

**Mr. Deputy-Speaker:** The question is:

"That the Bill be passed."

*The motion was adopted.*

**Mr. Deputy-Speaker:** Next item. Nobody to move it. Should I adjourn the House?

**Shri Rane (Buldana):** Two hours were allotted for the Bill.

**Mr. Deputy-Speaker:** Does the Government also want the House to be adjourned? The House is adjourned for 15 minutes.

15.15 hrs.

*The Lok Sabha then adjourned and re-assembled at Thirty minutes past Fifteen hours of the Clock.*

15.30 hrs.

[MR. DEPUTY-SPEAKER in the Chair]

HIGH COURT JUDGES (CONDITIONS OF SERVICE) AMENDMENT BILL

**The Minister of State in the Ministry of Home Affairs (Shri Datar):** Sir, I beg to move:\*

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

This is a simple measure.

**Mr. Deputy-Speaker:** The measure is of course very simple but the hon. Minister ought to be present here.

**Shri Datar:** The earlier Bill, I understand, collapsed within two minutes though two hours had been fixed for it.

**Mr. Deputy-Speaker:** It has to be taken into consideration that it may happen sometimes.

**Shri Datar:** I was just on my way... (Interruptions).

**Mr. Deputy-Speaker:** At least the House expects that the hon. Minister who was not here should give some indication that he is sorry for that.

**Shri Datar:** I am sorry, Sir. The moment I received intimation I started.

So far as this Bill is concerned, it proposes to amend the main Act. In the Constitution certain provisions of a transitional nature had been made and then it was said that they would remain in force till Parliament makes a law. Parliament made such a law in 1954 but certain difficulties arose, especially in the case of serving Judges because of the definition of the word 'pension'. Normally it meant only a periodical payment—annual or monthly. But the word 'pension' has been defined in the Constitution itself as including not merely pension of the ordinary type in the sense of annual payment but also any gratuity or other sums.

The difficulty arose in this way. There are three types of High Court Judges—Judges from the bar, Judges from the former Indian Civil Service and Judges who had been working as district Judges under the State judicial service rules. The Judges from the bar were governed by provisions in part I of the schedule to the Act of 1954. But the Judges from the Indian Civil Service and the State judicial service would have been entitled to a certain pension even apart from their having been the Judges of the High Court because their period of service in the High Court would be taken into account as a continuation of their ordinary service in the Indian Civil Service or the State judicial service. In their cases, what was done by the Act of 1954 was to give them additional pension as mentioned in parts II and III. The pension that was allowed under Part I was a little higher and it

\*Moved with the recommendation of the President.

## Bill

[Shri Datar]

would be open to the services Judges to opt for it.

Now, what happened was that about the year 1951 all the State Governments liberalised their pension rules and in addition to the fixed pension that they gave they also allowed to them what are known as retirement cum gratuity benefits. They were worked out by taking a portion from what an ordinary pension was. Sometimes it was found advantageous to the services themselves to have a gratuity and some other benefits and the Central Government also made provision for gratuity cum retirement benefits.

15.32 hrs.

[SHRIMATI RENU CHAKRAVARTY in the  
Chair]

So, after the 1954 Act was passed, difficulties arose because under the liberalised pension rules they were entitled to pension plus the other benefits of retirement cum gratuity. It was felt that inasmuch as no provision was specifically made in the Act of 1954 by which the High Court Judges were exclusively governed, they would not be entitled to this gratuity and other benefits though under the ordinary rules they were entitled to them. The matter was referred to the highest legal adviser and he came to the conclusion that the word 'pension' required some inclusive amendment. The definition is now given in clause (2) which says:

'(gg) "pension" means a pension of any kind whatsoever payable to or in respect of a Judge, and includes any gratuity or other sum or sums so payable by way of death or retirement benefits;'

The difficulty arose because the Judges who retired and who were to retire could not get the advantage of the retirement and other benefits even though they were entitled to them according to the rules made by the Central or

State Governments. So, the clause here says:

"In section 2 of the High Court Judges (Conditions of Service) Act, 1954 (hereinafter referred to as the principal Act), in sub-section (1) after clause (g), the following clause shall be, and shall be deemed always to have been inserted, namely:—

'(gg) "pension" means a pension of any kind whatsoever payable to or in respect of a Judge, and includes any gratuity or other sum or sums so payable by way of death or retirement benefits;'

The death or retirement benefits have been introduced in or about 1951 and on account of the interpretation of the word 'pension' in an exclusive manner this difficulty arose. I may also point out in this connection that this additional benefit has to a certain extent been worked out of the pension that they would otherwise have got. Sometimes, if not oftentimes, it happens that there is a death and sometimes certain lump sums would be more convenient to a Government servant than getting a periodical pension. That is the reason why the rules were so liberalised as to give a certain fraction of the pension in addition to the amount given by way of gratuity or retirement benefits. That was considered as more advantageous, but as I pointed out, it was worked out, out of the sum that they would have got; had it been only pension, three-fourth would remain, and out of the one-fourth this whole amount has been worked out.

That is the reason why it became necessary, in order to meet this hardship, to have a definition of the word "pension" by including in the expression gratuity or other sum or sums so payable by way of death or retirement benefits. So, that is the first part of the present amending Bill.

