

section (3) of Section 23 read with sub-section (4) of section 22 of the Oil and Natural Gas Commission Act, 1959.

(ii) Review (Hindi and English versions) by the Government on the above Reports. [Placed in Library. See No. LT-1412/77].

2. A copy each of the following papers (Hindi and English versions) under sub-section (1) of section 619A of the Companies Act, 1956:—

(a) (i) Review by the Government on the working of the Hindustan Organic Chemicals Limited, Rasayani, for the year 1976-77.

(ii) Annual Report of the Hindustan Organic Chemicals Limited, Rasayani, for the year 1976-77 along with the Audited Accounts and the comments of the Comptroller and Auditor General thereon. [Placed in Library. See No. LT-1413/77].

(b) (i) Review by the Government on the working of the Indian Oil Corporation Limited, Bombay, for the year 1976-77.

(ii) Annual Report of the Indian Oil Corporation Limited, Bombay, for the Year 1976-77 along with the Audited Accounts and the comments of the Comptroller and Auditor General thereon. [Placed in Library. See No. LT-1414/77].

(c) (i) Review by the Government on the working of the Engineers India Limited, New Delhi, for the year 1976-77.

(ii) Annual Report of the Engineers India Limited, New Delhi, for the year 1976-77 along with the Audited Accounts and the comments of the Comptroller and Auditor General thereon. [Placed in Library. See No. LT-1415/77].

15.34 hrs.

SUPREME COURT (NUMBER OF JUDGES) AMENDMENT BILL—
Contd.

SHRI SHYAMNANDAN MISHRA (Begusarai): I support this Bill. One does not require to adduce any additional reasons to establish the justification for this Bill. Considering the huge arrears before the Supreme Court one can say that the Bill has not come a day too soon. In fact, it has been inordinately delayed, but the delay cannot be faulted on the present Government. The responsibility for it has to be borne by the previous government.

I must say right in the beginning that I did not have any intention of intervening in this debate earlier but, my hon'ble friend, Mr. Alagesan is reported to have referred to my views on the proposed code of ethics for the High Court Judges and I have to reply to him. It sounds to me somewhat strange that the proposed code of ethics should relate only to the High Court Judges and that it should not relate to the Supreme Court Judges as well. Whatever information I have in my possession gives me the impression that the code of ethics was intended only for the High Court Judges. But even if it were universal, I would not reconcile myself to the view that the Judges require any Code of Ethics for them to repeat, even if it were meant for the Supreme Court Judges also.

15.36 hrs.

[DR. SUSHILA NAYAR *in the Chair*]

I can very well understand my friends anxiety to contradict my views on the subject. He is bound to reflect the spirit of Emergency. To this I cannot reconcile in any case and this does reflect the spirit of the emergency when you seek to prescribe a code of ethics for the various sections of the community.

[Shri Shyamnandan Mishra]

What, are the reasons behind my opposition to the code of ethics? One of the reasons that made me to make a statement on the subject earlier is that the Government seems to be creating an impression that they had absolutely nothing to do with the proposed code of ethics. What the communication from the Chief Justice of India said was that the Government was too keen to strengthen their hands in this matter and even a legislation on the subject was contemplated. So I want the Government to be given an opportunity to contradict this view. The Government must at the earliest opportunity come forward and say, that whatever the Chief Justice had said was not correct. It was for that reason that I had come before the House earlier to make a fuller statement on the subject.

I was telling you the reasons behind my opposition. The basic reason plainly is that I do not want that the judge should function in an atmosphere of surveillance, that they should be looking over their shoulders and that they have to get certificates of good conduct periodically even if they be from their fellow judges.

After all, these Judges are appointed by the President of India on the criteria of highest ability and distinction. Further, they subscribe to the oath prescribed by the Constitution, This oath, with a remarkable brevity, wants the judges to behave most scrupulously and conscientiously. And one would expect that judges would certainly adhere to their oath as consciously as we members of Parliament adhere to oath of allegiance to the Constitution. It would be a reflection on the choice of the President if a code of ethics in the form of another criterion is sought to be added to whatever criteria are laid down in the constitution. The President certainly exercises his function in the best of manner. Also, there is a particular procedure for removing

the judges. That procedure is prescribed in the constitution.

With all these safeguards I do not think there is any necessity at all for proceeding with the formulation of a code of ethics. To my mind it borders on the ridiculous when the judges are asked to give an undertaking not to drink either in the public or in the private except on medical grounds. Let it be quite clear that I am a very ardent supporter of the policy of prohibition. If there is a policy of prohibition adopted by the country, the judges, who are there to enforce laws, would be the first to abide by such a policy.

