C. B. No. 151

LOK SABHA

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15.3.

THE CONSTITUTION (FIFTEENTH AMENDMENT) BILL, 1962

Report of the Joint Committee

(PRESENTED ON THE 8TH MARCH, 1963)

LOK SABHA SECRETARIAT
NEW DELHI

March, 1963
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JOINT/SELECT COMMITTEE REPORTS PRESENTED TO LOK SABHA DURING THE YEAR 1963.

Sl.No.	Name of the Report	Date of Presentation.
1.	The Administrators-General Bill, 1962 (Report of the Select Committee)	25-1-1963
2.	The Constitution (Fifteenth Amendment) Bill, 1962 (Report of Joint Committee)	8-3-1963
3.	Joint Committee on the Constitution (Fifteenth Amendment) Bill, 1962 - EVIDENCE.	-do-
4.	The Constitution (Sixteenth Amendment) Bill, 1963 (Report of the Joint Committee)	18-3-1963
5.	The Government of Union Territories Bill, 1963 (Report of the Joint Committee)	15-4-1963
6.	The Major Port Trusts Bill, 1962 (Report of the Select Committee)	13-8-1963
7.	Select Committee on the Major Port Trusts Bill, 1962 - EVIDENCE	-do-
8.	The Christian Marriage and Matrimonial Causes Bill, 1962 (Report of the Joint Committee)	26-11-1963
9.	Joint Committee on the Christian Marriage and Matrimonial Causes Bill, 1962 - EVIDENCE.	-do-
10.	The Companies (Amendment) Bill, 1963 (Report of the Select Committee)	9-12-1963
11.	Select Committee on the Companies (Amendment) Bill, 1963 - EVIDENCE.	-do-
12.	The Slum Areas (Improvement and Clearance) Amendment Bill, 1963 (Report of the Joint Committee)	18-12-1963

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THE CONSTITUTION (FIFTEENTH AMENDMENT) BILL, 1962

Composition of the Joint Committee

Lok Sabha

Shri S. V. Krishnamoorthy Rao—*Chairman*

MEMBERS

2. Shri Brij Raj Singh-Kotah
3. Shri S. N. Chaturvedi
4. Shri Homi F. Daji
5. Shri Ram Dhani Das
6. Shri R. Dharmalingam
7. Shri Kashi Ram Gupta
8. Sardar Iqbal Singh
9. Shri Madhavrao Laxmanrao Jadhav
10. Shri Madeppa Bandappa Kadadi
11. Shri Hari Vishnu Kamath
12. Shri Paresh Nath Kayal
13. Shri Nihar Ranjan Laskar
14. Shri Harekrushna Mahatab
15. Shri M. Malaichami
16. Shri Mathew Maniyangadan
17. Shri Bibudhendra Misra
18. Shri F. H. Mohsin
19. Shri H. N. Mukerjee
20. Shri D. J. Naik
21. Shri V. C. Parashar
22. Shri Ram Swarup
23. Shri C. L. Narasimha Reddy
24. Shrimati Yashoda Reddy
25. Syed Nazir Hussain Samnani
26. Shri Ramshekhar Prasad Singh
27. Dr. L. M. Singhvi
28. Shri U. M. Trivedi
29. Shri Balgovind Verma
30. Shri Asoke K. Sen.

Rajya Sabha

31. Syed Nausher Ali
32. Shri Santosh Kumar Basu
33. Shri K. S. Chavda
34. Shri D. B. Desai
35. Shri Jagan Nath Kaushal
36. Shri Akbar Ali Khan
37. Shri R. S. Khandekar
38. Shri Lokanath Misra
39. Shri M. A. Manickavelu
40. Shri P. N. Sapru
41. Kumari Shanta Vasisht
42. Shri Vijay Singh
43. Shri Hira Vallabha Tripathi
44. Shri Bipin Behary Varma
45. Shri Gopikrishna Vijaivargiya.

DRAFTSMEN

1. Shri R. C. S. Sarkar, *Secretary, Legislative Department, Ministry of Law.*
2. Shri S. K. Maitra, *Deputy Draftsman, Ministry of Law.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

Report of the Joint Committee

I, the Chairman of the Joint Committee to which the Bill* further to amend the Constitution of India was referred, having been authorised to submit the report on their behalf, present this their Report, with the Bill as amended by the Committee annexed thereto.

2. The Bill was introduced in Lok Sabha on the 23rd November, 1962. The motion for reference of the Bill to a Joint Committee of the Houses was moved in Lok Sabha by Shri Asoke K. Sen, the Minister of Law, on the 8th December, 1962 and was discussed on the 8th and 11th December, 1962 and adopted on the 11th December, 1962 (Appendix I).

3. Rajya Sabha discussed and concurred in the said motion on the 12th December, 1962 (Appendix II).

4. The message from Rajya Sabha was published in the Lok Sabha Bulletin, Part II, dated the 13th December, 1962.

5. The Committee held ten sittings in all.

6. The first sitting of the Committee was held on the 14th December, 1962 to draw up their programme of work. The Committee at this sitting decided to hear the views of the Bar Council of India, the Indian Law Institute and of the Members of Parliament, on the Bill, if they so desired.

7. Members of Parliament were informed by a paragraph in the Lok Sabha and Rajya Sabha Bulletins, Part II, dated the 18th December, 1962 that Members who desired to place their views on the Bill before the Joint Committee might intimate their names to the Lok Sabha Secretariat. No member of Parliament, however, intimated his name or sent a memorandum to the Committee.

8. As requests for permission to give oral evidence before the Committee were received from certain other associations, the Committee, at their second sitting held on the 18th January, 1963, authorised the Chairman to decide, after examining the memoranda submitted by those associations, as to which of them should be called to give oral evidence before the Committee.

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*Published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 23rd November, 1962.

9. 118 memoranda/representations on the Bill were received by the Committee from different associations, etc. mentioned in Appendix III.

10. At their third and fourth sittings held on the 13th and 15th February, 1963, respectively, the Committee heard the evidence given by the representatives of fourteen associations specified in Appendix IV.

11. The Committee have decided that the evidence given before them should be laid on the Table of the House *in extenso.*

12. The Committee considered the Bill clause by clause at their sixth to ninth sittings held on the 18th, 19th, 20th and 21st February, 1963.

13. The Report of the Committee was to be presented by the first day of the fourth session. As this could not be done, the Committee requested for extension of time upto the 29th March, 1963, which was granted by the House on the 18th February, 1963.

14. The Committee considered and adopted the Report on the 2nd March, 1963.

15. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

16. *Clause* 2.—The Committee are of the view that the procedure for the determination of the age of a Judge of the Supreme Court should not be specified in the Constitution itself, but it should be left to be regulated by Parliament by law.

The clause has been amended accordingly.

17. *Clause* 4.—The Committee feel that it should be specifically laid down in the Constitution that the question of age of a Judge of a High Court shall be decided by the President after consultation with the Chief Justice of India.

The clause has been amended accordingly.

18. (*Original Clause* 5).—The Committee are of the opinion that a permanent Judge of a High Court should not be allowed to resume practice after retirement in any of the High Courts in which he has held office as a Judge.

The clause has, therefore, been omitted.

19. *Clause* 5 (*Original Clause* 6).—Under this clause, a Judge who is transferred from one High Court to another would be entitled to receive some compensatory allowance in addition to his salary. The

Committee are of the view that the benefit of this clause should also be available to Judges who have been transferred before the commencement of the Constitution (Fifteenth Amendment) Act, but they should receive such compensatory allowance from the date of such commencement.

The clause has been amended accordingly.

20. *Clause* 8 (*Original Clause* 9).—This clause would enable the High Court within whose jurisdiction the cause of action arises to issue directions, orders or writs to any Government, authority or person, notwithstanding that the seat of such Government or authority or the residence of such person is outside the territorial jurisdiction of the High Court. The Committee feel that the High Court within whose jurisdiction the cause of action arises in part only should also be vested with such jurisdiction.

The clause has, therefore, been suitably amended.

21. (*Original Clause* 10).—The Committee are of the opinion that the ceiling of two hundred and fifty rupees per annum fixed by the existing clause (2) of article 276 of the Constitution as the maximum leviable by a State or a local authority by way of taxes on professions, trades, callings or employments in respect of any person is an appropriate limit and need not be raised.

The clause has, therefore, been omitted.

22. *Clause* 10 (*Original Clause* 12).—The Committee consider that reduction in rank of a Government employee is a major punishment and the constitutional safeguards provided for in article 311 of the Constitution should continue to apply to Government employees in respect of the punishment of reduction in rank also.

The clause has been amended accordingly.

23. The Joint Committee recommend that the Bill, as amended, be passed.

NEW DELHI;
The 2nd March, 1963.

S. V. KRISHNAMOORTHY RAO,
Chairman,
Joint Committee.

MINUTES OF DISSENT

I

I am in agreement with the recommendations of the Joint Committee except the amendments proposed to Articles 124 and 217 (clauses 2 and 4 of the Bill). It seems to me somewhat odd that while the provision for the determination of the age of Judges of the High Courts should be embodied in the Constitution, Parliament should enact a separate law for the same purpose in respect of the Judges of the Supreme Court. There appears to be no justification for this kind of differentiation between the Judges of the two Courts. Nor does it appear desirable and proper; even otherwise, that this matter should be the subject of separate legislation by Parliament. I am, therefore, of the opinion that there should be uniformity in this matter in regard to both the Supreme Court and High Court Judges.

For future incumbents of these high offices, the age should be determined at the time of appointment and entered in the warrant of appointment, to obviate any subsequent doubts or dispute, instead of being left for decision to a future date when a question arises about it. The clause as at present worded would not enable this to be done.

I would, therefore, suggest that clauses 2 and 4(b) of the Bill should read as follows to achieve this purpose, as also to enable the President to determine the age of the present incumbents, should a question arise about it:

Clause 2.—"The age of a Judge of the Supreme Court shall be determined by the President after consultation with the Chief Justice of India, and such determination shall be final."

Clause (4) (*b*).—"The age of a Judge of a High Court shall be determined by the President after consultation with the Chief Justice of India, and such determination shall be final."

S. N. CHATURVEDI.

NEW DELHI;
The 2nd March, 1963.

II

I am constrained to append a minute of dissent as I have certain suggestions regarding the Bill which the Joint Committee could not be persuaded to accept.

To my mind it is of paramount importance that we treat the judiciary with all possible respect and enable it to perform its great role in complete independence of the executive agencies of the State.

I am unable to understand the reasons for differentiation between Judges of the Supreme Court and of the State High Courts in regard to the age of retirement. Both categories of Judges should retire on completion of the same age, namely, sixty-five.

I am unhappy that the question of the ascertainment of the age of Judges has recently been noised about in the way it has been. I am not inclined to support the decision of the Committee that the age of Supreme Court Judges "shall be determined by such authority and in such manner as Parliament may by law provide". I am entirely opposed to the further provision that questions, if any, regarding the age of High Court Judges "shall be decided by the President", which means, in effect, by the Executive, in spite of consultation with the Chief Justice of India. Some unfortunate cases might have taken place recently, but there is no reason to think that our Judges are likely to try and re-open ascertainment of their age which, according to the present practice, is ascertained without fuss at the time of appointment and made known in the proper quarters. Once ascertained, as it must be at the time of appointment, it should not be altered later either to one's advantage or to one's detriment. For extraordinary cases that may conceivably emerge, the law, has its remedies open to all. Normally speaking, no Judge should be made to feel that after appointment the Executive would decide questions cropping up about his age.

I suggest, therefore, that clauses 2, 4 and 6 be suitably amended by the House. In this view, I am happy I have the support of the legal profession which was represented, in evidence before the Committee, by eminent people like our former Attorney-General, Shri M. C. Setalvad.

Regarding clause 10, I am glad that the Committee has not countenanced the Government's original proposal that the penalty of reduction in rank should be taken out of the purview of constitutional safeguards. I feel, however, that Central Government employees should continue to have the constitutional, statutory and reasonable opportunity of showing cause against action proposed to

be taken against them, and not merely the opportunity of being heard in respect of the charges. Not only the representatives of the employees but also distinguished jurists appear to have been agreed on this point. In view, especially, of the Supreme Court's observations in this matter, particularly in respect of *Khemchand v. Union of India,* Central Government employees should not have their present rights curtailed.

In regard to Clause 12, I feel that decision on matters like fixation of vacations should be left to the discretion of the Chief Justice and the Judges of High Court who alone understand the issues involved. This may seem a trifling matter, but interference of the Executive in regard to such things will only be considered a variety of gratuitous domination over High Courts, which, in the larger interests of the country, should be scrupulously avoided.

I have deliberately desisted from amplifying my points, which I may have an opportunity of doing in Parliament itself.

H. N. MUKERJEE.

NEW DELHI;
The 2nd March, 1963.

III

I do not agree to the limit of 62 years put upon the raising of the age of the Judges of the High Court. Arduous duties performed by them are of the same nature and by people of same training and profession as the Judges of the Supreme Court. The total number of Judges of the Court runs into three figures and there are only 11 Judges (present) in the Supreme Court and each of the Judges of the High Court can aspire to be a Judge of the Supreme Court. There cannot be any valid ground for not raising the age to 65. I, therefore, propose that the age of '62' provided in clauses 4 and 6 of the Bill be raised to '65'.

Primarily, no compulsory allowance need be paid to any Judge who has been transferred from one High Court to another for the simple reason that such payment will continue to differentiate between citizen of one State from another and add to the prestige of one to detriment of the others. There is no reason to do so on economic grounds also.

I appreciate the decision of the Committee to retain the penalty of 'reduction in rank' as one of the reasons for holding an enquiry, but the amendment approved contemplates the dropping of the

provision of a hearing at the stage when the imposition of penalty proposed is likely to cause great hardship to Class III and IV employees. The enquiries on charges against these employees are always held by officers subordinate to the appointing authorities who are usually very raw about the principles of natural justice or of normal procedure for letting in or shutting off evidence and the appointing authority passes order on the basis of finding of such an enquiry.

The demands of natural justice have never been met in departmental enquiries and this meagre safeguard has been sought to be done away with. This will result in very serious curtailment of the rights which every one of the employees, private or public, should enjoy on grounds of natural justice. I, therefore, entirely disagree with this amendment and will urge upon the Government to keep it back till such time as some sort of administrative law is passed, and administrative tribunals have been appointed for enquiries and appeals therefrom.

Subject to these minutes of dissent, I agree to the report.

U. M. TRIVEDI

NEW DELHI;
The 5*th March,* 1963.

IV

An independent judiciary is essential for proper functioning of democracy. Nothing should be done which is, in any way, likely to impair, in the least, independence of the judiciary. Two corollaries, specially applicable to Indian conditions, follow from this, namely:—

1. The terms and conditions of a judge's appointment shall not be varied during the tenure of his office.

2. Nothing should be done, during or after his tenure of office, that is likely to adversely affect his independence and integrity.

Clauses 2 *and* 4 (*b*).—I am opposed to these clauses. In the first place, two different modes for fixing the age of Supreme Court and High Court Judges are not desirable. Secondly, far from simplifying they are likely to complicate matters. Thirdly, clause 4(b) will undermine the independence of the Judiciary specially as it has been made retrospective in application. Instead, I would suggest the following: Put in a provision at the end of Article 124 as well as of Article 217 to the effect that the age of Supreme Court and High Court Judges shall be fixed by the President at the time of their

appointment, which shall be final. Too much stress should not be laid on the ground that this will add unnecessary details to our Constitution. True, our Constitution is burdened with unnecessary details and objectionable provisions. But my suggestion is only consequential to the age of retirement of Judges already provided in the Constitution. It is desirable that the age of Judges should be beyond dispute.

The above suggestion, if enacted, will provide for all fresh appointments. I will leave the cases of existing Judges as they are. It is unfortunate that the age of a Judge was reopened which, in my opinion, has done more harm than good. Let the law take its own course in respect of the few cases that might arise. I am afraid giving power to the President to decide dispute relating to the age of the existing Judges will be positively harmful.

Clause 3.—1 am opposed to this clause. Initially, the Supreme Court consisted of only eight Judges including the Chief Justice. The strength has since been raised to thirteen (*vide* Act 17 of 1960). Article 127 which provides for appointment of *ad hoc* Judges has, in my opinion, become obsolete. The necessity for amendment of Article 128 as provided for in clause 3 is based by our Law Minister not on congestion of work but on the non-availability of Supreme Court and Federal Court Judges to fill up vacancies due to illness of Supreme Court Judges or their deputation on non-judicial work. The reason given is to my mind, not convincing. The Judges available at the time of enactment of Article 128 were not more numerous and some retired Supreme Court Judges are now employed on non-judicial work. I doubt if attendance of retired Supreme Court or Federal Court Judges on the ground stated, when there was no congestion of work, was ever in the contemplation of the framers of the Constitution and I am of opinion it is not necessary. On the other hand, it is likely to undermine the independence of the judiciary and might lead to abuse. In my humble opinion the amendment is not only unnecessary but is likely to prove harmful.

Clauses 4(*a*) *and* 6.—I am against these clauses. It would be ideal if we could make, as in some countries, the tenure of a Judge's office, a life tenure or a near-life tenure. But in this country Judges are found to have a tendency to stick to their post even when unfit. The framers of the Constitution, I respectfully submit, wisely fixed the age of retirement of High Court Judges at 60 and Supreme Court Judges at 65. I do not think any substantial change has since taken place to require revision of the age of retirement. We have got very sad experience of judges even before 60. The difference in age between Supreme Court and High Court Judges is explainable on the

supposition that at the time of recruitment of Supreme Court Judges due care would be taken to select Judges and Jurists who would be expected to continue fit upto 65 years. No change in the age of retirement of Judges is called for.

Clause 5.—The right of transfer is already there in Article 222 and in the past Judges have been transferred from one High Court to another without any compensation. There has also been direct appointment of Judges from the Bar of one High Court to another High Court. Transfers and appointments are always made in public interest and payment of compensation to High Court Judges might raise the question of discrimination forbidden by Article 14 of the Constitution. And no compensation should be allowed specially in view of our goal of a Socialist Pattern of Society. If necessary it should be made a condition of service that a Judge might be transferred in public interest.

In my opinion Judges, whether of High Courts or of the Supreme Court should be completely debarred from any sort of practice or from re-employment by Government after retirement. It is derogatory to their position and harmful in public interest.

Clause 7.—In view of the provisions of Article 224 of the Constitution this amendment is wholly unnecessary and will be more harmful than helpful. I am opposed to this clause.

Clause 10.—The safeguards provided in the existing Article 311 should not be taken away and the Article should be allowed to remain as it is. I am against this clause.

Clause 12.—I am against the proposed amendment. The High Court is the most competent authority to decide what should be the vacation. Conditions differ widely in different High Courts.

NEW DELHI; SYED NAUSHER ALI
The 6th March, 1963.

V

I beg to give herewith my Notes of Dissent on the Bill. They are as follows:

Clause 4(*a*).—In Article 217 of the Constitution in Clause 1 for the words "Sixty years", the words "Sixty-five years subject to disallowance of practice or employment in any Government job after retirement" be substituted.

My reasons for the above are as mentioned below:

As a matter of fact providing limit of Judges of High Courts or Supreme Court in the Constitution itself has proved to be very harmful and has led to bringing the Constitution down to a mockery. In place of this the proper steps would have been to provide for enactment of separate law by which the age limits etc. of Judges could have been governed. This would have also saved the agony of going through the long process of amending the Constitution. But as the matter had not been within the domain of the Joint Committee I cannot deal with the subject on these grounds. But I can appeal to the House to give its due consideration to this point of mine at this juncture, while discussing this report.

However, my arguments for increasing the age-limit to 65 years without the right of practice and employment is supported by all evidence that came up before the Committee. Judges of High Court are held in high esteem and allowing them practice or employment after retirement not only goes against maintaining that esteem, but places other members of the Bar at a disadvantage, as clients naturally feel that if they engage retired Judges, they may prove better for them. Atmosphere in our country is like that and no one can avoid that. Increasing the age to 62 with right of practice after retirement in Courts other than to which a Judge belonged originally or after retirement is no solution of the problem. An increase of two years has no ground and it is better to keep the age at 60 years, if the right of practice is to be allowed. On the one hand the average age in the country has increased and it is also held that maturity and long standing experience of a Judge is of much benefit for the public, while on the other hand age is increased by only two years. This in itself is a contradiction. The only argument that was given was that in that case the age of Supreme Court Judge shall have to be increased to 70 years. There can be no objection to such an increase, if some reasons are applied to it, but it cannot be a proper step to keep age of High Court Judges at 62, because at present Government is not in a position to bring amendment for age-limit of Supreme Court Judges. In fact increase in age-limit of High Court Judges has no immediate bearing on that of Supreme Court Judges, and can be treated independently. Hence my argument to increase the age-limit to 65 years holds good in every case.

Clause 4(*b*).—This ought to be as we have done in case of Supreme Court Judges, which is to be done by enacting a law to this effect by Parliament. I do not see any reason as to why there should be any discriminatory method adopted in case of High Court Judges. It looks very odd that High Court Judges shall be subject

to decision of the President, while Supreme Court Judges age-limit question be governed by a law.

The argument that was given in support of this amendment was that certain cases have already been decided by the President and the problem has not arisen in case of Supreme Court Judges, while there are a number of High Court Judges who have raised this question and are expected to raise in future. This argument has no ground. Constitution should not be amended in this way to seek convenience of the Government. My main objection is that we cannot adopt discriminatory methods for Judges of the two courts so far as question of determination of age of a Judge is concerned. It is also derogatory to the status of High Court Judge and shall reflect on their moral standard and prestige. I, therefore, append this note of dissent.

Clause 6.—The amendment to article 222 is for allowing a compensatory allowance in case a Judge is transferred from one High Court to another.

I herewith put my strongest disapproval of putting in this amendment. My arguments for this are as follows:—

The argument advanced in support of the amendment mainly is that there is a convention that Judges are transferred only with their consent and that if there is no incentive in the form of compensatory allowance, no Judge shall be willing to be transferred.

On the very face of it this argument goes badly against the status and high moral standard expected of a High Court Judge. On the one side it is generally argued and established that members of the Bar have mostly to lose heavily from monetary point of view when they enter service as Judge of a High Court. It means a Member of the Bar feels pride in sacrificing money when he enters High Court service. He is held in esteem for that. On the other after entering service they are thought to become so weak as not to get transferred if a few hundred rupees are not given to them as compensatory allowance. What a contrast and contradiction there is in the two positions. A person is liable to become so weak after becoming a High Court Judge as to be money-minded in a comparatively petty form is derogatory to the status of our High Court Judge. If a compensatory allowance is given it will tend to make the Judges money-minded, which is one factor that must be fully avoided if we want to maintain their standard and dignity.

Moreover from salary point of view, high salaried Government servants more or less have to maintain the same standard of living as Judges of the High Court. Economic effect of living on all such

persons are the same. When they are transferred no compensatory allowance is given. How then a separate economic standard is visualised for Judges? It is argued that Judges shall have or may have to maintain two houses. Why this argument for Judges only? Every person in Government service has the same problem. By law there is no bar on transfer of High Court Judges by order. The convention is there only to maintain their high moral standard and prestige. Is the convention now to be valued in terms of money? High Court Judges have been eminent members of the public before entering service. Many of them have been politicians and can become politicians and public workers after retirement. Politicians can be held in esteem only if they are not money-minded to this extent. Hence this clause instead of being of help shall prove harmful. If it is felt that High Court Judges are not well paid Government should come forth with a Bill to increase their salaries.

To my mind inclusion of this amendment can be challenged in a court of law as going against the basic concept of our Constitution itself. It discriminates between different categories of salaried persons, which is not according to Constitution. When I had questioned Shri M. C. Setalvad and raised this point before him, his reply was that the question can be decided when it is brought before a court of law. This means that an eminent lawyer like Shri Setalvad could not give out that this will not lead to discrimination and it further means that he too had doubts about its becoming discriminatory.

Thus both on grounds of Constitutional difficulties arising out of it and on practical grounds of maintaining all good standards for Judges this amendment should not be a part of the Constitution.

NEW DELHI; KASHI RAM GUPTA
The 6th March, 1963.

VI

An amendment to the effect that the provisions relating to the extension of age of the Judges of the High Courts should apply retrospectively from 1st March, 1963 was moved in the Joint Committee (*vide* para 7 of the minutes, dt. 21-2-1963). The object in proposing this amendment was to take advantage of the services of the Judges of mature experience in case they retire before the Bill is made into an Act. The procedure for passing the Constitution Amendment Bill takes some time as after the approval of both the Houses of Parliament the Bill is to receive ratification by not less than

half the Legislatures of the States. One of the objects of introducing this Bill, we presume, is to take advantage of the services of the sitting Judges of established credit and ability. We appreciate the point of view that as far as possible the law should not be given retrospective effect but even in the case of the Constitutional Amendments on more than one occasion retrospective effect was given in order to achieve certain desirable objects and to avoid hardships. The amendment above mentioned was negatived in the Joint Committee. We desire that this matter should be considered by both the Houses and the amendment accepted which we consider in the best interest of the administration of justice. We may mention that although we have suggested 1st of March, 1963 but we are willing to alter the date to any other convenient date if that is considered more feasible. We may also mention that the Judges who retire during this period shall be deemed to be on leave without pay so that the Exchequer may not be burdened.

JAGAN NATH KAUSHAL
AKBAR ALI KHAN
HAREKRUSHNA MAHTAB
IQBAL SINGH
VIJAI SINGH

NEW DELHI;
The 6th March, 1963

VII

I agree with the report except on the proposed amendment to article 311(2) (3) of the Constitution of India and hence this minute of dissent.

Before going into the merits or demerits of the proposed amendment, I want positively to state that delay experienced in the departmental enquiry must be done away with as far as possible. But I am sure this can be done by suitably amending the rules of conduct regarding the enquiry. This ground certainly does not justify an amendment in the present provision in article 311 of the Constitution.

The present proposal must be viewed on the background that generally Government employees have no recourse to ordinary courts of law in the country. The Government employees must be ensured that they will not be penalised except on enquiry which will ensure of natural justice.. The proposal as amended in the Report does not fulfil the principles of natural justice.

Article 311 of the Constitution as it is to-day with the interpretation put on it by the Highest Judicial Authorities of the land, envisages following stages which must be completed before a Government employee is penalised: (1) framing of charges and allegation and obtaining the statement of explanation of the Government servant, (2) holding an enquiry, (3) supplying a copy of the Inquiry Officer's report, (4) issuing a show-cause notice proposing a definite penalty, (5) obtaining the defence of the employee showing cause as to why no action or less action than proposed should be taken, and (6) issuing final proceeding. These stages ensure that a full enquiry, as to the charge against and penalty to be imposed, is carried out. The charge against the employee and the penalty to be imposed are two things as visualised by the present provision and the Government employee has been given the opportunity to contest them at two different stages. Unless the charges are proved, the penalty cannot be imposed and penalty must be suitable as to the offence done by the employee.

One important thing must be taken into consideration. The departmental enquiry is conducted under rules of service and conduct applicable to the employee. It is found that the penalty to be imposed against particular offence is not specifically defined anywhere. Therefore, the opportunity to contest the proposed penalty has to be taken as a fundamental right guaranteeing equality before law. I am pained to see that this fundamental right is being taken away from the Government employee. The number of Government employees is growing and is bound to grow. Therefore, it is alarming that a large number of Indian citizens are being treated not on par with other citizens only because they have opted for Government service which in itself is a national service and democratic cause. I think that the proposal amending the present article 311(2) (3) is *ultra vires* the democratic principles of fundamental rights of citizens of India, as visualised in the Constitution.

BELGAUM; *D. B. DESAI

The 5th March, 1965.

VIII

Clauses 3 and 7.—The proposed amendment to article 128 and the addition of 224(a) is highly objectionable. It enlarges the scope of appointing *ad hoc* Judges to Supreme Court and creates a new power

*Certificate required under Direction 87 of the 'Directions by the Speaker under the Rules of Procedure of Lok Sabha' not received.

for appointing *ad hoc* Judges to the High Courts. This will mean that Judges once retired can be re-employed as Judges of the High Court or Supreme Court, this is objectionable because it will tend to create an atmosphere when the Judges can expect re-employment. It is wrong to make a High Court Judge dependent on re-employment either on the executive or even on the Chief Justice. Any such tendency is highly deplorable. The office of a High Court Judge should be like Caesar's wife, above suspicion and above temptation.

Clause 4.—This clause seeks to raise the age of a High Court Judge from 60 to 62. The raising of the age is being considered in an *ad hoc* manner without considering the prohibition of right to practise after retirement. The raising of the age to 62 years shall serve no useful purpose. It is certainly not so attractive as to attract talents from the Bar. In this connection it will be pertinent to recall the debates of the Constituent Assembly where it was pointed out that it is safer to provide against even a fraction of the Judges of the High Court being incapable of doing their work rather than depend upon some functioning extraordinarily well, even after the age of 60. The Law Commission when it recommended an increase of the age from 60 to 65 years put two conditions: firstly, prohibition of practice thereafter or any employment under the Government and that this increase of age shall apply to new appointments. The present clause is completely at variance with this recommendation. Knowing things as they are today, it is not advisable to raise the age in an *ad hoc* manner as proposed.

Clause 4 (*b*).—It is most unseemly to allow the question of age of the High Court Judge to be a matter of controversy. Such a controversy or even a chance of a controversy makes the tenure of a Judge insecure and dependent upon either the executive or any stray citizen who chooses to raise the issue. Even if the executive revises the age in favour of a Judge, that too creates an unsavoury atmosphere and is not free from objections. The question should in no case be left to be decided by the President, that is the Executive, even on the advice of the Chief Justice. It should be settled once and for all at the time of appointment in the warrant of appointment itself and that should be final. For the existing cases, the normal course of law should be left unaltered. It is wrong even to create an impression that the tenure of a Judge can be varied to his advantage or disadvantage for whatever reason by a decision of the executive.

Clause 10.—The proposed amendment to article 311 has evoked great controversy among the Government employees who number into millions. It is, therefore, worthy of consideration whether during an emergency when the Government expects of the people to be welded into the national efforts, such a controversial measure should not at all be brought forward. A wrong scare seems to have been raised about the second opportunity being a *de novo* second enquiry; it is not so. Established legal opinion says that the second opportunity relates only to an opportunity to represent against the proposed punishment. This is a very salutary provision and should not be done away with lightly. A Government servant has some rights and expectancy about the tenure of the service and has, therefore, a right to expect full and fair enquiry when his services are to be terminated. In the scheme of article 311, both the opportunities have been integrated into one whole right of full and fair opportunity to show cause. One cannot dissect this right without grave injury to the reasonableness and fairness of the enquiry itself. It is wrong to assume that the second opportunity leads to delays. There are other reasons for the delays. When the Government or the officer so desire, even both the opportunities have been completed within a very short time. In fact, it is not till the charges have been established after evidence and the report of the enquiry officer is placed in the hands of the employee that he can have a real opportunity to represent against the charges or the punishment. What is sought to be done is to whittle down the real and substantive right that a Government employee possesses today and to keep only the shadow of his right in the name of enquiry into the charges.

It is pertinent to point out that our Government employees have no right to go to court on the substantive matters of the charges of the enquiry. Unlike other private employees who can go to tribunals, they cannot challenge the findings of the enquiry or the punishing authority, nor have they any Administrative Tribunals as in France. The superior class officers have at least a review by the independent authority of the Public Service Commission provided for them, while the common employees have not even got these safeguards. Therefore, it is most unjust and unbecoming to withdraw the small formal safeguard that is provided to the Government employees.

I may only add that my opinion is in full accord with the highest legal opinions expressed before the Committee by the representatives of the Supreme Court Bar Association, the Indian Law Institute

and Shri Setalvad himself. It is really regrettable that the proposed amendments are sought to be effected against the eminent legal opinion.

NEW DELHI;
The 7th March, 1963.

HOMI F. DAJI

IX

I am of opinion that the age of a Judge should be finally determined at the time of his appointment. This is essential because the age of retirement has already been fixed in the Constitution. A judge has no constitutional right to function as such after he crosses that age limit, and his decisions may be challenged on such an allegation in a court of Law, even of the lowest local jurisdiction. They may also be questioned in proceedings for a writ of *quo warranto* in the same High Court where he has been functioning as a sitting Judge. A Judge himself may also raise the question of his exact age of retirement in a court of law. It will be derogatory to the dignity and prestige of a Judge and indeed of the entire judiciary if such proceedings are allowed to be instituted in Courts. This cannot be avoided if the Constitution remains silent regarding the determination of a Judge's age.

In other words, there should be no constitutional difficulty for an automatic determination of a Judge's age if the need arises at any time after his appointment. This can be achieved by providing in the Constitution itself that the age of a Judge of the Supreme Court or a High Court shall be determined by the President at the time of his appointment and shall be stated in his warrant of appointment and that the statement shall be final. Such a statement in a Judge's warrant of appointment will set at rest for all time the question of his age and cannot be disputed by any authority or party at any time thereafter. This will apply to future appointments.

So far as the present holders of the office of a Judge are concerned, the difficulty has arisen because their warrants of appointment do not contain any statement of their respective age. A suitable procedure has, therefore, to be provided in the Constitution to determine the age if a question is raised. In such an event, the right to determine the age should be vested in the President, but only after consultation with the Chief Justice of India, which should be expressly provided in the Constitution. In other words, the procedure already laid down

in the Constitution for the appointment of a Judge of a High Court or the Supreme Court in that respect should be substantially the same for the determination of his age in case of doubt. The Joint Committee has provided this in clause 4 of the Bill in the case of a High Court Judge and I support this decision of the Committee.

In the case of Judges of the Supreme Court, however, the Joint Committee, in clause 2, have left the procedure to be determined by Parliament by some future legislation without even suggesting what should be done in the meantime. I am definitely of opinion that substantially the same procedure should be provided for the Judges of the Supreme Court and of the High Court. With regard to future appointments, the age of a Supreme Court Judge should be finally determined and stated in his warrant of appointment. For the present holders of the office, the President in cases of doubt, should determine their age after consultation with the Chief Justice of India, and regarding the Chief Justice himself, after consultation with such of the Judges of the Supreme Court as the President may deem necessary for the purpose. This simple procedure should be adopted, and no parliamentary legislation need be resorted to as suggested in clause 2 of the Bill. Moreover, the proposal that Parliament should decide by a special law the authority and procedure for determination of the age of a Supreme Court Judge places the matter in a somewhat unreal light. It would seem to suggest that special and more serious measures have to be provided in the Constitution of the country for determining the age of a Judge of the Supreme Court. For this I find no justification. Parliament can pronounce its verdict regarding the procedure now instead of relegating the matter to future legislation.

I shall, therefore, propose the following modifications in the Bill as it has emerged from the Joint Committee.

Clause 2.—For the words in clause 2 the following be substituted, namely:

"In Article 124 of the Constitution, after clause (2), the following clauses shall be inserted, namely:—

'(2A) The age of a Judge of the Supreme Court shall be determined by the President at the time of his appointment and shall be stated in his warrant of appointment and the statement shall be final.

(2B) If a question arises as to the age of a Judge of the Supreme Court other than the Chief Justice, the question shall be

decided by the President after consultation with the Chief Justice of India and the decision shall be final:

Provided that where the age of a Judge has been stated in his warrant of appointment, the statement shall be final.

(2C) If a question arises as to the age of the Chief Justice of India, the question shall be decided by the President after consultation with such of the Judges of the Supreme Court as the President may deem necessary for the purpose.

Provided that where the age of the Chief Justice of India has been stated in his warrant of appointment, the statement shall be final'."

Clause 4.—After sub-clause (a), the following be inserted, namely:—

"(b) after clause (2), the following clause shall be inserted, namely:—

'(2A) The age of a Judge of a High Court shall be determined by the President at the time of his appointment and shall be stated in his warrant of appointment and the statement shall be final'."

At page 2, line 2, for the letter and brackets "(b)", the letter and brackets "(c)" be substituted.

At page 2, after line 6, the following proviso be inserted, namely:—

"Provided that where the age of a Judge has been stated in his warrant of appointment, the statement shall be final."

I am in agreement with the other provisions of the Bill and with the other modifications made by the Joint Committee.

NEW DELHI; SANTOSH KUMAR BASU

The 7th March, 1963.

X

The amendment of the Constitution should not be undertaken unless there is a compelling necessity for it. The necessity being the good of the people at large. Grave reasons of national and permanent importance and not social or political exigencies should be the guiding factors in taking such a serious step as to amend the Constitution.

Clause 4.—The raising of the age of retirement of High Court Judge from 60 to 62 or 65 is a matter not of much consequence to the people at large unless some other important suggestions of the Law Commission are given effect to.

Some Judges during the closing years of their tenure look wistfully towards the Executive to secure jobs after retirement. That sometimes they soften in their duties when they feel or come to know that the Executive is interested. It is to eliminate all such temptations and blandishments from the executive that the Law Commission in the Fourteenth Report had recommended that the retirement age of High Court Judges be raised to 65 and that they should be prohibited thereafter from either practising or accepting any appointment either under the Centre or the State. If this recommendation of the Law Commission, had been accepted and followed by the Government, there would have been some justification for the amendment of the Constitution, because the common people of the country would have the assurance of an untrammeled and unbiased justice at the hands of the High Court Judges.

Mr. M. C. Setalwad when he gave evidence before the Joint Committee was of the opinion that even if the age of retirement of High Court Judges is raised to 62, they should be prohibited from practising after retirement or accepting any job under the Centre or the States.

This raising of the age of retirement of High Court Judges to 62 without the corresponding limitations on practice or accepting jobs after retirement is not of any benefit for the country at large and is likely to be misunderstood by the people as one brought about for the benefit of a few individuals.

Clause 10.—The proposed amendment to article 311 has attracted universal condemnation from all classes of employees. What they say is that the second opportunity given to them under the present provision to make representation against the proposed punishment is being taken away by this amendment. Giving of an opportunity to an employee to show cause against a punishment intended to be imposed on him is a salutary and necessary safeguard against any hasty or arbitrary act by the disciplinary authority.

In the context of the present emergency this amendment which is sought to be rushed through in the teeth of opposition of all classes of employees, in every branch of administrative and essential services is inopportune and undesirable.

DELHI;
The 7th March, 1963.

C. L. NARASIMHA REDDY,
LOKANATH MISRA,

XI

I am not happy with the recommendation of the Committee that the procedure for the determination of the age of a Judge of the Supreme Court should not be specified in the Constitution but should be left to be regulated by Parliament by law. I say this because if there is to be any reference to the question of age in the Constitution I would prefer to make no distinction in this matter between a Supreme Court and a High Court Judge. Indeed, it would have been better if the Constitution had not gone into such details as the fixation of the age of a Judge. In doing so, we are laying ourselves open to the objection that we are unwittingly no doubt casting a reflection on our higher judiciary. I recognise, however, that circumstances have unfortunately arisen which make out a case for inserting clauses regarding the manner in which the age of a Judge should be decided. As we have fixed the maximum age for retirement, the question whether a Judge has or has not attained that age can become a subject matter of controversy in our Law Courts, either by a writ of *quo-warranto* or a civil suit. I have, reluctantly, therefore, have had to come to the conclusion that perhaps the best course for us, in the circumstances in which we find ourselves, is to accept the suggestion of my esteemed friend Shri Santosh Kumar Basu that the age of a Judge, whether of the Supreme Court or of the High Court should be stated in the warrant of his appointment at the time of his appointment and that this statement should be final. The proper thing to do in the interests of judicial independence is that the age of a Judge should be scrutinised at the time of his appointment and if the age suggested is not acceptable then he should not be appointed at all.

It may be said that while an amendment of this character can give finality to the age of Judges of either the Supreme Court or High Court, to be hereafter appointed, it leaves untouched the problem of how the issue of age of Judges who are at present in service and who raise questions about it should be decided. I would be prepared to vest the power of deciding the question, on its arising in the case of an existing Judge in the hands of the President, who will act on the recommendation, after enquiry of a Board of three Supreme Court Judges nominated by the President to assist him for this purpose. Action taken on the recommendation of the Board by the President should be final, and not challengeable either in writ proceedings or in a suit in a Law Court. The Board would, of course, meet in camera and though its character will be advisory, it can be reasonably expected that the President will accept its recommendation. I prefer the suggestion I have put forward to the

proposal that the question of age should be decided after consultation with the Chief Justice of India. Cases are imaginable where the age of the Chief Justice itself may be in question. I would, therefore, suggest that at page 1 after line 6 of the Bill as originally introduced the following clause should be inserted:

> "(2A) The age of a Judge of the Supreme Court shall be determined by the President in consultation with a Board of three Judges of the Supreme Court appointed by him for this purpose and stated in the warrant of his appointment and the statement shall be final."

Also in clause (4), I would insert a sub-clause to the effect that the age of a Judge of a High Court shall be determined by the President in consultation with a Board of three Judges of the Supreme Court nominated by him and stated in the warrant of his appointment and the statement shall be final.

In regard to existing Judges I would, for lines 20 and 21 and 1 and 2 respectively at pages 1 and 2 of the Bill as originally introduced insert the following sub-clause:

> "(3). If any question arises as to the age of a Judge of a Supreme Court or a High Court, the question shall be decided, by the President in consultation with a special Board of three Judges of the Supreme Court appointed for this purpose and his decision shall be final."

