12.37 hrs.

HIGH COURT JUDGES (CONDITIONS OF SERVICE) AMENDMENT BILL—*contd.*

Mr. Speaker: The House will now resume further consideration of the following motion moved by Shri Datar on the 25th September, 1958, namely:—

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

Out of 2 hours allotted for all stages of the Bill, 1 hour and 14 minutes were availed of during the last Session, and 46 minutes now remain.

Shri Harish Chandra Mathur may now continue his speech.

Before the hon. Member starts, I would like to know how long the clause-by-clause consideration stage would take.

Shri Narayanankutty Menon (Mukandapuram): About 15 minutes.

Mr. Speaker: I do not find that there are any amendments.

Shri Frank Anthony (Nominated—Anglo-Indians): You may be pleased to allot at least 1 hour for the general discussion and about 15 to 20 minutes for the clause-by-clause consideration.

Mr. Speaker: We have had general discussion for 1 hour and 14 minutes already. I believe the hon. Member himself started it.

Shri Frank Anthony: No. I spoke on the Supreme Court Judges (Conditions of Service) Bill; I had not spoken on this.

The Minister of State in the Ministry of Home Affairs (Shri Datar): That Bill has been passed already.

Mr. Speaker: I was mistaken. Does the hon. Member want to participate in the discussion on this Bill?

Shri Frank Anthony: Yes.

Mr. Speaker: Very well, I shall allow him.

Only 46 more minutes now remain for all the stages of the Bill. If necessary, I shall extend it by half an hour.

Shri Harish Chandra Mathur (Pali): I shall finish in ten minutes.

Shri Narayanankutty Menon: Are you extending the time by half an hour?

Mr. Speaker: I shall extend it by half an hour more. Let us see. I shall extend it by one hour, if there is need.

Shri Harish Chandra Mathur: Mr. Speaker, you will recall that the hon. Member who just preceded me during the last Session put forward a very extraordinary viewpoint. What he suggested was that in the matter of the computation or calculation of the period for pension, the judges who used to work in the Part B States should not be treated on a par with those in the Part A States. He had suggested that only 50 per cent. of the period service put in by the judges in the Part B States should be taken into account; and this discriminatory treatment, he thought, would make up for the inferior status of the people who had been taken over to the Benches from the Part B States.

I think the hon. Member who made this suggestion did not himself realise the dubious implications of it. I will just ask the House to take into consideration one aspect. In Rajasthan for instance, we had Mr. Wanchoo working as Chief Justice. He had worked as Chief Justice in that Part B State for quite a number of years till reorganisation came about. Now if the suggestion of my hon. friend's

was to be accepted, the entire period of service of seven or eight years put in by Mr. Justice Wanchoo in Rajasthan—while serving in a Part B State—would not be taken into consideration, as it ought to have been, but only half of it would be taken into account. He also forgets that once you admit a Judge on the High Court Bench, there can be no discrimination between Judge and Judge.

I strongly urge this point and wish to state with all the emphasis at my command that no credence should be given to any idea which divides Judge against Judge, which injects a sense of superiority in one Judge and of inferiority in another. I think that would be a most dangerous thing and the earlier we forget about this idea of the inferior status of Judges in Part B States the better it would be for a dignified judiciary and for harmony of work and for better unity of purpose.

Having disposed of this particular point urged by my hon. friend, I would like to pass on to a larger issue. When we discuss and accept certain terms and conditions of service for Judges of the High Court or of the Supreme Court, we do it in a certain context and with a definite, particular purpose in view. I think the only purpose in view is that we want to ensure and have an independent and fearless judiciary. It is only this consideration which prompts us to liberalise the terms and conditions and give them the salaries and pensions which we propose to recommend It is in this context that I most respectfully venture to submit that today a rotten deterioration has definitely started and it is time that we took a serious note of the situation. Of course, our judiciary, by and large, particularly the higher judiciary, has conducted itself very well, but we cannot shut our eyes to the definite fact that a rotten deterioration has started, and we should take certain definite and effective steps to see that our judiciary, the higher judiciary in particular, enjoys greater respect and confidence in the minds of the people. It must inspire greater confidence in the minds of the people. Such a view has been expressed by those people who are very directly connected with the working of the judiciary; such an expression of view has been given by Judges of the Supreme Court and by members of the Law Commission The last and latest utterance which we had on this subject is from no less a respectable person than Mr. Justice Chagla at the time of his relinquishing the office of Chief Justice of the Bombay High Court. I would just read three lines from the speech he made on this particular point. He said:

> "It cannot be said that the Government either in States or at the Centre has scrupulously desisted from making inroads upon the status and jurisdiction of the law courts"

I think a serious note must be taken of such observations. Even when I say all this, I do not support the viewpoint which has been put forward by many speakers while speaking on the other Bill regulating the conditions of service of Judges of the Supreme Court, that we should have a statutory ban on the appointment of Judges to some administrative or ambassadorial jobs. Of course, I do not want such a statutory ban, but there should certainly be a convention, which should be respected, that the Judges look forward to nothing else but their promotion as Judges only. It should be only in certain very exceptional circumstances that in the national interest it may be necessary to appoint some Judge to a certain other post. That is why I do not insist upon any statutory ban.

The hon. Home Minister, while speaking on the subject, said that there was no reason why we should not have faith and confidence in our Judges. If we cannot have faith and

[Shri Harish Chandra Mathur.]

confidence in people of that status, then God alone help us I entirely respect the observation made by the hon. Home Minister It is not that we have no trust and confidence in our Judges. We do have trust and confidence in them We also want that we make the best possible use of the talent available in the country. I concede both these points But then we cannot ignore also the other two factors It is only because we want to make the best use of the talent of these Judges that we have fixed the superannuation age at a higher level Judges of the High Court do not retire at the age of 55, they retire at the age of 60 Judges of the Supreme Court do not retire even at 60; they do so at the age of 65 It is only because we want that Judges should remain Judges and it is only because we want to make the best use of the talent. I think the Judges and the Administration should be satisfied with the best use which we are making of this talent Not that we do not trust our Judges, but certainly Judges are human beings like ourselves and we should never put temptations and pitfalls in their way It is only for this reason that we suggest that there should be a strong convention that no Judge, so far as possible, should be appointed to any executive or ambassadorial job I say this because it does affect independent working I am personally aware of such cases, how at the time of retirement our seniormost officers feel and how they behave and try to secure certain better jobs. So we must try to avoid all these temptations and pitfalls We must remember that we are already making the best use of the talent available in the country I make an exception because I do not want, as I said at the beginning, any statutory ban; I say that if in an exceptional circumstance it becomes necessary to depart from this convention, we should do so

I will only refer to one other point which was mentioned in regard to this matter, namely, about the salaries of the Judges One hon. Member made the point that the salaries and pensions given to Judges were not adequate and they should be raised. Even when we were discussing the other Bill, it was suggested that we must remember that the Federal Court Judges were getting Rs 7,000 per month each I think we should remember the context and the circumstances At that time, the Governor-General, not even the Head of the State, was getting Rs. 21,000 or Rs 23,000 per month It should be remembered that now the Head of the State is getting Rs. 5,000 or Rs 6,000. He has cut it down. Let us also consider the context in which salaries of Judges and of everyone else have to be decided I am not one of those who wants to import political stunts when we are considering the pay structure of our services, and particularly the pay structure of the Judges While discussing the question of salaries of Judges, one hon Member sitting opposite told the House that the Chief Minister of Kerala was getting only Rs 350 per month I do not know what oblique suggestion he was wanting to make Does he want that Judges should get Rs 500 or Rs 600 or Rs 700 per month? I do not think we need import these political stunts while we are considering such an important subject as the scales of salaries and pensions of Judges. At the same time, we cannot divorce ourselves from the context of the pay structure which is obtaining in the country and the resources which are available to us I think the salary of the Judges which has been fixed as also the pension is more than adequate and they should be satisfied with it. It is enough to make the Judges live in comfort and absolute security. We are not providing for luxuries In this country we cannot afford to. I do not know how the Judges themselves will be feeling in asking for higher salaries when they know that there are other equally deserving people who do not get higher salaries

and that a large section of our pay structure provides only for bare maintenance. Let us not forget that.

When this particular question was raised, my hon. friend sitting over there stated that the posts of Judges were going abegging. It is a very important matter of which we have to take note. It was mentioned that in a particular State the offer of appointment as a High Court Judge was made one after another to 8 or 9 advocates and was refused. I would, certainly, like the hon. Home Minister to throw some light on the subject. I would like to know particularly whether it was in a Part B State or in a Part A State; and, if it was in a Part B State, was it when the salary of the Judges in some of the States used to be Rs. 1,000 or Rs. 1,500 or was it after the salary was raised to Rs. 3,500.

Apart from saying that the salaries and pensions of these High Court Judges are adequate, I wish to stress and emphasise one particular point. The Home Ministry should see that no offers are made to persons who are likely to refuse them. I think there is something very unhealthy in offers being made to such persons. I cannot conceive of it. It also indicates and reflects the bad health of the Bar Associations and the Bar itself. It would be better if the Bar Associations of the various States convene a conference and evolve a sort of convention that whenever an offer is made that offer would be respected. The Home Ministry should also evolve a procedure to see that offers are, by and large, made only to persons who will accept them.

It is not that we always want a person from the Bar who is making the most money. It is not always necessary to have such a person who is getting such a lucrative practice that he would never think of accepting the offer. I do not understand how even a very lucrative practitioner would refuse an offer if the Income-tax Department is working properly, because income-tax should mop away whatever extra income he gets over Rs. 4,000 or Rs. 5,000. Even if he is getting more than Rs. 10,000 he would not be able to retain more than Rs. 4,000 or Rs. 5,000 if the Income-tax Department is working properly.

It is not only money that should be the consideration. I think the Bar Associations must meet and evolve a healthy convention if they are to have the respect which is absolutely their due. It is only the Bar of this country which has provided personnel for political work in the country, for public work in the country and also for the Bench. If they are not satisfied with Rs. 4,000 or Rs 5,000 which this poor country can hardly afford to pay, I think, there is something wrong with the health of the Bar of this country; and it is better that they take stock of this and do something for the country.

Having said all this, I support in full particularly those clauses in which the attitude of the Government is reflected. Government's attitude appears to be that they want to make no distinction between a Judge who is taken from a Part B State and a Judge who is taken from a Part A State. I would only want the hon. Minister to make absolutely clear his attitude in the matter and to say that he gives no credence to the ideas which had been put forth by the hon. friend who preceded me and who wanted discriminative treament. He wanted to inject a sense of inferiority in the people who had come from the B States and a sense of superiority in those Judges who happened to be in Part A States, though we have had very brilliant Judges from our Part B States. We had some people who were really brilliant and who were found to be as good as any other from Part A States.

