

Members want to speak on this very important Bill. Will you, therefore, kindly extend the time by an hour at least?

Mr. Speaker: Let us see. Hon. Members in the beginning of the day are very anxious that we should dispose of business and sit longer hours, but as the day advances, all hon. Members, one after the other, leave their place.

12.23 hrs.

SUPREME COURT JUDGES (CONDITIONS OF SERVICE) BILL—Contd.

Mr. Speaker: The House will now resume further discussion of the following motion moved by Shri Datar on the 24th September, 1958, namely:

"That the Bill to regulate certain conditions of service of the judges of the Supreme Court, be taken into consideration."

and also the motion for reference to Select Committee moved by Shri Frank Anthony.

Out of the 2½ hours allotted to this Bill, one hour and 42 minutes now remain. Shri Anthony may kindly continue his speech.

Shri Frank Anthony (Nominated—Anglo-Indians): I am glad that the hon. Home Minister is in the House. Yesterday in the very few minutes during which I spoke in support of my motion for reference to Select Committee, I had emphasized the fact that this is a very vital Bill which deals with the conditions of service of the Supreme Court Judges; and the Supreme Court is something in respect of which we must address ourselves carefully; that the conditions of service will depend on whether the Supreme Court functions as we want it to function in the vitally pivotal position.

I was at the point where I mentioned that although Government may take the position that the salaries that have been set out in the Constitution to be paid to the Supreme Court Judges are sufficient in the context of the resources of the country, I could not accept this position. I pointed out that the Federal Court had much less work, had much narrower jurisdiction, and yet the Chief Justice of the Federal Court used to get a salary of Rs. 7,000 whereas we have fixed a salary to our Chief Justice of Rs. 5,000. A Judge of the Federal Court used to get Rs. 5,500 whereas we have fixed the salary of a Supreme Court Judge at Rs. 4,000. I know that the plea will be taken that this thing has been fixed in the Constitution, but I feel that this is a matter . . .

The Minister of Home Affairs (Pandit G. B. Pant): Just a word of apology. I have to attend a meeting. Shri Anthony was good enough to refer to me. I shall certainly study all that he has said or will be saying, but he will excuse me if I go out now.

Mr. Speaker: Shri Datar will be here.

Pandit G. B. Pant: Yes. I may be coming back.

Shri Frank Anthony: I feel that in this very vital matter of the conditions of service for our Supreme Court Judges, to try and strike a comparison even with the salaries of Ministers is quite wrong. Any economy here is not only mis-conceived economy; to my mind it is false; worse than that, it is dangerous economy.

So far as the pension scales are concerned, I feel strongly, as I mentioned yesterday, that they are not only inadequate, they are grossly inadequate. I think they are grossly niggardly. So far as the Chief Justice is concerned, the maximum limit of pension for him is Rs. 26,000 per

[Shri Frank Anthony]

annum. For a Judge it will work out to Rs. 20,000 per annum. After deduction of income-tax and all the other taxes which we have recently evolved, a Judge will get Rs. 1,000 or Rs. 1,200 a month. Does the hon. Minister seriously believe that a Supreme Court Judge can live with the minimum of dignity on a pension of about Rs. 1,000 a month?

It is a question of degree, a question of comparison. A labourer works. I do not say he cannot live, he lives on Rs. 2 a day, but I do say that in the context of the purchasing power in the country today, a person like a Supreme Court Judge will have to live definitely in a shabby way, probably in a very shabby way.

But it is not so much a question whether he can live at a certain level. What I am trying to under-line is a question of principle. What have been the principles which have been adopted with regard to the Judges of the highest courts in the most progressive democracies? What is the position in Britain? There, there is no age of retirement for the Judges. In America, the same practice is followed. There may be conflicting points of view, but it is a good thing to allow the Judge to continue to be a Judge till 90. But what is the principle that underlies this very salutary convention? It is the maxim: once a Judge, always a Judge. This is the vital maxim which underlies the principle, and that is why in these progressive democracies they have invested the service of Judge with conditions which ensure that at 60 or 65 his emoluments do not suddenly go down to half or one-third or a quarter of what he was getting till then.

I feel, and I say this with all respect, that so far as our judiciary, is concerned, the Government, probably unwittingly, is setting up one

only bad conventions; the Government is setting up retrograde conventions, because we are not prepared or willing to pay our Judges generally an adequate salary; more than that because we are not willing to pay them an adequate pension.

Look at the pernicious conventions that we have adopted. A High Court Judge after retirement is allowed to practise. I had to resist this bitterly when the States' reorganisation was on the anvil because, I said, we practising lawyers knew what would happen, and what we envisaged has happened. Judges who should have maintained themselves on a pedestal, come down into the fierce hurly-burly of a highly competitive profession. They are not practising at the bar, they are malpractising at the bar. They are bringing themselves and the judiciary and the High Court into utter contempt. Speak to any responsible lawyer in any bar, speak to some of our leading lawyers in the Supreme Court bar. The High Court Judges, since you have allowed them to practise—I know the Supreme Court Judges are not allowed to practise—are undercutting the most junior lawyers, and some of the other malpractices will not bear mention. I had resisted this because I knew what would happen. So far as Supreme Court judges are concerned, we do prevent them from practising, but in common with the High Court judges, we do not prevent them from accepting jobs. This is not only a pernicious convention, but it is a malignant convention. It is eating, and it has already eaten into the vitals of the independence of the judiciary in the High Courts. Because we have not maintained this convention 'Once a judge, always a judge', two disastrous consequences have already supervened. Already, so far as most of our High Courts are concerned, the independence of the judiciary is an increasing casualty, and I say this

advisedly. Talk to the leading responsible members of any High Court bar—not to the ordinary members—and they will tell you—of course, honourable exceptions are there—that steadily, within the last few years, there has been a rapid deterioration in the independence of the judiciary in the High Courts.

Shri Satyendra Narayan Sinha (Aurangabad—Bihar): Why?

Shri Frank Anthony: Because political considerations are becoming a dominant factor in the appointment of judges. And this is a fact in many of our—I do not say all—High Courts. Talk to anyone, and he will admit it. Talk to some of your leading jurors, and leading members of the Bench, and they will tell you, and they say it with regret, they say it with pain, and they say it with shame.*** *** It is because you are allowing judges to seek Government patronage and Government jobs, and Government has converted them into job-seekers that this is happening. Everyone is talking about this. And if we were to shirk a vital issue like this, we would be guilty, as I say, of not facing up to an issue which is destroying the independence of the judiciary. Nobody is more disgusted, and nobody is....

Mr. Speaker: The hon. Member's point is that after retirement, it ought not to be open to them to seek any other job....

Shri Frank Anthony: Quite so.

Mr. Speaker: ...or to stand before Government for any such jobs lest it should interfere with the fairness of their judgment.

Shri Dasappa (Bangalore): Except jobs of a quasi-judicial type.

Shri Frank Anthony: That is what I have said. It is Government's policy that is corrupting our judiciary in two ways. For, judges, particularly of the High Court, feel now that they have to be able to supplement their inadequate pensions by getting Government jobs, and they can only get jobs if they curry favour with the politicians and the Ministers; and that is what is happening. What is the good of our shutting our eyes to it? And because of this pernicious and malignant convention of Government, a High Court judge whether he is in service or after he has retired, becomes a Government-job-seeker. I have set my face against it, because nobody is more zealous than I am that we should maintain intact the position which they have held. Put them on a pedestal; isolate them if you like, as they should be isolated; and give them the maximum of confidence, and you can only do it if you set the right conventions. I am sorry to say this, but somebody has got to say it. Everyone is talking about it today. The Bar Associations, and the litigating public are all talking about it, that in many of the High Courts, the rot has set in; and they say that in fifteen or twenty years' time, because the same people will ultimately come to the Supreme Court, the Supreme Court will also lose the semblance of its present independence; and a leading member of the Supreme Court Bar has said that in fifteen or twenty years' time, because of this rot having set in the High Courts, that rot will ultimately dominate the Supreme Court and the Supreme Court will be nothing more than an extension of the North Block in another 20 years. That is why I say it is a serious matter, and I am pleading with Government not to think that there is any conflict in respect of this. Let us make a common cause and refer it to a Select Committee. It is a vital matter which goes to the very basis of the maintenance of an incorrupt and an incorruptible judiciary.

[Shri Frank Anthony]

I am not suggesting for one moment that our judiciary is corruptible by money. So far as the High Court judges are concerned, they are not corruptible. But there are other ways of corrupting people. And this prospect, this constant dangling of Government patronage before them is corrupting them, and is demoralising them—not all; many of them are incorruptible even from this point of view. But what I am more aggrieved about is this.

The second disastrous consequence of allowing a judge, whether a judge of the High Court or a judge of the Supreme Court, to accept Government patronage is that public confidence in the judiciary is rapidly being destroyed. What happens is this. We know that many of our judges are absolutely honest; most of them are. You get a judge who is absolutely impeccable. He gives a judgement. And judges are also fallible. Somebody may discern in it some bias in favour of the executive or the legislature. Immediately the Bar or the public says, 'Why has he given this judgment? Why is there this noticeable bias in favour of the executive? It is there because at the back of his judicial mind, he was thinking of some preferment'. You are exposing your judges to this kind of attack by the litigating public and the Bar.

Mr. Speaker: Is all that relevant so far as the Supreme Court Judges (Conditions of Service) Bill is concerned?

Shri Frank Anthony: Yes. They also become Governors. They can become Ambassadors. They may be supremely fitted for it. But the convention is utterly pernicious. You are exposing your judges to criticism. You are allowing the public, and you are allowing the members of the Bar to point their finger at them—even

though they may not have done so—and say that this judgement has been written because this person had his eye on some Governorship or some ambassadorial appointment in the future. I resent it. We are angered, many of us are angered, at the fact that this criticism is current coin today; and many of us feel that nobody should be able to point a finger at the judiciary, as it is being done today. We resent it. How are you going to stop it; when you yourself are doing all these things? My hon. friend knows that it is a priceless axiom that justice should not only be done but it must appear to be done, and it is that appearance that Government are interfering with today. Government are investing that with the appearance of job-seekers. Are you not doing it? As I say, it is a tragic thing. I resisted this at the time of the consideration of the States Reorganisation Bill. I feel strongly that no judge, whether a judge of the Supreme Court or a judge of the High Court, however estimable he may be, and however fitted he may be for official preferment, should be allowed to accept any appointment, except as I have indicated in my amendment, an appointment by the State to a judicial or quasi-judicial appointment. For that certainly you require that talent. Beyond that, they must not on any account be allowed to accept any appointment either private or official.

In this respect, may I say that they would not have this temptation, they would not accept these jobs if you give them adequate pension. I am prepared to concede that with Rs. 4000 or Rs. 5000 a month, he can live at a certain level, but I am not prepared to concede that a judge of the Supreme Court can live adequately on Rs. 1000. My own view is that they must have a special pension rate. They should get at least Rs. 3000 a month. Then, as I say, there would be no temptation for them to look to government jobs,

There would be no temptation to accept government jobs.

In this connection, may I say that I am completely opposed to the provision allowing certain High Court Judges who do not qualify for a full pension to get the pension of Rs. 7,500? This is a completely wrong provision. If a person, whatever the reasons may be, has not been long enough in the High Court, do not raise him to the Supreme Court Bench, if he cannot qualify for a full pension. I feel on this strongly. What will happen is this. He will get as pension after deductions about Rs. 600 a month. Some person will point to him—he will be living more shabbily than a member of a Class II service—'Look at the former Supreme Court Judge. Look at the way he is living.' You bring the institution into contempt. That is why I have tabled an amendment that your rates are inadequate, that at least you should make it free of income tax. But do not on any account have this provision for a minimum pension of Rs. 7,500 per year for a Supreme Court Judge. If he is not in line, if he is not qualified for a full pension, do not raise him to the Supreme Court Bench.

I nearly wish to conclude by a few observations on the question of leave. The hon. Minister seemed to be very happy when he told us that they had cut down the long vacation. Now, I am going to enter a plea for an objective and a careful approach to this matter of leave for all Judges, and more especially for Supreme Court Judges. There is an impression particularly in political circles that Judges get too much leave, that the long vacation is too long. I say advisedly that there is a real danger of political standards being applied to this question of leave.

What is the kind of work that a Judge of the Supreme Court is required to do? He sits from 10 to 4 with a

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break for lunch. But his work is a work which involves sustained, unremitting mental strain. The most complicated questions of fact and law are being canvassed before him every minute of the day. He cannot get up. A minister can have a cigar, he can have a chat, he can have coffee, and go into the lobby; but a Judge does not do that. It is amazing how they do not go out between 10 and 4, except for the lunch break, on any occasion or anything. And it is not only the work they do in courts; the work they do over the week-end is as strenuous as, perhaps more strenuous than, that they do in courts. What happens? My hon. friend knows that law and legal precedent in this country are literally growing every day and no Supreme Court Judge, unless he wants to become a legal anachronism, can afford not to study the law reports over Saturday and Sunday. He won't know the Indian law, much less the law in the American and other courts. He has to do it. On Saturday and Sunday they write their judgments. We have not given them any of the facilities that the American Supreme Court has. When Justice Warren was here, I asked him. He told me that they have a special elaborate procedure. When they write their judgments, they retire to the countryside. They have echelons of lawyers and professional assistants assessing the facts, studying the law and telling them how a judgment should be written. Our Judges on their own at home have to write judgments on Saturday and Sunday.

Then what happens? They come on Monday. What is the amount of work that is done in the Supreme Court on Monday? Special leave matters. A Bench disposes of on an average between 30—40 special leave matters in three hours. Now most of these special leave matters have voluminous records involving fact and law. The average time taken for the disposal of a special leave petition is five minutes. A death sentence matter disposed of in five minutes! We may not

[Shri Frank Anthony]

like the procedure. But the judges can only do that because they have studied all these voluminous records and studied the law at home on Saturday and Sunday. Saturday and Sunday may be for the average politician a day of *aaraam*, but they are certainly not days of leisure for Judges of the Supreme Court.

I know that on this question the plea is entered that if you have shorter vacation, your arrears will be cleared. I have analysed this. I have discussed this with one of the most senior of our Chief Justices of High Courts. He says the position is impossible. By cutting a few days or weeks, you are not going to begin to touch this problem of arrears.

What I feel is that this facile plea is made by some people for speedy justice. It is a dangerous plea to apply to the Supreme Court. Already many of us feel that the summary procedure of disposing of death sentence matters in five minutes in special leave applications is not adequate. But we cannot help it because there are so many special leave matters and comparatively so few Judges. But in regard to constitutional matters, in regard to appeals that are admitted, there is always a full hearing and we must ensure that there is a full hearing. It is all very well to talk of speedy justice. That may be all right for people's courts in Communist totalitarian countries. They may get speed, it may be inexpensive, but what they dispense is not justice. Here the very hall-mark of justice in the Supreme Court is a full and patient and careful hearing, and I submit with the greatest respect that if that hall-mark is either ignorantly assailed or ignorantly curtailed, you will undermine and destroy public confidence in the highest court of this country.

For these reasons, I say that these matters require the most careful consideration by all sections of the House

and I earnestly request the Home Minister not to reject my request but accept it and let this matter be referred to a Select Committee.

Mr. Speaker: Dr. Subbarayan. Hon. Members will be brief.

An Hon. Member: The time may be extended.

Mr. Speaker: We will have half an hour more.

Dr. P. Subbarayan (Tiruchengode): I have listened with very great care to the remarks addressed by my hon. friend, Shri Frank Anthony. In the first place, he was objecting to the Judges of the Supreme Court and High Courts expecting to be appointed to other places. May I remind him that in the middle of the first world war, Lord Reading, who was then the Chief Justice of England, was sent as Ambassador to the United States? If the State feels that a particular Judge is capable of doing something for the country in another country in a diplomatic mission, I do not think you can restrict that in the way Shri Frank Anthony wants. I am as much for the independence of the judiciary as he stands for, but there are exceptional cases when people are wanted for particular places and I think Government should be given the liberty of appointing such people to places where they think they will do well and be a credit to the country, though I generally agree with Shri Frank Anthony that appointments are not to be given in a haphazard fashion to Judges except what he mentioned himself, namely, labour tribunals etc. which require work of a quasi-judicial nature.

He was complaining about the pay. I agree with him to a certain extent because the pay must be such as to

attract the topmost men at the Bar, because the pay has been reduced to such an extent from what it was in the old days that it is no attraction for a very active practitioner with a large income to accept a Judgeship, however fitted he may be for it. Several Chief Justices have told me that some men would not accept the place because it was not attractive enough for them. But of course, we are always thinking of lower salaries, and our standard of living is not as high as it is in some other countries. Therefore, the pay should be what is provided for in the Constitution. I agree with that to a large extent, but I think some method ought to be found for attracting eminent men from the Bar into the judiciary.

I entirely agree with Shri Anthony that we should not cut into their holidays. As he pointed out himself, most of the Judges spend their Saturday and Sunday in writing judgments. As he said, our Judges have not the facilities which Judges of the Supreme Court have in the United States for the purpose of writing judgments because the latter have outside help. But, on the whole, Mr. Anthony will agree with me when I state that our Judges have done very well in spite of the handicaps under which they work. I do not think that our Benches will not stand comparison with some of the Benches in other countries. We had some very eminent judges. All the same, we got others who were not so eminently qualified. But, when you have increased the number of Judges as has happened in most of the High Courts, you may not always look for quality because quality is not to be obtained. Therefore, you have got to do with the best material in your possession. And that is what has happened.

But, still, I agree with Mr. Anthony that the holidays should not be cut into. And this demand that there should be less holidays for the High

Courts and the Supreme Court will not do at all because they do require rest. As Mr. Anthony says, these judges sit from 10 to 4 either in the High Courts or in the Supreme Court; and, as he has pointed out, it is not an ordinary mental strain because they have got to listen to all the arguments that are put forward. They have got to be awake the whole time. I know judges who have slept on the Bench. But, still, I know of judges who looked as if they slept and all the time they were listening to what was happening. Sometimes they would wake up and ask a particular question which you will find refers to the matter on hand which shows that even though they looked asleep, they were following the arguments that were put forward and knew exactly to put their thumb on a particular point that had arisen.

There are judges and judges. Don't you run away with the idea that they are asleep on the Bench because their eyes are closed. They are really listening. The mental strain, as Mr. Anthony said, is such that though they look asleep and tired, all the same they are doing their duty and paying attention to what is happening before them and they know where exactly to put their finger. Mr. Anthony has had larger experience than I have had because it is a very long time since I left the Bar and I have not ventured to go back to it. But I know what is happening. There are judges and judges. There are some judges who are very quick on the uptake, I would say, because I know a judge whom I do not want to name. He would at once put the finger on the point. Once he said: 'You are arguing all round; why are you not referring to a particular witness?' He turned round and told the practitioner, 'if you cannot knock out this particular witness, you knock yourself out of court', because he said that according to him, everything turned round in this case on this par-

[Dr. P. Subbarayan]

ticular witness. The Council concerned was trying to avoid that witness and going round other witnesses and pointing out what was the flaw in the evidence that had been given on which the judge had come to a certain conclusion. He forgot that the judge also reads the papers like he does himself and this particular judge had read the papers and knew what was involved in the case. He put his finger on the right spot when he talked of the particular witness on whom the whole case depended because he was the only eye-witness to this murder and the particular practitioner was arguing round and round.