The second is, there has been a provision already in the rules that

family pensions are also to be granted in certain cases, especially for example, when a judge dies while in service, unfortunately, or immediately after retirement he dies. In such cases it was considered necessary, that for his immediate dependants some provision should be made by way of a family pension. For that purpose the rules have already made provision in respect of this particular matter. Generally, the amount of pension that is granted is for a stated number of years, the highest number of years being ten. In these cases, a sum of Rs. 150 per mensem is generally given as the pension. That was for the purpose of meeting the hardship that is likely to be felt by the dependants of the high court judge if he were to die while in service or within a stated number of years after he retires. So, that provision has also been included. You will find from the Bill that section 17A has to be added by the insertion of clause 3, saying:

"Where any Judge who has elected to receive the pension payable, to him under Part II or Part III of the First Schedule dies, whether before or after retirement, in circumstances to which section 17 does not apply...."

Section 17 is a provision for the grant of extraordinary pension when the judge dies as a result of accident, etc.—

"...a family pension or gratuity, if any, shall be payable to the person or persons entitled thereto under the ordinary rules of his service if he had not been appointed a Judge, his service as a Judge being treated as service therein for the purpose of calculating that family pension or gratuity."

In other words, had this particular judicial officer or an ICS officer not become a judge of a high court, he would have been entitled to a family pension under the liberalised pension rules, but as I pointed out, it could not be given to him because the special

family pension was not held to be included in the term "pension". Therefore, a technical difficulty arose and in order to make the matter absolutely clear, namely, that a family pension also would be available even if the person becomes a high court judge and unfortunately dies thereafter, this provision has been made. In order to meet an interpretation which was likely to cause hardship, in addition to defining the expression "pension" as inclusive of these benefits, it has also been made clear that such judges in Parts I and II would also be entitled to a family pension because they were already entitled to it under the rules. But for their having become a high court judge, they would have got this family pension. A difficulty arose because under the Act of 1954 it was held that all the benefits including pension and the rest could only be got under the Act of 1954 and not under the liberalised rules to which, as Government servants, they were formerly entitled to. It is to meet this legal difficulty and to avoid the natural hardship that was caused by an interpretation of the Act of 1954 which made it difficult to give them all these benefits that it has become necessary to introduce by clause 3, a new section called section 17A, and to leave the matter beyond all doubt.

So far as clause 4 is concerned, it is a matter about procedure. The Lok Sabha has evolved a procedure as to what should be done so far as the rules are concerned. They have to be placed on the Table of Parliament in a certain manner and after giving a certain period for the hon. Members to consider the rules. That is the form which has now been evolved and therefore it was considered proper that in the place of the original rule under the Act of 1954, a more detailed rule according to the present practice of the Lok Sabha should be introduced therein.

It is for these three purposes that this amending Bill has been brought forward and I commend it to the approval of the hon. House.

**Mr. Chairman:** Motion moved:

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

How many hon. Members wish to participate in this debate? I see about three or four hon. Members standing. Shri Nath Pai.

**Shri Nath Pai (Rajapur):** Mr. Chairman, I welcome this amending Bill for two very good reasons. One is, as the hon. Minister has been trying to submit to the House, it will be mitigating the legitimate hardships which should not have been there in any case, but a far more important consideration which I have in mind is this: that with this improvement in the conditions of our judges, it is possible that slowly we will succeed in drawing the best talent from the Bar to the Benches.

The Law Commission, in its report, has pointed out that one among the reasons why we cannot finish with the arrears of work pending with the high courts is the inadequacy of the judges. When we consider the reasons why there are not enough number of judges, one factor is this: that they do not find the conditions sufficiently attractive. I think it was Justice Chandrasekhara Ayyar who commented another reason why we do not succeed in dealing with these cases expeditiously, and I think there would not be two opinions on this issue: that when matters get unduly delayed, it is another type of injustice. A citizen approaches the courts to redress a wrong and when there is any inordinate, undue delay, it is the creation of another kind of wrong; it is almost the perpetration of another fraud on the citizen. If, therefore, we are to succeed in eliminating these delays, we will have to have two things: enough number of judges and secondly, that these judges are endowed with the requisite calibre, qualifications and ability.

It was the second point that Justice Chandrasekhara Ayyar dealt with. He said that many of these judges are of such a calibre that they cannot comprehend cases and therefore they cannot give the judgment and therefore delays result: not a very flattering compliment, but he had this reason in mind which he wanted the authorities concerned to take into consideration. He saw that with this kind of condition which we today afford, we should not expect to try to attract and recruit the best kind of talent from the Bar. He, therefore, had commented on this.

The Law Commission, in its report, also has tried to draw attention to this very vital matter, the matter of making the conditions for judges attractive enough. I fully agree that pay and prospects are not the only consideration; there are other considerations which weigh with the best minds on the Bench, but this one aspect should not be completely ignored.

The other aspect will be that we shall have to bear in mind the kind of status or understanding we show to the judges. May I, therefore, in this connection, read a very pertinent paragraph for the consideration of the Minister and the Ministry when they try the very important issue of making appointments to the courts?

"It is necessary for all to realise that the role assigned to the judiciary under the Constitution is social and economic justice, equality, freedom and dignity of the individual, will be impossible of achievement unless the judiciary fearlessly discharges its duties in every complaint of excess of power by the legislatures or the executive, brought to its notice. A proper realization of these aspects at the highest level can alone bring about a change in the attitude towards the judiciary."