Now that we have got only one kind of State, I do hope that this discriminative treatment and this psychology would be forgotten once

[Shri Harish Chandra Mathur]

for all and all the States would be treated on an equal level in this country

Shri Frank Anthony: Sir, speaking on the Supreme Court Judges (Conditions of Service) Bill, I covered considerable ground which I felt is vitally relevant even to the present Bill And, frankly, I was a little reluctant to speak on this Bill because of the lack of response that my suggestions had evoked from Government I felt with a great deal of distress that Government is determined to pursue measures which, in my humble opinion, are corrupting steadily the independence of the judiciary and are also undermining public confidence in the judiciary I say this with a great deal of respect, and I say with a great deal of sorrow that I feel that progressively Government has undertaken measures which are calculated to make our judiciary, even in the higher regions, little more than an appendage of the Executive

Sir, when I was speaking on the Supreme Court Judges (Conditions of Service) Bill, I had referred to this feeling that this prospect of executive preferment to judges after they retire or even while they are in service has demoralised our judiciary In saying that, I am expressing the unanimous feeling of the members of the legal profession, and I may say this that I am expressing the feelings of a large section of the Judges themselves

I do not know whether I would be right in saying that Government is aware of the extent to which the independence of the judiciary has been steadily undermined Some people suggest—and I perhaps am one among them—that Government knows to what extent the independence of the judiciary has been corroded I do not know whether it is part of Government's policy to evolve measures which will keep our judiciary subservient to the executive But, I say that it is the characteristic of all governmens, particularly of governments which are in a dominant position, governments which inevitably become tainted with the taint of power-drunkeness, that they do not deliberately encourage and foster an independent judiciary

What has happened to what we regarded as the *sacrosanct* principle before independence that there must be a separation of the judiciary from the executive? We have even enshrined it in our Directive Principles, but this Directive Principle has become one of our forgotten Directive Principles I say this with a great deal of sorrow, but I say without qualification that so far from this principle being implemented by Government, so far from the judiciary being separated from the executive more and more, by measures, indirect *sub rosa* there is an increasing fusion of the judiciary with the executive

Sir, I know that Government is inclined to indulge in cliches and say, 'No, we must not point a finger at our judiciary, that our judiciary is incorrectible, that our judiciary is as independent as it was before' I do not want to point a finger at our judiciary No one is more zealous than I am of the need for preserving intact the independence of our judiciary and the need for preserving intact the maximum of public confidence in the judiciary But, I cannot help feeling that there is an almost calculated pattern of encroaching on the independence of the judiciary

13 hrs

Sir, this Bill purports to be innocuous I am glad that the Home Minister is here The Home Minister did not have the benefit of listening to my views when I spoke on the Supreme Court Judges (Conditions of Service) Bill But I say that in one provision,

at any rate, this Bill is not so innocuous. I do not know what the intention of Government is—I am referring to clause 23A which reads:—

> "Every High Court shall have a vacation or vacations for such period or periods as may, from time to time, be fixed by the President... ."

I say with a great deal of respect that this is an eloquent exemplification of this creeping encroachment of the executive on the judiciary. I am aware that there were disparity of conditions as between State and State, particularly between Part A and Part B States, with regard to length of vacations. But I do not know what Govment's motive is. I am not going to assign any motive, but what is going to be the effect of a provision like this? I say this provision is most reprehensible.

Sir, this question of tampering with the vacations of our judges is completely misconceived. Whether they have ten weeks or eight weeks, what difference is it going to make? The arrears in some of the High Courts are so huge that even if we abolish their vacations completely, it will make no appreciable impression on the clearing of these arrears. The Chief Justice of one of the leading High Courts calculated it that at the most a Judge can on an average dispose of four units of work per day. There are two hundred or two hundred and ten working days in a year. On a generous estimate the most he can dispose of in the course of a working year is about eight hundred to eight hundred and eighty units. How, if you take away three or four weeks, are you going to solve the problem? Assuming that they dispose of another eighty or hundred cases per judge (fifteen judges disposing of fifteen hundred cases) how are they going to make an impression on the arrears running into fifteen thousand? It is misconceived, because I feel we play to the political galleries when we say: Oh our judges are getting ten weeks, cut it down to six weeks. It is misconceived in this way.

Judges are supposed to do mental work which is of a uniquely sustained character. They are on the Bench from ten to four. They do not have any breaks, except short breaks for lunch. No one is more dangerous to the integrity of our judiciary than a tired judge, an overworked judge—integrity in the sense that a tired judge an over-worked judge will not dispense injustice. He will be inclined to dispense injustice. He will be inclined not to apply his mind to writs and other matters involving life. He will be inclined to deal with them in a superficial or summary manner. What I feel very strongly in connection with this particular provision is that it underlines a sort of executive encroachment on the independence of the judiciary.

What does it mean in effect? What are we telling our judges? We are telling our judges this: in future you will have to behave like good boys; that in future the Home Minister of a State, or even perhaps the Home Secretary, will determine whether you get ten weeks or six weeks by way of vacation. I just cannot understand how in principle we can accept a provision like this. If, however, you wish to make a provision like this, leave it to the Chief Justice of India or leave it to the Chief Justice of the High Court concerned. But to leave it to the Home Secretary or Home Minister is not good. I realise that the word is the 'President'; but in the final analysis it will be the Home Minister of a State who will detemine whether the judges should get ten weeks or six weeks, or four weeks. I feel that the principle is not only wrong, but that it is pernicious. I would even go to this extent. If you want to tamper with the independence of the judiciary, we cannot prevent it. But at least let the tampering be qualified. I would not like to place this at all in the hands of the executive, whether

[Shri Frank Anthony.]

they get ten weeks or six weeks. I am not prepared to place the independence of the judiciary at the whims and caprices of some executive officers. I would even be prepared to go to this extent. If you think you have got a case for cutting down their vacation, I do not object; cut it down, for ten weeks make it six weeks. We are making the conditions of service and salary uniform in the High Courts. Make the period of vacation six weeks. Put a specific provision here that the High Courts shall not have more than six weeks of vacation But the period of their vacation cannot be decided from period to period as may be fixed from time to time. The Judges will not know what their vacation would be. Suddenly they would be told: you have not done your work

I heard from a senior Judge only a few days ago what happened in one of the Part B States before the merger. I do not want to attribute motives. One of he Part B State Judges wanted to show the disposal of work He got hold of his list, looked at it and arbitrarily cut down 70 per cent of his petitions—dismissed just like that. That is precisely what will happen if the executive thinks that it can cut down the vacation of the Judges in this way, make their leave conditional on quick disposal As I said earlier you won't get justice in this manner. I would appeal to the Home Minister do not give the judges a feeling that now more than ever they are being brought completely under the domination of the executive, that even the vacation of the High Court Judges will be at the mercy of some Home Secretary. I say that it is extremely bad; it is another measure on the road to make the judiciary the appendage of the executive. It will create resentment among the judciary and it will only give the public another reason for pointing a finger at the fact that the judiciary is steadily losing its independence.

पंडित ठाकुर दास भार्गव (गुड़गांव) : जनाब स्पीकर साहब, एडवोकेट साहब की तरह जजेज के बारे में मुझे जो कुछ अर्ज करना था वह मैं ने उस वक्त अर्ज कर दिया था जब कि सुप्रीम कोर्ट के जजेज का बिल आया था और अब मैं उसको दुहराना नहीं चाहता । लेकिन मैं सेक्शन २३ ए के बारे में, जिसका हवाला दिया गया है, मैं अदब से चन्द बातें अर्ज करना चाहता हूं ।

मैं तो यह यकीन नहीं रखता कि हमारी गवर्नमेंट किसी तरह से भी जूडीशियरी के इंडिपेंडेंस को कम करना चाहती है । और न मैं यह यकीन रखता हूं कि कोई भी गवर्नमेंट जो कि कान्स्टीट्यूशन की परवाह रखती है वह अपने बिल में इस किस्म का ख्याल भी ला सकती है । लेकिन इसमें शक नहीं है कि जब कभी रेजिसनेशन लाया जाता है तो हम गवर्नमेंट को बतलाते हैं कि कान्स्टीट्यूशन के मुताबिक एग्जेक्यूटिव और जूडीशियरी के सेपरेशन के प्रिंसिपल को अमल में लाना चाहिए । लेकिन मैं पाता हूं कि गवर्नमेंट उस उसूल पर अमल नहीं करती क्योंकि उस पर अमल करना किसी कदर मुश्किल है । जो गवर्नमेंट यह चाहती है कि देश में गवर्नमेंट के काम स्मूदली चलें वह उसूलों की कम परवाह करती है । वह काम को स्मूदली चलाने की ज्यादा परवाह करती है । इसी तरह से जब गवर्नमेंट के पास ये शिकायतें आती हैं कि हाई कोर्ट से जल्दी जस्टिस नहीं मिलते तो बिला इस मामले में गौर किये हुए कि क्यों जस्टिस जल्दी नहीं मिलती, गवर्नमेंट की तवज्जह इस बात की तरफ जाती है कि हाई कोर्ट और सुप्रीम कोर्ट में छुट्टियां ज्यादा होती हैं । पिछली मर्तबा जब आनरेबिल होम मिनिस्टर साहब तकरीर फरमा रहे थे तो उन्होंने सुप्रीम कोर्ट की छुट्टियों के मुताल्लिक

फरमाया था कि सुप्रीम कोर्ट ने खुद यह मान लिया है कि हम अपनी छुट्टी किसी कदर कम करेंगे और इस से हाउस के अन्दर जनरल सैटिसफैक्शन था। हिन्दुस्तान के अन्दर बहुत से ऐसे लोग हैं जो यह समझते हैं कि अंग्रेजों के जमाने में जो कंडेशन्स थीं वही कंडेशन्स अब जब कि जज हिन्दुस्तानी है कायम नहीं रहने चाहिए। इस वास्ते जब सुप्रीम कोर्ट को निस्बत यह कहा गया कि वह छुट्टियां कम करना चाहते हैं तो हाउस में जनरल सैटिसफैक्शन हुआ था। मैं अब भी यह अर्ज करना चाहता हूं कि अगर हाईकोर्ट के जज इस बात को मान लें कि वह वेकेशन्स को कम करना चाहते हैं तो मैं बहुत खुश हूंगा। मैं खुद चाहता हूं कि सब अफसरों को चाहे वे बड़े हों या छोटे, उन कायदों के मुताबिक जिससे कि वे गवर्न होते हैं वेकेशन्स मिलनी चाहिए, ज्यादा नहीं। लेकिन साथ ही मैं इसको भी मानने को तैयार हूं कि हाईकोर्ट और सुप्रीम कोर्ट के जजों की वेकेशन्स के बारे में जो प्रिंसिपल है वह दूसरे डिपार्टमेंट्स से बिल्कुल मख्तलिफ है। एक हाईकोर्ट का जज कितना काम करता है इसका अन्दाजा एक ले मैन के लिए लगाना बहुत मुश्किल है। हाईकोर्ट के जज दस बजे से चार बजे तक अपनी कुर्सी पर बैठे हैं और एक मिनट भी इधर उधर देखे बगैर बराबर अपना काम करते रहते हैं और क्लाक की तरह दस बजे से चार बजे तक अपना काम करते रहते हैं। और इसके अलावा भी मैं समझता हूं कि कोई हाईकोर्ट जज वर्थ दी साल्ट नहीं होगा कि जो घर पर भी अपना काम न करता हो। मेरी चन्द जजों से वाकफियत है और मैं जानता हूं कि वे अपना बहुत सा काम अपने घरों पर करते हैं।

इसके अलावा कहा जाता है कि साहब ये जज लोग आम तौर पर सनीचर की छुट्टी भी कर देते हैं। लेकिन ऐसा कहने वाले यह नहीं जानते कि जो जज लोग बहस सुनते हैं उस पर जजमेंट किस वक्त लिखते हैं। आम तौर पर सैटरडेज को और छुट्टियों को जजमेंट लिखते हैं। लिहाजा मैं अर्ज करना चाहता हूं कि हाईकोर्ट और सुप्रीम कोर्ट के जजेज के काम का तरीका और उनकी जिम्मेवारियां इतनी जबरदस्त हैं कि उनका मुकाबला दूसरे डिपार्टमेंट्स की छुट्टियों से करना मुनासिब नहीं होगा।