Such things do happen and I am sure Mr. Anthony will give credit to our judges that they are awake, that they know what is happening and they can put the finger on the right spot and come to the right conclusions. I would, however, venture to support Mr. Anthony in the matter of pensions. I think Rs. 7,500 for a judge who has not completed his period may be a very good solatium no doubt. At the same time, you are putting them in a position that they will not be able to keep up the standard they are accustomed to. I would, therefore, plead with Mr. Anthony that you should appoint judges in such a manner that they will be able to earn their full pension and live in comfort.

Of course, there are men at the Bar who can be found young enough to get on to the High Court and then to the Supreme Court and earn their full pension. Therefore, there is no need to get people who are about to retire after 3, 4 or 5 years at the most on the Bench, though there may be exceptions and you want to get an exceptional man who is good enough for this purpose. Then, you may pro-

vide for a particular pension for him and not this Rs. 7,500.

I would therefore plead with the hon. Minister to consider the circumstances and come to right conclusions so that the judiciary would be kept above party politics. I do not say that party men cannot be appointed to the High Court. There are cases on the English Bench where people were appointed because of party affiliations. That you cannot help when there is a party Government. I will give you a particular instance, the instance of Mr. Justice Sterling who was first appointed to the Kings Bench Division and afterwards became Lord Justice Sterling. He happened to be the Parliamentary Secretary to Mr. Gladstone who was then the Prime Minister. Mr. Gladstone was influencing the Lord Chancellor all the time to appoint this gentleman to the Bench. The Lord Chancellor turned round to the Prime Minister and said . . .

Shri Nath Pai (Rajapur): This thing is being discontinued now in Great Britain as the latest appointment of the Chief Justice of Great Britain shows. This system of making party appointments to judgeship is being discontinued.

Dr. P. Subbarayan: I do not say that party men should be appointed to judge ships. But all I am saying is that you cannot help appointment of party men; not because they are party men but because they are worthy of the appointment, they are chosen. That is the point I am making. I am not saying that party men should be appointed and Mr. Nath Pai need not run away with the idea that party men should be appointed. (Interruption). What I am pleading for is . . .

Mr. Speaker: I am afraid that all these observations regarding future appointments are not quite relevant—either from Mr. Anthony or from Dr. Subbarayan. They have answered each other. Let us proceed. Even if the

pension is equal to the salary, still a judge may like to become a Governor. God alone knows what he may or may not like. Therefore, let us not stray away. Whether it is adequate or not is the only point here. His liking to have another job may not necessarily be for want of money merely but may be for want of prestige also.

Mr. P. Subbarayan: That is also involved in it. But what Mr. Anthony was aiming at was that you should not place any temptation in their way so that their judgment may be biased because they are looking up to Government for further preferment. That is how I understood Mr. Anthony. I say I agree with him, though there are exceptional cases when the State may require the services of a particular person for a particular job. That is all I said. I do not see where the irrelevancy occurred, Mr. Speaker.

But, as I say, all these things should be looked into and Government should take care to see that our judiciary is placed above party politics and everybody thinks that our judiciary is of such a nature as to inspire confidence in the public.

Pandit K. C. Sharma (Hapur): Mr. Speaker, Sir, I very much appreciate my hon. friend Mr. Anthony's solicitation about the comfort of life of the Supreme Court Judges. I have all respect for his views. But he did not note certain pertinent facts. One of them is that when the Supreme Court Judge is taken from the Bar he has made enough of fortune.

Mr. Speaker: Enough of what?

Pandit K. C. Sharma: He has made enough of fortune, enough of money at the Bar. If he comes from the High Court Bench, in the promotion there is no adverse effect upon him, or his way of living. Therefore, to say that because lawyers are making lots of fortune so the best of lawyers do not come to the Bench is not a very

sound argument for the simple reason that it is not always true that the lawyer who makes the best of fortunes is necessarily the most brilliant lawyer. Because the legal profession is now turned into a private trade—and all sorts of practices are resorted to—where intellectualised men cannot stand competition.

Even a good and successful lawyer is not necessarily a good Judge, because the qualities of mind and character that are necessary for a Judge and a lawyer are quite different. They differ in many respects. Therefore, it is no good argument to say that because a lawyer makes a good fortune, therefore, Judges should be given as much as they can earn at the Bar. That is an impossible proposition. A top lawyer in High Court Bar earns something like Rs. 20,000 to Rs. 30,000 a month. Such a fat salary no State can give to the Judges or to any functionary whatsoever.

12.00 hrs.

Sir, there is another factor which has got a psychological bearing.

12.01 hrs.

[MR. DEPUTY-SPEAKER in the Chair]

Here are developments where the cardinal virtues of social evolution are epitomised in the solemn and sublime symbol of the majesty of law. The hon. Judges—the My Lords—provide the agency of the rule of law and at this stage of development the comforts and luxuries of life pale into insignificance and the dignity of office and nobility of functions get the better of them. Therefore, my respectful submission is that if a man accepts the office simply for the emoluments, in my judgment, he is unfit to sit on the exalted chair.

Shri Nath Pal: It is something different from Bharat Sevak Samaj.

Pandit K.C. Sharma: But all the same it requires human virtues and a man who has not much respect for dignity of the office would not make a good judge. He better joins the Dalmia's office where he could make money.

I support Shri Anthony's case about the pension and I support his motion for sending the Bill to the Select Committee, because there are many important questions, many important aspects and it would be much better if they are quietly and carefully discussed before the Bill is made into law.

Shri Nath Pal: Sir, I share the anxiety expressed by my hon. friend Mr. Frank Anthony though I very fervently hope that we have not yet reached that state of affairs to which he wished to draw the attention of the House and the country. I think it was more a reflection of his anxiety than a description of the reality which is prevailing today in our High Courts. I hold, as he has eloquently been borne testimony to, that the contribution of the judiciary of India in strengthening the citizen's liberty has been very great. I hold, Sir, that the High Courts and the Supreme Court of India will have to play an even greater role in strengthening and preserving that liberty.

Sir, in a democracy like ours, in order to check the excesses and the enthusiasm of the executive, in order to call a halt to that enthusiasm which often has the better part of wisdom, the citizen can depend upon only the High Court and the Supreme Court in particular. The High Court comes in not only when there is a dispute between one citizen and another; far more important is its role when it is called upon to arbitrate between the citizen and the almighty executive.

The way our High Courts have functioned so far is a matter of pride for all of us. But there are certain tendencies which we must guard against and which must not be allowed to escape our vigilance. I should at the very beginning like to point out that the provisions that the Bill seeks to make are very meagre, very meagre indeed. Let there not be any kind of economy in looking after a branch which is charged with the very vital task of preserving the citizen's liberty. This Government reminds one of the men who was penny-wise and pound-foolish—want to have an army on which we are going to spend more than 50 per cent. of the additional taxation which we are going to raise, to defend our freedom and liberty. The High Courts have got a very important part to play in preserving that liberty and freedom. I would like, therefore, to say that whereas we should be very particular about every penny that we spend, anything that we spend we spend in maintaining the independence, the objectivity and impartiality of our judiciary, is the soundest investment we can make. I should therefore, like to point out some tendencies which are likely to develop, if not checked in time.

We have read in the papers about the announcement of the appointment of one of the finest judges this country has as our envoy to Washington. As an individual he is one who has won the affection and admiration of his countrymen; so far as his ability to discharge the duty he is called upon to perform is concerned, we have not the slightest doubt that there are few more fitted than he. But I want to ask you and the Ministry concerned: where are we going to land if these practices are continued? Are these things, these favours which are within the bounty of the executive, to be dangled before the eyes of the judiciary? It is a very sinister thing to make any judge, something which he can not reach because he is

a judge. No judges are in any way to be encouraged to feel that by being a good judge—and we know what that means—he can reach any such post like an ambassadorial post. It is a very dangerous thing. The independence, the impartiality and the objectivity of the judges will be very seriously undermined.

I very seriously hope that no one will misunderstand my reference to this appointment. I have made myself abundantly clear beyond the realms of any possible twist or misunderstanding that so far as his ability is concerned, we have no doubt of any kind. However, if jobs within the bounty of the executive are to be given to judges it is a very serious affair.

I would like to point out another practice that is developing. Whenever there is a vacancy in a Governor's post the practice is gradually developing to make the Chief Justice the Governor. How does he qualify himself to be a Governor? I feel a judge must basically remain a judge. Mr. Anthony has pointed out that one of the cardinal tenets of an independent judiciary is that once a judge always a judge he must remain. He will then alone remain independent. But if the executive can pick him up and make him a Governor in the case of many judges, I am afraid, howsoever impartial and good they may be, and a majority of our judges are good, efficient and impartial, there is a little element of uncertainty, that is, a temptation to surrender to it once in a while. We often say: better to let a thousand guilty men escape than punish one innocent man. So stringent is the law. The same applies here. Now I want to point out one thing. The executive, if it is tired of the objectivity, impartiality and independence of a judge, has one way—to give him an ambassadorial post. This can be a way of removing him—it can act as a temptation in his case, or it can be an instrument in their hands to remove a judge. And then we cannot condemn. After all they do not

victimise him; they have only promoted him.

No, Sir, these tendencies have got to be checked, and very sternly checked. A judge can be promoted only to a higher post within the purview of the judiciary of India, not to any post that the executive has to give. We should be vigilant and cry a halt to this practice. America could produce Justice Holmes and create a law which was something of course in keeping with the law of the Congress of the United States, but also something that reflected a conception of social justice that the country was building because care had been taken to see that his independence and impartiality was assured to him.

Let us be liberal to the judges and ensure to them adequate pay, more liberal and generous pension. This is no extravagance. There are many departments in which economy can be effected. It is not necessary to go on sending forty-seven people to Geneva to attend the Atom-for-Peace Conference. Save money wherever it is possible, but don't have this unwise policy of being economical where charity is required because here we put our money to its fullest value and use. There will be clause-by-clause discussion when I will have more opportunity to have my say.

My final point is this. Ours is a nascent democracy. People by their restraint, Parliament by its wisdom and judiciary by its independence—all together can alone hope to lay the foundations of democracy. At every stage, at every level and strata, we have to guard to see that we take the proper step. So, my plea is this. Let us not hastily rush through this piece of legislation. Let there be mature deliberation so that we can march ahead guarding against the things to which I have already referred during my brief talk. Let us refer the Bill to the Select Committee so that we will be properly advised and guided, so that we can create the foundations on which we can build the grand edifice of our democracy. I may say "In

[Shri Nath Pal]

conclusion that if this tendency is allowed to grow, that edifice which we are working upon may begin to sink in its most vital part, that is, the independency of the Judiciary.

Shri Bhanja Deo (Keonjhar): Mr. Deputy-Speaker Sir, I would request the hon. Minister to accept the suggestion of Shri Anthony to send it to the Select Committee so that the matter may be properly thrashed out there. What should be the allowances, pension, leave, etc. granted to our Supreme Court Judges? The Supreme Court has a very important part in our Constitution and it is rather the custodian of the Constitution. Whenever there is a danger to the Constitution, we may have to refer to them for their interpretation. For our democracy to grow properly, it is necessary that the Judges of the Supreme Court should be of an independent character. I do not say that they are not so. We are proud of our judiciary and that is why they should get the facilities which are not provided for properly in this Bill. Because much has been said about the Judges, their pay and privileges, etc., I would like to come to this point. Some of these points mentioned in the Bill are very vital and they should be thrashed out in the Select Committee. The hon. Minister pointed out that according to article 125 of our Constitution, the Parliament should lay down what should be the privileges, allowances, etc. of the Supreme Court Judges. It has not been done for the last 8½ years after we passed the Constitution. If this matter is referred to the Select Committee and it is delayed by another two months or a little more, nothing untoward would happen within this period. So, I urge the hon. Minister to accept the amendment of Shri Anthony.

There are certain matters where I have some doubt. If a Judge from the High Court comes to the Supreme Court, will he be able to carry forward the leave that stands to his credit? When a Judge goes on

medical leave, will that leave be counted towards his pension? That point also is not very clear from the Bill. The Minimum pension of a Supreme Court Judge should be higher than that provided in the Bill and it should be in conformity with the dignity and the duty performed by him. The pension should be adequate for him. According to the Constitution, the Judges are entitled to official residence. But it is not very clear whether electricity, water and furniture will be provided to them free of cost as in the case of Ministers. When a Judge goes on tour, we do not know whether he can take with him his wife. If the hon. Minister is granted that privilege and while going on tour he can take his wife with him, I do not see the reason why the hon. Judge, when he goes on duty to a far off place, should be denied the facility of taking his wife with him.

Shri V. P. Nayar (Quilon): Why not M.P.s. also? (Interruptions.)

An Hon. Member: We welcome this privilege.

Shri Bhanja Deo: It has come to my notice that when some of our Supreme Court Judges retired, they happened to face certain eventualities. One of our Chief Justices of the Supreme Court, when he retired, could not get travelling allowance to go home as he is entitled to it only when he comes to take office or join the post. That particular Chief Justice had to sell his car here before leaving his office to go to the place of his residence. That is why he should be given travelling allowance as is allowed to him while joining duty. When he vacates office, he should not be put to any extra hardship and should be allowed the same travelling allowance when privy office.

This Bill is of a very important nature. It involves financial matters, which has not been well enunciated

in the bill. Therefore, I would urge the hon. Minister to accept this amendment and send the Bill to the Select Committee so that after due deliberation and mature consideration it can be brought before the House again. It relates to a very important limb of our Constitution and we should not pass this Bill in a hasty manner within 24 hours and I would, therefore, request him again to accept the amendment of Shri Anthony.

Shri Satyendra Narayan Sinha: After the very eloquent speeches of Shri Frank Anthony and my hon. friend Shri Nath Pai I feel a certain amount of diffidence in participating in this discussion. They have made very eloquent pleas for raising the salaries of the Judges and also the scales of pension. The main argument placed before the House is that unless we raise the salary and we make the conditions of service attractive, we will not be getting first-rate men. My hon. friend said that in a particular High Court as many as nine persons declined the offer of judgeship. It is really unfortunate that anybody should decline an offer of judgeship.

So far as the importance of the judiciary is concerned, so far as the need for having an independent, impartial and incorruptible judiciary is concerned, I do not suppose there will be any difference of opinion in this House. We all agree that judiciary is the bulwark of democracy. But the great emphasis that has been placed upon the pecuniary considerations for attracting men to the Bench is somewhat misplaced. I for one do not subscribe to this view.

I sincerely regret that some persons really refused to accept the call to serve as judges merely on grounds of financial loss. It is necessary that we should develop some sort of a convention, some sort of a tradition that when a call is made to serve as a judge it should not be refused on this ground alone. I concede that

members of the Bar are earning much more than what a judge gets, but whatever a person loses, when he becomes a judge, in terms of money, is amply or more than fully compensated in terms of dignity, honour, position, security and, above all, opportunity to serve the State and the people. This aspect of the matter has also to be taken into account, and I do not believe that members of the Bar, who alone are eligible for appointment as judges, place so much emphasis on the pecuniary aspect of the whole question.

Shri Shree Narayan Das (Darbhanga): Lawyers should be debarred from being appointed as judges.

Shri Satyendra Narayan Singh: Members of the Bar, which represent the most noble profession in this country, have had a very illustrious record. We find that most of our leaders are drawn from that noble profession. During the freedom fight we found that the vanguard of fighters of freedom came from this noble profession. I do not think that circumstances have altered so much that members of the Bar have suddenly started thinking in terms of monetary considerations, or mercenary motive is the dominant factor in their mind. Therefore, I have a feeling that in assuming that financial loss or gain or mercenary motive is the dominant factor in their mind we are being very unfair to members of that noble profession, and I would not be surprised if this kind of attitude towards the members of that profession is going to evoke a very great protest, indignant protest, from that noble profession.

We are trying to evolve a socialistic pattern of society. We are trying to create an integrated, harmonious picture of society. I cannot believe that members of that noble profession would like to be kept out of that picture. Even judges as a class would like to be kept out of that picture. We cannot treat them as a class by themselves and say that whatever happens in the society, it has no relevance to them, the economic life

[Shri Satyendra Narain Sinha]

of our country has nothing to do with them. Therefore, this undue emphasis upon pecuniary considerations or mercenary motive is almost sickening to me. I have listened to their speeches with very great respect, and with very great respect I have to say that I do not subscribe to their views.

Even from the point of view of my regard to members of the profession, I wish to enter my humble protest, because at one time I also happened to belong to that profession. In line with the maxim: "once a judge always a judge", I would say: "once an advocate always an advocate". As an advocate, I do not agree that you will not attract the best men if you are not going to raise the salary or pension scale.

My learned friend, Pandit K. C. Sharma, said that the age of retirement of Supreme Court Judges is 65 when the number of competing ones is much less and they have very few requirements to satisfy. For a Supreme Court Judge to look forward to Rs. 3000 per month to permit him to lead a way of life in the context of the existing society, to say the least, is something which is hardly in consonance with the existing position. I for one do not subscribe to this view. I strongly deprecate the tendency to place the emphasis only upon this aspect of life and no other. Their pecuniary loss is amply compensated in terms of prestige in society and dignity. I do not think they will refuse to serve the country due to any pecuniary loss. I think they are patriotic enough.

Sir, while framing the Constitution the President of India was given the top-most position. The Constitution laid down certain scales for different posts in this country. The President of India was given Rs. 10,000, the Chief Justice of Supreme Court was given Rs. 5000, Supreme Court Judges were given Rs. 4000 each and so on. Therefore, certain considerations were there

and a certain amount of dignity, position and honour was attached to particular posts.

You have provided for Rs. 15,000 per annum as pension to be payable to a President who retires. Now, I cannot understand why you should pay more than Rs. 15,000 to any one else? That does not appear to me to be reasonable. Therefore, from this aspect also I want to enter my protest. You should not pay more than Rs. 15,000 as pension to any functionary in India. Rs. 15,000 should be the maximum limit.

Of course, you cannot alter the conditions of service of those who are already on the Bench, but for new entrants you can do so. I would request the hon. Minister to take this into consideration and bring an amending Bill or, if possible, incorporate in this Bill itself a different scale of pension for new entrants.

After having heard the speeches of so many hon. Members I feel that a controversy has almost arisen on this Bill. Therefore, it is necessary that this measure should be sent to a Select Committee where a calmer deliberation can take place, and where you can meet all the different view points and bring forward a measure which will satisfy us all.

With these words, Sir, I support the amendment moved by Shri Frank Anthony.

