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Title: The High Court And Supreme Court Judges (Salary And Conditions Of Service) Amendment Bill, 2015, 2015. *h

HON. CHAIRPERSON: The House will now take up Item No. 21 – High Court and Supreme Court Judges (Salary and Conditions of Service) Amendment Bill.

Dr. K. Kamraj to continue.

DR.K. KAMARAJ (KALLAKURICHI): Hon. Chairperson, Sir, in continuation of my speech in the discussion on the Bill, I would like to submit that in response to a Writ petition in the Supreme Court, the hon. Supreme Court has delivered a judgment directing that the pensionary benefit ten years practice as an advocate be added as qualifying service for judges elevated from the Bar with effect from 1st April, 2004 for the High Court Judges and also as in the Section 13A of the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 2005.

Further the Supreme Court also said that the experience and knowledge gained by a successful lawyer at the Bar can never be considered to be less important from any point of view vis-à-vis the experience gained by a judicial officer. Such a discrepancy does not exist in the law governing salaries and service conditions of Supreme Court Judges.

In this amendment certain provisions of Government of India Act 1935 are omitted. Certain provisions regarding the courts in the pre-Independence era are removed. Many outdated clauses found the earlier Act are omitted and some of the clauses are modified and substituted with appropriate terms so as to make the Act effective and updated in accordance with the current provisions in the High Courts and Supreme Court Acts.

Sir, after retirement the judges of the High Courts cannot practice in the Court where they were working and they have to do practice only in other High Courts or the Supreme Court. When compared with the lawyers, whether in individual practice or in law firms, there is no dispute that judges are grossly underpaid. Inadequate judicial salaries, especially when compared with those that the lawyers are earning deter many young and talented lawyers from taking up a seat on the Bench when offered. The most productive and highest earning period of a lawyer's life is usually between the ages of 50 and 70.

At present there are many vacancies in the High Courts. Out of a sanctioned strength of 1071, that is, about 35 per cent of posts of judges of High Courts are currently vacant. It is also perhaps a reflection of the fact that the post of a High Court Judge requires a monetary sacrifice that it deters talented and honest lawyers from taking it up.

This minor amendment, brought in accordance with the judgment of the hon. Supreme Court of India, will benefit the retired judges of High Courts and Supreme Court and also encourage the talented and service-oriented advocates to take up the post of judges in the High Courts and the Supreme Court.

Hon. Chairman, Sir, I would like to bring to the knowledge of the hon. Law Minister the fact that the Bill which has been circulated contains a lot of errors in the annexure about the amendment they are making in the High Court and the Supreme Court Judges (Salary and Conditions of Service) Amendment Act, 1958.

The parts which are going to be modified or omitted are not found in this Bill. Some Sections of the Act are also not found in the Annexure circulated along with the Bill.

16.11 hours (Shri Anandrao Adsul *in the Chair*)

I would like to inform the hon. Minister also that of late, the Bills which are circulated to the Members contain many errors and omissions. Some of them are corrected by way of corrigenda which is again followed by another corrigenda for correcting errors. The new Members find it very difficult to understand the provisions of the Bill and the purpose of the amendment which is sought to be made.

Hence, I would request the hon. Law Minister to circulate Bills without errors and also print the complete Bill with complete bare Act which will be amended so that reading and understanding the Bill will become easier for the Members.

The Government of Tamil Nadu headed by the hon. Chief Minister, Puratchi Thalaivi Amma is second to none in extending all facilities to the Judicial Administration and the High Court.

The Government must consider the long pending demand of the Madras Bar and the people of southern India for establishing a bench of Supreme Court in Chennai to cater to the legal needs of the people living in the Southern States of India. â€ (Interruptions)

SHRI S.P. MUDDAHANUME GOWDA (TUMKUR): Be generous to make it at Bengaluru. It will always come to your rescue....(Interruptions)

DR.K. KAMARAJ : Chennai is the ideal place for the whole Southern Region. I also concur with the idea of setting up of Regional Courts in Eastern and Western Regions.

It is a phenomenon that is being witnessed in these days that the High Courts and the Supreme Court are flooded with Public Interest Litigations. Despite the Supreme Court coming down heavily on motivated, self-centred, private and personal interest litigations disguised as Public Interest Litigations, such personal interest litigations continue to hound the Courts. Much of the court and Government servants time get wasted by these frivolous petitions. The Government must address this problem with a suitable legislation.

The Parliament, in its wisdom, passed the Constitution (Ninety-Ninth Amendment) Act, 2014 to propose the National Judicial Appointments Commission for the appointment of judges to the higher judiciary in India.

The Constitution Bench of the Supreme Court had struck down the law on the ground that it is violating the basic feature of the Constitution. As a result of this, we do not have a credible and foolproof system for appointment and transfer of judges of the Supreme Court and the High Courts.

I urge upon the Government to bring about a new and credible National Judicial Appointments Commission Bill with a provision to set up a State-level Judicial Appointment Commission for the appointment of High Court judges as demanded by our hon. Chief Minister, Puratchi Thalaivi Amma.

In conclusion, the amendment in this Bill brings in the principle of One Rank One Pension for judges of the Supreme and the High Courts. Our Party, AIADMK, welcomes the amendments made by the High Courts and the Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill, 2015.

SHRI TATHAGATA SATPATHY (DHENKANAL): Sir, I thank you for giving me this opportunity to speak on the High Court and the Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill, 2015.

It is interesting to read the Statement of Objects and Reasons. The first paragraph of the Statement of Objects and Reasons says:

"With the passage of time, certain provisions in the aforesaid Acts have become spent and outdated."

The last line of the first paragraph says:

"Some of the provisions relating to the determination of leave allowances of judges in both the Acts needed to be simplified."

We all know that the birth of this Bill took place because the Supreme Court asked the Government to review the salaries and pensions of the Supreme Court judges. We all know that our judiciary is under tremendous strain. I am not sitting in judgement of the judiciary. They are judging all of us. They are even judging the House, which is the voice of the people. Decrying or negating the NJAC is not only a slap on the Government or the House but also a slap on the face of the people of this country. It is a very sad event. All of us are concerned. Those who think for this country are concerned because it is not just those few judges who took the decision, it is a mindset which is gaining predominance in this country.

There is no doubt that judges should be very well paid. That is the only way you can stop all these rumours and all these falsified claims that are circulating in the open society today that our judges are corrupt. These false things must be put an end to. Nobody can claim that our judges are corrupt. So, it hurts all of us when we hear that from the junior most judiciary up to the highest, the Apex Court, the rich, the wealthy and those who have reach, who have the power, get away with everything.

I remember that when a big industrialist's name featured in the Nira Radia tapes, he went to the Supreme Court on a Monday, saying that no further leakages should be permitted of the tapes. The hearing took place on the Wednesday of that same week. The judgement came out that same Friday, that week's Friday, the last working day. The judgement said that we stop all publication of further leakages of Nira Radia tapes involving this very well-known big industrialist of Mumbai. Interestingly, the next day, two magazines, 'Close' and 'Inward Looking' published further data on the Nira Radia tapes. So, two things came to mind of the public and to me, as a humble citizen of this country, that people have reached a stage where they wish to defy the Supreme Court just because the Supreme Court did not give a judgement that was acceptable to the people. So, in a democracy people are definitely supreme.

Here, we are addressing a problem, as far as I understand this Bill, which is slightly complex. There are two streams through which people are coming up as judges. One is from the junior judiciary, subordinate judiciary. They are coming up from the JMFC, SDJM, CJM, District Judge and then they become High Court judges with seniority. There are other judges who do not climb the tree but pluck the fruit from the top of the tree. They come up because of certain other abilities, like they are good practitioners in the Bar, their income tax returns are good, etc. Therefore, they come straight up without going through the grind and enter the High Courts or sometimes they even probably do so at a higher level.

The problem that we can perceive is that, let us assume a young LL.B graduate, who could have very easily joined the Bar and maybe could have excelled as a lawyer, made a neat package and would have lived a happy life. Instead, in a very contorted manner, he joined the judicial service – he "sacrifices" his youth – to dispense justice, becomes a judge or becomes a magistrate and then a judge, and we expect absolute honesty, absolute efficiency and we think that he will dispense with justice because the subordinate judiciary is the real justice dispensing system that really touches the people. So, to give him credit, in the present situation without this Amendment, he was getting a higher pension when he retired than his compatriot who joined the judicial service at a higher level because of his ability or because of his practice as a good lawyer or because of his influence, some God Father picked him up and made him a Judge which we also know as happened in many High Courts. Now, this Bill tries to equate them by not making this line which has come up through the grind go up but, instead, adding ten years as bonus service period for that Judge who has not come through the grind. This, I personally feel, is unequal and unjust. In a justice system, you cannot do something which is unjust to those young people who join the judicial service. Just because they did not practice or just because they do not have a God Father at a higher level does not mean that they should be deprived of the pensionary advantage which they have over somebody who has made a lot of money while being in private practice.

Sir, the High Court and the Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill should have also taken into account that why not make the Central Government pay the salaries of the High Court and the Supreme Court Judges. Now, what happens is suppose the hon. Minister's State of Karnataka sends a Chief Justice to Odisha. The gentleman or the gentle lady retires from service as the Chief Justice of Odisha. Then, his or her pension will be a burden on the State of Odisha. So, instead of burdening the States with a service that you think of is All-India level – because the Chief Justice is transferable across the States – the Government should take up the responsibility because they are not

IAS officers. They do not have a State cadre. So, the Government of India should take up the responsibility of paying the pension. While they are in service, the salaries can be paid for by the relevant States but their pension should be borne by the Central Government. If you do that, then, what you do as the High Court and the Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill will be much more acceptable to the people. We were given by one hon. Member last time when we were discussing this Bill an example....(Interruptions)

HON. CHAIRPERSON : Please conclude now.

SHRI TATHAGATA SATPATHY : No, Sir, I have just started.

HON. CHAIRPERSON: Only six minutes are there.

SHRI TATHAGATA SATPATHY : All right, Sir, I will come to a few points. I will wind up.

There is a saying in English: "Give peanuts and you get Semians." So, Sir, let us not give such low salaries to our hon. Judges that they are tempted to go into acts which are not acceptable to society.

Sir, all the 24 High Courts in the country have 44.5 lakh pending cases. The lower courts across the country have 2.6 crore pending cases. If you see, out of these, most of them will be civil cases. Out of the 44.5 lakh cases in all the 24 High Courts, I would say that 34,32,493 are civil cases and 10,23,739 cases are criminal cases. So, my suggestion is that come up with a Bill such as the Uniform Civil Code whereby a lot of these civil cases could be disposed of with speed and justice could be meted out to the people. Those who are in need of immediate justice will be better off. Again, I would refer to an old adage: "Justice delayed is justice denied." In India, many of our lawyer colleagues believe that justice delayed is justice delivered because the more number of dates, the better it is for a section of the people. Time is also the best healer. A lot of lawyer colleagues are here. I do not think the Chairperson is a lawyer, therefore, I am saved by you. Thank you so much. A lot of lawyer would be very perturbed that this is a court that does not suit anybody. So, I beg pardon from them. But I think simplification of the law is the first primary responsibility of the Government of India.

The second is that the subordinate judiciary in this country must be strengthened. Government jobs are no more attractive. Nobody wants to get to Government jobs unless they call it *uppari* in Oriya, meaning if somebody is not dropping over and above the dome, it is no more attractive. You are a man of the field. You go to the people and you see the plight of the people. A case filed against a family destroys the whole family; destroys the peace; destroys their economy. This happens only in India because of justice delivery system has collapsed at the lower lever.

