RAJYA SABHA

_____

*SYNOPSIS OF DEBATE

_____

(Proceedings other than Questions and Answers)

_____

Wednesday, August 17, 2011/ Sravana 26, 1933 (Saka)

_____

STATEMENT BY PRIME MINISTER

Situation arising out of agitation launched by Shri Anna Hazare

THE PRIME MINISTER (DR. MANMOHAN SINGH): It is my painful duty to report to this august House certain events that took place yesterday in New Delhi.

Hon'ble Members are aware that after extensive consultations and discussions, including deliberations in a Joint Drafting Committee and a meeting of all political parties represented in Parliament, the Government has introduced a Bill in the Lok Sabha on the setting up of Lok Pal. The Bill has been referred to the Standing Committee concerned.

Notwithstanding the introduction of the Bill, Shri Anna Hazare and his supporters have persisted with their demand that the Jan Lok Pal Bill drafted by Shri Anna Hazare should be introduced in Parliament and that the Jan Lok Pal Bill should be the Bill that must be passed by Parliament. In support of this demand, Shri Anna Hazare had announced some time ago that he would undertake an indefinite fast beginning August 16, 2011.

***This Synopsis is not an authoritative record of the proceedings of the Rajya Sabha.**

On August 2, 2011, an application was made to Delhi Police by an organisation called India Against Corruption for permission to hold a month-long fast beginning August 16, 2011 at New Delhi. Delhi Police held discussions with the applicants in order to identify a suitable place and to formulate the conditions under which the permission could be granted for holding a fast at that place. Eventually, on August 13, 2011, Delhi Police informed the applicants that permission would be granted for the protest at Jai Prakash Narayan Park, near Ferozshah Kotla, subject to permission being granted by the land owning agency and subject to certain conditions.

Delhi Police also informed the applicants that they would have to give an undertaking to abide by the conditions.

However, on August 15, 2011, the organisers refused to accept six of the conditions, including the condition that the protest fast would be limited to three days. Hence, Delhi Police informed the applicants that, since they had declined to accept some of the conditions and refused to give the undertaking to abide by all the conditions, permission would not be granted to hold the protest fast at Jai Prakash Narayan Park. Prohibitory orders under section 144 CrPC were also imposed on August 15, 2011 in and around Jai Prakash Narayan Park and some other areas.

On the evening of August 15, 2011, Shri Anna Hazare, through public statements, made it clear that he and his supporters would converge at Jai Prakash Narayan Park and defy the prohibitory orders under section 144 CrPC. Yesterday morning, Delhi Police reviewed the situation. Delhi Police came to the conclusion that it was clear that Shri Anna Hazare and his supporters would commit a cognizable offence and there was a likelihood of a breach of peace. Hence, Shri Anna Hazare and six others were arrested, as a preventive measure, under section 151/107 of the Criminal Procedure Code. They were taken to the Delhi Police Officers' Mess at Alipur Road and, subsequently produced before a Magistrate. Delhi Police did not seek the police remand of the arrested persons. The Magistrate offered to release the arrested persons on their personal bonds subject to the

condition that they would undertake not to violate the prohibitory orders. However, Shri Anna Hazare and others refused to give such an undertaking or furnish personal bonds. Hence, the Magistrate remanded the arrested persons to 7 days' judicial custody.

Meanwhile, during the course of yesterday, 2,603 persons were detained in Delhi when they were proceeding to or were in areas where prohibitory orders under section 144 of the Criminal Procedure Code were in force. All of them were released later in the evening yesterday.

Late yesterday evening, Delhi Police received information that Shri Anna Hazare intended to move the Supreme Court challenging the orders of Delhi Police. Delhi Police also received information that the petition was likely to be mentioned before the Supreme Court on Wednesday, that is, today, for urgent hearing. Since there were reasonable grounds to believe that Shri Anna Hazare had opted to seek legal remedies, Delhi Police did not apprehend any imminent breach of peace or imminent disturbance to tranquillity if the arrested persons were released. Hence, Delhi Police moved the Magistrate concerned to review his earlier order and the Magistrate was pleased to release Shri Anna Hazare and the other arrested persons at about 7 p.m. yesterday. The jail authorities informed Shri Anna Hazare and others that orders for their release had been received. However, Shri Anna Hazare and others (except one) declined to leave the jail premises unless the Government gave an undertaking that they would be permitted to hold their protest fast at Jai prakash Narayan Park without any condition.

Our Government acknowledges the right of citizens to hold peaceful protests. In fact, Delhi Police have allowed several such protests, but in each case appropriate conditions have always been imposed and the organisers were always required to give an undertaking to abide by all the conditions. Shri Anna Hazare and his supporters would have been allowed to hold their protest fast if they had accepted the conditions under which the permission was granted and had undertaken to abide by those conditions. Since they declined

to do so, Delhi Police was obliged to refuse permission to hold the protest fast.

The Government wishes to stress that the issue before the nation is not whether a Lok Pal Bill is necessary or desirable. All of us in this House are agreed that a Lok Pal Bill must be passed as early as possible. The question is, who drafts the law and who makes the law? I submit that the time-honoured practice is that the Executive drafts a Bill and places it before Parliament and that Parliament debates and adopts the Bill with amendments if necessary. In the process of adoption of the Bill, there will be opportunities for Shri Anna Hazare and others to present their views to the Standing Committee to which this Bill has been referred by the Hon. Speaker. The Standing Committee as well as Parliament can modify the Bill if they so desire. However, I am not aware of any constitutional philosophy or principle that allows anyone to question the sole prerogative of Parliament to make a law. In making a law on Lok Pal, the Government has faithfully adhered to the well-settled principles. As far as I am able to gather, Shri Anna Hazare questions these principles and claims a right to impose his Jan Lok Pal Bill upon Parliament.