श्री सिंहासन सिंह (गोरखपुर) : उपाध्यक्ष महोदय, श्री फ्रैंक एन्थनी का भाषण सुन कर मुझे आश्चर्य हुआ। उन्होंने देश में ईमानदारी को रुपये पर तोला है। ईमानदारी और रुपया दोनों मिला मिला चीजें हैं। ईमानदारी कम रुपये में भी रह सकती है और अधिक रुपये में भी रह सकती है।

श्री नाथ राई : ईमानदारी का मूल्यांकन नहीं किया जा सकता।

श्री सिंहासन सिंह : आप रुपये में उसका मूल्यांकन करना चाहते हैं। आप कहते हैं कि रुपये अधिक दो तभी उनकी इंटेगिरेटी और अनेस्टी क्रायम रहेगी अन्यथा नहीं रह सकती। लेकिन दोनों अपने अपने स्थान पर भिन्न भिन्न हैं। एक आदमी को समाज में अधिक से अधिक इज्जत मिल जाये। हमारे देश में प्राचीन काल में यह संस्कृति थी कि उस व्यक्ति को समाज में अधिक से अधिक आदर दिया जाता था जो कि संसार की भाया को छोड़ कर अपने खयालात जाहिर करता था। उस व्यक्ति को राजा अपना आधा सिंहासन दिया करता था। अब हम धर्मवाद की नीति में आकर हर एक चीज को धर्म पर ही तोल रहे हैं। किसी व्यक्ति के लिये इस देश में सुप्रीम कोर्ट का जज होना महान् गौरव की बात होनी चाहिए लेकिन उसकी न्याय करने की क्षमता को इस से तोलना कि उसको कितना दिया जा रहा है मैं नहीं समझता कि कहां तक ठीक होगा। अगर वह न्यायाधीश भी अपनी न्यायप्रियता को, अपने न्याय के स्थान को रुपये के आंकड़ों से तोले तो मैं समझूंगा कि वह भी अपने कर्तव्य का जिस तरह से पालन करना चाहिए नहीं कर रहा है। सुप्रीम कोर्ट के जजेज के बारे में यहां बहस हो यह हमारे लिये शोभा की बात नहीं है। उनको तो हम जितना गौरव प्रदान कर सकें, उनको तो हम जितना ऊंचे से ऊंचा स्थान दे सकें यह देश के लिये शान और गौरव की बात होगी। तो मैं इस स्थान का समन्वय रुपये से करना उचित नहीं समझता।

दूसरी बात में यह कहना चाहता हूं कि टर्म्स आफ सरविस में हम उन को जितनी सुविधा देना चाहते हैं दें, चाहे तो रिटायरमेंट की एज को भी ६५ साल से आगे बढ़ा दें। लेकिन रिटायरमेंट के बाद उन को कोई ऐसा प्रलोभन नहीं होना चाहिये कि उन को गवर्नमेंट में किसी अन्य स्थान पर नियुक्त कर दिया जायेगा। इस विधेयक को देखने से मालूम होता है कि इस प्रकार की सम्भावना है। मैं श्री नाथ पाई की इस

बात से बिल्कुल सहमत हूं कि अगर किसी रिटायर्ड सुप्रीम कोर्ट जज को कहीं बाहर राजदूत बना कर भेजा जाये उस के बनिस्बत अगर उस को कहीं सुप्रीम कोर्ट का जज बना कर भेजा जाये तो उस की न्याय-प्रियता के कारण उस का ज्यादा महत्व होगा। राजदूत बनाने में हां सकता है कि रुपये पैसे के लिहाज से और सम्मान के लिहाज से कुछ ज्यादा फायदा मालूम होता हो। लेकिन इस प्रकार की सुविधा देने में खटका है। हमारे संविधान की धारा १२८ में वह साफ दिया हुआ है कि अगर चीफ जस्टिस योग्य समझे तो किसी भी सुप्रीम कोर्ट के रिटायर्ड जज को रिटायरमेंट के बाद फिर से सुप्रीम कोर्ट में नियुक्त कर सकता है। यह बात तो सम्मान की है और वह रहनी चाहिये लेकिन अगर उस रिटायर्ड न्यायाधीश को कहीं दूसरी जगह नियुक्त किया जाये तो इस में खतरा हो सकता है क्योंकि इन्सान में कमजोरी होती है और वह कमजोरी बहुत दूर तक जाती है, जिस के कारण वह आदमी झुक सकता है। ऐसी कोई आशंका न रहे इसलिये मैं चाहता हूं कि इस विधेयक में कोई ऐसी धारा जरूर होनी चाहिये कि अवकाश ग्रहण करने के बाद कोई सुप्रीम कोर्ट का जज सिवा उस स्थान के जिस का जिक्र संविधान की धारा १२८ में किया गया है और किसी स्थान पर नियुक्त न किया जाये।

दूसरी बात यह कही गई कि इन को अधिक पेंशन मिलनी चाहिये। अभी मेरे भाई सिन्हा ने कहा कि इस में एक बड़ी आपत्ति है। भारत में राष्ट्रपति का सब से ऊंचा स्थान है और वही राष्ट्रपति सुप्रीम कोर्ट के जजों को नियुक्त करते हैं। अब आप देखें कि रिटायरमेंट के बाद राष्ट्रपति को तो १५००० सालाना पेंशन मिलेगी और जिन को वह नियुक्त करते हैं उन को २६००० पेंशन मिलेगी। तो अगर पैसे के हिसाब से नापा जाये तो राष्ट्रपति की इज्जत सुप्रीम

[श्री सिद्धारथ सिंह]

कोर्ट के रिटायर्ड जज से बहुत कम हो जायेगी। राष्ट्रपति का स्थान छांटा हो जायेगा। न्याय की दृष्टि से देखा जाय तो देश में राष्ट्रपति से न किसी को अधिक इज्जत मिलनी चाहिये और न अधिक पया मिलना चाहिये। इसलिये अगर आप सुप्रीम कोर्ट के जजों की पेंशन २६००० रखते हैं तो आप को राष्ट्रपति की पेंशन मजबूरन बढ़ानी होगी। लेकिन जब हम इस प्रकार पया बढ़ाने की बात करते हैं तो हम को देश की आर्थिक स्थिति का भी ध्यान रखना चाहिये। आज हालत यह है कि हम दुनिया में रुपये के इलिये हाथ पसारते फिर रहे हैं लेकिन जहां खर्च करने का सवाल आता है तो हम बड़ी उदारता के साथ सब की पेंशन और वेतन बढ़ाने को तैयार हो जाते हैं। जब रुपये का सवाल आता है तो हम भ्रमरीका, जर्मनी, जापान और सब जगह दौड़ते हैं। और जब खर्च का सवाल आता है तो उदार हो जाते हैं। इन दोनों बातों में बड़ा असन्तुलन है। एक तरफ तो हम मांगते हैं और दूसरी तरफ बड़ी उदारता के साथ दे देते हैं। मैं तो सुप्रीम कोर्ट के जजों से भी प्रार्थना करूंगा कि देश की आर्थिक अवस्था को देखते हुए उन को चाहिये कि "गवर्नमेंट को लिख" कि हमारी पेंशन कम करो, इस में कोई ज्यादा औरब नहीं है। आज हम इस बातानकूलित भवन में बैठे हैं पर हम अपने देश के गरीबों की हालत को नहीं देखते। आज देश में हर जेज खुराक का मसला सामने आता है, कपड़े का मसला सामने आता है, मकान का मसला सामने आता है। जो हमें यहाँ भोजन वाला कोटर है आज उस के बदन पर कपड़ा नहीं है, उस के पेट में अन्न नहीं है, उस के सामने भूखों मरने का सवाल है, और यहां यह प्रश्न सामने आते हैं कि इन की तनस्वाह बढ़ा दो और उन की पेंशन बढ़ा दो। तो हम को देश की आर्थिक हालत को देखते हुए संतुलन से काम लेना चाहिये।

हम ने सन् १९३२ में कानूनी से दिक्कत स्वीकृत पास किया था और उस वक़्त की हालत को देखते हुए यह निर्णय किया गया था कि किसी का ५०० रुपये से अधिक वेतन नहीं दिया जाना चाहिये। लेकिन वह तो अब इतिहास की बात हो गई है।

श्री नाथ पाई : क्या वह सुप्रीम कोर्ट के और हाई कोर्ट के जजों के लिये था ?

श्री सिद्धारथ सिंह : वह तो जनरल था। मैं तो सब के लिये कह रहा हूँ। तो मैं यह कहता हूँ कि हम ने देश की गरीबी का ध्यान नहीं रखा। मेरा तो इस बात से बड़ा विरोध है कि सिवा राष्ट्रपति के किसी दूसरे व्यक्ति को राज्य की तरफ से फ्री फरनिशर हाउस दिया जाये। आप ने इस विधेयक में भी प्रांवाइड किया है। पहले जो फेडरेल कोर्ट के जज थे उन को इस प्रकार की मकान की सुविधा नहीं दी गई थी। ब्रिटिश शासनकाल में गवर्नर जनरल और गवर्नर के अलावा किसी को इस प्रकार की सुविधा नहीं दी जाती थी। आज तो हम यह सुविधा मंत्रियों और बहुत से दूसरे लोगों को दे रहे हैं। लेकिन मैं तो कहूंगा कि इस सब को जोड़जाड़ कर हम उन को उतनी तनस्वाह दें तो ज्यादा अच्छा होगा। हमें यह कहने को तो होगा कि सुप्रीम कोर्ट के जज को इतनी तनस्वाह मिलती है। कहा जाता है कि फेडरेल कोर्ट के जज को ७५०० रुपया वेतन मिलता था। लेकिन मैं कहता हूँ कि आज जो सुविधाएँ हम सुप्रीम कोर्ट के जजों को दे रहे हैं, जैसे फ्री फरनिशर मकान है, शायद लाइट भी फ्री हो, अगर इन सारी सुविधाओं को जोड़ा जाये तो आप को मालूम होगा कि हम सुप्रीम कोर्ट के जजों को भी कम नहीं दे रहे हैं। मैं कहता हूँ कि आप इन को ७५०० वेतन ही क्यों न दें। इस प्रकार घुमा फिरा कर क्यों देना चाहते हैं। तो मैं मंत्री महोदय से प्रार्थना करूंगा कि इस मसले पर विचार किया जाये। क्या इस देश के अन्दर

यह ठीक है कि हम इस प्रकार से किसी को सुविचार्यें बढायें जबकि एक तरफ हमारे देश में लोग शीत और ताप में नंगे बदन बिना भकानों के रह रहे हैं। मैं समझता हूँ कि इस हालत में इस प्रकार की सुविचार्यें देना ठीक नहीं है।

दूसरी बात मैं यह कहना चाहता हूँ कि आप ने सुप्रीम कोर्ट के जजों को प्रावीडेंट फंड की सुविधा भी देने को कहा है। मैं जानना चाहता हूँ कि यह प्रावीडेंट फंड कांट्रीब्यूटरी होगा या नान कांट्रीब्यूटरी। वह बात इसमें साफ नहीं है। मैं जानना चाहता हूँ कि क्या आप इन को दोनों तरह का बैनीफिट यानी पेंशन का और प्रावीडेंट फंड का बैनीफिट भी देना चाहते हैं। यह आप को साफ करना होगा। अगर यह नानकांट्रीब्यूटरी प्रावीडेंट फंड हो तब तो कोई बात नहीं क्योंकि कोई भी अपनी तनखाह में से कुछ रुपया कटवा सकता है। लेकिन अगर गवर्नमेंट इन को पेंशन भी दे और कांट्रीब्यूटरी प्रावीडेंट फंड का बैनीफिट भी दे तो फिर ग्रन्थ से भी इस प्रकार की दोनों सुविधाओं की मांग होगी। उस अवस्था में अगर हम को फिर रुपये के लिये दूसरों के आगे हाथ पसारना पड़ा तो बहुत दुःख की बात होगी। इसलिये सरकार इस प्रश्न पर विचार करे और इन जजों को दोनों प्रकार की सुविधा न दे। एक चीज उन को देनी चाहिये।

मैं इस बिल को सिलेक्ट कमेटी में भेजने के लिये तो नहीं कहता पर मैं चाहता हूँ कि इस मसले पर अधिक गौर किया जाये। यह ऐसा सबाल नहीं है कि जिस पर एक दो घंटे में सीधे विचार किया जा सके। और अभी इस को पास करने की कोई खास जल्दी भी नहीं है। अगर अभी इस सत्र में यह विधेयक पारित न भी होगा तो जजों को कोई सुविधा नहीं होगी क्योंकि नियम तो पहले से मौजूद हैं ही। मैं चाहता हूँ कि इस को

अगले सत्र में विचार के लिये रखा जाये। मैं चाहता हूँ कि मंत्री महोदय मेरे इस सुझाव को मान लें।

एक बात मैं और कहना चाहता हूँ। प्राज सुप्रीम कोर्ट की स्ट्रेंथ ११ आबमियों की है। इस वक्त सुप्रीम कोर्ट में एक चीफ जस्टिस है और दस जज हैं। अपने संविधान में हम ने प्राठ जजिज का प्राविधान किया था—एक चीफ जस्टिस और सात जज। उस के कुछ समय बाद संविधान में संशोधन कर के जजों की संख्या बढ़ा दी गई। लेकिन हम देखते हैं कि जजों की संख्या ग्यारह होने के बाद मुकदमों की संख्या भी बढ़ी है। हमें देखना है कि किस तरीके से जल्दी जल्दी फ़ैसले कर के इन मुकदमों की संख्या को कम किया जा सकता है।

जजों की छुट्टियाँ भी बहुत दी जाती हैं। एन्थोनी साहब को मेरी इस बात पर हैरानी होती है। वह बकालत करते हैं और काफ़ी रुपया कमाते हैं। उन को गरीबों से मतलब नहीं है, मुकदमे में जितनी देर होगी, उन को उतना ज्यादा रुपया मिलेगा। तीन महीने तक सुप्रीम कोर्ट की छुट्टी रहती है। उस के अलावा जजों की भी बहुत छुट्टियाँ मिलती हैं। मैं यह निवेदन करना चाहता हूँ कि तीन महीने तक देश के न्याय का काम रुका रहे, यह ठीक नहीं मालूम होता।

श्री संतोष नारायण सिंह : उस वक्त वेंकेशन जज होता है।

श्री सिंहासन सिंह : वह फ़ौजदारी के केसिज देखता है और सिवल काम नहीं देखता है। उस वक्त सिर्फ एक एप्लीकेशन बीच होता है—वह सिर्फ एप्लीकेशन लेता है और वह कोई डिसिजन वगैरह नहीं ले सकता है।

इसलिये इस बात पर विचार किया जाना चाहिये कि हम अवकाश कम करें-

[श्री सिंहासन सिंह]

ताकि प्रागे चल कर हम को फिर जजों की संख्या न बढ़ानी पड़े। अमरीका की सुप्रीम कोर्ट में एक चीफ जस्टिस है और आठ जज हैं। अमरीका की आबादी कम है, लेकिन उस का क्षेत्रफल दुगुना बढ़ा है। उस के पास धन भी बहुत ज्यादा है। अगर हो सके तो छुट्टियों की संख्या कम की जाय, ताकि जजों की संख्या बढ़ाने की नौबत न आये। यहां हफ्ते में पांच दिन काम होता है।

इन शब्दों के साथ मैं इस बिल को विशिष्ट कमेटी में भेजे जाने के प्रस्ताव का अनुमोदन करता हूं।

Shri Tangamani (Madurai): Mr. Deputy-Speaker, Sir, I am very glad that a Bill like this is being discussed today. It has come to this House under article 125(2) whereby we are legislating to provide for the allowances, privileges and rights in respect of leave, pension, etc. for the Supreme Court Judges. But as the Bill makes it very clear, certain things like the travelling allowance, medical facilities, etc. are only those which are already in existence. Two specific things have been included, namely, pension and leave facilities.

I do agree with some of my learned friends who have spoken before me that this is a matter which has got to be canvassed in a calmer atmosphere. So, a Select Committee will be a proper place for taking up this issue, because there are so many things which are also incidental to the provisions of this Bill.

I find that notice has been given of two amendments Nos. 5 and 9. One of the amendments reads as follows:

"A Judge who has held office as a Judge of the Supreme Court shall not accept any political appointment or take up political career, except any Government job of a judicial nature."

Several Members have already spoken about this. Reference was made to the appointment of Governors and ambassadors from the cadre of Judges. I would add another appointment, which is also an alluring one, namely, Judges of the Supreme Court on their retirement being made the Vice-Chancellors of certain universities. We have had occasion to know how the Vice-Chancellor of a particular university can be a controversial figure. Very recently, on several occasions, we discussed the Banaras University.

My submission is that those Judges who have presided over the highest judiciary in this country should not fail for favours from anybody, to take up the position of Governor, Ambassador, Vice-Chancellor or any other position, however alluring it may be.

Another point I would like to mention is, I do not agree that our Judges are carried away only by the question of monetary emoluments. There are talents and we also know that Judges are appointed to the High Court and Supreme Court from amongst the cadre of men who have had a very lucrative practice either in the High Court or Supreme Court. In many cases I know that accepting Judgeship of the Supreme Court or High Court is more in the nature of a sacrifice. So, this pecuniary attraction is not the main thing, so far as Judges are concerned. So, I do not think we are doing justice to the Supreme Court Judges when we say that the emoluments must be increased.

Our Constitution-makers have seen to it that the salaries of the Supreme Court Judges and the Chief Justice of the Supreme Court should be fixed in the Constitution itself. According to the Constitution, the Chief Justice gets Rs. 5,000 per mensem and the other Judges of the Supreme Court get Rs. 4,000. We are now asked to legislate for the other facilities. Coming to the provisions of this Bill, I find that clause 14 deals with the Judges from ICS cadre. I do not think the ICS cadre Judges should have any

discriminatory treatment from the non-ICS Judges. I do not think these Judges should be treated differently. They have to merge; otherwise, the old imperialist hang-over of past will be still lurking. I find that the ICS Judges are allowed to have the old ICS scale of pension or leave facilities and they can also, if they want, accept the terms which are conferred on them by this legislation. I think it is high time the distinction between ICS and non-ICS in the judiciary was dispensed with.

My next point is, now specialisation is taking place all round the country. The other day we had occasion to deal with industrial tribunals. We had also occasion to deal with election tribunals. So far as industrial tribunals are concerned, there is, of course, no right of appeal to the Supreme Court direct. But in many cases, we find that under article 136, appeals are preferred to the Supreme Court. So, my submission is, however eminent a Judge may be, it is difficult for us to conceive of a Judge who will know everything about industrial law, income-tax law, criminal law, civil law, election law or any specialised kind of law. So, we will have to have special Benches in the same way as we are having the Constitution Bench. There must be a special Industrial Bench, special Election Bench, special Military Bench, etc. We must have also an Income-tax Bench, Railway Bench, Water Transport Bench and so on. Probably it may be something in the air today. But after a few years, we ourselves will realise that unless such departmentalisation comes up in the judiciary itself, we are not going to have efficiency in the matter of disposal of cases.

After independence, we find that there are more and more cases pending year after year. Several questions have been tabled in this House as to the number of cases pending before the Supreme Court and the High Courts. I do agree with some of the friends who mentioned that we are opposed to any kind of summary

disposal. We want a proper hearing. But, at the same time, what is the point in giving matters to a particular judge or particular Bench which has been dealing with constitutional matters? A matter which has been canvassed for nearly three years before an industrial tribunal is placed before a judge who has been dealing with constitutional matters. If it is referred to a particular Bench which has been specialising in industrial disputes, I am certain that they will be able to grasp the points much quicker than the other judges. That kind of division of labour will have to take place.

