certain powers have been given to the President, namely,—

"If the President, on receipt of a report or otherwise, is of opinion that there are good grounds for making an investigation into the misbehaviour or incapacity of a Judge, he may constitute a Special Tribunal for the purpose of making such an investigation and forward the ground of such investigation to the Special Tribunal."

[Shri Gauri Shankar Kakkar]

After this Tribunal has made the inquiry and has given its finding, that has to come before this House. Now, in accordance with the provision of article 121 of the Constitution, if the requisite majority is not favourable to the finding of the Special Tribunal, it will mean that the action taken by the President and the channel that has been evoked through the President is being overthrown by the House and it will indirectly mean casting an aspersion on the President also.

श्री गुरुम चन्द कछवाय : अध्यक्ष महोदय, सदन में गणपूर्ती नहीं है।

**Mr. Speaker:** The bell is being rung . . . Now there is quorum.

**Shri Gauri Shankar Kakkar:** I was submitting, Sir, that there was absolutely no necessity for bringing forward such kind of a Bill before the House. It has been provided in article 124(5) that Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4). In accordance with the mandatory provisions of the Constitution—articles 121 and 124—the proper forum for all these investigations into the misbehaviour or incapacity of a judge has exclusively been laid down as the Parliament. If there is any attempt to deprive that forum by evoking any sort of special tribunal for censuring or investigating into the misbehaviour or incapacity of a judge, it would be a very serious aspersion.

There is no denying the fact that the judiciary is the proper custodian of the democratic set-up of the country. If you are going to create any sort of tribunal for the purpose of inquiring into the misbehaviour or incapacity of a judge, it would mean creating a sort of court or tribunal above the Supreme Court. In accordance with the provisions of the Constitution it is only the Parliament which is empowered to bring a motion and

after that motion has been discussed, a representation is to be made to the President. Clause (5) of article 124 only provides for those rules and regulations for presenting that representation. So, Parliament is the proper forum.

My objection first is to the name of this Bill, namely Judges (Inquiry) Bill. This is a very wrong nomenclature given to this Bill. It would have been proper if the Bill were to be given the name in accordance with clause (5) of article 124 which says:—

"Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4)."

**Mr. Speaker:** The long Title is there.

**Shri Gauri Shankar Kakkar:** Then, in sub-clause (2) of clause 3 of this Bill it has been provided, namely,—

"The Special Tribunal shall consist of such number of members, being not less than three in number, as the President may think fit to appoint from among persons who are or have been Judges of the Supreme Court".

As an amendment says, there are other persons who are able but who have not been judges of the Supreme Court. Therefore, this scope should not have been limited.

Then, my next objection is that the functions and privileges which were exclusively given to Parliament are being diverted to the President by this particular measure of legislation. After the motion it is the Parliament which can come forward to create any sort of special tribunal or committee which may go into it. It can be *in camera*—because it is a very delicate affair—so as not to publicise the proceedings

of such special tribunal to censure the conduct of a judge. I would have been glad if the Cabinet came forward with a piece of legislation to regulate and control the conduct of Ministers in this country. I wish to say that if there had been any attempt to regulate and control the executive powers vested in Ministers, it would have been a very happy chapter in the history of this Parliament; but any attempt to regulate and control the activities of the judiciary would be suicidal.

I am very glad that it is going to the Joint Committee. My only suggestion is that it would be better if the Joint Committee takes into consideration this and gives its opinion that it would not be proper to bring forward any specific Bill for this purpose and that it should be confined to what has been given in article 124.

**Mr. Speaker:** What is to be done? The Constitution requires that there ought to be a Bill for the purpose and the hon. Member says that there ought not to be any.

**Shri Gauri Shankar Kakkar:** It does provide. But who has the authority? Parliament has the authority. Parliament is legislating this Bill. The personnel of the tribunal are to be nominated by Parliament and not by the President.