## Bill

A judge must not be placed in the position where he makes a comparison between himself and his colleagues who continue at the Bar. We knew the practice which a successful barrister or an advocate or a lawyer could have at one of our leading High Courts, be it Bangalore—for your sake I am saying Bangalore—Madras, Bombay, Calcutta or the Supreme Court, and we knew the conditions, the kind of pay, emoluments and other benefits a Judge can expect to have when he comes to be a Judge. It is with this in mind that the Law Commission has made certain observations. They have said:

“We trust that what we stated will be appreciated and measures taken in all directions so that the judiciary—superior as well as subordinate—may enjoy the dignity and the respect to which it is justly entitled and which alone can be an incentive to a proper discharge of their duties.”

So, apart from the question of emoluments, allowances and pensionary benefits, there is the question of according them the status to which they are entitled under our Constitution. As the Constitution somewhere observes, the Supreme Court and the High Courts of India are constituted as the protector, the guarantor of fundamental rights and they cannot consistently with the responsibility so laid upon them refuse to entertain applications seeking protection against the infringement of such rights. If the courts are to discharge the high responsibility cast upon them by the Constitution and fulfil the expectations of the lay citizens from the High Courts, we must see that we draw the best talent to the High Courts and to the Supreme Court in India.

When we take into consideration this we shall have to apply our mind to two not very healthy practices of the present executive. One is, whenever a Judge shows a tendency to pass a Judgment which does not find favour with the current facts of the Govern-

ment the invariably incurs the wrath of the Government, and there are Ministers who do not hesitate from criticising such a Judge. You are aware, Madam Chairman, that very recently a Judge of the Allahabad High Court has, I think, delivered a history judgement. I have in mind Justice Mulla who has, I think, very properly, with due sense of his responsibility and with the very commendable experience at his disposal, made certain observations on another branch of our Government, the Indian Police. I think there will be few, very few. . . . (In:erruption). That is the pattern. U.P. normally leads the rest of India in bad things. The observations made with regard to the police in U.P., I think, unfortunately we have to agree—it is not with pride or with a feeling of glee or jubilation that one is forced to admit these things, come to these conclusions or reach these inferences—by a very responsible, eminent and learned Judge of the Allahabad High Court, broadly speaking, applies to the police in India. He has rendered a service. We require judges of that calibre, that independence of mind. What happened? We find that the Chief Minister of U.P.—I am not going into details, but the pertinent factor that the independence of the judiciary shall be upheld and if we undermine that independence we undermine the constitutional guarantees of our own freedom—criticised it. That independence cannot be sustained, continued and guaranteed if the Executive is to subject Judges to this kind of harsh, unwarranted and, I think, uncalled for criticism as was indulged into by the Chief Minister of U.P. He did not. . . .

**Shri Harish Chandra Mathur (Pali):** Has Shri Nath Pai read what the other Judge of the same High Court has said?

**Shri Nath Pai:** He is absolutely free to quote the other Judge. If one Judge differs with the judgment of the other Judge . . .

**Shri Harish Chandra Mathur:** On this very subject he has criticised his brother Judge.

**Shri Nath Pai:** When one Judge disagrees with another Judge, one Judge expresses his views which may be critical of the views of another Judge, it is not interference, it is a differing judgment delivered. As a lawyer Shri Mathur should know this. But it is a far cry from a differing judgement of a fellow colleague to the admonitions to be delivered by a Chief Minister. Taking the occasion of a police parade the Chief Minister of U.P. thinks it fit to make observations, to pass strictures on this. It is a very sinister thing, and I think he hon. Member and I have in common in trying to maintain the dignity, the independence and impartiality of our Supreme Court and our High Courts. The President of another democracy has this to say regarding people who will try to assail the Judges of the High Court. The President of the Bar of United States said:

"But there is danger indeed when the courts are assailed by sensible and well-intentioned . . ."

I am prepared to grant that both these adjectives are possibly applicable to the Chief Minister of U.P.

"... sensible and well-intentioned citizens who have let their disagreement with individual decisions lead them into irresponsible criticism of the courts as an instrument of government."

**Mr. Chairman:** The hon. Member is making a very important point, no doubt, but I would like to draw his attention to the fact that the time is very limited.

**Shri Nath Pai:** I thought you were looking for speakers on this Bill.

**Mr. Chairman:** I have no objection, but the House will have to give its consent to extend the time allowed for this Bill. Only one hour has been allotted to this Bill.

**Shri Tangamani (Madurai):** The other Bill was to go for two hours.

**Mr. Chairman:** It is true that we have saved some time. If the House is agreeable we can extend the time for this.

**Some hon. Members:** Yes.

**Mr. Chairman:** Shri Nath Pai may go on.

**Shri Harish Chandra Mathur:** Madam, what you have to decide is whether we have to cover the whole gamut or whether we have to limit ourselves to the present Bill.

**An Hon. Member:** That is a different matter.

**Shri Harish Chandra Mathur:** Shri Nath Pai has covered a vast ground. When you asked as to who all would like to participate in the debate I did not get up. But now Shri Nath Pai has given us an opportunity because he has been allowed to speak and cover such a vast ground.

**Mr. Chairman:** I will answer that point. It is true that in an amending Bill we do speak specifically with regard to the main objects and reasons and about the particular clauses given there. But in the case of High Court Judges, the very reason for ameliorating the conditions of Judges is to maintain the impartiality of the judiciary. Therefore, I have permitted Shri Nath Pai to make his point. What I was trying to ask him to do is to make his remarks concise and not go on giving too many quotations, so that we could fit in a few more speakers. In any case, if the House is willing and since we have saved quite a lot of time on the other Bills, I will permit the speakers to have a little more latitude and continue to make their points. Now, Shri Nath Pai may continue his speech.