Sir, the High Courts and especially the Supreme Court is inaccessible to most people. If you go to the States, and if you find out from those who are convicted and are in jail, many of them are jailed at the SDM level, at the most, the District Judge level. They do not have the wherewithal; they do not have the financial prowess, the strength to come up to the High Court, forget the Supreme Court. At that level, we have to address the problems of the subordinate judiciary, make that stronger, make that more attractive so that you can demand that if you are getting better pay, do not accept inducements, and be honest, and be speedy and deliver justice at a pace that will amaze the same country.

I think, this Minister is a progressive Minister and a thorough gentleman. I do not know why they took him out of Railways; I was hoping a lot that he would do wonders in the Railways. But he is a man who can actually change the system. Here is an example. And you can do it. We have full confidence. I am sure the House would back you, if you think about the subordinate judiciary and bring about changes. No matter who shouts, we will support you if you bring in changes. Thank you so much, Sir.

श्री विनायक भाऊराव राऊत (स्नानिरी-सिंधुदुर्ग) : सभापति महोदय, उत्त न्यायालय और उत्ततम न्यायालय न्यायाधीश (संशोधन) विधेयक 2015 का समर्थन करने के लिए मैं खड़ा हूँ।

हमारे संविधान में न्यायपालिका का एक स्वतंत्र स्थान निर्माण किया है और ऐसी न्याय व्यवस्था में हाई कोर्ट, सुप्रीम कोर्ट के जजों के वेतन में, पेंशन में और बाकी जो फाइनेंशियल सुविधा रहती है, उनमें जो विसंगति थी, वह दूर करने का बहुत बड़ा काम केन्द्र सरकार ने किया है। इसके लिए मैं केन्द्र सरकार का आभार व्यक्त करता हूँ, उन्हें धन्यवाद देता हूँ। खास करके इस सुविधा के माध्यम से न्याय व्यवस्था में जो भी कुछ कमी है, आम आदमी के लिए न्याय व्यवस्था कैसे आधार हो सकती है, उसके लिए न्याय व्यवस्था में क्या सुधार करना चाहिए, इसके बारे में मैं आपके माध्यम से माननीय मंत्री महोदय जी का ध्यान आकर्षित करना चाहता हूँ।

उत्त न्यायालय, उत्ततम न्यायालय में जाना आम आदमी के लिए उतना आसान नहीं है। अभी हमारे सत्पथी साहब ने कहा कि सामान्य आदमी के ऊपर जब मुसीबत आती है या न्यायालय में जाकर न्याय मांगने की जब परिस्थिति आती है तो डिस्ट्रिक्ट लेवल तक बाड़ी-बाड़ी से हाई कोर्ट तक जाने की कोशिश करते हैं, लेकिन दुर्भाग्य से हमारे महाराष्ट्र में एक कहावत है कि 'झट्टाणे माणसा ने कोर्टाची पायरी चढ़ नहीं।' सभापति महोदय, इसके पीछे का यह मतलब है कि आज की न्याय-व्यवस्था में जब सामान्य आदमी कोर्ट में जाता है, तो उसे जब न्याय चाहिए, तब उसे न्याय नहीं मिलता है। उनके दादा जी वहां न्याय के लिए गए, पर उन्हें न्याय नहीं मिला। दादा जी के गुजर जाने के बाद उनके पिता जी कोर्ट में गए, पिता जी के देहांत के बाद जब वह न्याय के लिए जाता है, तो उसकी जो न्याय के प्रति एक इच्छा होती है, एक आस होती है, वह निकल जाती है। दुर्भाग्य से, इस संविधान ने जिसके लिए न्याय व्यवस्था का निर्माण किया है, इसमें भारतीय जनता को न्याय देने का जो उद्देश्य है, वह सफल नहीं हो रहा है।

महोदय, सुप्रीम कोर्ट और हाई कोर्ट के जजों के वेतन और पेंशन में जो तुटि या असमानता थी, वह इस बिल के माध्यम से निकल जाएगी। लेकिन, आज एक डिस्ट्रिक्ट कोर्ट, एक सेशन कोर्ट की स्थिति क्या है? सिविल मैटर चलाने वाले जो महसूल के कोर्ट हैं, उनकी स्थिति क्या है?

महोदय, आप भी ग्रामीण इलाके से चुनकर आए हैं। आप भी इसके बारे में जानते हैं। कई बार तो डिस्ट्रिक्ट कोर्ट में घुसना भी एक मुसीबत बन जाती है। न्यायालय की इमारतों और वहां के कार्यालय की स्थिति बहुत ही गंदी है। वहां टॉयलेट नहीं होते हैं। जो लोग वहां आते हैं, उनके बैठने की वहां सुविधा नहीं होती है। अगर बैठने की सुविधा है भी तो उन्हें उसके खटमल से बचाना बहुत मुश्किल है। ऐसी स्थिति में लोगों को न्याय के लिए बहुत-बहुत वर्षों तक रूकना पड़ता है।

सभापति महोदय, जैसा कि माननीय सदस्य ने कहा, करोड़ों और लाखों केसेज आज भी पूर्वावधि हैं। पन्द्रह-पन्द्रह, बीस-बीस वर्षों से मुफ्रिसल विभाग के केसेज का निपटारा नहीं होता है। इसलिए इस विधेयक के माध्यम से मेरी मांग है कि जब सरकार सुप्रीम कोर्ट और हाई कोर्ट के जजों के वेतन के बारे में अच्छे से देख रही है तो उसके साथ-साथ आज जो-जो पूर्वावधि केस हैं, उनका अध्ययन करें। अगर उसका जल्दी से जल्दी निपटारा करना हो, तो न्यायालयों की संख्या बढ़ाने की आवश्यकता है। जब हम न्यायालयों की संख्या बढ़ाने की कोशिश करेंगे, तो उसके साथ-साथ न्यायाधीशों की संख्या भी बढ़ाने की कोशिश करनी चाहिए। लेकिन, दुर्भाग्य से कोई डिस्ट्रिक्ट जज के लिए जाना नहीं चाहते। जिनकी प्रैक्टिस अच्छी है, ऐसे वकील न्यायालय में न्यायाधीश के पद पर काम करने को तैयार नहीं हैं। उसके पीछे क्या कारण है, उसका भी सरकार को अध्ययन करना चाहिए। न्यायपालिका जिस तरह से स्वतंत्र है, वैसे ही उसे सुदृढ़ बनाने की भी जरूरत है, सिर्फ उसके स्वतंत्र रहने से नहीं होगा। न्यायपालिका अगर सही तरीके से चले, तो उसके लिए वैसे ही फाइनेंशियल प्रोवीजन रखने होंगे। उनके वेतन, पेंशन आदि का प्रोवीजन करने की जरूरत है, तब ही न्याय

व्यवस्था की तरफ जाने वाले लोगों की संख्या बढ़ेगी। इससे ज्यादा कोर्ट और ज्यादा न्यायाधीश निर्माण करने का सरकार का जो मक़सद है, वह सफल हो जाएगा।

सभापति महोदय, आज कई ज़ग़ह लोक अदालतों की शुरुआत की गयी है। यह सरकार का एक अच्छा प्रयास है। लोक अदालतों को लोग भी पसंद करते हैं। इसके माध्यम से दस-दस, पन्द्रह-पन्द्रह सालों से जो मुकदमे चल रहे थे, कई ज़ग़हों पर उनके संबंध में अच्छा रिजल्ट मिला है। कई वर्षों से जो केसेज पेंडिंग थे, उनका निपटारा करने में एक सफल प्रयोग हो चुका है।

कहीं मॉर्निंग कोर्ट और कहीं ईवनिंग कोर्ट चलते हैं। लेकिन, मॉर्निंग और ईवनिंग कोर्ट का जो प्रयोग है, वह सफल नहीं हो सका है। इसलिए आज कसेज़ों केस पेंडिंग हैं, जो एक समस्या बन चुकी है। उसका हल निकालने के लिए ज्यादा कोर्ट का निर्माण किया जाए और ज्यादा न्यायाधीशों की नियुक्ति की जाए। लोगों को जल्दी से जल्दी न्याय दिलाने पर सरकार को ध्यान देना चाहिए। उसे अपना लक्ष्य निश्चित करना चाहिए। इस पर निर्णय लेने की जरूरत है।

महोदय, आबादी बढ़ने के साथ-साथ क़़ाइम भी बढ़ता है, गुनाहगार बढ़ते हैं। कई अलग-अलग तरीके से गुनाह आज हो रहे हैं। क़़ाइम की व्याख्या भी बदल चुकी है। ऐसे वक्त में जब कसाब जैसे आतंकवादियों के संबंध में न्याय देने के लिए जब दस वर्ष लगते हैं तो कानून का डर कैसे पैदा हो सकेगा? लोगों में कानून का डर होना चाहिए। कानून तोड़ने वाले गुनाहगार को कानून का डर लगना चाहिए। कानून का डर तब लगेगा, जब उसका गुनाह साबित हो और न्यायाधीश उसे सजा दे, शासन दे, तभी गुनाहगार को लगेगा कि इस हिंदुस्तान में रहना हो तो शांति से रहना होगा, आतंकवादी कार्रवाई हम नहीं कर सकेंगे और भारत का शासन इसे सहन नहीं करेगा। यह डर जब गुनाहगार के दिल में आएगा, यह डर जब आतंकवादियों के दिल में पैदा हो जाएगा, तब इस देश में आतंकवादी कार्रवाई करने के लिए लोग तैयार नहीं होंगे।

कानून की व्यवस्था, न्यायपालिका की व्यवस्था जनता के प्रति कैसी हो, लोगों को सलाह देने के लिए कैसी होनी चाहिए, इसकी ओर सम्माननीय सरकार ध्यान दे, ऐसी विनती मैं इस चर्चा के माध्यम से करता हूँ। मुझे बोलने का मौका दिया, इसके लिए मैं आपको धन्यवाद देता हूँ।

DR. RAVINDRA BABU (AMALAPURAM): Hon. Chairman, Sir, thank you for giving me the opportunity to speak. Whatever the Supreme Court says, it becomes the law of the land. The Supreme Court has already ruled the hiking of the salaries of the High Court Judges and also an addition of 10 years' service. What is left for the Parliament to approve this? When 10 years' service is already added and salary is already hiked, is there anything left with the Parliament?

There is also one reminder, that is, the principles of natural justice. There are two cardinal principles in the principles of natural justice. One is *audi alteram partem* which means nobody should be condemned without being heard. Another is *nemo judex in causa sua* which mean nobody can sit in judgement of his own case. I would ask whether the judgement given by the Supreme Court in the High Court Judges case is not contravention of the principles of natural justice. If that is so, if that is not, when the MPs were raising, were seeking the hike of their salaries, there was a hue and cry in the public. It is because, we are publicly accountable every day. Whenever I go to my constituency, people always *gherao* me, ask me, what is that I have promised and what is that I have given. Every day, I am accountable as far as the Session is not there. When Session is there, I am accountable every weekend. That accountability is missing from the Judiciary. They give judgements – I do not know – like in vacuum, not being accountable to anybody. Whenever a progressive legislation is made in this august House, they strike it down on the ground of *ultra vires*.

