

15 30 hrs.

### HIGH COURT JUDGES (CONDITIONS OF SERVICE) AMENDMENT BILL

MR. DEPUTY-SPEAKER: We shall now take up the Bill further to amend the High Court Judges (Conditions of Service) Act, 1954.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): I beg to move:\*

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

There has been a widespread feeling that the condition of service of High Court Judges requires to be improved. This feeling has been expressed both in the House and outside. The matter has been under consideration of Government and after due consideration. Government has recognised that there is a need for improvement of conditions of service of Judges. The present Bill is to put into effect the decisions to improve the conditions of service of Judges of the High Courts.

The present Bill which seeks to amend the High Court Judges Conditions of Service Act, 1954 seeks to provide the following benefits:

(1) Extension of the scheme of family pension as admissible to Central Government officers to the Judges of the High Courts drawn from the Bar, who were so long not entitled to it.

(2) Provision of death-cum-retirement gratuity in the case of High Court Judges who are governed by Part I of the Schedule of the High Court Judges Conditions of Service Act, 1954, i.e. those recruited from the Bar. It is proposed to give them the facility of death-cum-retirement gratuity admissible to Class I officers of the Central

Government subject to the modification that the minimum qualifying service for the purpose of entitlement shall be two years and six months and the gratuity will be calculated at the rate of 20 days' salary for each completed year of service as a Judge subject to a maximum of Rs. 30,000.

(3) Provision of rent free accommodation to the Judges of High Courts and in case a Judge does not occupy the residence allotted to him, a house rent allowance at the rate of 12½ per cent of the salary.

(4) Grant of conveyance allowance of Rs. 300 per month for Judges of the High Court.

(5) Sumptuary allowance of Rs. 300 per month for the Chief Justice of the High Court.

In addition, Government has also considered the question of increase in pension of the Judges. The maximum pension of Government servants on retirement has been increased on the recommendations of the Third Pay Commission by about 48 per cent. There has been no increase in the pension of Judges since the commencement of the Constitution. In the circumstances, it is proposed to increase the pension of the Judges by about 40 per cent. The maximum pension of the Chief Justice of the High Court will be raised to Rs. 28,000 per annum from Rs. 22,400 and that of Judges of the High Court from Rs. 16,000 to Rs. 22,400. The minimum pension admissible is also proposed to be increased from Rs. 6,000 per annum to Rs. 8,000 per annum in the case of High Court Judges.

It has also been considered necessary and desirable to give post-retirement medical facilities to the same extent as are admissible to retired Central Government servants of Class I and also provide that the State Governments should by order provide medical facilities at other places to the retired Judges of the High Courts on the same

\*Moved with the recommendation of the President.

[Shri H. R. Gokhale]

basis as their own employees. The amendments proposed in the High Court Judges Conditions of Service, Amendment Bill, 1976, seek to achieve the above purpose. With these words I beg to move that the High Court Judges Conditions of Service Amendment Bill, 1976 be taken into consideration

MR DEPUTY-SPEAKER. Motion moved.

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

SHRI SOMNATH CHATTERJEE (Burdwan): Sir, it would seem strange that when the real wages and the various entitlements like bonus etc are being revised or taken away so far as the working class is concerned, we should consider a Bill for improving the service conditions of the High Court Judges who are within what we may call the higher income brackets in the country. But we feel that, like the working class, the judges in this country have been getting a raw deal and, along with those of the working class and common people we feel that the service conditions of the judges in this country should be improved as we believe, still, that the Judiciary has to play a very vital role in the constitutional set-up of this country. We also feel that this Bill should have been brought many years earlier, with still better provisions.

Then, perhaps, the Indian judiciary would not have lost the services of a fearless judge like Justice Gokhale when he resigned from the Bench of the Bombay High Court on the issue of better service conditions of judges and, if I may say so, we would have been spared of the agonising experi-

ence of a very great lawyer actively associating himself with the curtailment of the people's human rights because of the company he is now keeping

The reality is that the conditions of service of the judges in this country have almost remained static since independence. As a matter of fact, the judges were getting more salary during the pre-independence days. The terms and conditions, unfortunately, have not been such as to attract competent, meritorious and efficient people on the Bench, and this has had the inevitable consequence, because, when merit ceases to be the criterion for appointment, mediocrity sets in. That is why we find the unseemly spectacle of aspirants for judgeship frequenting the corridors of power and looking for *tadbirkars* to espouse their cause. I am sure, Mr Gokhale is flooded by visits of such people.

It is the sad and painful experience of a large number of practising lawyers in this country as well as of litigants that the standard or efficiency of the new recruits has not been upto the mark and that there has been a very well deserved demand for revision of the service conditions. But fortunately, there are always honourable exceptions in all courts: there have been persons who have made real sacrifices to accept judgeship—competent people are there. But, by and large, the complaint is there, and there is some basis, as I can say from personal experience.

Now, what is the position? Why are we supporting this Bill, although it does not meet with the necessities of the situation? If I may quote from the observations made by Mr. Gokhale at some other place:

"The value of money is determined by the goods and services which it will buy. An advocate who sacrifices his practice at the Bar when he becomes a Judge is, I

think, entitled to expect that the conditions of his service, measured in real terms, will not be allowed to deteriorate and that the authorities concerned will be alive to changing conditions and will make corresponding changes in his real earnings. If this is not done, the Constitutional guarantee relating to the salaries of Judges almost becomes illusory."

"In my opinion, against the background of rising prices, growing inflation and high taxation, the present conditions of service are not consistent with the position which the office of a Judge imposes on him and which he is expected to maintain. It is obvious that he cannot go on grumbling and be constantly in need and yet discharge his duties to the satisfaction of his conscience. It is well known that, in the last few years, leading members of the Bar have declined the invitation to be elevated to the High Court Bench."

"I honestly feel that, in the present conditions, I sha'll be doing injustice to my work if I continue in this state of affairs, for, the compensations which go with a Judge's position have very nearly vanished."

This was said by our present Law Minister, while resigning from the Bench in 1966. The position now is worse, and he has come forward with a Bill for doling out his pittance to the judges of this country. I find, if I am not mistaken, that the real increase in the emoluments will be of the order of Rs. 150 or Rs. 200 after payment of income-tax on the increased perquisites or allowances or salary. And, for this, we are going through a ceremony like this? I feel that what is provided for in this Bill is inadequate. There may be some improvement so far as post-retirement benefits are concerned, but not during the tenure of a Judge when he has actually to discharge his functions, according to Mr. Cokhale, to

the satisfaction of his conscience; unless he mortgages his conscience, he cannot function, according to his own theory.

With the steep rise in the cost of living and the incidence of income-tax, I would like to know what would be the real benefit or advantage that would accrue to the judges. I would request the hon. Minister to tell us that. We feel that as judges still play a very important role, it is necessary that the real effort should be made in bringing out all round improvements in the service conditions of the judges to attract the best talents instead of providing this pittance by driblets. I would like to make it clear, why we are supporting this measure. We want a fearless, honest and independent judiciary which will be the sentinel of the people's rights in this country and which will act as a check on the arbitrary actions of the ever-expanding executive in this country which are out to enslave the people by various Draconian laws and anti-people's rights in this country and the common people and the working class are being eroded fast, it is only the judiciary, apart from vigilant public opinion and the struggle of the working class and the common people, that can keep the executive on its path and prevent the semblance of a democracy in this country from degenerating in a total dictatorship.

We are happy that, by and large, the Indian judiciary has tried to uphold the human rights and human dignity of the people of this country. In spite of the various restrictive laws including procedural laws and laws curtailing people's rights, the judiciary, by and large, has been trying to protect the citizens' rights. The recent tendencies, however, are not in the right direction. I want to take this opportunity of expressing what is being felt not only by me as a practising lawyer, but a very large section of the lawyers of this country. I do not claim myself to

[Shri Somnath Chatterjee]

be their mouthpiece, but I am sure, I am expressing the views of a very large section of lawyers, especially those who are practising in the High Courts or in the writ jurisdiction. We find, these tendencies these day are shaking the people's confidence in the judiciary in spite of the Government's protestations that they are not interfering with the independence of the judiciary. One is that attempts are being made, both overt and covert on the part of the executive to interfere with the independence of the judiciary and to make the judiciary the scapegoat for all their own failures and the ruling party's so that they can find out an excuse by putting the blame on the judiciary.

The other trend is rather on the opposite direction and that is very much discernable and it is an attempt on the part of some of the judges to 'carry' favour with the executive, which, according to me, is pernicious and eating at the very vitals of the judicial fabric in this country. What is happening in this country? The judges have lost all the rights of seniority, the security of the judges' tenure is being threatened by various methods. We have seen that judges in Supreme Court have been superseded. This has happened in the High Courts also. We are not told, why supersession takes place, why one is allowed to supersede the other. We think, these are the clear high-handed activities of an arrogant executive, which is not even prepared to tolerate any bonafide criticism or any check on its actions. What has happened very recently? A judge of the Delhi High Court has been bypassed; he has not been confirmed; his two juniors have been confirmed. The Supreme Court Bar Association has passed a very strong resolution condemning this, but we do not know, why it has happened. The only crime supposed to have been committed by Justice Agarwalla was that he was a party to the decision

in Kuldip Nayar's case, where the Delhi High Court set aside the detention of Kuldip Nayar, an eminent journalist. I think, Mr. Gokhale, as the Law Minister owes an explanation to the country and to this House, why such drastic step has been taken. This is bound to affect not only the independence of judiciary, but will also deter all self-respecting people from accepting judgeship, when they do not know, that once they are appointed temporary judges, whether they will ever become permanent or not. If they do not know whether they are entitled to enjoy the facilities of seniority and when it appears that the Chief Justiceship has become a matter of executive patronage, who will go and enter into such an establishment where there is no security?

I think these are the tendencies which must be curbed. Merely giving them a motor car allowance will not do. If you want really an independent and fearless judiciary, the attempt of the executive to tinker with or take away the rights of the Judges which should be treated as inalienable rights must be stopped and they should not be interfered in a manner as casually as it is being done in this country. That is why we say that there is a deliberate attempt on the part of the Government in this country to interfere with the judicial independence and to hold out a threat to the Judges that the executive will not tolerate any inconvenient decisions from the court. But my appeal will go out to the hon. Judges in this country that they should fearlessly and honestly seek to uphold the oath they have taken. By surrender of their rights and their conscience they will neither enhance their own dignity and position nor will they be able to discharge their functions properly.

The other disturbing feature is the tendency, specially after the proclamation of emergency, that we find in

the various High Courts. I have had the privilege of appearing before various High Courts and I find that the impression is growing in the minds of lawyers and litigants that some of the Judges feel that the king or the queen can do no wrong. I am saying this with a very heavy heart, not in any light vein, but this is the feeling and this is shared by a very large number of people and lawyers in this country. This is a most pernicious attitude which will ultimately force the people to lose faith completely in the independence of the judiciary in this country.

We all know that the State is now the biggest litigant in this country. Everyday disputes between the citizens and the State are coming up before the courts and a feeling has unavoidably been aroused in the minds of the people that as against the government, people will not get justice because it is the government which alone can dispense favours. That is why I found that a High Court employee—I am very sorry to say and I am ashamed to say—was dismissed by the Governor who has no jurisdiction in the matter. The Constitution specifically provides that appointment and dismissal of all High Court employees are solely within the exclusive jurisdiction of the High Court Chief Justice. The High Court employee was dismissed because his only fault was that he was the Secretary of the High Court Employees' Union of which I have the great honour to be the President. When I went to the Chief Justice, he pleaded his complete inability even to raise a protest against the Governor's action of dismissal of the employee . . . . (Inerruptions) This is the position and I have had to go to the High Court and ask for the release . . .

SHRI SATYENDRA NARAYAN SINHA (Aurangabad): What did the High Court do?

SHRI SOMNATH CHATTERJEE: The court directed that so long as the matter is not heard, he will get

full salary and full allowances. That is why that Judge is not a good Judge any longer.

