that I would be justified in bringing this Bill.

We have taken powers under this Bill to remove hardships, and may I say that we shall be constantly watching this, the implementation of this measure, and see that any avoidable hardships are not inflicted. It is not possible for me to say anything beyond that because to make a promise and not to carry it out would be disloyalty to this House.

Thank you for the patience with which you allowed us to speak on this Bill. May I say that it was because this Bill is a new and novel measure that I never raised any voice even though the time first given was three hours and it was extended further, because I believe that all the time that we have spent on this Bill has been usefully spent and has benefited all of us in every way.

Shri Bade: It is a historical Bill.

Mr. Speaker: The question is:

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

The motion was adopted.

13-22 hrs.

CONSTITUTION (FIFTEENTH AMENDMENT) BILL

Mr. Speaker: We now take up further consideration of the following motion moved by Shri A. K. Sen on the 29th April, 1963, namely:—

"That the Bill further to amend the Constitution of India, as reported by the Joint Committee, be taken into consideration."

Shri Tridib Kumar Chaudruri may continue his speech. He has already taken 31 minutes.

Shri Tridib Kumar Chaudhuri (Barhampur): I will finish as soon as possible.

Mr. Speaker: Five minutes.

Shri Tridib Kumar Chaudhuri: I asked for ten minutes. In ten minutes precisely I will finish.

Mr. Speaker: Out of the ten minutes he asked, five were taken yesterday and five remain.

The Minister of Law (Shri A. K. Sen): He may be allowed to speak because he is throwing good light on the matter, if I may request you.

Shri S. M. Banerjee (Kanpur): How does he know he will not throw good light?

Shri A. K. Sen: I did not say so. Simply because somebody throws good light, that does not mean others will not.

Shri Prabhat Kar (Hooghly): In that case, the time for the Bill should be extended.

Mr. Speaker: Not now. We have just started.

Shri C. K. Bhattacharyya (Raiganj): In any case, we may kindly be allowed to throw some light on it.

Mr. Speaker: If light comes from every quarter, there will not be light at all.

Shri Sonavane (Pandharpur): There will be a flood of light.

Mr. Speaker: Only if there is some darkness, light can be appreciated, not if light comes from all sides and there is no darkness.

Out of five hours allotted for the Bill, probably for the second reading we might have 3½ hours.

Shri Prabhat Kar: Yes.

Shri Tridib Kumar Chaudhuri: I was trying to point out yesterday that the main thing involved in clause 4

[Shri Tridib Kumar Chaudhuri]

of the Bill is an important constitutional question, namely whether the notified tenure of the office of a High Court Judge can be curtailed by an executive fiat on the plea of dispute about his age.

This was recently brought into sharp focus by a Special Bench decision of the Calcutta High Court in J. P. Mitter's case, and I had occasion to quote from the judgment of two of the three eminent Judges who constituted that Special Bench.

13.25 hrs.

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

At present under our Constitution, the independence of the judiciary from the executive, so far as the High Courts are concerned, is assured under article 217 which provides that a High Court Judge once appointed by the President shall hold office until he attains the age of 60 years. But as experience has shown, disputes can arise about the age of a Judge, and in that context the moot question is who should have the powers to decide on it when the question of age of a judge is raised. The original provision was that this should be decided by the President. The only amendment that has been made by the Joint Committee is that this question should be decided by the President in consultation with the Chief Justice of India.

I was on this part of the Bill and was trying to point out that it is highly objectionable in principle to bring in the highest dignitary in the country's judiciary into this matter when administrative decisions are involved. If the Government were really serious in obtaining the opinion of the Chief Justice of India, it should be not merely consultation but the judicial opinion of the Chief Justice, and that opinion should be binding on them.

I have not much time, but I can only commend to the House for its acceptance the views that have been expressed by Shri P. N. Sapru, a Member of the Joint Committee, who was himself a Judge of the High Court. He has stated:

> "As we have fixed the maximum age for retirement, the question whether a Judge has or has not attained that age can become a subject matter of controversy in our Law Courts, either by a writ of *quo-warranto* or a civil suit. I have, reluctantly, therefore, had to come to the conclusion that perhaps the best course for us in the circumstances in which we find ourselves, is to accept the suggestion of my esteemed friend Shri Santosh Kumar Basu that the age of a Judge, whether of the Supreme Court or of the High Court should be stated in the warrant of his appointment at the time of his appointment and that this statement should be final."

If any dispute arises, Mr. Sapru further suggests, that should be decided by the Chief Justice or a panel of Judges judicially, and that opinion should be binding upon the Government.

Then I come to the amendment that has been proposed by Shri Tyagi. I take it that Shri Tyagi's amendment is in effect an official amendment, because it has already obtained the approval of the Law Minister who is going to accept it. It seeks to give retrospective effect to those provisions of the Bill whereby the age of retirement of High Court Judges has been raised to 62, so that Judges who are due to retire on 1st January, 1963 might not have to suffer. This raises an intriguing question because I saw in the papers that the Law Minister has said that according to a letter from the Chief Justice of India to the Government, about ten Judges were about to retire on or about 1st January, 1963 and they should be allowed to continue. It is with a view to allow these Judges to have the

benefit of this raising of the retirement age that Shri Tyagi's amendment has been tabled.

In this connection, I would draw the attention of the House to the fact that in J. P. Mitter's case it was agitated before the Court publicly that in the case of 15 or 16 Judges there was discrepancy between the matriculation age and the age given by them. We do not know what decision was taken in those cases, but we know that the hon. Minister when moving for the consideration of the Bill last session informed us that there were ten or twelve cases where this question had been raised. Supposing these judges who were due to retire on the basis of their matriculation age on 1st January, 1963 had retired, what would have been the harm? They could then very well be appointed as *ad hoc* judges or additional judges, as provided in the new Bill, after retirement and that way they could well continue in service; although they would not be considered as High Court Judges, they could very well have the benefit of service and earn the same salary. But instead of that retrospective effect is sought to be given in order to enable them to enjoy the proposed extension of tenure. I want to know what decision the Government has taken in the case of those Judges who were due to retire on the basis of their matriculation age. I know the case of one judge of the Patna High Court who was due to retire on the 1st of January 1963 As a matter of fact he had retired on the 22nd of December and a farewell party in his honour was held and then he was informed during the Christmas holidays that he could continue working. What is that judge's position now? How does he continue? What is the legal position in this regard? I may here refer to an opinion expressed by the Supreme Court. I think the law in the matter has been laid down by the Supreme Court in the case of Atlas Cycle Industries *versus* their workmen when the legality of appointment of a judge of an industrial tribunal was agitated. What Supreme Court said in that case means in plain language, that after a judge reaches 60 years of age, he cannot continue in office under the law or under the Constitution. How are those judges who were due to retire continuing in office, even if we may seek to give retrospective effect to that? It will take sometime for this Bill to go to the State legislatures. Then they have to express their views. Only then the President, when the majority of the States have approved this Bill, can give assent to this Bill. May we therefore know how these judges are continuing in office against the clearest provision of the Constitution and the clear mandate of the Supreme Court? If they are just being continued merely by executive fiat, the question arises: how is the executive going to use this power that are given in their hands? The entire judiciary seemed to be functioning illegally. I want some light to be thrown on that point by the Law Minister.

As you have rung the bell, I will finish in a minute, Sir. I refer now to amendment of article 311. The hon. Minister has said that he will try to give a second opportunity so far as the nature of punishment is concerned. I seek only to point out now that in the Government Servants' conduct rules there is no clear rule laying down what punishment is to be attached to what kind of offences. Dismissal and reduction in ranks are the two major punishments for offences like gross insubordination. Nobody knows what constitutes gross insubordination and unless more thought is given to this matter, the security of Government servants will be in jeopardy. I hope the other Members who will speak on the Bill will touch on this matter and Government will take their views into full consideration.

Shri S. S. More (Poona): Sir, I rise to oppose the particular provision of the Bill which seeks to extend the age of the High Court judges by two years. The hon. Minister has given no reason why this extension is necessary. According to me, when a man enters

[Shri S. S. More]

the decade between 60 and 70 years of age, he enters a decade of disease, decay and deterioration. A man could be vigorous upto 60 but when he passes that limit, decadence and decay begin to appear and the quality of the work is bound to go down. I belong to the Bombay bar and the Bombay bar has already voiced its opposition.

The other point is that whenever there is any dispute or doubt regarding the age of a High Court Judge, an enquiry has to be held by the President and he has to accept the adivce of the Chief Justice of the High Court. I think we could have a provision on the pattern of article 102.

Shri A. K. Sen: Sir, he may be allowed to speak while sitting.

Mr. Deputy-Speaker: He can sit.

Shri S. S. More: Thank you, Sir, for your kindness but I think I will be more at ease like this, due to the habit.

The Law Minister was pleased to say, when I interrupted him, that the President will hold an enquiry and he may not accept the advice of the Chief Justice. I feel that there should be a provision on the pattern of article 102.... (*An Hon. Member*: You mean 103). Thank you. That article reads as follows:

> "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.
>
> (2) 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."

This is more categorical than the oral assurance given by the Law Minister. Therefore, I plead that the clause should be reworded.

There are different tiers of the judicial offices in our country. There are also different age limits for the different categories. I really wonder why there should be such differentiation. Between 55, the age limit where the Sessions Judge retires and 65, the age limit where the Supreme Court Judge retires, there is a wide variety for no ostensible reasons. Therefore, I feel that this new category of two years more to the High Court Judges should not be permitted.

Shri Himatsingka (Godda): Mr. Deputy-Speaker, I support the principles of the Bill. Some changes have been proposed. I feel that in some respects there has been a good deal of improvement. As regards the appointment of judges and the age, the age has been proposed to be raised to 62, whereas the age of the Supreme Court judges is retained at 65. The question about the fixation of the age of the judge, as to what his age is, I feel, should be finally fixed when the appointment is made. No question should be left open for decision later on, and it should be mentioned in the warrant of appointment as regards the age. After that, no question should be allowed to be raised either by the Government or by the judge concerned. That should be final.

In this connection, the only question that remains will be as regards the age of the existing judges. There also I feel that unless there is something extraordinarily or palpably wrong, that question again should not be raised. If it is raised, the only authority that should decide is, as has been suggested in the report of the Joint Committee, the President, in consultation with the Chief Justice. The Chief Justice can make such enquiry as he thinks proper in connection with the age, when the question arises, and the President, in accordance with such advice, may decide. I do not think that any other procedure

can possibly be suggested because it will be very difficult to have evidence taken as in an ordinary case. So, that is the best thing that can be done.

As regards the change that has been proposed about the judges being liable to be transferred, so far as I know, the feeling is against such a provision, because no judge generally would like to be transferred from the place where he is actually living, has his establishment, because a transfer will mean additional expenditure. I do not think that the proposal made by the amendment that the judge should be paid some compensatory allowance could be quite an inducement for any judge to go from one place to another. Therefore, it is rather a doubtful provision as to whether that will be at all useful or not.

As regards the change that has been proposed that persons who have acted as judges of the High Courts can also be taken or appointed to act temporarily as judges in the Supreme Court, it is a welcome provision, because ordinarily there is great difficulty in filling the vanancy when a judge falls ill or he is taken to some other work. Therefore, utilising the services of a person who has been a judge of a high court to act as an *ad hoc* judge in the Supreme Court is a welcome provision.

There is one more thing that I would suggest for the consideration of the Government, and that is about the position especially in the Calcutta and Bombay High Courts on the original side, on account of the salary having been reduced to Rs. 3,500 which, compared to the old days, is very much less in actual value. Rs. 4,000 had been fixed sometime in 1860 or thereabouts, when there was no income-tax, and up to 1920 the tax also was much less; it was about Rs. 100 on Rs. 4,000. Now, the tax has gone up to Rs. 1,200 on Rs. 4,000. Therefore, the salary is now not regarded as attractive for a person who has some good practice either in the original side or the appellate side. Therefore it is getting more and more difficult to have persons whom the Government would like to appoint as judges. So, I suggest that some considearation should be given in regard to the pension that will be payable to a judge so that he may not have any difficulty after retirement, and may not have to seek the right that has been given now of practising in other courts. If the pension is increased and the judge feels that even after retirement there will be no difficulty in having a decent living, I think the difficulties that are now being experienced to have proper judges will be to a very great degree lessened.

There is another provision that has been intended to be added, and that is about the addition of the word "organisation." That is to say, the Government will be entitled to give directions about holidays, etc. That also a not very much liked by the high court judges. After all, the internal management of holidays, etc., should be left to them. Of course, the overall limit that so many working days should be there, etc., can be provided, but the question as to which holidays should be observed in a particular high court should be left to the judges themselves.

The amendment that is proposed to article 311 is necessary because the way article 311 has been interpreted by courts, it has become almost impossible for the Government to take any action. As you know, out of thousands of cases very few cases are detected where action is proposed to be taken. We hear complaints of corruption and all kinds of allegations against Government officers from members of different sections from different sides, but very few cases are taken up either for departmental enquiry, punishment, or for action by courts. Therefore, the provision that is now being suggested by the amendment, I think, is a welcome one. I think the employee will still have the opportunity, and sufficient and reasonable opportunity will still be there for presenting his evidence and being heard. I think that the amendment

[Shri Himatsingha]

that has been proposed should be accepted by the House.

As I said, so far as the appointment of judges is concerned, the remuneration that is to be paid should be taken into consideration in view of the fact that proper persons are not much willing nowadays especially in the original side of the Calcutta and Bombay High Courts, to accept the post. As a result, what is happening is that the cost of litigation is increasing because the time taken in deciding cases is much more than what would otherwise be if proper persons are on the Bench. With these words, I support the Bill.

Shri Daji (Indore): Mr. Deputy-Speaker. Sir, this Bill as has been reported by the Joint Committee, is certainly an improvement upon the one which was introduced in this House, and to that extent, I express my happiness about the matter. However, there are certain matters in the Bill, matters of principle, about which I am not happy, and on which I think one cannot compromise. May I remind the House most humbly that we are dealing with a Constitution (Amendment) Bill and what we shall now legislate shall form part of the Constitution, a basic document that will go down to posterity as the considered opinion of this House on matters of constitutional law. It is only from this background, and without any prejudice, that I will address myself on mainly two points.

The first point is regarding the determination of the age of the judges. About this, I say that we are committing a grave error. There is absolutely no reason or logic to raise the age of the high court judges from 60 to 62 in this *ad hoc* manner. The matter has been considered threadbare by the Law Commission. The Law Commission recommended raising the age of retirement to 65. The main reason advanced by the Law Commission was that it would attract talent from the bar. Knowing the bar a little as I do, I make bold to say that the raising of the age by 2 years will not serve that purpose; certainly not. When the Law Commission made that recommendation, they put two riders on it. The first rider was that after 65, no further employment should be permitted to the Judges. The second rider was that the raising of the age to 65 should not apply to the Judges already appointed, but it should apply only to future appointments. That is precisely a very salutary rider, because you have appointed certain Judges, because better persons expressed their inability because of certain service conditions. In a particular competitive condition, you appointed these Judges. You cannot increase their age of retirement in an *ad hoc* manner. If you make fresh recruitment under this new condition, you may get better talent. It is with this consideration that they put two riders.