**Shri Nath Pai:** I am very grateful to you, Madam. I shall not try to take all the time . . .

## Amendment Bill

**Shri Harish Chandra Mathur:** No, you can go on.

**Shri Nath Pai:** . . .so that we shall have the benefit of hearing my colleague Shri Mathur.

**Mr. Chairman:** I have allowed him to go on.

**Shri Natā Pai:** I will not be easily deterred by him.

**Shri Harish Chandra Mathur:** From our side, do not think we are objecting to it.

**Shri Nath Pai:** The objective of this amendment, as you succinctly tried to summarise for the whole House, is to make the conditions better and maintain the dignity of the Judges, and from that point anything that one has to submit becomes pertinent and relevant to that. In this case, again, I would like to say very briefly, in making the appointments we shall have to bear in mind the very serious recommendations of the Law Commission and we shall have to be on the guard that no political considerations come. I am repeating the point that it is not pay and prospects that will bring the best mind. If you want the best mind, an independent mind, a mind which will have courage to say the truth whether it is pleasant to the ears of the executive or not, then we shall have to see that in making appointments we do not allow, as we have been warned by the Law Commission, political considerations to come in.

I will conclude, Madam Chairman, by this very very brief reference, and I crave your indulgence for that alone. On page 72, the Law Commission in its report Vol. I on reform of judicial administrations has this to say:

"Now, the Governor has to be guided by his Ministers and it is usually felt that nowadays the Chief Minister thinks that it is his privilege to distribute patronage and that his recommendations should be the determining factor."

The Constitution calls upon the President of India to appoint a Judge in consultation with the Governor, which in practice means the Chief Minister, the Ministry and all these pressures of caste, communal, political etc., not to mention relatives and others.

"The voice of the Chief Justice is not half as effective as it was in the past."

What a sad comment? These are the words of the Chief Justice of the Supreme Court of India.

"This unedifying prospect has brought about some demoralisation in the minds of the Chief Justices . . ."

So, it is not by prospects of pension or other benefits alone that we will draw the necessary quality of talent on the bench but by seeing that their spirit of independence is never assailed and by seeing that in making appointments we do not have any ulterior considerations. I do hope the hon. Minister, while taking into account the genuine support that we have lend to this amending Bill, will bear in mind the other observations which I had to submit.

**Shri Naushir Bharucha (East Khadesh):** I whole heartedly agree with the observations made by the previous speaker, though they may not come strictly within the ambit of this Bill. But they are particularly relevant in view of the fact that this Bill seeks to ameliorate the conditions of service of High Court judges. It is true that on many occasions appointments have been made without consideration of merit and there was reference to it when we discussed the Law Commission's Report. I do hope that the observations made today by Shri Nath Pai, namely, that not merely by ameliorating the conditions of service that you can attract to the bench the best talents from the bar and elsewhere but by providing certain conditions and environments which are acceptable to the dignity and self-respect of the judges who adorn these

**Bill**

[Shri Naushir Bharucha]

benches, will be given careful consideration.

So far as this Bill is concerned, we particularly welcome this as doing rather belated justice to those whose privilege it is to dispense justice. The High Court Judges (Conditions of Service) Act was passed in 1954 and it is only in 1961 that we are setting right an unfortunate error which has crept in as a result of interpretation of a particular word, namely, "pension" in the Act. I do not know why there was so much delay. I should have thought that a matter of this type could have been set right immediately. It is true that the original intention was to see that the High Court Judges did receive such of the retirement benefits to which they have been entitled, and if the interpretation of the word "pension" only means periodical payments then, naturally, it is the duty of the Government to bring in an amending Bill to enlarge the connotation of the word "pension" and give that Bill retrospective effect. That is being done and we welcome it.

But there is one point which troubles my mind, and it is this. Notwithstanding the fact that retrospective effect has been given to this Bill, what will be the position in the case of retirement or death of a judge which has taken place between, let us say, 1954 and 1961. Suppose a judge has died in 1955. I do not know what exactly Government proposes to do in such a case as this because, to my mind, if we frame a Bill in this way, namely, we say that this clause shall always be deemed to have been inserted, then the relatives of those judges would today be entitled, after the passing of this Bill, to the amenities which would be theirs. I take it that it is the intention of the Government to see that retrospectively the dependants of such judges are properly compensated. I would like to have an assurance from the hon. Minister to that effect that it is the intention and that it will be done.

**Sari Datar:** We have clearly stated that that clause shall be deemed always to have been inserted. So, there is no difficulty.

**Shri Naushir Bharucha:** I agree. Therefore, I say that there should be no difficulty in giving retrospective effect to this provision and paying arrears that may be due to the dependants of such judges.

There is one more point to which I shall refer before I conclude my observations on this Bill. In the case of High Court judges it becomes exceedingly difficult for them to voice their grievances. We have never heard of any High Court judges openly suggesting that they are labouring under certain disadvantages or disqualifications, but it is the duty of this Government, if they desire to maintain the highest standard of judiciary of their own accord to find out whether there is any disability or disadvantage under which they have been labouring and, if so, to remedy them. As was pointed out, respect and dignity prevent them from bringing out these grievances in public. So, I think it is our look out and, I am sure, the hon. Minister will look into this matter because this alone does not seem to exhaust the list of grievances and injustices which may be inadvertently done to the Bench.

