

13.43 hrs.

The Lok Sabha then adjourned for Lunch till forty five minutes past fourteen of the clock.

14.55 hrs.

The Lok Sabha re-assembled after Lunch at fifty-five minutes past Fourteen of the Clock.

[SHRIMATI MALINI BHATTACHARYA—*in the Chair*]

SUPREME COURT JUDGES
(CONDITIONS OF SERVICE)

AMENDMENT BILL

AND

HIGH COURT AND SUPREME COURT
JUDGES (CONDITIONS OF SERVICE)
AMENDMENT BILL

MR. CHAIRMAN: Now, the House shall take up item Nos. 8 and 9 together for discussion.

THE MINISTER OF STATE IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H.R. BHARDWAJ): Madam Chairman, I beg to move:

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

"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 first Bill seeks to provide that where a Judge of the Supreme Court does not avail himself of the official residence, he would be paid an allowance of Rs. 3,000/- per month and this allowance would not be included in the computation of his income chargeable under the head "Salaries" under Section 15 of the Income Tax Act, 1961. Normally, the Supreme Court Judges are given official residences and no house rent allowance was being paid to them. But recently we increased the strength of Judges and there is, sometimes, the difficulty to provide them official residences. So, now we propose to make a provision that in case a Judge does not get his house immediately, then in lieu thereof we will be paid Rs. 3,000/- per month. Already such a provision exists for High Court Judges and they are paid Rs. 2,500/- per month which is exempt from income tax also. So, a similar provision is being brought in now for paying Rs. 3,000/- per month, in case a Judge is not given a house immediately. This is a matter which is non-controversial in nature.

Madam, the other Bill which I propose for consideration is to amend the High Court Judges (Conditions of Service) Act, 1954 and the Supreme Court Judges (Conditions of Service) Act, 1958. Recently in 1986 the Judges were given two Leave Travel Concessions to travel to their hometowns. The Judges who are posted from one place to another have to visit their hometowns and considering this problem, the Leave Travel Concessions were provided to them once in a year.

That Leave Travel Concession is not, at the moment, exempted from income tax. So, a relaxation is now being made under the Income Tax Act that these Leave Travel Concessions are not to be taxed hereafter. Hence, these Leave Travel Concessions can be properly utilized by the Judges, because whatever money they spend on Leave Travel Concession, if it is put to tax, then they do not really get this facility and becomes almost elusive.

These two matters are very non-controversial and it has been a tradition of this House that whenever we consider the Salary or Conditions of Service of the Judges we have always got the unanimous support from the House. So, I commend that these two matters may also get the support of this House unanimously.

MR. CHAIRMAN: Motions moved:

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

"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."

15.00 hrs.

MR. CHAIRMAN: There are amendments to Motion for consideration of the two Bills.

Shri Girdhari Lal Bhargava—not present.

Shri Anna Joshi—not present.

Shri Pawan Kumar Bansal may speak.

SHRI PAWAN KUMAR BANSAL (Chandigarh): Madam Chairman, I rise to support these two Bills. In our society, as in any other modern society, judiciary plays a very important and crucial role. Any aberration in the working of the democratic institutions is checked by the judiciary. Though the orderly functioning of the society depends upon the health of its three wings, namely the Executive, the Legislature and the Judiciary, yet it is the judiciary which is considered to be the ultimate repository of people's faith and confidence. It is the bastion of rights and freedom of the people. Even we, the politicians and the bureaucrats rush to the Courts to seek redressal of our individual grievances as does the State in a very large number of cases to get unresolved matters decided by the courts. The Constitution provides for seeking of the Supreme Court's opinion on various vital matters by the President of India. With this hallowed position of the judiciary in our polity, it is essential that the men manning it are men of high calibre, standing and integrity. In order to attract such men who can stand steadfast in any turmoil, who can dispense justice without fear or favour and who can by precept and practice prove to be worthy inheritors of India's age old but unfortunately dying tradition of justice and equity, it is imperative that their conditions of service are such that they do not have to worry about that and they can devote their time and energy to the dispensation of justice, immune from influence of the Executive.

With that end in mind, any measure to improve the conditions of service of the

[Shri Pawan Kumar Bansal]

judges of the Supreme Court, the High Courts and even the subordinate judiciary must be welcomed and supported by all.

In the past, we have taken up this matter on quite a few occasions but have sought to improve the working conditions only in dribbles. These two present Bills, unfortunately, are being taken up two years after introduction in Parliament. What we are really giving to the judges is again not even touching the fringes of the problem. In one case, for judges of the Supreme Court, we are providing, that in case they are not given official residence, then in lieu thereof, they will be paid Rs. 3000 which is not even the market rent of one room in Delhi. I am sure, the hon. Minister would come forth with a piece of legislation which would really do justice to the matter.

I suggest that a committee headed by the Chief Justice of India be constituted to go into the entire gamut of the matter so that we can come up with a proposal having an in-built system to raise the emoluments etc., of the judges periodically to offset the galloping inflation as well.

Only then we can attract the best lawyers to the Bench.

I do not mean to suggest that we can in any way provide a salary to the judges equivalent to the earnings of the best lawyers, but surely their remuneration and other conditions of service should be reasonably attractive. In this context, though I may be deviating a little from the two Bills before us I do want to take this opportunity to refer to the rather unsatisfactory conditions of service of subordinate judiciary.

While their remuneration is poor, the housing arrangements for them are grossly inadequate and there are cases where the judges of the rank of District and Sessions Judges have to go repeatedly to the Deputy Secretaries and Officers below that rank to ask for a house failing which they have to go to the market to get one at an exorbitant rental.

I suggest to the hon. Minister to take initiative in this direction also and prevail upon the State Governments to make sufficient funds available to the Chief Justice of the High Courts for this purpose as also for court buildings.

Having said that, I would venture to touch upon an aspect of the Judges Conditions of Service that has often been voiced by different Bar Associations with equal support from the discerning public. This relates to the transfer of High Court Judges. The very fact that the demand is gaining momentum shows that dispassionate discussion on the issue is called for. Our Constitution which we must understand is a charter of change and development and not an apologia of status quo also provides for transfer of a judge from one High Court to another by the President under Articles 222 and 217.

Many years back hon. Mr. Justice Y.V. Chandrachud, the then Chief Justice of India had said:—

"Experience shows that there are cases, though fortunately they are few and far between, in which the exigencies of administration necessitate the transfer of a judge from one High Court to another. The factious local atmosphere sometimes demands the drafting of a Judge of Chief Justice from another High

Court and on the rarest of rare occasions which can be counted on the fingers of a hand, it becomes necessary to withdraw a Judge from a circle of favourites and non-favourites. The voice of compassion is heard depending upon who articulates it. Though transfers in such cases are eminently in public interest, it will be impossible to achieve that purpose if a judge cannot be transferred without his consent. His personal interest may require that his moorings ought to be served to act as a reminder that the place of Justice is a hallowed place."

In 1976, sixteen judges were transferred from their respective High Courts. In one case, the action was challenged by an hon. Judge and the Gujarat High Court set aside the transfer. But in appeal, the Supreme Court, by a majority judgment, upheld that transfer. Thereafter, some time back, in another case, the Supreme Court has held that transfer without consent was outside the purview of Article 222 and power to transfer in a selective fashion makes judges vulnerable to pressure or blackmail.

I do not dispute this but humbly submit that this does not militate against the basic question. Even hon. Mr. Justice Krishna Iyer, lamenting the kin-syndrome that prevails in many High Courts has said that justice is more important than Justices.

The principle of transfer is suggested to preserve and not to whittle down the independence of judiciary. It is to keep the fountain of justice pure. And to do, it may be imperative to ensure that transfers are effected in accordance with an acceptable policy without discrimination. According supremacy to the opinion

of the Chief Justice of India, as the hon. Minister has been rightly doing in the past would allay all the misgivings that have been expressed about such a scheme.

With all respect to the judiciary an other matter that I would like to raise here is about the opinion that has been expressed in certain quarters that truth should be permissible as a defence in the law of contempt of court as the present stringent provision of law debar a citizen from even pointing out an impurity in the elixir of justice. I am of the unshakable view and commitment that judiciary has to be accorded reverence that is duty to the temple of justice and that any standards utterance or writing has got to be really looked down on and discouraged. But should a true and honest revelation of an aberration remain unnoticed for the fear of contempt? That is a vital question which is being raised in certain circles and I suppose, it is time that we addressed ourselves to this.

To conclude, I would refer to the tremendous pressure that the various high courts and the Supreme Court is presently undergoing because of the heavy inflow of cases to these courts. The Supreme Court is increasingly becoming a court of appeal and contrary to what perhaps, our founding fathers anticipated and wanted the apex courts to be like, today, it is flooded with routine special leave petitions and most of the time is taken in deciding interim matters. Cases remain pending in all the courts for years and decades and the result is that justice is often denied because of the delay in the decision of the cases causing injustice to the poor and benefiting only the scheming and the dishonest litigant. Shri Rajiv Gandhi while speaking on the imperatives

[Shri Pawan Kumar Bansal]

to bring about judicial reforms had said and I quote:

"We must develop a dynamic judicial system that would be able to answer the needs of the people."