A categorical amendment of the Constitution on these lines would make it impossible for the question of age to be agitated in a Court of Law.

I come now to the question of the age of retirement of High Court Judges. While I gladly recognise that the Committee has improved the position in this respect by raising the age to 62, my strong preference is for the view suggested by the Law Commission that it should be fixed at 65 for Judges hereafter to be appointed. As the appointing authority will have necessarily to be the executive, for it is on its advice only that the President can act, it is important to ensure that, after appointment, the Judge should be provided with a psychological environment which would ensure his complete independence from the executive which may have to figure before him as a litigant. Importance is attached in democratic countries to life tenure or near life tenure in the case of Judges of superior Courts. Their position cannot be compared as was pointed out by Sir Winston Churchill in the historic speech which he

made in the British House of Commons on the question of salaries of Judges with that of Civil servants or any other class of persons under the employment of Government. Indeed, as Sir William Holdsworth has pointed out in an article in the Law Quarterly of 1932, they cannot be regarded as servants of the Crown or in our case the Government. After appointment a Judge must not be made to look to any favours at the hands of the executive for the state is, in many cases, a litigant in our Courts of Law. After taking into consideration Indian conditions, the Law Commission came to the conclusion:—

> "That the average and the normal High Court Judge would be able to discharge his duty even if the age limit is raised to 65 years. It will be remembered that there is no retirement of High Court Judges in other countries and where the age limit exists—they are higher than 65 years. So great is the importance attached, to a Judge's ripe experience that justices of foreign countries who have visited India have often expressed surprise at the low age limit of retirement which prevails in our country."

The Law Commission has further recommended that they should not be allowed to practise after retirement for the public would be apt to think that in dealing with the cases of litigants who they hope after retirement will seek their legal advice they do not act impartially.

The Law Commission further recommended that High Court Judges should not be permitted to take employment under Government after retirement. In their case too they recommended the enactment of a Constitutional Bar to Government employment as in the case of the Chairmen and the members of Union Public Service Commission. Such a course would not, of course, apply to a High Court Judge at any stage being appointed a Judge of the Supreme Court.

I may point out that in England appointment of Judges of Hign Court to the court of appeal is not regarded as a promotion. As we are not raising the age to 65, the pensions paid to High Court Judges being meagre and inadequate, and as they have a right under existing constitutional arrangements to practise in courts other than one of which they have been Judges, I am not suggesting that practice in courts other than the one of which they have been members should be barred. I am of the opinion that it should be even open to the State to utilise their services as Chairmen or members of Committees or Commissions of public importance, but this is strictly subject to the

proviso that the emoluments paid to them will not exceed those payable to experts assisting the U.P.S.C. The daily allowance in their case is I believe Rs. 50.

I am not raising any objection to clause 8 which by amending article 224(a) enables High Court Judges to be appointed for certain purposes as Judges of High Courts and the Supreme Court because on the material placed before us, the number of Supreme Court Judges available for acting in temporary vacancies is extremely limited. It is, in my opinion, undesirable that temporary appointments in leave vacancies should go to members of the Bar or the subordinate judiciary. It must be distinctly understood that the power taken should not be utilised to enable Judges so appointed to function for purposes of clearing arrears or make appointments to long term vacancies certain to become permanent.

I am glad that the Committee has taken the view that article 311, the phraseology of which has been changed and with which I agree, should apply to cases in which it is contemplated to reduce a person in rank. Reduction in rank can, in some cases, be worst than dismissal or removal. It is not necessary that the procedure followed in departmental cases should exactly be the same as that laid down in the Criminal Procedure Code or other procedural laws.

What is essential is that it must be in accordance with well established principles of natural justice. There is here no question of a second opportunity, and I do not wish to go into any detailed controversy regarding this question. I, however, think that in the clause as recommended by my colleagues, a further proviso of a clarificatory character should be inserted to the following effect, *viz.* "But it should be open to the aggrieved person concerned to make representations regarding the quantum or nature of punishment proposed to be meted out to him." In simple language, I would only give the person concerned the right of showing any extenuating circumstance affecting the punishment proposed to be awarded to him. There will be no rehearing of the entire case.

I attach importance to this proviso, for Class I and Class II servants are appointed by the President on the recommendations of the U.P.S.C. In disciplinary matters, though the recommendations of the U.P.S.C. are not binding, they have a right to go to it and Government almost invariably accepts the recommendations of the U.P.S.C.

Class III and Class IV officers have no right to have their representations considered by the U.P.S.C. They have no doubt a right of submitting memorials to their superior officers but a feeling which is strong with them is that senior officers to whom representations are

made generally support the action taken against them. The genuineness of this feeling cannot be denied. Persons belonging to Class III and Class IV services should not have the feeling particularly at this juncture when we need unity among all sections of the people that they are being discriminated against. There should be, as far as possible, equality of treatment for all classes of our civil employees. It is, therefore, desirable to give them, what I would call not a second hearing, but an opportunity to make submissions regarding the quantum of punishment proposed to be awarded to them.

Regarding the question of vacations I was of the view when the question was discussed in Parliament that it should be left to a High Court to determine its vacation. I still stick to that opinion. That view was not, however, accepted by Parliament. It is I, however, recognise useless to reagitate the question now and I am, therefore, not disposed to oppose the clarificatory amendment that the word "organisation" includes vacation also.

The question of the pensions payable to Judges is not before the Committee but I hope that it is permissible to express the view that there should be a liberalisation of the pension payable to them. Indeed, the question of the emoluments paid to them needs re-consideration for our effort should be to attract the best talent from our Bars to our High Courts and the Supreme Court to which direct appointments should also be made.

NEW DELHI; P. N. SAPRU

The 7th March, 1963.

XII

In spite of the representations sent by various bodies, and their oral statements before the Joint Committee and after the discussions in the Committee, I still think, the discipline in the services of the Centre and the States is very much important, and therefore the proposed clause 12 should continue to remain as suggested in the original Bill. In fact the remedy ought to have gone even further. The entire country and the population of India is suffering, and the plans and policies cannot be effectively implemented mainly on account of the general atmosphere of slackness and corruption amongst the services. The services should certainly have security and justice, but that should be provided through service Rules, and not through the Constitution. I am fully in favour of giving them all possible avenues of appeal and review through rules. The question of reduction of rank has been opposed through misunderstanding, and I am surprised to see that reduction of rank is said to be as harsh as dismissal or removal. In dismissal or removal there is complete loss of income,

but in reduction of rank the person concerned remains in employment and normally punishment is only slight. When all safeguards regarding appeal review etc. will be there, I do not think that officer will necessarily or mostly misuse this punishment. During the British days, ordinarily the discipline in services was better, and it was easier to take disciplinary action, against subordinates, and they could not be slack or currupt if the superior officers so wished. It is to be remembered that Government employees usually want for themselves effective disciplinary powers against their subordinates, and oppose such powers when some higher officer uses them against themselves. Therefore the original amendment embodied in clause 12 regarding reduction in rank should continue. Hence, I dissent from the main report regarding clause 12, and wish that the clause should remain as it was in the original Bill.

NEW DELHI; GOPIKRISHNA VIJAIVARGIYA

The 7th March, 1963

XIII

The Bill seeks to amend several unrelated articles of the Constitution, in fact a motley crowd. The object of this strange jumble is obviously a desire on the part of the Executive not to appear too fond of amending the Constitution, and thus stain the escutcheon of our teenaged Republican Constitution.

We have carefully gone through the Constitution (Fifteenth Amendment) Bill, 1962 as reported by the Joint Committee. We regret that we are not in agreement with all its provisions in their entirety. Our points of difference are as follows:—

Clause 4(*a*):—There is no reason to substitute "62 years" for "60 years". High Court Judges already enjoy a privileged position. Seldom does any High Court Judge remain unemployed after his retirement. He practises in the Supreme Court, and is not infrequently employed in some capacity or the other by the Government. Hence there is no need to raise the age of retirement of High Court Judges.

Clause 4(*b*):—The question of the age of a High Court Judge should be decided exactly as provided in clause 2 of the Bill. There should be similar provisions for deciding the age of a Supreme Court Judge and that of a High Court Judge. There should be no difference in this matter.

Clause 5:—Transfer of a High Court Judge should not entitle him to any compensatory allowance. No other Government servant gets such allowance on his transfer from one place to another.

Clause 6:—The words "62 years" need not be substituted for "60 years". It is merely consequential, flowing from what we have already stated above dissenting from the majority view.

Clause 7:—This provision is unnecessary; and it is likely to be misused for making appointments on grounds unrelated to strict necessity or public interest.

Clause 10:—There is no reason to amend article 311 of the Constitution. The proposed change will adversely affect all the Government servants, and particulary Class III and Class IV employees. It is likely to expose them to the vagaries and highhandedness which characterises some superior officers. The change is therefore uncalled for.

NEW DELHI;
The 7th March, 1963.

HARI VISHNU KAMATH
R. S. KHANDEKAR

XIV

I regret that I find myself in disagreement with the majority report in respect of several proposed amendments in the Constitution. While I would hasten to state that the deliberations in the Committee have considerably narrowed the area of differences and have resulted in recasting the Amendment Bill in a significant measure, I find that there still persists a certain difference of approach and of views, sufficiently substantial to impel me to append the following minute of dissent to the majority report.

Clause 3.—The main justification for amending Article 128 of the Constitution to include Judges of High Courts and those duly qualified for appointment as Judges of the Supreme Court is to enlarge the "field" for recruitment of *ad hoc* Judges to the Supreme Court. The enlargement proposed by the clause is much too wide and sweeping, and is not in consonance with the cautious note implicit in Article 128 of the Constitution as it stands. There was overwhelming evidence of those connected with the Supreme Court of India as members and spokesmen of the Bar to the effect that the proposed amendment was not dictated by any present or pressing exigency. Indeed it was pointed out to the Joint Committee that the need for the enlargement of the "field" is not likely to assume compelling proportions in the foreseeable future.

I feel that constitutional amendment should be approached with a solemn sense of self-restraint. Seeking to amend the Constitution on any but the most compelling grounds is to give rise to constitutional instability and avoidable public apprehension. Moreover, the proposed amendment of Article 128 includes even those who are "duly qualified for appointment" as Judges of the Supreme Court.

The requisite qualifications for appointment as a Judge of the Supreme Court are of necessity such as to include a large number of practising advocates who have put in a certain number of years of law practice. Such an enlargement is not only unjustified and unwarranted, it would also be improper.

Clause 4.—This clause seeks to amend Article 217; appears to be the consequence of a recommendation of the Law Commission in their 14th report. The Law Commission had, however, recommended the age of retirement of Judges of High Courts to be raised to 65 years.

One would look in vain for a satisfactory explanation of the modification of the Law Commission's recommendation either in the notes on clauses circulated with the Bill or in the speeches of the Law Minister which he delivered while introducing the Bill in both the Houses of Parliament. The proposed amendment is obviously a halting resolve, a half-way house and it does not appear to have any rational basis.

It is true that at the Constitution-making stage, the Judges of the Federal Court and the Chief Justices of various High Courts had expressed their predilection for maintaining a difference of three to five years between the retiring age of the High Court Judges and that of the Supreme Court Judges. They had recommended that the age-limit for retirement should be raised to 65 for High Court Judges and to 68 years for Supreme Court Judges. In my opinion the recommendation advocating the difference in the retiring age has lost much of its relevance in the light of subsequent experience. At any rate, in order to retain seasoned Judges and in order to attract the best talent to our High Courts, we should raise the age of retirement of Judges of the High Court to 65 years. At the same time we should proceed forthwith to increase the pension for retired High Court Judges so as to ensure them a comfortable living after their retirement.

Along with advocating the raising of retiring age to 65 and a substantial increase in the pension, I would suggest that prohibition should be written in the Constitution precluding retired Judges from practising in any Court.

One of the underlying purposes for the proposed amendment seeking to raise the age of retirement of High Court Judges was to retain experienced Judges. It appears that the introduction of the Amendment Bill was considerably delayed on account of various factors. Its progress after the introduction was also not very swift because it included a miscellaneous entourage of other amendments. The up-shot of this would be that before the passage of this Bill and

its ratification by State Legislatures take effect, several distinguished Judges would have retired in the meanwhile. I feel that an effort should have been made and can even now be made to secure the retention of those Judges who have retired or are going to retire after the introduction of this Bill on 23rd November, 1962 in the Lok Sabha or after the 2nd of March, 1963 when the Joint Committee adopted its Report.

Clause 4(*b*) of the Amendment Bill constitutes a departure from the form and procedure contained in clause 2 as adopted by the Joint Committee, whereas the age of a Judge of the Supreme Court is to be determined "by such authority and in such manner as Parliament may by law provide", the question of the age of a Judge of a High Court is to be decided by the President after consultation with the Chief Justice of India. The departure from the procedure sought to be prescribed in clause 2 for the Judges of the Supreme Court has no rational justification and defies all canons of constitutional consistency and logic. The obvious dualism is demonstrably unsound. It appears that it is traceable to the overpowering impact of the somewhat disturbing and embarrassing proceedings of particular case. I feel that the matter must be considered in a perspective sufficiently detached from the facts and circumstances of a particular case so as to be fully poised and dispassionate. The age of a Judge of the High Court should be stated in the warrant of appointment itself and such a statement in the warrant of appointment should be made final.

The proposed amendment adopted by the majority empowers the President to decide the question of the age of a Judge of a High Court "after consultation with the Chief Justice of India" and imparts finality to the decision of the President. I like to think that "consultation with the Chief Judstice of India" would in actual fact mean that the President's decision would be based on the advice of the Chief Justice whose views would at all times be the sole determining factor. But this is an assumption which would depend on a certain stretching of the phraseology. The President has by convention been considered to be bound by the advice of the Council of Ministers. In actual practice also the President does not take his independent decisions in such matters and has necessarily to be guided by the views of his Government. It is perhaps time that the Government have so far as a convention endorsed the advice of the Chief Justice of India, but this would be a slender safeguard for the future.

I strongly feel that on considerations of public policy and for the maintenance of complete judicial independence, all avenues leading

to the possibility of executive interference in determining the age of a Judge or his condition of service should be studiously avoided. I also feel that it is neither necessary nor advisable to create a special administrative-*cum*-advisory jurisdiction for the Chief Justice of India in the matter of deciding questions of age of Judges of High Court. The existing procedures for the determination of such questions are not so utterly unsatisfactory as to warrant the proposed amendment. A solitary case should not be magnified out of all proportion to become the sole guiding factor. Besides, the difficulty for the future would be obviated if the age of a Judge is stated in the warrant of appointment itself. All this can be provided for by Parliament by suitable legislation.

My opposition to the proposed amendment is only on account of my anxiety to ensure that the integrity, consistency and long-range public-policy objectives are preserved inviolate in the institutional framework under our Constitution. I am unable to concur in the majority view because I think that empowering the President to determine the age of Judges (even if it is to be in consultation with the Chief Justice of India) would be imposing an undue constitutional strain on the office of the President, besides needlessly extending the scope of administrative and advisory functions attached to the office of the Chief Justice of India.

Clause 5.—The provision of compensatory allowance is not altogether undesirable in itself, but as a pecuniary inducement to facilitate transfer of Judges from one High Court to another, it has nothing to commend itself; indeed several undesirable and unbecoming consequences may arise particularly by way of patronage and by way of opening up possibilities of manipulation of seniority with an eye on Chief Justiceship in this or that High Court.

Transfer of High Court Judges should be resorted to only in rare and exceptional cases and that too, as the convention so far has been, on the advice and with the concurrence of the Chief Justice of India. Transfer as a means of promoting national integration is irrelevant except as a homage of hypocricy to a slogan. Transfers from one court to another are also fraught with practical difficulties of an insurmountable character, because the records of a large number of cases even at the level of a High Court are kept in the language commonly spoken in that State. If translation of the entire record into English is to be the necessary consequence of transfer of Judges, it would saddle the litigants with avoidable and unnecessary additional expense. It is also to be remembered that certain local expressions and colloquialisms are best understood by those who belong to the region. Moreover, the prospect (rather, the threat) of transfer would

be a highly dissuading factor for the members of the Bar in consenting to their elevation to the Bench. Last but not the least it is necessary for the growth of healthy traditions and efficiency at the Bar that there should exist a certain rapport and understanding between the Bench and the Bar which frequent transfers would undermine. It is true that transfers may promote useful interchanges, but the benefit is offset by the considerations mentioned above.

I feel that unless a large number of transfers are in contemplation, the provision of compensatory allowance for a transferred Judge has no particular expediency or advisability.

Clause 10.—While expressing satisfaction at the continuance of the safeguards provided by Article 311 of the Constitution in respect of reduction in rank also, I regret that the existing provision of "reasonable opportunity of showing cause against the action proposed to be taken" is sought to be replaced by a mere (reasonable, of course!) opportunity of being heard in respect of the charges only. The proposed change is calculated to do away with what has been known in the field of Indian legal interpretation as the "second opportunity". I feel that this second opportunity should not be dispensed with because establishment codes and departmental rules do not prescribe uniform and maximum penalties for specified lapses and offences. Indeed the elimination of the second opportunity may well lead to an inordinate increase in arbitrary and even vindictive disciplinary action against employees, among whom the withdrawal of the second opportunity will lead to a widespread sense of psychological instability, insecurity, uncertainty and dislocation. I disagree with the proposed change also because it is not always possible to get a fair deal in an official inquiry and because appellate machinery in disciplinary proceedings have by and large tended to be blindfolded, moribund and otiose.

Clause 14.—It is unfortunate that the proposed amendment has been brought forth to set at naught the effect of the decision of a special bench of the Calcutta High Court reported in 65 Calcutta Weekly Notes 920 and holding that the expression "organisation" occurring in entry 78 of List I of the Seventh Schedule to the Constitution does not include "vacations". It is wrong in principle to overreach a judicial decision by constitutional amendment. What is more, the proposed amendment constitutes undue encroachment upon the accustomed autonomy of the High Courts. The clause which appears to be trivial is ill-conceived besides being entirely unnecessary.

NEW DELHI; L. M. SINGHVI

The 7th March, 1963.

Bill No. 111 B of 1962

THE CONSTITUTION (FIFTEENTH AMENDMENT) BILL, 1962

(AS REPORTED BY THE JOINT COMMITTEE)

(Words side-lined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions.)

A

BILL

further to amend the Constitution of India.

BE it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Constitution (Fifteenth Amendment) Act, 1963.

Amendment of article 124.

5 2. In article 124 of the Constitution, after clause (2), the following clause shall be inserted, namely:—

"(2A) The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.".

Amendment of article 128.

10 **3. In article 128 of the Constitution, after the words "Federal Court", the words "or who has held the office of a Judge of a High Court and is duly qualified for appointment as a Judge of the Supreme Court" shall be inserted.**

Amendment of article 217.

4. In article 217 of the Constitution,—

15 **(a) in clause (1), for the words "sixty years", the words "sixty-two years" shall be substituted;**

(b) after clause (2), the following clause shall be inserted and shall be deemed always to have been inserted, namely:—

"(3) If any question arises as to the age of a Judge of a High Court, the question shall be decided by the President after consultation with the Chief Justice of India and the 5 decision of the President shall be final.".

* * *

Amendment of article 222.

5. In article 222 of the Constitution, after clause (1), the following clause shall be inserted, namely:—

"(2) When a Judge has been or is so transferred, he shall, 10 during the period he serves, after the commencement of the Constitution (Fifteenth Amendment) Act, 1963, as a Judge of the other High Court, be entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament by law and, until so determined, such compensatory 15 allowance as the President may by order fix.".

Amendment of article 224.

6. In article 224 of the Constitution, in clause (3), for the words "sixty years", the words "sixty-two years" shall be substituted.

Insertion of new article 224A.

7. After article 224 of the Constitution, the following article shall be inserted, namely:— 20

Appointment of retired Judges at sittings of High Courts.

"224A. Notwithstanding anything in this Chapter, the Chief Justice of a High Court for any State may at any time, with the previous consent of the President, request any person who has held the office of a Judge of that Court or of any other High Court to sit and act as a Judge of the High Court for that State, 25 and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that High Court: 30

Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that High Court unless he consents so to do.".

Amendment of article 226.

8. In article 226 of the Constitution,—

(a) after clause (1), the following clause shall be inserted, 35 namely:—

"(1A) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising

jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not
5 within those territories.";

(b) in clause (2), for the word, brackets and figure "clause (1)", the words, brackets, figures and letter "clause (1) or clause (1A)" shall be substituted.

* * * * * *

10 9. In article 297 of the Constitution, after the words "territorial waters", the words "or the continental shelf" shall be inserted.

Amendment of article 297.

10. In article 311 of the Constitution, for clauses (2) and (3), the following clauses shall be substituted, namely:—

Amendment of article 311.

"(2) No such person as aforesaid shall be dismissed or
15 removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that this clause shall not apply—

20 (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for
25 some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

30 (3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.".

35 11. In article 316 of the Constitution, after clause (1), the following clause shall be inserted, namely:—

Amendment of article 316.

"(1A) If the office of the Chairman of the Commission becomes vacant or if any such Chairman is by reason of absence or for any other reason unable to perform the duties of his office,
40 those duties shall, until some person appointed under clause (1)

to the vacant office has entered on the duties thereof or, as the case may be, until the Chairman has resumed his duties, be performed by such one of the other members of the Commission as the President, in the case of the Union Commission or a Joint Commission, and the Governor of the State in the case of a State 5 Commission, may appoint for the purpose.".

Amendment of the Seventh Schedule.

12. In the Seventh Schedule to the Constitution, in List I, in entry 78, after the word "organisation", the brackets and words "(including vacations)" shall be inserted and shall be deemed always to have been inserted. 10

APPENDIX I

(*Vide* para 2 of the Report)

Motion in Lok Sabha for reference of the Bill to Joint Committee

"That the Bill further to amend the Constitution of India be referred to a Joint Committee of the Houses consisting of 45 members, 30 from this House, namely:—

1. Shri Brij Raj Singh-Kotah
2. Shri S. N. Chaturvedi
3. Shri Homi F. Daji
4. Shri Ram Dhani Das
5. Shri R. Dharmalingam
6. Shri Kashi Ram Gupta
7. Sardar Iqbal Singh
8. Shri Madhavrao Laxmanrao Jadhav
9. Shri Madeppa Bandappa Kadadi
10. Shri Hari Vishnu Kamath
11. Shri Paresh Nath Kayal
12. Shri Nihar Ranjan Laskar
13. Shri Harekrushna Mahatab
14. Shri M. Malaichami
15. Shri Mathew Maniyangadan
16. Shri Bibudhendra Misra
17. Shri F. H. Mohsin
18. Shri H. N. Mukerjee
19. Shri D. J. Naik
20. Shri V. C. Parashar
21. Shri Ram Swarup
22. Shri S. V. Krishnamoorthy Rao
23. Shri C. L. Narasimha Reddy
24. Shrimati Yashoda Reddy
25. Syed Nazir Hussain Samnani
26. Shri Ramshekhar Prasad Singh

27. Dr. L. M. Singhvi
28. Shri U. M. Trivedi
29. Shri Balgovind Verma
30. Shri Asoke K. Sen

and 15 from Rajya Sabha;

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

that the Committee shall make a report to this House by the first day of the next session;

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

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of 15 members to be appointed by Rajya Sabha to the Joint Committee."

APPENDIX II

(*Vide* para 3 of the Report)

Motion in Rajya Sabha

"That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do join in the Joint Committee of the Houses on the Bill further to amend the Constitution of India, and resolves that the following members of the Rajya Sabha be nominated to serve on the said Joint Committee, namely:—

1. Syed Nausher Ali
2. Shri Santosh Kumar Basu
3. Shri K. S. Chavda
4. Shri D. B. Desai
5. Shri Jagan Nath Kaushal
6. Shri Akbar Ali Khan
7. Shri R. S. Khandekar
8. Shri Lokanath Misra
9. Shri M. A. Manickavelu
10. Shri P. N. Sapru
11. Kumari Shanta Vasisht
12. Shri Vijay Singh
13. Shri Hira Vallabha Tripathi
14. Shri Bipin Behary Varma
15. Shri Gopikrishna Vijaivargiya."

APPENDIX III

(*Vide* para 9 of the Report)

Statement of memoranda/representations received by the Joint Committee

Sl. No.	Nature of document	From whom received	Action taken
1	Memorandum	The Indian Law Institute, New Delhi.	Circulated to Members and evidence of the Institute taken on the 13th February, 1963.
2	Do.	The Bar Association of India, New Delhi.	Circulated to Members and evidence of the Association taken on the 13th February, 1963.
3	Do.	Supreme Court Bar Association, New Delhi.	Circulated to Members and evidence of the Association taken on the 15th February, 1963.
4	Do.	All India Railwaymen's Federation, New Delhi.	Circulated to Members and evidence of the Federation taken on the 15th February, 1963.
5	Do.	National Railway Mazdoor Union, Bombay.	Circulated to Members and evidence of the Union taken on the 15th February, 1963.
6	Do.	All-India Defence Employees' Federation, New Delhi.	Circulated to Members and evidence of the Federation taken on the 15th February, 1963.
7	Do.	National Federation of P&T Employees, New Delhi.	Memorandum identical to the one submitted by the Federation at S. No. 6 above copies of which were circulated to Members. Members also informed. Evidence of the Federation taken on the 15th February, 1962.
8	Do.	All India Postal Employees Union-Class III, New Delhi.	Circulated to Members and evidence of the Union taken on the 15th February, 1963.
9	Do.	All India Postal Employees Union Postmen & Class IV Delhi.	Memorandum identical to the one submitted by the Federation at S. No. 6 above copies of which were circulated to Members. Members also informed. Evidence of the Union taken on the 15th February, 1963.

Sl. No.	Nature of document	From whom received	Action taken
10	Memorandum	All India Telegraph Traffic Employees Union-Class III, New Delhi.	Memorandum identical to the one submitted by the Federation at S.No. 6 above copies of which were circulated to Members. Members also informed. Evidence of the Union taken on the 15th February, 1963.
11	Do.	Civil Aviation Department Employees Union, New Delhi.	Do.
12	Do.	All India Income-tax Non-Gazetted Employees Federation, New Delhi.	Do.
13	Do.	All India Non-Gazetted Audit & Accounts Association, New Delhi.	Do.
14	Do.	All India Telegraph Engineering Employees Union-Class III, New Delhi.	Do.
15	Do.	Central Government Clerks' Union, New Delhi.	Memorandum identical to the one submitted by the Federation at S. No. 6 above copies of which were circulated to Members. Members also informed.
16	Do.	The Co-ordination Committee of Central Government Employees' & Workers' Union and Association, West Bengal, Calcutta.	Do.
17	Do.	Government of India Stationery Office Employees' Association, Calcutta.	Do.
18	Do.	Inspection Directorate Staff Association, Calcutta.	Do.
19	Do.	I.A.R.I. Agricultural & Industrial Workers' Union New Delhi.	Do.
20	Do.	N.E. Railway Mazdoor Union, Gorakhpur.	Placed in the Library and Members informed.
21	Do.	Central P.W.D. Workers' Union, Central Office, New Delhi.	Memorandum identical to the one submitted by the Federation at S. No. 6 above copies of which were circulated to Members. Members also informed.

Sl. No.	Nature of document	From whom received	Action taken
22	Memorandum . .	Central P.W.D. Workers' Union, Eastern India Regional Committee, Calcutta.	Memorandum identical to the one submitted by the Federation at S. No. 6 above copies of which were circulated to Members. Members also informed.
23	Do.	Telegraph Check Office Association, Calcutta.	Do.
24	Do.	Govt. Medical Store Depot Employees' Union, Calcutta.	Do.
25	Do.	Pay and Accounts Employees' Association, Calcutta.	Do.
26	Do.	Customs Ministerial Officers' & Record Suppliers' Association, Calcutta.	Do.
27	Do.	Supplies & Disposals Employees' Association, Calcutta.	Do.
28	Do.	National Federation of Railwaymen, New Delhi.	Placed in the Library and Members informed.
29	Representation . .	The Alleppey Produce Merchants' Association, Alleppey.	Do.
30	Do.	The Alleppey Chamber of Commerce, Alleppey.	Do.
31	Do.	The Indian Chamber of Commerce, Cochin.	Do.
32	Do.	The Travancore Chamber of Commerce, Alleppey.	Do.
33	Do.	The Alleppey Oil Millers, & Merchants' Association, Alleppey.	Do.
34	Do.	The Travancore Coir Mats & Matting Manufacturers' Association, Alleppey.	Do.
35	Resolution .	High Court Bar Association, Lashkar, Gwalior.	Do.
36	Do.	Advocates Association, Madras.	Do.
37	70 Resolutions protesting against the proposed amendment to Article 311.	70 different Associations etc.	Do.
38	12 telegrams protesting against the proposed amendment to Article 311.	12 different Associations etc.	Do

APPENDIX IV

(*Vide* para 10 of the Report)

List of Associations who gave evidence before the Joint Committee

Sl. No.	Names of Associations	Dates on which evidence was taken
1	The Indian Law Institute, New Delhi	13-2-1963
2	The Bar Association of India, New Delhi	13-2-1963
3	Supreme Court Bar Association, New Delhi	15-2-1963
4	All India Railwaymen's Federation, New Delhi	15-2-1963
5	National Railway Mazdoor Union, Bombay	15-2-1963
6	All-India Defence Employees' Federation, New Delhi	15-2-1963
7	National Federation of P&T Employees, New Delhi	15-2-1963
8	All India Postal Employees Union—Class III, New Delhi	15-2-1963
9	All India Postal Employees Union Postmen & Class IV, Delhi	15-2-1963
10	All India Telegraph Traffic Employees Union—Class III, New Delhi	15-2-1963
11	Civil Aviation Department Employees Union, New Delhi	15-2-1963
12	All India Income-tax Non-Gazetted Employees Federation, New Delhi	15-2-1963
13	All India Non-Gazetted Audit & Accounts Association, New Delhi	15-2-1963
14	All India Telegraph Engineering Employees Union—Class III, New Delhi	15-2-1963

APPENDIX V

MINUTES OF THE SITTINGS OF THE JOINT COMMITTEE ON THE CONSTITUTION (FIFTEENTH AMENDMENT) BILL, 1962

I

First Sitting

The Committee met on Friday, the 14th December, 1962 from 11.06 to 11.30 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Kashi Ram Gupta
3. Sardar Iqbal Singh
4. Shri Hari Vishnu Kamath
5. Shri Paresh Nath Kayal
6. Shri Mathew Maniyangadan
7. Shri Bibudhendra Misra
8. Shri F. H. Mohsin
9. Shri H. N. Mukerjee
10. Shri V. C. Parashar
11. Shri Ram Swarup
12. Shri C. L. Narasimha Reddy
13. Syed Nazir Hussain Samnani

Rajya Sabha

14. Syed Nausher Ali
15. Shri K. S. Chavda
16. Shri D. B. Desai
17. Shri Lokanath Misra
18. Shri M. A. Manickavelu
19. Shri P. N. Sapru
20. Kumari Shanta Vasisht

21. Shri Hira Vallabha Tripathi
22. Shri Bipin Behary Varma
23. Shri Gopikrishna Vijaivargiya

DRAFTSMEN

1. Shri R. C. S. Sarkar, *Secretary, Legislative Department, Ministry of Law.*
2. Shri S. K. Maitra, *Deputy Draftsman, Ministry of Law.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

2. The Committee considered whether any evidence should be taken by them. It was decided that the Bar Council of India and the Indian Law Institute be addressed to send their comments or suggestions, if any, on the provisions of the Bill for the consideration of the Committee, by the 10th January, 1963. They could also give oral evidence before the Committee, if they so desired. The Committee also decided that Members of Parliament might be informed that they could, if they so desired, place their views on the Bill before the Committee.

3. The Committee decided that copies of the following documents might be circulated to the members of the Committee:

(1) Speeches of the Minister and synopsis of speeches of other members on the Bill made in both the Houses of Parliament.

(2) Judgement of the Punjab High Court in the case of J. P. Mitter, Judge of the Calcutta High Court *Vs.* Union of India.

(3) Relevant paragraphs from the Report of the Law Commission of India.

(4) Relevant extracts from the Civil Service Rules.

(5) Synopsis of debates in the Constituent Assembly of India on the Articles of the Constitution sought to be amended by the Bill.

4. The Chairman suggested that amendments, if any, might be sent to the Lok Sabha Secretariat by the 15th January, 1963.

5. The Committee decided to sit from the 17th January, 1963 onwards for hearing oral evidence, if any, and for clause-by-clause consideration of the Bill.

6. The Committee then adjourned to meet again on Thursday, the 17th January, 1963 at 14-00 hours.

II

Second Sitting

The Committee met on Friday, the 18th January, 1963 from 10.04 to 10.30 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman*.

MEMBERS

Lok Sabha

2. Shri Brij Raj Singh-Kotah
3. Shri S. N. Chaturvedi
4. Shri Homi F. Daji
5. Shri Ram Dhani Das
6. Shri R. Dharmalingam
7. Shri Kashi Ram Gupta
8. Shri Madhavrao Laxmanrao Jadhav
9. Shri Madeppa Bandappa Kadadi
10. Shri Hari Vishnu Kamath
11. Shri Paresh Nath Kayal
12. Shri Nihar Ranjan Laskar
13. Shri Harekrushna Mahatab
14. Shri M. Malaichami
15. Shri Mathew Maniyangadan
16. Shri Bibudhendra Misra
17. Shri F. H. Mohsin
18. Shri D. J. Naik
19. Shri V. C. Parashar
20. Shri Ram Swarup
21. Shri C. L. Narasimha Reddy
22. Shrimati Yashoda Reddy
23. Syed Nazir Hussain Samnani
24. Shri Ramshekhar Prasad Singh
25. Dr. L. M. Singhvi
26. Shri U. M. Trivedi
27. Shri Balgovind Verma
28. Shri Asoke K. Sen

Rajya Sabha

29. Syed Nausher Ali
30. Shri Santosh Kumar Basu
31. Shri K. S. Chavda
32. Shri D. B. Desai
33. Shri Akbar Ali Khan
34. Shri R. S. Khandekar
35. Shri Lokanath Misra
36. Shri P. N. Sapru
37. Kumari Shanta Vasisht
38. Shri Vijay Singh
39. Shri Hira Vallabha Tripathi
40. Shri Bipin Behary Varma
41. Shri Gopikrishna Vijaivargiya

DRAFTSMEN

1. Shri R. C. S. Sarkar, *Secretary, Legislative Department, Ministry of Law.*
2. Shri S. K. Maitra, *Deputy Draftsman, Ministry of Law.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

2. At the outset, the Minister of Law informed the Committee that Government intended to introduce in Lok Sabha next week the Constitution (Sixteenth Amendment) Bill, 1963, to amend Articles 19, 84 and 173 of the Constitution for the purpose of preservation and maintenance of the integrity of the Union. The Government also intended to suggest reference of that Bill to this very Joint Committee. In view of that the Minister of Law suggested that both the Constitution Amendment Bills might be taken up together.

The Committee, accordingly, decided to defer consideration of the Bill.

3. The Committee also decided to hear oral evidence on the Bill and authorised the Chairman to select associations etc. to be asked to send their representatives to give oral evidence.

4. The Committee then adjourned to meet again on Wednesday, the 13th February, 1963 at 14.00 hours.

III

Third Sitting

The Committee met on Wednesday, the **13th February, 1963 from** 14.00 to 17.35 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Brij Raj Singh-Kotah
3. Shri S. N. Chaturvedi
4. Shri Ram Dhani Das
5. Shri R. Dharmalingam
6. Shri Kashi Ram Gupta
7. Shri Madhavrao Laxmanrao Jadhav
8. Shri Hari Vishnu Kamath
9. Shri Paresh Nath Kayal
10. Shri Nihar Ranjan Laskar
11. Shri M. Malaichami
12. Shri Mathew Maniyangadan
13. Shri Bibudhendra Misra
14. Shri F. H. Mohsin
15. Shri H. N. Mukerjee
16. Shri D. J. Naik
17. Shri V. C. Parashar
18. Shri Ram Swarup
19. Shri C. L. Narasimha Reddy
20. Shri Ramshekhar Prasad Singh
21. Dr. L. M. Singhvi
22. Shri U. M. Trivedi
23. Shri Balgovind Verma
24. Shri Asoke K. Sen

Rajya Sabha

25. Shri Santosh Kumar Basu
26. Shri K. S. Chavda
27. Shri D. B. Desai

28. Shri R. S. Khandekar
29. Shri Lokanath Misra
30. Shri M. A. Manickavelu
31. Shri P. N. Sapru
32. Kumari Shanta Vasisht
33. Shri Vijay Singh
34. Shri Hira Vallabha Tripathi
35. Shri Bipin Behary Varma
36. Shri Gopikrishna Vijaivargiya

DRAFTSMEN

1. Shri R. C. S. Sarkar, *Secretary, Legislative Department, Ministry of Law.*
2. Shri S. K. Maitra, *Deputy Draftsman, Ministry of Law.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

WITNESSES

I. *The Indian Law Institute, New Delhi*

1. Shri M. C. Setalvad
2. Shri S. M. Sikri

II. *The Bar Association of India, New Delhi*

Shri Purshottam Trikamdas

2. The Committee heard the evidence given by the representatives of the Associations named above.

3. A verbatim record of the evidence given was taken.

4. The Committee then adjourned to meet again on Thursday, the 14th February, 1963 at 10.00 hours.

IV

Fourth Sitting

The Committee met on Friday, the 15th February, 1963 from 10.03 to 13.20 hours and again from 15.37 to 16.46 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Brij Raj Singh-Kotah
3. Shri S. N. Chaturvedi
4. Shri Homi F. Daji
5. Shri Ram Dhani Das
6. Shri R. Dharmalingam
7. Shri Kashi Ram Gupta
8. Sardar Iqbal Singh
9. Shri Madhavrao Laxmanrao Jadhav
10. Shri Hari Vishnu Kamath
11. Shri Paresh Nath Kayal
12. Shri Nihar Ranjan Laskar
13. Shri M. Malaichami
14. Shri Mathew Maniyangadan
15. Shri Bibudhendra Misra
16. Shri F. H. Mohsin
17. Shri H. N. Mukerjee
18. Shri D. J. Naik
19. Shri V. C. Parashar
20. Shri Ram Swarup
21. Shri C. L. Narasimha Reddy
22. Shrimati Yashoda Reddy
23. Shri Ramshekhar Prasad Singh
24. Dr. L. M. Singhvi
25. Shri Asoke K. Sen

Rajya Sabha

26. Syed Nausher Ali
27. Shri Santosh Kumar Basu

28. Shri K. S. Chavda
29. Shri D. B. Desai
30. Shri J. N. Kaushal
31. Shri Akbar Ali Khan
32. Shri M. A. Manickavelu
33. Shri P. N. Sapru
34. Kumari Shanta Vasisht
35. Shri Vijay Singh
36. Shri Hira Vallabha Tripathi
37. Shri Bipin Behary Varma
38. Shri Gopikrishna Vijaivargiya.

DRAFTSMEN

1. Shri R. C. S. Sarkar, *Secretary, Legislative Department, Ministry of Law.*
2. Shri S. K. Maitra, *Deputy Draftsman, Ministry of Law.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

WITNESSES

I. *Supreme Court Bar Association, New Delhi*

Shri S. T. Desai

II. *All-India Railwaymen's Federation, New Delhi*

1. Shri Peter Alvares
2. Shri Basantha C. Ghosh

III. *National Railway Mazdoor Union, Bombay*

Shri V. B. Mahadeshwar

IV. *All-India Defence Employees' Federation, New Delhi*

Shri K. G. Srivastava

V. *National Federation of P. & T. Employees, New Delhi*

1. Shri P. S. R. Anjaneyulu
2. Shri N. J. Iyer

VI. *All India Postal Employees Union-Class III, New Delhi*

Shri K. Ramamurti

VII. *All India Postal Employees Union Postmen & Class IV, Delhi.*

Shri Gopal Singh Josh

VIII. *All India Telegraph Traffic Employees Union—Class III, New Delhi.*

Shri B. R. Bamotra

IX. *Civil Aviation Department Employees Union, New Delhi*

Shri V. Ramanathan

X. *All India Income-tax Non-Gazetted Employees Federation, New Delhi.*

Shri G. S. Gnanam

XI. *All India Non-Gazetted Audit & Accounts Association, New Delhi.*

Shri E. X. Joseph

XII. *All India Telegraph Engineering Employees Union-Class III, New Delhi.*

Shri Om Prakash Gupta

2. The Committee heard the evidence given by the representatives of the Associations named above.

3. A verbatim record of the evidence given was taken.

4. The Committee then adjourned to meet again on Saturday, the 16th February, 1963 at 14.00 hours.

V

Fifth Sitting

The Committee met on Saturday, the 16th February, 1963 from 14.05 to 14.25 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Brij Raj Singh-Kotah
3. Shri S. N. Chaturvedi
4. Shri Homi F. Daji
5. Shri Kashi Ram Gupta
6. Shri Madhavrao Laxmanrao Jadhav
7. Shri Hari Vishnu Kamath

8. Shri Harekrushna Mahatab
9. Shri M. Malaichami
10. Shri Mathew Maniyangadan
11. Shri Bibudhendra Misra
12. Shri F. H. Mohsin
13. Shri H. N. Mukerjee
14. Shri V. C. Parashar
15. Shri Ram Swarup
16. Shri C. L. Narasimha Reddy
17. Shrimati Yashoda Reddy
18. Shri Ramshekhar Prasad Singh
19. Dr. L. M. Singhvi
20. Shri Balgovind Verma

Rajya Sabha

21. Shri Santosh Kumar Basu
22. Shri K. S. Chavda
23. Shri D. B. Desai
24. Shri J. N. Kaushal
25. Shri Akbar Ali Khan
26. Shri M. A. Manickavelu
27. Shri P. N. Sapru
28. Kumari Shanta Vasisht
29. Shri Vijay Singh
30. Shri Hira Vallabha Tripathi
31. Shri Bipin Behary Varma
32. Shri Gopikrishna Vijaivargiya

DRAFTSMEN

1. Shri R. C. S. Sarkar, *Secretary, Legislative Department, Ministry of Law.*
2. Shri S. K. Maitra, *Deputy Draftsman, Ministry of Law.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

2. The Committee decided that the evidence given before them might be laid on the Table of the Houses and the memoranda submitted by the associations|bodies who gave evidence might be placed in the Parliament Library for reference by members.