Judiciary should realise that they should not look to the government for favours. Not that we say that the Government is bound to lose all its cases. Certainly we do not say that, but the Judges must be allowed to decide the cases and to decide them according to the laws of the land, according to the constitutional provisions and according to their judicial conscience. But what is necessary is that the Judges should imbibe and develop an attitude of fearlessness and complete impartiality and integrity in the discharge of their duties and functions which I think is of the greatest importance in this country.

There is another recent trend which has developed and which is being encouraged by the executive, by this government and the ruling party and that is that they welcome hobnobbing of the judges with the executive and members of the ruling Party. The recent spate of so-called conferences of lawyers which is happening in State after State are being conducted and managed by particular political parties in this country and also under the aegis of the government. A West Bengal State Lawyers' Conference was held and the Government of West Bengal, if I am wrong, I may be corrected, provided Rs. 2 lakhs for the State Lawyers' Conference . . . .

SHRI M. RAM GOPAL REDDY (Nizamabad): Were you there?

SHRI SOMNATH CHATTERJEE: They would not dare to invite me there. Now, under the aegis of this government, these conferences are being held to propagate a particular point of view and I find Judges are actively participating in them and allowing themselves to be denigrated by others and then actively competing among themselves to denigrate themselves.

[Shri Somnath Chatterjee]

This is a strange sad spectacle which is happening in this country. When this is happening, although right thinking people may not be allowed to open their mouth, you cannot stop them from having a feeling that there is no longer any hope last chance which they can have of protesting or effectively challenging the Government's arbitrary action. I request the Law Minister and also the hon. judges, please leave each other alone. You have to do your duty as an Executive and allow the judges to do their duty in their turn. Do not bring out loll pops in front of them. That is why I have tabled an amendment. I find one of the reasons which is shaking peoples faith in the independence of judiciary is this offer of post-retirement jobs and assignments. This is one of the factors which is polluting the Indian judicial system. I have not got the figures. These figures are not readily available. But between August 1967 and July 1970 I find the Central Government alone gave appointment to 36 retired judges. Once they take up an assignment, the assignment never seems to be over, goes on for three, four or five years and all the facilities which they used to enjoy during their period of judgeship, they continue to enjoy. With low pension and with inadequate post retirement benefits, I do not blame the judges falling a prey to these allurements. They are currying favour; they are competing with each other; they are looking forward to it. What sort of justice would you expect from a judge who within two days of his retirement, get an assignment from the Government when the Government is the biggest litigant in this country? Government must have been appearing before him in so many cases. Unless a judge was being approached while he was a judge to take up the assignment after his retirement, it is not possible that he could be given the job within two or three days of his retirement. If you require 36 persons to be appointed to different Commissions, etc., over a period of

three years, can't you get from the sitting judges? Why must you have these retired judges? This is happening everywhere. We see an unseemly spectacle of a retired High Court Judge becoming a Judge of an Industrial Tribunal, who becomes subject immediately to High Court Supervisory jurisdiction. Does it enhance the prestige of the judges? Does it enhance the faith of the people in the judiciary in this country? Leave the judiciary alone. That is my humble request to the Law Minister and the Government. Various assignments, even their acting as arbitrators and discharging judicial functions, have become a fruitful source of employment for the retired judges.

This is the condition in this country, primarily because of the inadequate service conditions or facilities given to the judges during their tenure and after their retirement—that is why these pitfalls are there. Therefore, I appeal to the judges to rise above all this. They will have to choose. I am taking the opportunity of this forum to make this appeal with all sincerity that the judges will have to choose between independence and subservience between fearlessness and cowardice and between their allegiance to the Constitution and the people and what is suspected to be their allegiance to the establishment. The people will not exonerate them if they succumb to allurements.

With this I support this Bill.

SHRI H N MUKERJEE (Calcutta—North-East) Mr Deputy-Speaker, Sir, I have been noticing today the speed with which we are passing legislation after legislation and what we have just heard from our friend Shri Somnath Chatterjee reinforces my conviction that every Bill before the House must go through the grime of a Select Committee for otherwise in the name of expedition Government in a hurry would come and get through legislation without adequate consideration. I cannot for the life of me understand

however how Government can expect to answer many of the things which my friend Shri Chatterjee has just raised and get away with it because discussion necessarily would require much longer time. Mr. Chatterjee has referred to certain matters with which I am in agreement. I am sure the House would agree if it really applies its mind to the matter that the allurements offered to judges after retirement are something of a scandal. I recall how nearly 22 years ago I had to shout in this House because I had felt utterly humiliated at finding a highly respected ex-judge of the Calcutta High Court of the most independent disposition having been constrained to tread on the corridors of power, as Mr. Chatterjee put it, in the expectation of some kind of a commission deserts being given to him. It was not that ex-judge's humiliation; it was a humiliation of the entire country. I do not also know, Sir, how Mr. Gokhale would give, but if it is a fact that a judge of the Delhi High Court has been deprived of his on account of a decision which he gave in the case of Kuldip Navar or whoever else it may be, if that is a fact, Sir, it will take Government a lot of time before it leaves it down. If it is a fact as I also seem to have learnt earlier it is a fact, that in Calcutta superseding the authority of the Chief Justice of the Calcutta High Court the Governor of the State had the gumption to intervene and sack somebody over whom he had no jurisdiction whatever. I do not know what Government here was doing about this business and how a Governor of a State could have the presumption to intervene where the Chief Justice was the final authority beats my conviction.

We all are interested in the status of the judiciary because we expect our judiciary to act in the manner which is required by the country today. I do not accept some of the implications of Mr. Chatterjee's observations but at the same time there is no doubt that judges should have the independence to which they are entitled. But here

again I find, Sir, that our judges themselves have perhaps been often even more to blame than the executive. They also do their kind of lobbying in certain places and my friend the Law Minister would remember how a few years ago we had to mention in this House the case of a former Chief Justice of a State High Court—I would not particularise because I do not relish scandals, but a Chief Justice of a particular State High Court was allegedly involved in certain activities which were openly noised about in the Press which put forward certain plausible evidence also in support of those allegations and nothing could be done about it in spite of my having tried to take up the matter not only with the Law Minister but with the Prime Minister herself. Nothing happened and that particular ex-Chief Justice goes about the country making convocation speeches and preaching piety to the young.

16 00 hrs.

[SHRI BHAGWAT JHA AZAD in the Chair]

Now, possible this kind of judge also gets encouragement under the dispensation of today. I do not wish to be interpreted as making any impugment of our judiciary because by and large our judges are a good lot. But there is this danger against which we have to fight but Government so far has not done so. I am sure if this Bill had gone to a Select Committee, the Select Committee could have business like sessions and certain things could have been incorporated. After retirement no allurement except in most exceptional instances of extraordinary academic excellence on the part of a Judge who continues to retain his faculty and that sort of thing he might be occasionally called upon to do a few things, but some of our judges continue ever and ever with all kinds of assignments which are at the mercy of the executive is a scandal. The judges themselves have to be awake to this position and the executive should help the judges to that realisation.

[Shri H. N. Mukerjee]

In so far as this particular Bill is concerned the main idea is that the judges conditions of service should be improved. I have no quarrel with that. We should let the judges have the optimum conditions of service for their kind of work and when I find that the Law Minister has vouchsafed to us that the facilities which are open and admissible to Class I officers are not available to High Court judges, I say, go ahead. Give them those facilities. I do not object to the Bill in so far as those particular facilities are concerned but at the same time having said what I had earlier said I would stress certain things which do not seem to be particularly necessary. Is there any special reason why these ancillary benefits would take retrospective effect from 1st October, 1974? I do not know why this particular bonanza should be made available to the judges. I do not know why a provision is made that judges of the High Courts would have the facility of rent-free accommodation. This is perfectly alright but where a judge does not avail of the official residence he will be paid an allowance at the rate of twelve and a half per cent of his salary. I do not understand it because a judge who does not take advantage of rent-free accommodation placed at his disposal must have some special reasons. Possibly he owns a house or houses or he may have a lot of money and that is why he does not want official accommodation. If he does not want official accommodation why should he get special payment for it. Is it merely to put him at par with the other fellows. The other fellows are utilising official accommodation. Why do you have to put them at par? Is the judge only after money? No judge if he is worth his name should be after money. This may be trueism but we have to make sure of certain things. The Law Minister himself had been a judge and he discovered, it was very difficult for a successful lawyer who has proved his mettle to become a

judge because his income drops drastically. I know, Sir, that is a fact though sometimes it is expressed in exaggerated form. I have heard in the precincts of this House the talk about a certain person, whom I shall not name, who is not perhaps a leading lawyer that he would not even accept the office of Speaker because he earns Rs. 50,000/- per month and I had intervened at that point when the conversation was taking place with the query whether he did actually pay income tax of income of no less than Rs. 50,000/- a month because I have statistics offered to me by Government which showed that that kind of income is shown by very few people and I hardly discover any of our leading lawyers in that list.

But, Sir, money is not everything. Or is it? Is not the Speaker's job an important enough job? Is not the Minister's job important enough? Did not the Law Minister accept the office of Minister at a very much lower salary not only because along with certain other ancillary advantages which all of us get in greater or lesser measure, the Ministers more than the Members of Parliament—because of that we can make both ends meet—but also because of the opportunity of doing some service to the country that he agreed to become a Minister at a very lower salary than he got as High Court Judge? The salary of a High Court Judge was considered by him quite appropriately, as being inadequate in so far as the ambitions and aspirations of high-earning lawyers are concerned.

Sir, I can understand aspiration for money, but only to a certain extent, not beyond that. Because where would you end at that rate? How much does the Speaker get? How much does the Prime Minister get? Why should everybody go on thinking only in terms of money?

I was reminded at one time talking of this desire for reaching out to a



higher level than the other person, that Napoleon used to be jealous of Julius Caesar and Julius Caesar used to be jealous of Julius Caesar and Julius Caesar used to be jealous of Hannibal and Hannibal used to be jealous of Alexander and Alexander was jealous of Hercules who did not even exist. There is no end to jealousy. If jealousy on the score of the amount of money x, y or z earns is going to be the criterion, there is no end to it. And let not judges and other people or even Ministers in our country, let them not think in terms of the money that they get. They should get enough so that they do not have to worry over petty, trivial things. Keep them relieved of anxiety, but no more than that. Therefore, I ask, why should a Judge who has a house of his own and there are Judges who own houses in cities like Delhi, Calcutta and Bombay-why should they have this kind of allowance?

Then the Chief Justice of the High Court is proposed to be given a sumptuary allowance of Rs. 300 per mensem. It is very little. Mr. Chatterjee's point is very valid-how much would remain after the income tax people really and truly get at the position? Luckily, they do not. But that is a different matter. Why give this petty-fogging amount of money, and why does he need to hobnob perhaps with the leaders of the executive? A Judge does not need to throw parties. What is the good of it? Let these Judges try to believe in our old maxim:

कौपीनः खलु भाग्यवतः

It cannot be interpreted in literal terms, but to some extent, there is some virtue in abstinence. Why have this petty little sum thrown to them for other people to talk about? What is the good of it that we have this sort of thing given to these Judges?

I find also that it is proposed to in-

crease the pension of the Judges by about 40 per cent and fix the maximum at Rs. 28,000 per annum in the case of the Chief Justice and Rs. 22,400 per annum in the case of other Judges. I do not wish to be considered mean. I do not mind pension being given, but should it be at this level, in our kind of country where the earnings of the average citizen are so little? The President of this country, when he retires may or not an affluent person, but when he retires how much do you give him? Rupees 1000 a month, no more than that, as long as he is alive. If the President of India can have a pension of Rs. 1,000 per month with Rs.10,000 year for secretarial assistance and if he has to make do, why make a fetish? And very likely this man, this person who became the Chief Justice had been a success at the Bar and had accumulated money, had got gratuity-cum-x, y z and other facilities, and has got money by the bagful. There is no doubt about it; most of these people are not people who are in need. We are not pleading for people who are suffering. But we are trying to make these people live very affluent lives. So where are we going? What is our philosophy?