Another suggestion I would like to make is that the rules governing the Supreme Court need some change in relation to what is happening in the country today. Many people find that it is very expensive to go to the Supreme Court now. I can speak from my own experience about industrial disputes. Whenever an award is given in an industrial dispute, it is more the employers who are in a position to go to the Supreme Court.

Shri V. P. Nayar: Equal protection of the law.

Shri Tangamani: This is the equal protection that is given. I am not going to give any figures. But I will say that the amount of deposit for certain kinds of appeals will certainly have to be reduced. I know that in the Strait Settlements, they have statutorily fixed that whenever a suit is filed so many weeks will have to elapse before the matter has been disposed of. It may be a very big suit and it may involve lakhs and lakhs of rupees. But within three months the suit will have to be disposed of. Then, from the moment the appeal is filed it will have to be disposed within four weeks. We have also got our legislation. The Representation of the People Act provides that the election tribunals should dispose of the question within six months and after the appeal is preferred to the High Court, the High Court has to dispose of it within one month. But that never

[Shri Tangamani]

happens. We are told that in some cases the matter is pending before the election tribunal for more than 18 months. Then when the matter is referred to the High Court, it is not able to dispose of the case within one month.

This is a matter which will have to be taken up, though not by us, but by the Law Commission seriously. What is the use of the Law Commission going *ad infinitum* into certain items of detail instead of going into the real difficulties which face us in actual practice? So, that has to be looked into.

Then I come to the question of the age of retirement. I am of the opinion that there should not be any discrimination in the matter of retirement in the judiciary. Here I must say with respect that some of the judges of the district courts are very eminent men and it is very unfortunate that they are not elevated to the High Court. It is unfortunate that they have not come to the Centre. There are various considerations which are taken into account in a party government. Whether they are judges of the district court, High Court or Supreme Court, the age of retirement should be the same. Why should it be 55, 60 and 65 in the case of these three categories? Let there be some unanimity about the age of retirement of judges.

One or two more points and I am done. One hon. Member referred to Mr. Justice Oliver Wendell Holmes. Any student of law who wanted to know the elementary principles of law used to read the judgments of Justice Holmes. I remember, every time the famous Marxist, Harold Laski, referred to any judiciary, he always made it a point to bring Justice Holmes into the picture. Justice Holmes was a judge of the United States. He was humane and he has seen the limitations of

judiciary. I remember he said—I just quote from memory—

“Any articulate major premise of law under capitalism is that you retain the class structure of society and other things incidental thereto.”

It may be the same in a socialist State also. We have now dedicated ourselves to a socialist pattern of society. That is the declared policy of the government and different parties have accepted it with, maybe, different understandings. Now it is a changed country. It is no longer under the British imperialism. It is a changed country, but it will certainly absorb the best in the British jurisprudence without being a slave to Anglo-Saxon jurisprudence.

This country must have the correct interpretation of this Constitution. So my submission is that the major premise of law has also got to change. There were many eminent and talented personages, not only in the High Courts but also in the Federal Court, not only judges of British origin but also Indian judges. I may be excused if I mention one of the judges who is still living, a judge of the Federal Court, who was also a member of the first Pay Commission, Mr. Justice Varadachari. I might say that he will satisfy almost all the criteria which I have mentioned here. I do not think he will accept a post, even if it is offered, from whomsoever it may be. The only thing that he now deals with in his life is the subject of the unity of Indian culture and how with the Indian culture we were able to develop British jurisprudence. These are the two things in which he is very much interested. Then there are Chief Justice Mukherjee, Justice Bhashyam Ayyangar, Justice Mohammad, Justice Ashutosh Mukherjee and others. These are very great names, and their traditions must be maintained.

Having said this, I submit that if we want these judges to really defend us

from any encroachment on our Fundamental Rights, if we want them to correctly interpret the Constitution, then it has to be discussed in a much calmer atmosphere. I do not agree that monetary consideration alone is a thing which weighs with judges. Several considerations will weigh with them. There are some judges who, like one judge of a particular commission, are prepared to work without any pay. A fear was expressed by Shri Anthony that the judges will be forced to go behind important Ministers to get favours. I hope it will not come true. I know the case of one or two judges, whom I should not mention, very eminent judges, because they are not in the good books of certain powers that be they are not elevated to higher posts. So, their talents are not being utilized.

I will end by coming back to clause 21-A, which has been moved as an amendment, which says that a judge who has held office as a judge of the Supreme Court shall not accept any political appointment or take up political career except any Government job of a judicial nature, It is self-explanatory.

शंखित ठाकुर दास भार्गव : (हिसार)

जनाब डिप्टी स्पीकर साहब, इस बात में कोई शक नहीं है कि सुप्रीम कोर्ट जजिज की सर्विस कन्डीशन के बारे में यह बिल गैर-मामूली ग्रहमियत रखता है और इस के मुस्तलिफ एस्पेक्ट्स पर गौर करने के लिये यह जरूरी है कि इस मामले पर जितना मुमकिन हो, उतना गौर किया जाये। बिजनेस एडवाइजरी कमेटी ने इस बिल के लिये जो दो ड्राई वंटे का वक्त दिया है, मेरी राय में वह बिल्कुल नाकाफी है। न ही इस सदन में इस बिल से मुताल्लिका सारी जरूरी बातों पर अच्छी तरह से गौर किया जा सकता है। इसलिये मेरी नाकिस राय में इस बिल को जरूर सिलेक्ट कमेटी में भेजा जाना चाहिये। इस में चन्द एक बातें इतनी ग्रहम हैं कि उन की बाबत सिर्फ़ धाज ही नहीं कहा गया है, बल्कि कांस्टी-यूट ग्रसेम्बली में भी उन का तजकिरा हुआ 209 'A' L.S.D.—7.

था। धाज सी बे बातें उतनी ही जरूरी हैं, जितनी कि बे उस वक्त थीं, जब कि हम ने अपना कांस्टीट्यूशन बताया था। बे बातें ऐसी हैं, जिन के बारे में राय में फर्क हो सकता है। इस सिलसिले में मैं यह भर्ज करना चाहता हूँ कि जो शरुस एक दफा सुप्रीम कोर्ट का जज हो जाये, उस के दिल में यह ख्याल भ्राना कि किसी पोलीटिकल जगह पर, या किसी ऐसी जगह पर, जो कि सिर्फ़ जुडिशयल न हो, जो कि उसी तरह की न हो, जैसी कि सुप्रीम कोर्ट के जज की होती है, उस की एप यंटमेंट हो सकती है, हमारे लिये एक निहायत खराब वोज है। सारे सिविलाइज्ड मुल्कों में इस तरह के कन्वेन्शज बने हुए हैं। इस में कोई शक नहीं कि हमारे सामने लाई रीडिंग की मिसाल दी गई। मैं तो उस मिसाल से वाकिफ नहीं हूँ, लेकिन मैं समझता हूँ कि शायद वह इस तरह की अकेली मिसाल होगी।

14 hrs.

श्री बें० प० नायर : हमारे देश में भी कभी कभी ऐसा होता है।

पंडित ठाकुर दास भार्गव : आप का देश और कोई होगा।

श्री बें० प० नायर : नहीं, भारत में।

पंडित ठाकुर दास भार्गव : मैं समझता हूँ कि यह बात हमारी जुडिशरी की इंडिपेंडेंस को कायम रखने के वास्ते बिल्कुल फंडामेंटल है कि न तो गवर्नमेंट यह ख्याल करे कि वह सुप्रीम कोर्ट के किसी जज को गवर्नर बना सकती है, या कहीं एम्बेसडर बना कर भेज सकती है, या और किसी पोस्ट पर मुकर्रर कर सकती है और न ही सुप्रीम कोर्ट के किसी जज के दिल में यह ख्याल रहना चाहिये कि मैं ऐसी किसी जगह पर एपाइंट हो सकता हूँ। ह्यूमन नेचर जैसी है, उस से सभी लोग वाकिफ हैं। मैं कितने ऐसे जजों को जानता हूँ, जो सुप्रीम कोर्ट या हाई कोर्ट के जज नहीं बल्कि डिस्ट्रिक्ट जज रहें। जब तक वे काम करते रहे, वे बड़ी ईमानदारी से काम करते रहे, लेकिन जब वे रिटायर होने लगे

[पंडित ठाकुर दास शर्मा]

हैं, तो सब को ब्याल आता है कि अब मेरा क्या होगा। उस वक्त वे जरूर देखते हैं कि किसी न किसी गवर्नमेंट जाब पर लग जायें। यहां तक कि मैं ने कितने ही रिटायर्ड जजिज को डिटेन्शन लाज की छोटी छोटी कमेटियों के लिये कोशिश करते देखा है, सिफारिशें कराते देखा है, कि किसी तरह से हम उन में आ जायें। उन की बात समझ में आ सकती है। लेकिन सुप्रीम कोर्ट के जजिज की बात दूसरी है। जब यह मामला कांस्टीट्यूट एसेम्बली में था, तो मैं ने अर्ज किया था कि वे सप्तरक्षियों की तरह हैं। इस देश की आजादी के दो बुलवर्क हैं—एक तो यह पार्लियामेंट और दूसरा सुप्रीम कोर्ट। पार्लियामेंट में भी हम मेम्बरों की डिस्क्वालिफिकेशन के बारे में एक बिल ला रहे हैं, जिस में हम ने यह उलू रखा है कि वे एजेंक्टिव से किसी किस्म की एपायंटमेंट एक्सेट न करें। क्यों ? इसलिये कि पार्लियामेंट के मेम्बरों की इन्टेग्रिटी, प्योरिटी और इन्डिपेंडेंस पहली चीज है, जो कि देश की सिक्चोरिटी की जामिन है। लेकिन इस से भी बढ़ कर हम ने फंडामेंटल राइट्स बनाये और एक तरह से हमारी सुप्रीम कोर्ट और हाई कोर्ट उन को गारण्टी करते हैं। मेरी निगाह में तो हमारी कुल आजादी के मालिक वे जजिज हैं। कभी चर्चिल के बारे में हम ने सुना था कि लड़ाई के दिनों में उस की स्पीचिज ऐसा असर रखती थीं, जैसा कि किसी बेटेलियन का किसी मुल्क में चले जान से होता है। मैं समझता हूँ कि आप इस देश में हजारों पुलिस मैन एपायंट कर दीजिये, लेकिन वे पीस सिक्चोरिटी और लिबरटी के बैसे मुहाफिज नहीं हो सकते हैं, जैसे कि सुप्रीम कोर्ट के जज अपनी जगहों पर बैठे हुए हमारे हक्क के मुहाफिज होते हैं। जब हम ने सुप्रीम कोर्ट के जजिज को वह जगह दे दी, जो कि सप्तरक्षियों के बराबर है, और हम ने उन को अपनी लिबरटी का बुलवर्क बना लिया, तो ऐसी सूरत में उन के दिमाग में एक दफा भी यह ब्याल आना कि हम को कोई और जगह मिल सकती है, हमारी

इन्डिपेंडेंस के लिये उन की लिबरटी के लिये नहीं, बल्कि इस देश की लिबरटी के लिये, किसी जरूर से कम नहीं है। मेरी नाकिश राय में अकेला यह प्वाइंट कि वे आईन्दा कहीं एप्वायंट हो सकें या नहीं, इतनी इम्पोर्टन्स का है कि महज उस के लिये इस बिल को सिलेक्ट कमेटी में भेजा जाना चाहिये, जो कि इस सिलसिले में सारी दुनिया की हिस्ट्री देखे और अपनी तसल्ली करे।

मेरी राय इस बारे में बिल्कुल साफ है। जब इस हाउस में इस बात पर चर्चा हुई थी कि कोई गवर्नर साहब रिटायर हो कर काम करें या नहीं, तब मैं ने अर्ज किया था कि हमारी गवर्नमेंट सुप्रीम कंट के किसी जज को किसी दूसरी जगह—गवर्नर के तौर पर—मुकर्र कर दे, इस को मैं निहायत ही बुरी निगाह से देखता हूँ। हम तो अंग्रेजों की कांस्टीट्यूशनल हिस्ट्री में और दूसरी जगह यही देखते आये हैं कि वन्स ए जज आलवेज ए जज। उस को कभी किसी दूसरी जगह एपायंट नहीं किया जाना चाहिये और न ही उस को ऐसी इजाजत होनी चाहिये। उस के दिल में कभी यह ब्याल नहीं आना चाहिये कि रिटायर होते हुए मैं कोई फैसला कर दूँ, तो मुझ को फायदा हो सकता है।

जनाब के रूब रू जिक्र आया है कि उन की तनख्वाह बढ़ा दी जाये। मैं इस बहस में नहीं पड़ना चाहता हूँ। मैं तंड शिड्यूल में लिखा हुआ है कि उन की इतनी तनख्वाह होगी। वह तनख्वाह जस्टिफाइड हो या न हो, उस से ज्यादा हम तनख्वाह नहीं दे सकते हैं। अगर किसी जज के लिये ज्यादा तनख्वाह का सवाल हो तो मैं उस को प्रज नहीं करता हूँ, क्योंकि हम ने सुप्रीम कोर्ट और हाई कोर्ट के जजों को न सिर्फ टेम्पटेशन से एबाव रखना है, बल्कि उन को आराम से रखना है। जब तक वे पूरे आराम में नहीं रहेंगे और उन को कोई फिक्र न रहेगा वे अपने काम को अच्छी तरह से नहीं कर सकेंगे और इस का नतीजा

यह होगा कि सही फैसले नहीं होंगे। आप सब जानते हैं और मैं भी जानता हूँ और यह बात किसी से छिप नहीं हुई है। कई हाई कोर्ट के जजिज ऐसे हैं जिन की प्रैक्टिस बहुत अच्छी हुआ करती थी और इतनी अच्छी हुआ करती थी कि कोई ठिकाना ही नहीं। उन को जो तनस्वाह मिलती है उस से ज्यादा एक मामूली वकील भी पैदा कर लेता है। लेकिन फिर भी उन्होंने ने अपनी प्रैक्टिस की परवा न कर के हाई कोर्ट की जजिप ली। आम तौर पर यह कनवैन्शन सी बनी हुई है कि एक अच्छे से अच्छा वकील भी जो सिर्फ रुपये की तरफ ही नहीं देखता है, अपनी प्रैक्टिस को लात मार कर जब उस को जजिप आफर होती है उस को एक्सेप्ट कर लेता है। इस का कारण यह है कि ऐसा समझा जाता है कि इस के अन्दर मौका है देश की सेवा करने का, इन्साफ करने का वगैरह। मैं नहीं मानता कि कोई भी अच्छा वकील इस आफर से इन्कार करेगा। फ्रैंक एन्थनी साहब जैसे हो सकता है न आयें क्योंकि उन के लिये आप कितनी तनस्वाह बढ़ायेंगे। आप तीस चालीस हजार भी कर दें तो भी शायद वे न आयें। लेकिन जो अच्छा वकील है और जो अपने फर्ज को समझता है वह कभी भी इस आफर को ठुकरायेगा नहीं और जो कनवैन्शन बनी हुई है उस को तोड़ेंगा नहीं। बहुत थोड़े लोग हैं जो रिफूज करते हैं।

यहां पर कहा गया है कि नौ प्रादमियों ने इस आफर को लेने से इन्कार कर दिया है। मुझे ताज्जुब है कि कैसे उन्होंने इन्कार कर दिया और इस कनवैन्शन को ठुकरा दिया। लेकिन इसका मतलब यह नहीं है कि उन लोगों से हम कहें कि वे बतौर साधू के काम करें। इसके लिए कोई भी तैयार नहीं होगा। उनकी भी बहुत सी जरूरियात होती हैं जिन को उन्हें पूरा करना होता है। जहां तक तनस्वाह का सवाल है जब हम ने कांस्टिट्यूशन बनाया तो इस में जो तनस्वाह और पेंशन का प्राविजन रखा तो वह बहुत सोच विचार करके रखा और

बड़ा बेलेंस करके उसको हम ने बनाया। यहां पर राष्ट्रपति जी का भी जिक्र किया गया है। लेकिन मैं समझता हूँ कि अगर आप हाई कोर्ट या सुप्रीम कोर्ट जजिज के लिये कोई तबदीली करते हैं तो हो सकता है कि बेलेंस न रहे। इस चार हजार को अगर आप कम करते हैं या ज्यादा करते हैं तो भारी में, नेबी में तथा दूसरी कम्पेयरेबल पोइंट्स में भी इसके साथ ही साथ आपको तबदीलियां करनी पड़ेंगी और उनकी तनस्वाहों को तथा पेंशंस को भी आपको कम या ज्यादा करना पड़ेगा। इसका नतीजा यह होगा कि सारे का सारा जो बेलेंस है वह बिगड़ जायेगा। आपको ना-मालूम कितने लाख रुपये और खर्च करने पड़ जायें तथा दूसरी तबदीलियां करनी पड़ जायें। मेरा खयाल है कि इस मामले को जिसको कि कंस्टिट्यूट असेम्बली ने बड़े गौर के बाद तय किया था रिश्चोपन नहीं करना चाहिए और यह ठीक नहीं है। आप देश का खयाल करें, उन लोगों की बुजुर्गी का खयाल करें। मेरा खयाल है कि कोई भी सुप्रीम कोर्ट का जज अपने दिल में यह सोचता नहीं होगा कि इस वक्त देश की जो हालत है उसको देखते हुए उसके लिए चार या पांच हजार रुपया बतौर तनस्वाह पाना कुछ कम है। कुल हालात को देखते हुए मैं समझता हूँ कि इस तनस्वाह के सवाल को न तो हम लीगली ओपन कर सकते हैं और न ही हम को ओपन करना चाहिए।

श्री फ्रैंक एन्थनी साहब ने दो बातें कही हैं और उनमें मैं उनसे बिल्कुल सहमत हूँ और यह मैं अपना फर्ज समझता हूँ कि उनका जिक्र मैं इस हाउस में करूं। पहली बात तो यह है कि हम उस तरीके से संतुष्ट नहीं हैं जिस तरीके से कि हाई कोर्ट के जजिज की एम्पाइंटमेंट्स होती हैं। मुझे सुप्रीम कोर्ट का तजुर्बा नहीं है, गो मैं जानता हूँ कि सुप्रीम कोर्ट के जजिज के बारे में भी कई बार यह सुनने में आता है कि वहां जो सब से बड़ा जज है यानी चीफ जस्टिस उसको भी एमोच किया जाता है और कहा जाता है कि गुम इस तरह से कर दो। हाई कोर्ट

[पंडित ठाकुर दास भार्गव]