While welcoming this measure, I am glad that the Government have sought to remove what was an inadvertent flaw in the 1954 Act, and I do hope that the Government will bear in mind that it is not merely by improving the prospects slightly in the matter of pensions, or giving some gratuity at the time of retirement, that we will be able to attract the best talents to the Bench. In that connection, I once again endorse the observations made by Shri Nath Pai and I do not hope the hon. Minister in reply will assure the House that he will see to it that the dignity and the self-respect of the Bench are maintained so that a proper kind of talent is attracted to the Bench.



16 hrs.

**Shri Harish Chandra Mathur:** I welcome this amending Bill which only rationalises the position and gives the benefits which are overdue to the serving judges. While we are talking of the terms and conditions of service of the High Court judges, I am sure nobody in this House will have two opinions that the terms and conditions should be such that they allow our judges to function with the fullest freedom and the greatest dignity. As a matter of fact, it is not these amending Bills which give that freedom and that dignity to the judges. We have taken care of this aspect when we framed our Constitution. In our Constitution we have provided such good provisions which enable any serving judge to function with the utmost of freedom, and it is our experience during the last fifteen years of independence that our judges have functioned that way. Occasions have never been wanting when we found that they have given expression to their views on all vital matters, ignoring completely what the view point of a particular State Government or the Central Government is. So, there is absolutely no reason for any apprehension on the part of anybody that there is anything which is being done, or can be done, which will deflect our judges from pursuing that path of independence and freedom and exercising their minds with that complete impartiality. As I submitted, that is already provided by the Constitution. So, that part need not be brought in.

We do certainly feel that as far as the terms and conditions of service of the judges are concerned, it should be the anxiety of the Home Ministry to see that all these matters are disposed of with promptitude. I am referring to this particular matter because I feel that there are certain matters still pending with the Home Ministry. There have been some recommendations regarding the retirement age of judges. There have been fresh recommendations. I do not know how far I am correct, but if I

am correctly informed, even at the meet of the Judges, they have suggested that the retiring age of the judges should be raised. This is a part of the terms and conditions of service. Whatever the decision Government wish to take, it is my ardent wish and it is my strong advice to the Government that such matters must be disposed of quickly and should not be kept pending. There has been a unanimous recommendation of the conference of judges on this subject. Other committees, the Law Commission and also the Union Public Service Commission have made their recommendations on this subject. Still, I think this matter is pending before the Home Ministry and they are yet to take a decision as to what should be the retiring age of judges.

This comes exactly within the purview of such amendments where you have to take it into consideration. I do not think it is very nice for the Home Ministry to come in driblets with one amendment after another. They should dispose of all the matters which are pending before them and keep nothing hanging like that. That, I believe, is very necessary to keep up the morale of the judges. Of course, I do not think that the morale of the judges is going to be affected in any manner, but it is highly desirable that all these matters which pertain to the terms and conditions of service of the judges are quickly disposed of.

I do not know what was the particular reference when my hon. friend mentioned about certain opinions expressed by the judges. When I intervened it was none of my intention to say that anything should be done to curb the freedom of the judges. I rather very much welcome permitting him to give full expression to his views. He referred to certain observations made by a judge of the Allahabad High Court. As a matter of fact, I had decided in my mind that I will take the earliest opportunity to bring up this matter on the

[Shri Harish Chandra Mathur].

floor of this House somehow and tell the hon. Home Minister what we think about it. I still hope that we will get such an opportunity. But now that this matter has been mentioned, I think it definitely deserves the pointed attention of the Central Government. That particular judge has made sweeping observations condemning the entire Police service and not only the Police service of the UP Government. His remarks cover the entire Indian Police Service. He has said that the Indian Police Service is such and such.... (*Interruption*). I do not know if it has been corrected, but I thought that even the conscience of another judge of the same High Court felt a twinge. It is very unusual and very rare that a judge of the same High Court should feel compelled to go out of his way to make observations just counter to the observations made by an hon. judge of the same court earlier. I think it would be a half-told story if I do not also mention what the other judge had to say. My hon. friend has quoted only one judge. Let me therefore read out what has appeared only in today's papers. It reads:

"Mr. Justice S. S. Dhavan, of the Allahabad High Court, has observed that a reform of the police methods of investigation was overdue but he did not think that the problem could be solved by calling the entire police force a 'lawless group with a record on crimes unrivalled in the country or comparing it to be stinking shoal of fish in which every fish barring a few stinks'.

Such observations by this court, ..... might draw pointed attention to the problem but these might also do more harm than good as they tended to demoralise the police force and create the impression that the judiciary were used to....."

I am now referring particularly to the phrases which he has used about his own judges.

".....intemperate language.

The above observations were made by his Lordship while setting aside the conviction of two persons.....

His Lordship said: "This court as the judicial organ of the State has been striving for a radical reform of the methods of investigation and no individual can claim the credit of making long efforts to clean up the agean stables...."

I think he is referring to his fellow judge when he says this. Let this be understood. It appears quite clearly that he was not very happy.

"..... no individual can claim the credit of making long efforts to clean up the agean stables alleged to be the police force. The first step towards the solution of a problem is to state the problem correctly. The root causes of the evil lie in a primitive system of investigation....."

He has made an analytical study of the whole thing.

What I mean to say is that we want our judges to exercise the fullest freedom. We want them to function with great dignity. But if they use intemperate language and go out of their way to make such general observations, I do not think this right can be denied to any citizen of this country, namely, to express himself as and what he feels, least of all to the Chief Minister of a particular State. We here do not want to criticise our judges or their observations when any matter is *sub judice*. But certainly the immunity which we have given to our judges through our Constitution should never be abused. We will expect the judges to abuse it the least. That becomes all the more necessary when you put a particular man in a position of great dignity. A greater responsibility devolves upon him. He must understand it. I must

*Amendment Bill*

understand what responsibility devolves upon me if I am a Member of Parliament. If certain privileges are attached to me, certainly those privileges also mean that there is a great responsibility which lies on my shoulders.