इसके अलावा मेरी नाकिस राय में अगर हम इस दफा २३ ए को यहां पास करेंगे तो हम अपने कांस्टीट्यूशन की भी खिलाफ वर्जी करेंगे। कांस्टीट्यूशन में जहां हाईकोर्ट के जूरिसडिक्शन का जिक्र है वहां पर आर्टिकिल २२५ में यह लिखा है।

"225. Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution:"

इसके सही मानी यह हैं कि जो कुछ ताकत हुकूक, जिम्मेवारियां हाई कोर्ट की कांस्टीट्यूशन के अमल में आने के पेश्तर थी वे इनटेक्ट रहेंगी और आयन्दा भी वे वही जरिसडिक्शन एक्सरसाइज करेंगी। पेश्तर इसके हम दफा २३ ए को नाफिज करें हमको यह देखना चाहिए कि क्या कांस्टीट्यूशन के मुताबिक हाईकोर्ट का यह हक है कि वह कब अपनी छुट्टी करें और कितनी छुट्टी करें।

[पंडित ठाकुर दास भार्गव]

मैं अदब से अर्ज करना चाहता हूं कि आर्टिकिल २२५ के मुताबिक तो यह हाईकोर्ट के जुरिसडिक्शन की चीज है कि वह खुद अपनी छुट्टियों का फैसला करे ।

मैं अदब से अर्ज करना चाहता हू कि जूडीशियरी और एग्जीक्यूटिव गवर्नमेंट के दो टुकड़े हैं और हमारे कास्टीट्यूशन में यह उसूल रखा गया है कि उनमें से एक दूसरे के हुकूक पर एनक्राच न करे । ऐसी हालत में एग्जीक्यूटिव को यह अख्तियार देना ठीक नहीं होगा कि वह जुडीशियरी की वेकेशन के बारे में फैसला करे । अगर आप समझते हैं कि जेर दफा २२५ हाईकोर्ट को अपनी छुट्टियों के बारे में फैसला करने का अख्तियार है तब तो यह मुनासिब नहीं होगा कि एग्जीक्यूटिव को यह अख्तियार दिया जाये । मैं मानता हू कि प्रेसीडेंट साहब को यह अख्तियार दिया गया है । उनसे बड़ी पावर आज हमारे देश में कोई नहीं है । लेकिन मैं पूछना चाहता हू कि इस लफ्ज के क्या मानी है । इसके मानी, जैसा कि एटर्नी साहब ने फरमाया सेक्रेटरी टु दी गवर्नमेंट आफ इंडिया भी हो सकते हैं । प्रेसीडेंट के नाम से सारी पावर्स एक्सरसाइज की जाती है । अगर इस में यह होता कि होम मिनिस्टर साहब इस पावर का एक्सरसाइज करेंगे तब भी हम समझते कि वह इस तरफ काफी तवज्जह देंगे । लेकिन इन के मानी यह है कि सेक्रेटरी गवर्नमेंट जो तजवीज लिखकर भेज देगा वही प्रेसीडेंट के नाम से जारी होगी । मैं नहीं चाहता कि हाईकोर्ट के जज यह ख्याल करें या पब्लिक यह ख्याल करे कि वे पावर्स जो हाईकोर्ट के जजों को दी गयी थी और जो कि इतने उम्दा तरीके से डिस्चार्ज की जा रही थीं वे एग्जीक्यूटिव को दी जायें । मैं अर्ज करना चाहता हू कि यह मुनासिब नहीं होगा कि हाईकोर्ट इन पावर्स को इस्तेमाल न करे । और हाईकोर्ट और जूडीशियरी के इंडिपेंडेंस के लिहाज से भी मैं समझता हू कि यह पावर उनको ही होनी चाहिए । हम जानते हैं कि किस उम्दगी से और किस काबलियत से उन्होंने अपनी ड्यूटीज को अभी तक डिस्चार्ज किया है और ऐसी हालत में कोई वजह नहीं है कि हम उनसे यह हक ले लें । हमारी पार्लियामेंट भी ओवरिन है लेकिन आप देखें कि हम कितनी छुट्टियां लेते हैं । जब भी काम होता है तो हम ज्यादा से ज्यादा काम करने को तैयार रहते हैं । फिर हम क्यों यह समझ लें कि हाईकोर्ट के जज ही इस मामले में कोताही करेंगे और ज्यादा छुट्टियां लेना चाहेंगे ।

बल्कि असलियत तो यह है कि हाईकोर्ट में जो यह यूनिट आफ वर्क का तरीका रखा गया है यह भी ठीक नहीं है । मैं ने देखा है कि जिन अदालतों में यूनिट का हिसाब रखा जाता है वहां घास काटी जाती है । मैं समझता हू कि अगर इस तरह का कायदा हाईकोर्ट और सुप्रीम कोर्ट में भी हुआ तो वहां पर न जस्टिस रहेंगी और न इंटेग्रिटी रहेगी और न इम्पारशियेलिटी रहेगी । इस वास्ते मैं अदब से अर्ज करता हू कि हाईकोर्ट के पास से इस अख्तियार को लेकर हम किसी दूसरे को न दें । लेकिन अगर फिर भी आप समझते हैं कि आर्टिकल २२५ में हाईकोर्ट को यह वेकेशन का फैसला करने का हक नहीं है और आप इस अख्तियार को किसी दूसरी अथारिटी को देना चाहते हैं तो मैं अदब से अर्ज करूंगा कि आप सुप्रीम कोर्ट के चीफ जस्टिस को यह अख्तियार दें । मैं यह तो समझ सकता हू कि सुप्रीम कोर्ट देश की सारी हाईकोर्टस के वास्ते वेकेशन मुकर्रर कर दे । लेकिन मैं यह समझने से कासिर हू कि यह पावर एग्जीक्यूटिव को दी जाये । अगर ऐसा किया गया तो जूडीशियरी पर वह इम्प्रेशन पड़ेगा कि उससे एक हायर अथारिटी है जिसके सबमिशन में उसको रहना होगा ।

मुझे खुशी है कि मेरे दोस्त श्री केशव अय्यंगार ने दफा २३ए को हटाने के लिए एक अमेंडमेंट रखा है। मुझे उम्मीद है कि आनरेबल मिनिस्टर साहब उस को क़बूल फ़रमायेंगे।

इस में कोई शक नहीं कि आर्टिकल २२५ में "कंशन्ज" का ज़िक्र नहीं है, लेकिन मैं अर्ज़ करना चाहता हूं कि "कंशन्ज" के अतालिक अख्तियारात भी उन्हीं पावर्ज़ का हिस्सा है। हम यह नहीं कह सकते कि चूंकि हाई कोर्ट ने उन पावर्ज़ को इस्तेमाल नहीं किया, इस लिए वे उस आर्टिकल की ज़द में नहीं आती। इस बिल में और भी बहुत सी बातें हैं लेकिन मैं इस वक्त उन में नहीं जाना चाहता हूं और न ही मैं उन बातों को दोहराना चाहता हूं, जो कि दूसरे मेम्बर साहबान ने यहां पर कही हैं। लेकिन मैं यह अर्ज़ करना चाहता कि इस हाउस को राइटली ऐक्शन होना चाहिए कि कोई ऐसा काम न किया जाय, जिस से जुडिशरी को यह महसूस हो कि हम एग्जीक्यूटिव को ऐसे अख्तियारात दे रहे हैं, जिन को अब तक वे बरतते रहे हैं या आईन्दा बरतें। मैं यह अर्ज़ करना चाहता हूं कि यह कंम आर्टिकल २२५ में आए या न आए, मेरी गुज़ारिश है कि दफा २३ए को एनेक्ट न किया जाए। "कंशन्ज" का मामला हाईकोर्ट पर छोड़ दिया जाना चाहिए और अगर आप ऐसा नहीं करना चाहते, तो कम से कम इस को सुप्रीम कोर्ट पर छोड़ दिया जाना चाहिए, क्योंकि इस देश में सब से ऊंची जुडिशल अथारिटी सुप्रीम कोर्ट की है। कोर्टस के लिए वह जो भी इन्तजाम करती है, जो भी इन्टरप्रेटेशन करती है, वह आखिरी अथारिटी है। गवर्नमेंट को यह पावर नहीं लेनी चाहिए।

Shri Narayanankutty Menon: Sir, in connection with the discussion on this Bill I wish to submit a few points for the consideration of this House. By passing this Bill, this House is passing a measure by which we give admittedly better conditions of service for the Judges of the High Courts. There is no difference of opinion on any side of this House on the point that to keep up the fundamental maxim that the independence of the judiciary has to be kept up the conditions of service applicable to the Judges should be, in comparison to others, far better

A suggestion was made during the debate on the last day of the previous Session by a colleague of mine that the emoluments that we give to the High Court Judges and also the conditions of service applicable to them should have some relationship to the financial state of affairs in the country. That was a mild suggestion made during the course of the debate But today I find that my hon friend from Rajasthan made a big mountain of that mouse of a suggestion that was made, by making a reference to the salary drawn by the Chief Minister of Kerala. It was not suggested on that day that because a Chief Minister in a State was drawing only Rs 350 the salary paid to a particular High Court Judge should also be Rs. 350 The only suggestion made then was that there should be some sort of comparision between the emoluments drawn by a High Court Judge or a Judge of the Supreme Court and the financial state of affairs in the country My hon. friend from Rajasthan was not kind enough to look at it from that point of view and take it as a thing which he could also accept. He said that it is a political stunt. I am not surprised that my hon. friend termed it as a political stunt, because many many things said by Mahatma Gandhi himself during those days when the organisation of the Congress was led by him are considered by Congressmen today as political stunts Mahatma Gandhi said that Congress Ministers should draw only Rs 500. Nobody says today that those Ministers should draw Rs. 500 only. Some changes can

[Shri Narayanankutty Menon.]

be made because of change in circumstances. But, for a Congressman from the other side to dub it as a political stunt is itself, I should say, a political stunt to counter a reasonable and sensible argument which my hon. friend could not answer.