**Shri C. K. Bhattacharyya (Raiganj):** Mr. Speaker, Sir, this Bill proceeds on a very delicate ground. In fact, since the British system of judiciary was established in this land, I do not know whether an Act like this has been legislated before. This is the first time that a legislation is proposed to be enacted to inquire into the conduct of the judges. As such, we ought to proceed very carefully and very cautiously.

Sir, when I look to the constitutional provisions on which this Bill is based, that is, Article 124, at times I feel that the Constitution has almost tried to

provide that such an inquiry could not be held because sub-Section 2(b) provides that a judge may be removed from his office in the manner provided in clause (4). But when the procedure is indicated in clause (4), the entire bias of the procedure is such that it makes it difficult for such an inquiry to be held. The substantive provision says that a judge may be removed but when the procedure is indicated in clause (4), it does not say that a judge may be removed. There, it completely changes the bias of the provision to the negative side that "a judge shall not be removed."

12.32 hrs.

[Mr. DEPUTY-SPEAKER in the Chair]

श्री हुकूम खन्व कछवाय : मेरा व्यवस्था का सबाल है। हाउस में गणपूर्ती नहीं है।

श्री जोकीम भाल्वा (मंगलौर) : इमर-जेंसी के वक्त में आप को यह धाबजेकशन नहीं लाना चाहिए।

**Mr. Deputy-Speaker:** The bell is being rung.... There is quorum now. The hon. Member may continue his speech.

**Shri C. K. Bhattacharyya:** As I was saying, if you look to the provision contained in sub-section 4 it is decidedly negative that a judge of the Supreme Court shall not be removed. Then, it proceeds to lay down conditions which may be necessary to fulfil before an inquiry could be conducted. Putting these two together, I feel that the bias of the Constitution is that a judge shall not be removed though a provision is there and some authority is left to the Parliament for presenting an address to the President.

When we look to our judiciary, we find our judiciary has, by eminence, made a name in the whole world and we have seen judges who could and

[Shri C. K. Bhattacharyya]

who can hold themselves up against the judges of any country in their juristic learning, in their impartiality and in their capacity to tackle very difficult cases. We have seen that in our courts. Here, I am thinking of the opinion of Mr. Justice A. K. Sarkar who was one of the Bench for that controversial reference by the President of India regarding the powers and jurisdiction of the High Court and its duties in relation to the State Legislature in that U.P. Legislature vs. Allahabad High Court case. He referred to the fact that the Parliament though having powers has not proceeded to criticise judges in any way and, though he upholds the supreme authority of the Parliament in relation to the judiciary, at the same time he points out:

“... that though article 211 is not enforceable, the legislatures have shown an admirable spirit of restraint and have not even once in all these years discussed the conduct of judges”.

He commendably referred to the traditions that we have established in our legislatures. So, when we go to frame an Act like this, we should proceed very cautiously so that the judiciary may not be affected in any way.

As I was saying, we have produced judges of monumental learning. The Privy Council in regard to some of the judgments delivered by our High Courts has repeatedly referred to the juristic knowledge of the judges who delivered those judgments. We should be able to depend on the learning and the capacity of our judiciary to proceed in their own way, in an impartial way, so that a legislation like this when passed into law may not be necessary to be applied at all.

With reference to the Bill, there have been some criticisms. When I look to the Constitution and look to the Bill, I feel that the Bill has put the things rather awkwardly. The Constitution brings the Parliament first

and the President last. But the Bill brings the President at the very first instance. The Constitution says that the Parliament will proceed with an address and the address will go to the President and the President will take the steps. What the Bill proposes is that the President comes at the very first instance. It is the President who gets the report; it is the President who sets up the tribunal; it is the President who appoints the person who has to defend the judge; it is the President who receives the report and submits it to the Parliament and then the Parliament comes into the scene. I think this procedure will have to be changed. Instead of bringing the President at the very first instance, as the Bill has done, the Bill should follow the Constitution and keep the President at the ultimate stage of this entire procedure under which the conduct of the judges or their incapacity may be looked into.

