

[Mr. Speaker]

but it will be covered by article 117 as a financial Bill. The proviso to rule 74 is applicable to both Money Bills as well as financial Bills. Now we are constituting a Joint Committee because it is a financial Bill. If it had been a Money Bill, then it would not have been possible at all to do it, even by the suspension of the rule. That would have been a bar by the Constitution itself. But now the bar is only of the rule and not of the Constitution.

**Shri Tyagi** rose—

**Mr. Speaker:** What does he want?

**Shri Tyagi** (Dehra Dun): I want to speak on the Bill.

**Mr. Speaker:** Unless this rule is suspended we cannot take up the discussion. Does he want to speak on the suspension of the rule?

**Shri Tyagi:** Your ruling is final in that case.

**Shri Narendra Singh Mahida:** May I seek a further clarification?

**Mr. Speaker:** I am putting the motion to the vote of the House now. The question is:

"That the first proviso to Rule 74 of the Rules of Procedure and Conduct of Business in Lok Sabha in its application to the motion for reference of the Constitution (Fifteenth Amendment) Bill, 1962, to a Joint Committee of the Houses be suspended."

*The motion was adopted.*

16.11 hrs.

CONSTITUTION (FIFTEENTH  
AMENDMENT) BILL

**The Minister of Law** (Shri A. K. Sen): Sir, I beg to move:

"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 Laxamanrao Jadhav, Shri Madeppa Bandappa Kadadi, Shri Hari Vishnu Kamath, Shri Paresh Nath Kayal, Shri Nihar Ranjan Laskar, Shri Harekrushna Mahatab, 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 Samnani, 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 last day of the first week 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."

I may mention here, before I say anything else, that Shri Tyagi has put in a notice for an amendment of the third paragraph so that the report may be made not by the last day of the first week of the next session but by

the first day of the next session. On behalf of the Government I can intimate straightaway that we shall have no objection to accept that amendment because we expect to finish the work of this Committee before the next session starts. In fact, if the present session is prolonged.....

**Shri Tyagi** (Dehra Dun): Does it mean that I am deprived of my speech?

**Some Hon. Members:** No.

**Mr. Speaker:** Was that the only thing that the hon. Member wanted?

**Shri A. K. Sen:** The present Bill deals with various matters, particularly, with regard to the question of judges, their age; if there is a dispute about their age, the authority to determine the dispute; the transfer of judges; and on transfer what compensatory allowance will be payable to judges; and the question of the jurisdiction of the different High Courts to entertain applications under article 226 of the Constitution. Then, the important matter not relating to High Courts is the question of opportunity being given to civil servants in case of their removal from office.

So far as the provisions relating to judges are concerned, the objects are fairly set out in the Bill itself, but I shall nevertheless try to explain why these provisions have been made. Hon. Members will see that clause 2 relates to the question of any dispute regarding the age of judges of the Supreme Court. Hon. Members will recall that the Constitution provides that Supreme Court Judges shall retire at the age of 65. If there is any dispute as to whether a person is really 65 or not, as it has arisen in respect of several High Court Judges, the Constitution at present is not quite clear as to who should determine the dispute. A judge says that he is not 65, whereas there may be other evidence showing that he is 65. If there is such an unfortunate case—fortunately, in the Supreme Court

such a case has not occurred but in the High Court such a case has occurred—then who is the authority to determine it? We are, therefore, providing that in such a case, that is, should such an unfortunate case occur, the person who has the highest office in the country would determine the dispute and his decision shall be final. There will be no question of any appeal to that to any other authority.

In article 128 of the Constitution we have inserted certain other provisions so as to make it possible for any person who has held the office of a Judge of a Supreme Court or is duly qualified for appointment as a Judge of the Supreme Court for the purpose of appointing *ad hoc* judges of the Supreme Court. Occasions have arisen recently and even in the olden days when temporarily either due to illness or due to other reasons or due to heavy pressure of work it has become necessary to appoint *ad hoc* judges for a short while. As the existing provisions stand, it is not possible to appoint anyone to the Supreme Court as an *ad hoc* judge unless he has either been a Judge of the Supreme Court or of the Federal Court. Federal Court means the Federal Court before 1950, that is, before the Constitution came into effect. There are not many **ex-judges of the Supreme Court or of the Federal Court** and we have had repeatedly to go only to one person in the past few years when such occasions had arisen. Yet, any man who had been a Judge of the High Court, if he is qualified and if he is considered fit by the Chief Justice of the Supreme Court, or any person who is otherwise qualified to be appointed as a Supreme Court Judge may be appointed an *ad hoc* judge provided he has other qualifications and the Chief Justice of the Supreme Court thinks that he is fit. Therefore we are enabling such appointments to be made and not restricting the choice only to a retired Supreme Court Judge or a retired Federal Court Judge which choice only restricts the field of selection possibly only to one or two.

[Shri A. K. Sen]

Then, we are raising the age of retirement for the Judges of the High Courts from 60 to 62 years. We are also providing, similarly, that if there is any dispute about the age of any High Court Judge, it will be determined by the President himself and his decision shall be final.

Then, in order to induce more judges to agree to transfers from their own High Courts to other High Courts we have made some provisions. This is one of the objects which we have accepted for the purpose of facilitating the process of integration in the country so that judges of one State go to other States and there is inter-changing of judges. It has been accepted as one of the methods desirable for the purpose of bringing about national integration. Yet from the practical point of view one would agree that it is very difficult for a judge who is rooted to one place to go on transfer so that in most cases he may have to maintain his family in both the places and his expenses will increase.

**Shri Bade (Khargone):** So is the case with others.

**Shri A. K. Sen:** He has hardly any inducement to go if he is on the same salary.

**Dr. P. S. Deshmukh (Amravati):** Let him go home.

**Shri A. K. Sen:** He is at home. There is no question of allowing him to go; he is there. The question is to make it worth his while to go away from his home. Therefore we have provided that in case of such a transfer the prohibition regarding practising in the same High Court where he has acted as a judge would not apply to his parent High Court if in the new court to which he is transferred he serves for more than five years. So that, if one is transferred from the Allahabad to the Punjab High Court and he serves in the Punjab High Court for more than 5 years, the prohibition to practice would apply only

with regard to Punjab High Court and in the old High Court, he will still be entitled to practice, if he is away for more than 5 years. This, it is expected, would possibly act as an inducement for a Judge to accept a transfer from his parent High Court. We are also providing in clause 6 by the amendment of article 222 that a Judge, if he is transferred to another High Court, would be entitled to such compensatory allowances as may be determined by Parliament, and until Parliament determines the allowance, such allowance as may be determined by the President himself.

We are also providing for *ad hoc* appointments in High Courts. Because, —sometimes it happens—due to heavy pressure of work or illness or other reasons of the existing Judges, it becomes necessary to appoint *ad hoc* Judges in the High Court. At the present moment, that provision does not exist at all. One has to appoint either an Additional Judge or a permanent Judge. We are making it possible for High Courts where necessity occurs to appoint for a temporary period *ad hoc* Judges.