My submission is that the conditions of service of High Court Judges should be superb, should be excellent, in order that they would be able to keep up the independence of the judiciary. At the same time, Sir, this is a country where judicial tribunals have laid down that the minimum wage of a worker should be Rs. 28. Let us multiply it by 100 and make it Rs. 2,800. Hundred times difference between the wages of a labourer and the highest man of the judiciary is a reasonable thing compared to the standards of any other civilised country in the world. That is the only suggestion made. In the light of that suggestion certain things may be taken into consideration by the Government. The *per capita* income of an Indian citizen today should be taken into account. In relation to that let Government fix as many reasonable and excellent conditions of service as possible for the High Court Judges

My second point is about the disposal of cases. These are rare opportunities, when we discuss the conditions of service applicable to the Judges, available to this House where we will be able to point out, I believe, for the Government to follow and take suitable measures and for the judiciary to understand, the sentiment prevailing in the country today. After 1947 the administration of justice in the country, both in the number of cases and also in the nature of cases, has become a complex affair. Before 1947 only criminal and civil law was being administered. The nature of cases in those days was different. After 1947, especially after the Constitution came into force, the very nature of cases and the number of people involved in each case have all undergone a substantive change. The very nature of administration of justice has undergone a change. When certain types of cases come before the High Courts and inordinate and extraordinary delays occur in the disposal of these cases, the implication and the total result of such delays is far more far-reaching than it used to be before 1950. The other day when some other matter was being discussed here, I drew the attention of the hon. Home Minister to the fact that a large number of writ applications taken from the orders of tribunals are pending for many many years. I have come across instances where workers were dismissed, industrial dispute was raised, the tribunal gave an award, somebody else took a *writ* application before the High Court and it is pending before the High Court for 2½ to 3 years. I am not finding fault with any member of the judiciary. It may be that due to pressure of work in the High Court in the ordinary course of business it was not possible to dispose of these cases with as much speed as there ought to be. My suggestion, therefore, to the Government at this juncture is that irrespective of the quantum of work, irrespective of the cause of delay, Government should find time to direct each High Court to have separate Judges to hear these cases

I wish to make an earnest appeal in this connection, because the very conception of independence of judiciary, the very conception of the confidence of our people in the judiciary will be undermined if cases directly affecting their own lives are delayed for such a long number of years. When such long delays occur in such cases the citizen himself loses the confidence of getting justice at the hands of the judiciary. The laudable maxim "justice delayed is justice denied" is applicable to these cases, and delay in disposing of these cases means denying justice to millions and millions of workers. Many such cases

are pending before the High Courts, today. If any more delay occurs people will begin to feel that justice would be denied to them and to that extent they will lose confidence in the judiciary. Therefore, both in the name of industrial peace and in the name of fostering confidence in the minds of the people as far as judiciary is concerned, Government should come forward with a scheme whereby the cases that are pending before the High Courts could be disposed of with as much speed as possible. I do not suggest that other cases should be delayed. All other cases will have to be disposed of as soon as possible, but top priority, both from political and social view point, should be given to cases where not one litigant is involved as far as private rights are concerned, but the interests of lakhs and lakhs of workers are involved. With that understanding, Sir, a separate judge should sit in the Bench of each High Court to dispose of cases which are taken from tribunals. I hope Government will very seriously think over this question, especially when Government have rejected the other day the proposal for excluding jurisdiction of these courts over the industrial tribunals. I hope at least they will consider this suggestion of having one judge in each High Court to dispose of these cases involving workmen

3.27 hrs.

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

The last point I wish to mention is about the raising up of the principles emphasised by all hon. Members during the course of this debate for the building up of confidence in the judiciary by the people of this country. Without making any allegation or casting aspersion on anybody, I would say, if you take the consensus of opinion of both the Bar and the general public interested in this affair and, without any political bias or prejudice if the lawyers and the people of this country are asked whether the confidence of the people in our judiciary has enhanced or decreased during these 11 years after 1947, the unanimous reply will certainly be that to a considerable extent there has been some deterioration in the confidence of the people in the judiciary of this country, whatever might be the reasons, I do not wish to go into them because those reasons are beyond the scope of this particular Bill. I only want to point out that this state of affairs, this deterioration in the confidence of the public and also of the Bar in our judiciary certainly means a great danger to the democratic institutions. Certain stringent measures will have to be taken by Government to see that public confidence in the judiciary is resorted

In this connection I want to make a particular reference. The present procedure for appointment of Judges is certainly a laudable procedure. But the proof of the pudding, Sir, is in the eating. When a particular gentleman from a Bar is selected as a Judge, we scrutinize the whole question and see, by the public opinion and also the opinion of the Bar, whether that particular appointment is certainly the appointment which should be in the interests of the independence of the judiciary. In many cases, the answer that comes is not at all laudable. Therefore, in selecting judges from the Bar, the one and only consideration that should weigh is not only the experience at the Bar so that the selection could be made well but the unanimous opinion of both the Bar and the public that the one real selection that has been made was the only selection possible in that case, taking only the capacity of that particular individual to adorn the highest place in the judiciary of the land.

In procedural matters also, the present procedure is that the Chief Justice of the High Court concerned makes on original recommendation presumably taking for granted that

[Shri Narayanankutty Menon.]

the recommendation passes through all the various channels and the President makes the appointment. I have got a suggestion to make, not because I have got any aspersion to make on the capacity of the Chief Justice or anybody It should be far better that the responsibility of making this recommendation originally from the High Court is not given particularly to the Chief Justice, that responsibility will have to be shared by all the Judges of the High Court. I have got a reason to make this suggestion, because a Chief Justice certainly enjoys a better position than the other judges, but the Chief Justice alone might not have much opportunity of seeing a particular individual from the Bar who may be working in different capacities Secondly, it might be possible, whatever might be the integrity of the Chief Justice and whatever might be the experience of the Chief Justice—that he might err The fundamental principle of human nature is that it is possible for one human being to err, and it is possible that more human beings err as much as possible Even taking that maxim into consideration, it would be far more laudatory and far more salutary that this function of making the original recommendation for the appointment of judges from the Bar is given not to the Chief Justice alone but to the judges in general

I hope that by remembering that aspect very well, and at the same time, bearing in mind that any departure made from the primary principle that every criterion for selection from the Bar as a judge is the criterion of the capacity of the individual alone, the selection will be made If that principle is adhered to in general, certainly the confidence that is required for a High Court judge to administer justice can be instilled in the minds of our people, because that principle, namely, justice should not only be done but it should appear to be done, is also applicable not only in administration of justice but also to the selection of the judiciary. In the beginning, the method of appointment plays very much in the minds of the litigants and of the people till that judge retires

Therefore, in the case of appointments, I make a last appeal to the Government extreme care will have to be taken in making appointments and I hope that whatever might have happened in the past, whatever might been the deterioration which has happened in the opinion of any one individual but the people in general and the Bar in general, will not happen in future I am fully confident that we will then be opening a new road where every appointment, as far as possible, will be beyond reproach and that the judiciary in our country will certainly function as a solid foundation rock of our democratic system

The Minister of Home Affairs (Pandit G. B Pant). I do not propose to make a long speech The comment that have been made on this Bill have gone far beyond the scope of the Bill They cover a very wide ground If I were to attempt a reply to every one of the points that have been raised here it would perhaps prolong the debate and that too without any fruitful result

So far as the general position and the attitude of the Government towards the judiciary is concerned, I entirely endorse the remarks made by the hon Members about the prestige, the independence and the dignity of the judiciary and especially of the High Courts being maintained fully, and on that, there can be no difference of opinion I venture to say that so far as I am personally concerned, I have made every attempt to improve the conditions of service and to contribute, so far as the Government can, towards the raising of the stature and status of the judges of the High Courts The principle that the judiciary should occupy a position in

which it should not be deterred by any extraneous considerations from dealing in a judicious and judicial way with all problems that may come before it is unexceptionable. Even in this Bill we have been stating what we have been striving at; it seeks to improve the terms of service. The judges in Part B States were getting emoluments lower than the Judges in Part A States. The terms about leave, pensions, etc., were also more to their disadvantage than those which were prescribed for the Part A State Judges. This Bill seeks to give the full benefit of the provisions relating to Part A State Judges to all those Judges who were serving in the Part B States not only for the period that they were serving in Part A States but also for the period that they have served in Part B States. If this Bill were not introduced and if these provisions had not been brought before this House, then, they would not have the benefit of the laws that govern the emoluments of the Judges, and there too, we ourselves introduced amending Bills for giving greater facilities and amenities to the Judges. So, every attempt we have been making has been in the direction of making it easier for the Judges to concentrate on their work and to lead a life befitting the position that they occupy.

In the circumstances, I am sorry that any remark should have been made about any sort of influence being brought upon the Judges by the Government in order to undermine their independence, but some of the hon. friends here have spoken highly about the independence of our Judges, about their ability and about the way they dispose of their business. I hold a high opinion of our judiciary; it is not necessary to go into individual cases. No one can ever say that all are of an equal stature or that all possess talents of the same order. But taking the judiciary as a whole, we have every reason to be proud of our judiciary. They have functioned well and they deserve well of every one of us. So, we have been making attempts to meet their needs.

As to the remarks that have been made about the judges being denied opportunities of service after their retirement, I should say that they do no justice to the judges. To say that they are not able to discharge their duties in an impartial way because there is some possibility of their services being utilised for public purposes later, is, I submit, a very unfair thing, which indicates and reveals an approach which is not consistent with the regard which everyone of us must possess for the character and the integrity of our judges. To say that they are likely to refrain from doing what is right because sometime after they have retired, they may be requested to perform some public functions is not creditable either to us or to them. Then, I do not know how many of the proposals that have been made from time to time are to be carried out. We are asked to hold judicial enquiries about administrative matters not once or twice, but on scores of occasions So, if the enquiries are to be held under the auspices of and by the eminent members of the judiciary, then we cannot find them among the executive officers. You want that judges should be employed for those purposes. If they have to be employed to meet the public demand, then they can be found only among those who have judicial experience In the circumstances, the suggestion or the criticism seems to be utterly unjustified and to some extent, it savours of injustice to our judges.

Something has been said about our proposal in this Bill regarding vacations As all Members know, the High Court consists not only of the Chief Justice, but also of a number of judges. The proposals emanating from High Courts are not effective ordinarily, unless the judges are in agreement. Where suggestions are made which may be acceptable to the Chief Justice, there are judges who may not quite welcome those

[Pandit G. B. Pant]

proposals or agree with him. There are dissensions between the judges also. So, we cannot assume that everything that is proper or that may appear to others to be advisable and expedient would also be acceptable to the High Courts as such. Still there may be judges in the High Courts who hold a certain view and who may not agree with some other colleagues of theirs. Public interest has to be served in such a way that no injustice is done to anyone.

Now, unfortunately, I should say, we are faced with a difficult situation. Some reference has been made in the House to the arrears that are pending in the High Courts. In some of the High Courts, the pile of pending cases is simply appalling and tremendous. We have taken some steps and we want that by the end of this year, the number of cases that is in arrears should be reduced substantially and if possible, no cases older than two years should remain on the file of a High Court on the first of January of the next year. I must express my appreciation of the efforts that have been made by some High Courts to act accordingly. In such High Courts, the numbers have come down and I hope it is possible that the target that we have fixed for ourselves may also be realised. But there are other High Courts where the position is entirely different and where, even though a number of additional judges have been appointed, the pile is still growing. The addition of judges has not made any substantial difference. We have to find some way out.

I quite realise that the High Court judges deserve a vacation, that they must have some days when they can throw off the burden of continuous work in the court completely and they can find relief, when they can refresh themselves for their work after the vacations. I appreciate all that. But now we see that the pile of arrears varies according to the length of vacations in the various courts. I do not say that there is any fixed proportion or ratio, but generally that would be the conclusion that one would draw. We would not like to do anything that would place the judges of the High Courts in a really uncomfortable or embarrassing position. But the rules, as they are prevalent at present, do not seem to be uniform. The vacations differ from court to court. We need not be particularly anxious so far as courts which have no arrears are concerned, but where we have arrears, we have to see that the arrears are cleared off.

We have been reminded by a number of speakers that justice delayed is justice denied. So, some effort has to be made in that direction. This provision in the Bill that vacations may be fixed by the President is not to be used in such a way as to hit unjustly any High Court or the judges of any High Court. There is one sub-rule attached to it which has been ignored by the hon. Members who have dealt with this matter Every order passed under this Act has to be placed on the Table of Parliament. I cannot say there can be any better safeguard than a provision like this, that if an order is passed, it will have to be placed on the Table of this House. So, the President will be good enough to pass on to this House whatever order is passed and this House will have full right to question that order and to say that it is not fair.

Now what is proposed here does not in any way affect the independence of the judiciary. To say that the judges will not discharge their duties fairly and impartially because their vacations may have to be fixed by the President with the approval of this House is....

Pandit Thakur Das Bhargava: Nobody suggested that.

