

*Amdt. Bill***(iv) Demand for acceptance of recommendation of Mandal Commission on Backward Classes and inclusion of certain castes/tribes in the list of Scheduled Castes and Scheduled Tribes**

PROF. NARAIN CHAND PARASHAR (Hamirpur): The Union Government has done a lot for the amelioration of Weaker Sections of the society notably Scheduled Castes/Tribes and Minorities and has launched many programmes for the benefit of those living below the poverty line. However, there are some areas where the Government has still to take a major initiative. The report of the Mandal Commission on Backward Classes, is still pending with the Government for acceptance and implementation of the major recommendations. Though the Commission had submitted its report in early 80s, yet the Government is still to take a decision in this regard. The High Power Panel on Scheduled Castes, Scheduled Tribes, Minorities and other weaker sections headed by Dr. Gopal Singh set up by Government of India in 1980 had also made important recommendations.

In view of the deep resentment and frustration among the other Backward Classes, which constitute a substantial section of population in the country, I request the Union Government to accept the Report and implement at least its major recommendations.

The Government should also take an early decision for the inclusion of certain Castes and Tribes like the Gujjars, Lobanas, Jheevars, Tarkhans and Gaddis of Himachal Pradesh and Tamangs of West Bengal and Sikkim in the List of Scheduled Tribes/Castes for which these sections have been pressing for a long time.

An early decision by the Union Government on the Mandal Commission Report for other Backward Classes and the inclusion of left out Tribes/Castes in the List of Sched-

uled Tribes and Castes, will generate new hope and confidence among these weaker sections of society.

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS AND MINISTER OF STATE IN THE DEPARTMENT OF CHEMICALS AND PETRO-CHEMICALS IN THE MINISTRY OF INDUSTRY (SHRI P. NAMGYAL): Sir, we would like to postpone Item No. 7 and take up Item No. 8 in place of Item No. 7 in view of our having to finish many items of important Government business.

MR. SPEAKER: If the House so desires, it is okay.

SEVERAL HON. MEMBERS: Yes.

MR. SPEAKER: So, we skip Item No. 7 and go to Item No. 8.

11.27 hrs.

HIGH COURT AND SUPREME COURT
JUDGES (CONDITIONS OF SERVICE)
AMENDMENT BILL—*CONTD.*

[*English*]

MR. SPEAKER: The House will now take up further consideration of the High Court and Supreme Court Judges (Conditions of Service) Amendment Bill moved by Shri B. Shankaranand, on the 28th July, 1989.

Shri Aziz Qureshi — not present.

Shri Y.S. Mahajan.

SHRI Y.S. MAHAJAN (Jalgaon): Mr. Speaker, Sir, I rise to support the High Court and Supreme Court Judges (Conditions of Service) Amendment Bill. In financial terms, the Bill is not important. Its' object is to rationalise some fringe benefits such as to

raise the caroling of carry forward leave, to raise the leave allowance of Judges and to fix the minimum family pension at Rs. 375/- per month to the families of High Court Judges who have not held a pensionable post prior to their appointment as such and who retire within less than seven years of service.

The Judiciary is the third pillar of the realm and the importance of its function cannot be exaggerated. Thousands of learned persons with a judicious bent of mind have contributed to the building up of the system of legal dispensation in the country and many of our Judges have distinguished themselves as Jurists in the world. The system has grown up gradually over the last 150 years. But never was it in such a dangerous position as it is today. It is likely to collapse soon unless steps are taken immediately to strengthen and revitalise it. The dispensation of justice has become almost impossible because delay is endemic in our system. Justice delayed is justice denied is a truism which is neglected by us completely. The number of cases pending in the High Courts and Supreme Courts is enormous. In the Supreme Court alone, 2,04,000 cases are pending and the number of such cases pending in the High Courts is more than 1.6 million apart from the 10 million cases pending in the lower Courts. This was the situation as on 31st March, 1989. In the Supreme Court and High Courts, cases remain pending for 15 to 20 years. This means that if the case is filed in one generation, the verdict is given in the next generation. The reason for this serious situation is the inadequacy in the number of Judges. The previous Law Commission had recommended an increase in the number of Judges in the Supreme Court and High Courts. But steps have not yet been taken to fill the vacancies. Therefore, steps should be taken immediately to increase the strength of Judges. There is no dearth of talented and able advocates in our country. If necessary, their salary and emoluments should be raised sufficiently to attract able and efficient people from the profession. The Government should also deal with inefficiency at the low levels

which is mainly due to the fact that law degrees like other degrees can be obtained easily by dubious means. The Minister should consider or explore the possibility of holding a Central examination for those who are aspirants for jobs in the judicial services. Legal procedures should also be streamlined to provide justice expeditiously. I do not wish to underestimate the significance of procedure. Every student of law or practitioner will admit the truth of Henry Mane's statement that justice is secreted in the interstices of procedure. Sir, in our country, there is no denying the fact that procedural law is abused to defeat the ends of justice through interminable arguments, frequent adjournments and excessive liberal attitude towards grant to leave to appeal. Government is the trustee of the national interest and Government is the biggest litigant in the High Courts and the Supreme Court. Therefore, apart from the interest of the people, the Government itself is interested in seeing that justice is dispensed expeditiously.

In this matter, I would like to recommend strengthening Lok Adalat system. I myself attended many Lok Adalat sittings in my districts. Many contentious cases can be decided immediately, when both the parties are present and those cases are examined by the people who are not judges, who are not professional lawyers.

Then, I would like to bring to your notice the question of appointing women as judges. We have been giving certain percentage of reservations for women in the lower levels, in the Taluk Panchayat, district panchayat. But the number of women judges in the High Courts and the Supreme Court is very low. I hope, the hon. Minister will consider the possibility of raising the number of women judges in all the courts.

And then, there is one thing; it is a small yet very important. When judges are transferred at the district level, they go about looking for houses. Considering the housing situation, it is very difficult to get proper quarters. Therefore, I recommend that housing for judges should be improved so that

[Sh. V.S. Mahajan]

transfer does not cause any inconvenience or have any adverse effects on the judges.

With these few recommendations and suggestions, I recommend the acceptance of the Bill.

[*Translation*]

SHRI VIRDHI CHANDER JAIN (Barmer): Mr. Speaker, Sir, I rise to support the High Court and Supreme Court Judges (Conditions of Service) Amendment Bill, 1989. The benefit of family pension and other allied benefits should be extended to them. Beside, this, I fully agree with the provision of raising the ceiling of carry forward leave of the judges. I have found that the justice is becoming costlier specially now-a-days. The people who want to file writ-petition for the protection of their rights cannot do so without paying at least Rs. 5000 to the advocate. Therefore, if injustice has been done to some particular class, and if they belong to class II and if they want to file a writ-petition for the protection of their rights, they will have to face the problem of payment of fees to the advocate to have justice from the court. Even in High courts and the supreme court, cases are not listed for hearing and cases are kept pending for 10 to 15 years. When the cases do not come up for hearing for such a long period, you can easily imagine how the people can get early justice. Even if a case has been settled at the lower courts and if an appeal is filed in the higher court, it takes years to decide. The system of judiciary which we have adopted here has been inherited from the Britishers. Once we had introduced the system of 'Nyaya Panchayats' in the rural areas of Rajasthan and that system had proved very beneficial for the people. Only minor cases were settled by these Panchayats and 'Nyaya Panchayats' were authorised to give their judgements only in civil suits. That system proved beneficial for the people. If that very system is introduced here, it may help the people to a great extent to decide their minor disputes. What I want is that service we have decided

to go in for the Panchayati Raj System and we are going to amend the constitution to achieve that end, alongwith one more constitutional amendment in respect of the municipal bodies, we should take a decision about the establishment of Nyaya Panchayats at the national level, so that all the cases of minor disputes may be got settled at the village level itself by the Nyaya Panchayats. It will be a great relief for the villagers.