I might add for the information of my hon. friends here that I have spent the best 16 years of my life as a magistrate and have been one of the severest critics of the Police administration and their methods of investigation.

**Shri Tangamani:** It is always open to a judge to pass an obiter on the basis of a particular investigation. It may not be in general terms as the judge has done. If he makes certain remarks about the way the Police is functioning, it will certainly help the administration.

**Shri Harish Chandra Mathur:** Shri Tangamani perhaps does not know that I gave up the judicial service only because certain remarks passed by me against a senior Police officer were expunged. I had a grievance against the Chief Justice of that High Court. If the magistracy is to function honestly and independently, it must have that right. As a matter of fact, I have been working all the time not only for the independence of the High Court judges but for the independence of the magistracy as well. But, as I submitted, when we exercise that right of making observations against Police officers we also have a great responsibility. In my judgment I would not say that the entire police force of the State is such and such and that this has happened. I may make my observations on certain evidence which is before me in that case and say, "Here is a Police Superintendent who has tampered with the records. Here is this evidence and on the basis of this evidence I say that the Police records and evidence have been tampered with and that certain action must be taken against this officer."

**Mr. Chairman:** I think the hon. Member has made his point. Normally

we do not go into a long invective against judgments made by the High Court judges. A passing reference may be made, but I think anything beyond that should not be done. After all, we are all, on both sides, claiming that we want the impartiality of the judiciary to be upheld. In such a situation it is better that we leave it to the judgment of the judges and do not permit this forum to be a direct criticism of the judges of the High Courts and of the Supreme Court.

**Shri Harish Chandra Mathur:** As I had submitted, I have lived all my life for the freedom of the judiciary. I plead for that freedom not only for the High Court judges but for the entire magistracy. I told you that I gave up my service in the judiciary only on this account. Therefore please do not misunderstand me that I am in any way saying anything. Which will curb the independence and the freedom of the judiciary. But I say that that freedom and independence also means a lot of responsibility and it is not I who is saying this but here is a fellow judge of the same High Court who has gone out of his way to say all that. This does not mean that I am supporting the investigation methods of the Police Department. I have got very strong reasons and I told you I had already decided in my mind to take the earliest opportunity. But I will rather like to drop it at that.

All that I would submit is that I support this Bill in full. It just fills up a deficiency which was there for a long time. It rationalises the whole thing. I further urge upon the hon. Home Minister to see that all matters which are pending with him regarding the terms and conditions of service of the judges are taken note of and are disposed of as quickly as possible. They should not be permitted to hang as they have been so far. I do not wish that a wrong impression should go out of this House, namely, that we do not stand for the dignity and freedom of our courts. The dignity and freedom to our

[Shri Harish Chandra Mathur]

courts, as a matter of fact, has been given in a foolproof manner by our Constitution. We support that Constitution in full and want to do everything which will give or judges the same independence. I also feel proud of our judges who have during all these 10—12 years given a clear evidence of the way in which they have conducted themselves with great independence.

**Shri Sadhan Gupta** (Calcutta—East): Mr. Chairman, while I rise to support the Bill, I also want to take this occasion to draw the attention of the House to a few things which are necessary to preserve the independence and integrity of the judiciary. Speakers from all sections of the House have emphasised the necessity to maintain the independence and integrity of the judiciary. The principal thing which is necessary for this purpose is to make them realise that their dignity is respected and even more, to let the country realise that the executive respects the dignity of the judiciary. I take it this is the reason why we have brought in this Bill to provide them with their due retirement benefits; we have, even at this late stage, introduced a retrospective amendment to provide for it. But that is not sufficient.

We must act in a way which will ensure the dignity of the judiciary, particularly the higher judiciary of the State and the Supreme Court. Unfortunately, there have been some blemishes in this respect, with the result that it has sometimes impaired the independence and integrity of some of the Judges. For example, it happened—that is not the rule; it is an exception—that when a particular Bill was referred to a particular High Court for its opinion, first of all the opinion given was against the principal provisions made by the Bill regarding sessions trials. Then the Bill was sent back by the Home Minister and it received the approval of the High Court by a majority or something like that. This kind of thing

can happen if the Judges feel that their recalcitrance will earn them the displeasure of the executive. Of course, even then it should not have happened; but then the danger is inherent in it.

Therefore, in its dealing with the judiciary and in its dealing about the judiciary also, Government, whether in the Centre or in the State, must behave in a very cautious manner with the utmost circumspection. From that point of view, a controversy has been raised about the propriety of certain condemnations of the police. I do not want to go into that in detail. I just want to say that even if the executive feels that an injustice has been done to the police, it is not proper for the executive in the particular context to raise that point. The Chief Minister raised it in a police parade. Public men like Shri Mathur may raise it here, that is another matter. But for a Chief Minister to raise it in a police parade is very unfortunate. There might have been an appeal to the Supreme Court for expunction of that particular thing; that is a different matter. But if the head of the executive Government of the State does it in a manner which would seem to every man in the public to be a patent affront to the judges, that should not be done.

