

## NOES

Ramamurthy, Shri K.

MR. SPEAKER: Subject to any minor correction that may be made, the result\* of the division is: Ayes: 318; Noes: 1.

The motion is carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting. The Bill, as amended, is passed by the requisite majority in accordance with the provisions of article 368 of the Constitution.

*The motion was adopted.*

16.10 hrs.

SUPREME COURT (NUMBER OF  
JUDGES AMENDMENT) BILL—  
*contd.*

MR. SPEAKER: We now take up further consideration of the Supreme Court (Number of Judges) Amendment Bill. The hon. Minister.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): Mr. Speaker, Sir, I am again very grateful to all the hon. Members of this House for the second time who have given me whole-hearted support on the provisions of this Bill.

A few points have been raised in the debate by the hon. Members which I would like to deal with in my reply. First of all, the hon. Member, Shri Somnath Chatterjee, raised a point as to why the Supreme Court should not sit in separate Benches. He raised a question that justice is very expensive in this country, the distances are long and the question of the Supreme Court Benches sitting in different parts of the country needs examination. So far as the question of the Supreme Court sitting in Benches is concerned deeply appreciate

the sentiments behind the suggestion because in this country which is a poor country and which is also a country of long distances, whenever person has a case in the Supreme Court, maybe sometimes he has to travel long distances which also makes justice even more expensive than what otherwise would have been. But another hon. Member, Shri Kanwar Lal Gupta, gave his tales of woe, when he happened to go to the Supreme Court in connection with his election petition which he had the good fortune of winning, as to what expenses he was put to in connection with the election petition, he told the House that even for reading the papers, the members of the Bar or rather the member of the Bar whom he happened to engage wanted Rs. 8000. He must have been as distinguished a member of the Bar as Shri Somnath Chatterjee.

SHRI SOMNATH CHATTERJEE: Perhaps, I would not have charged him so much.

SHRI SHANTI BHUSHAN: This may be a special friendship for Mr. Kanwar Lal Gupta. Of course, everyone cannot claim to have the privilege of being friendly with Shri Somnath Chatterjee. But that is a separate thing.

The problem of the high fees charged by the members of the Bar is not fairly easy of the solution. I know, from my personal experience, it is not merely that the members of the Bar want really earn that much, that they have to charge such high fees. I am saying from my personal experience that even in those years when the income-tax which was payable beyond a certain figure, namely, Rs. 2 lakhs, was 97.75 per cent, even those members of the Bar who

\*The figures of the division announced were on the basis of figures shown on the machine and votes recorded through Tellers. Subsequently, on usual check with the photograph it was found that the vote of Shri R. D. Gattani who voted for 'AYES' through Tellers had already been recorded for 'AYES' by the machine. Therefore, the correct figures of the division are: Ayes 317; Noes 1.

were paying full income-tax on their entire income, even though they had to per force keep on increasing the fees on account of the hard realities that they were so much in demand that it was not possible for them to keep up with the work which was given to them and the only way left to them was to keep on gradually increasing their fees in order to discourage the people coming to them. Of course, there are companies and there are people to whom the payment of fee is not a matter of importance at all. Therefore, the only way in which expenses can be kept within a reasonable limit is to keep on increasing the fees and decreasing the area of clientele. Even I had to do it. That problem is there. It is not that this problem does not require solution and justice should not be made cheap. But at the same time I would say that, so far as this suggestion is concerned, namely, the Supreme Court may sit in Circuits or Benches in different places in the country, perhaps, this would create more problems than it would solve. So far as the Supreme Court is concerned, being the apex judicial body in the country, necessarily it cannot become an unduly large court. It has got to remain a court within reasonable dimensions because it must be a court which can function as a single court, which would reflect the homogeneity of the court also and which, at the same time, would represent the very cream of judicial talent in the entire country. If the Supreme Court is made too large, then the distinction between the stature of the Supreme Court and the stature of the High Court—even High Courts are, of course, of very high stature—would, perhaps, diminish and in that case the Supreme Court would cease to serve the purpose for which it was constituted by the Constitution itself....

**SHRI SOMNATH CHATTERJEE:** What has happened to the High Court in your State, the Lucknow High Court? (Interruptions)

**MR. SPEAKER:** Your High Court is not far behind.

**SHRI SOMNATH CHATTERJEE:** That is true. Because of too many litigations, we want a Circuit Bench in North Bengal. But they are not giving. Do not go by theories only. Theories have to be tested.