We are amending article 226 which has become very necessary in view of certain decisions of the Supreme Court that any application for the issue of a writ under article 226 against the Union of India can only be made in the Punjab High Court because Delhi, which is the headquarters of the Union of India happens to be within the jurisdiction of the Punjab High Court. So that, an ordinary man who wants to sue the Union of India in Kerala or Assam or Bengal or in far off places, has to travel all the way to Delhi and file his application in the Punjab High Court. In most cases for the common man whose resources are slender, it becomes an impossible thing. This demand has now arisen from everywhere. Though the original intention was never to make only the Punjab High Court the High Court against the Union of India, and it was contemplated that all the High Courts

would have a similar jurisdiction, by a judicial decision of the Supreme Court, this unfortunate result has been brought about. Before the Constitution, the Privy Council took a different view altogether. They held in the Parlakimidi case and also in the case of Howrah Municipality that the seat of authority or Government was not material, so that, even if the seat, let us say, of the Union of India was Delhi, you could not sue in Delhi the Union of India for the issue of one of the writs unless the cause of action arose within the jurisdiction of this High Court also. They took quite a different view, quite the opposite view to what the Supreme Court has taken. When the law was in that state, this Constitution was framed thinking that every High Court will have jurisdiction within whose jurisdiction or territorial jurisdiction the cause of action had arisen. Therefore, we are trying to restore the position as it was in the contemplation of the framers of the Constitution in the Constituent Assembly, so that that man has not got to travel to Delhi with such scarce accommodation as is there.

**Shri Tyagi:** That was never the intention of the Constitution.

**Shri A. K. Sen:** It was never so. Therefore, we are making it clear that every High Court will have jurisdiction within whose jurisdiction the cause of action has arisen. A few lawyers have told me that cause of action can again be interpreted as the whole of the cause of action and if some part of it had arisen elsewhere, the High Court may be deprived of jurisdiction.

**Shri Tyagi:** God save us from lawyers.

**Shri A. K. Sen:** No. That is a relevant point. We shall certainly be prepared to consider and the Joint Committee might possibly meet this difficulty by saying where the cause of action or any part thereof has arisen, as in section 20 of the Civil Procedure Code. Therefore, I do not think that

difficulty will be insuperable. **Sari C. R. Pattabhi Raman** had told me that that difficulty might again arise in future. We may meet it by saying, cause of action or any part thereof.

Then, we have sought to amend article 276, that means, the power of the States to levy taxes on professions. A ceiling was fixed at Rs. 250. It is considered that that is too little in many of the States. They want to put up the ceiling. Therefore, we are raising it from Rs. 250 to Rs. 5000.

We are also seeking to amend article 297. Because, the Constitution only declared the ownership of the country over what lies within the limits of the territorial waters. But, it is now well conceded in international law and also by the Convention which was arrived at in Geneva last, that what lies in the continental shelf, that means the shelf lying underneath the sea beyond the territorial waters up to a depth of 200 miles would also be the property of the State, whose continental shelf it is. Therefore, we are seeking to insert the words 'continental shelf' so as to appropriate all properties and assets which lie in the continental shelf also.

**The Deputy Minister in the Ministry of Labour and Employment and for Planning (Shri C. R. Pattabhi Raman):** The Law Minister played a part in that.

**Shri Tyagi:** Are they only fish?

**Shri A. K. Sen:** In clause 11, we are inserting the words 'continental shelf'.

**Shri Tyagi:** What is meant? Is it fish?

**Shri A. K. Sen:** There may be oil. There may be other sub-soil assets and fish also. More than fish, it is oil and various other things which may lie in the continental shelf.

**An Hon. Member:** Fish can escape.

**Shri A. K. Sen:** Many of the oil wells have actually been sunk within the continental shelf.

Then, we are seeking to amend article 311 of the Constitution. When article 311 was inserted taking it almost bodily from a similar provision in the Government of India Act of 1935, it was not quite clear either to the Constituent Assembly or even to the Judges or lawyers that this constitutional provision would lead to a result whereby a civil servant against whom disciplinary proceedings are drawn up, either for dismissal or for demotion, would have the constitutional right of asking for two separate sets of trials, more or less. That means, first of all, charges being given to him, then an enquiry committee dealing with the charges coming to a finding on the charges and then again another set of trial proposing a punishment on those findings and then, according to the Supreme Court's latest decision, this entire gamut again is thrown open. That means, the same process has to be gone through, the same charges, the same replies, the same answers, the same show cause and everything. It has become an impossible thing. In each case, two sets of proceedings are going on. The same ground has to be covered over and over again. Therefore, what we are providing is what was intended, namely that before the proceedings are taken, give him the charges, hear him on the charges, let him be heard, let him have full opportunities to defend himself, and then, on that decide what according to the authority concerned should be the punishment. What we are doing further is that this right, we are giving only with regard to dismissal and removal from office. With regard to minor punishments of suspension and demotion, we are leaving it to the Civil Service Rules, which is actually provided. For, dismissal, removal, suspension, demotion etc. are all provided for in the Civil Services (Classification, Control and Appeal) Rules. With regard to dismissal and removal which are the major punishments, we are giv-

ing this constitutional safeguard, but with regard to the minor punishments of demotion or suspension we are leaving it to the Civil Services (Classification, Control and Appeal) Rules which cover the field.

Then, we are providing for a very necessary thing which was not in the Constitution. When the chairman either falls ill or takes leave from the Public Service Commission, there is no provision allowing Government to appoint an acting chairman, so that the question arises who will act as Chairman in his place. We are, therefore, taking this authority that where either due to illness or leave or otherwise a chairman is absent, and it becomes necessary to appoint an acting chairman in his place, which happens almost frequently, Government will have the power to appoint an acting chairman, until the permanent chairman comes back and joins office.

With regard to clause 14, this has become necessary because a Special Bench of the Calcutta High Court has decided that the words 'organisation of High Courts' do not include the prescription either by Parliament or by Government of any vacation. The House will remember that a law was passed by Parliament authorising the President to fix the vacations of the different High Courts. Pursuant to that, certain vacations were fixed by the President relating to the High Courts, prescribing 210 working days out of 364. Some members of the Bar took up the matter and challenged this decision on the ground that Parliament had no authority, as entry 78 in List I of the Seventh Schedule only talked of organisation and 'organisation' did not include vacation; there is a good deal of difference. This again is hair-splitting, I should imagine. But, nevertheless, their Lordships on the Special Bench decided that the term 'organisation' did not include prescribing vacations. One would normally say that organising High Court would also mean organising the days during which the work has to be carried on, including Sundays or

Saturdays or other holidays. One would normally think that the term 'organisation' would include all this, but since this observation has come, by way of abundant caution we have sought to add the words 'including vacations' after the word 'organisation', so that there will be no doubt whatsoever in the mind of anyone what the term 'organisation' would really signify.

These in substance are the provisions which we are intending to make. These provisions have become necessary as a result of our experience of the working of the Constitution during the last fifteen years and the difficulties which have arisen as a result of judicial decisions primarily, and with regard to the Public Service Commission as a result of practical difficulties experienced due to illness or leave-taking by the chairman. I should, therefore, commend that this motion be accepted. We thought originally that we might take up the consideration straightaway, but since some Members desired that it being a constitutional amendment, it should first of all be examined by a Select Committee, Government agreed immediately not only to a Select Committee of this House, but to a Joint Committee of both Houses, for which, unfortunately we have incurred the wrath of Shri Kamath. He thought that we should not have come forward with this motion.

**Shri Hari Vishnu Kamath** (Hoshanabad): There is no wrath. You should take it in the proper parliamentary spirit.

**Shri A. K. Sen:** We take Shri Kamath's wrath and pleasure with equal pleasure.

These are, therefore, matters on which I personally think that there is not much scope for controversy. These are provisions which have been rendered necessary by reason of judicial decisions, some of the Supreme

Court and some of the High Court, and we must remove those difficulties by constitutional amendments.

**Shri Harish Chandra Mathur** (Jalore): We want a little more information from the hon. Minister, because otherwise the discussion is likely to wander. There is a provision for determining the age of the High Court judge or Supreme Court judge. **May I know whether quite a number of cases have arisen?** How many cases are pending at the present moment, which have necessitated such a provision?