3. The Committee decided to ask for extension of time for the presentation of their Report upto the 29th March, 1963 and authorised the Chairman and, in his absence, Shri S. N. Chaturvedi to move the necessary motion in the House.

4. The Committee then adjourned to meet again on Monday, the 18th February, 1963 at 14.30 hours.

VI

Sixth Sitting

The Committee met on Monday, the 18th February, 1963 from 14.30 to 17.05 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Brij Raj Singh-Kotah
3. Shri S. N. Chaturvedi
4. Shri Homi F. Daji
5. Shri Ram Dhani Das
6. Shri Kashi Ram Gupta
7. Shri Madhavrao Laxmanrao Jadhav
8. Shri Hari Vishnu Kamath
9. Shri M. Malaichami
10. Shri Mathew Maniyangadan
11. Shri Bibudhendra Misra
12. Shri F. H. Mohsin
13. Shri H. N. Mukerjee
14. Shri D. J. Naik
15. Shri V. C. Parashar
16. Shri Ram Swarup
17. Shri C. L. Narasimha Reddy
18. Shrimati Yashoda Reddy
19. Shri Ramshekhar Prasad Singh
20. Dr. L. M. Singhvi

21. Shri U. M. Trivedi
22. Shri Balgovind Verma
23. Shri Asoke K. Sen.

Rajya Sabha

24. Syed Nausher Ali
25. Shri Santosh Kumar Basu
26. Shri K. S. Chavda
27. Shri D. B. Desai
28. Shri Akbar Ali Khan
29. Shri R. S. Khandekar
30. Shri Lokanath Misra
31. Shri M. A. Manickavelu
32. Shri P. N. Sapru
33. Kumari Shanta Vasisht
34. Shri Vijay Singh
35. Shri Hira Vallabha Tripathi
36. Shri Bipin Behary Varma
37. Shri Gopikrishna Vijaivargiya.

DRAFTSMEN

1. Shri R. C. S. Sarkar, *Secretary, Legislative Department, Ministry of Law.*
2. Shri S. K. Maitra, *Deputy Draftsman, Ministry of Law.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary*.

2. The Committe took up cluase by clause consideration of the Bill.

3. *Clause* 2.—The Draftsman was directed to redraft the clause to provide that if any question arises as to the age of a Judge of the Supreme Court, the question shall be decided in a manner to be provided by or under law made by Parliament.

4. *Clause* 3.—The clause was adopted without amendment.

5. *Clause* 4.—Discussion on the clause was not concluded.

6. The Committee then adjourned to meet again on Tuesday, the 19th February, 1963 at 17.10 hours.

VII

Seventh Sitting

The Committee met on Tuesday, the 19th February, 1963 from 17.14 to 19.00 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman*

MEMBERS

Lok Sabha

2. Shri S. N. Chaturvedi
3. Shri Homi F. Daji
4. Shri Ram Dhani Das
5. Shri Kashi Ram Gupta
6. Shri Madhavrao Laxmanrao Jadhav
7. Shri Hari Vishnu Kamath
8. Shri M. Malaichami
9. Shri Mathew Maniyangadan
10. Shri Bibudhendra Misra
11. Shri F. H. Mohsin
12. Shri D. J. Naik
13. Shri V. C. Parashar
14. Shri Ram Swarup
15. Shri C. L. Narasimha Reddy
16. Shrimati Yashoda Reddy
17. Shri U. M. Trivedi
18. Shri Asoke K. Sen

Rajya Sabha

19. Shri Santosh Kumar Basu
20. Shri K. S. Chavda
21. Shri D. B. Desai
22. Shri Akbar Ali Khan
23. Shri R. S. Khandekar
24. Shri M. A. Manickavelu
25. Shri P. N. Sapru
26. Kumari Shanta Vasisht
27. Shri Vijay Singh

28. Shri Hira Vallabha Tripathi
29. Shri Bipin Behary Varma
30. Shri Gopikrishna Vijaivargiya

DRAFTSMEN

1. Shri R. C. S. Sarkar, *Secretary, Legislative Department, Ministry of Law.*
2. Shri S. K. Maitra, *Deputy Draftsman, Ministry of Law.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

2. The Committee continued clause by clause consideration of the Bill.

3. *Clause* 4 (*continued*)—(1) Sub-clause (a) of the clause was adopted without any amendment.

The Committee felt that the provisions of this sub-clause should also apply to the present High Court Judges.

(2) In sub-clause (b) of the clause, the following amendment was accepted:

> Page 2, lines 1 and 2, *for* "and his decision shall be final" *substitute* "and after consultation with the Chief Justice of India and the decision of the President shall be final".

The clause, as amended, was adopted.

4. The Committee then adjourned to meet again on Wednesday, the 20th February, 1963 at 16.00 hours.

VIII

Eighth Sitting

The Committee met on Wednesday, the 20th February, 1963 from 16.05 to 17.24 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman*

MEMBERS

Lok Sabha

2. Shri S. N. Chaturvedi
3. Shri Homi F. Daji
4. Shri Ram Dhani Das
5. Shri Kashi Ram Gupta

6. Shri Madhavrao Laxmanrao Jadhav
7. Shri M. Malaichami
8. Shri Mathew Maniyangadan
9. Shri Bibudhendra Misra
10. Shri F. H. Mohsin
11. Shri H. N. Mukerjee
12. Shri D. J. Naik
13. Shri V. C. Parashar
14. Shri Ram Swarup
15. Shri C. L. Narasimha Reddy
16. Shri Ramshekhar Prasad Singh
17. Dr. L. M. Singhvi
18. Shri U. M. Trivedi
19. Shri Balgovind Verma
20. Shri Asoke K. Sen

Rajya Sabha

21. Syed Nausher Ali
22. Shri Santosh Kumar Basu
23. Shri K. S. Chavda
24. Shri D. B. Desai
25. Shri Akbar Ali Khan
26. Shri R. S. Khandekar
27. Shri M. A. Manickavelu
28. Shri P. N. Sapru
29. Shri Vijay Singh
30. Shri Hira Vallabha Tripathi
31. Shri Bipin Behary Varma
32. Shri Gopikrishna Vijaivargiya

DRAFTSMEN

1. Shri R. C. S. Sarkar, *Secretary, Legislative Department, Ministry of Law.*
2. Shri S. K. Maitra, *Deputy Draftsman, Ministry of Law.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

2. The Committee resumed clause by clause consideration of the Bill.

3. *Clause* 5.—The clause was negatived.

4. *Clause* 6.—The following amendment was accepted:

Page 2, *for* lines 13 and 14, *substitute*—

"(2) When a Judge has been or is so transferred, he shall, during the period he serves, after the commencement of the Constitution (Fifteenth Amendment) Act, 1963, as a Judge of the other High Court, be entitled"

The clause, as amended, was adopted.

5. *Clause* 7.—The clause was adopted without amendment.

6. *Clause* 8.—The clause was adopted without amendment.

7. *Clause* 9.—The following amendment was accepted:

Page 3, line 4,

for "cause of action for the exercise of such power arises" *substitute* "cause of action, wholly or in part, arises for the exercise of such power,"

The clause, as amended, was adopted.

8. *Clause* 10.—The clause was negatived.

9. *Clause* 11.—The clause was adopted without amendment.

10. The Committee then adjourned to meet again on Thursday, the 21st February, 1963 at 16.00 hours.

IX

Ninth Sitting

The Committee met on Thursday, the 21st February, 1963 from 16.06 to 18.00 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman*

MEMBERS

Lok Sabha

2. Shri S. N. Chaturvedi
3. Shri Homi F. Daji
4. Shri Kashi Ram Gupta

5. Sardar Iqbal Singh
6. Shri Madhavrao Laxmanrao Jadhav
7. Shri Hari Vishnu Kamath
8. Shri M. Malaichami
9. Shri Mathew Maniyangadan
10. Shri Bibudhendra Misra
11. Shri F. H. Mohsin
12. Shri H. N. Mukerjee
13. Shri D. J. Naik
14. Shri V. C. Parashar
15. Shri Ram Swarup
16. Shri C. L. Narasimha Reddy
17. Dr. L. M. Singhvi
18. Shri Asoke K. Sen

Rajya Sabha

19. Shri Santosh Kumar Basu
20. Shri K. S. Chavda
21. Shri Akbar Ali Khan
22. Shri R. S. Khandekar
23. Shri Lokanath Misra
24. Shri M. A. Manickavelu
25. Shri P. N. Sapru
26. Shri Vijay Singh
27. Shri Hira Vallabha Tripathi
28. Shri Bipin Behary Varma
29. Shri Gopikrishna Vijaivargiya

DRAFTSMEN

1. Shri R. C. S. Sarkar, *Secretary, Legislative Department, Ministry of Law.*
2. Shri S. K. Maitra, *Deputy Draftsman, Ministry of Law.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

2. The Committee resumed clause by clause consideration of the Bill.

3. *Clause* 2.—(*Vide* para 3 of the minutes, dated the 18th February, 1963).

The following amendment was accepted:—

Page 1, *for* lines 7 to 10, *substitute*—

"(2A) The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as may be provided by or under law made by Parliament."

The clause, as amended, was adopted.

4. *Clause* 4.—The Committee reopened their earlier decision regarding the determination of the age of a Judge of a High Court (*Vide* para 3 of the minutes, dated the 19th February. 1963).

The following amendment was accepted:

Page 2,

for lines 1 and 2, *substitute*—

"after consultation with the Chief Justice of India and the decision of the President shall be final"

The clause, as amended, was adopted.

5. *Clause* 12.—The following amendments were accepted:

(i) Page 3, in line 19,

after "removed" *insert* "or reduced in rank";

(ii) Page 3, line 23,

after "removed" *insert* "or reduced in rank";

(iii) Page 3, line 27,

after "remove a person" *insert* "or to reduce him in rank";

(iv) Page 3, line 36,

after "remove such person" *insert* "or to reduce him in rank".

The clause, as amended, was adopted.

6. *Clause* 13.—The clause was adopted without amendment.

7. *New Clause 13A*.—The Committee considered the following amendment proposing insertion of a new Clause 13A in the Bill:

Page 4,

after line 12, add—

"Amendment of the Second Schedule".

13A. In the Second Schedule to the Constitution, in paragraph 10, after sub-paragraph (3), the following sub-paragraph shall be added, namely:—

'(4) Every person holding office as a Judge of a High Court on or after the 1st day of January, 1963 shall, notwithstanding that he has attained the age of sixty years before the date on which the Constitution (Fifteenth Amendment) Act, 1963 received the assent of the President, continue to hold office as a Judge of that High Court, unless he has elected otherwise, and shall be deemed to be on actual service from the date of his attaining the age of sixty years to the date of such assent.' "

The amendment was negatived.

8. *Clause* 14.—The clause was adopted without amendment.

9. *Clause* 1.—The following amendment was accepted:

Page 1, line 4,

for "1962" *substitute* "1963".

The clause, as amended, was adopted.

10. *Enacting Formula*.—The following amendment was accepted:

Page 1, line 1,

for "Thirteenth" *substitute* "Fourteenth".

The Enacting Formula, as amended, was adopted.

11. The Title was adopted without amendment.

12. The Committee decided to consider their draft Report at their next sitting.

13. The Committee then adjourned to meet again on Friday, the 1st March, 1963 at 17.05 hours.

X

Tenth Sitting

The Committee met on Saturday, the 2nd March, 1963 from 17.05 to 17.25 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman*

MEMBERS

Lok Sabha

2. Shri S. N. Chaturvedi
3. Shri Ram Dhani Das
4. Shri Kashi Ram Gupta
5. Shri Nihar Ranjan Laskar
6. Shri Harekrushna Mahatab
7. Shri M. Malaichami
8. Shri Mathew Maniyangadan
9. Shri Bibudhendra Misra
10. Shri H. N. Mukerjee
11. Shri V. C. Parashar
12. Shri C. L. Narasimha Reddy
13. Shri Ramshekhar Prasad Singh
14. Shri U. M. Trivedi

Rajya Sabha

15. Shri Santosh Kumar Basu
16. Shri R. S. Khandekar
17. Shri Lokanath Misra
18. Shri P. N. Sapru

DRAFTSMEN

1. Shri R. C. S. Sarkar, *Secretary, Legislative Department, Ministry of Law.*
2. Shri S. K. Maitra, *Deputy Draftsman, Ministry of Law.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

2. The Committee adopted the Bill, as amended.

3. The Committee then considered and adopted the draft Report with verbal changes.

4. The Chairman announced that the minutes of Dissent, if any, might be sent to the Lok Sabha Secretariat so as to reach them by 17.00 hours on Thursday, the 7th March, 1963.

5. The Committee authorised the Chairman and, in his absence, Shri S. N. Chaturvedi to present the Report on their behalf and to lay the evidence on the Table of the House after the presentation of the Report.

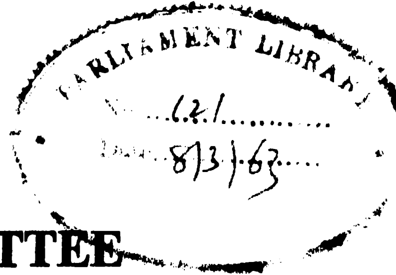
6. The Committee also authorised Shri P. N. Sapru and, in his absence Shri Santosh Kumar Basu to lay the Report and the Evidence on the Table of Rajya Sabha.

7. The Chairman announced that the Report would be presented to Lok Sabha on the 8th March 1963 and laid on the Table of Rajya Sabha on the same day.

The Committee then adjourned.

C. B. No. 152

LOK SABHA



JOINT COMMITTEE ON THE CONSTITUTION (FIFTEENTH AMENDMENT) BILL, 1962

EVIDENCE

LOK SABHA SECRETARIAT
NEW DELHI
March, 1963/Phalguna, 1884 (Saka)
Price : Rs. 1.15 *nP*

WITNESSES EXAMINED

Sl. No.	Names of Associations and their spokesmen	Dates of hearing	Page
I	The Indian Law Institute, New Delhi	13-2-1963	2
	Spokesmen :		
	1. Shri M. C. Setalvad		
	2. Shri S. M. Sikri		
II	The Bar Association of India, New Delhi	13-2-1963	19
	Spokesman :		
	Shri Purshottam Trikamdas		
III	Supreme Court Bar Association, New Delhi	15-2-1963	40
	Spokesman :		
	Shri S. T. Desai		
IV	All-India Railwaymen's Federation, New Delhi	15-2-1963	56
	Spokesmen :		
	1. Shri Peter Alvares		
	2. Shri Basantha C. Ghosh		
V	National Railway Mazdoor Union, Bombay	15-2-1963	56
	Spokesman :		
	Shri V. B. Mahadeshwar		
VI	All-India Defence Employees' Federation, New Delhi	15-2-1963	67
	Spokesman :		
	Shri K. G. Srivastava		
VII	National Federation of P & T Employees, New Delhi	15-2-1963	67
	Spokesmen :		
	1. Shri P. S. R. Anjaneyulu		
	2. Shri N. J. Iyer		
VIII	All India Postal Employees Union-Class III, New Delhi	15-2-1963	67
	Spokesman :		
	Shri K. Ramamurti		
IX	All India Postal Employees Union Postmen & Class IV, Delhi	15-2-1963	67
	Spokesman :		
	Shri Gopal Singh Josh		

2759(E) LS—1.

Sl. No.	Names of Associations and their spokesmen	Dates of hearing	Page
X	All India Telegraph Traffic Employees Union-Class III, New Delhi	15-2-1963	68
	Spokesman :		
	Shri B. R. Bamotra		
XI	Civil Aviation Department Employees Union, New Delhi	15-2-1963	68
	Spokesman :		
	Shri V. Ramanathan		
XII	All India Income-Tax Non-Gazetted Employees Federation, New Delhi	15-2-1963	68
	Spokesman :		
	Shri G. S. Gnanam		
XIII	All India Non-Gazetted Audit & Accounts Association, New Delhi	15-2-1963	68
	Spokesman :		
	Shri E. X. Joseph		
XIV	All India Telegraph Engineering Employees Union-Class III, New Delhi	15-2-1963	68
	Spokesman :		
	Shri Om Prakash Gupta		

JOINT COMMITTEE ON THE CONSTITUTION (FIFTEENTH AMENDMENT) BILL, 1962

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE CONSTITUTION (FIFTEENTH AMENDMENT) BILL, 1962

Wednesday, the 13th February, 1963 at 14.00 hours

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman*.

MEMBERS

Lok Sabha

2. Shri Brij Raj Singh—Kotah
3. Shri S. N. Chaturvedi
4. Shri Ram Dhani Das
5. Shri R. Dharmalingam
6. Shri Kashi Ram Gupta
7. Shri Madhavrao Laxmanrao Jadhav
8. Shri Hari Vishnu Kamath
9. Shri Paresh Nath Kayal .
10. Shri Nihar Ranjan Laskar
11. Shri M. Malaichami
12. Shri Mathew Maniyangadan
13. Shri Bibudhendra Misra
14. Shri F. H. Mohsin
15. Shri H. N. Mukerjee
16. Shri D. J. Naik
17. Shri V. C. Parashar
18. Shri Ram Swarup
19. Shri C. L. Narasimha Reddy
20. Shri Ramshekhar Prasad Singh
21. Dr. L. M. Singhvi
22. Shri U. M. Trivedi
23. Shri Balgovind Verma
24. Shri Asoke K. Sen.

Rajya Sabha

25. Shri Santosh Kumar Basu
26. Shri K. S. Chavda
27. Shri D. B. Desai
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30. Shri M. A. Manickavelu
31. Shri P. N. Sapru
32. Kumari Shanta Vasisht
33. Shri Vijay Singh
34. Shri Hira Vallabha Tripathi
35. Shri Bipin Behary Verma
36. Shri Gopikrishna Vijaivargiya.

DRAFTSMEN

1. Shri R. C. S. Sarkar, *Secretary, Legislative Department, Ministry of Law.*
2. Shri S. K. Maitra, *Deputy Draftsman, Ministry of Law.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

WITNESSES EXAMINED

I. THE INDIAN LAW INSTITUTE, NEW DELHI

1. Shri M. C. Setalvad.
2. Shri S. M. Sikri.

II. THE BAR ASSOCIATION OF INDIA, NEW DELHI

Shri Purshottam Trikamdas.

I. THE INDIAN LAW INSTITUTE, NEW DELHI

Spokesmen:

1. Shri M. C. Setalvad.
2. Shri S. M. Sikri.

(*Witnesses were called in and they took their seats*).

Mr. Chairman: Your memorandum has been circulated to the Members. If you want to add anything, you may.

Shri Setalvad: No. We do not want to amplify the memorandum, which is detailed enough, I think. Hon. Members may put any questions they wish to.

Dr. L. M. Singhvi: The Institute's Memorandum says that so far as the determination of the age of Judges, covered by clauses 2 and 4 of the Bill, is concerned, it ought not to be made a matter of decision by the President as proposed. I understand them to suggest that the fixation of the age of Judges ought to be done at the time of their appointment. However, when the Bill was introduced in Parliament, a ground was advanced that this cannot be made applicable to the Judges who are already appointed, and whose age might sometimes be a matter of dispute. What would be your suggestion in respect of those Judges who are already there, whose declaration was not obtained when they were appointed, or whose age was not determined at the time of appointment?

Shri Setalvad: The view taken by the Institute is that in regard to Judges who are already on the Bench at the moment, the matter should be left as it is, because it is in extremely rare cases that such a dispute would arise. In fact, past experience shows that such incidents rarely arise, and there is only one dispute which has gone to the court.

Dr. L. M. Singhvi: There may not have been court disputes, but I understand there have been cases in which certain Judges applied for reconsideration of their age as determined at the time of their appointment, and in some cases this reconsideration has been given. Would you suggest any particular method by which such cases could be reopened, or would you suggest that the age that they declare at the time of appointment should be taken without any further possibility of reopening it, even if, as the Law Minister said in Parliament, there was conclusive evidence to show that the age shown at that time was not correct?

Shri Setalvad: My own view is—I am not sure whether that is the view of the Institute, because this is a matter which has not been dealt with in the memorandum—that the matter should really be left as it is. Once he has declared the age, he is bound to accept it and act up to it. He must take the consequences, maybe sometimes unfavourable to him, but that cannot be helped. It may be the result of some statement by the father or uncle when he was quite a child or a young man for some examination purpose or something of that character, but then he has got to abide by the consequences.

Shri S. N. Chaturvedi: Would you have any objection if the decision of the President is taken on the advice of the Chief Justice of India, so that there is no interference of the executive in the matter, as that is the real apprehension as appears from the memorandum?

Shri Setalvad: So far as I know, the view of the Institute is based really on the ground that the introduction of such a clause in the Constitution providing for an investigation of the age of a Judge in dispute reflects somewhat on the dignity of the judiciary. So far as we know, no other Constitution in the world, not even perhaps the Judiciary Acts, provide for an investigation as to

the age of a Judge. Underlying such a provision is a sort of assumption that superior court Judges are apt to raise disputes as to their age, and that is a reflection on the judiciary. That is one aspect.

Another aspect is that once a Judge is appointed, we have in our Constitution, as in other constitutions, safeguards which really mean that the Judge will be removed only in certain circumstances by Parliament. That position should stand so that not even on the intervention of anybody should the President be able in effect to remove a Judge even in consultation with or on the advice of the Chief Justice. That would be the view of the Institute.

Shri P. N. Sapru: Is it that the determination of the age of the Judge should be a judicial question and it will be inadvisable to invoke the Administrative office of the Chief Justice for that purpose?

Shri Setalvad: It will be mixing up, to a certain extent, other duties with the judicial duties of the Chief Justice and imposing on him something like an administrative duty.

Shri Santosh Kumar Basu: There is a positive provision in our Constitution that Judges shall retire at the age of 60. That fixes a time limit beyond which a Judge cannot act as such and if he does act, his decisions become *ultra vires* and are open to litigation. So, is there not a lacuna in the Constitution? If it does not make any provision as regards what will have to be done when his age is questioned by anybody, there is a gap. Do you not think that some provision should be made to fill that gap?

Shri Setalvad: I would disagree with the view suggested for two reasons. First, the Constitution is not a document which can take care of every possible circumstance and all contingencies. There has been a feeling among responsible people that our Constitution as it is has been too detailed and too lengthy. The other answer is that if ever such a question arises, it could be taken care of by the Courts which deal with far graver and far more important questions. Questions such as the validity of the election of the President may be challenged in a court of law. The question of the age of the judge, if it ever arises can be dealt with in an appropriate court of law.

Shri A. K. Sen: Do you think that it is better for all this evidence to be gone into by courts publicly and then give a finding to the effect that a judge has given an incorrect age? Or is it not better to do these things outside the public view by the authority on the advice of the Supreme Court?

Shri Setalvad: I quite agree with the hon. Minister that it does seem in a way unseemly that the age of the Judge should be the subject of a controversy in a court of law. But in matters of this sort it becomes a choice of evils. If the choice were between leaving the decision of the age to the executive with the result that the independence of the judiciary is bound to be affected or in any case appear to be affected and the other course, the choice certainly in my view would be in favour of leaving it to the decision of the courts even if there be an unseemly aspect in it.

Shri U. M. Trivedi: I will refer to your memorandum clause 4(a)(7). The Chief Justice of a State gets the same salary as a judge of the Supreme Court. If you raise this age in any manner and if you want to appoint the Chief Justice to be the Judge of the Supreme Court, would he like to come here, giving up his powers, as a puisne judge.

Shri Setalvad: We have in our Supreme Court as puisne judges gentlemen who have served as Chief Justices.

Shri U. M. Trivedi: By coming to the Supreme Court, there was an advantage for him to go upto 65 years, instead of 60 which would be the case had he remained in the High Courts. But once this age is raised to 65, would he like to come here on the same

salary, leaving the enjoyment of power which he wields?

Shri Setalvad: I am speaking from recollection but this increase in age was recommended by the Law Commission. A suggestion was made in the report that when a gentleman is appointed to the High Court Bench it should be understood that it is a matter as a condition that when called upon he should serve also in the Supreme Court.

Shri U. M. Trivedi: Your suggestion is that the fixation of age at 62 is unnecessary and that it should remain at 65.

Shri Setalvad: It should be 65 as suggested by the Law Commission.

Shri U. M. Trivedi: May I draw your attention to clauses 5 and 6 of your note. You have been conducting several cases in several High Courts. Have you not come across judges recently appointed who are not able to express themselves well.

Shri A. K. Sen: Expressing oneself in English is not much of a qualification in itself.

Shri U. M. Trivedi: But power of expression is. Would it not be giving a premium to such people who have been recruited by some method or the other to stick to where they are?

Shri Setalvad: It would be best always to go to the root of the trouble and stop the improper method of recruitment. No trouble would then arise.

Shri A. K. Sen: May I request Shri Trivedi to clarify that he did not mean any disrespect to the judiciary?

Shri U. M. Trivedi: No, no. I have got the greatest regard for our judiciary.

Shri Setalvad: It is not the fault of the individual judges; it is the fault of those who appoint them.

Shri U. M. Trivedi: I will now refer to clause 9 of your note on article 226.

Shri U. M. Trivedi: Regarding article 226, don't you think it is better to have a law on the question of the use of the powers of the High Courts under article 226, rather than leaving still a loophole by making this little change?

Shri Setalvad: Do I understand the hon. Member to suggest that a special Act should be enacted?

Shri U. M. Trivedi: Yes. Today one High Court passes an order in a particular manner on an important point. Another High Court passes another type of order and a third court a third type of order and that creates confusion. The whole thinking is upset. Would it not be better to have a special Act on this question?

Shri Setalvad: If we pass an Act, it will be really complicating matters, instead of leaving it to the judicial discretion to pass orders of such nature as may be necessary in a particular case. In an Act, there will be questions of interpretation of various kinds. I think it will create more divergence of opinion between High Courts.

Shri P. N. Sapru: Under article 226, can the court go into disputed facts whether a person's age is 60 or 61?

Shri Setalvad: So far as I know, the Supreme Court has ruled that in an application under article 32 or under article 226, the court can go into disputed facts. In fact, Bombay and Madras High Courts have rules which do provide for evidence being taken in applications under article 226.

Shri U. M. Trivedi: In clause 12, you have suggested that to the word "dismissal or removal" the words "reduction in rank" should be added, because practically they have the same effect so far as the individual affected is concerned. You have studied the various interpretations put upon this question of reduction in rank. Would you like to enlarge this to include reduction in rank from a post which has been temporarily held for a period of three years?

Shri Setalvad: So far as I know, the Supreme Court and other courts have made a distinction between permanent posts and temporary posts and they have held that reduction in rank really has reference to permanent posts and not temporary posts.

Shri U. M. Trivedi: That has been put dogmatically. When you say reduction in rank will add to the indignity of the person, will it not affect a person if he has been working for 3 years continuously in a post and then if he is asked to go to a lower post without any inquiry into the matter?

Shri Setalvad: The view which the courts have taken is that a man who is occupying a temporary post will understand that he is liable to be sent back to his permanent post, and therefore there is no question of any sense of indignity.

Shri U. M. Trivedi: He has not been working there for 1 or 2 months. He is allowed to go on working for 3 years and even earns the increments. Would it not be better to provide safeguard for him also?

Shri Setalvad: Notwithstanding his earning increments, so long as he is still occupying a temporary post, there cannot be any question of improper treatment or indignity if he is asked to go back after 2 or 3 years.

Shri Hari Vishnu Kamath: In regard to clauses 4(a) and 7, regarding the proposal to raise the age of retirement of High Court Judges from 60 to 62, the Institute has held that the reasons for raising it to 65 rather than leaving it at 62 are that "at present after retirement, the High Court Judges have either to restart their practice or seek employment which is not very satisfactory or edifying". Does it really solve the problem, because when the Judge retires at 65, he will have to face the same problem. So, do you think—the Institute or you yourself personally think—that there should be no age limit at all, as perhaps in the American Supreme Court, if I am not mistaken, where there is no age limit at all?

Shri Setalvad: In the United States Supreme Court, there is no age limit. In England, they have an age limit of 75.

Shri A. K. Sen: In Australia, there is no age limit.

Shri Hari Vishnu Kamath: That will solve the problem satisfactorily, because they do not have to restart practice or seek employment. Would you recommend such a course in India?

Shri Setalvad: I am very hesitant about it, because there is a tendency sometimes for some people to carry on —it has been noticed in the past also —even though they are not fit to continue in their posts. Perhaps it would be better to have an age limit. That is my personal view.

Shri Hari Vishnu Kamath: How does it solve the problem, because again he will have to face the same problem at 65?

Shri Setalvad: Now he has to retire at 60 when he is generally very fit to work; and perhaps he has got children who have not completed their education and he has to pay heavy taxation on his salary. So, it is rather hard on the man to be without employment. So, if he is allowed to continue for a period of 5 years more, it will help him. But really speaking, the remedy lies, as was recommended by the Law Commission, in having larger pensions, so that at 65 when he retires, he can look forward to a substantial pension.

Shri Hari Vishnu Kamath: What would you suggest as a decent pension?

Shri A. K. Sen: That is out of the the scope of the Bill.

Shri Setalvad: Nor have I thought of it.

Shri Hari Vishnu Kamath: May I invite your attention to your note on clauses 5 and 6, where you deprecate,

the proposed transfer of High Court judges from one State to another? Does the Institute object to it as inherently bad or because it might be misused or abused by those in power?

Shri Setalvad: I think the objection of the Institute is based on the latter ground which you mentioned, namely, its liability to be abused, in the sense that it may enable either the Chief Justice or the local executive to influence the transfer of the Judge or it may induce the Judge by reason of some advantages which may accrue to him from the transfer, to carry favour with either the Chief Justice or the executive.

Shri Hari Vishnu Kamath: In other words, the same extraneous factors might come into operation as those you suggested in the Report of the Law Commission over which you so ably presided to have come into play even in the appointment of judges.

Shri Setalvad: That is the apprehension. In fact, I may mention, that when working in the Law Commission we found cases in which certain judges had been threatened with a transfer from their own State to other States by the executive by reason of the attitude they had in a judicial capacity taken in regard to some matters which had come before them.

Shri Hari Vishnu Kamath: It is not necessary for me to remind you that the States Reorganisation Commission in their report suggested that in every High Court one-third of the judges at least must be from outside States. In that case, if at the very inception, at the time of appointment, this requirement is not fulfilled, would it not be advisable in the public interest to arrange the transfer of competent judges from one State to another? Very recently, last year or year before last—I am not quite sure—, when the Chief Justice of Mysore retired there were two opinions in that State as to whether a local judge should be promoted as the Chief Justice or a judge from outside should be imported. In that case, would you oppose the transfer of a judge from one State to another either to fulfil the requirements of the States Reorganisation Commission's Report or to become the Chief Justice of another State?

Shri Setalvad: I do not think the Institute would oppose any transfer in the interest of administration of justice. In the instance of Mysore, it was the general opinion that the appointment of a distinguished judge from the High Court of Bengal to Mysore had resulted in the gradual toning up of the High Court of Mysore.

Shri A. K. Sen: Then what is it you are opposing? The right of transfer is already there.

Shri Setalvad: The right of transfer has been there, but very rarely used. Let the right of transfer remain, but what the Law Institute means to say is, let the additional inducements mentioned in the proposed change go because those additional inducements have tendencies which are not desirable.

Shri A. K. Sen: The convention is not to transfer a judge unless he agrees, and in practice it has been found that unless some additional inducements are given they would not go. They have to set up two establishments and various other additional difficulties arise. This is a healthy principle of having a fair number of judges from outside the State not only for getting impartiality of the courts and keeping them free from local bias and prejudice but also for national integration. Therefore, we have to offer them some inducements, because a man cannot be expected to keep two establishments if that is the price he has to pay for his transfer.

Shri Setalvad: The main inducement suggested is, if he goes out for five years and serves in another State, when he comes back he is able to practice in his own State. That is highly undesirable. As it is, the practice by judges after retirement is generally subject to comment, and this would make it worse.

Shri Hari Vishnu Kamath: On this issue of determination of the age of a judge, the Institute says here that his age at the time of appointment itself should be properly ascertained and once it is ascertained it should be final. I agree that it is perhaps the best thing to do. But supposing a contingency like the case of a High Court Judge of Calcutta arises, what would you suggest as a way out?

Shri Setalvad: Well, of course, one is the court of justice. Any citizen can go and take out what is called a *writ of quo warranto.* Supposing a judge has exceeded the age of 60 according to his information and knowledge and he is still serving as a judge of a High Court, he can always approach the court of law under the appropriate writ and say that he is not capable of sitting on the Bench. That is one method. Then, if you need any tribunal—I do not know why you should need one—other than the ordinary court of law, you could have the Supreme Court both in the case of High Court judges or in the case of judges of the Supreme Court. There is no objection to two or three judges of the Supreme Court dealing with the age of a brother judge or the judge of a High Court. But, certainly it should not be in the hands of the executive, and that is the main point of the Institute's view.

Shri Hari Vishnu Kamath: That did not work, apparently, in the case of the Calcutta High Court judge. What happened in that case?

Shri Setalvad: I believe the case is still pending in the Calcutta High Court.

Shri A. K. Sen: He has challenged six judges up till now. His appeal is pending in the Calcutta High Court.

Shri Hari Vishnu Kamath: If it is left in the hands of the President it means in the hands of the Executive because the President acts on the advice of the Council of Ministers. Therefore, it will amount to an executive decision. Would you think that the President acting in his individual judgment might be a satisfactory solution.

Shri Setalvad: I do not think so. To begin with we will be introducing in the Constitution his acting on individual judgment which, I think, would not be wise to do and, secondly, even then he would have to be assisted by someone; therefore, he will have to have recourse to some sort of a judicial tribunal who could look into the matter or consider the facts on affidavits or otherwise. He would have to leave it to some judicial body or individual. So, we are really coming back to a judicial tribunal. Therefore, why not leave it to an ordinary court of justice to decide the question whenever it arises?

Shri A. K. Sen: It is stated on behalf of the Government that out of the ten cases which have arisen so far all the cases excepting one have been decided by the President on the advice of the Chief Justice of India and that all the judges concerned have accepted such an advice of the Chief Justice. Only one judge has challenged it in a court of law. He has even made allegations against the Chief Justice being a party to a conspiracy in his latest suit. Therefore, do you think that it is conducive to the judiciary if such matters are allowed to be decided in a court and questions of conspiracy against the Chief Justice of India being made subject-matters of litigation? The Government has taken the view that it is absolutely undesirable that such matters should be taken to the court.

Shri Setalvad: In my view there is nothing so sacred as cannot be trusted to investigation and decision by a proper court of justice. Of course, it appears at first sight a bit unseemly, but in the long run that is the best course.

Shri Hari Vishnu Kamath: Should the Committee understand that the Institute favours a special tribunal for this purpose? The court of justice apart, if that is not acceptable, should

an *ad hoc* tribunal, if necessary, assist the President in coming to a finding?

Shri Setalvad: If we have to have a tribunal, it will have to be a properly organised tribunal. But the basic view of the Institute is that by reason of this unusual conduct of a judge who is now litigating the matter, why should we be stampeded into making a Constitutional amendment? Such occurrences are very rare and unusual.

Shri Hari Vishnu Kamath: When a question of disqualification for legislature arises, under the Constitution the President is empowered to seek the assistance of the Election Commission for the settlement of that question. Legislature also is supposed to be independent of the executive, as independent as the judiciary is.

Shri A. K. Sen: It is not only independent but it is the task-master of the executive. You are there every day to take us to task.

Shri Setalvad: The executive is the servant of the legislature.

Shri Hari Vishnu Kamath: Just as the President seeks the assistance of the Election Commission for resolving his doubts with regard to the disqualification for the legislature, would you recommend a similar court in the case of a judge?

Shri Setalvad: No; I would not.

Shri Hari Vishnu Kamath: Not the Election Commission but some other Tribunal.

Shri Setalvad: I would leave matters as they are at the moment.

Shri Kashi Ram Gupta: Suppose, a person goes to a court of law and files an affidavit to the effect that a particular judge has crossed the age limit and that he should be stopped from working as a judge and suppose, the court of law allows him an order to that effect and the judge stops working, if later on it is found that the decision has to be changed, will the judge be able to sit in the court after the court of law has passed an order to that effect, or can the judge file an appeal or a writ against the earlier order of the court?

Shri Setalvad: There is the usual course of litigation. If a decision given by Court A is reversed by a superior court, the decision of the superior court will have to operate and prevail.

Shri Kashi Ram Gupta: No, my point is that so long as the later decision is not given the judge will not be able to work.

Shri Setalvad: No, he will not be able to work.

Shri Kashi Ram Gupta: My second point is this. The hon. Law Minister pointed out that the judge should be given an inducement for transfer. I think, it is better to have an obligatory transfer than to give inducements in the form of allowances and all these things. After all, money is not the thing to be reckoned that way by the judges when they are so highly placed. When Government servants are not allowed allowances for transfer, why only should the judges be allowed allowances? Will it not be derogatory for them?

Shri A. K. Sen: I think, he has not said anything about allowances.

Shri Kashi Ram Gupta: No, I am asking his opinion about giving inducements for transfer.

Shri A. K. Sen: How can he answer this question? I do not think he has advocated this special allowance at all.

Shri Setalvad: Do I understand that the hon. Member is suggesting that there is some question of article 14 and discrimination between a judge and other Government servants?

Shri Kashi Ram Gupta: That is my point.

Shri Setalvad: Such a point will be raised if it comes before the court of law under article 14.

Shri V. C. Parashar: I find from your comments on clause 12 (page 5 of the memorandum) that the Law Institute recommends that the position as it is with reference to article 311 should not be disturbed. When even an accused, after full enquiry, is not given an opportunity to show cause about the propriety of the punishment meted out to him, why such a facility should be allowed to a Government servant?

Shri Setalvad: Article 311, as it has been construed for many years now, says that not only has the guilt or innocence to be determined by an enquiry but that once it has been determined and he has been found guilty, before Government proposes to take a particular action, he should be told what Government propose to do. It may remove or dismiss him and he should be allowed to show cause against that. After all, a man entering Government service has got expectations of permanency and it is only appropriate, even after he is found guilty, when he is threatened with some punishment that he should be told what punishment is intended to be given to him and he should be given an opportunity to show cause against the proposed punishment.

Shri V. C. Parashar: In that case, would you agree to the right of appeal being taken away from him?

Shri Setalvad: Right of appeal is not provided for by the Constitution. It is a matter of rules govering a particular Government servant. You may or may not have such a rule. That is entirely for the executive to determine as to what rules they shall frame under article 309 or under some other article.

Dr. L. M. Singhvi: The distinguished witness said that he would favour the fixing up of the age of a judge at the time of his appointment. I should like to know from him whether he has any definite suggestion to make regarding the method of fixing the age at the time of appointment. Would he suggest that a definite provision be made in the Constitution providing the method of fixing the age a judge at the time of his appointment, or would he rather leave it as it is?

Shri Setalvad: I would leave it as it is. As I said some time ago, we should not encumber our Constitution with these detailed provisions. It is always open to the executive who make appointments to so many posts including those of High Court and Supreme Court judge to fix the age in any manner that they deem fit. No detailed provision is necessary either in the Constitution or even in any other legislation.

Dr. L. M. Singhvi: Would you depend on the unifying influence of judicial decisions in the ultimate analysis so that there can be definite criteria for determining the age of a judge at any time when it becomes the subject matter of controversy in a court of law rather than provide, either by way of a Constitutional provision or by way of general practice to be followed by the Government when the warrant of appointment is issued or when a declaration has to be obtained at the time of appointment? Would it not rather change the present practice to be determined by the court?

Shri Setalvad: No, because I have no doubt that the Government would be able in their wisdom to evolve a proper procedure for determining the age at the time of appointment. There should be no difficulty in doing that.

Shri A. K. Sen: That is in fact being done now.

Dr. L. M. Singhvi: The next question is whether the Institute or the distinguished witnesses individually would favour a comprehensive prohibition against law practice or appointment under the executive government so far as retired judges are concerned? In case this provision for extension of the age to sixty-five, which is what is suggested by them, is made, would

they suggest that they should not be allowed to practise in any court of law—so far as High Court judges or Supreme Court judges are concerned, and, secondly, may I know whether they would also like to suggest the enactment of a prohibition against their taking up any employment under the executive after retirement?