That remains the question before us. And I am sure the hon. Minister would take steps in this direction. I thank him for bringing forward these two Bills and having given us the opportunity thereby to raise certain important matters. I am sure, after this, a deeper exercise, as I suggested, would be undertaken to ensure that the best working conditions are provided to the judiciary so that, as I said earlier, they work free from all strains in the discharge of their responsibilities.

SHRI SRIBALLAV PANIGRAHI (Deograh): Madam Chairperson, this is a Bill which has a very limited purpose. The Bill provides for certain facilities to be given to the hon. judges of the Supreme Court and the high courts. There can be no controversy or dispute about that. They are entitled to Government accommodation.

When such an accommodation is not available, in that case, an allowance of Rs. 3000/- has got to be paid to the Supreme Court Judges for getting a house on rent or something like that. My previous learned speaker Shri Pawan Kumar Bansal has already referred about the difficulties faced by them with regard to the availability of accommodation. In a city like Delhi they face difficulties in paying the rent that is required to get a good house. Anyway, this is not adequate. But we also cannot afford to pay a very high amount. So, there should always be ef-

forts on the part of the Government to provide them with Government quarters.

Secondly, as regards LTC, they are getting certain LTC facilities. I think in the case of the High Court Judges, it is twice a year and in the case of the Supreme Court Judges it is three times or something like that in a calendar year. But they also get the benefit of the income-tax exemption though not in respect of the entire amount of LTC. It is limited to two within a period of four years or so. If I am wrong, it may be clarified. Now I am told it is limited to two within one year. As per this amendment, the income-tax exemption should cover all the LTCs. We do not have objection about that also because when the LTC and some substantial portion of it will have to be paid by way of income-tax, then the real benefit that is intended to be given is also eroded. But I have a serious reservation about this. They have been getting these facilities from the 1st of April, 1986. This is 1993 and this year 1993 is going to be over shortly within a fortnight or so. In fact, after seven years, we are debating this today. We will pass it today. I have a question to pose to the Government. Why is this benefit sought to be given to the Judges retrospectively? The last two sentences of the Statement of Objects and Reasons say: "Since the enhanced facility was being extended to the Judges since 1st April, 1986, it is proposed to grant such exemption from the said date." Why are you giving this benefit retrospectively?

SHRI H.R. BHARDWAJ: I want to clarify the position. The point is they have been given the LTC facility. They have enjoyed it. It was not mentioned at that time that they are tax-free so that the Judges are not being asked to repay by

way of income-tax. So, this amendment is necessary. Otherwise, it could have been given prospectively.

SHRI SRIBALLAV PANIGRAHI: Technically-speaking, for the last one year or so, the income-tax statement etc. might have been under process. But for the last seven years, it cannot be so. Whatever it is, you please give your explanation. But I have a feeling that in a country of our size and population, poverty is a companion of our people. At the same time, I agree with you that they are very brilliant people. I confess that some of the Judges both in the High Courts and in the Supreme Court have made some sacrifices by being elevated to the Bench. Those Judges were having a roaring practice. They also decided to join the Bench and they got selected by the due selection process. But in terms of monetary benefit, they are the losers. I agree. About the retrospective effect which is sought to be given now, this is only a technicality, a formality that is made. Anyway, this point has been clarified.

Then there are certain features of our judiciary, as at present, which are also very much disturbing us. Judiciary, as you know and as visualised by the Constituent Assembly, has got to be freed from the control of the Executive and the Legislature. Judiciary is independent and free from any such influence also. By and large, it is so. The high courts, the Supreme Court and the entire institution are autonomous. But, I think, there will be no two opinions about the people. After Independence, as the time is advancing, people are gradually and increasingly losing faith in our judiciary. I think, there cannot be two opinions about it. There are some very good judges both of superior judiciary and of subordinate judiciary. But

there are certain black sheep and there are many allegations that can be levelled and that are being levelled also against the judges with regard to their integrity etc. I can say that judiciary—what to talk of ideal condition—is not in good shape. It is not moving in the right direction and we have to take corrective measures, corrective steps as quickly as possible to correct the situation.

As you know, ours is the greatest and the largest democracy in the world. We have got not only the largest democracy but we have also got the longest Constitution, written Constitution in the whole world. We have a very long list of Fundamental Rights. The Supreme Court and the High Courts have their special jurisdiction with regard to writs etc. On Fundamental Rights they have their jurisdiction. All this enhances the responsibility, the burden of work of the senior judiciary, the topmost judiciary, the Supreme Court and the High Courts. What we say is that justice should be easily available, should be demonstrated in such a way that the litigants are not harassed and they get the justice as quickly as possible. We know the famous saying, 'justice delayed is justice denied and justice denied is justice buried.' We know, several lakhs of litigation cases are pending adjudication for more than a decade in different High Courts. They pendency of cases in all the courts is one crore. According to one estimate, the pendency of cases in the High Courts is twenty lakhs spread over 25 high courts and the total number is two crores in the entire judicial system. More than a lakh cases are a decade old cases. We are in such a state of affairs.

Added to all this, of late, there are allegations about justice being sold at different levels. I do not want to castigate anything against any one. I want to quote

[Shri Sriballav Panigrahi]

the Chief Justice of the Supreme Court who has retired very recently.

Chief Justice, Shri Venkataramaiah, about four years ago, on the eve of his retirement, some time in December 1989 or earlier said:

"The judiciary, in India, has deteriorated in standards because such judges are appointed as are willing to be influenced by ladies' parties and whisky bottles."

MR. CHAIRMAN: Shri Panigrahi, may I request you to remain within the scope of the Bill?

SHRI SRIBALLAV PANIGRAHI: Madam, it is quite a related matter. I do not want to take much time since you have reminded me about this time factor.

Another thing which is very much disturbing us now is the nexus between the judge and his kith and kin. Please ask anybody as to what is happening now in different courts. Judges in the High Courts, even in Supreme Court, have their own sons, daughters, sons-in-law, daughters-in-law, and brothers practising in different courts and what is happening is anybody's guess. And it is more so nearabout Delhi.

There are figures to prove this. Fourteen out of the 28 sitting judges have close relatives practising, eight of them having more than one relative in nearly all the twenty High Courts of the country; close relatives of the judges are having a thriving practice. This is what is going on.

You are perfectly right, Madam, to say that this Bill does not cover all these aspects. But, this provides an opportunity to us to express our concern at what is going on in the judiciary, how it is drifting away and how its standards are deteriorating. That is why, we have to address ourselves to the system and see as to what sort of improvement could be made.

MR. CHAIRMAN: Please also say a word or two on the Bill itself.

SHRI SRIBALLAV PANIGRAHI: I will do, Madam. The deterioration in the judicial standards compels people to lose faith in the judiciary; faith in judiciary is being eroded. It is not a good thing at all. People are being harassed.

Madam, you should be rather liberal by giving us an opportunity to deal with all these things here because, outside, we cannot say all these things. We will be hauled up for contempt of court. It is only here, on the floor of the Assemblies and Parliament, where we have the privilege to say these things; elsewhere, we cannot talk all about it. That is another danger. The hon. Minister of Law should also think about it. I am just not criticising anybody for the sake of criticism or any particular judge. I come from a District Bar and Pawanji also comes from High Court Bar and we know what is happening in all these areas. So, naturally, in a democracy, a provision should exist where everything should be transparent, when such a wall like this contempt of court exists to conceal their misdeeds. It is also time for us to debate on this; there should be a national debate on our legal jurisprudence, on our legal system to find out what are its shortfalls.

Madam, some judges like to invoke the provision of contempt of court in order to silence their critics from saying anything against the judgments and their conduct. It is very important to improve the judiciary's image in the eyes of the public. So, both the Government and the judiciary have to take concrete steps to ensure speedy and cheap justice to litigants. They also need to preserve judiciary's integrity and efficiency.

So I would only request through you the Government and the hon. Minister of Law that the basic national objective of dispensation of justice should be easily available as far as possible at their doorsteps; it should not be very much costly; it should be within their means and they should also not be harassed.

Naturally decentralisation of superior judiciary is called for in this context. When there is decentralisation in different spheres, I do not think what is sacrosanct about not having the decentralisation at the higher level of judiciary. In High Courts also there is a great pressing demand for this from different regions which are agitating for establishment of autonomous development council from areas which are backward which remain backward due to various reasons and which are farflung areas, far away from the seats of headquarters of the High Court. Now the Government should initiate action so that High Court benches could be set up in such deserving places or at least High Courts can go and hold circuit courts in such places. In that context I would mention that there is a long-standing genuine demand for the establishment of a bench of Orissa High Court at Sambalpur, the headquarters of Western Orissa. There are six districts which have a different type of culture. They are

far away from Cuttack and about one crore people will be benefited.

With this I support the Bill. As I said there is nothing controversial, there is nothing to oppose. At the same time since it relates to promotion of judiciary and improvement of our judicial system—in a way that is also the purpose—therefore when the entire judiciary is in the process of deterioration it calls for immediate attention, immediate action from all concerned, so that it does not further deteriorate and before that also necessary corrective measures could be taken.

[Translation]

SHRI GEORGE FERNANDES (Muzaffarpur): Madam. Chairperson, there is no question of opposing this Bill. There can be no objection when a Bill is moved to increase the salaries of the hon'ble judges of the Judiciary, particularly High Courts and Supreme Court.