Perhaps most of us in the House are not aware that this particular Judge had been a leading criminal lawyer in the Allahabad High Court and he knows the ins and outs of the police administration; it is not merely from a particular piece of evidence in a particular case, but from his criminal practice throughout his life, he has known the police administration. Anyone who has come across our police would realise that the observations made by him were not far from the truth. The other Judge might have been shocked, but he was primarily a civil lawyer. He was an eminent lawyer too, but more or less on the civil side. Therefore, he took rather a theoretical than a practical

view. I do not want to proceed with the controversy any further.

The other thing which has caused some flutter in High Courts is the Government's procedure about dealing with the law's delays. It is, of course, necessary that delays should be avoided. But it is not a proper thing, it is a dangerous thing, I should say—to instil in the Judge's mind a sense of hurrying up with cases. Unfortunately, we work under a system of precedents. That is to say, when a case has been decided and when a particular view of the law has been taken by the High Court or the Supreme Court, whether that view is right or wrong, in all subsequent cases, other judges are bound to abide by that decision, whether they like it or not. That is the broad statement on the theory of precedents. Of course, there may be some ways of modifying a precedent. A full Bench can overrule a Division Bench and so on.

**Mr. Chairman:** I would request the hon. Member not to go into too many legal details. The main point in this particular amending Bill is whether the Bill is substantial enough for keeping broadly the impartiality of the judiciary. I do not think we should go into too many details about judicial practices and legal procedures. Otherwise, we will not be able to finish in time.

**Shri Sadhan Gupta:** I am just pointing out how the Government act about the law's delays. I broadly stated the precedent system. This being our system, if the court goes wrong in stating the law, that wrong gets perpetuated. Therefore, in every case involving a complicated question of law, there should be no hurry. Every side should be considered with due deliberation. If you instil in the judge's mind a sense of hurry, that cannot be done.

The other thing is, there is a great fuss about holidays.

16.24 hrs.

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

Government wants the High Court to put in so many days in a year—210 or 215.

**Shri Datar:** The Hon. Member is raising all questions which have absolutely no bearing on the present Bill, which is of a very limited nature.

**Shri Sadhan Gupta:** I am just trying to point out what should not be done.

**Mr. Deputy-Speaker:** Probably there is more time than is required for the Bill. Is that the reason?

**Shri Sadhan Gupta:** I was trying to point out that a judge's work should not be judged by the amount of time he spends in the court alone. He has to work at home also. You cannot jade a man and get good quality work from him. There is a limit to intellectual labour. When a man works in the court and at home also, he needs some relaxation. Therefore, it should not be counted by the number of days. There are other ways of avoiding laws delays. Sometimes, the court may be under-staffed. Then, the staff should be increased. Sometimes, additional Judges may be put in and so on. That is how things should be done.

The last thing that I want to point out, which naturally comes to one's mind as we are approaching the elections is this. It has been sometimes the practice after the last general election and even before, to a point a defeated candidates as Judges. I do not object to it. But, it must not be done in such a way as to give the people an impression that it is a consolation for their defeat. In many cases, the candidates were really fit candidates. But, then, if you immediately make him a Judge after his defeat, the whole dignity of the judiciary goes. People start feeling that it has been a reward. A person may have been a Minister. He is defeated and then he is made a Judge. That should not be done. Even if he

[Shri Sadhan Gupta]

deserves it, you can wait for six months or one year or whatever it is. You should not proceed in that undue haste. Then, it seems that Judgeship of a High Court is a thing for the executive to distribute as a patronage. This must be avoided.

**Mr. Deputy-Speaker:** We are not considering appointments, I suppose.

**Shri Sadhan Gupta:** We are not considering appointment.

**Mr. Deputy-Speaker:** We are considering pension.

**Shri Sadhan Gupta:** We are considering the dignity of the judiciary. With these remarks, I would support the Bill and commend it for acceptance of the House.

**Shri Tangamani:** rose—

**Mr. Deputy-Speaker:** Is there something to be said also?

**Shri Datar:** It may not be of a general nature.

**Shri Tangamani:** I will confine myself to some points.

While generally supporting this piece of legislation which wants to fill up a lacuna in the payment of pensions to these Judges, I would like to make some observations. In the first place, I am very glad that clause 2 defines pension as "pension of any kind whatsoever payable to or in respect of a Judge and includes any gratuity or other sum or sums so payable by way of death or retirement benefits" and also says that this clause shall be deemed to have been included in the original Act itself, that is the High Court Judges (Conditions of Service) Act of 10 1954. This Bill provides for retrospective payment of this pension. I submit that this is a salutary practice that in cases where we want to give benefits either to the Judges or to other persons, such a

provision should always be there for providing retrospective payment of these benefits. I would like to add also that it is a welcome thing that section 24 of the principal Act has been amended for providing for the rules to be laid and also re-laid if it necessary. Although the original Act provided for laying them on the Table, the expanded clause 3 is much more beneficial for a check up by this House.

Members addressed themselves to the dignity of the Judges. I would not go into the question of the appointment to the Judges, although some Members have referred to it but refer to the Fourteenth report of the Law Commission. When once the Judges are appointed—I would like to mention only two or three points which I consider as very pertinent in this connection because, with respect, some of the observations of the Members of this House may be followed with advantage by the members of the judiciary—the Law Commission have pointed out that it is not a healthy practice for the Judges to accept parties got up either by the Chief Minister or by private citizens. They have mentioned it in great detail.

**Mr. Deputy-Speaker:** Why should we go into all those things? It is only the pension when a Judge retires or dies that has to be considered. That is all.