What we do is, we pick out arbitrarily one recommendation of the Law Commission and trisect it; three years we do not accept, only two years we accept. Then we say that this is the Law Commission's recommendation. It is not only a question of the Law Commission's recommendation, but it is the considered opinion of the jurists before the Joint Committee led by Mr. Setalvad from the Law Institute, Mr. Desai from the Bar Association and Mr. Purushottamdas Trikamdas from the Supreme Court Bar that they would prefer 65, with this rider that no further employment should be permitted to the Judges under the Government. Even in spite of this massive judicial opinion, we are straying into paths which are dangerous to tread. Knowing the present condition of Judges and courts, I may say I share in full the respect that the Law Minister always expresses here for the Judges. But without meaning any disrespect to them, knowing the Judges and the courts as they function today, I certainly say that the raising of the age to 62 is not proper.

It is not only a question of raising the age by 2 years, but the question is, why? What is the logic? The general trend of juridical opinion in the country is that we must make our Judges more and more independent. I need not repeat what the Law Commission has already stated about the present state of affairs in appointing Judges. When the Law Commission has concluded that extraneous conditions have been taken into consideration, I need not go further than that, because I know from my own experience what a middle and mess has been made of it. Some district court lawyers harly having any experience with High Court Judges have been raised. Law Secretaries invariably have been raised, if they are in the favourable books of the Law Ministers of the different States. In my State of Madhya Pradesh, there have been a series of Law Secretaries who have been raised that it has been remarked that a High Court Judge should be a sinecure for Law Secretary in Madhya Pradesh, provided he works on the right side of the Law Ministry. Therefore, this gratuitous gift of two years is not proper.

Secondly, I have dissented from the report of the Joint Committee not only from this angle, but also on the question of appointment of retired Judges as *ad hoc* Judges. When the demand from juridical opinion is to lessen the temptation to the Judges after retirement, you are increasing it. You are not even prepared to put a limit to the time for which they may be appointed after retirement. On the one hand you say at a particular age the Judge should retire; you have put a limit under the Constitution. On the other hand, you say that even after he retires on reaching that age, he may be recalled to act as High Court Judge or even as Supreme Court Judge, for what period? We do not know. Practically a Judge who retires at 62 may be called back at one time to the High Court and at another time to the Supreme Court for various purposes. It may be temporary, but 'temporary' has not been defined. It may be 3 months, 6 months or 1 year. There are some vacancies on Commissions and enquiries for two or three years. Therefore, by this provision of *ad hoc* Judges, you even negativate the age limit prescribed in the Constitution itself. Therefore, for this reason and for the reason that it will act as a temptation, I oppose this. It has a tendency to act as a temptation. In the case of Judges, we must adhere very strictly to the famous adage that Caesar's wife must not only be chaste, but she must be above suspicion. It will be a standing temptation to the Judges that after retirement, they may get some fresh appointment. Even if there is a possibility of one among 400 Judges succumbing to this temptation, we should plug the loophole, rather allowing even one Judge to be able to succumb to the temptation that we are holding out to the Judges.

About the age limit, the whole question was considered in great detail by our Constitution-framers. I will recall to the House just one sentence of Mr. T. T. Krishnamachari, who said, while speaking on this subject, that conceding that some Judges may be able to work properly after 60, it is better to ensure against the possibility of even one Judge not being able to work properly after 60, rather than to allow some to work efficiently after 60. That should be the criterion. Is there a possibility or not, normally of a few Judges after 60 not being up to the mark? If there is a possibility, you should plug that loophole. Is there a possibility of undermining the independence of the judiciary or not, by holding them out the temptation of re-employment after retirement—the re-employment would be entirely in the hands of the executive—is the question. Therefore, the sum total of this makes me feel that we are, maybe in a subtle way, undermining the independence of the judiciary. I do not say we are doing it with those motives, but the result is likely to undermine the independence of the judiciary.

[Shri Daji]

Therefore, I think these provisions require to be revised.

Coming to the question of the determination of the age, I totally disagree with the provision made. The determination of the age should be done once for all when the warrant of appointment is made. The Law Minister will say that is the practice even now. But unless you write that in the Constitution, even if you make that the practice, you cannot prevent a third person from challenging it. It is very unseemly and unsavoury that the age of a High Court Judge should be challenged. What is happening? I know a Chief Justice whose tenure has been extended by six months, because at the fag end of his career, the Government have accepted that his age was six months less. There was another Judge whose tenure has been extended by two years, because it was discovered at the fag end of his career that his age was 2 years less. The man took the farewell party, went home on vacation and he was informed by the Union Government that, "We have now revised your age; you are two years younger; start again". Now by this amendment, he will get another 2 years, so that he can continue for 4 years. Without imputing any motives in the least, I say, supposing two Judges apply and one says "I have wrongly given my age". Another also says the same thing. One application is rejected and another is accepted. You may have acted most honestly and most scrupulously, but what shall be the impact on the independence of the Judiciary and on the public at large? It will be most unsavoury. At the fag end of his career, a Judge is told, as in Calcutta, "You are older; therefore, retire". Another Judge is told, "You are younger; you come back." Do these tend to strengthen the independence of the judiciary? That is the question I put.

Shri Tyagi: The Central Government does it?

Shri Daji: Only the Central Government can do it; none else.

Shri U. M. Trivedi: Judges are not appointed by Governors.

Shri Daji: I will do no more on this subject than invite the attention of the House to the opinion of the High Court Judges themselves. The Judges of the Calcutta High Court say:

> "....if the Judges of this Court are so much at the mercy of the Executive that an Executive fiat would be enough to retire them and to terminate their tenure, that would mean the end of judicial independence in this country. Independence of the Judiciary would then be a thing of the past and the cherished safeguards of the age, so fondly enshrined in the Constitution in that behalf, would become useless and unmeaning and would be reduced to a mockery. I shudder to think of such consequences. I was, therefore, immensely relieved, when I found that the learned Advocate General could not lay his hand on any provision of law—either statutory or constitutional—to support his above extreme contentions. All he could do was to place reliance on so-called rules of prudence and public policy."

> "I am glad that the learned Advocate General could not draw any better material to his assistan on this point."

14 hrs.

Now, this is exactly what we are doing. The hon. Judge says that it would be the end of judicial independence. He says there is no law, there is no constitutional provision. We are now providing a constitutional provision to end the independence of the judiciary. There is a more outspoken remark of another Judge. Here he has made an appeal to the Members of Parliament. I will only read out the judgement and leave it to the good

sense of hon. Members. What does he say:

> "It is for the Members of Parliament to consider how far such an amendment would be consistent with the dignity, the impartiality and the independence of the judiciary which is charged with the responsibility of protecting the rights and liberties of the citizens of the Republic of India. One may very well urge that, the President acts on the advice of his ministers and the ministers in the discharge of their functions are assisted by their Secretaries. And it would indeed be a sad day for our country if the tenure of office of a Judge of the Supreme Court or of a High Court depended on the opinion of a Secretary to the Government of India approved by his minister rather than of an independent judicial authority or the required majority of elected representatives of the people. In any event this very proposal for amendment raises doubts as to whether in the Constitution as it stands today even the President has been vested with the power of removing a Judge of a High Court...."

This is the appeal of a High Court Judge to the Members of Parliament, on this amending Bill and the independence of the judiciary. I am not pleading for any particular case. I do not say even that the Government will act improperly in future. I am ready to concede that much in favour of the Government. But I say that in such matters it is not sufficient that you act properly. You should not even give a possibility of doubting the action. The tenure of the High Court Judges cannot be left in uncertainty. At the end of two or three years a Judge cannot be told that he is two years younger or two years older. I am reminded, Sir, of the famous incident in the Pakistan High Court where a Judge who was about to deliver a judgment against the Government was given a warrant saying that his services were terminated.

Shri Tyagi (Dehr Dun): They are practical people.

Shri Daji: We may like to do the same thing here. He does not know that he has grown older than his real age. The President decides that he has grown older and he is given a warrant. A Judge may be spending his vacation in Mussorie. He gets a warrant saying that he has become younger and he should come back. This has actually happened; I am not talking of the future. A Judge spending his vacation is called back and a Judge who is sitting is asked to go away. It was this matter that went to the court and the court said that we cannot do it. The Judge has appealed to the Members of Parliament not to enact this law because this will mean the end of their independence.

Shri Tyagi Sir, I am feeling very much hurt on account of the remarks made. May I know from the hon. Minister as to which Ministry is responsible for these actions? Is it the Ministry of Law?

Mr. Deputy-Speaker: Let him continue.

An Hon. Member: Home Ministry.

Shri Hari Vishnu Kamath: In his reply he will say.

Mr. Deputy-Speaker: He will reply.

Shri Daji: There was a lacuna.

Shri A. K. Sen: There is nothing to feel hurt about. These are facts stated in the way they are sought to be stated.

Shri Tyagi: He puts them in another way.

Shri Prabhat Kar: These are facts.

Shri Daji: These are facts. I may embellish the facts, you may dress them up. Facts are facts. A Judge who was retired was called back.

Shri A. K. Sen: Unfortunately, I shall have to show these are not facts.

Shri Daji: Show it to me. The question therefore is, under the present Constitution it cannot be done. Now we want to amend the constitution and make it possible. My humble request would be that we should not amend the constitution at all. We should leave it for the future. We should say that the warrant of appointment should be final, and the cases of eight or ten Judges—there may be more—which are pending should be allowed to be decided by due judicial process. Let the judicial process take its own course. Incidentally, that is also the opinion of Shri Setalwad, that the judicial process should take its own course, and that the President or the Chief Justice should not get any hand in it.

Lastly, I would come to the provision regarding the proposed amendment to article 311. This amendment is really unnecessary. It is based on a misunderstanding of the law or a misinterpretation of the law—it is almost the same thing. The hon. Minister, when he introduced the Bill in the House said:

> "According to the Supreme Court's latest decision this entire gamut is thrown open. That means the same process has to be gone through, the same charges, the same replies, the same answers, the same causes 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."

The Law Minister was referring to the famous Khem Chand's case. May I request the hon. Minister and the House to read fully the whole judgment. If you read the judgment in full and do not stop at a particular point, it has been clearly laid down that although two opportunities are there, in the second opportunity the whole gamut need not be gone through over again. It has been made amply clear in this very ruling and also the subsequent numerous rulings of the High Court. The hon. Minister stopped at a particular point. I will continue reading from where he has left. It says:

> "Their Lordships referred to 'statutory opportunity being reasonably afforded at more than one stage', that is to say, that the opportunities at more stages than one are comprised within the opportunity contemplated by the statute itself. Of course if the government servant has been through the enquiry under R. 55, it would not be reasonable that he should ask for a repetition of that stage, if duly carried out, which implies that if no enquiry has been held under R. 55 or any analogous rule applicable to the particular servant then it will be quite reasonable for him to ask for an enquiry."

That is, if once the enquiry has been gone into before the show-cause notice has been given, it would not be reasonable for him to ask for a second enquiry. That is the considered view.

Then, why is a second opportunity necessary? I will read out the judgment of the Supreme Court:

> "There is as the Solicitor General fairly concedes, no practical difficulty in following this procedure of giving two notices at the two stages. This procedure also has the merit of giving some assurance to the officer concerned that the competent authority maintains an open mind with regard to him. If the competent authority were to determine, before the charges were proved, that a particular punishment would be meted out to the government concerned, the latter may well feel that the competent authority had formed an opinion against him, generally on the

subject matter of the charge or, at any rate, as regards the punishment itself. Considered from this aspect also the construction adopted by us appears to be consonant with the fundamental principle of jurisprudence that justice must not only be done but must also be seen to have been done."

Shri Hari Vishnu Kamath (Hoshangabad): Appear to have been done.

Shri Daji: This is what the Supreme Court has said. I submit that it is not possible to bisect the two opportunities permitted under article 311. It is not permissible to say that we will give one leaving the other under the rules. I submit, the two opportunities—not two enquiries—required under article 311 are inter-linked, they are part of the whole, and we cannot separate them.

Consider the guarantee given under article 311 as it today stands. By numerous rulings of the Supreme Court it is a right wrung from judicial pronouncements after so many years of trade union struggle. You cannot set the clock back. You cannot set the clock back by 20 years. Even a Congress labour organisation like the I.N.T.U.C. has remarked that this amendment puts the clock back by 20 years. Here is the opinion of the *Indian Worker*, a weekly of the I.N.T.U.C.:

"The proposed amendment of Article 311 is unwarranted and may create discontent among the civil servants. We appeal to the Home Minister to reconsider the measure. In view of the fact that Service Associations and Trade Unions are not allowed to deal with individual disputes, curtailment of the rights guaranteed under Article 311 would be a great injustice to civil servants. The Second Pay Commission had considered the question of discipline and appeal procedures including the one provided under Article 311."

I say this because I want the House to keep in mind one thing. Even as it is, the protection under article 311 is far from adequate. It is only a formal procedural protection and not a substantial protection. Whereas the employees of a private industrial concern, whereas the employees or private clerks of a *bania* or a shopkeeper, if they are dismissed, can take their case to an independent tribunal for final adjudication on the merits of the case, a government servant, may he be a peon or a Secretary or the Chief Secretary, cannot take his case to any independent tribunal for final adjudication. Article 311 only gives a formal procedural protection. You give the charge-sheet, you hold an enquiry, you give the show-cause notice and then you dismiss. As the High Court has said, it only prescribes the procedural drill and if the drill prescribed has been properly performed the courts are *functus officio*.

Mr. Deputy-Speaker: The hon. Member must try to conclude now.

Shri Daji: Sir, I will take five or eight minutes more.

Mr. Deputy-Speaker: You have taken more than twenty minutes. Also, there are about 24 Members who want to speak on this.

Shri Hari Vishnu Kamath: Sir, why not extend the time?

Shri Daji: Yes, Sir. It is a very important Bill.

Shri A. K. Sen: The hon. Member need not take more time on this, because Government is moving an amendment, making it clear that the second opportunity in regard to the punishment proposed will be retained, but only on the evidence already adduced.

Shri Hari Vishnu Kamath: Let us have the text of the amendment so that we can examine it.

Shri A. K. Sen: Examine for what?

Shri Daji: I am very happy to hear that the hon. Minister is moving an amendment to that effect. I am sure, it will cut short the discussion quite a lot. I was very happy yesterday when I heard the hon. Minister saying that Government will consider such an amendment favourably. Now the hon. Minister has given an assurance that it will come forward with an amendment. It will cut short the discussion quite a lot.

What I was submitting was that even in the present set-up the bureaucracy treats an ordinary employee very harshly. I know of a case where the show-cause notice was given at 2-30 p.m. and the dismissal was made at 4-30 p.m. in Bombay. I know of a case where an employee was dismissed, the Supreme Court set aside the dismissal and said that it was wrong, and he was retrospectively suspended, despite the judgment of the Calcutta High Court that there can be no retrospective suspension. In the first case, the charge was that he was working as a trade union worker. The Supreme Court said that it is not unconstitutional, he can work for the trade union and quashed the dismissal. The second charge was that he published a paper for the trade union. The Supreme Court has struck down the first charge that working for a trade union is not unconstitutional, and yet the second charge was that he had published a paper for the trade union, as if it is not working for a trade union. The whole logic in keeping that man under suspension for years and years is to cripple the trade union movement. Under such conditions, when bureaucracy is always trying to treat the employees harshly, this protection should not be given up.