**Shri A. K. Sen:** Nothing in regard to the Supreme Court, but many relating to the High Court.

**Shri Harish Chandra Mathur:** How many cases?

**Shri A. K. Sen:** It is not really fair to discuss High Court judges.

**Shri Harish Chandra Mathur:** That will come into the discussion, if the number is not given.

**Shri A. K. Sen:** It is not fair to discuss individuals here. The statement of the Government should be enough.

**Shri Tyagi:** He wants only the number, not the names.

**Shri Harish Chandra Mathur:** We do not want the names but only the number.

**Shri A. K. Sen:** At least five or six.

**Shri Harish Chandra Mathur:** There is also one other point. Even at present, some arrangements are being made for the acting chairman of the Public Service Commission. I know of certain cases where the man has acted for four or five or even six months and more. How has it been regulated so far?

**Shri A. K. Sen:** There has been a doubt. We have taken the view that the authority to appoint a chairman

[Shri A. K. Sen]

includes the authority to appoint an acting chairman, but doubts have been expressed with regard to that.

**Shri Harish Chandra Mathur:** But Government have been appointing so far.

**Shri A. K. Sen:** We have taken the view that the authority to appoint a chairman includes the lesser authority to appoint an acting chairman. But doubts have been cast, I can assure the hon. Member, by very high authorities, as regards the validity of that view. Therefore, on such a matter particularly touching on the Public Service Commission, we do not want to keep the matter in any state of doubt.

About the number about which the hon. Member was asking me, for one High Court alone, the number is about five.

**Shri Harish Chandra Mathur:** That was why I wanted to know the number. It is not less than 20 actually.

**Shri A. K. Sen:** For one High Court alone it is five.

**Shri Narendra Singh Mahida (Anand):** I would like to know whether the Supreme Court judges and the High Court judges have been consulted before bringing forward this measure.

**Mr. Speaker:** I cannot allow all these questions now from all sides of the House.

**Shri Narasimha Reddy (Rajampet):** Does it mean that these High Court judges who were originally recruited..

**Mr. Speaker:** If everything is clarified now, what shall we do during the discussion?

Motion moved:

"That the Bill further to amend the Constitution of India be refer-

red 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 Madappa Bandappa Kadadi, Shri Hari Vishnu Kamath, Shri Paresch Nath Kayal, Shri Nihar Ranjan Laskar, Shri Harekrushna Mahatab, 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 Samnani, 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 last day of the first week 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."

**Shri Tridib Kumar Chaudhuri (Berhampur):** I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion

thereon by the 30th June, 1963.”  
(1)

The hon. Law Minister has almost invited us to a legal and constitutional jumble sale, jumbling up all sorts of amendments of the Constitution, with all of which I am not concerned. I am particularly concerned with only those provisions of the Bill which relate to the determination of the age of the appointed Judges of the High Courts and the Supreme Court.

The hon. Minister has informed us that in a number of cases disputes are pending about the age of the Judge, which means in practical terms, disputes about the retirement time of the Judges concerned. One of the cases had been referred to the Punjab High Court and that High Court has also given its opinion thereon. Of course, the High Court did not grant the writ applied for because in the opinion of the Chief Justice who heard the case, the case was not a proper one for grant of a writ because there was no action of the executive authority against which the writ could be granted. But certain questions of principle are involved and, if I may say so, this is a monstrous invasion of the independence of the judiciary. One of the bases of the independence of the judiciary is fixity of tenure of office of the judges. Once the age of the appointed Judges has been accepted on the basis of certain documents—birth certificates, horoscopes, matriculation certificates etc.—it is not proper that the fixity of tenure of Judges' office should be open to question or to the caprices of the decisions of the executive government. If Government were allowed to question a Judge's age at any time during his tenure of office, he would be in perpetual peril of his position and would not be able to administer justice.

**Shri Harish Chandra Mathur:** Is it his case that the representation should be rejected outright? It is not

Government which has raised the issue; it is Judges who have raised the matter.

**Shri Tridib Kumar Chaudhuri:** That is not at all my case. I do not want the executive Government to take that decision.

**Shri Tyagi:** Who will do that?

**Shri Tridib Kumar Chaudhuri:** I have my suggestions as I develop my point. In the Constitution itself, in other cases where the question of qualification and disqualification of certain high public officials is raised, even the President has not been given the final voice.

Now, what are the dangers involved in giving this power to the executive government? I cannot do better than read out the opinion of the hon. Chief Justice of the Punjab High Court who heard this case. The hon. Chief Justice of the Punjab High Court said, and I quote:

“It will be seen at once that if there is, indeed, a right to fix a Judge's age arbitrarily, then this right is pregnant with the gravest dangers and can be used to undermine the independence and security of Judges, and an unscrupulous Home Minister can effectively get rid of a Judge by giving a finding that the age as given in a certain document (not necessarily the matriculation certificate) must form the basis of his enquiry. Thus, a policy may be adopted that the certificate or affidavit of a doctor, who was present at the Judge's birth, will be the final word on the question of the Judge's age. If the doctor can be prevailed upon to give a false affidavit, the Judge has no remedy and will have to leave his office long before his due date, and this would have the effect of removing a Judge by a means not contemplated by the Constitution.”



[Shri Tridib Kumar Chaudhuri]

—I may add, till we amend it in the way desired by the hon. Law Minister.

**Shri D. C. Sharma** (Gurdaspur): Whose opinion is it?

**Shri Tridib Kumar Chaudhuri**: This is the opinion of the Chief Justice of the Punjab High Court, and I cannot improve upon the remarks or the language of the learned Chief Justice.

**Shri A. K. Sen**: The whole thing should be put in, because the extract really gives a rather different view, because Their Lordships found that the Government did not act arbitrarily; they gave the fullest opportunity to the Judge concerned, and on the advice of and after consulting the Chief Justice of India, the action was taken. It is in the judgment.

**Mr. Speaker**: Is it published material?

**Shri A. K. Sen**: Yes. The whole judgment should be put in.

**Shri Tridib Kumar Chaudhuri**: I also say the whole judgment should be put in.

**Shri Prabhat Kar** (Hooghly): It may be made available to the House.

**Shri Tridib Kumar Chaudhuri**: It is a reported judgment and published. There is nothing secret about it.

I must mention the fact that the Punjab High Court refused to grant a mandamus as prayed for by the applicant concerned only because they held that there was no executive decision of the Government before them, it was only a suggestion to the Judge concerned, and the Judge was not bound to act according to that suggestion. So, I am very glad that the hon. Law Minister wanted to place the whole judgment upon the Table. At least, it should be made available to the Members of the Select Committee, and I think the entire judgment is in favour of the point that I am making out.

It is quite conceivable that disputes about the age of the Judges, once appointed, may arise. Similar disputes may come up very often. If I may draw an analogy, I would refer the House to article 103 where the question of the disqualification arising in the case of Members of Parliament and State legislatures comes up, and there it has been provided in the Constitution:

“If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final.”

Then in clause (2) of the same article, it is provided:

“Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.”

Here, the President is not a free agent. He has to refer the question to an independent body, and he has to be guided by the opinion given by that body.

You might remember, Sir, that in the First Lok Sabha, we had a raging storm in this House over the Vindhya Pradesh (Removal of Disqualifications) Bill, where a Bill had to be brought in this House to remove certain disqualifications which, according to the Election Commission and therefore, accordingly the opinion of the President, had arisen in the case of certain Members of the then existing Vindhya Pradesh legislature. The only point that I am urging before the Government is that they should not take this power in their own hands. The hon. Law Minister was very eloquent and said that they were giving this power to the highest officer of the State, the President. But for all practical purposes, it is the Government's decision, and ultimately the

decisions of the Home Ministry or the Law Ministry or some Deputy Secretary there.

