Mr. Speaker: But 2 hours have been allotted.

Shri Satya Narayan Sinha: That was under a wrong impression. In the Bill which we passed in the last session, there is some lacuna and they have taken it to the High Court There is some writ petition or something like that. So, they just want to get over it. There is no controversy about it. I am not responsible for allotting 2 hours for it. If you like, it may be dropped, Sir.

Mr. Speaker: The business allocation is for 8 hours and we have only 5 hours.

Shri Satya Narayan Sinha: We can sit a little late today.

Mr. Speaker: Is the Government prepared to drop the Hindi Sahitya Sammelan (Amendment) Bill?

Shri Hem Barua (Gauhati): That is a very insignificant Bill. How 2 hours were allotted to it, God alone knows. It is better that it is dropped and we discuss the more serious matter, namely, the price-line.

Shri Satya Narayan Sinha: If the hon. Members look into it, they will see that it is a very simple amendment. The Business Advisory Committee insisted on 2 hours; I pleaded...

Mr. Speaker: If the House agrees, the hon. Minister may formally move for the reduction of time allotted to the Bill from 2 hours to ½ hour.

Shri Hari Vishnu Kamath (Hoshangabad): The House may sit tomorrow.

Mr. Speaker: There is no question of sitting tomorrow; hon. Members must already have made arrangements.

Shri Satya Narayan Sinha: I formally move that the time allotted to this Bill may be reduced from 2 hours to ½ hour.

Shri Hari Vishnu Kamath: The Bill is not even before the House. How can he move for reduction of time?

Mr. Speaker: Objection has been taken by Shri Indrajit Gupta that his motion may not be reached. So, the hon. Minister has moved that the time allotted to the Hindi Sahitya Sammelan (Amendment) Bill may be reduced from 2 hours to ½ hour.

Shri Hari Vishnu Kamath: Then, I move an amendment that it may be reduced to 1 hour.

Shri Bade (Khargone): It should be at least 1 hour.

Mr. Speaker: Even then the same difficulty arises that instead of 8 hours, it would be 7 hours. Shall we sit till 8 o'clock?

Shri Hem Barua: It is better that the Bill is postponed to the next session.

Shri Hari Vishnu Kamath: It may be taken up in the January session.

Shri Satya Narayan Sinha: I would not like to inconvenience the House by sitting for 8 hours. In that case, if hon. Members are not prepared to reduce the time to half an hour,....

Mr. Speaker: Is it possible that we may take up the Hindi Sahitya Sammelan (Amendment) Bill after Shri Indrajit Gupta's motion regarding price-line, if there is time?

Shri Satya Narayan Sinha: Yes, Sir.

12.49 hrs hrs.

CONSTITUTION (FIFTEENTH AMENDMENT) BILL.—*contd.*

Mr. Speaker: The House will now take up further consideration of the motion moved by the hon. Law Minister for reference of the Constitution (Fifteenth Amendment) Bill to a Joint Committee. Out of 3 hours

allotted, 1 hour and 50 minutes have been taken up. I hour and 10 minutes remain.

Shri C. K. Bhattacharyya (Raiganj): Sir, when the hon. Law Minister was speaking on this Bill, he told us that as many as 20 cases are there before the department, dealing with the ages of High Court Judges.

12.50 hrs.

[MR. DEPUTY-SPEAKER *in the Chair*]

He has not disclosed to the House whether in all these 20 cases, it is the judges who have applied to the Government for changing their ages or whether it is the Government which is disputing the ages of those judges, as had happened in the case already known. In the case already known it was not the judge who applied for having his age changed. The case arose because the Government disputed his age and wanted to remove him from the Bench before his time of retirement according to the age already accepted by the High Court. The hon. Law Minister has not stated whether the difficulties about the 20 judges have been about because those judges applied for changing their ages or whether the Government has created this problem by disputing the ages of the judges already accepted by the High Court. If we had known it we might have dealt with this matter. I hope, Sir, when the Law Minister deals with it he will inform the House on this question. The question is, he mentioned to the House that there are 20 cases pending before the Government relating to change of ages of High Court judges.

The Minister of Law (Shri A. K. Sen): I did not say 20; I said there were 5 in one High Court alone. I think Shri Mathur said that there were 20 cases.

Shri C. K. Bhattacharyya: I believe, he said that there were 20 on the whole.

Dr P. S. Deshmukh (Amravati): In the Law Minister's absence some more figures were given.

Shri Tyagi (Dehra Dun): I remember, he said that there were four or five in one High Court.

Shri A. K. Sen: Shri Mathur quoted the figure of 20.

Shri C. K. Bhattacharyya: In any case, whether they are 5 or 20, the question I put to him is this, whether it is those judges who have applied to the Government to change their ages or whether the problem has arisen because the Government is disputing the ages of those judges on the eve of retirement according to the age which has been accepted by the High Court when they were appointed. That is the question I put to him, because in the case already known the problem arose because the Government disputed the age of the judge, when he was going to retire, an year before his proper time of retirement.

Shri Harish Chandra Mathur (Jalore): This must be clarified by the Law Minister to avoid unnecessary argument; otherwise, we are arguing just in the dark. Let the Law Minister clarify it. Why is there a reluctance on the part of the Law Minister to do that?

Mr. Deputy-Speaker: Order, order. The hon. Member is not yielding.

Shri Harish Chandra Mathur: I am addressing you.

Mr. Deputy-Speaker: Unless he yields, the hon. Member cannot go on.

Shri Harish Chandra Mathur: He will yield to you. I am submitting to you.

Shri A. K. Sen: I shall do that.

Mr. Deputy-Speaker: He will clarify that when he replies to the debate.

Shri Harish Chandra Mathur: What is the use then?

Shri C. K. Bhattacharyya. In the Bill that has been placed before us, the question of deciding the age of a High Court Judge finally has been left to the President. The question of deciding the age of a judge is a question of fact. It is not a question of opinion that a Minister may decide it or the President may decide it. Since it is a question of fact it can only be decided by a court of law. There is no other person who has authority to decide a question of fact. In the case that is already known, the judge approached the court not to have his age verified or declared; he approached the court disputing the order of the Government to remove him from the Bench. Had he filed a declaratory suit in a Munsif's court to have his age declared he could have got it done, but being a High Court Judge probably he did not go to a Munsif's court. An ordinary person to establish his age would have at once gone to a Munsif's court and filed a declaratory suit and got his age declared. He would not have left it to the President or the Home Minister to decide what his age is.

Regarding the question of leaving the matter to the President, I believe, some of my hon. friends, Shri Shree Narayan Das and Shri Tridib Kumar Chaudhuri have argued that it should not be left to the President.

I was going through some of the Debates of the Rajya Sabha regarding the Press Council Bill, when the Chairman of the Press Council was proposed to be nominated by the President. And Pandit Hirday Nath Kunzru, while arguing against that, said:

> "I do not want him to be appointed by the President of India who will have to act as the Ministry directs him to. The Ministry, though Dr. Keskar may not do so personally, being a political body, may be tempted by political considerations to recommend the appointment of a person as Chairman of the Council."

Shri H. N. Mukerjee (Calcutta Central): On a point of order, Sir. I have an idea—I am subject to correction—that in this House no reference should be made to the proceedings in the other House, unless it be that reference is made to statements by Ministers. Statements made by ordinary Members of the other House are not entitled to be referred to in this House. That is my impression, I am subject to correction.

Mr. Deputy-Speaker: That is only with reference to the current session, not about the past session. Is that about the current session?

Shri C. K. Bhattacharyya: No, Sir, this is from the 1956 proceedings.

Mr. Deputy-Speaker: The hon. Member may finish soon. The time is very limited.

Shri C. K. Bhattacharyya: I will finish very soon.

Again, the question was that the nomination be left to the Vice President. And about that Pandit Kunzru was prepared to agree to the nomination being left to the Chairman of the Council of States but he would not accept it to be done by the Vice-President. Pointing out the reason for this, he said, "because the Vice-President as such would have to carry out any recommendation made to him by the Government.' He was prepared to accept the nomination being done by the same person under another designation but not as Vice-President.

I should quote again the opinion of Shri P. N. Sapru, who was himself a Judge of the Allahabad High Court. He said:

> "I would like to say that it would have been better if the President of India had not been made the nominating authority.

I should like to say that. The President does not act in his individual discretion; the President acts on the advice of the Ministry of the day and the Ministry the day is answerable to a political party."

That is the way Pandit Hirday Nath Kunzru and Shri P. N. Sapru interpreted the nomination being left to the President. And here the determination of the age of the High Court Judge is being left to the President. I believe that ought to be changed, and what I would suggest is this. Instead of leaving it to the President, the Law Minister should set up an administrative tribunal composed of Judges of the High Court or the Supreme Court. They may frame their own procedure. And it is this administrative tribunal which will have full authority to determine the age of a Judge when such a question is placed before them. That is my suggestion to him.

Shri Bade (Khargone): I am glad that this Constitution (Amendment) Bill is going to the Select Committee, because there are a number of important points to be considered by the Committee.

The first is the provision which seeks to amend article 217 so that the retirement age of High Court Judges may be increased from sixty to sixty-two. This is being done because the Fourteenth Report of the Law Commission has recommended like that. But I do not know why, when they have recommended sixty-five years, the Government has taken only the golden mean. The Home Ministry has extended the age of retirement of government servants from fifty-five to fifty-eight, that is by three years. Then why have they not proposed an increase from sixty to sixty-three in the case of Judges? What is the measuring rod? No reasons are given for this.

When the retirement age of High Court Judges is being raised from sixty to sixty-two, the Select Committee should consider why the retirement age of the lower class of Judges, that is District Judges, Additional District Judges, and all Judges should also not be raised. When the law is made, or when there is an amendment made for the retirement age of High Court Judges, the retirement age of the District Judges and Additional District Judges should also be raised.