Similarly, there is the point of Lok Adalats. In our Rajasthan, judges of the High court had taken special interest in Lok Adalats and these Adalats had given very good decisions and the number of cases decided by them had increased considerably but now I find that in fact, these Lok Adalats are not functioning properly. Though we have enacted a law to make Lok Adalats an effective instrument, these Lok Adalats have not been functioning properly. We should also think about the enactment of a law so that the Lok Adalats may function effectively and take decisions. But as at present, our advocates are trying to make the experiment of Lok Adalats a failure because if the cases are settled by the Lok Adalats, advocates will be deprived of their fees which will be prejudicial to their professional interests. That is why these people do not want Lok Adalats to be a success. In this connection, we need to keep a watch on them and take all possible remedial measures to check the move of the advocates and pleaders. If somebody tries to make these Lok Adalats a failure, action should be taken against such person.

At present, High courts and Supreme Court are short of judges. Number of pending cases in the Supreme Court is about 2 lakhs. However, there is a greater number of pending cases in the High courts. I have been the Member of Lok Sabha for the last ten years. I find that number of pending cases has never declined, instead it has increased. I have never heard from any Law Minister that number of pending cases had ever declined. Hence, effective steps should be taken in this connection also. Till now, we have not taken any effective steps in this

regard so as to reduce the number of pending cases.

We have also enacted a law for the provision of free legal aid to the poor. The Central Government extended its assistance to the State Government for that purpose but it did not reach the poor. Even today, the services of an advocate at the Government expense, are not made available to the poor, though there are advocates on the panel of the Government. In fact, on the Government panel, there are such lawyers, who are of a very low calibre and have not been a successful legal practitioner. Hence, they can neither protect the interests of the poor nor that of the Government. In such situation other lawyers have to be engaged to protect their rights. What I mean to say is that the appointment of Lawyers, Public Prosecutors, additional public prosecutors for the Government panel should be made essentially on merit basis which was not hitherto being done. Present incumbents are not capable of defending the interests of the accused. In fact, as per the present trend, appointments to the post of public prosecutor are being made on political considerations and consequently fail to protect the interest of the Government. As a result thereof Government loses the cases. Therefore, capable persons with at least ten year experience as legal practitioner should be appointed as public prosecutors, additional prosecutors, Government panel of lawyers and revenue lawyers so that they could plead the cases properly.

We should strive for cheap justice, proper provision for giving justice to the people in the rural areas and final settlement of the pending cases at the earliest.

At present a lot of difficulties come up in the way of appointing the judges to the Supreme court and High courts and they are more in respect of the appointment of the Chief Justice. The system of transfer of the chief justices has been a great success. In fact, chief justices in Rajasthan High Court were not able to handle the administrative side of the High Court as desired by them and

it was causing a serious set back to the entire judiciary. As per the existing system, chief justice is appointed from some other state and it has a good effect and it has also enhanced the prestige of the judiciary. Now there is no scope of any partiality. Thus, the Government has taken a very commendable step in this regard. What ever efforts may be made by some particular individual to change the present system, the Government should not change it. They should continue the present system with no change in it under any circumstances.

With these words, I support the Bill.

[English]

SHRI HAROOBHAI MEHTA (Ahmedabad): Sir, the Bill brought by the Law Minister shows with what esteem and respect the Government and the Parliament treats the judges. I am, however, not quite sure whether so much expenditure need to lavishly made on the conditions of service of the Supreme Court judges and High Court judges. We should recall Mahatma Gandhi's words, how the highly placed officers, judges and ministers should be paid and should not be paid. In my respectful submission, the payment of salary and allowances at a rate equal to number of times of the average per capita income will not be quite justified especially when the approach of the judiciary is not quite kind to the Bills passed by Parliament, legislations passed by Parliament and their implementation.

Some times we have seen the instances when in order to redeem the promise given to the electorate, Assembly or Parliament passes a Bill and enacts it. And if somebody for his own individual interest challenges it, courts very liberally give stay and the Act remains unimplemented for five or seven or more years. So, it is temporarily voidened on account of stay granted by court. So the Parliament's determination to fulfil the sovereign will of the people reflected by it remains under abeyance for several years.

Similarly, on many points, progressive

[Sh. Haroobhai Mehta]

legislations are stayed even development projects come to be stayed, many important development works suffer delay on account of court's stays. We feel sometimes that interest of the people and the spirit of the Constitution is often over-looked by many of the judges.

What is worse is, even revenue collection by the Central Government suffers on account of stay granted. More than Rs. 2,000 crores of Central Excise dues are bogged down on account of court's stay orders. Even when Parliament has enacted a Bill to exclude the jurisdiction of High Court and the Supreme Courts jurisdiction under Article 32 and set up a tribunal for excise and customs, courts often go into it and grant stay. The result is, vested interests get benefited on account of court's processes. On the other hand, as my hon. good friend Shri Jain pointed out, a number of litigations are pending in the courts. So much so, even if no new petition is filed in the Supreme Court of high courts, it would take more than five decades to dispose of the present pending cases on the assumption that no fresh of application is filed in the Supreme Court and the high courts. Sir, Justice delayed is justice denied. People are fast losing faith in such institutions. Something has to be done. Even respected and eminent judges like the retired Judge Mr. D.A. Desai is on record to have stated that judicial system is collapsing in our country. I would earnestly urge the Law Minister, the Parliament and the Government to go into the question of pending cases and see how justice can be administered without any avoidable delay. One of the reasons why delays are continuing is misuse of public interest litigation. In order to save somebody's personal interest, public interest litigations are initiated and they take time of the court. And what is shocking is that people say that those who can afford can get easy access to Supreme Court and get the matter heard.

Look at what happened in the Reliance case. Somebody is arrested in Bombay for

criminal conspiracy read with IPC 302. One investigating agency of the Maharashtra Government decided to hand it over to the CBI. And immediately a third party goes to the Supreme Court and promptly gets the stay. The result is that, because of unprecedented stay given by the Supreme Court, neither the CBI nor the Bombay State Police agency could investigate and such a crime remains uninvestigated on account of the Supreme Court's stay. Common people think that weal their the person in India, easier for him to approach the court and get stay orders. This does not really increase the faith of the people in the judicial institutions.

Similarly Parliament amendments. Despite Parliament's unequivocal and categorical amendment made in Article 368, the Supreme Court went into the content of the Constitution amendment, in the case of Keshwanand Bharti. This is the only democratic country, perhaps, if I am not mistaken, where amendments made in the Constitution by the amending body, that is, the Parliament, under Article 368 is subject to scrutiny or examination by the courts on the contents and not on mere procedure. I can understand an amendment being thrown out on the ground that the 2/3 majority or the requisite majority was not there or certain procedures were not gone through. But on the content, saying that the basic structure is violated, if they say something, it is not understandable. And what is the basic structure? It is what the Supreme Court says like the Chancellor's foot!