I would be very happy if the position is made clear in this respect. Nobody wants a second inquiry or second opportunity, but only a real opportunity to represent against the punishment proposed, because it is wrong to include the punishment in the charges, because the charges are preliminary. How can you think of a punishment before the charges are proved? If you include the punishment in the charge-sheet itself, the employee will think that even before the inquiry the officer has already made up his mind that the employee has got to be punished. Therefore, the question of punishment can come only after the inquiry. So, the second opportunity can come only after the inquiry into the charges and the report of the inquiring officer and the other evidence are placed in the hands of the employee and he is told: this is the inquiry report, this is the punishment I am proposing, what is your representation? It is important because some hon. Members have argued previously that even in criminal cases the second opportunity is not given before punishment. Precisely so. But, in criminal cases, the punishments are definite and known. Here the punishment is not known. It may vary from warning to dismissal, from compulsory retirement to discharge, from termination of service to fine, from reduction in rank to stoppage of grade promotion. A conglomeration of punishment is there which can be given for all offences, big and small. Therefore, since the punishment is not clearly laid down, an opportunity to represent before a final decision is taken on the punishment is a very vital right, a substantive right. It is the only real right guaranteed to the Government servants under article 311, and that right should not in any way be crippled, or suspended or whittled down. I am very happy that the hon. Law Minister has conceded this in a different way.

Then, I must express my thanks to the hon. Minister for amending article 226. As a working lawyer I know many difficulties which we had to face when we wanted to file writ petitions. That amendment is very necessary, and I am glad the hon. Law Minister has brought it forward.

Therefore, in the end, I submit that in considering this constitutional

amendment, let no questions of prestige stand in the way of the Government when we are discussing such vital issues. Let us not weaken the independence of the judiciary; let us not hold temptations before them. Let us not sap the morale of the Government employees, millions and millions of them, who alone can help the Government in nurturing the tree of socialism. If you cripple them or demoralise them instead of strengthening them, you will not be able to build up socialism; you would be building up only a bureaucratic State.

Mr. Deputy-Speaker: Shri Vidyalankar.

Shri U. M. Trivedi (Mandsain): Sir, I want to go out, after making my speech, because of some pressing engagement.

Mr. Deputy-Speaker: At what time does he want to go?

Shri U. M. Trivedi: At three o' clock.

Mr. Deputy-Speaker: I will call him immediately after Shri Vidyalankar. I request hon. Members to be brief, because the number of members who desire to speak is very large.

Shri A. N. Vidyalankar: Mr. Deputy Speaker, seeing the number of dissenting notes that have been appended to the report of the Joint Committee, I feel that the Joint Committee was sharply divided on many issues. On the question of the determination of the age of the judges, I feel there should be uniformity of procedure, both in the case of High Court and Supreme Court judges. I see no reason why two different procedures should be adopted in the case of High Court judges on one hand and the Supreme Court judges on the other. Really, it does not bring credit to the judiciary; at least it is not to the credit of the individual judges to raise the question of age at the fag end of his career. In these matters, we should be expected to accept what the judge says about his age at the time of his appointment. But, in some cases, it has been found difficult or impossible to accept what the judge says in the last days of his career because of some reasons. That is why I say that it does not bring credit to the judiciary.

But, at the same time, I do not agree with the view that a decision in this matter should rest with the executive. We want the judiciary to be as much independent as possible from the executive. Therefore, I say that the decision in regard to the age of those judges who are already in service should not be left to the executive, whether with the President or with anybody else, but it should be left to the Chief Justice, because the decision of the Chief Justice will be a judicial decision, and not a decision of the executive. In case the power to decide the age is vested in the executive, in very many cases it is quite likely that the affected judge might approach the judiciary, either the Supreme Court or the High Court, to seek judicial verdict because the decision of the executive might possibly be appealable in some legal way or the other. Therefore, in its own interest, I think the executive should be rather reluctant to decide such cases about judges, because it would be very difficult for the executive to take a decision against a judge when a High Court judge declared that his date of birth was different from what had been shown on the records. Therefore, in such matters, the Chief Justice should be given the power to decide the case, in which case it will be a judicial decision, and this should be final.

I have not been able to appreciate the suggestion of the Joint Committee that the President, on the advice of the Chief Justice, should decide. Because, whatever decision has to be taken must be a judicial decision. If the highest authority of the judiciary now makes a recommendation to the head of the executive, as suggested, it

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is left to the head of the executive either to accept that recommendation or not to accept it. So, I think that it is a procedure which is derogatory to the position and status of the Chief Justice. Therefore, it does not appeal to me. In the case of the new appointments, I think the age should be determined at the time of appointment, when they should be asked to file an affidavit before the Chief Justice of the Supreme Court or the High Court, as the case may be, and that declaration should be final. The judge should be held responsible for that declaration and if he makes a declaration he could be proceeded against.

Coming to the age-limit, I feel that there should be a uniform age limit of 65 when we are raising it. Why, in the case of High Court Judges alone it should be 62 and in the case of Supreme Court Judges 65? After all, the age limit is determined having regard to the capacity and experience of the persons. The very fact that a person is appointed to the Bench of the High Court shows that he is efficient and experienced. Therefore, in tune with the recommendation of the Law Commission, the age limit should be 65 for all judges. One reason for the recommendation of the Law Commission to raise the age limit is that the judges should not be put to financial difficulties because after retirement they will not be allowed to practice or seek any appointment.

If we are going to raise the age-limit, it is implied and consistent with that enhancement of the age-limit that the High Court Judges should not practice anywhere and should not seek any appointment under the Government. We may make an exception only in the case of special courts or tribunals. For instance, in the case of certain labour tribunals and others we might make an exception. But I personally feel that there should, in fact, be no age-limit. In many other countries there is no age-limit for judges and I would rather like that in the case of the judges here too there should be no age-limit.

My hon. friend, Shri Tyagi, has proposed through his amendment No. 8 that retrospective effect should be given to the provisions of this Act. I fully endorse and support this suggestion. I fully support his amendment because the purpose of the whole Act is to benefit from the experience and ability of certain judges who are already working. We have very few persons of eminence having long experience. After being passed in this House, this Bill will go to the Rajya Sabha and thereafter to the State legislatures. That will take a lot of time. Already it has taken a lot of time. Therefore in order not to be deprived of the services of those judges, I think, the proposal for giving rerospective effect is quite reasonable. It is really essential that retrospective effect should be given and Shri Tyagi's amendment should be accepted.

With regard to the amendment of article 311, I am glad that the hon. Law Minister has announced that the Government is going to bring forward an amendment before this House. I am glad that some amendment is going to be made although I do not know what would be the exact wording of that amendment. I feel that article 311 is very necessary. It is the minimum that we could provide for giving protection to Government employees. I have not been able to appreciate and understand why any amendment to this article is at all being suggested. In this article it is provided that "reasonable opportunity of showing cause against the action proposed to be taken". These are the actual words. . Now it has been suggested by the Joint Committee that those words be replaced by "reasonable opportunity of being heard". There is lot of difference between "reasonable opportunity of being

heard" and "reasonable opportunity of showing cause against the action proposed to be taken". These are two different things. I do not know why the scope of opportunities is being reduced. As I have stated, this article 311 gives the minimum opportunities to the employees and I feel that those opportunitities should not be reduced and the employees should be given full opportunity to defend themselves.

My predecessors have made it clear that no second inquiry is asked for. No one says that again and again there should be an inquiry; but full opportunities should be given. I can say from my own experience that generally officers are not acquainted with procedural matters—they are not acquainted with law and procedure—and in most of these cases they commit mistakes. I have known many cases as I had been dealing with them in the Punjab as a Minister and many cases had been coming to me. When these cases are examined, generally somebody down below recommends that such-and-such punishment should be awarded and the officers go on endorsing that without looking into the case from the point of view of legal procedure and privileges of the employees. Therefore I think that this matter is very important because we are deciding with regard to dismissal, removal and reduction in rank of these people. For an employee these punishments are just like capital punishment in a criminal case, because having been punished the employee practically loses everything, the whole job. Therefore these are very drastic punishments and in these matters we should be very careful. We should give full opportunity to these employees.

These employees have no opportunity to go to any tribunal. Class I and Class II officers can go in appeal to the Public Service Commission, but Class III and Class IV employees cannot go even to the Public Service Commission. I personally think that if you give all the employees an opportunity to go to the Public Service Commision, that would be rather better. After all, they will get some protection. If we have to create a sense of justice and confidence that no injustice is being done to them, if we want to create that kind of confidence among the Government employees, it is very essential that at least they should know that full opportunity is given to them. So after it happens that the officers with whom they work get biased and prejudiced. After all, every day they have to work together and it is quite natural that somebody might get prejudiced. Therefore we have to give them protection. I do not want to protect those employees, who might not be doing their work properly. But I think that proper protection is due to every honest employee. It is our duty and the Government's duty to give all protection to the Government employees and there should be no injustice. We should safeguard that no injustice is done even to a single civil servant. Therefore I think that the provision of article 311 should remain as it is and there should be no amendment of it. But in case any amendment is to be made—as I have stated, I do not know in what words the Government is submitting an amendment—I would be glad, whatever amendment is submitted to the House, if it ensures and gives full assurance and protection to an employee so that no injustice was done to him.

Mr. Deputy-Speaker: Shri Trivedi.

Shri Dhaon (Lucknow): May I know whether Shri Tyagi's amendment is open for discussion now?

Mr. Deputy-Speaker: Not the amendment. We are having general discussion. Amendments will come later.

Shri U. M. Trivedi: Mr. Deputy-Speaker, Sir, I must certainly congratulate our present Law Minister for having brought forward this most urgent and necessary amendment of article 226 to be put on the statute book. This article has caused a good deal of worry to all

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those who suffered all over India at the hands of the executive and whom the High Courts stationed just near-by were not able to render proper service.

In this Constitution (Amendment) Bill the most annoying thing to me and to other hon. Members is the amendment of article 311 of the Constitution. For a long time since 1935, when section 240 of the Government of India Act, 1935, came into operation, Government servants have felt a sort of relief. The relief consisted only of this much that they generally got a hearing and ultimately even if they were found guilty, they had an opportunity of appearing in person and pleading in mitigating circumstances and get less punishment. The second opportunity, therefore, was not re-opening of the whole case but was merely a question of what punishment should be meted out and the man might have a say against the punishment that was proposed to be imposed upon him. This right of approaching the appointing authority is now being taken away by the present provision. The hon. the Minister has said that he is going to bring an amendment. I do not know what amendment he is going to bring but if that amendment covers the point that I have raised it will be a welcome thing.

It appears that the superior government officers are straining at the leash that they must get this opportunity of enjoying this right of dismissing the government servants under them or reducing them in rank according to their sweet wish. Most unfortunate is the fate of the employees of the Government in the railways. The superior officers in the railways, most of them, are untrained entirely in law and act in a very empirical manner. They have been used to deal with menials and start treating even their own subordinate officers as menials, with the result that the grievances of the railway servants are not properly looked into. It has often happened that even if the enquiry committee's report is indicative of the fact that the man has not been found guilty, after four or five years some misreading of the report takes place, and one fine morning the man who has been found not guilty gets a notice as to why he should not be dismissed from service in view of the finding of the enquiry—and the finding of the enquiry is that he is not guilty. And yet he gets removed from service as soon as the notice is served. What protection is there for such people? Under these circumstances the voice has been raised against this provision from all sections of this House, and it will be in the fitness of things that the Law Minister should apply his mind to a proper amendment which will enable the poor employees of this category to get some relief. There are some persons who argue "While there is a right of appeal, what is a right of appeal when you have no right even to a hearing? From a person who has never seen your face, who is moved only by the notes given by the officer who has passed the orders of dismissal or removal, from such officers it is impossible to get any justice in the matter of appeal". I will therefore say that this amendment which is now being introduced in our law under article 311 must be to this extent suitably amended that the opportunity to show cause against the punishment should be retained, as has been retained from the time of section 240 of the Government of India Act of 1935 and as originally provided in article 311 of our Constitution.

Sir, then I will draw your attention to this provision about the High Court judges. I for one have failed to see the propriety of keeping this age arbitrarily at sixty-two. I have been fortunate enough to move into several High Courts and in the Supreme Court also. A judge of the High Court gets promoted to the Supreme Court. What type of tonic does he get, I cannot understand. But the moment he goes to the Supreme

Court he can work merrily up to sixty-five. As long as he was in the High Court he was fit to go only up to sixty—now he will be fit enough up to sixty-two. Why this difference of three years? I see no reason whatsoever for making this difference between the functions to be performed in the High Court and in the Supreme Court. The duties are equally arduous, for every conscientious judge the duties are certainly very heavy, brain work is there, mental pressure would be there. But then, it will be equal for a judge of the High Court as for a judge of the Supreme Court. I have not seen any reason advanced as to why this arbitrary age of sixty-two is to be fixed. In 1956 a point was raised in the First Parliament, and Mr. Datar who was then in charge of this matter in the Ministry of Home Affairs said in his reply, "We do not want to raise the age of the judges of the High Court beyond sixty". The proposal was turned down then. Now the Government, perhaps moved by the recommendations made by the Law Commission, has come round to the view that the age may be raised. But then also the Government has acted in a most miserly manner and has come to suggest that it should be sixty-two, for no reason whatsoever. No reasons have been given as to why it should be fixed at sixty-two. I should say that the Government should certainliy consider this proposal and give second thoughts to the question whether it is proper that the age-limit should be placed at sixty-two. It should be sixty-five.

Then there is another question about these judges, which has always been a matter of great concern to all concerned. The judges of the High Court are not allowed, on retirement, to practise in their own High Court but are allowed to practise in any other High Court or in the Supreme Court. Why should the judges who have been so revered and respected by all the members of the bar, go and get themselves insulted either at the Supreme Court bar or at other High Court bars? We know that each one of them is not very intelligent, is not a big jurist. We also know that some of them have been elevated not for their very great learning; with all respect that I can show them, there are people who are certainly not up to the mark. And when they go to the High Court bar, some of them may not be known to the Supreme Court judges; and even if they are known, for some reason or other it may be that remarks are passed against them which are of a highly derogatory nature; generally Supreme Court judges do not mince words and they may give them certificates not of a very happy type. And then all the respect that they may have earned is just simply washed out before the juniors who stand near them or by them and before all the public gathered at that place. It will therefore be in the fitness of things that these gentlemen should not be allowed to go and practise or seek any further employment from the Government. If the Government says that the government servant is going to retire, even after the enhancement of the age, after fifty-eight years, and a High Court judge should not serve after sixty-two years, what temptation is there for Government to re-employ a man who is not considered under the law fit to be re-employed after sixty-two years? I say there must be a closed chapter for this purpose. Make it therefore sixty-five. But then at sixty-five cry a halt to further employment of these officers in whatever capacity they are to be employed. There are umpteen number of other well-read persons learned people, jurists of standing who might be available from the newer generation, from the fresher stock for any such employment that the Government may desire. It is on account of this temptation entertained by some of the judges that in trying to do justice when they are sitting on the bench they try to do some favour to the Government. The impression that

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goes into the mind of an ordinary litigant is that between man and man he may get justice, but between man and Government he will not get it. That impression should be washed away; that impression must go. As has been rightly said, not only justice must be done but justice must also appear to have been done. If we believe in that principle, I should say that any temptation which is in the way of having employment even upto the age till a man is completely cripple must not be put in the way of judges who are likely to retire soon.

Then, Sir, in the new arrangement that we have made we have also said in clause 5 that:

> "When a Judge has been or is so transferred, he shall, during the period he serves, after the commencement of the Constitution (Fifttenth Amendment) Act, 1963, as a Judge of the other High Court, be entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament by law and, until so determined, such compensatory allowance as the President may by order fix".