I am personally against raising the retirement age of Judges. Because, the old people, when they meet, always speak of their insomnia, rheumatism and diabetes. There is no other subject of conversation for them. Whenever they meet each other they always talk of their diseases. Therefore, let old people go and let new blood come in. Because, according to Shakespeare, there are seven stages in life—first a child, then a school boy, then a soldier singing ballads of his mistress' eye-brow, then a judge, then a gentleman wearing all the loose pants of his young age and then he goes to the grave sans eys, sans teeth, sans everything. So, here also old people after 60 or 62 are without teeth, without hearing and they get all sorts of diseases like insomnia, rheumatism and diabetes. They are very slow and slack in their work because they know they have to retire very soon without anything to look forward to.

13 hrs.

Mr. Deputy-Speaker: Dr. Aney is laughing at you.

Shri Bade: That is a case where exception proves the rule. Therefore, I say that young blood should come in and these old people should go. The delay in the disposal of cases in courts is also due to retaining old judges. Of course, some pleaders and advocates are also to be blamed partly for delay. Some judges are too old and they

[Shri Bade]

know they are going to retire without any hope of any extension. So, they do not take enough interest in their work.

Then there is an amendment to give some allowances to judges if they are transferred from one High Court to another High Court. On the other hand, if a civil servant is transferred from Madras to New Delhi, he is not given any additional allowance. Recently, a friend of mine was transferred from Madras to New Delhi and he was not given any allowance. So, it is a matter for consideration whether the Constitution should be amended to give some concessions to the Judges alone.

Then there is an amendment in clause 10 to raise the maximum limit of taxes leviable by local authorities on professions, trades, callings and employment from Rs. 250 to 500. Previously, a municipality could not realise more than Rs. 250 by way of taxes. In my opinion, even this limit of Rs. 500 is very low. If for example, a municipality takes at the rate of Rs. 5 per show in the case of cinema, it will come to Rs. 1.800. But, according to this amended provision, they cannot collect that much amount. So, the maximum limit should be raised further still, as Rs. 500 is too low.

Then I come to the amendment of article 311, which is very mischievous, which takes away a very important right of the Government servants. By this amendment only one opportunity will be given to a Government servant in respect of any departmental enquiry against him. The amended article will read as follows:

> "No such person as aforesaid shall be dismissed or removed except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:"

From the original article the words "until he has been given a reasonable opportunity of showing cause" has been taken away. Now the cause of the substantial enquiry will not be shown to him, because it is mentioned in sub clause (b)

> "where the authority empowered to dismiss or remove a person is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry".

So, that inquiry will not be held at all.

I know in one case there was some suspicion of a certain Government servant that he has joined some opposition party and has gone to Nagpur to attend certain semi-political party. He told the inquiry officer that he went to Nagpur to take his wife and child. The inquiry officer was not convinced. He produced his wife and child before the inquiry officer and told him "this is my child. Then the inquiry officer said jokingly "you must have borrowed the child". That is a very funny thing. He is my friend. He brought his wife from Nagpur and showed her to the Enquiry Officer. He said, "I never went to Nagpur for attending any semi-political party meeting but I had gone there to be with my wife who had gone there for delivery." Therefore, so far as Government servants are concerned, if article 311 of the Constitution is amended, it would be taking away a very fundamental right.

The constitution should not be amended every now and then. It is said:

रूढ़िर्बास्त्राद् बलीयसी ।

If there are practices and those procedures are going on, if people are following them, amendments should not be made often. The Constitution should be flexible. The Manu Smriti is always changed after a hundred years. It is not changed every now and then. The Constitution may be

flexible and elastic but it must not be so flexible or elastic as to go according to the whims of the ruling party.

My submission is that the Joint Committee should see that this amendment of article 311 of the Constitution is a very mischievous amendment and it should not be allowed to go in. At the same time, there is one amendment about the age of judges. There is one principle in law known as the law of estoppel and acquiescence. When one has said that this is his age and one has entered into service, one is stopped by the principle of estoppel to change it. They should not say that their age as given is not the correct age and that it is such-and-such. So, the Joint Committee should see that this amendment regarding the raising of the age from 60 to 62 is not proper. It should at least be 65 and should be made applicable to all the judges, or it should be as it is, that is, 60 years because new blood should be encouraged to come in and do proper service to the nation.

Dr. P. S. Deshmukh: Mr. Deputy-Speaker, Sir, a large number of hon. Members who have spoken on this Bill have almost uniformly opposed these provisions which occur in clauses 2, 4 and so on. It appears to me that the points of view that have been urged so far as these clauses are concerned are very relevant and sufficiently important, which should be considered by the hon. Law Minister as well as by the Joint Committee. I hope, even before the Joint Committee the hon. Law Minister will represent the view which the House has taken as a whole so far as the extension of the retirement age, the determination of the date of birth of judges etc., are concerned.

I also agree with my hon. friends who have said that the Constitution should not be treated with such slight respect as to be amended in small details every now and then. I specially object to giving these judges this special position and privilege because this amendment evidently has arisen not as a result of interference of the Home Department in the States in bringing down the judges' ages. There has only been one case of this sort which has been pointed out. As against that, according to our information there have been a large number of cases, raised by the judges for getting their ages corrected. We consider the High Court Judges as people with great talent as well as with great character, but, I think, the character becomes suspicious when after years of their having known what their particular date of birth was they are seeking now to get that changed. I think, this is something which, even if there is justification, the High Court Judges should ordinarily be expected to refrain from. If they cannot be restrained in that way, I do not think we should give them a position which is quite separate and distinct from that of an ordinary citizen of the country. As has been mentioned by a friend of mine, if they have a quarrel with the age as recorded, they must go to the ordinary civil court and get it adjudged just as an ordinary citizen will do. Why should be President be bothered about determining the ages of a half a dozen or more people. I object to this provision of bringing in the President one way or the other, whether he interferes according to his own choice or hands over the cases to a tribunal to determine. why should be President be brought in unnecessarily and botheration created in this dispute which is going to benefit after all, a few individuals. I think, as has been mentioned by Dr. Aney the other day, there should be the law of estoppel working against them. They have allowed this thing to continue for so long and it should not be open to them now to change it. The judges being legal people who know the laws are expected to know the law better than anybody else. They should not be ashamed, if there is really a hard case, to go before the Sub-Judge and get it done. In fact, I would go to the extent of saying even that it should not be open to

[Dr. P. S. Deshmukh]

them. Estoppel should work against them and it should not be open to question the once settled age.

The extension of age is neither here nor there. As pointed out by an hon. Member, why 2 years; why not 3 or five. I am not in favour of extending the age of Judges although there is a clamour that longevity of life has increased. It has increased tremendously from 29 to 47 as was mentioned by the Prime Minister in a broadcast or somewhere. Even so, we have not taken it into account in extending the other ages. I think whenever we give extension, it does affect the younger generation. Even if there is need for extension, let us wait for 5 or 10 more years of freedom before we extend the ages so as not to block the coming in of new blood and better qualified people. There is no doubt that the younger generation is better qualified than the older generation so far as qualifications are concerned.

Thirdly, this provision about some allowance on transfer is also a very objectionable feature. This is also a very special sort of a thing intended for the Judges. If you are not getting better recruits because the salaries are lower, than what a clever lawyer gets, let us raise the salaries. But, this way of tempting them or meeting their grievance or to make them more agreeable transfers by giving them these facilities is also not quite proper. I hope the Joint Committee will come to the same conclusion which has been pointed out by so many Members of the House and reject these amendments which have been proposed.

13.13 hrs.

[MR. SPEAKER *in the Chair*]

So far as clause 14 is concerned, I do not like the way in which the amendment has been worded. They are just trying to put in the words 'including vacations'. I do not like the way the amendment has been put by which "vacation" would also figure in the Constitution. I hope that some better brain in the Ministry or somebody in the Joint Committee will be able to suggest a better amendment.

Shri Harish Chandra Mathur: Mr. Speaker, I would again submit, let the Law Minister tell us this, because there has been a discussion from Member to Member that the request for the age to be revised has been from the Judges. We want to know how many Judges have asked for revision. You were not here. The argument all the time has been that it is not the Judges who want to get their ages revised, but, it is the Government which is now taking up the case *suo motu* and wanting to cut down the age of the Judges. We want to know this so that our discussion is informed. They have also mentioned that they have already taken certain steps to revise the age of certain Judges and they want to give this retrospective effect. If they want to give retrospective effect, let us know what they want to give retrospective effect to. Whether they have taken action *suo motu* or whether it is the Judges who had asked, how many cases have been there, we want to know so that our discussion is informed. Every Member has spoken at cross purposes just dealing with one point. So many other amendments have been lost sight of. The hon. Law Minister said that he would be prepared to explain. Let him first give us this much of factual information at least.

Shri Hari Vishnu Kamath (Hoshangabad): The senior Minister is not here.

Mr. Speaker: The Law Minister might be informed so that he might come.

Shri A. N. Vidyalankar (Hoshiarpur): This Bill is a jumble of many

matters, and many issues have been raised. Still, it is not a comprehensive piece of legislation. I wish that Government had brought forward a comprehensive Bill.

Mr. Speaker: This expression 'jumble' is that of Shri Kamath, and it is spreading like a contagion to other Members also.

Shri A. N. Vidyalankar: There are many issues raised, but I shall touch only three points. The first question is with regard to the raising of the retirement age. This matter has been pending for long, and there are many judges who are nearly completing their original retirement age. I want to know whether this measure would be given retrospective effect at least in the case of who retire before this legislation is finally enacted.