**SHRI SHANTI BHUSHAN:** If the Supreme Court is made very large, as I was saying, then, perhaps, it will cease to perform the function for which it is meant. Therefore, to conceive of having several Branches of it in various parts of the country will not be a practical proposition. That is easy to see....

**SHRI SOMNATH CHATTERJEE:** Has it been rejected out of hand just now or will you consider it?

**SHRI SHANTI BHUSHAN:** I am not rejecting it. I am only saying that these are the difficulties which should be taken into account in considering the suggestion. That is all I am saying. I am not rejecting anything. I am not standing here to reject any important suggestions made by hon. Members.

**SHRI VASANT SATHE:** Why don't you make a beginning by having a Bench, say, in Bangalore and try it out and see if the dignity and functioning would be affected.

**SHRI SHANTI BHUSHAN:** These are very valued suggestions coming from persons with ripe experience. For the first time when I heard Mr. Sathe speaking, I thought that Mr. Sathe represented the rich experience of 60 years, but when I looked at him, I was surprised to find him to be so young. I have been told that it is a name adopted by him and that it has nothing to do with 60 or anything like that.

Hon. Member, 'Mr. Allegation'—since he repeated an allegation, I happened to say so—, Mr. Alagesan.,

**SHRI VASANT SATHE:** Do not make an allegation against him.

**SHRI SHANTI BHUSHAN:** Mr. Alagesan referred to an appointment which has recently been made in the Supreme Court. As all the hon. Members are aware, two appointments have been recently made in the Supreme Court. One of those appointments raised some controversy, and it seems to me that this controversy arose on account of some misunderstanding unless it was a deliberate work of some interested persons; I would like to put a more charitable interpretation on the kind of controversy which was raised, namely, that it had arisen on account of some kind of a misunderstanding. But I am happy to say, and I have had the occasion to say the same thing earlier also—and I am grateful to Mr. Somnath Chatterjee also because he has said that—that he is one of the most brilliant judges ever appointed to the Supreme Court, so far as the case in point is concerned. I am also very happy to say that a close friend of Mr. Sathe, an important Member of his own Party—I am referring to hon. Member Shri D. P. Singh of the other House—openly congratulated me in the other House: he said that he would like to congratulate the Law Minister or one of the most brilliant judges having been appointed to the Supreme Court, namely, Mr. Justice Desai....

**SHRI VASANT SATHE:** Let me say this. He may be one of the most brilliant judges. I am not controverting this. I am only asking as to why he should have superseded the other most brilliant judges.

**SHRI SHANTI BHUSHAN:** I will come to that. Now my response to Shri D. P. Singh was: Do not thank me, thank the Supreme Court; you congratulate the Supreme Court, do not congratulate me. This was because the selection had been made by the Supreme Court and we are com-

mitted to the independence of the judiciary. But, as the hon. Member, Shri Shyamanandan Mishra has rightly said, consultation does not mean dictation. When the high authority like the Supreme Court, or the Chief Justice of India or the Chief Justice of any High Court etc., are required to be consulted, that does not mean that whatever advice they give, becomes totally binding on the Government and the Government is bound down hand and foot. But that advice from those constitutional quarters requires very careful consideration and is not to be lightly disregarded unless there are weighty reasons on the basis of which such advice must be disregarded and the attention of those authorities drawn to any other facts which they have failed to take into consideration. Until then, it would not be right, in the absence of any such weighty considerations for the Government, the executive, which is a political body, to substitute or reject the advice of such constitutional authorities, and to say that this is for us to decide whether 'A' is abler or 'B' is abler and so on.

Then, a reference was made to the attitude having been adopted by the Gujarat Bar Association.

**MR. SPEAKER:** Why don't you come to the Bill instead of going to these individual cases?

**SHRI SHANTI BHUSHAN:** Sir, it would be my duty to reply to these things because these have been referred to here.

**SHRI SAUGATA ROY** (Barrack-pore): Sir, it is good that the hon. Minister is taking pains to explain these things.

**SHRI SHANTI BHUSHAN:** Mr. Speaker, Sir, I would bow down to your directions and if you feel....

**SHRI VINODBHAI B. SHETH** (Jamnagar): I have got personal knowledge that Justice Desai was reluctant to take the oath of Office in

Supreme Court just to save the embarrassment caused to the Government through the press.