If our expectation of the judges is that they must have their commitment to the country, they must also at the same time make a commitment which could be interpreted in terms of expenditure to the public exchequer. Why should we do this? By all means, close the gap; wherever there is a yawning fissure you do something about it; you plug the loopholes and that sort of thing and give the judge so much that he does not have to worry; help him become an independent citizen of this country on whom everybody can rely; help him to show that he shares the spirit which would animate a country which wishes to rise to greatness. shall we do so by catering to their petty little trivial ambitions for a little more money in their pay packet? I

Shri H. N. Mukherjee

we not understand this. The entire approach is wrong and that is why I say that this is not in conformity with whatever we say is our ideal today. This is not in conformity with the notion that there should be some commonality and suffering, that there should be some kind of attempt not at asceticism but at certain kind of living which would not be resented by the fact of inequality staring you in the face in the most scandalous fashion; that is why, let us not be too prodigal, let us not allow too many things.

But whom do I talk to? Government comes forward and says: this is the legislation which has to be passed; here you are, take it or leave it. What do I do? They have already proposed; I do not know who proposed but it was a good proposal, that every Bill in Parliament must go to a Select Committee so that we can discuss it properly. Talking in this manner, in an open forum is not always conducive to the ascertainment of certain decisions which could be helpful. Whom do I talk to? This will be passed just as it is with whatever little amendments the Law Minister in his condescension might choose to bring forward. But he has not done so. Whom do I talk to? What is the point? It is a most peculiar situation to which we have been reduced: give something today and say take it or leave it. It is not right. It could have been different. The Law Minister could have easily called a meeting of people and tried to formulate something.

But as I have said earlier, I have some fundamental objections to the very basis of this approach, even though I do not object to some little money going to the pockets of High Court judges or to the Supreme Court Judges for that matter. But these matters of principle have to be given thought to what Mr. Chatterjee has particularly pointed in regard to allowances being offered to judges, in regard to penalisation allegedly of

certain judges who did not toe the line which the Executive wanted them to toe; in regard to those things this House must have satisfaction. We have all respect for the judges; but the judges on their part should also behave differently. A former Chief Justice of the Supreme Court, that is to say a former Chief Justice of India has been known to have been associated with some of the biggest blackguards in the industrial history of this country. Nothing has happened, not even a clean exposure of the matter by government; only some attempt was made from this side in order to put forward such a case. The judges also are not beyond blame. Today everybody blames everybody else. Judges also have to cure themselves. A national endeavour has to take place. I am afraid I see no signs of it. We have just got a readymade Bill and all I can say is: a few more rupees to the Judges pockets we do not mind, but certain principles are involved to which government must give some answer.

श्री भूल चन्द डाया(पानी): सभापति महोदय, न्यायाधीशों को और सुविधाएँ मिलनी चाहिए, यह सवाल क्यों पैदा हुआ है? आज भी जो वकील सुप्रीम कोर्ट और हाईकोर्ट में काम करते हैं, वे एक एक पेशी के तीन तीन, पांच पांच हजार रुपये ले लेते हैं। अच्छे वकील जज बनना पसन्द नहीं करते हैं।

यह एक विभाग में बान है और इसविद् प्राप्त ने सोचा कि जजेज को सविसेज को प्रोटेक्टिव बनाने के लिए त्रमें उन को और सुविधाएं देनी चाहिए। मैं इस बान से महमन हूं मुजर्जी हैमाहब की कि देश की आर्थिक हालत को देखते हुए कुछ चन्द लोगों को प्राप्त सब कुछ दे दीजिए, सारी दुनिया दे दीजिए, सारा हिन्दुस्तान का फायदा प्राप्त जजेज को, सारी लोगों को

कुछ और लोगों को, योंही बहुत बड़े प्रकसरों को दे दीजिए क्योंकि हिन्दुस्तान इन से चलेगा। हिन्दुस्तान को चलाने वाले कुछ लोग ही हैं और उन लोगों से ही यह दुनिया चलेगी। साठ करोड़ का हिन्दुस्तान केवल सुप्रीम कोर्ट के बड़े जजेज से या हाईकोर्ट के जजेज से या बड़े मन्त्रिया से या कुछ बड़े बड़े वकीलों से जो अपने आप को दिमाग वाले कहते हैं, उन से चलेगा। बाकी और सब को आप कम कर दीजिए। यह बहुत अच्छा उमूल मेरी समझ में आया है। यह आप कीजिए क्योंकि उन का काम अच्छा होना चाहिए, उन के बच्चे अच्छे होने चाहिए, उन का परिवार अच्छा होना चाहिए। इस से वह लोग बड़ा अच्छा न्याय दे सकेंगे अन्यथा न्याय नहीं दे सकेंगे। मैं कहता हू कि यह बात कहा तक ठीक है हिन्दुस्तान की संस्कृति और सभ्यता की दृष्टिकोण को देखने हुए। कहें कि एक वकील को दस हजार रुपया मिलना चाहिये क्योंकि आप के यहाँ एक मलत तरीका है। मैंने यह ला कमीशन की रिपोर्ट पढ़ी है और उसी से से मैं कोट करना चाहता हू। आज आप हाई कोर्ट और सुप्रीम कोर्ट के जजेज को सुविधाएँ देने की बात कर रहे हैं लेकिन छोटी छोटी कोर्टों में जहाँ न्याय बनता है वहाँ क्या हालत है? न वहाँ बुक्स हैं न अलमारी है न और कुछ है। यह ला कमीशन की रिपोर्ट में उन्होंने लिखा है

"We are quite clear in our minds that the terms of service under which junior judicial officers are employed and the fringe benefits and general amenities which are made available to them are wholly unsatisfactory and meagre to a degree, and that they need to be immediately improved if competent and capable lawyers have to be attracted to the judicial career. It

must be borne in mind that the work which these junior judicial officers discharge in their respective courts in small taluk towns is, in substance, the foundation of what is described as the Rule of law As Justice Holmes once observed, the basis of the rule of law is laid down not necessarily in important and sensational constitutional cases but in small and humble disputes between litigants who bring their causes to the courts"

छोटी कोर्टों में क्या न्याय है? छोटी कोर्टों में आप जरूरत नहीं समझते हैं। बड़े बड़े वकीलों को वहाँ जाने की फुर्तत नहीं। जाएँ तो बम्बई से हवाई जहाज में चले आयेँ। गवर्नमेंट 15 लाख रुपया उन को एक साल में कास्टीट्यूशनल केसेज के लिए दे देगी। विभागी कसरत ये करते हैं। जो शारीरिक कसरत करते हैं उन के लिए कुछ जरूरत नहीं। जो इंग्लैंड में चले जाएँ वहाँ से बैरिस्टर बन कर आ जाएँ वह बड़े कैंपेबल बन गए। हिन्दुस्तान में रह गए, हिन्दुस्तान की यूनिवर्सिटीज में पढ़ते रहे और अच्छी अंग्रेजी नहीं बोल सकते या नहीं निख सकते तो वह ऐसे ही रह जाएँगे तो न्याय कैसे मिल सकता है? मैं समझता हू कि अगर कोई न्याय को पढ़े और सारी किताबों को पढ़े तो एक की नकल दूसरे में दूम्ने की तीमरे में इस तरह से सारी कनिब नोट करते हैं और तनक्बाह चार हजार रुपये मिलेगी जज माहब को, वह हवाई जहाज से आयेँगे। क्या इस से न्याय मिलेगा? हाई कोर्ट के जजेज का न्याय क्या होता है यह हम जानते हैं। अभी आज भी गोबले साहब कह रहे थे कि 226 हमें हटाना पड़ेगा। (अपवाचन) मैं कहता हूँ वह बड़े घरों में पैदा होने हैं उन को बरा मालूम कि छोटे लोगों की तकलीफ क्या है? कहते हैं जूडिशियल आफिसर्स छोटे घरों में पैदा हूँ जो उन की तकलीफों को समझ सकें।

[श्री मूल चन्द ढापा]

जजेज कैसे होने चाहिए ? क्यों छोटे बरों में पैदा होकर लोग ईमानदार नहीं हो सकते हैं ? फिर तो इसका मतलब यही है कि जिसके पास धन नहीं है, जो गरीब है उसमें सभी बीमारियां पैदा हो गईं। जजेज की तनख्वाहों के बारे में मैं सोच रहा था। मैंने सोचा आप उनकी तनख्वाहें बढ़ा दें लेकिन जो न्याय और इन्साफ देने वाला होगा, जो सत्य और न्याय की मूर्ति होगा वह ऐसा होना चाहिए जो देश में गरीब आदमी को न्याय दे सके। आज तो देश में सारी पेपर जस्टिस होती है। मैं छोटे छोटे जजेज की तनख्वाहों के बारे में कहना चाहता हूँ। लेकिन हम देखते हैं न्यायाप्रिय और सत्य की मूर्ति तो वही लोग मिलेंगे जो ज्यादा पैसा व माने हैं। जब प्रो० हीरेन मुकजी बोल रहे थे तो मेरे दिमाग में आया कि जुडीशियरी के जो जूनियर जजेज हैं, जो छोटी कोर्ट्स हैं वहां पर छोटे छोटे आदमियों को जाना पड़ता है लेकिन वहां पर हालत क्या है ? उनके लिए कोई कंसिडरेशन नहीं है। वहां पर कोई लाइब्रेरी, नहीं है, कोई क्लर्क नहीं है, स्टेनो नहीं है, टाइपिस्ट नहीं है, एक छोटे से कमरे में मुंसिफ बैठता है। वहां पर बड़े बड़े केसेज टाइप करने होते हैं। सारे केसेज वही से शुरू होकर डिस्ट्रिक्ट कोर्ट्स, हाई कोर्ट्स और सुप्रीम कोर्ट में आते हैं। लेकिन वहां पर उनके लिए कोई सुविधा नहीं है।

एक बात और है। कैसे आपके जजेज होने चाहिए ? ला कमीशन ने भी अपनी रिपोर्ट में कहा है। कहते हैं अच्छे आदमी नहीं मिलते हैं। देश के 60 करोड़ आदमियों में कुछ आदमियों के ही दिमाग है, ऐसा समझते हैं। देश की यूनिवर्सिटीज 30 लाख विद्यार्थी सालाना निकालती हैं और 5 करोड़ पढ़े लिखे लोग बेकार हैं ? कुर्सी देने से उनमें काठिनयत आ जाती है। अगर कुर्सी नहीं मिली तो उनमें काठिनयत

नहीं है। फिर जो जके जजगदे लोग हैं उनका एक बेटा इजीनियर है और एक बेटा पब्लिक सविस कमीशन में नौकरी करता है। पब्लिक सविस कमीशन की रिपोर्ट कहती है कि हिन्दुस्तान में कुछ लोग ऐसे हैं जिनका एक बेटा डॉक्टर और एक बेटा इजीनियर और दूसरी तरफ कुछ लोगों के लिए कुछ नहीं यह तरीका इस देश में है। यहा तक कहा है कि एज लिमिट भी नहीं होनी चाहिए।

"More weighty considerations arise in making appointments to the Supreme Court Bench and we feel, that in making selections from the Benches of the High Court, prompt and unhesitating recognition should be given to merit and ability, regardless of considerations of seniority and experience. It must not be forgotten that youth carries a freshness and vigour of mind which have their advantages as much as maturity and experience flowing from age."