I will give one example of Nagaraj case on SC/ST reservation in the Supreme Court. They have upheld the 81st, 82nd and 83rd Amendments but, while upholding the Amendments, they have introduced another concept of three systems, that is, efficiency should not come down by virtue of reservation for SCs/STs, there should be proportional representation and also backwardness. All these three silly reasons inserted in the Nagaraj case led to 117th Amendment which had been passed in the Rajya Sabha but it could not be passed in the Lok Sabha.

These types of judgements delivered by the Supreme Court are stopping the progressive legislations of this august House. We are accountable to the people; Judiciary is not accountable. So many times, they have interfered in the functioning of the august House. As my senior colleague Satpathy said, the people of the country are supreme. The collective will of the people is in Parliament. This is Lok Sabha. We are supreme means the people are supreme. People have every right to do whatever they want to do. Why should Judiciary interfere in the will of the people? I ask the Judiciary: Where is the question of interfering in the will of the people? We are accountable for five years. I may get unseated. I may become pauper or anything but the Judiciary will continue like a white elephant. They will do what they want. I want our Law Minister to make some suggestions or amendments in this Bill to fix some accountability because autonomy without accountability will destroy the very nature of this service. This service should not be destroyed. Judiciary has done a lot of injustice to this country. We have been paying heavily. For example, they have introduced the concept of basic structure. The basic structure was never spelt out by Dr. Ambedkar in our Constitution. But in the 42nd Amendment, they have introduced this basic structure by Golaknath case. Though there is a provision to amend the Constitution yet they are stopping the amendment power by introducing the word 'basic structure'. I totally object to this. This august House, which is the collective will of the people of India, should be supreme. If we make any bad law or legislation, let the people call us back; let them defeat us; and let them elect a new Government. There is an adult franchise. There is a provision in the Constitution that people can use their adult franchise in every five years. There is an in-built mechanism. The Judiciary should not interfere.

In the Bill a period of ten years is added to the service of a Judge for availing the pension benefits. Why do not we introduce such things for SCs and STs? There are no judges from SC and ST communities in the Supreme Court and the High Courts. Let this ten years of service be added in the service of SCs and STs also so that they may also get the benefits. About 352 posts of judges are lying vacant in the High courts and the Supreme Court. I request the hon. Minister to make some provisions in this Bill for SCs and STs.

Social justice is the main plank of this NDA Government. Social justice, justice to the poor, justice to the underprivileged and justice to the underdogs is the pledge of this Government. We should deliver our commitments through these types of legislations. Judiciary should be curtailed to the extent that they should not interfere with the legislation made in this august House. The collective will of the people should prevail upon any judicial pronouncement. That should be the main goal of this Bill. Just increasing the autonomy and salary does not justify the Judiciary.

We have seen, there are so many cases of corruption and nepotism in the Judiciary. But where are they accountable? Impeachment is a cumbersome process. It will never happen. It will never take place. Therefore, there has to be some accountability. Every time we have seen these types of pay hikes and Pay Commissions. The Central Government is also having the revision of the recommendations of the Pay Commission. Last

time we have also seen the 6th Pay Commission which has put a burden of Rs. 1 lakh crore on the Exchequer. Instead of doing it periodically, let it be annually. Let it be a permanent mechanism. So, that it will take care of the situation of inflation dynamics. Let there be some commissions like NITI Aayog. Let there be some permanent commission situated in the DoPT's wing. All the employees of the Central Government, 31.6 lakh employees, should be taken care of on a permanent basis. Let us not give a large figure to the people that by 7th Pay Commission, we are putting a burden of Rs. 1 lakh crore on the Exchequer. That causes a very severe reaction from the people. Let us not provoke the people by giving these types of statistics once in every ten years. If that revision is there after every year then the burden would not be that much.

The salary hike in Judiciary should be linked to some Commission. It should not be done by themselves. They are giving a judgement to themselves. It is a violation of the fundamental rights and the principles of natural justice that is *nemo judex in re sua*. It means, you cannot sit in judgement in your own case.

There is another thing related to Pay Commission. There are IAS officers sitting in the Pay Commission. The recommendations of the Pay Commission are already referred to the Committee of Secretaries. There also the IAS officers are there. They are deciding as to what is the salary of an IAS. None of the Central Government employees – Group 'A', Group 'B' and Group 'C' – are taken into consideration before deciding their salaries. Every day, we are seeing the violation of principles of natural justice. Let it be stopped once and for all. Principle of natural justice is one of the cardinal features of any *Jurisprudence* in the world. That should be prevailed upon. Nobody should have the right or guts to violate the principle of natural justice, that is, *nemo judex in re sua*.

Jai Hind! Jai Telugu Desam! Jai Chandrababu!

Thank you.

SHRI B. VINOD KUMAR (KARIMNAGAR): Hon. Chairperson, Sir, this Amendment Bill – The High Court and the Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill, 2015 – is to further amend the High Court Judges (Salaries and Conditions of Service) Act, 1954 as well as the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958.

Sir, the reason for introduction of this Bill, as stated by the hon. Law Minister, Shri Sadananda Gowda ji is given in the Statement of Objects and Reasons of this Bill. It says:

"With the passage of time, certain provisions in the aforesaid Acts have become spent and outdated. A review has been undertaken and it has been decided to remove the same for clarity and provide for the added years of service in view of the judgment given by the Supreme Court. Some of the provisions relating to determination of leave allowances of judges in both the Acts needed to be simplified."

Sir, after going through this Bill, I feel that it is not going to be simplified but it is further going to be complicated.

Sir, the main Acts of this Bill are of the year 1958 for the High Court Judges and 1958 for the Supreme Court judges. I think, the hon. Law Minister should withdraw this Amendment Bill and come with a comprehensive legislation with regard to the salaries and allowances of both the High Court Judges and the Supreme Court judges.

Sir, there are 28 Clauses to this Bill. I am unable to understand each Clause as a Member of Parliament and also as an advocate earlier. I know about the elevation to the High Court judge from the bar. Yes, it is a fact that 10 years' service as a practising advocate is necessary to become a High Court judge.

Sir, the Supreme Court judgement dated 31st March 2014 stated that the qualifying service of judges should be as per the conditions mentioned for elevation of judges, that is, the minimum practice of 10 years. That has been taken into account as a reason for this judgment.

Sir, tomorrow some judge who had been elevated from the bar, after retirement, can say that he practised for 32 years and he was elevated to the High Court judge and so, his 32 years' of practising advocate service should be counted as his service. Some such litigation may come up. So, only for the reason of that judgment, we should not come forward with amending the main Acts.

Sir, I am not against increasing their salaries or pension. Definitely we have to pay a comfortable pay as salary and also after retirement the judges should get a comfortable pension. I feel that this legislation may not resolve the complex issue that is before us. So, I think, the hon. Law Minister should withdraw this Bill and come with a comprehensive legislation, and that legislation may be referred to the Standing Committee on Law and Justice. After a thorough study, we can pass that legislation.

Thank you.

DR. A. SAMPATH (ATTINGAL): Thank you, hon. Chairperson, Sir. If you are a Supreme Court judge, I should have addressed you as 'Me Lord, Sir'. If you are a High Court judge, I should definitely addressed you as 'Me Lord' or at least 'Your Honour'. Otherwise, Sir, you would have told me "address me properly".

Sir, I am a practising lawyer. I hope, most of the Members who are participating in the discussion on this Bill or present in the House now - just like Shri Chowdhury Saheb on the other side, my learned friends here also and many other friends who are sitting in the Treasury Benches also – are or were advocates. ...(*Interruptions*)

SHRI TATHAGATA SATPATHY : I am not a lawyer. ...(*Interruptions*)

DR. A. SAMPATH : But you are a jurist, my friend. But unfortunately, even though the Constitution of India under Article 124(3) gives ample powers for the appointment of a Jurist as a Supreme Court Judge, the history of the Indian Judiciary says that Jurists have no scope in the Judicial System at all.

16.50 hours (Hon. Deputy-Speaker *in the Chair*)

Hon. Deputy-Speaker Sir, *vanakam*. Sir, here, the Part IV of the Constitution of India, Chapter IV, says about the Union Judiciary. Here, Article 130 of the Constitution of India says about the Seat of the Supreme Court. I do not understand why still the Supreme Court is in Delhi, having hearing in Delhi, filing in Delhi, disposing cases in Delhi. Why even now, is the Supreme Court or the Union Judiciary hesitant to move out of Delhi, at least to have Circuit Benches? We will support you, Mr. Minister, if a Bench is established in Chennai; we will support you if a Bench is established in Kolkata; we will support you if a Bench is established in Mumbai. If a Bench is established in Bengaluru, Sadananda Gowdaji, definitely, we will support you.

At least, our Supreme Court should ensure that decentralization of the Judiciary should take place; it should percolate. Here, the decentralization of powers happens from the top to the bottom, from the State to the Zila Panchayats, to the Block Panchayats and to the Gram Panchayats. Unfortunately, here, most of the works are being done in the Mofussil Courts. My learned friends have mentioned here that in many courts, the Advocates do not have the space even to breathe. They wear the dress, which were entrusted, enforced upon them during the time of the colonial ear. Even during a temperature of 45-46 Degree Celsius, the Advocates are forced to wear the black coat, gown, etc., and in many of the courtrooms, there would not be any fan. Sometimes, they were used as toilets.

Sir, I am also there in the Standing Committee on Personnel, Public Grievances, Law and Justice. It has come to the notice of this Committee that in many parts of this nation, the Lower Courts, the Mofussil Courts, the Munsif Courts, the Advocates still work in the soiled toilets. This is a pity.

Here, Sir, I am not against increasing the salaries or the pensions of the Me Lords and the Your Honours of the Supreme Court and the High Courts. We should definitely give them their salaries. There should be no arrears at all. There should be one rank one pension. Of course, at least, that may percolate to the Defence Personnel also, I hope. Any way let it happen at the top. The person, who has delivered the Judgment, which has paved the way for this Bill, is now the Governor of the State of Kerala. He delivered the Judgment while he was the Chief Justice of India.

While we are discussing this Bill in this House, we are having the 43rd Chief Justice of India. His predecessor, who demitted office, who retired, said it. There are people who say: "I am retired but I am not at all tired. You find out some place and see for me, so I can also ensure justice." But, my humble request is that it is not "*Prabhu ki kripa*". प्रभु की कृपा नहीं है; Fair justice, speedy justice is my right. It is the right of the poor men, who are living on the pavements, in the streets because all the powers are coming from the people, so says the Constitution of India. This was made for the people of India. It is 'We the people of India'; and whether he or she is educated or not, whether he or she is rich or poor, whether he or she is having land or not, whether he or she is having any job or not, it does not matter.

Sir, I hope you would bear with me because I was a practising lawyer for the last 25 years. Here, what about National Judicial Appointments Commission? We have discussed it threadbare in this House as well as the Upper House, and what was the Judgment of the Supreme Court?

It is just like this - I am the judge, I am the jury and I am the executive. You show me the man, I will show you the rule. This is what happens in the Indian judiciary. Indian judicial system has become a costly affair, a rich man's game. It has become cumbersome. It has become very much difficult. I do not know whether it has become impossible but it is very much difficult for a common man to seek justice. The lawyers, the judiciary and all the jurists speak about the Goddess Thetis. In mythology, there is a Goddess Thetis having the law and justice and it should be equal.