I think it is time for the Parliament to assert itself against the High Court or the Supreme Court's intervention in the matter of Parliament's power of amending the Constitution. The power of the Parliament to amend the Constitution is not negotiable. With all respect to such institutions as the Supreme Court, the High Court or the C & AG, we must point out that the Parliament has the final disciplinary jurisdiction over the Supreme Court, the High Court and the C & AG. Therefore there is nothing wrong if the Parliament goes into the matter as to how these institutions discharge their duties.

Sometimes even scant respect is shown to the Parliament as such by some judges. One of the Supreme Court judges—for the sake of respect I shall not name him—said in October 1988—it is reported in the Patriot of the 25th October, 1988—that the Parliament has made a mockery of its own statutory provisions by not imposing restriction on the money that may be spent by political parties during elections. Out of respect to the judiciary and in keeping with the tradition of deference to the judiciary. I did not pursue the matter under the of law parliamentary privileges. But I don't think Parliament can take these things lying down if a judge says that the Parliament has made a mockery of its statutory powers. I wish to emphasize that there should be a comity of jurisdiction. Just as the Parliament shows respect to the judiciary and other constitutional institutions, so also Parliament deserves to be treated with respect and with consideration by the judiciary. I only appeal through you at this juncture that the judiciary should cultivate a culture where in the Parliament is respected as the highest institution representing the sovereign will of the people.

Of course, the Law Minister has considered it fit to bring this Bill before the House for consideration. I shall not object to it. These are the observations which I wanted to make at this juncture.

With these words, I conclude my submission.

[Translation]

DR. G.S. RAJHANS (Jhanjharpur): Mr. Speaker, Sir, I would like to make two-three submissions only. I think the main provisions of the Bill relate to raising of the ceiling of carry forward earned leave and liberalisation of benefit of family pension in respect of judges. I am of the opinion that the judges of High Courts and Supreme Court should be given adequate salaries and allowances so that they may perform their duties without any fear or favour. The fourth pay commis-

sion has sufficiently increased the pay and allowances of the bureaucrats and the salary and allowances of the judges of High Courts and Supreme Court has also been increased by the Act of the Parliament. However today the salary and allowances of the executives particularly those of senior Executives in the Private Sector are so high that the judges of the High Courts and Supreme Court stand no where in comparison with them. Judges should be given a handsome salary so that an eminent advocate who does not want to become a judge may have some attraction or incentive to become a judge. Several posts of judges in High Courts are lying vacant which could not be filled up despite the repeated assurances given by the Government because prominent advocates who earn a lot in their profession, do not want to be appointed as judges. Same is the case with the executives of the Private sector who do not want to give up their handsome salary and allowances to join the public sector. This factor has to be looked into. A renowned advocate does not want to become judge as a result of which many posts of judges remain vacant in High Courts. Due to these vacant posts, a large number of cases remain pending and people are unable to understand as to how this backlog would be cleared. Therefore, I would like to request the Government to make the salary and perks of judges so attractive that eminent lawyers may also be attracted to this side. Besides this, I would also like to say that similarly, an upward revision should also be made in the salary and perks of judges working at the lower level. One more important point I would like make is that nowadays District judges and judges of similar rank feel obsessed for one reason or the other. I have observed that even a hardened criminal is released on bail particularly in Bihar. In this regard I have talked to several judges also and they are of the opinion that generally people are afraid of appearing as witness in the court and secondly—Judges have not been provided adequate security by the Government. There is no guarantee that if a dreaded Criminal escapes from the jail, he will not kill or kidnap the judge of his family members.

[Dr. G.S. Rajhans]

11.57 hrs.

[MR. DEPUTY SPEAKER *in the Chair*]

Hence it is a very serious matter to which Government should pay attention. The judges at the lower level are panicky of criminals and out of that fear, they release them on bail. What I mean to say is that judges should get adequate security cover so that they may take their decisions impartially and fearlessly. A provision should also made in the conditions of service in respect of High Court and Supreme Court judges that they will be provided adequate security not only while in service but also after their retirement so that they can perform their duty without any fear or favour.

I would also like to support the point raised by my friend Shri Mahajan that at present there are a few lady judges in the High Courts and Supreme Court and their number should be increased. I have discussed the point at various levels as to how cheap and quick justice can be provided to the people but I could not come to any conclusion. Though Lok Adalats have been set up in different parts of the country but they are also functioning on the same lines. Hence the Government should find out a way to provide cheap and quick justice to the people. Now-a-days a common man hesitates to go to court because of his conviction that only that only a rich person who can engage an eminent lawyer to plead his case, can get justice from the court. Ours is a Welfare State. Hence it is our duty to stop injustice to the poor and provide them cheap justice. I want that we should utilize the services of retired judges also for this purpose.

12.00 hrs.

One more submission I would like to make is that like freedom fighters, family members of the judges of High Courts and Supreme Court should also get same amount of family pension as they were getting after

the retirement because the services of the judges are also essential and of great utility for the society.

As has been said just now by Shri Jain that Government is going to bring about a drastic change in the set up of Panchayats and Nagarpalikas, there is a slight difference in the designation of Sarpanch in Bihar and in rest of the country. In Bihar, the sarpanch is considered to be a man who looks after the judicial side of it whereas in other parts of the country Sarpanch is the head of the Panchayat. The Panchayat should be encouraged to settle the maximum number of local disputes at its own level. When a case is decided at the Panchayat level, no one gives false evidence because he knows it that he has to live in the very society. In this way the poor will get justice at the Panchayat level and they will not have to go to any court.

Mr. Deputy Speaker, Sir, in the end I would like to say that the Government should pay special attention to ensure a dignified life for the judges of the Supreme Court, High Courts and the lower courts.

SHRI K.D. SULTANPURI (Simla): Mr. Deputy Speaker, Sir, I rise to support the High Court and Supreme Court Judges (Conditions of Service) Amendment Bill moved by Shri Shankaranand in the House on 28th July. I feel that the measures taken by the Government to uphold the dignity of Judges are highly commendable and I would like to congratulate the Government for this. A large number of cases are pending in the High Courts, the Supreme Court and the lower courts in the country. The pace of disposal is very slow. People who are fighting against injustice have become so hard up that they are finding it difficult to pay the fees of their advocates and purchase court fee stamps. Nobody can wait long for justice. Here, I would like to point out that though the Government has enacted liberal laws with a view to do justice to the poor people, yet the procedure adopted by the Government to provide legal aid to the poor is a very lengthy one. It is in no way helpful to them. There are a large number of people who cannot pay full

fees and they live at the mercy of God. They have no money and they cannot go to courts to get justice. The Government has taken a number of good measures such as appointing Judges from amongst the Scheduled Castes and Scheduled Tribes in Assam, Andhra Pradesh and Tamil Nadu. While I congratulate the Government for this, I would also like to request them to provide adequate reservation of seats for the people belonging to Scheduled Castes and Scheduled Tribes who are eligible for the post of Judges in the High Courts and the Supreme Court as it is done in respect of Parliament and State Legislatures etc.

I would like to request the hon. Minister of Law to recruit one such eligible person in each High Court and Supreme Court also from amongst the Scheduled Castes and Scheduled Tribes.