जवानी तो बसन्त का मौसम है उसको ठीक नहीं समझते हैं। कहते हैं बूढ़े ही जजेज बने। क्या जवान ईमानदार नहीं बन सकता है। और एक जज का बेटा ही जज बने, इस प्रथा को भी तोड़ना चाहिए। मैं यह कोई नयी फिलॉस्फी नहीं कह रहा हूँ। गोखले जी सब समझते हैं। मैं तो कहता हूँ कि आप वकीलों की आदमनी कम करे जोकि क्लाएन्ट्स को एक्सप्लाइड करते हैं। एक एक वकील को चार पांच लाख खपया सामाना तक गवर्नमेंट देती है उनकी फीस के रूप में। बड़े कांस्टीयूशनल केस लड़ते हैं तो अच्छा है 6 महीने तक ग्रागुमेंट्स करे। उस के बाद वे जजेज, जिन को हमने बैठा दिया है, वे निर्णय देगे। जरूर दीजिये --लेकिन एक बात ध्यान में रखिये, बुनिया इस प्रकार के कुछ लोगों से गड़ गाइड नहीं होनी चाहिये। आज उन की तनख्वाहें बढ़ाना चाहते हैं, जरूर बढ़ाये, लेकिन

फिर बाद में कहा जायेगा कि उनकी तनख्वाहें कम हैं, क्योंकि एक वकील तो दो तीन लाख रुपये कमाता है, बकालत नामे में गलत लिखता है, बकालतनामे में उस का कोई इन्दराज नहीं होता, ब्लैक मनी देता है और कहता है कि मैं सुप्रीम कोर्ट का लायर हूँ, बड़े ठाठ से बकालत करता हूँ, अपने काशिस को अलग रख कर, केवल टैकनिकलैटीज आफ ला मे जाता है और फिर कहा जाता ।

A very fine lawyer he is, who can defend any murderer.

यह बात सोचनी चाहिये हम लोगों की तनख्वाहें बढ़ानी है तां जो जुडीशियल आफिसरज है, मैजिस्ट्रेट है, मजिफ है, मेगन कोर्ट के जज हैं, जहा कही ज्यादा काम होता है, इनको भी ज्यादा तनख्वाहें देनी चाहिये । जहा तक न्यायाधीशों का सम्बन्ध है, जरूर तनख्वाहें बढ़ाये, लेकिन हमें ईमानदार और अच्छे न्यायाधीश मिलने चाहिये ।

SHRI SATYENDRA NARAYAN SINHA (Aurangabad) Sir, I suport this Bill, which is a simple measure intended to give certain benefits to the judges recruited from the Bar. You are aware that the demand for improving the service conditions of judges has been persistently made over long years; and even when the High Court Judges (Conditions of Service) Bill was first brought before this House in 1954, it was urged before this House that we should improve the conditions of service of judges so as to attract the best talents from the Bar; and that whatever salaries and allowances were guaranteed under the Constitution, suffered erosion due to inflation and rise in prices; and the Government did not protect them. Mr. Chatterjee has already quoted from that speech of my friend the Law Minister which the latter had made while resigning from the Bench, that the Government did not protect the salaries; and it was not consistent with the status and dignity which attach to

the Justice of the High Court; the comparative ease of the service, and all the compensations of the office had very nearly vanished and therefore it was not consistent with the conscience to function as a judge. And, therefore, he thought that he could not continue as a judge. In England Sir, when the judges threatened to resign, the Government of UK immediately took remedial measures and prevented the resignation from materializing. Here, the Government has taken such a long time in coming forward with this measure. I was not able to understand the reasons for the speech made by my friend Mr Daga, or for that matter the views expressed by my very learned friend Prof Hiren Mukherjee. Prof Mukherjee had said that money was not all that we needed for attracting talents; and that it was not in conformity with the ideals that we held or cherished. Quite true. But may I enquire whether or not the same considerations prevailed when the Conditions of Service Bill was brought forward before this House in 1954, whether or not this demand has been persistently made and whether or not it is in conformity with the reality or fact of life. Are we functioning in some kind of airconditioned compartment, having nothing to do with reality of life? The reality of life is that we cannot function in an independent, impartial manner, without being harassed for our daily chores or necessities of life, if we are not paid enough. Those days are gone when a lawyer considered it to be an honour to accept an offer of judgeship. Are you not aware that many lawyers have declined the offer to serve as judges?

Government have not also encouraged that kind of patriotism in the judges. Recently, the trend has been that the judges are not very sure about their security of tenure. As my friend Shri Chatterjee, said, the dignity, which attaches to this office has also undergone some kind of erosion. Therefore, we cannot

[Shri Satyendra Narayan Sinha]

attract talents to the Bench until we have improved the conditions of service to an extent that they will not feel the pinch of life.

My hon. friend, Shri Daga, has spoken about the improvement of salaries and other things for the junior judiciary. Perhaps, he is not aware that the Pay Commission has already made some recommendations for improving their salary scales and all that. You will notice that in the Statement of Objects and Reasons it has been mentioned that with regard to Class I service officers the Pay Commission has recommended certain improvements in their salaries and pensions. This Bill relates only to such members of the Bench as are recruited from the Bar; it does not relate to those who are promoted from the permanent service, because they are already entitled to those benefits, which have not been made available to those members of the Bench, who have been recruited from the Bar. Therefore, the criticism made by Shri Daga is not germane to this measure.

Secondly, it is only when we have fixed the maximum and minimum personal incomes and the ratio between the two that we can consider these arguments as valid. We have got to go by the present trend of thinking, and we cannot preach idealism to the judges who are recruited from the Bar, and have another standard for those who are recruited from the services.

SHRI H. R. GOKHALE: I am sorry to interrupt the hon. Member, but I think there is some misunderstanding. The distinction is only in respect of gratuity, because gratuity is already available to the service judges but not to the Bar judges. Now it is made applicable to the Bar judges. The other proposals apply equally to all.

SHRI SATYENDRA NARAYAN SINHA: I stand corrected.

I do feel that even in the change context of things we do want that the judiciary should be insulated, and the greatest safeguard that you can have for the independence of the judiciary is to keep them aloof from all temptations, not only when they are serving judges but even after retirement. It may or may not be true, but the general feeling is that when the judges can have post-retirement benefits, people start having some kind of apprehensions about the impartiality of these judges. You will remember—because you were a Member of this House then—that even in 1954, practically, from every section of the House a demand was made or concern was voiced in this House that no post-retirement appointments should be given to the judges. The Constitution has imposed an embargo on permanent judges from practising in the same court after retirement. But the real provisions should be there that neither the judges should accept any office nor the Government should give them any office in their gift, because it is creating a wide feeling of uneasiness with respect to independence of judges. By providing employments after retirements, the Government is virtually undermining the foundations of independence and impartiality of the judiciary which is *sine qua non* of democracy. I do believe that the Government still believes in the independence and impartiality of the judiciary. Therefore, I support the views of my friend Mr Chatterji that we should not give them any appointment unless it is of a very exceptional nature. The judges look beyond their tenure for employments. They are carrying favour with the executive. Why should they do it? That is why the status, the dignity and the respect attached to this office has been eroded. It is my concern as a Member on this side of the House that the independence and the impartiality of the judiciary should be maintained and the people should have respect,

faith and trust in their impartiality and independence. Then alone we can say that our democracy will function properly.

In the end, I have one submission to make to the hon. Law Minister. My friend Mr. Daga has asked why the high offices of the judgeship should be confined to only a particular section of the people. Supposing a man becomes a judge. His son will also become a judge. His nephew will also become a judge. His relations will also become judges. Why should there be this kind of inbreeding. Why does it happen? I am not saying that those people do not deserve. But we should do all that we can to allay the suspicion of the public in this regard. I would beg of the Law Minister to help develop a very healthy and necessary convention that at least the Chief Justice of a High Court should not be from among the judges of that High Court; he must invariably be brought from outside. Secondly, a certain percentage of the judges must be from outside. That can prevent this kind of inbreeding. With these words, I support this measure

SHRI VASANT SATHE (Akola): I rise to congratulate the Law Minister for bringing this long awaited measure. As far as judges are concerned, both in the High Court and the Supreme Court, we have been feeling for a long time, that their salary and remuneration have not kept pace with the rise in the cost of living in this country right since 1954. While the incomes of men in other professions in life have been increasing particularly in the field of law, the share of practising lawyers in the High Court and the Supreme Court, with the growth of black money in the country, has also been increasing. Let us not deny that, because eminent lawyers known in this country are lawyers who are known to be practising on taxation side, wealth, income, election petitions, petitions relating to company

matters, petitions relating to high civil matters and petitions in which big money is involved. I believe, the Law Minister will agree that 80 per cent or may be 75 per cent of the cases are of value that are confined to the jurisdiction of lower courts, say, below Rs. 50,000 or Rs. 25,000 or whatever it is. He can give the exact figures. In this respect, one of the eminent judges of the Supreme Court was giving the figures the other day. So, the main litigation in this country takes place actually at the lower level. Very few of those litigants have the capacity to go to the High Courts or to the Supreme Court. It is only the rich who can afford to go to the High Courts and the Supreme Court. In effect, justice becomes available only to the rich and the rich have enough money to throw about, to engage eminent lawyers. The eminence also grows with how much fee a particular lawyer charges *per diem* in the Supreme Court.

It is a vicious circle that we get in. The black money grows, the defenders of black money grow; the big fees are charged and the eminence grows with big fees. We know what happens in labour matters, in the field of social legislation. It is the experience of those, like you and me, who have been practising all these years in the branch of social legislation, for the employees, as a matter of dedication, that even the labour matters are taken by the employers from the labour court right upto the Supreme Court and they take years. In the High Courts, the cases are pending for years; the writ cases are pending for six years even. In the Supreme Court, they are pending for more than five years.

What I would like to know is, while we are trying to ensure and secure the remuneration or salary or wages of the High Court judges and the Supreme Court judges, and rightly so, is there not going to be the simultaneous thinking of real justice being available to the people

[Shri Vasant Sathe]

of this land? This question does not seem to occupy the same urgency in our thinking. In spite of the various Commissions which have given reports about what to do about laws delay, really, such a measure should have been brought about. How are you going to have these cases disposed of in the High Courts and in the Supreme Court that are pending for years?

We are talking of time-bound programme in the economic field. Is there not going to be any time-bound programme for justice in this country? The dictum "justice delayed is justice denied" has really become worn out. That dictum has lost all its meaning because the rule is, justice delayed.

16.45 hrs.

[SHRI C. M. STEPHEN in the Chair]

You will never get justice in this country if a matter like wage fixation is going to take 16 years. My case of the wage earners of Sivaraj Fine Art Litho Works and other Litho Works is till today pending in the Supreme Court and it has been going on for the last 16 years. Now many of the workers have died and nobody seems to bother anything about it. There is not even a Bench available on labour matters in the Supreme Court.

We are today talking about land legislation. Thousands of cases have been admitted and are pending in the High Courts. I would like to know what the High Courts and the Supreme Court are doing about this. There are thousands of matters and one question of law; if you decide one case, thousands of cases get decided.

SHRI SOMNATH CHATTERJEE: I can tell you that in three months our Calcutta High Court disposed of 9000 cases. So, they can do it, but

the trouble is that they are not allowing the facilities. There are six vacancies in the Calcutta High Court.

SHRI VASANT SATHE: What I am saying is, you may fill up the vacancies. Ultimately there has to be an awareness on the part of the High Court and Supreme Court to dispose of cases expeditiously and early. Lawyers may go on arguing; there may be one month's argument on a point of constitutional law—eminent lawyers arguing and the same point being repeated this way or that way with different wordings and different quotations and different precedents. What I would like to say here today is that if there were a higher court above the Supreme Court, Mr. Gokhale will agree that more than 50 per cent of its decisions would be set aside, if not more. Therefore, is there going to be any sense of finality of justice in this country? The beset common-sense justice, if you ask me—and I have the benefit of practising right from the lowest court to the Supreme Court—you can get from down below. In fact, I would say, while we are doing all this re-thinking, that we should have people's courts at the grass-root level, at the panchayat Samiti level. There are 'Nyay' Panchayats; revamp them with persons who know something. There are so many young lawyers we are producing every year: put there a person who is experienced in civil law, may be a judge or a magistrate. Have a two, three or five judges' Court at the grass-root level and give larger jurisdiction to it—say, upto Rs 50,000 in civil matters and, in criminal matters, punishment up to five years or ten years. You give it such jurisdiction. They know in the village or in the place itself what is what and who is what and they will not be deceived by the so-called evidence created. Therefore, you will get more natural justice there. We talk of natural justice; greater natural justice—justice according to the village—will be there. Therefore, let us also do something on these lines. Give



finality there and only on a question of law—on a very substantial question of law—or gross miscarriage of justice, allow one review. Stop these appeals, and the power of issuing writs given to the High Courts and Supreme Court. It is not necessary. Every matter need not go to High Courts and Supreme Court. I do not know whether my friend, Mr. Frank Anthony, will agree with me because, by this, the practice of the Supreme Court lawyers will suffer.