**SHRI VASANT SATHE:** The Minister has not explained if Justice Desai is a close relative of the Prime Minister.

**SHRI SHANTI BHUSHAN:** Even if the closest relative of Shri Sathe was to be considered for appointment, I shall not take into consideration his relation, with Shri Sathe while considering the question as to whether he should be appointed or not. The relationship is a matter of absolute non-concern in these matters. It is the merit of a person that would be the criterion for making appointments to these high offices.

**SHRI VASANT SATHE:** But it may disqualify other eminent judges.

**SHRI SHANTI BHUSHAN:** Now, I would deal with some other points that have been raised particularly by the hon. Member, Shri Shyamnandan Mishra in regard to the consultation under Article 124 and so on. He has raised the point, namely, whether the Chief Justice alone can be consulted or other judges of the Supreme Court also must be consulted, such of them, as the Government might like to consult, or even some of the High Court judges must also be consulted. I would like to say that perhaps it was for the first time when the Government decided to consult judges other than the Chief Justice of India in this connection. Specific letters to those other judges were written inviting their attention to Article 124 and saying that the Government would like to have their views. It is only thereafter that the Chief Justice and those judges got together, discussed and arrived at unanimous conclusions and they sent those unanimous conclusions of those three judges who were sought to be consulted by the Government and on the basis of these unanimous views of those judges, ap-

pointments were made to the Supreme Court.

**SHRI SHYAMNANDAN MISHRA:** I would like to have one clarification, and that is where Article 124 requires consultation with other judges of the Supreme Court, should it be an assembly of the other judges with the Chief Justice that would yield the desired result or should they not be consulted separately in order to arrive at the best choice? The hon. Law Minister said that they had asked two other Judges to give their opinion in this matter and these two Judges got together with the Chief Justice and all the three of them sent their views in this matter. Now, what Art. 124 requires is that the Chief Justice would be consulted as also the other Judges. Probably, the intention of the Article is that there should be an advice from the other Judge independent of the advice of the Chief Justice. That is my interpretation. Now, in this case, Mr. Speaker, what seemed to have happened is that the Government also consulted the same Judges whom the Chief Justice had the pleasure to consult. That does not seem to me the spirit of Art. 124.

**MR SPEAKER:** I am not going into the question of law. I had some experience here. Uptill the last occasion, on not a single occasion, had any Government consulted anybody other than the Chief Justice, and times other Judges did not know whom the Chief Justice had recommended.

**SHRI SHYAMNANDAN MISHRA:** This is an improvement on that. But would he not go a step further and seek the independent advice of the Judges?

**SHRI SHANTI BHUSHAN:** Perhaps the hon. Member does not know the full facts. So far, as the government is concerned, it independently consulted the Judges but how can Government prevent them, after it seeks the independent advice of the Judges, from their coming together and

[Shri Shanti Bhushan]  
discussing and then arriving at a unanimous decision. It cannot tell them, 'Don't discuss with each other. You give your advice but don't meet each other' and so on. The Government cannot do that.

**SHRI SHYMANANDAN MISHRA:** Then why did the government consult the self-same Judges as the Chief Justice had consulted?

**SHRI SHANTI BHUSHAN:** The hon. Member has not heard me. The Chief Justice had talked to them after the letters had been sent to two other senior Judges, namely, that the Government would like to consult them and it is only thereafter that the three got together and they conferred and came to a unanimous solution. It is not that the Chief Justice had earlier independently consulted them and the Government wanted to consult the self-same Judges.

So far as the High Court Judges are concerned, even Pandit Nehru had applied his mind to this question and he had come to the conclusion that since the field of choice included all the Chief Justices and the Judges of the High Courts, normally, as a rule, it would not be proper and desirable to consult the High Court Judges because naturally if they are themselves in the field of eligibility and choice and consideration in the matter of elevation to the Supreme Court, then perhaps it would not be very useful normally....

**SHRI SHYAMNANDAN MISHRA:** Then why has it been laid down in the Constitution?

**SHRI SHANTI BHUSHAN:** That does not mean that in some rare cases when you can get some useful consultation from the High Courts, you should not consult, but that cannot be made the rule. It may be that in some exceptional situation where the situation is like, 'All right, some useful material may be forthcoming from the High Courts also. So we may consult them'....

**SHRI KANWAR LAL GUPTA:** What about the attitude of the Judges during the emergency.... (Interruptions)

**SHRI SHANTI BHUSHAN:** I would not like to make any comment on the views of the Judges or on the decision of the Judges. So, it would not be right for me to enter into that kind of controversy.