Mr. Deputy Speaker, Sir, through you, I would like to convey thanks to the hon. Minister for the measures taken by the Government for the women. Our hon. friend Shri Mahajan also made a mention of this thing in his speech. I would like to make a fervent appeal here that women should also be given optimum representation in the appointment of Judges to the High Courts and the Supreme Court. There are also eligible person in the backward communities and minorities who are amply qualified to become Judges. I feel that they should be appointed as Judges. I know the manner in which interviews are being held by the Public Service Commissions. People possessing higher qualifications are not selected. They do not get employment. Then what these people living in the villages could do who received their education in village schools and do not get the opportunity of education in a Central School. They are not able to receive good education. But the method of doing justice in rural areas is a very good one. I shall request the Government to take note of this plus point and provide employment to all the educated youth in the back-

ward areas according to their merit and qualifications. While we are discussing the provision of various facilities for Judges of the higher courts, I must take this opportunity to make a submission about the ex-servicemen who served the armed forces and sacrificed a lot in service of the nation. In a way they are the people who do justice to the nation and save the nation. I, therefore, request the Government to increase further the existing rate of their pension while increasing the amount of pension for the Judges, because these people lay down the best part of their lives for the defence of their country and dedicate themselves to the service of the nation living away from their families. Their pension should also be brought at par with others. Sir, I know that this subject matter does not come under your jurisdiction but I would like to call upon the hon. Minister of Finance to take immediate steps in this regard. The ex-servicemen should be given maximum facilities. I am grateful to you for providing me an opportunity to speak. The hon. Member who are eminent advocates will plead the case of advocates here, but I shall deal with problems of the villages only. I would like to ask you to give adequate representation to Scheduled Castes, Scheduled Tribes, women, physically handicapped persons and the people belonging to minorities in the appointment of Judges. It is a good thing that the Judges are being granted pensionary benefits and various other facilities. At the same time, there should be time bound programme for expeditions disposal of cases. In case there are 15 cases with a Judge, he goes on giving dates after dates and the cases linger on for 2 to 4 years. Even murder cases take 10 long years to reach the stage of judgement. I know that Shrimati Indira Gandhi was assassinated and a judgement in her case took almost 4 years. I, therefore, want that the judicial process should be expedited. It should be cheaper and not costly. It should not help the advocates grab money from people. The Government should lay down some norms in this regard so that a poor man could get justice. With these words I support this Bill.

SHRI YOGESHWAR PRASAD YOGESH (Chatra): Mr. Deputy Speaker, Sir, I would like to congratulate the hon. Minister of Law Mr. Shankaranand for instilling a new enthusiasm in the members of Judiciary who were having a sense of frustration. Now they will be able to contribute something in nation building. Since long it was being felt that the salaries of the judges do not commensurate with their living standard and requirements. The social life of the High Court and Supreme Court Judges is very limited. They have a very limited circle to move in. They cannot mix up with people freely. They cannot involve people in their work. The Government realised their problems and felt the need of effecting basic changes in their living conditions and took necessary steps in this regard. The Bill moved in the House regarding the allowances after the enhancement of salaries of judges with effect from 1-11-86 is also an appropriate and justified step taken by the hon. Minister. This Bill seeks to raise the rate of allowances from Rs. 328 to Rs. 375 per month with effect from 1-11-86 which will enable them receive a handsome amount. It is a commendable step. With this I would like to draw your attention to the appointment of Judges in the High Courts and Supreme Court. I request you to taken into account the requirements of this trade and the Judicial commissions. I feel that the percentage of advocates appointed on these posts should be reduced. Because, the advocates are unbridled because of the very nature of their profession and they cannot work in the disciplined way like Judges. The Government should discourage the appointment of advocates against these posts and particularly those advocates whose only aim is to earn more and more money and who do not give due regard to the Judiciary and where character does not fit into the mould of Judiciary. Such persons should not be taken for these posts. Hence, I would like to cite the example of advocates like Shri Jethamalani who took up the cases of criminals, dreaded criminals, traitors and terrorists. He is earning huge sums of money from these cases. I have given just one example only, but it is not the case with any particular individual. The only aim of these dubious characters is to hoard

money. They have no respect for the country, justice and moral values. Hence it is very essential to think deeply before appointing such people against these posts.

Most of the public prosecutors appointed from amongst the advocates are generally appointed as Judges. That too when some higher authority recommends the appointment of some person(s), merit of the particular individual is not taken into account. People without merit are being taken against these posts. When judges or Deputy Commissioners require any specific suggestion from these advocates, it is not being made available to them. It is duty of the advocates to give advice to the Judges and Deputy Commissioner(s) but such persons as they are not of that calibre cannot give them right advice. Hence it is not being made available to them. In certain cases people with lower qualifications are being appointed and by that norms prescribed for the appointment of Judges are not being adherent. Besides, such people are not able to discharge the duties of a public prosecutor properly.

An hon. Member stated one thing towards which would also like to draw the attention of the hon. Minister that inter-state transfer of judges would be good for administration of justice. I have seen judges also falling prey to the regional biase adversely affects the proper administration of justice.

The other important point made by our colleague is with regard to appointment of people belonging to Harijans and Adivasis as judges in the High Courts and the Supreme Court. I fully support the point made by him because definitely they will prove to be a good judge as their outlook it not feudal. As these people hail from poor stratum of society, they are not jealous of anybody. It is natural that a person of feudal background will have some sort of a feeling of discrimination but a person coming from the lowest stratum of the society is free from such prejudices. Therefore these people could be proved to be a good judge. Women should also be appointed as judges. There is no harm in it. Though the people belonging to

Harijan, Adivasi and other backward classes are educationally backward, but in practice they are very capable and they are men of character. They should be given preference in matter of appointment of judges because they are practically very capable persons and are free from any kind of prejudices.

With these words, I conclude.

SHRI RAM BHAGAT PASWAN (Rosa-
era): Mr. Deputy Speaker, Sir, I support the High Court and Supreme Court Judges (conditions of service) Amendment Bill moved by Shri B. Shankaranand.

After independence, a lot of reforms have been made in each and every Department but judiciary is the only sector, where no radical changes have been made so far. Today people have a feeling of resentment towards judiciary because there is no time-limit to dispose of a case, as a result of which people do not get proper justice. Sometimes innocent persons are awarded punishment whereas actual culprits escape punishment. Many hardened criminals never come in the grip of law. Due to these reasons people are losing faith in judiciary. I have great regard for judges. Through this amending Bill their conditions of service are being improved and they will get their pension and other allowances on enhanced rates. These facilities should be provided to them so that they could lead a respectable life. So far as the question of justice is concerned, people do not get proper justice. We have seen many such cases in which atrocities were committed on Harijans and they were deprived of their land but even then no punishment was given to the accused. Same is the with cases burning of women for dowry. Hardly any culprit is punished. Steps should be taken to remove the shortcomings in our judicial system. Besides, our judicial system is not in the favour of poor people. Shri Shankaranand is a staunch supporter of the poor people. We hope that necessary reforms should be made in our judicial system to enable the poor section of our society to go to the Supreme Court or the High Courts to seek justice. Poor Harijans, Adivasis and

farmers should be provided cheaper and quick justice. The people belonging to poor section of the society do not have money to go to the courts. That is why they have to bear with atrocities and injustice perpetrated in them. I would like to urge upon the Minister of Law and Justice, who is a great supporter of poor people, to introduce reforms in our judicial systems a poorest man could easily go to the court to seek justice. If it is not possible, the powers vested in the High Courts and the Supreme Court should be delegated to the Gram panchayats so that the poor people may get justice there. Our Government has been trying its best for development of the country and bringing socialism here. It has been seen that stay orders are obtained from the Supreme Court or the High Courts against the acquisition of land for digging a canal or constructing a school building or a Harijan colony or distributing it among the poor people. Once High Court or the Supreme Court grants stay order in the matter, the landlord takes possession of the land forcibly. Such irrational judgements are being delivered today. If someone wants to do anything for the welfare of the society, he should not be prevented from doing so through the courts of law.