The other matter is regarding the determination of the age. I do not think it would be desirable or proper that the President should be bothered in this matter. My suggestion would be that before the appointment is made and before the judge is appointed. The age should be determined first. and thereafter only the appointment should be made. With regard to those judges who are already working, and whose age is yet to be determined because dispute has been raised, I think the President should not be bothered. The Chief Justice of the Supreme Court—if it is considered desirable, he may be assisted by the two judges—should be entrusted with this work, and final decision must be made by him, and the President should not be bothered. There is also another reason why this suggestion should be accepted, because the President naturally would act under the advice of the Home Ministry, and that finally or ultimately amount to a decision by the Home Ministry, and that would mean interference by the executive in the judiciary. I would like that such interference should be avoided. It may even be well-intentioned interference, but still the impression should be avoided that there has been some kind of interference by the executive in the judiciary. Therefore, I think that the matter should be left to the judiciary, and the Chief Justice of the Supreme Court should decide any dispute regarding age.

I agree with the remarks made by Shri Tyagi that such disputes cast very unfavourable reflection on the integrity of our judiciary, and I do not think that these disputes should at all have been allowed to linger long. I personally think that if a judge submits an affidavit about his age that should have been accepted. I do not know why so much of fuss has been created in this matter and why this matter has been allowed to prolong so much

The question was raised with regard to reappointment after retirement. I would like the House to bear in mind that in some enactments such as the Industrial Disputes Act, for instance, it is provided that the tribunal appointed under the enactment should consist of only a retired High Court judge. So, while fixing or determining the age, we should keep in mind also the fact that under that enactment, no one after the age of 65 can be appointed to serve on the tribunal. If we fix the retirement age for High Court judges at 62, that means that only for three years a retired High Court judge can serve on the tribunal after retirement. Some hon. Members have suggested that the retirement age should be raised from 62 to 65. If the age is raised to 65, we shall have to introduce certain amendments in the other legislation also. This should also be kept in mind.

Shrimati Sarojini Mahishi (Dharwar North): The Constitution (Fifteenth Amendment) Bill that is before the House now consists of a number of provisions which are not apparently connected with each other. This Bill consists of a number of provisions which ought to have been brought be-

[Shrimati Sarojini Mahishi]

fore the House in the fifth amendment to the Constitution, but for various reasons that could not be done. A few of the amendments which could not be brought forward in that Bill and also a few others which have been necessitated with the passage of time have together been brought forward in the Bill now before the House.

In a federal form of Government, the judiciary occupies a very important place. It is one of the important organs of the State. The judiciary stands as the custodian of the Constitution as also its interpreter. Therefore, it has a very important role to play.

The other day when speaking on this Bill, Shri Tyagi referred to deterioration of the Indian judiciary. I do not know why he is so much attached to the British judiciary and why he has spoken so highly of that. I do not think that the Indian judiciary and the eminent Judges of India are in any way inferior to any of the justices in the world. We have got a very brilliant galaxy of justices even prior to the British regime and subsequent to the British regime. If we look at our ancient history, we have got a galaxy of writers of *smritis* and a number of commentators who have written their commentaries to suit the political, social and economic circumstances of the day, making certain amendments in the original *smritis* also. Therefore, subsequent to independence also, we have a galaxy of eminent Judges in the field. I do not know why so much praise is being given to British Judges because, to say the truth, though the Judges who imported pieces of legislation from Britain to India tried to interpret the personal law, either Hindu law or Mohammedan law, with the help of the Pandits and the Maulvis as to how much justice they could do; the instruction given to them was that they should interpret every piece of legislation with equity, good conscience and justice. With all due respect to those Judges, we must at the same time say that we had also a very brilliant galaxy of eminent Judges.

Coming to the amendments, the first is regarding the raising of the retiremetn age of the Judges. The retirement age of a High Court Judge was 60 and that of a Supreme Court Judge 65. I do not know why this distinction should be there. The necessary qualifications for being appointed as a Judge of the High Court or of a Supreme Court are practically the same—experience of ten years as an advocate in one or more High Courts or experience of a judicial office for ten years and appointment as a Supreme Court Judge, five years' experience as a High Court Judge. Therefore, when there is no such distinction for appointment, why should there be a distinction in the case of the retirement age of Judges? I do not know why in the case of High Court Judges it should be raised from 60 to 62 only. What harm would have been there if it was raised to 65? I do not know whether High Court Judges who have retired as Judges of High Court at the age of 62 would stand a chance of becoming Supreme Court Judges. It will be by sheer chance that they would be coming as Supreme Court Judges. I hope the Joint Committee will consider this point again.

The second amendment relates to modification of article 220 of the Constitution. Article 220 as it is in the Constitution puts a restriction on a Judge of a High Court resuming practice after retirement in all the High Courts where he has worked as a High Court Judge. The amendment wants to make a provision that if he has served in the last High Court for at least five years, he can resume practice in all the other High Courts except the last High Court. Suppose a particular Judge works for 4½ years in each of the High Court, even in the last High Court, I do not know if he will be entitled to resume practice in all the High Courts. This will be a sort of temptation especially

to resume practice. Sometimes it may be a temptation if he is taken in any of the executive services subsequent to his retirement. Therefore, my request is that instead of taking him in any other service after retirement or allowing him to resume practice, it will be better if the retirement age itself is extended to 65 and then a bar is put upon resuming practice, so that they should not be tempted to take up practice or a job in any executive or any other department.

Article 226 is also being amended so as to give wider powers to the High Courts. Under Article 226, the High Courts have got the power to issue writs, directions or orders. All these constitutional remedies have been guaranteed under article 32 of the Constitution. The High Courts also have the power to redress the grievances of the citizens in this respect, but there is a restriction that except the Punjab High Court, within whose jurisdiction, the seat of the Central Government lies, no other High Court could issue such a writ against the Central Government or any authority of the Central Government or its representative. Therefore, the cause of action has been taken as the main thing. If the cause of action has arisen within the jurisdiction of a particular High Court, that High Court will be entitled to serve the writ direction or order. The remedies given to the citizens have been widened, and the litigants from distant corners of India need not go to the Punjab High Court to get their grievances redressed, but can apply to their own High Courts within whose jurisdiction the cause of action has arisen.

Article 276 is also being amended, and the local authorities can now collect or levy taxes from any trade, calling or profession up to Rs. 500 instead of Rs. 250 as before. I think this will be a burden for the ordinary person who wishes to enter any trade, calling or profession. It may not be a heavy tax for the bigger concerns, but for the smaller person who wants to enter a profession or calling or start his own undertaking, it may be a burden. In addition to this, he will have to pay a number of other taxes also. Therefore, I hope the authorities will reconsider this and raise the limit to Rs. 300 only and not to Rs. 500. That will be a good means of collection, but at the same time we must see that in order to encourage the trades, callings and professions, the citizens should be able to exercise his fundamental rights to enter any profession, and it is desirable to see that the ordinary person is not taxed.

This amending Bill is welcome, and I hope the changes I have suggested will be taken into consideration.

Shri S. M. Banerjee (Kanpur): I shall confine myself to the proposed amendments to article 311 of the Constitution.

I support the contention of my hon. friends who have spoken about the other articles of the Constitution, regarding the retirement age of the High Court Judges. I fully support the contention of my hon. friends who suggested that it should be 65 instead of 62, as in the case of the Supreme Court Judges.

I must congratulate the Government on bringing an amendment to Article 226. That will eliminate the many difficulties experienced by the Central Government employees in moving for writs in High Courts when the jurisdiction was given only to the Punjab High Court. I am happy the amendment which was suggested long ago by this House when many Members participated in the debate and suggested that this hardship should be mitigated, has been accepted.

Coming to Article 311, it is surprising, and I want to know from the hon. Law Minister or his Deputy the necessity of amending this article. What is the change? The original article reads:

> "No such person as aforesaid shall be dismissed or removed or

[Shri S. M. Banerjee]

reduced in rank until he has been given a reasonable opportunity of showing cause against the action propose to be taken in regard to him."

The proposed amendment reads:

"No such person as aforesaid shall be dismissed or removed except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges."

This was one article under which the Central Government or the State Government, the corporation employees or even the people in general could resort to writs whenever injustice was done to them by the officer or the department in reducing their rank and when they were tired of representing to the higher authorities after getting 'no' from every quarter. They took advantage of this article either in High Courts or in the Supreme Court. According to the classification control and appeal rules which is a sort of a charter of liberty for the Government employees, reduction in grade will be taken as a major punishment. When this reduction in rank is taken out of the purview of the article, it will be regarded as a minor punishment. The stoppage of increment for a year or a censure or a warning is a minor punishment now but if and when the amendment is accepted it will be a sort of a suppression of the Fundamental Rights of the Government employees which is already mortgaged in the Home Ministry. A major punishment like the reduction in rank where a man suffers mentally and financially even to the tune of Rs. 100 will be regarded as a minor punishment. I would like to know why this amendment is being proposed. I will read some passages from Basu's compilation which deals very nicely with article 311

"Reduction in rank means the degradation in rank or status of the officer, directed by way of penalty. It thus involves two elements: (a) a reduction in the physical sense: (b) such degradation or demotation must be by way of penalty. (a) Reduction in rank in the physical sense takes place where the Government servant is reduced to a lower post or to a lower pay scale. Even reduction to a lower stage in the same pay scale (ordered by way of penalty) would involve a reduction in rank, for the officer loses his rank or seniority in the gradation list of his substantive rank. Even the stoppage of future chances of promotion may constitute reduction in rank...

On the other hand where a Government servant has no title to a particular rank under the contract of his employment or conditions of service, there will ordinarily be no reduction in rank within the meaning of article 311(2).

An officer who holds a permanent post in a substantive capacity cannot be transferred to a lower post without complying with article 311(2)."

Now, what is a reasonable opportunity? I am quoting Mr. Basu's compilation because I am not a lawyer myself and I have to meet the arguments of eminent lawyers, our Law Minister and his Deputy. He shows what 'reasonable opportunity' implies:

"In short this clause requires that the civil servant in question is entitled to have an opporunity to show cause at two stages."