But I am only distressed to say that the Government observes dual policy in such matters. There is a separate policy for people in high places and a separate one for people in low places. For example, the postal workers were on strike some 4 days back which included extra departmental employees also. They were demanding an increase of Rs.30-50 in their wages. And for such a small demand you made them sit on road for 4 days.

[English]

Whenever a point is raised to provide even an ordinary facility to a lowly placed person the Government looks worried as to how the money would be arranged and many logics are given in support of their statement and instead of

[Shri George Fernandes]

solving the problems, the problems are made more complex. The Government had given the decision in this House on the day before yesterday on behalf of Ministry of Personnel, Public Grievances and Pensions. There was a small question put by the Board of Arbitrator regarding leave encashment of Government employees as on 31st March, 1989. The Government turned it down saying that they were not in a position to afford it. It was only about leave encashment, and a big amount had not been demanded. In fact, it was not a demand of the employees, it was an award of the Board of Arbitration. This Board consisted of a retired judge of the High Court, and Justice K. Bhaskaran was its chairman. The Board of Arbitration comprises of three members one of them is a retired judge and one is from the staff side i.e. from the side of employees and the third one from the official side, could be from the Ministry of personnel or Ministry of Home or some other department, I am not aware of that. But one official is also there. Not only one but two awards were given by them. One of the awards is to provide transport allowance of Rs.30 for those employees who neither get any transport allowance nor any conveyence is provided. It means transport allowance of Rs.30 per month was to be given to the employee of the lowest category but they did not accept it. Whenever there is talk of providing some facility or improving the condition of an ordinary and poor man, you start harping on the economic problems we are facing. But the judges of the Supreme Court or high courts will come to only about 250 or 300 in number and not more than that. I have objection to this fact that when question is raised to give them an increase of Rs.3000 to them, you do not

think of the economic situation of the country. This Bill, however has been pending for the last two years.

Today when I obtained a copy of this Bill from the Parliament House I found that it had been destroyed by ants. This Bill should have been brought earlier. This Bill should have passed as soon as it was brought. If the need be, you could even have passed it in a sitting on Saturday and that too without quorum. That's what you're doing now. But you should dispense with your dual policy ... (Interruptions)... Dispense with this dual policy. Don't behave with the employees in this way. This dual policy is not restricted to wages only, it is practised in courts also. I have to express my objection to that because the hon'ble Minister of law is present here. He is a renowned lawyer and is held in high esteem both in courts and outside. If dual policy is practiced in distribution of wages, it will have its effect in courts and in the matters relating to law also. The observance of laws is different both for highly placed people and ordinary citizens. If a highly placed person needs a bail then in some cases the judge himself goes to the house of the person concerned and grant him bail. Similarly, even bail can be availed for that person at mid-night by going to the house of the judge. You are ever ready to flout all rules to facilitate a big person in order to save him from going to jail or a police station. And we are the witnesses to such incidents in the capital.

Madam, same is the case in the event of committance of a crime. A person picks a pocket for five rupees, because he does not have money to have one square meal, if he is caught, he is beaten black and blue in police station

and is humiliated to the maximum extent in the court and is awarded 6 months imprisonment and thus made to become a professional criminal when he is released from jail. Such system prevails in India.

But if a person who loots Rs. 500 crores or Rs. 1000 crores turns out to be a big person of the share market or a person belonging to some big industrial house, then not to speak of punishment, he is invited to Rashtrapati Bhavan. It happened only two days back and it was in yesterday's newspaper that he went to the Prime Minister's house and presented a car to the Prime Minister and he said that the car would be gifted to a needy institute. The security personnel did not allow him to take the car inside. He took a picture of it and presented the same to the Prime Minister and told him that he would send the keys later. He is the same person who is being prosecuted for before deals in a Swiss court and he was even responsible for bringing the Minister of External Affairs on the point of tendering resignation. When this is the position then, who will respect your laws.

My colleague Shri Sriballav Panigrahi has just now told us that the judges are not fair in their profession and our judiciary is getting defamed. I will not oppose what he has said but I must comment on the ideals being set by our bureaucracy and our politician before our judges. When a person who is being prosecuted in a Swiss court, is shown with the Prime Minister, on the cover page of the newspapers and the same person is invited to PM's residence is given a warm welcome. What can you expect from a judge when the same person is prosecuted in a court. So, it is not right to criticize the judges alone. I do not say that the conduct of judges is good. Only a few months back motion of impeachment

was brought in the House against a justice and this motion was not brought either by like us or the opposition but it was brought on the basis of a decision given by a committee, set by the Chief Justice on the recommendation of three judges of Supreme Court and we had only presented that decision in this House. Many of your members had supported what was said here, what was said by Punjab High Court and Supreme Court but then at the eleventh hour the Prime Minister issued directive to his party members not to support the motion and truth was decided here on political basis and thus an untruth was decided here on political basis and thus you saved that justice. Then on what basis you make complaints against judges. An opportunity had presented itself to the House to differentiate between honesty and dishonesty but the House did not avail of it.

Madam, I would like to say that before finding faults with justices and aluminising them we should first see what ideals we have set before them and we, especially the politicians, should introspect ourselves.

Madam Chairperson, I would like to say a few more words about complaints against courts. Shri Panigrahiji has stated that 2 crore cases are pending with the courts. This matter has not been raised for the first time. Our friend Shri Shahabuddin would be surprised to know the truth. These are official data and not prepared by politicians. A judge of the Supreme Court and some other judges have mentioned figures on various occasions. The Minister of Law may state here in the House that these cases are connected with the poor people only and not with the highly placed people. You are in the Government which has been sup-

[Shri George Fernandes]

porting GATT and the new economic policy of the IMF and you have been one of the great champions of socialism. The workers of this country have been knocking the door of Supreme Court in search of justice for 25 years. Are you not aware that cases related to workers have been subjudiced in the Supreme Court for the last 20-25 years. If these were clubbed together for disposal, I would have said that since Government has to decide about crores of people, it is very difficult to formulate a policy and that's why it is being delayed. The bureaucracy has the power in its hands. You may imagine the plight of the employees of the public undertakings, Government departments and Government undertakings. How can a poor person seeking justice can be deprived of that? I had felt it when I was the then Minister of Railways. I used to say that our friends would not go to courts but the officials urged that if that case did not go to courts then it would lead to involve everybody. It was a matter of right and wrong. It is the bureaucracy which has resorted to moving courts for maintaining wrong practices. You are the Minister of Law, you are required to probe it and not to introduce amendment Bills during your Ministership. You may get it probed through your Ministry that why so many cases are not being disposed of for so long. Finally these cases are being referred to Supreme Court and High Courts. You may get this also probed as to how the people in individual cases are being harassed by Public Sector Undertakings in the Supreme Court and High Courts. Yesterday, Ms. Mamata Banerjee had taken up the problems of some particular employees of West Bengal. These days lakhs and crores of workers are being harassed through courts. But your Ministry is not willing to pay attention to these cases.

They all do lip-service. But in actual practice they don't practice what they preach. My request is that the number of judges and courts be increased and arrangements be made to provide justice at lower level. The workers should not be subjected to court proceedings for every little thing. Where on the one hand the judiciary is being resorted to put hurdles in the way of poor people in getting justice, on the other hand, it is being used to save big people from getting punishment. I am putting before you my experience. If BJP and you people had not removed us from power, we would have got a period of three months. I was the then Minister of Railways. A case had been put before me. There was a piece of land outside New Delhi Railway Station. This piece of land was in the possession of first agent of coca cola in India. Now he is making some other cold drink. He had not paid the rent. He refused to vacate the land. When I took charge of the Ministry of Railways in 1989-90 this case had been brought before me in the beginning of 1990 and I found that an amount of Rs. five crores was outstanding against that company. This case had been pending in the courts for the last ten years. It was brought to my notice that the case was being delayed not because of judges but because of lawyers. It won't be right to name anybody and Minister of Law knows everything. We tried to get a speedy disposal of that case but somehow it could not be disposed off due to some mismanagement. The administration of Railways does not have funds for development and a meager amount is being spent on it. On the other hand an amount of Rs.7-8 crores is to be earned by the Railways from that piece of land but Railway cannot get this amount. It will take another 25-30 years to recover this amount. His three generations will enjoy. It's your judiciary, your judges and you are also present here.

I would like the Government to consider these questions seriously. You should put forward a new thinking before the country with a view to provide justice to people. The problems of the people created due to inadequate number of judges and load of work should be overcome.

With these words, as I had said in the beginning also that I would not oppose it, I support the Bill.

[English]

SHRI SYED SHAHABUDDIN (Kishanganj): Madam Chairperson, I rise to support these Bills which I consider to be technical, though, there is one point that I would like to make in connection with these Bills. The limit of Rs.3,000 that they have set will obviously have to be revised after a few years. It should have been set in terms of a percentage.

SHRI H.R. BHARDWAJ: I may just explain to you, there was no provision for any amount. The judges are already entitled, under law, for a free official residence. Earlier, there were 18 judges, but now their strength has increased. Higher type houses to which the judges are entitled are not available. This is a temporary rather transitory period. Once the houses are available, this provision will not apply.

SHRI SYED SHAHABUDDIN: Well, I do recall that there is a provision for the officers of the Government who are also entitled to free Government accommodation or accommodation at concessional rates, that if the Government accommodation is not made available to them, then a certain percentage of salary is payable to them. That would have been a permanent solution to the problem. As

and when it may happen that either the Government don't have houses to provide or a judge under a given circumstance may not like to take the Government house—he may have a house of his own—in either case, certain percentage relative to his salary or emoluments should have been provided for. That would have solved the problem for all times rather than, the Hon'ble Minister is saying, having to make a temporary arrangement.