There is no representation of Harijans in the courts today. Most of the judges belong to the families of big landlords. That is why they deliver judgements against poor people. It should be ensured that the judiciary does not come in the way of welfare measures being taken under 20-Point Programme and other programmes. I would also like to submit that the Supreme Court should not deliver a judgement which adversely affect the poor people who have taken loans. No writ petition should be allowed by the Court in this regard.

Steps should be taken to fill up the posts of judges reserved for Scheduled Castes and Scheduled Tribes. These people are also very capable. While delivering judgement, they will keep in mind interests of Harijans and Tribals. We hope that reservation policy will be fully implemented in judi-

[Sh. Ram Bhagat Paswan]

ary also. Women should also be given reservation. Judges should be transferred from one state to other atleast after a period of three years in order to make the judgements free from the evil influence of communalism and caste bias and local prejudices.

The Bill, which has been moved for improvement in the service conditions of judges is a welcome step. These facilities should be given to them and along with this, reforms should also be introduced in the judicial system.

[English]

SHRI SYED SHAHABUDDIN (Kishanganj): Mr. Deputy Speaker, Sir, the Bill before us is a technical Bill and I see no reason to oppose it but it gives me an opportunity to draw the attention of the Government and of the Hon. Minister to certain aspects of judicial administration that have been exercising the mind of the people.

Sir, the first question is with regard to the mounting arrears in the High Courts and even in the Supreme Court. I am sure, the Hon. Minister is fully aware of the situation because he has been answering questions on the subject practically in every Session of the House. I do hope that under the new dispensation that has been announced by the hon. Chief Justice, these arrears will go down but I do request the hon. Minister to take us into confidence that the Government is looking at this problem in all seriousness and is trying to devise means in consultation with the judiciary to bring the level of the arrears down.

The second question that arises is the question of vacancies. Mr. Deputy Speaker, Sir, as we know the possible date of superannuation, the vacancies can be anticipated. The gap between a vacancy arising and being filled sometimes runs into years not months and at any given time, I have a feeling that roughly of the order of about 15 per cent of the posts of High Court judges are

vacant. That, Sir, is a very high percentage and it also affects the question of arrears. It affects the performance of the courts. Therefore, Sir, the Law Commission had gone into the matter and had suggested that instead of the present procedure that we are following, there should be a national body, something like a Supreme Judiciary Council, which should deal with appointments. They should be vested with this authority and the role of the Government there—naturally the Government shall play a part in it, Government shall be represented in that Council or Committee—shall be basically to collect the necessary information about the persons who are to be considered and of course about notifying their appointments.

Sir, I feel the present this procedure of appointments is very very time consuming and needs to be streamlined. Sir, there is also the question of the appointment of Chief Justice and the judges of the Supreme Court when the vacancies fall. I don't see any reason why within this present scheme of things, half the judges of any High Court should not be from outside the State and as far as possible Chief Justice may be from outside. Why cannot this be so that we comply an all India Seniority List of High Court judges and the moment a vacancy arises, the man highest on that list should automatically be appointed as the Chief Justice? It should be done without any question. It should be automatic. Similarly, if a vacancy arises in Supreme Court, immediately the senior most person on the common list of seniority should be considered, of course, in my view keeping aside those who have just a few months to go. That applies to all the promotions in Government, in the judiciary and in the executive that for the highest post if among the candidates those who have got just a few months or a very small period to go, they should normally be passed over because they are not in a position to make any impression on the institution or leave a mark on the institution or give it a new character or orientation. But, with this reservation, the senior most persons should be considered one by one and I think with this procedure the vacancies at least at

the level of Chief Justice and the judge of the Supreme Court can be filled in without any delay whatsoever.

I would like to refer to the question of multiple appeal which is also the reason for the mounting arrears. I looked into the question of the number of cases before the Supreme Court which relate to tenant landlord relationship particularly on the question of house tenancy.

I was shocked to find that a very high percentage of the cases running into tens of thousands of cases before Supreme Court originate largely from an area very close to Delhi, within a small radius of Delhi, clogging the entire proceedings of the Supreme Court. The Law Commission had suggested that in these matters there should be not more than two levels of appeals and such cases need not necessarily come before the Supreme Court. I think some legislation is required to that effect.

I also come to the question of specialisation. This question has exercised the mind of the legal experts in our country for a long time. Life is becoming very complex. We are having piles of laws in our Statute Book and every day we are adding to them. I think we should plead guilty. We are responsible for this. It is impossible for any single individual to be an expert on all branches of law. It is just not done. In most advanced countries, today there is a system of specialisation even at the highest level. You have got a constitutional bench, you have got a civil bench and you have a criminal bench. Some such practice might be considered by the hon. Chief Justice in trying to work out the arrangement within the Supreme Court or within every High Court.

This brings me to the question of reorganisation of the High Court system. There are States and States. There are States which have got a population of nearly one

hundred million, that is about ten crores and there are States which have got a very small population running into just a few lakhs. I think there should be some common national yardstick in order to make justice accessible to every citizen, bring it within a reasonable distance of his door step. For this purpose, we should have a system of having a High Court Bench for every one crore or two crores of population. So, let us have a national yardstick and let us fix the number of High Courts and Benches accordingly. For this purpose, some small States and Union Territories can be clubbed together, as well as some States can be divided into various regions. Now all the High Court benches within a certain State can obviously be under purview of one High Court. In other cases, the High Court may be located in one of these States or Union Territories with a Bench each in every one of those States or Union Territories which are under its jurisdiction. I think a rational approach is required and not an *an hoc* approach. Otherwise it leads to agitations like the agitation we are facing in the Western Uttar Pradesh for the last four or five years. It gets a political colour. I do not understand why this subject should have a political colour at all. If there is a uniformly applicable national yardstick which should satisfy every one, I think no one would grumble. No State, no region or no people can grumble that they are not having their due share or equal access to the higher levels of judiciary.

Finally, I would like to speak one word about the question of reservations. I think it is a fact that many sections of our society are not represented in the higher levels of judiciary even at the district judge level. I find that they are monopolised by the caste groups which have naturally advanced in the field of education and which have better tradition of legal education. I will not plead for a system of reservation. But surely, without even trying a system of reservation in the matter of selection, due attention can be paid to this

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question to see that all sections of the national community have due representation both at the level of district judges as well as at the level of High Court judges. When we have got sufficient number of people coming from the weaker sections at the district judge level, they will automatically find a seat at higher levels. Here I must caution the hon. Minister through you Mr. Deputy Speaker that it is becoming increasingly difficult to find credible judges from the Bar. I am afraid the level of legal education in the country is fast going down. I think this needs to be stressed. This needs to receive the highest attention of the Government because if the level of legal education goes down, you shall not have judgments which will be legally coherent. You will not have judgments which will settle an issue. These judgments may unsettle an issue and create more problems than they decide, because of poor language, poor expression or poor legal insight. I would suggest that the hon. Minister should apply his mind on how to raise the standard of legal education so that in turn, the standard of judiciary can be raised to appropriate levels.