Once the Chief Justice of India came to Kerala and attended a programme in the constituency of my learned friend Mr. N.K. Premachandran. He was also a practising lawyer. He is my very good friend. He was the first rank holder of the LLB from the Government Law College. He was one year senior to me and Mr. Kodikunnil Suresh is one year junior to me.

Sir, once Justice Bharucha attended Lawyers' Conference in Kollam. He stated that 80 per cent of the Judiciary is honest, it means ...(*Interruptions*) I reserve my comments. Everybody understood what he said. If that kind of statement made by a common man or somebody from the media or even if that was the public statement made by an hon. Member of this House, what would have happened? The contempt of court proceedings would have been initiated. According to the protocol, what is the place or what is the rank of a Member of a Parliament. In this august House, Pandit Jawaharlal Nehru, when he was the Prime Minister, spoke from this Chair. His Division Number was one. He spoke and it is in the records.

"The rank of the puny judge is equivalent to the rank of the Member of Parliament."

According to the protocol, an MP is equivalent to a High Court Judge. There is no political difference in this. Now, what happens? They say, they dictate, they legislate, they execute and they punish.

Sir, what about the Right to Information Act? I want to know whether they are subjected to RTI or not? Even the Prime Minister is subjected to RTI; all the Ministers are subjected to RTI; all the MPs are subjected to RTI; all the MLAs are subjected to RTI; the CBI is also subjected to RTI but unfortunately, Deputy Speaker Sir, me Lords and Your Honour, some of them might be seeing. ...(*Interruptions*) Anyway, I cannot go back to the court room when I retire as a Parliamentarian. There will be no space in the court room.

HON. DEPUTY SPEAKER: Even as a Member, you can go now. Who is going to prevent you?

DR. A. SAMPATH: Anyway, I am not afraid at all of them Sir. Here, everybody should obey the law. If there is a law, we should oblige the law. Here somebody puts a question under the provisions of RTI, then the concerned Registrar of the High Court will give a reply stating that this is not under the RTI Act and we are sorry to give you the information. Why the courts, why the judiciary is afraid of the Right to Information Act? This august House and our brothers and sisters in the Upper House and it was the Parliament of India which had enacted such a law. With all respects to Sadananda Gowda Ji, I am not requesting that under Rule 109, you should withdraw this Bill and that should be given a thorough scrutiny of the Law

and Justice Committee but that would have been much better. What about the Indian Judicial Service? We have Indian Administrative Service and we have Indian Economic Service. At the same time, why do not we have Indian Judicial Service? It is the court, it is the judges who will decide their successors and the 42nd Chief Justice of India was able to induct only judge.

17.00 hours

Now, more than 400 vacancies, including judges of the High Courts and judges of the Supreme Court are lying vacant. In many of the High Courts around 40 per cent vacancies are there. I understand just like that they are vacant. I hope I have the immunity if I say some truth, nothing else but truth, in this august House because some of the judges want some of theirâ€¦I reserve those words because I will scratch your back. You scratch my back. You support me. I also support you. This happens. Ultimately, it leads to the casualty of the Indian judicial system. Ultimately, it will dismantle the fundamental rights of the people of India.

Sir, here we are all parliamentarians and we respect the late Justice Krishna Iyer. Even now the law students of Australia and the United States of America study the judgements of the late Chief Justice of Kerala, Mr. Subramanian Potti when they study the writ of *habeas corpus*.

Sir, what about the junior advocates? They do not have any stipends. They do not have any money even to buy a pair of clothes. They are just like bonded labourers. It is a pity. That is the case of the junior advocates in this nation. We take pride of the judicial system and we say that India is a sovereign, socialist, secular, democratic republic.

Before concluding, I would like to say that the Advocates Act specifically states about the right to practise. Now, more and more tribunals are coming up. When more and more High Court judges and Supreme Court judges get retired, they seek some other appointments somewhere and they want all these benefits either by salary or allowance or pension. But at the same time they will be provided with a car with a flashing red beacon and all the VIP facilities. They will be having very good bungalows in Delhi, etc. They have much better facilities than some of the MPs may be having. Of course, let them be there. But my question is, why are all these tribunals and quasi judicial bodies required? Definitely, it has to be reviewed.

Here I have mentioned the case of the sad plight of the lower judiciary.

HON. DEPUTY SPEAKER: Please wind up. You have already taken 15 minutes.

DR. A. SAMPATH: Sir, before concluding, I want to say this. Is there social justice in judiciary? How many people from SC and ST communities have come as High Court judges? How many of them were OBCs? How many of them were minorities? Let it be so. Our hon. Speaker is a lady. In the Fifteenth Lok Sabha also, our Speaker was a lady. How many women have come as High Court judges? How many women have come as Supreme Court judges? When will the time come when the Supreme Court of India can say that our Chief Justice is a lady? Ours is still an all men's world where the women are also being deprived of the opportunities that they should have got.

With all this, I again humbly request our hon. Sadananda Gowda Ji to have a rethinking on this Bill. Also, we have to legislate a comprehensive legislation on the salaries, allowances, pension, appointments, qualifications, etc., of the judiciary.

Before concluding, let me ask this. Will any person get a reply from any of the High Courts to this question? What is the total emolument, including travelling allowance and other allowances that the High Court judges get per month? It is because the common people will not understand the legal terminology. There will be provisos. There will be exceptions just like one touches the nose this way. It will be like that. Sir, the judiciary is hiding behind the walls. They are afraid of the people. If somebody says that, they are afraid of the people. My mind and heart is also with the people. Our judiciary should be accountable. The judiciary should be accountable to the people. The people of India are supreme. The judiciary should also ensure that social justice as enshrined in the Constitution is being implemented.

I conclude just in a minute. This Session started by paying homage; paying tribute and showering praises upon Dr. B.R. Ambedkar and his team. Shri Sadananda Gowda Ji, if we take that spirit to our heart, it is high time that this House, the 16th Lok Sabha should take up an initiative for a comprehensive legislation for the judiciary in India.

SHRI M.I. SHANAVAS (WAYANAD): Thank you, Dy. Speaker, Sir. I would like to present a few points. From yesterday onwards, we all have been hearing so many thought-provoking discussions with respect to the judiciary and the lawyers who are practising especially in the High Courts. We are sitting here to deliberate upon the amendments in respect of benefits, mostly pensionary benefits to the judges of the High Court. It has already been said in the House by some of my learned friends that it has been decided by the hon. Supreme Court on 31st March, 2014 that pensionary benefits should be extended to the High Court judges. Justice K. Sadasivam, who was the Chief Justice of India, said: 'One rank one pension must be the norm in respect of a Constitutional office.' The amendment moved by Shri Sadananda Gowda is in response to the Supreme Court judgement. Had there been no Supreme Court judgement, this amendment Bill would not have come.

With respect to this Bill, personally I am not against any emoluments being given to the judges. But here a way has been found out by the court which is just like the appointment of the judges that judges are deciding their brothers' salaries. That is what is happening here. I am not against it. Those who do service should be given necessary remuneration, salary, allowance, pension, etc.

I am sure that in a meeting of High Court judges and the Chief Ministers, a demand has come from the Chief Justices of various High Courts that their remuneration should be enhanced to Rs.4.5 lakh. If in this august assembly we decide to increase the pension, salary and allowance of everybody and a new Bill is being brought, nobody would criticize it. But, you know, Dy. Speaker, Sir, that the lowest paid MPs in the world are the MPs of India.

The Times of India recently conducted a study on it. If something is given to the MPs, a committee decides upon it and calls upon suggestions to increase even the lowest amount in the salary of MPs, which is a very small amount of Rs.50000 only and the step itself is criticised by everyone. If somebody takes this issue to the court, the judges will criticize it also. So, everybody will criticize the MPs. At present, the hon. Ministers are here.

They may note it down that in this aspect we are the lowest paid MPs in the world.

HON. DEPUTY SPEAKER: You are giving to others. So, you are the masters.

SHRI M.I. SHANAVAS: Yes, but something has to be done for a Member of Parliament to be able to pull on.

I know that there is paucity of time, but I would like to ask the hon. Law Minister as to what happened to NJAC. We all discussed it here in this House. The Members of Parliament discussed in Rajya Sabha as well. Everything came up in 20 Assemblies also. Is the Government afraid of somebody? Is the Government afraid of the Judiciary? The 5-judge Bench of the Supreme Court by a majority of 4:1 nullified the said Act. They struck down an Act which has become the will of the people. The entire country supported that Act, but there is nobody to resist as they decided. You must be knowing that 'the second judges case' was adjudged by nine judges while this most important Act was nullified by five judges – four against and one for. Now, what is going to happen? It was argued by the Attorney-General that it should be heard by an 11-member Bench, a larger Bench, but it was not heeded to. Parliament was taken for a ride. The people of the country were taken for a ride. We all are elected from the nook and corner of the country and come here. We represent the people of India. We represent the sentiments of the people of India. People of India have got the opportunity to hear us, to punish here and to rectify us, but there is nobody to rectify the Judiciary. So, what is this Government going to do?

We all were expecting that something will come because this Government has got such a massive mandate. Shri Narendra Modi came to power as Prime Minister with such a majority which was never witnessed in this House for so many years. So many things are happening in this country. In the 'Breaking News', you can see every High Court Judges sitting and they are uttering comments for 9.00 p.m. news. For the purpose of 'Breaking News', the whole system has been subverted in some High Courts. It has become a habit of judges to utter comments and observations for appearing in the Press and in television discussions. The hon. Law Minister and the Members may kindly see one thing : who is at the receiving end? We are at the receiving end.

Who has upheld Dr. Ambedkar's Constitution, the greatest Constitution in the democratic world? We upheld the principles of the Constitution. We, the politicians, upheld every right enshrined in the Constitution. It was done by us, but now a situation has been created where Members of Parliament are shown in a bad light and it is projected that the members of the Legislative Assemblies do not have any principle. So, something has rotten somewhere. The Judiciary is doing a great dis-service by getting involved in so many unwanted activities which are happening in the court-rooms. Sir, you already know that the big lawyers or the so-called legal luminaries will charge Rs. 35-40 lakh per case for coming to Kerala or for going to Chennai. How will the poor man get justice? In some Benches, if a particular lawyer comes, then he will get the order. So, justice is denied to the poor people. ...(*Interruptions*) So, you may kindly see as to what is happening in the court rooms. ...(*Interruptions*) This is an opportunity for this House to analyze as to what is ...(*Interruptions*)

HON. DEPUTY SPEAKER: This can be done. I am not against what you are speaking, but that can be done on many occasions. Here, we are discussing about the salaries of those people.

...(*Interruptions*)

HON. DEPUTY SPEAKER: We are not their lawyers.

...(*Interruptions*)

SHRI M.I. SHANAVAS: Sir, my question is this. Who will decide about the increase in their salaries? The increase in their salaries should be decided by this Parliament. The Parliament decides it. So, when Parliament decides it, then the Parliament has the authority and the right to question the issues that come before the judiciary also. So, I would like to draw the attention of the hon. Law Minister and others, especially, to the NJAC Act and the bad tendencies that have crept in the court rooms in the judiciary. Everything has to be controlled.

Here, my dear friend, Shri Sampath asked so many questions. Have you heard about a single instance where a judge has been enquired into by the Enforcement Directorate? So many MPs have been subject to questioning by the Enforcement Directorate, but we do not see them being subjected to the same. So, there is nobody to check them. We are not a judiciary, but when I say this, I tell you that the judiciary in India has done a commendable job also. They have safeguarded the rule of law, but there are certain things that should be rectified and corrections should be made. This is the time when we should all sit together and see that the supremacy of Parliament and the will of the people –

HON. DEPUTY SPEAKER: Mr. Shanavas, mentioning corruption and everything is not correct.