**Shri A. K. Sen:** I can tell the hon. Member that not one decision was arrived at without the consultation with the Chief Justice, though there is no constitutional prohibition. Every decision arrived at has been in accordance with the opinion of the Chief Justice.

**Shri Tridib Kumar Chaudhuri:** Even in this case to which the hon. Minister has referred it is very much open to objection: whether in such administrative matters the opinion of the Chief Justice should be obtained because it is on record that when this case was referred to the Chief Justice he really said that he was not concerned with it. It says here:

"The Chief Justice said that the controversy in question was not a matter with which the Chief Justice of India was concerned, that the Government of India had no power to reopen the question of age once it has been accepted and acted upon."

Of course the Chief Justice said that the Judge concerned should accept the suggestion of the Government and should retire but so far as the powers of the Government were concerned, the Chief Justice was quite clear that Government had no power at least under the Constitution to open the question of age once it has been accepted. . . . (Interruptions).

**Shri A. K. Sen:** That is, the Chief Justice of the Punjab High Court. . . .

**Shri Tridib Kumar Chaudhuri:** It is not Punjab High Court judgment. That is the opinion of the present Chief Justice. . . . (Interruptions).

The Constitution does not give this power to the executive Government because the founders of our Consti-

tion in their wisdom were guided by the very well established principle of fixity of judicial tenure. In Great Britain for instance there is no retirement age for the judges. Once they are appointed they can continue in office subject to their good behaviour; they can even refuse to retire even if they become deaf. . . .

**Shri A. K. Sen:** Now the age is 70 years.

**Shri Tridib Kumar Chaudhuri:** I stand corrected. It is 70 in the Dominions also.

**Shri D. C. Sharma:** Who is to interpret good behaviour?

**Shri Tridib Kumar Chaudhuri:** Parliament. If the behaviour of a judge is found to be objectionable and if he is guilty of misbehaviour or misconduct or dishonesty, Government can make a motion here and indict the judge and have him removed. That remedy is open to the Government. But his fixity of tenure should not be touched, once his age is accepted. The only positive suggestion that I can make on this point is that the Government should not take this power in their hands. They should try to think out some constructive device whereby some independent judicial body—maybe two or three Judges from some other High Court, other than the High Court to which the Judge whose age is in question belongs—may be appointed to give a decision. This power cannot be given—public opinion will refuse to give that power to the executive Government and it should not be given in any case.

**Shri Tyagi:** I beg to move:

"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."

[Shri Tyagi]

I am glad the Minister has agreed to accept this amendment and so I need not lay stress on that. But there are other matters on which I would like to make a few comments. How long do we sit, Sir?

**Mr. Speaker:** Up to 6 o'clock. Would he take the whole time?

**Shri Tyagi:** No, Sir.

**Shri C. K. Bhattacharyya (Raiganj):** We too have some claim upon your time, Sir.

**Mr. Speaker:** Certainly I have to be guided by that. But I was nervous whether Shri Tyagi wanted all the time till 6 o'clock.

**Shri Tyagi:** Justice is one of the basic requirements of a State. Mostly States came into being primarily for one reason, namely, giving justice. When there is some dispute between individuals, the States come in and give justice. I remember in my boyhood I read that the British became popular because the first time India knew of actual justice was by means of the Dewani Adalat which they gave in Calcutta. It was that appreciation of justice which made the British popular in India ultimately. I must submit that this is the most important function of a State.

In India, unfortunately, after the British went away, I am sorry to say—my lawyer friends will please excuse me; I have always been an anti-lawyer campaigner....

**Mr. Speaker:** Does he want to remove me from this office?

**Shrimati Yashoda Reddy (Kurnool):** Judges come out of lawyers.

**Shri Tyagi:** Therefore, their practising mentality does not go. It is on account of lawyers primarily that our standards of justice have gone down and are going down every day. That is what is happening in law courts.

16.58 hrs.

[MR. DEPUTY-SPEAKER in the Chair]

It is a good idea that the hon. Minister has thought of effecting some improvements now. But I must confess with a sense of shame and regret that even now—I do not know whether the times are bad or for some other reasons—their standard is deteriorating every day. I have experience for the last 40 years and if I compare our courts now with the past, our courts now are nowhere in comparison to the courts of the British days. That is what has happened. It is for the Government to investigate as to what the reasons are. Is it because of too much of security to the Judges? In the name of freedom of judiciary, we are giving the fullest security in the Constitution to Judges. I do not know whether that freedom is the root cause. In the British days also, there was that freedom, but everything depended on the goodwill of the Viceroy here. The executive powers were higher than the powers of the judiciary. In our enthusiasm and fanaticism for liberty, we gave the judiciary fullest powers, in the hope that they would be justified. But my fears are that our aspirations and all our hopes have now been frustrated practically because justice is delayed. You may go from one end of the country to the other; everywhere the people will say that justice is expensive, justice is delayed and justice is not just. People go on in appeals after appeals and take years in civil cases. There are thousands and thousands of cases pending for the last ten years in various high courts. Take the statistics of one high court and you will know it. In the Allahabad High Court, for instance, the number of cases pending for more than ten years runs into thousands. What is justice if it is delayed like this, if a case starts from the lower court and goes in appeal from one higher court to the other and takes ten, twelve or even twenty years and the litigant does not get

any justice after having spent his life time on it?

17 hrs.

**Shri Surendranath Dwivedy** (Kendrapara): That is why the High Court Judges of Allahabad are appointed as tribunals.

**Shri Tyagi:** Then, one thing which is needed is, justice must be made cheaper. Justice has become too costly. If a case is started on a dispute over Rs. 100—for the sake of prestige litigants go to courts for such small amounts—the result is that he spends many times more than that amount and then he gets justice done. Sir, I will only close this general remark or argument by saying that something drastic is needed to see that justice is given.

Coming to the High Court and Supreme Court Judges, I do not want to pass any remarks on them. But I do not think it is dignified for a judge to come with an application saying that his age has been wrongly written. Sir, practically everywhere in the whole country we have seen that the position of a judge is recognised by everybody as one of a higher authority, one which carries with it some respect from all corners of the country. Everybody recognises that there is some veneration with the profession. I do not know how, with what face, some judges are coming with an application that their time to retire is two or three years after and that their age had been wrongly written in their matriculation certificates. Do such persons deserve to be judges?

**An Hon. Member:** Certainly not.

**Shri Tyagi:** One man went on as a judge for years together. It never occurred to him that his age was wrongly written in his matriculation certificate. But when the time for his retirement came he comes forward

and says that his age had been wrongly written. I think it is better that such a judge had resigned and gone. He is not fit to sit in the chair of a High Court Judge. Therefore, when my hon. friend argues on behalf of judges and says that the President may not be given the right of finally deciding about it, I am surprised. Who else would do it? This amendment has come only because in the Constitution there was no provision for it. Who will decide it? In case there is a litigation between a State and the Judge, to which court would they go?

**Shri Tridib Kumar Chaudhuri:** I hope Shri Tyagi would bear with me for a minute. In fairness to the judge's case which was referred to here, I must say that it was not he who asked for any extension of time, it was the Government which wanted him to retire prematurely prior to the notified date.

**Shri Tyagi:** I am not referring to one case. I am referring to a number of cases that the Minister has quoted. There are a number of cases—five in the High Court.

**Shri Tridib Kumar Chaudhuri:** What would be his suggestion for remedy to the judge in whose case the executive government finds the judge inconvenient and raises the question of his age?