Finally Sir, I come to the question of judicial reform. This is a perennial problem. It is like a mighty ocean. I do not know whether to touch it or not. But I am sure that the hon. Member who preceded me is absolutely right in saying that no real judicial reform has taken place in our country. The essence of the reform, in my view, is decentralisation to make the justice cheaper and nearer to the people.

With this view, the various reports of the Law Commission and various suggestions made by various learned bodies should be duly considered by the Government and a break-through should be attempted.

SHRI SOMNATH RATH (Aska): Sir, I rise to support the Bill. The judges of the High

Courts and Supreme Court have been well-remunerated by this Bill. The services of the judges are required for Commissions and for extra-judicial functions. Because of this, the strength of the courts remained below the sanctioned number. The number of pending cases have increased because of the simple reason that more cases are filed than the cases are actually disposed of. So, this aspect may be kindly looked into. What we want is not the quantity of the judges but the quality, judges. The judgements are very lengthy. The time taken by the judges are long.

Because of the recent legislation of the Government, the service conditions of the judges have greatly improved. The amendments of the rules, as stated in this Bill, have liberalised their additional benefit. The dissatisfaction of men of talents and integrity to seek judicial posts have also been reduced.

In this House when this matter was raised more than once, the previous Law Minister had stated that efforts were under-way to have Circuit Benches (without administrative setups where they would hear cases) of High Courts to bring the process of justice closer to where large sections of people were in other parts of States.

I want to know from the Hon. Minister this point. When the policy of the Government is to take justice to the door-step of the people and also to have more Circuit Courts for different High Courts, what steps have been taken so far in different States as to have more Circuit Courts?

In Orissa, there is a great demand for having a permanent bench of Circuit Court at Berhampore in Ganjam District. This demand is very genuine. It has been stated in this House that for having Circuit Courts, the High Courts in consultation with the Government can have Circuit Courts. Regarding the setting up of permanent benches, the Government of the State in consultation with the

High Court should write to the Central Government and the Central Government will do it. As such, when there are a large number of pending cases—pending the setting up of permanent benches of the High Courts in different places—why not the Government contact the Orissa Government as well as the Orissa High Court to have a Circuit Bench of the High Court at Berhampore? This is my appeal to the Law Minister. The buildings for the court and talented advocates are there, together with infrastructures. The agitation is going on since one year.

I had put a question asking whether it had come to the notice of the Government that an agitation was going on, demanding a permanent Branch of High Court at Berhampore. The hon. Minister had replied to me, that no such agitation had come to the notice of the Government. In fact, the agitation is going on since one year; and the demand of all those lawyers from the southern parts of Orissa is to have a permanent Bench of the High Court at Berhampore. Pending establishment of a permanent Bench, I would suggest keeping in view a policy of the Government why not the Government talk to the High Court as well as the Orissa Government and see that a Circuit Court of the Orissa High Court functions there immediately.

Another point I would like to bring to the notice of the hon. Minister is that the increase of cases starts at the grassroots level, namely, munsiff courts and other courts. That is why the pendency increases. For example, in the Statute, in some areas the civil court's jurisdiction is completely barred, and the jurisdiction of the revenue court is there. For instance, regarding the encroachment and settlement of Government the Statute prohibits the jurisdiction of the civil courts altogether. And this jurisdiction is given to the revenue court, i.e. Tehsildar,

Sub-Collector, the Revenue Commissioner etc. But whenever a person encroaches upon Government land and revenue Court gives notices he goes to the civil court, and gets a stay order, for which the civil court has no jurisdiction. And the stay order continues for years together. Therefore, development work suffers, and the number of cases increases in civil court having no jurisdiction. Such suits should not be entertained by civil courts, under these circumstances, I would suggest that the Law Minister, as I said, can talk to his counterpart in different States on this issue: when the Statute specifically prohibits the jurisdiction of the civil courts, that should be adhered to; and let not the civil courts interfere in the jurisdiction of the revenue courts and give stay orders. Thereby, the number of cases can be reduced. These are the facts which require the attention of the State Government at the grassroots level, besides the writ petitions and other matters, for which the High Court has the original jurisdiction.

So, while supporting the Bill, I would suggest that these basic factors viz. administration of the law at the grassroots level, at the district level and the State level should be thought of, and specific steps should be taken so that the pendency of cases does not start from the munsiff court and come to the High Court and the Supreme Court. We are not considering how the cases increase at the lower courts level.

SHRI HAROOBHAI MEHTA: I want to go on record—appreciating the steps taken by the Law Minister and taking care to ensure that a Scheduled Caste Judge is appointed in Gujarat High Court.

MR. DEPUTY-SPEAKER: You have already spoken. Now the Minister.

(Interruption)

THE MINISTER OF LAW AND JUSTICE (SHRI B. SHANKARANAND): Sir, The present Bill for consideration before the House is an indication of the Government's mind concerning the Judiciary, and on improving the service conditions of the Judges.

As has been stated in the Statement of Objects and Reasons of the Bill, this Bill is of a consequential nature, on account of the recommendations of the Fourth Pay Commission. Certain amendments were needed in view of the recommendations of the 4th Pay Commission, and these amendments have been suggested here.

I must thank all the Members for their unanimous support for the provisions of the Bill. The Members have spoken on various aspects of the Judiciary, besides the service conditions of the Judges,....right from the legal education to the recruitment of judges at the Districts and other places, I mention here what they were getting and what they will get. Various aspects like reservation for SC&ST, minorities, weaker-sections and backward classes, etc. have been touched by the hon. Members. Before replying to them, I thought it is proper to inform the House what the Judges are getting. A Judge of the High Court was getting Rs. 3500/- plus full allowances. Now he is getting Rs. 8000/- plus DA and other allowances. A Chief Justice of the High Court was getting Rs. 4000/- plus other allowances. Now he is getting Rs. 9000/- plus other allowances. A Chief Justice of India was getting Rs. 5000/- plus other allowances. Now he is getting about Rs. 10,000/- plus DA and other allowances at Central rates.

On account of the provisions in the Bill amending various Sections of the 1954 Act regarding High Court Judges and 1953 Act regarding Supreme Court Judges, the allowances which they used to get for first 45 days leave on full allowances—usual salary and allowances drawn prior to proceeding on

leave—after 45 days of leave on full allowances, they used to get a fixed amount of Rs. 2220/- per month. Now they will be getting Rs. 4800/-. Under leave on half allowances, they used to getting a fixed rate of Rs. 1110/- per month; now they will be getting 30 per cent of the salary that is about Rs. 2400/. With regard to Chief Justices of the High Court, they will be getting usual salary and thereafter they will be getting 55 per cent of the salary. About Chief Justices, for the first 45 days of leave on full allowances, they will be getting usual salary and thereafter 55 per cent of the salary that is about Rs. 5000/-. Under leave on half salary allowances, they will be getting Rs. 2500/-.

This is a very technical Bill and the Members have no hesitation in supporting it. But they have made certain observations about the functioning of the judiciary. So, first I deal with the mounting arrears about which Members have shown their concern. Steps have been taken in this regard. The question of arrears was discussed in the Conference of the Chief Justices, Chief Ministers and Law Ministers in the year 1985 and certain resolutions, recommendations passed by this Conference; they have been commended to the High Courts and the State Governments for implementation. In this regard, the Code of Civil Procedure was also amended; the Code of Criminal Procedure was also amended in order to avoid certain obstacles and difficulties which were coming in the way of reducing arrears.