SHRI H.R. BHARDWAJ: It is suggested by the Supreme Court.

SHRI SYED SHAHABUDDIN: That is not the important point that I am making. I am mentioning that in these days of inflation in all Bills rather than mention an absolute limit, there should be some sort of a relative limit so that it can rise with the flux of time.

Madam, I would like to take this opportunity to make a few brief points. I am sorry to say this. But I find that the quality of justice is going down, that there is a smell of corruption in the halls and corridors of judiciary, and that the fountains of justice are now getting contaminated. Now, I am making this observation with due sense of responsibility. I will not like to name names. I think there is many a story floating around and that does not redound to the credit of judiciary.

I would like to take this opportunity first to focus on the system for appointment of judges. I think the Constitution envisaged the three states; the legislature, the executive and the judiciary, to be independent of each other. There is a separation of powers, that is implicit in the Constitution. But, somehow in working out the system of recruitment of the higher judiciary, we have politicised

[Shri Syed Shahabuddin]

the system. I dare say, perhaps the hon. Minister of Law will not be happy with this observation, that the recruitment of judges today has become, to a very large extent, a matter of political patronage. I, therefore, suggest that a time has come to review the entire system of recruitment of higher judiciary, the judges of the High Courts and the Supreme Court and to make it, as far as possible, absolutely independent of the wishes of the executive. I think some sort of a Committee system must be evolved whereby the Chief Justice of India and the Chief Justice of the respective High Courts have greater authority; the legal profession has a say in the matter. Perhaps, the Law Minister may himself be a part of that Committee. One can envisage that. Perhaps, a senior Parliamentarian can be a Member of that Committee but there should be a Committee system where the wishes of the Chief Minister or the wishes of the Government of the day should not prevail, as they have been prevailing. Do you know how they have been prevailing? They have been prevailing because the only other option is all right, there shall be no appointment. There are Chief Ministers who sit on the papers, who refuse to communicate to higher authorities the recommendations made by the Chief Justice of the High Courts and they say, "Unless you put the name of so and so person, we are not going to sign it up". This is what we have come to. And, therefore, a time has come in my opinion to review the recruitment system and, as I said, to make it as far as practicable independent of the wishes of the executive.

The second point which I would like to make, Madam, Chairperson, is that when we consider the judiciary, we forget the subordinate judiciary, which is in a

pitiabie state. You go to any State, go to Munsif's court and see in what condition they are working and in what condition they are living. That is where corruption has penetrated and for very good reasons because they are ill-paid, ill-staffed, ill-equipped, ill-housed and ill-accommodated in the office. A Munsif's court consists of a table, a chair and a ramshackle bench. This must go.

I saw a report the other day that the hon. Law Minister has applied his mind to it. I think Rs.1200 crore are provided for improving the working conditions of the judiciary. I hope that you are able to do something immediately about it. In fact the way I look upon the judiciary, Madam, Chairperson, it is as an organic whole; from the Chief Justice of India to the junior most Munsif, they all form a part of the chain. We cannot possibly separate the levels and the living conditions of one from the other without detriment to the whole system. I think the judiciary, if it is to command respect, if it is to be effective, if it is to be efficient—and that is what we demand—if it is to be above politics, if it is to be totally free from corruption then both these aspects, that is the system of recruitment and the working conditions, need to be looked into.

Thirdly, Madam, I would also like to focus briefly on the question of transfers. Recently, the hon. Law Minister must be aware of the fact that the Chief Justice of India visited Chandigarh and he was given a reception by the Punjab and Haryana High Court Bar Association. There, a member of the Association had the guts to stand up and say on the face of two Chief Justices that the sons and daughters and immediate relations of so many judges were practising in the High Courts. I believe that the two Chief Justices walked out but can their walk out conceal the fact that there is something

called a negative practice and that there are judges who are giving finishing touches to the briefs prepared by their near and dear ones? This is what is being talked about. Therefore I believe that in working out the transfers of Judges this reputation and these facts must be taken fully into account.

16.00 hrs..

Now, another brief point that I would like to make is, with regard to the arrears that have been talked about. I saw the other day an estimate that if the cases were to be handled at the present rate, at the existing rate, it will take another 225 years to finish the arrears. And of course, it would be an endless process because more arrears would be accumulating in the meantime. There are many ways, you know, of reducing the arrears. But I would suggest one thing. And I have pleaded for it the past and the hon. Minister has slurred over my suggestion. There is something called 'human load'. With so many High Courts and so many judges, we can average out the number of cases that a judge can reasonably be expected to handle under the present dispensation. Therefore, by simple arithmetic, you can work out the average number of pending cases and annual number of new cases that are flowing into a High Court every year and the human capacity of the judge for handling the cases and work out the number of judges. I mean, if we want our judiciary really to be efficient, we have to pay for it. Therefore, I would again join with my friend, Shri George Fernandes, in pleading with you that the number of judges of a High Court should be determined on a rational basis and we should not shirk the figure. We should appoint the desired number of judges.

I am not going to take any time of the House on the other procedural system

like revising the present system of adversarial justice. This has been talked about and the judges have many representations. The Law Commission has also made some suggestions. But there is one thing that I would like to add here. I do not understand one thing. Why does the High Court or the Supreme Court for that matter not have specialised benches? Surely if two or three judges were to deal with all rent control cases, which overwhelm the Supreme Court and overwhelm the Delhi High Court—I know a vast portion of the cases that are clogging the judicial machinery belong to particular categories—one can make an analysis. And if it is, say—I am taking one example—rent control, there can be one or two judges who shall decide only the rent control cases. So, in that case by virtue of a specialisation, the cases can be ticked off just like that and the progress can be much faster. Why do we shirk a specialisation? Why can we not have special benches dealing with the civil matters or the criminal matters, which should be permanent? So many times, adjournments are granted or cases be heard serially and continuously only because the bench has been broken. So it goes on, cases go into the limbo, until the bench is rejoined, the cases cannot come up. Now that can surely be a structural reform, which can immediately be introduced once this idea sinks in that even in the judiciary, the multiplicity of cases need a specialised approach.

The last point that I would like to make is with regard to the appointment of the Chief Justice and the appointment of the judges of the Supreme Court. If our vision of judiciary, as an organic entity from top to bottom, is valid, then in that case we cannot possibly have unreasonable and arbitrary supersessions. The Law Minister is aware of what I am hinting at. There was a time

[Shri Syed Shahabuddin]

when a large number of judges were appointed to the Supreme Court and so many senior judges were by-passed. Why? For what reason? Why do you introduce an element of discontent in the system? Why do you introduce an element of irritation in the system? Surely one can make a rule, as I have always pleaded, that in any system nobody should be permitted to go the top unless he has got a minimum time to put in. But, otherwise, generally unless a man has been found to be unfit or unless he himself offers to opt out, it should go by the line of seniority. I know the case of Justice Jafar Imam who refused to be the Chief Justice of India because he himself felt that in his existing state of health, he could not perform the duties. That was noble of him. But, otherwise, normally it should go by the line of seniority and specially when you are appointing judges of the Supreme Court, you must take the relative seniority of the Chief Justices of various High Courts into consideration.

And when you are appointing the Chief Justice of a High Court, you must take relative seniority of the Justices to the various High Courts into consideration. When you are appointing the Chief Justice of India, you should take the relative seniority of other honourable judges into consideration. As I said, may be a voluntary system can be evolved and a consensus worked out that when a person has got, say, only three months to go then he should himself opt out and say, 'No', sorry. The next man at least must have one year so that he can do something about the system. He can leave an impress on the system. He can concentrate and apply his mind on the system. That should apply not only to him but also to the Cabinet Secretary. In my opinion, it

should also apply to the Chief of the Army Staff. Anyone going to the top must have time to give something to the system as a whole.

So, I would plead with you not to supersede judges or promote than out of turn. I am telling you with my personal knowledge that people feel so unhappy. They have no forum. They cannot turn to anyone. They cannot plead their case in public. They cannot come to the Parliament. They cannot petition to anybody. That upsets the system and that creates tensions in the body.

Madam, I thank you very much for giving me this opportunity of saying a few words and presenting my suggestions to the hon. Minister for consideration.

With these words, I support the Bill before the House.

[Translation]

KUMARI MAMATA BANERJEE (Calcutta South): Mr. Chairman, Sir, I rise to support the Bill introduced in the House regarding the service conditions of the Supreme Court and High Court Judges and I would like to draw the attention of the Government and the august House to two or three important things. However, this Bill is not a Controversial Bill, it is very simple one. I would like to express my thanks for giving me an opportunity of saying a few words regarding this Bill. I support this Bill introduced by the Minister to amend the present service conditions, accommodation and LTC facilities provided to the Supreme Court and High Court Judges. But on the basis of my own experience, I would like to submit that once I happened to present myself as a witness in connection with a case in the

court of a District Judge and I had to wait for two hours there. When I wanted to know the reason, I came to know that the judge did not have any vehicle. The police generally bring him to the court when they get time and the proceedings of the court start thereafter only. I would like to submit that if a person like me is required to appear before the court of a subordinate judge or a District judge to defend myself in a case and has to wait for such a long time then how it will do? I appeal to the Government that all the District and Subordinate Judges should invariably be provided vehicles as well as Government accommodations. Normally it takes too much time to dispose of a case in our country. The subordinate judges should be provided the same facilities as are provided to the Supreme Court Judges. I, therefore, support the amendment introduced by the Hon. Minister in this regard and I urge upon the Government that subordinate Judges should also be provided accommodation and vehicle facilities because it will help the common man.