I will readily agree to the proposition —and I do admire him—that there must be transfers of judges. If we want to have the unity of the country proclaimed, I should say, the judges from the north should go to the south and the judges from the south may go to the west and the judges from the west may go to the east. Let there be transfer of the judges. That will be a very helpful thing. But to make this provision that they must get a compensatory allowance for going from one High Court to another, I see no earthly reason why it should be so. Officers of the highest cadre in IAS or in late ICS, or other officers, get transferred from one province to another, from one city in the north to another city in the south and from one city in the east to another city in the west. Yet they do get any sort of compensatory allowance for such transfers. Why should such a transfer mean a sort of compensatory allowance for the judges can not been comprehended by me and, I hope, the House will also appreciate this that after all a judge who is to be transferred should not be treated as a subject of a particular State. Each one of us is a citizen of India and as a citizen of India it is our bounden duty to go and serve the cause of our country wherever we get posted. We cannot, therefore, demand that a compensatory allowance must be paid because of such a transfer. It will also create a feeling amongst the other judges who would be there, as sort of dscrimination and these murmurs will go on. People will murmur, he must be a superior person compared to other judges of this place, of this State and he gets more salary than the others. Why should such a feeling be created amongst the judges or in the public at large? I would, therefore, humbly submit that this should not take place.

One more point and I have done with it. One amendment is there—I do not know what the view of the Government is—by Shri Tyagi which is proposed to give retrospective effect. There are many considerations which may weigh in favour of the suggestion that is made by Mr. Tyagi. If it was merely a question of service, if it was merely a question of some statute other than this consitutional one, I would have readily agreed to the proposition. But situated as we are and the experience that we have gained of our present ruling party of amending the law in such a manner and in a particular manner, especially the Constitution, I am afraid that any retrospective amendment, any retrospective provision to a constitutional measure must not be accepted. We would not like to stand in the way of any Government servant getting some benefit. But I will stand by that and most emphatically I do submit that a constitutional provision which gives

retrospective effect will create many other mischiefs and it always sets a precedent for the future to come. I would, therefore, submit, with all my respect for Mr. Tyagi and for his very noble approach in this matter and his very great desire to do justice to those who are likely to suffer, that this amendment may not fit in here.

With these remarks I conclude.

Shri Tyagi: I support this Bill from end to end. I think it is a good idea of amending the Constitution. My hon. friends have raised many objections, but I think, on the whole, it is a good idea that we are amending the Constitution in these lines. I am particularly interested in the case of judges. My amendment has been talked about and many of my friends have also opposed it. I can well see, it touches their sense of adjustments so to say, or their political sanguinity perhaps—I use that word—or I should say that it violates against the pattern they have been following so far, because in the case of a constitutional amendment to say it should be given retrospective effect looks rather unusual. But the difficulty is this. I felt, as I had also indiscreetly remarked last time, that the fault is not that of the judges but ours. This Bill was, for the first time, introduced in 1962 in the month of September or November. It should have been passed by now, and the Parliament had also once decided that it would go through. But the Joint Select Committee took a lot of time. There is nothing irregular in it. Now, all those judges who were told or who were given to understand that they will continue on—they will not be allowed to retire, they will have some extensions—must have made up their minds and are living every day in the hope that the Bill is getting through. Naturally, after this delay, those judges are getting retired and as my friend has mentioned the Chief Justice of the Supreme Court also mentioned that some of the judges, about 12, are going to retire in the meantime. Some of them have perhaps already retired and others are going to retire because this Bill has to be referred to various States as it is a constitutional amendment. Therefore, it was from that angle that I felt like moving my amendment. Today the biggest demand of the High Courts is for the senior-most, the most knowledgeable and the experienced judges to say and those who are retiring are, of course, the senior most.

Shri Hari Vishnu Kamath: Let them stay permanently.

Shri Tyagi: Not permanently. We are giving this benefit. Why should it not go to them also?

There is one remark that I want to bring on record. I am not satisfied with the standard which our judiciary is maintaining these days. Of course, I do not criticise every judge, but the whole standard of the judiciary and its prestige in the country has been lowered since we have taken over from the British. I must confess that. It is a pity. And if a State cannot keep up the prestige and the independence of the judiciary, that State cannot be a democratic State. I am sorry I have that feeling and that is perhaps due to the fact—I do not know law, I am a layman- myself—that I have seen courts a number of times when I was convicted.. (*interruption*) My feeling is that not only at the Centre but also in various States the department of judiciary, the department of law, Ministry so to say, must be separated from the Home Ministry. The judiciary must be handed over to the Law Ministry so that the environment of Law might do justice to the appointment of Judges. Looking after the judiciary, their laws and everything else he might maintain a high standard. So long as the judiciary or the administration of the judiciary will vest in the hands of Home Ministries both in the Centre as well as in the States, it is difficult to maintain that standard which the nation desires. Because,

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appointments are made by the Home Minister. The Home Minister has to deal with law and order in the whole country. Not only that. The State Home Ministers cannot afford to be absolutely impartial in the matter of administration, for, he is the Home Minister of a political party. Party bias must remain most with the Home Minister and least with other Ministers. The Minister of law is one who has nothing to decide on the basis of party prejudices. He has to give judgments here or to give legal interpretations. They are like mathematical calculations. One's opinions might differ. I suggest that the Law Minister may take notice; I do not know; the Prime Minister might also like to take notice. But, this demand I want to raise today in the hope that I shall get comments from Bar Associations or from the people at large, lawyers and others, and Bar Associations particularly, whether they agree with the idea that the judiciary must be entrusted to the Law Ministry both in the States as well as in the Centre. What is happening is, I with pain, confess, that I am not satisfied with the manner in which some of the appointments of High Court Judges have been made by our Government. There is no hiding the fact, it pains me. If the headquarters go wrong, nothing will remain. The whole structure will fall to the ground. I definitely, with a sense of anger, want to say that we have not behaved well and we have not kept the old standard. There are people talking. Personal accommodation is not the question. Particularly in the case of judiciary in the appointments. Sons of friends sons of relations are no qualifications in the matter of appointment. This type of procedure comes only when people are taken from the Bar. Others, of course, are in regular service. They have their juniority and seniority. They become High Court Judges according to qualifications. But, the manner in which some of the appointments from the bar have been made of Judges during this regime, the Congress regime, of our Government, has, in my opinion been disgraceful.

Shri Hari Vishnu Kamath: Which State?

Shri Tyagi: State apart, appointment of High Court Judges cannot be made on the merits of son of my friend, my Minister or ex-Minister or my relation or my community.

An Hon. Member: Or my party.

Shri Tyagi: Particularly when High Court Judges are taken from the Bar, the Bar Associations know it whether the Government has selected on merits. Everybody knows. In my State, everybody knows in the Allahabad High Court Bar which lawyer is deserving and which is not deserving. If the Home Ministry or the Government starts behaving in this manner independence of judiciary is impossible to maintain. I must say that independence of the judiciary, in this brief period, has gone down. It is deteriorating. I cannot hide facts. It is a question of patriotism. If the judiciary goes, democracy goes. Therefore, my emphasis is that the judiciary must be transferred from the hands of the Home Ministry to the hands of the Law Minister who has little bias. Not only in the Centre, but everywhere; in the States. The Home Minister who is in charge of so many administrative matters should not be incharge of the administration of the judiciary.

Shri Vasudevan Nair: (Ambalapuzha): How does that solve the basic problem?

Shri Tyagi: That is what I suggest Therefore, this must be a separate department. The judiciary must be entrusted in the hands of a Minister who has nothing to do with police or District magistrates or their reports or the Home Ministry. The Home Ministry and the judiciary must be separate.

I also suggest that, if the Minister cares to judge it, my feeling is that the judiciary must be an All-India service. If you want the integration of India, the best integration can come if the judiciary is independent and is an All India service. It is a right idea which my hon. friend has suggested in this Constitution Amendment Bill that High Court Judges will now be transferable from one State to another. That is a very good idea. It must be welcomed. I suggest that even Sessions Judges and District Judges must be taken into the Judicial service which should be an All India service. They too should be transferable from one State to another.

Another question comes about pay. The independence of the judiciary does not depend only on standards of pay and pension, I must say. In the British days, pay and pension were perhaps smaller. But, then, there was some climate of judiciousness in the judiciary. That was maintained by the British. I remember we were convicted and sometimes even District magistrates and Judges convicted us on some charges, sometimes also with political bias. But, their High Courts, their District Judges, I have seldom seen exercising their personal bias in the matter or even political bias. That was so, I remember very well during the British days. The British became popular through the 'Dewani' they gave for the first time. They did not become popular on account of the force of the sword or anything. They were liked here and they became popular, in contracts with the Maghul dewani because they gave a fairer dewani. Therefore, the British become more popular. Pay, however, counts these days. It is not possible to separate the question of pay and pension. Let us see what happens.

In the case of regular Judges, I can well understand. The pension of the service Judges comes to Rs. 16,000 per year. In the case of Civil service Judges it comes to about Rs. 12,000 or so. But, in the case of those who are taken from the Bar, they are the most prominent lawyers earning Rs. 20,000 30,000 and 40,000 per month. This is the standard that they are earning. We want to have the choicest ones from the practising lawyers, to appoint as Judges. What is the pay of a Judge? He comes only for the sake of dignity. He is the most prominent lawyer known all over the State. He thinks that his knowledge is being recognised by the State and he is being given Judgeship. That is the notion about the dignity of a High Court Judge. He receives hardly one-tenth of what he was earning. He comes at a loss. That is a sacrifice indeed. He cannot stay for long. A big practice he has built after years of experience. He is nearing 60; he comes near about 60, if he retires within less than 7 years of his service, he is banned from the practice. Think of that Judge. Most of these Judges are from the Bar Associations.

Mr. Deputy-Speaker: Come to the Bill.

Shri Tyagi: I will finish, Sir. They have come after a roaring practice and the pension is only Rs. 470 per month or Rs. 5000 per year. Think of that Judge. Per month Rs. 450 is the pension of the biggest, the prightest lawyer from the Bar of a High Court. He gets a pension of Rs. 450 per month. He is banned from any further practice. That is the penalty he has to pay. I think this is a very important matter which has to be looked into. What will happen to those who come from the Bar Association? Will they be allowed to go on this pension of Rs. 450 per month? This is one matter which should be considered.

I think the demand that the retirement age must be made 65 is, in my opinion, quite justified in the case of High Court Judges. I think most of the Members in this Houses have also supported this idea that this age should be 65 and not only 62. There must be some arrangement made for

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those lawyer friends who take up High Court Judgeship for a brief period. The question about the amendment which I have moved, I will discuss later. But, the question is quite clear that retrospective effect should be given with a view to accommodating those Judges who were all expecting that the Bill will be passed in time. It was moved in September; it has not yet been passed. It will take 5 or 6 months more. The Chief Justice of the Supreme Court, as he already mentioned, says that the best and seniormost Judges, about a dozen or so, are now retiring in this period. Shall we lose them? This amendment, does not look very regular because this amendment goes into the Constitution, I confess. But, even then, the situation demands that they must be accommodated.

Shri M. B. Bhargava (Ajmer): The Bill that we are considering today is the Constitution (Fifteenth Amendment) Bill. This Bill aims at bringing about certain alterations in different provisions of the Constitution which are absolutely unconnected with one another.

15 hrs.

So far as clauses 8 and 9 which seek to amend articles 226 and 297 of the Constitution are concerned, I think they are purely non-controversial amendments, and the hon. Law Minister deserves to be congratualated on enlarging the jurisdiction of the High Courts throughout India where the Government of India holds office or carries on certain activities, and where at present, the officers and authorities representing the Government of India could not be subjected to the jurisdiction of the High Court. By this amendment, it is proposed that wherever the officers of the Central Government or the authorities of the Central Government commit certain infringement of the Fundamental Rights, they are liable to be subjected to the jurisdiction of the High Court within whose jurisdiction the cause of action arises. So far as this amendment is also concerned, the Law Minister deserves congratulations.

As regards the other amendments, I respectfully submit that they fundamentally go against the basic principle and the great and splendid position that our Constitution gives to the judiciary. It is a well known fact that in a democratic Constitution, the role of the judiciary is magnificent and splendid, and therefore, its integrity and independence must be maintained at the highest pitch. Therefore, we have to see whether the other amendments which want to bring about certain changes in the tenure of the judges of the High Court and the Supreme Court, or which aim at enhancement of the age of superannuation or which deal with the question of the determination of the age of judges, in case of any dispute, are satisfactory and are on the right lines, the right line being the maintenance of the integrity and the independence of the judiciary.

Looking from this angle I am sorry I cannot subscribe to these amendments. The background of the amendment relating to the raising of the age of retirement of the High Court judges from 60 to 62 is perhaps based upon the recommendations of the Law Commission. The law Commission's recommendation was to the effect that the age of retirement of the High Court judges should be brought on the same level as the age of retirement of the Supreme Court judges, that is that it should be raised from 62 to 65. But the recommendation of the Law Commission made this proposal subject to two very essential and indispensable conditions. The first was that the judges after retirement should not be allowed to resume pratice not only in their home High Court where they had their tenure of service but in any High Court in India or in the Supreme Court. Secondly, they should not be

given any executive appointment after retirement. In fact, the Constitution, when it adopted article 220, had placed an absolute bar on the resumption of practice by judges of the High Courts and the Supreme Court in any court in India. But in 1956, the Constitution was amended and this restriction was relaxed so that a retired judge of a High Court could practise in any other High Court except the High Court where he had his tenure of service, or in the Supreme Court. But, now because of this craving that the judges should be transferred from one High Court to another the amendment sought to be introduced is that he should not be allowed to practise only in that High Court where he had been in service just on the eve of retirement, otherwise, he will be entitled to practise in any other High Court.

Now, in regard to all these questions, about the tenure of office of a judge, the determination of the age of a judge, the transfer of a judge etc. who will be competent under the present Constitution to decide the issue? For instance, who will be competent under the present Constitution to effect transfer of High Court judges from one court to the other? The answer can be only one, namely the President, perhaps, after consultation with the Chief Justice. Therefore, the transfers will be in the hands of the executive. Unfortunately for us, the appointments of judges are still in the hands of the executive. As regards how these appointments have been made, one has only to look to the recommendations and the findings of that august body the Law Commission which consisted of some of the best legal talents in tthe country, and the verdict of that body, if one refers to pages 65 to 73 of their report, there is a severe condemnation to the effect that the manner in which the appointments have so far been made does not do credit to our administration. They have come to a finding after having long experience of the High Courts, and after coming in contact with the best judges of the High Courts and the Supreme Court and the best legal luminaries of the country Their finding and their verdict is that the appointments to the Benches of the High Court and Supreme Court judges have been influenced and made on the ground of political expediency or on regional and communal considerations. Therefore, the recommendation of the Law Commission was that if the independence and integrity of our judiciary are to be maintained and kept up at a high pitch, then we must create a machinery which is absolutely independent of the executive.

The appointment of the judges are made by the President but the President, and so also the Governor or a State, is a constitutional Head, and under the Constitution, he is bound to act on the advice of his Ministers, and the Ministers, as we know, are influenced by political considerations. The finding of the Law Commission is that even in the matter of the appointment of the judges of the High Court, when the Governor virtually acts on the advice of his Chief Minister, it is invariably the advice of the Chief Minister which ultimately prevails.