Some reference was made to the conduct of some of the judges. We have seen the judges, and one of them at least was Sir Gooroodas Banerjee of the Calcutta High Court, who chose to retire before time. He earned his pension before the age of retirement. He proposed to the Chief Justice that he should be allowed to retire. The Chief Justice wanted to retain him. But he said, “My continuance on the Bench means keeping out the younger ones. I do not want to do that.” When he went to the Bench, both his son and son-in-law, eminent lawyers themselves, were in the court. He was on the civil side. His son gave up his civil practice because his father was there and he spent all his life as a judge of the tribunal. His son-in-law gave up civil practice altogether; he was having a practice limited to criminal side and even in that, he rose to great heights; he became the Chief Justice of the High Court—Sir M. N. Mukherji—and then came to the Centre as a Law Member. That was the example set up by the judges there. So we should think of this conduct that

the judges have set for themselves and for the followers who go to the bench after them. When this Bill is enacted into a law, I believe, as I said now, that this will remain a dead Act; it will never be applied in relation to the members of our judiciary who have established in India such a glorious record, such a record of which we can be proud. In fact, we can present to the whole world the achievements of Indian lawyers and Indian judges.

**Shri M. P. Swamy (Tenkasi):** In deference to the wishes of the House, the Deputy Minister was pleased to refer this Bill to a Joint Committee and I hope the Joint Committee will thoroughly go into this matter and make suitable suggestions and amendments, if found necessary.

The operative clause of this Bill is clause 3, which says:

"If the President, on receipt of a report or otherwise, is of opinion that there are good grounds for making an investigation into the misbehaviour or incapacity of a Judge, he may constitute a Special Tribunal..."

Here I want to say that each and every report sent to the President is not automatically referred to the Special Tribunal; the President exercises his discretionary power; he scrutinises the report and other factors before he sends the matter for investigation to the Special Tribunal. So there we have got the fullest confidence in the discretionary power of the President.

We find that the judges are the watchdogs of liberty and freedom of the citizens against the citizens and the citizens against the Government. The judges occupy an eminent place in the society and it is a delicate matter to enact legislation to inquire into their misbehaviour. We should, therefore, bestow our best attention to framing and putting our suggestions in this connection. As the Bill stands now, clause (8), Section 3, says:

"The President may, if he so thinks fit, appoint a person to conduct the case against the Judge."

Here I would suggest that a person who is learned and who is an advocate of the Supreme Court should be appointed to conduct the case against judges before the Special Tribunal.

There is no penalty attached if a judge refuses to submit himself before the Medical Board for examination. Here, Clause (5), Section 3, only says:

"...the Judge shall submit himself to such medical examination"

There is no penalty attached if he fails or refuses to submit himself before the Medical Board. I think the Joint Committee will look into this matter.

As I said earlier, our judiciary is functioning very well and we have great confidence in them. But here we find that the Parliament is the supreme authority in conducting the whole affairs of the nation. Under Article 124, Clause (5), we have got the power to remove a judge for proved misbehaviour or incapacity. Here again we find that only the President is given the power to initiate the proceedings. What the Parliament is asked to do is either to accept or to reject the report given by the Special Tribunal. The President has got the power to exercise his discretion and only when he is of the opinion that there is a proper case, he will forward it to the Special Tribunal for investigation. So there is a safeguard here against any fictitious or frivolous allegation made against judges. If, on investigation by special tribunal, any report is proved to be false or baseless, the law must be invoked, to punish the complainant.

श्री हुकुम शर्मा कलकत्ता: येरा एक व्यवस्था का मसाला है. हाउस में कोरम इस समय मौजूद नहीं है।

**Mr. Deputy-Speaker:** The bell is being rung . . .

Now there is quorum. The hon. Member may continue.