**Shri Tangamani:** The Law Commission considered in extenso . . .

**Mr. Deputy-Speaker:** They have considered many things. What is their relevancy here in this Bill? I am only asking the hon. Member to confine himself to the Bill.

**Shri Tangamani:** I have said that the pension that is going to be paid with retrospective effect is a proper thing. The Law Commission also considered the question whether their

## Amendment Bill

salary should be increased. In that matter, they felt that the salaries of Judges of the High Courts, particularly in Calcutta and Bombay may not be sufficient. Generally, their recommendation is that the present salary, as fixed in the Constitution will be sufficient. Here, there are certain observations, because, I found, reference was also made. Here is a very pertinent point. After retirement, the question arises whether a Judge could practice in the Supreme Court or not. Today, the practice is, they can practice in the Supreme Court. I submit that this is not a very healthy practice. The Law Commission went into this matter and this is what they say on page 87.

"To allow the judges to practise either in Courts or by way of giving advice is an extremely retrograde step gravely affecting the independence of the judges\*\*\*\*\*. There are big clients appearing before you as a judge . . ."

They give opinion, etc. They may be able to get Rs. 10,000 or 15,000 or 20,000. They quote a particular passage which is attributed to a leading counsel. The Law Commission have also suggested that the Constitution should be so amended preventing them from appearing in the Supreme Court. I remember, when the amendment regarding appointment of Supreme Court Judges was brought here, many hon. Members referred to this particular question. Although there is no bar on the practice of High Court Judges before the Supreme Court, my humble submission is that it will not be a salutary practice. This can also be extended. Where a Judge retires as a District Judge, he is allowed to practise in the High Court. It goes even further. I know of cases where some Judges appear before Industrial tribunals also. In some cases, they may have presided over such Industrial tribunals.

The point that I would like to make is, when we are providing for this kind

of pension with retrospective effect, it must be made obligatory on the part of the High Court Judges to see that they do not continue this practice as a regular practitioner in the Supreme Court. If they occasionally go there, perhaps, we may not seriously object. To be regular practitioners in the Supreme Court, for persons who have spent their lives as High Court Judges, appears to me to be not a very desirable practice. I am in good company because Members of the Law Commission have felt that it was not a very good practice. I would like to emphasise at least this point when we are considering the question of providing for the retirement benefits for judges, that it is but fair that we should expect from them that they would not continue their practice before the judiciary. Even if they seek appointment elsewhere, I may not seriously have any objection to it, but it appears to me that if they continue practice as a practising lawyer, then that may not be a very salutary thing.

With these words, I once again support the main provisions of this Bill.

Shri Datar: I am obliged to the Members of the House who took part in the debate for having supported the provisions of this Bill, which, as my hon. friend Shri Harish Chandra Mathur has pointed out, has been brought forward only for rationalising certain provisions.

A number of general questions were raised, which, to a large extent, were beside the point, so far as the provisions of this Bill are concerned. I might, however, point out to the House that when the Law Commission's report was received, it was debated in this House and in the other at great length, and the points raised now had been replied to from these benches. Therefore, I would not enter into the general questions raised by hon. Members in this respect.

My hon. friend Shri Harish Chandra Mathur stated that a number of matters regarding the High Court Judges

[Shri Datar]

were pending before the Home Ministry. May I point out that it is not so at all? Sometimes, what happens is that certain questions are raised, and then, we have, to pass through a fairly detailed procedure; we have to consult the State Governments, and they have to consult the High Courts. Therefore, if there are any matters, then they have to pass through this process of consultation at different levels. Therefore, it would not be proper to say that the Home Ministry have a number of matters pending before them.

**Shri Harish Chandra Mathur:** Only last week, I read in the newspapers that the question of the age of superannuation was under consideration.

**Shri Datar:** A number of matters, when they are raised, have naturally to be considered, and the consideration takes a considerable time, because we have to consult the State Governments and the State Governments have to consult the High Courts . . . .

**Shri Harish Chandra Mathur:** That was precisely my point.

**Shri Datar:** So it would not be proper for my hon. friend to charge us generally with delays so far as these matters are concerned. We try to dispose of all matters as early as possible.

I would not like to deal with the other points, as they have already been sufficiently replied to.

**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:** As there are no amendments to the clauses, I shall put them together to vote.

The question is:

"That clauses 1 to 4, the Enacting Formula and the Long Title stand part of the Bill".

*The motion was adopted.*

*Clauses 1 to 4, the Enacting Formula and the Long Title were added to the Bill.*

**Shri Datar:** I beg to move:

"That the Bill be passed".

**Mr. Deputy-Speaker:** The question is:

"That the Bill be passed".

*The motion was adopted.*

16.40 hrs.

#### COFFEE (AMENDMENT) BILL

**The Minister of Commerce (Shri Kanungo):** Sir, I beg to move:

"That the Bill further to amend the Coffee Act, 1942, be taken into consideration".

I wish to make at the outset certain observations to clarify the scope of the amendments proposed in this Bill to the Coffee Act, 1942.

The principal amendment proposed is in regard to section 4 of the parent Act, which provides for the constitution of the Coffee Board and the manner of representation of certain interests represented on the Coffee Board. Under section 4(2) of the Coffee Act, the board consists of a chairman and 32 other members representing the Governments of the coffee-growing States, the coffee growers in those States, Parliament and others interests. Section 4(2A) of the Act provides that the persons representing the coffee-growers in the producing States shall be elected or nominated as may be prescribed.

Before every reconstitution of the board, a number of representations is received from the various planters