Another point I would like to mention is this. While we are thinking of Constitutional reforms, at least as far as *vires* of legislations of Parliament and State Legislatures is concerned, the power of judicial review should be taken away from the High Courts and the Supreme Court. Let there be another forum, a national judicial review committee or commission where in representatives of Parliament, a judge of the Supreme Court, a Chief Justice of High Court and leader of the Opposition or his nominee—some such persons—may be there. Let them have the jurisdiction for judicial review. Even advance, advisory opinion on a Bill or legislation can be obtained from them. Fifty per cent of today's delay and mischief—I am using the word 'mischief' advisedly—could be stopped if you withdraw this power of judicial review Constitutionally from the High Courts and the Supreme Court. Simultaneously, you may create people's courts; give them good salaries at the grassroots level. Then you will find that justice in this country is real; justice for the common man will become real; justice for the landless labourers and the working class people, who cannot afford to go to High Courts and Supreme Court, will become real. Today justice is being delayed in a criminal way, literally speaking. Therefore, have some simultaneous thinking on this

To be very frank, not much is being done for these judges. You are only bringing them on par with Class I officers in respect of remuneration

and other benefits. I do not think that this is anything extra-ordinary. In fact, I have not understood what is the object of sumptuary allowance of Rs. 300/- to the Chief Justice. This looks a little odd. Is he required to give parties and other things? I would like to know this from him.

The minimum pension is proposed to be increased by 40 per cent, from Rs. 6,000 per annum to Rs. 8,400 per annum. I would request you to increase it to Rs. 10,000 per annum. For a retired judge, an amount of Rs. 1,000 per month is nothing. Let him live with dignity, in his retired life, having worked as a judge. I would, therefore request you to accept this suggestion and increase it to Rs. 10,000. I believe, there is some thought being given to increasing the lowest taxable limit from Rs. 8,000 to Rs. 10,000. In the case of judges, please increase the minimum pension to Rs. 10,000. Also, in this Budget Session, please bring some other measure which will ensure speedy justice in High Courts and Supreme Court and which will enable the poor to have justice more directly.

SHRI FRANK ANTHONY (Nominated-Anglo-Indians): Mr. Chairman, I hope, the Law Minister will not deal seriously with the *non-sequiturs* that fell from my friend who spoke before me about people's courts and divesting the courts of their powers of judicial review in the matter of *vires* of legislation. These are serious subjects which will require careful debate and are hardly the subject-matter of pensions and emoluments which fall within the purview of this particular Bill. I am particularly concerned. I hope my friend will not be able to collect disciples for this view that the courts should be divested of this power which is basic to courts. Why have courts, if the *vires* of legislation. These are serious be placed before them. That, to my mind, is the supreme function of the courts. They alone are capable of interpreting the *vires* of legislation

[Shri Frank Anthony]

according to certain rules of procedure, according to certain norms, according to certain nuances which only people with that experience will be capable of doing.

Now, I shall immediately go to the Bill and some of the criticisms which seem to have fallen from my friend, Hiren Mukerjee and my other friend. Both of them seem to be against the principles underlying this Bill. I can understand my friend, Hiren Mukerjee; I have known him for many years as an ultra-idealist, but everybody cannot be an ultra-idealist, and certainly people from the bar cannot be expected to be ultra-ascetics.

I am very happy that this Bill has come. Personally, I would like to have seen the pensions pitched at a higher figure. I think, it was long overdue. There is only one question that I would ask here and that is, what particular significance has this deadline of 1st October, 1974. Some people rather uncharitably suggested that some judges friendly with the Law Minister must have retired after 1st October, 1974, that is why, the deadline has been fixed. The other judges said: Why don't you give it to us generally, we are not a very large fraternity, leave it to us, whether we should practice or not

So far as the judiciary is concerned, I consider that this has been really a priceless legacy of ours—its independence and its competence, and those of us who have practised for many years are a little unhappy about certain trends today. Let us be frank I think the Law Minister privately will admit this that even the juniors, the front rank of juniors have not been accepting judgeship for some considerable time. My friends have spoken against the seniors who make so much money and charge so much money in any case they would not be eligible from the point of age for judgeship apart from the fact that they are not likely to accept, but even the juniors in

the front rank of juniors have not been accepting judgeships.

Presently, there, has been a very disconcerting development. I find, Mr. Chatterjee referred to that. We do not know the reasons, but all manner of speculation wild and otherwise is going round, as to why three judges in Bombay High Court and one judge here, who have worked and apparently had commended themselves to the Government, have not been confirmed. One of my juniors, who has worked well for a considerable time was approached for a judgeship. He said Now I would never accept a judgeship. It would have meant certain sacrifice, I would have been prepared to make the sacrifice because it would have meant serving the country in a certain way, but if we are going to be elevated to the Bench and because we write a judgement that may be unpalatable to the executive, suddenly after two or three years for no reason at all being sent back and to have to re-build our practice, is going to be a tremendous disincentive now to our good young men for accepting judgeships

I do not know, what the reason is I do not know, whether Government would be prepared to give the reason for this departure. It has not been the rule for judges who have served for two or three years as Additional Judges suddenly to be axed

17.00 hrs.

There is one particular matter that I wanted to undertake and that is the main reason why I have spoken and participated in this debate. I have made this plea year in and year out. I say, yes, judges are *sui generis*; you cannot assess their conditions of service their conditions of pay, emoluments cannot be compared with the condition of pay of any other service. Because, by and large, you are recruiting people who are already successful, men who are successful even from

the financial point of view, if they are going to accept judgeships, they have to make a very very heavy financial sacrifice. But what I have asked is this: equate the pension to the salary, but, after that, do not allow a Judge to do anything that partakes of a political or even of an administrative character. This is having a disastrously erosive effect on the judiciary. I have asked that Article 220 be amended so that Judges should not be allowed to practise. At present they can practise in other High Courts or the Supreme Court. Since the Law Minister has left practising at the Bar, he has not seen the new phenomenon. Not a day goes by without some retired Judges swelling the ranks of virtually unemployed senior lawyers in the Supreme Court. Now, this is not very edifying and I say this with a great deal of reluctance. These people who belonged to the judiciary where they have been rightly treated with a great deal of respect, come there and they bring their whole cadre into disrepute. They start as juniors. Now, the Law Minister knows what a fiercely competitive profession the law is and, juniors—I am not justifying juniors—do indulge in malpractices and these people who have held very high offices as Judges, in order to get briefs, are undercutting the juniors or are indulging in a malpractice which is commonly referred to as touting which is sad, and I am sorry to say it, very degrading. That is why I say, give them not only this pension but a higher pension, but put a blanket ban on their right to practise. I do not know whether the Minister is contemplating this, but I would seriously ask him to do this.

Then, with regard to the question of offering them some kind of preferment or employment after they retire. Several years ago I addressed one of the High Court Bars and the Members of the Bar complained to me that Judges, on the eve of their retirement, were canvassing with every kind of politician in the country for some kind of a post retirement job. I spoke to the Chief Justice. He said, 'Mr. Anthony you are talking

of canvassing of Ministers. I know that Judges are canvassing with Parliamentary Secretaries and Deputy Ministers for some kind of a post-retirement job. This is a grave reflection on the judiciary. I know what happened when a Judge of the Supreme Court was made a Governor. There was all kind of criticism. Much of it was irresponsible. And another very eminent gentleman, we know him, came from a High Court. He was made a Minister. There was all manner of criticism, and justified criticism from this point of view, that a particular Supreme Court Judge—I do not know—had been influenced by the prospect of some kind of executive preferment, but people began to analyse his judgments. They said, 'You see this judgment. One month before he retired. Obviously it was conditioned by his knowledge that he was going to become a Governor or the likelihood that he was going to become a Governor.' This is what is happening in regard to allowing Judges to practise. All over the country people are talking. Much of it is loose talk—that Judges on the eve of retirement from this High Court or that High Court, are feeding this firm or are feeding the senior lawyer so that ultimately when they come to the Supreme Court, they can in turn be fed with briefs. Stop this. As I said, this was long over-due. I have pleaded earnestly and I think the Law Minister will agree with me. You have done this. Give them the option—those who get this enhanced pension—it is very appreciable, all right—either you take this pension and do not practise. If you want to practise, you give up your pension. At least give them that option and probably you will find that this invasion of the Supreme Court Bar by juniors in the form of one time Judges—the whole thing will end and it will be a healthy thing. I think for that alone, the Bar will acclaim the Law Minister.

SHRI C. M. STEPHEN (Muvattupuzha): Mr. Chairman, I rise to support this Bill.

The arguments spelt out in the state-

[Shri C. M. Stephen]

ment of objects & Reasons—why exactly the Bill has been brought forward are certainly convincing. It is really an act of grace and justice that the erosion of money value may be made up as far as judges are concerned. But in this again I want to give expression to one sentiment with which all sections in this House and I hope the entire country will agree. There is a feeling that the judiciary in this country is not keeping pace with the aspirations of the people and the changes that the people are pressing for and whatever happens on the socio-economic front, a situation has now arisen when the blame for the delay is sought to be placed at the door of the various courts in this country. Rightly or wrongly, the people have seen enough of the performance of the courts, that unlike what would have been the position some time back, they seem to be easily persuaded to accept the charge that it is the courts which are delaying transformation which had to take place. The point is not whether the charge is correct, but the relevant point is whether the charge is going to be accepted by the people. The judiciary has got to take note of the fact that whereas a few years back if the charge was placed, the people, the intelligentsia, the democratic elements in this country would have opposed it furiously, today the pattern has changed and no sooner the charge is made, the people (including the intellectuals) are inclined to believe that the charge is well founded. Therefore, when the Bill comes forward to give additional remuneration to the judges, having regard to the facts that this is a fair thing that has to be done, nevertheless this House and the people are inclined to concede it not with the gusto and not with the openness with which they would have considered it some time back, but with reluctance. The question is whether it is justified? It is not that I am opposing the Bill but this is one aspect of it.

Now, as far as the High Court is concerned, there are basic defects in

our constitution which when we consider the amendment of the Constitution, we would rather take note of. The position to-day is any High court accepting the writ petition can strike down any law which is passed by the legislature or by the Parliament. Here is a very strange situation that whereas the supreme court in order to strike down a law where a constitutional question is involved must constitute a bench of five judges, the High Court can strike down a law passed by parliament and declare any law *ultra vires* including an amendment of the Constitution. One single judge is sitting there and striking them down. In Kerala one High Court Judge can do it. The number—one or two—depends upon the rule which has been framed. A single judge can strike down a law declaring it *ultra vires*.

There is another thing which we have to take note of. The same law can be challenged in different courts and the different courts can give different judgements on the same cause of action. The result is that the different laws will be prevailing at the different corners of this country. In the same state the High Court has got the power to call up any case which may be pending in the subordinate courts so that different opinions may not be given on constitutional matter.

The Supreme Court does not have the power under the constitution today to call up cases pending in subordinate courts and give decision binding on everybody. The result is confusion throughout. That is what prevails actually. It is time we consider this, whether we must accept the high courts as the really constitutional courts which is what comes to today. Formerly the writ jurisdiction was not in every high Court. When the British Government was here the writ jurisdiction vested only in three high courts. I just cannot understand why exactly the writ jurisdiction to the extent of giving power to strike down laws passed by different legislatures and Parliament must be vested with all the high courts and why cannot we withdraw the

whole thing to a Central Court so that decision can be given binding on everyone. And the mischief with respect to stay and delaying tactics happens not necessarily from the supreme court.