**Shri Tyagi:** This right is being vested in the President to see whether the grounds are valid or not. If the Chief Minister of a State raises a question, the President will not automatically fall in line with him. After all, the President also has a certain dignity, he represents the whole nation and holds the biggest office in the country. So, is he not higher in judgment than the judges themselves? Certainly because he occupies a position of greater dignity. So, he could decide things. In most of the cases the judges have come forward as beggars with the demand that their ages

[Shri Tyagi]

may be lowered a little from what is stated in the record. I suggest that in such cases the judges must be dismissed on that very day because they do not deserve to sit in those chairs. It is beneath the dignity of the chair which they occupy. Just like a school boy makes an application that his age is wrongly entered in his matriculation certificate, if a judge also makes the same application, can he be a judge of integrity? I submit that such a judge should not be allowed to occupy even for one single day that high chair because he has lost his dignity.

Therefore, if there is any dispute about age, it should not be fought in courts, as it is happening now. Now judges are coming forward with applications that their age is two years or five years less than what is mentioned in their certificates. Can we trust such judges for their honesty? If I were a litigant myself and a party to a civil case, how would I like my case to be decided by a judge who is quarrelling about the correctness of the date of birth as entered in his matriculation certificate? He did not dispute it when he appeared for matriculation, he did not dispute it when he appeared for B.A., M.A. or LL.B. or even when he became a judge. But when it became time for his retirement he is making the plea that his correct age is less than what is entered in his matriculation certificate. This is a painful matter. So, I think the President must be vested with this power. Let such judges know that there is some authority to decide their fate.

I welcome the Bill generally because there are so many good features in it. I must congratulate the Minister of Law for having brought forward so many matters in one single Bill, because it does not look well if for every little small matter we come forward with an amending Bill for the Constitution. So, it is good that he has brought all these points together.

There is a complaint that competent lawyers would not accept judgeships because their income is so big. So, it is a good thing that their age is increased at a time when the average age in the country has increased. In the civil service also we have increased the age. My only sorrow is that we have extended it only by two years whereas it should have been five years. So far as the amenities and emoluments are concerned, we should be very liberal because we expect them to rise to the level which is expected of them.

Coming to the services, it is a good thing that some changes are made in the Constitution so far as the services are concerned. There was the case of a railway official who was about to retire. He was given notice that he was to retire on such and such a date. Instead of retiring on that day, he says that he has nine more months to serve. He goes to a court and gets a stay order that he should not be retired. This is how the courts are working. Then the case goes to a higher court, where the judge says that it is not a fit case for his intervention and that the lower court should not have issued the stay order at all. Still no punishment was given to that person; on the other hand, he went on promotion. So, what I am saying is that the services are not being controlled by the Government. Now they go to court very often. Many safeguards were provided in the Constitution when it was enacted. They were too many indeed. Once a notice is given, sometimes a notice for explanation, then some charge-sheet, again another chance and yet again another chance.

These are emergency times. Let us put our Services in proper order. Their morale must be raised. They must have a higher morale, no doubt, because we cannot do without the Services. Government is primarily run by the Services. I do not want the politicians to intervene in the rights and privileges of and the authority vested in the Services because every man in the Government must

feel that he is serving the country and is a patriot, that he is trusted by everybody. Let him work with full vigour and full sense of self-confidence. Therefore it is a good idea that article 276 of the Constitution is being amended.

**Mr. Deputy-Speaker:** He must close now.

**Shri Tyagi:** There are many other matters and I do not want to take much of your time. There are some smaller matters which, I do not think, were necessary in this Bill. For instance, there is the provision for allowances on transfers. It does not look well to say here that Rs. 200 or Rs. 300 or Rs. 400 will be given as allowance on transfer from one place to another. Shall our Constitution have these small things? I would suggest to the Joint Committee to look into this. After all, these amendments will become our permanent Constitution and our Constitution will rather look cheap if we begin to define as to how many rupees shall be given to a person if he is transferred from one place to another, whether it will be Rs. 200 or Rs. 300 or something else. It does not look well. Therefore I suggest that these things should not be mentioned. Whether a judge when he is transferred from one place to another will be given Rs. 300 or Rs. 400 or even Rs. 500 as allowance should not be decided by Parliament. The Government themselves could make some rules and give them something. But this does not look well.

With these remarks I support the Bill.

**Shri Prabhat Kar:** Mr. Deputy-Speaker, Sir, so far as the clauses of this Bill which is being referred to the Joint Committee relating to the increase in the age of retirement of judges as also regarding the transfer of judges from one High Court to another are concerned, these are welcome. I only wish that this amend-

ment had been brought earlier so that the controversy which has arisen, as stated by the hon. Law Minister, about the retirement age of judges and the correctness of their age which has now been proposed in this amendment to be referred to the President would have been avoided. So many cases are pending.

It is a strange thing, as Shri Tyagi was pointing out, that there is some deterioration in the judiciary. What is it due to? We, in this House, have all the time been pointing out about the way of appointment by the Home Department. Today, as a result of the controversy that has come into the press, it is found that not only the appointment which is the sole discretion of the Home Department but it is also said that there have even been certain political appointments of judges. Today we find that a judge can even be made to retire at the sweet will of the Home Department.

Just now Shri Tyagi was very much eloquent about a person not being fit to be a judge who at the time of retirement comes and asks for a change in his age. I want to know what type of an administration the Home Department is. Since the appointment of a judge in 1949 upto 1959 the age of the judge is accepted and published in the Gazette and in the middle of 1959 the Government comes and says, "You are not of that age." Uptill now what was the Home Department doing? It was published and he was to retire on a particular date. But in 1959 it comes and says, "You are to retire". I want to know what was the record of the High Court, how the Chief Justice of the particular High Court accepted the age. Today, how, here Shri Tyagi, without knowing the case, comes and shouts that that Judge has to be retired. I do not know which case he is referring to.

**Shri Tyagi:** I am sorry, I did not refer to any particular case. My hon. friend has misunderstood me. I

[Shri Tyagi]

have not read any case. I said only on principle that the Judges should not object. I did not refer to any case.

**Mr. Deputy-Speaker:** He did not refer to any particular case.

**Shri Harish Chandra Mathur:** Mr. Deputy-Speaker, you were not here. I purposely asked the Law Minister to give us the number of such representations from the Judges. It is not a particular case which is criticised here. We can understand your feelings. If there are plenty of representations . . .

**Shri Tyagi:** Twenty representations.

**Shri Harish Chandra Mathur:** . . . from the judges asking for revision of their age, what do you think? Comment on that. That is the problem.

**Shri Prabhat Kar:** At the outset, I have said that I would have liked this amendment to have come earlier so that the controversy that has arisen today about the age could have come to a stand-still. The point here is whether the representation has come from the Judge in the sense whether they are representing today that the age that has been recorded was wrong and therefore it should be changed or representation is coming because, today, the age which has been recorded is now being changed by the Home Department. That is the point that would be there.

**Some Hon. Members:** No, no.

**Shri Harish Chandra Mathur:** So that the discussion might be fruitful, let the Law Minister clear the position. That is why I asked him to clear the position.

**Shri Tyagi:** How many cases are there?

**Shri Harish Chandra Mathur:** Is it representation by the Judges for revision of the age in their favour? If it is not so, let the Law Minister contradict it.

**Shri Tridib Kumar Chaudhuri:** There are also cases where the Executive Government has asked the Judges.

**Shri Harish Chandra Mathur:** There is not a single case like that.

**Shri Tyagi:** Any such case I do not welcome.

**Mr. Deputy-Speaker:** Order, order. Mr. Tyagi should address the Chair.

**Shri D. C. Sharma:** Is the hon. Member referring to any particular case?

**Shri Prabhat Kar:** No. I am not. I want to make it clear. I am not interested in any of the applications. I was only . . .

**Mr. Deputy-Speaker:** Would he please address the Chair?

**Shri Prabhat Kar:** I was pointing out that too much interference by the Home department either on the question of appointment or on the question of retirement tells upon the morale of the judiciary, which should not be done.

