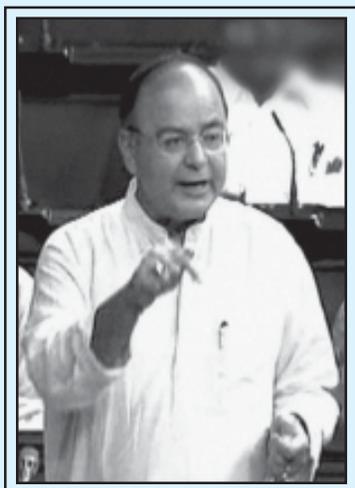


Arun Jaitley in Parliament



*Fight against terror is a battle
India cannot afford to lose*



Bharatiya Janata Party

Foreword

The parliament debates in the Monsoon session 2011 covered a range of issues. The Congress led UPA government could not respond to people's aspirations on various issues of national importance. The entire government appeared to be in disarray, confused and directionless failing to lead the nation on crucial issues. While people were coming forward in large numbers to express their anguish against large scale corruption in the country and to vent their anger against the Congress led UPA govt., BJP took up the issues to question the government so as to expose it before the people.

The Leader of Opposition in Rajya Sabha Shri Arun Jaitley expressed the view of the BJP on a number of issues. Speaking on National Security and Terrorism he cited the Mumbai terror attack as another example of failure of the government in checking terrorism owing to its weak policies and soft approach. On CAG report on CWG he said the report had again exposed the nexus of Congress people, government officials and contractors in looting the public money. The situation is such that even PMO and Delhi chief minister Shiela Dixit too stand indicted. He also spoke at length on impeachment motion of Justice Soumitra Sen and effectively demolished his defense citing instances of his misconduct in misappropriation of funds. He also took the government to task for failing to address the concern of the people on corruption and undemocratically trying to muzzle the voice of the civil society. We are publishing the full text of his speeches for our esteemed readers.

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Fight against terror is a battle India cannot afford to lose : Arun Jaitley

The terror has once again attacked Mumbai on 13 July 2011. A serial bomb blast killing 22 people and injuring hundreds has sent a shock wave in the entire nation. India is shocked, anguished and in pain. The repeated terror attacks have yet again failed to see the Congress led UPA acting with urgency and sincerity. It has led to a situation wherein a sense of being ditched and cheated by its own government prevails among the people. It is really shocking to see that the even heart rending scenes of terror victims, blood soaked streets and mangled corpses have failed to move the government to act. The Leader of the Opposition in Rajya Sabha Shri Arun Jaitley while speaking in the house on "Mumbai blasts and national security" touched upon various dimensions of terrorism and took the government to task for its failure to act effectively and decisively. His speech on 4th August 2011 while giving a deep insight into the current situation, dwells at length on the manner in which the government should act and the serious lacunae which has hitherto impaired the government policy on terrorism and national security. We are publishing the text of his speech for the benefit of our readers.

Mr. Deputy Chairman, Sir, we have been discussing, since yesterday, the issue of national security, particularly in the wake of the 13th July blasts at three places in Mumbai. Needless to say, the blasts and the actions accompanying them, have to be condemned and have been rightly condemned by every section of this House.

They are condemnable and also worrisome for this country. Our worries, also increase because three weeks after the blasts, it appears that we do not have serious clues as to who the real culprits are. This attack on Mumbai is actually in a series of attacks where Mumbai has been repeatedly attacked. It started in 1993 with a

serial blast in Mumbai. Then you have several important isolated cases which caused extensive damage. Then you had the train blasts. And then was the major 26/11 blast, the attack through the sea route. The 26/11 attack through the sea route, clearly from across the border, after the 9/11, perhaps, has been one of the most major terrorist strikes anywhere in the world. Now you have the 13th July attack where three crowded areas in Mumbai were picked up and bombs were planted in a structured manner in those areas. One of the questions which arises is: Why is Mumbai, repeatedly, chosen for such attacks? I have been closely following the statements of the Home Minister. He has carefully avoided answering the questions saying, "I know the answer; I have a hunch, but I do not want to really specify the reasons". I don't think, Sir, the reasons are a matter of great research being required or they are any closely guarded secret. The attack on Mumbai which comes in this entire chain, increases the credibility and visibility of the terrorist outfit which organizes all attacks. That is why Mumbai is repeatedly chosen.

The cities like Mumbai and Delhi, when they are chosen for attack by the outfits, their own visibility, their on credibility as a terrorist organization also gets noticed all over the world. Secondly, when these attacks are successful and not prevented, attacks on a place like Mumbai end up resulting in exposing the weakness of our security system. If these people can enter with ammunition, go to a number of places, plant them and then escape, how many people would be involved in organizing this? Those who manufacture these bombs, those who purchase ammonium nitrate and other such chemicals, those who provide the logistical support, transportation, escape, money and, maybe, finally even legal defence, are all involved in this. It always puzzles me that this exposes the weakness of our security system when terrorists infiltrate into the city and successfully organize these blasts.

I beg to differ with the Home Minister when he said, on the morning of 14th at Mumbai, that it was not an intelligence failure. The fact that so many people were involved, the fact that they successfully organized these blasts and managed to escape, the

fact the intelligence agencies did not know any of these things, that they had not infiltrated into these modules, is, itself, an intelligence failure. That the intelligence not knowing any of these things, when so many people must have been involved in this whole conspiracy to commit these ghastly crimes, is an intelligence failure. I think he understands intelligence failure as meaning that the intelligence had not informed and, therefore, nobody had an opportunity to act on the basis of the intelligence information. There is a fundamental difference between the two. The difference being that if the executing agency, normally, the police in Maharashtra, did not have the intelligence information, then, that is a separate issue. If intelligence information had been given and the Mumbai police had not acted, then, that would be a failure of the executing agency. There is a difference when the intelligence agency does not inform you that so many people in these modules are acting in this manner, that they have entered, and a likely warning is given, then, we admit that it is an intelligence failure. The third reason, I come back, why Mumbai is repeatedly chosen is because it is a commercial capital centre of India. And when India's commercial centre is attacked, then, obviously, it catches the global attention. And, fourthly, -- I say this with a sense of regret - on an issue where all of us should really be speaking the same language in the national interest, Mumbai is chosen also for reasons that once Mumbai is attacked and people are identified, irrespective of those who are there, you always find people, keeping the character of the city in mind, who will come up and say, "People have been wrongly harassed and, therefore, let us now go soft on this." I shall, in the course of my intervention, try to highlight this point as well. Mumbai having been repeatedly attacked, after the attack, now, a debate starts in this country about the spirit of Mumbai. I am, at times, puzzled that these days on public issues, rather than political thinkers and political leaders, as our colleagues just now rightly mentioned, there is now a convention to get the cinema and fashion celebrities, to give an opinion on serious subjects. So, they always say that the spirit of Mumbai is that yesterday we were attacked and today morning we are all normal. The resilience of Mumbai is the only spirit of Mumbai. Well; resilience is a good

thing. Plurality is a good thing. To come back to normalcy is a good thing. Not retaliating is a good thing. But that alone can't be the spirit of Mumbai. The spirit of Mumbai can't be that it gets attacked repeatedly and then gets ready to wait for the next attack. This is the sad history of Mumbai. The real spirit of Mumbai has to be that it has to influence each one of us, those in Government, those in Opposition, those in building public opinion in this country, to resolve, to have a system in this country where nobody really dare attack Mumbai ever again or, for that matter, any other part of India. If the spirit of Mumbai can lead us to that destination, I think, we would all be discharging our national responsibility much better. The question which then arises is: If you are to reach that destination, that this should be the last attack and that Mumbai should never be attacked again or any other part of India should never be attacked again, then, how do you fight this menace of terrorism? You don't fight it by dividing ourselves into categories of 'your terror' or 'my terror'.

Sir, I have always believed that the first essential condition required for any society to fight terror is: does it have the political will to fight terror? I have always believed that after 9/11, not many have dared attack Manhattan or, for that matter, United States ever again. Yesterday, we were at a function where the Home Minister corrected me by saying that the attack did take place. But there is a serious doubt about that whether that was because of an association with a radical organization or because of mental illness. I won't get into that controversy. But there are societies which have been targeted by terrorists and which have shown a resolve and determination to make sure that they are never attacked again. Terrorists may still slip in. No security system can be foolproof.

But do we have that political will? Every time we have a policy, somebody decides to pull down that policy. And I have not the least doubt that we must finally have to make a choice: will India's national security and internal security be guided only by security consideration or will it be guided by other collateral facts? You take a hard line on national security, and that is a correct line to take; then, you will have, for some time, to abandon this thought as to who it hurts. It must hurt only those who indulge in these acts. Those who do not

indulge in these acts have nothing to fear about. There is some kind of compromise which takes place with our own freedom and our own human rights. We all do not like being frisked wherever we go. But we are in a vulnerable society which can be repeatedly attacked. There are precautions that the society and the system has to take. Let us not, then, get up and say, "Well, you take this step. This step is, ostensibly, against terrorism but it is intended against a community". No aspersion should be cast on a community; it should only be against the terrorists. And to the extent that you need hard measures, even if they compromise a little with our human rights, then, you will have to take hard measures, and you must have the political will to take those measures.

Sir, a determination to counter terror will have three steps essentially. The first step is your security and intelligence system which prevents terror. Your second step is: if despite that a terrorist attack takes place, your ability to contain that attack. The third step is: you must have a tough and a fair system so that you are able to inflict, after an honest investigation, a punishment on the man who does it, and that punishment, then, ends up acting as a deterrent for others who want to commit terror.

Therefore, we must have the system, both Intelligence and security, to prevent a terrorist act, to contain an attack when it is on, with our Quick Response Teams and so on. There are several questions. Then, of course, the hon. Foreign Minister is here and we have the privilege of his presence at the moment. Our foreign policy considerations, Sir, also have to factor this in mind that we have to effectively use our foreign policy as an instrument to isolate those nations and societies which make terror as an instrument of their State policy. Sir, let us honestly introspect. As a society, have we shown our political will? And when I am saying this, I am not only referring to politics, I will refer to other instruments of Indian society also. Much was debated just now about POTA and TADA. An anti-terror law only comes in after the act is committed.

It does not prevent a terrorist attack. After a terrorist act is committed, you investigate under special powers; you give a punishment to the person and that punishment will act as a deterrent

so that in future the act is not committed again. That is the objective of the law. An antiterror law is not a replacement for an intelligence agency. It is not a replacement for the security personnel. Those people will do their tasks separately. Let us look at our own track record and let me give a few illustrations. The late Shri Rajiv Gandhi, when he was in power, brought in TADA. At that time, we had a problem in Punjab. Even the serious problem in Kashmir had not started; it was around mid-80s. The present Home Minister was then Internal Security Minister, and he had piloted the law. It was completely well-intentioned because terrorism was raising its head in this country. There were complaints that in some parts of India it was misused; it could have been amended to stop the possibility of its abuse. Nobody then said, 'repeal it'. This law was then not against any community. The maximum misuse took place in the late 80s in Gujarat, where farmers were arrested under this law. Then, somebody stepped in and said, 'you cannot use it against farmers.' It was used in Punjab, it was used in several other parts of India. It was used in Assam. You had insurgency in Assam in those days. Finally, it was used in 1993 in the Mumbai blasts. Now, the 1993 Mumbai blasts were admittedly terrorist acts; you had a series of blasts at various places. Overnight, you found a campaign for a repeal of TADA because it was used in Mumbai. The Narasimha Rao Government had no option because of this campaign, and that had to repeal TADA. When the next anti-terror law came, you said that it is anti-secular; it is anti-minority. Look at some of the more serious cases. And this is not for punishing the innocents. Home Minister is a very eminent lawyer. Look at the Parliament attack case. But for some of the special provisions in that law, but for an anti-terror law, which was applicable at that time, you would not have been able to convict the terrorists.

Look at the Akshardham case. I always believe that even though, finally, the accused were convicted only under the IPC in the assassination case of late Shri Rajiv Gandhi, the rules of evidence of TADA were used by a logic that the Supreme Court gave. And it is only because those rules of evidence were used that some people could be convicted for the assassination of late Shri Rajiv

Gandhi.