I acknowledge that Shri Anna Hazare may be inspired by high ideals in his campaign to set up a strong and effective Lok Pal. However, the path that he has chosen to impose his draft of a Bill upon Parliament is totally misconceived and fraught with grave consequences for our Parliamentary democracy.

Our Government does not seek any confrontation with any section of the society. But when some sections of society deliberately challenge the authority of the Government and the prerogative of Parliament, it is the bounden duty of the Government to maintain peace and tranquility. Delhi Police, as the authority charged with the responsibility, took the minimum steps necessary to maintain peace and tranquility in the capital city. Inevitably, though unfortunately, it led to the arrest and subsequent release of Shri Anna Hazare and some of his supporters. I sincerely hope that the incidents of yesterday will not be repeated today or in the future.

I should also make it clear that the issue between the Government and Shri Anna Hazare is not one of different attitudes to fighting corruption. In my Independence Day address, I spoke at length about the need to deal effectively with corruption. I would like to assure this House that we are determined to provide a Government that is transparent, accountable and responsive at all times and determined to fight corruption. But as I said on 15 August at the Red Fort, there is no magic wand by which, in one stroke, we will get rid of the menace of corruption. We have to work simultaneously on several fronts. In my 15 August address, I have outlined some of the measures we intend to put in place to strengthen our fight against corruption. I invite all sections of this House to join hands with us to deal with the cancer of corruption.

With respect to the events of yesterday, I will only say that a functional democracy must allow multiple voices to be heard. But differences of opinion must be resolved through dialogue and consensus. Those who believe that their voice and their voice alone represents the will of 1.2 billion people should reflect deeply on that position. They must allow the elected representatives of the people in Parliament to do the job that they were elected for.

India is an emerging economy. We are now emerging as one of the important players on the world stage. There are many forces that would not like to see India realize its true place in the comity of nations. We must not play into their hands. We must not create an environment in which our economic progress is hijacked by internal dissention. We must keep our mind focused on the need to push ahead with economic progress for the uplift of the common man.

I appeal to all sections of this august House to ensure that the Government and its processes, and the Parliament and its processes function smoothly and effectively. There is no substitute for that. If some people do not agree with our policy, there will be a time when they will have an opportunity to present their points of view to the people of this great country.

I request all political parties to ensure that Parliament functions smoothly. There are very many important legislative measures that are required to be passed. If we do not pass them, we will do great injustice to the people of India and in turn hurt the common man. We are willing to debate every issue in Parliament, and we have demonstrated that we are co-operating with the Opposition in every possible way to ensure that Parliament functions smoothly.

We as elected representatives of our people should do nothing to weaken our people's faith in the capacity of our democracy, our institutions and our social ideals and values to overcome all difficulties. We should have faith that we can together build a promising future for ourselves. Let us unite in that faith.

THE LEADER OF THE OPPOSITION (SHRI ARUN JAITLEY): We have heard a detailed statement from the hon. Prime Minister which not only disappoints us but does not really add to our information or knowledge. The Prime Minister, in his statement, besides giving us the detail of the events which have taken place, has posed a question before this Parliament as to who drafts the laws and who makes the laws in this country. This is a serious political issue which is being debated for the last few months, which climaxed in the last few days, and now we find that the political leadership of this country is really hiding behind the men in uniform and tells India's Parliament and India's people that this entire crisis was being handled by some policemen and the solution to them was that the police decided to invoke provisions of sections 151 and 107 of CrPC. It is time for the Prime Minister of India and the political leadership of the Government to really stand up and take bold decisions. He must go to the root of this issue. When the news spread that Shri Anna Hazare had gone and sat at the Rajghat, thousands of people, voluntarily started arriving there in order to show solidarity and support. When the news of his arrest spreads, all over the country, every city, even in rural areas, protests start. India today is exasperated with corruption; India today is exasperated with this political leadership of the Government, which is unable to tackle corruption.

When the 2G scam took place, it was repeatedly told that there is nothing of a scam in it. You were coerced by courts; you were compelled by the courts and by the course of public opinion and the Opposition in Parliament to start taking action against those who were responsible for all these scams. There are two questions this Government has to answer. The first is: Does it have a political will to fight corruption? You determine political will, you evolve that political will in yourself and then decide to fight corruption. You followed the police power approach to solve the political problem. Smugness and arrogance of power which has become a character of this Government, is not the methodology by which corruption can be fought. If the Government is having a political will to fight corruption it is only then that you can ever get the confidence of this nation back.

Members of civil society or any citizens' group or any citizen of this country has a right to campaign for his views. He has a right to crusade for his views. That is a part of the democratic discourse, they have a right to protest and they have a right to dissent. You have first involved them in the Drafting Committee. Then, you come up with a Bill, a Bill which almost provides for a Government-controlled Lokpal. That Bill may not inspire confidence with them. There are areas where we also have serious differences with the Bill. The issue, today, is how you have handled a political crisis. You have imposed conditions. The Government of the day, against whom the protest is being organized, will decide as to whether the people are entitled to a large protest or only a miniscule protest. You will never have more than 5,000 people in this protest. Is the Congress Party willing to give an undertaking to this country that it will never organize a protest of more than 5,000 people? Are you willing to abide by each of these conditions that you have imposed on Anna Hazare and his people?