के जजिज के बारे में तो मैं अच्छी तरह से जानता हूँ कि किस तरह से उनकी एप्वाइंटमेंट्स होती हैं और कई कंसिडेरेंस कई बार ऐसी गवर्नमेंट के सामने होती हैं जोकि नहीं होनी चाहियें। ये एप्वाइंटमेंट्स सिर्फ इसाफ की बिना पर और मेरिट पर नहीं होती हैं। मुझे बड़े दुःख के साथ कहना पड़ता है कि कितनी ही सूरतों में ऐसे जज एप्वाइंट होते हैं जिन के ऊपर वे कंसिडेरेंस नहीं होती हैं जो होनी चाहियें। दूसरे अरुसर जो रखे जाते हैं और जो बड़े बड़े अरुसर होते हैं उनकी बात को मैं छोड़ता हूँ। लेकिन मैं बड़े प्रदब से अर्ज करना चाहता हूँ कि दूसरी जगहों पर आप कुछ भी करें, किसी को भी एप्वाइंट करें तथा कोई भी कंसिडेरेंस अपने सामने रखें लेकिन हाई कोर्ट और सुप्रीम कोर्ट के जजिज के एप्वाइंटमेंट्स के बारे में सिर्फ मेरिट को ही कंसिडर करें। जो लोग रखे जायें वे ऐसे होने चाहियें जो कि उन क्वालिफिकेशंस को आसर करें जो इन पोस्ट्स के लिये रखी जाती हैं। इसके अलावा और कोई भी कंसिडेरेंस गवर्नमेंट के सामने नहीं होनी चाहियें। हम इसी दुनिया में रहते हैं और हमें मालूम है कि किस तरह से लोग एप्वाइंट होते हैं। यह मुझे बहुत दुःख के साथ कहना पड़ रहा है। मैं अर्ज करता हूँ कि जहां तक एप्वाइंटमेंट्स का सवाल है वे बिल्कुल सहा तौर पर होनी चाहियें।

दूसरी बात जो मैं अर्ज करना चाहता हूँ वह यह है कि आज के दिन हमारी हाई कोर्ट्स में जो इंडिपेंडेंस है, वह ज्योपाडी में है और तरह तरह की बातें हम हाई कोर्ट्स के जजिज के बारे में सुनते हैं और ये ऐसी बातें होती हैं जिनको सुन कर सिर शर्म से झुक जाता है। हम चाहते हैं कि हमारी जो हाई कोर्ट्स हैं वे बिल्कुल अबाव-ससपिशन हों, उनकी तरफ कोई अंगुली उठा कर न देख सके। यह बेसिस जस्टिस का है, यह बेसिस सोसाइटी के प्रिजर-वेशन का है। अगर इसके अन्दर गड़बड़ी होती है तो हम कहां जायेंगे यह नहीं कहा जा सकता

है। हम बहुत अष्टाचार सुनते हैं वेल्थ के अन्दर। लेकिन हाई कोर्ट्स के अन्दर अगर अष्टाचार की कहानियां जो रायज हैं, वे अगर और ज्यादा हो गईं तो पता नहीं हम कहां जायेंगे। किसी खास जज के बारे में मैं यह नहीं कहता हूँ। आम तौर पर हाई कोर्ट्स के जजिज की इंडिपेंडेंस हमारे वास्ते ऐसट प्राफ वी फर्स्ट प्रायोरिटी है। यह सब से इम्पार्टेंट चीज है। इसको कम होने देना बहुत भारी गलती होगी। अगर आपको इसके बारे में कोई शक हो तो आप सुप्रीम कोर्ट के जजिज से इसके बारे में पूछ सकते हैं, हाई कोर्ट्स के जजिज से पूछ सकते हैं और वे आपको बतलायेंगे कि यह दुरुस्त है या नहीं। जो स्टैंडर्ड और रेपुटेशन पहले थी वह आज किसी कदम कम होती जा रही है। अगर वह और कम हुई या वह इंडिपेंडेंस कायम न रही जो पहले थी, तो यह हमारे देश की स्टेबिलिटी के लिए बहुत नुकसानदेह साबित होगी।

श्री सिंहासन सिंह : जिम्मेदारी गवर्नमेंट की है।

पंडित ठाकुर दास भार्गव : हर चीज की जिम्मेदारी गवर्नमेंट की है। अगर आबादी बढ़ती है तो वह भी गवर्नमेंट की जिम्मेदारी है। गवर्नमेंट ही माईबाप है।

तीसरी बात मैं पेंशन के बारे में कहना चाहता हूँ। मेरे दोस्त ने यहां पर राष्ट्रपति जी की पेंशन का भी जिक्र किया है। इस के बारे में मैं यह अर्ज करना चाहता हूँ कि जहां तक साढ़े सात हजार रुपये साल पेंशन का सवाल है, यह एक अलग चीज है। इस को आप २६००० और २०००० से कम्पेयर न करें। किसी चीफ जस्टिस के लिये २६,००० रुपया काफी हो या नाकाफी हो, इस के बारे में मुझे कुछ नहीं कहना है। डिगनिटी के साथ वे रह सकते हैं या नहीं यह भी मुझे नहीं कहना है। लेकिन मैं पूछना चाहता हूँ कि हमारे मिनिस्टर्स को क्या मिलता है, स्पीकर और डिप्टी स्पीकर को क्या मिलता

है ? क्या वे किसी तरह से कोई कम इम्पार्टेंट काम करते हैं ? कितना भी इम्पार्टेंट काम हो वह तब तक तनक्वाह से जज नहीं होता है । हमारे सेक्रेटरीज हमारे मिनिस्टर्स से ज्यादा तनक्वाह पाते हैं लेकिन इसके यह माने नहीं हैं कि हमारे मिनिस्टर्स उनसे कम इम्पार्टेंट काम करते हैं या उन से किसी कदर कम काम करते हैं या कम रिसर्पासिबिलिटी का काम करते हैं । यह तनक्वाह का कोई क्राइटीरियन नहीं है ।

लेकिन ताहम एक बात मैं कहना चाहता हूँ । अगर सुप्रीम कोर्ट के जज को हम ६०० रुपया पेंशन दें और उससे कहें कि तुम इस में गुजारा करो, तो यह आयज नहीं होगा । हम अपनी सोसाइटी को जानते हैं । अगर उनको ६०० रुपया महीना दिया जाता है तो किस तरह से वे अपना गुजर बसर कर सकते हैं, किस तरह से अपने बाल बच्चों को पाल सकते हैं । सुप्रीम कोर्ट के सारे जजिज ऐसे नहीं हैं कि जिनके बीवी बच्चे न हों । उन का कुनवा भी है, खर्च भी उन के है, लायाबिलिटीज भी उन पर हैं । आप कम से कम उन को इस तरह से तो रखें कि वे अच्छी तरह से रह सकें । मैं जानता हूँ कि सुप्रीम कोर्ट के कितने ही जजिज बहुत ही सिम्पल हैं, बहुत ही काबिले इन्जत हैं और हमारे आइडियल्स के मुताबिक हैं । लेकिन ताहम वे कुनबेदार आदमी हैं, उनकी भी रिसर्पासिबिलिटीज हैं, उन के भी खर्च हैं । इस वास्ते हमारा यह फ़ज है कि जब कोई सुप्रीम कोर्ट का जज रिटायर हो तो कम से कम उस को हम इस तरह से तो रहने का मौका दें जिस तरह से कि एक अच्छे मिडिल क्लास का आदमी रहता है । मैं पूछना चाहता हूँ कि आज ६०० रुपया माहवार के अन्दर वह किस तरह से रह सकता है । एक शख्स को जिसको कि आप एक बार इतना बड़ा ख़तबा देते हैं, इतनी बड़ी जगह पर लगाते हैं, जब वह रिटायर हो जाता है उसको इतनी पेंशन तो दें कि वह एक अच्छे मिडिल क्लास-मैन की तरह से रह सके ।

इस में २६,००० और २०,००० रुपये सालाना पेंशन की जो बात कही गई है उस के बरख़िलाफ़ मुझे कुछ भर्ज नहीं करना है । लेकिन आपको उसके स्टैंडर्ड और रेपु-टेशन का भी खयाल करना होगा । आप को उस को इतनी कम पेंशन नहीं देनी चाहिये कि वह यह महसूस करे कि उस के साथ इंसाफ़ नहीं हुआ है और वह अपना गुजर नहीं कर सकता है । अगर आप इस बड़ी या पूरी पेंशन को एक दफा डिस्टर्ब कर देंगे तो मुझे नहीं मालूम कि हम कहां जायेंगे । इस वास्ते यह जो ७५०० की रकम रखी गई है, यह मुझे बहुत ही कम मालूम पड़ती है और मैं महसूस करता हूँ कि एक अच्छी मिडिल क्लास का आदमी ६०० रुपये माह-वार में गुजारा नहीं कर सकता है । सुप्रीम कोर्ट के जज के बारे में अगर आप इस को रखेंगे तो मैं समझता हूँ यह मुनासिब नहीं होगा । इस वास्ते मैं भर्ज करना चाहता हूँ कि जब मैंने सेक्रेटरी शेरियल को पढ़ा तो देखा कि हम खास तौर से सेक्रेटरी शेरियल से किसी हद तक बंधे हुए हैं । कांस्टिट्यूशन में लिखा हुआ है कि इतनी ही चीज हो सकती है । न हम उससे आगे जा सकते हैं और न पीछे जा सकते हैं, जब तक कि हम कांस्टिट्यूशन को ही तब्दिल न करें । इस लाइट में हमें देखना है । इसके मुताबिक हमें देखना है कि यह चीज दुफ़्त है या नहीं । इसलिये मेरी अदब से गुजारिश है कि जहां तक इस बिल का सवाल है, वह ऐसा है कि अगर आप इसे सेलेक्ट कमेटी में ले जायेंगे तो ज्यादा अच्छा होगा । आप मुझे माफ़ करेंगे अगर मैं यह भर्ज करूँ कि जो नाम श्री एण्थनी ने रक्ले हैं उनसे मैं किसी हद तक मुतफिक नहीं हूँ क्योंकि उस में प्रिपॉंडरेंस है एक तरफ़ के लोगों की । अगर आप चाहते हैं तो और नाम जोड़ें, लेकिन इस बिल को सेलेक्ट कमेटी में जरूर ले जायें और वह जो इस के मुस्तलिफ़ पहलू हैं, उन पर काफी गौर करें । कुछ हर्ज नहीं होगा अगर यह बिल आज पास नहीं होता, अगले सेशन में हो सकता है । हमारा यह

[पंडित ठाकुर दास भागव]

प्रतिनिधाल है कि अगर कोई कंट्रोवर्शल बिल आता है तो हम उसे सेलेक्ट कमेटी में ले जाते हैं और उस की छानबीन करते हैं। इससे हमारा किसी तरह का नुकसान नहीं होगा, बल्कि सुप्रीम कोर्ट और हाई कोर्ट के जजेज, सारे मुल्क के, महसूस करेंगे यहां पर जो काम किया जाता है, वह सोच विचार करके किया जाता है। जब इस में कंट्रोवर्शल इश्यू है, तो हमें गुंजे नहीं करना चाहिये इसको सेलेक्ट कमेटी में ले जाने से। और सेलेक्ट कमेटी में ले जा कर इसके मुह्त-लिफ पहलुओं पर गौर करके तब इस बिल को आइंदा यहां ले आना चाहिये।

Some Hon. Members rose—

उपाध्यक्ष महोदय। बहुत से माननीय सदस्य बोलना चाहते हैं, लेकिन स्पीकर साहब ने तो सिर्फ इसके लिये डाई थंटे ही किये थे। तो क्या मैं अब मिनिस्टर साहब को बुला दूँ ?

Some Hon. Members: A time limit may be fixed.

Mr. Deputy-Speaker: Why should I fix another time limit when there is no time?

Shri Braj Raj Singh (Firozabad): We have been under the impression that the time would be extended.

Mr. Deputy-Speaker: That, the Speaker has done in deference to the wishes of the House. He had extended it by half an hour. The House agreed. It would be realised that it would be difficult for me to override that.

Shri Braj Raj Singh: The House can do it.

Mr. Deputy-Speaker: There are at least half a dozen Members. If I give ten minutes to each, it means one hour. Now, the hon. Minister, I will try to accommodate during the discussion of the clauses, some of the hon. Members who want to speak.

Shri Braj Raj Singh: He may accept the proposed motion for Select Committee. Then, the clauses may not come up.

Mr. Deputy-Speaker: That is good. No further speeches might be necessary.

Shri Braj Raj Singh: We will be debarred from expressing our views.

Mr. Deputy-Speaker: If he accepts that would be all right.

The Minister of State in the Ministry of Home Affairs (Shri Datar): Mr. Deputy-Speaker, a number of points have been raised. The point to which I would first reply would be whether this Bill should be referred to a Select Committee or a Joint Committee. So far as reference to a Select Committee is concerned, a reference arises or would be proper where there are any controversial matters. So far as this Bill is concerned, in respect of a number of matters like leave and others, you will find that whatever had been decided by the Constitution.....

Mr. Deputy-Speaker: Hon. Members want more time to discuss. Yet, the hon. Minister says there is no controversy.

Shri Datar: That is what I am replying to. I am pointing out.....

Shri Braj Raj Singh: That is why we should be allowed to express our views.

Shri Datar: That controversy has been settled.

Shri V. P. Nayar: As many views as the number of Members who have taken part have been expressed. He says, there is no controversy.

Shri Datar: A controversy has been raised where there is no controversy

Mr. Deputy-Speaker: The hon. Minister says that the more Members we allow, the more the view points.

Shri Braj Raj Singh: It is not for the Minister to say.

Mr. Deputy-Speaker: We might not come to any agreement. Let us hear the hon. Minister.

Shri Harish Chandra Mathur (Pali): You will be satisfied only by listening to the other controversies.

Shri Datar: But I have already heard, and I was pointing out that we have liberalised the provisions regarding leave. So far as the pension question is concerned, we have made no departure at all.

Two other questions have been raised. One question was raised by Shri Anthony complaining that the present pay scales are not proper and they ought to be enhanced. He also felt that this question was beyond the purview of the present discussion because the pay scales were fixed by the Constituent Assembly after considering all the circumstances, and we find that they have been incorporated in the Constitution itself. As Pandit Thakur Das Bhargava, who was a Member of the Constituent Assembly, has pointed out, all the questions were considered and after considering the whole matter the Constituent Assembly came to certain decisions of which one related to the pay scales. The salary of the Supreme Court Judges is not a matter which is before us at all, and it can be referred to only indirectly.

I am coming back to the question of pension again because that was raised by my hon. friend Shri Anthony, and he stated that the pensions that we have given ought to be further increased, and he has pointed out certain grounds to which I shall reply almost immediately. But at present I am dealing with the question of reference to a Joint Committee.

As I have stated, the question of pay scales has nothing to do with the Bill. So far as leave is concerned, we have followed a liberalising policy, we are giving more benefits under the new rules. In regard to pensions, we are following the same practice. Under the circumstances, I fail to understand what controversy there is.

Shri Sinhasan Singh rose—

Shri Datar: Let the hon. Member wait for one minute.

Another question was raised, and there are certain amendments to that effect, viz., that the Supreme Court Judges, while they are in service or after retirement, should not be appointed to other posts, except posts which are judicial or quasi-judicial. Most of the hon. Members made certain observations regarding the desirability of not allowing retired Supreme Court Judges to accept any posts under the executive, especially political posts—that is how it was put.

This question also was discussed at great length by the Constituent Assembly. In the first place, a point was raised, while this question was going on before the Constituent Assembly, that they might be allowed to practice. That was negatived. Next the question was raised whether a restriction or a prohibition should be placed on the Judges of the Supreme Court in the same way as the Members of the Public Service Commission were prohibited from accepting any office under Government. That was also discussed at great length, and that is why I am pointing out that all the arguments that were advanced today were advanced before the Constituent Assembly, and the Constituent Assembly came to the conclusion after going through the whole thing, that no such restrictions ought to be placed upon the retired Supreme Court Judges. Here, we are not considering the question of the High Court Judges, but so far as the Supreme Court Judges are concerned, this question was fully considered, and I did not

[Shri Datar]

find a single argument that was urged by hon. Members which was not considered by the Constituent Assembly. I have got here a long extract of the speeches made by the hon. Members and the reply by Dr. Ambedkar, and there he has pointed out how it would not be proper to place any such restrictions or bans upon the retired Supreme Court Judges for the reason that sometimes it becomes necessary and advisable to take their services for certain national purposes.

I was happy to find that most of the hon. Members stated that the Indian judiciary or the Supreme Court Judges are known for their independence, they are above corruption, they are above approach. I fully agree and pay my tribute of appreciation to the Supreme Court Judges because they have been carrying on their work very well, and the Supreme Court that was established under the Constitution has lived a life of great usefulness and has gathered a reputation which is worthy of any High Court or any Supreme Court in the whole world. After pointing this out, may I submit that the question of their pay should not be considered in the context of this independence? If the Judges are independent, above approach, absolutely impartial, then no question can arise so far as the payment of pensions is concerned. May I also point out that the salaries as well as the pensions that we have offered are fairly satisfactory. Take for instance the pay scales that were settled and accepted by the first Central Pay Commission. Immediately the pay was reduced for certain higher classes of officers. Take the I.C.S. and certain other services where the Central Pay Commission gave a report in 1947 and their pay scales were reduced by about 25 per cent. Even there also they have got a certain margin, but we have purposely given the Supreme Court and High Court Judges far better and more benevolent conditions than Government servants in other categories. The age of superannuation has been kept at 65 for the

Supreme Court and at 60 for the High Court Judges purposely, while in the case of the gazetted officers as you are aware, it is 55 and it is being retained all along. We also consider that they should be given very good pay, but I fail to understand why the question of pay should be brought in such a way as to place them above temptation. I cannot understand how such extremely high officers of integrity would fall a prey to temptations because they are offered certain other posts.

Secondly, as Shri Sinhasan Singh and others rightly pointed out, it is not a question of pay all along. After all, we are giving fair conditions. The figure of Rs. 7,500 is the minimum pension, not the maximum. The maximum pension is Rs. 26,000 per year for the Chief Justice of the Supreme Court when he retires, and Rs. 20,000 for an ordinary Judge of the Supreme Court.

Let us take into account the economic conditions of the country, and further the high tradition of public service that we have in India. If a Supreme Court Judge retires, of course he has to live a fairly satisfactory style of life, but after all, what is most important is not a very high standard of life, but simplicity; and simplicity coupled with high thinking is the ideal that India has been following all along. Therefore, I fail to understand how all these monetary considerations were brought in when a plea was made that the pension should be increased. In fact, this is the highest pension that we are giving. The other Government servants are getting almost less than half or just in the neighbourhood of half, as the highest.

Now, two grounds have been urged as to why they should be given more pensions. One of the grounds urged was that otherwise they are likely to fall a prey to temptation. This is an argument which I refuse to accept. I fully agree with my hon. friends that our judges are absolutely independent

judges. If the judges are independent, if they are known for their sturdy independence, why should we fear that they would, for example, ask for more? After all, India is a poor country. That has to be taken into account. And if India is a poor country, then this sum of Rs. 7,500 per year to Rs. 20,000 or Rs. 26,000 per year which we have given as pension—not the pay, you will kindly understand—is fairly by way of a good appreciation, and, therefore, there can be no question about it that they are already getting what is necessary, and we have given them more than what other Government servants are getting.

As my hon. friend Pandit Thakur Das Bhargava has pointed out, the whole argument for and against was considered in a proper and balanced manner, and then a certain arrangement was come to. Under these circumstances, I would point out that monetary considerations should not be raised here, and much less the question of temptation. The Judges are entitled to live a very good life, and a very high life, but that high life must be taken into account in the context of India's poor economic condition. We cannot forget that question. That should be taken into account. And I am confident that whatever has been done for the Supreme Court judges, and whatever we propose to do is not only fully in keeping with India's economic condition but is perhaps more; and the conditions that we have given them are quite satisfactory and are more than what any other country would have done in this respect.