Supposing I am guilty of a particular charge. When I reply to the charge-sheet after going through the charges, I am heard in person or a statement is given by me and that is considered by the Board of Enquiry or the Court

of Enquiry, and after that, when the Board or the Court is satised, and when the fact-finding committee submits its report proving my guilt, I am given a show-cause notice and am asked to reply as to why my services should not be terminated or why I should not be downgraded and so on. So, I get two opportunities to defend myself; according to the Constitution, a reasonable opportunity of showing cause is given, but it is now denied. I would request the Law Minister to throw some light on this. What were the specific cases in the mind of the Government. which warranted them to bring an amendment to article 311 which is the only safety for the Government employee today

I have been a victim myself and in 1956 I was dismissed from service by the then hon. Minister, but thanks to democracy, he never became a minister again, and I became a Member of Parliament; so both the capacities were equalled. A defence employee is given protection under article 226, there is power given to the high courts to issue certain writs. A rule was issued in my case but thanks to my having been elected—I was elected immediately thereafter—naturally my lawyer said to the high court judge that "my client is now a Member of Parliament", and the case was then withdrawn.

So, I beg to submit that many Government employees today would suffer at this time of emergency if such an amendment is made. When the Central Government employees' meeting was convened by the hon. Home Minister on the 9th, all the Central Government employees' organisations including the railwaymen, defence and posts and telegraphs pledged their unconditional support to the Government and assured the Home Minister and requested him to give assurances to the Prime Minister on their behalf, that they will not do anything which may hamper production or the smooth running of the administration and that they will not strike. Even after that, such an amendment is being proposed by the Law Minister. I do not know the implications of it. I would submit that in the larger interests and welfare of the Central Government employees, who are the pillars of our parliamentary democracy today, it would be much better that this amendment is withdrawn. Otherwise, let the Minister quote the instances where he is satisfied that the existing provision is defective. I am sure that this amendment is superfluous; it will give a sharp instrument in the hands of those officers who want to punish the Central Government employees under one pretext or the other, and these servants will have no chance o go to the high courts or the Supreme Court

With these words. I once again request the hon. Minister to consider this matter objectively. The Heavens are not going to fall if reduction is retained as a major punishment. It is a major punishment today. The moment this Bill is passed, then the definition of major punishment will not include reduction in rank which, according to me, is a severe punishment—financially, mentally and so on—which the poor Government servant has to bear. I request the Minister to withdraw this amendment

Mr. Speaker: Shri Mathur put a question to the hon. Minister. It must have been conveyed to the Minister, I suppose.

Shri Harish Chandra Mathur: After the Minister left, I put the question whether it is possible to have complete information about the cases in respect of which he wanted to give retrospective effect. We want to have complete information.

Shri A. K. Sen: If the names are wanted, I can say that some of them are retired high court judges. We shall give the information. I thought that it would be better to mention that so many cases were there in respect of such and such a thing. I think

[Shri A. K. Sen]

it is rather odious to mention names. There are many

Shri Harish Chandra Mathur: Please mention the nature of the case.

Shri A. K. Sen: If the number is wanted, I shall inform the House.

Shri Harish Chandra Mathur: I am not keen about getting the names. Please tell us, before I speak, the nature of the case. It would be much better to know that in so many cases we have taken the step.

Shri A. K. Sen: Is it your desire, Sir, that I could do so now?

Mr. Speaker: I rather desired that since Shri Mathur had many points to make, he could perhaps be included in the Joint Committee. I would prefer it.

Shri Harish Chandra Mathur: That is not the answer, Sir.

Mr. Speaker: It is not his suggestion; I am making it because I have no time now.

Shri A. K. Sen: After I have spoken, Shri Mathur's questions might perhaps have been cleared, because I have noted his questions.

Shri Harish Chandra Mathur: I have not spoken at all.

Shri A. K. Sen: The hon. Member asked me certain questions.

Shri Harish Chandra Mathur: Yes; I put them on a particular point which was raised. I hope I will get an opportunity to speak.

Mr. Speaker: That is my difficulty. I have to call the hon. Minister now. The hon. Member had said that discussion would not really be complete if that information was not complete And there is no time which I can now encroach upon! There is no time left. That is my difficulty.

Mr. Speaker: If he can just abridge this remarks within 10 minutes . . .

Shri Harish Chandra Mathur: You will appreciate that we are amending the Constitution. We are touching the judiciary on so many points. We are changing the fabric of the executive.

Mr. Speaker: But we are sending it to the Joint Committee where it is to be considered and again it is to come up here. That was why the House thought that so much time would be enough. Otherwise, they must have given it longer time if we are to dispose it of now itself.

Shri Harish Chandra Mathur: Even if it goes to the Joint Committee, certain fundamental questions are involved which must be ventilated on the floor of the House for public opinion, for enlightenment of Members and for discussion in the Joint Committee. It is not the Joint Committee and a few Members alone who are interested; the entire country is interested.

Mr. Speaker: Can he suggest anything to me now?

Shri Harish Chandra Mathur: We cannot take the amendment of the Constitution lightly. We may extend the time. I am at your disposal, Sir. I feel my conscience pricking; I never gave my name yesterday when we were discussing the Chinese cease-fire proposal, because I knew that the points which I would be making would be made by manly other Members and so it was not necessary for me to speak. But I feel very strongly on this....

Mr. Speaker: That is why I advised the Minister that he might include Mr. Mathur in the Joint Committee, because he has so many ideas which he wants to put before the Committee.

Shri A. K. Sen: That means we have to remove one Member ....

Mr. Speaker: The whip may take note whether they can substitute any Member by Mr. Mathur.

Shri Rane (Buldana): We could have done it easily. But now it has

been laid down that the names should be announced clearly at the time of making the motion.

Mr. Speaker: We can adopt a motion here to that effect.

Shri Harish Chandra Mathur: It is very embarrassing for me and it would be embarrassing for any other Member in future also if one who wants to participate in the discussion is to be put on the Select Committee. I deeply appreciate your kindness and your understanding....

Mr. Speaker: I have been misunderstood really. I think I have this right to suggest to the Law Minister—not about Mr. Mathur; he is involved at this moment—that he might include any other Member in the Joint Committee, if I feel that that would serve the purpose of legislation. That is a different thing altogether. If he thinks that I am putting him in an embarrassing position, I would not do it then. I have to call the Minister now if I have to get through the business.

Shri Harish Chandra Mathur: Why not we sit longer today?

Mr. Speaker: There is already business for 8 hours.

Shri Harish Chandra Mathur: I feel very strongly about it and I wish to lodge a protest. If in matters where the Constitution is being amended we do not get an opportunity to speak, I do not know whether this august House will have that respect which it ought to have.

Shri D. C. Sharma (Gurdaspur): I think it should not be bustled like that.

Shri Harish Chandra Mathur: I feel a revolt within myself.

Mr. Speaker: How can I help it, if the House has taken a decision?

Shri Harish Chandra Mathur: I am giving expression to what I feel.

Mr. Speaker: Yes; he is doing that and I am listening to it. When the House has taken a decision, I am bound by it. When the House took that decision, at that time they did not raise a voice; they did not object to that allocation of time. They bind my hands and then when it comes to regulating the time, they throw the whole burden upon me. That is my difficulty. It was put to the House and the House approved of that allocation. What should I do now? If any Member can suggest any way out, I am prepared to do it. I have no objection. I do not want to hustle or muzzle . . .

Shri S. M. Banerjee: Why not sit for an hour more, Sir?

Shri H. P. Chatterjee (Nabadwip): Let his name be included in the Joint Committee, as you suggested.

Mr. Speaker: He says it would put him in an embarrassing position.

Shri P. Venkatasubbaiah (Adoni): Why not extend the time?

Mr. Speaker: Up to what extent? Business for eight hours has already been put down on the Order Paper. If the hon. Members are prepared to sit up to ten o'clock, I have no objection.

Shrimati Renuka Ray (Malda): The debate on the question of prices is very important.

Mr. Speaker: Are the Members prepared to sit up to ten o'clock.

Several Hon. Members: No.

Shri D. C. Sharma: How is it, Sir, you say that business for 8 hours has been put down? You are raising the time in the case of other things, whereas you do not raise the time limit in this case.

Mr. Speaker: That is because there is some room left, some discretion left to me, which I can encroach upon. In this case it was announced on Friday. When the whole business allocation has been taken account of, I shall be left with no authority or discretion

[Mr. Speaker]

to extend the time. It was also made clear, if the hon. Members will consult the debates, in the House. That is my difficulty. Otherwise, I do not have any objection to extend the time.

Shri D. C. Sharma: You can encroach upon some other time for the sake of this.

Shri A K. Sen: Sir, you have allowed me half-an-hour. Out of that, ten minutes may be given to Shri Mathur to make his points.

Mr. Speaker: He says he wants half-an-hour. I had said that if he could condense his remarks within ten minutes, certainly I will give him that time.

Shrimati Yashoda Reddy (Kurnool): If Shri Indrajit Gupta does not need all the time that is allotted for his motion, we can have some more time for this Bill.

Shri C. K. Bhattacharyya: It is not proper to make such a request.

Shrimati Renuka Ray: The motion on the question of prices is very important in the present emergency.

Mr. Speaker: That we are taking up. Now, Shri Mathur may have ten minutes.

Shri Harish Chandra Mathur: Mr. Speaker, Sir, I am grateful to you for this opportunity though I feel really embarrassed in the circumstances in which I am speaking.

This constitution (Fifteenth Amendment) Bill, you will appreciate, brings about various amendments which touch upon both the judicial administration as well as the executive, and what disturbs me most is that this Bill, as certain things in the past, has given an indication that we are all the time proceeding in a direction which means concentration of power in the hands of the executive. This Bill, especially, underlines that particular attitude of the Government.