Thefore, my submission is this. In the matter of transfers, it is now proposed that compensatory allowance under clause 5 will be given to the judges who are so transfered. I would like to sumit that the question of trasfer was first recommended by the States Reorganisation Commission, and their suggestion was not in regard to transfer but in regard to the original recruitment itself, that is to say, the original appointment or recruitment should be made in each High Court from outside the particular State. That was the only practical proposition. If we are keen on bringing about national integration, then the original recruitment and appointment of judges up to the strength of one-third or more should be made from outside the State. But this question of transfer from one State to the other mainly may be utilised by the executive to shift those judges who may not be pronouncing

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their decisions to the taste of the executive. The role that the judiciary is to play in the matter of dispensation of justice, not only between individual and individual but between the citizen and the State, requires that our judges must be as above suspicion as Caesar's wife. Therefore, it is essential that in the matter of transfer or the determination of age, the decision must rest in the hands of a judicial tribunal to be constituted by three senior judges of the Supreme Court and to be presided over by the Chief Justice. This is only in the interest of the maintenance of the independence and integrity of the judiciary. In matters concerning the appointment and recruitment of Judges to either the High Courts or the Supreme Court or in matters concerning transfer or the determination of the conditions of service, it is essential that on the recommendation of this judicial unapproachable body of the President should act. This would be a safeguard for the maintenance and integrity of the independence of the judiciary. The proposals which this Bill contain regarding compensatory allowance and transfer of judges are, I respectfully submit, not in keeping with the object of the furtherance of the independence of the judiciary. I therefore, oppose all those provisions.

Shri Narasinmha Reddy (Rajampet): Shri Tyagi was very vehement in his denunciation of those Judges who have been appointed from the time the British quit India up to the present day, as their appointments have been based on improper considerations, communal considerations and considerations of nepotism.

An Hon. Member: Not all.

Shri Narasimha Reddy: Not all, I agree. In the same breath being the sponsor of an amendment seeking to extend the retirement age of judges upto 62 with retrospective effect, I wonder whether he would like some at least of those inefficient judges who, according to him, must have had their birth as Judges during this period of great inefficiency to continue. I do not think it is possible to reconcile both views.

The Law Commission say in their report that the retirement age of High Court Judges could raised to 65. At the same time, they were clear that this should apply only to new entrants. So it is clear that they were very vehement in mentioning that any changes made in the Constitution should have effect only subsequently but not retrospectively. The Law Commission in their Report have made many recommendations. But strange to say, our Government after a long lapse of time have come forward with their own amendments to the Constitution which have no bearing on the important recommendations of the Law Commission.

The Constitution is amended only when there is a compelling necessity of the State or when it conduces to the well-being of its people or when there is a drastic alteration in circumstances and conditions as existed at the time of the drafting of the Constitution. But today, none of those conditions exist. Neither the State nor the common people have anything to gain by these amendments proposed by Government which are trival and uncalled for. The common people have nothing to gain by way of rectification of law's of errors in dates, nor the untramelled administration delays of justice free from the interference or influence of the executive. Judges, specialy High Court Judges should be above temptation. Human nature is such that when a person is appointed as a judge of a High Court, he is not suddenly transformed into a rarified being as a paragon of virtue. He has his faults and foibles. The limitations of flesh and blood do creep upon him is spite of his willingness and desire to keep himself straight. High Court Judges have got unlimited jurisdiction over human life and property. I could understand if the Law Minister had brought in amendments to increase the salaries of judges or

their pensions in these days of increased cost of living. That would have kept them above want and temptation, and justice could be administered under those circumstances in a very impartial and straight manner. I could understand the Law Minister coming forward with an amendment raising the retirement age of judges provided, as the Law Commission had reported, there were two conditions attached, i.e. that they were prohibited from practising after retirement and also prohibited from accepting any office under either a State Government or the Central Government. These two conditions—provisions have not been incorporated when the age of retirement was sought to be raised to 62. When it was discussed in the Joint Committee, I was agreeable to raising the age to 62 provided there were these two conditions attached. When Shri Setalvad was tendering his evidence, I asked him: 'Supposing the age of retirement is not raised to 65 as envisaged in the Law Commission's Report, but raised only to 62, would you even then advise us to prohibit such judges from practising after retirement or from accepting any office under either a State Government or the Central Government? He said: 'Undoubtedly yes; that is my opinion'. That was his emphatic opinion.

Another important amendment proposed by the Law Commission should have been accepted, but that has not found a place. That was to the effect that no High Court Judge should be appointed unless he has the recommendation of the Chief Justice of the High Court and also that of the Chief Justice of the Supreme Court. This according to them, would make High Court Judges free from obligation to the executive and make them perform their duties unifluenced by them. I would read to you an extract of the Report of the Law Commission which would be of interest to hon. Members.

> "Many unsatisfactory appointments have been made to the High Courts on political, regional and communal or other grounds, with the result that the fittest men are not appointed.
>
> "This has resuled in a diminution of the out-turn of work of the Judges."

Again they say:

> "These unsatisfactory appointments have been made notwithstanding the fact that in the vast majority of cases the appointments have been concurred in by the Chief Justice of the High Court and the Chief Justice of India."

For that they have given reasons. Discussing the procedure under which the appointments are made, they say:

> "The appointment of a High Court Judge is first discussed at a meeting between the Chief Justice and the Chief Minister during which the Chief Justice suggests names and the Chief Minister gives his opinion in the proposal. Thereafter some discussion takes place and an informal understanding is reached between the two before formal proposals are sent up. From experience of such conferences it was clear that political or other considerations did affect the mind of the executive at the time of the discussion of the names. It is not surprising, therefore, that the concurrence of the Chief Justice has been obtained to many unsatisfactory appointments. In substance, having regard to the position in which he is placed, the Chief Justice surrenders his better Judgment and yields to the wishes of the Chief Minister."

This is the damaging statement made by the Law Commission.

We expected that some of these recommendations would have found a place in the amendments brought forward by the Government. On the other hand, here are amendments

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which do not conduce a bit to the welfare and improvement of conditions of the people at large. What the people are concerned with is justice free and unfettered, justice untarnished by corruption, justice unsusceptible to the blandishments of the executive or its corroding influences. The recommendations of the Law Commission seem to have been lost on the Government, recommendations made after taking into consideration the evidence tendered by the finest legal brains and intellectuals of our country.

I submit the Government should take care not to do anything which rouses the suspicions of the people. This proposal, almost sponsored by the Government, of making the revised age or 62 have retrospective effect is viewed with great suspicion and concern in many parts of the country. Government should not give the impression that they are bringing about these amendments to the Constitution on account of their interest in particular individuals. There is a furore in many places, especially in Andhra Pradesh, that some of these amendments are made because some political celebrities in Delhi are interested in extending the tenure of some judges about to retire.

In the Joint Committee, a similar amendment sponsored by the Government or inspired by the Government was discussed and rejected by a good majority of the Members from both the Houses. The rejection was not on party lines, and this proposal bust like a balloon. Now it is sought to be carried by bringing in additioal reinforcements.

15.25 hrs.

[SHRI THIRUMALA RAO *in the Chair*]

It appears Government wanted to reinforce itself by getting the *imprematur* of the Chief Justice of the Supreme Court to this proposal of giving retrospective effect to the revised age. I do not know whether the Chief Justice gave his opinion by himself gratuitously to the Government, or whether the Government asked the Chief Justice for his opinion. In either case it is an improper procedure, and I think that Government should not have taken advantage of its position in trying to wangle a view from the Chief Justice in this matter, knowing full well that the position of the Chief Justice as the embodiment and the apex of the judicial administration in our country would be viewed with the importance it deserves.

Recently ther was a unaimous resolution of the Bar Association of the Andhra Pradesh High Court condemning the attempt to raise the age of retirement of High Court Judges to 62. It came as a bit of a surprise to me because once upon a time I thought that 60 was rather early for a Judge to retire and that their tenure could be extended by two more years. But this resolution of the Bar Association opened my eyes, because it is an unmistakabble indication by the members of the Bar without exception that they are not satisfied with the Judges who are on the eve of retirement, and that they disapprove of such a change in the Constitution. Members of the Bar are the best persons to speak about the judges; they are of all creeds, of all religions, of all temperaments and of all inclinations. I therefore have to revise my original opinion and agree with the members of the Bar who have so unmistakably and unanimously expresed their opinion against raising the age of retirement of High Court Judges to 62.

The amendment proposed to article 311 seeks to eliminate the safeguards of a second hearing for an employee against whom charges have been framed. This safeguard has been provided in the Constitution by the framers so that the employees under the Government of India may work in an atmosphere of fearlessness, without

being subject to the freaks, whims or fancies of officers, departmental heads or even Ministers. The framers of the Constitution thought that giving wide powers, almost dictatorial powers, to the executive was not salutary, and that democracy should be safeguarded by limiting these powers. This amendment to article 311 has roused the severest opposition among all classes of employees an opposition which is as tumultuous as it is unanimous. I appeal to all the hon. Members from every part of the House, to all parties to firmly diapprove of this amendment which produces an element of great dissatisfaction among the employees. Especially when our country is being threatened by a foreign power and when these thousands of employees are giving their best to the nation it is an act of gross impropriety and cruelty to interfere like this with these hundreds of employees who form really the foundation of our nation.

Shri Frank Anthony (Nominated Anglo Indians): Mr. Chairman, Inspite of my personal regard for the Law Minister, I am extremely unhappy about this 15th amendment....

Dr. L. M. Singhvi (Jodhpur): Sir, the Law Minister is not her while the discussion is going on.... (*Interruptions.*)

The Deputy Minister in the Ministry of Health (Dr. D. S. Raju): I am here representing him.

Shri Hari Vishnu Kamath: This is not an ordinary Bill: It is a Bill to amend the Constitution.... (*Interruptions.*)

Mr. Chairman: There is no pint in all people talking simultaneously.

Shri Tyagi: The Minister of Co-ordination is here. The Law Minister is coming.

Shri A. K. Sen: The Law Minister always comes when Mr. Anthony speaks!

Shri Frank Anthony: Inspite of the personal regard that I have for the Law Minister, I am rather distressed by this Bill. In the first place, it sets a bad precedent. It is a jumble of what should be distinct and distinctly numbered amendments to the Constitution. I do not know what the reason was. Perhaps Government does not want to give the impression that it is amending the Constitution too often. So, instead of making these amendments extend to 25, they have been all jumbled together in a single number. In the result we are considering reaching character on entirely different and disparate articles of the Constitution. From articles about the conditions of the judges, articles which go to the root of our judiciary, one of the bastions of our democracy, we suddenly jump to an entirely different article dealing with the service conditions of Government employees and in the result inevitably the discusion is going to be almost incoherent.

I feel that the hon. Law Minister has lost a golden opportunity. Here was an opportunity, especially when he was dealing with the articles relating to the judiciary, to implement all the very salutary and unexceptionable recommendations of the Law Commission. It was a unique body; it consisted of some of the most eminent lawyers and its recommendations were marked by courage and by independence of a very unusual order. Inspite of that Government has come here with one or two odd amendments. May I say this great respect? Take this amendment with regard to age. There is neither principle nor policy in these amendments, none at all. I do not understand how the Law Minister arrived at this particular age, 62. There is neither sense nor logic, may I say with great respect, in fixing this particular age. Probably by some rule of thumb, some method of compromise it has been done like that. The Law Commision said that the age should be raised to 65. That was part of a concatenated pattern of

[Shrri Frank Anthony]

recommendations. The Law Commission said: raise the age: raise the pension limit; do not allow them even chamber practice do not allow them to seek employment. That was the salutary pattern of the recommendations. While adopting only one of those recommendations, we just put in this *ad hoc*, rule of thumb provision.

Several hon. Members have referred to this point. You have done away with none of the evils that are corroding the judiciary today. Let us recognise it. I do not know whether the Law Minister will admit it on the floor of the House but every practising members of the bar will say unreservedly that this right to practise is corroding the independence and is destroying the prestige of the judiciary. We know that when we join the bar, we join virtually as juniors. Once they enter into the fiercely competitive profession, they are subject to all the pressures of that fiercely competitive profession and like most juniors they succumb to those pressures, with the result they resort to get the most meagre practice, to all kinds of malpractices. Immediately the prestige of the judiciary is tarnished. It is said with regard to judges that with their eye on practice in the Supreme Court their judgments represent a bias in favour of those who will be able to feed them when they begin their practice at the bar. All these things are being said. What degree of truth there is in these allegations we do not know. But the fact is that these are the current criticisms and I am very sorry that this opportunity was not taken to implement at least some of the recommendations of the Law Commission. On the other hand, the right to practise has been given a pernicious extension. There is provision here that if a judge is transferred away from his native High Court for a period of five years, he can come back and practise in his native High Court. Nothing is more pernicious. Some of us have repeatedly underlined that one of the evils of temporary judges is just this, that no person who has been a judge in his home State, even if he has been a judge for a week or a month, on priciple he should never be allowed to practise. What is happening? Immediately, unfair advantage is given to him. Immediately through the ring he builds up nice practice. He canvasses. After all he has been friendly with those who are now sitting on the Bench. It is an extremely pernicious thing. Now, we have extended that pernicious practice to those who, for some reason or the other, will leave their native. High Court for five years to come back and practise in their original High Courts.

Shri A. K. Sen: That has been deleted.

Shri Frank Anthony: I am glad. But still the right to practise is there and I feel that as long as that right is there, what little prestige the judiciary enjoys today is going progressively to be destroyed. Then there is the right to employment. It has played and continues to play absolute havoc. The judges on the eve of retirement, because admittedly they get inadequate pensions, join the queue of jobseekers on the eve of retirement. It is pathetic how they become sycophants and courtiers to the most subordinate of executive authorities. For some of us practising at the Bar it is an extremely disquieting thing. Some of us are really dismayed by what is happening and what has happened to our judiciary.

Then, what is going to happen with regard to this question of transfer? I know what the Law Minister will say. He will say, "you will remember what the States Reorganisation Commission recommended—that we should have an All-India Bar." I agree entirely, but is this the way to achieve an All-India Bar by making the judges liable to transfer on the initiative of the executive? I should have thought

that if we wanted an All-India judiciary, one-third of the judges should be taken at the point of recruitment and not by way of transfer. What is going to happen? Two evil consequences are going to flow. Either the judges who want a transfer will go round deliberately carrying favour with thepolitical powers that be, or the independent judges will be brought to heel because they refuse to accept the dictates of the political powers that be, and they will be, as a penal sort of measure, transfered out of their home States. That is going to happen. Judges privately have told me that this is an extremely pernicious provision—this right to transfer has been given there—and it is bound to be used as an instrument of political terror, an instrument in order to demoralise the judiciary.

I also feel this: that it is extremely bad that this provision should have been put in—article (2A): if the question arises as to the age, the matter should be decided by the President. Judges have come to me and have unanimously said this: that they regard this unreservedly as an affront to the judiciary. If the question of the determination of their age was to be left to anybody, surely it should have been left to the Chief Justice of the high court concerned or to the Chief Justice of India, but what is going to happen? What I feel is this: the judiciary also feel increasingly helpless. They are under constant political presure; they are living under the shadow of political pressure and domination today. Increasingly they are becoming subjected to executive interference and they say this is the ultimate sort of hostage to thes political pressures and political interference. They will have to go to a Deputy Secretary in order to plead their case with regard to age. As they say, it is an affront; and what is more, those judges who carry political influence will be able to get their ages rectified according to their needs, and those who have and semblance of independence left will not be able to persuade the Deputy Secretary to accept the particular case. I feel that whole thing is an extremely ill-conceived medley of amendments.

I also feel this: it is not only the question of extending the age but making it retrospective. I have given it considerable thought. I know that at first sight it may seem a little anomalous. My friend Shri Ranga for whom I have great respect says that if we accept this amendment retrospectively, Government will use it as a precedent. That is not quite correct. Government has already amended the Constitution retrospectively on more than one occasion. They have already got precedent. What I feel is, there is no objection in retrospective legislation; there is nothing wrong in principle. What the courts have done is this. If there is some doubt as to whether the legislature intended that the legislation should be retrospective, the courts have leaned towards making it prospective. But when a legislature in its wisdom has categorically made legislation, retrospective—there is nothing inherently wrong in that—the only question is whether there is justification for making it retrospective. Normally, I would not have been in favour of Shri Tyagi's amendment. But I am one of those who feel very strongly that absolute, utter, irremediable havoc has already been played with our judiciary largely because of political pressures. Appointments, as the Law Commission has said, are made for political, regional, communal considerations. As I said, they are constantly functioning.....