The politics is a separate discipline and the law is a separate discipline. The political problems are to dealt with a political approach. If a country is exasperated with corruption, you address the problem of corruption. If a citizens' group wants to protest, you allow him to protest. National Advisory Committee is a group of citizens. The laws drafted by your NAC will come up before the Government

or the Parliament. The effective issue today is that Shri Anna Hazare, his group and lakhs and lakhs citizens of this country have a right to say what they want to say. They have never indulged in violence; they have not disrupted the public order; they have not been a threat to peace. If the Government becomes so dictatorial, so oppressive, then a citizens' group may well say that it is willing to offer satyagraha and even go to prison.

You brought in a bill that does not satisfy anyone. When they chose to protest, you quietly went early morning and arrested them. But by the evening you saw the enormity and the magnitude of the protests, therefore, you make a statement. India is already exasperated with you. It is fed up of corruption and those who are covering up for corruption. You went begging him to come out of the prison. He had shown his moral strength to you by saying that he is on a fast whether inside or outside the prison and my fast will continue. This is not a confrontation between the civil society and India's Parliament. We are clear in India's Parliament that Parliament alone will draft the law. But if citizens' group wants to tell us something, we will listen to them. We may or may not accept what they say. But they have a right of peaceful protest. Please develop a political will to fight corruption; you will solve most of your problems. Release each one of the persons that you have arrested. Allow them the right of peaceful protest at a reasonable place. If anybody violates the law, invoke your police powers. But don't invoke them against peaceful protestors because, then, you will be threatening the right of dissent which is the very essence of Indian democracy.

DR. V. MAITREYAN: The events of the last two-three days are of real concern to all of us. The issue is no longer limited to Lokpal alone the issue that has emerged now is the larger issue of corruption. The groundswell of support for Shri Anna Hazare in the last couple of days shows the mood of the nation.

SHRI TIRUCHI SIVA: Every citizen in this country has got his rights. The Government has got some duties and the Parliament has got some powers. The Prime Minister has clearly said that

everyone in this House is interested in getting the Lokpal Bill passed as early as possible. There is a process for enacting laws in the Parliament. If there is something that needs to be discussed on any Bill that comes before the Parliament, it is sent to the Standing Committee and it takes its own time. Shri Anna Hazare says that the Prime Minister must be brought within the purview of the Lokpal Bill. We too feel the same and so do many other political parties. These views will be presented by the political parties before the Standing Committee and when the recommendations come to the House, the House would decide on them. Shri Anna Hazare should have had some patience to wait till the recommendations of the Standing Committee came. The media must project this fact too that the Government is very particular in doing away with corruption. A Lokpal Bill which is going to be passed by this House will solve these problems step by step. I would request that people must wait till the recommendations of the Standing Committee come to this House instead of creating chaotic conditions across the country.

SHRI D. RAJA: I disapprove the arrest of Mr. Anna Hazare and his supporters. I demand that all those arrested should be released forthwith unconditionally. I urge upon the Government not to snatch away the right to protest, the right to dissent, the right to express opposition to the Government which is a fundamental right given to the citizens by our own Constitution.

Corruption has become a major issue which is haunting the entire nation. People trust Mr. Anna Hazare in fighting corruption. They do not trust the Government. This Government suffers from a crisis of confidence, a crisis of credibility. The neo-liberal economic policies, financial policies pursued by your own Government have resulted in increasing unemployment and poverty in the country and you are unable to control the prices and inflation. There is social unrest in the country. It is not a confrontation between civil society and the Parliament. Every citizen believes, that legislations are made in the Parliament.

Effective public pressure is required to force the Government to bring an effective legislation, particularly to fight corruption.

On Independence Day, the Prime Minister spoke about strong Lokpal Bill. But he did not spelt out anything on inclusion of the Prime Minister in the ambit of Lokpal and on constitution of National Judicial Commission. This Government is lacking confidence and credibility in the fight against corruption.

SHRI SHIVANAND TIWARI: Two things are clear from the statement of the Prime Minister, one that the Government has lost his capacity of governance and the other is that the government is not capable to run a democratic government. At one hand the Government has arrested Anna Hazare and on the other hand his release orders were sent later on. Government is not able to understand that what is to be done. No matter the Prime Minister has delivered his speech from the rampart of Lal Quila that he will make a strong Lok Pal and stop corruption through that but nobody is ready to believe his statement. At one side they admit that Anna Hazare is raising his voice against corruption with an honest intention and on the other side their party is trying to assassinate his character.

Today the honest people in the country are treated as fool. In Govt's emerging economy, the incentive of being good people and civilized citizen has totally been finished in the country.

SHRIMATI BRINDA KARAT: We have seen on the streets of Delhi is a blatant assault on the democratic rights of citizens of this country granted to them by the Constitution of India to peaceful protest. Prime Minister by his statement wants to add a new chapter to the fairytales. The Government has been closing its eyes to what is happening on the streets of this country. Govt. has withdrawn from his duty of taking action and intervening on an issue which has enraged and outraged the massive people of this country. Anna Hazare had appealed to the Prime Minister himself for permission to go on hunger strike. But they were not allowed to exercise their democratic right to protest.

Prime Minister in his statement has said that civil society is challenging the Parliament. Were not there protests outside Parliament against the Women's Reservation Bill? But at that time no one said such things. Govt. is bringing various Bills in Parliament to help Corporates. But I want to assert the right of the people of this country to protest against these Bills. Civil Society and such other organizations have every right to protest.