Let us see what is happening all the world over. As a matter of fact, even in the old democracies like the United Kingdom, even in New Zealand, they are quite worried to see how the abuses and malpractices of the executive are to be checked by certain important measures to be brought about. Only recently, in New Zealand they have brought out a Bill for the appointment of a Parliamentary Commissioner for investigations, which is a very strong and sound check on the executive actions, and to protect the rights of the citizen. I first want to emphasise this very important factor, this fundamental principle, which must not be forgotten if democracy is to function in a proper manner, if democracy is to command the respect of the masses. The central and focal point has got to be the citizen, neither the politician, nor the Government, nor the administration, and we have got to see whether the citizen gets proper justice or not. All our actions will have to be judged from that view point.

I mention this particularly because now, again—take amendment to article 311—you are going to make an amendment regarding the government servants. I can quite appreciate that we want to cut out delays and procedural difficulties. That can be done. But if you just examine all the various cases where trouble has arisen because of procedural difficulties under article 311, you will find that it was simply because of the incompetence of the authority making the departmental enquiry, because they made a mistake here or a mistake there. Only the other day I read of a certain case in which a sub-inspector was reinstated after five years. What is the reason? The reason is mere incompetence of the executive authority who was making the investigation. Are we here sitting to amend the Constitution or to make legislation to give a cover to the incompetence of the higher authorities

and to permit them an easy-go at anybody?

I understand from the Home Minister's statement here that he wants to amend article 311 so that he may be able to punish corruption. I do not know how the punishment of corruption will come with the amendment of article 311. We have given them so much power in the anti-corruption measures and the anti-corruption Acts passed one after another, but we have not seen very much result coming out of it. When we amend article 311 and cut out the rights of the Government servants to have a reasonable opportunity to be judged by a certain independent authority, I wish, at the same time, simultaneously, we must think of certain machinery to be provided by which the executive actions of those in authority will be reviewed and considered. There must be some built-in arrangement which will give confidence to the services. While all the procedural delays have got to be eliminated and cut out so that quicker dispensation of justice is obtained and they will not be able to come in the way because of legal wanglings and wranglings, at the same time, we must create confidence in the minds of the Government servants that they will be enabled to maintain their independence and that they will get justice at the hands of the Government.

Even as it is, the position is that the services stand very much demoralised and there is so much of political pressure on them. What is the machinery which will guard against that? I am not here going to quote any facts but I can say this much that there are cases the parallel of which will not be found in the history of maladministration. Therefore, if for sound and valid reasons, it is necessary to amend article 311, simultaneously, we must make certain provisions which will make their working smooth. You may even have an advisory body which will review the work and tell the executive authority, the independent executive body, whether action taken is proper or not. There should be certain high-powered independent body which will be able to do so. It is very necessary. The administrative machinery is very delicate and if you once shake the fabric of it and if you bring demoralisation into it, if you kill the initiative in the administrative machinery, I am afraid, we will have to be sorry for it.

Then I will pass on to the judiciary. When I speak of the judiciary, I do not want to grudge the better terms and conditions of service that you give to the judges. I will not mind them. You can raise the superannuation age to 62 or 65, whatever is considered reasonable. But judiciary exists for a particular purpose. People and Parliament are interested neither in judges nor in anybody else. We are interested in the quick and speedy dispensation of justice. We would have welcomed it if the hon. Minister, who had paid visits to the East European countries had told us how quick the dispensation of justice in those countries is. If he had brought a Bill for speedy dispensation of justice and in that context he brings in some amendments for the betterment of the conditions of judges, that will go down our throat more easily and we will have some sympathy both for the Government and the judges. But if the emoluments of judges are to be raised, if the pensions of judges are to be increased, if their superannuation age is to be raised and, in spite of all that, if a citizen can get justice only after ten years and if it again takes 4 or 5 years for the paper book to be prepared then we have absolutely no sympathy either for the proposals of the Government or for the judges. When the judges meet here in the annual conference, instead of discussing how their superannuation age should be raised or how their pension or conditions of service should be improved, they should better consider how to have a better standard of judiciary, how to command better respect from the citizens for the judiciary and how to bring in quicker dispensation of justice.

I do not know the rationale behind raising the age to 62 and not to 65. If

[Shri Harish Chandra Mathur]

a sessions judge is promoted to the High Court at the age of 54, he can continue in the High Court until he is 62; otherwise, he becomes unfit at the age of 55. I do not know how these two can be reconciled. Then again, we have got to understand the implications of the revision of the age to 62. I do not know whether previously there had been judges who used to sit for 10, 15 or 20 years continuously on the Bench. Now I find from the order of appointment of judges of the Home Ministry that judges to High Court are appointed at the age of, you will be surprised to know, 37, 40, 42 and 45. There are a large number of judges of this age group. They will continue in the High Court for 20 or 25 years, they will get stale. Even in the executive side, in the services, we do not want to keep a departmental head in the superannuation scale for more than 5 or 7 years. When he reaches the top rung of the ladder, he cannot continue there for more than 5 or 7 years. Here, on the other hand, we have got judges who will sit in the Bench for 20 years, because they are appointed as judges at the age of 37 or 40. Therefore, we have to look into the implications of this, and then revise it or do something about it.

Then, it must be clearly understood that judges are also human beings. They also develop prejudices and predilections, consciously, sub-consciously or unconsciously. If they are to remain at a particular place for 15, 20 or 25 years, just consider the effect of it. Therefore, I feel that it is absolutely necessary that no person should be permitted to remain at a particular place for more than 5 or 7 years. He should be transferred after a period of service of 5 or 7 years. Further, the transfer should not be left to the discretion of the judges. They should not be tempted by an allowance of Rs. 400 or Rs. 500. Transfers must be mandatory. They cannot just stay there at one place for more than 5 or 7 years. Then only we can inculcate in them a feeling of absolute independence.

I will finish in two minutes, as I do not want to take undue advantage of your generosity.

Then I come to the alternation of age of judges. I do not want to pass any comments on this subject in ignorance, but we must have a sound and healthy practice that the age accepted at the time of entry is the final age which will never be altered. How will a need arise for altering the age of a judge? Whatever age is accepted after careful consideration at the time of entry, that must remain the age of the High Court judge. It should not be altered under any circumstances. The fundamental principle is that during the tenure of office of a judge we should do nothing to alter the terms and conditions of service which will be adverse to him. Similarly, we should also do nothing which will mean a favour or even a semblance of a favour in the minds of other people. It is a very important thing. We should not have this clause in this Bill. We should categorically say that whatever age was mentioned at the time of their entry will continue to be their age and it cannot be altered under any circumstances.

14 hrs.

Just one last word about standards. I will not go into the standard of the judiciary, how it has fallen and why it has fallen. But one thing which has been mentioned here in the clause, which is pregnant and which further emphasises and reinforces my argument for transfers is that it is not only that judges are being appointed in an irregular way and that judges have been given or are given re-employment that affects their independence but also when judges are in their own home States they have got there so many of their relations, sons-in-law and brothers. After all, judges are also human beings. Their relations are in the service of that particular State Government and the executive influence is always there. I know, a number of things are happening. Therefore the

question of transfer of judges from their home States is very important and, more particularly, the Chief Justice should never be from a State in which he is stationed.

I am grateful to you for giving me this opportunity. I will further care to appear before the Joint Committee rather than being a member of the Joint Committee and have my further say there.

Shri D. C. Sharma: Mr. Speaker, Sir, I think that this Bill has been drafted in a spirit of unfairness and that unfairness runs through most of its clauses. The first thing to which I want to draw the attention of the House is amendment of article 220 of the Constitution. It is a good clause; but do you know, Sir, that I had a Private Members' Bill pending on this very subject in this House? It was partly heard and it was not fully completed. The hon. Law Minister has the goodness to incorporate my Private Members' Bill on this subject into the Constitution (Fifteenth Amendment) Bill without making the slightest possible reference to what I had done. He has not taken any notice of this. Therefore, I wish, you could understand how unfair sometimes these hon. Ministers can be to those persons who describe themselves as Private Members. Here is a private Member who puts forward this amendment of the Constitution and is, of course, not able to see it through for certain reasons. Now the hon. Law Minister comes forth with the Constitution (Amendment) Bill and brings that very amendment forward without referring to the person who suggested it or the person who brought it forward.

An Hon. Member: Very unfair.

Shri D. C. Sharma: I draw your attention to other cases. I think, the hon. Law Minister is determined to make free India a veritable paradise for High Court Judges. He wants that High Court Judges should be at the top of the tree and every other member of any other service, judiciary, executive, police or any other service, should be like a person who does not enjoy the same kind of status as the judge. I see that so many favours are being shown to the judges. Their age-limit is being increased. Why do you not increase the age-limit of magistrates, police officers and all other persons? Why do you do this thing in a vacuum? You should relate the raising of the age-limit of the High Court judges to the raising of the age-limit of all the persons all along the line. But you do not do that. You think that a High Court judge must have his world and heaven too. Therefore you think that their age-limit should be raised. I do not see any reason why this should be done.

14.03 hrs.

[MR. DEPUTY-SPEAKER *in the Chair*]

Again, the High Court judges should retire at 62 years but the Supreme Court judges should retire at 65 years. What is the logic behind it? What is the rationale behind it? What is the justification behind it? You place one judge in one category and another judge in another category. I think, the retirement age of the judges should not be revised upwards till the age of retirement of all the other members of all the services in India are revised upwards. I think that this should surely be a case of unfairness to all other services in this country.

The second point that I want to make is about the transfer of judges. I think, every member of the executive branch of our services is transferred after every three years. That is the normal time. He has his household effects; he has his books; he has his children. He has everything. He does not get any compensatory allowance. But the judges must have compensatory allowance also. I do not know what advantages are going to accrue to these judges. I think, this is certainly what is unthought of.