**MR. SPEAKER:** Let us not drag them in here.

**SHRI SHANTI BHUSHAN:** I am very grateful to hon. Shri Shyamnandanji Mishra because he always has been very kind to me and gives me an opportunity to clear up many things which remain in the realm of doubt. Here also he has been kind enough to make a mention in regard to the code of judicial ethics in order to, as he himself said, give me an opportunity to clearly tell us as to what the position is. I am very grateful to him for that, because on earlier occasions also I have said in this House as well as in the other House that so far as the Government is concerned, government does not think that it is for the government to evolve or lay down or enforce any code of conduct so far as the Judges of the High Court and the Supreme Court are concerned, the reason being that they are such high functionaries that except for those matters which are laid down in the constitution itself, namely, proved misbehaviour or incapacity and so far as the constitution is concerned, if there is any misbehaviour on the part of a Judge or incapacity on the part of a Judge, then certainly this House and the Parliament shall be concerned and the matter would require being gone into. But, apart from those matters of proved incapacity or misbehaviour, the question of the government a sort of enforcing any kind of a code of conduct against the Judges, either of the High Court or of the Supreme Court, does not arise.

**SHRI SHYAMNANDAN MISHRA:** I would like to ask the hon. Law Minister about the communication which was sent by the Chief Justice.

**SHRI SHANTI BHUSHAN:** Let me finish my reply. Government has never proposed to the supreme court or to the Chief Justice of India that a code of judicial ethics should be evolved or should be suggested nor has it been even consulted in the matter of judicial ethics for the judges. I want to make it absolutely clear when I say that. I hope the hon. Members would appreciate that. A high functionary has certain duties; he wants to consult his judicial colleagues; how can the Government come in the way? It would not be right for the Government to say, tell this either to the Chief Justice or Chief Justice of the High Court as to what consultation you should have with the judicial colleagues. Government cannot come in the way. If, however, at any stage the high functionary makes a suggestion after discussion then, only will be that the Government will be duty-bound to go into it. It does not mean that it will accept it, But, whatever suggestions come from the judiciary will be considered by the government and it shall be the duty of the government to apply its mind to whatever suggestions are made. So, that is the position here. Government has neither been consulted nor the Government has ever proposed any code of judicial ethics or constitution of a committee of Chief Justices to go into certain matters to have any kind of check on the work of high court judges etc. I want to make that very clear. I am grateful that the hon. Member has given an opportunity to me to make this clear.

He also referred to the fact that there is a suggestion requiring judges of the high court to give an undertaking or take an oath that they shall not drink in public or private except on medical grounds and so on. I want to make it clear that Government has never proposed nor has government been consulted in regard to the taking of such an undertaking

from judges of the high court or the supreme court. Also I wish to make another thing clear. The question of taking an undertaking from a judge is entirely different from the case when a person is appointed as a judge; he is a member of the Bar; all the factors should apply to him and are taken into consideration before an appointment is made. There is a difference here. Giving undertaking after the appointment stands on an entirely different footing. I will give you one example. Certain occasions have arisen in which persons who were appointed as additional judges were involved. When the question came of their being appointed as permanent judges they were not willing to be appointed because they wanted to take advantage of their right of practice in the same high court which they could not if they are appointed permanent judges. So what they did was this. They accepted the offer of additional Judgeship. When the question came of their becoming permanent judges, they refused the offer. So, this procedure was evolved. Before a person gives an offer for additional Judgeship an undertaking will be taken from him that in future if he is given an offer of permanent judgeship, he will not decline it. That undertaking is taken before he is appointed as Additional Judge. That is not interference with the judiciary.

The directive principle about prohibition is wellknown to the House. (*Interruptions*) Government has made a proposal that before a person is appointed as judge, it should be ensured that either he does not drink or on being appointed as judge, he would not be drinking and to restrict the appointments only to those persons who either do not drink or who are prepared not to drink after being appointed as judge. This is the proposal which is under the consideration of the Government.

On this proposal, it was decided that first, the judiciary should be consulted. Therefore, the Chief Justice of India was consulted in regard to this proposal. Such a consultation is not yet complete because the Chief

[Shri Shanti Bhushan]

Justice of India has not yet given his final opinion. A decision in regard to this matter, would be taken only after the well considered opinion of the Chief Justice of India is received. It can be available only after he has also consulted the high courts. In the meantime, in regard to names which had been recommended by the various Chief Justices, an enquiry was made from them in regard to this matter so that the necessary information may be available to Government.