SHRI M.I. SHANAVAS: Sir, I am concluding. ...(*Interruptions*)

HON. DEPUTY SPEAKER: The use of the word 'corruption' regarding judiciary has to be removed.

SHRI M.I. SHANAVAS: We represent the will of the people. This should be safeguarded and we should move ahead like this. ...(*Interruptions*)

SHRI M.B. RAJESH (PALAKKAD): Sir, you could go through the records, and if there is anything that is not proper, then it should be expunged. ...(*Interruptions*)

HON. DEPUTY SPEAKER: I am only saying that it may not look nice if you are generally telling about the judiciary. In Mr. Sampath's speech, 80 per cent was perfect and 20 per cent was alright. I personally feel that the word must not be there. If you specifically say it, then it is alright, but generally making a remark like this may not look nice.

SHRI M.I. SHANAVAS: Sir, I never said before the House that all the judges are corrupt. I never said so. I also said that they upheld the rule of law and they have done a commendable job also, but we, the Members of Parliament, are the conscience keepers of the nation and we should sit together to correct if anything is to be corrected and we should move ahead like this. Thank you, Sir.

HON. DEPUTY SPEAKER: The next speaker is Shri P.P. Chaudhary. Please be very brief as we have to pass the Bill by 6 o'clock. So, all of you please

cooperate with the Chair.

SHRI P.P. CHAUDHARY (PALI): Sir, why briefness is there at my stage?

HON. DEPUTY SPEAKER: Please cooperate with the Chair by being brief while making your speech.

SHRI P.P. CHAUDHARY (PALI): Sir, I thank you very much for affording me an opportunity to speak on the High Court and the Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill, 2015. I rise here to support the Bill. I congratulate the hon. Law Minister for bringing this Bill since some of the provisions have become obsolete and outdated or have lost their significance, hence need deletion.

The second point in the Bill is with respect to disparity in pensions to the High Court and the Supreme Court Judges because the High Court and the Supreme Court Judges are coming from two streams – one is coming from the State Judicial Services, and the other is coming from the Bar. The Judges who are coming from the Bar are not in a beneficial position because their experience at Bar is not being taken into consideration while calculating the pension. So, this Bill was necessitated long time back. Unfortunately, the legislative pillar of democracy took too long to correct this anomaly, and it was left to the court to step in and issue a direction to us to act upon it, and these directions were issued way back in 2005 on which we have acted now. This Bill is the need of the hour, and disparity in pension is being removed altogether.

Now, I am directly coming to other points. Apart from pension, the Judges should enjoy benefits that are higher than in other branches of the Government, both due to the position of the office they occupy as well as to ensure their independence and fair judgment. This is also in line with the fact that many Judges who are elevated from the Bar forego large sitting fee for becoming a Judge and compensation in position of the Judge and the office of the Judge should not come at the expense of the existing standard of living, and also the Judges hold the office for a very short period of time. So, the Judges' salary, increase in allowances and all those things can be provided.

Apart from this, on the question of legislative competence, we all know that democracy in our country basically consists of three pillars, namely, Parliament/ Legislature, Executive and the Judiciary. The first principle of democracy is accountability. So far as Parliament is concerned, it is accountable to people. So far as the Executive is concerned, it is accountable to Parliament. But it is the Judiciary alone which is not accountable under Article 124(2) either to the Parliament or to the Executive. Initially, we have enacted Article 124. In Article 124 (2), it has been provided that the Judges of the Supreme Court and High Courts shall be appointed by the President of India after consultation with the Chief Justice of India. Now, in the first Judges' Case, the word 'consultation' has been defined by the Supreme Court that 'consultation' means 'it is not binding, it is not concurrence'. The true definition of 'consultation' was given in the first Judges' Case. In the second Judges' Case and in the third Judges' Case, the word 'consultation' has been defined to mean 'concurrence', and after consultation, whatever decision is given by the Chief Justice of India, it is binding on the President of India. Not only this, they also have constituted the Collegium System, which is basically alien or foreign to Article 124(2) of the Constitution of India. It is an extra-judicial body or extra-constitutional body, which has been constituted by the Judges.

The Judiciary has to interpret the law and it should not legislate. It is the primary duty of Parliament to legislate.

HON. DEPUTY-SPEAKER: Even the judiciary also is accountable to Parliament. We are having the power of initiating the impeachment proceedings. We are doing that because we are having that power. The Parliament is supreme.

SHRI P.P. CHAUDHARY: My submission is that Article 124 (2) specifically provides that once the President appoints, the Executive is accountable to Parliament. On the basis of that accountability, if the High Court and Supreme Court Judges are appointed, then, indirectly, they are accountable to the public at large. So, the will of the people is always there. However, it has been changed to the Collegium System. My submission to the Law Minister is that Article 366 provides various definitions under the Constitution of India.

Now the word 'consultation' has not been defined in the entire Constitution of India. We can bring a simple definition of word consultation overreaching both the Judgments in the case of second Judges and third Judges. We can define the word 'consultation' under Article 366 of the Constitution of India whereby it can be made clear that the word 'consultation' does not mean 'concurrence' but 'consultation' means consultation and it is not binding. Not only this, Supreme Court says that it is an interference with the independence of Judiciary or the basic structure of the Constitution. What is the basic structure of the Constitution? We have to understand it. Chapter IV of the Constitution of India speaks about the Union Judiciary. If we say that all the Articles right from 124 to 147 are with respect to Union Judiciary, then how are the Legislature, that is, the Parliament, the Executive and the Judiciary having their respective jurisdiction assigned to them under the Constitution of India? The Parliament and the various provisions of the Articles under the Union Judiciary are competent to legislate. Under Article 125, the hon. Law Minister has brought the Bill. Is it not an interference with the basic structure of the Constitution? If the Union Judiciary (Chapter) is completely meant for the basic structure of the Constitution, then if any law is made by Parliament with respect to any provision of the Union Judiciary, even the Supreme Court can interfere at any time.

In so far as the Union Judiciary Chapter is concerned, it is interfering with the basic structure of the Constitution. In democracy, we have three basic structures of the Constitution. One is the Judiciary, another is the Legislature and the third is the Executive. The interference with the functioning of the Parliament is interfering with the basic structure of the Constitution. So, the Parliament is having legislative competence not under Article 246 to legislate but it is also having legislative competence under only Article 368 to amend "any provision" of the Constitution because the framers of the Constitution had used the word specifically that it can amend "any provision" of the Constitution including the Fundamental Rights.

In so far as Article 124(2) and Article 124(4) are concerned, these are the only two provisions where the constitutional provision has been made with respect to appointment and with respect to removal of the Judges. But those provisions are also subject to Article 368 of the Constitution of India because the Parliament is supreme. People of India have given this power and the Parliament can amend it. Even the Fundamental Rights can be abrogated under Article 368 of the Constitution of India. Therefore, the power of the Parliament to amend the Constitution is the supreme power.

It cannot be interfered by the Judiciary on the ground that it is interference with the independence of the Judiciary. Every institution in the democracy has got its own independence. It cannot be interfered by the Judiciary in the functioning of the Parliament.

Secondly, I would speak about the non-judicial function which is being given to the Judges under the Legal Services Authority Act. Now, the Judges know that we have given one judicial function. Under the garb of the judicial function, I would also request the hon. Law Minister to bring a suitable amendment in the Legal Services Authority Act taking away the executive function which is being assigned to the Judiciary. Now the Judiciary is exercising dual function – one is the judicial function and the other one is the executive function. We are unconstitutionally giving the executive function whereas the Constitution under the Chapter of the Union Judiciary has assigned the function to the Judiciary that these are the demarcated functions of the Judiciary and the Judiciary is required to exercise only those functions or the functions assigned by the Parliament or laws made by the Parliament.

So, the judiciary can say tomorrow again, as has been done in NJAC case, that so far as union judiciary articles are concerned Parliament is not competent to enact law. So, this is high time we bring a suitable legislation with respect to either restoring the mandate of article 124(2) by way of defining the word consultation or bringing some suitable amendment like creation of National Judicial Commission.

In the cases of Union Public Service Commission CVC, and C&AG, no reemployment is permissible under the Constitution after their retirement. But our Constitution is silent on this issue about judges. We should bring a suitable legislation by exercising the power under article 368 and amending the Constitution to the effect that once a judge is retired there would be no reemployment either in a tribunal or anywhere. If you want to utilise their services and if you think judges after retirement are fit to do their duties, then you can use them in the High Courts and Supreme Court by enhancing their retirement age.

Thank you very much.

श्री कौशलेन्द्र कुमार (नालंदा) : उपाध्यक्ष महोदय, आपने मुझे उच्च न्यायालय और उच्चतम न्यायालय न्यायाधीश (वैतन और सेवा शर्तों) संशोधन विधेयक, 2015 पर बोलने का मौका दिया, इसके लिए मैं आपको बहुत-बहुत धन्यवाद देता हूँ। यह सरकार का एक सकारात्मक कदम है। इस संशोधन विधेयक के द्वारा हाई कोर्ट के जजों के वेतन और पेंशन में वर्तमान में जो विसंगतियाँ हैं, उन्हें दूर करने का सरकार का यह प्रयास है। जैसे तो सरकार ने माननीय सुप्रीम कोर्ट के निर्णय के आलोक में इस विधेयक को प्रस्तुत किया है और सरकार इसमें संशोधन भी करने जा रही है। मैं भी मानता हूँ कि बदलते समय के अनुसार उच्च न्यायालय और उच्चतम न्यायालय के न्यायाधीशों के वेतन, पेंशन और सेवा शर्तों में नियमों में सरलता लाना अति आवश्यक था। मैं अपनी पार्टी की ओर से इस विधेयक का समर्थन करता हूँ।

उपाध्यक्ष महोदय, मैं एक बात और कहना चाहता हूँ कि देश के सभी न्यायालयों में करीब साढ़े तीन करोड़ मामले लम्बित हैं, यह एक चिंता का विषय है। बीस-बीस सालों तक लोग न्यायालयों के चक्कर लगाते हैं, वे आर्थिक बोझ से दब जाते हैं, फिर भी उन्हें न्याय नहीं मिलता है। कई मामलों में न्यायालयों के चक्कर लगाते-लगाते लोगों की जान तक चली जाती है। मैं समझता हूँ कि यह हमारे संविधान के द्वारा प्रदत्त अधिकार का हनन है, क्योंकि समय से किसी भी व्यक्ति को न्याय न मिलना उसके अधिकार का हनन माना जाता है। यह भी देखा गया है कि बड़े और रसूखदार लोगों के केसों का निपटारा जल्दी से जल्दी होता है या मामला समाप्त कर दिया जाता है। आये दिन अदालतों में भ्रष्टाचार के मामले भी आते हैं। यह भी गौर करने की जरूरत है। माननीय न्यायाधीशों को यह भी सोचने और विचार करने की जरूरत है कि कैसे पूर्णाली या व्यवस्था बनाई जाए, जिससे लोगों को त्वरित न्याय मिल सके। भ्रष्टाचार न हो, लोगों पर मुकदमे का आर्थिक बोझ कम पड़े, गरीबों को कानूनी सहायता मुफ्त में कैसे दी जाए, जिस लिखि को मामला निश्चित हो, उसकी उस दिन सुनवाई होनी चाहिए। तारीख पर तारीख न पड़े, अन्यथा अदालतों के चक्कर काटते-काटते उनका जीवन गुजर जाता है।

महोदय, एक चिंता का विषय और है कि गवाहों को मारकर या उन्हें प्रलोभन देकर रास्ते से हटा दिया जाता है, जिसका जीता-जागता उदाहरण व्यापम घोटाला और आसाराम का मामला है। अतः न्यायाधीशों को यह सुनिश्चित करना होगा कि गवाहों को पर्याप्त सुरक्षा प्रदान हो। कभी-कभी यह भी देखा गया है कि गवाहों को अदालती परेशानी होती है, जिसके कारण लोग गवाही से भी बचते हैं। यह भी नहीं होना चाहिए।

अंत में एक सुझाव और देना चाहता हूँ कि सभी उच्च न्यायालयों एवं सर्वोच्च न्यायालयों में रिक्त पड़े न्यायाधीशों के पदों को कभी खाली न रखा जाए, ताकि मामलों का निपटारा समय से हो सके। साथ ही साथ देश की निचली अदालतों में भी खाली पदों की समस्या न हो, ऐसी व्यवस्था सरकार सुनिश्चित करे। धन्यवाद।

SHRI N.K. PREMACHANDRAN (KOLLAM): Hon. Deputy Speaker Sir, I thank you for giving me an opportunity to participate in the discussion on this very important legislation. This Bill is intended to amend the High Court Judges (Salaries and Conditions of Service) Act, 1954 and the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958.