**Shri Tyagi:** I agree.

**Shri Prabhat Kar:** That is what I was pointing out. I am not holding a brief for any of the Judges or on any of the points that were raised now.

**Mr. Deputy-Speaker:** Nor did Shri Tyagi refer to any particular case.

**Shri Prabhat Kar:** What I was pointing out was, there is too much interference even at the time of appointment. As has been pointed out, there have been certain political appointments of Judges. Now, we find today interference at the time of retirement.

**Shri Tyagi:** Shall we get a clarification from the Minister? He is prepared to give.

**Mr. Deputy-Speaker:** Order, order.

**Shri Prabhat Kar:** I was telling that it is necessary, once a Judge is

appointed, there should not be any interference even on the question of retirement. We have often said in the House that Judges should not be given any appointment after retirement. Because, if this type of appointment is given after retirement of Judges, then, Judges will look more and more to the Home Department, because their future after retirement would depend on the Government. That is why we have been saying that Judges, after retirement, should not be given any appointment. That is why I welcome the suggestion that the age of retirement of the Judges should be increased. I was just wondering why, when the Law Commission has recommended that it should be raised, instead of 62 to 65, in the case of the High Court Judges, it is being restricted to 62 and why it cannot be raised to 65 as in the Supreme Court. My suggestion is that the judiciary should not be interfered with by the executive. That is how the judiciary should function. Therefore I would suggest to the Joint Committee to consider, when today we are accepting 65 as the age of retirement of the Supreme Court Judges, there cannot be any bar so far as the High Court Judges are concerned, and their age should be raised to 65. In other countries, just now, the point was made that so far as Judges are concerned, they retire at 70 or 75. In India also, it should be so. It is a question of experience.

**Shri Harish Chandra Mathur:** The age of superannuation of civil servants is also 69; not 55.

**Shri Prabhat Kar:** That is true. Here, I think Shri Harish Chandra Mathur, who is very keen on able administration, is aware fully how the judiciary is functioning and as pointed out by Shri Tyagi, there are grouses against the functioning. What we need is a good, efficient and experienced judiciary. That is why I think that if a judge becomes older, he does not lose the power of adjudication. If it is said that the man

will continue to have his full ability up to the age of 65 years when he is on the Bench of the Supreme Court, I do not see how it can be said that he will lose that ability after 62 years if he sits on the High Court Bench. Therefore, I would like that 65 should be the uniform age of retirement for the Supreme Court judges as well as for the High Court judges.

So far as the amendment to article 226 is concerned, it is a very welcome thing, because we have often experienced such difficulty about coming all the time to Delhi whether from the State of Kerala or from the State of Tamil Nad or from West Bengal.

About the amendment to article 311, I do not know why all of a sudden these changes have been suggested. The provision in this Bill is:

"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."

Then, there is a proviso to the effect that:

"Provided that this clause shall not apply—

- (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;...."

The right which has been granted now under article 311 is now sought to be taken away.

**Shri Tyagi:** That is for Communists!

**Shri Prabhat Kar:** Shri Tyagi may take pleasure in preaching anti-communism. But here that is not what is sought to be done. Here, you are



[Shri Prabhat Kar]

taking away the fundamental right of an employee. My hon. friend must understand that.

**Shri Harish Chandra Mathur:** My hon. friend need not take it seriously.

**Shri Prabhat Kar:** My hon. friend Shri Tyagi may take pleasure in talking about all these things. But he must understand that here a fundamental right of the employee is being taken away, namely that when a man is charged and he is to be dismissed, he should know exactly what he is charged with. According to the proposed provision, if the authority who is going to dismiss feels satisfied that it is not reasonably practicable to hold such inquiry, that becomes an end of the matter.

I know that there were Ministers who were capricious and they dismissed persons because they did not like them. I know of such cases. That sort of thing has to be stopped, and that must be stopped. It is to prevent that kind of thing that the existing article 311 has been put in in the Constitution.

**Shri Tyagi:** Those Ministers have ultimately to go.

**Shri Prabhat Kar:** Therefore, I would submit that the Joint Committee should take all these things into consideration.

Especially in regard to the controversy that has arisen today on the question of the age of the judges, I would like that in the interests of the judiciary so that the whole country may be satisfied, the Joint Committee should lay down certain criteria whereby this sort of controversy will be stopped, and there would not be any occasion in the future for any such controversy about the age of the judges when they are to be retired.

With these words, I hope that the Joint Committee will take all these points into consideration.

**Mr. Deputy-Speaker:** Now, Shri K. C. Sharma. Hon. Members should not take more than ten minutes each. I have got a long list before me.

**Shri Harish Chandra Mathur:** This Bill contains five important amendments.

**Shri K. C. Sharma (Sardhana):** At the outset, I would submit that the age of a judge or of any other employee could not be disputed after the appointment is made because when the appointment is made it is made of the whole man; 'the whole man' means his physical fitness, his mental capacity, his age of majority, and his loyalty to the State, and finally his character and integrity. When the character and integrity could not be questioned, the age also could not be questioned. Once it has been accepted by both the contracting parties, namely the Government and the employee, it should not be questioned at any later stage. Such a thing should not arise. And it is a wrong thing to say that a judge has given a wrong age in his matriculation certificate. Whether his father or mother or his guardian has given a certain age does not matter; once he is appointed on the basis of that age, no further question should arise about that, and it cannot be disputed at any later stage. It is entirely a useless provision in the Constitution which is going to be inserted, and I submit that it is toying with the sacred word of the Constitution itself. It is very unfortunate that in this country the Constitution should be changed so many times; though it is true that the Constitution should be changed with change of times, it is very wrong to change the Constitution for something about cows, something about buffaloes, something about this trifle or that, something about this man or that man, and so on. The Constitution is changed because certain members are disqualified. They must remain in the House. This is a strange phenomenon. There is some sanctity attached to the

supreme law of the land. But this sort of amendment means that we are not loyal to that supreme law.

There is one fundamental question. There is such a thing as the first class citizenry. What is first class citizenry? Every citizen is equal before a court of law. Everybody's claim will be decided in the same manner whether he holds a higher office or a lower job. It does not matter if a man holds an exalted office. Even a Judge must stand before the court, if he has a claim to make in his favour. There is such a thing as unalterable nature of justice. The Constitution is broken to pieces the moment you accept the principle that a man who sits in a high exalted chair has certain ways to get a decision on his claim other than those available to a man who sits in a lower chair. I do not stand by that. It is much more befitting that a man in exalted office should stand as a claimant before the court of law and say, 'I claim it', if there is a claim. Rights do not go by the bigness of the chair one sits on. They go by right of birth, by right of citizenship, by acceptance of the obligations of citizenship. Giving something to somebody that is not given to the lowest in the land is toying with the Constitution and playing with the sanctity of the supreme law.

As regards the age of retirement of Judges, I do not like the limit of 62. I would have preferred it if it had been put at 60. Why 62? Is a High Court Judge a child? This sort of thing, 'one year more' or 'two years more' does not appeal to me. We have fixed the age of retirement of Supreme Court Judges at 65. Let the age of retirement of High Court Judges also be raised to 65. In other countries, the retiring age of Supreme Court Judges is 75. Formerly in civilised countries, the Supreme Court Judges were appointed for life and it was expected that as soon as they realised that their physical and mental capacities were not remaining in accord with the functions of that

exalted office, they themselves would retire. There have not been many cases in which Supreme Court Judges refused to retire when they knew that they could no longer function in a right and conscientious way and their capacities were failing. Anyhow, they have fixed the age at 75 for retirement of Judges and generally they retire at this age unless they become senile before that time.