DR. SUSHILA NAYAR (Jhansi): What about the drinking by judges of the High Courts? How will you ensure stopping that?

SHRI SHANTI BHUSHAN: I have no intention to enlarge this debate into a debate on the merits or demerits of prohibition etc.

SHRI VASANT SATHE: Will this test apply in the appointment of Chief Justice of the Supreme Court? Was it done in February?

SHRI SHANTI BHUSHAN: No, Sir. So far as this is concerned, it has been made clear by the Government that this criterion would be applied only before the appointment of a person to the highest judiciary. This is applied for the first time before a person is appointed as a judge in the High Court. It would not apply to the person who is elevated as a Chief Justice of the High Court or who is elevated as a judge of the Supreme Court.

SHRI HITENDRA DESAI (Gadhra): What about the Minister's drinking habits?

SHRI SHANTI BHUSHAN: If he has received some information about drinking, I would like him to correct it.

SHRI SHYAMNANDAN MISHRA: May I seek one clarification from the Minister?

MR. SPEAKER: Kindly ask clarification for one point only.

SHRI SHYAMNANDAN MISHRA: The explanation which he offered over this matter has served to worsen the situation. What he has suggested is this. That is those who occupy the benches would be protected and those who would be occupying the Benches will have to give an undertaking. That seems to be the plain position

Is it not a discrimination of the grossest type? We ask him; can there not be a rule applicable to everybody? How can you say that the present incumbent is protected from that kind of undertaking. (*Interruptions*). If the Government wants to enforce the policy of prohibition strictly, that should be applied to all judges and Minister and all Members of Parliament. So, where is the question of making a discrimination? I must say that it is a height of audacity to apply it only to the judges. The Hon'ble Member has tried to make a distinction between taking an undertaking after the appointment is made and taking an undertaking before the appointment is made. I should like to find out the difference between the two. At 4.40 I am not a judge at 4.41 I would be a judge. After 4.41 the hon. Law Minister says that I would not be required to give an undertaking. At 4.40 I would be required to give an undertaking. Is that a convincing decision? It does seem to me that the hon. Chief Justice of India was not saying so in his letter and that the hon. Law Minister is not so innocent as he has been trying to make out in respect of proposal for the formulation of the code of ethics. The hon. Chief Justice has said:

"I am glad to be able to inform you that the present government is very willing to strengthen our hands and to help us move in the right direction by any legislation which may be necessary for this purpose."

**SHRI SHANTI BHUSHAN:** If the hon. Member wants to cross-examine me, I have no objection; I would be happy to be cross-examined by such an eminent person as Shyam Babu.

**SHRI SHYAMNANDAN MISHRA:** In the letter of the hon. Chief Justice no such distinction has been sought to be made as the hon. Law Minister has made.... (*Interruptions*)

**DR. SUSHILA NAYAR:** Drinking by judges is very bad. It must be stopped at all levels.

**SHRI SOMNATH CHATTERJEE:** In future will it be the criterion in deciding the competence of a person to become judge? That is the point.

**PROF. P. G. MAVALANKAR:** Will you go into the competence of drinking and non-drinking?

**SHRI SHANTI BHUSHAN:** May I suggest with great respect of the hon. Members....

**SHRI VASANT SATHE:** We have a very difficult choice. What are we to do? Chodo Sharabi; Pio....What?

**SHRI SHANTI BHUSHAN:** With great respect to hon. Dr. Sushila Nayar and Shri Shyamnandan Babu, may I suggest that they settle the differences outside the House, if possible.

**SHRI SHYAMNANDAN MISHRA:** She does not want to make a distinction between an incumbent already there and the one who would be taking office.... (*Interruptions*).