Hon. Members have raised points about the recommendations of the 77th Law Commission's Report. The Law Commission deals with delays and arrears in Trial Courts. In the 79th Report, the Law Commission deals with delays and arrears in the High Courts and other Appellate Courts suggesting various procedural reforms. They have been sent to the various High Courts and State Governments for implementation. I should say that the Committee of Chief

Justices of the High Courts, constituted by the Government in the year 1984 to study the problem of arrears in the High Courts, has suggested certain recommendations. The Committee went into the matter in detail and suggested numerous recommendations. Some of the reforms require amendment of legislation and High Court rules and orders whereas some others require issue of administrative instructions on the part of the various High Courts. The suggestions of the Committee, as accepted by the Government, have been sent to the State Governments and the Union Territory administrations; and the High Courts are requested to take necessary action in the matter.

I should mention that the High Courts are taking steps to expedite disposal of cases in their way, as cases involving common questions are being grouped together, matters are listed for hearing by giving short returnable dates, printing of records is dispensed with in many cases and priority is given to cases requiring quick disposal.

I must say that—though now I am not practising—I have been a lawyer. I had the experience of practising both in the District Courts, High Courts and the Supreme Court and I am quite aware of the basic reasons how the cases are adjourned, how the number of cases increases on the file of the various High Courts and the inherent delay on account of legal procedures and the manipulated delays on account of various reasons.

Very recently, we have appointed a Committee, consisting of three Chief Justices of the Kerala, Karnataka and the Calcutta High Courts. The Committee has been constituted and we have requested them to go into the aspects of these arrears taking in view all the various recommendations given by the previous committees and also by the Law Commission and we are awaiting their suggestions.

A question was raised about the appointment of Judges and the delay in the appointment of Judges. It has been the impression of the common people in the country that the appointments are made by the Government. Of course, they are made by the Government. But the procedure for appointment of High Court and Supreme Court Judges is governed by certain provisions of the Constitution. Article 124 deals with the appointment of Supreme Court Judges and Article 217 with that of High Court Judges. There, we are required to consult the Governors of the States concerned, the Chief Justices of the State High Courts and the Chief Justice of India and then forward them according to the procedure for appointment, to the President of India. In this, unfortunately, delays take place because the moment a recommendation comes from a Governor or a Chief Justice of a State High Court, during the process of these names either the Governors change or the Chief Justice goes by retirement or on account of other things and we have to again go back to them to take their views and invariably the names are different. Again, the process continues. Without consulting the Chief Justice and the Governor we cannot process the appointment. So, the delay is not deliberately done, it is inherent in the very procedure laid down by the Constitution.

Hon. Member, Shri Shahabuddin suggested that knowing the retirement date or the superannuation date of a certain Judge, precaution should be taken to complete the process of consultation in time so that the appointments are made in time. I do agree with him, but there are certain difficulties and it is not the intention of the Government to deliberately delay the matter of appointment.... (Interruptions).

SHRI SYED SHAHABUDDIN: Mr. Minister, what I am suggesting is really a Constitution amendment in accordance with

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the recommendation made by the Law Commission.

SHRI B. SHANKARANAND: The recommendation made by the Law Commission with regard to the setting up of an independent body for the recruitment of Judges has not been accepted by the Government.

SHRI AZIZ QURESHI (Satna): Does consultation mean concurrence?

SHRI B. SHANKARANAND: No, no. Consultation does not mean concurrence. Consultation and concurrence are two different terms.

I am grateful to the hon. Members for their suggestion regarding the appointment of Judges belonging to the weaker sections of the society, minorities, backward classes and women. We have been writing to the concerned States and also the Chief Justices of the various High Courts. We have been requesting them on and on for taking into consideration the desirability of considering the appointment of the judges belonging to the Scheduled Castes, Scheduled Tribes, backward classes, weaker sections and women.

AN HON. MEMBER: What about suitability?

SHRI B. SHANKARANAND: Of course, without damaging the suitability aspect. I do not think any Chief Justice or a Governor will recommend otherwise.

Sir, we have made it clear and I must take the House into confidence that we have written to the States and to the High Courts that while locating or identifying or picking up for appointment a person belonging to the Scheduled Castes, Scheduled Tribes or a

woman, the volume of practice need not necessarily be a criteria, except their competence and integrity. I am happy to say that the Government have been able to appoint so far about nine Scheduled Caste judges and two Scheduled Tribe judges in various High Courts. We have also made efforts to locate and appoint judges belonging to the minorities and backward classes, both in the Supreme Court and in the High Court.

SHRI GANGA RAM (Firozabad): Why don't you change the procedure for selection of Scheduled Castes and Scheduled Tribe judges in the High Courts and the Supreme Court?

SHRI B. SHANKARANAND: As I said earlier, the procedure for selection or appointment of judges of the Supreme Court and the High Courts is governed by the Constitution in articles 124 and 217.

SHRI GANGA RAM: I wanted to say that you obtain the recommendation of the Chief Justice of the High Court or the Chief Minister. Why does the Government of India not directly call for the applications, scrutinise them, get the enquiries made and appoint the judges according to the population in the various States?

SHRI B. SHANKARANAND: I am sorry I have not been able to make myself clear to the hon. Member. The procedure for selection of the Supreme Court judges and the High Court judges is laid down in the Constitution itself and we have to follow that procedure. But efforts are being made to find out people belonging to Scheduled Castes, Scheduled Tribes, minorities, backward classes and women. Efforts are on.

Members talked about mounting arrears I did reply about these things. The Government has provided the legal aid system. And by now holding of Lok Adalats in various States, we have been able to clear a large

number of cases in the courts. Many Members have suggested about the recruitment of district judges. The appointment of district judges and sessions judges or the public prosecutor for that matter, is the concern of the State Government. Many Members have expressed their fear with regard to the appointment of public prosecutors on political considerations. No such information has been received from any court or from any Government. I agree that it should not be purely on political considerations. Advocates who are competent to deal with Government cases, both civil and criminal and other matters, should be kept on the panel. But I fully agree with the Members on this point.

Regarding the fees of the lawyers, it is a common knowledge that a poor man cannot go upto the Supreme Court for redressal of his grievance. He cannot avail of the services of an eminent lawyer, who is, leave alone serving the poor man on a nominal fee, unwilling to spare his time to leave his briefs which are heavily paid. In this case, I should say, we have established the legal aid system in the Supreme Court and we are rendering services to the poor people in the High Courts and Supreme Court.

There have been questions and even the Law Commission has suggested, about fixing up the level of ceiling both on the floor and ceiling level for the lawyers. I do not think it is practicable as life has become complex, the legal system has also become very complicated and the legal practice has become so monopolistic in nature that perhaps only an awakened society can deal with this.

Finally, I want to deal with certain things, which, of course, are extraneous to the present Bill before the House. Regarding the power and competence of Parliament, the question is whether under article 368 the Parliament has the power to amend the Constitution or whether article 368 only lays down procedural aspect of it. The other day,

I had said that article 368 gives competence to Parliament to amending the Constitution. Though the Supreme Court has held that Parliament cannot change the basic structure of the Constitution. Parliament is the supreme body of the people of this country; the will of the people is expressed in this House and not in courts. This House has the constituent powers. Under article 368 when any amendment to the Constitution is considered, the House assumes the constituent power of Parliament. Of course, the courts have said that certain things can be amended and certain things cannot be amended. The matter deserves a detailed discussion by the House. I should say that this matter should be fully discussed and a separate time should be given for the discussion in this House on these matters.