Pandit G. B. Pant: .....hardly, to say the least, fair to this House or to the judges themselves. After all, we are concerned with all things. The executive has to frame the rules for leave, daily allowance, travelling allowance, medical aid, for everything that concerns the judges. So, those rules, I think, can be much more likely to cause inconvenience to the judges than any rule of this type which is to be placed on the Table of the House. In the circumstances, to say that we are doing anything or seeking to do anything which is altogether unthinkable, beyond the ordinary laws that have been followed so far, is hardly correct. Those other matters with which we are concerned which affect the judges' every day life are, I think, much more important for them than this particular provision; and in forming those rules, the executive has complete freedom.

So, the fears that have been expressed here will, I hope, be allayed; if the suggestion that the members of the House have no confidence in themselves were to prevail outside, that would not be helpful to anyone When it is laid on the Table of the House, we can at least expect this much that it will be carefully considered, it will be just and fair and it will not hit anybody. Otherwise, this House would not endorse anything like that. And if we can be sure about that, then I say that there need not be any misgivings in any quarter whatsoever about this provision.

I can say definitely that the judges will have their vacation. They will have reasonable periods of vacations But it will, perhaps, be advisable at times to let them have a suggestion as to when they should enjoy their vacation and for what period. So, I think the provision in the Bill which says that the order will be placed on the Table of the House has been overlooked completely. I do not see why there should be any feeling like this that the executive will be interested in harassing the judges, in doing things which will cause them unnecessary discomfort or which will amount to harrassment of the judges. After all, we are as much interested in maintaining the dignity of the judges as anyone else, and we have given proof of that. We have made full use of the judges, and the House knows that we have entrusted enquiries to the judges about administrative matters. On the one hand, to complain that the executive is making too frequent a use of the judges and to make it a ground of complaint and, on the other, to suggest or to insinuate that provisions like this are intended to undermine their independence, I submit, are statements which are hardly consistent with each other.

So, I do not think it is necessary for me to pursue the matter further. The position is plain enough and I can say that there is no desire at all to curtail the vacations unduly. We have, as the hon. Members might be aware, a provision even in the Supreme Court Judges (Conditions of Service) Bill about vacations. I would rather read out that provision. It says:

> "'vacation' means such period or periods during a year as may be fixed as vacation by or under the rules of the Supreme Court made with the prior approval of the President"

If you look into the Constitution, to which a reference has been made, you will find that the President has to be consulted about a number of things If you refer to article 145, it says:

> "(1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including—
>
> (a) rules as to the persons practising before the court;

[Pandit G. B. Pant]

(b) rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to be entered;

(c) rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III;

(d) rules as to the entertainment of appeals under sub-clause (c) of clause (1) of article 134;

(e) rules as to the conditions subject to which any judgment pronounced or order made by the Court may be reviewed and the procedure for such review including the time within which applications to the Court for such review are to be entered;

(f) rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceedings therein;

(g) rules as to the granting of bail;

(h) rules as to stay of proceedings;

(i) rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay;

(j) rules as to the procedure for inquiries referred to in clause (1) of article 317... ."

These are in a way essentially judicial matters and even about these the rules can be made only with the approval of the President. So, in a matter of this type which is now being provided for in this Bill, there should be much less objection to the proposal that is embodied therein.

Some reference was also made to the appointment of judges of High Courts. Well, the procedure is prescribed in the Constitution. I may only say that so far as this is concerned, at least since I have come here, there has not been a single case in which an appointment has been made except with the approval of the Chief Justice of India and, in most cases, with the unanimous approval, besides the Chief Justice of India, of the Chief Justice of the State concerned and of the Chief Minister of the State concerned. I do not see how, in the circumstances, we can be blamed for the appointments that have been made. I fully realize that the test for appointments should be that of merit along with character But I do not think that these tests are not kept in view by those who make these proposals and on whose advice these appointments are made

I do not think there is any other point which calls for any reply from me.

Mr. Deputy-Speaker: The question is :

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

The motion was adopted.

Mr. Deputy-Speaker: We will now take up clause by clause consideration There are two amendments to clause (7), one by Shri Kesava and another by Shri Subbiah Ambalam. Both of them are not present. There are no other amendments I will now put them to the vote

Pandit Thakur Das Bhargava: We want to speak on clauses. Even though there are no amendments, the clauses ought to be put to the House separately so that members may get a chance to speak on those provisions.

Mr. Deputy-Speaker: If the hon. Member wants to speak on any particular clause, I will put it separately.

Pandit Thakur Das Bhargava: I want to speak on clause 7.

Mr. Deputy-Speaker: The question is:

"That clauses 2 to 6 stand part of the Bill".

The motion was adopted.

Clauses 2 to 6 were added to the Bill

14 hrs.

Clause 7 (*Insertion of new sections 23A and 23B*)

पंडित ठाकुर दास भार्गव : जनाब डिप्टी स्पीकर साहब, मैंने उस तकरीर को सुना है जो कि आनरेबल होम मिनिस्टर साहब ने इस बिल के बारे में दी है और उन उन दलाइल को भी सुना है जो कि उन्होंने दफा ७ की डिफेंस में दी हैं। पेशतर इसके कि मैं उन दलाइल पर आऊं मैं यह अर्ज करना चाहता हूं कि कोई भी यह नहीं चाहता है और न ही गवर्नमेंट यह चाहती है कि जजिज की डिपेंडेंस में, इंडिपेंडेंस में, प्रेस्टीज में या डिग्निटी में किसी भी तरह की कमी वाका हो। मैं ने यह भी कहा था कि कोई भी यह नहीं चाहता है कि कास्टीट्यूशन के खिलाफ कोई काम किया जाए। लेकिन मैंने शुरू में जाहिर किया था कि हम उसकी जो भावना है उसके खिलाफ तो नहीं जा रहे हैं।

आनरेबल मिनिस्टर साहब ने वेकेंसिज को कम करने के बारे में कुछ कहा है और साथ ही उन्होंने कास्टीट्यूशन की कुछ दफाओं की ओर हमारा ध्यान दिलाया है। उन दफाओं में से एक दफा जिस की ओर उन्होंने हमारा ध्यान दिलाया है वह १४५ है मैं अर्ज करना चाहता हूं कि दफा १४४ सिर्फ सुप्रीम कोर्ट में चन्द रूल्ज एन्फोर्सेबल होने के बारे में है। जहां तक आर्टिकल १४५ का ताल्लुक है पेशतर इसके कि मैं उसके बारे में कुछ कहूं मैं आपका ध्यान आर्टिकल १३५ की तरफ दिलाना चाहता हूं जो इस प्रकार है :—

"Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to any matter to which the provisions of article 133 or article 134 do not apply if jurisdiction and powers in relation to that matter were exercisable by the Federal Court immediately before the commencement of this Constitution under any existing law."

जब कास्टीट्यूशन बनाया गया था उस वक्त जहां तक सुप्रीम कोर्ट का ताल्लुक है उसके लिए खास क्वायद बनाये गये थे, खास आर्टिकल बनाये गये थे क्योंकि सुप्रीम कोर्ट उस वक्त एग्जिस्टेंस में नहीं थी। यहां तक कि कम्पलीट पावर्स भी डिफ इन की गई और रूल बनाने की पावर के ऊपर भी कुछ थोड़ी सी रेस्ट्रिक्शंस डाली गई और कुछ पावर्स भी उसको दी गईं। जहां तक पार्लियामेंट का ताल्लुक है उसका एग्जेक्टिव और ज्यूडिशरी दोनों के ऊपर अधिकार है। तो जो पावर्स नाफिज की थी वे एक नई कोर्ट के बनाने में की थी। इसमें यानी १३५ दफा में लिखा गया है कि फैडरल कोर्ट की जो पावर्स हैं चन्द मामलात में वे कायम रहेंगी। लेकिन जब हाई कोर्ट का मामला आया तो हाईकोर्ट के वास्ते आर्टिकल २२५ बनाया गया जो इस कार है :—

". ....the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution:"

अब यह बताया जाता है कि चूंकि सुप्रीम कोर्ट की चन्द पावर्स के बारे में दफा

[पंडित ठाकुर दास भार्गव]

१४५ हमारे पास मौजूद हैं और उसके अन्तर्गत जीडेंट की एमूवल से ही कुछ कलस बन सकते हैं इसलिए एनालोजी के जरिये एक फर्स्ट इम्प्रेशन केस बनाया गया है और कहा गया है कि क्या हर्ज है अगर स रूल को भी पास कर दिया जाए। मैं अर्ज करना चाहता हूं कि हमेशा ही जब किसी एस्टेबलिश्ड आर्डर या किसी डेफिनिट रूल के खिलाफ कोई बात की जाती है तो इस किस्म की आर्गुमेंट दी जाती है। लेकिन मुझे यह आर्गुमेंट जरा भी अपील नहीं करती है। अगर कांस्टीट्यूशन यह कहती कि जो भी पावर्स हाई कोर्टस एन्ज्वाय करती है बिफोर दी कमेंसमेंट आफ दी कांस्टीट्यूशन या उनको यह पावर है कि वे अपनी कंडीशंस को मुकर्रर कर सकें तो मैं समझता हूं कि शायद ही होम मिनिस्टर साहब ने इस तरह की दफा रखी होती। होम मिनिस्टर साहब की तकरीर से यह जाहिर था कि इस तरह की पावर्स हाई कोर्ट के पास रही हैं। इसके अलावा इसके बारे में कुछ रूल २३ में भी दर्ज है :—

". . . . and every such order shall have effect notwithstanding anything contained in any other law, rule or order regulating the vacation of the High Court."

इसलिए मैं प्रिज्यूम करता हूं कि हाई कोर्ट में रूल बने हुए हैं इन रिगार्ड टू वैकेशंस और जब रूल्स बने हुए हैं उनके होते हुए अगर हमने इस सैक्शन को पास कर दिया तो वे सब के सब एबोगेट हो जायेंगे क्योंकि हम लिख रहे हैं कि उनको एबोगेट किया जाए। इसका साफ मतलब यह है कि ये पावर्स कांस्टीट्यूशन में हाई कोर्टस को दी गई हैं उनको हम इस दफा की रू से एबोगेट कर रहे हैं। मैं समझता हूं कि जब तक कांस्टीट्यूशन मौजूद है और कांस्टीट्यूशन में आर्टिकल २२५ मौजूद है कोई भी ताकत चाहे वह यह पार्लियामेंट ही क्यों न हो किसी तरह से भी बिना कांस्टीट्यूशन को एमेंड किये उन एहकामात के खिलाफ नहीं जा सकती और उनकी पावर्स के साथ खिलवाड़ नहीं कर सकती।