**MR. SPEAKER:** No clarifications now.

**SHRI SHANTI BHUSHAN:** If the hon. Members would do me the courtesy of permitting me to speak at least for two minutes at a time, may I say this. I am happy that Shyam Babu referred to another matter. He has read out some sentences; at one stage he has suggested that what the Chief Justice of India says, etc., should not be made public. Evidently in some matters, he wants to make

a departure. It does not matter. I should like to make it clear that the reference is to the matter of delays in the administration of justice and the disposal of arrears in courts. So far as that matter is concerned, certainly the government is concerned and the government had been giving much thought to this problem, what changes can be made in the judicial system, in the legal system, in the various Acts and rules and procedures and what methods can be evolved in tackling successfully this very important problem of delays in the administration and arrears in courts. It is in this connection certain suggestions which had been received by the government from various persons were sent to the judiciary, because even in these matters we want to consult the judiciary so that we may have the benefit of their views also before taking a final view of those suggestions. Those suggestions were sent to the Chief Justice of India in order to solicit their views, so that they can consider and give their advice on those suggestions. It was in that regard that we had said that, so far as this problem of arrears and delays in the administration of justice is concerned, by suitable legislation and proper procedures, in consultation with the judiciary, namely, with the Chief Justice of the Supreme Court, it could be worked out. So that, it was in this connection that the Chief Justice of India addressed a letter to the Chief Justices of the High Courts. That letter dealt with this problem of arrears and various suggestions in regard to delays in the administration of justice. He also said various other matters though the Government was not concerned with that. Therefore, so far as we are concerned, when he wrote this, this refers only to the problem of arrears and the delays in the administration of justice. So that, I have made that position very clear, the Government has made the position very clear so many times, and Government have said it before this House, that the Government is second to no Government in the world, so far



[Shri Shanti Bhushan]

as the independence of the judiciary is concerned, and the respect for the judiciary is concerned. That is why we have demonstrated that by our action that we want to attach the highest importance to the views of the judiciary in all these matters and we want that they should have a very important place in the Constitution and the constitutional framework of this country, because they have a very important role to play.

Then I come to what Shri Alagesan has said. When there is a proposal before the House for an increase in the number of Judges, he wanted to know as to whether this proposal is justified, whether the Judges work enough or not and whether there is also any need to see that our Judges are doing or performing their duties properly, whether that has been taken into consideration at the time when there is a proposal to increase the number of Judges. I quite appreciate what he has said. But let me tell him and tell the hon. House that, so far as the Supreme Court is concerned, and the Supreme Court Judges are concerned, we are a witness to the fact that the Supreme Court Judge is the most hard-working person in the world. That we may not be able to say about each individual High Court Judge but, so far as the Judges of the Supreme Court are concerned, that is the tradition, the practice and the system of procedure which they have upheld. They have to burn midnight oil almost every day.

**SHRI O. V. ALAGESAN:** I spoke about the High Court, which is the recruiting ground for Supreme Court.

**SHRI SHANTI BHUSHAN:** So far as the Supreme Court Judges are concerned, there is no doubt in my mind that they are very hard-working people, and beyond that it is not possible for any person to work. So far as the High Court Judges are concerned, as the hon. Member himself has said, there are Judges and Judges. There are High Court Judges who work very

hard, who burn midnight oil and some others who may not work that much. The sentiments of the House, the sentiments of the people of India, about delays in the administration of justice are known to the Judges, and we can expect that the Judges who would be appointed to tackle this problem would come out with their best in the discharge of this very important function, namely, the administration of justice to the people of India. I have no reason to suspect that the Judges of this country, each one of them, would not be performing their duty or not giving their best in this direction. I am sure they would devote their time and thought to this problem of arrears and delays in the administration of justice, as to how this problem can be tackled.

In that connection, a reference was also made to article 136 and something which was said by the Law Commission, that perhaps the scope and power of interference under article 136 is so wide, and that may be the reason why the Supreme Court has not been able to go into this work. This is a matter which requires thought.

So far as the Supreme Court of the United States is concerned, it has a role to play, the most important role, to set the direction to the development of law and so on, so that it can do justice to it and it does not lag behind, and it continues to perform that important function. The Supreme Court, as the apex body in the judiciary hierarchy, is there for a particular purpose, the very important purpose of development of law for the whole country uniformly, so that one High Court is not going in one line and another High Court in another line and so on, to resolve the differences between the various High Courts and also to set the tone and direction in which the development of law must take place, the broad principles on which the development of law must take place, then evidently it is for the Supreme Court to evolve; and I have no reason to think that they will also not ponder; I believe

they are already pondering over it; and there are suggestions forthcoming from them as to how this problem can be tackled. May be, it is not possible for the Supreme Court to do justice in every case—that is the function of the High Courts and the other courts—and the Supreme Court's main function is to set the direction of the development of law so that adequate attention would be paid to that also.