In India, I do not think the case is much different from what obtains in other countries. For instance, I do not agree with Shri Tyagi when he says that we are going down further and so on. Varadachari, Suleman, Shastri, Mukerjee, Das—they were eminent Judges. They compare well with any Judge anywhere in the world. Read their judgments, read the law they have laid down, look at their libraries, look at their working hours. See how much they have worked and what wise and beautiful things they have brought about so far as international law is concerned, so far as citizen law is concerned. It is a matter of pride that India has produced first-class Judges and first-class lawyers. Go anywhere in the world and find a lawyer who can compare with Motilal Nehru, Das, Desai and others. Not only that. They have been leaders of their people.

**Shri Tyagi:** He is taking of the older generation.

**Shri K. C. Sharma:** And the man kills a cow and gives a Brahmin a sandal—that is the story of your industrialist or businessman who claims the authority behind the curtain. It is the lawyer alone..... (interruptions). I do not yield.

**Shri D. C. Sharma:** I am on a point of order, Sir. He says a man kills a cow and gives a Brahmin a pie. It is a very strange reflection on the Brahmins.

**Shri K. C. Sharma:** How many businessmen, what men in other

[Shri K. C. Sharma]

stations have given their liberty in doing justice or doing good to the common people. It was given only to the lawyer. A lawyer comes from Bombay to defend an accused, and he at last is served with a notice that he would be arrested, but the lawyer given notice says it is his professional duty, his normal function to defend a man, in the dock, and he would do it even at the cost of his own liberty.

Has anybody given his palace to the nation? Your super industrialist has not given the structure of stones where the Father of the Nation died. Had it been a lawyer's house, it would have gone to the nation on his own offer.

**Mr. Deputy-Speaker:** No personal reflections.

**Shri K. C. Sharma:** Motilal Nehru gave Anand Bhavan, his house, to the nation.

So, my respectful submission is that India has been fortunate both in the eminent Judges it has produced and its lawyers, and India is still proud of the judiciary that it has.

Human life is human life. We are on the turning point in history. Never before has money played the part that it is playing today. After all, a Judge is a human being with human weaknesses as anybody else. If you have to judge him, judge him by your own standards. If you find within your own heart, within your own mind, that you are failing, you should not very much complain if the Judges fail. Judge them, as you would be judged.

**Shri Narendra Singh Mahida:** I have heard with great respect the speeches of my colleagues.

I am in agreement with Shri Tyagi to a certain extent, that the standards of the judiciary in this country are not comparable with those before independence. I will cite an example of the Bombay High Court. In those old days, when the British judges were also great, about a hundred years ago.....

**Shri Shivaji Rao S. Deshmukh** (Parbhani): They are great even now.

**Shri Narendra Singh Mahida:**... a Governor wrote a note to the Chief Justice of High Court, asking him to give a particular judgment, and the Chief Justice closed the High Court and went away to England, rather than open the High Court and conduct cases according to the wishes of the governor. These were the great traditions which the British left in legacy for us.

I do not say our High Court Judges are not up to the mark. They are, of course. We should not be satisfied with the present standards, but still improve them.

I am in agreement with Shri Sharma when he referred to the past generation of lawyers. We have high respect for them, and I pay my tribute to all those great lawyers of this country who played such glorious part in our independence movement. The lawyers were then foremost in fighting the freedom struggle, lawyers were also foremost in framing our Constitution, and even today some of them are foremost in this House.

**Shri Tyagi:** Lay men were not lagging behind.

**Shri Narendra Singh Mahida:** I was also a humble student of law in London. I have great respect for the legal institutions in England, like Lincoln's Inn, etc. We do not have such of them in India, and I request our lawyers to formulate such inns and high standards of the judiciary.

Justice must be speedy and efficient. I agree with Shri Tyagi when he said that there are cases pending for ten years. I know of cases pending for 10 or 12 years. If the Law Minister is keen, I can give him details of the cases. These things have been happening in India. In a country, with high standards of living, they can afford such legal delays, as the people there may not be much affected, but

have such people receive judgments after a generation, and a lot of money is being spent. I was a victim of a prolonged civil litigation for nearly 11 years and ultimately we the parties, compromised. The money we spent on courts was, I think now, foolishly spent. Even in these days our poor countrymen cannot afford delayed justice. Justice must be cheap and efficient. Unless this is done there will be no progress. I am glad that agricultural tenancy litigations are now over.

**Mr. Deputy-Speaker:** We are now concerned with the Constitution Amendment Bill.

**Shri Narendra Singh Mahida:** I am not in agreement with the increase in age of retirement of High Court Judges. It is all right for countries like New Zealand, United States or Sweden and Norway where the life expectancy is 69 or 70 years of age. In India it is only 39 years. If there is no provision for the retirement of senior judges, the younger generation will feel frustrated and they will not be able to make much headway. The Law Commission in their fourteenth report have suggested that the age of retirement be raised to 65. It is very good for the Commission to say that. I belong to the middle ages and I do not feel inclined to increase the age limit. Government have decided to raise the retirement age of civil employees from 55 to 58. As an emergency measure it is all right but if it is applied to normal times, it will create a blockade for the advancement of the younger generation. I would therefore request the Joint Committee to look into the implications.

It is proposed to pay a judge some small amount on transfer from one High Court to another. I think they get fair salaries. If they are not paid properly, their salaries may be increased. I believe that we cannot have High Court judges with Rs. 500

standard. The judges must be paid well and respected well. Their dignity and decorum should be maintained. Instead of giving them some emoluments like these, their salary can be increased. Temptations are always there when the salaries are not adequate. I do not mind giving such emoluments, so that they are above trifles and temptations.

I welcome clause 11 which refers to international law relating to our sea bed and sub-soil of the continental shelf adjoining its territory. So many nations have increased their sea-bed territories and this is a provision which perhaps many hon. Members have not noticed. I welcome this and suggest that the Joint Committee should take note of and approve it.

**Shri Warrior (Trichur):** That does not mean that the territorial waters are extended... (Interruptions).

**Shri Narendra Singh Mahida:** It is not that we claim the territorial waters and the sea-bed under it, but it is a very necessary measure that we claim such soil of the continental shelf adjoining its territory as well. I wish that we bring in such a measure about air space also. Although we have an unlimited air space limit over our territory, but in this age of moon travel and sputniks around, we would like to know whether any one is breaking our international air space limit rules. Probably in times to come, I hope a Bill will be brought in in this House about our international territorial rights on the air space limit also.

**Shri Tyagi:** To whom will the moon belong?

**Shri Narendra Singh Mahida:** There are changes in international laws according to circumstances and we have to be in tune with them.

[Shri Narendra Singh Mahida]

With these words, I welcome this measure and I hope the Joint Committee will look into the other suggestions I have made.

**Shri Shree Narayan Das** (Darbhanga): Sir, while supporting the motion for reference of the Constitution (Fifteenth Amendment) Bill to a Joint Committee, I would like to mention certain points. This Bill was introduced in the House long ago. Some of the provisions that are going to be amended are very necessary, but there are some new provisions in this Bill which on the face of it appear to be controversial.

Under clauses 2 and 3, the President is being empowered to make certain enquiries with regard to the ages of High Court or Supreme Court Judges, whenever such questions arise. As has been pointed out by Shri Tyagi, it is rather curious that such questions should arise. But we are not deciding legal cases here. We are here to make certain amendments in the Constitution to meet certain contingencies.

**Shrimati Yashoda Reddy**: Why should that contingency arise?

**Shri Shree Narayan Das**: We are legislators and we have to provide for certain contingencies. There are so many enactments which are not used every now and then, but we have to provide for that contingency. We are not concerned with any particular case or criticising those Judges in regard to whose ages some questions have arisen. We have only to see whether there is any provision in the Constitution to deal with the matter. If such questions have arisen, we do not know the circumstances under which they have arisen. But there must be some provision in the Constitution to meet the situation when such questions arise. Therefore, Government have come forward with this amendment.