Prime Minister has talked about the great majesty of Parliament. But the Government has shown utmost contempt for Parliament. It was said that extensive consultations and discussions were made on the Lokpal Bill in a Joint Drafting Committee and a meeting of all political parties represented. But it is not true.

The Parliament and all MPs in this House know their rights. We don't require Govt. to defend them. I would request once again, release Anna Hazare and his colleagues unconditionally.

There are more scams which are waiting to be unearthed. Govt. cannot escape unless the top leadership takes strong action against the corrupt. Don't divide civil society. Don't privilege one section of civil society and send the other section of the civil society to jail. Do not have double standards in dealing with citizens of this country. Don't bow down before corruption and don't use the shoulders of Parliament to shoot at people.

SHRI PYARIMOHAN MOHAPATRA: The entire issue has arisen because the Prime Minister has not been able to act. The Prime Minister has to take responsibility for acts of Ministers in his Cabinet. The right to dissent has to be respected. The right to dissent also has to be peaceful and organized. Today, this is the dissent of a middle class, who is tired of corruption. What is the Prime Minister doing about grass root level corruption? Prime Minister must now act instead of looking for a magic wand. We must have faith in the capacity of our institutions, our social ideas and values.

DR. MANOHAR JOSHI: Prime Minister has made a statement on the issue of corruption and agitation that was started in

Delhi. If the hon. Prime Minister sincerely wants to take action against the corrupt people, I can put a question as to what was done in case of Adarsh Building in Mumbai? They were the Ministers from Maharashtra who signed the permission. Why no action was taken against these ministers.

Discussion on corruption should start right from the elections to various bodies including the elections to the Lok Sabha or Rajya Sabha. There is corruption not only by the big people but also by the smallest people in the society. There are some departments where you don't find people without corruption. The remedy to remove the corrupt people is to change the system which supports the corrupt people. I hope the Prime Minister will think seriously and start taking immediate action to stop corruption.

SHRI MOHAN SINGH: This Government has no capability to handle crisis. The Government had issued a notification on 8th April, which was against the constitution. We don't believe in the Jan-Lokpal Bill formulated by Civil Society. We are against many sections of it. Now, Government has issued order of his release, but whether after this he can be kept in Jail even for a second? They have created an atmosphere in this country that this agitation is against corruption. The Government should propagate that all-round efforts has to be made to eradicate corruption. I demand that the Government should release members of civil Society immediately and unconditionally and they should be provided desired place for protest.

SHRI BIRENDRA PRASAD BAISHYA: The Central Government has totally failed in curbing corruption. My party, the Asom Gana Parishad, has always been in favour of a strong Lokpal at the Centre and strong Lokayuktas in the States. The Central Government has taken some unconstitutional and undemocratic decisions against the citizens of this country. Now, there is an emergency like situation prevailing in our country. My party, the Asom Gana Parishad, demands the immediate and unconditional release of Shri Anna Hazare and his team and allow them to carry on with their movement in a democratic and peaceful manner.

THE MINISTER OF LAW AND JUSTICE AND THE MINISTER OF MINORITY AFFAIRS (SHRI SALMAN KHURSHEED) : Corruption is the problem of society, it is not the problem of the Government only. Whatever action the Government is taking with regard to corruption, your cooperation is also expected in this regard. We have to decide what law will be prevalent in this country. We thought that it would be better to sit together and talk. We hoped that a collective draft could be presented before the Parliament, but it did not became a possibility. We want to give special status to the whole civil society. They wanted that a single institution should run the whole system in the country, but we have to give respect to the views of the State Governments also. We thought that different institutions should be established for cases of corruption of higher level and lower level. I had to explain that the Civil Society has concerns. We believe in democracy. But we have to put some checks somewhere in the system. We think that final decision taken by the court will prevail.

SHRI SATISH CHANDRA MISRA: It is the Government which invited the members of the Civil Society to the drafting committee. They gave their proposals. After that, the Bill was sent to the Standing Committee. The members of the Civil Society gave their suggestions before the Standing Committee also. Now, the Chairman of the Standing Committee himself is speaking into the television. This is how we ourselves have denigrated the entire institution. It is justified that power has been exercised under section 151. At 7.00 p.m. after 12 hours, another order of release is given. This entire issue of arrest can not be justified for any reason whatsoever. Since the Hon'ble Home Minister is here, a clarification would be required. Section 144 is still there, it has not been lifted. The entire country is now disturbed.

THE MINISTER OF STATE IN THE MINISTRY OF PLANNING, MINISTER OF STATE IN THE MINISTRY OF SCIENCE AND TECHNOLOGY AND MINISTER OF STATE IN THE MINISTRY OF EARTH SCIENCES (SHRI ASHWANI KUMAR): We are discussing today the issue of corruption and then

the fast of Mr. Anna Hazare. It is not a debate between the Opposition Vs. Government. It is a national issue. The Government has declared itself as a major fighter against corruption. Mr. Anna Hazare and his team have a particular vision about the Lokpal Bill. The Government has a particular point of view. The Bill has not been translated into law, so the occasion for fast or protest has not arisen.

It is a constitutional guarantee of the people of India to have a right to protest. But the same constitution also includes the provision for imposing reasonable restrictions on rights. These are all subjects to right of the people of India to live in peace, to ensure that there is no breakdown of law and order. Everybody has agreed on the right to dissent. Everybody has agreed that corruption has to be fought unitedly. The Government, Opposition, Parliament, Civil Society, NGOs all of them must join hands to fight corruption. What are the means for resolving the differences? The means are as important as the ends and Mr. Anna Hazare, who proudly proclaims himself to be a Gandhian must realize that Gandhiji insisted on the legitimacy of the means and the ends.