Sir, I rise to support this Bill with certain strong reservations. The first point which I would like to make is that from the aims and objects of the Bill itself, it is very clear that it is drafted and introduced in this House on the basis of a judgement made by the Supreme Court on 31st March, 2014. What was the judgement and who was the petitioner? A bunch of petitions was there and the petitioner was a judge of the High Court. On the basis of the petition, a judgement is pronounced in the Supreme Court. The main fact in the pronouncement of the judgment is that additional 10 years of service has to be counted in the pensionable service.

A simple question which I would like to make before this House is that the hon. Supreme Court has always alleged against others that the conflict of interest is there. When judges are hearing the cases, if there is even a little bit of interest or if the petitioner or the respondent is known to the judge, in most of the cases the judge will leave away from that case and that will be transferred to some other court. That we have seen in a lot of cases. But in the case of counting the pensionable service of judges of High Court Judges and the Supreme Court, the same Supreme Court has

heard the case and disposed of the matter directing the Government to count 10 more years of additional service to the judges, that is 10 years of practicing in the bar. Is it not a conflict of interest? That is what I am saying.

I am fully supporting the views expressed by most of the Members in this House regarding the emoluments, salaries, allowances and other observations about the judiciary. There should be a separate mechanism to look into these aspects and the judges should not determine the salary of the judges. No direction should be given from the judiciary or from the bench that this should be counted by the Government. That is my first point. Also, it is retrospectively effective from 1st April, 2014. So, retrospective effect has been given and 10 years of standing in the bar is to be counted for pensionable service. It is totally unethical and unfair on the part of the Supreme Court or the judiciary and this Bill is to give effect to the Supreme Court's judgment. That is the first reservation which I would like to make.

HON. DEPUTY SPEAKER: The Supreme Court is making law now. Whatever they are telling, we are following.

SHRI N.K. PREMACHANDRAN: The Supreme Court is directing the Executive to draft a legislation and to bring it to the House and the House has to pass a legislation for the sake of judges. As Mr. Sampath has rightly pointed out, they are the executors, they are law-makers, they are doing everything and they are judging everything.

There is another interesting point to which I would like to draw the attention of the hon. Minister. The second amendment is to increase the terminal surrender benefits of a judge of the High Court and the Supreme Court. By Clause 4 of the Bill, a judge of the High Court or the Supreme Court can surrender any leave at his credit. The principal Act says that only the earned leave can be surrendered. But now we are making an amendment by which any leave at his credit can be encashed. How will it be encashed? It will be with full allowances. How could it be? It is a strange provision. In All India Service pension, you can only encash the earned leave and here a judge can encash any leave at his credit and he will be entitled to encash the leave on full allowances basis. What a strange provision is this? According to this amendment, you can encash half pay leave, you can encash commuted leave and even child care leave for women can also be encashed. So, this is a strange provision with full allowances.

As for counting the encashment of the leave, only the basic pay and dearness allowance are counted. That is what the Lok Sabha Secretariat officials and civil service officials get. Everywhere, only basic and D.A. will be counted for encashment of leave but here they count all the allowances, full allowances. The strangest of strange provision is being incorporated just to satisfy the Judiciary. This is totally unfair and unethical. What are the benefits which a judge is getting? Basic, D.A., house rent allowance, telephone allowance, traveling allowance and all the allowances which the judges are earning will be counted for the purpose of this allowance. How is it justified?

A lot of eminent Members have already said in this House that a Judge shall never hold any official post after his retirement. Even if a Constitution Amendment is required for it, definitely it should come. A former Chief Justice of the Supreme Court is now holding the post of a Governor. Where is the separation of the Judiciary, the Executive and the Legislature? The Supreme Court has struck down the National Judicial Appointments Commission Bill on the ground that the separation of powers between the Judiciary and the Executive would be lost if that Bill is passed. Now, a retired Supreme Court Chief Justice has been nominated as Governor of a particular State.

I want to raise two points regarding the NJAC Bill. What happened to that Bill? I fully support the view expressed by the Law Minister as well as Shri Arun Jaitley, the hon. Finance Minister. I quote the words spoken by Shri Arun Jaitley, the hon. Finance Minister: "It is the tyranny of the unelected". There is no doubt about it because the entire Parliament consisting of both Houses of Parliament and 20 State Assemblies have approved the Constitution Amendment but in a Five-Member Bench four Judges decided that the will of the people will not survive and only their interest will survive, their decision will be final. What wrong the Government did was this. After the pronouncement of the judgement, what was the position taken by the Government? The Government was ready and willing to give comments for reformation of the collegium. My point is that the Government of India shall never give any comments for the reformation of the collegium. By giving any comments or response for reformation of the collegium as directed by the Supreme Court even indirectly you are taking away the right of Parliament, you are infringing the right of Parliament because both Houses of Parliament have unanimously passed the Constitution Amendment and most of the State Assemblies have passed the Amendment. That is the will of the people. A Four-Member Bench is directing that you should come and give some comments so that they would reform the collegium. How can the Government go at an immediate instance? The Government ought to have come back to Parliament and reported to Parliament that the Supreme Court Bench has struck down the Bill; we have no option, what to do? The Government has not consulted the Opposition. The Government took a stand and is amenable and subject to the Supreme Court verdict. It is ready to give comments and response for the collegium reformation process. This is totally unfair as far as parliamentary practice is concerned. Whether it is NDA or UPA, BJP, Congress, CPI, Left or Right, we have to protect the will of the people. It is not the will of the individuals. We should stand to fight out this case. We have to bring the NJAC Bill back to the domain of Parliament and it should be implemented.

With these words, I support this Bill with these reservations. Thank you.

श्री हुवमदेव नारायण यादव (मधुबनी) : उपाध्यक्ष महोदय, मैं ज्यादा समय नहीं लेना चाहूँगा।

जब मैं 1967 में बिहार विधान सभा का सदस्य बना था तो अपने कुछ साथियों के साथ संसद को देखने आया था। संसद के परिसर में बाबासाहब की मूर्ति को देखकर मैंने अपने साथियों को कहा कि बाबासाहब की मूर्ति हम लोगों को कुछ कह रही है। उन्होंने कहा मूर्ति क्या कहेगी? हमने कहा कि हाथ में संविधान की किताब है और अंगुली संसद की ओर है। इनका कहना है कि हिन्दुस्तान के गरीबों, पिछड़ों, दलितों, इस संविधान की किताब में तुम्हारे लिए न्याय की बहुत सी बातें लिखकर जा रहा हूँ, लेकिन जब तक हिन्दुस्तान में विधायिका, कार्यपालिका और न्यायपालिका में तुम्हारा बहुमत और अधिकार नहीं होगा, तब तक यह संविधान तुम्हारे लिए निरर्थक रहेगा। इसलिए आज तक वे बातें हमारे सामने यों की यों खाड़ी हैं। विधायिका में तो ज्यों-ज्यों हम पिछड़े और दलित समाज के लोग अपने वोट की कीमत जानते जाएंगे, अपने बहुमत की शक्ति पहचानते जाएंगे, विधायिका पर कब्जा करते चले जाएंगे। एक न एक दिन उनका बहुमत होकर रहेगा।

दूसरी बात है कि आरक्षण लागू होने के कारण कार्यपालिका में भी उनका बहुमत होता जायेगा और 50 वर्ष, 100 वर्ष आते-आते इन पिछड़े और दलितों का कार्यपालिका में भी वर्चस्व होकर रहेगा। लेकिन न्यायपालिका में आज तक उनको अधिकार नहीं मिला। विधायिका में एक से एक प्रतिभाशाली, योग्य, विद्वान, मुख्यमंत्री, मंत्री मिल सकते हैं, कार्यपालिका में एक से एक बड़े-बड़े ऑफिसर विद्वान मिल सकते हैं तो क्या न्यायपालिका में एक भी पिछड़े और दलित समाज का व्यक्ति उस योग्य नहीं बना है, यह हिन्दुस्तान के 85 प्रतिशत लोगों की प्रतिभा का अपमान है, 85 प्रतिशत

जनमत का अपमान है। इसलिए आपसे मेरी विनम्र प्रार्थना है, प्रधानमंत्री जी ने जो संशोधन किया, उसमें वयन समिति में उन्होंने लिखा कि 6 सदस्य में दलित आदिवासी और पिछड़ा वर्ग में से एक सदस्य इसमें रहेगा, हिन्दुस्तान के इतिहास में वह क्रांतिकारी परिवर्तन था। हिन्दुस्तान के सामन्तवादी लोगों को यह बर्दाश्त नहीं है कि वयन समिति में कोई पिछड़ा, दलित और आदिवासी बैठे, जो इस बड़ी कुर्सी के लिए न्यायाधीशों को चुनने का काम करे, इसलिए मेरी विनम्र प्रार्थना है कि वह एक क्रांतिकारी परिवर्तन आया था, जिसको आज लोग नहीं मान रहे हैं। मैं माननीय मंत्री जी से प्रार्थना करूंगा कि श्री नरेन्द्र मोदी जी के नेतृत्व में हिन्दुस्तान के पिछड़े, दलित, निर्धन, निर्बल, गरीबों ने विश्वास किया था कि सभी जगह उनको उचित न्याय मिलेगा और मिलता जा रहा है, लेकिन न्यायपालिका में उन्हें उचित न्याय नहीं मिल रहा है, प्रतिनिधित्व नहीं मिल रहा है, उसको दिलाने के लिए संविधान में एक नहीं, अनेक संशोधन करने पड़ें तो संसद् को करने चाहिए और न्यायपालिका को इस संसद् के निर्णय को सम्मानजनक तरीके से स्वीकार करना चाहिए, तभी हिन्दुस्तान चलेगा, अन्यथा यह संसद् का अपमान हिन्दुस्तान के लोकमत का अपमान है, हिन्दुस्तान के लोक का अपमान है और हिन्दुस्तान के जनमत और हिन्दुस्तान के लोक का अपमान हिन्दुस्तान में ज्यादा दिन तक लोग बर्दाश्त नहीं करेंगे।

धन्यवाद।

HON. DEPUTY SPEAKER: Now, the hon. Minister.