This argument also applies so far as the other contentions that have been raised here are concerned, namely that High Court judges should have no temptations before them, and High Court judges should not look to the executive for certain advantages or for certain posts or assignments after retirement. Now, there are two considerations that have to be taken into account. So far as these judges are

concerned, they are judges known for their competency and more especially for their judicial decision. There are occasions in the life of the country, when we require judges, because a judicial outlook has to be brought to bear on certain questions that have to be decided. In fact, on a number of occasions, hon. Members from all sides of the House have said that a particular committee or a commission should be appointed with a High Court judge or a Supreme Court judge as the chairman.

Shri Frank Anthony: We have allowed for that. That is why I have said 'quasi-judicial'.

Shri Datar: If, for example, we require the services of a judicial officer or a retired judicial officer, that is a compliment to him, and may I tell you from the experience that I have of High Court judges, that my hon. friend Shri Frank Anthony's remarks were not correct at all.

Shri Frank Anthony: I know more about them than the hon. Minister.

Shri Datar: No High Court judge, and much less a Supreme Court judge, would hanker after any post or assignment. In fact, it is we who have to be after them; we request them to accept certain appointments and certain assignments, and it is a privilege for us to have their services. It is not a favour for them at all. In purporting to do justice to the judges, some of the hon. Members who used such arguments were unfair to the very judges in whose favour they purported to speak. Therefore, I would not deal with that at greater length. I would mention only one or two other points that hon. Members have raised in this respect.

So far as the leave rules are concerned, they are also fair. In this connection, may I point out that two months and a half is a fairly good period for the vacation?

Shri V. P. Nayar: Too long.

Shri Datar: It may be too long, according to my hon. friend.

We have given them certain kinds of leave; we have given them facility for leave on medical certificate, leave otherwise than on medical certificate, and in extraordinary circumstances if at all they have to go on leave they can go, and we have given them good terms also. When they go on full pay, we have given a fairly good pay also. Under these circumstances, I would submit that so far as this aspect of the question is concerned, we have erred more on the side of generosity than on the side of taking away what was given to them.

Pandit Thakur Das Bhargava: May I rise to a point of order, because the hon. Minister says that Government have been more generous? According to paragraph 9 (5) in Part D of the Second Schedule of the Constitution, our hands and feet are bound. That paragraph reads:

"The rights in respect of leave of absence (including leave allowances) and pension of the Judges...."

Mr. Deputy-Speaker: This argument is addressed only to those who say that something more should be given, not to the others.

Pandit Thakur Das Bhargava: I am submitting that we are not competent to give less, in the face of this provision. The Constitution has decided what will be the rules regarding leave of absence, and pensions. So, we can neither be generous nor be parsimonious.

Shri Datar: May I point out that we have been generous, so far as the leave rules are concerned?

Pandit Thakur Das Bhargava: Under the Constitution, we cannot be. That is exactly my point. That is exactly my submission. Will you kindly allow me to read the relevant paragraph?

Mr. Deputy-Speaker: If without being generous and without doing anything further, he only says that 'We have been generous', where is the harm?

Pandit Thakur Das Bhargava: But I want to place the proper perspective before the House. Everything was considered here, and then the provision was laid down in the Second Schedule. So, we cannot be generous. Of course, I agree with my hon. friend, and I want that he may be generous. But, at the same time, when the Constitution binds our hands, I do not know how we can be generous.

Shri Datar: It only says that we are not to do anything to their disadvantage. We can do something to their advantage. There is no difficulty at all.

Pandit Thakur Das Bhargava: That is not the point at dispute at all. I know that rule that we cannot vary any condition to the disadvantage of the person holding the post now. That is given in this Bill also. At the same paragraph 9 (5) of Part D of the Second Schedule runs thus:

"The rights in respect of leave of absence (including leave allowances) and pension of the Judges of the Supreme Court shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the judges of the Federal Court."

Now, the hon. Minister should have circulated to us the provisions which were applicable to the judges of the Federal Court before the commencement of the Constitution; and those conditions regarding leave of absence and pensions should have governed the judges of the Supreme Court also. Unless and until we get over that hurdle, I do not see how we can be

generous or even be frugal or parsimonious or take away those rights.

Shri Datar: So far as this point is concerned, there is no substance at all in it. What was done at the time of the Constitution was that until Parliament made a change, the rules that were then existent would continue.

Pandit Thakur Das Bhargava: Where is that stated?

Shri Datar: May I point out to my hon. friend the provision in article 125 (2) which reads thus:

"Every Judge shall be entitled to such privileges and such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament....".

This process of determination is now going on. So there is no substance in the point of order.

Pandit Thakur Das Bhargava: If that is the interpretation, then the question of change of pay is also relevant.

Shri Datar: One hon. Member wanted to know how provision was made for their contribution to the provident fund. Whenever any officer gets pension naturally, it is open to him to contribute to the provident fund, but the contribution is only unilateral; he himself contributes to it, and there is no contribution by Government at all. In fact, the amount is kept with us; some interest is paid, but after all, it is his own contribution and nothing more. Therefore, I submit that whatever has been done has been more in the interests of the Supreme Court judges than otherwise.

There is one other controversial question, so-called controversial question, that has been raised.

Shri Frank Anthony: May I rise to a point of order that the point of order

has not been clarified? The proviso to article 125 (2) says:

"Provided that neither the privileges nor the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment."

Shri Datar: We are not varying them.

Shri Frank Anthony: He was entitled to all the leave and privileges as were given to a Judge of the Federal Court. We do not know what those privileges were. Are the provisions we are making more advantageous provisions than the provisions concerning Federal Court Judges' privileges?

Mr. Deputy-Speaker: I do not quite appreciate the point raised. Article 125(2) says:

"Every Judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence or pension as may from time to time be determined by or under law made by Parliament....".

This is Parliament's sovereign right—

"and until so determined, to such privileges, allowances and rights as are specified in the Second Schedule".

This is the second provision. The first provision is that Parliament shall be supreme and competent to determine the privileges, pay and other things, by law whenever it wants to. According to the second provision, until they are so determined by Parliament, by law, they would be entitled to such privileges, allowances and rights as are specified in the Second Schedule. The Second Schedule applies to these rights, but Parliament may at any time it likes determine them. Therefore, we are taking up this legislation at this moment.

Pandit Thakur Das Bhargava: That is right, but so far as the provisions regarding the Federal Court Judges are concerned, they must be applicable. Anything more can be given, but anything less cannot be given because of the proviso to article 125 which says:

"Provided that neither the privileges nor the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment".

So they cannot be varied to the disadvantage of the present incumbents.

Mr. Deputy-Speaker: When a Judge is in service and so long as he is in service, that is the provision, that nothing shall be done to detract or take away anything during his life time; otherwise, he would not have that security. The intention was that when once he has been appointed, nothing would be done to take away or minimise any of the allowances that had been promised. That is how I read it.

Pandit Thakur Das Bhargava: But we should know what the privileges of the Federal Court Judges were, then compare them and see that they are not varied to the disadvantage of the present incumbents. This is the least we can do.

Shri Datar: May I refer you to clause 25 of the Bill? We have been very careful. Clause 25 reads:

"Nothing contained in this Act shall have effect so as to give to a Judge who is serving as such at the commencement of this Act less favourable terms in respect of his privileges and allowances or his right in respect of leave of absence (including leave allowances) or pension than those to which he would have been entitled, if this Act had not been passed".

Mr. Deputy-Speaker: That has been provided for.

Shri Datar: So I submit that on all the points, there is no need for reference to a Select Committee. I do not want to take any more time. All these questions were fully considered and right decisions arrived at in respect of all of them by the Constituent Assembly, and no new arguments have been advanced.

Shri Braj Raj Singh: How many years back?

Shri Datar: Conditions are the same so far as this is concerned.

Shri Braj Raj Singh: Conditions have changed.

Shri Datar: There are no changes.

Shri Braj Raj Singh rose—

Mr. Deputy-Speaker: I will give Shri Braj Raj Singh an opportunity to speak during the clause by clause stage.

Shri Datar: I therefore oppose the motion for reference to Select Committee and commend my motion for acceptance of the House.

Mr. Deputy-Speaker: I will first put the motion for reference to Select Committee.

The question is:

"That the Bill be referred to a Select Committee consisting of Shri B. N. Datar, Sardar Hukam Singh, Shri Naushir Bharucha, Shri Surendra Mahanty, Shri H. C. Heda, Shri Jaipal Singh, Shri Hem Barua, Shri M. R. Krishna, Shri Ramanathan Chettiar, Shrimati Sucheta Kripalani, Rani Manjula Devi, Shrimati Parvathi M. Krishnan, Shri Narendrabhai Nathwani, Shri A. E. T. Barrow and the Mover, with instructions to report by the first day of the next session".

Those in favour of this motion will kindly say 'Aye'.

Some Hon. Members: 'Aye'.

Mr. Deputy-Speaker: Those against will kindly say 'No'.

Several Hon. Members: No.

Mr. Deputy-Speaker: The 'Noes' have it. The 'Noes' have it.

Shri Frank Anthony: 'Ayes' have it. I want division.

Shri Nath Pai: All the Members who have spoken have supported it except the Minister.

Mr. Deputy-Speaker: Shall I go by the voice or by the speeches that were made?

[Division No. 7]

I shall now put the motion for reference of the Bill to a Select Committee moved by Shri Frank Anthony again. The question is:

"That the Bill be referred to a Select Committee consisting of Shri B. N. Datar, Sardar Hukam Singh, Shri Naushir Bharucha, Shri Surendra Mahanty, Shri H. C. Heda, Shri Jaipal Singh, Shri Hem Barua, Shri M. R. Krishna, Shri Ramanathan Chettiar, Shrimati Sucheta Kripalani, Panti Manjula Devi, Shrimati Parvathi M. Krishna, Shri Narendrabhai Nathwani, Shri A. E. T. Barrow and Shri Frank Anthony, with instructions to report by the first day of the next session".

The Lok Sabha divided: Ayes 40;
Noes 107.

14.47 hrs.

AYES

Anthony, Shri Frank
Barrow, Shri
Beck, Shri Ignace
Bhanja Deo, Shri
Bhargava, Pandit Thakur Das
Bharucha, Shri Naushir
Braj Raj Singh, Shri
Deb, Shri P. G.
Dige, Shri
Galkwad, Shri B. K.
Gopalan, Shri A. K.
Goundar, Shri Shanmuga
Hynniewta, Shri

Jadhav, Shri
Kamble, Dr.
Kodiyar, Shri
Mahanty, Shri
Martin, Qazi
More, Shri
Mukerjee, Shri H. N.
Mullick, Shri B. C.
Nair, Shri Vasudevan
Nath Pai, Shri
Nayar, Shri V. P.
Parvathi Krishnan, Shrimati
Patel, Shri P. R.

Patel, Shri Rajeshwar
Patil, Shri Balasahb
Pillai, Shri Anthony
Prodhan, Shri B. C.
Rao, Shri D. V.
Reddy, Shri Nagi
Sinha, Shri Satyendra Narayan
Sinha, Shri
Siva Raj, Shri
Sonule, Shri H. N.
Sugandhi, Shri
Supakar, Shri
Tangamani, Shri
Valvi, Shri

NOES

Achar, Shri
Agadi, Shri
Ambalam, Shri Subbiah
Anirudh Sinha, Shri
Arumugham, Shri R. S.
Arumugham, Shri S. R.
Bahadur Singh, Shri
Banerji, Shri P. B.
Bangshi Thakur, Shri
Barman, Shri
Basumatari, Shri
Bhogil Bhal, Shri
Bidari, Shri
Birbal Singh, Shri
Bisendra Singhji, Shri

Chendak, Shri
Chaturvedi, Shri
Das, Shri K. K.
Das, Shri N. T.
Das, Shri Shree Narayan
Dasappa, Shri
Datar, Shri
Deb, Shri P. G.
Dube, Shri Mulchand
Dwivedi, Shri M. L.
Gandhi, Shri M. M.
Ganga Devi, Shrimati
Ganpati, Ram, Shri
Ghosh, Shri M. K.
Jain, Shri M. C.

Jyotishi, Pandit J. P.
Kotaki, Shri Lilladhar
Kesar Kumari, Shrimati
Keshava, Shri
Khedkar, Dr. G. B.
Krishna Chandra, Shri
Kureel, Shri B. N.
Lachhi Ram, Shri
Lalhari, Shri
Laxmi Bai, Shrimati
Maiti, Shri N.B.
Malaviya, Pandit Govind
Maneen, Shri
Mandal, Shri J.
Masuriya Din, Shri

Mishra, Shri J. R.
Mishra, Shrimati
Mishra, Shri B. D.
Mishra, Shri R. D.
Mishra, Shri R. R.
Morarka, Shri
Munisamy, Shri N. R.
Murmur, Shri Paika
Murti, Shri M. S.
Murthukrishnan, Shri
Nair, Shri C. K.
Nair, Shri Kuttikrishnan
Naldurgker, Shri
Narasimhan, Shri
Negi, Shri Nek Ram
Pedalu, Shri K. V.
Padam Dev, Shri
Pahadia, Shri
Panna Lal, Shri
Pillai, Shri Thanu
Prabhakar, Shri Naval

Rajiah, Shri
Ram Subbag Singh, Dr.
Ramesh Chandra, Swami
Rane, Shri
Ranga Rao, Shri
Rao, Shri Jagannatha
Raut, Shri Bhole
Rungtong Sule, Shri
Rup Narain, Shri
Sahodrabai, Shrimati
Sahu, Shri Bhagabat
Sahu, Shri Rameshwar
Salam, Shri Abdul
Samanta, Shri S. C.
Sanganna, Shri
Sardar, Shri Bholi
Satyabhama Devi, Shrimati
Satyanarayana, Shri
Seiku, Shri
Sen, Shri P. G.
Shah, Shrimati Jayaben

Sharma, Shri D. C.
Siddasanappa, Shri
Siddiah, Shri
Singh, Shri D. N.
Singh, Shri H. P.
Singh, Shri M. N.
Sinha, Shri B. P.
Snatak, Shri Nardeo
Subbarayan, Dr. P.
Sunder Lal, Shri
Tahir, Shri Mohammed
Tariq, Shri A. M.
Tewari, Shri Dwarikanath
Thirumala Rao, Shri
Tula Ram, Shri
Uike, Shri
Umrao Singh, Shri
Upadhyaya Pandit Munishwar Dutt
Vedakumari, Kumari M.
Vyas, Shri Radhikal

The motion was negated

An Hon. Member: Morally the 'Ayes' have it.

Mr. Deputy-Speaker: I shall now put the original motion.

Clause 3 was added to the Bill.

Clause 4—(Leave account showing amount of leave due.

The question is:

"That the Bill to regulate certain conditions of service of the Judges of the Supreme Court be taken into consideration".

The motion was adopted.

Mr. Deputy-Speaker: Now we shall proceed with the clause by clause discussion.

Shri V. P. Nayar: And now the exodus!

Mr. Deputy-Speaker: The question is:

"That clause 2 stand part of the Bill".

The motion was adopted.

Clause 2 was added to the Bill

Mr. Deputy-Speaker: The question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Pandit Thakur Das Bhargava: I want to speak on clause 4. As I pointed out to you, Sir, reading rule 9(5) of the Second Schedule along with article 125 of the Constitution, I feel that the right course for us is to find out first of all what the rules in regard to leave of absence and pensions were in respect of the Federal Court Judges before the commencement of this Constitution. According to me, unless and until article 125 a change is made we are bound hand and foot by the provisions of the Second Schedule, rule 9(5). According to the proviso to article 125, we are not competent to change those rules if they are to the detriment of those persons who were actually governed by rule 9(5) of the Second Schedule. Up to the present day, I believe, every Supreme Court Judge is, so far as the question of leave of absence and pension is concerned, bound by the rules which were applicable to the judges of the Federal Court at the commencement of the Constitution.

Now, with a view to see that the proviso to article 123 is fully given effect to, I am bound to see whether the provisions made in this Bill are the same or better or worse off. If they are better, I have nothing to say. But, if they are worse off, then, I can certainly say that we cannot change the rules relating to leave and pension so that they are less favourable than what they were to the Judges of the Federal Court before the commencement of this Constitution. This necessitates that we should be furnished with the material about the Federal Court Judges which existed then. In the absence of such material before us, I am sorry I am not in a position to give my vote in favour of clause 4. I cannot do so unless I have compared those rules with the present ones and find that in these rules we have not made any change which is to the detriment of the present incumbents of the Supreme Court judgeship.

I would, therefore, request that before you put the question, you will be pleased to direct the Home Minister to furnish us with the provisions of law relating to the Judges of the Federal Court just before the commencement of this Constitution. Unless that is done we will be giving a blind vote. I would, therefore, request you to direct the Home Minister to give us those provisions so that we may be able to find out whether these provisions have changed them for the worse or for the better.

Shri Datar: On this point, may I point out, Sir, that before the Supreme Court was established, we had the Federal Court. In my opening speech I pointed out that an Order was issued by the British Administration in 1937 and that Order dealt with all the circumstances till the Supreme Court was established. So far as that Order is concerned, it is available in the Parliament Library. It was open to the hon. Member to have looked into that.

Secondly, in the Statement of Objects and Reasons, we have definitely stated that the conditions which are now offered are more liberal than the conditions that were there under the Federal Court Order of 1937.

Pandit Thakur Das Bhargava: I know the opinion of the hon. Minister. I want that I should be able to compare. That is the difficulty. I do not say his opinion is wrong.

Mr. Deputy-Speaker: The hon. Minister advises the hon. Member to go to the Library. Then, what can I do?

The question is:

"That clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

Mr. Deputy-Speaker: The question is:

"That clauses 5 to 21 stand part of the Bill."

The motion was adopted.

Clauses 5 to 21 were added to the Bill.

New Clause 21-A.

Mr. Deputy-Speaker: New clause 21-A; is it going to be moved?

Shri Frank Anthony: Yes, Sir. I want to move it.

Shri M. C. Jain (Kaithal): Sir, this new clause is out of order because....

Mr. Deputy-Speaker: Let us know what it is.

Shri Datar: Let him move it first.

Shri Frank Anthony: Sir, I move:

Page 8,—

after line 39, insert—

"21A. The pension payable to a Judge of the Supreme Court shall not be subject to Income-tax."

Mr. Deputy-Speaker: Now, the hon. Member may raise his point of order.

Shri M. C. Jain: Sir, in the papers which have been circulated, new clause 21A is—

“No person who has held office as a Judge of the Supreme Court shall accept any appointment, either private or official, except an appointment by the State of a judicial or quasi-judicial character.”

I am referring to this clause and that is what I want to object to.

Mr. Deputy-Speaker: There are two amendments, amendments Nos. 4 and 5 regarding clause 21A.

Shri M. C. Jain: I say the clause I was reading is out of order.

Mr. Deputy-Speaker: One amendment is No. 4 and the other is No. 5. Mr. Anthony had only moved No. 4. Has the hon. Member to say anything about this?