SHRI MOHAMMED ADEEB: The present discussion is on the Lokpal Bill. But it is being said all over India that the people who are sitting in the Parliament are corrupt. It is nothing else but connivance regarding high jacking the dignity of the Parliament. It is an issue of making efforts to weaken the Government. With these words, I completely agree with the statement made by the Prime Minister and also believe that the Congress Party is competent to resolve it.

SHRI TARIQ ANWAR: In our democracy a person can express his views peacefully. But nobody is above the Constitution of India. I have seen two political movements during my political careers which were started against the corruption. One movement was initiated under the leadership of Shri Jai Prakash Narain and another was led by Shri V.P.Singh. But what were the outcomes of these movements? Neither corruption was eradicated and nor drastic changes could be brought in the system. Only political milage could

be taken out of them. I would like to state in an unambiguous term that efforts are being made to grab the seat of power by making Shri Anna Hazare a political pawn.

SHRI RAM JETHMALANI: I wish only to tell you that the crowds, which are now collecting, are victims of the very corruption about which Anna is able to tell them as to who is responsible for this corruption and from where this corruption originates? In recent times, the most important aspect of corruption has been the stolen wealth from this country. We have gone to the court and knocked the doors of the judiciary. The names are not forthcoming. They are being hidden by them because the names are of those people who are today in control of your party.

The United Nations created a convention against corruption. India signed it in 2005. From 2005-2011, they did not ratify that convention. Ultimately, in May this year the Government pretended to ratify the convention. But the Prime Minister did not tell the people that they had rendered the ratification useless. They signed a new protocol with the Swiss Government under which they gave up the right to require any information about the past. All information will be about the future and that future will start from 1st April, 2011. The reservation they have put is that wherever a bilateral treaty exists, we will act only under that treaty and not under the convention.

SARDAR SUKHDEV SINGH DHINDSA: Our party support civil rights. I can proudly state that our leader Sardar Prakash Singh Badal languished in the prison for 14-15 years in the independent India only for the cause of civil rights and fundamental rights. Wherever there is violation of fundamental rights, my party would be in the forefront to fight against it. I would like to ask from the Government that whether Anna Hazare is a patriot or a traitor? I on behalf of my party would like to state that Anna Hazare and his associates should be released immediately and allowed to sit on the fast unconditionally. Besides, the Government did not consult anybody on the Lokpal bill which was introduced by it. That is why

we oppose it. The country needs Lokpal Bill and Government cannot escape from it.

SHRI M.V. MYSURA REDDY: Yesterday's public anger is mainly due to the corruption in our political system. When we raised the issue of Radia tapes, on technical matter only, it was obstructed. Then the Supreme Court intervened in the matter and 2G scam was exposed. Regarding the issue of black money also, the Supreme Court had to intervene. Even in the appointment of the CVC, they ignored the objections of the Leader of the Opposition. Then regarding mining mafia in Andhra Pradesh, our pleas to the Government fell on deaf ears.

Like allotment of petrol blocks, allotment of coal blocks might also be started soon. The Government is getting a bad name because of a series of scandals. It is high time that they put a full stop to these scams and corruption. Will they come up with a legislation to mitigate the anger of the people?

SHRI RAM VILAS PASWAN: During the emergency, in JP movement we remained in jail for 19 months to protest against corruption. Nobody should be compared with Jai Prakash Narayan. I agree with the point that the Prime Minister should have apprised about the points raised by both the sides, the points agreed upon and the opinion of the opposition on the points which are not agreed upon. The national interest should be above all. After that, there should be the interest of the party and then the interest of the individual. We do not support the arrest of Anna Hazare. The civil right protection should be provided. There is nobody belonging to the scheduled castes in the civil society. Is nobody from the scheduled castes is able to be included in the committee? The dignity of Parliament should be maintained.

SHRI RAJNITI PRASAD: You are trying to run a parallel Parliament. You can not demoralize the Parliament by enacting a separate bill. Anna Hazare is a good person. He has also been kidnapped by them. This kind of democracy will not continue.

DR. PRABHA THAKUR: The Prime Minister has never said that the Prime Minister should be out of its purview. As an individual, he accepts it, but, constitutionally, the Lokpal Bill will be brought according to the opinion of all the members of the Committee.

OBSERVATION BY THE CHAIRMAN

MR. CHAIRMAN: The House will now take up the Motion for presenting an Address to the President for removal of Justice Soumitra Sen, Judge, High Court of Calcutta from his office together with the Motion for considering the Report of the Inquiry Committee constituted to investigate into the grounds on which removal of Justice Soumitra Sen, Judge, Calcutta High Court was prayed for.

Before calling the mover to move the Motion, I wish to inform the Members the procedure that I propose to follow.

After the motions are moved and the mover of the motion has spoken, I shall call Justice Soumitra Sen to present his defence. After the presentation, Justice Sen shall withdraw.

The House will then proceed to consider the motion and Members will participate in the discussion on the motion.

I would urge upon the Members to make precise and short speeches restricting themselves broadly to the findings of the Inquiry Committee, as contained in its Report. I also seek cooperation of the Members in maintaining the dignity of the House during the presentation of Justice Soumitra Sen to the House in keeping with the solemnity of the occasion.