**Shri M. P. Swamy:** As I was referring, it is the Parliament and Parliament alone which has got the power to accept or reject the report given by the Special Tribunal, by passing a motion to that effect, supported by a majority of the total membership of the House and by a majority of not less than two-thirds of the members present and voting. It is just like the procedure for amending our Constitution. So there are very many safeguards for the judges and we wish, as Shri C. K. Bhattacharyya said, that no occasion will arise to come across such cases in our country.

**Shri Jaganatha Rao:** Mr. Speaker, I am grateful to the hon. members who have evinced so much of interest in this Bill. I would have straightaway, accepted the motion of my friend, Shri Kamath, yesterday to refer the Bill to the Select Committee, but his motion was for a reference to the Committee of this House. Under the Constitution, both the Houses can present an address to the President for removal of a judge on grounds of proved misbehaviour or incapacity. Therefore, I could not accept his motion and have now come forward . . .

**Shri Hari Vishnu Kamath:** I agreed to it yesterday itself.

**Shri Jaganatha Rao:** Several points have been raised by the hon. members yesterday and today. One of the points, which, according to me, is important, is that the initiative should rest with the Parliament. This point was raised by Shri Kamath and was supported by Dr. Singhvi and Prof. Ranga. My submission is that the initiative always rests with the Parliament. The Constitution is the supreme law of the land and any legislation passed by the Parliament or the State Legislatures must conform to the provisions of the Constitution. Under the Constitution, the President is the appointing authority in the case of a Supreme Court judge or a High Court judge. The principle here is that the authority which has the power to appoint should have the authority to

remove the person so appointed. That is the principle on which the authority vests with the President to remove a judge. Certain safeguards have been provided in the Constitution to preserve the independence of the judiciary. A judge cannot be removed by the President who appoints him unless both the Houses present an address and on the ground of proved misbehaviour or incapacity. This is the first principle.

The second principle, which I would like to say in reply to the point raised is that the Parliament under Art. 124 of the Constitution can present an address to the President for removal of a judge on grounds of proved misbehaviour or incapacity, the words "proved misbehaviour or incapacity" presuppose that there should be some agency which would go into the question of the fact of incapacity or misbehaviour. Therefore, there must be some body or some agency to go into the question. Then only Parliament comes into the picture. Parliament has the final say in the matter. Therefore, according to me, Parliament should not have anything to do either with the appointment of the tribunal or with the initial stages and no discussion can take place in Parliament at that stage. That is the principle why the initiative which vests with the Parliament under the Constitution is retained and is not sought to be taken away by this Bill.

Further, no discussion can take place on the conduct of a judge either on the ground of alleged misbehaviour or incapacity unless there is adequate evidence. Otherwise, the fair name of the judge will be tarnished. Therefore, the framers of the Constitution envisaged that there should be some agency to go into this question and only when the report of that agency is forthcoming the power which vests with Parliament can be exercised.

Objection has been raised in regard to the constitution of the tribunal, and it has been asked why in clause 3 (2) it has been provided that only persons who have been or are members of the

Supreme Court shall be appointed to this special tribunal. The reason is simple. Persons who have been or are judges of the Supreme Court are men of vast judicial experience and exceptional integrity, and these are two classes of persons from among whom the members of the special tribunal shall be selected. These posts are not going to be advertised by the UPSC. One hon. Member said that persons who were qualified to be judges of the Supreme Court should also be selected. Any advocate with ten years' experience is qualified to be a Supreme Court judge....

**Shri Hari Vishnu Kamath:** On a point of order. If I have heard the Hon. Speaker aright, he had observed, when you, Sir, were not here unfortunately, that Members on both sides of the House need not go into the details, since the Joint Committee would consider all these matters at leisure.