It is the high courts which are the real culprits. And as far as these things are concerned, high courts irresponsibly give a stay, keeping the injunctions, holding up the whole thing, and passing judgements which ultimately will have to be set aside, going up to Supreme Court etc. This is something which we will have to look into seriously. So far as discussion on the Constitution is concerned and judicial review is concerned the central question is where exactly is the beginning or the source of legislative power in this country? Now it has come to a stage in which the courts have begun to say that 'We are the third chamber'

The Courts have gone to the extent of saying: Our business is not merely to interpret the law but to make the law also. This is a thing which has got to be contested. And the law they make is not binding on the Supreme Court. The Supreme Court makes a law and that law is subsequently overruled. They themselves reconsider it as it happened in the Golaknath case. There is no certainty as to what the law tomorrow will be, and who decides them. Something is decided by one Bench, another Bench comes and they overrule the whole thing. If you go through the history you will find that at the start, the Supreme Court rulings were basically correct but more often than not many of these rulings were being over-ruled in proportion to the number of benches that are being constituted. The graveman of my argument is this that this is not a judicial power. We must have a deeper look into the matter. The Parliament and the people's representatives cannot surrender the fundamental principle that the source, the beginning of the law, is from this very House and not from 3 or 4 judges sitting somewhere else. If

an attempt is made to assume that and to delay the socio-economic transformation in this country it will have to be resisted and it is this resistance which we are witnessing throughout the country. That is why, as I said in the beginning, if this was 4 or 5 years back or 6 or 7 years back, a Bill like this would have been accepted with an openness and with a gusto, saying that more must be done for them. But today, when a Bill like this comes we say, yes, it must be done, but with a grain of salt, with a feeling whether these people are really doing their job in the sense of assisting the socio-economic transformation which has received so much attention in this House and in certain legislative assemblies throughout the country. I hope that the Judiciary will take note of this attitude of ours, of the people throughout the country. And the correction must come from the Judiciary themselves. And if the correction does not come from them, the democratic system which we have, will get eroded and that will certainly be not good for the country and that will be a bad day. I hope that the Judiciary will take note of these sentiments and do accordingly. With these words I support the Bill.

SHRI ARAVINDA BALA PAJANOR: Mr. Chairman, Sir I welcome this piece of legislation introduced by the hon. Minister for Law. Though it is a belated one, it is giving only a solace to the present judges who are sitting and retired little earlier.

Before coming to the general discussion—the generality of law—as has been done by many Members here, I would like to come to the bill as it exists today. I remember how our hon. Minister resigned as a high court judge in Bombay expressing his inability to serve there due to the poor salary existing then. No change is made so far. How can you expect them to function then? After so many years he has brought forward

[Shri Aravinda Bala Pajanoor]

now this Bill. On this score alone, I congratulate him. But, at the same time, I want to mention to him that we are here also to represent the section of the people who are affected by this Bill—I mean the judges of the high courts and the Supreme Court.

Sir, I have had certain discussions with the sitting judges of the High Court and also with judges who have retired. Their general feeling was that this was not adequate. But, they were happy that at least they have been able to introduce this Bill in Parliament in this session itself. Sir, I recommend to the hon. Minister that this Rs. 700 and odd that you give by way of Rs. 300 as conveyance allowance and another Rs. 300 and odd as house rent allowance amounting to Rs. 700/- may be exempted from the income-tax.

I know that many members who took part in this debate are members of the Bar both from the High Courts as well as from the Supreme Court. We are particularly aware that the high court judges are getting Rs. 3,500 while the supreme court judge gets Rs. 4,000 and the Chief Justice of a High Court gets about Rs. 4,000. Ultimately, they will all get only Rs. 2,100 after deduction of tax. But, a judge who has not possessed a house, may be left with only about Rs. 1200 or 1100/- after these deductions. It is a pitiable condition for them if they are once again taxed on these allowances that are being granted by this Bill. So I recommend to the hon. Minister to consider this suggestion of mine. I hope he will also agree with me that this paltry sum that is being given to the judges is also exempted from income-tax. My second point is this. I cannot understand the sanctity that you are attaching to the date—1st October, 1974. This is the same question that has been posed to me because a particular judge in my High Court—high court of Madras—retired exactly on the 30th of September, 1974. He is unlucky to get this benefit by a day.

I agree with the hon. Member, Shri Frank Anthony, to extend this benefit to all the judges who retired prior to this date. After all they may not be more than 300 or 400. I do not have the statistics with me here but the hon. Minister can get that from his Department. So, this is not a big problem for them to give the benefits to the members who retired prior to 1st October, 1974 also so that all of them can be benefited when this small benefit is given to the retired judges.

I think the main idea of introducing this particular Bill in this House is to give the sanctity to the judiciary or recognise the faith that we attach to the judiciary in this country. When many members—I do not say that they departed from the discussion of the Bill—discussed about the generality of the judiciary that is existing in the country, of course, they reflected the opinion of this country's voice—the people's voice. That is not the main concern here. The point here is this that the judges are not properly looked after. That is the question. Some members referred that only the affluent people had taken this post as an honour. I agree with it. It is not only the money that you give them is important. What is important is that the people who have come to this post should serve this country by dispensing justice—not dispensing with justice—it may be so in many places. I know that the hon. Minister is also aware of it that the malady is not due to money alone but it is because of the faith that is being lost by the people in the judiciary. That is not because of the remuneration that they get but that is because of the conduct of some judges. In many cases—at least I know that in fifty per cent of the cases—the malady can be cured if we attract the best talents to the Bench.

When you took over as Chairman, I was feeling very much amused because you were arguing like a lawyer a few minutes ago and now you occupy this Chair. You are like a

judge occupying this Chair. Till yesterday my colleagues were in the Bar. The next day I used to see him sitting as a judge. But Mr. Stephen was arguing in the same court. I think it is not possible for a judge to argue in some other court. But, we have the privilege here because we happen to be Members of Parliament. But, I am not on that point. But, I can say the malady is that real talent is not attracted because we do not give due respect to the judiciary.

Sir, I do not know how far the Minister is aware of the fact that three weeks back in a place where I practice—Madras High Court—I saw in a Tamil daily with big captions about a lady judge being appointed. I do not know how the confidence can be so easily created when the judges of the High court can be appointed by newspapers. I feel there might be some truth and it might have leaked. They say this appointment of the lady as the judge is for the simple reason that this is International Women's Year. You know, Sir, how this kind of news will be used in the corridors of the High Court. It is not healthy for the judiciary. I am a little worried because in Tamil Nadu when transformation takes place we were hoping for the good and better things to come and at this moment certain things are being spoken about the judiciary. If you say a particular man is going to be appointed as a particular judge so many things are talked in the public and they say it is because of the influence of a particular gentleman or woman or party. That is how the public now judges the judiciary. It is not the money that is going to give the confidence but the atmosphere that we are going to create in the country is going to matter.

Many of the hon Members have talked at great length about some of the judgements or the reactions or observations of some of the judges. I am not going to express my views on it for I am afraid the way we reflect towards them today is going to re-

act in the future also. I feel the confidence that can be created in this country mainly must come from this House. So, whenever an appointment is made or contemplated to be made certain amount of norms, restriction or control must be there. I remember, some years ago when an Andhra Pradesh High Court judge was proposed to be appointed to the Supreme Court the news came out in the papers before the orders were issued and only on that score that judge was disqualified and some other judge was appointed in the Supreme Court. Such kind of confidence must be created in the public and only then they will respect the judiciary. Sir, there are about 300 high court judges and some Supreme Court judges in this country and there may be one or two judges—I would not say Allahabad, Bangalore or Assam judges—who are not in tune with the thinking of this country or not in line with the general thinking of the country. That need not be the main score to condemn them all as bad. We must take the generality as to how the judges are behaving. Many of them are good judges. I have an experience of 14 years. We have to consider them also as human beings. They have their own failings.

Sir, before I sit down I would like to say a word about the fact that some of the hon. Members have expressed the feeling that the judges must go in line with present aspirations of the people. I do not attribute to this idea. This will lead to lot of complications. A judge is only to interpret the law and nothing more than that. Today in certain States judges, are appointed according to the political shades of the State governments. In that case if they are going to give vent to their aspirations then there would not be an end to it. Rightly or wrongly this country is following English precedents and, as such they have only to interpret law according to the precedents.

(Conds. of Service)

[Shri Aravinda Bala Pajanon]

Lastly, I would like to say that twenty days in calculating the gratuity, in my opinion, is not correct. That can be 30 days. Further the total emoluments instead of 28,000 should be 50,000 and instead of 22,000 it should be 40,000. I am not saying all this for the money value but with the concept that these people should not come and practice after retirement.

They should not be people who seek out another employment on retirement. You must give them an assurance that they can live peaceful retired life. You know Judges in the US get the same pay even after retirement. There is no break in that there

The number involved in this case is limited. It cannot be a big burden on the finances of the country. If you want to create confidence in the people, it is better we treat them better. I do not say that they have to be put on a high pedestal, but keep them in the correct place so that we can get justice.

I am also not in agreement with friends who have said that there are delays in justice. I am in agreement with them that justice delayed is justice denied. At the same time, we cannot also forget that justice hurried is justice buried. So you cannot simply say : just hurry up.

Finally, I want to make this point. I made it the other day in Committee also. It is that one third of the Judges of a High Court must be those transferred from other States. I was surprised when the law officers asked Where is the provision? I had to tell them that under art. 222 of the Constitution, there is a clear provision under which you can transfer Judges. But the Law Secretary and other officers were asking, where is the provision? So even under the Constitution, there is provision to transfer Judges from other states.

Now there is a big rumour on our side that many Judges are going to

be transferred. You know there is corridor talk about this. So my request is that if there is going to be any transfer, you do it only in the month of June. If you are going to make such transfers, do it along with other transfers in other States. This is for the simple reason that the confidence of the people should not be disturbed. We may have a certain grudge against a particular Judge, but that is no reason for disturbing the confidence of the public by doing any such thing in this manner.

With these remarks I welcome this piece of legislation. I congratulate the hon. Minister on this and I hope he will come forward with some more legislation also so that Judges are given their correct place in society. Let justice be done and not dispensed with.

SHRI P. G. MAVALANKAR (Ahmedabad): Mr. Chairman, Sir, I fully support this Bill, and I do so on several counts. I suppose, we all agree that the role and contribution of the judiciary in a democratic set-up is at once vital, fundamental and profound. In fact, such a legislation was overdue. Seemingly, it is of minor significance; it only provides, as the Minister himself called them, ancillary benefits to the Judges. But it has certain significant aspects.

I have listened to the debate and I do not wish to go on the lines on which some of my friends on both sides of the House have gone. They have projected into this debate some very important and fundamental political and constitutional issues. I do not think this Bill really refers to those matters. But perhaps, quite expectedly I would say, they have taken advantage of this measure and expressed their views on the functioning of the judiciary, in the India of today and tomorrow. But I can say this much to those friends that at least some of us on this side do not want Judges to be members who belong to the *status quo*



of the conservative, rigid sections of the community. Certainly not. But that is not to say that the Judges must give judgments as per the wishes of the government of the day. There is a great difference between judgments given on the basis of dynamism and progressivism and judgments given on the basis of the pleasures of the government of the day. But I do not want to project those matters in this debate.

**THE MINISTER OF WORKS AND HOUSING AND PARLIAMENTARY AFFAIRS (SHRI K. RAGHU RAMAIAH):** Is not the government of the day sufficiently dynamic?

**SHRI P. G. MAVALANKAR:** I am glad the Minister of Parliamentary Affairs interrupted me. Normally he does not do it; I am glad he has done it today.

As I said, I am not going into those political overtones. If the Law Minister himself brings forward a measure, as he has been publicly saying, outside Parliament, that some fundamental changes in our Constitution are perhaps necessary, but the time is not yet ripe and Government are contemplating on it and they will come forward with it, when he comes forward with such legislation for changing the Constitution, we will express our views for whatever their value or worth. But the discussion today is really restricted to the specific issue of giving certain ancillary benefits to the Judges of the High Courts whose number, as the previous speaker said, is not far too large. One should not look at this problem from the point of view of the financial liability; one should look at it from the point of making the position of the High Court Judge sufficiently strong and independent so that he is not lured into doing a thing or starting something fresh when he has retired.