Shri Setalvad: Yes, I think the Institute's view is what the hon. Member has mentioned, that judges, after the age is raised to sixty-five, should be debarred from practising altogether. And also—of course the Institute's memorandum does not deal with it, but I expect that their view would also be this—that it should not be open to them to take up office under the government. If I recollect correctly, the Law Commission actually recommended an amendment to the Constitution introducing a prohibition against their accepting office under government, as in the case of Public Service Commission members.

Shri A. K. Sen: The talent available to Government would be heavily depleted then.

Dr. L. M. Singhvi: So far as the question of transfer is concerned, of Chief Justice or Judges, would the Institute or the witnesses favour that this should be exclusively kept within the jurisdiction of the Chief Justice of India, or that the President should be aided and assisted by the advice of the Government as at present?

Shri A. K. Sen: He is aided and assisted by the Chief Justice of India in this respect.

Dr. L. M. Singhvi: Would you rather make it exclusively within the jurisdiction of the Chief Justice of India?

Shri Setalvad: It would perhaps be more satisfactory, though I might say that the executive does act in consultation with the Chief Justice in these matters.

Dr. L. M. Singhvi: My next question is with regard to the raising of the age to sixty-five in the High Courts. The distinguished witnesses have very extensive experience of judges in this country. And, although both of them have fortunately been in the enjoyment of excellent health and intellectual powers even at an age later than the present or the proposed retirement age, is it not within their experience that some of the judges at an age beyond sixty tend to be fatigued, particularly after lunch hour, and are not able to perform their duties in a very adequate manner; and would they suggest some sort of health examination at that age, particularly about the state of the health of the person after sixty years of age? From their experience I am sure the distinguished witnesses would be able to suggest whether any health test or any other device can be provided to ensure that the judges are not clearly in an unfit state of health; because, there is a tendency to carry on in spite of their not being fit from the health point of view.

Shri A. K. Sen: The judge will demand that others should be subjected to the same kind of test!

Shri Setalvad: It is very undesirable to think of a health test. It can certainly not be incorporated in the Constitution, even if you are going to have it. But apart from that, what is mentioned to me that after lunch some of the judges are lazy, that tendency of course depends upon the individuals—a person even at the age of forty-five or fifty just going off for a little while after a heavy lunch—it depends not on the age so much as on the individuals.

Dr. L. M. Singhvi: Is it the view of the witnesses that there is no scope for offering alluring emoluments to judges by way of transfer or with a view to an eye on the Chief Justiceship somewhere or other under the present dispensation? Is there no such scope even at present?

Shri Setalvad: As was pointed out by the Law Minister, there is a provision enabling transfers to be made, and with the consent of the person

concerned, and of course other appropriate authorities, a judge may be transferred from one court to another to the advantage of the State to which he is sent. It may be that after getting there, on account of another judge retiring there, he may become the head of that court in a short while. There is nothing wrong in that. That is not deprecated, so far as I can see from the Memorandum of the Law Institute.

Dr. L. M. Singhvi: The Memorandum has laid particular emphasis on this matter and deprecates the tendency of transferring judges and offering them alluring emoluments for effecting such transfers. I am wondering whether the scope for allurement and inducement is not there already under the present dispensation and whether the proposed amendments only enlarge the scope of the allurement a little bit, not substantially.

Shri Setalvad: The view of the Institute seems to be that any allurement which tends to make a judge seek some favour either from his Chief Justice or from the executive is to be deprecated. That I understand to be the principle behind the memorandum.

Dr. L. M. Singhvi: Would the witnesses tell us something about the position in respect of transfer in the case of judges in the federal districts in the United States, on the question of right to practise in the case of retired judges in the federal districts, or in the case of judges who have resigned from the position of judges of the Supreme Court, and whether we can draw any useful lesson from their experience of the dispensation which prevails in that country?

Shri Setalvad: So far as the United States Supreme Court is concerned, there is no age limit there. The person would resign when he is not fit, as Justice Frankfurter did recently. And there is no question there of a judge of the Supreme Court practising anywhere at all after his retirement, nor is it such in India.

Dr. L. M. Singhvi: There is a federal court for each federal district in the United States and therefore if you take the position of the federal district Judge, that would be comparable to our High Court Judges.

Shri Setalvad: What would be comparable to our High Courts would be the State Supreme Courts.

Mr. Chairman: It would be the Supreme Courts.

Dr. L. M. Singhvi: Their jurisdictions are different. Even in the case of the Supreme Court or the Federal Courts or Federal Districts would you be able to tell us about the prevailing practice there, particularly about the right to practise?

Shri Setalvad: No, I have no knowledge about it.

Mr. Chairman: I think they are appointed for life.

Shri S. M. Sikri: In some States.

Dr. L. M. Singhvi: You have mentioned some objections regarding the proposed draft article 226. You have suggested that there are certain difficulties in the present proposed draft. Would it be possible on the basis of the suggestions made here in this memorandum for you to furnish us with an alternative draft for article 226?

Shri Setalvad: That would be the function of the Secretary. I had a conversation with him before I came. I am sure he will look into it.

Dr. L. M. Singhvi: Regarding article 311, there are two aspects as evident from the memorandum on clauses. One is relating to the reduction in rank which is sought to be omitted and the other is regarding the elimination of two opportunities to be given. Would you think that disciplinary jurisdiction can be made more effective by any other device?

Shri A. K. Sen: The purpose is to eliminate two enquiries: not two opportunities.

Dr. L. M. Singhvi: The purpose is to eliminate two enquirics and to make it clear that one opportunity should be given to the government servant in respect of any departmental enquiry. At present, of course, he is given two opportunities for hearing. The other is in respect of reduction in rank which is sought to be omitted from the scope of judicial review. The anxiety of the legislature as well as of the executive is to see that disciplinary jurisdiction in this country is made more effective. In certain cases, the present position hampers more effective exercise of disciplinary jurisdiction. Would you suggest any other alternative apart from the omission of reduction in rank and this question of two enquiries?

Shri Setalvad: Certainly. But, I am afraid that would be outside the scope of the memo. I am ready to deal with it.

Dr. L. M. Singhvi: I am sure the Chairman will agree, when we are dealing with article 311, when we have certain objective, we certainly would like to know from the distinguished witnesses as to what alternative method can be followed.

Shri Setalvad: I should think, having regard to so many years of experience, that courts are being glutted with various applications for writs made by government servants. I am informed by my colleague Shri Sikri that there are as many as 2000 writs in the Punjab High Court and most of them are writs by government servants complaining of one thing or another. The remedy appears to be—I have said that before publicly—that there should be some method of constituting Administrative tribunals to whom this large army of government servants—2 million, I am told, in the Union Government only—can go and seek a very quick and very effective remedy—Tribunals which would be independent of the particular department concerned and which would, therefore, command the confidence of the government servants. That would relieve the courts of this congestion, and give the government servants speedy remedy. Because, they are in a very poor condition at the moment I have known of cases in Bombay where departmental enquiries have dragged on for two years and three years. The man is under suspension, sometimes not getting anything at all, sometimes getting half payment or three-fourths payment. There is inordinate delay in the departmental enquiry and ultimately, he has to seek remedy in a court—further delay. Administrative tribunals of a very efficacious kind would perhaps be the remedy.

Dr. L. M. Singhvi: There are service rules in each State relating to each service. Even in cases of reduction in rank, an enquiry under the service rules would perhaps be available. Do you think that, in case that enquiry is not properly conducted or if the punishment under that enquiry is not awarded in accordance with the law and equities of the cases, jurisdiction under article 226 might still be invoked by such aggrieved person so as to provide him that relief even in cases which are not covered by article 311 in case it is amended?

Shri Setalvad: So far as article 226 is concerned, either if article 311 is not observed or the appurtenant rules have not been observed in conducting the enquiry or some other principle of justice is not followed, then, article 226 will be available to him.

Dr. L. M. Singhvi: My last question relates to clause 14 which relates to vacation for courts. Would it not be better in view of certain things that a uniformity is brought about in respect of vacations for the various courts? I find from the memorandum submitted by the Institute that it has been said that each court should be left free to arrange its own work. Difficulty does arise that Members of

the Bar and members of the Benches in the respective States have to observe various measures of vacation. Some of them, naturally, have to work very much more and some of them very much less. Would it not be better if there is some uniformity either by common consent or by some other procedure so that there is greater uniformity of conditions of work for the Bar and the Bench?

Shri Setalvad: I would deprecate uniformity. Ours is such a large country. Conditions vary from State to State very much. We cannot rightly and properly have uniformity in all matters. The state of work in a court, the nature of work and so forth is a matter best regulated by the court itself. If we have a proper Chief Justice,—I do not see any reason why we should not have him—there will be no difficulty. I have known, Judges, without any regulation, sitting in the vacation in order to get rid of arrears; without any directive by the legislature or otherwise. They can be trusted to do that.

Shri P. N. Sapru: Arising out of this question, do you object to the fixation of 210 days as the maximum period which the Judges might work and then they can fix their vacation?

Shri Setalvad: I would be opposed to any legislation restricting the discretion of the High Courts in the matter of working hours or the total number of working days.

Shri P. N. Sapru: I am not thinking of working hours. I am thinking of the total number of days that a court must work. Would you be in favour of something like this that they must work 210 days in a year and then they can fix their vacation accordingly?

Shri Setalvad: I would be against even fixing the number of days which they ought to work. It should be left to the courts.

Shri P. N. Sapru: One or two questions about the age limit. The appointing authority has to be the Executive. Once appointed, the problem is how to ensure that a Judge shall be independent. The only method which the English speaking world has been able to discover is life tenure. In Britain, I do not know whether the Act has been passed, the proposal is that the Judges of the Supreme Court, not the Law Lords, should retire at the age of 75.

Shri Setalvad: Seventy-five, I think.

Shri P. N. Sapru: Bearing in mind the importance of judicial independence, is it not desirable that the age limit should be one which makes it unnecessary for a man to work for his living after that age?

Shri Setalvad: That is why 65 has been suggested, I think.

Shri P. N. Sapru: Even with 65, if it were possible, would you go further than 65?

Shri Setalvad: I would go tentatively up to 65 and see how it works. With increased health and sanitary, conditions, we may go to 67 or 70 later on.

Shri P. N. Sapru: I take it that you are opposed to the right of practice which has been concerned by the proposed amendment to Judges who leave the court to which they were originally appointed because that would lead to many complications, that would disturb the harmony of the courts, that may lead to executive interference and it will not be an edifying spectacle to see a person who has been a Judge of a court appearing in that court after the lapse of a few years?

Shri Setalvad: That is so.

Shri P. N. Sapru: So, that would really amount to reducing the position of these judges to that of district judges.

Shri Setalvad: Yes, it will be impairing their dignity. Even now many feel that these retired judges practising in the Supreme Court is derogatory to their judicial status and it will be much worse if they practise in their own States after retirement.

Shri S. N. Chaturvedi: In regard to article 311, may I take it that your point is that the person who is going to be punished should be given the right of making a representation against the punishment which is going to be awarded to him?

Shri Setalvad: Yes, that is what they call it the second opportunity.

Shri Sapru: Reduction in rank might in fact be a way to get round the dismissal business. The executive might not dismiss a person, but may just reduce him in rank.

Shri Setalvad: The memorandum states that reduction in rank sometimes is more poignant and a more trying punishment than actual dismissal.

Shri S. N. Chaturvedi: Regarding article 311, if the administrative tribunals are set up, even then do you think that this second opportunity should continue?

Shri Setalvad: Let us see what the tribunals set up are and how they function and so on, and then there will be time enough to consider what should be done under article 311.

Shri S. N. Chaturvedi: You have said that quite a number of these departmental trials are lengthened, and the officer concerned is subjected to harassment. Is it not in your experience that the guilty officers or the accused officers themselves use dilatory tactics, and many of them retire before any punishment is awarded to them? Has that not come to your notice? Is not an unfair advantage taken of the rules?

Shri Setalvad: I must admit that my experience so far as Government servants are concerned is not very large. I have not come across any cases as you, Sir, have mentioned.

Shri S. N. Chaturvedi: In the case of the All India Services and class I services, even after the decision is taken as regards the guilt of the officer, a reference is made to the UPSC. Is that not by itself an adequate safeguard by way of a second opportunity to the officer to have his say as regards the punishment that is going to be inflicted on him? Such an opportunity is not there even in the case of a murderer.

Shri Setalvad: A constitutional provision of which advantage can be taken in a court of law is very different from representation to or redress from the Public Service Commission.

Shri S. N. Chaturvedi: In regard to article 124, when it was suggested that the age should be decided on the advice of the Chief Justice of India, an objection was raised that that would amount to giving some sort of administrative function to him. Even under the Constitution, advice is tendered by him in a hundred and one cases. I would like to have your opinion whether it tantamounts to giving him some administrative function.

I have a feeling and that is the feeling shared by many others that if the question of age of a Supreme Court judge or High Court judge is going to be decided in an open court, that will be much less conducive to their dignity than a decision taken by the President on the advice of the Chief Justice which will eliminate the influence of the executive in this matter. Do you still think that that course will be better than taking a decision in this manner suggested? For, if this suggestion is accepted, then these cases will last only for a short period, and thereafter the question will be decided at the time of appointment itself.

Mr. Chairman: He has already given his opinion on that point. He has said that he would rather prefer to leave it to the court.

Shri S. N. Chaturvedi: What is your opinion about the efficiency of the judges who have been going right up to the end of the present age-limit? Do you think that if the age-limit is raised, it will enhance the efficiency of our High Courts and Supreme Court?

Shri Setalvad: If the age-limit is raised I do not think that the efficiency will be affected, because, as a matter of fact, even today, many of them, even though they are 62 or 63 are working and practising efficiently in the Supreme Court, and we are seeing them every day, and we see Supreme Court judges who are even 62, 63, 64 or 65.

Shri S. N. Chaturvedi: That is by selection of those who have functioned quite well. But if the age-limit is uniformly raised, then will not the efficiency suffer. Of course, it would depend upon the state of their health. There would be no address by any House of Parliament on this question, and you will not give this right even to the medical profession to pronounce on their fitness or otherwise. Do you think that the raising of the age-limit would not adversely affect the efficiency of the courts?

Shri Setalvad: I think that having regard to the conditions in which we are living, as regards housing, sanitation, increase of longevity etc. it will not impair the efficiency of the judges if the age-limit is raised to 65.

Shri S. N. Chaturvedi: This kind of thing has not arisen in the case of others. For the Government servants retire much earlier. The raising of the age-limit here is proposed only to attract persons from among the Bar and the jurists to serve on the Bench. Do you think that if Chamber practice is allowed it will serve the purpose?

Shri Setalvad: There is at the moment no prohibition, so far as I can see, against Chamber practice. There are different views as to what the term 'practice' means. Some people construe practice as meaning practice by openly addressing the courts.

Shri S. N. Chaturvedi: It may be restricted to that. The whole point is that they can supplement their earning. That is the whole object of extending the age-limit and giving larger pension etc. Does Chamber practice affect the dignity of the judiciary in any way?

Shri Setalvad: In my view, Chamber practice would affect the dignity of the judiciary also, because, we have—without mentioning any names—instances of Chamber practice being resorted to by retired judges of the Supreme Court and we thought, some of us at least thought, that it was undesirable.

Shri Narasimha Reddi: Supposing the age of retirement of a High Court judge is itself raised not to 65 but to 62, even then would you suggest that judges after retirement after the age of 62 should be prohibited from holding any office either under the States or under the Centre?

Shri Setalvad: I would.

Shri H. N. Mukerjee: I have a question of a rather general nature in mind which I have been hesitating to ask, but I feel that since you are here, perhaps, the Committee should take advantage of your presence. I can put it like this, and I do so with all respect. A person like me gets the impression that in the last decade or so, even in the highest reaches of the judiciary there has grown a sort of a hope or expectation of what might be called favours from the executive. This is an impression very widely prevalent in the country. We should like very much to know the position, because the question of the status of the judiciary is so much in the picture as far as this legislation goes. I would very much like to know if from your experience as a leading member of the Bar in this country you can tell us something about it, as to how far the position of the judiciary has been affected at least in recent years, and

how far the conduct of our judges has from time to time affected the approach of Parliament in its discussion on their status, rights and privileges etc. I am sorry to put it this way, but I would like to know if you can tell us something about this matter.

Shri Setalvad: It is a very general question, and I want to speak with great respect to the judiciary, and I do not wish to say anything which would hurt their prestige or their status, but there is no doubt that there is, to my mind, clearly a falling off of standards in the judiciary, both in the matter of efficiency and, I should say, their integrity or independence. When I use word "integrity" I am not referring to actual corruption. What I am referring to is their attitude towards matters coming before them towards the executive and the detachment which one should expect in the judiciary. These certainly are to be found in a lesser degree nowadays than it used to be 15 or 20 years ago. But this is, of course, my own view, and it maybe wrong.

Shri D. B. Desai: Would the term "inquiry" in the new clause give the right of cross-examination?

Shri Setalvad: I do not think any court has held that the second opportunity involves a right of cross-examination. All that the courts have held is that on the occasion when a certain punishment is decided upon, the servant should be told what the proposed punishment is and he should be given an opportunity of making a representation against the proposed action, which means that, being furnished with the report of the enquiring officer and what the Government propose to do, he can make another representation to Government, which the Government may consider and then finally decide as to what punishment they are going to give him.

Shri R. S. Khandekar: Would you suggest that if the age of the High Court Judge is increased to 65, he will be entitled to more pension and more benefits than now?

Shri Setalvad: I do not think the memorandum says anything about pension, but it does suggest the increase of age up to 65. The increase of pension was mentioned by me, and I based it on the recommendations of the Law Commission's Fourteenth Report.

Shri R. S. Khandekar: Would you suggest that with the increase in emoluments, they should not be allowed to practise?

Shri Setalvad: Yes, in my view it will be desirable not only to increase the age to 65, but also to give them a larger pension, which would prevent them from practising or taking office under Government, so that the dignity of the judiciary is properly maintained, and at the same time, in these difficult times of rising prices and so on, they may have enough to live on.

Shri R. S. Khandekar: Would you suggest that transfers should not take place between Bench and Bench, for instance between Bombay and Nagpur and *vice versa*?

Shri Setalvad: The transfer spoken of is transfer outside the State. Nagpur and Bombay would really be one State now.

Shri S. K. Basu: The memorandum of the Institute says that many people among the deserving members of the Bar would be deterred from accepting judgeship because of the possibility of transfer. The provision for transfer is already there in the Constitution. The only question is emoluments. If attractive emoluments are offered, don't you think the deterrent will be eliminated?

Shri Setalvad: There is not doubt a provision at present for transfer, but it has been worked under a convention that unless a Judge consents, there is really no transfer made, so that though the power is there, under the convention there is no apprehension of transfer unless he agrees to go.

Shri Santosh Kumar Basu: If some provision is made under the Constitution on an equitable and uniform basis for an increase in emoluments on transfer, so that there is no scope for favouritism, it will work more satisfactorily and we can given effect to the present provision in the Constitution regarding transfers.

Shri Setalvad: As I read the memorandum, the more substantial objection to the proposed change is based on the proposal that if he is away for five years to another State, he gets the right to practise in his own State. That is the inducement which is largely objected to because of the consequences of his practising in his own State. It is not so much the monetary part.

Shri Santosh Kumar Basu: So far as I remember, in the proceedings of the Law Commission in Calcutta, where I had the honour of presenting myself as a witness, the Commission was at considerable pains to find out inducements for good people to accept judgeships from the bar. Don't you think this is one of them?

Shri Setalvad: It may be one of them, but I think it would be a minor consideration, because, compared to the earnings in the bar, this would be a small inducement. The real way to get hold of the right men in the bar for judgeships is to make proper and equitable appointments to judgeships, so that a man who is deserving always gets his chance, so that it is considered an honour to be on the Bench, even if the remuneration is much smaller. In some places, for instance in Bombay, some Chief Justices have been able to induce people to go on the Bench at considerable sacrifice because they thought that if they could invite these people to the Bench, they would be able to tone up the Court.

Shri Santosh Kumar Basu: You say that the Institute is very averse to the idea of their coming back to their own High Court and start practice there because they would then be able to build up prospective supporters. Was it brought to your notice that there are several judges who are very prone to favour particular members of the bar, though the strength of the case may not justify such a course of action?

Shri Setalvad: It is very difficult to answer that question. One hears of all sorts of things said about judges but one has to be very cautious in accepting all that is said. Sometimes in stray cases what has been mentioned may have happened but I do not think that it is a frequent or constant occurrence.

Shri Santosh Kumar Basu: If that happens, can this provision for transfer be not applicable to them as to other members of Government service when they have developed connections in a particular way?

Mr. Chairman: It is a hypothetical question.

Shri Santosh Kumar Basu: It may not be the experience of all but it is the experience of so many juniors who are struggling at the bottom of bar and who have seen this.

I now come to article 226. The new provision in the Bill says that the cause of action may also be one of the reasons. The word 'also' is used. Is that not capable of various interpretations. You may remember why Parliament did not accept the Law Commission's recommendation in respect of the amendment of the Limitation Act for regrouping of the articles in the schedules of the Limitation Act according to the cause of action. That reasoning would also apply very strongly to the case of a writ petition if the jurisdiction is determined by cause of action. You have altogether ruled out in your memorandum the alternative jurisdiction based on cause of action. Will it not lead to a conflict of jurisdictions, if it is allowed to remain as it is? A High Court within whose jurisdiction a particular authority resides has got that juris-

diction under article 226. If this additional power is given to other High Courts by putting in the word 'also' then it will have jurisdiction in the same matter and that might lead to conflict of jurisdiction in the same matter.

Shri A. K. Sen: Do you mean concurrent jurisdiction of several courts on the same matter or one excluding the other?

Shri Santosh Kumar Basu: I say there will be conflict of decisions also.

Shri Setalvad: Do I understand you to refer to this? A man who has to make a complaint can go to the High Court where the authority is or to the court where the cause of action has arisen, which means that there will be two courts available to him of which he chooses one. Then there is no question of conflict.

Shri Santosh Kumar Basu: He files proceedings in one Court for instance, in the Punjab High Court against the Union Government. His petition is dismissed, without even giving notice to the other side and nobody hears about it. He goes back to Calcutta and files an application there. Since no notice has been served on the Union Government it is not known to them. There, in the Calcutta High Court, he may get admission of his petition and thus there will be conflict of decisions, if not conflict of jurisdiction. Can this be obviated by having a proviso to the effect that 'Provided that the High Court where the proceedings were originally started shall have exclusive jurisdiction in the matter'.

Shri Setalvad: Such a proviso would rather lead to complications. It may happen in very rare cases. The normal course would be to leave, a man the choice to go to the place where the authority is, as at present, or to the place go where the cause of action has arisen. The Secretary tells me that he would amplify the provision by adding the words 'in whole or in parts' in the clause.

Shri U. M. Trivedi: The point raised by Shri Basu, if I have heard him correctly, is that a man can go on moving one High Court after another when his application is rejected. But I understand there is a rule under which a man who makes an application under 226 has to declare on oath that it is the only one moved and he has not moved a similar application elsewhere.

Shri Santosh Kumar Basu: I do not think that is so.

Shri U. M. Trivedi: That is the practice I have seen.

Shri Setalvad: If it is not there, they will take care of it by providing for it in the rules.

Shri A. K. Sen: He will be guilty of suppressing a fact which will disentitle him. I know of one case where in the same High Court a man whose petition was dismissed moved before another Judge.

Shri Kashi Ram Gupta: If a Judge's age of retirement is raised to 65, will it not act as a deterrent to the coming in of new blood? Also it is not a fact that the older a man becomes, the less he is adaptable to new changes?

Shri Setalvad: As regards bringing in new blood, if that is the only consideration, why not work it out downwards? Why not make the age of retirement 45 so that the new blood is looked after? I suppose particularly in judicial matters experience and maturity of judgment are matters of great importance. Foreign Judges who have visited our country have said even in regard to Supreme Court Judges: 'You are losing your people in the judiciary at the ripest and best time'.

Shri Kashi Ram Gupta: Do you think that maturity is reached at 65 and if the age is raised to 65, it will benefit the people more?

Shri Setalvad: Yes, in a way. It is not as if all offices require the same

kind of qualities. The judicial office is a peculiar one in which experience and maturity count for a great deal.

Shri P. N. Sapru: Do you think transfer of Judges will lead to what is called national integration? I have not been able to understand this word; I believe in federal or regional integration. We have got many regional languages in the country. In some of our High Courts, we have dispensed with the system of translating records. Suppose a Judge is transferred from Madras to Allahabad, without translation of records what is the use?

Shri Setalvad: The hon. Member is asking a question about national integration. It is a subject on which I have not much knowledge nor experience.

Shri A. K. Sen: It has not figured in courts yet.

Shri Santosh Kumar Basu: I remember one particular case which happened some years ago. A Judge was telling the members of the Bar present at the time. After lunch, at 3 O'clock, my head begins to do this and that....'.

Shri A. K. Sen: He is one of the cleverest Judges.

Shri Narasimha Reddy: Do you think it imperative that no High Court Judge should be appointed unless he has the recommendation of the Chief Justice of the High Court and the Chief Justice of the Supreme Court? Would it be a salutary provision to preserve the independence of the judiciary?

Shri Setalvad: That, in substance, is what the Law Commission has recommended.

I would like to thank the Members for the courtesy shown to me.

(The witnesses then withdrew)

II. The Bar Association of India, New Delhi

Spokesman:

Shri Purshottam Trikamdas

(Witness was called in and he took his seat)

Mr. Chairman: The evidence you tender will be printed and published.

Shri Purshottam Trikamdas: I have been told about it.

Mr. Chairman: Your memorandum has been distributed to Members. If you wish to add anything, you may do so. Then Members will put questions.

Shri Purshottam Trikamdas: Substantially the points which the Bar Association of India wanted to raise have been put in the memorandum. They have also been dealt with in the memorandum which you were discussing before this.

Shri U. M. Trivedi: Do you agree that the principle should be accepted that a Judge of a High Court, if the age limit is raised to 65, should not be allowed to practice anywhere, even in the Supreme Court?

Shri Purshottam Trikamdas: I entirely agree. Not only should he not be allowed to practise, but he should also be debarred from further judicial appointment. What happens today is that a Judge retires at 60 in the High Court, and immediately after that, when he is not considered to be good enough to continue as a Judge of the High Court, he is given a judicial appointment. I have known of cases when Judges who have retired at 60 have gone on for 10, 12 and 14 years in that way. If he is good enough for another judicial appointment, he is good enough to continue a little longer in his present office. My own feeling is whatever may have been the reason at one time for fixing it at 60 the longevity in this country has increased, particularly so far as lawyers are concerned—busy lawyers live quite long

and their minds are fairly clear—and so the minimum age for all Judges, whether of the Supreme Court or of the High Court should be 65 and they should not be permitted to practise after retirement.

Shri U. M. Trivedi: Would not the same principle apply to executive appointments also?

Shri Purshottam Trikamdas: That depends upon the kind of executive appointment. For example, there may be a diplomatic appointment like the one offered to Shri Chagla, who was at one time a Judge. He did not retire as a Judge. If an outstanding person is available for a job which it is considered to be a job which he can fulfil, then I do not see any reason why a person, even if he is a Judge, should not be appointed to that post. But it should not be dangled before him as soon as he is about to retire that he will be given an executive appointment.

Shri A. K. Sen: Why do you make an exception in the case of Mr. Justice Chagla? It was given to him while he was on the Bench. What is the principle or reason which distinguishes his case from others?

Shri Purshottam Trikamdas: Ordinarily, it should not be done, but if after a person has rtired . . . .

Shri A. K. Sen: Possibly, you know the criticism in Parliament about this. There was the case of one of the Secretaries accepting an appointment before the ink was dry on his signature in the request for retirement.

Shri Purshottam Trikamdas: I am aware of it, and many of us did not like that idea.

Shri A. K. Sen: I can understand the principle that they should not be considered for any appointment after retirement.

Shri Purshottam Trikamdas: If it is done in exceptional cases, that is a different matter.

Shri A. K. Sen: As you will appreciate, this is an executive appointment. So, who is to decide which is the rule and which is an exception?

Shri Purshottam Trikamdas: In that case, they should not be given any appointment. I would certainly go as far as that.

Shri U. M. Trivedi: What is your view on the question of appointment of *ad hoc* Judges? Should it be limited, as at present, to the retired Supreme Court Judges? Or, should the scope be widened to include all those whom the Chief Justice desires to take?

Shri Purshottam Trikamdas: I think it should be resticted to the Judges who have sat in the Supreme Court. They may be called back for service for a short period, provided they agree because the convention is, so far as I am aware, that a retired Judge is not called back for service in the Supreme Court unless he is agreeable.

Shri U. M. Trivedi: What can be your reasons for this limitation that only retired Supreme Court Judges should be called for appointment as *ad hoc* Judges? We want to extend it to include any person who is so learned as to become eligible for appointment as Supreme Court Judge. If the Chief Justice wants him to go and sit in the Bench, what is your objection to that?

Shri Purshottam Trikamdas: There are various angles to that question. One angle will be that there will be angling by various persons to be appointed as additional, temporary or *ad hoc* Judge.

Shri Hari Vishnu Kamath: Angling and wangling also.

Shri Purshottam Trikamdas: Probably, but I would not say that. That is an undesirable thing which should not happen. But when a person has been appointed as a Judge of the Supreme Court and he has retired, you can call him back.

Shri A. K. Sen: Is there angling for appointment as Supreme Court Judge?

Shri Purshottam Trikamdas: I am not aware of that. You should know better. If there is angling for appointment as Judges of the Supreme Court, I think it is extremely bad and undesirable. If I had the appointment in my hand and a man who was wanting to be a Judge of the High Court or the Supreme Court came to me, I would certainly rule him out straightway.

Shri U. M. Trivedi: The object of amending article 226 is merely to help those litigants who might be employed by the Union Government and posted in different States. Under the present law, they can go only to one High Court, and that is the Punjab High Court at Delhi. This amendment has been made to meet that eventuality. So, you would agree that this is a desirable amendment. In that case, do you not feel that the whole aspect of article 226 may be so modified, or the law may be so made, covering all the provisions of article 226 as to give complete jurisdiction to the High Courts on the question of their powers on the prerogative writs?

Shri Purshottam Trikamdas: Already, article 226 is a fairly wide one Under article 226 the High Courts are empowered not merely to deal with writs but other orders also. The Supreme Court under article 32 can deal with only Fundamental Rights and issue writs. The High Court can correct anything.

Shri U. M. Trivedi: True. But there is the question of interpretation. The accepting or rejecting a writ has become so discretionary that at one time one High Court says "it is all right, here is a gross mistake committed; we will intervene; this is an adequate remedy" whereas another High Court says "you ought to have preferred an appeal in the department and then you ought to have come here". By the time that pronouncement is made, the time for making an appeal to the department is lost and the writ though admitted is dismissed. So, it depends upon which advocate appears for which side and there is no hard and fast rule by virtue of which a High Court is bound to give a ruling on a particular point in a particular manner. The discretion is so wide that it causes a good deal of heart-burning, particularly in the cases covered by article 311. In view of that, has the Bar Association given any consideration to this aspect that while amending article 226 whether it would not be better to have a code made within the four corners of which the High Court will exercise jurisdiction? The discretion might remain there. Now one ever knows the fate of these applications, even when they have been admitted, till the end is reached. So, would it not it not be better for the courts to have a code, like the Crown practice in England?

Shri Purshottam Trikamdas: I have forgotten what the English Crown practice is.

Shri A. K. Sen: If I may tell Shri Trivedi, the Crown pratice is on procedure. The exercise of power is not codified even for the High Courts.

Shri U. M. Trivedi: I was giving only one analogy. The procedure is there. It is true that our High Courts have also framed rules. I still wanted to know whether some codification could take place.

Shri Purshottam Trikamdas: I do not see how it will help us. Unless you want to cut down the powers of the High Courts regarding either issuing of writs, or orders in the nature of writs, or the superintendence power under article 227, I do not think it will be desirable because finally, I believe, it should not be the administrative agency which should lay down the law. On the question of interpretation of law anybody could easily go wrong. I do not say that the decision given by the High Court would necessarily be right because . . .

Shri A. K. Sen: Shri Trivedi wants enlargement of the powers under article 226.

Shri Purshottam Trikamdas: I would welcome it. For example, take the writ of *habeas corpus*. If the magic words have been used by the officer concerned, there is no remedy, because the High Court says "we are powerless". In this connection, I might mention that the now defunct Supreme Court of Burma, Rangoon, went a step further in the case of *habeas corpus*. They did not say "we will look at the order and see whether on the face of the order it is perfectly all right". They said that they will call for the papers and see whether the authority which made the order had all the necessary material which would justify that order; of course, not that they are going behind the material. I would certainly welcome it. But, then, the difficulty would be that on orders of that nature which may be made you cannot have a full-scale trial where the trial itself is barred, but in other cases, like the *writ* of *certiorari* I think the court should have a wider power and not merely power to examine the legality or propriety of the orders made. In cases where it considers that interests of justice require it, it may exercise semi-appellate power to dispose of the matter instead of sending the matter back and starting the whole round again.

Shri U. M. Trivedi: You have stated that you have no comments to offer on the proposed amendment to article 276. Is it because you want to avoid any comments because of the question of taxation?

Shri Purshottam Trikamdas: You have increased the tax from Rs. 250 to Rs. 500. We have no violent disagreement with the amendment.

Shri A. K. Sen: It is a matter of no concern to you.

Shri Purshottam Trikamdas: It is a matter of concern to junior lawyers.

Shri A. K. Sen: I agree.

Shri U. M. Trivedi: The point we discussed at very great length when we framed this article was that this is a question of taxation upon taxation. Because you are taxed, you have to be taxed. Income-tax is levied only by the Union. To have a tax by the States on this income was considered repugnant to the very provision of income-tax. Now the States are probably very anxious to get more out of a man who pays more. Formerly it was Rs. 100, then it was raised to Rs. 250 and now it is being raised to Rs. 500. We would like to know your independent opinion whether this would not be resented.

Shri Purshottam Trikamdas: This is certainly not income tax. We lawyers are quite familiar with tax upon tax. In my personal view, Rs. 250 is perfectly all right and it should not exceed it. I would not welcome a slab system because then it would certainly be a sort of income tax you are imposing.

Shri A. K. Sen: In certain corporations—*e.g.* Calcutta Corporation—they have introduced a slab system.

Shri Purshottam Trikamdas: Personally I think that is not proper. As regards page 4 of our memorandum, there is a misprint. The comments shown under 'Re: amendment of article 297' are really those pertaining to amendment of article 311.

Shri U. M. Trivedi: The second opportunity given under article 311 was a right enjoyed for so many years here. Now Government want to curtail right, in two ways: They want to deprive a man entirely of the protection which is being given by the provisions of article 311 if he is merely reduced in rank. That is, if a man is in Class I service, he can be reduced to Class II, then to Class III and further on he can be reduced to the status of a Chaprasi. He has no remedy whatsoever by virtue of the proposed provision.

Shri A. K. Sen: He has the statutory rule.

Shri U. M. Travedi: What rule? Once you say there need not be any inquiry about his reduction in rank, there is no limit to it.

Shri A. K. Sen: That is not what we say. All that we say that this requirement is not under the Constitution.

Shri U. M. Trivedi: That might be the object in view. But the plain simple meaning of the opportunity being lost is what I have stated. We are removing the words 'reduced in rank' from the provision: and rewording the provision thus:

> 'No such person as aforesaid shall be dismissed or removed except after an enquiry in which he has been informed of the charges against him . . . '.

Do you not think that this will ultimately lead to the man either committing suicide or getting out?

Shri Purshottam Trikamdas: It would certainly lead to use of arbitrary powers by the person who can reduce him in rank without the safeguard of the Constitution, and there will be no check on such arbitrary powers. A departmental inquiry may be there. I am quite familiar with such inquiries and their results. Some of them are very fair, some are grossly unfair. If you take away this right, the departmental head can reduce a man in rank. He may or may not be reduce to a Chaprasi, but he can certainly be reduced to the substantive rank. I have come across one case in which a man had been appointed to a post of Head Clerk or somethink like that. He was pushed up till he was actually drawing Rs. 1500. Then something happened.— The case came to the Supreme Court—an inquiry was made, but before that, he was reduced to the substantive rank which was Rs. 170. There are other cases also.

Shri U. M. Trivedi: You are a person of very great experience. Would it not be better if instead of amending the Constitution in this manner, we have something like the *droit administratif* in French law. These independent administrative tribunals may deal with the cases and give punishments where necessary?

Shri Purshottam Trikamdas: We are introducing an idea which is, for the time being, foreign to our Constitution and administrative law. Even if you have this provision, you will have to consider whether the administrative tribunal will have the last word in interpreting the law or whether there will still be an appeal or writ lying to the High Court or Supreme Court. I might mention that, so far as the French system is concerned, the administrative law courts are a much greater protection, as they are functioning there, but it will be wrong to believe that the final decision of the administrative court from which there is an appeal on facts, is very quick. It also takes 2, 3 or 5 years before the final tribunal decides. But if you are willing to give all those powers of going into the question of fact again by the tribunal, then it may be worth considering. I am not saying that we should immediately jump into something which is not, for the time being, part of our system.

Shri U. M. Trivedi: So, you certainly do not agree to do away with the so called second opportunity?

Shri Purshottam Trikamdas: That is so.

Shri U. M. Trivedi: What useful purpose does the second opportunity serve?

Shri Purshottam Trikamdas: The second opportunity comes at the stage when the tribunal or committee, whatever may be have been set up under the rules, has come to a conclusion and reports that he is guilty. Then the question arises as to what punishment should be imposed on him—whether he has to be dismissed or reduced in rank or some other warning or punishment should be given. That is the stage when the man can come forward and show cause why punishment should not be given to him. If you take away the second opportunity, then as soon as he is found guilty, whoever is responsible for meting out the punishment can give him any punishment, including dismissal, and he will have no remedy against that.

Shri P. N. Sapru: Arising out of the question of Shri Trivedi, will the UPSC not provide an opportunity to the person concerned to make a representation in regard to the punishment that is proposed to be meted out to him?

Shri Purshottam Trikamdas: Yes, provided you make it compulsory. The Supreme Court has held that the power of consultation with UPSC under article 230 is optional. It may be referred to the UPSC or it may not be referred, though I know that usually it is referred. But unless you make it perfectly clear and amend that article, you are depriving him of the second opportunity. But if consultation with UPSC is made compulsory then a second opportunity would certaily be given by an independent authority.

Shri P. N. Sapru: I take it that your objection will be met if in the rules there is a provision making it compulsory that UPSC shall be consulted in regard to these matters.

Shri Purshottam Trikamdas: Yes, he should have an opportunity even before the UPSC to show cause why the particular punishment should not be meted out to him.

Shri P. N. Sapru: I am speaking of the punishment, as to what punishment is to be meted out to him.

Shri Purshottam Trikamdas: But before the punishment is meted out, one must have an opportunity to show why the punishment proposed should not be meted out to him. That should not be left out Merely referring it to the UPSC and it saying "well, we propose to impose this punishment on him" without hearing him will not serve the purpose.

Shri P. N. Sapru: My idea is that he should have an oppurtunity to go to the UPSC and show cause why that punishment should not be meted out to him.

Shri Purshottam trikamdas: I think it could be done.

Shri P. N. Sapru: What is your view about the retirement of judges?

Shri Purshottam Trikamdas: We have said in the memorandum that the age of retirement should be 65 with a complete ban on practice.

Dr. L. M. Singhvi: You go on further to say that a mere extension of three to five years would not serve the purpose in the context of the present taxation and cost of living. So, in order to deal with the situation adequately you have stated that the salaries of judges should be raised, their pension should be increased and their age of retirement should be increased to 65.

Shri Purshottam Trikamdas: Yes, because you bar them from judicial appointment and executive appointment.

Shri P. N. Sapru: I think the best thing would be to give them life tenure or near life tenure. 65 is near life tenure. In the circumstances of this country, is it possible to make it life-tenure?

Shri Purshottam Trikamdas: I think it would be jumping quite ahead that once a judge has been appointed he continues to be a judge for life on the same salary that he has been receiving and he looks to nothing else. He may retire at 65 or even at a later stage but when he retires he continues to be a judge.

Shri P. N. Sapru: So, your view is that there should be no fixed age limit for retirement by judges?

Shri Purshottam Trikamdas: I am taking things as they are, and one step at a time is good enough. From 60 we have raised the age to 65. We have to stop them from practising, given them better salarly and better pension. If we can give them full salary after retirement, it would be a good thing.

Shri P. N. Sapru: The question of pension is not before the Committee even though I feel that they should

get good pension. On the question of retirement your view is that they should not retire earlier than 65.

Shri Purshottam Trikamdas: Yes, except for incapacity.

Shri P. N. Sapru: And he should be forbidden from practice thereafter?

Shri Purshottam Trikamdas: Yes, every kind of practise.

Shri P. N. Sapru: Will you allow him to be re-employed?

Shri Purshottam Trikamdas: Insted of that I have suggested better salary and a good pension.

Shri P. N. Sapru: I take it you are opposed to the tarnsfer of Judges because it would give them compensatory allowance and the transfer would enable them after a lapse of five years from their own courts to practise in their own courts. It will lead to unhealthy practices on their part. They will keep themselves in touch with their own courts and there might be other complications. Am I right?