So, this I find to be somewhat strange, that such a proposition should have been mooted in this country and prescribed particularly for the judges of the High Courts. I say this it may not sound well but I do so in all humility that if you apply this, it must be equally applied to the judges of the Supreme Court. Moreover, it is the judges of the High Court who have stood the test during the period of emergency. Excepting for one judge of the Supreme Court who delivered a dissenting judgment in the *habeas corpus* case in 1975-76 and who ultimately, was suspended it was the judges of the High Court who bore the brunt of the Emergency. Therefore, I submit that it is their example which should be emulated by others. That should not be in the manner in which the communication from the Chief Justice of India has been sought to do. So, these were the reasons, because of which, I had expressed myself very strongly against formulating any proposal for taking an undertaking from the judges of the High Court.

I am also amused to learn that even before the idea was finalised on this subject, judges are being required to give an undertaking. I would like the hon. Law Minister to throw some light on this whether he had already agreed to the proposition that the new

appointees should give an undertaking in the manner in which the Code of Ethics proposed by the Chief Justice of India seeks to do. I was told that the newly appointed judges in the High Court of Bombay, were required to subscribe to such a code of ethics and to give an undertaking.

SHRI SOMNATH CHATTERJEE (Jadavpur): Whether the hon. Member will recommend applying the same to a judge of the High Court or the Supreme Court only to the future judges or to the existing ones also?

SHRI SHYAMNANDAN MISHRA: Why should you ask this question? I now come to my third point. Now that, the number of judges in the Supreme Court is going to be increased—I agree with the proposal to increase the number—I would like Government to set up some norms for the appointment of judges so that there is no scope for any doubts or misgivings in the matter. The Government must understand that there has been some criticism about a certain appointment made recently. The Government may be satisfied with reasons for making the appointment—I have nothing to say on this point and I have no particular instance in view at the present moment. What I am trying to say is that the Government must lay down certain norms for the appointment of the judges.

Government may say that there can be no hard and fast rules so far as the appointment of the judges is concerned. But I would not agree with the Government if it takes a view like this. There is already a constitutional provision so far as the appointment of the judges to the Supreme Court is concerned and that particular provision is contained in Art. 124. In my humble opinion, that Article must be strictly and scrupulously adhered to. What are the requirements of Art. 124? The first requirement is

that there must be consultation in the matter.

I will come to this later—consultation with whom? First we have to be clear that there must be consultation in the matter between the President of India and some judges as indicated in Article 124. Now, whether such a consultation is actually held or not; that will have to be established. I do not think that a mere communication from the Chief Justice of India to the President of India constitutes a consultation? 'Consultation' must have certain attributes. There must be a full consultation, and exchange of views and the Government must be in a position to establish that there has in fact been such consultations and exchange of views. Are you able to do that? Then the advice of the Chief Justice of India should not be considered to be binding on the President. Dr. Ambedkar had made it absolutely clear in the Constitutional Assembly that there could be no question of the advice of the Chief Justice of India being made binding on the President. And that is for a perfectly understandable reasons. But there must be consultation. I have still to know from the government whether in fact the government is holding consultations in terms of article 124.

Article 124 also requires that consultations would be with the Chief Justice of India and with the Judges of the Supreme Court and the judges in the states as the President deems fit. There must be consultations with these three. Whereas consultation with the Chief justice is clearly obligatory, it is maintained by the government that consultation with others is not so. My humble submission is that consultation is obligatory; acceptance of the advice may not be obligatory. However in terms of article 124, government can take the view that it is only consultation with the Chief Justice of India which is

[Shri Shyamnandan Mishra]
 obligatory. I mean in terms of the wording of the Article. But I like any government—I have passionate loyalty to this government—to tell me, whether they would not like to adhere to article 124 in holding consultations with the judges in the High Courts also. What is the difficulty in the way of the government adhering to the letter and spirit of article 124? Article 124 enjoining in a way—it may not be obligatory as Government demands,—but it requires consultation with the judges in the States. Would it not make for better choice if there is consultation with judges of the High Courts also? If there is such a provision in article 124, there must be some rationale behind it. Otherwise the founding fathers would not have included it in the Constitution. To my mind, there should be consultations with the Judges in the High Courts also.