That is the real point at issue. It is not just a matter of giving extra perquisites or benefits. It is to strengthen the base of the judge, ensure independence and integrity of that high office. It is not to suggest, therefore, that the

extra monetary and material facilities in themselves will necessarily ensure independence and integrity. I am not arguing from that point of view. But to deny those benefits to the judges is to punish those who have thoughtfully and with a certain degree of idealism gone from the bar to the bench in order to serve the principle of the rule of law and the tenets of democracy as laid down in our Constitution. If you want them to remain independent and look at the laws passed by Parliament strictly in conformity with the letter and spirit of the Constitution and the principles of the rule of law, it is necessary that they should be made to retire honourably at the retirement age and not to take up any job under the government or be forced to practise law after they retire. I am glad that my elderly and learned friend Shri Frank Anthony said that judges should not be compelled to practice at the bar after they retire. To see so many retired judges crowding the Supreme Court Bar is a sorry spectacle. Why is it happening? Because you do not have sufficient attraction in terms of monetary benefits and other ancillary benefits for the office of the judge to ensure that the right type of people are attracted to the bench. Here we find there is a valuable parallel to the profession and selection of teachers. By paying higher salaries you do not necessarily ensure that you get a good teacher; but if you deny a good teacher decent salaries, he will leave the field.

A teacher's job is an honourable calling; it is not a mere job or occupation; it is a calling. Similarly, judgeship is a calling. A person leaves his lucrative practice, in order not just to earn money; in fact, he gives up that. He has not necessarily gone to the bench to become Chief Justice; not every judge becomes a Chief Justice. But when a judge is functioning independently to do justice, he must be assured of two things. While working as a judge his conditions of service should be honourable; they should be decent, handsome and attractive. And,

[Shri P. G. Mavalankar]

secondly, when he retires as a judge, he should have sufficient amount in his pocket in terms of earnings, in terms of benefits like gratuity, pension, medical facilities, etc. which the hon. Law Minister is offering through this Bill. People with brilliant legal acumen and a certain natural aptitude for judicial service should join the bench and those persons must be well looked after by the state and by the society. Because this Bill does that, I want to support it and I hope in the years to come it will go a little more in the same direction.

I have already suggested: once a judge, always a judge. He should continue to be a judge till his retirement; he should not take any job or occupation which is under the executive government, except of course some very rare cases where there may be some kind of academic enquiry, say, university education, or the question of legal practice or system of judicial administration. In very rare cases, he can act as a judge for an enquiry. But, normally, no judge should be given a job after he retires because in that case he looks forward to that job while still serving though he is expected to be independent. He does not remain so independent because he feels that if he is really independent, he could not get any job and he will not qualify for government patronage after he retires.

MR. CHAIRMAN: The exceptions that you have made just now would be enough to give occupation to all retired judges.

SHRI P. G. MAVALANKAR: Well, Sir, how many times do we have really appointed Enquiry Commissions of fundamental importance? I am not saying that the judge must be appointed for every single enquiry into police firing, etc.

MR. CHAIRMAN: I think you have already made that point.

SHRI P. G. MAVALANKAR: But my point is: leave the judges free, and let them do a job after retirement in extremely rare cases. I use the words 'extremely rare cases' because obviously there cannot be any such recurrence in day-to-day cases of inquiries, etc. The performance of our judges in the High Courts since independence, by and large, has been very creditable, creditable to themselves and creditable to the judiciary. I am not talking merely of the judges and the judgements—since the declaration of "Internal Emergency" on 26th June 75 when many judgements of the various High Courts in our country have come in favour of freedom and rule of law and against the Government—but I am talking even of judgements before June 26, 1975 and we have seen that judges by and large have displayed a sense of fairness, equity and justice. If this is so, then I do not know why we should be wary about giving them extra monetary benefits. But one query about the provision of sumptuary allowance. You, Mr. Chairman, yourself mentioned about the sumptuary allowance, while participating earlier in this debate I too want to ask the Law Minister as to why a Chief Justice of a High Court is sought to be given such a sumptuary allowance. I assume therefore that the Supreme Court Chief Justice is already given such sumptuary allowance. Then a point further to be asked is

SHRI H. R. GOKHALE: In the next Bill.

SHRI P. G. MAVALANKAR: You are now technically saying, not immediately, but in the Bill to follow you are giving it. But my point is: Are these Chief Justices really expected to act like Minister or public relations men? The position of the Chief Justice is like the position of a Speaker. For example, the Speaker of the British House of Commons remains aloof from the society because he has to give justice, similarly a Chief Justice cannot be a social mixer. He must be

aloof from the social minglings. From that point of view, I do not see much point in giving sumptuary allowance. It is from this angle and from the various other angles that I have spoken earlier that I support this Bill. I hope that the functioning of the judiciary which is in the open, and which is open, to arguments and persuasions, will be strengthened by such benefits, monetary and other benefits.

श्री राजाबतार शास्त्री (पटना) : सभा-पति जी, हाई कोर्ट के जजेज को कुछ सुविधाएँ देने सम्बन्धी यह विधेयक है। ज्यादातर बोलने वाले माननीय सदस्य इस पेशे में, यानी बकालत के पेशे में रहे हैं या हैं लेकिन मैं उन लोगों में नहीं हूँ। मैं एक साधारण व्यक्ति भी हैसियत में इस बिल के बारे में एक दो बाने रखना चाहता हूँ। वकील के साथ मूविकल भी होना है और उमी हैमियत से मैं कुछ कहना चाहता हूँ। खूशी की बात है कि आपके दिल में जजों के प्रति हमदर्दी या महानुभूति पैदा हुई। काश इसी तरह की महानुभूति मजदूरों और जो दूसरे मध्यम वर्ग के लोग हैं जिनकी आमदनी कम है उनके लिए भी होती। उनके लिए भी आप कोई इस तरह की व्यवस्था करते। लेकिन ऐसा न करके दूसरी तरफ आप उनके अधिकारों पर कुठारघात कर रहे हैं जैसा कि बोनस छीन कर आपने किया है। हमारे दल के प्रवक्ता पहले ही कह चुके हैं कि हम कोई ईर्ष्या नहीं करने कि आप जजेज की सुविधाएँ क्यों बढ़ा रहे हैं आप उनको वह सुविधाएँ जरूर दे ताकि वे ठीक तरह से अपना काम कर सकें। यह बान भी कही गई कि जजों की भ्राज की सामाजिक प्रगति के अनुसार अपने को ढाचना चाहिए। इसको कहने में कोई अनिश्चयकित नहीं होगी कि अभी तक वे ऐसा नहीं करते रहे हैं लेकिन वह अलग बात है मैं इस सम्बन्ध में एक बात कहना चाहता हूँ।

आप ने सम्पुचुधरी एलाउन्स यानी आतिथ्य सत्कार के नाम पर हाई कोर्ट के

मुख्य न्यायाधीश को 300 रुपया देना तय किया है। जो अगला विधेयक आने वाला है, जिस पर हम बहस करने वाले हैं, वह सुप्रीम कोर्ट के बारे में है उस में सुप्रीम कोर्ट के चीफ जस्टिस को 500 रुपये और सुप्रीम कोर्ट के दूसरे जजों को तीन-तीन सौ रुपया देगे। मैं जानना चाहता हूँ कि आप हाई कर्ट के जजों को इस तरह का सम्पुचुधरी एलाउन्स क्यों नहीं देना चाहते हैं, दोनों न्यायालयों के जजों के बीच में यह अन्तर क्यों रखा गया है? मेरी राय में यह अन्तर समाप्त होना चाहिये, हाई कोर्ट के जजों को भी सम्पुचुधरी एलाउन्स या आतिथ्य सत्कार के नाम पर कुछ राशि अवश्य दी जानी चाहिये। यदि नहीं दे सकते हैं तो सुप्रीम कोर्ट के जजों को भी नहीं दी जानी चाहिये अन्यथा हम से आपस में कटुता पैदा होगी।

दूसरी बात मैं यह निवेदन करना चाहता हूँ कि भ्राज कल न्यायालयों में पैरवी बहुत चलने लगी है; कुछ साल पहले ऐसी बात नहीं थी और जनता में न्यायालयों के प्रति पूर्ण विश्वास था लोग कहा करते थे कि वहा पैरवी नहीं चल सकती, सही भाषनों में हमें न्याय मिलेगा। भ्राज पैसे और धन का तो अमर पडता ही है पैसे वालों की जल्दी न्याय मिल जाता है और कभी कभी तो गलत तरीके से भी मिल जाता है, लेकिन जो बेचारे गरीब हैं उन्हें न्याय नहीं मिलता। मैं इस का एक मुक्तभोगी हूँ मैं 1957 के पार्निशामेन्ट के चुनाव में खडा हुआ था और 8 हजार वोटों से हार गया था। उस समय कांग्रेस के एक मंत्री भुजपकरपुर में उम्मीदवार थे—उनका नाम था—श्री महेक प्रसाद सिंह, जो बाद में सगठन कांग्रेस में चले गये थे। उन के खिलाफ बाबू महामाया प्रसाद सिंह खडे थे जिन का समर्थन कम्युनिस्ट पार्टी कर रही थी। उस समय, सभापति जी, हैड-लाइन्ज में अखबार में निकला—

“Communist plot to kill Mahesh Babu”

## [श्री रामावलार चास्त्री]

जिस में मुझे सुझाव बनाया गया था कि इस प्रकार का वड्यरन देने किया है बाद में एम्पायरी हुई—जिस्ट्रेट ने कहा कि यह संभव है, यह जाली बिट्टी है। बाद में मामला एस० डी० प्रो० के पास गया तो उस ने खारिज कर दिया। जब हाई कोर्ट में पहुंचा तो वहाँ भी वेंचुरी के बल पर बेरी वरज्वास्त नामजूर कर दी गई। जब मैंने निवेदन किया कि मुझे सुप्रीम कोर्ट जाने दिया जाय तो नहीं जाने दिया गया—यह वेंचुरी का प्रसर है। मैं चाहता कि सरकार का ध्यान इस तरफ भी जाये ताकि वेंचुरी के बल पर गरीबों का गला न काटा जाय।

इन शब्दों के साथ मैं इस बिल का समर्थन करता हूँ।

SHRI H R GOKHALE Sir, the debate has been very good and I am particularly happy that every one of the hon. Members who spoke has supported the Bill. There might have been some aspects of the matter spoken in a critical way, but mainly with regard to the Bill itself, there has been unanimous support.

Mr Somnath Chatterjee did say that this was a measure which was long overdue, but he also said, what has been given is a pittance. I must say, it is not so. The salaries of judges are fixed under the Constitution and even if we have decided to amend the Constitution, we could not have increased the salary of a judge by more than Rs 500 or Rs 1000 at the most. But sum total of the benefits given under this Bill are much more than that. It touches the question of pension because pension has become a very important matter in respect of judges. This has relevance to certain other issues which were raised

Mr. Frank Anothony had said that judges should not be allowed to practise, not only in their courts, but in any other court and in the Supreme

Court. Then it was said that judges should not be given any employment after retirement. With the present low pension, a situation arises when perhaps the judges are compelled to take up employment, to carry on. Of course, Mr. Frank Anthony wanted that the pension should be the same as the salary. We cannot do that. But I think there has been a substantial increase in pension for the judges of the High Court, and as you will see later on, in the pension of the judges of the Supreme Court. Of the other two matters which have not been made applicable at all before, one is the family pension. Unfortunately, nobody referred to it. A judge dies in harness. He does not get pension. He cannot obviously get it, but his dependents too do not get pension now. Family pension really is intended to provide for the dependents of judges when they die in harness and it is a reasonable amount which is provided for. Then the third thing is about gratuity. There, the hon. Member Mr. Sinha is right that it is made applicable only to judges coming from the Bar, and the reason is that with regard to service judges, there is already the same scheme applicable in respect of gratuity. It is only the members of the Bar who were not entitled. The reason for making the qualifying service also low is that the Bar judge cannot remain like the service judge for that length of time; and if you make that qualifying period very large, no judge will in fact get the gratuity. And I think that 2½ years of service, which is the qualifying period, is a reasonable period, after which the judges will be entitled to get gratuity which is 20 days per year of service, subject to a maximum of Rs 30,000/- And some judges are entitled to reach up to the maximum. This has been available to the Civil Services, but unfortunately not available to the Bar judges. Now that, to my mind, is a substantial improvement. Now a question has been raised because two allowances have been provided for. One is the sumptuary allowance. The Chief Justice as far as the High Court is

concerned, would get it. The point is that the Chief Justice, in his capacity as the Chief Justice of the High Court has to spend on entertainment—it is not that he should entertain in the sense in which we think of entertainment. Not in that sense. Lots of people call on him in the ordinary course. District judges and other High Court judges call on him; and sometimes the Ministers call on him, as a Minister has got to do, in the course of his duty, particularly if the Minister happens to be the Law Minister or the Minister for Justice. It is ordinary courtesy that even where an allowance is not given, the judge cannot say, "I am not going to offer you even a cup of tea." He does it. He has been doing it even before this. Therefore, some provision is made by way of sumptuary allowance in respect of the Chief Justice of the High Court, on whom many district judges, many other judges from the subordinate judiciary, other judges of the High Court and certain other people—who in the ordinary course are required to visit him—call; and he is entitled to a sumptuary allowance.