...(Interruptions)

HON. DEPUTY SPEAKER: Nothing, except whatever the hon. Minister says, will go on record.

...(Interruptions) *

THE MINISTER OF LAW AND JUSTICE (SHRI D.V. SADANANDA GOWDA): Deputy-Speaker, Sir, I thank all the Members who have participated in the debate. They have traversed almost right from the Munsif Magistrate Court up to the Supreme Court. I certainly appreciate their concerns and I do take cognizance of certain suggestions given by the Members during the course of the debate.

As far as this Bill is concerned, I would like to base my arguments on the Articles which are laid down under the Constitution. We have debated for two days with regard to our dedication to the Constitution. Today's Bill solely rest upon the Articles laid down under the Constitution and we have not gone beyond, even a single inch, from the provisions of law.

I would like to draw the attention of the House to Article 142 of the Constitution. It clearly mandates as to how the judgements of the Supreme Court should be responded by the Government. Article 142(1) of the Constitution clearly says:

"The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or orders so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe "

So any judgement that has been rendered by the Supreme Court need to be implemented under article 142(1) of the Constitution.

HON. DEPUTY SPEAKER: What is the role of the Parliament then?

SHRI D.V. SADANANDA GOWDA: Sir, I am coming to that. There was a fiery speech as far as NJAC is concerned. I do not want to clarify much about NJAC because a final verdict has not yet come. Of course, on 16th October, the Collegium system has been restored and 99th Constitutional amendment was struck down.

HON. DEPUTY SPEAKER: Mr. Law Minister, that is not the point. As has been said by Mr. Premachandran, Parliament has the power to enact laws. When the Supreme Court says that the term and other things will remain like that, then they are dictating things. Then why are we discussing it? That is the point which the hon. Members are raising. We have to obey the judgments of the Supreme Court which you are saying is somewhat misleading the House.

SHRI D.V. SADANANDA GOWDA: Sir, I was just quoting the provisions of the Constitution. The question is why Parliament cannot over write the judgment.

SHRI BHARTRUHARI MAHTAB : It says that throughout the territory of India in such manner as prescribed by or under any law made by Parliament. So 'as made by Parliament' will be the ultimate truth.

SHRI D.V. SADANANDA GOWDA: Sir, unless and until that has been enacted as a law by the Parliament, it cannot be enforced. Now the judgment has come.

SHRI M. VEERAPPA MOILY (CHIKKABALLAPUR): The hon. Law Minister seems to give an impression that whatever order or decree made by the Supreme Court is enforceable. But until a law of the Parliament is made, it cannot be enforced. He has just said that we are bound to implement it. We are always entitled to bring a law and either you can enforce it or you can make a contrary law. This has been interpreted a number of times. My suggestion to the hon. Minister on this is that his stand may not be correct. It would be better if you consult the Attorney-General or the Ministry of Law. The Law Minister's statement going on record saying that whatever order is passed by the Supreme Court is enforceable under article 142 notwithstanding any law passed by Parliament is not correct. It is not at all correct. Let it not go like that. You please go through that. I have handled this portfolio both in the State and here. A number of things had come. One case regarding medical seats as also seats in the Common Entrance Test came up. The Supreme Court passed an order in this regard. At that time, it was opined by the then Attorney-General as also by various courts that we have to bring out a law to annul that. So, a law has to be brought in. I do not think in the absence of law, article 142 can be absolute. It cannot be absolute unless a law made by Parliament.

THE MINISTER OF STATE OF THE MINISTRY OF SKILL DEVELOPMENT AND ENTREPRENEURSHIP AND MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS (SHRI RAJIV PRATAP RUDY): Sir, it is absolutely clear under the Constitution that the law has to be made in Parliament. He was trying to explain it. There was an observation by the Supreme Court that till Parliament frames a law, we are under certain constraint. This is what he was trying to explain. So, let him complete and then we can have discussion.

SHRI D.V. SADANANDA GOWDA: Hon. Deputy-Speaker, Sir, as per the directions of the Supreme Court this has been brought as a Bill before the Parliament. I am only explaining the reasons as to how this could be justified. How could the direction of the Supreme Court be justified and why has the Government brought this Bill? That is what I am trying to explain. I have read the relevant portion of the article. That is all. I have not gone beyond that. I never said that it is mandatory for the Parliament to obey the judgment. The Parliament is supreme. I do not dispute that.

Hon. Deputy-Speaker, Sir, there was a similar provision. It was made available to the judges of the Supreme Court in the year 2005. After detailed review it came to our knowledge that there is some discrimination. For example, an advocate is elevated to the post of a judge usually at the age of 52 to 55 years. An advocate is elevated to the post of a judge only when he gains expertise in his field. Ultimately, for getting a pension he has to complete 14 years of service. That is the rule. Now, if someone is appointed at the age of 52 or 54, then he is going to retire at the age of 62 and in that event he will not be eligible for full pensionary benefits. Usually an advocate who has got a good practice and who has set up his office for over 20 to 25 years, he will never be prepared to be elevated as a judge to the High Court. This is in order to give some incentive and see that that there is no discrimination at the stage of his retirement. It should not be the case and it is for that reason this Bill has been brought.

Sir, the other thing is that an advocate after retiring as a judge at 62 years cannot relocate himself because he cannot practice in the same High Court. He has to shift to some other High Court and once he loses practice it will be a grave injustice to an advocate who has been elevated as a judge from the Bar. The practice is that two-thirds of the judges will be appointed from the Bar and one-third of the judges will be appointed from the judicial service. At present there are huge vacancies. Nearly 400 posts of high court judges are lying vacant. One-third means nearly 300 persons have to be elevated from the Bar to the Bench. After they retire at the age of 62, if they do not get any incentive, then automatically they feel that it is not favourable for them to be occupying the post of a judge. In order that there is no such feeling in the fraternity of the advocates, the Government wanted to bring this Bill. The judgment of the Supreme Court is only advisory to draft this Bill. On the basis of all such considerations we have brought this Bill.

Apart from this we have covered other aspects also with regard to leave and other things. There were several anomalies. Earlier Civil Servants were appointed as judges. Now it is not there. Earlier, Indian High Courts were there in Rangoon and other places, but now it is not there. We wanted to consolidate and rectify all these areas. All these outdated and redundant laws needed to be rectified. We have brought this Bill for these reasons. So, there are reasons and it is just not only because of the judgment of the Supreme Court. We are not following it blindly. The direction of the Supreme Court was just like an advisory. We have taken note of certain things which have been observed by the Supreme Court. So, we are going ahead with this.

HON. DEPUTY-SPEAKER: Hon. Members, now it is going to be six o'clock. If the House agrees, then we can extend the time of the House till the reply and passing of this Bill and we have one more Bill to move.

SEVERAL HON. MEMBERS: Sir, yes.

SHRI TATHAGATA SATPATHY : Sir, those Members who spoke on the Bill, can they seek some clarifications?

HON. DEPUTY-SPEAKER: That can be done after the reply of the hon. Minister.

18.00 hours

SHRI D.V. SADANANDA GOWDA: As far as NJAC is concerned, I want to say something....(*Interruptions*) I am not able to answer it because the final verdict has not come from the Supreme Court. They have sought some suggestions. Of course, we have also received some suggestions and certain suggestions are given to the Supreme Court. So, till the final verdict comes out from the Supreme Court, we are not in a position to debate that issue. But what they have said is that there are certain deficiencies in the collegium system and so, you may give your suggestions so that they will get it rectified. It is a continuation of the earlier judgement. It has come out of that judgement only. ...(*Interruptions*) They might have struck down the NJAC but subsequently, they have continued the same Bench to hear some more suggestions from various corners and stakeholders. Unless and until the final verdict comes from the Supreme Court, I am not in a position to debate on this issue.

A few other questions have been asked by our friends regarding establishment of the Supreme Court Benches and High Court Benches in the various parts of the country. Specially, article 130 is very clear as far as that matter is concerned. Unless it is concurred by the Chief Justice of India, the present Act does not permit to go ahead. We cannot establish a Supreme Court Bench in any part of our country unless the Chief Justice of the Supreme Court concurs with it. There is no role of the Government on this matter at this stage.

HON. DEPUTY SPEAKER: It is only a suggestion given by the hon. Members. When High Court Benches are there, this can also be done. As far as Chennai is concerned, Madurai is having a High Court Bench. Like that, they are suggesting that Supreme Court can also have a Bench.

SHRI D.V. SADANANDA GOWDA Mr. Deputy-Speaker Sir, all the suggestions are well taken. I have said this at the initial stage itself. There are various demands from various corners of the country for establishment of the Supreme Court Bench as well as High Court Benches. As regards the High Court Bench, the State Government with concurrence of the Chief Justice of the concerned High Court has to move the papers. No such proposals have come from any of the State Government so far. Neither the Chief Justice nor the Chief Minister has concurred and come up before us to have a Bench of the concerned High Court anywhere.

DR. A. SAMPATH : There was a long pending demand from the State of Kerala for the establishment of a High Court Bench in Thiruvananthapuram.

The Legislative Assembly of Kerala has unanimously passed a Resolution and that has been given to your predecessor also. Even recently, there was a Private Members' Bill in this regard.

SHRI D.V. SADANANDA GOWDA: Any Resolution passed by the Legislature itself will not be sufficient in this matter. Any movement by the Government is not sufficient. It should be concurred by the concerned Chief Justice of the High Court also. (Interruptions) It is not correct. The Chief Justice and the Chief Minister should concur with the proposal and they should send it to the Central Government and only then, we can go ahead with it. So far, no such proposal is pending before us. But there are many requests from various States of the country. Several MPs have placed their demand before us. Several Chief Ministers have sent us their proposals but there is no concurrence from the concerned Chief Justice of the State High Court. At present, unless it is concurred, we are not in a position to go ahead on this issue.

As far as salaries are concerned, a question was put as to why higher salary should be given to the judges. That was the question raised by all the Members. Usually, the salaries of the Chief Justice of the High Courts and the Chief Justice of the Supreme Court are on par with those of Cabinet Secretary and other Secretaries. As soon as the Pay Commission revises it, automatically the salaries of the Supreme Court judges and Chief Justice will be fixed. At present, the Chief Justice of the Supreme Court gets Rs. 1 lakh per month and the Chief Justice of the High Court gets Rs. 90,000 per month. That is on par with the Report of the Law Commission.

As far as salary is concerned, the Seventh Pay Commission has already submitted its Report to the Government and the Government is yet to finalise it. It has recommended a salary of Rs. 2.25 lakh to the Secretary to the Government of India and Rs. 2.50 lakh to the Cabinet Secretary. So, automatically the salaries of judges will also be revised. Almost all the hon. Members were telling that their salaries should be enhanced. There is no dispute as far as that aspect is concerned. I hope that it will be done.

Shri N.K. Premachandran talked about leave allowances and other things. He said that as per this Bill, it will go beyond the payments that are being made to the civil servants. But it is not like that. Even according to the earlier Act, they did not have the Earned Leave. They had only Half Pay Leave allowance and other allowances. So, we have consolidated everything and brought out a comprehensive leave benefits to the judges.