Shri Pursottam Trikamdas: Not entirely, because transfers are permitted even under the present Constitution. Transfer under the proposed conditions will lead to a scramble among persons trying to curry favour with the Chief Justices to get away somewhere and come back later to practise in their own courts.

Shri P. N. Sapru: It might undermine the authority of the Chief Justices.

Shri Purshottam Trikamdas: It might happen the other way also. Also, there will be anomalies.

Shri A. K. Sen: The period of five years is prescribed so as to lead to complete severance of his connection with the parent courts so that he does not really exercise a paramount influence, the assumption being that a Judge retiring, and practising immediately in the same courts may have some advantage over other practitioners.

Shri P. N. Sapru: He might be Judge in another State and yet he may keep in touch with his own State. So when he comes back, he will have an advantage over others. It is undesirable from that point of view. But do you think it will lead to national integration?

Shri Purshottam Trikamdas: An occasional transfer can take place. For example, the transfer of a very learned Judge fom Calcutta to Mysore. It was a new High Court. It certainly toned up the judiciary and everybody welcomed it in Bangalore. But that is a different matter. Then also do not transfer a Judge without his consent. If it becomes like tranfer of a District Magistrate or District Judge, he can be sent from pillar to post. If a Judge is inconvenient or considered not desirable by the Chief Justice, he can be sent out, say from Bombay to Assam or Calcutta to Trivandrum.

Shri A. K. Sen: Theoretically, even now you can do it. It is only by convention that we do not make such transfer. In fact, it is to bring about that consent that these additional inducements have been thought of, since such consent is not readily forthcoming.

Shri Purshottam Trikamdas: If you are thinking of principle, why not permit him to work for five years more?

Shri P. N. Sapru: You are not opposed to initial appointmet of a Judge to a court outside his State.

Shri A. K. Sen: We tried to bring about a convention that 25 per cent at least of the initial appointments should be from other States. Unfortunately, that has not worked. The Chief Justice has refused to recommend it.

Shri Purshottam Trikamdas: If that is done, it would be very salutary.

Shri P. N. Sapru: In some of our High Courts, we have done away with the system of translating records into English. If you tranfer a Madras Judge to Allahabad or *vice versa,*

translation will be necessary. This can be applied only to Hindi-speaking areas, e.g. Allahahbad to Bihar, Bihar to MP and MP to Rajasthan. Then the results you envisage may not happen.

Shri Purshottam Trikamdas: I agree entirely, that unless you have a common language for all courts, transfer would create difficulties which we do not visualise today. A man going from here to Mysore will find it very difficult. That may not be so difficult in the case of a Judge going from the Hindi-speaking region to Gujarat or Maharashtra.

Shri P. N. Sapru: Then there is the question of *ad hoc* Judges. Sometimes a Judge goes on leave for two or three months. You cannot appoint a practising advocate in his place for that period. It will be giving him an undue advantage over his fellow-practitioners. Under those circumstances, do you think the practice of appointment of *ad hoc* Judges might serve a useful purpose?

Shri Purshottam Trikamdas: I might tell you of the experience we had in the Bombay High Court in the old days whey Additional Judges used to be appointed. A number of practitioners used to try and get such appointment and return after six months or one year to practise as an ex-Judge. Thereafter, I am glad to say, although it was not part of the law, one of the Chief Justices—I believe it was Justice Martin or Justice Beaumont—who instituted a convention that if a man was asked to be an Additional Judge, he must give an undertaking . . .

Shri A. K. Sen: It was the same in Calcutta also.

Shri Purshottam Trikamdas: This relates to the interval between his being an Additional Judge and being appointed as a permanent Judge. This is only if he is to be appointed later as a permanent Judge.

Shri A. K. Sen: He had to give an undertaking that when he is offered a permanent judgeship, he must accept it.

Shri P. N. Sapru: In our court, unfortunately a case happened. A person was appointed Judge for two years. Eight months before the term expired, he retired. Apparently, no undertaking was taken from him.

Shri Purshottam Trikamdas: Personally, I do not like appointment of Additional Judges at all.

Shri P. N. Sapru: At the time of appointment, the age of a Judge should be ascertained and fixed. Who should fix it and how?

Shri Purshottam Trikamdas: I understand a convention has been established that the age of a Judge will be fixed before his appointment and thereafter it will not be questioned, although technically speaking, it is still possible to question it under a writ of *quo warranto*. But the way the amendment has been suggested, unless you really hand over that power of investigating this—this is my personal opinion—to the President as such through his own agency and come to any conclusion, saying that the President may inquire will in practice mean that some Under Secretary in the Home Ministry would be inquiring into it.

Shri A. K. Sen: Up till now, the cases have been decided on the advice of the Chief Justice of India; it is not some Under Secretary who decides it.

Shri Purshottam Trikamdas: I do not think that the Chief Justice should be brought into this.

Shri P. N. Sapru: What is the other agency that you suggest?

Shri Purshottam Trikamdas: The President should make an enquiry through his own secretariat. The other agency is the Chairman of the UPSC. I personally feel that it is not derogatory to anybody, though some of my colleagues feel that it will be

derogatory to a person who is about to be appointed a Judge if the question of his age is being determined by the Chairman of the UPSC.

Shri Gopikrishna Vijaivargiya: In regard to clause 12 which deals with article 311, in view of the criticism from many quarters that there is corruption and slackness in the services and the procedure of taking disciplinary action is very lengthy, don't you think that this amendment is necessary?

Shri Purshottam Trikamdas: How is it going to shorten it? There may be a few dishonest men who will also get the chance, but after all, it is a safeguard from arbitarary action on the part of the officer. As Mr. Sapru, said, on the question of meting out punishment, the matter should be sent to the UPSC.

Shri A. K. Sen: That is done after the punishment is given. You say it should be done before the punishment is given. Article 320 says it should be sent after the punishment is meted out.

Shri Gopikrishna Vijaivargiya: It is true that a similar const tutional safety to Government servants does not exist in most other Constitutions of the world and therefore, here also it should be abandoned and some reasonable safeguard for the services can be provided in the rules?

Shri Purshottam Trikamdas: I do not know whether in the new Constitution of Nigeria, such safeguards have been put; perhaps not. But knowing the condition of my country, I would like the safeguard to be there in the Constitution itself. Rules can be so framed as to make the safeguards illusory.

Shri Gopikrishna Vijaivargiya: Can you show us any other Constitution where there is a similar safeguard?

Shri Purshottam Trikamdas: I have not carefully studied on this question.

Shri V. C. Parashar: The accused is being asked, after enquiry, as to whether the punishment which is being proposed is proper or not. How do you justify giving such a right to the Government servants?

Shri Purshottam Trikamdas: In the case of the accused, it is the court of law which decides the case and at least there are two appeals over the decision of the magistrate's court. But in the case of the Government servant, the enquiry itself is a departmental enquiry, which is very different from a court of law.

Shri A. K. Sen: My experience is that the departmental enquiries are very fair. Usually a different officer is put in charge of it.

Shri U. M. Trivedi: I must have appeared in 200 departmental enquiry matters wherein writ petitions were filed in the High Courts of Madhya Pradesh and Rajasthan. It is my bitter experience that in none of the cases the enquiry was fair. Your experience may be otherwise.

Shri P. N. Sapru: Under article 311, the exceptions are laid down in subclauses (a), (b) and (c). Therefore, there is no difficulty in getting rid of a Government servant who is habitually corrupt, who is a security risk or who is convicted of a criminal charge or who is otherwise undesirable. The article as it is is self-sufficient.

Shri R. S. Khandekar: You said that the provisions under 311 can be waived if the case is referred to the Public Service Commission. May I point out that there are many departments which do not come under the purview of the Public Service Commission? Under such circumstances, what is remedy that you would suggest? Would you like to retain 311 as it is, or would you suggest some other remedy?

Shri Purshottam Trikamdas: If you make these cases amenable to Public Service Commission, then it is a

different matter. If you want an independent body, then the Public Service Commission. I take it, is an independent body. Otherwise, I would certainly not change 311. As Shri Sapru has just pointed out, a man can be dismissed without any enquiry under 311.

Shri Santosh Kumar Basu: Under article 320 (3) it is said: "The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted.. .." So it is obligatory.

Shri Purshottam Trikamdas: The Supreme Court has held that this is merely directory and not mandatory. I disagree with that judgment, but it is a judgement of the Supreme Court.

Shri S. N. Chaturvedi: What is the principle behind your saying that the accused should be given an opportunity for passing some sort of comment on the quantum of punishment that is given to him? Would it not give him an opportunity to extend the proceedings and adopt dilatory tactics?

Shri Purshottam Trikamdas: Not at all. After all, the Public Service is going to inquire into the whole matter. All the proceedings including the decision of the Government go to them and they are entitled to look into the whole matter. All that I am saying is that the man should have the right to say that the punishment awarded is unnecessarily harsh.

Shri S. N. Chaturvedi: On this question of determination of age of a judge by the President on the advice of the Chief Justice, you do not want to bring in the Chief Justice. When the Chief Justice and the Executive have a say both in the appointment and also in the promotion of judges, does it not mean that we are very allergic only about the determination of age if we say that in respect of this the Chief Justice should not be consulted?

Shri Purshottam Trikamdas: Determination of age is a question of fact, which can be verified from the matriculation certificate or any other certificate. When a question of fact is disputed by anybody, it is likely to go before the court of law and the courts will have to deal with it in a judicial manner. Therefore, I do not want the Chief Justice to be brought into this in order to avoid any kind of embarrassment to himself and his brother judges when the case goes before him for determination.

Shri S. N. Chaturvedi: When a case about the determination of the age of a judge goes before a public forum like the court, would that be conducive to the dignity of the judges?

Shri Purshottam Trikamdas: I want to make a distinction here between the question of determination of age before appointment and the question of determination of age after appointment. If after appointment a judge is to be retired earlier because his age as given before appointment has been found to be not correct, then the Chief Justice should definitely not be consulted on that.

Shri S. N. Chaturvedi: Are you of the view that the age as given at the time of appointment should be regarded as the true age?

Shri Purshottam Trikamdas: I do not say that. If a wrong age has been given, it is not for the Chief Justice to advice on that. If it is a question of intial appointment it may be all right. but when it is a question of asking a judge to retire, I do not think the Chief Justice or the judiciary should be brought into that at all. You may go before the Public Service Commission or any other independent organisation, but the Chief Justice should not be brought in.

Shri S. N. Chaturvedi: At the moment, as the law stands today, anybody can question the age of a judge. Therefore, when the case goes before a court of law, would that be conducieve to his dignity?

Shri Purshottam Trikamdas: Supposing I am the Chief Justice and I say that a particular judge has wrongly given his age and that he may be removed from service, he can go to a court of law. The matter may come up in appeal before me. What will be my attitude towards an appeal regarding which I have taken a decision?

Shri A. K. Sen: After the amendment it will be final.

Shri S. N. Chaturvedi: Then it will be determination by the President on the advice of the Chief Justice of India.

Shri A. K. Sen: Instead of the case being decided by a Munsiff or an ordinary judge, is it not better that the case is decided by the Chief Justice?

Shri Purshottam Trikamdas: Well, somehow or other, my mind does not seem to agree with the idea that the Chief Justice should be consulted in this matter.

Shri Santosh Kumar Basu: As regards 311, is not a second enquiry a repetition of the first, having regard to the nature of the enquiry that is envisaged, namely: "Please show cause why this punishment should not be imposed upon you"? That would open the door to a reptition of the entire enquiry because then it would be said that no punishment shculd be awarded against him because he is not guilty. I am not going to prove at the second stage that no punishment can be imposed upon me because I am not guilty. In that case, that opens the door once again to a fresh enquiry on facts and merits which have been gone into in the first enquiry. Is it not right? So, the second enquiry has to be confined only to the punishment, and that has to be decided with reference to the commission of the offence. No inquiry officer can say that one is barred or precluded from raising other questions of merits. There is a similar provision in the Banercs Hindu University Act. There was a Professor there whose continuance was considered to be detrimental to the interests of the University. In the second stage of the enquiry against him he was asked why he should not be dismissed or his services should not be terminated. At that stage, it was insisted upon that he should have chance of another enquiry by the Executive Council, the first enquiry having been by the Reviewing Committee with regard to the merits of the case. Now it has been held that he is entitled to open the whole case and show why no punishment should be awarded against him, because he is not quilty and he is entitled to prove his case at that stage.

Shri Purshottam Trikamdas: There are two reasons which I would give. Firstly, in the departmental inquiry an accused is not entitled to any legal assistance. Secondly, the second opportunity is not a fresh inquiry at all. The record is there and the officer before whom the second enquiry takes place is not going into the facts over again. He can point out on the facts which have been proved from the existing records that he is not guilty. That is all. He cannot bring in fresh evidence. So, there is no second opportunity.

Shri Santosh Kumar Basu: It may be argued and it may be accepted by the court that the principles of natural justice require that he should be entitled to prove his case. He may argue that he deserves no punishment because he is not guilty.

Shri Purshottam Trikamdas: I will give an analogy. A man has been acquitted in a criminal court or convicted and the matter goes in appeal. At that stage, he is entitled to show cause why he has been wrongly convicted. He can go even into facts though ordinarily he may not be entitled to do so. This is nothing more than that. After all, in a departmental enquiry a person may not have the opportunity of being properly defended, because he has to do it himself. He cannot take outside help and cross-examination is a difficult art.

Why should he not be permitted to establish his innocence? On the basis of the same report he wants to show how the conclusion which has been arrived at that he is guilty is wrong.

Shri Santosh Kumar Basu: Therefore, it is not correct to say that he will confine himself only to what punishment should be awarded. Do you not agree that if he is given an opportunity of reopening the matter on the merits of the question and the facts as well then it opens the door wide to enlargement of the enquiry.

Mr. Chairman: There should be no arguments here.

Shri Santosh Kumar Basu: I want to know whether he will modify his answer in view of the fact that it might reopen the door once again to an inquiry on facts and that might prolong the proceedings, resulting in all sorts of complications, doing injury to the officer because of the long delay in disposal of the matter, loss of evidence once again so far as public authorities are concerned, and in that way many important cases of corruption and other kinds of evils which we want to stamp out may be hampered. All these mischiefs can be avoided if a second inquiry, which is wholly unnecessary, is eliminated. Will you consider that aspect of the matter?

Shri Purshottam Trikamdas: I do not agree with that at all. I have given my reasons for saying why a second opportunity is necessary. It is not a second inquiry. So, there should be no question of fresh evidence. The evidence is there and the record is there. On the basis of that evidence you have held one person guilty perhaps wrongly. Why the person guilty held can not be allowed to convince another authority of his innocence, instead of allowing the department to hurry up with the matter?

Shri Narasimha Reddy: Some of the advocates of the High Courts, whose views I wanted to have regarding the age of retirement of Judges being raised to 62 or 65, told me that even as it is, when the retirement age is 60, in the closing six months of their tenure some of the judges become fidgety, impatient and so on. Do you agree with this view? What is your experience with regard to High Court Judges on the eve of retirement?

Shri Purshottam Trikamdas: I have practised in the High Court of Bombay for 34 years before I came over to the Supreme Court. There may be an instance of an occassional Judge acting like that but otherwise that is not what I have found. Neither have I found anything of that nature in the Supreme Court for the last seven years when I have been practising here. If the Supreme Court Judges can go up to 65, why not the High Court Judges?

Shri B. B. Verma: You state in your memorandum that the age of retirement of the judges should be 65, provision should be made for liberal pension, attractive salaries should be offered so that successful members of the profession are attracted to the judiciary and so on. May I know the consensus of opinion held by the members of the Bar about the transfer of judges from one State to another?

Shri Purshottam Trikamdas: I answered it a little earlier. There are various difficulties. The provision for transfer already exists in the Constitution as it is. What is now suggested is that there should be more transfers and judges should be compelled to go to some other High Courts. And what is dangled before him is that at the end of five years he can come and practise in his own High Court. That will lead to quite a number of undesirable consequences, so far as transfer by consent of the judge is concerned, from one High Court to another High Court. For example, difficulties might arise on the question of language, as pointed out by Shri Sapru. I agree with him there.

Shri Hari Vishnu Kamath: I shall confine myself to two issues only—one is the question of raising the age limit of the High Court Judges from 60 to 62, or 65 as some would like to have it, and the other is the determination of the age of the judge. Taking the first issue, did I hear you right as saying in answer to a question by my colleague, Shri Trivedi, that you favour 65 as the minimum age limit for a High Court Judge? I heard you use the word minimum.

Shri Purshottam Trikamdas: I did not say that. My friend, Shri Sapru asked a question whether the age should be indeterminate. Though personally I would have liked it, since we have 65 years in the Constitution and as normally some High Court Judges can go to the Supreme Court and sit for five more years. I suggested as my opinion that there should be a uniform practice. so far as the ages of Judges are concerned, and it can be fixed at 65 at present. If you meet Mr. Justice Mahajan or Mr. Justice Das, who have retired—I have not met the other judges like Mr. Justice Patanjali Shastri—you will find that they are perfectly fit although they are past 70 now. So is Mr. Justice Bose or Mr. Justice Venkataraman.

Shri Hari Vishnu Kamath: Stretching that argument a little further, does the Bar Association of India, of which you are the plenipotentiary representative here, favour an ageless situation, that is to say, that there should be no age bar at all and the judge should be removed only on the grounds of corruption or physical or mental infirmity? Would you prefer that position?

Shri Purshottam Trikamdas: I have no mandate from the Bar Association to say that but personally I would allow a judge to go on if you give him a very proper pension and not a very small pension, about 20 or 25 per cent. of his retiring salary, which is not enough.

Shri Hari Vishnu Kamath: You have said in your memorandum that it is desirable that judges should not at all practice after their retirement. You have travelled widely and have extensive knowledge of judicial systems in other countries of the world. How many countries could you recall where a judge, after having retired, is allowed to practice and in how many other countries is a judge not allowed and there is a ban on his practice?

Shri Purshottam Trikamdas: I am familiar with countries with the Anglo-Saxon system.

Shri Hari Vishnu Kamath: The Commonwealth countries.

Shri Purshottam Trikamdas: No. Even in the United States, so far as the Federal judges and the judges of the Supreme Court are concerned, they are appointed for life. In England, judges are appointed for life. Once a man is apopinted a judge, he is a judge although, I think, recently a retirement age of 72 has been fixed. But he still continues to be a full-fledged judge and he may be called upon by the Chief Justice to come and hear a particular case. He goes on full salary.

Shri Hari Vishnu Kamath: In the countries where there is a provision for retirement or resignation, are they allowed to practise in some countries and are not allowed in some other countries?

Shri Purshottam Trikamdas: I know of one country where a part-time judge of the Supreme Court was appointed, namely, Switzerland. He can practice. He can be a professor and can still be a judge of the Supreme Court. That is so because the country is very small and they cannot afford a reasonable salary to make him a full-time judge and perhaps there is not enough work. But apart from that I am not familiar with other courts. For example, what happens in France, I cannot tell you.

Shri Hari Vishnu Kamath: You say here that he should be given a proper pension, higher than the pension at present payable. What exactly is

in your mind? What quantum of pension would you suggest?

Shri Purshottam Trikamdas: I would suggest full pension at the retiring pay and make him a permanent judge throughout so that he continues to be a judge of the High Court. But knowing the conditions as they are, I would suggest at least 66 per cent of his retiring pay as pension. I might say that arguments are put forward that we cannot afford that. But let us, after all, check up as to how many retired judges are there in the country. They may be 25 or 30 and the number is not going to increase very much. It may be 30 or 40. If you give each of them, say, Rs. 1,000 more, you will be giving roughly Rs. 3 lakhs a year more. But then you do get a certain amount of independence. You also get people who are willing to take a job in the present circumstances where, for example in Bombay or Delhi, you cannot get a decent flat for less than Rs. 1,500. Judges in Bombay are not given free quarters as also in other places. You will not be able to get a man who is earning Rs. 6,000 or Rs. 7,000, or even Rs. 10,000, although he pays his income-tax, to accept an appointment in case he has got to retire on a very small pension unless he is a man who has earned a lot of money and has set it by, or unless he is a man who has inherited money. In that case he may be attracted to it.

Shri Hari Vishnu Kamath: But do you prefer this rigid ban on practice for a retired judge only on the ground that such judges practising in those High Courts will have an advantage or an edge over their non-judge lawyer colleagues in the same High Court? Is it only for that reason that you say that or for some other reason also?

Shri Purshottam Trikamdas: That is one of the reasons. It is linked up here with the transfer and the right to practice in his own High Court.

Shri Hari Vishnu Kamath: Leave aside the transfer.

Shri Purshottam Trikamdas: It is linked up. The two things are linked up. If a man is transferred from his own High Court for five years then he comes back and practises. Now, there are difficulties in that. Firstly, he will certainly have an edge in his own court over his other colleagues. Apart from the edge in his own court, leaving aside Bombay and Calcutta High Courts, Original Side, people have clients of their own where there is no dual system and I have known judges, who are about to retire, accepting briefs of clients for whom they had appeared in the old days. Even before retirement they have done that.

Shri Hari Vishnu Kamath: About the determination of the age of a judge, if I heard you aright, you said that you would prefer the President enquiring through a machinery of his own.

Shri Purshottam Trikamdas: I did say that.

Shri Hari Vishnu Kamath: Then, do you contemplate a particular kind of machinery, say, an ad hoc tribunal set up by him, or a secretariat only?

Shri Purshottam Trikamdas: It should be left entirely to him in which case he will not be guided by the Minister.

Shri Hari Vishnu Kamath: If the proposed amendment is to the effect "the President in his individual judgment", is it acceptable?

Shri Purshottam Trikamdas: So far as I am concerned, yes. In fact, I had pressed for such a thing, but the Bar Association thought that it would be going too far because no such thing is at present there in the Constitution, although I disagree with that interpretation of the Constitution. Therefore the Bar Association said that this would be something entirely novel, so far as the Indian Constitution is concerned and therefore let us not go in for that.

Shri Hari Vishnu Kamath: But there is no inherent objection to introducing that element now?

Shri Purshottam Trikamdas: Personally, I think there is none at all.

Mr. Chairman: It is for the Parliament to consider.

Dr. L. M. Singhvi: The witness said at the outset that he considers it undesirable that the President should determine the age of a particular judge; however, later on, he also said that he would have no objection—that is what I understood him to say—if the President is to determine this age not aided and advised by the Government. I take it that your objection to the determination of the age by the President is basically this, as you have stated in the memorandum, that this would in the ultimate analysis be determined by some executive official at some level and that it does not redound very much to the dignity of the judiciary. But even if the President is to determine the age and if he is to act in accordtnce with the rules of evidence, rules of equity and such rules of natural justice, he will have to depend upon some such official. Would you not rather favour the determination of age when such a question may arise either by a tribunal statutorily or constitutionally constituted of judges of the Supreme Court or by some such body because you have yourself said that the Public Service Commission doing it may be derogatory to the dignity of judges? At least there is a section of opinion which holds that view. Would you, therefore, not agree that it might be better to have some tribunal constituted under the Constitution to whom this question of determination of age would be referred and which may determine the age in case any question arises? This tribunal may be constituted of some judges permanently. It may always be in existence and whenever the need arises the matter may be referred to it by the President. This tribunal may act as his Privy Council and advise the President about determining the age in a particular manner. Would you think that that perhaps is the way out?

Shri Purshottam Trikamdas: I do not think it is necessary because the question does not arise very often and the most satisfactory thing would be, according to my opinion, that the President is left to determine in such a manner as he thinks it proper on the basis of the evidence that is available. It is not a full-fledged trial or enquiry. The President, everyone of us would agree, is not going to act in an irresponsible manner on some kind of a report made by some petty officer.

Dr. L. M. Singhvi: For that matter, you might as well say that the Home Minister is not likely to act in an irresponsible manner. After all, the President acts on the edvice of the Home Minister or an executive official attached to his secretariat. It might not really make any difference.

Shri Purshottam Trikamdas: I do not want the executive sword to be hanging over the heads of judges so that the judge may be told after ten years, if the Government does not like him, "You have got to face this enquiry" and all that. I do not want that sword to be hanging over the head of any judge at any time, because you will be undermining the independence of the judiciary if you leave that sword hanging.

Dr. L. M. Singhvi: Would you rather not leave the question of age as settled or agreed at the time of appointment for all purposes and not likely to be re-opened at any stage in any manner—not for existing judges but for the judges to be appointed in future?

Shri Purshottam Trikamdas: That should be so, so far as the future appointments are concerned.

Dr. L. M. Singhvi: You declare the age of the judge in some manner at the time of the appointment or by some other devise so that that age so determined will be for all purposes.

Shri Purshottam Trikamdas: The Constitution must also provide at the same time that the age so determined shall be final.

Dr. L. M. Singhvi: You would favour a definite provision to that effect.

Shri Purshottam Trikamdas: Yes.

Dr. L. M. Singhvi: Mr. Trikamdas, there are three things necessary in order to see that the judiciary functions in a satisfactory manner. One of them, of course, is the extension of age to 65 years. The other is that there should be increased pension and the third thing is that there should be fixed salary. Now, would you mention us what salary do you think is reasonable or proper to secure a satisfactory performance by the judges, and secondly, would you tell us, if you consider it necessary to have some sort of a health examination of some judges at the age of 60 in case they desire continuity of service?

Shri Purshottam Trikamdas: Not at the age of 60. If you are going to fix the age at 65, then you may not have an intermediate health examination over and over again.

Dr. L. M. Singhvi: Don't you think there are some judges who tend to be fatigued? Of course, as you mentioned, you have the experience of the Bombay High Court and perhaps that is not the best example. But, I suppose, as a representative of the Bar Association in India, it may have been brought to your notice that there are courts where you find judges tend to be, if I may say so, fatigued after a certain hour. This is an experience which, I thing, is not rare there days. particularly at the fag-end of their tenure or thereabouts.

Shri Purshottam Trikamdas: Therefore, I suggested, better pension so that the man will not cling on to an office when he feels that the burden is too heavy.

Dr. L. M. Singhvi: You will definitely not like to have health examination or anything like that.

Shri Purshottam Trikamdas: Not periodical health examination.

Dr. L. M. Singhvi: Not periodical health examination. Say, at the age of 60 when he seeks continuance in service.

Shri Purshottam Trikamdas: I would rather treat the judge as the responsible person although there may be some occasions of finding irresponsible judges. Therefore, I will not bring them down in the eyes of the public to make the public believe that unless this is done, these judges would go to sleep. I would not like that impression to be created.

Dr. L. M. Singhvi: The law Minister said that the recess of five years is intended to create a certain severence from the court in which the judge was in service. Do you think that this five years interval is quite sufficient to secure the sense of severence between the judge and the court in which he was working before five years?

Shri Purshottam Trikamdas: I am not suggesting that a judge practising in his court is likely to cut too much ice with his fellow judges. But he has got links in his own State with clients and other people which have been severed for some years. He will certainly make an attempt by fair means or not so fair—I would not use any other expression—to get those clients back from whomsoever it may be and this will bring about quite an unseemly kind of behaviour on the part of a man who is the judge in any court.

Shri Santosh Kumar Basu: There is one question arising out of that and that is the development of prejudices by judges for some members of the Bar. That does happen sometimes with the judges. Therefore, transfer may be a more suitable remedy to bring an end to such a state of affairs.

Shri Purshottam Trikamdas: In my experience it is very rare, so far as the Bar is concerned or a litigant is

concerned, that the judge has preconceived notion of a particular individual. There are cases in which that does happen.

Shri Santosh Kumar Basu: You will agree that such cases become a byword with the members of the Bar.

Shri Purshottam Trikamdas: We are exaggerating it. That is not my experience. One judge, as you may recollect, was actually removed. One judge was actually asked to retire and face a tribunal or an enquiry because he was supposed to have favoured, not because of any pecuniary motive, some friend of his whom he wanted to get on. There are remedies which are open.

Dr. L. M. Singhvi: You have deprecated the tendency to appoint retired judges to labour tribunals, appellate tribunals and to such other courts. Do you not think, if this practice is not followed—and some of these practices are followed in consonance with the statutory provisions—that these may become more and more of political appointments to start with, whereas in the case of retired judges, it cannot be as much a question of political appointment. Supposing a man is appointed to the labour tribunal or some appellate tribunal by the Government, unadvised, not advised for that matter by the Chief Justice, this might become more and more a political appointment. If the retired judges are being appointed on labour tribunals as they have the necessary experience as judicial officers or as High Court judges, then they are not so much politically-motivated appointments.

Shri Purshottam Trikamdas: If they are not good enough to be judicial officers in the High Court or......

Dr. L. M. Singhvi: After retirement.

Shri Purshottam Trikamdas: If they are not good enough for a particular court, is it that we are sending them to a second class court so that they are good enough there?

Dr. L. M. Singhvi: They have to retire after a certain age prescribed by the Constitution, 65 or 60.

Shri Purshottam Trikamdas: True. Then, by sending him to the labour tribunal or to the appellate tribunal, you treat that tribunal as a second class thing for which this man is fit even if he is not fit to be a High Court judge.

Dr. L. M. Singhvi: That requires reduced capacity.

Shri Purshottam Trikamdas: I do not think the tribunals require reduced capacity. If you want, you consult the Public Service Commission regarding appointments to tribunals, just as, the Public Service Commission is consulted in many other appointments.

Dr. L. M. Singhvi: Would you like, in case of transfers, to completely preclude any transfer without the consent of the judge sought to be transferred? Would you say that the Chief Justice of India may tender such advice to the President, as it is provided in the present provisions, and transfer a judge, or would you say that in all cases the consent of the judge must be the necessary pre-requisite to the transfer of any judge from one court to another?

Shri Purshottam Trikamdas: A convention to that effect has grown. I would like that convention to remain and to be respected. And if the convention is not being respected, then this is time enough for you to consider an amendment and put it in the Constitution.

Dr. L. M. Singhvi: Would you recommend any alternative to the existing provision of Article 311 or the proposed provision by which a second opportunity for showing cause against the punishment is sought to be omitted? Can you suggest any other way of ensuring the effective exercise of the disciplinary jurisdiction by the Government against an official who, according to the evidence or procedure laid down in the rules, cannot

be removed or reduced in rank? Can you suggest any other step to be taken by the Government to perpetuate its disciplinary power over such an official?

Shri Purshottam Trikamdas: Once a very distinguished Home Minister of India said: "You must do things on moral conviction". We do not know where we will go in that case.

Dr. L. M. Singhvi: But sometimes even rule of law is made ineffective because of procedural delays. Consistent with the rights of an employee and natural justice, could you suggest any alternative legal device?

Shri Purshottam Trikamdas: What have you got today? You have got a the accused is permitted to cross-examine witnesses. Why not give him an opportunity in the nature of appeal on the record to show that the record does not lead to the conclusion that it has suggested it has led. I am not suggesting a fresh enquiry.

Dr. L. M. Singhvi: In respect of Article 226 could you tell us if it might be better to allow that Court to have jurisdiction in whose judisdiction the petitioner resides or saying that the Government of India is resident everywhere......

Shri Purshottam Trikamdas: That might sound attractive. After all it must be remembered that the order which has been made against the petitioner has been made in a particular State. I do not want the whole machinery of Government to be dragged to another State as today the unfortunate petitioners are dragged to Punjab. If you have this amendment, which is a very salutary amendment, that difficulty will be removed. Suppose the man stays in Orissa......

Dr. L. M. Singhvi: The residence is established in the order against which the aggrieved wishes to have judicial review. His residence is at a certain place and that is the residence for seeking redress.

Shri Purshottam Trikamdas: It will be confined usually to a person ordinarily resident in the State. States have no extra-territorial jurisdiction......

Dr. L. M. Singhvi I will cite an example. A Union official residing in 'A' passes an order against an individual 'X'. 'X' should be able to seek redress against it where 'X' resides.

Shri Purshottam Trikamdas: In practice it is not likely to happen at all, because an order is passed by the Union official in Bombay or Madras and it will be dealing with something happened in Bombay or Madras, where a licence has been given or permit has been given and that has been cancelled. There may be rare cases in which this can happen.

Shri P. N. Sapru: In view of the quasi-federal Constitution that we have, Union Government exists everywhere and therefore—I was myself once a party to this case—it can be sued and an application against it can lie anywhere.

Mr. Chairman: It is a matter for the Committee to consider. We will consider.

Shri P. N. Sapru: There is another point I want to raise. Who should decide about vacation? What would you say about the vacation?

Shri Purshottam Trikamdas: It should be left to the Chief Justice of the High Court.

Shri V. C. Parashar: In connection with Article 311 regarding second opportunity being given to the accused, these provisions are exceptional. The second clause contemplates that Government can dispense with this second opportunity where it is not practicable. These provisions are therefore of exceptional nature. Would you like to interpret these provisions in such a way that they will apply in normal cases?

Shri Purshottamdas Trikamdas: Are you referring to sub-clauses (b) and (c)?

Shri V. C. Parashar: I am referring to sub-clauses (a), (b) and (c) of clause (2). They read:

"(a) where a person is dismissed or removed on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or...."

So, this provision is of an exceptional nature. Would you say that this applies to normal cases also?

Shri Purshottam Trikamdas: I have only suggested that this applies to normal cases. There are cases e.g., in one case in the Defence Department, they thought that it would not be right or proper to give a gentleman any opportunity at all and dismissed him straightway. It is all right provided the authorities concerned are satisfied and I take it that whoever has got the authority to take drastic steps of that kind will do that in a reasonable manner These are extraordinary cases.

Shri P. N. Sapru: In extraordinary cases, that power is already given to the judges.

Shri Kashi Ram Gupta: My question still remains unanswered. What should be the adequate salary for a judge that you are suggesting?

Shri Purshottam Trikamdas: At one time, the high court judges for nearly sixty years, seventy years, eighty years or even more that that used to draw a salary of Rs. 4,000 a month. Here the income-tax involved was negligible. At that time, the cost of living was perhaps one-sixth or one-seventh of what it is to-day. Therefore, let us not look at the figure of Rs. 3,000 , 4,000, 5,000 or whatever it may be as adequate so far as the present cost of living and value of money is concerned. To keep up the dignity of that particular position, that should be given. I won't like to give any arbitrary figure. But, I certainly feel that the present salaries are most inadequate in view of the cost of living and various other things.

Shri Purshottam Trikamdas: If you suggest that the salaries of the judges must be tax-free as is the case with the President now?

Shri Purshottam Trikamdas: If you are giving them tax-free salaries, it will save a lot of paper work.

Shri Kashi Ram Gupta: How can we know about the adequacy or otherwise of the salaries of the judges unless your Association gives their views in regard to this?

Shri Purshottam Trikamdas: I can only give the reasons why their salary is inadequate.

Shri Kashi Ram Gupta: Then, you may give the reasons.

Shri Purshottam Trikamdas: I do not want to repeat what I have said. I can only give the reasons as to why I consider the salaries given to them to be inadequate Let us not have that idea that Rs. 3,000, 4,000 or 5,000 is too much. We want to raise the floor. Therefore, we must reduce the ceiling. I think that fallacy has to be got rid of in deciding any of these things. You raise the floor. The ceiling will take care of by itself. That is what I feel.

(The witness then withdrew)

[The Committee then adjourned.]

JOINT COMMITTEE ON THE CONSTITUTION (FIFTEENTH AMENDMENT) BILL, 1962

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE CONSTITUTION (FIFTEENTH AMENDMENT) BILL, 1962

Friday, the 15th February, 1963 at 10.03 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Brij Raj Singh Kotah.
3. Shri S. N. Chaturvedi.
4. Shri Homi F. Daji.
5. Shri Ram Dhani Das.
6. Shri R. Dharmalingam.
7. Shri Kashi Ram Gupta.
8. Sardar Iqbal Singh.
9. Shri Madhavrao Laxmanrao Jadhav.
10. Shri Hari Vishnu Kamath.
11. Shri Paresh Nath Kayal.
12. Shri Nihar Ranjan Laskar.
13. Shri M. Malaichami.
14. Shri Mathew Maniyangadan.
15. Shri Bibudhendra Misra.
16. Shri F. H. Mohsin.
17. Shri H. N. Mukerjee.
18. Shri D. J. Naik.
19. Shri V. C. Parashar.
20. Shri Ram Swarup.
21. Shri C. L. Narasimha Reddy.
22. Shrimati Yashoda Reddy.
23. Shri Ramshekhar Prasad Singh.
24. Dr. L. M. Singhvi.
25. Shri Asoke K. Sen.

Rajya Sabha

26. Syed Nausher Ali.
27. Shri Santosh Kumar Basu.
28. Shri K. S. Chavda.
29. Shri D. B. Desai.

30. Shri J. N. Kaushal.
31. Shri Akbal Ali Khan.
32. Shri M. A. Manickavelu.
33. Shri P. N. Sapru.
34. Kumari Shanta Vasisht.
35. Shri Vijay Singh.
36. Shri Hira Vallabha Tripathi.
37. Shri Bipin Behary Varma.
38. Shri Gopikrishna Vijaivargiya.

DRAFTSMEN

1. Shri R. C. S. Sarkar, *Secretary, Legislative Department, Ministry of Law.*
2. Shri S. K. Maitra, *Deputy Draftsman, Ministry of Law.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

WITNESSES EXAMINED

I. SUPREME COURT BAR ASSOCIATION, NEW DELHI

Shri S. T. Desai.

II. ALL-INDIA RAILWAYMEN'S FEDERATION, NEW DELHI

1. Shri Peter Alvares.
2. Shri Basantha C. Ghosh.

III. NATIONAL RAILWAY MAZDOOR UNION, BOMBAY

Shri V. B. Mahadeshwar.

IV. ALL-INDIA DEFENCE EMPLOYEES' FEDERATION, NEW DELHI

Shri K. G. Srivastava.

V. NATIONAL FEDERATION OF P. & T. EMPLOYEES, NEW DELHI

1. Shri P. S. R. Anjaneyulu.
2. Shri N. J. Iyer.

VI. ALL-INDIA POSTAL EMPLOYEES UNION—CLASS III, NEW DELHI

Shri K. Ramamurti.

VII. ALL-INDIA POSTAL EMPLOYEES UNION—POSTMEN & CLASS IV, DELHI

Shri Gopal Singh Josh.

VIII. ALL-INDIA TELEGRAPH TRAFFIC EMPLOYEES UNION—CLASS III, NEW DELHI

Shri B. R. Bamotra.

IX. CIVIL AVIATION DEPARTMENT EMPLOYEES UNION, NEW DELHI

Shri V. Ramanathan.

X. ALL-INDIA INCOME-TAX NON-GAZETTED EMPLOYEES FEDERATION, NEW DELHI

Shri G. S. Gnanam.

XI. ALL-INDIA NON-GAZETTED AUDIT & ACCOUNTS ASSOCIATION, NEW DELHI

Shri E. X. Joseph.

XII. ALL-INDIA TELEGRAPH ENGINEERING EMPLOYEES UNION—CLASS III, NEW DELHI

Shri Om Prakash Gupta.

1. SUPREME COURT BAR ASSOCIATION, NEW DELHI

Spokesman: Shri S. T. Desai.

(*Witness was called in and he took his seat*).

Mr. Chairman: Your memorandum has been distributed to all the Members. Do you want to add anything to it?

Shri S. T. Desai: I have nothing particular to add to the comments which the Executive Committee of the Supreme Court Bar Association has made. But I am quite willing to answer any questions that may be put to me.

Mr. Chairman: Do Members want to put any questions?

Shri Akbar Ali Khan: It is a very lucid memorandum.

Mr. Chairman: Let us only ask for any additional information that we want, not cross-examine.

Shri S. T. Desai: If I may add one or two things, I would particularly like to make a very humble request to the law-makers to consider very seriously what the Executive Committee has said about the undesirable nature of the amendments to article 220, which is about the transfer of a judge and that he should be allowed to practise in the same State five years after his going to any other State. In my humble opinion it would be a very pernicious thing to do. I feel strongly about it, and if I am asked any questions I will answer them. That is one thing.

Another thing is that on principle—I happen to be one who has had the benefit of a judicial employment—I do feel that on first principles a retired judge should not want to practise. I want also to mention this. In 1956 we made changes in the Constitution on the ground that judges were not available. That is what was mentiontd in the Statement of Objects and Reasons in 1956. If I remember rightly, it was the Seventh Amendment to our Constitution. There we said that if we allow retired judges to practise we may get more qualified and more experienced judges. You, Sir, stated it in your Statement of Objects and Reasons and that is the reason why you made that amendment in article 220. Now, that assumes that on principle it is not desirable that a judge should practise after retirement, and it was realised that it was difficult to get lawyers who would be prepared to make a sacrifice and come to the Bench. And after retirement he may get a pension of Rs. 800 or Rs. 900. In my case it was Rs. 800. I was fifty-one when I was appointed. These cases are bound to create difficulties. Here it seems to be that after five years he is given a temptation that he may be allowed to go and practise. For myself I would think that for me to practise either in Bombay or Ahmedabad would be a most undesirable thing.

Shri A. K. Sen: Why do you think so? Would the judges be so undependable that your presence would weight on their judgment?

Shri S. T. Desai: If you accept the principle that a judge, after retirement, should not be allowed to practise, that in itself is a complete answer to what you have asked. If on principle he is not to practise....

Shri A. K. Sen: I can understand that.