हमारे आनरेबल मिनिस्टर साहब ने कहा है कि यहां पर कहा गया है कि अगर ये पावर्स ले ली जायेंगी तो हाई कोर्ट्स अपनी इंडिपेंडेंस खो देगी या वे जजिस हैं वे ईमानदारी के साथ इम्पार्शली फैसले नहीं करेंगे। आनरेबल मिनिस्टर साहब की यह आर्गुमेंट शायद किसी और मैम्बर की तकरीर के जवाब में हो तो हो, मेरी तकरीर के जवाब में तो नहीं हो सकती। मुझे पूरा भरोसा है कि अगर वैकेशंस को काट भी दिया गया तब भी जजिस ईमानदारी के साथ, अच्छी तरह से और इंसाफ के साथ फैसला करेंगे। मेरा ग्राउंड तो यह था कि जो चीज हम कांस्टीट्यूशन में कर चुके हैं उसके साथ हम को अख्तयार नहीं है और न मुनासिब है कि हम खिलवाड़ करें। हमको यह अख्तयार नहीं है और न मुनासिब है कि उस बिल के जरिये इस तरह की पावर्स अब हम अपने हाथ में लें। आप कांस्टीट्यूशन को एमेंड कर दें और तब न पावर्स को लें तब किसी को कोई एतराज नहीं हो सकता है और तब मैं समझूंगा कि आप इंसाफ कर रहे हैं। कांस्टीट्यूशन की मौजूदगी में यह सब बेमुद है। ये पावर्स अब तक हाई कोर्टस इस्तेमाल करती रही हैं, एंज्वाय करती रही हैं। कांस्टीट्यूशन के खिलाफ और उसकी मंशा के खिलाफ (२३ ए) के नीचे हम उनके साथ खेलना शुरू कर रहे हैं। चाहे अच्छी वजुहात ही क्यों न हों मैं इसके खिलाफ हूं कि उनसे न अख्तियारात की छीना जाये जो आज तक वे एनज्वाय करते आ रहे हैं जब तक जबरदस्त वजुहात न हों।

सरकार जजिज पर भरोसा करती है, लोग भी भरोसा करते हैं और वे इस वैकेशन के दौरान उधर होने से हर्गिज अपने फराइज

में कोताही नहीं करेंगे। गवर्नमेंट के पास क्या वजहात हैं कि जिन पावर्स को वे १९६१ से इस्तेमाल करती आई हैं उनको अब उनसे छीना जाये। यहां पर यह कहा गया है कि एरियर्स दूर करने में इससे मदद मिलेगी। ये जो एरियर्स हैं ये आज की पैदावार नहीं है। इसके लिए आपको दूसरे उपाय सोचने होंगे। आप जजों की तादाद बढ़ा सकते हैं, लोगों में प्रचार कर सकते हैं कि लोग ज्यादा मुकदमेबाजी न करें, और लोगों से यह भी कह सकते हैं कि मुकदमों का फैसला वे किसी दूसरे तरीके से कर लें। इसका क्या मतलब है कि जो एरियर्स को इस तरह से आप साफ कराना चाहते हैं कि जिससे उनकी पावर्स कम हो जायें। यह किसी भी तरह से मुनासिब नहीं है। मैंने अर्ज किया था कि अगर आर्टिकल २२५ न भी एप्लाई करता तब भी इंसाफ का यह तकाजा था, उसूल पर यह बात ठीक उतरती है कि हाई कोर्ट्स को ही यह पावर दी जाए कि वे अपनी वैकेशन का खुद फैसला करें। मैं चाहता हूं कि जिस तरह से दूसरे डिपार्टमेंट्स अपनी-अपनी पावर्स इस्तेमाल करते हैं और अपने-अपने डिपार्टमेंट्स में एक तरह से सैल्फ सफिशेंट हैं, उसी तरह से ज्यूडिशरी को भी अपने फैसले खुद करने का हक होना चाहिए। आज आनरेबल होम मिनिस्टर साहब को सारे देश के लिए कानून बनाने के पूरे अख्तियार हैं लेकिन क्या वह कभी अपने अख्तियारात को एब्यूज करते हैं? क्या वह कभी किसी अफसर को नाजायज तौर पर ज्यादा तनख्वाह देते हैं या लीव देते हैं? हम रोज देखते हैं कि हमारी गवर्नमेंट किसी की रियायत नहीं करती। पार्लियामेंट को अख्तियार है कि वह यह फैसला करे कि उसके मैम्बरों को क्या तनख्वाह मिले और वह यह फैसला भी कर सकती है कि हर एक को पांच हजार रुपया माहवार मिले। लेकिन क्या हमने कभी इस तरह का फैसला किया है या क्या कभी हम इस तरह का फैसला करने को तैयार हैं, कभी नहीं। अगर हाई कोर्ट्स [illegible] वैकेशन होगा तो क्या [illegible] वैकेशन एन्जवाय करने के अपने अख्तियार का नाजायज फायदा उठा सकता है?

यहां पर यह भी आर्गुमेंट दी गई है कि मुख्तलिफ हाई कोर्ट्स में मुख्तलिफ रूल हैं। इस बारे में पहले तो मैं यह अर्ज करना चाहता हूं कि इसका फैसला करना गवर्नमेंट के हाथ में नहीं होना चाहिये। गवर्नमेंट सजेशन दे कि वह नहीं चाहती कि इतनी वैकेशन हो उसके बाद वे खुद ही इसका फैसला कर सकते हैं। उसका जरूर असर होगा। पिछली मर्तबा दातार साहब ने कहा था कि सुप्रीम कोर्ट ने कबूल कर लिया है और वहां पर वैकेशन कम हो रहे हैं। अगर यह कहा जायेगा कि गवर्नमेंट की यह राय है, होम मिनिस्टर साहब की यह राय है या हाउस की यह राय है कि वैकेशन कम हों, तो वे जरूर सही और ठीक फैसला करेंगे और अगर उन पर उस मामले को छोड़ा जायेगा तो भी वे वही फैसला करेंगे जो आप चाहते हैं। लेकिन इसमें बड़ा फर्क है कि आप के मेजेस्टी साहब यह हुक्म जारी करें कि फलां दिन की छुट्टी नहीं होगी और केवल इतने दिनों की छुट्टियां होंगी, इसमें और हाई कोर्ट्स के सजेशन और रैकमेंडेशन के जरिए यही काम करने में रात-दिन का फर्क है। हमारे आनरेबुल होम मिनिस्टर साहब ने यह कहा है कि हम नहीं चाहते कि हाई कोर्ट्स के रूल्स ऐसे बनें जोकि उनके शायानशा न हों। मुझे वे मौके अच्छी तरह याद हैं जब हमारे आनरेबुल होम मिनिस्टर हाई कोर्ट्स के जजेज की इंटेग्रिटी और डिगनिटी के बारे में इस तरह का ऐंटीच्यूड लेते रहे हैं। अब अगर यह ऐंटीच्यूड वहां दुरुस्त है जहां कि हाई कोर्ट्स की डिगनिटी का सवाल हो और उन पावर्स के साथ जोकि इतनी मुद्दत के साथ वे एक्सरसाइज करते आये हैं और उनके साथ हमें खेलना नहीं चाहिये तो फिर इस वैकेशन के बारे में भी वही ऐंटीच्यूड क्यों नहीं दिखलाया जाता है? मुख्तलिफ हाई कोर्ट्स में मुख्तलिफ छुट्टियां होती हैं और मैंने अर्ज किया था कि अगर

[पंडित ठाकुर दास भार्गव]

आप उनको चेंज करना चाहते हैं और उनमें एक यूनिफ़ार्मिटी लाना चाहते हैं तो आपको पहले अपने कांस्टीट्यूशन में तबदीली करनी होगी। मैं तो ऐसा करने के खिलाफ़ हूं लेकिन अगर आपकी ऐसा करने की राय हो और आपकी राय के आगे मैं अपनी राय को कोई तूफ़ान नहीं देता, तो बराय मेहरबानी यहां पर चीफ़ जस्टिस आफ़ दी सुप्रीम कोर्ट कर दीजिये क्योंकि सुप्रीम कोर्ट के चीफ़ जस्टिस सब हाई कोर्ट्स के जजेज के ऊपर हैं और छुट्टियों की बाबत जो आप एक यूनिफ़ार्मिटी लाना चाहते हैं तो इस बारे में फ़ैसला करने का अधिकार आप सुप्रीम कोर्ट के चीफ़ जस्टिस पर छोड़ दें और जो कुछ भी वह फ़ैसला इस बारे में करेंगे वह सब हाई कोर्ट्स के ऊपर बाइंडिंग होगा। आनरेबुल चीफ़ जस्टिस मुझे पूरी उम्मीद है कि वह इस बारे में अपना फ़ैसला देते वक्त जो पब्लिक ओपीनियन है, हाउस की ओपीनियन है और मिनिस्टर साहब की ओपीनियन है उसका लिहाज रखेंगे।

मेरी समझ में नहीं आता कि क्लाज में केशन के मुताबिक इस तरह का प्राविजन रख कर हाई कोर्ट के जजेज को यह क्यों सोचने और अन्देशा करने का मौका दिया जा रहा है कि उनके अख्तियारात को सल्ब किया जा रहा है। ऐसा करना मुनासिब नहीं होगा। इस वास्ते मैं अदब से अर्ज करना चाहता हूं कि जहां तक उसूल का सवाल है, जहां तक कांस्टीट्यूशन का सवाल है और जहां तक पब्लिक ओपीनियन का सवाल है बल्कि ओपीनियन इस बात को जरूर कद्र करेगी कि गवर्नमेंट ने इस मामले में जिसके कि ऊपर वह अख्तियार रखते थे उस के बारे में कांस्टीट्यूशन के इरादों के बरखिलाफ़ कार्यवाही नहीं की। मैं जानता हूं कि गवर्नमेंट हाई कोर्ट की डिगनिटी को बनाये रखना चाहती है और हाई कोर्ट्स वाले छुट्टियों की बाबत अगर अपनी सिफ़ारिशात और सुझाव भेजेंगे कि हम इतनी छुट्टियां चाहते हैं तो गवर्नमेंट और हमारे होम मिनिस्टर साहब यह नहीं करेंगे कि नहीं हम यह नहीं मानते और उसमें कटौती कर देंगे और ऐसा कह देंगे कि नहीं छुट्टियों के मामले में सेक्रेटरी साहब के हुक्म का ही माना जाय। मैं नहीं समझता कि हमारे होम मिनिस्टर साहब के दिल में कोई ऐसी ख्वाहिश है कि सेक्रेटरी की बात रख कर वहां जजेज में एक फ्रैक्टर पैदा करें। मैं जानता हूं कि उनके दिल में हाई कोर्ट के जजेज के लिये कितनी इज्जत है और वह उनकी डिगनिटी को बनाये रखना चाहते हैं। आप इस चीज को भले ही और किसी ढंग से करें लेकिन ऐसा प्राविजन नहीं रखिये जोकि कांस्टीट्यूशन के मंशा के बरखिलाफ़ हो, उसूलों के बरखिलाफ़ हो और यह हाई कोर्ट्स की डिगनिटी के शायानशां नहीं है।

Shri Narayanankutty Menon: There is one point which directly arises.

Mr. Deputy-Speaker: Hon. Members may be very brief now because, we have already trespassed the time limit.

Shri Narayanankutty Menon: In the various amendments which are included in clause 7, there is one ambiguity which exists. When both in respect of leave and also pension, the term 'continuing Judge' is defined in the Bill, the hon. Home Minister owes an explanation to the House as far as the seniority of these Judges is concerned, it has been left out as far as this clause is concerned. As regards the Part B State High Court Judges, we all know before 1st November 1956, the Chief Justice of India visited all the Part B State High Courts, sat along with the Judges and scrutinised their capacity and selec-

tions almost were made for continuing employment in the subsequent Part A States. We find that as far as pension is concerned and leave is concerned, these Judges will have to their credit the service that they rendered in the Part B State High Courts. But, as far as seniority is concerned, We find that that seniority is not taken into consideration. The services of those Judges as Part B State Judges are not taken so far as Part A High Court Judges are concerned. The direct difficulty that arises today is that because of the contemplated decision of the Government, when a Judge from one particular court is transferred to another court, a Judge who has served for 15 years in a Part B State High Court, who, unfortunately, on 1st November 1956 has been confirmed in a subsequent Part A State, will be considered to have a service of two years when he goes to a Part A State which was a Part A State before integration also. He would be considered a junior to another Judge in that High Court. It is an injustice to those who served in Part B States, whose capacity has been verified and appointment has been made as a Part A State High Court Judge after 1st November 1956. I hope the Government will take this aspect into consideration and the seniority of the Judges when they were functioning as Judges of the Part B State High Courts will be given to them. So that, as a computation has been given as for leave and pension rights, in the future, when transfers are to be made, Judges who were functioning in the Part B State High Courts for a number of years, may not be considered as junior Judges when they go to Part A State High Courts. I hope the Part A State High Courts. I hope the hon. Home Minister will consider this aspect and the obvious iniustice done to the Part B State High Court Judges will be removed by the Government in future.