Shri Tyagi: Has the Law Commission said that?

Shri Frank Anthony: Yes, The Law Commission has said so.

Mr. Chairman: The hon. Member's time is up.

Shri Frank Anthony: I will finish in two minutes.

Shri Narasimha Reddy: It says: "These unsatisfactory appointments.," (*Interruption*).

Mr. Chairman: The hon. Member is not yielding and so why should Shri Narasimha Reddy go on with the reference?

Shri Frank Anthony: Why do I say this? I feel, in this context, admittedly the Bench is not attracting persons of the calibre that it used to attract; it is so for many reasons, because the pensions are not attractive, because political pressures make it difficult for them to function in an atmosphere of independence, and it would be a considerable loss for us to lose some of our best judges. That, I feel is the justification, and I think it is considerable justification, and that is the only consideration for making this legislation retrospective. If there is justification, then there is nothing inherently wrong in making the legislation retrospective.

I want to say a few words about article 311. I happen to have argued some of the cases which represent leading decisions of the Supreme Court under article 311. I feel this: that already there has been an erosion of the position with regard to the Government servants by judicial interpretation. I say it with great respect. There has been an erosion of that position. For instance, take the question of compulsory retirement. The Supreme court has held that compulsory retirement, even though it is made much before any prescribed period,—normally it is 20 to 25 years—and even if it is made after 10 years of service, it is not a punishment. It is not a removal or a dismissal; with the result that Government, if they do not like a person, can compulsorily retire him after 10 years. That is a form of dismissal or removal. But the Supreme Court says, no, there is no element of punishment in it, and so it does not attract the protection of article 311.

Then the Supreme Court has also held that a person whose services are terminated has no remedy. For instance, take the railwaymen; they have a contract. If their services are terminated, in terms of their contract, although the motive might have been to punish, they have no remedy. Article 311 is not attracted. There was Dingra's case which I argued; and there was Abraham's case. They were both cases of reduction in rank which unfortunately has been done away with. They were both, in fact, reduced by way of punishment. One General Manager said, "the work is unsatisfactory; reduce him." In the case of Abraham they said, "reduce him because of the charge of corruption." But the official order was that he was merely reduced for administrative reasons. So, the Supreme Court has said that if the speaking order does not show punishment, whatever the motives may be, it is not deemed to be punishment. So, as I said, by a series of judicial pronouncements, there has been this erosion of the protection given to Government servants under article 311. What is the justification for this at this late stage? The British did not consider it necessary. What is the reason for reducing or rejecting the second opportunity? The Law Minister will say, "Oh, it is either waste of time or it is illusory." I say it is not illusory. I deal literally with scores of cases and I say as a result of a carefully prepared answer, the second opportunity, this show-cause notice, very often the proposed punishment is either qualified or entirely remitted. It is a very substantial right. As I said, we were always charging the British with being a little conscienceless in these matters, but I say with great regret that progressively the Government is showing an increasing deadening of the legal conscience. Progressively the Government is showing an increasing disregard for the rule of law. I do not expect the Law Minister, who has been an eminent lawyer, to join with the Government in showing this increasing cynicism for the rule of law. That is what I feel we are doing. Fortunately the other provision of reduction in rank is not going to be moved. But I would ask that the second opportunity should not be done away with.

Shri C. K. Bhattacharyya: (Raiganj): Sir, the debate on this amending Bill brings to my mind the example of a Calcutta High Court Judge, who voluntarily retired before his time. When we think of all this wrangling for extension, all sorts of manipulating the Constitution or manoeuvring their positions in order to have extension, or change of ages, the figure of Sir Gooroo Das Banerjee, comes to my mind. He was a Judge who retired before he reached the age of superannuation; he completed a period of service which entitled him to earn pension before he reached the age of superannuation. The day he had completed the period of service which entitled him to pension, he wrote to the Chief Justice, "Please relieve me from judgeship". The Chief Justice said "You have still to reach your age of superannuation. Till then you continue". But he said, "My continuation means shutting out a younger man. That is not what I am going to do." So, he retired.

After retirement, he lived for 20 years more without approaching any Government for any employment or for any service. He rendered social service and service to the cause of education. He became the Vice-Chancellor of the Calcutta University. Of course, he was the first Indian Vice-Chancellor of that University. It was Honorary Vice-Chancellorship in those days, not Vice-Chancellor on pay. He became the President of the National Council of Education, which later took the shape of Jadhavpur University. He rendered other social and educational services. Even leaders of the national movement approached him to get correct guidance for their conduct. That is the example which we have been used to see and the ideal under the light of which we have grown up. These are things which appear strange and foreign to us. That is the tradition set up by the Judges of this land even during the British rule. Why should that ideal suffer now? What I feel is, as we claim that we are making more and more progress, we are going off from the ideal more and more. I want that that ideal should come back to the present generation for the present Judges and lawyers. It is with that object that I bring the instance of this one Judge into this discussion today. It will, I believe give a tone to the object which we want to achieve.

Coming to the Bill itself, the Joint Committee report consists of two volumes—report and the evidence. The evidence consists of 86 pages, 56 pages of which are the evidence of three representatives of eminent legal institutions and organisations—the Law Institute, the Bar Association of the Supreme Court and the Bar Association of India. The three representatives were Shri M. C. Setalvad, Shri S. T. Desai and Shri Purushottamdas Trikamdas. I went through the entire evidence that they gave and I find there is singular unanimity in the evidence of these three representatives of the three legal organisations. This singular unanimity singularly runs counter to all the provisions of the Bill. The Joint Committee Members who are here must be knowing about that. In their evidence they say, the Constitution must not be overburdened with minor details. They say that the age of the Judges should be determined by courts of law and not by anyone else. I believe when this question was put to Mr. Setalvad as to whether it would be proper for the Judges to have their ages determined by the courts of law, he said, "In my view, there is nothing so sacred as cannot be entrusted to investigation and decision by a proper court of justice." I remember, when this Bill was being sent to the committee, I myself suggested that for determining Judges age, an administrative tribunal composed of Judges should be set up and all these questions of ages should be referred to that tribunal for final disposal. What Shri Setalvad has suggested has been reiterated by the other two.

Mr. S. T. Desai has gone further. He has used the adjective "pernicious" about these proposals. When questioned by Members of the Joint Committee, he said, "What is pernicious, I

[Shri C. K. Bhattacharyya]

must call pernicious". This is recorded in the evidence. He further said that there should be no removal of a Judge except under the provisions of the Constitution and by the Parliament itself. The position that has now been taken up by the Judges of the Calcutta High Court is that the executive has no right to remove a Judge, whatever the defect they find in his appointment. Because the Chief Justice has acted according to the direction of the executive, a Bench of three Judges issued a rule against the Chief Justice and the Chief Justice himself is now an appellant before the Supreme Court. That is the position that the High Court of Calcutta has taken up.

In their evidence, they further say that no type of practice should be allowed to the Judges after retirement. Of course, the Law Minister suggested certain appointments to certain of these witnesses and asked whether those appointments could be given to the Judges after retirement. To some of these they agreed, like the chairmanship of certain committees. But others, they definitely opposed. They also said, there should be no transfer from one High Court to another. Some of them gave instances in which the executive had used the threat of transfer in order to cow down some of the Judges to certain propositions. That is why they say there should be no transfer. If it is essential for national integration that persons belonging to one State should be in the High Courts of another State, let that be done at the time of appointment, as suggested by the States Reorganisation Commission. They suggested that one-fourth or one-third of the Judges of each High Court should be from a different State. That was the suggestion of the Kunzru Commission which, they have said, might be adopted.

The question of helping national integration was put to Mr. Setalvad, I believe, by the Law Minister himself. Mr. Setalved very politely, very humorously maybe, excused himself with the remark that he did not know much of it. Asked whether the transfer of Judges would help national integration or not, he said, "It is a subject on which I have not much knowledge or experience". That is the way he excused himself from the question put by the Law Minister. In fact, the Law Minister put that question to Mr. S. T. Desai in the form of a logical fallacy, which we read in our intermediate classes "Have you given up beating your mother?" In that form he put it to Mr. Desai: "Are you not agreeable to have national integration by transfer of Judges?" How could that gentleman answer this question as 'yes' or 'no'? That is the attitude these representatives of the three legal institutions took. If you want Judges from one State to serve in another State, bring them at the time of appointment. Mr. Desai used the word 'sword'. He said, "Don't keep the sword of transfer hanging over the heads of Judges, so that the executive may use it whenever they like". That is what they suggested. In fact, I believe what they stated are reasonable propositions. Only one proposition they have agreed to, and that is the raising of the age. But here they say that the age should be raised to 65. I fully agree with them. On a previous occasion, in claiming that the retirement age of journalists should be fixed to 65 I referred to this very proposal and I quoted a line from Sanskrit:

अलंकरोति बार्द्धक्यम बुध-वैद्यविचारकान

Age becomes a qualification for judges. Therefore, in this case too, following that principle, if the retiring age is going to be raised, let it be raised to 65. After that let the other propositions follow in which all the three representatives of all the three institutions of law and practice have agreed. Let them not be handled in a different way from which they have suggested.

16 hrs.

Another question has come up in this evidence and that is about the language in courts. Shri P. N. Sapru, a member of the Joints Committee himself has raised it, and all the witnesses coming before the Joint Committee have agreed to it, that unless the courts have one language there will be difficulty. If judges from one State are to serve in another the courts should have one common language. That question also they have raised in the evidence.

16.01 hrs.

[MR. SPEAKER *in the Chair*]

The question of language we have disposed of already. If it is to be thought over again, it should be thought over by the Home Ministry and that should not be a burden on the hon. Law Minister. But, regarding the propsals that have come up before the House in the body of the Bill as modified by the Joint, Committee, I believe that the suggestions made unanimously by Shri M. C. Setalwad, Shri S. T. Desai and Shri Purshottamdas Trikamdas should have been accepted by the Joint Committee and may be accepted by the House even now.

Mr. Speaker: Shri Banerjee—Before he begins, I want to mention that I have received notice of an amendment from the Government. It would be circulated to hon. Members tonight. But I may read it for the benefit of hon. Members, so that they may be aware of this as well.

Page 3, line 18,—

add at the *end*—

> "and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed but only on the basis of the evidence adduced during such enquiry."

Shri S. M. Banerjee: Mr. Speaker, Sir, I am not going to repeat the arguments which were advanced by the hon. friends who spoke before me. I would only confine myself to two or three points. Sir, I join my hon. friends who have opposed the suggestion to give retrospective effect in the matter of age of the High Court Judges. I am sure that this would not be given in the larger interest of keeping the dignity of the judiciary at a higher level. Sir, you remember, that in case this is done the question will arise that in the case of the government employees also, in whose case the Central Pay Commission recommended that their age should be raised from 55 to 58, a similar action should be taken. All the recommendations of the Pay Commission with the exception of this one were implemented from 1st July, 1959. The decision taken by the Central Government in this case did not cover the past cases and it was implemented only from December, 1962. Naturally, Sir, if it is accepted in the case of the High Court Judges and the cases of a few High Court Judges—they may be six or ten—who retired are to be covered by accepting Shri Tyagi's amendment, I am sure there will be heart-burning amongst the services throughtout the country, and this will mean setting up a precedent. So I oppose the amendment and I would request my hon. friend Shri Tyagi, for whom I have the greatest regard, to withdraw his amendment even before it is discussed in this House.

My second point is, many hon. Members have said in this House that there should be no discrimination in the matter of age or extension between High Court Judges and Supreme Court judges. If the age of the High Court judges is sought to be increased from 60 to 62, why should it not be raised to 65. Much evidence has been adduced before the Select Committee in this respect. In some countries there is no age limit. In some countries the age is even up to 75. Therefore, I would only request that there should be no discrimination between the High Court judges and Judges of the Supreme Court.

[Shri S. M. Banerjee]

Taking advantage of this amendment to Article 311, which is a sort of *Magna Carta* for all the Government employees, I would like to mention that advantage under this Article 311 cannot be derived by the civilian employees working under the defence establishment because of the limitation imposed in Article 310 of the Constitution. Article 310 says:

> "Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union....."

Therefore, my submission is only this, that the framers of this Constitution perhaps did not take this into consideration that defence services also include the civilian employees in the defence establishments. When the civilian employees working in the defence establishments, whether in ordnance factories or in other defence establishments, are treated like civilian employees in the P. & T. and other government establishments, why should they be deprived of the advantage which they otherwise would have derived from article 311? This is a matter which had agitated the mind of nearly three lakhs of civil employees working in the defence establishments. I would request the hon. Minister to kindly consider this aspect of the problem also. If it is not possible to bring in an amendment during this session, at least it may be brought in the next session or in the near future so that they may also derive that advantage of having an adequate opportunity provided under article 311.

I am happy that the amendment which you very kindly read out has been brought forward. It will satisfy the Central Government employees to a great extent. I must congratulate the hon. Law Minister who could read between the lines, who could feel the anger of the Central Government employees who have dedicated every ounce of their energy and all that they have for the sake of the country, and bring in this amendment. At least by bringing in this amendment their interests will be safeguarded.

I may mention that to the report of the Joint Committee dissenting note has been given by 11 members. Eminent jurists like Shri Setalwad, Purshottam Trikamdas and Desai have also said that reasonable opportunity should be given. The hon. Law Minister, when he piloted this Bill in this House before it was referred to the Joint Committee was perhaps—I do not want to use the expression "confused"—having a misinterpretation about the judgment of the Supreme Court. He thought that the Central Government employees wanted two enquiries. That is not correct. I have explained to him both in this House at that time and also in person—also, a deputation on behalf of the National Federation of the P. & T. employees recently met the Law Minister and explained their difficulties—that the present practice where an employee is given a charge-sheet, he replies to the charge-sheet, a court or a board of enquiry is held where he is given adequate opportunity to place his evidence, after he places his evidence the board comes to some preliminary conclusion, then he is given a show-cause notice and even after the show-cause notice he deserves the right to bring forward new arguments, is a reasonable one. He can still plead innocence and he can bring new arguments in respect of his case. That was a reasonable opportunity, in our opinion. I am happy to see this amendment. But, that does not mean that the full requirements of the Central Government employees have been met. I am happy this has met their demand in part and, I am sure, if this Constitution is likely to be amended, which I am sure will be amended if the Bill of Shri Kamath is not passed——if that

Bill is passed, I think an amendment of the Constitution will not be so easy —then these two matters should be taken into consideration, namely, (1) that a reasonable opportunity should not have been denied, and I am sure this amendment will be passed unanimously and (2) retrospective effect should not be given to the provision about the age of retirement of High Court judges just to suit 5, 7 or 8 persons, as that would be setting a bad precedent in the country. Thirdly, I will say that Article 311 should be made applicable to the civilian employees in the defence factories.

A question was raised by my hon. friend, Shri Himmatsingka, that this amendment was necessary because many Government employees were involved in corruption cases and no action can be taken against them because of these provisions. A suggestion was mooted by many hon. Members of this House that there should be anti-corruption tribunals. Why has that suggestion not been accepted by this House or by the hon. Minister. An anti-corruption tribunal will eliminate all delays. Let there be summary trials where corruption cases are involved. Another suggestion which was very ably advanced by Shri Setalvad when he was giving evidence before the Joint Committee to avoid delay in disposing of these cases was to have administrative tribunals for dealing with disciplinary cases. So. administrative tribunals could be set up to dispose of all these cases.