I understand that our present Judicial System needs a discussion in the House. Previously there has been a debate in the House over Justice Ramaswamy case. But instead of discussing the case of an individual judge, the entire judicial system should be discussed in the House. Today we have full faith in the judiciary. But at the same time, I would like to state that gradually the common people are losing their faith in judiciary. They think that political influence has increased these days. As Shri Syed Shahabuddin and Shri George Fernandes has said that today political appointments are made to the posts of judges. Only blaming the Government of India will not serve the purpose because for the appointment of judges in a High Court in a State a panel is prepared after consultations between

the Chief Minister and the Chief Justice of the High Court of the concerned State and then sent to the Law Ministry. Law Ministry then finalise the names for appointment from that panel. There are non-Congress Governments in many States today, be it West Bengal, Tripura, U.P, Bihar or any other State, there should be no political interference in the judiciary.....(Interruptions) Please listen to me first. I am talking about all the States. I want to say that there should be no political interference anywhere and we should think about the welfare of the common people. That is why I say if our judicial system does not function properly and there is political interference, people will lose their faith in it and it will not be in the interest of our country. The Courts are the places where people can get justice. I, therefore request that a comprehensive discussion should be held in the House in this regard and it is necessary to think over as to how our judiciary should function properly and independently. I support the views expressed by Shri George Fernandes. The labourers, farmers and the poor people get meagre amount today, we have to think over it.

Madam Chairman, I have to make two or three suggestions. There should not be political interference at all in our judicial system. It is heard that the judges release only those accused on bail who are related to them. I request that it should not happen at all. If such a case comes to the notice of the Government, Government should take a serious note of that and that judge should be transferred. The rules concerning transfer of judges are framed by the Government. Similarly, local persons should not be appointed judges in their own areas. You know all about the judges. But some cases of irregularity have come to my notice and if you want I can tell you in confidence.

[Kumari Mamata Banerjee]

Something must be done to dispose of the cases pending in the courts. If two crores cases are lying pending in the courts then you can well imagine the fate of the nation. I, therefore, would like to request you that immediate steps should be taken to solve this problem.

Madam Chairman, I have to make one more suggestion. As per rule, chargesheet should be served by the police within 90 days of filing the case in the court. If it is not served then the case should be deemed as withdrawn. There are such people in the country who by using their money power and muscle power create obstructions in serving the chargesheet within 90 days of filing that case. Consequently, the criminals and the persons responsible for bomb blasts are saved. Such manipulation goes on. I therefore demand that if the chargesheet is not served even within 90 days then it should be looked into as to who is behind this manoeuvring. Although it is the duty of the administration, to investigate, yet the Department of law should also look into it. I do not want to speak more about the judiciary. I have faith in judiciary, but if a farmer is served injunction against cultivating his own land, then he cannot cultivate his own land. Even if an injunction is served on a worker, the officers do not act accordingly. It is essential to think in this regard. If the judgement given by the court is not implemented properly, the people will lose faith in the judiciary. The Lok Pal Bill was passed in the House. But how many Lok Adalats have been set up so far? The Lok Adalats have not been set up in desired number. Official panels are prepared for lawyers, the names of those lawyers are included in the panel who have influence. Instead the names of those lawyers be in-

cluded in the panel who work for the cause of the poor. If the names of those lawyers who have money power and having relations with judges, or with Ministers are included in the panel than no such person will be ready to provide free legal aid. I have such a team of lawyers which provide free legal aid to the poor.

A labourer named Bhikhari Paswan is living in my area. His wife was sick, yet he was arrested by the police at 12 O' Clock at night, and was beaten severely. When his condition worsened, the police took him to police station. His wife told me that she did not have money to buy rice for food. Then I filed a Habeas Corpus writ petition in the High Court. 80 per cent of population in our country is neglected and nobody thinks about it. Government policy is there but it is the duty of the State to implement it. If the State Government do not implement it properly, then a way-out must be found.

I, support this Bill and I would like to add that the Government should introduce a Comprehensive Bill in the House in order to make the judicial system effective and hold a discussion on it. With these words, I thank you.

SHRI BHOGENDRA JHA (Madhubani): Madam Chairman, there is no question of opposing this Bill. I also support this Bill. I would not like to repeat the points raised by my hon. colleagues. I would not like to contradict the points also with which I differ. In the capitalistic world and now even in Russia, justice is legally a saleable item. I am not talking about corruption. Justice is saleable even as per our own constitution. Just now Kumari Mamata Banerjee has mentioned that a person who does not have money cannot have an access to the court because money is required for stamp fee, lawyer's

fee and also for getting the copies of the judgement. In course of getting the copies of the judgement only one has to sell his two to four bighas of land, and the question of winning or losing the case arises later on.

Is there any remedy for it?

16.20 hrs.

[SHRI TARA SINGH *in the chair*]

Right from 1940 till date I myself had to fight my own case. I want that we should provide in this bill not only from money point of view but also from the lawyers point of view so that they are not able to distort the facts but fight for the truth only. We have our panel Code. I was also a member of its Select Committee. I fought for the point that one should be allowed to become witness for oneself. All the members of the Select Committee were against it. I argued that in the event of any quarrel between the two why the third person should be asked to become a witness, why one should not be allowed to narrate the incident oneself I should be cross-examined, I would like to be a witness but I would not like to hear anything incorrect from third person.

The Government should make provision under which a common man and a poor person should be exempted from paying stamp fee and those who cannot afford to engage a lawyer should be provided a lawyer. A provision should be made to exempt these people from fee and copy charges.

We should devise a way to get justice at the earliest. A blunder has already been committed by us. In the Joint Select Committee on the 72nd and 73rd Constitution on Amendment Bill of which I was

also a member, I urged upon that the Nyaya Panchayats and Gram Kachaharis also be given statutory status but my request was turned down. I do not know why the Government did not accept it. This could have solved the cases of common poor people in Gram Panchayats. An amendment should be brought so that majority of cases are disposed of at Gram Panchayats, Panchayats Samiti and Block levels only. There should be no scope for appeal also unless there is a gross violation of laws. There is no need of going through the facts as truth is revealed there. It is my personal experience that is why I am saying so. An amendment may kindly be introduced to lessen the burden. It will help in disposing of the half of the cases lying pending in High Courts. Simple cases will be disposed of at this level.

Political appointments should not be made in judiciary. Politics should not be defamed by money power. Politics should uphold the dignity of our Constitution. The court could not implement the Directive Principles. The judges should keep it in their minds. They should decide the judicial course where law and Act is not clear. There should be guidelines for the courts as well as for judges. Our politics should be like this. But politics has not been able so far to give it the shape for leading the country in proper and distinct direction. We should march towards a fixed direction. Provision should be made that there is no party politics and factionalism.

The courts have still many shortcomings. It is not necessary that one would get justice certainly. The court is bound to give judgement on the basis of the facts as per the provisions of the Constitution, and Acts thereunder. In the course of implementing the laws or acts, injustice or justice may be done or a new

[Shri Bhogendra Jha]

thing may come out but the courts cannot violate the laws. The courts cannot go beyond the Constitutional limits while delivering their verdict even if they wish to do so.

MR. CHAIRMAN: Mr. Jha, please speak on the amendment. You are talking any thing you like.

SHRI BHOGENDRA JHA: It is true that I sometimes go beyond the point of discussion but not to that extent as my other hon. colleagues. I am more pertinent. Time and again a lot has been said about the shortcomings of our courts. Of course these shortcomings are there but the things have now improved a lot. I would like to say that it would not help us if we do not have trust in our present judicial system. When Supreme Court was set up in India in Calcutta. Sir Elgines was appointed its Chief Justice. Sir Hastings fought the case of his friend and got him reinstated. At the behest of Sir Hastings, Raja Nand Kumar was hanged on the basis of the statement based on a dream. If the Chief Justice of the Supreme Court of India had deliberately shown cruelty 200-250 years ago, was he a corrupt judge? We were in jail in the 1942 during freedom movement and Shri Salisbury was the district and session judge. When he found himself in danger he himself burnt villages. There were some Indian judges also that time whose name I do not want to refer to, but most of the members might be knowing them. The judge of Patna High Court was the real brother of a very great leader. I would not like to go into it. I am talking about the pre-Independence era. We were in our childhood at that time. Therefore, it is not correct that the situation has worsened now. Today the society is bad, the

Government is bad, the State is bad. Therefore, a person like me continued to fight against the Government even after Independence. It is right that desired progress has not been achieved. The functioning of the courts has not much improved and it requires major changes.