In addition to that, I might mention with a reasonable degree of confidence—because, somebody also raised the question that this is all subject to tax—that the sumptuary allowance is not subject to tax. This Rs. 300 is not subject to tax. If Shri Chatterjee visits a Judge, I am sure he will not let him go without a cup of tea. Let us not be unfair to them, because they have all been gentlemen. They have been treating the guests in the same way in which all of us treat them. One way in which we can compensate them is to give them some benefit which is not subject to tax.

**SHRI SOMNATH CHATTERJEE** :  
That is the assurance I want.

**SHRI H. R. GOKHALE** : I am telling you I am not giving any tax exemption here. The tax exemption is under the Income-tax Act itself. Under

the existing law, as it is, it is not subject to tax. No special provision of tax exemption is made in respect of this.

A conveyance allowance of Rs. 300 is given to the Judges in the High Courts and the Supreme Court. Judges, particularly in bigger places, have to spend considerably on travel from their residence to the High Court, because the distances are longer in those places. I can say this from personal experience because I have been in one of the bigger places. Of course, this allowance is payable subject to their maintaining the car. If they do not maintain the car, they do not get the allowance. Therefore, I think this is also one of the substantive part of the benefits which are sought to be given to them.

**MR. CHAIRMAN** : They can go by taxi.

**SHRI H. R. GOKHALE** : They can go by taxi, but it will be costly. Conveyance allowance is given when they maintain a car. This has been provided, taking note of the other enactments where conveyance allowance is provided.

I do not want to go into the details. But I do mean to say that it is not a pittance. Perhaps it could have been more. I do not say that it could not have been more. But I do not think that in the present situation we can go so far as to keep these salaries completely out of tune with the general level of emoluments of the civil servants and other. Therefore, taking into account all those circumstances, this is not a pittance. This is a reasonably good package which is being offered to the High Court and Supreme Court Judges.

I fully agree with Professor Hiren Mukherjee that money is not everything. Why should it be everything? But I do not think that money is nothing also. The fact is that as human

[Shri H. R. Gokhale]

beings, as judges are, they have to live in circumstances where the economic and social impact is felt by them as much as by others. Therefore, while I do agree that one should not hanker after money merely for the sake of money, as human beings, as we are, we cannot completely ignore the money aspect of a person's remuneration or this emoluments

There is an amendment given notice of by Shri Somnath Chatterjee, about which he spoke also I personally feel that this is a matter which requires to be considered. I can tell you there was a time when there was a demand for judicial or quasi-judicial inquiry in every case. When anything happens a man wants that it must be a judicial or quasi-judicial inquiry. And no less a person than a retired or a sitting judge was acceptable for such enquiries. There has been a criticism as to why we do not appoint, for example, sitting judges. Now there are two reasons. Firstly, it is not a fact that we do not appoint. In the last two years, almost as a matter of practice, we have appointed sitting judges for these enquiries. If you recall the instances in the recent past, you will see that sitting judges have been appointed. But the other thing is that in a long drawn enquiry, if a sitting judge is taken away—it is true that retired judges sometime take so long and they continue and do not finish the enquiry—then it is not good

(Interruptions)

SHRI H. R. GOKHALE: But what are you to do? The Constitution requires it.

(Interruptions)

Let us not blame the retired Supreme Court judge.

(Interruptions)

SHRI SOMNATH CHATTERJEE: They are very competent. I know

SHRI H. R. GOKHALE: I am not talking of their competency. I am

saying that some of these enquiries are delayed not because of the judges only; they have been delayed for various other reasons, and we, as members of the bar, must equally share a responsibility in that matter along with judges. In what way, these enquiries are prolonged by the members of the bar—this side or that side or perhaps both sides? To prolong an enquiry is a fact of which Mr. Chatterjee should be aware.

MR CHAIRMAN: And also members of the Government

SHRI H. R. GOKHALE: Everybody concerned. What I mean to say is that you cannot put a blame only on these judges. It is true that a judge does it.

SHRI SOMNATH CHATTERJEE: A person who is retiring or has retired is looking forward for appointment. That is the point.

SHRI H. R. GOKHALE: That really should not be done. Somebody mentioned about—I do not know who—a particular instance when it was said that two days or a few days before his retirement.

SHRI SOMNATH CHATTERJEE: I will give you a list.

SHRI H. R. GOKHALE: I do not want names. But if such a thing has happened, it should not happen.

SHRI SOMNATH CHATTERJEE: There is a very recent instance, Mr Gokhale.

SHRI H. R. GOKHALE: There may be an instance. I am not saying that. What I am saying is that it should not be done. What I was saying was not that it was not there; it may be there. What I was saying was that we should avoid doing that. In fact, we should not do that.

With regard to the practice after retirement, that was not raised by you, that was raised by Frank Anthony. It

is a sad state of affairs that the Supreme Court Bar today is full of retired High Court judges, apart from the sorry spectacle which they make, because most of them have not practised and do not command any adequate practice. The other bad part is that they deprive the new coming up members of the Bar. A new bar is being built up in the Supreme Court. So far as I am concerned, whenever any question of appointment of counsel for Government cases, may be as a Government Counsel or similar position, came up, I had stoutly declined to consider any retired judge or any retired officer of the government for taking up these positions as Government Counsels. I insisted that leading ones among the junior Members of the Bar ought to be given this chance, because Government alone has a possibility of giving work to the junior members of the bar and the Government owes an obligation to the Bar that a junior bar is built up.

(Interruptions)

SHRI SOMNATH CHATTERJEE: I wish your wishes were translated into action. You have a Supreme Court panel. What about the State panel? People are monopolising there.

SHRI H. R. GOKHALE: I am telling you about the appointments made by the Central Government in any panel anywhere in the country. I can say this with complete assurance that I have declined to include a retired judge or a retired officer of the Government....

(Interruptions)

even in the High Courts.

SHRI SOMNATH CHATTERJEE: But there are small panels. A large section does not get the benefits.

(Interruptions)

But I know that there are a handful of people who are getting the benefit.

SHRI H. R. GOKHALE: Do not say that; you are in Calcutta. The point was with regard to a retired judge. We are dealing with that.

(Interruptions)

I was saying about a panel of the Central Government, whether it is here in Delhi in the Supreme Court or in the High Court; and by any chance, your Calcutta panel is not a small one.

18.00 hrs.

These are the matters which have been taken into consideration in proposing this Bill.

I must refer to one thing more. It has been said by at least two hon. Members that judges have not been confirmed because they had given adverse judgments in this particular case or in that particular case. I must say, this is not true. Non-confirmation has nothing to do with the judgments. Recently a judge who had given the largest number of adverse judgments against the Government has not only been confirmed but has been promoted as the Chief Justice of the High court. The judicial pronouncement has nothing to do with confirmation or non-confirmation.

Sir, these are the main points which have been made in the course of the debate....

SHRI SOMNATH CHATTERJEE: Are you giving an assurance to consider my amendment?

SHRI H. R. GOKHALE: I have said so I am in agreement with this and we should consider it separately. I think, I have said that We will give due consideration to it.

With this reply which covers almost all the points, I commend the Bill to the House to be taken into consideration.

MR CHAIRMAN: The question is:

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

The motion was adopted.

MR. CHAIRMAN: Now, we take up the clause-by-clause consideration of the Bill.

Clause 2. There is no amendment.

The question is:

"That Clause 2 stand part of the Bill."

*The motion was adopted*

*Clause 2 was added to the Bill.*

Clause 3 (Amendment of Section 17A)  
Amendments made

Page 2, line 7,—

for "and after sub-section (1) as so renumbered"

substitute "and,—

(a) in sub-section (1) as so renumbered, after the words "the First Schedule" the words "retires or" shall be, and shall be deemed always to have been, inserted,

(b) after sub-section (1) as so amended" (2)

Page 2, line 21,—

for "dies" substitute "retires, or dies" (3)

(Shri H R Gokhale)

MR. CHAIRMAN. The question is

"That Clause 3, as amended, stand part of the Bill."

*The motion was adopted*

Clause 3, as amended, was added to the Bill.

Clause 4 was added to the Bill.

Clause 4A (New)

SHRI SOMNATH CHATTERJEE: I beg to move:

Page 3,—

after line 2, insert—

"4A. After section 23A of the principal Act, the following section shall be inserted, namely:—

"23AA. No retired Judge shall be entitled to exercise any judicial or

quasi-judicial functions in any matter, question or dispute, in which a Government or a Government Company as defined by the Companies Act, 1956, or a body or authority constituted or incorporated by any Act of Parliament or of legislature of a State or Union territory or under the administrative or financial control of a Government is a party or is interested or in any manner concerned or shall be eligible to be appointed to any office or post in respect of which salary or allowance will be payable out of the Consolidated Fund of India or of any State or of any Union territory.

*Explanation.*—For the purpose of this section, Government will mean the Central Government or the Government of a State or of a Union territory." (5).

MR. CHAIRMAN: I put Amendment No 5 [clause 4A (New)] moved by Shri Somnath Chatterjee to the vote of the House

*Amendment No 5 was put and negatived*

MR. CHAIRMAN: There is no amendment to Clauses 5 and 6.

The question is:

"That Clauses 5 and 6 stand part of the Bill."

*The motion was adopted.*

*Clauses 5 and 6 were added to the Bill.*

Clause 7 (Amendment of the First Schedule)

*Amendment made:*

Page 4, line 2,—

for "service" substitute "service for pension" (4)

(Shri H. R. Gokhale)



MR. CHAIRMAN: The question is:

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

*The motion was adopted.*

Clause 7, as amended, was added to  
the Bill.

Clause 1 (Short title and Com-  
mencement)

Amendment made:

Page 1, line 5,—

for "It shall" substitute—

"Save as otherwise provided, it  
shall" (1)

(Shri H R Gokhale)

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.

The Enacting Formula and the Title  
were added to the Bill.

SHRI H. R. GOKHALE: I move:

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

MR. CHAIRMAN: The question is:

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

*The motion was adopted.*

18.06 hrs.

SUPREME COURT JUDGES (CON-  
DITIONS OF SERVICE) AMEND-  
MENT BILL

MR. CHAIRMAN: The Supreme  
Court Judges (Conditions of Service)  
Amendment Bill is also the same as  
the previous one. So, we need not  
repeat it .

SHRI SOMNATH CHATTERJEE  
(Burdwan) I wan. an assurance in  
respect of this Bill also.

THE MINISTER OF LAW, JUS-  
TICE AND COMPANY AFFAIRS  
(SHRI H R GOKHALE): Not assu-  
rance; I will say, I will consider it.

Sir, I do not want to repeat my  
speech It is practically the same as  
the previous Bill with some minor  
variations, I beg to move.\*

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

MR. CHAIRMAN: The question is:

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

*The motion was adopted.*

MR. CHAIRMAN: We take up  
clause-by-clause consideration.

The question is:

"That Clause 2 stand part of the  
Bill."

*The motion was adopted.*

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\*Moved with the recommendation

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of the President.