**Shri Jaganatha Rao:** Should I not reply to the points raised?

**Shri Hari Vishnu Kamath:** They were raised because there was no proposal to refer it to a Select Committee then.

**Shri Jaganatha Rao:** Because they have been raised, I am replying to them. My hon. friend cannot take away my right to reply.

**Dr. L. M. Singhvi (Jodhpur):** Is the hon. Minister so keen to reply to the points raised now?....

**Shri Jaganatha Rao:** Why were the points raised then? Certainly, I cannot allow a point to go on record without its being replied to.

**Dr. L. M. Singhvi:** I should like the hon. Minister to tell us whether there is any parallel for the appointment of a special tribunal in any of the countries which are advanced and experienced in the process of the rule of law.

**Shri Jaganatha Rao:** There is a parallel in the Canadian Constitution and in the Australian Constitution.

**Dr. L. M. Singhvi:** There is no such special tribunal there.

**Shri Jaganatha Rao:** We have got instances in the Constitutions of the other countries of the world also. That is the reason why this clause has been incorporated in the Bill.

My hon. friend Shri U. M. Trivedi raised a point about the commencement clause of the Bill. He asked why it had been said that the Act would come into force on such date as the Central Government might by notification in the Official Gazette, appoint. The reason is simple. This Bill contemplates the framing of rules by the Central Government regarding the procedure to be followed by this House for the presentation of the address to the President, how the Address should emanate, whether it should emanate in the Lok Sabha first and then go to Rajya Sabha, and if such a motion is adopted, what the procedure for transmitting it to the other House should be, in what form the Address has to be presented and so on. These things will be regulated by rules to be framed by the Central Government which have to be placed on the Table of both Houses of Parliament. That is why some time will be taken for the implementation of this Bill. That is the reason why this commencement clause has been incorporated in this Bill.

Then, some hon. Members suggested that the tribunal should be a permanent one. It is not a vigilance commission to inquire into the conduct of judges or public servants or public men. It is only when an occasion arises or when the need arises, which we hope will very seldom arise or may not arise at all. . . .

**Shri C. K. Bhattacharyya:** It will never arise.

**Shri Jaganatha Rao:** According to me, it may never arise. But the Constitution requires that a law should be



[Shri Jaganatha Rao]

made by Parliament, and the law is being made about the procedure to be adopted.

In regard to the procedure to be adopted by the tribunal, this Bill gives the powers of a civil court to the special tribunal. The provisions of the Civil Procedure Code regarding the summoning of witnesses, their examination, and the issue of commissions and so on will apply to them. Therefore, the Central Government or the executive does not interfere with the functioning of this special tribunal at all. The fears expressed by hon. Members on this score were unfounded, because I am sure evidently they have not gone through the Bill in detail.

As regards the medical board, I am glad that two hon. Members have already replied to it. When a judge is said to be incapacitated either due to physical defect or due to mental defect, somebody has to go into the question. It is only a medical board that can give an opinion on the matter. Therefore, a medical board has to be constituted in the interests of the judge.

Then, objection was taken to the provision that Government or the President may appoint a person to conduct the case against the judge, and it was asked why the word 'person' should be there and why the words 'a senior advocate' should not be there. I would submit that it is not always necessary that a senior advocate should be there. Suppose there is a question about the capacity of a judge, whether he is really incapacitated due to physical or mental defect, then any person may be appointed, for instance, a doctor could be appointed to conduct the case. Therefore, some discretion has to be allowed to the President to appoint a suitable person according to the circumstances of the case.

Fears have been expressed that the sovereignty and the powers and supremacy of Parliament are taken away by the appointment of this special

tribunal. I would submit that they are not taken away. The words used in the Constitution are 'proved misbehaviour' or 'incapacity'. So, a fact-finding body has to be appointed, and its report will have to be laid on the Table of both Houses of Parliament, whether that report be favourable or unfavourable to the judge. The final say rests with Parliament. Parliament will have to come to a decision by a total majority and by a majority of not less than two-thirds of the Members present and voting, and then the President is bound to act on the address presented to him by both Houses of Parliament. Therefore, the fear expressed in some quarters that Parliament's right is taken away is not correct.