Again, I would say that we have High Court judges and Supreme Court judges. Now we are going to have

[Shri D. C. Sharma]

ad hoc judges. I think, this thing must be existing somewhere in some country of the world, but I have not heard about it. You have *ad hoc* committees and all these things, but we are now going to have *ad hoc* judges also. I think, to become a judge once means that he will also die as a judge and there will be no room for you for having anything else. I think, the appointment of these *ad hoc* judges is barring the way of promotions for those young men who want to go up and show their talent and who are equally qualified to become judges. Such appointments should be absolutely done away with. If you want more judges, have permanent judges, but in no case should you have these *ad hoc* judges.

One point more and I have done.

Mr. Deputy-Speaker: He should close now

Shri D. C. Sharma: I have been waiting all these days. I have to say so much on the Bill. I was submitting very respectfully that we have to respect the executive but we have also to respect our employees to whatever category they may belong. It will be a sad day for India if India takes away some of those privileges which are already given to employees. I ask myself. Which way are we moving? We should move more and more in the direction of democracy; but we are moving more and more in the direction of autocracy. For instance, if a man is dismissed on a criminal charge, I think, he has no case; but if a man is demoted and is given a job which is lower than the job he was holding, I do not know why you do not give him any chance. I think, democracy is the science and art of distribution of chances of equality all along the line and if you do not do that, if you take away this chance from those employees, you are doing the greatest kind of injustice to them. I therefore, think that that clause should be looked into and should be taken away.

Then, municipalities have been given the right to levy the professional tax upto Rs. 500|-. Already people are groaning under these professional taxes in so many parts of the country. I think, the quantum of this tax should not be raised to Rs. 500|-. After all, has our income gone up? Has it doubled? Has the national income doubled? Has the *per capita* income doubled? After all, taxes should have some relation to the income that we have. If the *per capita* income has doubled then I think . . .

Mr. Deputy-Speaker: He should close now.

Shri D. C. Sharma: I am closing with a very sad heart.

If the *per capita* income has doubled then I think you can also double this tax. But the *per capita* income has not doubled.

Shri Bade: What about cinema tax?

Shri D. C. Sharma: Taking in view the prices and all those things, I think that this should not be at the figure of Rs. 500|-. If you want to raise it, it should be raised notionally and not in a substantial manner as has been done now.

Shri A. K. Sen: Mr. Deputy-Speaker. Sir, I am very sorry that Shri Sharma had closed with a sad heart.

Shri D. C. Sharma: I think, you will make me sadder still.

Shri A. K. Sen: I have never known him growing sad at all.

Shri D. C. Sharma: I always grow sad when I see this.

Shri A. K. Sen: That makes me sad. Anyway, I want to give a few instances about which there had been a demand from certain hon. Members of this House. Without mentioning names, except the name which has been referred to and whose judgment was read out by Shri Tridib Kumar Chaudhuri and then referred to by others, I shall refer to them.

Three cases which have already been disposed of are the following: One from the Punjab High Court. There is a discrepancy between the age given by him at the time of his appointment and the age as appears from his school and college records and Matriculation certificate and the age given by him at the time of his enrolment as an advocate. Because of this discrepancy, when the matter was enquired into, the advice of the Chief Justice of India was taken and on the materials which were furnished the Chief Justice of India advised that the age as appears from his school and college records and his Matriculation certificate and the age given by him at the time of his being enrolled as an advocate should be accepted in preference to the age he gave at the time of his appointment as a Judge.

Shri Harish Chandra Mathur: No credit to the Judge.

Shri A. K. Sen: No credit to the Judge at all.

Shri Harish Chandra Mathur: It was revised to his advantage? By how many years? That is what we want to know.

Shri A. K. Sen: By nearly 3 years. In each case, the Government had placed all the evidence before the Chief Justice of India before arriving at a decision.

Next, the case of a Judge of the Allahabad High Court. The learned Judge gave an age which was the same as the Matriculation certificate showed. But, when the time for retirement came, he produced certain writings supposed to have been his father's at the time of his birth, according to which he should retire later. This also was placed before the Chief Justice of India. The Chief Justice of India thought that the latter evidence was not convincing and, therefore, the age which he originally gave, which was supported by his Matriculation certificate should be adhered to. This was at the instance of the Judge himself.

There is another case from Patna where a complaint was by a litigant. Because, I would like to remind the House that this age being a constitutional prescription, it does not matter whether the Government condones it or not, if the age, in fact, is over 60 at the time he delivers the judgment, it will be completely without jurisdiction, because he will cease to be a Judge as soon as he reaches the age of 60. Therefore, for the benefit of the public at large, it is absolutely necessary that there should be no dispute about the age of a Judge, when he attains the age of superannuation. It is not merely a question of the Government allowing him. It is a case where the Constitution makes his office completely null and void at the time he is 60.

Shri Harish Chandra Mathur: The point is, why should it not be decided at the time of appointment.

Shri A. K. Sen: If all the evidence is not disclosed, what can be done?

Shri Harish Chandra Mathur: Why should he not do so?

Shri A. K. Sen: Unfortunately, it has happened. In the case in which judicial strictures appeared and the judgment was quoted by Shri Chaudhuri, the learned Judge refused to furnish any evidence.

Shrimati Yashoda Reddy: Don't you ask them to furnish a certificate for date of birth?

Shri A. K. Sen: Now, it is being asked. It is most unfortunate. . . .

Shri Harish Chandra Mathur: No appointment shou'd be made . . .

Shri A. K. Sen: Now, after all these cases; in the olden cases, until 1958 . . .

Shri A. N. Vidyalankar: Do you mean to say that even if the age is determined before appointment, it can be challenged in the law courts?

Shri A. K. Sen: Of course. That is what the Punjab High Court has

[Shri A. K. Sen]

said. Suppose we determine wrongly and then a conclusive evidence is brought forward? For instance, in one case, the Government upheld the contention of the Judge because he produced a birth certificate which was at variance with the age appearing in the Matriculation certificate. That was conclusive. If it is a Municipal register, that is a different matter.

Shri D. C. Sharma: Names of persons are not given there.

Shri A. K. Sen: Eldest son, second son—you can identify.

An Hon. Member: Sometimes even names appear.

Shri D. C. Sharma: I know people have changed their ages by reference to the Municipal certificates. The second son has been given the age of another.

Shri A. K. Sen: That carries us nowhere. That is why all the evidence is placed before the Chief Justice who is certainly a competent authority to decide. You cannot have a better authority than the Chief Justice of India.

This case of Patna High Court was one in which a litigant brought it to the notice of the Government. It was found hat the age given by the learned Judge was 2 years less than the age recorded in the Matriculation certificate. The Chief Justice, on going through the evidence, advised the Government that the age as recorded in the Marticulation certificate should be accepted, because there was hardly any evidence to support the other case. In all cases, the Judges accepted the decision of the Government based on the advice of the Chief Justice.

There is one unfortunate case where a learned Judge of the Calcutta High Court, the judgment in whose case was read out by Mr. Chaudhuri, refused to abide by the decision of the Government though, according to an affidavit, he took a letter from the Chief Justice on the assurance that he would abide by his advice. There is one affidavit. He told the Chief Justice, I do not mind, I shall accept your advice, but people may think that I had made a false declaration, so if you give me a letter that I may not be disbelieved, then, I shall do nothing else. It is an affidavit. The Chief Justice, on that assurance, gave him a letter saying that there was no question of disbelieving your statement, as a matter of policy the Government accepts the Marticulation Certificate as the correct evidence in the absence of other evidence, therefore on that basis your age was accepted as recorded by the Matriculation certificate and your Civil service examination declaration. After having taken that letter, he annexes that letter and tries to make out a case before the High Court that the Government had acted arbitrarily in the matter. The Punjab High Court had negatived the contention and it passed very severe strictures which really do not credit to a Judge or an ex-Judge, and said that there was nothing arbitrarily done by the Government or the Chief Justice and that this Judge refused to furnish any evidence whatsoever. Though for two years he was asked to furnish whatever evidence he had to rebut the age as declared by him at the time of his Marticulation Examination or at the time of his Civil service examination in London, he said, he would do nothing. On that, the Chief Justice advised the Government that the age as recorded by his Marticulation certificate should be accepted. After that, he came to the court. I intend to read the other portions of the judgment. Because Mr. Chaudhuri forgot to read the other parts of the judgment, it will be my duty to read the other parts.

Then, there was another case of a Rajasthan Judge. There, too, on the advice of the Chief Justice, the Government arrived at a decision to the

effect that the learned Judge should accept the age as recorded by his Matriculation Certificate. There, too, the difference was about 1 year.

Shri Harish Chandra Mathur: To his advantage?

Shri A. K. Sen: To the advantage of the Judge.

Shrimati Yashoda Reddi: Otherwise, he would not have raised it. He would have kept quiet.

Shri A. K. Sen: There are five cases pending. These five cases have been brought to the notice of the Government by the colleagues of the Judges. The Judges have brought to the notice of the Government about the age of the other Judges. They are under enquiry. We do not intend to mention them.

Shri D. C. Sharma: Sometimes, they are brought to the notice of the Government by the class fellows of the Judges.

Shri A. K. Sen: Yes. Some of them say, we matriculated in the same year, how is it that this age is so much and that is so much. This is most unsavoury. I must say to the eternal credit of most of the Judges that they accepted it as soon as the decision of the Government was communicated and each decision had stated that the decision had been arrived at on the advice of the Chief Justice of India. In no case did the Government arrive at a decision without the advice or contrary to the advice of the Chief Justice of India. In each case, all the available evidence was placed before the Chief Justice of India for the time being, and whatever the advice of the Chief Justice of India has been has been accepted by Govtrnment.

Shri Tridib Kumar Chaudhuri (Berhampur): Would Government be agreeable to incorporate an amendment to that effect in the Bill?

Shri A. K. Sen: To the effect that the Chief Justice shall be consulted? If we have been doing it without an amendment, why should everything be written in the Constitution? I do not see why that is necessary. In not one case did the Constitution make it obligatory, but in each case Government have consulted the Chief Justice.