Shri M. C. Jain: No, Sir.

Shri Frank Anthony: Sir, I want to make just a few observations. One or two of my hon. friends on this side who agreed with me that the Bill must be referred to a Select Committee, however, do not feel that there was any need for any kind of concession being given to the Supreme Court Judges in the matter of pension. I am not going to reply to that except to say that it is all very well for politicians who are inclined to sermonise and to adopt an attitude as if everyone in this country is or should be a *sanyasi*. I refuse to accept that principle. It is a normal human feature that a person will....

Mr. Deputy-Speaker: Nobody is asked to become a *sanyasi*. It is only suggested that they might have a *dhoti* and *kurta*; not all other paraphernalia but simplicity.

Shri Frank Anthony: Perhaps so. I was not talking in terms of clothing or the lack of clothing. But my hon. friend suggested that I was placing undue emphasis on mercenary motives.

May I say with a great deal of respect that this undue emphasis on self-sacrifice and service is, so far as an average politician is concerned, a pose which is almost indistinguishable from hypocrisy. The main fact is this that one of the buffers against corruption—it is not the only consideration—is to pay people adequately.

One of the main disquieting facts about our whole administrative fabric today is that every aspect of the administration is being increasingly corroded by corruption. What is the main reason? The main reason is the increasing pressure of the increasing cost of living. That is why in every aspect of the administration corruption is rampant and increasingly rampant. I only suggested that in this context let us do all we can to give our people the maximum amount, particularly by way of pension, so that they won't be tempted to look forward to accept appointments.

My amendment does not seek to increase the amount of pension. I say that if Government insists on giving what I call a niggardly scale, at least let Government make this concession that it will accept that because of the special circumstances attaching to the position that these people occupy and the fact that we feel in no circumstances should they accept any kind of Government patronage except appointment of a judicial or a quasi-judicial character.....

15 hrs.

Mr. Deputy-Speaker: Have any other pensions been free from income-tax?

Shri Frank Anthony: I am suggesting that because these people occupy a unique position, we treat them uniquely.

Mr. Deputy-Speaker: But that would be a departure from the general principle and we may find ourselves in difficulties. These questions would be raised. If he had brought a direct increase in the pension, that would certainly have been considered but this would be a departure.

Shri Frank Anthony: They would not then do that also. We cannot give them Rs. 3,000; that would also have been a departure because it means that they would be entitled to Rs. 3,000 pension when their salary is Rs. 4,000. That again would not be according to the normal pensionary valuation.

Pandit Thakur Das Bhargava: We had passed the President's Salary Act or some thing like that and we put in there that the President's salary will be subject to income-tax. It is a general rule. We cannot depart from that rule in the case of the Supreme Court Judges or any Judges. They are all citizens of India and so they must be subject to this tax.

Mr. Deputy-Speaker: The hon. Member, Shri Frank Anthony, wants some increase.

Pandit Thakur Das Bhargava: I am in favour of increasing the minimum pension but I cannot shut my eyes to what we have already done. I do not want to treat them as separate from the other citizens of India. When we considered the Bill which I referred to, the Government brought the Bill and it was said that the President's salary will not be subject to any income-tax but Parliament did not agree and put in that clause that it shall be subject to income-tax; they have said so far as the President is concerned. So, I do not think that we are justified in making a special law in regard to the Supreme Court Judges.

Mr. Deputy-Speaker: The hon. Minister wants to reply?

Shri Datar: Sir, you have already replied practically to the contention
200 A L.S.D.—2.

raised by my hon. friend as also Pandit Thakur Das Bhargava. This would create a very awkward situation. As Pandit Thakur Das Bhargava has pointed out, it would be like giving a preferential treatment which even Shri Frank Anthony would not like.

Mr. Deputy-Speaker: So, I shall now put amendment No. 4 to the vote of the House.

The question is:

Page 6,—

after line 39, insert—

"21A. The pension payable to a Judge of the Supreme Court shall not be subject to Income-tax."

The motion was negatived.

Shri Frank Anthony: Sir, I have got another amendment—No. 5. I beg to move:

Page 6,—

after line 39, insert—

"21A. No person who has held office as a Judge of the Supreme Court shall accept any appointment, either private or official, except an appointment by the State of a judicial or quasi-judicial character."

Sir, may I say with very great respect that after hearing what the hon. Minister has said, I was reminded of the maxim that those whom the Gods wish to destroy, they make mad first. Every hon. Member belonging to every Party in this House and more especially hon. Members of the ruling Party underline the need for a special provision any they put it differently; all agree that we should not give the appearance of corrupting the judiciary. My hon. friend said that deliberately but he seems to misinterpret or misunderstand what has been said. Nobody has said that so far as the Supreme Court Judges are concerned there is any suggestion of corruption nor was it the suggestion that there

[Shri Frank Anthony]

was lack of independence. But I did say and I repeat that in many of our High Courts, there is an increasing public criticism of this increasing erosion of the independence of the High Courts. My hon. friend, Pandit Thakur Das Bhargava, supported me. But apart from this feeling that the independence of the judiciary vis-à-vis the High Courts is being gradually undermined there is the fact that gratuitously our Government is exposing the whole judiciary, including the members of the Supreme Court, to public criticism. That is my grievance. The Judges may, as I say, be persons of the most unquestionable integrity; at no time is it remotely questioned or said that political patronage in the future enters into their considerations. But the moment judgments are given—I say this with regret and sadness—people are openly criticising the judgments of the Supreme Court. It is not because the Judges are in any way open to be influenced, not because the Judges are accessible but merely because of this pernicious convention that the Judges of the Supreme Court may at some future time be given political preference. I am grieved at this but it is happening. How is the Minister going to check this increasing public criticism of the fact that because the Government chooses to enable the Judges of the Supreme Court as also the Judges of the High Court to accept political patronage or Government preferment,—how are you going to prevent the public litigant or even members of the Bar from pointing out a finger at your Supreme Court Judges and saying this although it is wrong and even immoral—because a Judge is hoping to get a judgeship or an ambassadorial appointment, this judgement seems to lean towards the executive? How do you answer it? You are giving a complete handle to the public. I am not talking in terms of the Judges; they may be absolute saints; probably they are. But how do you stop members of the bar and the litigant public from saying this sort of a judgment was given because

the Judge is hoping to get some kind of a patronage later? Every hon. Member of this House has, without qualification, condemned this convention because you have exposed gratuitously every part of your judiciary to public criticism. I would ask the hon. Minister to consider this matter.

He has said that this has been decided under the Constitution. But what is so sacrosanct about the Constitution? In what part of your Constitution have you said that there shall be no embargo? It is not in the Fundamental Rights. The hon. Minister, as a member of the Government, has chosen in seven years to tamper with the Fundamental Rights seven times. When the experience of the Government shows that the Fundamental Rights could be tampered with, what is there so inviolable about some other part of the Constitution, when your actual working and actual experience shows otherwise? I ask the hon. Minister to go and talk privately to almost any member of the Supreme Court or to talk to the senior members of the High Court Bars. Let him ask them privately as to what is happening with regard to the public opinion in the High Courts. I may say that every one of them will tell him that so far as the High Courts are concerned, the public confidence and the public respect for the High Court is being gradually undermined. What is the good of closing the eyes to the facts. What do you think we can do so long as these things are allowed to continue? Nothing at all. We are grieved at this growing tendency every where. Speak to any of them. They will tell you from their private experience as to what is actually happening. I just do not understand this attitude on the part of the Government. We are trying to stop something which is going to destroy this country. But yet the Minister refuses to see; he has his eyes to see and know but they are blind and will not see. Let him consult his own colleagues about this matter and his own Party people also.

Mr. Deputy-Speaker: He wants to raise a point of order.

Shri M. C. Jain: Sir, in principle I support the point which has been made through this amendment by Shri Frank Anthony but I think the amendment is out of order according to the Constitution. We have brought forward this Bill under the powers given to us under article 125(2) which says:

"Every Judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament...."

That is to say, we can only provide regulations with regard to the privileges and allowances and pensions, etc. So, in this Bill we cannot provide anything else than these which come under article 125 (2).

Moreover, this Bill is only to provide conditions of service and not conditions of appointment. This amendment is, I feel, a condition of appointment of Supreme Court Judges. Therefore, this is outside the scope of this Bill.

So far as the principle underlying this amendment is concerned, I entirely agree with the statement made by my hon. friend. We are trying to establish a parliamentary democracy in our country.

Shri Braj Raj Singh: Is the hon. Member speaking on his point of order, Sir?

Mr. Deputy-Speaker: If the hon. Member has finished with his point of order, let that be decided first.

Shri M. C. Jain: Our democracy....

Mr. Deputy-Speaker: Is it the explanation of his point of order? Is it in support of his point of order that he wants to speak?

Shri Frank Anthony: He is supporting the amendment.

Mr. Deputy-Speaker: Has he finished with the point of order that he wanted to raise?

Shri M. C. Jain: So far as the constitutional aspect of it is concerned, Sir, I have made my submission.

Pandit Thakur Das Bhargava: I would like to say a word, Sir, on this point of order. My hon. friend has raised the point of order basing it on article 125 where it is said:

"Every Judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament . . ."

May I respectfully ask whether it is one of the rights that a Supreme Court Judge be appointed as an Ambassador or a Governor?

An Hon. Member: Fundamental Right.

Pandit Thakur Das Bhargava: Whose Fundamental Right is it? My humble submission is, article 125 specifically says that in respect of leave of absence, pension etc. the privileges shall be determined by or under law made by Parliament. This was left open at that time. Every other thing not covered by the then existing service conditions, privileges and allowances in respect of Federal Court Judges was left open to be determined by Parliament when it chose to do so. Today we are doing it. That is why we also say that a condition of service shall be that after retirement a Judge will not be able to hold any other post. Therefore, it cannot be out of order. It is perfectly within the competence of Parliament to make a law under article 125. Article 125 is itself a warrant for this kind of amendment, what to say that this bars it. Therefore, my humble submission is that the amendment is in order.

Pandit G. B. Pant: Sir, the Bill provides that no Judge of the Supreme Court will practise in any court in India after retirement. It would not besit the dignity of a Judge to appear before any such court in our own country, but I do not understand why a Judge who has served the country gallantly, truly and justly for the best part of his life should be deprived of the opportunity.....

Shri Braj Raj Singh: Is the hon. Minister speaking on the point of order?

Mr. Deputy-Speaker: A point of order was raised; perhaps the hon. Minister came a little later. I will first give my ruling on that.

I do not think that there is any bar to the incorporation of this provision. I agree with Pandit Thakur Das Bhargava that this also would be one of the conditions of service. Whenever a Judge is appointed he has to see what conditions are being offered to him, and he should come in with open eyes. After all, if you say that he cannot accept any other appointment it will not be outside those conditions. It is perfectly legitimate to lay down that no person who has held office as a Judge of the Supreme Court shall accept any appointment, either private or official, except an appointment by the State of a judicial or quasi-judicial character. This would be included in those conditions of service. There is nothing overriding in the Constitution or any other law. Therefore, I do not think the point of order has any validity.

श्री ब्रजराज सिंह : उपाध्यक्ष महोदय, मैं श्री फ्रेक एन्थनी के संशोधन के समर्थन में खड़ा हुआ हूँ। मैं इसलिये उसका समर्थन करता हूँ कि जहाँ तक सुप्रीम कोर्ट के जजों का सवाल है देश के नागरिकों के दिलों और दिमागों के अन्दर यह भावना रहनी चाहिये कि वे सिर्फ निष्पक्ष ही नहीं हैं बल्कि नागरिकों को भी यह लगता है कि वे निष्पक्ष हैं और निष्पक्षता

को दुब रहने के लिये वह बहुत ही आवश्यक है कि जब वे सुप्रीम कोर्ट की जजशिप से रिटायर हो जायें तो जैसे कि भारतीय संविधान में कहा गया है कि वे देश में कहीं भी किसी प्रदासत में वकालत नहीं कर सकेंगे उसी तरह से यह भी साफ चीज रहनी चाहिये कि सरकार की तरफ से और राज्य की तरफ से उन्हें किसी तरह की कोई नियुक्ति नहीं दी जायेगी। जब उनके दिमाग में इस तरह की भावना रहती है कि सुप्रीम कोर्ट की जजशिप से रिटायर होने के बाद सरकार उनको किसी उच्च सरकारी पद पर नियुक्त कर सकती है तो इसानी कमजोरी के नाते वह आशंका हो सकती है कि वे उस निष्पक्षता और दुढ़ता का परिचय न दें जोकि उनसे अपेक्षित है। मैं यह नहीं कहना चाहता हूँ कि इस तरीके से उनकी निष्पक्षता खत्म हो जायेगी, यह मेरे कहने का उद्देश्य नहीं है लेकिन हमें यह भी देखना है कि भले ही इससे चाहे उनकी निष्पक्षता खत्म न हो लेकिन इससे नागरिकों के दिमागों में कोई इस तरह की भावना घर न कर जाय कि इससे उनकी निष्पक्षता खत्म हो सकती है। यह चीज बहुत खतरनाक है और यह देश के भविष्य के लिये और उसकी उन्नति के हक में बहुत खतरनाक है।

सुप्रीम कोर्ट जजों की बात तो भलग है लेकिन जहाँ तक दूसरे कुछ लोगों का सवाल है, अभी राज्य की तरफ से इस तरह के प्रलोभन दिये जाते हैं और उन प्रलोभनों की वजह से कभी कभी बड़ा अन्याय हो जाया करता है।

एक केस देखने में आया जिसमें एलेक्जान ड्राइम्युनल ने एक जजमेंट दिया और उसके दूसरे ही दिन उनका एपायटमेंट हो गया। वह वहाँ से रिटायर हो गये थे। रिटायर होने वाले दिन उन्होंने जजमेंट दिया है और उसके दूसरे दिन सरकार की तरफ से उनकी नियुक्ति कर दी गई। मैं यह नहीं कहना चाहता कि उन्होंने जो जजमेंट दिया

वह किस तरह का था लेकिन जिस दिन उन्होंने जजमेंट दिया रिटायर होने की वजह से उसके दूसरे दिन सरकार की तरफ से उनकी नियुक्ति हो जाय, इससे नागरिकों के दिमाग में एक झंका पैदा हो सकती है कि उसमें कोई गड़बड़ी रही होगी और उसमें भ्रष्टाचार कोई ऐसी बात रही होगी जो कि उचित नहीं थी। तो इसलिये यह बहुत ही आवश्यक है कि जो देश की सबसे बड़ी जड़ीशियरी है, जो देश का सब से बड़ा न्यायालय है, जिसका कि सिर्फ यही कार्य नहीं है कि वह नागरिक और नागरिक के बीच न्याय करे, बल्कि जिसके ऊपर हमारे संविधान की रक्षा करने की जिम्मेदारी है, उस जूडीशियरी के सदस्यों के दिमाग में ऐसी बात न आने पावे। और उनके दिमाग में चाहे यह बात आवे या न आवे लेकिन यह भी आवश्यक है कि देश में किसी नागरिक के मन में यह बात न आ सके कि अगर कोई जज किसी खास मामले में खास प्रकार का दृष्टिकोण अपनायेगा तो उसको राजदूत नियुक्त कर दिया जायेगा या और कुछ कर दिया जायेगा। इसलिये में निवेदन करूंगा कि फ्रैंक एन्थनी महोदय का जो संशोधन है उस पर सरकार गम्भीरतापूर्वक विचार करे और उसे स्वीकार कर ले। उसे स्वीकार करके हम संविधान की इस भावना के अनुसार ही कार्य करेंगे कि सुप्रीम कोर्ट का जज वकालत न करे। देश में टैलेंट की कमी नहीं है, देश में योग्य व्यक्तियों की कमी नहीं है। लोगों को अपने लिये एक क्षेत्र चुन लेना चाहिये। जो लोग जूडीशियरी में जाते हैं वे हाई कोर्ट और सुप्रीम कोर्ट के जज हो सकते हैं। और उससे भ्रष्टाचार ग्रहण करने के बाद भी जहां सरकार किसी विशेष कार्य के लिये उनकी सेवाओं की आवश्यकता समझे तो उनको सुप्रीम कोर्ट में बुला सकती है या किसी क्वासी जूडीशियल तरीके के ट्राइब्यूनल में उनको नियुक्त कर सकती है और इस प्रकार उनको ले सकती है। लेकिन यदि उनको किसी राजनीतिक पद पर या किसी दूसरे पद पर नियुक्त किया जायेगा तो

इससे देश में एक अस्तरनाक भावना पैदा हो सकती है।

इसलिये में निवेदन करता हूँ कि सरकार इस संशोधन पर गम्भीरतापूर्वक विचार करे और उसे भ्रष्टाचार स्वीकार कर ले।

Pandit G. B. Pant: Sir, I was not present here when the point of order was raised; so I was referring to the merits of the amendment when I discovered my mistake. The position seems to me to be a simple one. The Judges of the Supreme Court are, and should undoubtedly be, men of great distinction who have risen to the highest rungs in the judicial ladder. They should be deemed to be men of probity, integrity, character and ability. Now, should the country be deprived of the services and of the contribution that such eminent men can make to its development and welfare after their retirement if they are in a position to do so? Every person who is in service, a District Magistrate, a District Judge, a Sub-Judge and a Puisne Judge, has the liberty to do what he likes after his retirement. It seems to me somewhat tragic that there should be such sort of suspicion about the character of our people.

Shri Frank Anthony: The Minister was not here when we spoke. We may assume that they are all saints. But you are giving the public the opportunity of thinking that those people can be influenced by prospects of preferment and nobody can stop them.

Pandit G. B. Pant: If it is accepted by all that so far as their character, their ability, and their capacity to resist temptations are concerned there is no difference of opinion in this House, then I welcome this assurance. Then, what is the basis for this invidious discrimination to be made against these people? If their attitude cannot be open to suspicion in anyway, then, why should they or the country suffer? I personally feel....

Shri Frank Anthony: If the public, the people are not allowed?

Pandit G. B. Pant: I do not understand, when the term 'people' is used, when the representatives of the people are all satisfied that these men are men of character, just in their attitude, fair and impartial in their dealings and capable of resisting all sorts of enticements from every quarter, why should the people suspect anyone?

Shri Frank Anthony: They are suspecting.

Pandit G. B. Pant: I hope they are guided by their representatives and they share their feelings. Otherwise, they would not be representing them but perhaps misrepresenting them which I would not assume under any circumstances. So, what I say is this. There are rights, and freedoms which every citizen, howsoever handicapped he may be in other ways, is entitled to enjoy. Would it be fair to deprive the Judges of the Supreme Court of such freedom and of exercising their option after their retirement? Are they less reliable than a district magistrate, than a deputy commissioner, than a sub-judge or a munsiff?

An Hon. Member: They are more eminent.

Pandit G. B. Pant: Everyone has to deal with things that are of great moment. A sub-judge disposes of cases of unlimited valuation; a case worth a crore of rupees may be disposed of by a sub-judge. So, everyone who is in the judicial line has to weigh the scales and do justice. In fact, I go further. I submit that even those who are in the executive act justly and have to act justly not on the basis of any evidence that is recorded but in spite of many odds that they may have to face. Otherwise, if we were not to rely on the character of our people, then, the whole structure of ours would be a very feeble one and the foundations would be very shaky.