So, the moment the political pressure started, other considerations came in and you said, "We have to repeal the law." Today, look at the campaign. What is the campaign? "Withdraw the Armed Forces (Special Provisions) Act." You have insurgency but you cannot withdraw the Armed Forces (Special Provisions) Act. Even if you withdraw the Army from some regions, you will have to keep the State Police; you will have to keep the CRPF. All that the law says is that before you prosecute a police officer or an army officer, you need a sanction. So, the whole objective is to remove the sanction so that those who are involved in separatist activities in the Valley can start endlessly prosecuting the army officers and the police officers! Let the Home Minister tell us how many applications for sanction are pending today with the Governments, State and Centre. Give them a free hand to prosecute. Then, we start saying, "Oh! It is absolutely a law which requires to be withdrawn!" How do you fight an organisation like Lashkar-e-Taiba? Unless we delink this fight from domestic politics and look at it only as a security concern, how do we fight? Today, this is not the occasion, but I will only refer to it and not discuss it in detail. You have the case and the Home Minister knows it well.

He and I will probably differ in our final assessment, in whose connection a Central Intelligence has warned the States as an LeT operative. When the States succeed in an action against them, the Central Government supports the State action, and then politics prevails. You withdraw the affidavit of the Central Government, replace it by an affidavit. And, accordingly, if you remember, what happened, the Lashkar-e-Taiba in its website said, "So and so has become a shaheed, one of our activists." When the Central Government withdrew the affidavit, the Lashkar-e-Taiba also withdrew the obituary. Sir, this is not the way how terror is to be fought. When we start blinking, then the others realise that this is a State which can blink on pressure, one or the other. I am conscious of the kind of pressure the Home Minister and his Government has had to face on the Delhi encounter in Batla House, an admittedly case of separatist terrorists. You had the NHRC going into the

matter; you had the courts going into the matter. They all agreed with his Ministry and his Government's assessment, and yet you had repeated efforts of India's domestic politics, and even the Congress Party's domestic politics, intervening to somehow describe those who were culpable as innocent and describe the security as somebody who is culpable. Instead of visiting the house of the police officer or the security officer who lost his life, people start visiting the houses of those who were being accused. This is not the spirit with which a society is able to fight terror, Sir. What has recently happened? I have no difficulty if you take action against some people who threaten law and order. We have a controversy on. I don't want to give a final opinion on that controversy. Where should one group of citizens sit on a fast from 16th August? The Government feels, "Well, we won't allow the heart of New Delhi, where the other citizens' group had sat on their protest; Ramlila Ground or otherwise. So, Mr. Hazare and Baba Ramdev can't sit at these places. Did we have the courage to show the same spirit where dozen different varieties of separatists came to Delhi and wanted to hold a meeting within yards of the seat of the Central Government? They came here; they came to Lutyens Delhi; they sat here. Before the entire country and the world they made speeches how India is to be broken up. Speeches were made.

They were not only separatists from the Valley, they were separatists of different variety. As though they are forming a union or a confederation, each one said, "The whole idea of India is incorrect. India can never be one country." These were the speeches made. The Home Ministry felt, "No, no, these are the people, whom we should not move out of this place." Sedition -- these were seditious speeches -- was passed off as a free speech. So, our entire liberal approach surfaced when we found these separatists. We will use kid gloves to tackle them, and use harsh means to tackle the 16th August fast or the earlier action which was taken at Ramlila Ground. Now, if this is, Sir, the approach, not only of the Government, this is the approach of anyone of us, for any colour of terrorism, then that is not how we can really safeguard India's security. Let us look back at 26/11. I only want to urge the Home Minister that the anti-

terror policy should not merely be judged from the approach which the Government or his Ministry has adopted in the last 32 months of his tenure.

There has been a long-standing policy and, therefore, let us judge the whole thing. When 26/11 took place, where did we stand at that time? How were we caught unawares? Have you had some Intelligence information before that? Sir, I have been reading a lot of material on this and the situation of India or our security apparatus on 26/11 is best described in the following words. Mr. Chidambaram will find these words very familiar and I am quoting them from his speech he delivered, the Intelligence Bureau Centenary Endowment Lecture on 23rd of December, 2009. This was his own description and I quote him. "The Security establishment was in disarray and numerous questions were being asked. Had the Intelligence failed? Did the first responder, the Mumbai Police, prove to be totally inadequate? Was the famed National Security Guard too slow to get off the block? Did the leadership of the Police let down its own men? Did the Central forces take too long to neutralize ten terrorists? Did the Centre and the State Government fail to provide a strong leadership? Did the management system collapse? Did the country pay a heavy price before it repulsed the terrorist attack? Did the Government fail to believe in mounting a swift counter on the perpetrators of terror." The Home Minister said, "I know the answers but I won't give them." Sir, when no answers are given the reason for not giving the answers is also at times obvious. Undoubtedly, the answers to most of these questions were, 'yes'. He then suggested a vision for the future and his vision for the future had several aspects. He first said, 'Let us first set up a National Investigating Agency.' Some people here and outside the State Government had doubts that the National Investigating Agency may impinge on the federal structure. Some speeches to that effect were also made, but because of considerations of national security we decided to support it. He then suggested that the Unlawful Activities (Prevention) Act will have to be expanded and according to him the amendments to the Act was an admission that the repeal of the Anti-terrorist Law had left a vacuum. So, barring two major areas

of difference, he brought back every provision of quota and I can assure some colleagues who use the words, 'these provisions in a society which is to fight terror are essential'. Then, don't compare them with any law of the past. These are new emerging situations. He then said, "lets have a National Intelligence Grid where everybody who collects information and there are dozens of agencies, has to share that information and that India needs a national centre for counter terrorism." Sir, this was in 2008, and now we are in 2011, and almost three years have passed. Where do we stand? Even the NIA did not investigate 26/11. I am a great personal sympathizer and a supporter of these investigative and Intelligence agencies because of their work being done in national interest, and if excesses are committed by any one of them, the system must be vigilant; we must have checks and balances to correct them. Sir, besides the questions he raised on 26/11, how is it that after investigating the whole case in which several people must have been involved -- look at the system that we have -- we ended up convicting one man? We have convicted that one man. And, convicting him was no rocket science. He was there with a weapon in front of us all, before the cameras and going about shooting and killing people. He was caught red-handed. And, he, obviously, had to be convicted. Our internal investigative system ended up convicting one man alone for an attack which was, probably, one of the most powerful attacks anywhere in the world after 9/11. It took no time for the FBI in the US to find out who David Hadley was and who Mr. Rana was. We had some evidence about Pakistan's involvement. But, it was really the Chicago Trial which gave us such conclusive evidence in terms of the involvement of both LeT and the ISI. It was these evidences that we got helped us. I am sure there must have been some domestic evidences also. But the trial itself was ended up in convicting only one man. One purpose the Chicago Trial served was that it completely demolished and obliterated the distinction between State actors and non-State actors in Pakistan. The Let is, ostensibly, a nonState actor. The ISI is a State actor. But, this was completely controlled and the handlers of this attack were in the Pakistan's official agency.

Sir, the National Counter Terrorism Centre has still not become functional; I hope it does. I would only urge the hon. Home Minister one thing. We have followed, through the media, the arguments and the counter-arguments in setting up of the National Intelligence Grid. I am sure, the Government will, in its wisdom, take all steps keeping two facts in mind. And, these are my causes of worry. In any intelligence grid, actionable intelligence intended to be shared. Sharing actionable intelligence has its own dangers; generic intelligence should be shared. But, actionable intelligence, with specifics, can never be put on such grids. You can never put intelligence on the grid that we know who is staying, say in a house in Abbottabad. The moment you did it, it will be counter productive. One agency may not be willing to share with the other agencies, which is the executing agency. The second one is this. This, I am sure, is what Mr. Ganguly mentioned about the cyber terrorism and those who use cyber space to invade. Unless we are doubly sure that we have built up fire walls around our grids, it is dangerous to put anything on the grid. The leaks in the US are from such grids. They have come and set the entire world to pace. Therefore, when we become over enthusiastic about these grids and sharing of intelligence and putting it on the grid, the need to know must be kept in mind -- who is entitled to know how much, what is not to be shared must also be kept in mind and nothing should be shared till you are able to build fire walls around the sharing mechanism. I hope, all this is kept in mind before these proposals are put into action. As I said, we have the opportunity that Shri Krishna is here. I come to the Foreign Policy initiative. In India's case, in fighting terror, the Foreign Policy initiatives are extremely important. It is an important instrument for us.

Sir, unquestionably, three facts are clear. The hon. Minister says that we live in a disturbed neighbourhood. Some hon. Members have said that this is the most dangerous border in the world. The economists have a cover story almost using the same language. We are a State in the neighbourhood which has used terror as an instrument of State Policy. We have a nation in the neighbourhood which has become an epicenter of global terror. You have a situation

where there is hardly a terror attack anywhere in the world, and some news items have initially indicated that in the recent attack in China Pakistan's hand or a Pakistan connection is always there. whether it is the blasts in the underground trains in London or major attacks in India or in the United States or anywhere in the world. Today, we are, for the first time, reaching a situation where there is a global convergence on how you deal with a State, which has a nuclear arsenal, which has terror, which has a lack of positive agenda, and which has a lack of great economic development. How does the world deal with a State of this kind? It is a State which is not merely living in denial. That was something we used to say years ago. Today, it is a State which is living in deceit. They are a friend of America, an ally of America, in America's war against terror. They are, simultaneously, an ally of the enemies of America in the war against terror. It is a State which can perform both roles. One important think-tank in the U.S., one of their important spokespersons talking about our neighbour, recently said, "Pakistan is an ally, not a friend. India is not an ally, but, still a friend." That's how they started looking at us and the situation in this region. The Afghan-Taliban was created and supported, virtually, by the ISI. They still want America to have a dialogue or an entry route for them . The Laskhar-e-Taiba was similarly created as an alternative front which was India-centric. It started the blasts in India. That is where the connection of all this security comes in. When they were found out and action taken in various parts of the world, they kept changing names. Somebody then started operating when there was a different regime in Bangladesh. Huji was there, and the JuD was there. And, then, you had, before the ban on the SIMI took place, - - there were several incidents with which SIMI was connected -- the armed faction of the SIMI or the wing of the SIMI which was organising this. When they were found out and banned, you now have the Indian Mujahideens. How do we, Sir, use our foreign policy initiatives in combating this? A lot of these activities may even take place by home-grown terrorists and they are externally inspired. Some of these Organisations are externally funded. They are also externally created. Therefore, it is simply said, in the absence of

any other alternative, we will continue to engage. The Government sees virtue in engagements. But, please bear in mind that even when you engage, one of the foremost issues you have to raise-- one can always negotiate the side issues which are in the grey areas -- is; what was contained in the January 2004 understanding between them and us? How can there be a fruitful engagement if your territory is used for terrorist strikes against us? You can always engage. Soz sahib just now said, we want a stable Pakistan. Of course, everybody wants a stable Pakistan. We want a stable neighbourhood. But if you get a stable neighbourhood which is more transparent, where there is civilian authority, where there is less radicalisation, it will be always welcome. But if you have a situation where the society gets radicalised, the society continues to use terror, the State instruments continue to use terror, the Armed Forces get radicalised, the civilian establishment gets weakened, transparency in the society goes down. Then, in a such case, the outcome of the engagement will be determined not by the fact that we are talking to them, but it will be determined by what their internal developments are. And those internal developments must come on the right track. Your foreign policy initiatives with them and with the rest of the world must be used to find out how we deal with the society which has all these issues which arise out of this.

Sir, I would urge the Home Minister not to take any satisfaction out of this fact that there have been only two terrorist strikes of this kind during his tenure. These are two main strikes. I am not going into Sheetla Ghat or any of these strikes. I am not going into those details. If you are able to lead the nation and overcome this menace, we all stand in one voice behind you. We wish you all success; this is not a battle we can afford to lose. But the fact is that you have various kinds of problems in this country. You may not call what has happened in some States in the North East as terrorism; you may call it as insurgency. You may call the Maoist activities as Left Wing extremism. The Indian society and segments within blink when you fight terror. Even in your battle against Maoists, this has happened. We have repeatedly discussed that issue here. I have always said that Maoism is not a poverty eradication programme.