Shri Frank Anthony: I shall be very brief. May I say to the hon. Home Minister that no one intended a remotest reflection on our judiciary at any level? What I was seeking to underline with all the emphasis in my power is that this new clause 23A does definitely subvert this principle which we have accepted, of separation of the executive from the judiciary. Apparently, the Home Minister was pleased to base his answer primarily on the fact that in some High Courts, there is a tremendous accumulation of arrears. Probably, it is to resolve this serious accumulation of arrears that this provision has been inserted. That is what I understood the hon. Home Minister to say.

I shall deal with that aspect first, whether this power to curtail or modify the vacations will even partially meet this undoubtedly serious position in regard to accumulating and increasingly accumulating arrears. Take the case of the Allahabad High Court. I think the Prime Minister once in a very savage attack, or the Home Minister himself—the Home Minister is not savage; he is always a pattern of statesmanship and sweet reasonableness—but the Prime Minister I think was rather savage once in his attack on the accumulation of arrears in a particular High Court. I think from the figures he gave, everybody who knew anything about courts knew that the reference was to the Allahabad High Court. There are 20,000 to 30,000 cases which are in arrears. As a simple arithmetical problem, if the Allahabad High Court with its Judges is not given leave for 10 years, no vacation at all, working out at this generous estimate of average disposal of four cases a day —over a period of ten weeks over a period of ten years, it will work out to 100 weeks—will they be able to resolve these arrears of 20,000 or 30,000 cases? They won't. Some other device will have to be evolved. Either we cut down the approach to the courts or we have peoples' courts with summary disposals. But, this cutting down of leave with the intention to resolve arrears is completely, I submit with respect, misconceived

[Shri Frank Anthony]

approach. It will not, in the case of the Allahabad High Court, cut it down in a period of ten years. The arrears will remain static. What is happening in the Supreme Court? In the Supreme Court, the arrears are already in the neighbourhood of 300, I am told, in writ matters only. I feel that this provision is not remotely justified on the ground that it will help us to attack this problem of arrears

A greater danger, I feel, is this. Those High Courts that have accumulation of files will be told, your holidays are going to be cut because you have these arrears I know what is going to happen. I say with all due respect to the integrity and sense of duty of the Judges, that the Judges will say: "Well, we are not going to forego our hard-earned holidays. We will do two things. We will not admit cases, however good they may be." It is all in the admission of cases. The disposal of cases *in limini* is not difficult; it is a purely discretionary matter. As the Attorney-General remarked with regard to the special leave days, *i.e.*, the days for admission of writ and other matters in the Supreme Court, it is a gamble *par excellence*. You never know whether you are going to get your writ admitted. You will drive your Judges deliberately—of course, they will not, but because you compel them —to deny justice. They will say: "Out of ten cases today, we will strike an average; we will only admit three out of ten." That will mean that you will drive them, because of this provision, to deny justice.

As I remarked on another occasion, in the courts of final resort, the absolute hallmark, or the only real hallmark of justice is a full and patient hearing. Already complaints are being made that because of this accumulation of arrears, the Judges are inclined to be impatient, they are inclined to dispose of cases summarily, they are inclined to dispose of cases superficially. That trend is going to be accentuated. I see in this provisions all manner of dangers which will ultimately further undermine public confidence in the judiciary.

I think the hon. Home Minister misunderstood us when he said that we did not want retired Judges to act in judicial or quasi-judicial capacity. That has never been my position. I say that you use your retired Judges as much as you like in judicial and quasi-judicial capacities, but I did say, and I repeat it because I hold that position strongly, that by dangling before our Judges this prospect of executive preferment as Governors, as Ambassadors, you have demoralised the judiciary in the first place. There is no question about it. The judiciary has been demoralised, and a much greater evil is that the public point to Judges who perhaps were men of unimpeachable integrity; because subsequently a Judge has become a Governor, the public look back with hind sight and say: "You see that judgment, that judgment was on the border line, it had an executive bias Why had that Judge passed that pro-executive judgment?— because he had this governorship in view." He never did, but you give the public a handle to criticise your Judges; you give them a handle to bring your Judges into disrepute by having this kind of measure

I make an earnest appeal to the hon. Home Minister. I feel that with his high regard for the judiciary, and I share his high regard, the simplest thing is to leave this matter to them. The hon. Home Minister himself has emphasized their sense of responsibility, he has emphasized their integrity, he has emphasized their sense of duty. Cannot he then from that *a fortiorari* leave this ordinary matter of leave to them? Will that not be the only step consistent with their dignity, consistent with the respect that you want the Bar and the public to accord them? What will happen when this goes out? The Bar will smirk, the public will laugh,

and they will say: "Your Judges today are being treated by the executive like overgrown school boys. Their holidays now are to be varied at the discretion of the executive." It is nothing we are doing, it is something that the provision is doing It is bringing the judiciary into discrepute The Heavens are not going to fall, arrears are not going to be cleared You will only create resentment among the judiciary, and it will definitely be a subversion of the principle to which we are committed, of keeping the judiciary and the executive completely apart.

श्री कालिका सिंह (आजमगढ़)

उपाध्यक्ष महोदय, यहां सदन में कुछ भाषण हुए हैं कि यह क्लाज ७ इस में से निकाल दिया जाये। यह मुझे समझ में नहीं आता कि आनरेबुल मेम्बर्स ने इसके मुताल्लिक भी ठीक से समझा है कि नहीं और इसे पढ़ भी लिया कि नहीं। क्लाज ७ में सिर्फ यही है कि प्रिंसिपल ऐक्ट के सैक्शन २३ में २३-ए(१) और (२) और इसर्ट कर दिये जायें और जोकि इस प्रकार हैं

'(1) Every High Court shall have a vacation or vacations for such period or periods as may, from time to time, be fixed by the President, by order notified in this behalf in the Official Gazette, and every such order shall have effect notwithstanding anything contained in any other law, rule or order regulating the vacation of the High Court

(2) Every order made under sub-section (1) shall be laid before each House of Parliament"

पहली चीज उसमें यह है कि अगर कोई रूल सैक्शन २३-ए के मुताबिक बनाया जायेगा तो वह पार्लियामेंट के सामने पेश होगा और उसमें फिर बहस की भी गुंजाइश रहेगी कि उस चीज को माना जाये कि नहीं माना जाये। इसमें कहीं भी यह नहीं कहा गया है कि वैकेशन हम घटा रहे हैं या बढ़ा रहे हैं। छुट्टी घटाने की बात जो चल गई है वह तो सिर्फ इस वजह से चल गई कि आनरेबुल मेम्बर्स के दिमाग में यह बात है कि शायद प्रेसीडेंट यह उचित समझेंगे कि हाई कोर्ट जजेज के वैकेशन में कमी कर दें। होम मिनिस्टर साहब ने खुद कहा है और मैं भी होम मिनिस्टर साहब की राय से इत्तिफाक करता हूं और मेरा तो कहना है कि पार्लियामेंट के दोगर मेम्बर्स की भी यह राय होनी चाहिये कि आज के बदले हुए हालात में इस वैकेशन में कुछ कमी की जाय।

अपने मित्र श्री फ्रेंक एन्थनी को मैंने स्वयं एक मर्तबा स्पीच के दौरान में यह कहते हुए सुना था कि एक मजिस्ट्रेट और एक मुंसिफ से जो कि जुडिशियल पावर्स एक्सरसाइज करते हैं और सुप्रीम कोर्ट के जजज से कोई डिस्क्रिमनेशन नहीं होना चाहिए क्योंकि दोनों ही जुडिशियल पावर्स एक्सरसाइज करते हैं और दोनों ही जस्टिस ऐडमिनिस्टर करने के लिए रिसपौंसिबिल हैं। आज जब हम अपने डिस्ट्रिक्ट जजेज, मैजिस्ट्रेट्स और मुंसिफों को जो कि जुडिशियल पावर्स एक्सरसाइज करते हैं, देखते हैं तो पाते हैं कि उन्हें कोई छुट्टी ही नहीं है। उनके पास कोई अधिकार इस तरह का नहीं है कि वह अपनी छुट्टियां एनलार्ज कर लें या कम कर लें। मैंने हाई कोर्ट्स में छुट्टियों के मुताल्लिक एक सवाल पूछा था तो बतलाया गया था कि ९३ दिनों से लेकर ११० दिन की छुट्टियां अलावा ऐतवार के होती हैं जब कि हमारे डिस्ट्रिक्ट कोर्ट्स में ५० से ५३ दिन तक ही यह छुट्टियां महदूद रहती हैं।

पहले जबकि अंग्रेज जजेज होते थे तो दो, ढाई महीने का वैकेशन होना समझ में आ सकता था क्योंकि उनको इंग्लैंड जाना होता था और वह वैकेशन होम लीव की तरह से मानी जाती थी। वह जब साल भर काम करने के बाद समर वैकेशन में इंग्लैंड जाते थे तो उनको रास्ते में ही एक डेढ़ महीना लग

[श्री कालिका सिंह]

जाया करता था और वह मुश्किल से अपने घर पर एक महीना रह पाते थे और मैं समझता हूं कि पहले के हालात में एक महीने का जजेज के लिये वैकेशन रखे जाने से इंडियन जजेज और इंग्लिश जजेज के बीच कोई डिस्क्रिमिनेशन नहीं किया जाता था क्योंकि विदेशी जजों को घर पहुंचने में आने-जाने में ही एक महीने का समय लग जाया करता था। वह दो ढाई महीने की उनको वैकेशन देना समझ में आने वाली बात थी लेकिन आज जब कि कोई भी फॉरेन जजेज शायद यहां नहीं हैं तब हाई कोर्ट के जजेज में और डिस्ट्रिक्ट कोर्ट्स के जजेज, मजिस्ट्रेट्स और पुलिस की छुट्टी के सम्बन्ध में इस तरह का पेरेलाल रखना उचित नहीं जचता क्योंकि वे सब लोग यहां भारतवर्ष के रहने वाले हैं और किसी को भारत से बाहर नहीं जाना है और ऐसी हालत में यहां पर यह कहना कि हाई कोर्ट के जजेज को छुट्टियां दो महीने की होनी चाहियें और उनको एक महीने की, कुछ तुक्तिसंगत नहीं जंचता। १५, २० मई से हाई कोर्ट जजेज को १२, १५ जुलाई तक की छुट्टियां होने से जनता को बड़ा नुकसान और परेशानी का सामना करना होता है। ऐडिशनल जजेज नुमा कर पेंडिंग केसेज को डिस्पोज करने की जरूरत पड़ती है। अब हाई कोर्ट जजेज २० या २४ जितने हों वे तो इस छुट्टी पर जा भी सकते हैं लेकिन उनके साथ जो एक बड़ा भारी स्टाफ लगा हुआ है क्लर्क्स एम्पलाईज और चपरासी वगैरह वे भी बेकार हो जाते हैं और उनके पास कोई काम भी नहीं रहता है और इस तरह से पब्लिक एक्सचेकर का काफी नुकसान होता है और पैसा व्यर्थ जाता है। इसलिए जहां तक इस राय का सवाल है कि हमारे हाई कोर्ट्स में छुट्टियां कम होनी चाहियें मेरी अपनी जाती राय यह है और प्रेसीडेंट की भी यही होनी चाहिए कि मौजूदा छुट्टियों में कुछ कमी की जानी चाहिये और मैं समझता हूं कि स्वयं हाई कोर्ट्स के लोग भी पब्लिक ओपीनियन का आदर करेंगे और जजेज की भी राय यही होगी कि हमको इतनी अधिक छुट्टियां नहीं मनानी चाहियें। कानून एक ऐसी चीज है कि जब तक रोज रोज हम उसको स्टडी न करते रहें और काम न करते रहें तब तक हम उसके साथ पूरी तौर से इंसाफ नहीं कर सकते क्योंकि हो सकता है कि कानून कुछ आगे बढ़ जाये और हाई कोर्ट के जजेज पीछे रह जायें। इसलिये उनको एक महीने से अधिक की छुट्टी नहीं होनी चाहिये।