So far as consultation with the judges in the Supreme Court is concerned, I found that in the case which was referred to by my hon. friend Alagesan, there was consultation with the same Judges who were consulted by the Chief Justice of India. I think such a consultation was clearly redundant. If the Chief Justice of India had consulted two judges and the same two judges were also consulted by the government, then in my humble opinion the spirit of article 124 was not adhered to. There must be wider consultations and then alone the President can be enabled to make a choice in the best manner possible. Here also I would enter a caveat that when consultations take place with the judges, details of the consultation must not be revealed to the wide world. In the case of the appointment of a judge recently I was surprised to find that the details of consultation with the Supreme Court were made public. May be there were some pressures on the government to reveal the contents of consultation. But whatever the pressures on the government my submission is that the government should

not make public the details of consultation. Otherwise, nobody would ever give free and frank advice to the government in regard to these matters.

The third condition also must be made very clear. You would recall that often it is said by the government—it was said in the past also—that seniority cannot be the sole criterion in this matter. I wholly agree with this proposition; nobody in his senses would suggest that seniority should be the sole basis for appointment. But my submission is that seniority does constitute a plus point; everything being equal the senior-most must be selected. This must be made absolutely clear by the government, that if we have got a number of able judges, the senior-most among them would be selected. Therefore, let there not be a sweeping statement from the government. That seniority cannot be the criterion, we would all agree, but we would also like to see that seniority is given due weight.

Then, how to proceed about this in a proper way? To my mind, Government must have a list of judges from the various High Courts who are considered to be suitable for appointment to the Bench. It cannot be the government's contention that—there is only one suitable person out of 370. But if there are a number of judges who come in the category of able judges, then the senior-most of them should be selected.

I have tried to lay down a few elements of the norms that can be set up for the appointment of judges. Since the Supreme Court is being expanded, I have no doubt that the government would bear in mind this point. The government may like to consult the Law Commission also in the matter, and then come before the House with some norms. These norms alone will ensure that there is no scope for any doubts or misgivings in the future.

MR. CHAIRMAN: There are 6 or 7 minutes left to 4 o'clock, when there will be voting. After the voting, the Law Minister will reply.

SHRI VASANT SATHE (Akola): Please give me five minutes.

PROF. P. G. MAVALANKAR (Gandhinagar): I have given my name last week and this week also. Kindly give me 5 minutes.

15.53 hrs.

[MR. SPEAKER in the Chair.]

SHRI VASANT SATHE: Sir, when you want to extend the number of judges in the Supreme Court, it is a welcome measure. Frankly, I feel increasing the number by three will not be enough, because with the increasing commissions, you will be needing more and more judges for working as commissions and again we will be where we are, with the arrears in the Supreme Court continuing to pile up. The other day a labour matter which has been going on for 17 years came up in the Supreme Court after it was given priority after 7 years! If this is what happens to a matter which is given priority, you can imagine what must be happening to matters coming up in the normal course. Therefore, you must have even more judges. In this matter, you must not be miserly.

So much was said about committed judiciary, judicial independence being curbed, and so on. But the first thing that this government has done after coming into power was to promote a man to the Supreme Court overthrowing all norms. It may be supersession. When Mr. Desai was promoted, the Supreme Court Bar Association boycotted his oath-taking. The High Court Bar Association boycotted. Not only that; all the courts observed a black day in Gujarat and have passed a resolution saying that hereafter in Gujarat, if either this

Judge or another judge from the Supreme Court or the Minister of Law came to that State, they would not only boycott any reception given to him, but that they will not also give him any reception. (*Interruptions*) I do not mean anything personal against him. What I am saying is that by superseding other judges, reflection will be cast and has been cast on other judges. The only main reason for elevating this hon. Judge is stated to be the fact that he happens to be the nephew of the Prime Minister. (*Interruptions*) Let this be contradicted. Let Morarjibhai say that it is not so. He has stated in his autobiography that his father happens to be his 'Mama'. Eight or ten years back, this gentleman was promoted to the High Court by making out a special cadre for judges; and there also he superseded 2 or 3 people. This has been the story of this particular Judge. Does not this smack of nepotism or favouritism and curbing of the independence of the Judiciary? My charge is that all this is being done so as to make a berth available for one of the judges of the Supreme Court, superseding the senior-most judge Mr. Chandrachud, who is due to become the Chief Justice. Therefore, if this fear is true, then it will be the most dangerous thing. Kindly, therefore, see to it that at least you don't have a practice of bringing in judges who will not enjoy or inspire confidence in the Bar and in the country as a whole. This is the warning. They already have brought****

MR. SPEAKER: Please don't record.

SHRI VASANT SATHE: That is what I have to say.

****Not recorded.