But I am not quite in agreement with the provision that is being made. Why should the President be dragged

here to decide certain cases? The President should have the power to appoint a special tribunal to enquire into the matter when it arises and the decision of the special tribunal shall be given effect to by the President. The action of the President cannot be made a controversial matter. So, with regard to clauses 2 and 3, the President should be empowered to appoint a special tribunal and the decision of the tribunal shall be given effect to by the President.

Some provision is going to be made for transfer of Judges from one High Court to another High Court. That is a welcome measure. I think in public interest Judges should be transferred. But at present if a High Court Judge has acted in a particular High Court, he cannot practise in that court after retirement. So, it would mean that if he is transferred to another High Court, he cannot practise in that court also after retirement. I submit that if a High Court Judge is transferred from one High Court to another, he should have the right to practise in that court after retirement.

Here, Sir, I would also like to make a suggestion. It has been provided here that if one acts as a judge in a High Court for five years then he can be transferred, and if he has served for less than five years then he will not have that right. I think this period of five years should be changed to four years, because I think the period of five years is too much.

With regard to the amendment of article 311, for a very long time we have been feeling this necessity. As a member of the Public Accounts Committee I have seen cases where some charges were made against some employees with regard to corruption, indiscipline etc., committed by them and the Government took certain action against them, but due to the legality of the cases the affected persons went to the court and it took several years before it was decided that they were

wrongfully dismissed or decreased in rank. In that way, I think, the discipline among our services has been very deteriorating. The fundamental right to the extent of dismissal or discharge is not being taken away. That is left as it is. But only in the matter of reduction in rank it is being changed. I think that disciplinary action should rest with the Government and only because of reduction in rank the employee concerned should not take his case to a court. That will have a salutary effect on the discipline or the morale of our services. The Government should be in a position to take the necessary action that will be needed for the proper working of the administration.

With regard to amendment to article 276 also, I think, in the changed circumstances, that is necessary. At present the local authorities like the municipal boards or district boards have the right to levy certain professional or trade taxes up to a limit of Rs. 250. I think in the changed circumstances, if they want to levy any taxes, there should not be any constitutional bar or limit saying that it should be only up to Rs. 250. Therefore, the provision that is going to be made raising it to Rs. 500 is a very welcome thing.

With these words, Sir, I support this measure.

**Shri Surendranath Dwivedy:** Sir, while I agree with the view that the standard of judiciary today is not as it was in the past, at the same time, it cannot be said that the executive has no hand in making this so; because through temptations and through other things the executive is also trying to influence the judiciary.

In a democratic set-up, the part of the judiciary is very important and essential. But we find in this country that judges of the High Courts are appointed to different posts and they are

given different assignments even after retirement. They are offered posts of governorship, ambassadorship and others which act as a temptation always for them to look to the executive and to satisfy them as far as possible. This is a very bad precedent that we are creating in this country. I am not quite satisfied with the precedent that we are creating in this country by raising the age of retirement. It seems as if we are going to be ruled by wise men of the land, as they put it; that is how I look at this problem. I find that in many spheres of administration we are raising the age of retirement. We have increased the age limit to 58 in the case of civil servants. In the case of technical personnel also we have raised it. Now we are doing it in the case of judiciary, in the case of High Court judges. I do not understand the idea behind this proposal. Is it because of the recommendation of the Law Commission? In that case, they wanted it to be raised to 65, just as in the case of Supreme Court Judges. I do not know why you have made it only 62 in the case of High Court Judges.

By this provision we are blocking the opportunities of younger men for promotion in this country. It has to be remembered that socialist pattern of society is our objective. So, the Constitution and the other enactments of the country must be viewed from that spirit, not from an orthodox or conservative point of view. In judicial judgments we sometimes find clash of interests or clash of view; the judgement is one thing whereas the spirit is something else. All these factors have to be taken into account when we think of appointments to the judiciary. The judiciary must consist of persons who have imbibed the proper spirit of the country as a whole. If we take that point of view, it is necessary that younger elements should be brought in the judiciary more and more. Then, why do you want to raise it?

**Shri Harish Chandra Mathur:** Otherwise, we will not get the right type of people.

**Shri Surendranath Dwivedy:** You can never get the right type of men. We are not getting even the right type of Ministers.

**Shri Hari Vishnu Kamath:** The present company here is, of course, excepted.

**Shri Surendranath Dwivedy:** Even younger man like Shri Tyagi is displaced.

**Shri Tyagi:** Am I a refugee?

**Shri Surendranath Dwivedy:** There is a department even to look after refugees. I think the Congress Party will look after you very well.

Then, most of the retired High Court judges are not unemployed today, because we have so many tribunals. Then there are other spheres also where judicial persons are needed. Therefore, even if they retire at the age of 60 I do not think they will remain unemployed. In fact, it has always been the complaint of the executive that if we were to provide for judicial people in every enactment where are we to get them from? I was told by the Chief Election Commissioner that they wanted as many as 54 retired High Court judges to be appointed as tribunals and it is difficult to get so many because every retired judge has got some appointment here or there. Their talents are being utilized in different spheres of society and nobody grudges that. But why should you go on changing the Constitution?

I am really surprised that higher emoluments have been provided in order to induce high court judges to take up appointments in high courts other than in their own States. The SRC recommended that in the interests of national integration judges of one State should be appointed as judges in a different State. But when we read in the papers about the appointment of high court judges we

rarely come across people belonging to one State being appointed as high court judges in another State. I do not know whether judges after appointment are transferred from one State to another or not, but when they make appointments Government see to it that only persons belonging to that very State are appointed as judges of that State.

**The Deputy Minister in the Ministry of Law (Shri Bibudhendra Mishra):** Look at your own High Court.

**Shri Surendranath Dwivedy:** There are very few cases. Tell me about the Calcutta High Court. Do not talk about the Orissa High Court. If you tell me about Orissa with all apologies I can say that even in the judicial sphere strange things are happening in Orissa. I did not want to say that. The Advocate-General of Orissa is a person who is even now the President of the Cuttack District Congress Committee. That is how the judicial system is made to work there.

**Shri Tyagi:** He feels, he is a wise man.

**Shri Surendranath Dwivedy:** In Orissa High Court and in Patna High Court you may have one or two persons. You may have a few here and there, but what about the Bombay High Court and the Calcutta High Court? Those are the aristocratic vested interests. Probably, they oppose it and want that nobody belonging to some other State should go there. You have not the guts to see that when appointments of persons from other States are made they go there. I do not know whether because the emoluments were not provided for in the Act these persons ever refused to accept the transfer and that is why this has been done. If that is so, this is a slur on the judiciary themselves.

I want some clarification in this matter. Now it is provided in this Bill that when he is transferred and if in that particular court he serves for five

years he cannot be permitted to practise there. But what about the original High Court where he was appointed? Suppose, he has not served there for five years. Now there is a ban. Whether after the transfer he will be permitted. If he is not transferred and he works for the full term in that particular High Court, are you going to permit him also to practise in that particular High Court? Is any change going to be made in that respect?

It is said, they are not welcoming transfers. It is known that persons having a good practice also decline to

take up appointments as High Court Judges because after retirement they do not get the opportunity to practise in that High Court. In conclusion, I think, this is not a good precedent that we should go on raising the retirement age of High Court Judges like this. I hope, the Joint Committee will take this matter into consideration with all its implications.

18 hrs.

*The Lok Sabha then adjourned till Twelve of the Clock on Monday, December 10, 1962/Agrahayana 19, 1884 (Saka).*

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