After all the Members have spoken, the mover will reply to the discussion. Thereafter, I shall put the Motion for presenting an Address to the President received under article 217 read with clause (4) of article 124 of the Constitution, and, the Address to the President together to the vote of the House in terms of Rule 16(4) of the Judges Inquiry Rules, 1969.

I may inform the Members that the Motion and the Address are required to be adopted by a majority of the total membership of the House, and, by a majority of not less than two-thirds of the Members of the House present and voting in terms of clause (4) of article 124 of the Constitution, and, presented to the President in the same Session.

The matter pertaining to the removal of a Judge is very serious, and, maybe dealt with in a careful and sound manner.

I request the Members not to repeat the points and not to bring in any extraneous matter while speaking on the Motion. Since the time allowed for discussion is four hours, excluding the ninety minutes time, which is the time allotted to the Judge for his defence, I would urge the Members to restrict themselves to the facts mentioned in the Judges Inquiry Committee Report and the reply of the Judge. Both the documents have been circulated to the Members on 10th November, 2010, and, on 21st February, 2011, respectively.

_____

MOTION

Motion for presenting an address under Article 217 read with clause (4) of Article 124 of the Constitution to the President for removal from office of Justice Soumitra Sen of the Calcutta High Court;

and

Motion for considering the report of the Inquiry Committee constituted to investigate into the grounds on which removal of Shri Soumitra Sen, Judge, Calcutta High Court was prayed for.

SHRI SITARAM YECHURY: I beg to move the following motion:

> "This House resolves that an address be presented to the President for removal from office of Justice Soumitra Sen of the Calcutta High Court on the following two grounds of misconduct:-

(1) Misappropriation of large sums of money, which he received in his capacity as receiver appointed by the High Court of Calcutta; and

(2) Misrepresented facts with regard to the misappropriation of money before the High Court of Calcutta.

I also move the following motion:

"This House do consider the Report of the Inquiry Committee in regard to investigation and proof of the misbehaviour alleged against Shri Soumitra Sen, Judge, High Court of Calcutta which was laid on the Table of the House on the 10th November, 2010".

I moved these motions fully conscious of the solemnity of the occasion. It is for the first time that this august House is considering the invocation of our Constitutional provisions for the adoption of such motions. This is not a motion questioning the integrity of the judiciary. This is a motion against one Judge who has been found to have indulged in conduct that constitutes the definition of misbehaviour within the meaning of our Constitution. The judiciary is held in high esteem by both the people and the system as it dispenses with justice and is one of the important organs of our State. It is, therefore, a call of duty to the nation to correct any aberration that may lead to the undermining of this faith. The constitution also provides specific provisions which are essential for the independence of the Judiciary, but also for safeguards in the process of the removal of a judge. These provisions, in my opinion, are aimed at strengthening the independence of the Judiciary rather than undermining it.

There is very little ground to apprehend that justice will not be done to these safeguards. The Report of the Inquiry Committee unambiguously upholds these charges. I think, the matter needs to be treated as closed. He proceeds to cast aspersions on the then Chief Justice of India and other members of the highest judiciary who have opined against him. What we are talking about is: do we, in

accordance with the law of the land, Constitution of the Republic of India and its provisions, find Justice Soumitra Sen guilty of the two charges that we have made? In the instant case that we are discussing now, all the provisions of the Constitution has been scrupulously adhered to by the duly constituted Inquiry Committee. I have established these points earlier. But Justice Sen's reply has been that the motion moved by me and 57 other Hon'ble colleagues does not contain any specific amounts of money that have been misappropriated.

The motion was appended with the letter of the then Chief Justice of India to the Hon'ble Prime Minister where the entire case was argued. If the contention is that these facts are not there, I think, that is wrong. I do not think there is any degree of ambiguity on the veracity of these charges. Since they stand established by three separate, independent and duly constituted authorities. Therefore I think, this is a matter that should be accepted by us as the final issue that these charges have been now proved. I feel that there is no other option but for us to proceed with these Motions. We had and have faith in our people and it is that faith that today unfortunately is being questioned by some quarters that this august Parliament is not competent or not capable to deal with corruption in high places. Therefore, we must set the precedent. I would now commend these Motions for adoption by this House, and to make sure that we convey not only to the people of India but also to the people of the world and modern human civilisation that the Indian Parliament is a sacred temple. It is the perpetual residence of inviolable justice. And this has to be established. With this appeal, I commend these Motions for your consideration and adoption.

JUSTICE SOUMITRA SEN: I am extremely grateful to the House for giving me this opportunity for presenting my defence. I have come to you to seek justice on certain very fundamental issues. I will prove from the facts as revealed from the Inquiry Committee itself that there has been no misappropriation in fact and in law. The motions that have been moved are two in number. One is misappropriation of large sums of money which I received in my

capacity as a 'Receiver' appointed by the High Court of Calcutta and secondly, misrepresentation of facts with regard to misappropriation of money before the Calcutta High Court. If I can demonstrate on the basis of the facts and evidence that there has been no misappropriation at all, the second motion automatically fails. After my elevation on 3rd of December, 2003, till November 2006, there has been no complaint against my integrity, my honesty in the public domain. Therefore, what is the substance and how could this motion come about?

Nobody has alleged anything against me. In the judicial proceeding in which the 10th April order was passed, the parties did not raise any allegation against me. The suit is filed in the year 1983 and is still pending disposal. The money belongs to third parties. They want it back. They have clearly said they have no allegation against me and they do no wish to contest the proceeding. Then, whose allegation it is? The proceeding before the learned single judge was purely to examine the conduct of a 'Receiver'. There was no question of examining the conduct of a judge.