With these words, I take this opportunity to congratulate all the Central Government employees throughout the country, who are working in defence. P & T, railways and other establishments. who raised their united voice. mighty voice, against the curtailment of their fundamental rights. because already most of their fundamental rights are mortgaged with the Home Ministry and if this right was also to be curtailed there would have been less incentive for them to work. So. I thank the hon. Law Minister for moving this amendment. I equally thank you for giving me an opportunity to participate in this debate.

Shri Krishna Menon (Bombay City North): Mr. Speaker, Sir, I would like to refer to two or three aspects which are covered by the proposed amendments to the Constitution. The first is in regard to the tenure of office and age of retirement of judges. With due respect I would say that I have no desire to go into the question of the judiciary deteriorating or otherwise because, on an occasion like this, it is only possible, if at all, for one to make a generalisations. At the present moment, speaking for myself, there should be no limit to the age at which a judge should retire. Scientists should not have and politicians, lawyers, and I think even Cabinet Ministers do not have any age limits prescribed for retirement. A judge, it is said, becomes more mature as he ages. If a judge can be trusted to deal with the fortunes of individuals, their property and personal laws, even their lives, surely he can equally be trusted that when he reaches the age of senility, or even before he quite reaches the age of senility, he will retire from service. I am firmly of the view that his honour has to be trusted that he will retire when he is not in a position to faithfully discharge his responsibilities and, therefore, a judge should hold office during the pleasure of the President. Also, that is the only way to guarantee his independence. At the present time, there are so many devices or, at any rate, so many circumstances which place a judge at the mercy of the executive not to speak of the favours he may be tempted to seek from public men, Members of Parliament, political parties and what not. The remedy suggested by Shri Tyagi however, is probably worse than the disease. To remove from the Home Ministry to the Law Ministry the function of appintments to the high judiciary is no remedy at all. What I submit is that there should be no age limit at all prescribed for retirement. As a concomittant it follows that a retired High Court judge should not be allowed private practice at any bar. He

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should not be permitted to appear before any bench or practise law. The independence of the judiciary depends upon there being no expectations on the part of the judge about his future plans. That is to say, the dispensation of justice should be without any fear or favour. There is no doubt that when the retired judges practise before a bench of judges, there would be in the minds of clients—whatever may be in the minds of judges is another matter—in the minds of concerned parties that this person was known to the judges and so he would be heard better! Things of that kind can, will and do happen.

Already we have difficulties all over the country that the best of talents are not available and the level of the legal profession and the bar is not what is probably was a generation ago. And it is very unfair to budding juniors that they should compete with men who have seen law from both sides, to compete with men who were members of the judiciary at one time. Therefore, I submit firstly, that not only there should be no age limit but they should not be called upon to take any office of profit after retirement. When a judge is at the fag end of his career he should not be tempted to think in his mind—I do not say in every case, but in many cases—whether an office of Vice-Chancellorship can be found, the chairmanship of a commission can be found, whether he can be the High Commissioner to Australia or something of that kind. This interferes with the independence of the judiciary. In most countries, more particularly in ours the executive has an inveterate tendency to encroach upon the independence of the judiciary. Our parliamentary institutions and our democratic apparatus are comparatively new. Now law would instil these political qualities apart from the experience that comes by age. My submission, therefore, is that the present proposal to extend the age of r etirement is a step in the right direction, but why or where it should stop I do not know.

May I also submit, Mr. Speaker, that this idea of the age limit of 55, 58, 60 or 65 years was thought of in times when the average expectation of life in this country was 24 years? Now the average expectation of life is 44 or 47 or something of that character. People live longer, and I believe it is only by the time that a judge reaches the present age of retirement that he would have been able to become familiar with all the case law and all else that goes on in all parts of the world. In the bygone days he had be familiar only with the Law Reports of this country and, perhaps, the law reports of the United Kingdom. Also, now the law has become so diversified with socialisation or nationalisation of industries and on account of the economic impact of life upon the whole of our administration being of a different character.

I do not submit and I do not agree that there will be constitutional difficulties in this matter because, while our Parliament is not sovereign, our Constitution is sovereign. Constitutionally, we can even abolish the Constitution itself. Therefore, unless there is, as is often the case, bad draftsmanship in the Bill itself, it can go through the courts, but it is very bad law and worse practice to try to give retrospective effect to constitutional provision. First of all, many practical difficulties may crop up. Suppose a person who has acted as a Chief Justice has retired and is brought back. He has to come back after six months or so now and may well find another Chief Justice in place already. What happens to either of him? Then, again, there is the question of the seniorities of 14 or 15 judges in the relevant category. Again, while I have no particular instance in my mind, it may well happen that while this may benefit some particular retired or retiring High Court judges, it would have adverse effect on many others if the proposed amendments are given retrospective effect. Again, if this retrospective effect is to confer benefit upon some relations or friends of

some high placed officer of Government or person in public life, it would shake public confidence, because it would appear that this has been done for that purpose. I have no instance in my mind, but there is no doubt that this may well be the result.

Now I will come to Article 311 of the Constitution, and I hope I am not being disrespectful in thinking aloud about it. It pains one to think that an amendment of this kind should have been introduced by a Government over which our Prime Minister presides. It is an inroad into individual liberty of a type and character which, one would have thought would take away from the Government servants the modicum of liberty that he has enjoyed even under the British rule under the 1935 Act. I think it is correct to say that Government have been wrongly adviced, by whoever it was, in saying that the Supreme Court has said something about going all over again. That is not the judgment of the Court. Either somebody has not read the whole of the judgment, or did not want to read it. If there is time, I would read the whole of it here. I would submit, therefore, what is at present proposed is not the remedy. What this amendment does is to take away from the civil servant the right to be able to say, once he has been found guilty why the effects of the guilt should not be visited upon him. This is the normal process of law. It is far more important that no innocent person should be punished rather than fear that a few guilty persons may escape. That should be the criterion for the law as administered.

16.20 hrs.

It may also be taken into account that the civil servant receives a much lower salary than his opposite number, either in industry—private or public—or in other walks of life. The civil servant is the only workman or labourer in a community who is at the disposal of his employer for 24 hours of the day. Perhaps people do not know that there is no limitation of hours on a civil servant. I am not saying that they work so hard. But the Government has a lien or control on their time for 24 hours of the day. Their entire life is given to the Government. The civil servant is also governed by the master-servant relationship, the employer-employee relationship and terms of service and he accepts certain limitations but now we are imposing more limitations. The remedy, therefore, should be to equate the civil servant, in substance and subject to the requirements of public security and exigency, to other levels of employment.

In other levels of employment a person who is a worker or employee can go to a labour tribunal if there is any industrial dispute. But in this case that can not happen because it would not be an industrial dispute. Civil Servants have no right to strike. They have no right to withdraw labour. They tie their hands behind their backs and the anticipation is that the safeguards provided in the Constitution and the rules made thereunder will make amends for what is being taken away.

In an ordinary labour dispute, however serious it is, there are various remedies. Apart from direct action, he can go to the labour tribunal. If he is not satisfied, he goes before the High Court and even then if he is not satisfied, he goes to the Supreme Court. Why should a civil servant be deprived of all these things specially when under the Government Servants' Conduct Rules we take away from him all that follows, from the rights of collective bargaining, the right of association and so on? Therefore the encouragement of Whitleysm and establishment of Administrative Tribunals where most of these things can be ironed out is the only answer to the problem. Taking away the fundamental rights of citizens even if they are civil servants or soldiers is not in keeping with the spirit of the

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modern age. Therefore I would submit that while this amendment, no doubt, would be passed—we have a large majority in the House and there are three-line whips on this. All that we can do is to speak; I hope, we will retain our right to do so for a long time to come—the remedy in this matter is for Government to consider the establishment of Administrative Tribunals where an aggrieved civil servant can go—I would go so far as to say, where he can go or be sent in the proper way.

The hon. Law Minister with his characteristic dexterity has brought in an amendment just a moment ago. I want to say that there is nothing in it except words because that amendment does not give the civil servant anything more than what he already has and will get anyhow. A civil servant, even today, and always can make an appeal to the President. Any citizen can do so. That is all that the new amendment offers just now. It does not bring back what is being taken away. He cannot have a second occasion and say, "I have been found guilty, you are going to dismiss me or are going to give me no money or pension, whatever it is; that is too much of a penalty or that it is wrong."

In the leading case in this matter, Khemchand against the Union of India what was actually the issue was stated by the Supreme Court. I am reading out from the Reports—this will not take long; Mr. Speaker, it will take two minutes. It says:—

"the reasonable opportunity.."

the hon. Law Minister was speaking about,

"envisaged...."

to the Government servant

"by the provision...."

contained in Article 311 (2)

"includes:

(a) An opportunity to deny his guilt and establis his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;"

That would be done. It goes on—

"(b) an opportunity to defend himself by cross-evamining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him,...."

This is the part that will be derogatory—I will not say "denied"—from the proposed amendment.

"....which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant."

Thus,

"the protection provided by rules, like R. 55"

of the Civil Services (Classification, Control and Appeal) Rules

". . . . was bodity lifted out of the rules and together with an additional opportunity embodied in S. 240 (3) of the Government of India Act, 1935 so as to give a statutory protection to the government servants and has now been incorporated in Art. 311(2) so as to convert the protection into a constitutional safeguard."

It is my respectful submission that what the Government proposes to do

by an amendment of the Constitution is to remove the constitutional safeguard.

Shri Hari Vishnu Kamath: Mr. Speaker, Sir. at the outset permit me to express the hope, nay the confidence, that this House under your guidance will be able to devote far more time to this very important Constitution (Amendment) Bill than has been allocated to it. I would earnestly request you when considering that for the Official Languages Bill we devoted five days, this Bill which seeks to amend more than ten articles of the Constitution deserves far greater attention at the hands of the House than at present seems possible. I hope, you will do the needful in the matter.

The Bill comprises a motley crowd or a hotchpotch, may I say, of articles wherein the age of Supreme Court and High Court Judges has been curiously mixed up with the punishment of Government employees and matters relating to territorial waters and continental shelf. The ineluctable inference to be drawn, as I have said in my minute of dissent, is that the Government wants to put on a virtuous appearance and does not wish to convey the impression to the nation that they are fond of amending the Constitution too often.

I will, for the sake of convenience and simplicity, split up the subject matters, the various subjects of this Bill, into four or five different items. First, we have got the raising of the retiring age of High Court Judges; second, the determination of age of Supreme Court and High Court Judges; third, the transfer of High Court Judges from one State to another; fourth, appointment of *ad hoc* Judges in High Courts; fifth, the vacations of High Courts; sixth, the provision in the Constitution relating to disciplinary action and punishment for Government employees; and, seventh, may I add, my hon. friend, Shri Mahavir Tyagi's amendment which has been moved and is, therefore, before the House. I would therefore crave your indulgence if I take a little more time than you would perhaps normally be pleased to allot to me.

I have taken keen interest in the proceedings of the Joint Committee and have appended a minute of dissent also. I would like to explain, if I may and if I can, the background and the foundation for that minute of dissent. I will take up the simpler matters first and dispose of them quickly.

First I will take up the provision with regard to the compensatory allowance for High Court Judges on transfer. I believe that this is wholly unnecessary and uncalled for because even the highest ranking Government servants on the executive side are not paid compensatory allowance. Even in the old British days when high-placed civil servants, men belonging to the ICS were transferred.....

Mr. Speaker: If, as he says, he takes the simpler matters first....

Shri Hari Vishnu Kamath: This is the simplest that I have taken up first.

Mr. Speaker: Then, I am afraid, when he takes up complicated matters afterwards, I may have to stop him.

Shri Hari Vishnu Kamath: That is why I wanted you to extend the time for the Bill. It is an important Bill.

Mr. Speaker: It is not possible to extend the time. With the classifications that he has made for me, it may not be possible.

Shri Hari Vishnu Kamath: It is then difficult to do justice to the provisions of the Bill. I submitted at the outset that the Bill to amend the Constitution must be considered leisurely by Parliament in any country. And, therefore, it is necessary to extend the time. I will be as brief as I can. Even in old days, when the British

[Shri Hari Vishnu Kamath]

were here, executive officers were transferred from one good district to what was called as *Kalapani* district in the State or outside the State. Even then they were not paid any compensatory allowance. I think, it is a very bad, unwise, incentive, an ugly incentive to offer to judges for agreeing to go from one State to another. I believe this is just to make possible the implementation of the recommendation of the States Reorganisation Commission which recommended that one-third of the judges of the High Courts in the State must come from outside the State. But this is hardly the manner in which it should be proceeded with, or dealt with.

Next, I come to the matter relating to *ad hoc* judges. In the Constitution, article 224 already provides for the appointment of additional and acting judges. I think, in addition to these, another article to provide for the appointment of *ad hoc* judges is entirely uncalled for and it will lead to gross abuse of power.

Then, I come to the clause relating to or dealing with the age of retirement of High Court judges. Before that, I shall dispose of briefly the provisions with regard to the determination of the age of High Court judges and Supreme Court judges. In the Joint Committee, after very interesting and sometimes very violent discussion the clause in the original Bill with regard to the determination of age of the Supreme Court judges was modified unanimously in the manner that is set forth in the amended Bill which is before the House. But the same line has not been adopted with regard to the determination of the age of the High Court judges and I would like to put them on a par with the Supreme Court judges. That is all I would like to say with regard to that provision.

Now, I would come to a major clause in this Bill, that is, the enhancement, the raising of the retirement age of the High Court judge. I am most strongly opposed to raising the age from 60 to 62 and I would prefer to retain the present constitutional provision with regard to the age being retained at 60. My friend Mr. Trivedi—he is not here—said, if the age of the Supreme Court judges is raised to 65, why not make the age of the High Court judges also the same as 65? One argument against that is that High Court judges are allowed to practise in all High Courts, except their own, also in the Supreme Court. That is one argument that seems to nullify this provision with regard to age being 60 for High Court judges and the other argument was set forth, admirably, by Mr. Datar, the then Minister of State in the Ministry of Home Affairs when he said:

> "So far as the Supreme Court judges are concerned, naturally, a higher age limit has to be provided for because a number of judges from the High Courts will have to be taken to the Supreme Court. If an invariable rule of 60 is to be put down, then perhaps it might be difficult for us to take advantage, or avail ourselves, of the ripe wisdom of judges working in the High Courts for the purpose of the Supreme Court judgeships".

And, Sir, when an attempt was made in 1956 to raise the age from 60 to 65 or 62, it was rejected by this Parliament. Now the Government has come forward with a provision which was dismissed in 1956 and perhaps it is thought wiser in 1963 what was not found wise enough in 1956. My friend Mr. Anthony asked, "Why it is 62? Why it is arbitrarily made as 62?". I have myself questioned this. In the Joint Committee, I asked, "Why it should be 62?' Why not 60 or 65? Why 62?". One question that I put was, the suggestion that struck me

was, perhaps, because it was introduced in 1962—the Bill was introduced in 1962—the Minister thought that 62 would also suit the occasion.....

Shri Prabhat Kar: But the Bill is being passed in 1963.