Shri S. T. Desai: It is no reflection on the judge; but human nature being what it is, it must appear that justice is being done, not only that justice is done.

Shri P. N. Sapru: It is five years, not two years or so.

Shri S. T. Desai: It is not a long period.

Shri P. N. Sapru: You think that they will maintain their contacts with their own court and that they will have their clientele.

Shri Akbar Ali Khan: You are not against transfer?

Shri S. T. Desai: You will never get any good lawyer from Bombay, Calcutta or Madras to go to Assam or Himachal Pradesh etc. Today the provision is that. But it is never exercised, and whenever these transfers have taken place they have been on very sound grounds. A Chief Justice is wanted in a particular State. A successful judge from a neighbouring State is given the chance and asked "Will you like to go there? For instance, our present Chief Justice was Chief Justice of Nagpur. That is not a compulsion.

Shri A. K. Sen: That is by convention.

Shri S. T. Desai: I would not say by convention. It is purely by choice.

Shri A. K. Sen: That hoice has been introduced by convention. The article in the Constitution does not provide for transfer only by the consent of the transferee. It is only by convention.

Shri P. N. Sapru: It will reduce the status of the Supreme Court judge to that of a district judge.

Shri S. T. Desai: That would be so. I am saying very humbly—I am not trying to attach any undue importance to retired judges or to judges who may retire.

Shri Akbar Ali Khan But you give compensation also.

Shri S. T. Desai: Compensation is no temptation at all. Assuming that a compensation of Rs. 500 is given, because they have to maintain an establishment in Madras or Calcutta or in Bombay,....

Shri P. N. Sapru: In some cases....

Mr. Chairman: Let him finish.

Shri A. K. Sen: Don't you appreciate that it is absolutely necessary for national integration and also for introducing an element of impartiality, free from local prejudice, likes and dislikes, that at least a certain percentage of Judges in every High Court should be from other States?

Shri S. T. Desai: I am wholly opposed to that idea. In the first place, we have got so many languages in the country. One difficulty is about language. A Judge from Bombay going to Assam, I doubt whether he would be able to do justice without understanding the language. He will be sitting in appeal against death sentence A piece of evidence may have one meaning to one Judge. To a foreigner, a piece of evidence on which the life of a man may be hanging may give a different meaning. After all, it is translation. Translated evidence is, after all, dead ashes.

Shri A. K Sen: How do our Administrative officers who are drawn from other States get themselves familiarised?

Shri S. T. Desai: They have to pass some tests..

Shri A. K. Sen: They carry on work in the courts.

An Hon. Member: What about the Supreme Court?

Shri S. T. Desai: There is no question of language in the Supreme Court. Language never comes in the Supreme Court. Everything is in English. Absolutely nothing comes in the original in the Supreme Court. The language is not the only point on which I am submitting.

Shri A. K. Sen: May I take it that the Supreme Court Bar Association takes it as a principle that it is not conducive to our national interests that Judges should be transferred for the purpose of national integration?

Shri S. T. Desai: As far as possible, not.

Shri A. K. Sen: I am afraid you do not reflect the views of the nation.

Shri S. T. Desai: There are some exceptions, may I explain?

Shri A. K. Sen: There will be difficulties.

Shri S. T. Desai: There are so many difficulties.

Shri A. K. Sen: It is absolutely necessary to have our Administrative officers in one State drawn from other States to impart impartiality to the administration. So has it become absolutely necessary to have at least a certain percentage of people on the Bench drawn from outside the State. We have seen in every case it produces better resuts.

Shri S. T. Desai: May I add a few words, if I am permitted?

Shri A. K. Sen: Please.

Shri S. T. Desai: I am obliged. Purely on principle to say that we are one country, we are one nation, we are one people, why should we not have Judges from all the States, to that, no sane man can object. I would not object. We have got to take the facts as they stand today. If we want to choose Judges from the Bar, people who are prepared to make a sacrifice and accept a salary which is, naturally bound to be less than what he was earning—if he has not been earning, we will not possibly think of appointing him a Judge; he should be doing well; he must have waited for a number of years; if successful, judgeship is offered; it is not something which is sought; it is something which comes—such a man would not be normally willing to be transferred from one place to another. Eyen assuming that the idea of transfer is not so objectionable, the present idea of giving a bait, if I may respectfully use that expression, of being allowed to practise in the same place after 5 years...

Shri A. K. Sen: That is a different thing.

Shri S. T. Desai: That is the main objection. I began with that, you will kindly remember.

Shri Santosh Kumar Basu: Your objection is based on the ground that he will build up many supporters utilising his position on the Bench and the members of the Bar would support him after he comes. Is that the main objection?

Shri S. T. Desai: Yes.

Shri Santosh Kumar Basu: Would you kindly see that we have provided that a Judge, after retirement, can practise in the Supreme Court? We have provided that.

Shri S. T. Desai: Yes.

Shri Santosh Kumar Basu: Is it not to a certain extent open to the same objection?

Shri S. T. Desai: It is.

Shri Santosh Kumar Basu: He can also build up prospective supporters when he goes to the Supreme Court so that he may be supported and supplied with briefs. From that point of view also, you may be creating a situation in the local High Courts. It is a question of principle. I am not making any reflection on anybody. It may be on principle, more or less, to a lesser extent, the same objection might apply. We have provided that in the Constitution already. It is only an enlargement of the same principle that he can come back to his High Court. On the strength of his merits or demerits will depend the support that he will get.

Shri S. T. Desai: The answer is on principle. If I might recall, I began by saying that it is undesirable that a retired Judge should be allowed to practise anywhere.

Shri A. K. Sen: That, I understand.

Shri S. T. Desai: The moment you make an exception, you have to draw a line somewhere. My own perpersonal view is that—it is not only

my view; it is the view of the Bar Association submitted in the memorandum—that retired Judges should not be allowed to practise. I wholeheartedly support that. I am entirely of the view that he should not be allowed to practise.

Shri A. K. Sen: Many people will support that.

Shri S. T. Desai: But, we cannot afford that. Therefore, the real thing is, the solution is not in tansfers and attractions of this nature that he will be given compensation if he goes from one State to another and we will allow him to practise. We have to go to the root of the matter. The real thing is that we should put the retired Judges in such a position that they are above want. By want, I do not mean luxuries; I mean reasonable wants. A Judge is given a salary of Rs. 3500. He works for 8 or 9 years and he is paid a pension of Rs. 800. What can we expect? One thousand rupees or Rs. 800 will be the pension. He was in the Bar. We assume, we always choose the best—by we, I mean the Chief Justice of India, the Law Ministry; it is really the Government of India in consultation with the Chief Justice of India and the Chief Justice of the High Court that decides—the best man available, who is prepared to make some sacrifice. The man has been earning Rs. 7,000 or Rs. 8,000. I know of cases where men earning Rs. 14,000 and 15,000 have accepted judgeship within the last decade.

Shri A. K. Sen: There have been.

Shri S. T. Desai: There are people. They think there is some altraction or it is a question of peace or quiet life and they accept judgeship. It is an individual equation why a man accepts judgeship. He is willing to work on Rs. 3,500 which comes to Rs. 2,800 after deduction of income tax. Assuming he is able to have some provident fund—some Judges cannot afford to have anything; they want Rs. 2,600. He has to live in a particular style. He has to give Rs. 350 for housing accommodation.

Shri A. K. Sen: I agree with you, the Judge's salary is low.

Shri S. T. Desai: The real thing is not to find out ways and means of doing something while we will not give more salary, we will not give a higher pension. Unless the pension is raised,—I do not mean a pension of luxury; I am well aware that we are a poor country and we are not a rich country; we cannot pay the pensions in England or America....

Shri Santosh Kumar Basu: All this, is it not an argument in favour of some compensation to a Judge?

Shri A. K. Sen: We agree that our pension should be reasonable. Assuming that they remain as they are, is it not a case for seeing that, when we transfer, on top of a poor salary that they are getting, they get some additional allowance?

Shri S. T. Desai: What is pernicious will remain pernicious. I have used a strong expression. I am aware I have used a strong expression which may be disapproved of by or may not be quite satisfactory to some hon. Members before whom I am giving evidence. It is the view of the Bar Association and my own view also.

About the age of retirement I wanted to add one or two words more. It should be 65. I also submit that the evidence of witnesses on this point may be seriously considered and it may be given proper attention. Sixty-five should be the age. There is no reason why there should be any difference in the age of retirement between a Judge of a High Court and a Judge of the Supreme Court.

Shri Narasimha Reddi: What is the minimum pension you suggest for a High Court Judge?

Shri S. T. Desai: The pension will depend on the salary.

Dr. L. M. Singhvi: You have said that an adequate salary would be a safeguard against a situation such as that. Would that be the adquate salary?

Shri A. K. Sen: You are an impartial Judge.

Shri S. T. Desai: I am not going to be paid a farthing more than Rs. 810 as pension which I am paid. I do not want more. I may assure you that I do not want a farthing more. Even if you say that you will give retrospective effect to this, I would say do not do it retrospectively. You want a really good man from the Bar. The first thing is choice of a leading practitioner at a reasonable age. An old man of 53 or 55 should not be taken. Between 45 and 50 would be the right age. The full pension may be round about Rs. 2,000 a month, in today's money value. The point is, how many years is he going to live. He is there till 65. Suppose the judges retire at the age of 60. Some have got young children, who are not very young but still who are to be educated in universities and higher educational institutions.

Shri Akbar Ali Khan: Some ex-Chief Justices have very young children.

Shri S. T. Desai: It all depends on the judge. Some might have married again; some might have married rather late in life, and some might have been bereaved and so on.

Shri A. K. Sen: It all depends upon how young the man is at the time of retirement.

Shri S. T. Desai: But the responsibilities are the same; he will have to maintain his children, educate them and so on. Therefore, I would suggest that a pension of Rs. 2,000 p.m. should be given, and, of course, he must not be allowed to practise. And there should be no question of transfer whatsoever. I, for one, have a very earnest, very sincere and very humble suggestion to make, and it is this. For goodness's sake, do not bring in this concept of banishment for five years and then allowing the judge to come back to his parent State.

For instance, take a place like Bombay and a place like Ahmedabad. Suppose a man has practised in Bombay, and he becomes a judge in Bombay. Suppose he has done a lot of work for Gujarat. I, for instance, have done a lot of work on the appellate side in Bombay. If after five years I am going to practise in the Gujarat High Court, naturally the people will say here is a man who has got a lot of experience. And the same lawyers who used to brief such a person would by then have become senior lawyers, and they will, therefore, be in a position to give him more work after five years. I hope Mr. Sapru will agree with me on this point.

Shri Sapru: Yes, that is true.

Shri A. K. Sen: But the transfers are not going to take place according to the convenience of the person.

Shri S. T. Desai: The transfers will be decided by the executive, I quite agree. But suppose a judge wants to practise in a particular High Court, then he can try to keep always on the right side of the Chief Justice and keep him flattered as much as he can, and he may say to the Chief Justice, 'I am prepared to go to a State like Assam, for instance'. Actually, nobody may be prepared to go to such a far off place like Assam, which is so near to NEFA, where one does not know what the Chinese will do and so on and that person may say that he is willing to go there for five years, because when he comes back he can practise in that High Court.

Shri Sapru: It may also create complications for the Chief Justice as well. Knowing that they can be transferred, the judges might defy the Chief Justice also and they may

get themselves transferred by going to the Chief Minister or to the Home Minister and so on, and they may think that it does not matter what the Chief Justice may think of them because they can get themselves transferred.

Shri Santosh Kumar Basu: The main idea is to attract talented people from the Bar. But I may point out that already in the Constitution itself, there is an obligation for transfer. If the Chief Justice or Government wants to transfer him, he or they can do so. There is already a provision for transfer without any compensation, and without any further possibility of being allowed to come back and practise in the parent High Court or anything of that kind. Would you think that it will be a deterrent upon deserving people, so far as the acceptance of judgeship is concerned?

Shri S. T. Desai: No, it would not be.

Shri Santosh Kumar Basu: But the obligation for transfer is there.

Shri S. T. Desai: That is true, but today as everyone understands it, that obligation for transfer which is there in the Constitution is purely a matter of insurance of safeguard in the Constitution. I might give one instance. A judge may be willing to go from one State to another. And there is, let us say, a desire and also a requirement in some other State to have a man with experience from Calcutta or Bombay, someone who has been a successful judge there. Such a judge may be transferred to that other State. In fact, some eminent judges used to become Chief Justices by going from one court to another, but that was rather on exceptional and totally different considerations. The present amendment has nothing to do with that kind of thing.

Another instance is this. Suppose a judge has got to be removed from one place to another. Suppose he is corrupt, and it is not possible to prove that he is corrupt. Then what is the safeguard which the country has got in the Constitution? The safeguard is that he can be immediately uprooted from that place and sent away to some other place. That is the way in which this provision in the Constitution is understood today. That safeguard will be used in very rare cases where a man has got to be removed from one place to another, and there is no evidence against him for impeachment before Parliament. The only way open is to transfer him from that place to some other place. The executive certainly has got the power to uproot him from that place. That is the reason why that provision is there in the Constitution. The transfer in such a case is by way of punishment. But I would suggest that if a man is undesirable, then do not have him at all on the Bench.

Shri A. K. Sen: The same thing may happen even now, except that on transfer he will get some additional remuneration.

Shrimati Yashoda Reddy: Mr. Desai has said that justice should not only be done but it should appear to be done. He has also said that when there is corruption the judge can be transferred from one place to another. But I would like to know what he means by corruption. The corruption of which I am aware and I have had experience is this; it may not strictly be corruption in the ordinary sense but still when a senior lawyer becomes a judge, then he may ask many of his former clients to go to his juniors, and the briefs may go to them; in this way, simply because a particular judge is presiding over a particular case, the briefs may go to the junior lawyers who used to work under him previously. Really, there may be no such intention on the part of the judge, but still the clients have a feeling that if they go to a particular advocate when a particular judge is presiding, then they will get better redress or better relief. Why not transfer such judges from those places? What is your objection?

Shri S. T. Desai: I have no objection to that at all. On the contrary, I would wholeheartedly join with you and say that such a person, in the first place, does not deserve to be a judge, and if he could be thrown out he should be thrown out, and far from wanting to transfer him, we should see that such a person who does not deserve to preside over the case should be thrown out from the Bench. If we cannot throw him out, at least we may transfer him and send him to a place where he may be less mischievous.

Shrimati Yashoda Reddy: My point is that the judge may be absolutely honest, but there is such a feeling in the Bar and among the public.

Mr. Chairman: Let us not enter into arguments now. We shall consider that matter between ourselves, later on.

Shri Malaichami: If the civil courts are empowered to decide on the question of the age of judges, will that not make the judges regular litigants, thereby impairing their honour and dignity?

Shri S. T. Desai: So far as the question of the age of judges is concerned, my first answer is that for the future judges, the salutary idea will be that before a man is appointed, he must agree to his age as ascertained.

Shri A. K. Sen: But that will not prevent others from challenging it in a court of law.

Shri S. T. Desai: There is no question then. He will have to be a litigant.

Shri A. K. Sen: Government may not challenge it, but somebody else may do it in a court of law, by means of a *quo warranto*.

Shri S. T. Desai: There is only a remote chance of that. It has never happened so far in the history of the world, that somebody else challenges the age of a judge, saying 'Though this judge says that he is 59, already he is 62, because he and I studied in the same village school, and he had given a wrong age when he appeared for his matriculation examination' and so on. Such a thing has not happened in practical life.

Dr. L. M Singhvi: But that could happen.

Shri S. T. Desai: That is a very remote possibility, if I may respectfully say so. But the other possibility is from the judge himself. Unfortunately that should never happen, but it has happened that some judges have challenged their age themselves.

Shri A. K. Sen: They have challenged it in the High Court. So, if it was decided by Government in consultation with the Chief Justice of India, it would be better and we have always accepted the decision of the Chief Justice.

Shri S. T. Desai: Such cases will be very few and rare cases. There is no reason why for that purpose this should be a matter which should be left to be determined in the manner suggested in the amendment. I would suggest that in such a case the matter must be left to the courts if you have got that much of confidence in the judiciary.

Shri A. K. Sen: But you have not got confidence in the Chief Justice of India? No decision has been arrived at without the concurrence of the Chief Justice of India.

Shri S. T. Desai: I would respectfully request you not to read our comments in that manner. On the contrary, I assure you that our Association has the highest esteem and regard for our present Chief Justice.

Shri A. K. Sen: All Chief Justices.

Shri S. T. Desai:....for all Chief Justices, and particularly for the present Chief Justice.

Shri A. K. Sen: No case has been decided contrary to the advice of the Chief Justice up till now.

Shri Akbar Ali Khan: Would that not be more dignified instead of the judge going to the court and being a party to a dispute?

Shri A. K. Sen: Would this not be better than a munsif deciding the case?

Shri S. T. Desai: But my own evidence is that I abide by what we have said in our memorandum.

Mr. Chairman: You would leave it to ordinary courts.

Shri S. T. Desai: Yes.

Shri P. N Sapru: What is your reaction to the proposal that the Judge's age may be decided at the time of his appointment and the warrant of appointment may state it?

Shri S. T. Desai: I respectfully agree.

Shri P. N. Sapru: Now in democratic countries they are fixing the age of retirement of Judges at as high as possible, 75 and so on. Do you not think that it is not desirable that Judges should be allowed to take up any work after retirement? That is, the age of retirement should be fixed at a high limit and they should not work after retirement.

Shri S. T. Desai: It is absolutely necessary that they should not be allowed to practise, if we want the public to have confidence in them.

Shri P. N. Sapru: We have been talking of national integration. Is it not more desirable from the point of national integration.........

Mr. Chairman: He has answered that.

Shri P. N. Sapru: Is it not desirable from the point of national integration that members of the Public Services Commission should be appointed by the President from States other than their own rather than......

Mr. Chairman: We are not concerned with Public Service Commissions.

Dr. L. M. Singhvi: You mentioned Rs. 2000 as adequate pension. We also wanted to know what would be an adequate salary. Also would you suggest that the salary payable to Judges should be tax-free?

Shri S. T. Desai: I would not suggest that any salary in our country should be tax-free. Everyone must be equal before the law. We are not a rich country, but a poor one. We cannot emulate other countries which are more prosperous.

As regards salary, it is rather presumptuous on my part to fix a figure. But since I am bound to answer, I will tell you that when I say Rs. 2000 as pension (minimum), it is at least half the salary, if not two-thirds. It is desirable to give two-thirds salary as pension, but since we are poor, we cannot afford it. Therefore, in my own thinking, the salary should be Rs. 4000—4500 and pension Rs. 2000—2500 the minimum should be Rs. 2000.

I apologise for forgetting to mention one thing. This is about the age of retirement. It is not desirable for many reasons to make a distinction between High Court and Supreme Court Judges on the question of retirement age. It is desirable in the interest of the country, in the interest of the dignity of High Court Judges that the age should be the same. The High Court Judge should not look on at a distant horizon. Judgeship should not be sought or applied for. It should be there. If we depart from this principle, we will be sorry for our judiciary. If the age of retirement is the same, there will be many advantages. It may be said that then we will not get people for Supreme Court judgeships. Still we would get people. If you fix it at 65, how many people are going to take away pension from our poor country? What is the average span of life, assuming that lawyers happen to be, unfortunately, a little longer-lived than some others?

Shri Hari Vishnu Kamath: Why 'unfortunately'?

Dr. L. M. Singhvi: You suggest a complete ban on all kinds of practice by retired Judges, High Court or Supreme Court. Would you include chamber practice also in that?

Shri S. T. Desai: Personally, I want an absolute ban which includes chamber practice also. There should be no chamber practice, no opinions given, no drafting etc. But if you as law-makers still think that the salary and pension are not adequate, you may allow it.

Dr. L. M. Singhvi: You also suggest a ban on all appointments under the executive on retirement.

Shri S. T. Desai: Yes. I have some papers with me on that. But there is one aspect. If he is getting a pension of Rs. 800 or so, what is he to do at the age of 60? He has his wife and children. He has to educate his children. He has to seek some job somewhere. Where does he get it? Arbitration work is not easy to get because States are choosy about it.

Shri A. K. Sen: Arbitration work will be a good thing.

Shri S. T. Desai: Arbitration or work in honorary tribunals. Let him charge his fees. There are some lawyers who even after retirement work as arbitrators charging full daily fees. There have been retired Judges who are doing that. But the pernicious thing which is happening is that the man who is about to retire has an eye—I have personal knowledge of this—on some tribunal or something. We have half a dozen tribunals in every State where retired Judges can easily get a chance provided the Minister in charge of Law or the Chief Minister is favourably disposed towards him.

Shri Hari Vishnu Kamath: What about posts of Governor and Ambassador?

Shri A. K. Sen: What about Commissions of Inquiry?

Shri S. T. Desai: I agree; I said so about such Commissions.

Shri A. K. Sen: What about Law Commission?

Shri S. T. Desai: Revenue Tribunal, Sales Tax Tribunal.

Shri A. K. Sen: We generally take the recommendation of the Chief Justice.

Shri S. T. Desai: But this thing 'we want a man on some' charity, Commission. It is bad that he should go to the executive begging.

Shri A. K. Sen: There have been cases where we have had to send Judges outside India, for the British Guiana enquiry for instance, and we have always nominated the Judge on the advice of the Chief Justice of India. There are many other judicial appointments where we find that retired Judges by their training and experience are eminently suited for the work.

Shri S. T. Desai: Sending them to outside countries may enhance our stature, but I am talking of matters within the State. If a colleague of mine in Gujarat wants to be helped by some one talking to the Chief Minister, that is objectionable.

Shri A. K. Sen: There is difference between a man angling for a job and the Government getting the assistance of a competent person on the advice of the Chief Justice of the State. What is the objection to the latter course?

Shri S. T. Desai: It is not desirable that the public which has seen a person dispensing justice as a High Court Judge should have to deal with him again as a member of a tribunal, taking its sales tax accounts before him. It does not add to the stature of the judiciary or to the confidence of the public.

Shri A. K. Sen: Sitting Judges in England are put on tribunals of importance.

Shri S. T. Desai: But those are honorary tribunals.

Shri A. K. Sen: When election cases of Ministers are involved, we have always depended, as a matter of principle, on retired Judges of High Courts drawn from other States to be appointed to such tribunals. Would you object to such a course?

Shri S. T. Desai: I am talking of things within the State.

Shri A. K. Sen: Supposing it is within the same State. What is the difficulty?

Shri S. T. Desai: If the country wants the services of a Judge, that is a different thing. There is always a practical aspect.

Dr. L. M. Singhvi: You want the age of Supreme Court Judges to be raised to 65. What would be the state of health of the Judges after 60?

Shri S. T. Desai: The age of 60 was fixed for English Judges. They wanted to go back to spend 10 or 15 years in their country. Some 25 or 30 years back, Indian Judges began to crumble in health when they were 58 or 60 but now health and sanitory conditions have so vastly improved, that it can be raised to 65 safely.

Shri A. K. Sen: Would you accept the same for district Judges?

Shri S. T. Desai: That opens up a vast scope of enquiry and discussion. I am prepared to answer it, but it is elaborate, and I would request you to permit our Association to put in a memorandum before you.

Shri A. K. Sen: It has been urged in Parliament by senior Members with great experience that it is just by chance some district Judge becomes a High Court Judge just beore 55 and he goes on to 62, whereas another who had not that luck had to retire at 55.

Shri S. T. Desai: There are many things in life like that.

Dr. L. M. Singhvi: For the determination of the age of Judges, if there is a special tribunal consisting of Judges of the Supreme Court to advise the President before he takes a decision, is that all right?

Shri S. T. Desai: There is no necessity for any such special tribunal. Very few cases of that nature will arise. Just because one case has arisen........

Shri A. K. Sen: Fifteen cases have arisen.

Shri S. T. Desai:....some others have had the idea that they could also do it. It is most undesirable that a Jude should want to go to a court of law. It is highly objectionable. But if he wants, why do you want to prevent him? Normally he would say: if you question my age, I am prepared to walk out.

Dr. L. M. Singhvi: The existing provision in the Constitution enabling the executive, on the advice of the Chief Justice, to transfer a Judge is perhaps meant to deal with a Judge who may not come up to the standard, though that is not so discernible from the provision. I understood you to say that would be an administrative or executive impeachment of the Judge. Would your viewpoint go so far as to ask for a complete abolition of even the present provision?

Shri S. T. Desai: The provision and the convention not to transfer without the consent of the Judge may remain. My objection is to the present draft amendment.

Dr. L. M. Singhvi: Have you any comments to offer on the proposed amendment to article 276 increasing the professional tax? As you represent a professional body, we would like your views.

Shri S. T. Desai: Increase the salary and pension of the Judges and raise the tax also. That will apply to lawyers. A new lawyer who is not getting Rs. 500 will also be taxed Rs. 500.

Dr. L. M. Singhvi: Coming to article 311, while we may think of a reduction in rank as a protection

under this article, may we do away-with the second opportunity of earing for showing cause against the punishment proposed?

Shri S. T. Desai: The provision about reduction in rank should be there; it should not be taken away. It is a serious matter. Therefore, the opportunity should be there. In practice there has never been the duality of enquiry. I can assure you this from a number of cases that have come before me. The second enquiry is never that elaborate enquiry wherein the whole gamut is gone into again.

Shri A. K. Sen: What about the suggestion that while giving a chance to make representations regarding the quantum or quality of the punishment, one may perhaps take reasonable safeguards to see that the whole gamut of enquiry is not reopened.

Shri S. T. Desai: This apprehension about duality of enquiry and waste of time and energy etc. is unfounded.

Shri A. K. Sen: I am sorry the Supreme Court are clear on that that the entire gamut of enquiry should be gone through. So, the law can be made clear on this point.

Shri S. T. Desai: I should think the law is clearer to to you than to some of us.

Shri A. K. Sen: A restatement of it is not so useless.

Mr. Chairman: What is the harm if the law is made clear?

Shri S. T. Desai: To say that it has to be made clear is on the assumption that it lacks clarity. It is like this in practice. An enquiry takes place and then it is decided that an officer should be given such and such punishment. Suppose I am the person involved, at the second opportunity I am entitled to say only this: if you say that I am technically guilty, let me put the summary of the evidence and show that this has happened or that has not happened and so this punishment is not proper. Why should I not say that?

Shri A. K. Sen: If that is the case, should we not make it clear? Why should you object?

Dr. L. M. Singhvi: That is to say that at the second stage the aggrieved has to take the record as it is and then proceed to say what he wants.

Shri S. T. Desai: I assure you he has to take the record as it is. But even on the record as it is, I can show that I am innocent. Why do you want to deny it?

Dr. L. M. Singhvi: Your association welcomes amendment of article 226. Would you agree that the petitioner should be given the right to file a petition only in the court which has territorial jurisdiction or rather according to the location of the Union Government which may be assumed to extend everywhere in the country, and allow the petitioner to agitate a matter in the court which is most convenient to him.

Shri S. T. Desai: The point is whether the petitioner or the plaintiff is to be allowed to choose any place he likes. That is why we have referred to the 'cause of action'. It should be where the cause of action has arisen. As it is not very clear, we have said in our memorandum that we assume these words will have the same meaning as assigned to them in decisions under the Civil Procedure Code.

But a view has been taken by a Judge in Bombay High Court that the Union resides everywhere as we have one Constitution, one citizenship and one flag. However, the Supreme Court has overruled that decision.

Dr. L. M. Singhvi: One of the main reasons for amending article 311 seems to be that the disposals were not quick or effective. Can you suggest any other means for making this more effective and quicker without impairing the safeguards.

Shri S. T. Desai: The inquiry should be left to the highest officers. If you leave it to the highest officers, it will be very short and speedy and

fair and also effective. But it is not done. It should really be a high person of the department to whom everyone may look to with respect. Then the enquiry will be short, and the people will not bring useless witnesses.

Shri A. K. Sen: I agree.

Shri S. T. Desai: It need not be the absolutely top man, but a real, senior and efficient top man in the department who will take action and have the courage to take that action. He knows that he is an independent man and that it is a quasi-judiciary procedure, and he will not trifle with the enquiry.

Shri S. N. Chaturvedi: In regard to article 311, you have suggested that it should be a high officer with ability on whose justice depends the future of the party concerned. But does the second opportunity ensure in anyway better justice?

Shri S. T. Desai: Not better justice, but complete justice.

Shri A. K. Sen: To say that justice is complete is a misnomer. Justice is not justice unless it is supreme.

Shri S. T. Desai: On the choice of words, we can always disagree!

Shri S. N. Chaturvedi: The whole point is one of giving the second opportunity. I want to know whether the second opportunity in any way ensures better justice to the accused, and one opportunity is not adequate.

Shri S. T. Desai: The second chance, in my submission, is only for this: you have reached a tentative conclusion. The decision is that the man is guilty of the charge, for which he was tried or an enquiry was made The tentative conclusion is that he is guilty. At that time, the man could say, "Let me know this and let me be given this second chance for satisfying you." It is the second opportunity of saying that he is not guilty.

Shri S. N. Chaturvedi: Why should this second opportunity exist only in the case of Government servants, when it does not exist anywhere else?

Shri S. T. Desai: Because the Government calims to be an ideal employer.

Shri A. K. Sen: The Supreme Court has said that the man can again cross-examine, and he could be given an opportunity to defend himself by cross-examination of the witnesses produced against him.

Shri S. T. Desai: I have not got the book with me. I am aware that you will read it and that I can also read it.

Shri A. K. Sen: It is mentioned in the summary: "a reasonable opportunity envisaged by the provision.." etc.

Shri S. T. Desai: The cross-examination comes only in the first enquiry.

Shri A. K. Sen: It says that he will be given a reasonable opportunity to show cause against the proposed action. It is mentioned in the Khemchand case. It says that the Government servant must be given a reasonable opportunity of showing cause against the action proposed to be taken.

Shri S. T. Desai: They are interpreting it. That is 311. My submission is this. I may be right or wrong. The point that has been laid down by the Supreme Court as well as by the high courts is that the article talks about only one thing.

Mr. Chairman: If the judgment of the Supreme Court leads to that interpretation, is it not better to make it clear in the law?

Shri S. T. Desai: After the first enquiry is over, the second opportunity is given. He cannot claim to cross-examine the witnesses.

Mr. Chairman: So, you have no objection to make the law clear?

Shri S. T. Desai: No one can have any objection to that.

Shri S. N. Chaturvedi: You are opposed to the amendment of section 124. In the promotion, apointment or transfer of judges, do you think that the conferment of more powers will adversely influence the independence of judges?

Shri S. T. Desai: We have said so. It is said that "it must be done on the advice of the council of Ministers." etc.

Shri S. N. Chaturvedi: If you put in, "in consultation with the Chief Justice," would you have any objection?

Shri S. T. Desai: Why should not the doors of the courts be kept open? Why do you want to deprive two or three ill-advised judges of that opportunity, if they want to go to court? The Constitution is not a thing to be dealt with like that.

Shri Mohsin: As regards article 222, you observe that the provision was only formal and it was never intended to be.

Shri S. T. Desai: Yes; as it abides today in the Constitution.

Shri Mohsin: If you look to the proceedings of the Constituent Assembly, you will find that there was no such thing there. Therefore, may I know what was the basis for your observation?

Shri S. T. Desai: There are many things said and interpreted. But I might say, to my knowledge—and Shri A. K. Sen would be able to remember that—that so far as the tranfers are concerned, there have been transfers only when some State so desired and requested for the same. Where it was felt that there was an undersirable wangle between two or three judges to become the Chief Justice. So, it is felt by the Government of India that the best way out of this impasse is to see that a judge from Calcutta, Bombay or Madras or any other High Court be taken and appointed as Chief Justice. That is what has happened.

Shri A. K. Sen: Puisne judges have been transferred with consent. That shows the Government have exercised the power rationally.

Shri S. T. Desai: I have not said anything so far that Government was not rational, nor was I provoked to say that Government has not been reasonable!

Shri Mohsin: Is there not a feeling expressed by Bar Associations of high courts that some judges are showing favouritism and they want judges to be transferred from one place to another?

Shri S. T. Desai: I have said that such persons do not deserve to be judges.

Shri Mohsin: You say in the memorandum that a higher salary should be given to the High Court Judges. Don't you think, that the present salary of Rs. 3000 to Rs. 4000 is sufficient, considering the standard of living in India?

Shri S. T. Desai: Nowadays a lawyer begins to earn well only after 15 years or so. He begins to earn well when he is about 35, and within ten years when he gets an income of Rs. 5000 or Rs. 6000 or more you offer him judgeship at that stage. So, a higher salary should be given.

Shri Mohsin: But our Ministers are not getting more than that.

Shri S. T. Desai: We should not compare judgeship with ministership. Politicians cannot be compared to lawyers. Politics has a glamour which nothing else has.

Shri A. K. Sen: I have a right to go back to the bar, if I choose.

Shri Mohsin: You are of the opinion that the fixing of age of a High Court Judge should be left to the ordinary courts. In that case, don't you think that it will result in a long delay because there would be a first appeal, a second appeal and so on?

Shri S. T. Desai: No, Sir. A writ petition can be filed only in a High Court. There cannot be any great delay. Such cases are very few.

Shri Mohsin: Do you think it should be left to the court in whose jurisdiction the High Court Judge is serving?

Shri S. T. Desai: It is a matter of jurisdiction which can be decided according to the usual procedure. It will depend on the facts mentioned in the writ petition itself.

Shri Hari Vishnu Kamath: Your opposition to the amendment of article 124 with regard to the determination of the age of a Judge apparently rests on the ground that the President must act on the advice of the Council of Ministers and in actual practice it will mean decision by a subordinate official of the executive. What do you say to the proposal that the President acting in his individual judgment should dispose of the matter?

Shri A. K. Sen: The President must be advised by somebody. He may act on the advice of the Chief Justice.

Shri S. T. Desai: This is a very unusual and unique type of amendment which is sought to be made in the Constitution, just because one case has arisen.

Shri Hari Vishnu Kamath: Would you oppose an amendment just because it is unique? That cannot be a ground for opposition.

Then, you are in favour of raising the age of retirement of High Court Judges to 65 and the grounds adduced are that otherwise it would not attract the best talent from the bar. Ostensibly it is so, but the real reason seems to be that the Judges should be given a more generous salary and higher pension.

Shri S. T. Desai: My feeling is that after retirement he should not be allowed to do any work. Retirement at 65 will ensure that.

Shri A. K. Sen: Excepting judicial work.

Shri S. T. Desai: The real principle is if you put him above want by giving a good salary and a reasonable pension, all these considerations like transfer and other things will become secondary.

Shri A. K. Sen: The salary will be the same everywhere. Will they accept the transfer?

Shri S. T. Desai: Transfers should be very rare.

Shri A. K. Sen: Once you accept the principle that we should have Judges from other States, raising the salary of all Judges will not solve the problem.

Shri Hari Vishnu Kamath: Even if you raise it to 65, the problems which will confront him at 60 will confront him at 65.

Shri S. T. Desai: Those five years will make a considerable difference.

Shri Hari Vishnu Kamath: Suppose a Judge lives till 90.

Shri S. T. Desai: We cannot take an extreme illustration. We should take the average.

Shri Hari Vishnu Kamath: You must not forget that we are living in a Welfare State. If you take the average, it would be just 40 years or so.

Shri S. T. Desai: I said 'average' in the context of pension. If you give good pension, you would get better lawyers to accept the judgeship, because their future would be assured. They will retire at 65, cannot do any other work and would draw a decent pension.

Shri Hari Vishnu Kamath: You object to transfer of Judges. Do you think inherently transfer is bad?

Shri S. T. Desai: A salutary principle is that the power of transfer is there, but in actual practice, it is rarely used.

Shri Hari Vishnu Kamath: Suppose we provide that a Judge who is transferred from one State to another will be precluded from practising in both the States?

Shri S. T. Desai: You will not get good people if the provision of transfer is there.

Shri Hari Vishnu Kamath: You are of the view that the Judges should not practise at all?

Shri S. T. Desai: That is my personal view.

Shri Hari Vishnu Kamath: You say that the Judges of High Courts are looked upon by the public with esteem and confidence. Do you apprehend that that esteem and confidence will suffer only if they resume in practice in some court of law or also if they accept jobs under the executive?

Shri S. T. Desai: Accepting jobs is most undesirable. It is pernicious. That he should look forward to a job from the Executive after retirement is a very undesirable thing.

Shri Hari Vishnu Kamath: Has your Bar Association at any time passed any resolution condemning or criticising this?

Shri S. T. Desai: They have not.

Shri Hari Vishnu Kamath: They ought to.

Shri S. T. Desai: You, Sir, certainly express your opinion very carefully and very criticially. I will certainly convey your views to the Bar Association.

Shri H. V. Tripathi: Coming back to the question of determination of the age of judges, supposing there is a provision in the Constitution that the President should do it in consultation with the Chief Justice of India, have you any objection?

Shri S. T. Desai: As I have already said, why do you want to deprive a judge of his right to have justice in a court of law? It is a question which touches him personally. In the first place, I have said, it is undesirable for a judge to go to a court of law on a matter of this type. If he still wants to go, let him have the privilege which every citizen in the country has got. It is not a matter, I should say, for the Constitution. I agree we have an elaborate Constitution, but there are things which we do not expect in the Constitution.

Shri H. V. Tripathi: When the judge concerned will have the benefit of the advice of the head of the highest court in India, is that not sufficient?

Shri S. T. Desai: Why should we not leave it to a judicial enquiry? Even a decision by the President in consultation with the Chief Justice of India does not amount to a judicial enquiry.

Shri H. V. Tripathi: When the Chief Justice takes up the question upon himself, naturally all the legal procedure that is necessary would be gone through by him.

Mr. Chairman: It is a matter of opinion. Let us consider it in the Committee and let us not argue it out here.

Shri H. V. Tripathi: Do you apprehend any kind of injustice?

Shri S. T. Desai: I have not suggested even that any injustice could be apprehended if that procedure is adopted.

Shri D. J. Naik: Would you object to a judge on retirement being appointed on a tribunal to enquire into a firing or railway accident?

Shri S. T. Desai: I have no objection to that. I think I made that very clear. I think that is the minimum that he can do by making his services available to work on a triunbal like that.

Shri P. N. Sapru: I want to invite your attention to clause 5 of the Bill. It says: "....for a period of not less than five years immediately before retirement.." It may happen that a

judge is transferred when he is 57 or 58 and he is able to serve only for two or three years. In that case, would it be open to him to practise in both the courts?

Shri S. T. Desai: I find that in the amendment to the article only "five years" has been provided. Therefore, this amendment would apply only in cases where a judge has served for at least five years. If he has not served for at least five years, he will not be able to practise in both the courts. But this is a very unusual provision. Mr. 'X' cannot practise in Bombay, but if he goes to Ahmedabad and serves there for five years, Gujarat being so close to Maharashtra, he can come back to Bombay and practise there. It is most pernicious.

Shri P. N. Sapru: I do not know what is the practice in Bombay, but in our courts they are doing away with the translation of records into English.

Shri S. T. Desai: In Gujarat, I said, so far as the High Court is concerned, please leave us out of the language controversy.

Mr Chairman: Let us not go into those details.

Shri Kashi Ram Gupta: If the Government opens up the question regarding the age of a High Court judge or a Supreme Court judge, what should be the procedure in that respect?

Shri S. T. Desai: As it happened in the case about which you are all aware, the Chief Justice had to inform the judge concerned that he is retired from such and such date and that he will not be given any work from that date. If he contests that decision he must go to a court of law. But it is a very undesirable thing. I would be grieved to know that a High Court judge put himself in that position. If he wants that the public should have confidence in the judiciary, he should be willing to step out whatever the consequences. If, on the other hand, he decides to go to a court of law, why do you want to deprive him of that opportunity?

Shri Malaichami: What is the difficulty regarding amendment of article 311 when there is provision in the Central Civil Services (Classification, Control and Appeal) Rules for the conduct of inquiry, appeal and review, so far as civil servants are concerned?

Shri S. T. Desai: No amendment is necessary and I say there is no justification for the amendment merely because of the passage which has been read out. The Supreme Court, as I understand it, has not stated that the whole inquiry has to be repeated. Some hon. Members seem to be under the impression, that the whole evidence must be taken again, there must be cross examination, of witnesses again and argument and so on. That is not the interpretation put either by the Supreme Court or the High Courts on article 311. In Shri Lal's case they said that he must be given a second opportunity and that at the time of punishment he has the right to be heard which he can claim on the basis of the same record that the first decision taken by the authority was wrong. That is all that the court has stated in interpreting article 311.

Shri D. B. Desai: You say that you are opposed to the transfer of judges. What will be your reaction if the Constitution fixes that a certain proportion of the judges of each High Court should be from other States?

Shri S. T. Desai: You can have hundred provisions in the Constitution but the point is whether you will get people of the type whom you want to appoint, people who have very good practice, people who are earning much more than what they will get as salary. We have had the good fortune to have judges who, when they accepted judgeship, had to pay more income-tax than the salary they received. Therefore, if you want to get people who are doing well at the Bar, this proposal of transfer from one State to another will prevent you from getting the top men of the Bar. If you have a provision about transfer, it can be at the whims

of the executive or an unfriendly Chief Justice. Suppose a judge is rather independent, as we find some people in every avocation of life including Parliament, if he always goes on differing from the Chief Justice, the Chief Justice can gently tell him that he will be transferred unless he changes his attitude. It has many implications. Of course, the transfer envisaged in this amendment is different.