The provisions made by the Government enabled people to move court on so many issues. Be it the Supreme Court, High Court or a district court though I have not been to all the High Courts, yet wherever I went I found that there was congestion everywhere therefore judges should be provided sufficient space for their offices. Number of judges should also be increased, be it district level, Sub-Division level, High Court level and Supreme Court level. We have increased the number in 1986 and it needs to be increased more and the provision on the basis on which promotions and recruitment are to be made, needs to be modified. Ours is a democratic system and we have elected form of Government. If we are not in power and Shri Bhardwaj is in that position naturally he would move the Bill. Apart from this, we believe that democracy form of the Government is the best form of Government. However, neither we can say nor it is a fact. Perhaps it will never be so. But if democratic set up is followed, someone will certainly have the responsibility to restore it. At the same time precaution should be taken to create such an infra-structure that there is no scope of any mistake. It at all mistakes are committed these should be rectified immediately. Similar attitude should be adopted with regard to promotions, otherwise there will be conflict. After independence it was at the instance of the Prime Minister of Bihar—I am referring to the period before 1950, there were Prime Ministers in States at that time not in Delhi—that a judge of Patna High Court

was suspended who in turn condemned this act openly in the all India Conference of advocates held at Nagpur. There have been such flaws.....

[English]

MR. CHAIRMAN: Mr. Bhogendra Jha, this is not relevant.

[Translation]

SHRI BHOGENDRA JHA: No some issues were raised when you were not present.

MR CHAIRMAN: If the earlier speakers have not spoken to the point, that does not mean that you too would follow them.

(Interruptions)

SHRI BHOGENDRA JHA: Therefore my submission is that there is a need to provide better opportunities of promotions. There is a need to give more seats to them. More judges should be appointed and measures should be taken to provide more facilities and in expensive justice to people. I am talking of those who do not employ advocates, They should be provided a true copies free of cost.

We have made certain provisions in the penal procedure code. For instance if a person who files a law suit is poor and illiterate gets a copy of it. We forced the Government to make a provision to this effect. However, police officer were to provide a copy of it to the person who lodges complaint most of the time he does not do so. But the complainant needs all other copies also to fight his case. We should make arrangements so that more

and more people get justice. I would like the hon. Minister of Law, Justice and Company Affairs to make an announcement today that Panchayati Raj has been brought within the purview of constitution through 72nd amendment. Therefore it is not the will of the Government that it may or may not hold elections for 15 years together, as it happened in Bihar. At the same time the Government should make arrangements for providing justice at Panchayat level itself so that more than fifty per cent cases may be disposed off at this level. It would enable the people having limited resources to get inexpensive justice. The rent fixed at Rs. 3000/- per month recently would be revised again after some years. Government can adopt the pension like formula which go on increasing with the rise of price index in respect of rent also. I am not referring only to the rent of the house, a systematic procedure should be adopted in each case. With the increase in inflation the rent should automatically increase. It does not look nice for the judges and Members of Parliament to revise the rent of the houses time and again. It becomes awkward both ways to favour or to oppose the move to that effect. The Government should evolve a policy under which the amount should increase automatically with the price rise. At present the amount has been fixed at Rs. 3000/-per month, I feel that it is reasonable and thus there is no possibility of making any amendment into it.

I support this Bill, and would submit to the Government that justice should be provided at Panchayat level by means of Panchayat Raj or constitution so as to make it somewhat cheaper. This system is being adopted in many states, and the Government should adopt the same in the other parts also so that they are relieved of their burden. The number of law suits is

[Shri Bhogendra Jha]

increasing day by day and for their disposal more space is required, but there is shortage of space everywhere. So far as other factors related to this issue are concerned, I would not like to give my opinion. I would only submit that we should move ahead with it and if the hon. Minister of Law, Justice and Company Affairs makes an announcement to bring it within the purview of constitution I feel, that not only the mistake we committed under 72nd Amendment will be rectified but we will be in a far better position. Moreover, the burden of the upper courts will also ease.

[English]

SHRI H.R.BHARDWAJ: Mr Chairman, Sir, as I submitted in the beginning, so far as these two small measures are concerned, one deals with providing Rs.3,000/- in lieu of official residence to Supreme Court Judges. I may inform the House that existing laws provide that the Judge of the Supreme Court will be provided an official residence free of charge, rent free accommodation, furnished. But as I submitted we had shortage of bungalows. Some of the Judges who are newly appointed to New Delhi from various places and they have to stay sometimes in the accommodation provided by the States in the shape of Bhavans which are provided by various States in New Delhi and they have to spend money from their pockets. So, in order to meet the short stay of Judges, this provision. It is imperative and necessary that all Supreme Court Judges have to be provided Type VIII bungalows and we do provide them. But sometimes it takes a month or two to provide them.

Otherwise, I may make it clear that they are not accepting Rs.3000/- as a

permanent measure. So, they are accepting Rs.3000/- for the transitory period. The High Court Judges accept Rs.2500/- That was already there. The House had granted that facility to the Judges. In the case of Supreme Court Judges, we never had any problem of houses. Recently, we increased the strength from 18 to 26. So, this problem arose. The houses earmarked for the Judges fell short by eight. We had difficulty in obtaining these eight houses from the Urban Development Department. We could get quite a lot of houses and some problems remain in the case of one or two houses. So, when we are not able to give the house, we will provide them Rs.3000/- for that month or for the period of the month. So, this measure is not, as a matter of fact, a substitute for the official residence. I am very happy that the entire House has supported it.

Regarding the other measure, I must explain to the House that today the High Court Judges have two LTCs and the Supreme Court Judges have three LTCs. That gives an opportunity to them to visit their places. For example a judge from West Bengal comes to Delhi. Something happens in the family. Suppose, there is marriage. A Judge has to go and attend the marriage. He has no provision under the law. So we give him the LTC facility saying that he can visit his home town once, twice or thrice. Or, in connection with some mourning or any such emergencies, they have to be provided this LTC. Today, the Judges are enjoying it tax-free. When you purchase an air ticket, you are not supposed to pay tax on that. This is a facility for travelling to your home town. So, today they are enjoying it. But unfortunately when this provision was made in 1986, it was not specifically mentioned that it would be tax-free. So, the tax-people raised this issue. They

gave notices to some judges saying that they have enjoyed it and have to pay this money. No judge can afford to pay this money because he has enjoyed this. So they did not want to do it themselves. They discussed it with the Chief Justice of India who in turn discussed with us and we agreed. In this no tax is involved now. Now, they are having it tax-free. This is the second measure which I have brought forward before this House. I am very thankful that all the Members have, like on the earlier occasions, supported this measure. This House has that respect for the judiciary and it always has it. Whenever it relates to the perks—we may debate our own allowances and perks—of Judges, as far as the Judges are concerned, the Members have unanimously supported the measures always. I have seen the Constitution Amendment also being supported unanimously. This has been so today also. Therefore, to that extent, I am very grateful to this House.

Sir, besides these two matters, some hon. Members have drawn my attention to various problems that are facing the country today in the case of judicial administrative system. I am one with them that in our country, we need to have radical reforms in our judiciary and legal system. This country has given itself a Constitution where the life, liberty and property of the citizens have a significant meaning and they have to be protected by all of us. So, the judicial system must be really very effective. I think it is my duty that I must take the House into confidence as to what we have been thinking and what I have done in this matter when I have taken over recently as the Minister of Law, Justice and Company Affairs. Earlier, in 1986, I had brought forward a reform by consulting all the Chief Ministers and the Chief Justices in August 1985

and 1st September 1985. I requested the then Prime Minister to summon all the Chief Justices and the Chief Ministers because if we think that we can intrude the legal and judicial reforms by ourselves at the Centre, it is not possible to do it because it is a quasi-federal structure where the States have their own powers. The High Courts, the Subordinate Judiciary are located in the States. Their viewpoint is necessary because they spend money from their own Consolidated Fund. We cannot go over and above their views. So, whenever we want to bring forward any reforms, we have to consult them. On certain issues, the States were with us. At that time also, we had agreed. A court-room which was constructed 50 years ago when there were 20 lawyers is wholly inadequate where there are 1000 or 2000 lawyers today. Those days, nobody was there to enter a court-room. Now, it is an open court-room with the gift of democracy. No proceedings can take place unless everybody is allowed entry in a public hearing of a case.