**Shri C. K. Bhattacharyya:** The whole thing will depend on the interpretation of the word 'proved'. What does the word 'proved' mean?

**Shri Jaganatha Rao:** It means 'proved to the satisfaction of the tribunal'.

**Shri Hari Vishnu Kamath:** Proved to the satisfaction of Parliament.

**Shri Jaganatha Rao:** It is a fact-finding body. That is why we are going to have a sitting judge or a retired judge of the Supreme Court as a member of the special tribunal, and the tribunal will go into the question; full opportunity would be given to the judge to adduce evidence in defence of himself and to rebut the allegations. . . .

**Dr. L. M. Singhvi:** It has to be proved to the satisfaction of the Parliament and not of the special tribunal. How does the hon. Deputy Minister import the concept of a special tribunal and superimpose it on article 124 (5)?

**Shri Jaganatha Rao:** The tribunal is given full powers to go into the evidence. Supposing the tribunal says that the case is not proved against the judge, the report will be laid on the Table of the House. It is then

open to any Member of Parliament to bring forward a resolution. That is not barred. That right is not taken away.

**Shri Hari Vishnu Kamath:** The hon. Deputy Minister should also be there on the Joint Committee.

**Shri Jaganatha Rao:** I shall be there on the Joint Committee. We are trying to evolve a code and a machinery by which we shall safeguard the interests of the judge and at the same time see that the Constitution is followed.

**Shri Alvarez (Panjim):** The pilot must be on the Joint Committee.

**Shri Jaganatha Rao:** I am there on it.

I need not go into the other details now. I am glad that the House has evinced great interest in this Bill, and I thank the hon. Members who have taken so much interest in this Bill.

**Shri Hari Vishnu Kamath:** On a point of clarification. The Deputy Minister was pleased to say that Parliament had not been divested of the right given to it under the Constitution. Now, the President has been given the initiative to order or direct an investigation into the misbehaviour or incapacity of a judge. Suppose in spite of—God forbid—allegations, memorials and petitions presented to the President, as has happened in some cases in the past, the President refuses to appoint a tribunal, then will Parliament still have the right, and will any Member of Parliament have the right to bring forward a motion or a resolution to advise or ask Government to order an investigation?

**Shri Jaganatha Rao:** That power is not taken away. It is open to any Member to bring forward a resolution.

**Shri Hari Vishnu Kamath:** I hope they will co-operate in bringing it about.

**Mr. Deputy-Speaker:** The question is:

"That the Bill to regulate the procedure for the investigation and proof of the misbehaviour or incapacity of a Judge of the Supreme Court or of a High Court and for the presentation of an address by Parliament to the President be referred to a Joint Committee of the Houses consisting of 30 Members; 20 from this House namely Shri S. V. Krishnamoorthy Rao, Shri N. C. Chatterjee, Shri Sachindra Chaudhri, Shri Homi F. Daji, Shri R. G. Dubey, Shri Hari Vishnu Kamath, Shri Harekrushna Mahatab, Shri Shankarrao Shantaram More, Shri Gulzarilal Nanda, Shri Ghan-shyاملal Oza, Shri Tika Ram Paliwal, Shri Raghunath Singh, Shri Shivram Rango Rane, Shri N. G. Ranga, Shri Sham Lal Saraf, Dr. L. M. Singhvi, Shrimati Tar-keshwari Sinha, Shri U. M. Trivedi, Shri T. Abdul Wahid, and Shri Jaganatha Rao, and 10 from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of Members of the Joint Committee;

that the Committee shall make a report to this House by the 28th February, 1966;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees shall apply with such variations and modifications as the Speaker may make; and

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of 10 Members to be appointed by Rajya Sabha to the Joint Committee."

*The motion was adopted.*