Even with regard to transfers, I can say that no transfer is done excepting on the advice of the Chief Justice of the High Court concerned or of the Chief Justice of India.

Now, it is a matter of principle with us that the judiciary should not be dealt with except on the advice of the Chief Justices concerned, and we have never done it. As is known to hon. Members, for instance, the President appoints the judges of the Supreme Court; it is not stated, that it should be on the advice of the Chief Justice of India, or that the advice of the Chief Justice of India would have to be taken, but in each case what happens is that the Chief Justice sends the name, and then the appointment is made. The same thing happens with regard to judges of the High Court; the Chief Justice sends the names, and then they are appointed, unless there is a disagreement between the Chief Justice of India and the Chief Justice of the local High Court.

It is, therefore, necessary to remember that Government have never dealt with a case except by referring it, in the first instance, with all the evidence available, to the Chief Justice of India, and it is only on his advice that we have acted, and the Chief Justice in every case had taken good care to ascertain through the Chief Justice of the High Court what the views are or what the learned judge has to say with regard to all the materials placed against him.

Dr. M. S. Aney (Nagpur): May I ask one question? When Government submit the papers to the Chief Justice, do they make any recommendation of their views also?

Shri A. K. Sen: No. while sending the papers to the Chief Justice of the local High Court?

Dr. M. S. Aney: Who submits the papers to the Chief Justice for investigation?

Shri A. K. Sen: Government.

Dr. M. S. Aney: Do Government make their own recommendations also while sending the papers?

Shri A. K. Sen: Of course, not. Government's recommendation is made only after consulting the Chief Justice of India.

Dr. M. S. Aney: That is what they do as a result of the decision. Before the decision is arrived at, while sending the papers, do they write anything about their own views?

Shri A. K. Sen: Of course, not. It is not sending a note to the Chief Justice, but the evidence is sent, and the Chief Justice is asked to advise us.

Mr. Deputy-Speaker: I think that if the Law Minister addresses the Chair there will be less of interruptions.

Shri A. K. Sen: This is the position. Therefore, there should be no apprehension in the mind of anyone here or outside that any decision of Government has been arrived at without due enquiry or without obtaining the advice of the highest judicial authority in the country.

With regard to the particular case, to which reference was made, namely the case of the judge of the Calcutta High Court, Mr. Justice J. P. Mitter, I would like to read this from the judgment of the Punjab High Court. It says:

> "The main argument of the petitioner was that the question of his age cannot be reopened at all, and once the statement of a Judge with regard to his age is accepted at the time of his original appointment, the matter becomes final and conclusive. I am unable to accept this argument. The Constitution lays down that a Judge must retire when he attains the age of 60 years. Supposing owing to some misapprehension or deliberate misrepresentation a Judge gives a wrong age professing to be younger than he, in fact, is,...."

—in fact, that happen to be the position in all the cases—

> "... and his statement is accepted, because at that time there is no necessity for holding an enquiry,...."

—because when a judge gives it, people accept it straightway and do not go to make an enquiry . . .

Shri Harish Chandra Mathur: Now, you are wiser.

Shri A. K. Sen: Now, the certificate of the university is called for. The judgment continues to say:

> or, the Government erroneously believes that his statement is correct, then it must follow that although the Judge has, in fact, on a certain date reached the age of 60, he can go on working as a Judge in violation of the Constitution. If a Judge is, in fact, more than 60 years of age, then the orders passed by him are null and void. Therefore, the question is not of what age has been given by the Judge or what age has been erroneously or through a misapprehension accepted, but what is his actual age."

As I said, it is not for us to accept an erroneous age. If, in fact, he is 60, he must retire.

> "This, as I have already observed, must be determined not according to any preconceived policy or any pre-determined standards but in the ordinary way and according to the rules of evidence. When the age is determined in this manner, then the Judge is obliged to retire on attaining the age of 60. The reopening of the question of age is certainly not an incursion into the rights of the

judiciary, nor is it calculated to endanger its independence...."

I address this remark particularly to my hon. friend Shri Tridib Kumar Chaudhuri because he thought that this was an incursion into the independence of the judiciary. The Chief Justice of the Punjab High Court says:

"... nor is it calculated to endanger its independence, provided, of course, the enquiry is made according to law and according to the rules of evidence. Even a private individual can, on coming to know that a certain Judge has exceeded the age of superannuation, question the legality of the orders passed by him...."

—as happened, for instance, in the Patna case.

"In order to do this, he can produce evidence of the Judge's age. This evidence will have to be examined according to law. If it is found that the Judge has, in fact, exceeded the age of 60, then any orders passed by him will be held to be illegal and of no effect. If he a private individual can provoke an enquiry into a Judge's age, the Home Ministry can undoubtedly do so. I should not be taken to mean that there is any special right conferred on any member of the Ministry...."

—that is, on any particular Minister—

"... to institute an enquiry into a Judge's age. Such an enquiry can be started by anyone, but because the administration of justice in so far as it relates to High Courts, is part of the business transacted by the Ministry of Home Affairs, such an enquiry would well come within the scope of the Ministry's business. The petitioner was finally forced to admit that an objective enquiry into a Judge's correct age could be made at all times and that no right-thinking person could have any objection to his correct age being determined even though there had been no demur to the age given by him on a previous occasion. The main objection of the petitioner is not to the factum of the enquiry but to the manner in which it was conducted. His contention is that the enquiry was made entirely behind his back and he was not given an opportunity of rebutting the material upon which the Home Minister based his final decision. Now, this argument does not seem to have much force when we come to examine it. I have already referred to a letter which the Chief Justice of Calcutta High Court wrote to the petitioner on receiving a copy of the Home Minister's letter. In this letter the Chief Justice asked the petitioner to give him a full statement on all points involved, and also to send him any material which he may consider relevant for the correct ascertainment of his date of birth. Thus, as early as the 17th of April, 1956, the petitioner was provided with an opportunity to represent his case. He was told on that occasion that the evidence against him consisted of the entries in the Bihar and Orissa Gazette. Shortly afterwards he was informed of the second piece of evidence upon which the Home Ministry was proposing to act, namely, the records of the Civil Service Commission in London. For more than two years the matter remained under consideration and several letters were exchanged between the petitioner on the one hand and the Chief Justice of Calcutta, the Chief Justice of India and the Home Secretary on the other. The petitioner on no occasion produced any material which would go to rebut the evidence of the gazette or the report of the Civil Service Commission. Along with the petition he has filed two documents, one of which purports to be his horos-

[Shri A. K. Sen]

cope and the other an entry made by a relative in an almanac. These two documents were never mentioned by him in his correspondence and they certainly were not produced before anyone. If a reference was made by the petitioner in his oral conversation with anyone, no record of such conversation was kept, and it seems to me that this evidence has been produced now for the first time. The petitioner's attitude throughout has been that the matter cannot be reopened at all, because the age which he had given in 1949 just before his appointment as Judge was accepted, and this acceptance cannot now be questioned, and since he took up this position throughout, he did not consider it necessary to produce or even to refer to any evidence which had been in his possession when such evidence might have disproved the correctness of the matriculation age.

"In the circumstances, the determination of his age had perforce to be made upon the material which was available with the Home Ministry, and this consisted of two previous statements made by or on behalf of the petitioner. The petitioner has now sought to explain away these previous admissions or statements in a somewhat naive manner. He does not admit that it was he who gave his age at the time of matriculation. He also says that it was not he who mentioned his age at the time he sat the Indian Civil Service Examination. The age was mentioned in a certificate sent to him from India by some relative—"

whose name he does not mention,—

"The petitioner did not choose to disclose even the name of the relative."

I do not think a harder castigation of any Judge is found anywhere else.

Shri Harish Chandra Mathur: Please do not read it further.

Shri A. K. Sen: It is necessary because this is quoted. There were some inspired sources. I am sure, Shri Tridib Kumar Chaudhuri did not know all the facts; if he did, I am sure he would not have championed this case.

Shri Tridib Kumar Chaudhuri: I would request that the words 'inspired sources' should be removed from the records.

Shri A. K. Sen: Not you. I made it clear that if you had known facts, this would not have been done. I mean by 'inspired sources' people outside this House.

Shri Tridib Kumar Chaudhuri: My whole point, if he would bear with me for a minute, was....

Shri A. K. Sen: I said that if he knew the facts, he would not have done it. I am certain he would not take up a question unless he was convinced about the question. It will never be my suggestion, so far as a respected man like him is concerned, that he was inspired.

He says further :

"It is impossible to believe that the petitioner was ignorant of these facts or that he allowed a false statement of age to be given without being a party to it. At the time he sat the Indian Civil Service Examination in London, he was, according to himself, 21 years of age and according to the age he then stated was 21. In either case, he must be fully conscious of what he was doing. He knew that he could not sit the examination unless he was over the age of 21 and, therefore, at that time according to his own showing, he misrepresented his age in order to sit in the examination. He had done the same thing previously when at the age of 13 (according to him) he had sat the Matriculation Examination. In his letter to the Chief Justice, he had professed ignorance of what he had done when he sent his application to

the Civil Service Commission. I do not think that it is possible to forget such an important event. Also I find it difficult to believe that he revealed all the facts to Sir Trevor Harries in 1949. The fact that he mentions Sir Trevor Harries's name for the first time only after his death is somewhat significant and I have grave doubts about the veracity of the petitioner's statement before us in this respect."

This is what the Chief Justice of the Punjab High Court has said.

Shri D. C. Sharma: The veracity is doubtful.

Shri A. K. Sen: He says further:

"We thus see that there was nothing illegal or unjust in the Home Ministry reopening the matter of the petitioner's age on getting reliable information of an inaccuracy in the High Court records in this respect. Adequate opportunity was given to the petitioner to produce evidence and to represent his case. He did not choose to avail himself of the opportunity and merely contended himself by challenging the right of the Home Ministry to reopen the matter at all. He took this stand on the impregnability of a Judge's position and the inviolate nature of whatever statement he had made on a previous occasion. I cannot see how any Judge has a right to deny a probe into the truth of a most important matter regarding himself. There is nothing to show that the enquiry was started with an ulterior motive.".