This is a violent movement which wants to overthrow India's Parliamentary democracy. Therefore, when States take up the fight against them, we take various kinds of social and economic actions. I don't think there is a dispute. You must develop those regions. You must give tribals the full justice and the benefit of economic development. But, then, to do that, to build roads, to build schools, to build institutions, you need the land free from landmines. And, therefore, when you need it free from landmines, you will have to take some security steps. All of us felt very strongly when you, initially, as Home Minister, in your early days in this Ministry, said that these were the steps we would take. We saw discordant voices amongst your friends. From the Left to the Right, everybody supported you. I do not want to go into the details because we have discussed it at length. But, Sir, we have talked about the weakness of the Indian States in dealing with this. I have dealt with the weakness of our political system and our concern for vote banks. Look at how other institutions look at it. I must confess, Sir, that I am extremely disturbed about what recent pronouncements in this matter have come. We had one precedent and I thought we will wish it away where in Kashmir, our security forces were fighting with the militants who were holed into a place of worship. The Supreme Court decided that how many calories must be fed to the terrorists on each day. Judges don't fight terror; Governments do; security forces do.

Therefore, this was one area where I thought the whole concept, which is so vital to our democracy of separation of powers, was being weakened. When I read, I find that from 1861 onwards, the Police establishment of this country, the security establishment has been aided actively by civilians. The 1861 Police Act, almost 150 years as of today, says that you must have special police officers. The Home Minister will say that "we are understaffed and we are trying to cover it up." So, from traffic to law and order, members of the community are taken to aid the community, to help the community and to protect the community. What were the Village Protection Committees in Punjab? These are Special Police Officers. So, one or two people in every village will get up and protect the village.

Today, in Doda, Kishtwar, Soz Sahib will know, in Rajouri, you have the Village Protection Committee comprising of special police officers. You have had them in Maoist-infested areas. You have them in the North-Eastern States. These are not merely employment generating methods. Now, when I read the observations of the Court on these issues, I don't mind, Sir, repeating what I have said in print. "It appears that instead of leaving security issues to the Government of the day, ideology of the authors of the judgement now becomes the ground for determining constitutionality."

Sir, since this is now the law declared, I am sure, the Minister will have no objection if I read out two or three paragraphs. I am quoting it. These are stray paragraphs. I quote, "People do not take up arms, in an organized fashion, against the might of the State, or against fellow human beings without rhyme or reason. Guided by an instinct for survival, and according to Thomas Hobbes, a fear of lawlessness that is encoded in our collective conscience, we seek an order. However, when that order comes with the price of dehumanization, of manifest injustices of all forms penetrated against the weak, the poor and the deprived, people revolt." So, this is the rationale why people revolt and pick up arms.

The next, is this, and I quote. "Thus the same set of issues, particularly those related to land, continue to fuel protest politics, violent agitator politics, as well as armed rebellion.... Are governments and political parties in India are able to grasp the socio-economic dynamics encouraging these politics or are they stuck with a security-oriented approach that further fuels them?" Sir, I don't think our constitutional mechanism ever took away this responsibility from the Government. Judicial review, enforcement of law is a domain of the court. But what should be the approach, security or otherwise, is a matter entirely left to the Government. This guides the approach in the matter of how insurgency or leftwing extremism is to be handled. It further says, "Rather than heeding to such advice which echoes the wisdom of our Constitution, what we have witnessed in the present proceedings have been repeated assertions of inevitability of muscular and violent statecraft." So, if people lay down land mines, if they go about killing security staff,

demolishing schools, dispensaries, hospitals, roads, it is violent statecraft. If the Government's policies are anti-poor, the Government should be voted out. The Government should be protested against on the streets. The courts must step in and say, 'the Government must then act as per law.' But the courts will not say, 'this is the reason why people have turned violent and you must go as a Home Minister and offer a satyagrah before them.' Don't use what the court chooses to describe as violent statecraft. They can go about killing people and then you are to be removed for the fallouts.

There are other aspects of this which have nothing whether it is a separatist or an unlawful act of a State. Centre or States should really rationalize this kind of an approach, and in a country which is torn by various forms of extremism, today you have a situation where thousands of SPOs all over the country are removed. Now, I am not so sure whether the Home Minister can advise the States and the Central organizations to immediately recruit lakhs of people. The result of this was that within two days of this judgment, the Maoists are now giving to the Special Police Officers conditions for amnesty. The conditions for amnesty are, 'you come and join us, we will leave you.' The dice is loaded in their favour. Sir, when I said the political establishment must not blink, there are various aspects of the Indian State, whether it is the media or it is the Police or the State Governments or political parties or courts or institutions, are we going to allow every establishment to start blinking in a case where 210 districts are influenced by Maoism?

The North-East areas have their own problems in some States, which we are trying to resolve; in Jammu & Kashmir, trouble is created from across the border, and then, sporadic attacks elsewhere in the country also take place. Now, if the Government or a State Government violates human rights, the courts must step in. That is their jurisdiction, but how they are to fight insurgency is a matter which is entirely to be determined by the policy of the Governments, whether Centre or the State. Therefore, I would like the response of the Union Home Minister and the Government as to how they intend to deal with this situation.

Sir, lastly, as I said, this is not a battle that we can afford to

lose. Now, how do we fight it? Do we have the political will to fight it? Are we going to be over-partisan in doing so? Or, are we going to fight it only on the basis of considerations of national security? We must address the causes which cause such a situation. But then, no effort should be made to weaken the will of the Indian society in order to fight this menace of terrorism and separatism. That is why, we are glad that the Foreign Minister is here. That is an important instrument he has at his disposal that could be used. And I am sure, if the Government of the day looks forward and brings out a policy and an approach with the support and in coordination with the States, we can hope that this is the last time that Mumbai or any other part of India is attacked in this manner.



CWG

Involvement of political heads of two governments led to monumental fraud in CWG : Arun Jaitley

The CAG report has again exposed the nexus of Congress people, government officials and contractors in looting the public money. The situation is such that even PMO and Delhi chief minister Smt. Shiela Dixit too stand indicted. All the government documents are pointing towards the fact that a big fraud has been committed under the open patronage of the union government and the Delhi government. Leader of Opposition in Rajya Sabha Shri Arun Jaitley spoke on CWG scam on 09th August 2011. We are publishing the text of the speech hereunder:

Sir, I was referring to the mode and the manner in which the Organizing Committee and its Chairman were appointed. I would just recollect that even though the original bid categorically provided for it being a Government Committee with a Government Chairman, efforts to slip in documents to convert its character did not succeed. Thereafter the IOA President writes to the Prime Minister. On the receipt of the letter and I am just reading a note of 29th October, 2004. This is a letter of 23rd October which is received in the Cabinet Secretariat. The Cabinet Secretary puts up a note to the Prime Minister saying, "Separately a communication has also been received from Shri Suresh Kalmadi, President, Indian Olympics Association for associating IOA in the Organizing Committee. A view in the matter can be taken after

presentation by IOA as mentioned in para 9 of the draft minutes." It is put up to the Prime Minister. The Prime Minister signs this on the 5th of November. Now, it is during this period that something is radically moving. He merely wanted to be associated and his organization to be associated. But, Somehow on the 6th, on receipt of this note, the Prime Minister says and I have already read that note, "Overruling the entire objections of the Prime Minister's Office saying that the Organizing Committee would be headed by the President of IOA and this matter should now be referred to the GoM." The GoM thereafter meets on the 29th of January, 2005 and puts its imprint of approval on the appointment of Mr. Kalmadi as the Chairperson. Later when Minister after Minister is complaining - this is the period when Mr. Sunil Dutt is complaining - it was his two successors who were saying that this is a complete hijack. Is the Government only a milch cow, as one of the Ministers said, which is going to provide the funds without any form of accountability and this would be a private body? What he does curiously is, having received this approval of the Prime Minister and the GoM finally on the 29th of January 2005, now the final hijack of this into a private fiefdom takes place. Instead of a Government society, on the 10th of February, 2005 he goes and registers a private society called Organizing Committee Commonwealth Games, 2010, Delhi.

This is not a Government body; this is a private society. He registers a private society, the Prime Minister and the GoM have already approved his chairmanship of the society and the other members of the society are, at the time of this registration, all who belong to his organization. Therefore, what was originally intended to be a body, appointed by the Government, and a Government non-profit society with a Government chairman became a private society. Even an undertaking in the Host City Contract says, "Even though the games are awarded to the IOA, the Government of India, the Government of NCT and the IOA are all bound by undertaking." And, one of the undertakings clearly was that it will be a Government society with a Government Chairman because

only they could organize it. And, the hijack was, now, complete. Then, Ministers after Ministers start complaining as to what is to be done. I have already referred to Mr. Sunil Dutt's letter, saying, "I find that there is a change of minutes." He writes on 14th November, 2004, "I was surprised to see newspaper reports about a resolution passed by the Indian Olympic Association regarding the appointment of the Chairman of the Organizing Committee, which is at variance with the decision taken in the GoM. The letter of the President, IOA, dated 28th October, 2004, addressed to you, a copy of which was received in my office from the PMO clearly shows that the President, IOA, was aware of the decision appointing a GoM, appointing a Minister." Then, he says, "Notwithstanding the sense of disquiet, I waited for the formal minutes of the GoM meeting, which reached my office on 10th November, 2004, the minutes, as issued by the Cabinet Secretariat, do not reflect the decisions taken in the meeting of 25th October. So, the Minutes are changed." Thereafter, there are letters by which his successor Mr. Mani Shankar Aiyar, then, advises the Prime Minister. He first writes on 23rd October to the Prime Minister's Office, I am quoting, "Without a drastic overhaul of both the Executive Board and the Organizing Committee of the Commonwealth, I fear it will prove to be precisely impossible for the Government to significantly address the excesses of the Chairman, Mr. Suresh Kalmadi." He, then, directly writes to the PM, making a complaint almost to the same effect. Mr. Gill, with his bureaucratic experience, now, starts looking at files as to how this has been hijacked as a private body, which was supposed to be a Government body as the Government was funding that; the agreement was Government, the bid was Government, then, how did it become a private body? Mr. Gill, when he takes over, as late as in 2009, says, I am quoting just one sentence from Mr. Gill's letter, "The then Government of India and the Government of Delhi, along with the IOA, signed the agreement, taking the games, in 2003. The original signed document had a Government chairman, but later somehow it got changed." So, the Minister

was wondering how this Government chairman and Government body got hijacked. Why did it happen? When all this was happening, the three Ministers, in a row, had been complaining as to what was the source of power that this man was wielding that the Prime Minister overruled the Cabinet Secretary, he overruled the Prime Minister's Office, he overruled three successive Ministers, and he overruled what the original bid was. This becomes clear from a letter, when the Ministers are complaining whether they are only a milch cow which is going to fund them and he keeps hijacking the whole operation and spends the entire money and there is no accounting. Mr Kalmadi writes to the Prime Minister's Office, to the Principal Secretary on 31st October, 2007. He responds by saying, and that is where he indicates that where his powers yield from, "The OC, under the Chairmanship of Mr. Suresh Kalmadi and with a fifteen member Executive Board, was registered as a society under the Society Registration Act, 1860, on 10th February, after a series of discussions with the PMO, Chairperson of the UPA and the GoM."

I am repeating, Sir, that the Government's own understanding always was that this is a Government society, not only under the NDA Government, but even under the UPA Government. These are the documents which are freely available. Ordinarily, I would not have referred to them. I had no access to them. But now these are available on the net. One of the funding proposals goes to the Cabinet. A note is circulated to the Cabinet on 21st March, 2005. They compare the bids - this is till 2005 in what is given to the Cabinet -- they compare the Hamilton Bid and the Delhi Bid. The Delhi Bid, in the papers circulated says: "Delhi's Organising Committee will be a non-profit Government-owned registered society, chaired by a Government nominee. The projected games time workforce will comprise 1,990 paid staff and 18,000 volunteers." So, even in 2005 when you are doing all this, you were clear that this had to be a Government body.

Now, where did this pressure come from that sometime in October, November and December, 2004, you completely

allowed this hijack to take place; converted what was to be a Government society, headed by a Government chairperson, and allowed it to be a personal fiefdom of some individuals. Now, Mr. Maken would have us believe that, well, there is something in the Host City Contract. In none of these documents -- I am referring to the Cabinet notes, Cabinet Secretary's notes, Ministers letters, Prime Minister's note - any strength is drawn from the Host City Contract because the Host City Contract was as clear as daylight. Games are awarded to the IOA. The IOA, Government of India, and the Government of NCT are bound by their undertakings, which is the bid document. And the bid document was that this is going to be a Government-owned registered society with Government nominee as the Chairman and IOA nominee as the Vice-Chairman. Now, Sir, I would like to put a question. Was he a chairman in his private capacity, or, was he a chairman as a Government nominee? If he were chairman as a Government nominee, then, why was it allowed to be registered as a private society? So, the private society of which he and his friends are the owners, they run it; the Government lends its shoulder to him to become a chairman. This House is not informed about a single document. So, while this matter is serious, has the Government, through the Minister's statement, told us that this appointment was made by the GOM, this appointment was made by the Prime Minister's Office? Nothing is told to us.

Therefore, Sir, to make this debate meaningful, -- the country is entitled to know the entire facts on the structure of these games -- at least, the papers should be placed in the Chairman's Chamber or before this House. The whole country is entitled to see what the documents are. I have no hesitation in saying that if you don't place these documents - there are only some which have reached us - there are going to be a lot more in those files which are going to reveal the truth which the Government does not want to come out with. Now, Sir, the eventual test was when in 2010, after the games, scandals erupted, and Mr. Kalmadi had to be removed. Who removed him? If he was the private chairman of a private society,

the Government of India had no power to remove him. All of us are associated with societies in our private capacities, Governments cannot remove us. Governments can remove us only if Governments have appointed us.

The Government now wakes up to the truth and refers the matter to the Attorney General of India. The Attorney General, in January, 2011, gives an opinion saying, "We now realized that it was a private society, but he was appointed as Chairman by the GoM; so, the Government of India is within its right to remove it." So, the final law is made when the Attorney General's opinion comes that he can be removed by the Government of India because it is the Government of India in 2005, which had appointed him. Now, Sir, as a Chair, you are the protector of this House and its rights. A statement has been made before this House, which, essentially, has only limited information. There was a Host City contract. The bid got, for some reasons, altered - whether it was an interpolation, whether it was a fabrication, and before which, Sir, our hands were tied. The whole history of its strangle hold on the Organizing Committee and the money spent by persons outside the Government is completely concealed. Is this House to be kept in the dark or is this House to be informed? And, if this House is to be informed, then, I think we are being unfair to poor Mr. Maken. He has committed no impropriety. He has just been put up here after the newspapers reported that the finger is pointing to the Prime Minister's Office for having appointed him, for having made a hurried Statement and that hurried Statement is that you must simply say, "Nobody had anything to do; it was only the previous Government which had done all this." Sir, you will have to take a call whether this House is entitled and the people through this House are entitled to know the truth or not. Or, are we only entitled to know convenient Statements made by Ministers? Now, look, what happens after this. Every contract which is executed by this private body--they function, essentially, on Government money; they function on tax payers' money-and implemented is over priced. I am not only on the procedural improprieties.

compare it with the costs. For the last one year, we are being disgraced by fact after fact before the global media that every contract is overpriced and there is no scrutiny. Today, the CBI is working overtime to find out the truth. Once this kind of a leeway starts that the Organizing Committee can do it, then, obviously, what has happened elsewhere is not untrue either. We all live in a real world and we know in the real world how much stadiums cost and how much beautification drives in the host city costs. Compare the cost of these stadiums with the stadiums built elsewhere in the country. So, I can tell you, except for the recently renovated Mumbai, the Wankhede Stadium, there is not a single cricket stadium in India, cost of which has gone into three figures. They are between Rs.40 to Rs.80 crores. They are considered as good as the best in the world. You have had the World Cups, you have had more games there than any other part of the world. Jawahar Lal Nehru Stadium renovation cost Rs.961 crores. Dhyan Chand Stadium -- Pandit ji built it at the time of First Asian Games-- from 14,000 to 17,000 is the capacity expansion, 3,000 seats are increased- cost Rs.350 crores. Dharamshala has, probably, one of the most beautiful cricket stadiums in the country -- Rs.48 crores, including land cost. You compare the cost which the Commonwealth Games have cost us. You compare it with each one of the contract. The NDMC had to build the Shivaji Stadium, it is still not ready. Seven colleges of Delhi University were told, "Don't admit students in the hostel for the first few months. Hostels will be renovated and guests will come and stay here." Each college was given huge grants, because practice facilities will be held.

Now, we happen to know some of those colleges. In fact, I am associated with one of them in the management. So, I asked them, 'how were the practice facilities held?' Six months after the Games were over, the work was still going on. No practice was held. How many guests came and stayed in the hostels from which students were evicted? Not one; not one. You evicted all the students from the hostels of the universities because guests will come and stay. This is how the money is to be spent. You lay the

pavements; then you pick them up and say, 'I don't like the colour.'

Sir, as far as the agencies are concerned, the agencies will be accountable to whoever in law the agencies are accountable, whether it is the CPWD or the Sports Authority of India and other agencies. The political heads of the Government, whether it is the Delhi Government or it is the Government of India, are responsible to both Houses of Parliament. Delhi is after all a Union Territory though they have their own Assembly; but it is a Union Territory. The political establishment is accountable to this country. You created a system in which, in a whimsical and fanciful manner, works are going on overpriced; the Central Government is a little worse, because, you created a mechanism for the Games which was contrary to all arrangements.

Sir, every Commonwealth Game, every Olympic Game, every Asian Game is awarded to the Association. Mr. Maken should know this. But there is always a Government-headed Organizing Committee because Governments pay, taxpayers pay. The Sydney Olympics had a Government-headed Chairperson. The 1982 Asiad, first had Mr. V.C. Shukla and then had Mr. Buta Singh. The Afro-Asian Games during the NDA period was done by the IOA; it was held in Hyderabad and Mr. Chandrababu Naidu was the Chairman. This is the arrangement which was to take place and which has taken place in the history all throughout. And, instead of that arrangement, you created private systems and, therefore, Sir, there are two issues which I raise and with which I conclude. My colleagues may refer to some other questions with regard to the final details of this. The first is, the Government has not taken this House into confidence. They have not been candid with all facts. They have given us a twisted version of the facts that 'because of some contract we were bound', though that is never referred to, from 2004 to 2007. The real truth is, you saw a political ally in the gentleman and handed over the Games to him by turning and twisting all the contracts. And the second fact is, it is for the Government to decide what they want to do. We, as the Opposition, are very clear that political heads of the two

Governments which were involved in this and because of which this monumental fraud has taken place, these huge cases of overspending of public money have taken place, don't have a right to be in their offices even for a single day more.... It is only when these heads roll that India's democracy will be held to be more accountable. Sir, if I had stated any fact which is inaccurate, we, at least, have three former Sports Ministers present in this House today to point it out. I am sure, from 2003 to 2010 those who looked after these Departments are here, barring Mr. Sunil Dutt. They will know the facts which I mentioned. Even if there is a slight inaccuracy in what I have said, it can be pointed out. Otherwise, the Government must be hauled up for making an inaccurate statement of this kind which the Minister has a lot to answer on these questions. Thank you.



We need a judicial vision and a legislative statesmanship: Jaitley

The Rajya Sabha on August 18 passed the impeachment motion against Justice Soumitra Sen of the Calcutta High Court, clearing the first stage for his removal. This is the first time in the country's history that an impeachment motion against a judge has been passed by either House of Parliament. As many as 189 members voted in favour of the motion to impeach the 53-year-old Judge after a two-day debate on the issue, in the second case in Parliament's history and the first-ever in the Upper House. Seventeen members voted against. The members belonging to BSP opposed the motion. Trinamool Congress MPs were absent during voting. The impeachment motion will come up before the Lok Sabha next week. If passed by a two-thirds majority in the Lok Sabha, the motion will be referred to the President who will order Justice Sen's removal as a judge. Leader of the Opposition in Rajya Sabha Shri Arun Jaitley made a strong pitch for Justice Sen's removal, noting that right through his tenure as receiver and then a judge of the high court, he never rendered account of the money entrusted to him, and in fact created encumbrances and misappropriated the money, "as an in-house committee appointed by judiciary had found." Stating that a judge needed to be transparent, he said, notwithstanding his persuasive arguments placed before the Rajya Sabha the entire basis of Justice Sen's defence was completely at variance with facts. "You said you materially operated the account between 1993 and 1996 and that no statements were available?...but the Rajya Sabha inquiry directed the bank to file a statement. We are publishing the text of speech delivered by Leader of Opposition in Rajya Sabha Shri Arun Jaitley on the motion for the removal of Justice Soumitra Sen on August 18, 2011.

Mr. Chairman, Sir, today is an occasion which is both sad and historic. We have all assembled here in an alternative capacity of Parliament where we perform a function where we decide the fate of a man who has conventionally been deciding the fate of

others. Though this is a political House, it performs a judicial function. We have had an opportunity to hear the mover of the Motion, Shri Sitaram Yechury articulating his point of view in support of the Motion. We have also, at length, heard the learned judge who is sought to be impeached.

Sir, we are conscious of the fact that the power of impeachment is intended to be exercised in the rarest of the rare cases. The power of impeachment of a holder of a Constitutional office is an authority or jurisdiction given to us to remove a man in order to save the dignity of his office. The Office gets precedence over the man who occupies it. And if we find that the man is guilty of any misdemeanor, in the case of a judge, a proven misconduct or incapacity, we impeach him so that we can ensure that the dignity of the Office of judge that he occupies can be maintained. This power, Sir, is both punitive and also a deterrent power. We regulate the exercise of this power by article 124(4) in the case of a judge of a Supreme Court and read with it article 217 in the case of a judge of a High Court. The two grounds on which a judge, in either case, can be impeached is either proven misbehaviour or incapacity. In this case, Mr. Yechury's Motion is confined to the first ground, i.e., proven misbehaviour. Sir, when these articles were being drafted by the Constituent Assembly, Shri Gopalaswamy Iyengar had expressed the hope that, perhaps, these powers would never be used. He espoused the confidence that, at least, in his lifetime it will never be used. His prophesy was partly correct because it was not used in his lifetime.

Virtually, we have made two efforts in the past. One at the preConstitution stage, when a judge of the Allahabad High Court was sought to be impeached. He resigned before the Impeachment Motion could go through. There was a second occasion in 1993, where the Motion fell in the other House because of want of quorum itself. Sir, before I deal with what the learned Judge has presented before us, a few words about the kind of system which we have adopted in this country. We, perhaps, have adopted some of the soundest principles for running Indian Democracy. We are a

Parliamentary Democracy where different shades of opinion are represented. We have an independent Judiciary. We have the concept of separation of powers. And this power of removal of a judge is given to the legislative body, a political sovereign, which conducts an inquiry in accordance with the Judges Inquiry Act, where there is a pre-dominant participation of judges and on their recommendations decides whether to remove a judge or not to remove a judge. Sir, originally, when we devised the concept of independence of Judiciary, world over, the whole mankind was conscious of the fact that to judge the fate of ordinary humans is normally a divine function. But we bestowed this power with an ordinary human being in the hope that this ordinary human being would almost be perfect. He would be free from all collateral considerations; he would have a high level of scholarship; he would have the utmost integrity and, therefore, we were convinced that this function could be performed by the Judiciary and that itself would safeguard the rule of law and adjudicate fairly disputes between ordinary people.

Sir, as times have passed by, there are too many whispers and too many aberrations which we are confronted with. It is only a very rare case which comes to this House for consideration. And, therefore, Sir, we are now living in a changed time where the level of vigilance and the standards of probity will also have to be higher. The judges will also have to realise that Judiciary is no longer an institution which lives on ivory towers. Judges, like most of us here and others holding constitutional offices or high offices, also now live in glass houses. And, therefore, whether it is public or it is the media or it is the litigant or it is the Bar, they eventually become the best judges of judges.

Their conduct is also going to be watched and watched very closely. This is not to say that we can make unfounded allegations against a Judge because a Judge in ordinary circumstances speaks only through his judgments and he is not able to defend himself. Therefore, we have to be very cautious about every word that we say as right to speak, both inside and outside this House that

Judges and the Judiciary is an institution which cannot be thrown to the wolfs. It cannot be made an object of unfounded allegations but it will also like other institutions have to stand by the scrutiny of all times. When, Sir, a Judge is sought to be impeached through a procedure, what are really the standards we expect from the Judge? Do we expect from a Judge to resort to every technicality which is available to him? Do we expect a Judge to say that 'I will not enter the box so that I cannot be questioned; there are hard facts which I will not be able to answer?' Or, do we expect a Judge to be a role model as a litigant and then candidly states every question that is put to him because system cannot suffer for a Judge who is stigmatised? A Judge who is stigmatised can really never be in a position to represent the face of rule of law in India and be a Judge as far as others in the society are concerned. Therefore, Sir, when a Judge says, 'I will not appear myself and answer the questions, or, that first that prove the allegations against me and let me see how much you have in your pocket against me, only then I will let you know what my response is', that is not the case of an ideal Judge facing an inquiry. It has been repeatedly said and we hear rightly so these days that holders of high offices must be like Caesar's wife, they must be above suspicion. Caesar divorced his second wife because he suspected her of an illicit relationship. Even though the charge was not fully proved, he went through divorce because he said, 'Caesar's wife, considering the position she is in, must be 'unsuspectable'. So, a Judge cannot really say, 'first prove an allegation against me beyond reasonable doubt and only then I will come up and tell you whether I have an answer to give or not.' A Judge by his very character must be 'unsuspectable'. His position must be such that nobody can point a finger to him. We have, Sir, heard the presentation of the learned Judge at length. Sir, I have had an opportunity to read the entire record which the Secretariat has served and distributed to the Members. At times I got an impression whether the facts which I have read are similar to the facts which I was hearing from the learned Judge.

Sir, when we were young lawyers we were all trained that if in a given case you are strong on facts, you bang the facts first. If you are weak on facts but strong on law, you bang the law. And, if you are weak on the both, then you bang the desk, at least, you will appear to be confident. I was wondering what the facts are. The facts are in a very narrow compass. One does not have to go into a complicated circle of facts in order to determine that there are many other cases in the Judiciary where people are accountable. Of course, there are other cases in the Judiciary also where the persons should be accountable. In the matter of probity or lack of probity, there is no right of equality. There are other people who have committed offences while being Judge and got away with it is no ground available to any Judge to say that 'I must also get away from this offence.' In the matter of violation of law there is no article 14. Article 14, the Right to Equality, applies in the matter of application of law not in the matter of violation of law. Therefore, to discredit other Judges and say, 'well, there are others like this and, therefore, I must get away is never an argument available to any citizen, least of all, to a Judge. What are the facts as are apparent from the Report of the Inquiry Committee and the entire records which the Secretariat has served? I heard large discussions about workmen being paid and all workmen have signed, I found that this case has nothing to do with any workman. The charge has nothing to do with the workman. The case in a nutshell is that Steel Authority of India, a public sector company brought certain goods. The goods were to be brought through the shipping route by the Shipping Corporation of India and there was a supplier. There was a dispute over those goods and its qualities. The Steel Authority of India moved the Calcutta High Court and the Calcutta High Court on 30 th April, 1984 appointed the then Mr. Soumitra Sen, an advocate as a receiver. The Calcutta High Court said, 'Take charge of these goods. You can then make an inventory of the goods. Depending on the direction of the court, you can sell these goods.' Mr. Sen takes charge of these goods and he keeps the goods in his custody. Nothing happens. There was a direction

of the Calcutta High Court that what you do to these goods and the moneys you recover, every six months, please file a return with the Calcutta High Court. From 1984 till 2006, 18 years have passed, not once is the return filed. Nothing very seriously happened till 1993. On 20th January, 1993, the Calcutta High Court says, 'What has happened to these goods? Please sell them. You are entitled as your fee to five per cent of whatever is your sale value and whatever you sell, open a bank account, keep it in that bank account and the court will decide what is to be done with this money', and the court says, 'don't create any encumbrances on this money or on the goods. You can't use it for any other purpose.' Over the period of time, the goods are slowly sold and finally an approximate sum of Rs. 33,22,800 is received against these goods. Goods are sold over different periods of time. Mr. Sen, as he then was, opens two bank accounts, one account in the ANZ Grindlays Bank and the other account in the Allahabad Bank. He deposits Rs. 4,68,000 in Allahabad Bank and the balance of about Rs. 28 lakhs in the ANZ Grindlays Bank which later merged and became the Standard Chartered Bank. What does he do with these moneys? Now, these moneys are to be kept in these accounts. They will earn interest and eventually, whoever succeeds in the case will get these moneys. So, what does he do with the money lying in the Allahabad Bank? That is the reason, the judges' Inquiry Committee said, 'He claimed a right of silence.' Obviously, his advocate could not come and answer. He only argued on law. If he had appeared and the Inquiry Committee had asked him these questions, 'how come this money was lying in these accounts which were for the benefit of the court?' You are the receiver of the court and the court would give it to a winning party. He first cuts out cheques from these accounts, gives four cheques in the names of private individuals who are known to him, who have nothing to do with this case. One Subroto Mukherjee, Biresh Pratap Choudhary, Somnath Ray, K. L. Yadav, one Jai Guru Enterprises gets that money. Other amounts of money, his visa, credit card bills are debited to it. There is a well known

law book publisher, S. C. Sarkar and Company. So, law books are purchased. The moneys go from that account. While this was happening and this was the entire rigmarole that the presentation today was getting into, another judge of the Calcutta High Court appoints him as a special officer in the case of one Calcutta Fans. That case has nothing to do with this case. He is paid Rs. 70 lakhs so that workmen of Calcutta banks could be paid. He opens another bank account and puts the Rs. 70 lakhs there. Of this Rs. 70, he quietly withdraws Rs. 25 and makes a deposit in the name of one company, Links-India. Obviously, this Rs. 25 lakhs has gone there. So, the money is shortfall of workmen in the second case.

The second case has nothing to do with this impeachment proceeding. When he is paying the workmen, he realized that he is short of money because M/s Links India went into liquidation soon after he deposited the money. So, what he does is, he removed Rs. 22 lakhs from the SAIL's money, which is lying in the other account, and deposited in the Calcutta Fans Case. As a result of which only Rs. 800 and odd are left in this account. Well, this is a serious issue to ponder over which I deal with it in a little later. In February, 2003, the SAIL moved the court and said, 'We have not got any accounts. We have not got our money. What has happened to our money? This case is pending for over 19 years.' And, the weakness of our system is, since Judges appoint Judges in this country, the Government has a very marginal role. In December, 2003, he was elevated to a Judge. Now, the first thing that should have struck him when he becomes a Judge was that he was a Receiver in some cases and he got somebody else's money and he has to clear that first. He has already misappropriated that money for some alternative purpose. He just keeps quiet and keeps sitting on it. So, during his tenure, as a Judge from 2003 onwards, this misappropriation for 'alternative' purpose continues. When he does not answer the advocate of the Steel Authority of India, it moved the Calcutta High Court. The Calcutta High Court issues notice to him repeatedly, 'please file

an affidavit and tell us..." -- by this time he is a Judge -- '...as to what have you done with this money?' When he does not respond, the Judge, who was being put across as a villain of the piece, comes up and then makes enquires. He calls people from the Registry and he calls people from banks and tries to trace out where this money has gone. After all, this money was put in trust with the court and the court keeps its trust in him. He was holding it for the benefit of some other parties. He has utilized it and misappropriated it for some other purpose. Now, if he goes back to court as a Judge, he has to tell the Judge that my Visa Credit Card bills paid from this account, from other account I paid to the workmen and that deficit I compensated from this account, my books' bills, my self cheques -- there are a large number of self cheques which all enquiries revealed -- are paid from this account. So, what he does is: He does not file any Affidavit or response to the court. The court, finally, delivers a judgment. He has paid back to SAIL Rs. 5 lakhs. With regard to the balance amount, with interest, the court then passes a decree against him saying that Rs. 52,46,454 be paid. In three installments he paid Rs. 40 lakhs. Now, he is a Judge. He has not voluntarily paid for three years. Only on a coercive direction of the court he pays Rs. 40 lakhs. Then, he asks his mother to move an application before the Calcutta High Court praying for giving some more time to pay the balance amount. So, the Calcutta High Court says, 'first tell us as to what happened to this money in the meanwhile.' So, the court is told, 'I have put this money in M/s Links India and that money got lost because M/s Links India went into liquidation.' But, you never put this money in M/s Links India. You put some other money into M/s Links India. Why are you confusing the two? And, that is where the misrepresentation comes in. So, the court passes a judgment by giving him time and makes some adverse remarks against him. When these adverse remarks are reported in newspapers, the Chief Justice of Calcutta High Court writes to the Chief Justice of India, saying that this case has come to notice and this is a conduct unbecoming of a Judge.

Sir, 10th September, 2007 -- by this time he has paid the entire amount -- the Chief Justice of India calls him and says, 'how do you explain this conduct?' He says, 'give me some more time.' So, the Chief Justice fairly says, 'Please take some more time, but explain to me your conduct in this case, because it is unbecoming of a Judge.' He goes back, files an appeal through his mother again before the Division Bench, after taking time. The appeal comes up before the Division Bench. It is not a very happy commentary either on Judges or on lawyers.

As the appeal comes on day one - now, one brother Judge is getting into trouble; he has to explain to the Chief Justice of India - they asked the advocate of the Steel Authority of India and the buyer of the goods if he has no objection if they set aside this judgement, at least, the observations against him. So, on a concession made by a party, those parts of the observations were all set aside. And, those advocates get up and say that they have no objection you can set aside the observations. And, collusively, on that concession, the Division Bench passes an order. He goes back to the Chief Justice and says, "You had asked me for an explanation. Now, I have a very good judgement from the Division Bench which has set aside, by this method, the strictures against me." So, the Supreme Court was legitimately concerned as to what you do. So, the Chief Justice of India asked two very eminent Chief Justices of High Courts, and a Judge. All of them were men of proven integrity. The Chief Justice A.P. Shah, the Chief Justice Patnayak, and the Justice R.M. Lodha, men of great reputation, said, "This is an inhouse mechanism". Now, the learned Judge, today, says that the inhouse mechanism is extra constitutional. Obviously, the Constitution does not provide for any in-house mechanism. Impeachment is a near-impossible procedure. So, the in-house mechanism is: Let the Judiciary, in the first instance, look into the allegation itself and prima facie see whether any unfounded allegation is being made or it is a serious allegation. So, the three judges repeatedly call him. He gets a detailed hearing from them. He puts up his defense. They asked him what he did

with this money all this while, both, when you were an advocate and from 2003 to 2006, when you were a Judge. There is a continuing running threat. But, as a Judge, are you expected to misappropriate the money and keep to yourself the misappropriated money; and, then, not share with anybody where you kept this money? It is only when there is a coercive order of a court that you decide to return the money. Now, you say, "Since I have returned the money my sins are all washed off."

Section 403 of the Indian Penal Code, Mr. Jethmalani knows Criminal Law better than most of us, talks regarding misappropriation of money. Even a temporary misappropriation of money is a misappropriation of money. The fact that I stole this money or I misappropriated this money and when I got caught I returned it with interest does not wash off your crime. In any case, what is the level of probity that we expect from a person who is going to judge the rest of the society? The standard of proof may be beyond reasonable doubt, but a Judge is expected to act with probity and not in this manner. After the inquiry holds him guilty - - that is the procedure they follow, so that the dirty linen of Judiciary is not washed in public -- the three senior most Judges of the Supreme Court call him and ask him to submit his resignation because prima facie there is a serious material against him. Now, should this be interpreted as some kind of belinious act or a conspiracy? They have gone through a procedure. The Chief Justice of the High Court said, "Prima facie the allegations appear true and serious." The inquiry said that the charges were serious. And, since he does not agree to resign, fiftyeight Members of Parliament submit a motion, for his removal, to the hon. Chairman. The hon. Chairman constitutes a Committee, which comprises, under the Judges Inquiry Act, of a sitting Judge of the Supreme Court, Justice Reddy, a Chief Justice of a High Court, who got changed in between Justice Mudgil, and the third has to be a Jurist, Mr. Fali S. Nariman. He appears through an advocate. The first thing he does is, raises an allegation of bias against Mr. Nariman. He, then, appears before the Inquiry through his advocate

and says, "I will not enter the witness box". Obviously, he would have had to answer where these moneys were from 1993 to 2003, and from 2003 to 2006. He did not enter the witness box. That's what they referred to his right of silence. - So, the Judges' Inquiry Committee has to do a fishing inquiry. They have to call bankers. They have to call various people and then find out that these were two separate transactions.

The Kolkata fans case, which is payment of workers' dues, had nothing to do with this misappropriation. He only made good of the shortfall from here by putting the monies into that account. And, then, it has written a detailed finding holding him guilty of proven misconduct. I have just recollected this fact because the manner in which some of the facts have been given are really made out as though it is a different case between the paper circulated to us, what we have understood and what the learned judge was really arguing. In a nutshell, Sir, the misconduct is this. The first misconduct, which is a proven misconduct is, that you misappropriated the monies. The misappropriation started when you were an advocate. It continued after your elevation. You kept the monies and allowed them to remain misappropriated. You didn't cooperate with the Judicial institution in telling them the truth. Finally, when there were a compulsion of a judicial order, you claim it to be a virtue that now, at least, I have returned the entire money with interest.

The second fact is this. Why did you misrepresent the facts? Even today, Sir, when he seeks indulgence from this hon. House, did we once hear him tell us where the money of the Steel Authority case went? All we were told was this money was used for some fixed deposits, this went to workmen, this has been honourably paid, etc. This money had nothing to do with workmen. It was some other Kolkata Fan's case. He kept misleading the inhouse inquiry, the judges' inquiry, even today, the House that I honestly deposited the money. The impression which any person who has not read the record would get is, that I deposited this money with a company and that company went into liquidation. So, I was

good enough to take my own money and pay it back with interest. That is the case being made out.

Sir, having said this, on both counts, the prima facie opinion of the Chief Justice of the High Court, the firm opinion of the Judges' Inquiry Committee, which is the in-house Inquiry Committee, and, then, the opinion of senior three-judges of the Supreme Court to ask him to submit his resignation so that things don't come to such a pass. It has happened in the past. It may be extra-constitutional. It is the in-house persuasive method which the Judiciary has. And, then, comes, finally, the statutory constitutional procedure. Again, there was an inquiry by three eminent people. All findings come to a unanimous conclusion that, 'Yes, you did misappropriate money, and you did misrepresent the facts by not telling the truth. This case had nothing to do with Lynx India. You were using some other monies in Lynx India.' What business did you have even in that case to put the workers' money into Lynx India; a company which was on the verge of liquidation? You only made good of the shortfall in this case and put it into Lynx India. Is there any reason, is there any extraordinary argument that we must disagree with all these reports of all these experts and, then, come to a finding that the learned judge has not committed a misconduct or a proven misbehaviour?

Sir, from the beginning to the end, it smacks of an abuse of a process both as an advocate and as a judge. And when it smacks of abuse of a procedure, are we being guided by the opinion of a former Chief Justice of India? He may have his own grievances against the former Chief Justice of India. That is not an issue today. Can he today seriously contend that the sub-judice rule must apply to the impeachment jurisdiction of Parliament? The misconduct of a judge; of this judge, is not pending before any court. We are relying on independent evidence which was even held back from the single judge Division Bench and elsewhere, which came up for the first time before the Judges Inquiry Committee, which was appointed by the Chairperson. This House, in exercise of its Constitutional jurisdiction to remove a judge, will look at the kind

of evidence which has come out and, then, to say, in a single day hearing, as soon as I filed an appeal, on basis of concessions of two advocates, I managed to get a judgement; therefore, all my sins are washed off. We are not relying on any judgement in the course of this impeachment proceeding against him; we are relying on the Report of the Judges Inquiry Act. Judgements which are obtained in this manner by concessions between parties may be binding between those parties.

That is why, the Committee appointed by the hon. Chairman rightly says that these are judgements in personam, inter se the parties; these are not judgements on an issue, concerned with larger public interest, dealing with the misconduct of a judge. Therefore, they will not be binding, as far as this House is concerned, as far as the misconduct of a judge is concerned. This House is not moving on a presumption of guilt. In fact, a full opportunity has been provided by the Inquiry Committee, by this House. We start with the presumption of innocence, but when the facts, which are prejudicial, come before us, then, this House, prima facie comes to an opinion, and then, if the Motion is passed, comes to an opinion that the Judge, in question, really should not hold such a high office. He is a judge who stands stigmatized by repeated reports and those reports have a strong basis on the face of it. Those facts are borne out by the fact that monies have been diverted for collateral purposes. There may be other problems with the judicial institutions, which the Judiciary or the Legislature will seek to correct. But, then, Sir, these are not issues on which the judge can say, "I need the benefit of any doubt". Because no doubt has been cast on any of the findings which the Inquiry Reports, placed before us, have, really, revealed. I, therefore, strongly support the Motion, moved by Shri Sitaram Yechury, for the fact that an Address be sent to the President supporting the fact that this judge is unfit to be in the Office of Judge. There is a case of proven misbehaviour against him; therefore, the judge be removed from office. Having said this, Sir, a few observations that....

Mr. Chairman, Sir, yesterday, after some initial observations with regard to the bar being raised on issues of probity when it comes to Constitutional functionaries like the Judges, I had dealt with at length what the learned Judge had to say in his defence when he appeared before the House yesterday. In a nutshell, so as to maintain the continuity, if I can just repeat two or three sentences, the case against the Judge is that from his tenure as an Advocate-Receiver to his tenure as a Judge, there is a thread of continuity where he never rendered accounts for monies which came into his possession as Receiver. He created, on his own admission, encumbrances. And I was trying to build up a case that he even misappropriated those funds. And, that is the case the Inquiry Committee has established and the in-House Judges Committee has established. This misappropriation spilled over into his tenure as a Judge. He became a Judge on 3rd December, 2003. It is only in 2006, when the Court passed an Order against him, that he had to then repay it under a coercive threat of a Court Order.

The second limb of the charge against him is that before various authorities, whether it was the Court, the in-House Committee, or the Inquiry Committee, he misrepresented the facts. He misled them, and this entire misrepresentation was during his tenure as a Judge. A Judge is expected to be candid. A Judge is expected to be a role model litigant. A Judge does not come up and say, 'I invested this money erroneously, by an error of judgement, in Lynx India. The money got lost because of insolvency', when the fact is that he did not, from the monies, in this case, of Steel Authority of India, invest any monies in Links India. Sir, since the House had adjourned yesterday for continuing this debate today, I got a further opportunity to read the entire evidence which came up before the Committee set up under the Judges Inquiry Act by the hon. Chairman. And, I must say that even when the learned Judge was here yesterday, and he made a very persuasive presentation, some of the facts that he stated -- and I say this with a sense of responsibility - were not merely a continuation of this exercise to

mislead the entire enquiry process, and earlier, the judicial process; when he appeared before this House, the entire basis of his defence, on the basis of documents admittedly before the inquiry which the hon. Chairman appointed, was completely at variance. The truth was something else. I will refer to three illustrations of this fact.

The hon. Judge says, "The Committee that the hon. Chairman appointed mentioned that the Judge was a holder of a particular account whereas the account belonged to some other Soumitra Sen, and that he was being hanged because the Committee attributed a bank account to him which was in the name of some other Soumitra Sen.

When all of us heard this, we were actually surprised that how the Committee could commit such a patent error on the face of it. I checked up the entire evidence. When the charge was made against him that you obtained moneys by sale of goods in the Steel Authority case, you usurped those moneys; you misappropriated those moneys. On the contrary, from some other case of Calcutta Fans where you were a Special Officer, you invested those moneys in a company called Lynx India. The Committee or any other litigant did not make this charge of this account against him. This judge, in the first instance, through his mother went to a single judge of the Calcutta High Court and he told the single judge of the Calcutta High Court, "Well I had kept this money in Account No.O1SLP0156800 and this money was invested in Lynx India." Through his mother he filed a written note. This account number that he himself gave was the account of the other Soumitra Sen. And that written note -- I hold in my hand the relevant extract -- is before the Inquiry Committee. The Calcutta High Court never had an opportunity to see it. Even the in-house inquiry did not get it. It's only the Inquiry Committee appointed by the hon. Chairman that obtained this by directing the bank to come here. Not only this, when we challenged the order of the Division Bench at two places -- and I will read it and those familiar with court proceedings will appreciate that this is in form of grounds of appeal and an interim application -- he makes the same observation.

"For the learned judge failed to appreciate that all investments made by the erstwhile Receiver in the company were by way of cheques drawn on ANZ Grindlays Bank from bank Account No.01SLP0156800." His defence was that from this account he made the investments in Lynx. So, both the High Court and everybody called for this account and they found that from this account no investments had been made. Twice he told the Division Bench this.

After he told the Division Bench this and the single judge did not accept his case and they found that from this account no moneys had been paid to Lynx, the matter came up for inquiry under the Judges (Inquiry) Act. They charged him not for holding this account; but you say that from this account you paid moneys to Lynx, unfortunately, from this account no money has been paid. The copy of the charge is then given to him. He doesn't correct the error. The charge is then given to him. The charge doesn't say that you hold this account. The charge says from this account also no money has been paid to Lynx. So, the defence is false. When he comes up before the inquiry Committee, he files a detailed reply. Even in the reply, he doesn't say that this belongs to some other Soumitra Sen. It is only when the bank official comes his counsel now very conveniently puts a question to him, 'Well this account doesn't belong to my client, it belongs to somebody else'. So, the bank rightly says, 'Yes, it belongs to somebody else.' So, the Inquiry Committee says, 'You yourself put up a false account from which you had made the payments and when it is found out that this is not the real account, they get the account opening form. The account opening form is of one Soumitra Sen who is an employee of Food Specialities Ltd. So, you passed off his account as your account in the pleadings." So, the Inquiry Committee holds against him from these moneys of sale or this account you have not paid any money. Now what does he do when he appears before us? He comes here and says, 'Look so casual and vindictive was this Inquiry Committee that they foisted a false account on me.' Sorry, the truth is otherwise. You passed off a false account as your

account. When the bank was called, they detected this fraud and the Committee has, therefore, given a finding against you.

So, the first point on which he tried literally to rubbish the procedure of the inquiry was by saying that a false account is foisted on me. The second fact -- and we can check up the record -- is when he says, "The accounts were materially operated between 1993 and 1995. No bank statements are available, and I am being hanged without the bank statement showing expenditure." This worried me a little, Sir. So, I went and checked back the record at night, and from the evidence, which the Committee appointed by the hon. Chairman, I found that before the High Court, he never brought the bank statement. Obviously, he himself had to show the bank statement of expenditure. But, the inquiry appointed by the hon. Chairman directed one of the banks to come and show the statement. So, the bank filed the ledger. So, second falsehood where he misled the House yesterday was, "bank statements are not available". The bank statements are available. They are exhibited in the inquiry appointed by the hon. Chairman. What does the bank statement say? I am just holding the statement of Allahabad Bank where I had mentioned yesterday that some Rs.4,68,000 was deposited. From 24th March, 1993 onwards, by cash, and mostly by cash, some payments by cheque, he withdraws the money. And, Rs.4,68,000, on 8th March, 1996, within two years, becomes Rs.5,378. No money given to any workmen; no money given to Lynx India; all cash and cheque withdrawals for himself. Till date, he has not explained what did he do with this money. It's only in 2006, ten years later, when he got caught, he says, "Okay, I will pay with interest". So, this House was again misled yesterday by saying that bank statements are not here. Bank statements are available. I hold them in my hand.

The third thing he said yesterday where he tried to mislead us, "Even if you hold me guilty and remove me, I will still shout from rooftops that I did not misappropriate the money.". Well, you may have a great determination or a pathological conviction that you have not misused the money, but the best proof is : how

were the cheques cut out from this account? The cheques can't lie; individuals can. On the inquiry appointed by the hon. Chairman, what do the cheques show? I am holding zerox copies of the cheques which are on the record of the inquiry. The same names as I mentioned yesterday - cheques in favour of one K.L. Yadav, one Guru Enterprises, one Subroto Mukherjee, Prashed Prasad Chaudhary, Ram Nath Roy and the same names which I had mentioned yesterday. Now, who are these people? These are not workmen. What is the second set of cheques? Now, regarding the second set of cheques, the record is with me. It is in Committee's record. Any Member can borrow the record from me. All these cheques are cut out 'self' and cash withdrawn. You can shout from rooftops that you did not withdraw this money, but these cheques and this misappropriation will hang like an albatross around your neck even when you are shouting from rooftops. These are all self withdrawals. These are all withdrawals in favour of a company, S.C. Sarkar and Company, the bookseller, publishers that I mentioned. And, then, there are cheques towards ANZ Grindlays Bank card number so and so which is for VISA credit card. These are exactly the same facts I had given yesterday. Now, you use the money, you utilise the money which is really custodial, as he says, in his possession, which is case property. He holds it as a trustee. And, when he holds it as a trustee, he not only misuses this money, misappropriates this money, but in 2003 when he becomes the Judge, he does not tell the Court that I should now be discharged. He continues this misappropriation. The misappropriation continues to 2006. And, the second limb of his offence is when he is called before Courts, when he is called before an in-House inquiry, when he is called before the inquiry appointed by the hon. Chairman, he tells them, "I made some wrongful investments. There must have been an error of judgement on my part, but there is no misappropriation."

Self cheques, credit card cheques, book publisher's cheques, cheques in favour of some other unknown gentleman! And, both the inquiries, the inquiry appointed by the Chief Justice of India,

and, the inquiry appointed by the Chairperson of the Rajya Sabha, have come to a finding that this was a case of misappropriation.

He says that I eventually went and returned the money. I mentioned this yesterday, and, some of us who are familiar with this branch, know that the first explanation, in fact, that is the only explanation, to breach of trust deals with a situation when, as a trustee, you hold money which is to be used for a particular purpose. The explanation to section 403 of the IPC states that a dishonest misappropriation for a time only is a misappropriation with the meaning of this section.

So, any kind of misappropriation, even if it is for a temporary period, in this case, this period stretches to almost more than ten years, is a misappropriation. And, as a Judge, between 2003 to 2006, not only he continues the misappropriation but also misrepresents to every authority, and, he tells to every authority which is constituted, "well, these were some honest, bonafide investments, which got lost, and, therefore, I paid back after ten years with interest". Can we afford to have a Judge whose conduct is of this manner? The plea that he raises is that since the main suit is pending, the issue is sub judice. The issue of Justice Sen's misconduct or proven misbehaviour within the meaning of article 124 and article 217 is not pending in any court. In fact, that is the sole jurisdiction of this House. He then says, "I did not claim a right of silence". The summons issued to him under the Judges Inquiry Act say, "you can appear in person and through counsel but be prepared to answer all the questions". So, his counsel appears, and, it is a clever strategy that he does not appear himself nor offer himself as a witness. He is the best available person who can tell us and produce his accounts. What would a Judge do? He will be candid and say, this is how I spent the money. It was an error of judgement. I compensate the loss caused. He does not appear because these cheques would be confronted to him, the accounts would be confronted to him, and, he will have no answers to give.

So, the second limb of the charge on which he is held guilty is

his misconduct during his tenure as a Judge, both continuing the misappropriation and stating incorrect, inaccurate facts. So, on each of these grounds, two different bodies have come to a conclusion, and, in all fairness, we are not really bound by what the in-house inquiry has said; we are not even bound by what the then Chief Justice's letter to the Prime Minister contains. There may be many cases of a grosser impropriety, of which evidence, unfortunately, may not be forthcoming. Therefore, we have to consider how we strengthen the system that even those cases do not go unchecked. But is that a ground that because many people who have committed similar or larger offences have got away, therefore, why pick me up, why single me out? Can we afford to have a Judge whose conduct smacks of this kind of a proven misconduct? Therefore, when an opportunity has come, where a committee of two very eminent Judges and one very eminent jurist has come to a finding, is there anything extraordinary in his presentation saying that they have violated the procedures, or, the substantive facts are incorrect, that we should really consider not accepting the committee's recommendation? And, therefore, I concluded yesterday, and, I am reaffirming that, I support Mr. Sitaram Yechury's motion that this is a fit case of proven misconduct where the Judge concerned must be removed from office, and, the Address to the President should be so recommended by this hon. House.

Sir, I would now like to make just a few observations. The first thing that comes to our mind is - and this has nothing to do with this particular case - that even in 2003, when this misconduct was continuing, how come such persons get to be appointed? It really seriously means that we have to revisit that process. Originally, when the Constitution was framed, we had a system where Judges were appointed by the Executive Government in consultation with the Chief Justice of India. Ordinarily, the Government would be bound by the Chief Justice's advice. In 1993, that system got changed by a judicial interpretation and the advice of the Chief Justice of India was binding on the Executive

Government. That is the position today. Today, even though the Government is a part of the consultation process, it can refer back the case once, but effectively, our experience has been, this was the experience when the NDA Government was in power, this is the experience of the present Government, that we are living in a system where Judges appoint Judges. The Government, at best, has only a very marginal say. There is no other process by which there is any kind of a participation in the process of appointment of Judges.

Sir, both the pre-1993 system and the post-1993 system had several handicaps. The best in this country are not willing to become Judges. We have to seriously consider why. At times, the selection process, where only Judges appoint Judges and the process is a non-transparent process, will always create situations where rumours in the corridors of the court and those who are close observers of the judicial process will be far too many. It was unthinkable once upon a time; it is not unthinkable today. That is why whereas, on the one hand, I suggested that vigilance has to increase, at the same time, we think of an alternative. My suggestion to the alternative is, I am not going into the details but a two-fold alternative. We should seriously consider a system which is being debated about setting up a National Judicial Commission. The National Judicial Commission must have Judges. It must have the participation of the Executive. It can also have participation of the people selected by a collegium of some eminent citizens. It can't only remain the domain of the Judges. Therefore, public interest has to be protected in the matter of appointment of competent Judges, in the matter of appointment of Judges who are men of integrity, men of scholarship. Not only this, the criteria for appointment today does not exist. Is it today the discretion of the collegium? Collegium is also a system of sharing the spoils. When the High Courts recommend, members of the collegium share the spoils. This is an impression which close observers have. Therefore, the discretion whether the collegium system continues or we have a National Judicial Commission must also be now

statutorily regulated so that arbitrariness can be avoided. After all, there has to be some objective criteria.

Except elected offices, there is no other appointment which is made where there is no threshold criteria for entry. What is your academic qualification? How bright were you during your academic days? What is your experience as a lawyer? If you are a Judge, how many judgements have you written? How many have been set aside? How many have been upheld? How many juniors have you trained? How many cases have you argued? How many cases have been reported which you have argued? Have you got laws laid down? Have you written papers on legal subjects? These are all objective criteria. One cannot disregard them and say I pick up a name out of my hat and appoint him because I am in the collegium. Therefore, we need, I am glad the hon. Prime Minister himself is here, a system where this should be seriously reviewed.

Secondly, Sir, the matter of Judges judging Judges and nobody else participating in this is also an issue which requires a serious review and which requires to be referred to, in my opinion, the same National Judicial Commission.

The third issue is this. When appointments are made we have to seriously consider how the institution functions, whether it functions without any pressures. Today, whether it is politicised appointments or it is appointments which lack credibility or it is subsequent lack of accountability or biases on account of relatives, biases on account of religion, caste, and personal relationship, these are all areas where accountability and vigilance norms have to be improved and increased, so that the independence of the institution can seriously be preserved.

I have always believed that we must seriously consider this larger issue of almost every retiring judge, barring a few honourable exceptions, holding a belief that he is entitled to a job after retirement. Jobs have been provided in certain statutes; they are created by certain judicial orders. Therefore, search for a job on the eve of retirement begins, as a result of which there is a serious doubt which is raised that retirement eve judgements at times get

influenced by the desire to get a job after retirement.

Therefore, I think when there is a Bill pending with regard to increasing the retirement age from 62 to 65 in the case of High Court Judges, we should correspondingly think of increasing the strength of judges, even increasing the facilities, remuneration and pension available, but putting a stop to this practice of everybody being entitled to a job after retirement. The desire of a job after retirement is now becoming a serious threat to judicial independence. Lastly, Sir, it is just a brief comment. I have said in the very beginning that the separation of powers is one of the basic features of our Constitution. At times it's argued that the separation of powers is threatened because Governments of the day don't want an independent judiciary. They want to influence the independence of judiciary. So the theories like committed judges, judges with the social philosophy were all propounded at one point in time. Those are now ideas of the past.

Separation of powers requires that every institution works in its own spheres. And if every institution works in its own spheres, it has to lay down the lakshman rekha of its own jurisdiction. But why is it necessary to lay down lakshman rekha of its own jurisdiction? What happens if one steps into the other's domain? And I must candidly confess that this attempt to encroach upon the lakshman rekha is neither coming from governments of the day in the Centre or the States nor is it coming from the Executive or the Legislature. Some serious sidestepping is coming from the judicial institution itself. Therefore, we require a certain element of judicial statesmanship; we require a certain legislative vision so that we can maintain this separation of powers. Otherwise, what should be the economic philosophy of India? What should be our economic policy? Whether we go to the post-91 policy of liberalisation or we go to State controls is the matter entirely for the Executive. Courts cannot say that this is neoliberalism which is creating problems. Courts cannot have an ideology. The only ideology that courts can have is commitment to the rule of law and what law is made by Parliament. Courts cannot tell this to the

Government. There was an incident in the past when a terrorist group was holed up in Kashmir and courts asked our security agencies how many calories were to be fed to the terrorists, because they have a right under Article 21 carrying a gun in their own hands. How Maosim is to be fought or insurgency in the North-East is to be fought, we have gone through these debates in this House. That is the domain of the Government. The Government has to decide the policy. Courts cannot decide that policy. What should be the land acquisition policy? The Government is seriously contemplating a new Land Acquisition Act. What should be the quantum of relief and rehabilitation? These are all areas.

I recently came across a fact that a Pakistani prisoner should be released. There may be some space for compassion in any civilised society.

But, whether the Government of India wants to release the Pakistani prisoner or it wants to exchange for another Indian prisoner in Pakistan, is a matter of the foreign policy or the security policy of the Government of India. We have not handed over the management of India's foreign policy to the Supreme Court of India and, therefore, how the Pakistani prisoner is to be treated - released or otherwise - is entirely in the domain of the Government of India. Now, these are all examples of recent past that I am mentioning where the space or line of separation of powers itself gets obliterated and the encroachment, in most cases, is neither coming from the Legislative nor the Executive.

Therefore, we need a serious introspection and I, therefore, said that we need a judicial vision, a legislative statesmanship and vice-versa in this country so that the correct balance of separation of powers can itself be maintained.

Finally, Sir, we were dealing with the case of a delinquent Judge. I am of the clear opinion after going through the reasoning of the Inquiry Committee; detailed reasoning has been given; it's a very well written report which is substantiated by huge number of documents. The conduct of the Judge leaves much to be desired

- his conduct as a receiver, his conduct as a Judge, his conduct in the course of inquiry and finally - though not a ground for impeachment, but a ground on the basis of which we must make our own assessment - the kind of statement he made yesterday. I think, this is a case which should leave none of us in doubt that it's a fit case for removal of this Judge and we must so make a recommendation of the Address to the President of India. Thank you.