That is democracy. Therefore, now it needs that we should give a serious look to our judicial infrastructure. I have been requesting the Chief Ministers time and again to please give their serious consideration for providing court rooms, bar rooms, canteen facilities to litigants and also the judicial housing. But this has not got that attention which it ought to have got because the judiciary and justice administration was not a planned subject. It was a non-plan subject. Therefore, no development took place in this direction. You will appreciate that the way we are legislating here in Parliament and in the States everyday, we are creating offences and creating problems which are justiciable. We create disputes where they have to be resolved. While we have not brought any alternative system of resolution as

[Shri H.R. Bhardwaj]

was suggested by Shri Jha. We have to decentralise justice down to the Panchayat level in our country. We have not been able to do it for obvious reasons and I will explain to you why it has not been done. But we have to do that work and unless we do that, nobody will bring utopia in the system of working of courts because you require better environment for the functioning of the court. That is, you require proper court room proper staffing, proper judges, proper lawyers because you cannot minimise quality of justice. People are not going to accept a very cheap type of system as against the present one. It must be something better and more effective. When I was the Planning Minister, I intervened specifically for that purpose and requested the Prime Minister to make this justice administration as a planned subject. And I am happy to tell this hon. House that this scheme was accepted that it should be a centrally sponsored scheme like other centrally sponsored scheme where we must allocate equal amount of money for court buildings, court housing and judicial infrastructure to the State. And today, we have earmarked Rs.1,200 for development in this plan. If this money is really spent in these buildings and other things, it will sufficiently improve our court system, housing system and infrastructure that is required in the next four to five years. Besides that, you will appreciate that I have again been meeting the Law Minister of all the States. During the last year when I completed my discussion with them, we brought out a charter containing 23 points on reducing arrears, reducing expenses and reducing delays. These points of charter were again brought by the Law Minister and the Law Secretaries of all the States. I started from Bangalore, then went Pondicherry, Madhya Pradesh and Goa where the Law Minister from all

the States were taken into confidence. We drafted a unanimous declaration saying we were going to act the following programmes. That was based on the Malimath Committee Report which went into the question of reducing arrears and simplifying the procedure. We immediately got in touch with the Chief Justice of India. I would beg to submit that no Minister, no Government can cure the system of administration of justice unless we take the judiciary, the bar into confidence because it is they who have to implement it in the courts. Suppose a lawyer does not curtail his argument and goes on arguing and arguing, just as we sometimes prolong the debate, on the point which are wholly unnecessary for the relevance of the case, that would not reduce the arrears. Therefore, this matter to consult judiciary was also started and we went to the Chief Justice of India with those proposals so that there is interaction between the judiciary and the executive face to face. We had three meetings with him. He called his senior colleagues, all the three were the Supreme Court Judges and they discussed the judicial agenda. They gave a final touching and thereafter I requested the Prime Minister of India to call a meeting of all the Chief Ministers. Again a few days back, we had a meeting in New Delhi of the Chief Justices of the High Courts, the Chief Justice of India, Chief Ministers, Governors, Law Ministers and Law Secretaries. There we put across these two or three important questions. One is about what the senior Member and a freedom fighter Shri Jha has said and the other is of Shri George Fernandes. They said that we must do something immediately for the poor litigants.

We do not care if the people who have money go on spending in various courts; but, we must do something for this

poor peasant, for this worker and for those who are down-trodden so that they do not feel the pinch of these expenses, delays and all these other things. So, I have suggested that we should immediately revert to a more effective, more substantial and less expensive system for rural litigation in the case of workers and peasants.

Now, in principle, the States have agreed that they are going to adopt something like a *gram nyayalaya* where you can send the court to them and they can take the help of the panchayats or laymen or retired judges who are living in that area and decide those cases within that block or taluka. (Interruptions)

KUMARI MAMATA BANERJEE: Sir, I wish to seek one clarification. If you are going to give this power to *gram* panchayats, as you are aware, everywhere, in every *gram* panchayat, some political parties will be in power and there is no impartial system; in such a situation, if the other party goes there, what justice will they get? So, there should be some independent organization.

SHRI H.R. BHARDWAJ: Mamataji, I am not giving any power to them.

SHRI SAIFUDDIN CHOUDHURY (Katwa): That point should be well taken. This power should not be given to the panchayats.

KUMARI MAMATA BANERJEE: They should be independent and away from the panchayats.

SHRI H.R. BHARDWAJ: Mamataji, let me explain it to you. This thing is not there; we are not giving any power to the panchayats. (Interruptions) Kindly listen to me. (Interruptions) why do you discuss

among yourselves when I am giving you the reply? We are not giving any power; Mr. Chairman, we are not giving back any power to the panchayats because they were tried earlier in 1970s.

MR. CHAIRMAN: I was saying the same thing. I was asking about what its past performance was.

SHRI H.R. BHARDWAJ: Our intention is to send the same stipendiary court which is functioning in an urban area; we want to send the same court to the village; they could listen to the woes of the poor people there and dispense justice so that they do not have to come to the urban areas. It is just like a mobile court where they will use the outside people in their advisory committees, as we have the jurors and assessors so that the evidence is available there. That is simplified and that is given in the report of the Law Commission.

Now, a debate will take place in this House on the type of rural litigation or the litigation to help a layman, without diminishing the quality of the justice that we can give to them and then we would like to strengthen that system with adequate legal aid provisions so that if a worker has to fight a case, he must be given legal aid or money for the legal aid. (Interruptions)

SHRI GEORGE FERNANDES: What is the purpose if it takes twenty years?

SHRI H.R. BHARDWAJ: It does not take twenty years.

SHRI GEORGE FERNANDES: I will give you a list of the cases which my own organization had filed.

SHRI H.R. BHARDWAJ: You have to do something now. If you go on saying that way, we cannot do anything. I am telling you about what I have done. If you are interested in it, I will tell you about it because I want to take this House into confidence on what is being done and what is in the offing. This was born out by the events that have taken place a week back. (*Interruptions*) If you do not want to hear me, I can sit down. Since some points were raised by very senior Member—if I want, I can just stick to two points about the provisions in the Bill—I just want to tell you that we are now offering a separate package of justice for the poor people backed by the provisions of the legal aid.

SHRI SAIFUDDIN CHOUDHURY: It should not be a poor justice.

SHRI H.R. BHARDWAJ: It should not be a poor justice. It should be substantial and effective justice. There is no question of diminishing the quality of justice. If you all agree, we will have a debate on it because when we bring that report before you, then, we would like to have a proper discussion on it and whatever comes out of the discussion will be in the shape of a law.

So, it is not that we are sleeping over it. I have done that work within the shortest period. In the month of October, I have done all the consultation and the Chief Ministers having agreed to it, my work will be easier now to proceed further. So, we are not sitting on the problems of the poor and the down-trodden. We are quite conscious of it.

SHRI BHOGENDRA JHA: Will this get finalised by the next Budget Session?

SHRI H.R. BHARDWAJ: Let me complete this session. In the next session, we will see what we can bring. I think, one of you can raise this question--the question of judicial reforms in the country--in a substantive motion.

SHRI GEORGE FERNANDES: We can jointly sponsor a discussion.

SHRI H.R. BHARDWAJ: I am ready, whenever you like: I would like this House to debate on this and give suggestions because of its urgency.

I have done something on several points. Regarding corruption in judiciary I have again gone to the Chief Justice of India. The one-third transfer of judges was pending since 1980. Last month I have transferred eleven Chief Justices of High Courts on the recommendations of the Chief Justice of India. Wherever the Chief Justice felt that the transfer is necessary in public interest he recommended and we implemented it. Now, I am giving information, we have received around 38 transfers of judges which we are going to implement. Another list will be coming. So the Chief Justice of India as the leader of the judiciary is doing his work sincerely and we must hope that he succeeds in it with the cooperation of everybody.

We have to minimise it. I cannot say that we will be succeeding in wiping out corruption from any institution—judiciary or any other sphere—but let us try to make a sincere effort to minimise it. It is where we will not come into controversy. It is the Chief Justice of India who is going into this question. He has constituted a committee of four judges—two judges of

the Supreme Court and two Chief Justices. He left it to them; they are taking data from all High Courts about the complaints which you are making. Now Shri Syed Shahabuddin has mentioned about the Punjab case. Immediately after his return he went around the country and a regional conference of Chief Justice was held. He has obtained data as to who is practising where, whether he is related to a judge or anybody is influencing the course of justice. That is the statistics available with him. Based on that he has constituted a house committee which is going to deal with it.

I personally do not want to come into it nor do we want to take the credit or the discredit for it. Because I am from the Executive Wing, the moment we will come into the picture, the question of judicial independence will come and you will yourself criticise it. We are leaving it to the judges. So whatever the Chief Justice of India has recommended, we are implementing it. I hope it will have a salutary effect and it will have the desired effect also. This aspect of tackling the problem of relatives and kith and kin of judges is being tackled.

Then about supersession. You can take it I am not saying what happened earlier— that I am telling you with full confidence that we have not superseded a judge who was getting an opportunity for even seven days. One judge was entitled to remain for one day as Chief Justice. Even he was not superseded. We gave his due and he remained the Chief Justice for one day. Likewise there are cases of one day, seven days, two months, three months. It is because we do not want to get this type of a stigma that we are choosing or handpicking judges and putting them in place.

Seniority is being adhered to. It is one of the principles. Again as you said, if the question is decided we will have a tenure fixed for judges as Chief Justice if it is in the interest of the institution. Let the institution say so. But we will not do that because it creates a lot of heart-burning in a very noble institution. Whatever we may say, people do have confidence in our judiciary.

About what hon. senior Member Shri George said, we have improved upon judiciary which was alien to our system. They used to give justice. Now our own brothers and sisters are occupying the chair of judges. We should try to see that they function impartially, independently and people are satisfied with the quality of justice they administer. Our duty is to strengthen their hands. As I said at the outset, this House has already supported whatever we have done for furthering this cause, namely to give them perks here and there. I personally feel that a lot more needs to be done in this. There should be no interference from political side.

Regarding appointments I will say one word. That issue has also been sorted out. Recently nine Judges of the Supreme Court went into it. It is not as though nobody argued this case. We opened this case with an open mind in the Supreme Court. Earlier people used to say that the Government said that they must preserve their right of appointment of judges and all that. This time you see the affidavit filed by the Government. The Attorney General was told that while we want that the Government of the day should be responsible for appointing judges, we will definitely give primacy to the Chief Justice of India. It is our affidavit, the Law Ministry's affidavit. We do not want that in the judicial appointments the Chief Justice should say that he has

[Shri H.R. Bhardwaj]

no say in these appointments. We have supported the position of the Chief Justice of India and we wish him good luck in this.