13.00 hrs.

Sir, while moving the Constitution Bill, Dr. Ambedkar, gave I should say, a golden message to the people of this country and Parliament. When he was addressing the Constituent Assembly he said that when the country achieved political freedom at that time people did not know the political content of the freedom of the country. There are economic and social inequalities. He said that these were the constitutional contradictions. Since then we have been able to do away or narrow the gap of these contradictions to a great extent. But still there is a long way to go. For many people in this country, it is a freedom movement under the Constitution and for a majority of them, it is a power struggle. For the weaker sections, for the minorities and for the backward classes it is still a freedom movement and we have to achieve that freedom under the Constitution. We cannot bind down the future of this country by certain rigid rules in the Constitution and we have no authority to rule the future generation of this country because the Constitution has said something today. Every generation has its right to amend the Consti-

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tution looking to the needs of the country, looking to the needs of the society in view of the political and economic atmosphere in this country. No court can bind down the people. The people have the supreme authority to rule themselves under the laws which they make in the name of the Constitution which is the supreme law of the land.

Sir, I request that a separate time is fixed for this purpose and the Parliament should go in detail about the authority and power of parliament to amend the Constitution. Having said this, I don't want to take the time of the House. I once again thank the hon. Members for their unanimous support to this Bill.

SHRI SOMNATH RATH (Aska): Sir, since the policy of the Government, as it has been stated in this House, is to have more Circuit Benches of High Courts in different places in the States, will the hon. Minister talk to the Orissa Government and High Court to have a Circuit Bench in Berhampur for which agitation is going on pending establishment of permanent Benches.

SHRIB. SHANKARANAND: For establishment of permanent Benches, I would say that Jaswant Singh Commission was appointed. They went into great details for establishing permanent Benches and Circuit Benches Under the guidelines, it is open for the States to come with definite proposals before the Central Government as to whether they have decided to establish certain courts, certain Benches or certain Circuit Benches at certain place giving infrastructural facilities, and the Government of India will certainly consider that.

[Translation]

SHRI AZIZ QURESHI (Satna): Mr.

Deputy Speaker, Sir, at an earlier occasion, I congratulated the Minister of Law for increasing the pension of Judges. But I would like to ask him whether a pension of Rs. 371 could be considered sufficient for subsistence of a family in the present trend of rising prices? I would like to submit that family pension of a judge should be fixed taking into account the number of dependents along with the current price index so that in case of death of the judge, at least his family could lead a respectable life. The second point that I would like to make is about the appointment of judges in the Supreme Court and the High Courts I regret to say that people have been losing faith in High Court's judges. Therefore, I would like to submit that before their appointment as judges in the High Courts, their past records and antecedents with regard to income tax paid by them, number of cases disposed of by them and their public image and integrity should be taken into account. Only then the purpose of keeping the condition of ten years experience for appointment as a High Court Judge will be served.

The Constitution has been Amended to increase the retirement age of judges to 65 years. In this regard, I would like to submit that in U.S.A., earlier there was no fixed age of retirement of judges but later on, it was fixed at 70. Similarly, there was no fixed age of retirement for judges in U.K. Is any proposal to amend the constitution to increase the age of retirement of judges under consideration of the Government of India?

Similarly, a demand is being made to set up a High Court Bench in Bhopal. I strongly appeal to the Government to give a serious thought to set up a High Court Bench in Bhopal.

(Interruptions)*

[English]

MR. DEPUTY-SPEAKER: Nothing goes on record.

*(Interruptions)**

SHRIB. SHANKARANAND: Sir, I would like to state that at present, the Government is not considering about the increase of the retirement age of the Judges. The hon. Member said about the appointment of certain Judges. I should say that this Bill is there to strengthen the judicial system and to make the Judiciary independent. The accountability of the Judiciary is left to themselves. We are accountable to the people of this country. If we fail to do certain things which we promised to the people, the people will just throw out the Government. But for the judiciary, the accountability is left to themselves. So, it is for them to raise the confidence and trust in them by the people. If the trust and confidence of the people in the Judiciary is reduced, to that extent, the accountability of the Judiciary comes down. If the Judiciary fails in this country, that will be the end of democracy.

*(Interruptions)**

MR. DEPUTY-SPEAKER: Nothing goes on record.

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS AND MINISTER OF STATE IN THE DEPARTMENT OF CHEMICALS AND PETRO-CHEMICALS IN THE MINISTRY OF INDUSTRY (SHRI P. NAMGYAL): Sir, we would like to sit through the Lunch hour because many hon. Members want to speak on the next Bill.

MR. DEPUTY-SPEAKER: I want to ascertain the sense of the House whether

you want to skip the Lunch hour and continue the discussion.

SEVERAL HON. MEMBERS: Yes.

MR. DEPUTY-SPEAKER: So, we continue our discussion.

The question is:

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

The motion was adopted

The House will now take up Clause-by-Clause consideration of the Bill

The question is:

"The Clauses 2 to 6 stand part of the Bill."

The motion was adopted

Clauses 2 to 6 were added to the Bill

CLAUSE 7 (Amendment of Section 16A)

Amendment made

"Page 2, lines 38 and 39,—

for "calculated at the rate of half of the family pension so admissible to him"

substitute

"twenty-five per cent of the pension admissible" (1)

(Shri B. Shankaranand)

MR. DEPUTY-SPEAKER: The question is:

"That Clause 7, as amended, stand part of the Bill."

The motion was adopted

Clause 7, as amended, was added to the Bill

MR. DEPUTY SPEAKER: The question is:

"That clause 1, the Enacting Formula and the long Title stand part of the Bill."

The motion was adopted

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

SHRI B. SHANKARANAND: Sir, I beg to move:

"That the Bill, as amended, be passed."

MR. DEPUTY-SPEAKER: The question is:

"That the Bill, as amended, be passed."

The motion was adopted

13.10 hrs.

SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) BILL

[English]

MR. DEPUTY-SPEAKER: We go to the next item.

Dr. Rajendra Kumari Bajpai.

THE MINISTER OF STATE OF THE MINISTRY OF WELFARE (DR. RAJENDRA KUMARI BAJPAI): I beg to move*:

"That the Bill to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto, be taken into consideration."

Mr. Deputy-Speaker, Sir, this House is aware of the deep concern our Government has for the welfare of the Scheduled Castes and Scheduled Tribes. A separate Welfare Ministry was created in 1985, specially for the welfare of weaker section of the society. Many new initiatives have been taken, particularly in the last few years to improve the lots of Scheduled Castes and Scheduled Tribes, in trying to discharge a mandate of the Constitution. Poverty alleviation programmes which provide a special attention to the Scheduled Castes and Scheduled Tribes have been expanded and intensified.

13.11 hrs.

[SHRI SOMNATH RATH *in the Chair*]

First the IRDP and other programmes were improved considerably and now these have been replaced by a bigger scheme of the Jawahar Rozgar Yojana. It is because we think that if we have to improve the economic conditions of the weaker sections of the society, specially Scheduled Castes and Scheduled Tribes and those who are below the poverty line, they should be given employment. For that, Jawahar Rozgar Yojana has come in a big way.

*Moved by the recommendation of the President.