Mr. Nathwani made a reference to a specialist Bench and so on. The importance of that is also being increasingly realized. But that again is a matter for the Chief Justices of the High Courts and for the Chief Justice of India. And there is no reason to think as to whether the Chief Justices will also not realize the importance of this specialization in Benches and so on, and would not take necessary steps to remedy the situation.

Lastly, coming to the irrepressible Mr. Sathe, he has given us an instance of a 17-year-old labour matter coming up for hearing before the Supreme Court after being expedited. That only highlights the magnitude of the problem, viz., that even labour matters have to wait, and even then not in their own turn they have to be expedited after 17 years in order to provide a sort of a decision or a solution to the problem. This only highlights as how we have had the administration of justice in this country. And this requires a thoughtful approach on the part of all the sections of the House and of all hon. Members of this House so that in future we may be able to evolve ways and means to successfully tackle the situation because the rule of law—which is the foundation of democracy—requires not merely giving a theoretical right to a person to go to the court of law for redressal of his legal grievances, but also an assurance that his legal

grievances would be redressed within a reasonable time. And the concept of reasonable time cannot be in years or decades. It has to be in months, at the most in a year or so.

SHRI VASANT SATHE: At least during his life time.

SHRI SHANTI BHUSHAN: Life-time itself will be a variable factor.

These are the various important points made by the hon. Members. I am grateful to them and I thank them once again for their universal and unanimous support.

MR. SPEAKER: The question is:

“That the Bill further to amend the Supreme Court (Number of Judges) Act, 1956, be taken into consideration.”

*The motion was adopted.*

MR. SPEAKER: We now take up clause-by-clause consideration. Amendments to Clause 2.

Clause 2—(Amendment of Section 2)

श्री लक्ष्मी नारायण नायक (खजुराहो) : मैं प्रस्ताव करता हूँ :

Page 1, line 6,—

for “seventeen” substitute “fifteen” (1)

MR SPEAKER: Mr. V. Arunachalam, are you moving?

SHRI V. ARUNACHALAM: I am not moving, Sir.

MR. SPEAKER: Mr. Anant Dave is not present. Now Mr. R. N. S. Yadav.

श्री रूपनाथ सिंह यादव (प्रतापगढ़) : मैं प्रस्ताव करता हूँ :

Page 1,—

after line 6, insert—

“(ii) to section 2 of the principal Act the following proviso shall be added, namely:—

“Provided that twenty-five per cent of the number of Judges in

श्री रूपनाथ सिंह यादव]

the Supreme Court shall be reserved for the suitable and qualified persons available among the Scheduled Castes and other social-ly backward classes." (4)

MR SPEAKER: Now Mr. O. P. Tyagi:

SHRI OM PRAKASH TYAGI (Bahraich): I beg to move:

Page 1,—

after line 6. insert—

'(ii) to section 2 of the principal Act the following proviso shall be added, namely:—

"Provided that no person shall be appointed as Judge who is more than sixty years of age at the time of appointment." (5)

श्री श्रीमती लक्ष्मी नारायण नायक : मैं एमैंड-मेंट पेश नहीं कर रहा हूँ लेकिन चेयर से यह दरखास्त करना चाहता हूँ कि भविष्य में जिन लोगों के संशोधन हों, उनको बोलने के लिए बरीयता मिलनी चाहिए। मुझे खेद है कि शासन से इस तरह की व्यवस्था नहीं की जाती।

16.51 hrs.

[DR. SUSHILA NAYAR in the Chair]

SHRI VINAYAK PRASAD YADAV (Saharsa): I beg to move:

Page 1,—

for clause 2, substitute—

"2. In section 2 of the Supreme Court (Number of Judges) Act, 1956, for the word "thirteen", the words "seventeen, out of which ten shall be reserved for persons who

are Adivasis, Harijans or belong to backward classes" shall be substituted.' (8)

SHRI VAYALAR RAVI: Sir, the Calling Attention should be taken up at 5 O' Clock, as decided earlier. This Bill can be taken up tomorrow.