We do not want to take the blame that appointments are tainted, appointments are politically motivated. We do not want this.

SHRI GEORGE FERNANDES:
Since they used to be in the past!

SHRI H.R. BHARDWAJ: I cannot say. Past is past, the present should be good enough and the future should be better. We should wish for the future; and there is room for improvement at every stage.

SHRI BHOGENDRA JHA: We all know more about the past.

SHRI H. R. BHARDWAJ: I told yesterday, Shri Jha, that when you were participating in the freedom movement, we were just kids.

SHRI BHOGENDRA JHA: I am talking about the Government.
(Interruptions)

SHRI H.R. BHARDWAJ: We know Shri George, when he was a trade union leader and all young men supported him. Now we are across the table. These are the things. From time to time, people have to take note of the changing situations.

I am only saying that our conviction to strengthen the judiciary has increased. It has not gone back. We have not gone to the situation which we had ten years back. Has there ever been any supersession? Not one. They used to say

that we were sacking the judiciary by political people. I filed an affidavit. I filed my official affidavit through the Ministry saying that we had not appointed any judge so far, without the recommendation of the CJI. Wrong impressions are being given and wrong impressions are being created. No person can afford to have a political judiciary. Now the Government has changed.

SHRI BHOGENDRA JHA: In the last ten years, is there not a single instance?

SHRI H.R. BHARDWAJ: No.

SHRI SYED SHAHABUDDIN: Mr. Minister, will you yield for a minute? When we have a number of cases of late, the judges who retire from the Bench tend to join a political party. Does it have something to do with the political considerations, before they are elevated to the Bench?

SHRI H.R. BHARDWAJ: Nothing. That is an attraction in that political party. If I am attracted by you—I admired you yesterday in the debate — that does not mean that I share all your views. That is the attraction. If you are attracted by a party, another is attracted by another. Like this, judges have their own views. They are human beings. But, according to me, judges should not join political parties. Once they retire as judges, they should contribute towards strengthening the judicial institution; and politicians should contribute towards politics. Judges have, over the years commanded a lot of respect. If they say somebody that you are being hanged, he goes to the gallows and gets himself hanged. He can not do it at my instance as a Minister. So this is the difference between the judiciary and the

executive. Judiciary is held in very high esteem. That is why, they are kept aloof; and that being aloof should not mean that they should not know what is happenig in the society. Political considerations should not weigh in the appointments. I agree with Kumari Mamataji. Otherwise, who will administer justice between State and individual and between individual and individual? Even the state is 99 per cent litigant in criminal matters.

So, a judge has to be independent. Therefore, what I say is that, day by day, it is being strengthened; and a debate is always healthy on this, provided it is constructive. We do not denigrate our institution. We have developed a very sound judiciary; and our judiciary, I can say with a confidence, command respect world over. They have not cared for individuals. You may say whatever you may; but there are judges who have unseated the mightiest and they have decided the cases of the mightiest; and they have shown their impartiality, time and again. So, we should be proud of that heritage and that is the strength of our commitment to the rule of law and democracy. So, I personally feel that whatever has been suggested is already in our minds.

About transfer of judges and appointment of judges, there is always something which you can improve upon. About the latest judgment, many people have told me, "Mr. Law Minister your powers are no longer with you". I said, "I am happy". At least I will have some good time in Parliament. People will say, "Now that he has no powers, he cannot do any wrong". I am happy about this. But, I personally feel that that is not the constitutional scheme. How can you deprive a Chief Minister of his consultation? Money is being spent from his own Consolidated Fund in the High

Court. So, we have to consult him. But the recommendation must not come from the Chief Minister; it must come from the Chief Justice of the High Court. We are adhering to it. We are now giving time schedule also that within six weeks every constitutional functionary will have to give his or her views. If he does not do it, we will take it that he has no views to offer. That is given. (Interruptions) Within four months we will complete the appointments; and the filling up of the vacancy will start four months in advance. If a vacancy arises in April, the process must start in January.

17.00 hrs.

This is in the latest judgment and in the resolution adopted. So, we are streamlining everything. Now, we hope that if this House lends us support and if we discuss all these issues in a healthy manner, we will have a good time in judiciary. People are realising it. Judges themselves have realised it. They have met now and decided. I wanted to bring this specific thing to your kind notice. We are very conscious that the poor man suffers. If we talk of equality, we must give him some financial help so that he can stand up and fight his case.

Mr. Jha has suggested about copying and all these things. We are trying to bring computerisation and automisation of the courts. I must tell you that during the last year, we computerised the Registry of the Supreme Court. The arrears have come down from 45,000 to 35,000 now. We are making categories of cases—bunching of cases—and one decision would render judgment in hundred cases by classification and documentation in the judgments in the Supreme Court Registry.

[Shri R. Bhardwaj]

We have requested all the states now. Most of them have gone half - way to computerise their records so that there is codification and classification of all their matters. Then, they can decide in bunches. We have 23 items on how to reduce the arrears. Most of them have been agreed to. I think, it is not difficult to grapple with the problem of arrears. The arrears have been there. But they have increased because of various factors. We have over - legislated over the years. Parliament and State Legislatures passed so many laws off the hand. Immediately when problems come, you pass another law although our substantial laws are very adequate to meet everything. Sometimes, the opposition rightly says that this law is not necessary. But to meet the exigencies of certain challenges, we have to bring laws.

New courts are created. New problems are created. But we are a poor country. Whenever we go to states and tell them to set up courts, they say: "Where are the funds? Where is the infrastructure?" So, even with the resources which are available to the States, we are going to review strength of Judges also. We may have relevance in this. I think, today the criterion of a High Court Judge is to decide 700 cases. They are deciding 700 cases. I monitored the working of all the High Courts. Normally, the High Courts are doing that work. But the institution has increased. The strength has not increased to that extent. But we have consulted. We have found that we should try to increase the strength of judges also. We will be doing that. After all this is done, I think, we can have a better system and every day, we can improve.

I am grateful for your patient hearing and the support you have extended to me. Thank you very much.

MR. CHAIRMAN: The question is:

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

The motion was adopted.

MR. CHAIRMAN: Now, 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 1—Short title

Amendment made:

Page 1, line 4,-

for "1991" substitute "1993" (2)

(Shri H.R. Bhardwaj)

MR. CHAIRMAN: The question is:

"That clause 1, as amended, stand part of the Bill."

The motion was adopted.

Clause 1, as amended was added to the Bill.

Enacting Formula

Amendment made:

Page 1, line 1,-

for "Forty-second" substitute "Forty-fourth. (1)

(Shri H.R. Bhardwaj)

MR. CHAIRMAN: The question is:

"That the Enacting Formula, as amended, stand part of the Bill."

The motion was adopted.

The Enacting formula, as amended, was added to the Bill.

MR. CHAIRMAN: The question is:

"That the long title stand part of the Bill"

The motion was adopted.

The long title was adopted to the Bill.

SHRI H.R. BHARDWAJ: I beg to move:

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

MR. CHAIRMAN: The question is:

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

The motion was adopted.

MR. CHAIRMAN: Now we will take up the High Court Judges (Conditions of Service) Act, 1954 and the Supreme Court Judges (Conditions of Service) Act, 1958.

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.

MR. CHAIRMAN: The House now take up Clause-by-Clause consideration of the Bill.

The question is:

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

That motion was adopted.

Clauses 2 and 3 were added to the Bill.

Clause 1—Short title and commencement

Amendment made:

Page 1, line 4,-

for "1992" substitute "1993" (2)

(Shri H.R. Bhardwaj)

MR. CHAIRMAN: The question is:

"That Clause 1, as amended, stand part of the Bill."

The motion was adopted.

Clause 1, as amended, was added to the Bill.

Enacting Formula

17.09 hrs.

Amendment made:

ADVOCATES (AMENDMENT) BILL

"1, Page 1, line 1,-

Amendments made by Rajya Sabha

for "Forty-third" substitute "Forty-fourth" (1)

[English]

(Shri H.R. Bhardwaj)

MR. CHAIRMAN: The question is:

"That Enacting Formula, as amended, stand part of the Bill."

The motion was adopted.

The Enacting Formula, as amended was added to the Bill.

The question is:

"That the long title stand part of the Bill."

The motion was adopted.

The long title was added to the Bill.

SHRI H.R. BHARDWAJ: I beg to move:

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

MR. CHAIRMAN: The question is:

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

The motion was adopted.

THE MINISTER OF STATE IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H.R. BHARDWAJ): Sir, I have got a small request to make to you. Item No.13 was passed by the Lok Sabha unanimously and similarly, it was passed in the Rajya Sabha. But the Lok Sabha had passed it in 1992. So, I request that this small amendment be agreed to by the Lok Sabha. It is only a technical thing because it is now 1993. If you kindly allow me, I can move it.

MR. CHAIRMAN: All right.

SHRI H.R. BHARDWAJ: I beg to move:

"That the following amendments made by Rajya Sabha in the Bill further to amend the Advocates Act, 1961, be taken into consideration:-

Enacting Formula

That at page 1, line 1, for the word "Forty-third" the word "Forty-fourth" be substituted. (1)

Clause 1—Short title

That at page 1, line 3, for the figure "1992" the figure "1993" be substituted. (2)