Lokpal Bill

Does UPA have political will to fight corruption ? - Arun Jaitley

Launching a scathing attack on Prime Minister Manmohan Singh after his statement in the Rajya Sabha on circumstances leading to Anna Hazare's arrest, Leader of Opposition in Rajya Sabha Shri Arun Jaitley said even the British administrators did not impose such conditions on freedom fighters, including Mahatma Gandhi when they staged protests. He slammed Prime Minister Dr. Manmohan Singh for lacking political will to tackle corruption and instead taking "refuge behind Delhi Police Commissioner" for Anna Hazare's arrest. He said the Congress led UPA Government was also trying to engineer a confrontation between Parliament and civil society. We are publishing the text of the speech made by Shri Jaitley on August 17 for our readers.

I am extremely grateful to you for allowing me to raise an issue of importance. Sir, we wish to raise our strong anguish and protest as to what has been happening in the entire country in the last few days. This is nothing short of a brutal assault on Indian democracy.

एक नागरिक समूह अपने विचार को लेकर विरोध करने का अधिकार व्यक्त करना चाहता है, तो क्या यह सरकार उसको इस अधिकार से वंचित करेगी?

Mr. Chairman, Sir, we have just heard a detailed statement from the hon. Prime Minister which not only disappoints us but does not really add to our information or knowledge. A list and resume of events is given which in the course of yesterday and day before newspapers and television channels have repeatedly told us. 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. I do not think there a serious difficulty in answering that question. But the question that he has posed as to who drafts the laws and who makes the laws in this country, I do not think there is a serious debate or anybody inside or outside this House is seriously disputing that. After reading his statement, I am left wondering as to who really runs this country and who rules this country. You have 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 all the political issues which arise and the solutions which are being sought, the solution to them was that the police decided to invoke provisions of sections 151 and 107 of CrPC and thereafter the law started taking its own course.

Sir, I think 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 as to why such a loss of confidence in this Government has taken place. Sir, on the Independence Day, the most defining moment was not the Prime Minister of India unfurling the National Flag at the Red Fort but in the evening when the news spread that Shri Anna Hazare had gone and sat at the Rajghat, thousands of people, not brought by buses, voluntarily started arriving there in order to show solidarity and support. The defining moment was yesterday, something which even political parties may find difficult to organize, that the news of his arrest spreads and you find not in hundreds but thousands of places all over the country, every city, even in rural areas, protests start. Why is this that this has not happened in the past? Sir, some of us who participated in these movements when they had earlier taken place, I was a part of the movement led by Jaiprakash Narayan, and some of these images which we saw in the last two days go even far beyond what we had even visualized and analyzed. The truth is that India today is exasperated with corruption; India today is exasperated with this political

leadership of the Government, which is unable to tackle corruption and which has absolutely no solution except cover-ups to all. Sir, you had some of the most monumental scams in history which have taken place in the last few years.

All we got was the routine phrase and the routine templates that this Government will have a zero tolerance level to corruption, this Government will now allow investigative agencies a free hand. But repeatedly, when the 2G scam took place, we were repeatedly told that there is nothing of a scam in it. I am not getting into the details of those issues. But, you had situations, whether it is Telecom or it is National Highways or it is the Commonwealth Games, you pick up any infrastructural decision and that is the sector which has taken a set back. You find decisions being taken for collateral purposes and the best defence Government had to offer for three years was, one, they lived in denial that there is no such scam which has taken place, and finally, whatever action this Government did take was not a voluntary action. 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. Why should we blame the youth of this country which has come out in lakhs yesterday when we have votes of confidence taking place in Parliament which are vitiated by corruption? Can we blame those people that it is not a fair cause that they are fighting for, where they are exasperated not only with the extent of corruption but also with the fact that the Government of the day is willing to condone it? In such a situation, Sir, it is a wake up call for all of us that unless we put our house in order and this Government leads us all in putting that house in order, the people in this country will now become restless. What really happened? The issue today is not as the Prime Minister, with utmost respect to him, who drafts the laws and who makes the laws. Has anybody in this country ever disputed that it is the authority ultimately of the sovereign Parliament to make the laws? Nobody has disputed that. Sir, unless this Government and its supporters address themselves to the right

question, they will never get the right answer. The right question is not as to who frames the laws. There are two questions this Government has to answer. The first is: Does it have a political will to fight corruption? When the Prime Minister says he has no magic wand, you don't need a magic wand, you don't need magics in order to fight corruption. All you need, Mr. Prime Minister is, a political will. The whole country will support a Prime Minister who says, 'I have the authority, I have the stature and I have the moral stature to fight corruption.' You determine that political will, you evolve that political will in yourself and then decide to fight corruption. You will find that you are in a position to fight corruption. You bring in then the necessary laws. Instead what you have done is, you have unleashed a new political idiom against the critics of this Government. On the one hand you send Ministers to receive Baba Ramdev. You formed a Drafting Committee with Shri Anna Hazare and his team and then in the middle of the night you unleash them with lathis. You followed the police power approach to solve the political problem. What is the kind of Indian that we are seeing in the last few days? Political spokesmen are being used literally as hit men. That is the new role that they have to adopt. You pick up those crusading for probity in public life and unleash a series of political abuses on them. You start making allegations against them. Is that the level to which you have brought the level of political debate in this country? Then you stand up and cry before five editors with a sense of helplessness and say, 'These are compulsions of political alliances and coalitions that I am unable to take action.' Is that the answer that you have to political corruption?' Smugness, Mr. Prime Minister, which has become a character of this Government, arrogance of power which has become a character of this Government, is not the methodology by which corruption can be fought.

Power is not immortal. The more arrogant you are, the earlier it disappears. Please bear that in mind. Therefore, when the question is to be posed today, the first question the whole country is asking and is before you is this. We, in the Opposition, today,

ask you: Is your Government having a political will to fight corruption? If you decide that the answer is in the affirmative, it is only then that you can ever get the confidence of this nation back. The second question -- this is the question the entire Opposition puts to you and also the civil society is putting to you -- is this. They are not saying that they will substitute this Parliament and draft laws All that they are saying and we are saying. and all that we are we are reaffirming is, they have a right to put their point of view across. 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. We are entitled to tell him how much we agree with him and how much we cannot accommodate his views. That is a part of the democratic discourse. But, they have a right to put their view point across. And, as a part of their right to put their view point across, they have a right to protest and they have a right to dissent. It is this right to protest and this right to dissent which your Government is trying to scuttle and we are all here to oppose that.

Let us see what you have done. The defence that you have put up is: you have first involved them in the Drafting Committee and you try and lead them up the garden path. Even when they ask you to involve the Opposition in the drafting process, your smugness persuades you. Your arrogance persuades to say that Opposition is not required at this moment. After leading them up the garden path, you find a stalemate with them. Then, you come up with a Bill, a Bill which almost provides for a Government-controlled Lokpal. The appointment process of that Lokpal is really gives an edge to the Government of the day to appoint that Lokpal. Obviously, that Bill may not inspire confidence with them. There are areas where we also have serious differences with the Bill. But the issue, today, is not whether we agree with your version of the Bill or their version of the Bill. The issue, today, is how you have handled a political crisis. Have this Government lost all sense of statecraft how political agitations are to be dealt with? You impose conditions. Sir, all of us have been in Opposition at some

point of time or the other. All of us have been parties to protests. We have all courted arrest. The issue is, for holding a protest, *Dharna* or *fast*, when is it that the regime of the day say that I will impose 22 conditions on this protest. My conditions include, whether your members will come by car or they will walk, how many cars they can park there. My conditions include, whether you put up *Shamianas* or were you have to put up *Shamianas*. My conditions include, what should be the size of protest. 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? Your people can go and break Section 144 in the adjoining State of Uttar Pradesh and you say that right to protest is my Fundamental Right! But, when it comes to Delhi, you adopt an alternative argument. So, what will be the size of protest, what will be the duration of the protest, the Government against which the protest is being organized will have a right to determine that.

So, I will determine who can protest against me; how he can protest; how long his protest will be; and, what the size of his protest will be. The power to impose conditions on a protest can legitimately be: Don't indulge in violence and don't disrupt public order. But, you cannot impose such unreasonable conditions which render a protest redundant; you can't impose conditions that effectively take away the right of an effective protest. And, that is what the Government is seeking to do. I think, this is a problem with all the Governments which have too many lawyers advising the Government. The 'politics' is a separate discipline and the 'law' is a separate discipline. The political problems The political problems are to be dealt with a political approach. The political approach is: 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. How can you rake up a plea today that there should be no participation outside Parliament of anyone outside Parliament in the drafting of the laws? What is the National Advisory Committee? It is a group of citizens. You are using them effectively to draft your laws. Your Ministers even don't have the courage to start opposing the laws that they are drafting. So, if another group of citizen says, "It has a view point and please consider it; it wants to campaign, crusade", they are not replacing Parliament.

Even the laws drafted by your NAC will come up before the Government or the Parliament. Therefore, if a group of citizens says that it has an alternate view, we may not eventually accept what they say, we may accept some suggestions of what they say. But how can you take away and snatch their right to say? And, what you have effectively done is, under advice of the very eminent lawyers in the Government, you have invoked the CrPC to solve political problems. If you decide to invoke such powers to solve a political problem, then, that reduces the Prime Minister of India to hide behind the Police Commissioner and say, "I did not decide this. It is the Police Commissioner who decided this." That is the inevitable consequence of this. Therefore, the effective issue today is: Shri Anna Hazare, his group and lakhs and lakhs of citizens of this country - this figure is, now, probably, going to cross - have a right to say what they want to say. The track record is that they have never indulged in violence; they have not disrupted the public order; they have not been a threat to peace and tranquility. And, don't tell us that Delhi has shrunk so much that there is no place in Delhi where we cannot effectively seat them for their protest or their sit-down or their dharna or their fast. Do you even recollect any illustration from the British regime where these kinds of restrictions were being imposed on the freedom fighters and Gandhiji? They had hundreds of protests. Have only miniscule protest, have only small protest, don't have a large protest. If the Government of the day becomes so dictatorial, so oppressive, then, a citizens' group may well say that it is willing to offer

satyagraha and even go to prison. And, the truth, now, is your Government was being too clever by halves. You first led them up the garden path, then, you deserted them. Then, you brought in a Bill that does not satisfy anyone. When they chose to protest, you made them run around for weeks from one office to another as to whether they can get a permission to sit on a fast or not. Then, eventually, you quietly went early morning and arrested them. You thought that all these people of India will take it lying down.

But by the evening you saw the enormity and the magnitude of the protests and, suddenly, you decided to make a statement. Therefore, you make a statement, which, at least, does not inspire confidence to me. We heard that he is moving to the court. Therefore, since he is moving to the court, we realise that he has become very law-abiding. Therefore, since he has now become law-abiding, we went and tried to release him. Well, you saw the magnitude of the protests. Your advisers let you down. Your agencies let you down. They thought, nothing will happen in this country. They did not realise that India is already exasperated with you. It is fed up of corruption. It is fed up with those who are covering up for corruption. Therefore, you went begging him to come out of the prison. And, now, he had shown his moral strength to you. And the moral strength of his fast was, 'Well, I am on a fast whether inside or outside the prison and my fast will continue.' You are now in a trap. Therefore, unwilling to make a statement yesterday, today you have volunteered the statement. And the text of your statement is, 'Can I somehow make it a confrontation between the Parliament and the Civil Society?' Well, we are refusing to bite this bait. 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 accept some of what they may say. We may not accept what they say. But they have a right of peaceful protest. Till the very end, we will uphold that right of peaceful protest that they have. You have given a statement that it is not the crushing of their right of peaceful

protest that the Government is doing, but it is a great ideological debate between the Parliament and the civil society. We refuse to accept that as the agenda. That's not the real question. The real question, Mr. Prime Minister, is this. And, I will end with that note. Please take steps. Please determine a political will. The Prime Minister is the tallest political functionary of the country. A Prime Minister can never be helpless in fighting corruption. 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. Having said this, Mr. Prime Minister, we reject this entire thesis that you have built up that this was a police power in order to prevent an apprehension of breach of peace. Thank you very much.