जहां तक हमें मालूम है प्रेसीडेंट जो भी छुट्टी के मुताल्लिक आर्डर देंगे उसके पहले वे सुप्रीम कोर्ट से और हाई कोर्ट के चीफ जस्टिस से कंसल्टेशन कर लेंगे। आखिर पब्लिक ओपीनियन को हमें इस विषय में नजरअंदाज नहीं करना होगा और प्रेसीडेंट जिनके कि हाथों में हम यह अधिकार देने जा रहे हैं वे गवर्नमेंट आफ इंडिया के एक सिम्बल हैं और आपको उनके ऊपर पूरा विश्वास रखना चाहिए कि वह जो कुछ देशहित में होगा उसको दृष्टि में रख कर आर्डर करेंगे। मैं कहता हूं कि आखिर आपको प्रेसीडेंट को यह अधिकार देने में क्या आपत्ति है? जब आपको प्रेसीडेंट के ऊपर विश्वास नहीं मालूम होता तो फिर हाई कोर्ट के जजेज के ऊपर विश्वास होना तो दूर की बात है।

इसलिए मैं समझता हूं कि क्लाज ७ के जरिये जो यह २३-ए (१) और (२) जोड़े जा रहे हैं उसमें कोई ऐसी बात नहीं जो कि काबिले ऐतराज हो।

अब जहां तक संविधान को नजरअंदाज करने की बात कही गई है और जिसकी ओर पंडित ठाकुर दास भार्गव ने इशारा किया है मुझे तो संविधान की २२५ और १४५ धाराओं को पढ़ने से यह नहीं मालूम होता कि

उनका उल्लंघन किया जा रहा है । आर्टिकल २२५ में तो सिर्फ इतना ही लिखा गया है :

"jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the judges thereof, in relation to the administration of justice of the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution.".

इसमें कहीं भी वैकेशन का नाम भी नहीं आता है । जो रूल्स हैं कार रेग्यूलेशन आफ़ सिटिंग उनमें भी यह चीज़ नहीं आती है कि वैकेशन के लिये हम कोई तरीका प्रेस्क्राइब नहीं कर सकते हैं । इसलिये यह पावर ओपन है और होनी भी चाहिए । पार्लियामेंट को वकेशन को रेग्यूलेट करने का अख्तियार होना चाहिए । पार्लियामेंट को यह काम जरूर करना चाहिए । आजकल एरियर्स बहुत जमा हो गये हैं । यहां पर एक सवाल पूछा गया था उसके जवाब में बतलाया गया था कि ४०० अपीलें दस बरस से ज्यादा पुरानी इलाहाबाद में हैं कहीं ९० हैं कहीं १०० हैं । यह जो एरियर जमा हो रहे हैं इनसे लिटिगेंट्स को कितनी तकलीफ होती है इसका भी खयाल रखना चाहिए । कैसों में इतनी देर होती है कि लोग मर जाते हैं और उनके वारिस पैदा हो जाते हैं । भगवान सन्यासी की तरह जो हार गया वह जीत जाता है इस देरी की वजह से । तो इनके लिए प्रेसीडेंट साहब को खयाल करना चाहिए क्योंकि जस्टिस डिलेड इज जस्टिस डिनाइड । आजकल बहुत एरियर्स इकट्ठे हो गये हैं इनको साफ करना चाहिए । आजकल हाई कोर्ट्स का बहुत ज्यादा वक्त तो रिट्स की वजह से खर्च हो जाता है । हमारी तो यह राय है कि यह काम डिस्ट्रिक्ट की अदालतों को देवा जाय तो अच्छा होगा । कांस्टीट्यूशन में दिया हुआ है

"Parliament may by law confer the jurisdiction of writs etc. conferred on the Supreme Court on any Courts other than High Courts".

हमारी राय में जिन केसेज में सिर्फ जुरमाने का सवाल है और सजा नहीं है, या जो अपीलों के मामूली मामले हैं उनका रिट जिलों की अदालतों में फैसला किया जाना चाहिए । चार चार हजार रिट हाई कोर्ट में जाते हैं और उनको टाप प्रायारिटी देनी होती है । मैं समझता हूं कि यह जो काम हाई कोर्टों में जमा हो गया है इसमें जजों का कोई हाथ नहीं है यह तो सिस्टम और कानून की खराबी है जिसकी वजह से यह काम जमा हो गया है । आज इस स्टेज पर विचार करने का समय आया है । इसमें यह जो क्लाज रखा गया है यह बहुत इन्नोसेंट क्लाज है । मैं तो चाहता था कि कुछ अच्छे प्रोविजन रखे गये होते जिनसे मालूम होता कि हम आज ही वैकेशन के बारे में कुछ फैसला कर रहे हैं । अभी तो होम मिनिस्टर साहब ने सिर्फ इतना कहा है कि उनका इरादा है कि बेंचों का शिफ्ट में तरीके से रखी जाये । अगर वह चीज हमारे सामने आती तो उसका हम स्वागत करते ।

मैं इस क्लाज ७ का सपोर्ट करता हूं और चाहता हूं कि सदन भी उसका समर्थन करे ।

Pandit G. B. Pant: In fact, many of the arguments that have been advanced are hardly different from what we were told when the matter was referred to in the course of the motion for consideration. I regret that the submissions made by me have not effectively removed the misapprehensions of misfeasance of some of the hon. Members who have spoken over this clause now.

Pandit Thakur Das Bhargava has again referred to the Constitution. He also read out part of article 225, but perhaps he did not read out the whole

[Pandit G. B. Pant]

of it. I would just invite his attention to the initial introductory part of it. It says:

> "Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and. . .".

That is, all this is subject to the provisions of any law that may be made by the appropriate legislature. Parliament is certainly competent to pass such a law. So, I am really somewhat surprised that a lawyer of his standing should have found some difficulty in appreciating the validity of this clause.

He referred to certain other matters too, but they do not call for any special rejoinder, as what he said was exactly what he had stated before.

I was somewhat perplexed, and maybe, even amazed to hear certain remarks of my hon. friend Shri Frank Anthony. He said that if we curtailed the period of vacations, or if the judges feel that the period of vacations may be curtailed, then they will reject such petitions which they would otherwise entertain; they will hurriedly deal with the cases and try to see that the file does not go up, and not be worried about the merits or the cases and the applications. I hope our judges are not made of such a stuff. That would be exceedingly deplorable. That indicates the view that they care more for their own comfort, and for their leisure than for justice. I cannot possibly share such an opinion about our judges. All this talk about their prestige and dignity and so on losses its force and becomes almost farcical if such be our estimate of their integrity and devotion to duty.

He also said that mere reduction of a few days in the vacations would not prove a complete solution of this problem of arrears. I never claimed that simply by this we will be able to reduce the arrears, but if all the High Courts worked for one day more, they do as much work as one High Court Judge would do in the course of a year, more or less. So every day's addition to the working days would mean so much of saving to the taxpayer and would also result in the dimunition of cases to be disposed of by the courts. I think the disposals would increase and to the extent the disposals increase, the arrears will, of course, inevitably go down. The arrears by themselves cannot be cleared off that way. But I think Shri Frank Anthony will also concede that every day's addition to the working days would result in so much more work being done. If that is so, to that extent, the arrears will be reduced.

As I stated before, we have not been relying on this alone. Whatever be the changes we may suggest, we will bear in mind fully the needs of the service and the nature of the work that the Judges have to do and will to the utmost try not to give them any cause which would result in any sort of dissatisfaction. We have tried our best to maintain relations of utmost harmony and cordiality with the Judiciary, while in every way respecting thir independence. That will continue to be our effort even hereafter.

There was one more point, to which reference was made by Shri Narayanankutty Menon—about seniority of Judges of the former Part B States. This question was settled at the time of the reorganisation of States and it was the view of the Chief Justice of India—and we also agreed with

him—that where a person was appointed to a Part A State High Court after the merger of any State, if he was a Chief Justice, he would be given seniority over all Puisne Judges of that High Court, and if he was a Puisne Judges of a Part B State High Court, he would be placed after the Puisne Judges of the Part A State High Court. In the Part B States, the Judges, as a rule, received lower emoluments. Their terms of service did not compare favourably with those of the Judges serving in Part A States Otherwise, there would be no occasion for bringing this Bill before this House today.

So those who had been serving as Chief Justices were given priority from the date of their appointment as Chief Justice in each case in the 'B' State, when they were appointed or allotted to an 'A' State High Court, and those who had been serving in the 'B' State High Courts as Puisne Judges were on their appointment placed as Puisne Judges after the Puisne Judges who had been serving in the 'A' State High Courts. The reasons are obvious Those who have been serving in the 'A' State High Courts had been receiving a higher salary; they were entitled to larger pensions, and they had different rules also.

As to the general remark that this would interfere with the normal practice—the provision that we have made about vacations—I would again remind hon. Members that we have to deal with many matters which are of a trivial nature, but which vitally affect the comforts of the Judges. The rules about medical aid, rules about travelling allowance, rules about halting allowance, about leave and also the granting of leave—all these are dealt with by the executive, if you so choose to call those who have to deal with these matters. But nobody has ever said that the independence of the Judges has been affected on that account or that there has been any interference with the work of the Judge because of these powers that the executive possess. What is done here is to subject every case to the control and scrutiny of Parliament. I do not see what greater or more effective safeguard could possibly be devised for any person or group of persons in this country—well, it would be a reflection on Parliament. My hon. friend, Pandit Thakur Das Bhargava, is so alert that nothing can escape his notice and every order will come under his scrutiny. If he feels that there is anything wrong about it, I hope he will set us on the right path and correct us. Depending on him, Shri Frank Anthony and other friends here, while fully confessing that we have our own weaknesses, I hope nobody will suffer because of the introduction of this clause.

Mr. Deputy-Speaker: The question is:

"That clause 7 stand part of the Bill".

The motion was adopted.

Clause 7 was added to the Bill.

Mr. Deputy-Speaker: The question is:

"That clauses 8 to 10 and 1, the Enacting Formula and Long Title stand part of the Bill"

Clauses 8 to 10 and 1, the Enacting Formula and Long 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

14.49 hrs.

TEA (ALTERATION IN DUTIES OF CUSTOMS AND EXCISE) BILL

The Minister of Revenue and Civil Expenditure (Dr. B. Gopala Reddi): I beg to move:

"That the Bill further to amend the Indian Tariff Act, 1934, and