I might remind Shri Frank Anthony that this question was raised in the Constituent Assembly too. So far as I remember, he did not support any proposal of this type. I wonder if he has grown wiser since.

Shri Frank Anthony: Very much; more experienced.

Pandit G. B. Pant: Very much. Well, I wish then that the wisdom earned in earlier years was not spoiled by the advance of age.

Shri Frank Anthony: May I inform the Home Minister that every Member of the Congress Party has supported me on this. They also have grown wise in the interval—every Member.

Mr. Deputy-Speaker: They might be converted after the speech of the Home Minister.

Pandit G. B. Pant: I do not dispute that. Shri Frank Anthony is a very eloquent speaker and can present a case in a very cogent and convincing way, and that is why he succeeds in courts so often. So, if the hon. Members have been impressed by what he may have said, that is not news to me. That is what I would expect.

So far as the simple facts of the case go, it would hardly be in consonance with the dignity of the Judges of the Supreme Court to have a rule like that. If you cannot depend even on their discretion that they will do what is right and refrain from doing what is wrong, then who else in the country can be trusted? Is everyone to be bound by laws and rules as to what he should do and what he should not do? And these esteemed and estimable men....

Shri Sinhasan Singh: There are similar rules for the Comptroller and Auditor-General and the members of the Public Service Commission.

Pandit G. B. Pant: Exactly, that question was argued in the Constituent Assembly, and it was then said that so far as the Public Service Commission is concerned, they have agreed to be in close contact with the Government, and all their dealings are with Government and every case that goes to them concerns the Government. But so far as the judiciary is concerned, the Government is not a direct party. It is only very rarely that a case goes to the judiciary. So, there is an obvious difference between the two, and the Constituent Assembly, after weighing these two problems, came to the conclusion that while such a restriction would be advisable in the case of the members of the Public Service Commission, it would not be desirable, advisable or proper in the case of judges. So, where the judges of the Supreme Court are concerned, it becomes all the more undesirable; I would not use a stronger expression. So, my submission is that I would like our people to be more sturdy in their faith in themselves and in the character of their people. The suspicion of the olden days should be shed off. We must remember that we live in a free country and if we cannot trust even the best of our people here, then the

very base of democracy will be badly shaken. So, I hope that this amendment will not be pressed.

Shri Frank Anthony: I am pressing it.

Mr. Deputy-Speaker: The question is:

Page 6,—

after line 39, insert—

“21A. No person who has held office as a Judge of the Supreme Court shall accept any appointment, either private or official, except an appointment by the State of a judicial or quasi-judicial character.”

The Lok Sabha divided:

श्रीमती जयाबेन शाह (गिरनार): यह बत्ती जलती नहीं है।

Shri Kalika Singh (Azamgarh): I also forgot to press the button.

Mr. Deputy-Speaker: I will add two more. The result of the division is:

Ayes 31; Noes 109.

Division No. 8]

AYES

[15.31 hrs.

Anthony, Shri Frank
Banerji, Shri P. B.
Bhargava, Pandit Thakur Das
Bharucha, Shri Naushir
Braj Raj Singh, Shri
Dige, Shri
Ghosal, Shri Aurobindo
Gopalan, Shri A. K.
Goundar, Shri Shanmuga
Jadhav, Shri

Kodiyan, Shri
Mahanty, Shri
Majhi, Shri R. C.
Matera, Shri
Matin Qazi
More, Shri
Mukerjee, Shri H. N.
Mullick, Shri B. C.
Nair, Shri Vasudevan
Nath Pai, Shri

Nayar, Shri V. P.
Patel, Shri Rajeshwar
Patil, Shri Nana
Rao, Shri D. V.
Reddy, Shri Nagi
Salunke, Shri Balasahob
Shastri, Shri Prakash V.
Sinha, Shri Satyendra Narayan
Sonule, Shri H. N.
Tangamani, Shri
Valvi, Shri

NOES

Achar, Shri
Agadi, Shri
Ambalam, Shri Subbiah
Anrudh Sinha, Shri
Arumugham, Shri R. S.
Arumugham, Shri S. R.
Behadur Singh, Shri
Banerji, Dr. R.

Banerji, Shri P. B.
Bangshi Thakur, Shri
Berman, Shri
Basappa, Shri
Bhakt Darshan, Shri
Bhogji Bhai, Shri
Bidari, Shri
Birbal Singh, Shri

Birendra Singhji, Shri
Bose, Shri
Dallit Singh, Shri
Das, Shri K. K.
Das, Shri N. T.
Das, Shri Shree Narayan
Dasappa, Shri
Datar, Shri

Dube, Shri Mukchand
 Elayaperumal, Shri
 Gendhi, Shri M. M.
 Ganpati Ram, Shri
 Ghose, Shri A. V.
 Ghosh, Shri M. K.
 Gounder, Shri K. Periaswami
 Guha, Shri A. C.
 Heda, Shri
 Jena, Shri K. C.
 Joshi, Shri A. C.
 Joshi, Shrimati Subhadra
 Jyotishi, Pandit J. P.
 Kalika Singh, Shri
 Kotaki, Shri Likadhar
 Keshava, Shri
 Khan, Shri Sadath Ali
 Lachhi Ram, Shri
 Lahiri, Shri
 Laskar, Shri N. C.
 Maftda Ahmed, Shrimati
 Maiti, Shri N. B.
 Mandal, Shri J.
 Masuriya Din, Shri
 Mathur, Shri Harish Chandra
 Mathur, Shri M. D.
 Mehta, Shri J. R.
 Mishra, Shri Bibbuti

Mishra, Shri B. D.
 Misra, Shri R. D.
 Misra, Shri R. R.
 Morarka, Shri
 Murmu, Shri Paika
 Muthukrishnan, Shri
 Naidu, Shri Govindrasajulu
 Nair, Shri C. K.
 Naldurgker, Shri
 Narayanasamy, Shri R.
 Padam Dev, Shri
 Pahadia, Shri
 Patel, Sushri Maniben
 Pillai, Shri Thanu
 Prebhakar, Shri Naval
 Pragi Lal, Ch.
 Ram Subhag Singh, Dr.
 Ramanand Shastri, Swami
 Ranbir Singh, Ch.
 Rane, Shri
 Range, Shri
 Rangarao, Shri
 Rao, Shri Jaganatha
 Reut, Shri Bhola
 Rungeung Suisse, Shri
 Rup Narain, Shri
 Sahu, Shri Bhagabat
 Sahu, Shri Rameshwar

Saman ta, Shri S. C.
 Samantinkar, Dr.
 Sanganna, Shri
 Satyabhama Devi Shrimati
 Seiku, Shri
 Sen, Shri P. G.
 Shah, Shrimati Jayaben
 Shankaraiya, Shri
 Sharma, Shri D. C.
 Siddananjappa, Shri
 Siddiah, Shri
 Singh, Shri D. N.
 Singh, Shri M. N.
 Sinha, Shri B. P.
 Sinha, Shri Gajendra Prasad
 Siva, Dr. Gangadhar
 Snatak, Shri Nardeo
 Subbarayan Dr. P.
 Sunder Lal, Shri
 Tahir, Shri Mohammed
 Tantis, Shri Rameshwar
 Tariq, Shri A. M.
 Tewari, Shri Dwarijanath
 Tiwary, Pandit D. N.
 Ulke, Shri
 Umrao Singh, Shri
 Vedakumari, Kumari M.
 Vyas, Shri Radheal
 Wilson, Shri J. N.

The motion was negatived

Mr. Deputy-Speaker: The question is:

"That clause 22 stand part of the Bill."

The motion was adopted.

Clause 22 was added to the Bill.

Mr. Deputy-Speaker: The question is:

"That clause 23 stand part of the Bill."

The motion was adopted.

Clause 23 was added to the Bill.

Clause 24—(Power to make rules)

Shri Braj Raj Singh: I beg to move:
 Page 7,
 omit lines 30 to 32.

मैं चाहता हूँ कि सब-क्लाज (डी) और (ई) को हटा दिया जाये, जो कि इस प्रकार हैं—

"(d) use of official residence by a Judge:

(e) facilities for medical treatment and other conditions of service of a Judge".

मैं यह संशोधन इसलिये रख रहा हूँ कि इन दो विषयों के बारे में नियम बनाने का कोई प्रश्न न उठे। जहाँ तक वेतन का सवाल है, संविधान ने एक दर निश्चित कर दी है और उसी के अनुसार उन साहबान को वेतन मिलता है। अब हम उनको और विशेष सुविधायें देने की सोच रहे हैं। मैं जजों को विशेष सुविधायें दिये जाने को कोई बुरी बात नहीं समझता हूँ, लेकिन मैं यह अर्थ करना चाहता हूँ कि विशेष सुविधायें देने की बात मिनिस्टर्स से शुरू हुई है और बढ़ती चली जा रही है। यदि हम जजों की विशेष सुविधाओं को खत्म कर सकें, तो हो सकता है कि

यह बात उलट कर मिनिस्ट्रों की तरफ भी आये और उन की विशेष सुविधायें भी खत्म हों। मैं चाहता हूँ कि सरकारी अधिकारियों या जन-सेवकों को जो कुछ भी वेतन दिया जाये, वह जनता को मालूम हो। उस को अच्छी तरह से ज्ञात हो कि प्रमुख व्यक्ति को इतना वेतन दिया जाता है। आज स्थिति यह है कि यह दिखाया जाता है कि किसी मिनिस्टर को वेतन दिया जाता है दो हजार, लेकिन उसको जो विशेष सुविधायें दी जाती हैं, वे कभी कभी जा कर दस हजार की बढ जाती हैं। मैं यह नहीं कहता कि सुप्रीम कोर्ट के जजों की विशेष सुविधायें भी इतनी बढ जायेंगी, लेकिन भविष्य के लिये यह एक बुरा उदाहरण होगा। इसलिये मैं इसका विरोध करता हूँ। आज सरकार के किसी मिनिस्टर के मकान का किराया ३७०० रुपया होता है, फर्निचर का किराया १७५० पया होता है, लेकिन उसका वेतन २२००, २२५० पये होता है। लेकिन जो उनके रेजिडेंस के लिये मकान हैं, जो फर्निचर है, उस का किराया करीब करीब जाकर पांच हजार से ऊपर बैठता है। और भी इस तरह के लोग हैं जिन के जितने वेतन हैं उससे कहीं ज्यादा उनके मकान तथा फर्निचर का किराया हो जाता है, वह ज्यादा बैठता है। इसलिये इस तरह की बातों को अगर हम बढ़ायेंगे तो उसका नतीजा यह होगा कि जो जनता है देश की, जो वाकई मुल्क की मालिक है, मुल्क की स्वामी है, जिसके नाम पर हम सब राज करते हैं, सरकार राज करती है, जिसके प्रतिनिधि यहां आकर बैठते हैं, जिसके नाम पर सुप्रीम कोर्ट के जो जजिज हैं वे भी कानूनों का पालन करते हैं और कानूनों को इंटरप्रेट करते हैं, उसके साथ हम ईसाफ नहीं करेंगे। यदि उसको यह मालूम न पड़े कि हमारे खजाने में से कितना रुपया और किस काम के लिये जा रहा है, तो उसमें बड़े भय की बात है, बुराई की बात है। इसलिये मैं चाहता हूँ कि अगर आप यह महसूस करते हैं कि हमारे

विधान में सुप्रीम कोर्ट के जजिज के लिये जितना वेतन निश्चित किया गया है, वह वर्तमान परिस्थितियों में कम है, तो आप विधान का संशोधन करें और उनको आप ज्यादा वेतन दें। लेकिन इस तरह उनको रेजिडेंस की पूरी सुविधायें और फ्री सुविधायें और साथ ही साथ मेडिकल ट्रीटमेंट की मुफ्त सुविधायें देना ठीक नहीं होगा। इसी तरह से आप उनके लिये और सुविधायें देते हैं और खर्चा बढ़ाते हैं और मैं समझता हूँ यह बुरी बात है। ऐसा करके भागे के लिये हम दूसरे लोगों के लिये इन सुविधाओं की मांग करने का दरवाजा खोल रहे हैं, जो ठीक नहीं है। मैं तो कहूंगा कि इन सुविधाओं को त्यागने की जो शुरुआत है वह मिनिस्टर्स से ही आज ही होनी चाहिये। कुछ अर्सा हुआ यह कहा गया है कि हम १५०० के बजाय १२५० लेंगे लेकिन साथ ही साथ यह भी कह दिया गया था कि यह इनकम-टैक्स फ्री होगी। अभी यहां पर कहा गया है कि सुप्रीम कोर्ट के जजों की जो पेंशन है वह इनकम-टैक्स से फ्री नहीं होनी चाहिये। मैं इस बात से सहमत हूँ। इनकम-टैक्स में छूट की बात किसी की ग्रामदनी में भी नहीं होनी चाहिये।

जो मैं इसका विरोध कर रहा हूँ इसका अर्थ यह नहीं है कि मुझे उनके खिलाफ कोई शिकायत है। मैं नहीं चाहता कि उनके ही वेतन कम हों और दूसरों के वेतन कम न हों। मैं चाहूंगा कि सरकार की तरफ से स्वयं इसका उदाहरण पेश हो। हम समाजवादी समाज की रचना करने जा रहे हैं। उसके वास्ते सब से पहले सरकार को भागे ग्राना है। इस वास्ते इस अवसर पर जब कि सुप्रीम कोर्ट के जजिज के लिये जो फ्री रेजिडेंस की तथा अन्य सुविधाओं की बात की जा रही है, सरकार उदाहरण पेश करे कि किसी को भी इस तरह की मुफ्त सुविधायें प्राप्त नहीं होंगी और जिनको पहले से ही प्राप्त हैं उनकी छिन जायेंगी।

[श्री ब्रज राज सिंह]

इस तरह की जो घोषणा हो वह साफ तौर से हो। ऐसा न हो कि तनक्वाह को तो कम करके दो हजार या डेढ़ हजार या एक हजार कर दिया जाये और पांच हजार दूसरी प्रकार की सुविधाओं के रूप में प्राप्त कर लिया जाये।

इसलिये मैं चाहता हूँ कि (बी) और (ई) को इसमें से निकाल दिया जाये।

Shri Dasappa: I am afraid this amendment, even if accepted, is wholly infructuous and would serve no purpose at all, because this clause 24 relates to the power to make rules to carry out the purposes of the Act and even if the whole of sub-clause (2) is omitted, nothing would be lost, because sub-clause (1) of clause 24 gives ample powers to the Government to make rules to carry out the purposes of the Act. In the first place, the mere omission of sub-clauses (c), (d) or (e) is not going to take away the power or right of the Government to frame rules consistent with this Act. Secondly, if the rules are not desirable or acceptable in themselves, it is certainly open to the Parliament to bring in such amendments as they choose, because under sub-clause (3) they will have to be laid before Parliament and Parliament is at liberty to amend them if they so choose. So, in either case, it serves no purpose.

Pandit G. B. Pant: The position seems to me to be plain enough so far as the provision in the Bill is concerned. It only seeks to regularise the present practice. At present, under the order that is applicable to the judges of the Supreme Court, as given in the Second Schedule, every judge of the Supreme Court is entitled to the use of an official residence without payment of rent. So the Constitution contains this provision and nothing which is inconsistent with that can be passed here. But, not only is it necessary that there should be such a provision, but I feel that so

far as possible official residence should be provided also for others in a place like Delhi where there is such a scarcity of accommodation. It would relieve the pressure if official residences could be provided for public servants. So far as Ministers are concerned, well, whatever they get, it is by way of the enjoyment of the benefits and amenities conferred on them by this House. They cannot have anything which is not passed by this House itself. So, while some of my friends may feel somewhat annoyed, I would not say frustrated.

Shri Nath Pal: We are not annoyed; we are amused.

Pandit G. B. Pant: You did not say anything.

Shri Braj Raj Singh: So you want to divide?

Pandit G. B. Pant: I do not know. Well, we need not enter into any conflict. I think some have views which are more balanced and some have more of enthusiasm in them. So, there are emotional qualities and there are also rational qualities, and these by themselves divide people into two groups. But I am not concerned with it here.

So far as this particular provision goes, it is a simple one; medical facilities are provided for everyone. We think it necessary that the Supreme Court Judges should have that privilege, if you call it so, which others enjoy. Even if these clauses were omitted, that will make no difference whatsoever, because these sub-clauses are subject to sub-clause (1). So long as sub-clause (1) is there, there will be no bar to any sort of rules being framed by Government which could come within the purview of sub-clause (1). Sub-clause (2) only seeks to elucidate the general principle which has been laid down in sub-clause (1). So, I do not think there is much force in the amendment.

Mr. Deputy-Speaker: I do not think Shri Braj Raj Singh will press his amendment. After all, clause 24 will not confer any substantial right.

Bill

Shri Braj Raj Singh: No, I do not want to press it.

The amendment was, by leave, withdrawn.

Mr. Deputy-Speaker: The question is:

"That clause 24 stand part of Bill".

The motion was adopted.

Clause 24 was added to the Bill.

Mr. Deputy-Speaker: The question is:

"That clause 25 stand part of the Bill".

The motion was adopted.

Clause 25 was added to the Bill.

The Schedule (Pension of Judges)

Shri Braj Raj Singh: I beg to move.

Page 9, line 31,—

for "Rs. 20,000" substitute
"Rs. 10,000".

मुझे इस संशोधन के विषय में ज्यादा कुछ नहीं कहना है। सिर्फ इतना कहना चाहता हूँ कि आज मुल्क की जो परिस्थिति है, उसे देखते हुए २०,००० के बजाय १०,००० रक्खा जाय तो वह हमारी परम्परा के अनुसार ज्यादा अच्छा होगा।

Mr. Deputy-Speaker: Has the hon. Minister anything to say about it?

Pandit G. B. Pant: No.

Mr. Deputy-Speaker: The question is:

Page 9, line 31,—

for "Rs. 20,000" substitute
"Rs. 10,000".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That the Schedule do stand part of the Bill".

The motion was adopted.

The Schedule was added to the Bill.

Mr. Deputy-Speaker: The question is:

"That clause 1, Enacting Formula and the Title stand part of the Bill".

The motion was adopted.

Clause 1, Enacting Formula and the Title were added to the Bill.

Pandit G. B. Pant: I move:

"That the Bill be passed".

Mr. Deputy-Speaker: The question is:

"That the Bill be passed".

The motion was adopted.

BUSINESS OF THE HOUSE

15.48 hrs.

Shri Braj Raj Singh (Firozabad): Before the next business is taken up, may I submit that we have got only one hour and some minutes today and two and a half hours on Saturday for official business. There is a motion which has got to be passed before the close of this session. If this Bill is taken up and then the motion, the time allotted for non-official business on Saturday will be encroached upon. So, I submit that if we now take up the motion and hold this over for the next session, there will be no harm.

Mr. Deputy-Speaker: I do not think I have competence to do that.

The Minister of Home Affairs (Pandit G. B. Pant): This Bill has to be passed and then it has to be submitted to the Upper House so that it may be finalised before they disperse.