Shri D. B. Desai: Would it not be advisable to fix a minimum age limit for the recruitment of judges?

Shri S. T. Desai: I have myself stated that the best age would be between 45 and 50, nearer 45 rather than 50. The convention established in the Conference of Chief Justices is that, as far as possible, a person below the age of 40 should not be recommended. I am aware of that and, yet, I felt that because of the special circumstances a person of 39 deserved to be appointed as a High Court judge and he was recommended. Therefore, having an inflexiable rule will be difficult.

Shri D. B. Desai: Members of Parliament and State Legislatures should be above a particular age limit.

Shri S. T. Desai: In the case of judges also ten years' practice at the Bar is necessary.

Shri D. B. Desai: That can be done before one is 35.

Shrimati Yashoda Reddy: You were saying that here would be complications if the judges were permitted to practise in their own home State after retirement. In that case, the first appointment can be made not in the Home High Court but in another State so that when they are transferred to their home State they cannot practise in that High Court after retirement.

Shri S. T. Desai: But, then, a lawyer would not be willing to go from Madras to be appointed as a judge in the Punjab High Court at Chandigarh. He will be quite happy at Madras. That is the trouble.

(The witness then withdrew)

II. All India Railwaymen's Federation, New Delhi

Spokesmen:

1. Shri Peter Alvares.
2. Shri Basantha C. Ghosh.

III. National Railway Mazdoor Union, Bombay

Spokesman:

Shri Mahadeshwar.

(Witnesses were called in and they took their seats)

Mr. Chairman: We have circulated your memorandum to all the members and they have gone through it. If you want to stress any particular point or bring in new points, you may now do so.

Shri P. Alvares: Before July 1961, as far as the railways were concerned, puishments were cited as against certain specific offences. For instance, for a grievous misconduct it was laid down under the statutory rules of the Establishment Code in the Indian Railways that a man may be liable to be dismissed. These rules were changed in 1961. Since then, any punishment can be given for any offence, however minor it may be. Since the change of the rule, it is now conceivable that a man may be dismissed for a mere absence from duty. Previously, dismissal was possible only for certain specific offences. With the amendment of article 311 where the second opportunity for show-cause notice period is given, there may be no opportunity for us to contest the reasonableness or the commensurateness of the punishment *vis-a-vis* the offence alleged to have been committed.

Secondly, now it is incumbent, after the first inquiry, for the findings to be given to the accused and on the basis of that a show-cause notice is

given the second time for the imposition of penalty. At this second opportunity an opportunity is availed of to contest the findings themselves. They are not justiciable at the moment as to whether the findings are in accord with the evidence recorded. Our experience in the railways as been that in a very large number of cases because the findings are not justiciable and cannot be questioned in a court of law, the officers of the railways do not exercise that sense of responsibility in recording the findings. Therefore, they are free to punish us as they like. With the amendment of article 311 the findings may not at all be given to us and therefore we will have no opportunity for finding out whether the findings recorded are in accord with the evidence that has been produced by the victim in the case.

Therefore because of these two circumstances the disadvantages have been made more acute and there is no security. Therefore the All-India Railwaymen's Federation would pray that this right of second opportunity should be maintained because the findings can then be vetted or contested by the disciplinary authority as also because since July 1961 the Railways have amended a very important provision in the Establishment Code which does not now require them to specify any punishment and leaves them free to punish anybody as they like, whether the punishment is commensurate with the offence or not.

Shri Basantha C. Ghosh: So far as the second opportunity is concerned, both the Privy Council in I. M. Lall's case and the Supreme Court in Khemchand's case have laid down that if he has gone through a full inquiry at the first stage, it is not reasonable that he can ask for a second one. Therefore, when the second opportunity is given, he is not given an opportunity of being heard over again or of going through the entire inquiry over again. All that he gets is the opportunity for representation against the report of the Inquiry Commission. Not only an opportunity to contest the punishment should be given but also an opportunity to show that on the material brought out in the inquiry I do not deserve to be punished.

Mr. Chairman: That is all that you want.

Shri Basantha C. Ghosh: That is not all that I want. I am explaining it.

Shri Bibudhendra Mishra: In your memorandum you have referred to Lall's case and to Khemchand's case. All that it states is that when the first inquiry is over, at the time of the proposed action the grounds for the proposed action are given to you and you are given a reasonable time to show cause against the proposed action and the grounds. That is all. So, suppose this principle which has been laid down by the Supreme Court is clearly stated in article 311 without the words 'reasonable opportunity', will it serve the purpose?

Shri Basantha C. Ghosh: There is one thing more which the Supreme Court, as also the Privy Council, has laid down in Khemchand's case, namely, that while showing cause against the proposed action he may also show cause against the punishment itself.

Shri Santosh Kumar Basu: By calling witnesses and by cross-examination? Does it invlove recalling of witnesses?

Shri Basantha C. Ghosh: No. What I have explained is that once he has gone through a valid and good enquiry, it will not be reasonable for him to ask for a second inquiry in the shape of taking evidence etc.

Shri S. N. Chaturvedi: Who is going to judge whether it is valid and adequate?

Shri Basantha C. Ghosh: For the time being the authority determining it which is justiciable certainly, that is, whether he had a reasonable opportunity in the first instance and whether he was justified in asking for a

further recording of evidence. That would always be justifiable there can be no doubt about that.

Shri Santosh Kumar Basu: So, the second opportunity is to be confined to the record which has already been made and not extend to recalling of witnesses?

Shri Basantha C. Ghosh: Provided it is complete.

Shri Bibudhendra Mishra: If, suppose, the principles laid down in Khemchand's case are re-stated clearly, you will be satisfied.

Shri Basantha C. Ghosh: Yes. If the principle laid down in Khemchand's case is followed, certainly it would not require an amendment of article 311.

Shri Bibudhendra Mishra: Leave aside whether the amendment is necessary or not because it may be necessary to make the law clear, but what you want is a second opportunity and as to what is meant by 'second opportunity' has been stated in Khemchand's case

Shri Basantha C. Ghosh: It is re-stated rather.

Shri Bibudhendra Mishra: You want this same course to be followed nd the second opportunity to be given. If that is re-stated clearly so as not to leave any doubt or ambiguity in the matter, you will have no objection.

Shri Basantha C. Ghosh: We will have no objection.

Then, there is another matter. The language of the proposed amendment to article 311 takes away the words "reasonable opportunity of showing cause". The phrase "reasonable opportunity of showing cause" has now received judicial recognition. It is now an expression which has been interpreted both by the Privy Council and the Supreme Court to mean certain things. They have said that it is implicit in the language itself. What is sought to be done now is that that is to be taken away and in its place only an inquiry is provided at which he will be given an opportunity of being heard.

Dr. L. M. Singhvi: I do not think he is correct in that. I would like to point out to him the proposed draft where the words 'reasonable opportunity, are there. The amendment reads:

> "No such person as aforesaid shall be dismissed or removed expect after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:"

Shri Basantha C. Ghosh: There is a difference between "reasonable opportunity of being heard" and "reasonable opportunity of showing cause against the proposed action".

Dr. L. M. Singhvi: The words "reasonable opportunity" are there, whether of showing cause or of being heard......

Shri Basantha C. Ghosh: My own apprehension is that "being heard" limits the rights which are now existing.

Shri P. Alvares: The opportunity of being heard may be limited to just hearing the evidence

Shri P. N. Sapru: Why do you want to have two rights? You have a right of being heard in person; you have a right of having your case investigated in full and after the investigation is complete and the authority awards the punishment you are asking for an opportunity to represent against the punishment proposed. But why do you want to have the whole matter re-opened?

Shri Basantha C. Ghosh: We are not asking for a fresh inquiry to be held.

Shri P. Alvares: We are asking for the second opportunity for two reasons. The first is that there is no legal provision now for the findings to be in accord with the evidence. The findings can be utterly unrelated to the evidence that has been tendered in the

inqnory; they can be quite different. Therefore the administration can come to any findings they like irrespective of the evidence that is there and we have no protection.

Shri S. N. Chaturvedi: They can do that even after this.

Shri P. Alvares: At the second opportunity now we have a right to find out whether the findings are wrong. The second reason is that hitherto the punishments were related to specific offences as in other laws, but now with the amendment to the Establishment Code, the Railways, for example, can give the severest punishment for the most trivial offences. It is not justiceable and therefore there is no protection.

Dr. L. M. Singhvi: What is this amendment to which you refer and which has now made this possible?

Mr. Chairman: You may read it out.

Shri P. Alvares: It is section 1706 of the Establishment Code which reads.

> "A Railway Servant shall be liable to be dismissed from service in the following circumstances, viz.,
>
> (i) conviction by a criminal court, or by a court martial, or
>
> (ii) serious misconduct, or
>
> (iii) neglect of duty resulting in, or likely to result in, loss to Government or to a Railway Administration, or danger to the lives of persons using the railway, or
>
> (iv) insolvency or habitual indebtedness, or
>
> (v) obtaining employment by the concealment of his antecedents, which would have prevented his employment in railway service had they been made known before his appointment to the authority appointing him."

Then, serious misconduct is further defined as—

> "Offences of the following nature will also be treated as serious misconduct. The list is not exhaustive but it is illustrative:
>
> (1) embezzlement.
>
> (2) fraud.
>
> (3) forgery.
>
> (4) cheating in his capacity as a railway servant.
>
> (5) taking and offering of bribes"

Mr. Chairman: They are only illustrative.

Shri P. Alvares: Yes, but the main thing is 'serious misconduct' and dismissal is related to five types of offences. Hereafter it means for any offence and it is not justiciable at all.

Mr. Chairman: What do you say that?

Shri P. Alvares: Dismissal would be only for these offences. These have been removed from the Establishment Code.

Dr. L. M. Singhvi: What is the date of repeal?

Shri P. Alvares: 4th August, 1961.

Shri Gopikrishna Vijaivargiya: May I know whether such provision is made in any of the constitution of any other countries? Is there any provision in any written constitution just like this Article 311 of our constitution?

Shri Basantha C. Ghosh: There is no provision, so far as I can recollect about the services except under due process of law. In American written constitution, it is under due process of law. In the American constitution, they have not gone to elaborate all these things.

Shri Gopikrishna Vijaivargiya: They can be dealt with in the rules.

Shri Basantha C. Ghosh: Everything comes under due process of law. It is under the process of law. This was there in the Government of India Act of 1935. Prior to that it was in

the rules. When the Government of India Bill of 1935 was under consideration by Parliament, we took evidence. The Joint Select Committee of Parliament took evidence. They took the views of different associations so that it will be given constitutional safeguard.

Shri Gopikrishna Vijaivargiya: Suppose the Constitution Assembly makes some mistake. Can it not be amended or rectified now?

Shri Basantha C. Ghosh: It is not a mistake. The Constituent Assembly only carried forward what was in the earlier Act. So far as dismissal and removal are concerned, they merely copied the provisions of Section 240 of the Government of India Act, 1935.

Shri Gopikrishna Vijaivargiya: In view of the prevailing feeling and criticism in certain quarters that corruption and slackness are rampant, should not this amendment of Article 311 be enacted now?

Shri Basantha C. Ghosh: That is what is being raised in some quarters but it is to be seen whether this amendment will ease the situation or it will create further difficulties in that. A man who is charged of corruption knows that he will be hauled up. He will be given an enquiry. That is there. What would be the administration gaining by refusing to give him the opportunity of showing cause against the proposed action if the whole enquiry is to be there? The charges are there. So far as corruption is concerned, the charges can be specified. In the departmental enquiry, charges can be specified. It will have to be specified. Even if this amendment is accepted, that will make no difference at all. What we are trying to stress upon is this. From our own experience of the working of this, we have at least come to this conclusion that in the second opportunity we have a right to assail the findings of the enquiry committee.

Mr. Chairman: You want the whole enquiry to be gone through.

Shri Basantha C. Ghosh: A fresh enquiry has to be held. The officer will decide whether the plea is a *bona fide* plea or a *mala fide* plea. If the authority is satisfied that the plea taken is a *bona fide* plea, the authority certainly would not be justified to punish me without re-examining the matter if it is a *bona fide* plea. If the authority is not satisfied that it is *bona fide*, then, the authority may record 'I am not satisfied'. That matter will be justiciable.

Shri P. N. Sapru: Article 311 gives ample authority in exceptional cases to take action. Already, there is provision for representation to the President in all cases.

Shri Basantha C. Ghosh: That of course is true.

Shri Daji: What is the practice in the Railways? Is the enquiry conducted by the senior officer or done by some subordinate officer?

Shri Basantha C. Ghosh: Generally by officers who are either of the same rank or subordinate. In very rare cases the officer himself does it.

Shri Daji: All that the officer does is to do the enquiry and then he passes on the papers for final orders.

Shri Basantha C. Ghosh: Gives the finding himself.

Shri Daji: It becomes necessary that you get the opportunity before the man passes order.

Shri Basantha C. Ghosh: Yes.

Shri Daji: What is your experience as to whether appeals under departmental rules are heard fairly and dispassionately?

Shri Basantha C. Ghosh: It is not so and that is the uniform experience of all of us and that is recorded in the judgment of Assam High Court too.

Shri Daji: Is the employee who is victimised or punished, getting a copy of the evidence or verdict?

Shri Basantha C. Ghosh: He will not.

Shri Daji: If he gets the copy, he will be able to make out the case.

Shri Basantha C. Ghosh: That has been my experience. If one could get the paper and find out from the record a good case could be made out to proceed against the departmental enquiry.

Shri Daji: Is it not your experience that in many cases when you challenged, you are able to satisfy the senior officers who passed order about the need to re-examine the matter?

Shri Basantha C. Ghosh: There are not many cases, but there are certainly good number of cases where the authority himself has been convinced and has passed orders to hold a fresh enquiry.

Shri Daji: The enquiry has given some sort of security and justice to the employee.

Shri Basantha C. Ghosh: It is so.

Shri V. C. Parashar: May I know what are the figures? Can you give us as to how many cases you came across where second enquiry had been ordered by the officer concerned?

Shri Basantha C. Ghosh: That figure we have not prepared. We cannot give. So far as I am concerned, I have come across at least half a dozen such cases in my time. It is impossible to give figures because we have not prepared the figures.

Mr. Chairman: Out of how many?

Shri Basantha C. Ghosh: I believe one-fourth will be like that—about 25 per cent.

Dr. L. M. Singhvi: I think the Law Institute has done some work on this subject.

Shri V. C. Parashar: He said 25 per cent. May I know how many cases are there? This is just for my information.

Shri Basantha C. Ghosh: As I said, that is almost impossible—to give the figure off-hand.

Shri V. C. Parashar: You said that you have come across about six cases. The authorities themselves have been give a second opportunity when they feel it is necessary. Therefore, would you agree that there is no necessity to provide for it in the Constitution?

Shri Basantha C. Ghosh: There appears to be some misunderstanding. It is only when the second opportunity is given that the man is able to give an explanation and to satisfy the authorities that the inquiry was not correctly conducted.

Shri V. C. Parashar: According to the rules a Government servant is allowed the right of appeal. If second opportunity is preferred, than will you agree that there will be no need for an appeal?

Shri Basantha C. Ghosh: In the appeal he has also a right to show that the authority who proceeds against him does not act in conformity with the rules, procedure and natural justice.

Mr. Chairman: Do you mean to say that there are three stages? One is the enquiry, the second stage is consideration by the higher officer and award of punishment and then there is an appeal also.

Shri Basantha C. Ghosh: Appeal is there though it is rare. In the appeal there is an additional opportunity for the accused.

Mr. Chairman: Where does this second opportunity come in?

Shri Basantha C. Ghosh: Before the punishment is imposed.

Shri P. Alvares: At the time the disciplinary authority wants to impose punishment, he gives an oppor tunity to show cause.

Shrimati Yashoda Reddy: As between the second opportunity and appeal, which is more advantageous to the accused? What has been your experience?

Shri P. Alvares: There is always the psychological satisfaction that.....

Shrimati Yashoda Reddy: Apart from the psychological satisfaction, which has given the accused greater benefit?

Shri P. Alvares: Second opportunity has sometimes set aside the punishment and sometimes reduced the punishment.

Mr. Chairman: Is the second opportunity an appeal?

Shri P. Alvares: No.

Mr. Chairman: The first man does not impose any punishment?

Shri P. Alvares: First, the enquiry is before the inquiry officer.....

Mr. Chairman: He does not make any recommendation regarding punishment. It is only the second man who awards the punishment?

Shri P. Alvares: Yes.

Mr. Chairman: Is there any case in which you have been denied the opportunity to show cause?

Shri P. Alvares: No.

Mr. Chairman: You have not been denied this opportunity?

Shri P. Alvares: Not so far.

Shri Malaichami: When the inquiry officer and the disciplinary authority are the same person, will it be useful to have another opportunity so far as punishment is concerned?

Shri Basantha C. Ghosh: We will have to presume that the officer decides the case on merits.

Shri J. N. Kaushal: The Constitution provides only for one opportunity and the second opportunity is only given under the departmental rules. Is the witness aware that it is departmental rules under which the inquiry is held and the Constitutional protection comes in only after the inquiry is over? May I now ask the witness whether the present constitutional protection is only in form and not in substance?

Shri Basantha C. Ghosh: The position is that the present constitutional protection takes into consideration what is there in the departmental rules. If departmental rules are not there, then the recording of evidence, showing cause—all these will have to be done under Article 311 of the Constitution.

Shri Hari Vishnu Kamath: What comes first—the Constitution or the rules?

Shri Basantha C. Ghosh: The Constitution comes first. If a procedure is adopted under certain rules, the Constitution merely recognises it.

Shri P. N. Sapru: Will your objection be removed if the first inquiry is conducted by an independent officer—an officer independent of the department?

Shri Basantha C. Ghosh: Then that lacuna will remain, namely, I will not be given—I mean the accused—an opportunity of representing against the evidence recorded by the authority.

Shri D. B. Desai: Suppose the inquiry is held by a tribunal?

Shri Basantha C. Ghosh: Judicial tribunal?

Shri D. B. Desai: Not judicial.

Dr. L. M. Singhvi: Some administrative tribunal of a judicial nature.

Shri P. Alvares: Administrative tribunal will not be independent of the administration.

Mr. Chairman: Not a person who has got any jurisdiction over the employee, but an independent officer can constitute a tribunal.

Shri P. Alvares: At the present time, in the Railways, there is a pressure from the Trade Unions to have an officer who is not connected with the Department as an Enquiry Officer. It is not always conceded.

Shri Mohsin: About holding an enquiry you stated that sometimes subordinate officers are punishing officers who hold enquiries. Supposing if the punishing officer holds an enquiry,

would it not be superfluous to give a second opportunity of showing cause against the punishment awarded? Will it not do if the second opportunity is dispensed with and if the Enquiry Officer himself who holds an enquiry for showing cause against the punishment may be continued? Can you not distinguish like this?

Shri Basantha C. Ghosh: The point is this. You presume that the officer will proceed honestly. So, after he has himself examined the matter he comes to a tentative decision. I point out to him that these are the lacunae and these are the evidences on record on which the punishments are to be awarded or that the punishments proposed should not be given

Mr. Chairman: You want that a second opportunity should be given to you.

Shri Basantha C. Ghosh: While awarding punishment, he will take that thing also into consideration.

Shri P. N. Sapru: Have you got a right to go to the Public Service Commission?

Shri Basantha C. Ghosh: We have no right to go to the Public Service Commission.

Shri Mohsin: In the enquiry stage itsef are you given an opportunity to give evidence and show cause why a punishment is to be.....

Shri Basantha C. Ghosh: At the enquiry stage we can give evidence only against the charges. I suppose that the proposed punishment is to be awarded after full consideration of all the charges and other materials presented.

Shri Mohsin: They are suppsed to award the punishments according to the evidences. There are certain penalties which are to be given in a particular evidence. You cannot forsee as to what punishment you may get on the basis of the evidence.

Shri Basantha C. Ghosh: There are two things involved Psychologically, one can foresee what would be the punishment or quantum of punishment to be awarded by the punishing authority. But in the Railways, we do not even know the reasons but one may be dismissed even for a most trifling evidence.

Shri Mohsin: Even in criminal cases, the accused is never given an opportunity by a District Judge or a Judicial Officer when once a punishment is given after a show cause notice.

Shri Basantha C. Ghosh: But in the Railways that is not done.

Shri Mohsin: If a second opportunity is confined only to the question of punishment and not to re-open all the records or the evidence, will that satisfy you?

Shri Basantha C. Ghosh: No, Sir. One thing I would like to point out. That is, from it is clear that the proposed amendment to the clause seeks to provide the punishment as well as quantum of punishment. I presume that both are included in the amendment proposed to be made.

Mr. Chairman: You want to show on the evidence recorded that you are not liable to be punished at all. If you are liable to be punished, what should be the punishment that should be given is to be mentioned. This is what you want.

Shri Basantha C. Ghosh: In Gopalan's case, Shri S. R. Das, the then Chief Justice felt that since the expression 'reasonable opportunity of showing cause' is also implicit for an opportunity of being heard, he must be examined in his presence and that the charges made against him must be made available to him. This proposed amendment will not only take away the second opportunity but it will take away the nature of enquiry to be conducted by the Supreme Court as was done in the above case.

Mr. Chairman: There is an Officer holding the enquiry. On the basis of the evidence, an opportunity is given to you to argue out your case as to whether you are guilty or not. He

then submits his records of findings to the higher officers. There, you want one more opportunity to be given to you for being heard that you are not guilty.

Shri Basantha C. Ghosh: In this case, if the amendment is adopted what would happen is that I will be called and I will be told that here is the charge. Have you got to say anything without a reasonable opportunily of being heard?

Shri Mohsin: What have you got to say when you have the reasonable opportunity of showing cause at the enquiry stage itself?

Shri Basantha C. Ghosh: The reasonable opportunity of showing cause is there. But the second opportunity is not given at the enquiry stage.

Shri Santosh Kumar Basu: Reasonable opportunity of being heard comes in which regard to the merits of the case whether you are guilty or not as also while awarding punishment. It does not come in two stages.

Shri Basantha C. Ghosh: If you make an amendment to the Constitution and change the words which are judicial interpretation, then our Judges will say that this is an object to take away all this. Whatever may be the reasons for the amendment, this would be the interpretation which would be given by the Judges. This is my fear.

Dr. L. M. Singhvi: It is the Enquiry Officer reporting to the Officer who is entitled to award punishment or quantum of punishment on the basis of the evidence and charges levelled against an employee. Do you think that there is some protection in what you say. You have said at one time that a second opportunity that is to be given is superfluous in the sense that the person who hears the appeal will tend to ditto of what the subordinate officer has said. If that is the position, does it not really amount to this that the second opportunity that is given in appeal is superfluous? You yourself have said that by and large the Officers are forced to ditto the first decision.

Shri Basantha C. Ghosh: I feel that there is some confusion about it. The appeal is different from the second opportunity. What we have stated is that in the appeal of course there is a second opportunity. But, in the appeal, the punishing authority has already made up his mind as to whether the person should be punished and if so, what should be the punishment to be awarded to him.

Dr. L. M. Singhvi: This is what it comes to. Your objection is mainly on the expression 'showing cause for the action proposed to be taken against him'. This has got to be omitted. In many cases I think there would be a clear evidence being recorded against him. If that is treated as one phrase then it is clear that before the punishment is awarded—not after the punishment is given to a man—the Officer entitled to award punishment gives you an opportunity to show cause on the analogy of the criminal Proceedings *e.g.*, here the accused is entitled to represent that he is not guilty in the first instance on the basis of the evidence on record and in the second instance, he is given an opportunity to show cause in case he is found guilty. That is the amount of punishment which ought to be awarded.

Shri Basantha C. Ghosh: The Indian Penal Code or any other law in this country which provides for punishment also provides what should be the maximum punishment. In this particular case we do not know what is in the mind of the punishing authority at the time when the report is made. He must make it clear as to what according to him is assessed punishment.

Dr. L. M. Singhvi: You are saying that the quantum of punishment now remains completely unknown and there would be, therefore, some sort of arbitrary power vested in the authority. Part of the difficulty arises from the repeal of clause 1706 of the Establishment Code. Supposing in the Establishment Code or the Service Rules we are able to provide a

code of punishment along with the definition of offences, will that not be sufficient?

Shri P. Alvares: The provision of specific punishments for specific offences would restore much of the advantage that was there under clause 1706. Then it would not provide opportunity for contesting the findings. Very much of the difficulty in the Railways is that the enquiry officer is not bound by moral or legal considerations, while in the court it is incumbent upon the court to do so.

Dr. L. M. Singhvi: Don't you think that when an enquiry officer comes to a conclusion which is palpably perverse it can be challenged in the court of law?

Shri P. Alvares: Only the procedure can be challenged and not the punishment or the quantum of punishment.

Dr. L. M. Singhvi: Under the rules of natural justice you will be able to go to a court and say that there is absolutely no evidence on record and therefore the punishment is illegal.

Shri Basantha C. Ghosh: I will assume that if there has been a failure of natural justice or if the action is *mala fide* or if it is a colourable use of power the courts can interfere. But beyond these three there may be good grounds for asking the authority to hold that the case does not merit the punishment given because there are evidences which were not properly assessed by the enquiring authority.

Shri P. N. Sapru: Supposing you are asked to comment on the evidence that is recorded and you are heard before the punishment is awarded, what is your objection?

Shri Basantha C. Ghosh: Here one officer holds the enquiry and another officer decides finally whether action should be taken or not. It is to that officer that we want to represent.

Dr. L. M. Singhvi: If you think that the present enquiry machinery is not adequate or it is not satisfactory—that is what I understood you to say—would you suggest an independent enquiry machinery, an independent system of administrative tribunals, quasi-judicial tribunals, which are not connected in any manner with the administration?

Shri Basantha C. Ghosh: We have already said that we would certainly welcome such an authority being set up.

Shri Kashi Ram Gupta: The present amendment withdraws the safeguard regarding reduction in rank, which means that it is sought to be made a minor offence. What is your objection to it and what are your reasons for the same?

Shri Basantha C. Ghosh: If reduction in rank is taken out and it does not come under the constitutional safeguards provided in respect of punishments, then no officer would bother about dismissal or removal from service and he would only resort to reduction in rank. Then it would be impossible for anybody to carry on his work, because an engineer can be reduced even to the rank of a khalasi

Shri P. N. Kayal: Supposing you have got something against the findings of the enquiring authority you have the right of appeal, and while exercising that right of appeal the appellate authority may ask for a fresh enquiry. Therefore, you have that right of fresh enquiry.

Shri Basantha C. Ghosh: We have already stated that he may, but generally he does not do it. The difficulty is, once the enquiry is done and the authority proposing the punishment does inflict the punishment, the appellate authority is not inclined to interfere with the punishment awarded by the man on the spot because it is the immediate superior authority who inflicts the punishment.

Shri P. N. Kayal: After all, you are working in an administration and therefore there is both advantage and

disadvantage. You cannot have both sides of it as you get in courts of law.

Shri Basantha C. Ghosh: It is only in the case of dismissal or reduction in rank that this safeguard is provided and not in the case of other punishments. This can be compared only to execution or death sentence.

Shri Hari Vishnu Kamath: Shri Ghosh earlier referred to departmental rules and somehow conveyed the impression that the onstitution was in some way, a sort of, in conformity with the departmental rules. I agree that the founding fathers of our Constitution were not writing on a clean slate, but do you finally suggest that the founding fathers of our country so confined themselves as to ensure conformity of the Constitution with the departmental rules in force at that time?

Shri Basantha C. Ghosh: That is not our suggestion, that the Constitution itself should conform to the departmental rules. I think I should make myself clear on that point. In I. M. Lal's case about reduction in rank, it was held that since clause 55 of the Civil Service Rules and rules 1700 onwards of the Railway Establishment Code provided for a full enquiry in the right that was given to him under Section 240 of the Government of India Act, from which article 311 has been taken, it would not be reasonable for him to ask for a fresh enquiry. But if the rules do not provide for such an inquiry, he is entitled to ask for the whole inquiry under section 240. It is not that he is not entitled to the inquiry itself because he has had a prior enquiry into the matter and, therefore, it would not be reasonable for him to request for a repetition of the inquiry. When the Constituent Assembly incorporated a similar provision in the Constitution it must be taken that they have adopted it in the light of the interpretation given to section 240 of the earlier Act in Lal's case.

Shri Hari Vishnu Kamath: As has been pointed out already, article 311 (2) refers only to "a reasonable opportunity", not twice.

Shri Basantha C. Ghosh: It is a reasonable opportunity. Therefore, if he has not gone through the earlier inquiry, then he will certainly have another inquiry under article 311. Article 311 envisages, according to the decision of the Supreme Court in Khemchand's case, that he should be given all the materials on which the charge is based, all the witnesses should be examined in his presence at the inquiry, he should be permitted to cross-examine them, he can give his own defence and bring witnesses in support of his contention. That is bound to come under article 311. But they said that if under the rules he has got all the opportunities and there is no lacuna, then it would not be reasonable for him to ask for the repetition of the same under article 311 of the Constitution—not that he has not got the right but it would not be reasonable for him to ask for a repetition if he has got that under the departmental rules.

Shri Hari Vishnu Kamath: May I invite your attention to page 2 of the memorandum of the National Railway Mazdoor Union where it is stated:

> "In a meeting with the Railway Board on 5th February, 1963, the All India Railwaymen's Federation pointed out to the Railway Board that the delegation of powers vested in the lower supervisors who many a time abuse the powers vested in them."

When did this delegation of power come into force?

Shri Mahadeshwar: This was done in 1961.

Shri Hari Vishnu Kamath: Is it a fact that the General Managers of Railways have been invested with powers tantamount to summary powers as regards punishment?

Shri P. Alvares: Under rule 149 of the Establishment Code the General Manager can dismiss or remove any

person without assigning any reason and without notice.

Shri B. B. Varma: But they are given one month's notice?

Shri P. Alvares: Not even that.

Shri B. B. Varma: Probably, one month's salary in lieu of that.

Shri P. Alvares: Not in all cases.

Shri Hari Vishnu Kamath: Has this rule tended to improve the discipline among the railway men?

Shri Basantha C. Ghosh: It has not. On the contrary, it has created widespread dissension. In fact, it has been challenged in the Assam High Court and it has been held *ultra vires*. It is now pending before the Supreme Court in four cases. One is that of Shri Priya Gupta, a Member of Parliament.

Shri Hari Vishnu Kamath: In the last para of the memorandum it is stated:

> "The Union feels that specially at this hour, when the entire country including the Railwaymen have risen as one man to fight the Chinese Communist aggression for defending the democratic way of life for which India stands, it is necessary to recommend the dropping of this proposal....".

So, are you in favour of dropping it only for the emergency?

Shri Basantha C. Ghosh: No, not at all. We only meant that a wrong opportunity has been chosen for this. The time is very inopportune.

Shri Iqbal Singh: Suppose a railway official commits an offence like theft. Would you like him to be treated as an ordinary citizen of India?

Shri Basantha C. Ghosh: Certainly. The point is that an ordinary citizen has got a judicial tribunal which will act under the framework of the Indian Constitution. Therefore, so long as the democracy continues in India, there is nothing to complain. But in the case of the departmental inuqiry, even though all the trappings of a judicial inquiry are provided for, the officer holding the departmental inquiry is not bound down by any law of evidence, much less I believe of anything short of natural justice.

Shri P. N. Sapru: Natural justice is a very wide term.

Shri Basantha C. Ghosh: It is flexible also.

Shri Iqbal Singh: Suppose there is nothing like article 311 in the Constitution. What will be your reaction?

Shri Basantha C. Ghosh: So far as we know, there is no similar provision in the statutes of any country. In America they have the due process of law.

Shri Iqbal Singh: Suppose the railway and other Government officials are put on par with ordinary citizens, so far as disciplinary matters are concerned, how will you react to it?

Shri Basantha C. Ghosh: We should welcome that.

(The witnesses then withdrew.)

IV. ALL-INDIA DEFENCE EMPLOYEES' FEDERATION, NEW DELHI

Spokesman:

Shri K. G. Srivastava

V. NATIONAL FEDERATION OF P. & T EMPLOYEES, NEW DELHI

Spokesmen:

Shri P. S. R. Anjaneyulu

Shri N. J. Iyer

VI. ALL INDIA POSTAL EMPLOYEES UNION—CLASS III, NEW DELHI

Spokesman:

Shri K. Ramamurti

VII. ALL INDIA POSTAL EMPLOYEES UNION POSTMEN & CLASS IV, DELHI

Spokesman:

Shri Gopal Singh Josh

VIII. ALL INDIA TELEGRAPH TRAFFIC EMPLOYEES UNION—CLASS III, NEW DELHI

Spokesman:

Shri B. R. Bamotra

IX. CIVIL AVIATION DEPARTMENT EMPLOYEES UNION, NEW DELHI

Spokesman:

Shri V. Ramanathan

X. ALL INDIA INCOME-TAX NON-GAZETTED EMPLOYEES FEDERATION

Spokesman:

Shri G. S. Gnanam

XI. ALL INDIA NON-GAZETTED AUDIT & ACCOUNTS ASSOCIATION, NEW DELHI

Spokesman:

Shri E. X. Joseph

XII. ALL INDIA TELEGRAPH ENGINEERING EMPLOYEES UNION—CLASS III, NEW DELHI

Spokesman:

Shri Om Prakash Gupta

(Witnesses were called in and they took their seats)

Mr. Chairman: Your memorandum has been distributed to all the Members. It is on the same clause, namely, clause 12 amending article 311. If you want to add anything to what you have said in your memorandum, you may say that in a few words.

Shri Srivastava: We have nothing particular to add but we want to stress certain points. One of the important points is regarding the reduction in rank.

Mr. Chairman: You want that that should be retained.

Shri Srivastava: That should be retained. The punishments of dismissal and removal from service are tried to be bifurcated as if reduction in rank is a lesser punishment. In practice it happens that in many cases reduction in rank is a much more severe punishment than even dismissal or removal from service because it reduces the pay of a person sometimes to 40 or 50 per cent. A workman would not like to continue in service if this punishment is inflicted on him. So, this has to be considered a major punishment and a punishment equivalent to removal or dismissal from service.

Then, there are cases of this type happening very often, specially in the lower grades. It may not so happen in the grades of Gazetted officers perhaps. But when we deal with workers who are getting wages, say, between Rs. 100 and Rs. 300 a month, if they are reduced in rank, this reduction is considerable which, in the present circumstances, they are not able to bear. Therefore, this punishment is a major punishment and there should be no bifurcation of that punishment.

Secondly, the Government of India has not yet made any rules under article 309 of the Constitution governing the service conditions of the Central Government Employees. All the rules that are there at the moment are made by the departmental heads or by the Ministers and they do not have the status of a statute. So, there is more possibility of its being misused and the employee does not have the right to go to the court of law for its redress. Here there is one right which has been in existence for a pretty long time. We have submitted in our memorandum that even under the old Government of India Act, 1935 this right existed. So, if this right is taken away, it will affect the employees very adversely. Therefore this right should not be taken away.

Thirdly, the procedure that is followed in taking departmental action in the services is also important. Here, it is the same person who first decides that a person has committed an offence, then it is the same person who charge-sheets him and it is the same person who decides as to what the penalty should be. If this statutory right is not there....

Mr. Chairman: Is it the same person or a different person who holds the inquiry and also gives the punishment?

Shri Srivastava: It is the same person. So, the chances of its misuse are more. Therefore, this should be retained.

Then, one particular thing which I want to say about the Defence Department is this. I do not know exactly what happens in other departments, but I do not think that in other departments when there is an appeal, all the papers are sent to the appellate authority. In the case of civilians in Defence establishments only the appeal goes with the recommendation of the officer, with the result that in a majority of cases whatever punishment is inflicted by the lower officer is upheld by the higher authority. Unless they specially call for the papers which is in very, very rare cases, generally the same punishment is upheld. So, for these reasons particularly we wanted to stress that this amendment should not be there.

Lastly, during this emergency when the attention of all the employees is directed towards the nation-building activities and they are co-operating fully with the Government which Government has also realised, such a thing should not be brought about because it will cause discontentment among the employees.

Shri Anjaneyulu: At the outset, on behalf of the National Federation of P. & T. Employees, I would like to express my sincere thanks for the opportrtunity given to us for appearing before you and tendering this oral evidence today. While we have stated briefly the relevant points in the memorandum that was submitted to you, I would like to invite the special attention of the Committee to some of the very important paragraphs of the memorandum.

I would refer to paragraph 8 of the Memorandum wherein we have specifically mentioned that the disciplinary proceedings in the Government departments particularly while dealing with the Government employees are somewhat peculiar. It is peculiar in the sense that the disciplinary authority combines in himself the powers of a prosecutor and also the judge. He issues the charge-sheet. He can himself appoint an enquiry officer or he can himself conduct the enquiry without appointing any separate authority as the enquiry officer and then he can award the punishment on the delinquent official. Therefore, the scope for independent judgment regarding the offence committed by the official is very little in these disciplinary proceedings.

Then, I will invite your attention to paragraph 12.

Mr. Chairman: We have gone through it. You may say any particular point which you want to emphasise in addition to what you have already raised in your Memorandum.

Shri Anjaneyulu: In addition to the points mentioned in the Memorandum, I would only like to say that the Government appear to be of a particular view. It is our understanding from the speech made by the Government representative while introducing this amendment to Article that they are introducing this amendment because of the judgment of the Supreme Court that two opportunities are to be given to delinquent officals. We would only submit that according to the Supreme Court judgment itself, what they said was not so much a question of giving two opportunities, but it was only a question of giving an opportunity for the delinquent official to submit his defence at two stages. The opportunity remains one and the same. But he gets an opportunity of submitting his defence before the enquiry was conducted and also another chance at the stage of proposing the punishment and if this stage is taken away, major punishments are likely to be inflicted on the employees without the employees getting a chance of the details of the enquiry and knowing what the

enquiry officer has said in his proceedings.

Mr. Chairman: Does he want to go over the evidence again or what does he want? If one is liable to be punished, what punishment is to be given is stated. If that is given, you are satisfied.

Shri Anjaneyulu: We are satisfied. Another point which we would mention is this. He has referred during the course of discussion that sufficient provision has been made in the existing rules themselves. We would only say that the provision more or less on the same lines continue to exist in the previous rule 55 of the C.C.A. Rule of 1930 and it was stated that those rules were only administrative rules and liable for change at any time. Therefore, we would submit that this constitutional safeguard by providing an opportunity by giving a showcause notice, etc. may be provided and retained in the constitution itself. If the constitutional safeguard is taken away the rules may be tampered with and the government servants would be denied of this protection.

Then, about the reduction in rank, we submit that it is a very serious punishment and we would like it to be retained in the constitution.

Shri Joseph: On behalf of the All-India Audit and Accounts Association, I wish to say this. According to the present procedure every employee has to be given a copy of the finding of the enquiry officer. If the proposed amendment is accepted, he will not get the same.

Mr. Chairman: Rules say that copy has to be given.

Shri Joseph: According to Supreme Court decision and according to present procedure a copy has to be given. If the amendment is carried out no copy will be given. After the enquiry, the only thing that the employee will receive is the punishment order. If the employee finds out any defects in the enquiry at a later stage, it becomes very difficult for the employee to prove his case. If he gets this chance earlier it would be useful. I would like to mention one case which occurred in the P. & T. Department. The employee's name is Kochar. He was discharged under temporary rule No 5. According to him, he was discharged as a punishment and he has filed a case. Now authorities have taken the stand that records are missing. Just to counter the point of the employee, they have taken the stand in the court that the records are missing. Therefore, unless the employee is given a copy of the report at the stage of the enquiry itself, it will not be helpful. If a report is not given after the enquiry they can tamper with the records and therefore this has got very dangerous consequences.

Another point is this. We find that the appeals stage is more or less a formal stage where the authority upholds what is done earlier. Cases of technical fault or procedural mistake occurs. There are three cases which we know where the punishments have been simply confirmed by the higher authority, but all the three employees went to court and won their cases in the court of law. Such things happen. So if he can point out the mistake before the finding is given, that will save lot of money and lot of time. If a person wins his case in the court of law, he is given all the money. It will result in saving of time and saving of the money if he points out the mistake earlier before the finding is given. If the mistake is pointed out earlier and if the authority is fair, he can correct the mistake.

There are instances where victimisation of trade union officials has taken place in the department to which I belong. I may be forgiven if I point out my own case. In my own case, namely, that of General Secretary, I have been charge-sheeted 7 times in the course of 5 years. Once, I was retired from service at the age of 27 for association activities. I went to the Supreme Court and the Supreme Court quashed the order and now they are proceeding on some

other pretext and under some other rule. Therefore, proceedings are used to victimise trade union officials. If we are to encourage healthy trade union movement, we should not encourage such tendencies in the country. This thing should not be used against us. Even if the procedural protections are taken away like this, there will be more victimisation of trade union officials. That is our fear.

The Minister referred to speed in conducting such cases. After the strike of 1960, more than 2,000 to 3,000 cases have been dealt with. Therefore, there is no question of delay. If they want to award punishments they can give them. If they don't want, they can delay the same. They can do things at their convenience. The question of speed does not come into consideration at all. If the officer proceeds with the necessary competence and intelligence, this question of delay will not present any difficulty.