The allegation of judicial misconduct and impropriety is not correct. My conduct, as a Judge, was never in question. I agree with Mr. Yechury when he said that people in high office should be absolutely clean. They are trying to hold me guilty by a non-judicial process because they have already determined what to do. The real issues are something else. Hon'ble Member referred to the question of diversion of funds from one account to the other. This distribution of money had been made to the workers of a closed factory, pursuant to a Division Bench's order. Payments were made through account payee cheques. Neither any worker nor the Union has complained. But a single Judge says that this is the diversion of funds. It is not justice. The decision was made long time ago to hold me guilty. It is apparent from the letter written to the hon'ble Prime Minister. I have never said that I did not receive the money or I cannot give it back. A Receiver cannot hand over any money to anybody unless the court directs. But there was no demand, no order, in the meantime. The 1993 order, categorically, records that I am to hold the money until further orders. When the application came up for the first time, I was discharged

from further acting as a Receiver. The fixed deposit receipts are still lying in their custody untouched. Where is the question of misappropriation? I could have taken shelter behind the Companies Act. I did not do so. I have decided to come whatever the outcome may be. There is not a single allegation of dishonesty and corruption in my judicial functioning? Tarnishing the image of a Judge is tarnishing the image of the judiciary. But, if he becomes a victim of abuse of power, where would he go? Firstly, they offered me VRS. But when I refused to do so they demanded resignation. I have exhausted me remedies in accordance with law, and I have succeeded. I am not taking shelter behind a judicial order. The Judges Inquiry Committee holds me guilty of misrepresentation on the basis of wrong account number.

I am being held guilty of putting a wrong account number. A learned Single Judge had supplied the account, money was withdrawn from the account and then it was closed. It was said that misappropriation of money was committed. I paid back the money to the parties because I thought it was my moral responsibility. The court granted interest of Rs.24 lakhs only to benefit the parties. A very huge Constitutional requirement and necessity of impeachment of a judge has been so flimsily framed. The bank's officials said 'Probably not his account'. He was also very skeptic about the signature. They have no witness to prove anything. There should be a Constitutional requirement of proof. Did you verify the records in the High Court of Calcutta that this Account number pertains to the Respondent? The then Manager of the Bank is not interested in giving the right answer. On verification, I found that the signature and the address mentioned are not matching with that of the respondent. The Judges Inquiry Committee are too anxious to hold me guilty any how. The dues of the workers have been fully paid. They have been paid one lakh rupees more. I have worked in that matter without remuneration because I thought that taking remuneration out of the poor workers' fund was not moral.

It has been said that I have put money in my own account and there has been a merger of funds. It has been repeatedly said that this

is Receiver's Account. But, the bank does not open a Receiver's Account. That is the procedure in Kolkata. In 1993 Order, which directs me to sell property and keep the money, there is no direction to open the account. So, what wrong have I committed? I agree that I should have handled the account in a better way. As an Advocate, there may have been some indiscretions on my part. But, that does not constitute the allegation of misappropriation. The allegations of misappropriation based on diversion of funds are demolished by the cheques themselves. The High Court does not produce the entire bunch of cheques. The misappropriation amounts only when it can be proved that I have utilized it for my personal gain. Mere transfer of money from one account to another is not misappropriation. Is it possible for me to create 79 fictitious accounts and obtain money from them? Unless you prove diversion of funds, you cannot prove misappropriation. You have to give judgment whether I have influenced the Judges or not. The explanation of the Judge to proceed an independent inquiry is that I have not approached the Court in spite of repeated opportunities. The application was filed in March, 2003 and it was served upon me in May, 2005. No copies of the Orders were served upon me although official liquidator was called, a vigilance was registered, the bank was called and my personal account was investigated. Is this a fair procedure to be adopted in a Court of Law? Therefore, it is improper to say that I did not approach the Court and I did not cooperate. In respect of the findings based upon the withdrawals of money, I will say boisterously that these payments are not my personal withdrawals, these are labour payments. This is neither a diversion of fund, nor misappropriation. On the one hand you say for payment, on the other hand you are passing an order for injunction. The Judge passed an order of injunction against my personal property because he has a special interest in the matter.

There is a specific order that the documents shall be kept in a sealed cover. But, how did they come out of the sealed cover? Investments must have been made earlier. When there is no evidence and no bank accounts from 1993-1995 are established, how can you make a presumption? Is it not based on pure surmises and

conjectures? The Judge neither believes me, nor disbelieves me. Therefore, he asks me to come to Court once again with fresh material. This is a mockery. The money belongs to third party. They never came to me and said that I had misappropriated the money. On what evidence did the Judges Inquiry Committee proceed? The account on which the matter proceeded is not my account at all. It is impossible for a person to remember all the figures of the account number. This mistake of fact is made the ground to hold me guilty of misleading the Division of Bench. This is not tenable. The Single Judge passes an Order directing payment to be made within a period of time, and then passes an Order restraining me to pay. My bank account was sealed. The parties who are entitled to almost Rs.32 lakhs have got Rs.58 lakhs. Is it an act of a person who has misappropriated the money when the fixed deposit receipts are available and there is no encashment of them? The parties said that they had no allegation against the receiver and they had no allegation against his conduct. Then whose allegation is it? I never misappropriated and misused Government funds. The learned Judge insisted upon the parties to file an affidavit. The House will see as to who has actually abused the process of law. Justice K.G. Balakrishnan has become accuser, prosecutor and the judge. This is not a fair procedure. Now, I am confident that I will get justice from this House. The Senior Counsel himself says that the erstwhile receiver was never directed by the judge to make any payment prior to the Order of 10th of April 2006. He submits that the aforesaid remarks were not necessary for deciding the matter and that the erstwhile receiver never disputed his obligation to pay the money pursuant to the directions of the hon. Court and Learned Senior Counsel.