Shri Hari Vishnu Kamath: I am opposed to the raising of the age to 62. In the first place, High Court judges, as I said, have got ample scope for practice after retirement. If this —raising the age—is thought as an incentive for attracting the best talent for High Court judges, then it is not the right way. But, perhaps, it would be to offer higher salary and higher pension to High Court judges—not this way. Moreover, after retirement we have always found in this country High Court judges are usefully employed on many commissions, tribunals and many other special jobs, Governorships, Ambassadorships, which are in the dispensation of the executive. I am, of course, not in agreement with the Government's proclivity, tendency, towards distributing largesse and patronage to the judges because, if I may use the old adage, it is like dangling a carrot before a donkey, and such baits should not be held—they are growing and increasing in numbers—before the judiciary and I am afraid, if this is not nipped in the bud, it will be a monstrous violation of the independence of judiciary. It is well said, a judiciary, a strong, vigorous and independent judiciary is the last bastion of a parliamentary democracy, and, therefore, let us think twice, let us think hundred times, let the Government think hundred times, before they lay their hands—they are not so clean hands—on the judiciary.

As I said, the judges after retirement are usefully employed and in recent years we have had judges holding a judicial inquiry into various matters where even the Union Minister was concerned. In 1958, we had a judicial inquiry into an affair where a Union Minister was concerned. I am sorry to say that perhaps events are moving so fast that another judicial inquiry is in the offing against another Minister of the Union Cabinet very soon. I do not know how far it has gone. But I have it from the most authentic and unimpeachable source that the interim report of the Attorney General is not very favourable to the Union Minister concerned and there are more entries in those books which have been seized relating to the Minister than was disclosed earlier. So, an inquiry....

Shri Tyagi: Was it of relevance here?

Shri Hari Vishnu Kamath: I say about judicial inquiry in various matters....

Shri Tyagi: No judicial inquiry... (*Interruption*)

Shri Hari Vishnu Kamath: I am not dealing with that. Coming to an amendment of Mr. Mahavir Tyagi, my old friend....

Mr. Speaker: Why should he probe into those things that are not disclosed yet? Is there any necessity of going into those things?

Shri Hari Vishnu Kamath: That was disclosed, Sir.

Mr. Speaker: Then he will say that his time-limit must be extended.

Shri Hari Vishnu Kamath: I did not take even half a minute for that.

Mr. Speaker: They are not relevant here. He should not go into the extraneous things that are not relevant here.

Shri Hari Vishnu Kamath: Judges are employed usefully. They will be employed usefully in future. I shall deal briefly with my friend Mr. Tyagi's amendment which seeks to give retrospective effect.

Shri A. K. Sen: He has not moved it.

Shri Hari Vishnu Kamath: He has moved. He was not present.

Shri Tyagi: I supported in my speech my idea. I mentioned it in my speech.

Shri Hari Vishnu Kamath: I would submit, this matter was discussed very vigorously, violently and even acrimoniously in the Joint Committee and I am glad to say that the Joint Committee by a majority, by a fair majority, including the many Congress Memberc, voted against such a provision to be made in the Constitution. I think it is to my mind the most obnoxious, the most pugnacious provision that can be incorporated in the Constitution. I am not talking of statutory laws—they are different. But I am saying about the Constitution. Suppose 50 years hence some citizen of this counntry looks up, takes up the Constitution and finds...

An Hon. Member: Your speech.

Shri Hari Vishnu Kamath: I am sorry for your ignorance. My speech will not be in the Constitution. My spech will only be in the records.

Mr. Speaker: There ought not to be long jumps from this side.

Shri Hari Vishnu Kamath: He asked for it and he got it. When he asks for trouble, I can't help it. Suppose some citizen 50 years hence....

Mr. Speaker: I expect all his directions towards me.

Shri Hari Vishnu Kamath: I request him also to..I was saying, suppose, some citizen 50 years hence has a look at the Schedule, at the article, and comes across this very intriguing, mysterious date, the 1st of January, 1963. What will he think for himself? What will he say? What happened on the 1st of January, 1963? What particular matter, what particular judges they had in mind? I would ask, I would demand of the Law Minister that he should place—and if he does not, I will request you direct to place—the full facts with regard to this matter before the House. Why has it been thought necessary? Because, I am sorry, he announced some days ago that, if an amendment were moved to that effect, he would accept it. It was wrong; I think it was not proper on his part to say that.

Shri A. K. Sen: I never said that we shall accept. I said, we shall consider it seriously.

Shri Hari Vishnu Kamath: I think it was reported in the papers—that is my impression; I may be wrong; I am sorry if I am wrong;—that the Law Minister announced on that day in reply to the debate that if an amendment were moved to give retrospective effect with regard to the retirement age of High Court Judges, then he, on behalf of the Government, would be prepared to accept it. That is my impression. I do not know. Shri Tyagi has....

Shri A. K. Sen: The hon. Member may be correct. But, my recollection is that what I said was that we shall be prepared to consider it seriously.

Shri Hari Vishnu Kamath: Even that is not in conformity with the highest traditions of Parliament. When a Bill is before the House, when a Bill is coming up later, I would request you and earnestly plead with you to give your ruling on this matter, when a Bill is coming up later, is it open to a Minister to announce in advance that if an amendment comes before the House with regard to retirement age of Judges, Government will be prepared to accept? Is it correct?

Mr. Speaker: Where is the harm? When he has said that they would consider it seriously, there is no harm.

Shri Hari Vishnu Kamath: I said that if he had said that he would accept, is it wrong.

Mr. Speaker: Then too the ultimate decision is with the House even if the Government says that it would accept.

Shri Hari Vishnu Kamath: It is not proper. When a Bill is coming up, it is not in conformity—I am concluding in one minute or in two minutes if you will allow.

I would refer to one last matter. With regard to the appointment of *ad hoc* Judges, I forgot to mention; I shall mention in passing. I do not know again why this power is sought to be vested in the Chief Justice of the High Court, because Additional and Acting Judges are to be appointed by the President under article 224. Here, the Chief Justice is sought to be vested with that power, with the previous sanction of the President; of course, it is true. But, that comes, as in many other matters, as a matter of course. On the same ground I am opposed to the President being dragged in with regard to the question of determining the age of a High Court Judge. The President, however high he is,—he is the highest dignitary of the Union—in this matter, the Constitution provides that he has no independent judgment, that he does not act in his individual judgment, that he always acts on the advice of the Council of Ministers. In this matter, he won't act in his discretion also. Therefore, it is very pernicious, very undesirable for the President to be dragged into this affair at all.

One last word about the attempt to amend article 311. You have been pleased to read out the text of an amendment which will shortly be moved by the Law Minister either today or tomorrow. I feel,—I do not have an exact copy before me, because I could not copy it as you were reading it out—*prima facie*, it does not meet the requirements of the case. We are not satisfied with the amendment as it has been embodied in the text which you just now read out. I would like to say something more when we come to the clause by clause consideration stage.

Shri A. K. Sen: Mr. Speaker, I thought I should have been able to finish my reply in the course of today. But, I am afraid, it will not be possible to do so within the 15 minutes which are left before we close today.

May I deal, first of all, with the rather uncharitable remarks which were made by Mr. Frank Anthony and Mr. Kamath, that we have made a hotch-potch by collecting together what he calls a motley crowd of Constitution amendments. I do not see why there should be any motley crowd. A constitutional amendment is a constitutional amendment whether it touches a civil servant or a Judge. To my mind and to the mind of any ordinary citizen, they are of equal importance. And I see no harm whatsoever if they are put together before the House. I do not see any valid objection to the course which Government have pursued.

It has further been said that Government have done it rather hastily for the purpose of putting all of them in what is called a haphazard manner. My hon. friend was not here then, but in the last Parliament, when questions were put in regard to many of these matters, particularly with regard to the question of increasing the age of retirement of judges, the question of transfer of judges and several other matters which are included in this Bill, we had said that Government had been considering all these matters so that a comprehensive constitutional amendment Bill might be brought forward instead of each matter being made the subject-matter of a separate Bill.

Shri Frank Anthony thought that the other course of bringing each matter separately in the form of a separate Bill was preferable. We are sorry that we cannot share the same point of view, and we feel that so far as constitutional amendments are concerned, it is better to bring forward a more comprehensive measure rather than bring in stray measures, though circumstances force such stray measures occasionally.

[Shri A. K. Sen]

For instance, even the Sixteenth and the Seventeenth Amendment Bills which will be coming in every shortly...

Shri Hari Vishnu Kamath: Seventeenth and Eighteenth?

Shri A. K. Sen: ..The Sixteenth and Seventeenth Amendment Bills which would be coming in shortly have been rather forced by the exigencies of the times. I, therefore, have no hesitation in saying that this criticism is not only not valid but highly unfair, and it ignores a good deal of care and thought which have gone before the measure was formulated and brought before Parliament.

The next point was about the provisions relating to the judges. Shri Kamath and Shri Anthony have both said that the fixation of the age of 62 was a matter of arbitrary fixation, and that no rational thinking had gone into the matter. Even if we had fixed it at 65, the same criticism would have been there, namely why choose it at 65, why not at 66, why not at 67, why not at 68 and so on. In fact, even when the Law Commission recommended 65, they might equally have been criticised for having chosen an arbitrary figure. In my submission, there is a valid reason for our choosing a lower figure than the one mentioned by the Law Commission. If the age of retirement of High Court Judges were fixed at 65, then, there would have been no difference between the age of retirement of a High Court judge and that of a Supreme Court judge. And as I explained when the motion for reference of the Bill to the Joint Committee was being debated upon here, it would have been rather difficult to attract good talents from the States to the Supreme Court, if the age of retirement were the same for both.

Shri P. R. Patel: Are there no talents in the country except the present ones?

Shri A. K. Sen: The hon. Member knows better.

Shri P. R. Patel: I am asking the hon. Minister. Is there a scarcity of talents?

Shri A. K. Sen: There are talents everywhere, but the question of attracting talents is a different matter. When I said difficult to attract talents, it presupposes existence of talents. If there are no talents, there would have been no question of attracting them.

Shri A. N. Vidyalankar (Hoshiarpur): But the Judges could be brought from High Courts to the Supreme Court before their age of retirement is reached.

Shri A. K. Sen: It is to give greater inducement for people to leave the respective High Courts. Many Chief Justices of State High Courts have come, giving up their Chief Justiceship, to the Supreme Court, and it will not be unfair to say that one of the inducements certainly was the higher age of retirement. Otherwise, possibly they would not have thought of coming to the Supreme Court at all, giving up their Chief Justiceship and coming almost for the same salary.

Shri Kashi Ram Gupta (Alwar): Why not raise the age of retirement of Supreme Court Judges to 70?

Shri A. K. Sen: That is entirely a different matter. It was not at all recommended by the Law Commission. Secondly, it was never seriously thought of by anyone except casually by the hon. Member.

As I said, whatever age is chosen may be attacked as arbitrary, and yet when the reasons are analysed, we may still find valid reasons for choosing one age rather than the other. It is precisely for the purpose of keeping a difference between the age of retirement of the High Court

Judge and the age of retirement of the Supreme Court Judge that we thought it better to fix a lower age of retirement for the High Court Judge. Unless it is shown that such a difference was irrational, we would prefer to stick and adhere to the age we thought it fit to fix for High Court Judges for retirement.

Then the next criticism was about the whole question of raising the age of retirement. I could not, though I tried very much to, appreciate the argument as to why there should be opposition generally to raising the age of retirement. Many Members said, 'I am against raising the age of retirement'. It is all right to say one is against raising the age of retirement, but when one asks the reason, one possibly fails to get a good answer. There is a very good reason why we have thought it necessary to raise the age of retirement. First of all, it is a fact today that a man at 60 is perfectly capable of working vigorously and giving his very best.

Shri Hari Vishnu Kamath: Even at 70. Why only 60?

Shri A. K. Sen: Some even at 80. But everyone is not as vigorous as Shri Kamath at this age.

Shri Hari Vishnu Kamath: I am not 80.

Shri A. K. Sen: I have no doubt that even at 80, he would retain the same vigour. Let us hope that he does so.

Shri Hari Vishnu Kamath: Thank you for the good wishes.

Shri A. K. Sen: So far as I am concerned, I have no doubt that he will do so. Vigorous men at 80 are a rare commodity, but vigorous men at 60 are quite general these days.

Then it has been our experience that if good Judges are made to retire at 60, it is sometimes very difficult to get substitutes, and possibly the High Courts and the States which they serve would be served better if more experienced Judges are retained for two more years rather than allowed to retire prematurely at 60 when they are still strong and vigorous, both mentally and physically, particularly because the Law Commission had itself recommended raising of the age of retirement to 65.

Then there was the question of transfer of Judges. I think there has been criticism from all sides from Opposition Groups that this provision was designed to coerce the Judges and to keep them in a state of perpetual fright. This argument completely ignores facts and history. The Constitution itself contains a provision even now for transfer of Judges from one High Court to another without any compensatory allowance.

Shri Kashi Ram Gupta: Then, why make the change?

Shri A. K. Sen: If the hon. Member will hold his soul in patience, he will certainly get the answer.

And yet the history of the administration both here and in the States so far as it is concerned with the High Courts has amply proved that there has been no attempt to effect any transfer of Judges excepting the consent, and the power today remains without any obligation to pay any compensatory allowance whatsoever. The reason for introducing a provision for compensatory allowance was explained by me when the motion for reference to the Joint Committee was under consideration. I said that we had accepted it as a principle that so far as High Court Judges were concerned, they should not be transferred excepting by consent. This convention has worked without fail during the last twelve years, and all transfers have been made not only with the consent of the transferee, but also in

[Shri A. K. Sen]

consultation with the Chief Justice of India.

Shri Bade (Khargone): Is it not a fact that in article 222(2) of the Constitution there was a provision for giving some compensatory allowance, and that it was deleted by section 14 of the Constitution (Seventh Amendment) Act of 1956 on this ground that there was no justification for granting any compensatory allowance to the Judges?

Shri A. K. Sen: That is a different matter. I am now talking about the way in which transfers, such as they have been, have been effected,—the question of allowances is a different matter—because when we appreciate the way in which the whole thing has worked, we shall appreciate the necessity for introducing this provision.

As I said, though the power of the President to transfer a Judge from one High Court to another was unfettered, by convention we have never transferred a Judge without his consent, which explains a good deal the restraint with which these powers have been exercised, and completely negatives the unfounded charge that we have tried more or less to interfere with the judiciary, a charge which is so frequently and freely canvassed by persons who are possibly either ignorant of facts or do not like to know the facts.

This plenary power of transfer has never been exercised and transfers which have been effected since the Constitution have always been made with the consent of the transferee and in consultation with the Chief Justice of India. It is therefore necessary if we accept that it is a good thing, that it is a desirable thing, for the purpose of national integration to have Judges drawn from different States, so that the highest judicial tribunal in every State contains elements from other States and we have an all-India atmosphere running through our entire judicial life and strengthening it and giving it a national outlook, for good or for bad. People may differ with regard to that objective. We have by and large accepted it as a desirable thing. We feel that it is absolutely essential for the purpose of national integration and for introducing a robust national outlook into our judicial system that Judges should be transferred from one High Court to another, so that there is an element from outside the particular State in the highest judicial tribunal free from local bias, free from local prejudices and completely devoted only to the supreme task of administering justice equally and impartially.

Mr. Speaker: Is the hon. Minister likely to finish within five minutes? Otherwise, he may continue tomorrow.

Shri A. K. Sen: I shall continue tomorrow, Sir.

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17 hrs.

*AMENDMENT OF ARTICLE 31A OF CONSTITUTION

Mr. Speaker: We will now take up the half-an-hour discussion.

Dr. L. M. Singhvi (Jodhpur): Before you take up the half an hour discussion, may we request you to consider the question of extending the time for discussion at least on the clause-by-clause consideration of the Bill..... (*Interruptions*).

Mr. Speaker: We havs already extended the Session by two days and we cannot go on extending. We will always complain of lack of time. Let us see.

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*Half-an-hour discussion.