श्री श्रीमती लक्ष्मी नारायण नायक : सभापति महोदया, मेरी प्रार्थना है कि मंत्री महोदय जो भी संशोधन आये हैं, उन पर अपनी सम्मति प्रकट कर दें।

सभापति महोदय : जिन्होंने अमेंडमेंट मूव किए हैं, वे अगर एक-दो मिनट बोलने के लिए लेना चाहते हैं तो ले सकते हैं।

श्री लक्ष्मी नारायण नायक : माननीय सभापति महोदया, विधि मंत्री जी ने "उच्चतम न्यायालय (न्यायाधीश संख्या) अधिनियम, 1956 का और संशोधन करने" का जो विधेयक रखा है मैंने उस पर अपना संशोधन दिया है कि 17 जजों के बजाय 15 और जज रखना उपयुक्त होगा।

हमने अभी 44वां संविधान संशोधन पास किया है। उसके द्वारा हमने पूर्व संविधान संशोधन की उस व्यवस्था को रद्द कर दिया है जिसमें यह था कि किसी भी सांविधिक मामले की सुनवाई के लिए सात जजिज की बैच का होना आवश्यक है। इसलिए सुप्रीम कोर्ट को अब संशोधन पास होने से सुविधा मिल गई है और उसमें अब ज्यादा जजिज की आवश्यकता नहीं होगी।

मैं यह भी निवेदन करना चाहता हूँ कि केवल जजिज की संख्या बढ़ाने से फैसले जल्दी नहीं होंगे शासन को यह भी देखना होगा कि ये मुकदमें कहां से आते हैं, किस तरह से आते हैं। अगर

हमारा शासन सक्षम है, प्रशासन ठीक ढंग से चल रहा है, न्यायिक ढंग से चल रहा है तो मुकद्दमेबाजी कम होगी और न्यायालय में मुकद्दमें भी कम जायेंगे। जैसा कि कांग्रेसी शासन में था, हम लोगों ने भी उसी चीज को दोहराया है कि कार्यपालिका और न्यायपालिका को अलग अलग नहीं किया। ये दोनों अलग अलग होनी चाहिए। आज कल क्या होता है कि एक अधिकारी शासन भी करता है और वही व्यक्ति न्याय भी करता है मैं समझता हूँ कि जब न्याय करने वाला और शासन करने वाला व्यक्ति अलग अलग होगा तभी मुकद्दमेबाजी कम होगी।

एक मेरा यह निवेदन भी है कि जज लोग लम्बे लम्बे फैसले न दें। हम चाहते हैं कि फैसले छोटे हों और छोटे होने के साथ वे ठीक भी लिखें। इसलिए मैं चाहता हूँ कि 17 जजेज करने के बजाय 15 जजिज ही करने चाहिए। जिस तरह हम मजदूरों को कहते हैं कि वे अधिक समय दें, उसी तरह से हमें जजों से भी यह अपेक्षा करनी चाहिए कि वे अधिक समय काम करें। वे आजकल गरमियों में छुट्टियाँ मनाते हैं इन छुट्टियों में भी उन्हें काम करना चाहिए। इस तरह से इतने जजों से काम चल जाएगा।

**समापति महोदय :** अभी चूँकि स्पीकर साहब ने कहा था कि पांच बजे काल अटेंशन लिया जाएगा, अब पांच बज गए हैं, इसलिए मैं सुझाती हूँ कि इस विधेयक को पांच दस मिनट में समाप्त कर दिया जाए। (उत्सवधान)।

विधि, न्याय और कम्पनी कार्य मंत्री (श्री शांति भूषण) : मेडम, यह बिल इतना सिम्पल है, इसमें और देर नहीं

लगनी चाहिए। आप इस पर वोटिंग करा लीजिए। इसके बाद इसे राज्य सभा में भी पास कराना है।

17 hrs.

**SHRI HITENDRA DESAI:** The Calling Attention must be taken up at 5 O' Clock.

**MR. CHAIRMAN:** This is a simple Bill. The hon. Minister can reply in five to seven minutes. This has to go to the Rajya Sabha also.

**SHRI VAYALAR RAVI:** No.

**MR. CHAIRMAN:** Will you then agree that after the Calling Attention and Half-an-Hour discussion we take this up and finish it?

**SHRI VAYALAR RAVI:** We agree.

**PROF. P. G. MAVALANKAR (Gandhinagar):** On a point of order. You are right in saying that the Calling Attention must be taken up at 5 O' Clock, but at 5.30 there is a half-hour discussion. Then there are statements to be made under rule 377. So, after all these are over, the Bill can be resumed.

**MR. CHAIRMAN:** According to the Order Paper left with me by the Speaker, first there are statements under rule 377, then there is Calling Attention and then there is the half-hour discussion. You can finish all that, but please stay to finish the Bill after that. That is all. Do you agree?

**HON. MEMBERS:** Yes.