Now, according to the existing procedure, after the enquiry is completed the report of the enquiry officer has to be considered by the disciplinary officer and he has to apply his mind to it and record his findings. In certain cases the Court of Law have quashed certain decisions only because the disciplinary officer did not even care to record his findings. In the Bombay Accountant-General's office, three cases came up where the disciplinary officer did not care to record his findings and when two employees went to court of law, the court quashed the orders. Therefore if this stipulation is taken away, they will never apply their mind. They will not even read the enquiry reports. Without even reading the reports the punishments will be given. There will be such difficulty coming up if the amendment is accepted.

In many cases enquiries are conducted in a haphazard manner. In one case of mine there was an enquiry and I had to go before the inquiry authority. He did not even allow me to speak. I told him: "Please allow me to speak". He said: "You tell me 'No' or 'Yes' to whatever I ask you and nothing more". I said that my request to speak may be recorded. He said 'nothing doing' and that it is for him to decide whether something is to be recorded or not. He got angry and finally asked me to go away. He wrote down his own record according to his own version. I did not have the opportunity to question it. If I point it out to the appellate authority, then he will say: "You are telling me something which is not correct. This is my record and I will believe only that". Therefore, it is very important that the report is given to the employee. If the existing procedure is taken away, it will cause immense suffering and a lot of agony to the employees.

Shri S. N. Chaturvedi: Did the second oportunity give you any redress in this case?

Shri Joseph: They have to give a copy of the report of the inquiry. If the report is not given, afterwards they will tamper with the record. Once I am given a copy, they cannot play any triok and I can point out that the report is defective.

Shrimati Yashoda Reddy: He wants to know whether you have got redress as a result of the second oportunity being given to you.

Shri Joseph: Even before the point of giving me report, I filed a case in the court of law.

Mr. Chairman: Whom do you represent?

Shri Ramamurti: National Federation of P. & T. Employees to which Postal Employees Union is affiliated.

Mr. Chairman: Please be brief.

Shri Ramamurti: I submit to you that the inquiry that is conducted against a Government servant is not in the nature of tribunal proceedings. In the case of tribunal, in the private sector, for example . . . .

Mr. Chairman: Your colleague has said all this. You need not labour on that point. We know it is not a judicial inquiry, but only a departmental inquiry.

Shri Ramamurti: The opportunity of being heard allows the Government servant proceeded against to state his own conclusion only.

Mr. Chairman: All these things have been brought out.

Shri Ramamurti: In the earlier evidence?

Mr. Chairman: Yes.

Shri Ramamurti: I did not know that because I was not here.

Mr. Chairman: I will make the points clear. You want the reducing rank should be retained there. Secondly, you must be given an opportunity to be heard to say that you are not guilty on the evidence on record and if you are to be punished you should have the right to say what punishment should be given . You want an opportunity to be heard.

Shri Ramamurti: The opportunity to show cause why the penalty should not be awarded, must be given. I only want to elaborate one point. The disciplinary authority and the punishing authority and the inquiry authority more often happen to be one. It has been covered already. But the point I want to draw your attention to is that it is not like a court where both sides argue the case and a third person gives an independent judgment. The prosecutor and judge happen to be the same person here. I might never know the conclusion of the disciplinary authority. I can only state my conclusion if I am given an opportunity to be heard only. Later on I should know the conclusion of the disciplinary authority on the basis of the evidence. More often the inquiry officer may not record his findings in accordance with the evidence tendered. More often the inquiry officer records his findings which are contrary to the evidence. That has happened not in one or two cases, but in a large number of cases. Unless you know the findings of the inquiry officer . . . .

Mr. Chairman: You mean to say that the report should be given to you.

Shri Ramamurti: Not only that. I must have the chance of knowing the findings of the inquiry officer and the disciplinary authority and say that the findings are not in accordance with the evidence, if they are really so.

Shri Bibudhendra Mishra: I think you will be satisfied if you will get a copy of the report and the grounds on which it is based so that you can make a representation against....

Shri Ramamurti: That is precisely the show cause notice.

Mr. Chairman: You want the show cause notice to be retained. Anything else?

Shri Ramamurti: Then, these rules—C C A Rules—have not been made justifiable. I would like to invite the attention of this house to a recent judgment of the Punjab High Court where this point of justiciability of these rules was raised. Although other courts have not said so and there is no Supreme Court ruling on this point....

Mr. Chairman: Have you got that case?

Shri Ramamurti: I do not have it. I am sorry, I do not have the judgment.

Shri Santosh Kumar Basu: Has it been published?

Shri Ramamurti: It is a very recent judgment. It has not come out.

Mr. Chairman: You can give the number of the case.

Shri Ramamurti: Yes. The third point that I want to raise is that in all these courts of law the merits or demerits of the points involved have never been gone into. They have

gone into only one aspect whether a reasonable opportunity has been given or not. If an officer follows the provisions of these rules, there is no question of these people going to courts of law and their cases not being settled for 5 or 6 months. If the provisions of these rules are followed closely, not a single case will have to go to the courts.

Mr. Chairman: You want that the rules are to be observed strictly by the officers.

Shri Ramamurti: Yes, Sir. In this connection, I may submit one more point that there are really no two stages the reported cause for bringing in the proposed amendment. That point, I believe, has been covered. Actually, the disciplinary authority can straightaway appoint an Enquiry Officer. He makes equiries and I tender my evidence and then only I get the chance to show cause against the proposed action to be taken. It is not a second opportunity. In fact the first opportunity given to me is for submission of preliminary statement of defence. On the basis of this, the authority must decide as to whether an enquiry is to be held or not. The first procedure is simple. I am given the statement of allegations and the charges and I am asked to show whether I have anything to say. If I admit the charges, no enquiry need be held. If I do not admit the charges and I say that an enquiry should be held, then an Enquiry Officer is appointed. The authority can straightaway frame allegations and appoint an Enquiry Officer and ask the government servant concerned to explain his conduct in the preliminary stage to the Enquiry Officer himself. The holdings of an enquiry will not arise if the government servant concerned admits the charges levelled against him. If he does not admit, then he will say that he is not guilty and that an enquiry should be held. He gets an opportunity to examine the witnesses as also to cross-examine them. Since the government servant files a preliminary statement of his defence only, opportunity must be given to him after the enquiry.

Mr. Chairman: We have already gone into these matters.

Shri Ramamurti: I won't go into details. I hope my friends might have explained about the aspects of the protection to the trade unionists. I would only make one observation so far as the protection to the Trade Unions is concerned. We, the Government servants, are governed by a Code of Conduct and Conduct Rules which prohibit them from addressing public meetings, writing to the press and so on and so forth. As a trade unionist, I do not have the right to take up these cases with my authorities for negotiations. In a private sector, *e.g.*, under the Industrial Disputes Act, a dispute might arise on account of discharge or retirement or victimisation of an employee. One of the terms and conditions of service in my organization is that I am precluded from taking up any of the individual cases. From the trade union point of view, I would say that unless the law of the land and the Statute and the Constitution itself embodies protection, it will be very difficult for us to protect the legitimate interests of the employees as such. This is a very important point which I respectfully submit for the earnest consideration of this House. I would quote one case—and I do not mention the name of the individual—wherein that individual wanted that the Enquiry Officer should proceed to the spot to find out whether any such incident could have possibly taken place. He refused to go to the spot. Ultimately, the case was decided against the government servant. Subsequently, he went in on an appeal. In the appeal also, unfortunately, the case was rejected. Our experience has been that at least in 96 per cent. of the cases—that is the statistics available with me—the appeals are rejected generally. The original officer's decision is generally

upheld for some reason or other. Therefore, we attach the greatest importance to the original stage itself rather than the appellate stage and the stage of submitting a petition to the President. My submission, therefore, is that the maximum opportunities should be given to the government servants in the original stage itself.

Shri O. P. Gupta: We would very much appreciate if the Committee would recommend that no delay should take place in the disposal of disciplinary cases. At the moment, when the officer is under suspension and finally even when he is awarded any punishment, he is paid half the pay.

Mr. Chairman: What is your suggestion?

Shri O. P. Gupta: As per Art. 311 it provides that when a charge-sheet is given to a person, he has to reply to that. But, before he submits his reply, his case is shunted out to the Enquiry Officer. He starts the case. I think that till he replies to the charges, no further proceedings should take place against him. According to Government, once a charge-sheet is given under rule 15, enquiry has got to be conducted. The second point is that according to this rule, the official is asked to reply whether he would like to be heard in person. When he replies that he wants to be heard in person, he is not allowed to be heard in person because they say that there is going to be an Enquiry Officer. So, the purpose in having this rule 15 is imaginary as if it looks that a government servant is given an opportunity to reply.

Mr. Chairman: Do you mean to say that the rules are not being observed strictly?

Shri O. P. Gupta: Yes, Sir, Rule 15(1)(a) provides that an Enquiry Officer can be appointed simultaneously taking away the benefit of replying to the charge-sheet. This has no meaning. Secondly when the enquiry is conducted, sometimes they ask anyone to hold an enquiry. Unfortunately, he will be a subordinate officer. If a disciplinary authority asks a subordinate officer to enquire into the case, our experience has been, that the merits of the case have not been gone into. He simply upholds what the subordinate authority says.

Mr. Chairman: We are not concerned with the rules as such. You may say that the rules are not being observed strictly. This is one of the grounds for which you object to the amendment.

Shri O. P. Gupta: Apart from that, delay takes place in the conduct of enquiry in different stages.

Mr. Chairman: Do you mean to say that the rules are not observed strictly?

Shri O. P. Gupta: These rules require modification with regard to the disposal of disciplinary cases without delay. Our experience has been that delay takes place in disposal of disciplinary cases. We have got cases being disposed of in two months' time. The rule provides for a show cause notice being given. Even if the disciplinary authority has to disagree with the views of the Enquiry Officer, he has to give the reasons. If they prove that they are not guilty before the Enquiry Officer, the Enquiry Officer should not say that they are guilty simply because the disciplinary authority has disagreed with the views of the Enquiry Officer. As regards punishment, there is a Punjab High Court decision in the case of Niranjan Singh, a railway worker and a P. & T. worker Mr. Sud. It was established before the Enquiry Officer that they were not guilty. But, the disciplinary authorities having disagreed with the Enquiry Officer's report said that they should be punished. If you analyse various cases, basically all the copies of the documents are to be supplied. The question of second opportunity does not arise at all.

Mr. Chairman: That has been stated already.

Shri O. P. Gupta: We get the show cause notice and we have a chance to say that the conclusion of the Enquiry Officer is not based on the facts. That is the material difference that it makes when we do it. The third point is that there is no legal remedy against the punishments except that we can go into it. As Mr. Mathur pointed out in Parliament, the delay or the revision of cases basically comes in many cases. In Raizada case, because certain officers have not implemented the various provisions, the delay has taken place. Procedural delays are there.

The last thing I would submit is this, that the government servants have contracted service for two reasons. In the British days the economic structure of the wages was better, it was a better life and there was peace. The other reason for contentment is security of service. As regards economic factors we are worse off today. In the private sector, in the Reserve Bank and other places we can get better wages. Here the wages have been reduced. If security is also taken away, we feel there will be much greater dissatisfaction than today.

For peace in the industry and security it is very necessary that government servants should not be subjected, either due to administrative or political vindictiveness, to the whims of individual officers. Because, our experience has been that it was on account of the whims of the officer and his predetermined attitude about a case that people have been punished and not on the merits.

Shri S. N. Chaturvedi: How will a second opportunity help? The same officer will decide. You say it is by the whim of the officer.

Shri O. P. Gupta: I will get a chance and an opportunity to show how his conclusions have been based and that his conclusions are wrong.

Then, as regards appeals, if you prescribe a certain limit, a time factor, for deciding appeals, that would help. Because, otherwise the appeal goes into the waste-paper basket, and only the lucky fellows get their appeals considered. And if there are certain punishments, like in the IPC where it is defined that for such and such charges there will be so much of punishment, that will be better.

If the second opportunity is taken away, just as is provided in rule 15 in respect of the ICS and other services that the UPSC is to be consulted, in our case let the tribunal be consulted, and we will not ask for "show cause".

Shri N. J. Iyer (Spokesman of All India R.M.S. Employees Class III): Many Members of the Committee are asking a question as to why we want a second opportunity. Under the present procedure discharge, dismissal and reduction in rank are three punishments which are given.

Mr. Chairman: We will adjourn now and meet again at 3-30 p.m.

(The Joint Committee then adjourned till 15.30 hours.)

(The Joint Committee re-assembled after Lunch at 15.30 hours)

Mr. Chairman: You were saying something.

Shri N. J. Iyer: Constitutional provision has been specifically made for cases where the disciplinary authority contemplates dismissal, removal, compulsory retirement—of course, compulsory retirement has not been specifically provided—and also reduction in rank. Since a stigma is attached to these punishments, if the disciplinary authority has gone wrong, we are anxious that we should not be attached with any stigma for unnecessary reasons. So, a reasonable

opportunity has been elaborated by the various courts to say that all these facilities should be provided. When we are given a charge-sheet, generally, the main charge will be one. Along with that, several charges are also added. If we are able to establish against the main charge, then, sometimes, the disciplinary authority, if it wants to punish us, it also punishes on minor charges. Therefore, we want to know the complete details of the enquiry report as well as the findings of the enquiry for each charge so that we will be able to establish our case. If we receive the enquiry report and the findings of the enquiry, we can put forward our points of view, our arguments against the charges which are supposed to be established or not established. Therefore, our contention is that the so-called second opportunity which really is not the second opportunity, but the same opportunity,—the real opportunity—comes only after the disciplinary authority weighs the evidence from the enquiry report and then contemplates to give punishment. Initially, it may also be known to you, that in these disciplinary proceedings, specific punishment for each offence has not been provided. Even if initially it is a flimsy or minor offence, then also, he can be dismissed for some offence or he may be let off with a minor punishment also. We do not know this at the time the charges are framed or disciplinary proceedings are initiated. Therefore, we are very anxious to know as to what kind of penalty the disciplinary authority intends to give. That stage comes only after the enquiry is over and the entire details of the enquiry or proceedings are given. Whether he wants to dismiss or remove or he wants only reduction in rank, we will be able to know only at that stage. Initially we are not told as to what punishment is intended to be given. It may be that we may be let off.

Mr. Chairman: These are arguments you are advancing. All these things have been advanced by your colleagues. Do not cover the same points again. Do not repeat. If you have any new points, you may say.

Shri N. J. Iyer: If you are convinced with my arguments, if you feel that these points have been covered....

Mr. Chairman: All your friends have covered the same points.

Shri Akbar Ali Khan: If there is any new point, you can say.

Shri N. J. Iyer: About reduction in rank, I wanted to say this. If initially a person has been directly recruited, he can even be brought to Class IV cadre from class III. That is a stigma. If the anxiety of the Government is in respect of punishment in corruption cases, we have said in our memo that we do not hold a brief for corruption cases. If a special procedure is adopted, we will be all the more glad.

Shri Ramamurti *rose—*

Mr. Chairman: You have had your say in the morning.

Shri Ramamurti: I wanted to bring to your notice a fresh point.

In regard to reduction in rank particularly, I want to bring to the notice of the Committee one important aspect of the problem, namely that under the existing rules, any officer of any class, holding any post, in any grade, can be reduced to any class, any post or any grade. To put it specifically, a Class I or Class II or Class III officer can be reduced as a Class IV employee. I have before me several cases where a person directly recruited as a clerk and promoted to the next higher grade, was reduced as a postman for a period of two years on a very trivial offence for which a very minor penalty or warning would have been sufficient. The importance of this punishment is how it affects the employee. It is a power that is granted to the subordinate officers to do anything they like. I do not say everybody does it. This protection has been given. It is not as if this is an everyday common punishment. If

this constitutional safeguard is not there, it is bound to become a common feature. That is where constitutional safeguards give us protection against abuse of authority. That is one deterrent factor on the subordinate officers. Therefore, we are grateful for the constitutional protection. That is No. 1.

Secondly, we appeal to the Joint Committee to drop the proposed amendment to article 311.

Mr. Chairman: You have said that in your memorandum.

Shri Ramamurti: Supposing the show-cause-notice-opportunity that we have today after the enquiry is over is put in the shape of an administrative instruction or is embodied in the rules, without that constitutional safeguard, what will happen? That is the point on which I would like to seek your attention. It will have no meaning, and no validity, and it will remain just an administrative instruction. When the concerned authority does not adhere to the administrative instruction, and it is simply a rule which is neither justiciable nor statutory nor something which has constitutional authority, what is the remedy that is open to a Government employee to say that the administrative instruction has not been followed properly and opportunity has not been given to him? The only right that he has today is the constitutional safeguard and the second tage as it is called, which is part and parcel of the first stage itself. Unless that stage is guaranteed by the Constitution, we shall have no opportunity to defend ourselves. This is the most important aspect of it namely that a Government servant has no other opportunity to defend himself. As you know, Sir, his fundamental rights are limited at the pleasure of the President. We have nothing to say about it. That is not the object of the present evidence at all. Although we have much to say about it, I do not want to say even a word about it because in the interest of public weal and in the interests of public tranquillity and order, if certain reasonable restrictions are imposed on the Government employee, we accept them for the present. So far as this provision is concerned, it is in that background and in that context only that the weight of this constitutional safeguard has got to be considered. And that is my respectful submission to this committee.

My second submission would be that if this opportunity of showing cause is allowed to remain as only an dministrative instruction or a rule or order which is not justiciable, and which has no justiciable or statutory or constitutional substance about it, then it has no validity in any aspect at all, and it will have no meaning at all.

Shri Narasimha Reddy: Some of you have said that the enquiring authority is quite different from the punishing authority. Some others have said in the morning that the enquiring authority and the punishing authority are one and the same. Are there any rules? Could you enlighten us on this point?

Shri Ramamurti: The rule permits the disciplinary authority to function also as the enquiring authority; it also permits him to appoint an independent officer as an enquiring authority.

Shri Narasimha Reddy: What about the punishing authority?

Shri Ramamurti: It can be either, *i.e.* both authorities are the same.

Mr. Chairman: The same authority may both enquire and punish.

Shri Ramamurti: Yes Sir. But the enquiring authority, where different, will after enquiry submit his report to the punishing authority and the punishing authority in any case is the same person.

Shri Narasimha Reddy: You have been saying that the enquiring authorities or the punishing authorities have not been observing the rules of procedure etc., and that they are not bound down by any technicalities.

Have you got any suggestions to ensure that the departmental enquiry officers act upon those rules and instructions?

Mr. Chairman: He has already told us that the rules are there but they are not observed.

Shri Ramamurti: If the disciplinary authority is the same as the enquiring authority, and the person does not follow the rules, then he may not get any structure except when an appeal is preferred. But there should be provision in the rules that the conduct of the officer should be judged properly in the light of the manner in which the enquiry is conducted and the rules are adhered to. But generally they do not get any strictures; they may be confidentially pulled up but we know nothing about it, and we are not told anything about it.

Shri P. N. Sapru: Your point is that the enquiring authority or the investigating authority should be appointed by a department other than the one to which the person belongs?

Shri Joseph: That by itself will not suffice, unless a tribunal is created in which the disciplinary authority will put forward his point of view, the accused shall put his point of view, and an independent authority will come to a judgment. Then this question may not arise, but not otherwise.

Mr. Chairmen: That is beside the point.

Shri Narasimha Reddy: Is there no penal provision in the rules making the officers who disobey the rules liable for some punishment?

Shri Ramamurti: The higher officers may take note of it or may not take note of it but we know nothing about it.

Shri Narasimha Reddy: There is no provision as such?

Shri Ramamurti: No Sir. Today, the only protection that we have is the constitutional protection.

Shri Gopikrishna Vijayavargiya: Is there any constitution in the world where a provision similar to article 311 of our Constitution exists?

Shri Joseph: I may give one piece of information. In England where there is no written Constitution, and where there is only an unwritten Constitution, the procedure followed is the same as the one in article 311 of our Constitution.

Shri Gopikrishna Vijayavargiya: That is covered by rules only.

Shri Joseph: But there is no written Constitution there.

Shri Gopikrishna Vijayavargiya: There is a general criticism all over the country that there is corruption and slackness. What is your alternative proposal to meet that criticism? How can efficiency be brought into the administration? The trend seems to be that one should have all rights but no duties and in the services also that seems to be the position.

Shri Joseph: I have one or two suggestions to make in this connection. One is the toning up of the spirit, the ethos and the atmosphere in the services in the entire country; when that is done, corruption also will go down. Secondly, the associations and unions of employees can be taken into confidence and I am sure that we can do a lot to help in seeing that these corruption cases are brought down. But our experience is that often when we point out some cases like that, the punishment comes upon us and not upon the people who actually commit the corruption.

Shri P. N. Sapru: I may point out that under article 311, there are already provisions which enable Government to take action without going through this formality, and in exceptional cases recourse can be had to those provisions.

Shri Joseph: That is exactly the point. There is already provision in article 311 to which, in cases of an extreme nature, recourse can be had, and the punishment can be imposed without any further enquiry.

Shri P. N. Sapru: The sole judge as to whether recourse can be had or cannot be had to those provisions is the executive authority. That authority is vested with the executive.

Shri Joseph: But it has also been provided that he must record the reasons in writing.

Shri P. N. Sapru: Yes, the reasons can always be found.

Shri S. N. Chaturvedi: Could you give us any figures to show that the second opportunity has enabled you to secure from the executive better justice by way of modification of the proposed punishment, or the ordering of a re-enquiry or re-trial or the recording of fresh evidence, or has this only helped you in securing redress from courts against irregularities of procedure?

Shri Joseph: In the office of the AG, Bombay or Maharashtra, out of 15 cases where show-cause-memo was given for retirement or dismissal or the awarding of an extreme penalty, after considering the representation in reply to the show-cause-memos, 12 cases were reconsidered and only minor punishments were imposed, and only in three cases was the extreme punishment of dismissal given.

Secondly, in many cases, particularly in the P & T new enquiry has been conducted, because the reply to the show-cause-memo showed that the enquiry was defective.

Shri S. N. Chaturvedi: Has that been the case in the other departments also?

Shri Ramamurti: Yes, in other departments also.

Shri S. N. Chaturvedi: Is there no other safeguard? If the procedure is not followed under the Civil Service regulations, then even without article 311, you can go and seek redress in a court of law?

Shri Ramamurti: No. I would differentiate between two things. One is whether the rules are justiciable or not. The other is the question of the constitutional remedy. If the constitutional remedy is there, I can go and file a writ petition in the High Court and secure redress quickly. Even the writ petitions, as you know well, take about six months to one year. When that is so even with regard to writ petitions, what to talk of a civil suit? It goes on for four or five or six years, and there is no time-limit about it, and, therefore, it actually becomes an infructuous thing. Even assuming that it is justiciable, I put it to you like this. If it is justiciable, then what is the remedy open to us? The moment you make that justiciable and statutory, then automaticall the constitutional right accrues. The only thing is that where we have the right of writ petition today, we go to the court with the writ petitions only in extreme cases where we find that we are unable to have any other remedy.

Shri P. N. Sapru: Under the proposed amendment, will there by any distinction or discrimination made as between superior officers and inferior officers? Superior officers appointed on the recommendation of the UPSC will have a right of representation to that Commission and the Commission has a right to be consulted. So far as class III and IV officers or junior officers are concerned, they are not appointed in consultation with the UPSC.

Shri Ramamurti: Under the existing rules, there is no reference to the UPSC at the time of inflicting punishment on class III and IV employees. At the time of submission of appeal also, there is no such reference. Only when the appeal is rejected and he prefers a petition to the President, that comes. The petition can be rejected by the head of the department. But if the head of the department wants to accept it, he may refer it to the UPSC for a recommendation. But now that rule itself has been amended to confer the right vested with the President on the head of the department himself. Without even consulting the UPSC, he can accept or reject it.

Therefore, so far as class III and IV are concerned, the question of consultation with UPSC will not arise and as you very rightly pointed out, there will be a blatant discrimination between superior and inferior officers.

Shri P. N. Sapru: Corruption is not confined to inferior officers; it is as much prevalent among superior officers also.

Shri Ramamurti: It is more so.

Shri Santosh Kumar Basu: You seem to be under a misapprehension that failure to observe the rules is not justiciable. If you refer to article 309 with the proviso, you will see that these rules which have been framed by the President so far as Union government servants are concerned, have the force of law and if they are not complied with or are departed from, it is as much justiciable as any provision in the Constitution. So there is hardly any substance in the argument, if I may say so, which you have been advancing, that you suffer if the safeguard is not there in the Constitution.

Shri Anjaneyulu: If a constitutional provision is amended, it comes before Parliament and has to be approved by it; but if rules are amended by the executive authority, Parliament's sanction is not required. That has been our experience.

Shri Santosh Kumar Basu: The question of amendment is different. So far as the present rules stand, they have got the force of a constitutional provision and failure to observe the same is tantamount to failure to observe a provision of the Constitution itself.

Shri Akbar Ali Khan: His point is that rules can be amended by the executive without Parliament's approval whereas an amendment to a constitutional provision has to receive Parliament's approval. Therefore, their security of service is better ensured by this being made a provision in the Constitution.

Shri Bibudhendra Mishra: The interpretation that is to be put on article 309 is beside the point. The whole point is if instead of two opportunities now given, only one will be given and if they are not given the grounds and the action proposed, how do they know what the case is and how can they go to a court of law? That is probably their point.

Shri Daji: Even if they go to the court, what will the court do?

Shri O. P. Gupta: An attempt was made to amend the rules and we pointed out. . . .

Shri Bibudhendra Mishra: We have nothing to do with the rules.

Shri O. P. Gupta: They say it will not vitiate the proceedings.

Shri S. N. Chaturvedi: There was no corresponding provision in the 1919 Act.

Shri Joseph: The only provision in 1919 Act was that the punishing authority cannot be subordinate to the appointing authority. There was a rule, 240, which said that the inquiry procedure should be followed, and there was a case. The decision of the Privy Council was that because it was only an administrative rule, even though made under the 1919 Act, it was not justiciable. They dismissed it on that account.

Shri S. N. Chaturvedi: This was as a matter of fact embodied for the first time in the 1935 Act and it was because the Secretary of State's services got apprehensive of the further instalment of freedom conferred on this country. It was not introduced because of any agitation or representation by other services. This is a legacy of that distrust which has continued in our Constitution. If you want it to be continued, it is a different matter.

Shri Ramamurti: I have been in the trade union movement for 20 years and I can say that we have been persistently representing that these provisions are inadequate and should be

enlarged. So it is not correct to say that there was no agitation on the part of the trade union movement for this. I may also say that the Home Ministry has been issuing clarifications enlarging the scope. We are a democratic country and today......

Mr. Chairman: It is all argument.

Shri Kashi Ram Gupta: Can you suggest an alternative wording to the present amendment safeguarding the interest of the employees as well as removing the difficulty of the second opportunity?

Shri Ramamurti: Unless the first enquiry is improperly held, the question of a second enquiry does not arise at all. It is not a second chance as such, it is the real chance, because only after the enquiry is held, I have a copy of the enquiry officer's report, I know what has happened, what the intention of the administration is, what the charges and evidence against me are. I will contrast it with the procedure in regard to minor punishments like stoppage of increment. A charge-sheet is given, a reply is furnished, and straightaway the officer imposes the minor penalty. There is no question of a second opportunity. It is only because this is a major thing which may affect my security of service, promotion or pension and involve me in financial loss or reduction of rank that the question of giving me a reasonable opportunity to exonerate myself arises.

There is no alternative to the present wording, but I would suggest that in addition to article 311, the procedure prescribed in this article must apply as far as corruption cases are concerned.

Shri Kashi Ram Gupta: If the reasons are not given and if only the punishment comtemplated is given, will that suffice?

Shri Ramamurti: How will it suffice?

Shri Daji: Supposing we evolve a composite system whereby first of all the charge-sheet is given, there is an enquiry and the report of the enquiry officer is given to you as also the evidence taken, will that suffice?

Shri Ramamurti: Yes, and if the opportunity to show cause is retained.

Shri Daji: You said that about 2,000 cases of the striking employees were disposed of within a week and that there were irregularities. In the case, did the court interfere in any of the cases?

Shri O. P. Gupta: They were all settled out of court.

Shri Gopikrishna Vijaivargiya: Don't you think that service in the ordnance factories, for instance, in view of the security of the country involved, is entirely different from service in a private firm, and that there should be more strictness and discipline?

Shri Joseph: We agree that the democratic ideals of the country should be completely reflected in the services, otherwise this will be a police State.

Shri Gopikrishna Vijaivargiya: When there is so much of corruption and inefficiency everywhere, something should be done to remove that.

Shri Ramamurti: But when we wanted an Efficiency Board and representation on it, so that we could give our views about more efficiency, they say it is the concern of the administration and none of ours.

Shri Hari Vishnu Kamath: The representatives of the Government employees' organisations, particularly Shri Ramamurti and Shri Joseph, have been quite forthright and outspoken. I appreciate the spirit in which they have made their comments and observations.

Suppose you are offered the choice to state at what stage and in what form you want an opportunity before a Government servant is punished in disciplinary proceedings, what will be your stand?

Shri Ramamurti: If the existing provisions as defined in the Supreme Court judgment and as embodied in the existing rules are strictly followed, that will provide us a reasonable opportunity and we will be satisfied, but if there is any proposal to change this, the only alternative we can suggest will be the appointment of tribunals, divesting the executive authority of punitive powers. Today, the executive authority does not want to divest itself of that power for the simple reason that if that is done, it cannot carry on the administration. There may be some truth in that. Let both the parties present their case before an impartial tribunal and take its verdict. Today the executive happens to be the punishing as well as the prosecuting authority.

Shri Hari Vishnu Kamath: Most of your apprehensions stem from the fact that the punishing authority and the enquiring authority are not distinct from each other?

Shri Ramamurti: They may be distinct where the punishing authority appoints another officer to conduct the enquiry, but still he remains the prosecuting as well as the punishing authority.

Shri Hari Vishnu Kamath: Suppose you have an independent, permanent tribunal in every State to enquire into the cases of Government servants against whom action is proposed, and power is taken away from the departmental officers or the appointing authorities, would you object to the present proposal?

Shri Ramamurti: A constitutional provision will have to be made for the establishment of the tribunal headed by a person who is not a Government officer. Today, the Superintendent of Post Offices, for instance, appoints the Inspector of Post Offices to conduct the enquiry. The Inspector is a subordinate of the Superintendent and how can he take a different view from his superior's. I know unofficially instructions are also given as how he should conduct himself. Again, one director may appoint another director as an enquiring authority. The officers' union is the most powerful trade union in the country because they are also governing the country. Therefore, we are in a different position.

Shri Bibudhendra Mishra: It will be too much to say that in all cases the enquiry officers do like that and go to any length to get punishment for an accused.

Shri Ramamurti: Quite a large number of them may be good. But the law provides only for extreme cases. The Penal Code and Criminal Code are there to punish those who commit mistakes. If in a democracy things get delayed, it has to be tolerated in the interest of justice and fairplay.

Shri Hari Vishnu Kamath: I think it was Shri Ramamurti or perhaps Shri Joseph who said that these proceedings tended to be dilatory and that it was the enquiring authority who was responsible for delaying the proceedings for some reason or the other. Can you substantiate this?

Shri O. P. Gupta: In Delhi itself there were a number of cases where delay has taken place because the documents on the basis of which the enquiry is conducted are not supplied. They have to give copies of the documents on the basis of which charge-sheets are framed and they are not given. But there are administrative orders that copies of these documents need not be supplied and delay takes place because of these orders. Then again delay takes place at the stage where the enquiry officer is finalising his report. Once the witnesses start coming, it is for the

Enquiry Officer to see that things get going. In fact instructions have been issued that if a person charge-sheeted does not reply within a fortnight and if he also does not ask for time for sufficient and just reasons, the enquiry should be conducted *ex parte*. If *ex-parte* decisions are not taken, it is precisely because the other documents are not given. The enquiry officer has also to do his other normal work.

Shri Ramamurti: The Home Ministry has issued instructions very recently that within so many days the reply should be received. If that is followed, where is the delay?

Shri Bibudhendra Mishra: Can you tell me approximately the number of disciplinary proceedings in a year, on an average?

Shri Ramamurti: I can give a random sample. I am intimately acquainted with one division in Bihar where out of a total of 160 employees, 140 were charge-sheeted in one year. In another division in Punjab where out of 210 employees only 23 were charge-sheeted.

Shri Bibudhendra Mishra: Out of 14 cases, how many were punished?

Shri Ramamurti: About 111 were awarded, mostly minor punishments. They were charge-sheeted for major punishments but later on they were cancelled and minor punishments were awarded. Ultimately there were 10 major punishments.

Shri Bibudhendra Mishra: How many went to court?

Shri Ramamurti: They do not go to court in the case of minor punishments. Even in the case of major penalties we do not go to the court. You know the law's delays. The trade unions go to courts in test cases, where they feel that from the trade union point of view some principle is involved. Otherwise, they do not go.

Shri Joseph: Secondly, when there is a constitutional protection, the officer knows that the men will go to the court and that acts as a safeguard.

Shri Bibudhendra Mishra: If any of the 140 persons did not go to the court of law, it is not justifiable to say that the enquiries are not conducted properly or that the supervisors go to the whole length to see that the subordinates are punished.

Shri Ramamurti: I should not be misunderstood. When I said that there were some officers who were very harsh, it does not mean that all are like that, I did not say so. Some are good; some not so good. So, it depends upon that I have myself pointed out instances of both these kinds one in Bihar and the other in Punjab.

Shri Hari Vishnu Kamath: I think it was Shri Joseph who said, quoting his own case, that the enquiry officer refused to record his objections to the procedure adopted; he wanted Mr. Joseph to say yes or no. Could the Minister enlighten us as to how action could be taken in the case of such officers who refuse to conduct the enquiry in a just and fair manner, who refuse to record the objections and who want the witnesses only to say yes or no.

Mr. Chairman: That is a different matter.

Shri Hari Vishnu Kamath: That is bound up with this. Anyway, I will take it up later on with the committee.

There is a widespread notion in the country, may be ill-founded, that in our democratic set-up, because of so many constitutional guarantees and all that, indiscipline and inefficiency among employees are growing; it may not be rampant but it is prevalent. I do not wish to say that it is prevalent among Class I officers or Class II officers or Class III officers or Class iv staff. But it is prevalent. From your experience, do you think that the proposed amendment to article 311 would tend to tighten up discipline and efficiency or to worsen matters?

Shri Ramamurti: It will worsen matters because efficiency of the service cannot be maintained by a show of force or mere disciplinary action. If there is inefficiency, there must be some reasons for that, such as shortage of forms, shortage of staff, equipment, etc., which have got to be enquired into and there must be proper application of the rules and simplification of procedure. There is a method of job evaluation and enquiry. When these basic causes are removed, and on top of that, if the employees continue to be inefficient, there is no excuse. There can be no two opinions about it. But merely saying that they would take stringent action, does not make the employee more efficient, and that does not improve the efficiency of the service. It only results in the executive authority trying to function in a rather arbitrary manner.

Shri Hari Vishnu Kamath: Totalitarian manner.

Shri Ramamurti: I do not use that word, because we are wedded to democracy and democratic ideals and I believe that our officers also are imbued with the spirit of the new age in which we are living. Definitely, there has been a tremendous improvement in regard to it.

Shri O. P. Gupta: I would only add that the human factor is there, and as our Rashtrapati has pointed out, there is a crisis of character. We also share that, but we are not above it; we are not beyond that.

Shri Hari Vishnu Kamath: I would draw your attention to para 42 of your printed memorandum. It acquires a little tragic poignancy—it is topical—because of the passing of Shri Datar. You refer to the conference you had with the late Shri Datar after the emergency was proclaimed. You have also referred to the resolution adopted at that conference which your representatives had with the Minister, namely, "the role that the Central Government employees should play in the national emergency in a variety of ways and call upon the administration and the employees"—I do not know whether I have quoted it fully and rightly—

Shri Ramamurti: Yes; you have quoted it rightly.

Shri Hari Vishnu Kamath: It says that the administration and the employees should exercise the utmost restraint and forbearance, maintain the services, etc. etc. The point is, it called upon both the parties—the administration and the employees—to exercise restraint and forbearance. Now, before the resolution was formulated and finalised and adopted at that conference, was there any discussion as to how this resolution, so nobly embodied, would have to be implemented or the course that the Government propose to adopt or follow in spirit and letter. What did the Government mean by saying "Government also should exercise forbearance and restraint"? Did the Minister make it clear at that time, because the Constitution (Amendment) Bill was introduced in the House on the 11th December. I do not know when your conference was held.

Shri Ramamurti: On the 9th December.

Shri Hari Vishnu Kamath: About the same time, simultaneously. At that time, this Bill was on the anvil of Parliament, and the Government had already in mind this proposed amendment to article 311.

Mr. Chairman: We are concerned with this Bill. They may have passed a resolution but the Joint Committee cannot go into that.

Shri Hari Vishnu Kamath: It will become clear to you in a minute. The point is—

Mr. Chairman: Let us not go into extraneous matters.

Shri Hari Vishnu Kamath: How can it be extraneous? Their stand or position is that this article should not be amended.

Mr. Chairman: They have supported this with their arguments.

Shri Hari Vishnu Kamath: I do not know who attended that conference.

Shri Ramamurti: All of us attended.

Shri Hari Vishnu Kamath: Was this matter discussed with the Minister?

Shri Aiyar: In the resolution it has been stated that during the period of the emergency there should be no dismissal, etc., by the authorities, and that we on our part should not stop production. We have agreed to that spirit. But during this period, this amendment will accelerate the dismissals.

Shri Hari Vishnu Kamath: Did you agree even remotely or indirectly that for the duration of the emergency at least you would not mind conferring of such powers on the Government or the executive? You refer to the emergency in this paragraph.

Shri Anjaneyulu: I have a copy of the resolution. I do not want to read the entire resolution, but the salient features of it are that both the parties should exercise—the employers and the employees—restraint and forbearance so that nothing is allowed to come in the way of their single-minded and concerted endeavour in support of the defence of the country. Then, under the heading "Co-ordination and Co-operation", all complaints pertaining to the dismissals, discharges, victimisation and retrenchment of individual employees not settled initially should be settled through arbitration. For this purpose, the officers of the conciliation machinery may, if the parties agree, serve as arbitrators. Dismissal and discharges of employees should be avoided as far as possible. It was the consensus of opinion in the conference that after this resolution was adopted, a committee of the Central Government employees' representatives and the Government-representatives should be formed. Only the view was expressed, but unfortunately, later on, the committee was never formed.

Shri Santosh Kumar Basu: Will you refer to the Central Civil Service (Classification, Control and Appeal) Rules? Are these applicable to you? Now, rule 13 regarding the disciplinary action relates to a number of penalties; some of them are minor and some of them are major ones.

Shri Anjaneyulu: Up to rule 3, they are minor. Censure, recovery of pay, pecuniary loss caused to the Government by negligence or breach of orders, etc., are considered to be minor penalties. Items 4 to 7 are considered to be major penalties.

Shri Santosh Kumar Basu: So, with regard to these penalties, the procedure has been laid down.

Shri Anjaneyulu: Yes; under rule 15.

Shri Santosh Kumar Basu: Now, there are several clauses to that rule. For instance, refer to clauses 6, 7, 8, 9 and 10. I take it that you have no objection to the rules as they are at present, and your point is only that with the amendment as is proposed all the provisions contained in these rules will be taken away.

Shri Ramamurti: They are likely to be modified.

Shri Santosh Kumar Basu: If some provision can be made in the Constitution which will result in the continuation of the present procedure, there will be no difficulty at all from your point of view because you admit that the present procedure admits of no doubt, it is complete in all respects and it meets with your demands. Your objection is to the wording which is proposed in the amending Bill and you feel that the wording is not enough to safeguard the interests of the employees which they now enjoy?

Shri Ramamurti: The quintessence of all these things is contained in the

one sentence: "....showing cause against the action proposed to be taken in regard to him". The moment that sentence goes away, these rules will be modified.

Shri Santosh Kumar Basu: Supposing these rules are not modified, what is your objection?

Shri Ramamurti: If these procedures are there and these are justiciable, why are we amending the article at all? If there is no intention of changing the rules, why change the article at all?

Shri Santosh Kumar Basu: Article 309 provides that in the absence of any legislative enactment the President is empowered to frame rules. It also has got its foundation in the Constitution. I hope you agree that all these rules cannot be embodied in the Constitution?

Shri Ramamurti: Yes, but we will be happy if they are embodied in the Constitution.

Shri Santosh Kumar Basu: These rules are embodied in article 309, and they have the Constitutional backing.

Shri N. J. Iyer: Article 309 is not a substantive right; it is only an enabling provision under which the President can frame rules. But article 311 is a substantive right.

Shri Santosh Kumar Basu: Article 309 supplements article 311, because you cannot embody each and every rule in the Constitution. Therefore, you have to read article 311 along with article 309.

Mr. Chairman: It is a matter for the Committee to consider.

Shri Ramamurti: The nature of the rules to be framed is not made out in article 309. That article confers only rule-making powers.

Mr. Chairman: That we will consider in the Committee. I think we have nothing more to ask of the witnesses.

(The witnesses then withdrew.)

The Committee then adjourned.

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