As far as other issues are concerned, no serious concern has been expressed by my learned colleagues. Of course, they expressed certain grievances against the judiciary. It is visible by the arguments placed by our learned Members across the party lines. Of course, there is a need for some more judicial reforms. Certainly we are working on this.

I am taking all the suggestions made by my learned friends made in Parliament. Certainly, we will consider how to go ahead with them.

With these words, I would request that the Bill may kindly be passed.

DR. A. SAMPATH : Hon. Deputy-Speaker, Sir, I would like to seek one clarification.

HON. DEPUTY-SPEAKER: You are allowed to seek only one clarification.

DR. A. SAMPATH: My submission is this. The people have a right to know what all amounts that are being paid to the judges, those who are in the judiciary, in the High Courts as well as in the Supreme Court.

We are enacting a law for their salaries, pension, etc. But what each judge of the High Courts and the Supreme Court, get by way of salary, travelling allowance, especially the medical allowance should be made public. Medical allowance is an important item. There is no question of any national security involved in making them public. There is no threat to national security if these things are revealed. So, I would like to know whether the Minister will take initiative to make them public. Let it come out in open. Let it be shown to the public.

श्री निशिकान्त दुबे (गोड्डा) : उपाध्यक्ष महोदय, अभी मंत्री महोदय ने अपने जवाब में कहा कि यह सुप्रीम कोर्ट का ही जजमेंट नहीं था बल्कि और कई कारण थे, जिससे हमें इसे बढ़ाना पड़ा। इस बिल के ऑब्जेक्ट और रिजल्ट के बारे में है। सुप्रीम कोर्ट ने अपने जजमेंट में 1 अप्रैल, 2004 यानि इसे रिट्रोस्पेक्टिव डेट से लागू करने की बात कही। मंत्री महोदय जो बिल लेकर आए हैं, इसके क्लॉज 8 में सुप्रीम कोर्ट के डायरेक्शन हैं, यह बिल उसी को पूरा कर रहा है। मेरा मानना है कि इसने पार्लियामेंट को डिफेंड कर दिया है। यह कस्टीट्यूशन, जिसकी शपथ हम लोग लेकर आते हैं, संविधान की धारा 368 में कहा गया है कि

"For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article."

जिस तरह से एनजेएसी को किया है और उसके बावजूद भी हम सुप्रीम कोर्ट के सारे डायरेक्शंस को रेट्रोस्पेक्टिव कर रहे हैं, इस बारे में सरकार को, देश को वतरीफाई करना चाहिए, क्योंकि यह पार्लियामेंट की डिजिनिटी का सवाल है, किसी पोलिटिकल पार्टी का सवाल नहीं है। यदि पार्लियामेंट डिफेंड है तो हम क्यों सुप्रीम कोर्ट के डायरेक्शन को मानेंगे? हम रेट्रोस्पेक्टिव को मान रहे हैं क्योंकि यदि कानून होता, तो वह प्रीसपेक्टिव होता। सुप्रीम कोर्ट के डायरेक्शन पर हम रेट्रोस्पेक्टिव कर रहे हैं, इस बारे में सरकार को वतरीफाई करना चाहिए।

SHRI TATHAGATA SATPATHY : I have just one question to put. I have brought in a point whether the Central Government to consider paying the pension of all High Court Judges and the Supreme Court Judges. If you are increasing their emoluments, we have no problems. They are not willing

to be put under the ambit of RTI. Their number of judgments which have not been revoked by that higher court is not counted when they are being promoted. Good lawyers, like the hon. Minister has said, are unwilling to become Judges unless they are assured that the Judgeship will give them more money. So, you are, more or less, admitting covertly that you are taking in poor, inefficient lawyers into the judiciary. So, the only thing I want to ask is this. Under these conditions, will the Government consider that all the pension of all the retired High Court Judges – Let us go back retrospectively from 1947 or 1950 whenever our Constitution came into being - be paid by the Centre? Let the Central Exchequer pay the pension of all the High Court Judges and the Supreme Court Judges and do not put this burden on the State Governments with retrospective effect. Why do you put the burden on the State Governments? So, if you are so happy to please the Judges, you please them. We have no problem. But you take the burden. That is all that I want the hon. Minister to clarify.

DR. MAMTAZ SANGHAMITA (BARDHAMAN DURGAPUR): I just want to say that so long as the service is concerned, the number of Judges on the Supreme Court and the High Courts has not actually been increased since the inception of the Courts. That creates problem in delineating the services. So, a number of cases are pending all over India.â€¦ (Interruptions) I know that it is not under the law.

Next, coming to the percentage of female Judges, I would say that women Judges should be there in their representation in the Supreme Court.

DR. RAVINDRA BABU (AMALAPURAM): I would like to put one small academic doubt to the august House, especially to the hon. Law Minister assuming but not admitting that suppose this Amendment is not passed, suppose this Bill is not passed, does it amount to contempt of court...(Interruptions)

SHRI R.K. SINGH (ARRAH): Sir, the hon. Minister has not clarified two very salient issues which have been raised by the hon. Members. One salient issue which was raised by the hon. Members was that no person can be a Judge in his own cause or no institution can be a Judge in its own cause. That is the first question. The hon. Minister has not met that point.

The second point which was raised was that the hon. Court has passed orders on a subject which, by the Constitution, belongs to Parliament. It has infringed on the jurisdiction of Parliament. I believe that a strong message needs to go to the courts that they should stop doing that; they should stop infringing on the jurisdiction of Parliament. So, both these points, I think, need to be met by the hon. Minister. He needs to make a clear statement on these issues.

SHRI D.V. SADANANDA GOWDA: Hon. Deputy-Speaker, Sir, we are not bringing in this legislation on the basis of the Supreme Court's judgment alone but there is one thing....(Interruptions)

HON. DEPUTY-SPEAKER: He has already made it clear.

SHRI D.V. SADANANDA GOWDA: But, as per the Article 125, we are bringing forward this Bill before the Parliament. We brought this Bill to see that there is uniformity. There should not be any discrimination as far as those people are concerned. In 2005, there was already amendment regarding the Supreme Court Judges. So, there is a little bit discrimination as far as High Court Judges are concerned. Secondly, good advocates will not come to the post of Judge, if they are not given some sort of benefit.

HON. DEPUTY-SPEAKER: Hon. Minister, don't tell that good lawyers will not come. Judiciary is different. If they want to serve, they will come. They are not for money; nobody will come for money-sake and occupy the position.

SHRI D.V. SADANANDA GOWDA: To bring uniformity, we are bringing this Bill. Apart from that, this Bill ought to have brought before Parliament by the UPA Government. At least now we are bringing it on par with that. There is no increasing salaries, etc. I will be on par with the recommendations of the Pay Commission.

HON. DEPUTY-SPEAKER: The question is:

"That the Bill further to amend the High Court Judges (Salaries and Conditions of Service) Act, 1954 and the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958, be taken into consideration."

The motion was adopted.

HON. DEPUTY-SPEAKER: The House will take up clause-by-clause consideration of the Bill.

The question is:

"That Clauses 2 and 3 stand part of the Bill."

The motion was adopted.

Clauses 2 and 3 were added to the Bill.

Clause 4 Amendment of section 4A

HON. DEPUTY-SPEAKER: There is an Amendment No.1 to Clause 4 to be moved by Shri Premachandran. Are you moving your amendment?

SHRI N.K. PREMACHANDRAN: Sir, I am moving my Amendment No.1 to Clause 4. I beg to move:

"Page 2, line 23,--

for "the period of leave"

substitute "the period of earned leave". (1)

Once again I would like to highlight this House that the terminal surrender benefit is only for the Earned Leave. Here there is a provision that all the leaves, whether it is Commuted Leave or Half Pay Leave, etc. would be encashed.

Secondly, either one should be amended. Nowhere in the world, the Travelling Allowance can be encashed; telephone allowance can be encashed. Encashment of leave does not mean it is only the Basic Pay and the D.A. The H.R.A. will never come. How can HRA be encashed? How can Travelling Allowance and Petrol Allowance or some other allowance can be encashed? So, any one of them should be deleted. That is my submission. I move my amendment.

SHRI D.V. SADANANDA GOWDA: It is not like that. In the earlier Act of 1954, under Section 3(1), there was some confusion about Leave Allowance, Full Allowance, Half Allowance, etc. All those things were consolidated and brought under the Act.

HON. DEPUTY-SPEAKER: Okay.

I shall now put Amendment No.1 to Clause 4 moved by Shri N.K. Premachandran to the vote of the House.

The amendment was put and negatived.

HON. DEPUTY-SPEAKER: The question is:

"That Clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

Clauses 5 and 6 were added to the Bill.

Clause 7 Amendment of Section 14

HON. DEPUTY-SPEAKER: There is an Amendment No.2 to Clause 7 to be moved by Shri Premachandran. Are you moving your amendment?

SHRI N.K. PREMACHANDRAN : Sir, I am moving my amendment No.2. I beg to move:

"Page 2, line 35 to 37, -

substitute "any other pensionable post after retirement under the Union or a State".'. (2)

HON. DEPUTY-SPEAKER: I shall now put Amendment No.2 to Clause 7 moved by Shri N.K. Premachandran to the vote of the House.

The amendment was put and negatived.

HON. DEPUTY-SPEAKER: The question is:

"That Clause 7 stand part of the Bill."

The motion was adopted.

Clause 7 was added to the Bill.

Clauses 8 to 19 were added to the Bill.

Clause 20 Amendment of section 4A

HON. DEPUTY-SPEAKER: There is an Amendment No.3 to Clause 20 to be moved by Shri N.K. Premachandran. Are you moving your amendment?

SHRI N.K. PREMACHANDRAN : I beg to move:

"Page 4, line 2,--
for "the period of leave"

substitute "the period of earned leave". (3)

Most of the Members in this House supported this amendment. A High Court Judge or a Supreme Court Judge shall never hold any official post, either under the Union of India or the State Government. That is the amendment which I have moved in a different way.

HON. DEPUTY-SPEAKER: I shall now put Amendment No.3 to Clause 20 moved by Shri N.K. Premachandran to the vote of the House.

The amendment was put and negatived.

HON. DEPUTY-SPEAKER: The question is:

"That Clause 20 stand part of the Bill."

The motion was adopted.

Clause 20 was added to the Bill.

Clause 21 was added to the Bill.

Clause 22 Amendment of Section 13

HON. DEPUTY-SPEAKER: There is an Amendment No.4 to Clause 22 to be moved by Shri N.K. Premachandran. Are you moving your amendment?

SHRI N.K. PREMACHANDRAN: Sir, I am moving the amendment.

I beg to move:

"Page 4, for lines 11 to 14, -

substitute "pensionable post after retirement under the Union or a State". (4)

HON. DEPUTY-SPEAKER: I shall now put Amendment No.4 to Clause 22 moved by Shri N.K. Premachandran to the vote of the House.

The amendment was put and negatived.

HON. DEPUTY-SPEAKER: The question is:

"That Clause 22 stand part of the Bill."

Clause 22 was added to the Bill.

Clauses 23 to 28 were added to the Bill.

Clause 1, the Enacting Formula and the Long Title were added to the Bill.

HON. DEPUTY SPEAKER: The Minister may move that the Bill be passed.

SHRI D.V. SADANANDA GOWDA: Sir, I beg to move:

"That the Bill be passed."

HON. DEPUTY SPEAKER: The question is:

"That the Bill be passed."

The motion was adopted.