The learned single Judge had no reason to observe that the erstwhile receiver has committed a breach of trust. What have I done as a Judge? Am I not a victim of circumstances? The objectionable remarks and observations of the learned single judge recorded in the order dated 10th April, 2006 have been summarized in Annexure 'B'. G.A.NO. 875 of 2003 was filed in connection with CS No. 8 of 1983. Today we are in the 2011. The suit is still pending. This is anarchy;

and complete misuse of power. Kindly do not permit this. The sale is still not complete. Therefore, the matter is still sub judice and it should not be discussed in the House. You will also have to decide whether the Division Bench judgement can be negated.

If that is permitted, it will result in judicial anarchy. We follow judicial hierarchy. Kindly prevent the tendency of misusing of power. I have become a victim of that. In the said application, the plaintiff never raised any question in respect of the conduct and functioning of the erstwhile receiver, and also did not claim any amount towards interest. In order to examine the conduct of the receiver, the parties to the suit, never made any allegation regarding misappropriation of amount. This is the misappropriation with regard to diversion of funds which I have paid to the workers. The observation of the learned single judge is not based upon proper materials on record. The foundation/formation of the In-House Committee is a misrepresentation of fact. In-House Committee is not applicable on a Calcutta High Court Judge.

When the Committee was formed, the allegation has been deleted from the record. The procedure for forming the In-House Committee was pursuant to a Full Court Resolution of the Supreme Court in 1999. Is it a fair procedure? The procedure came after the Report, along with the Report holding me guilty. Who has raised a complaint against me? How could that procedure be adopted? The In-House Committee was constituted, irrespective of the fact that all allegations have been withdrawn by the Division Bench. There is a procedural irregularity. The letter of the Hon'ble Chief Justice of India is a reproduction of the findings of the In-House Committee. It is significant to note that out of the three Judges, two have been brought to the Supreme Court within three months after giving the Report against me. I don't have any father, mother and brother in the judiciary. Today this position has come to me because of my hard work. My honesty and integrity throughout my career was untarnished. Examine everything, all assets; open my locker and find out. I appeal to you to do justice. The Division Bench said that the

erstwhile receiver has no occasion to submit any explanation. Please note this carefully.

If I do not pay, hold an inquiry; hold me guilty of misappropriation. But in the same order, where you give direction, you hold me guilty of misappropriation and then pass an order of injunction on my bank accounts so that I am prevented from paying. This is mockery of a judicial process. I can only get justice here. This is the finding that a court cannot hold a person guilty of misappropriation without giving him an opportunity to pay. My bank accounts were put under a microscope from 1993 till 2006. Not a single entry was found which was suspicious. All that is credited into my bank account is my salary. The only withdrawals they talk about are the withdrawals to the workers. That is the ground for holding me guilty of misappropriation. They should ask the paying bank to bring the accounts. Witnesses were called from Kolkata. The Bank officials, liquidator, Registrar etc gave the evidence. Was it not the duty of the Judges Inquiry Committee to call the Director of the company and ask whether what I was saying was correct or not?

I wanted an opportunity to come at the right place to say the truth because I know this is where I will be able to say what I want to say. "The application filed vide G.A. No. 875 of 2003 was merely an application for handing over the amount lying with the receiver. The scope and ambit of the said application did not contemplate any inquiry into the personal accounts of the erstwhile receiver." The learned single Judge committed a serious error in making a detailed inquiry into the personal affairs and bank accounts of the erstwhile receiver. If a judgement is not liked, you can bypass it. I have not tarnished the image of the judiciary. The other people are responsible for tarnishing the image of the judiciary.

It appears that witnesses were examined. Even after all this, there was no evidence of any kind to show that the erstwhile Receiver had one anything benefiting himself. That is the finding of the Division Bench on record. Can anybody contradict it today? Where is the purchaser's money? Your thirty-two lakh do not constitute that money. I had two bank accounts. I took a step which may not be

proper but it does not constitute misappropriation. You don't charge me on things which I have not done. The assets and liabilities of the wound up company are in possession and custody of the Official Liquidator since 2000. I was elevated in 2003. How could I misappropriate? Another allegation has been made that you have given certain written notes. After going through the written notes submitted on behalf of the Receiver on the report filed by the Official Liquidator, the court came to an independent finding. Kindly note this very carefully. When you read the judgment, read it as a whole. Don't take a portion and hold me guilty. The court went through the records of the Trial Court and came to an independent finding that the erstwhile Receiver had deposited the entire amount. It is also being suggested that this judgment is not binding on the Judges Inquiry.

The issue is misappropriation of money between parties *inter se*. If the parties cannot raise this issue of misappropriation between themselves, can a third party raise this issue? This is a fantastic logic that this judgment is a judgment in *personam*, it just does not bind the Parliamentary Committee. The hon. Members may please take the trouble of going through the Division Bench order and then decide. I have taken enough of your time. I am defending my life, the very existence before you. Before deciding it, kindly decide in accordance with your conscience, apply your independent mind and then decide on merit.

* * * *

* * * *

V. K. AGNIHOTRI,
Secretary-General.

rssynop@sansad.nic.in

******Supplement covering rest of the proceedings is being issued separately.**