At the end of it, Their Lordships say :

"The petitioner has, on previous occasions, according to his own professions, made use of a false date of birth to suit himself, and that being so, the granting of the present relief would be putting a premium on falsehood".

Shri D. C. Sharma: What made you appoint him as a Judge of a High Court?

Shri A. K. Sen: He says:

"On this ground alone I would dismiss the petition".

That is, when a man comes and says that on a false statement I got a thing done and now I want to correct it. He said on that ground alone, he would dismiss the petition.

Shri Harish Chandra Mathur: Nothing has undermined the status of a Judge more than this.

Shri A. K. Sen: That was why I did not mention this or any other case. When I moved for consideration of the motion, I deliberately did not mention either cases which were disposed of or those which are under enquiry. In each case, every Judge said that he will abide by the decision of the Chief Justice of India. Nobody has challenged it. This is the one solitary case where the learned Judge challenged it. And what is worse, after this application was dismissed, he made another application to the Calcutta High Court against the Chief Justice for a writ. That was dismissed and when he went in appeal, he made allegations against the Chief Justice and even brought me into the picture, saying that we were all parties to some conspiracy. He mentioned us by name, which, I think, was most disgraceful on the part of any Judge to have done. I am very sorry that this particular Judge thought that the respect we voluntarily give to Judges should be exploited in this manner.

Shri Hari Vishnu Kamath: He should be sent to a psychiatrist.

Shri A. K. Sen: I entirely agree with the hon. Member.

Shri Sinhasan Singh (Gorakhpur): Has any action been taken against the Judge for making a false statement?

Shri A. K. Sen: What can we do? That will only further degrade the judiciary. We do not want to do it. That was why I did not even mention names.

Shri Tridib Kumar Chaudhuri: I may mention that the case is still being heard by the Calcutta High Court. It has been referred to a third Bench.

Shri A. K. Sen. It has been heard. Judgement is reserved.

Shri Tridib Kumar Chaudhuri: No, it has been referred to a third Bench.

Shri A. K. Sen: I do not mind anyone trying all the processes. But the Supreme Court dismissed the appeal preferred against the Punjab High Court's judgment. The Court refused to give leave.

I must frankly say, and I am sure the whole House will agree with me, that the conduct of this learned Judge was, to say the least, disgraceful.

Shri D. C. Sharma: Will he prefer an appeal to Yamaraj also?

Shri A. K. Sen: Government have never acted without the advice of the Chief Justice. This convention is so well established that we do not need a constitutional safeguard prescribing it and there will be no occasion for Government ever to act in this matter or in any other matter relating to the High Courts or the Supreme Court without the advice of the Chief Justice concerned. This is a matter which we have followed scrupulously because we want our judiciary to function in the way we want it to function, commanding respect of the people, upholding the rights of the ordinary man fearlessly and independently and doing justice as between man and man and between the citizen and the State. That is the greatest function of the courts in a democracy. We therefore do not intend to do anything which would destroy this confidence which we voluntarily have tried to develop in our judicial structure. I having been one associated all my life with the courts feel proud that our judiciary has lived up to the best traditions of Judges everywhere. I imagine there are lapses everywhere and these lapses only prove that our judiciary in its core has functioned in the most admirable manner through stress and strain, and people know where to go to set the matter right when their rights are invaded. I have no doubt that the Parliament and the Government will join the entire country in developing this proper and healthy respect for the judiciary because without it the rule of law becomes a farce. These unfortunate acts of individual Judges do certainly redound against the judiciary as a whole, but we have confidence that " these are very very rare cases

With regard to article 311, I have only a few words to say and then I will finish. All that we have done is not to take away the safeguard of the civil servant to have a hearing, to have a reasonable opportunity of being heard, of charges being given to him and a proper enquiry being made. That is preserved. It is only with regard to a reduction in rank that the constitutional safeguard is going to be taken away, but the civil service regulations should be ample for this purpose, because not only a reduction in rank but any disciplinary punishment involves an enquiry.

Shri S. M. Banerjee: Why can't you amend that?

Shri A. K. Sen: That is a different matter. If we amend it, we can amend it in the Constitution, but the constitutional safeguard is merely for the purpose of a minor punishment. We think it is not appropriate when the rules are quite sufficient for this purpose. If the rules were not sufficient, then it would have been proper

Shri Harish Chandra Mathur: The rules are thrown to the winds and there is no remedy.

Shri A. K. Sen: You can go to the courts to enforce the rules, because the statutory rules are enforceable. It has been held that the civil service classification rules are capable of enforcement by a writ of mandamus. I have heard the hon. Member. It is entirely for the House to decide whether a reduction in rank should be put on the same level as dismissal. All the safeguards of a proper enquiry are there. All that we are doing away with is the unnecessary provision read into this article by judicial decisions which say that the same thing has to be done over and over again when you hear the charges, determine the charges, and then when you actually propose the punishment, the entire gamut has to be reopened.

Shri Prabhat Kar (Hooghly): So long it has remained in the Constitution and the right was there. What is the difficulty now, and why is it being taken away?

Shri A. K. Sen: The difficulty is to repeat the same trial again at the time of the actual pronouncement of the sentence, because the Supreme Court has said that the original enquiry into the charges would not be enough. This is the position for the major punishment of dismissal The only safeguard which was intended at the time the Constitution was framed is there, and we are only doing away with the necessity of doing it again at the time of the pronouncement of the sentence, which the decisions of the court have made it necessary.

These are my submissions.

Mr. Deputy-Speaker: What about the amendments?

Shri A. K. Sen: With regard to the amendment of Shri Tyagi, I would accept it.

Mr. Deputy-Speaker: What about Shri Chaudhuri?

Shri Tridib Kumar Chaudhuri: I do not press it.

Mr. Deputy-Speaker: Has he the leave of the House to withdraw his amendment?

Hon. Members: Yes.

The amendment was, by leave, withdrawn.

Mr. Deputy-Speaker: The question is:

> "That in para 3 of the motion, for "by the last day of the first week of the next session" substitute "by the first day of the next session."

The motion was adopted.

Mr. Deputy-Speaker: Now I will put the motion as amended.

Shri Hari Vishnu Kamath: On a point of clarification with regard to the next session. Suppose this session is adjourned with a date, that means a particular date in January. Then the "next" session would be the session following that.

Shri A. K. Sen: This does not prevent it being put in earlier. It is only the limit

Shri Hari Vishnu Kamath: Will it be binding that it should be brought before the 'next' session?

Mr Deputy-Speaker: Before the first day of the adjourned session.

Shri Hari Vishnu Kamath: 'Next' session is not the adjourned session, but the February session.

Shri Harish Chandra Mathur: Whether it is January or February, whenever is the next session.

Shri Hari Vishnu Kamath: If this session is adjourned to a particular date in January, that means the January session canot be the 'next' session, it will be this session itself.

Shri A. K. Sen: Shri Kamath is right, but that does not prevent us from putting it in earlier.

Mr. Deputy-Speaker: The question is:

"That the Bill further to amend the Constitution of India be referred to a Joint Committee of the Houses consisting of 45 members; 30 from this House, namely:

Shri Brij Raj Singh Kotah, Shri S. N. Chaturvedi, Shri Homi F. Daji, Shri Ram Dhani Das, Shri R. Dharmalingam, Shri Kashi Ram Gupta, Sardar Iqbal Singh, Shri Madhavrao Laxmanrao Jadhav, Shri Madeppa Bandappa Kadadi, Shri Hari Vishnu Kamath, Shri Paresh Nath Kayal, Shri Nihar Ranjan Laskar, Shri Harekrushna Mahtab, Shri M. Malaichami, Shri Mathew Maniyangadan, Shri Bibudhendra Misra, Shri F. H. Mohsin, Shri H. N. Mukerjee, Shri D. J. Naik, Shri V. C. Parashar, Shri Ram Swarup, Shri S. V. Krishnamoorthy Rao, Shri C. L. Narasimha Reddy, Shrimati Yashoda Reddy, Sayed Nazir Hussain Samani, Shri Ramshekhar Prasad Singh, Dr. L. M. Singhvi, Shri U. M. Trivedi, Shri Balgovind Verma, Shri Asoke K. Sen and 15 from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one third of the total number of members of the Joint Committee;

that the Committee shall make a report to this House by the first day of the next session;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees will apply with such variations and modifications as the Speaker may make; and

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of 15 members to be appointed by Rajya Sabha to the Joint Committee."

The motion was adopted.

14.45 hrs.

MOTION RE. MODIFICATION OF CENTRAL APPRENTICESHIP COUNCIL RULES ETC.

Shri Indrajit Gupta (Calcutta South-West): I beg to move:

(i) 'This House resolves that in pursuance of sub-section (3) of section 37 of the Apprentices Act, 1961, the following amendment be made in the Central Apprenticeship Council Rules, 1962, laid on the Table on the 4th September, 1962, namely:

in rule 3, in clause (e), the following be added at the end, namely:

"of whom not less than 4 persons shall be representatives of all-India trade union organisations"

This House recommends to Rajya Sabha that Rajya Sabha do concur in the said resolution.' (13)

(ii) 'This House resolves that in pursuance of sub-section (3) of section 37 of the Apprentices Act, 1961, the following amendments be made in the Apprenticeship Rules, 1962, laid on the Table on the 4th September, 1962, namely:

in sub-rule (2) of rule 5, omit "have the power to".

This House recommends to Rajya Sabha that Rajya Sabha do concur in the said resolution.' (1)

'This House resolves that in pursuance of sub-section (3) of section 37 of the Apprentices Act, 1961, the following amendments be made in the Apprenticeship Rules, 1962, laid on the Table on the 4th September, 1962, namely: