Saturday
24th April, 1954

PARLIAMENTARY DEBATES

HOUSE OF THE PEOPLE

OFFICIAL REPORT

(Part II - Proceedings Other than Questions and Answers)

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OFFICIAL REPORT

HOUSE OF THE PEOPLE

Saturday, 24th April, 1954

The House met at Quarter Past Eight of the Clock.

[MR. SPEAKER *in the Chair*]

(No Questions: Part I not published)

MESSAGE FROM THE COUNCIL OF STATES

Mr. Speaker: The Secretary will read the message from the Council of States.

Secretary: Sir, I have to report the following message received from the Secretary of the Council of States:

> "In accordance with the provisions of rule 125 of the Rules of Procedure and Conduct of Business in the Council of States, I am directed to inform the House of the People that the Council of States, at its sitting held on the 23rd April, 1954, agreed without any amendment to the Muslim Wakfs Bill, 1952, which was passed by the House of the People at its sitting held on the 12th March, 1954."

Mr. Speaker: The hon. Prime Minister.

Shri H. N. Mukerjee (Calcutta North-East): Before the Prime Minister is called upon, may I draw your attention to an important motion, notice of which I have already given...

Mr. Speaker: I received a notice. The usual procedure is that the hon. Member need not call attention to it in the House. When the notice comes to me, I send it for scrutiny and factual statement to enable me to know as to how far that motion is admissible.

Shri H. N. Mukerjee: If you will permit me, the elections are to be held tomorrow and an indication of the mind.....

Mr. Speaker: Order, order. The hon. Member will see that the point that he has raised is solely a point of law and order so far as the State Government is concerned. All that he can ask for is such information about it as the Minister can get and can give, but the subject matter cannot be a matter for discussion in the House. The Press report, on which the hon. Member relies, is after all an *ex-parte* statement of the facts and we do not know what exactly happened. The Minister will make enquiries and give me the information early. I have sent the notice to him with my endorsement.

STATEMENT *RE*: INDO-CHINA

The Prime Minister and Minister of External Affairs and Defence (Shri Jawaharlal Nehru): The House is aware that in February last France, the United States of America, the Union of Soviet Socialist Republics and the United Kingdom agreed to convene a conference of themselve and the People's Republic of China, to which other interested States are also to be invited, to consider, respectively, the problem of Korea and Indio-China. This conference begins its sessions at Geneva next week.

[Shri Jawaharlal Nehru]

We are not participants either in this conference or in the hostilities that rage in Indo-China. We are, however, interested in and deeply concerned about the problem of Indo-China and, more particularly, about the recent developments in respect of it. We are also concerned that the conference at Geneva should seek to resolve this question by negotiation and succeed in doing so, so that the shadow of war which has far long darkened our proximate regions and threatens to spread and grow darker still, be dispelled.

An appreciation of the basic realities of this problem, of the national and political sentiments involved, and of the background and the present situation there, both political and military, is essential to that kind of approach which alone might prove constructive and fruitful.

The conflict in Indio-China is, in its origin and essential character, a movement of resistance to colonialism and the attempts to deal with such resistance by the traditional methods of suppression and divide-and-rule.

Foreign intervention have made the issue more complex, but it nevertheless remains basically anticolonial and nationalist in character. The recognition of this and the reconciliation of national sentiments for freedom and independence and safeguarding them against external pressures can alone form the basis of a settlement and of peace. The conflict itself, in spite of heavy weapons employed and the large-scale operations, remains even today a guerilla war in character with no fixed or stable fronts. The country is divided between the rival forces, but no well held frontiers demarcate their respective zone. Large pockets and slices of territory and populations, change allegiance to one side or the other from day to day or over-night. Battles are won and lost, places taken and retaken, but the war rages year after year with increasing ferocity. Millions of Indio-Chinese, combatants and others as well, irrespective of what side they are on, are killed and wounded or otherwise suffer and their country rendered desolate.

In Indo-China, the challenge to imperialism, as a large-scale movement, began in 1940 against the Japanese occupation. During the war against Japan, the United States and allied troops were assisted by the Viet-Minh (founded in 1941) and by other nationalist and other groups, at the head of which was Ho-Chi Minh. The Viet-Minh proclamation of the time referred to the "defence of democratic principles by the United States, the U.S.S.R., Britain and China" and asked the Great Powers to "proclaim that after Japanese forces had been overthrown, the Indo-Chinese people will receive full autonomy".

After World War II, a provisional Government, of which five out of the fifteen members were communists and which was supported by moderate nationalists, Catholics and others, was established. Ho-Chi Minh was elected the President of the "Democratic Republic of Viet-Nam" which was proclaimed in September 1945 and was recognised by the then Government of China. On March 6th, 1946, France, which had now returned to Indo-China after the war, signed an agreement with Ho-Chi Minh, recognising the Democratic Republic of Viet-Nam "as a free State with its own Government, Parliament, Army and Finance and forming part of the Indo-Chinese Federation and the French Union". This arrangement, however, did not last long. Conflict between Ho-Chi Minh's Republic and the French Empire began in 1947 and has continued ever since. In June 1948, the French signed an agreement with Bao Dai, the former Emperor of Annam, and made him the head of Viet-Nam which they recognised as an Associate State within the French Union. Similar agreements were made by the French with the two other States of Indo-China, the kingdoms of Laos and Cambodia.

At this stage, the conflict in Indo-China begins to assume its present and most ominous aspect of being a reflection of the conflicts between the two power blocs. Material aid and equipment given to France by the United States became available to the French for the war in Indo-China. The Viet-Minh, on the other hand, although still maintaining that the war was one against French colonialism, it is reported, received supplies from the People's Republic of China, whose Government continued the recognition accorded to the "Democratic Republic of Viet-Nam" (Viet-Minh) by its predecessor.

Intervention followed intervention and the ferocity of war increased. Negotiations became increasingly difficult and abortive. It is in this background that the developments of recent months have taken place.

The first of these developments is the decision of the Berlin Powers to have this problem considered by the Geneva Conference. We welcomed this conference and expressed our hope that it would lead to peace in Indo-China. We saw in it the decision to pursue the path of negotiation for a settlement. I ventured to make an appeal at the time for a cease-fire in Indo-China in a statement made in this House, which was unanimously welcomed by the House.

While the decision about the Geneva Conference was a welcome development, it was soon followed by others which caused us concern and forebodings. Among these were:

(1) the repeated references to instant and massive retaliation, to possible attacks on the Chinese mainland and statements about extending the scope and intensity of hostilities in Indo-China;

(2) an invitation to the Western countries, to the ANZUS powers, and to some Asian States to join in united and collective action in South-East Asia. This has been preceded by statements, which came near to assuming protection, or declaring a kind of Monroe Doctrine, unilaterally, over the countries of South-East Asia.

There were thus indications of impending direct intervention in Indo-China and the internationalisation of the war and its extension and intensification.

The Government of India deeply regret and are much concerned that a conference of such momentous character, obviously called together because negotiation was considered both feasible and necessary, should be preceded by a proclamation of what amounts to lack of faith in it, and of alternatives involving threats of sanctions. Negotiations are handicapped, they start ill and they make chequered progress, if any at all, with duress, threats, slights and proclamations of lack of faith preceding them.

Another element which must again increase our misgivings, is the stepping up of the tempo of war and the accentuation of supplies in Indo-China. Accentuated supplies have obviously come to the aid of the Viet-Minh which, it is alleged, enables them to mount great offensives calculated to secure military victories to condition the forthcoming conference to their advantage. To the French Viet-Nam side, United States aid has been stepped up and assurances of further aid have been made.

To us in India, these developments are of grave concern and of grievous significance. Their implications impinge on the newly-won and cherished independence of Asian countries.

The maintenance of independence and sovereignty of Asian countries as well as the end of colonial and foreign rule is essential to the prosperity of Asian peoples as well as for the peace of the world.

We do not seek any special role in Asia nor do we champion any narrow and sectional Asian regionalism. We only seek to keep for ourselves and the adherence of others, particularly our neighbours, to a peace area and to a policy of non-alignment and non-commitment to world tensions and wars. This, we believe, is essential to us for our own sake and can alone enable us to make our contribution to lowering

[Shri Jawaharlal Nehru]

world tensions, to furthering disarmament and to world peace.

The present developments, however, cast a deep shadow on our hopes; they impinge on our basic policies and they seek to contain us in alignments.

Peace to us is not just a fervent hope; it is an emergent necessity.

Indo-China is an Asian country and a proximate area. Despite her heavy sacrifices, the conflict finds her enmeshed in intervention and the prospect of her freedom jeopardised. The crisis in respect of Indo-China therefore moves us deeply and calls from us our best thoughts and efforts to avert the trends of this conflict towards its extension and intensification, and to promote the trends that might lead to a settlement.

The Government of India feel convinced that despite all their differences of outlook, their deep-seated suspicions and their antagonistic claims, the great statesmen assembling at Geneva and their peoples have a common objective, the averting of the tide of war. In their earnest desire to assist to resolve some of the difficulties and deadlocks and to bring about a peaceful settlement, they venture to make the following suggestions:

(1) A climate of peace and negotiation has to be promoted and the suspicion and the atmosphere of threats that prevail, sought to be dissipated. To this end, the Government of India appeal to all concerned, to desist from threats, and to the combatants to refrain from stepping up the tempo of war.

(2) A cease-fire. To bring this about, the Government of India propose:

(a) that the item of a "cease-fire" be given priority on the Indo-China Conference agenda;

(b) a cease-fire groups consisting of the actual belligerents, *viz.*, France and her three Associated States and Viet-Minh.

(3) Independence. The conference should decide and proclaim that it is essential to the solution of the conflict that the complete independence of Indo-China, that is, the termination of French sovereignty, should be placed beyond all doubt by an unequivocal commitment by the Government of France.

(4) Direct negotiations between the parties immediately and principally concerned should be initiated by the conference. Instead of seeking to hammer out settlements themselves, the conference should request the parties principally concerned to enter into direct negotiations and give them all assistance to this end. Such direct negotiations would assist in keeping the Indo-China question limited to the issues which concern and involve Indo-China directly. These parties would be the same as would constitute the cease-fire group.

(5) Non-intervention. A solemn agreement on non-intervention denying aid, direct or indirect, with troops or war material to the combatants or for the purposes of war, to which the United States, the U.S.S.R., the United Kingdom and China shall be primary parties, should be brought about by the conference. The United Nations, to which the decision of the conference shall be reported, shall be requested to formulate a convention of non-intervention in Indo-China embodying the aforesaid agreement and including the provisions for its enforcement under United Nations auspices. Other States should be invited by the United Nations to adhere to this convention of non-intervention.

(6) The United Nations should be informed of the progress of the conference. Its good offices for purposes of conciliation under the appropriate Articles of the Charter, and not for invoking sanctions, should be sought.

The Government of India make these proposals in all humility and with the earnest desire and hope that they will engage the attention of the conference as a whole and each of the parties concerned. They consider the steps

they have proposed to be both practicable and capable of immediate implementation.

The alternative is grim. Is it not time for all of us, particularly those who today are at the helm of world affairs, on one side or the other, in the words of His Holiness the Pope, which I feel cannot be improved upon, to "perceive that peace cannot consist in an exasperating and costly relationship of mutual terror"?

DELIVERY OF BOOKS (PUBLIC LIBRARIES) BILL

The Parliamentary Secretary to the Minister of Education (Dr. M. M. Das): Mr. Speaker, with your permission, I, on behalf of the hon. Minister of Education, beg to move:

> "That the Bill to provide for delivery of books to the National Library and other public libraries, be taken into consideration."

Sir, this is a very small and simple, non-controversial, but at the same time a highly commendable measure, and I am confident that this small measure will receive the blessings of the House in no time. It will, I am sure, receive the unanimous and vocal support of every section of this House. Sir, the object of this Bill, as has been explained in the Statement of Objects and Reasons, is to secure free of cost four copies of all publications that are brought out in this country to build up the National Library in Calcutta and other libraries which will be specified at a later date by the Government of India by notification in the Official Gazette. The importance and necessity of building up well-developed libraries in the country cannot be overemphasised. It has been the policy of this Government to do everything in their power to develop and establish libraries in this country. The development and improvement of library service in this country has occupied a very important place in the Five Year plan of the Education Ministry of the Central Government. According to the Constitution, establishment and maintenance of libraries come under the ambit of the States Government's activities. So far as the Central Government are concerned, they have prepared schemes and invited the attention of the State Governments to those schemes. They have asked the State Governments to implement those schemes and have offered liberal financial assistance for their implementation. The activities of the Central Government are not confined to preparation of schemes and giving grants to State Governments alone. The Central Government would like to see that in four different parts of the country, four well-developed public libraries spring up, come into existence. One is already in existence —the National Library in Calcutta; the next one—the Central National Library in Delhi, will come into existence in the near future. Regarding the other two remaining libraries, although no final decision has been taken regarding their location and character, we entertain high hopes that they will also come into existence in the near future. It is necessary as well as highly desirable that all these four libraries should get free copies—I mean copies free of cost—of every publication that is brought out in this country. The provisions of this Bill, which is a very small measure and which is before this House, impose a statutory obligation upon all the publishers in this country to supply, to send at their own expense, free of cost, four copies of their publications, one to each of these libraries.

There is already in existence a legislation "The Press and Registration of Books Act of 1867" which provides for sending two copies of all publications for the use of the Central Government but for these two copies, the Central Government have to issue executive directives. It has been thought expedient not to complicate matters with the State Governments by making an amendment to the existing legislation to that effect. So, the present Bill has been brought before the House.

At the present stage of the Bill, I do not propose to take any more time of the House; but before I resume my seat I beg to draw the attention of the

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House to one important point. After this Bill was introduced in December last, it has come to our notice that the proposed legislation will not bind the Central Government and the State Governments to send copies of their publications to these four libraries. In order to bring the State Governments as well as the Central Government within the ambit of this legislation we have given notice of an amendment and I propose to move that amendment when the clause by clause discussion will be taken up. Sir, I move.

Mr. Speaker: Motion moved:

> "That the Bill to provide for delivery of books to the National Library and other public libraries, be taken into consideration."

The Business Advisory Committee has allotted a maximum limit of one hour for this Bill. Hon. Members will remember that and then proceed with the discussion.

Shri S. S. More (Sholapur): May I seek some clarification? The Parliamentary Secretary who has piloted this Bill has referred to the constitutional provision. I may bring to your notice that under the Seventh Schedule, List 2 which is the State List, Item 12, Libraries etc., it appears to me and I am subject to correction, are entirely under the exclusive control of the States. I have tried to scan the Union List and I do not find any corresponding entry. In Item 12 of this List, that is List 2, it might be interpreted as ancient and historical monuments and records other than those declared by Parliament by law to be of national importance but this subsequent clause 'other than those declared by Parliament...' refers only to ancient and historical monuments and not to libraries, museums and other similar institutions controlled or financed by the State and then the subsequent clause follows and therefore, my submission is that this subsequent right for the Parliament to declare any particular ancient or historical monument to be of national importance is confined to ancient monuments alone. So, are we permitted to refer to a matter and legislate about a matter which is entirely within the jurisdiction of the States?

I want to make some other comments on the merits of this Bill; if you will permit me, I shall proceed.

Mr. Speaker: Let us first decide the point that he has raised. I think the hon. Law Minister will explain, but it seems to me that it is not a Bill to control libraries of any States. It is a Bill to control or ask the publishers to supply certain copies to the libraries. So, it is not a Bill, to my mind at least, which compels or seeks to interfere with the administration of libraries in the States. However, the Law Minister will be able to say more definitely.

The Minister of Law and Minority Affairs (Shri Biswas): Mr. Speaker, I do not think there is any substance in the point raised by my hon. friend, Mr. More.

Shri S. S. More: A little louder please.

Mr. Speaker: Order, order. If the hon. Law Minister looks to the Chair and addresses, the sound would be carried better.

Shri Biswas: I will raise my voice too. As I understand the matter, there is not much substance in the point raised by my hon. friend, Mr. More. As you were pleased to observe yourself the Bill really imposes an obligation on publishers of books in India to supply free copies, not exceeding four in number, to certain libraries. It is not a measure dealing with libraries as such.

Apart from that, even taking the view that this is a law concerning libraries, the National Library is already an institution regarding which an item figures in List 1. If you refer to Item 62, you will find 'The institutions known at the commencement of the Constitution as the National

Library, the Indian Museum and so on', and then it says 'any other like institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance.' When the time comes to issue a notification specifying the other libraries, then if any of them fulfils this condition—that it is "an institution financed by the Government of India wholly or in part....."

Shri S. S. More: What is the article?

Shri Biswas: Item 62, List I. You will find that National Library is mentioned specifically, and then there is "any other like institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance." This Bill does not mention the other three libraries, which will have to be declared to be "institutions of national importance", but at the time the notification is issued, if the libraries are financed wholly or in part by the Government of India, a law may have to be introduced here which will declare such libraries to be of national importance, and then the objection raised by my hon. friend will not apply, because that will specifically bring them within the words of entry 62.

Mr. Speaker: I think it is quite all right. I might remind hon. Members that fifteen minutes have been taken and I wish to be clear as to the time limit. There are certain amendments to certain clauses. If it is desired that the amendments should be discussed more thoroughly, then more time will have to be left to the amendments. Will it do that by 9 o'clock we put the consideration motion to the House and then in the remaining half an hour, we take up the amendments?

Some Hon. Members: Yes.

Shri K. K. Basu (Diamond Harbour): That will be too short. Half an hour may be allowed. Or twenty-five minutes for the consideration and twenty minutes for the amendment stage may be given, because the consideration is more important.

Mr. Speaker: I am prepared to allot all the forty-five minutes to the consideration if the House so likes.

Shri K. K. Basu: Twenty-five minutes will be all right.

Mr. Speaker: So we shall go on till ten minutes past nine. Mr. More: Let him be short now.

Shri S. S. More: The real and important question is the principle, and I very seriously oppose the principle on which the Bill has been conceived and put forth in this House. You are already aware that the publishers' industry in this country, which thrives on the labours of writers, is not in a very good condition. I quite realise that all our libraries must be substantially equipped with all the books that are available. But should it be done at the cost of the poor publishers, many of whom are running the industry at a loss to themselves? This is like robbing Peter to pay Paul, and I am surprised, if not pained, at Government ushering this sort of measure. If we follow this analogy there may be a day when, in order to equip our hospitals with proper instruments, all those who manufacture such instruments shall have to supply them to each of the hospitals in this country. Of course, it will be to the advantage of the country itself, but it will be at the cost of the manufacturers who produce all these instruments. Realising that my time is very short, I very stoutly oppose this measure on the principle itself, and I feel that it will be doing the greatest harm to the publishers' industry which has not yet been able to find its own feet.

The Prime Minister (Shri Jawaharlal Nehru): I am really surprised at the argument advanced by the hon. Member opposite. Evidently he is not aware of the international practice in this, and evidently he has not thought that the only way to encourage booksellers and publishers is to give publicity to the books and not, as is the

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habit in India, to sit tight and expect things to happen. We have to build up National Libraries, and the only way to build them up is to have some such arrangement with publishers and others. Normally speaking, a main library, may be one or possibly more but mainly one, keeps every printed document that appears, like the British Museum. May be fifty per cent. of the papers that they keep are not worth while, but they keep them for historical record. They have got over the past hundred years every pamphlet and paper published. The other libraries in the United Kingdom like Oxford, Cambridge, Edinburgh and Dublin too (of course Dublin is in another independent country) have also the right to keep these, but they did not exercise the right. They only exercised the right in the case of what they considered to be suitable books; they did not keep every pamphlet and every paper. But Oxford, Cambridge and Edinburgh have the right to send for such books, more serious and worth while books. That is how they built up the Bodleian Library, the University Library in Cambridge, and the Edinburgh Library—which from the national point of view is of great value. There is no other way of building them up, unless there is some kind of legislation. And so far as the publishers are concerned, in the final analysis it is of great advantage to them to get this kind of publicity. We want to build up libraries all over India, not only these National Libraries. The National Libraries become a kind of local point and centre of the other libraries that might be built up. Any good or semi-popular book that is issued in any of the European countries is likely to have a fairly large demand even from the libraries themselves, apart from the individuals, because there are thousands of libraries which take books like that.

So I submit that this very simple Bill that has been put forward before this House is quite essential, and it is in the interest not only of the nation but of the publishers and the authors themselves.

Shri Ramachandra Reddi (Nellore): I have got only a few words to say on this. It is said in the definition clause that every volume in any language should be submitted to these four Libraries. I do think that there is so much of literature that is published in India which probably amounts to a trash and which does not deserve to be placed in any National Library. For instance, we have got infant standard and primary standard books which may not be required in a National Library. On the other hand, if it is possible for the Government to frame the rules or by an amendment of the Bill itself, to say that lists published by each publisher should be submitted to the Librarians of the respective Libraries, that will be better. And then they can select such volumes that they feel will be useful or necessary for such Libraries. Otherwise the number of volumes that will reach these Libraries will be so many that it may not be possible for these Libraries to keep them or to preserve them.

Another point is that when these publications have to be sent at their own cost by the publishers to these several Libraries, it may cause them unnecessary expenditure. If postal concessions in this respect are given to the publishers, it will be very helpful from their point of view.

I therefore suggest that the Bill might be so amended or when framing the rules under clause 7 such stipulations might be so made as to secure all the books which are really useful for the Libraries and eschew some of the publications which are after all not so useful.

श्री राघे लाल व्यास (उज्जैन) : अध्यक्ष महोदय, मैं इस बिल का स्वागत करता हूं। हमारे इस बहुत बड़े देश में यह जरूर है कि एक लाइब्रेरी से काम नहीं चल सकता है। अगर एक ही लाइब्रेरी हो तो दूर दूर के लोगों को एक बहुत दूरी के स्थान पर आना पड़ेगा। इसलिये गवर्नमेंट का यह प्रस्ताव कि तीन और भी लाइब्रेरी कायम होंगी, स्वागत के

योग्य है। एक नेशनल लाइब्रेरी दिल्ली में है, दूसरी कलकत्ते में है। लेकिन साथ ही मैं यह निवेदन करूंगा कि जो नई नेशनल लाइब्रेरी कायम हों, वह ऐसे मुकामों पर हों कि जहां अध्ययन की विशेष सुविधा हो क्योंकि इन लाइब्रेरियों का उद्देश्य, जैसा कि बिल में बतलाया गया है, केवल किताबों का संग्रह ही नहीं है, बल्कि व्यक्तियों को स्कालरशिप्स भी दिये जायेंगे और अध्ययन करने की सुविधायें भी खास तौर पर दी जायेंगी। अतएव यह आवश्यक है कि जहां पर अध्ययन के लिये अच्छे वातावरणयुक्त स्थान हों, ऐसे ही स्थानों पर लाइब्रेरीज़ कायम की जानी चाहियें।

मेरा दूसरा सुझाव यह है कि देश में कई भाषायें हैं और अच्छा यह होगा कि जिस रीजनल लैंग्वेज में किताबें छपें उसी रीजन में उस भाषा की लाइब्रेरी बनाई जाय। अगर वहां उस भाषा की किताबों का संग्रह होगा तो उस भाषा के जानने वाले और समझने वाले उसका ज्यादा अच्छा उपयोग कर सकेंगे और उस से लाभ उठा सकेंगे। दिल्ली में या कलकत्ते में दक्षिण की किसी भाषा की किताबों का संग्रह करना उतना उपयोगी सिद्ध नहीं होगा। इसलिये मुझे आशा है कि शासन चार लाइब्रेरियों के अलावा और भी अधिक, लाइब्रेरी जितनी भाषायें हैं, उतनी लाइब्रेरियां खोलने का प्रयत्न करेगा। हां, एक लाइब्रेरी में सभी भाषाओं का संग्रह होगा तो वह ज्यादा उपयुक्त होगा।

एक मेरे मित्र ने अभी बतलाया कि आजकल किताबों की बिक्री ज्यादा नहीं होती है, इसलिये विक्रेताओं से या प्रकाशकों से इस प्रकार से किताबें लेना उन के साथ ज्यादती करना होगा। मेरे विचार से अगर उनकी किताबों की बिक्री नहीं होती है तो वह सब उसके घर पर ही पड़ी रहती हैं, उन में से तीन या चार किताबें देने में उन्हें आपत्ति नहीं होनी चाहिये। और अगर बिक्री होती है तो उनको उन किताबों से काफी मुनाफा होता है। इतना मुनाफा होते हुये तीन चार किताबें देने में भी उन्हें आपत्ति नहीं होनी चाहिये। इसलिये जो युक्ति आपने बतलाई वह मुझे किसी तरह से भी युक्तिसंगत नहीं मालूम होती है।

मुझे आशा है कि मैंने जो सुझाव रखे हैं उन पर शासन अवश्य ग़ौर करेगा।

तथा अन्त में अब मैं अपनी तरफ से भी यह सुझाव देता हूं कि उज्जैन का ऐतिहासिक महत्व है औ हमारे प्रधान मंत्री जी ने समय समय पर उसका काफी ज़िक्र किया है। वह पर यूनिवरसिटी भी कायम हो रही है जैसा कि मध्य भारत सरकार ने स्वीकार कर लिया है और वहां पर एक ओरियेंटल इंस्टीट्यूट भी है जहां पर किताबों का काफी संग्रह है, और बहुत से मैन्युस्क्रिप्ट भी हैं। वहां रिसर्च का काम भी किया गया है। मैं चाहता हूं कि सरकार विचार करे कि वहां भी एक लाइब्रेरी खोली जाय क्योंकि यह स्थान हमारे देश के मध्य में है। उसके लिये मध्य भारत सरकार उपयुक्त सुविधायें देगी और उज्जैन की जनता भी देगी।

Shri Bansal (Jhajjar-Rewari): Sir, I rise to support the principle of this Bill. I would not have liked to intervene, but for a few remarks made by my hon. friend Mr. More. He gave the analogy of manufactures, whether they will be asked to supply their products to all the hospitals if they were manufacturing surgical goods. I can say that, if the manufacturers are asked to submit one or two numbers of their products to one central museum they will be very happy to do so. In fact, that will the best source of their advertisement, and the analogy, therefore, does not apply at all.

After having said this I want to give one small suggestion. That is in clause 4 where it is mentioned that the librarian or the officer in charge will give a receipt to the publisher. In as

[Shri Bansal]

much as these books are made available as gifts, I would like a few words to be added here saying, that the books will be acknowledged with thanks. If these words are added at the end of the clause, I think it will make this Bill more graceful in as much as these books are given as gifts to the public libraries.

Dr. Lanka Sundaram (Vishakhapatnam): Sir, I regret to say that the opposition to the principle of this Bill is not well grounded. Knowing something of the publishing trade and having also written books of some sort, I would like to say two or three things about this Bill.

In the first place, my objection to the Bill is that the names of all the four libraries are not mentioned. Even now it will not be too late for the Government to mention the names of the libraries—three more in addition to the National Library at Calcutta.

The second point I would like to make is this, with regard to books in regional languages. Even as my hon. friend said just now, books of the primary classes and secondary classes in schools need not be sent to one Nation- is the Library of Parliament here; then there are the libraries at Bombay cated in different parts of the country, the regional books of ordinary interest—schools books and so on—can be kept in the regions concerned, so that one centre may not be loaded with all sorts of books.

The argument of Mr. More about cost, is not valid to my mind. Every publisher and every writer of books supplies free any number of copies for review purposes; and reviews are good, bad and indifferent. I can speak from my own experience—I have also written some books—not less than fifty to sixty copies go for review. An additional four copies is not a burden either to the publisher or to the author.

I consider that this Bill is extremely necessary, and if the three other libraries are named, and if my suggestion for dividing the books of lesser merit into various zones or regions and keeping only one National Library where all books are maintained, I think that will be a great service to the country. I support this Bill.

9 A.M.

Shri Jawaharlal Nehru: Sir, in view of what Dr. Lanka Sundaram has said, that the names of other Libraries should also be mentioned, I may state that the intention is that apart from the National Library at Calcutta, there is the Library of Parliament here; then there are the libraries at Bombay and Madras. The names of the four centres are these. In regard to his other suggestion, if the hon. Member will see the last clause, Government is given power to make rules, so that rules can be framed as to the distribution of books as he has said. The suggestion is very good, but the idea is that it will be considered in that sense.

Shri Raghavachari (Penukonda): Sir, I wish to make two observations on this Bill. This Bill seems to be based upon the presumption that every little thing that is printed will have to be preserved. If that is the principle and presumption, it is very dangerous, because in the new-found freedom, all sorts of pamphlets; even election pamphlets, abusive pamphlets and all sorts of things are being manufactured every day, and the definition of the word 'book' includes pamphlet. If I take it into my mind to abuse my neighbour and issue an abusive pamphlet, it will also find a place in the National Library.

Dr. Lanka Sundaram: Only priced publications.

Shri Raghavachari: There is no such word there. Therefore, Sir, this presumption that every little thing printed is worth preserving is a thing which is likely to cause embarrassment to provide accommodation for all kinds of things. That is one thing.

The other thing is that when everybody is expected to do a thing under the law, or in default undergo punishment, it is likely to involve an amount of examination as to which of the prosecutions should be started.

These are the two things I have to say. No doubt, when a legislation has to be passed asking everyone to submit what they publish, it must really be anything worth preserving. That one little thing must be borne in mind as otherwise it will lead to these anomalies.

Dr. M. M. Das: Sir, I am highly grateful to the hon. Members who have taken part in this debate and expressed their views upon this very small measure. Although there has been some criticism levelled against some small procedural matters relating to the provisions of this Bill, I think I can say without any fear of contradiction that this Bill has received the blessings of this House. In so far as the principle is concerned, every one of the hon. Members except our hon. friend Mr. More has supproted this Bill.

Now, I propose to take the criticism or, rather opinions, that have been expressed by our friends here, and try to explain the Government's viewpoint regarding those matters. My hon. friend Mr. Reddi has given a very valuable suggestion. He said, that if all the publications that are brought out in this country are collected in every library, there will be difficulty in space, and there may not be any real need for collecting all the publications in each one of these libraries. We quite agree to what he has said. Government has considered this part of the matter and they have come to the conclusion that under the rule making power of the Government rules will be framed in such a manner that all these publications will come to one of these libraries—most probably, it will be the Calcutta National Library. These will be kept there and the rest of the libraries will get only those publications which are worth having; no trash will come to these three libraries. My hon. friend Shri Bansal has proposed that two words may be added to the word 'receipt'. We quite agree. After all, nobody can deny the statutory obligation that has been put by this statue. We may give the publisher our thanks or not, but the obligation is there.

Dr. Lanka Sundaram has raised several points. He has said that all the four libraries have not been mentioned. The Prime Minister has already explained the position. In my speech, I also have said something about this matter. One of the libraries is already existing: the National Library in Calcutta. Another is going to be established in Delhi. The location of the two others, as the Prime Minister has said, will be considered and decided. Dr. Lanka Sundaram has stated that the books in the regional languages should be sent only to the regional libraries, if I have understood him correctly. These libraries are only four in number and they will be foremost libraries of this country. It is not an ordinary lending library; but it will be intended mainly for research scholars. Suppose in Calcutta there are a large number of Hindi speaking friends and they want to study these books, they must be given proper facilities. Similarly in Bombay, there may be Bengali speaking people who may want to study Bengali books. I do not think that this part of his argument has any cogency.

The hon. Member Shri Raghavachari said that the collection of all publications including election literature and pamphlets is not necessary. I think there is necessity even for the election manifestoes and election literature to be preserved in some parts of the country, for historical reasons. They may not be of any interest to us after the election is over. But, they may be of great interest to the future generations. I think I have met or at least explained the view of the Government on some of the points raised by the hon. Members.

Mr. Speaker: The question is:

"That the Bill to provide for delivery of books to the National Library and other public libraries, be taken into consideration."

The motion was adopted.

Mr. Speaker: We will now take the Bill clause by clause.

Clause 2.—*(Definitions)*

Shri N. B. Chowdhury (Ghatal): I want a clarification with regard to the word lithographed: whether it would include cyclostyled matter. We support the idea of having copies of books in the Libraries but we do not think that it is necessary to have every cyclostyled matter also. I want to know whether the word 'lithographed' includes only printed things such as is done with the Urdu script or it includes cyclostyled matter also.

Mr. Speaker: I think the Law Minister will explain, or will he do it?

Dr. M. M. Das: There are two Acts which relate to the printing press and publications in this country. One is the Indian Copyright Act of 1914 and the other is the Press and Registration Act of 1867. In both these Acts, the word 'lithographed' is there. This word has a special significance in these Acts. Moreover, it is necessary because Urdu script is printed through this method.

Shri N. B. Chowdhury: I have referred to that.

Mr. Speaker: His question is whether cyclostyled matter will be included?

Dr. M. M. Das: No; it will not be included.

Shri N. B. Chowdhury: I do not propose to move that amendment.

Mr. Speaker: Shri D. C. Sharma: not present.

The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3.—*(Delivery of books to public libraries).*

Mr. Speaker: Clause 3.

Shri S. S. More: May I seek a little clarification about this clause?

Mr. Speaker: Which clause?

Shri S. S. More: Clause 3.

Mr. Speaker: Let me first dispose of the amendment.

Shri Kirolikar (Durg): I beg to move:

In page 1 line 23,—

Omit "notwithstanding any agreement to the contrary."

In my opinion, there is no necessity for these words. Because, as the clause stands, in spite of any agreement, he will have to supply the books.

Mr. Speaker: He wants to have a clarification as to whether these words are necessary.

Dr. M. M. Das: These words are essential to make the clause effective. If these words are withdrawn, it will make the whole clause infructuous and defeat the very purpose of the Bill. The implication of the amendment is this. If the publisher enters into an agreement with the author that no copy would be distributed free to anybody, that would be valid and we will not be able to procure any book from them. The acceptance of this amendment would defeat the very purpose of the Bill.

Mr. Speaker: Does the hon. Member press his amendment?

Shri Kirolikar: How is any agreement between the publisher and the author binding on us?

Mr. Speaker: He has not followed the argument.

Shri K. K. Basu: What is the amendment?

Mr. Speaker: He will see the amendment to clause 3. If these words are not there, the result would be this. As the Minister says, it would be open to a publisher to enter into an agreement with the author that no copy shall be supplied free of charge to anybody. Then, the publisher can immediately hold the agreement before the Government and say, I am helpless, I am bound by the agreement. Therefore, in order to annul any such escape, these words are necessary. That is what he has explained. Does the hon. Member press his amendment?

Shri Kirolikar: I do not press my amendment.

Shri S. S. More: I refer to the words "publisher of every book published in the territories to which this Act extends". You know that in section 500 of the Indian Penal Code and other law of libel, the word 'published' has a technical meaning. It does not mean printing. Will this include, as I think it ought to include, publications which are printed outside India but which are put on sale, that is, published in this country: I mean publications printed in the United Kingdom or America, but which are for sale here. By that, they are supposed to be published in this country. I want to know this from the Law Minister. As I have been defeated on the first point, I go a step further and say that this Act must be made so comprehensive as to include all publications which are published outside this country, but put on for sale in this country. Our libraries would be enriched to that extent.

Shri Biswas: The word is "published", not "printed". A book may be printed outside India, but if it is published in India, simply because it is also published elsewhere that does not exempt the publisher from the obligation imposed on him by this Act.

Mr. Speaker: The question is:

"That clause 3 stand part of the Bill".

The motion was adopted.

Clause 3 was added to the Bill.

Clause 4.— *(Receipt for books delivered).*

Shri N. B. Chowdhury: Here also I want to have some clarification with regard to the receipt of books. It is a very simple thing. It has been said in this clause that the person in charge of the library or any other person authorised will receive the book. It should be clear whether it is necessary for the publisher to deliver the book personally or it would be enough if the book is sent by registered post. In case the book is sent by registered post, then the postal acknowledgment receipt should be considered as sufficient proof of such delivery, because some penalty has been provided that in case such publications are not supplied within a month, then he would be subject to penalty. There may be delay due to books being mislaid somewhere, due to delay in the postal transit, and the publisher himself may not be delaying it. So, in such cases the publisher should not be held responsible. So, I want to have this clarification.

Dr. M. M. Das: It is not necessary that the books should be handed over to the library personally. They may be sent by post, and the postal acknowledgment is certainly a proof. In addition to that, the librarian in charge or the man authorised by the librarian will also send to the publisher a receipt.

Mr. Speaker: Does he want to move his Amendment?

Shri N. B. Chowdhury: No.

Mr. Speaker: The question is:

"That clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

Clauses 5 and 6 were added to the Bill.

New Clause 6A.—(*Books published by Government*)

Dr. M. M. Das: I beg to move:

In page 2, *after* line 35, *insert*—

"6A. *Application of Act to books published by Government.*—This Act shall also apply to books published by or under the authority of the Government other than books meant for official use only."

I have already explained the reason why we have give notice of this Amendment. The Bill as it has been introduced does not bind either the Central Government or the State Governments to send copies of their publications to these four libraries. So, by this Amendment we are bringing the State Governments as well as the Central Government within the ambit of this legislation.

Shri N. B. Chowdhury: Here the words "State Governments" do not appear. The words are only "under the authority of Government".

Mr. Speaker: That includes State Governments.

The question is:

In page 2, *after* line 35, *insert*—

"6A. *Application of Act to books published by Government.*—This Act shall also apply to books published by or under the authority of the Government other than books meant for official use only."

The motion was adopted.

New clause 6A was added to the Bill.

Clause 7 was added to the Bill.

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

Dr. M. M. Das: I beg to move:

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

Shri N. B. Chowdhury: I wish to say something at this stage.

Mr. Speaker: On the third reading? Let me put the motion to the House. Then he may speak. There are about ten minutes now, and a number of people would like to speak. If they want to speak, I shall ration time.

Motion moved:

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

Shri N. B. Chowdhury: We welcome the idea of having a number of public libraries in this country. Ours is such a vast country and we do need to have such libraries to encourage scholarship, study and research, but we must have assurances from the Government that in these public libraries the public would get sufficient opportunity to have books, and these libraries would be managed properly.

Some time ago we know that while the National Library in Calcutta was removed from the heart of the city to some interior place a few miles away, the reading public in the City faced a lot of difficulty, and ultimately because of the agitation there, an arrangement had to be made for a reading section at the previous place.

We also find that it becomes very difficult to have the valuable or important books in the library, and so, while we are getting copies of every publication inside the country, we also expect that the Government would make arrangements to have more than one copy of the very important books which are frequently used by the public in such libraries.

Then, it has been mentioned by the hon. Parliamentary Secretary that they want not only these libraries but more libraries also in this country. We need a planned library movement in this country. In this vast country it would not be sufficient to have these four public libraries only. Afterwards the people would demand that at least in every State there should be a good, magnificent library. They may not be all such ambitious plans as these public libraries are, but in every State

there should be at least a large library, and along with it there should be a network of libraries in the rural areas also. In our country, 80 per cent. of the population are still illiterate, and so, if we really want to encourage scholarship, this research and spirit of acquiring learning should not be confined to the very few people who now have the advantage of higher education. So, if we really want to encourage scholarship and research on a large scale, we must consider the broad question of a campaign for literacy and if you succeed in educating the entire population by making provision for compulsory literacy or education, in that case only there would be scope for better utilisation of such libraries. So, on this occasion we demand that in these public libraries there should be adequate facilities for the reading public. Also there should be a planned library movement and the Government should provide sufficient money for a network of libraries all over the country.

Shri Joachim Alva (Kanara): I would like to support this Bill with some kind of mental reservation for I feel that the Government has brought this Bill with the cart before the horse. Before fostering a real library movement, we first want to consign books into three or four national libraries. It has been said that the greatest revolution of the 19th and 20th centuries was fostered under the shadow of the books in the British Museum. Marxism is the essence of French thought, British economics and German philosophy. Marx wrote his famous book in the British Museum and hence Marxism arose around the globe. It is a great pity that quite many Indian students have gone to the British Museum and found out books which they could not find in their own country or books written by their fellow-countrymen.

This is a good beginning that we are forming libraries. We will have these central libraries where every author shall go and put a copy of his book on record. I agree with hon. Member Shri Reddy when he said that there would be good and bad books, and it would be difficult to separate the wheat from the chaff. Like the recording angel who records both the golden and dark deeds, the library shall have to contain both good and bad books. It may be that good coins may be driven out by the bad ones, but then it would be for the future historians to see the kind of books published, especially the type of libels that were spread in electioneering periods and every one would read what happened in this period in the generations to come. We need not learn anything in the matter of libraries; our ancestors, and our great writers have handed down to us great manuscripts, which have come down to us through generations, centuries and even ages. The great truths of Hinduism, Buddhism, Jainism etc. have been written on the leaves of palmyra trees or other trees, and they have lived down the ages. My own view is that we can claim that these immortal books or truths have even travelled across the bookstalls and libraries of the whole world. For instance, we have *The Light of Asia* on the great Buddha, the *Gitanjali* by Tagore, Mahatma Gandhi's books, the books of our own Prime Minister, or the books of Dr. Radhakrishnan, which have gone round the globe, unto the various bookstalls and libraries of the universe.

Only yesterday, I say in the Czechoslovakian Cultural Exhibition, the picture of a travelling library. While we talk of travelling museums, travelling medical units, etc., we still have not got travelling libraries. I think that it is only in Baroda where the library movement is organised at its best, that they have got travelling libraries. Unless we have travelling libraries, and make available the books even to the meanest citizen in the country, we shall not have developed the idea of libraries at all. What is the use of developing at the top, if we are not build down below?

[Shri Joachim Alva]

My own plea is that the Education Ministry, which finds crores of rupees for some unprofitable schemes—and some of us its men or Secretaries even go abroad to teach others, without finding time to teach our own people—should take steps to spread the library movement in the proper manner, so that every citizen may read good books, and may also know how to distinguish good books from bad books.

Dr. M. M. Das: My hon. friend from Midnapore has raised some very important points. He said that the National Library at Calcutta has been removed from the city to a few miles distance. I would like to state that the Library still exists within the municipal jurisdiction of the city. Calcutta being a big city, even though the Library is a few miles away, it is still within the city limits, and not outside the city.

He has also suggested that these four libraries are not at all sufficient. In this very House, I have replied question after question put by hon. Members who have shown great interest in the library movement, and I have stated already that the Central Government have prepared schemes, and these are being implemented by the State Governments. The development of libraries is a very important matter and it occupies an important place in the Five Year Plan. So, what the hon. Member wants is being done by Government. The policy advocated by the hon. Member is being pursued and implemented by Government.

Shri K. K. Basu: We want it with greater vigour.

Dr. M. M. Das: My hon. friend from Kanara, Shri Joachim Alva, has given some very learned and valuable suggestions. I hope the Government of India will bear in mind those suggestions, at the time of formulating their policy regarding libraries.

Mr. Speaker: The question is:

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

The motion was adopted.

HIGH COURT JUDGES (CONDITIONS OF SERVICE) BILL

The Minister of Home Affairs and and States (Dr. Katju): I beg to move:*

"That the Bill to regulate certain conditions of service of the Judges of High Courts in Part A States be taken into consideration."

The object of the Bill has been clearly stated in the Statement of Objects and Reasons.

[PANDIT THAKUR DAS BHARGAVA *in the Chair*]

The history of this matter really begins from 1922, when orders were passed setting out the rights of leave and other incidental matters. Then came the Government of India Act, 1935, when the whole matter was revised, and in 1937, all these questions were dealt with by orders dealing with salaries, pensions, rights of absence, leave and so on. When the Constitution was enacted, as the House is well aware, it was provided therein that these will be as in the Second Schedule, until Parliament intervened and provided for these matters on a certain basis.

The main object of the Bill is really, in short, one small matter, namely, that if a judge does not qualify himself for a pension, strictly according to the rules, then the very fact that he has served as a judge for a shorter period should qualify him for a minimum pension of Rs. 6,000 a year, or Rs. 500 a month. The ordinary rule has been—and it will remain so, until Parliament passes this Bill—that there should be a minimum service of seven

*Moved with the recommendation of the President.

years. If a judge does not serve for a minimum period of seven years, he does not earn any pension at all. I know of many cases in the past, prior to 1950, where judges who had accepted office for shorter periods of two, three or four years, and who had to retire on superannuation, did not earn a single penny by way of pension. This matter was represented to Government, some years back, particularly by judges, who resigned their office in 1950 on the ground that under the Constitution, certain restrictions were being placed on their rights of practice etc. It was then thought fit that if the President employed anyone as a judge of the High Court, and that judge was under the Constitution debarred from practising his legal profession in any High Court in India, or in the Supreme Court in India, then it is only fair and proper that he should be entitled to some minimum pension. So, the change now proposed is that he should be entitled to get a minimum pension of Rs. 6,000 a year, or Rs. 500 a month. Otherwise, the rules remain the same.

It may be a technical matter, but the rules are these. If a judge has served for more than the minimum period of seven years, his pension is calculated on the basis of Rs. 5,000 a year, to which has to be added, for every year of service, if he is a puisne judge, a sum of Rs. 470; that is to say, if a judge serves for seven years, he gets a sum of Rs. 5,000 a year, plus Rs. 470 multiplied by seven, which would roughly come to about Rs. 8,000. If he serves for eight years, then his basic pension increases to that extent. There is some change also in regard to the Chief Justice, and a different rate has been introduced in favour of the Chief Justice. Hon. Members will be aware that formerly—and even now,—the judges of the High Court were not recruited merely from the bar. Under the old regime, one-third was from the Indian Civil Service, one-third was from members of the British bar, and one-third was from Indians, the latter including members of the Provincial Judicial Service, and members of the Indian bar.

Today the Indian Civil Service having disappeared, there is a higher judicial service, as it is called, in the different States. The proportion in the different High Courts varies, but there is everywhere a substantial number of service judges. These service judges start their career in the service itself. Supposing they are members of the Provincial Judicial Service, then, as you are aware, they may start as Munsifs, serve a number of years as subordinate judges, then as district judges and for three or four or five years they may serve as High Court judges. Now, they earn a pension; for the period they serve as Judges of the High Court, they are entitled to different pensions. So far as salary is concerned, it is really a promotion. A district and sessions judge may be getting Rs. 2,000 as a service judge in the district. As soon as he is appointed a judge of the High Court, he begins to get Rs. 3,500. Similarly with a Judge of the Indian Civil Service. So I would like to draw the House's attention to the fact that the pension varies in cases of different categories, members who are drawn from the Indian Civil Service—it is now a fast vanishing category—members who are drawn from other services,—the Provincial Judicial Service— and members who are drawn from the Bar. We have to make separate provisions for these. So far as a service judge is concerned, there is no question of any minimum pension because he gets his pension as he has been serving the State for so many years. The question of minimum pension only arises in respect of the judges recruited from the Bar. It may be said. 'You may appoint a judge for six months when he is 59 or 59½ and you make him a present of Rs. 500 a month for the rest of his life'. That is a relevant consideration, and I may inform the House that when the President is making appointments this factor is taken into consideration because we are anxious that a man who is appointed a judge should be able to serve at least for some years, three years, four years,

[Dr. Katju]

five years—may be less than seven years—but it should not be a mere trifle of a few months or at the outside one or two years. That is really a new feature. Otherwise, it is practically a reproduction of what is the existing practice which has served very well and which has the sanction of 30 years' experience behind it.

One thing I may mention here, namely, that there were certain extra facilities provided—medical treatment and so on—which were till now regulated by rules. But those rules have disappeared and we have thought it fit to embody them in this Bill itself—I refer to travelling allowances, medical facilities and all that. From the amendments, of which notice has been given, a good deal of attention seems to be concentrated on this leave matter. I shall go into them further when those amendments are discussed, but I should like to draw the attention of hon. Members to one feature which distinguishes a High Court judge from every other public servant in India. That is that by a practice introduced in this country by the British, we have what is called the long summer vacation—an annual vacation. The annual vacation used to extend to 10 weeks; I understand that in some courts, the judges have of their own accord reduced it to two months—that means reduced it by ten days. No other public servant in India enjoys any such thing as a summer vacation or annual vacation on full pay. I do not grudge it; I am only mentioning it, as to what is the existing procedure. The judges naturally say that they do highly responsible work; it requires concentrated attention and great intellectual effort. I read a note which was recorded by a Chief Justice in which he said that the judge when he started after the vacation, he was full of health and vitality, but by the time he finished 10 months or 9½ months work, his vitality was lower—probably he referred to something about calories and all that.

Shri S. S. More (Sholapur): He is like a Minister.

Shri A. K. Gopalan (Cannanore): Teachers have a summer vacation.

Dr. Katju: He said that it was absolutely necessary. I do not want to go into that. But you cannot have it both ways. You cannot say that every member of the service, whether it is the Indian Civil Service or the Indian Administrative Service—is entitled to one month's pay, he is entitled to so much furlough and all that sort of thing. You get your two months and the result is that in the matter of other kinds of leave, there is a restriction. Secondly, there is this basic restriction, namely, the leave is divided. Even if you get four months' leave, then for the first month you are entitled to your basic salary of Rs. 3,500. For the second month and the third month—if you are entitled to leave—it is what is called leave on full allowances, Rs. 2,200 and then comes leave with half allowances, Rs. 1,100. Now, some of the amendments are intended to liberalise the rules. I may draw the attention of the House to this because we have actually copied what is in the Constitution itself. That has been mentioned, I believe, in the Statement of Objects and Reasons also. In the Second Schedule, Part D, the words 'actual service' are defined and in the Bill the definition given in the Constitution of 'actual service' has been reproduced *verbatim*. This embodies the practice which has been in vogue for 33 years, if not more, and the Government thought that that was the very best guide to us; what the Constitution-makers approved of was quite good enough for them.

The rules relating to leave, Mr. Chairman, are liberal. The judges work hard; I know it. I am very reluctant to say anything about judges in Parliament because it is desirable that we should not discuss them at all, and they should occupy a position of aloofness and great dignity and

status. They work hard. It is said that they work on Saturdays and Sundays; they have to compose judgments, think over cases, they hear very elaborate arguments, difficult and complicated, and I imagine their minds are always occupied with those matters. So far as sitting in courts is concerned, I was once calculating. I think the sittings in court—that excludes Saturdays, Sundays, religious holidays and vacations also—are about 175 days in the year. So I do not think that there is any justification for our going out of our way for liberalising the rules relating to leave or for liberalising the rules relating to pension either, because hon. Members opposite and hon. Members here will recognise that in these matters the House is always rather severe and strict.

Then it is said that the members of the Bar come to the Bench and they make great sacrifices. I think that is correct. But there is a standing tradition, and I imagine that that tradition is being followed in India also, that is, that every practising member of the profession, whenever a judgeship of the High Court is offered to him by the Head of the State—may be by the Sovereign in England, by the President in the United States or the President in India—should think it as a matter of patriotic duty to accept the offer, no matter what may be the pecuniary loss to him. The reason that is assigned is that when the President calls upon him, all the experience and the learning that he has gathered in the King's courts or the President's courts are to be placed—it becomes his duty to do so—at the disposal of the King or the President. I think that is a tradition well understood.

So far as salaries are concerned, that is a matter for Parliament, and I do not think that in India, at present, the salary of Rs. 3,500 can be called a negligible salary, nor is it a salary which is not in keeping with, or in consonance with the emoluments of the profession. I am not talking now of big cities like Calcutta, Bombay and Madras, and I do not know—I am ignorant—of what is obtaining there, but in the rest of India, lawyers have been reconciling themselves to the altered circumstances, and with the disappearance of the *zamindari* and all sorts of things, I think the opportunities for making vast incomes will disappear. I need not say anything more. I move.

Shri K. K. Basu (Diamond Harbour): On a point for clarification. The hon. Minister has said that there are a number of judges who had served for a certain period but that they could not earn the minimum pension. Can he give an idea as to the number of such judges?

The second point is: the hon. Minister said that for one month, the judges would get full pay. Under the Constitution, it is Rs. 3,500. We know those judges who had served prior to the Constitution were given the old scale of Rs. 4,000 per mensem. I want to know whether this one month's full pay is at Rs. 4,000 or Rs. 3,500.

The third point is about the medical facilities. I do not know of other parts of India, but so far as Calcutta High Court is concerned, certain kinds of treatment were allowed for the judges and their families. I do not know under which provision it is given. So far as Calcutta High Court is concerned, such concessions were not given to the Indian Judges. I do not know about the service judges.

Dr. Katju: The hon. Member is aware that so far as this distinction between Rs. 4,000 and 3,500 is concerned, that very article—article 221 of the Constitution—guarantees that all rights and privileges including the rates of salary, leave, pension, etc., will continue. Therefore, any judge who was appointed prior to the coming of the Constitution will get Rs. 4,000. Any judge who was appointed afterwards will start on Rs. 3,500.

[Dr. Katju]

As to the number of judges, really I am at a loss to know how many continued to serve. It may be very few. I know of one who resigned.

Shri K. K. Basu: He could have easily earned his minimum pension. He did not resign.

Dr. Katju: I really do not know how many continued to serve and how many will benefit, but the number will not be very large. I think it may be three or four only.

So far as medical facilities are concerned, I could not grasp the real significance of the observation. If a member of the Bar is appointed as a judge, then, along with the service judges, he becomes entitled to the medical facilities provided for every judge.

Shri K. K. Basu: You said that these medical facilities were provided under the existing conditions, but my point is, so far as I know, in Calcutta High Court, the judges who come from the Bar are never provided such medical facilities as you contemplate. That is the exact position. You said: "In continuation of the existing system".

Dr. Katju: I was told that there have been rules made by the Secretary of State which provided for these facilities, and now we want to put them into shape.

The Minister of Law and Minority Affairs (Shri Biswas): Such facilities were allowed to judges who were serving before the Constitution came into being and before independence. But, as a matter of fact, I may say—I am subject to correction—the Indian judges never availed themselves of those facilities.

Dr. Katju: I was going to say this. For instance, in Calcutta there may be about 5,000 doctors and you may have your own beloved physician in whom you place your trust and confidence and a judge over there may have his familiar doctor in the Medical College Hospital. I will have my own doctor, A, B or C. These are individual preferences. I have nothing to do with that. Here is the Law Minister and he knows all about it!

Mr. Chairman: Motion moved:

> "That the Bill to regulate certain conditions of service of the Judges of High Courts in Part A States, be taken into consideration."

Shri Satyendra Narayan Sinha (Gaya West): This is a small measure, as the hon. Home Minister has said, intended to lay down the conditions of service of the High Court judges. The conditions are more or less the same as were before the Constitution came into being. But one welcome change has been included in this Bill, and that is, that a non-service judge will be entitled to a minimum pension of Rs. 6,000 per annum even if he is not able to complete seven years of service on the Bench. In the Statement of Objects and Reasons, it is stated that this is considered necessary mainly because of article 220 of the Constitution barring practice after retirement, a provision which adversely affects the recruitment of desirable candidates, who would not be able to put in the minimum seven years on attaining the age of 60 to qualify for pension. I welcome this provision which will facilitate the appointment of persons with long-standing at the Bar and who are of sufficiently advanced age, even if they would not have seven years in front of them to complete the age of 60 before they retire. I also share the anxiety of the Government to attract the best men to the Bench. But I would bring to the notice of the Home Minister that there is a growing feeling among many people who are interested in the administration of justice that whatever may be the conditions of service, we are not able to attract the best men to the Bench.

No less a person than Shri Chandrasekhara Aiyar, who himself is an ex-judge of the Supreme Court, the other day expressed the view that the mounting arrears in the High Courts are due not to the lengthiness of the counsel's arguments but to the incapacity of the judges....

Shri S. S. More: Shortness of pay.

Shri Satyendra Narayan Sinha:..... to make up their minds. He has gone on to say that while the abler ones are able to make up their minds easily, the less competent ones wobble and vacillate and are not able to decide quickly important legal questions and that is the reason why there are delays in disposal of cases. This is a very serious comment on the type of judges recruited after 1950. And, if there is some truth in what Mr. Chandrasekhara Iyer himself has said, it is something which should be taken note of by the Government.

I feel that the High Court Judges should be provided with such pay and prospects that they may not suffer from a sense of loss while looking back at their colleagues at the Bar. At present the leading counsels at the Bar are able to make far more money than what a judge ordinarily gets, even though the salaries paid to our judges compare favourably with those paid for similar officers in Canada, South Africa and Australia. All the same we have got to consider whether the pay and prospects alone determine the type of judges that we are getting. How are we to attract the best talents to the Bench? Does the remedy lie elsewhere? Incidentally, I feel, and it becomes pertinent also, that we should examine the question of the method of appointment and recruitment. As far as I think, the method of recruitment also determines the type and character of the judges. The framers of the Constitution were anxious to see that the judges are kept free from executive interference. That is why they incorporated a provision vesting the power of appointment in the President, and laid down the procedure that the President will consult the Chief Justice of India and the Governor of the State, and, in the case of the appointment of a puisne judge of a High Court, the Chief Justice of the concerned High Court. But, what is the position in actual practice? In actual practice, the President is advised and guided by the Home Ministry and the Governor, by the State Government. And, the result is that many other considertions, other than merit and integrity of the candidates, come into play in the matter of nominations. I am told that the State Governments, in many cases, recommend only one name for appointment, and in one case even when the President had returned the recommendation and fresh proposals had been called for, the State Government persisted in recommending the same name over and over again. When the judges are appointed, virtually they become the nominees of the State Government and what was in the view of the framers of the Constitution is, I am sorry to say, being defeated in actual practice. The judges, instead of remaining independent of executive interference, are virtually the nominees of the State Governments.

Mr. Chandrasekhara Iyer has also commented upon the method of appointment. And, I agree with him when he says that the appointment of judges should be kept out of the hands of the State Governments or of the Home Ministry. Actually, it has been suggested, and I also agree, that in the matter of appointment, the President should be guided by the advice of the Chief Justice of India and the Chief Justice of the High Court, whenever the appointment of a puisne judge is concerned. The Government should act merely as a post office and should not have an effective voice in the matter of selection. Otherwise, the checks and balances provided in the Constitution would be reduced to a mere farce. The situation that confronts the country and the Government today is one which cannot be viewed with equanimity and approbation as being, in the

[Shri Satyendra Narayan Sinha]

ultimate analysis of things, a threat to the independence of the judiciary, which is a *sine qua non* of any successful democracy and rule of law. Therefore, I beg to submit to the hon. Home Minister that he should seriously consider the question of getting the best men to the Bench and, if the method which is being followed today for appointments inhibits persons of merit from getting the favour of the State Government, and thereby prevents their selection, I think, this practice should be done away with, the sooner the better. Or else, the High Court will become a representative of mediocres at the Bar.

10 A.M.

Secondly, my suggestion is that the Government should consider the question of instituting an all-India cadre of High Court judges. It so happens that in many of the High Courts, the Bar which happens to be the main recruiting ground at the present moment does not contain able men and for some reason or other we may not want to deplete the Bar also. In that case, we can go to other Bars, the Bars in other States and the Bar of the Supreme Court. Unfortunately, as it at present exists, the lawyers practising in the Supreme Court do not have any prospect of getting recognition of their merit because they do not happen to be attached to any provincial High Court nor do they come in contact with any State Governments and the result is that sometimes mediocres get recognition and are elevated to the Bench whereas much abler persons are hardly even thought of. This is a very anomalous position. While I agree with the hon. Home Minister that we should have some attractive pay and prospects for the High Court judges and the provisions, according to him, are quite good enough, we should also consider this question of the ways and means by which we can attract the talented lawyers to the Bench.

With these observations, I support this motion.

Shri Frank Anthony (Nominated—Anglo-Indians): Mr. Chairman, I wish to take this opportunity to speak on what I consider to be the vital conditions which are governing the services of our judges. The remarks which fell from the hon. the previous speaker, not only surprised me but have caused me unpleasant surprise, particularly when he commented on the calibre or lack of calibre of judges appointed since 1950. At any rate, I was under the impression that the country had every reason to be proud of the judiciary before 1950 and I think we should say with gratitude that one of the greatest boons which the British administration conferred on this country was to give us a judiciary—at any rate in British India—which was trained and nurtured in standards unequalled in the world except perhaps in Britain and those standards should be our constant endeavour to preserve and maintain.

Personally, I am very glad of this provision to give a minimum pension to judges—non-service judges—who have not put in the seven years of service. But, I have doubts as to whether even this provision will help to recruit the best available talent from the Bar. Personally, I would like to have seen a higher pension scale. In this respect, I am afraid I cannot endorse the sentiments which fell from the Home Minister. There is no room, in a vital matter such as this where our judiciary is concerned, for misguided sentiments or sloganmongering. The Home Minister has talked of patriotism and stated that when a person is asked by his sovereign or President to be a judge, he regards it as a duty and accepts that order. We are dealing with human nature, and, as I have said, we cannot talk in terms of sentiments and of slogans. We have to recognise the fact that leading lawyers....

Shri S. S. More: Is not patriotism part of human nature?

Shri Frank Anthony: It becomes a little diluted against the background of

financial considerations. I am talking in terms of leading lawyers earning princely incomes. I agree with the Home Minister that not all leading lawyers have princely incomes, but certainly in the main High Courts, the leading lawyers earn on an average anything between Rs. 20,000 and Rs. 50,000 a month.

Shri C. D. Pande (Naini Tal Distt. *cum* Almora Distt.—South West *cum* Bareilly Distt.—North): They refuse to accept that.

Shri Frank Anthony: I do not know what they show as their income for income-tax purposes, but they earn that amount. We cannot expect these persons being swayed by a sense of alacrity in the matter of accepting these appointments, as it means reducing their income to one-tenth of their earnings. I am giving the example of what is prevailing in England. I am giving it because the scales or emoluments which our Ministers and civil servants get compare more or less with the scales obtaining in Britain—as a matter of fact, our civil servants get very much more than their opposite numbers in Britain, and yet in Britain, the Lord Chancellor used to get £10,000, the Chief Justice £8,000 and the other judges £5,000. In 1953, I remember a Bill was on the anvil—now it is perhaps law—where it was proposed to give £1,000 income-tax free to the judges.

Shri K. K. Basu: That was amended.

Shri Frank Anthony: I am not so much concerned here with a brief for increasing their salaries, but I would ask the Home Minister to consider liberalising the pension scale. I say this without offence. Obviously, we want to attract the very best talent from the Bar and that is the main consideration. There is no point in the Home Minister setting up ministerial standards as to what emoluments should be paid to the judges. When a Minister—there are exceptions to this; in fact the Home Minister himself is an exception to this—is raised to a ministerial rank, he suffers nothing, but gains. I am not talking of the Home Minister; he happens to be a leading lawyer with eminent practice and his is a case of an exception proving the rule. An average Minister.....

Dr. Katju: This is a very unjust observation to me.

Shri Frank Anthony: It is a compliment to the Home Minister.

Dr. Katju: I wipe myself out of the stage.

An Hon. Member: It is not a correct statement of fact.

Shri Frank Anthony: This is a statement of fact, and the Home Minister himself unfortunately brought in this illustration. After all, when we compare the emoluments of our judges with those of the person in public life.....

Dr. Katju: I said 'public service'.

Shri Frank Anthony: Ministers are public servants, at least I presume that. What I am suggesting is that the principle itself is wrong and we should not apply to the judges a principle that applies to Ministers and civil servants. I am sure all my friends in the House will agree with me in this. How many Ministers suffer when they become Ministers? They prosper on the other hand. An average politician getting about Rs. 500 a month is made a Minister and he suddenly finds himself elevated in his salary to the region of Rs. 3,000.

Dr. Katju: Where?

Shri Frank Anthony: On the Treasury Benches.

Dr. Katju: What are you thinking of? Are you dreaming?

Shri Joachim Alva (Kanara): Is that also not so in the U.K.?

Shri Frank Anthony: This is my argument for justifying that we cannot apply standards which we apply to Ministers and even to civil servants.

Shri S. S. More: Is the Home Minister walking out in protest?

Shri Frank Anthony: I say that a Minister does get a ten-fold increase in his emoluments when he is made a Minister. It means that unlike a Minister who gets a ten-fold increase in emoluments, he is likely to get a ten-fold diminution in income. That is the point I am trying to make. And I feel this too: that it is our business to look after our judges and deliberately place them in a class by themselves, because I believe that the judiciary represents the last bastion of democracy in this country. The Home Minister is not in his seat. He takes offence very readily; I do not wish to give offence. Among our politicians I am prepared to have knaves—they cannot do irreparable injury to the country. But once you vitiate your judiciary, then the whole basis of structure of society, of your civil liberties will disappear. I say that our judges, our judiciary, represent the final bastion of our national well-being, the final yard-stick of our national well-being.

I do not wish to join issue with the Home Minister on the question of scales. The scales may remain as they are. But I would ask the Home Minister to reconsider the question of pension. The Home Minister himself has made this point that when making an appointment of a judge, the appointing authority will consider whether the person concerned is likely to put in at least a minimum of five years of service. When that consideration is before the appointing authority, I say it is quite wrong to have a minimum pension of Rs. 6,000 a year. After all, it is inconsistent with the dignity of a judge. If you are going to give him a pension, well give him a pension which is commensurate with his dignity. You are not going to appoint a person who is likely to serve only for one or two years. Only if he serves for five years will he get the minimum pension. I say that the minimum pension should be at least *Rs. 1,000 a month.*

I say that deliberately. After all, you cannot avoid comparisons. We tend to bring the whole office of judge into contempt when we give a person Rs. 500 a month, because people would say that is less than the pension of an Under Secretary to Government. People do form their opinions in terms of financial comparison. That is why I say we should have a minimum pension for a judge of a thousand rupees a month.

My hon. friend who preceded me underlined his observation by giving an illustration which is disturbing to me. He said that a particular State Government has persisted in sending back the name of a person who apparently has not commended himself to the appointing authority. If this is correct, there is a danger today that because service conditions are not attractive enough, we are attracting lawyers only from the second or even the lower rungs of the ladder. That is a danger which we must stop. There is no point in merely repudiating it by asserting. If there is that danger, as pointed out by my hon. friend, and I believe he has no reason to exaggerate it, we must be alive to it.

Sir, the preceding speaker has also drawn attention to a danger greater than attracting second rank people. That is the danger of making these appointments pawns in the game of party politics. Now Sir, this is something which we must face. There is no point in simulating righteous indignation about this. Once political considerations, even remotely, begin to enter into judicial appointments, then we would have sounded the death-knell of the integrity of the judiciary in this country.

I give to the Home Minister—I do not know the person—it is the inner gossip in every Bar room in this country that recently an appointment was made to the judiciary in Rajasthan on purely political considerations; it is the inner talk in every Bar. I am surprised that the President is

guided in the first place by the Home Minister. I was under the impression that in terms of Article 217, President was guided by the Chief Justice of India and in the case of the appointment of puisne judges he was guided by the advice of the Chief Justice of the High Court. Now, I make this request earnestly to the Government. I know that the signs are against the tenets of the best tradition and I say it with a sense of regret that there are signs of increasing power-drunkenness and intolerance on the part of Governments including the Government at the Centre. There is intolerance of anything that is not connected with the control and patronage of Government. If we allow this and start playing politics in the appointment of judges then we will be responsible for the ultimate death of democracy in this country. In order to place the matter beyond all doubt, I would ask the Home Minister to seriously consider an amendment to Article 217 which will categorically ensure that the President will act and act only on the advice of the Chief Justice of India and in the case of puisne judges, on the advice of the Chief Justice of the State High Court concerned. That is a duty which the Home Minister owes to the country.

There is no doubt that we must keep our judiciary incorruptible and we must preserve our independence. Article 217 if it is properly understood, shows no indication that the President should be guided by the advice of his Ministers. But my friend has stated—presumably when he is a Member of the ruling party, what he has said is on good authority—that apart from consulting the Chief Justice of India and apart from consulting the Chief Justice of the State concerned he will have to consult the Governor. I find that reprehensible because the Governor invariably goes on the advice of his Ministers and anything to which we bring in Ministers, we bring political parties, personal favour. My friend smacks.....

Dr. Katju: I do nothing of the kind; I shall put a very gloomy face when you are speaking.

Shri Frank Anthony: I am making a serious request because if we take to this, democracy will not be safe in this country. I know Government does not want to be responsive to my request because Government of India would like to make the judiciary creatures of their executive administration and that is the danger

Some Hon. Members: No.

An Hon. Member: Question.

Shri Frank Anthony: You may question it; it is a question of simulated self-righteousness. I am trying to ensure that; under the Constitution you should keep the judiciary above the executive; you should keep it above the remotest possibility of political and personal taints; that is what I am asking. And I have given you an example of what has happened in Rajasthan; it may happen elsewhere. I know that in the lower rungs such as the appointment of public prosecutors, they have since independence become appointments which are determine by considerations of political and personal favour. I do not want that to happen in India which happened in the native States with a few hon. exceptions. What was the worth of the judiciary in most of the native States?.....

An Hon. Member: Indian States.

Shri Frank Anthony: I am talking about the native States. Most of the appointments, most of the judges in former native States were persons who held their appointments due to the personal patronage extended to them. Do we want that to happen today in India?

Shri Joachim Alva: They were buttressed by British agents in those days.

Shri Frank Anthony: Not necessarily.

An Hon. Member: Now it is the Congress agents.....

Mr. Chairman: Order, order. This subjects about the appointment of judges and about the method of appointment of judges is very remotely relevant to this Bill. This Bill only deals with certain conditions of service: though I have allowed this discussion, I would request the hon. Member not to pursue this matter any further because he has already taken a long time.

In regard to this, I am just making an announcement. We have got only four hours and out of these four hours, I propose to devote two hours so far as the consideration of the clauses are concerned and half an hour at least will be necessary for the third reading. So far only two speakers have spoken and many are anxious to speak and I will therefore request the hon. Member to conclude his speech.

Shri K. K Basu: After a thorough discussion in the general consideration there will not be much time required for the third reading.

Mr. Chairman: If the House so desires I have no objection. We will devote two hours for the consideration stage and half an hour.....

The Minister of Parliamentary Affairs (Shri Satya Narayan Sinha): And dispense with the third reading.

Mr. Chairman: We can give half an hour.

Shri K. K. Basu: Two hours can be given for the consideration and the rest for the amendment stage. Half an hour or less than that will be enough for the third reading. You, Sir, will be in a position to judge from the trend.

Mr. Chairman: Very well.

Shri Frank Anthony: I bow to your ruling, but since the previous speaker had referred to it, I was only underlining his remarks. The Home Minister has walked out. I hope not in protest!

The point I had made was that I felt that there should be a minimum pension of a thousand rupees. And I am also making the other point—I hope I will get the attention of the Deputy Home Minister. It is an important point.

Mr. Chairman: He may go on.

Shri Frank Anthony: My other point is this. I feel the scale of the pensions generally is not an adequate scale. As I have said, we may not at this stage consider the scales of salary.

Mr. Chairman: Order, order. The hon. Member wants the particular attention of the Deputy Home Minister.

Shri S. S. More: They convert the Treasury Bench into a Cabinet meeting place.

Mr. Chairman: I do not want any comments to be made. Otherwise they will be entitled to reply to the comments.

Shri Frank Anthony: I feel that it would be a powerful added attraction if judges are given half their salary by way of pension. Apart from the minimum pension of a thousand rupees, I would like to say that where a judge after serving for three years on Rs. 4,500 retires he should get half of that; if he was getting Rs. 5,000 he should get half of that. I have already given the reason why judges should be placed on a class by themselves. I do think that this enhanced pension scale which I am suggesting would go a very long way to attracting the best type from the Bar.

It will also do this. It will make—and this is my last and, I believe, my most important point—it will make it unnecessary for judges even to want to consider other appointments. I feel this is a very vital matter. I do not know whether it can be put into this Bill. But if it can be, I would earnestly ask Government to do it, namely that there should be an absolute embargo on a judge accepting any kind of post or appointment after he retires. We

have prohibited judges from practising. But I say it is an unalterable principle of the highest standards of judicial integrity exemplified in those words "Once a judge, always a judge". And I say we are tampering with the appearance of justice. My friend knows that it is an axiom that justice should not only be done, but justice should appear to be done I say your judges are incorruptible. But they must give the appearance of incorruptibility. And incorruptibility does not only consist in not being attracted by money. There are other forms of corruptibility. And to allow judges to keep within their mental gaze the prospect of posts is very wrong. It is the Government which is placing, gratuitously, temptation in the way of judges. It is common talk in the Bars today. A judgment may be given. I do not doubt the incorruptibility, the integrity and the independence of the judge. But sometimes lawyers do not agree. Some ignorant layman thinks the judgment is perverse. What is the common talk in Bars today? That judgement is being given because some Judge wishes to accommodate the Government concerned in the hope that he may become an Ambassador. It is an evil thing and I want that it should be stopped. The Government is inducing our judges to these criticisms. We should place our judges beyond the remotest possibility of criticism. I do not say that 9 out of 10 Judges even remotely have the prospect of Government preferment; but we are dealing with Judges and do not let us talk in terms of infallibility; do not let us think in grandiose terms; they are human beings and as long as they are human beings, one out of ten Judges may be absolutely incorruptible. The prospects of Government preferment when they retire may not have the remotest influence on their sub-conscious mind. I do not say that the judges may be corrupt, but there may be a chance for the sub-conscious inkling that there is this prospect of becoming an Ambassador. This is wrong. I say that you do our judges injury, because the Judges may not think of it, but the public and the lawyers are there to think that the judge gave the judgment as he hopes to become an Ambassador.

Shri Joachim Alva: Was not a former British Chief Justice, Lord Reading, appointed Viceroy of India?

Mr. Chairman: Order, order. No reply is necessary to this question. In the heat of the moment if an hon. Member says one thing, it is not proper for another hon. Member to stand up and say something in reply. Now, Shri Kasliwal.

Shri Frank Anthony: Sir, I have not yet finished.

Mr. Chairman: I thought the hon. Member had finished. Anyway, as he has already taken half an hour, I would request him to finish early.

Shri Frank Anthony: I am not criticising the Government in this sense. I am not criticising them personally—I am glad the Home Minister has returned. What I say is that we should have in this Bill a specific embargo definitely stating that once a judge retires he shall not be allowed to accept any appointment. I say that in that way alone can you put your judges on the pedestal that you want to put them. We should not allow the members of the Bar or the public to point a finger at our judges.

Mr. Chairman: Shri Kasliwal.

An Hon. Member *rose*—

Mr. Chairman: I do not understand why the hon. Member is very anxious. I will try to call all hon. Members who want to speak. I have already called Shri Kasliwal and let him proceed on.

Shri Kasliwal (Kotah-Jhalawar): I would not have referred to the speech of the hon. Member who has just sat down because I consider that it was on the whole an irrelevant speech, but he has made certain remarks relating to Rajasthan about the appointment of a particular Judge and I would like to refute that allegation. Let me make

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it very clear that, that particular gentleman who was appointed as Judge was a leading member of the Bar.

Shri S. S. More (Sholapur): What do you mean by 'leading'?

Mr. Chairman: Order, order. No reply is necessary to that question.

Shri Kasliwal: I will explain, Sir. The hon. Judge who has been appointed was a member who was earning thousands of rupees a month by way of practice, and I would like to inform the House—especially for the information of my hon. friend Mr. More—that a Judge in Rajasthan gets only Rs. 2,000 a month. So that you can very easily judge whether the appointment was made on political considerations or otherwise. I may also say that the hon. Member who was appointed as Judge was one who did not belong to the Congress Party. Therefore, to say that the appointment of that Judge was made on political considerations is altogether wrong.

Now, I will refer to the Bill itself. As I could understand from the speech of the hon. Minister, the object of the Bill seems to be two-fold. One is to regularise the rules relating to the leave and travelling allowances of judges; and secondly, to grant pensions to certain judges who, because of the bar of sixty years, would not be entitled to either practice or to pensions. In so far as these two considerations are concerned I welcome this Bill. But, I would like to ask—and the question is a very pertinent one—one question. This Bill has been brought before this House in pursuance of Article 221. Article 221 relates only to Part A States. Now, I ask why a Bill relating to Part B States was not brought in pursuance of a similar provision in the Constitution; a provision just like Article 221?

That provision is contained in article 238 clause 13 sub-clause (2), which reads thus:

> "Every Judge (—this relates to Part B States—) shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined to such allowances and rights as may be determined by the President after consultation with the Rajpramukh:"

I would like to ask the hon. Minister why, in this particular respect, he has made, if I may be permitted to say so, this invidious distinction. He has brought this Bill in respect of the judges in the Part A States. Nothing has been done in regard to the judges in the Part B States. You know very well that the Part B States are those States formed out of the old Indian States. In the Part B States, even today, everything so far as the leave and pension rules are concerned, is unsettled. In so many States there are different rules. Even today, in some of the States, neither the pension rules nor the leave rules have been regularised. I would like to know from the hon. Minister whether in the near future he intends to bring a Bill to this effect, that is to say to regularise the rules relating to pension and leave of judges in the Part B States.

Shri S. S. More: I entirely support the principle that the members of the judiciary should be independent of the executive, that they should be impartial and that the people also must be given an opportunity to draw the inference that they are independent and impartial. Even the executive ought to be particular in creating such conditions in the country that the confidence of the people in the independence of the judiciary should not be affected to any extent. Why so? We are trying to implement and work this parliamentary government. Parliamentary government, in its essence, means government by checks and balances. If the executive goes wrong, the electorate, at the end of five years, can bring them round if they develop sufficient consciousness. Not only that. During the period of their governance, they may commit certain offences against the public; they may entrench

upon the fundamental rights of the people. Who is to give protection to the average citizen who is not in a position to fight against the mighty executive? It is the judiciary which has to give him this sort of protection. It is the judiciary which will be the bastion for the protection of his rights. That is why I say that the independence and impartiality of the judiciary ought to be maintained at any cost.

Let us go to the scheme of the Constitution. Under article 217, it is the President that is empowered to make the appointment. There is an obligation on him to consult the Chief Justice of the Supreme Court, to consult the Governor of the State, and to consult, when a puisne Judge has to be appointed, the Chief Justice of that particular State. You know that in a constitutional government, the President is in the position of a constitutional monarch. The President can only act on the advice of the Ministers and the Ministers are the executive arm. The independence of the President himself is only theoretical. In actual practice he has none. Naturally, therefore, if the President appoints certain members of the judiciary, then on this constitutional principle, he has sought the advice of his Ministers. I may fairly concede that on many occasions, the executive members, in tendering the advice, may act without any ground for any suspicion. But, human nature being what it is, it is a chronic tendency with us, I may say we have got it in our blood, to support those who are akin to us, who are nearer to us either in blood or in political affinity.

I am not talking particularly about this Indian Government. From the experience of democracies all over the world, we may generalise by way of conclusion that political parties do show this incurable tendency to support their partisans. Leave aside the United Kingdom. What has happened in America? There even members of the judiciary become sharers in the spoils of office.

Pandit K. C. Sharma (Meerut Distt. —South): There, the recruitment system is different.

Shri S. S. More: I am prepared to take my lessons from my friend here, but I am talking about the American democracy. Whenever a political party comes into power there, it comes into power with a batch of judges. Therefore, I wish that article 217 should be amended. The President should not be under any obligation to consult even the executive when appointing judges.

There is also another requirement that the Governor has to be consulted. The Governor, too, is a constitutional ruler, and he has to act on the advice of his own Ministry when the President consults him. I can quote an instance from my own province about the insistence by the Ministers on their right to advice. The Governor happens to be the Vice-Chancellor of a University.

Shri Sarangadhar Das (Dhenkanal—West Cuttack): Chancellor

Shri S. S. More: I stand corrected. He is the Chancellor. As the Chancellor he has the right of nominating certain members to the Court of the University.

Now, the Prime Minister insisted: "You are the Chancellor of the University because you happen to be the Governor of the State, and hence even your rights as the Chancellor will have to be exercised on our advice." And there was some trouble as the Governor refused to accept this contention. The matter was referred to the Attorney-General and he decided the matter in favour of the Chancellor. He said the Chancellor, though he is the Governor, need not, as Chancellor, act on the advice of the Prime Minister. That matter had appeared in the press also. So, my submission is that all these provisions should be removed from the Constitution.

Then, I would indicate another way in which the Constitution needs

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amendment. Take for instance some of the provisions under articles 222 and 124. A judge of the Supreme Court or a judge of a High Court after his retirement is not allowed to practise. I cannot understand the underlying principle. In spite of my best efforts to understand the underlying idea in imposing that sort of prohibition, I am not able to appreciate it. I say the ban is not well-conceived. Supposing X has been appointed as a judge of the High Court of Madras. If he is permitted to practise in the Supreme Court after retirement what harm is there? Once we concede the honesty, independence and integrity of the judiciary, I am not prepared to yield to the suggestion that if such a man is allowed to practise in any Court, he is likely to influence that particular Court in his favour. That will be a slur not only on the honesty and straight forwardness of the retiring judge, but it will be a grievous slur on the anxiety, impartiality and whatever virtues we attribute to the Supreme Court judges. I think that provision ought to be done away with, because this Chapter III which refers to pensions is conceived on the distinct understanding, as created by the provisions of the Constitution, that he will be debarred from carrying on any practice as lawyer in any Court, and some provision has to be made for his physical well-being after his retirement. If there is any prohibition which is absolutely necessary, it is the prohibition to accept office in the gift of any Government. I would refer you to article 148 of the Constitution which refers to the Comptroller and Auditor-General of India. Clause (4) of article 148 says that the Comptroller and Auditor-General shall not be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office. I would rather request the Law Minister and the Government that, if they are contemplating material changes in the Constitution, they should remove the prohibition for the retiring judges to practise and instead of that they should introduce some clause which will be akin to this clause (4) of article 148. I am not saying this in a partisan spirit. I feel that even on the eve of retirement when the judge sees that in a year or two he will be retiring, he will be, like any other man, anxiously looking to his future.

It may be that within the ken of his future, there may be some appointment, or some possible talk of appointment either as a Governor or as somebody else, or some talk about his going here and there. The box of the executive is full of so many sweet temptations of diverse nature which will be effective if only they are out to tempt any one. Dr. Katju need not look at me scowling; I am not trying to make any suggestion against him personally. I know he is very straightforward whenever he speaks to me in the lobby, but as far as the Treasury Bench is concerned, he is an executive arm, and he must do his duty—I am not blaming him for that. My submission is, let us conceive of a situation where the country's administration has gone into the hands of unscrupulous administrators. What will happen in that case? They will have limitless loaves and fishes in their bags, which they can throw to the retiring judges, and in this way, they may try to undermine the secure foundation on which the impartiality and independence of the judiciary is based.

My submission is that I do accord limited support to this measure, but I also expect that Government will rise above party and executive considerations, and apply their mind to guarantee the independence of the judiciary for it is going to be one of the most fundamental basis of our parliamentary democracy. It is not enough that Dr. Katju alone should go about feeling that everything is alright under his executive office, but we on the Opposition must also be made to feel that even though Dr. Katju belongs to the Congress, yet as far as we are concerned, and our fundamental rights are

concerned, we are quite safe. That sort of confidence must be there, and it is collaboration from us. He should not go with the idea that all constructive genius is concentrated on the Treasury Benches only; we have some fractions here too, and if he wants to utilise that constructive genius for nation-building, about which we frequently talk, I would say that he must inspire confidence also in the general public which has to be trained in the art of parliamentary democracy.

Shri Raghuramaiah (Tenali): I am one of those who consider that the amount we spend on the judiciary is the one amount that should never be grudged. I do not think any Member of this House is going to question the pension rates that are specified in the Bill.

Shri Frank Anthony made, however, one suggestion that every judge should be paid by way of pension, half the amount he was drawing at the time of retirement. Probably he has no idea as to the ages at which judges are sometimes recruited; sometimes, they are recruited at the age of fifty-eight and even fifty-nine, and they have to retire at the age of sixty. Is it fair that after one year or six months of service, he should be given half the salary he was drawing as pension? It may not be so in every case, that they recruit such older members of the bar, though there are such cases. It cannot be suggested that just because a learned member of the Bar has put in some six months of service as a judge, he should be paid throughout his remaining life, half the salary he was drawing on the last day of his appointment, as pension.

At the same time, I am not one of those who would agree with Shri S. S. More that judges should be allowed to practise. I think that is the most pernicious and the most dangerous thing that can be allowed. It may be that the question does not arise in the particular court in which he was a judge, and it may be that the suggestion has reference only to the Supreme Court. But do not forget that judges of the Supreme Court are oftentimes recruited from among the judges of the various High Courts. I do not suggest that the judges of the Supreme Court are not above considerations of formal friendship and all that. I do not suggest that, but remember that the greatest safeguard that you can have for the independence of the judiciary is to keep it aloof from all temptation.

Shri S. S. More: Even after retirement?

Shri Raghuramaiah: Even after retirement. After all, the old friendship is there. When you come here as one of the judges of the Supreme Court and your friend retires and comes and sets up his practice, you cannot forget your old friendship. I do not say that in every case it is so but what I do press is that you should not give opportunity for that kind of temptation. I am not doubting the honesty or sincerity of judges. But let us keep them aloof.

Sir, there is one important subject which I would like to press on this occasion. That relates to the transfer of judges. Now, there is a provision in article 222 of the Constitution for compensatory allowance for judges transferred from one place to another. I wish some provision had been made in this Bill to cover that compensatory allowance also. May be the Government are contemplating bringing in another Bill for it. But to my mind, that is most important because, while I am one of those who agree that in the vast majority of cases our judges have been very impartial, and that we have been able to keep up a very high standard of judicial integrity which will be an example and illustration for all other countries to follow, I do consider that there have been some developments of late which are not very happy. I am one of those who

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consider that a Chief Justice of a High Court should not be recruited from among the members of the Bar of that High Court. I think we should have a very healthy and very necessary convention that in the case of every High Court, the Chief Justice, at any rate, must be brought from outside—from other High Courts or at any rate not from the State in which the High Court has its principal office. There is also another very necessary convention, sometimes followed, sometimes abused, and that relates to the practice of relations of judges in the High Courts. I know of cases of practice of brothers-in-law or sons-in-law of High Court Judges. May be he is not allowed to practice before that particular judge, but I have been a member of the Bar and I know how difficult it is to compete with the brother-in-law of a judge or the son-in-law of a judge. There used to be a convention that the brother-in-law or the son-in-law should not practise before the particular judge. But what about appearing before his colleagues? I am not sure whether even that convention is now being followed. It is a reprehensible habit. You may say, quite rightly, that you cannot condemn a man just because he is a relation of a High Court Judge that he should not take to the legal profession, just as sometimes it is said that just because a man is a brother or son-in-law of a Minister, he should not be debarred from taking any permit. I see the difficulty there, but the only remedy is to make the transfer of High Court judges as frequent as possible. And if you say that you cannot find personnel in this country who will come forward to join the judiciary merely because we propose to transfer them from place to place, I do not agree.

Dr. Katju: What does he mean by 'place to place'?

Shri Raghuramaiah: From High Court to Hight Court. You keep him in a High Court for three years, then transfer him to another High Court for three years. Keeping a person on a kind of life-long lease in a particular High Court, I say with a sense of responsibility, create a vested interest, which is most dangerous.....

Shri S. V. Ramaswamy (Salem): Yes.

Shri Raghuramaiah: My friend, Mr. Ramaswamy agrees. It is one of those rare occasions when I have the advantage of support from my brilliant colleague, Mr. Ramaswamy. I need not elaborate further at this stage. At any rate, in the case of the Chief Justice of a High Court, I would mostly earnestly urge on the Home Minister to consider that whenever a new Chief Justice is to be appointed, invariably he should be from outside the High Court to which he is to be appointed.

Shri S. V. Ramaswamy: Why?

Shri Raghuramaiah: Why? Because there is a lot of patronage involved. Why—because there is a lot of control over other judges, and there is control over a series of appointments. This involves patronage. When the Chief Justice comes, you have got the Registrar. There are other judges. You have got a paraphernalia of persons to be appointed, which involves so much patronage. The man who is taken from the locality has got prejudices, he has got connections and he has got so many other things.

Pandit K. C. Sharma: The man from the locality has got character too.

Shri Raghuramaiah: Do you mean to say that men from other localities have no character?

Mr. Chairman: There should be no cross talk like this. If the hon. Member has any objection, let him stand up and raise a point of order. I shall not allow interruption and reply to interruption like this. This interferes with the normal course of the debate.

Shri Raghuramaiah: I was only suggesting a general proposition. I

do not say that every Chief Justice has misused the powers. In fact, in the vast majority of cases, as I said at the very outset, our standards have been very high. But I do say that there is scope for some kind of misuse of the powers when a particular judge of the locality is appointed as Chief Justice of the High Court. I would earnestly urge that this aspect should be considered.

As for the other provisions of the Bill, as I said at the very outset, I am one of those who would not grudge anything paid to our judges. They are all our greatest safeguard and we should see that they do not suffer anything by way of emoluments and that their integrity is left untouched.

Shri K. K. Basu: This Bill, as the Home Minster has said clearly, is a simple legislative measure. So far as the conditions of service of the judges of the High Courts of our country are concerned. Though the scope of the Bill in that respect is rather united, we feel that all this legislation should be considered in the context of the duty that the Constitution has enjoined upon the judges and of what feelings the common man entertains about them. Already, an hon. Member from this side has suggested that there are certain difficulties, or rather, there are certain methods which he does not like, regarding the appointment of the judges. We fully support the view that,—if such happenings are there—that even in spite of the recommendations of the Chief Justice of the High Court or of the Supreme Court, the person concerned from the Bar was not appointed, on the advice of the executive,—the matter requires serious consideration. I do not know the instance, but I feel that, under the existing provisions of the Constitution, there is no necessity for the President to consult that way, or rather, I would say that he might discuss but should not seek the advice of persons such as the Home Minister. I hope he has not done so, as is reported in the particular case which was referred to.

Another point that was put forward regarding the appointment of judges from the members of the Bar was this: judges who come from the Bar earn a good deal so that, when they are appointed as judges, their pay should be increased. I don't support this, because, in the context of emoluments given for judges in other countries, the judges' pay here is not at all high. But, at the present context, unless an overall decrease in the entire scale of emoluments of public servants is called for, we need not think of increasing, to some extent, the pay of judges. I cannot quite understand this idea that unless they are paid at a very high level, people are not willing to be appointed as judges. In my own part of the country,— Calcutta—as far as I remember, there have been only very few cases where certain gentlemen refused to accept judgeships because they thought that they stood to incur pecuniary loss. From our experience of the Calcutta High Court at least, I can say that there are persons who are conscious enough, so far as the public spirit is concerned, and are willing, to sacrifice their pecuniary gain in the cause of serving the country as a judge.

We have known for a long time that there have been persons who have been earning before they accepted the judgeship Rs. 20,000 or Rs. 25,000 per month. Even today in the Calcutta High Court there are persons who are earning so much. Do you mean to say that all of them are equally talented? I am told that Lord Sinha, when he accepted the Law Membership was earning about Rs. 20,000 to Rs. 25,000 a month and Sir Sircar, before he came here as Law Member, was earning a similar amount. They all sacrificed when they accepted the Lieutenant Governorship and the Law Membership. I say that if you work out in this way, probably the judges would have to be paid Rs. 8000 or Rs. 9000 a month, because the top-rankers in our part earn at least Rs. 20,000, to Rs. 30,000. You

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cannot argue out a mathematical case. I am sure there are quite a number of persons who feel the same way as Lord Sinna and would, in the same manner, be prepared to accept a judgeship if called upon by the Head of the State, on the advice of the Chief Justice, to serve the State. Even in England, Sir, when Mr. Wilfred Greene was offered a judgeship he was earning about £ 50,000 while the judgeship carried only £ 5000, or whatever it might be. So, that argument does not appear to sound in the present economic context of our country.

The judges have generally kept up their traditions and they have acted in a manner which, possibly, our country expects. But, we must guard against their being influenced by the executive. Some time back, it came out in the papers in Bengali that the Chief Minister of a State had written a letter to the Chief Justice criticising the decision of a Judge. This came out in the papers and it was answered in the Legislative Assembly. Whether the particular judge was influenced or not is a different matter. But, we must feel that the judges should be above party politics. We are given certain rights under the Constitution. The only limited guarantee that the common man has, in our country, is the guarantee that the Supreme Court and the High Court would see that the citizen of India is guaranteed the rights that are granted to him under the Constitution. Therefore, I feel that these things should be guarded against. We find that judges, even when they are serving as judges, are appointed to certain posts in which they come into contact and in closer touch with the executive authority. In our part, though it was an old case, a judge was appointed Vice-Chancellor. I do not know how he felt. But after his appointment he met the Chief Minister of the State, after his election and garlanded him for it. It came out in the Press that he went and called on the Chief Minister. He might have been his personal friend but we must distinguish between personal friendship and duty,* as a public servant. The judges should be respected by all persons. We should therefore, guard against this kind of appointment.

It has also been reported that because of these appointments on committees and other authorities, these persons come into closer contact with the Chief Minister and the executive and there has been a feeling that they are influenced by the party in power. The feeling may be wrong. But, whatever it is, no man should feel that our judges who have been respected by all and who are expected to be above board and above party feelings have become executive-minded.

As far as I remember, I am told that in old days the judges of the High Court did not even attend parties given by the Head of the State. We have poems in Bengali written in the eighties —I do not remember the exact date— that when the Prince of the British Crown came down, an Indian Judge did not attend the parties that were given to him by a senior of the people of the State, because they thought they would be coming in close touch with the executive authority. I am told that in Calcutta, before 1925 or 1926, the judges of the High Court did not even attend any party given by the Viceroy or the Governor, because they thought that if they attended the parties, they would be taken to have been influenced by them. But, today even a very minor private party in the Secretariat or Writers Buildings or in the Bombay Secretariat, you find these judges and the Chief Justices sitting together with the Ministers and others, creating a feeling in the mind of the common man that these judges are being influenced by these Ministers and others.

Another point I should like to emphasise is about practice after retirement. It is very dangerous. Our Constitution deliberately and consciously adopted a provision by

which it barred private practice, though my friend, Mr. More, supports the proposition that they should be allowed to practise. Actually, it is wrong. The common man must have respect for these judges and Chief Jusices of the High Courts. If they are allowed to practise, they have a feeling that they have to do something which loses the respect which they had already acquired as a judge. Of course, instances are very few of judges going in for practice after retirement. I am told that the rules were such that the judges could practise in the same High Court of which they were judges. Because one of the judges did that, the rules had to be amended. The Constitution has correctly stated the proposition that there should not be private practice by these judges after retirement. I strongly oppose the post-retirement appointment also.

11 A.M.

The other day I was discussing with a very eminent man, who is accidentally a judge of the High Court and he was telling me that possibly 90 per cent of the superannuated judges of the High Court today are filling various appointments here and there. I do not understand this. If you think that the judges are competent to work after superannuation, why do you not increase the age-limit and allow them to work longer as judges? If after retirement you do not allow them to practise as lawyers, you allow them to take up posts on Labour Tribunals, Income-Tax Investigation Commission and what not. It gives rise to a feeling that during the last two or three years of his service, the judge cannot go against the Government. We have this feeling in the Calcutta High Court. In what capacity is the last retired Chief Justice of the High Court working? He is working as an Adviser to Government, and that appointment was being talked about even six months prior to his retirement. Our leading lawyers litigant public and others had a feeling that our Chief Justice is being influenced by the executive because he was expecting a Government appointment after his retirement, may be in some committee or sub-committee etc. We have also judges going about discussing things with Governors and Ministers, which is not considered befitting the dignity of judges. Therefore, I strongly oppose such appointments after retirement. I feel that the time has come when the House should discuss the post-retirement appointments and see that such appointments are done away with. In Calcutta openly in Press and in the paper something was said against a judge in a particular case towards a particular party because he was going to his house, and he has behaved in a manner which goes against the dignity of a Judge of the High Court. In olden days it might perhaps be thought that this particular Judge is rather pro-British, but even then they do not openly say it out but today such allegations are made and I do not know how far such allegations are true, but we have to consider the psychological frame of the litigant public and of the common man when the judges behave in this manner or allow themselves to be influenced by the big people and top not others the Governor or the Chief Minister or whoever it may be, I urge that this point should be taken into consideration in determining the service conditions of the judges.

Mr. Chairman: I would request the hon. Member to finish his speech as soon as possible.

Shri K. K. Basu: I will take up just two or three minutes more. Some Members have stated that good and capable men cannot be found for appointment as judges. Possibly it is not the fault of the judges. I might frankly say the legal luminaries like Rash Bihari Ghose, S. P. Sinha, Motilal Nehru and Bhulabhai Desai are no longer there, but there are individuals good enough for appointment as judges In the present context of things, our legal luminaries have died down, but still there are judges who deliver the judgement

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immediately the arguments are closed and there are also judges who are talked to have been appointed otherwise than on merit do not deliver judgement for twelve or fifteen months after the arguments are closed. This is a question of individuals and it all depends upon the Government properly selecting the individual for appointment as judge. Even with the talents that are available in the country, I do not think that the proposition is made out that good and capable man cannot be found for appointment as judges is quite correct.

On the question of the minimum period of service, the Home Minister has said that every judge must work for at least a certain number of years to earn his pension. This is a very dangerous proposition. Dr. Katju, who himself was an eminent lawyer, in spite of certain expressions which he used, still holds some respect for the independence of the judiciary. So long as he is our Home Minister everything may be all right. But cases may arise when a person at the fag end of his career may be appointed to the Bench and may have the opportunity to work only for a year or two. I say that nobody should be appointed, unless he is in a position to put in a minimum period of service and I have tabled an amendment to this effect.

I know that in the Calcutta High Court there have been only two or three instances where persons appointed to the post of judges have not been able to earn their pension. So, this provision may be used as a thin end of the wedge: it may be used in a way which may go against the prestige and dignity of the judiciary. I hope the hon. Home Minister will accept my amendment.

Mr. Chairman: I propose to call the Home Minister at 11-15 to reply. So, there are hardly seven or eight minutes left.

Shri A. M. Thomas (Ernakulam): Mr. Chairman, in support of the Bill I wish to make a few observations. Mr. Frank Anthony said that political considerations are being brought to bear in the matter of appointment of High Court judges. His reference to the appointment in the Rajasthan High Court has been answered by my hon. friend Mr. Kasliwal. I know of an instance where there have been conflicting recommendations from the Rajpramukh as well as from the Chief Justice with regard to the appointment of a High Court judge. The recommendation of the Chief Justice was accepted. I am glad of the healthy convention that is being developed by the Home Ministry in advising the President to accept the recommendation of the Chief Justice. So that, I do not think that the attack that has been levelled by my hon. friend Mr. Anthony that appointments are made on political considerations, has any basis.

Sir, the first speaker who initiated the discussion said that we must have an all-India cadre of High Court judges. But for that what is essential is uniformity in the scales of pay and other emoluments. Sir, in the Administration Report of the States Ministry for 1952-53 it was stated that there has been a proposal under the consideration of the Government of India for framing uniform rules governing the pensionary, leave and travelling allowance terms of High Court Judges of Part B States.

> "Though salaries may be different, the status, responsibilities and functions of the High Court Judges do not vary as between Part A and Part B States. The existing disparity between the salaries of judges in Part B States and Part A States is due to the lower level of salaries in Part B States and their more difficult financial position. It is expected that when these causes cease to

operate, it will be possible to attain uniformity."

I admit that there may be some difficulty in introducing uniformity as between Part A and Part B States. I cannot understand the difficulty in introducing uniformity between Part B States *inter se*. In the very same Administrative Report, it has been stated that the salaries of the High Court judges vary from Rs. 3,000 to Rs. 1,500 in Part B States. In Rajasthan, my friend, Mr. Kasliwal said that the Chief Justice gets Rs. 3,000 and the puisne judges get Rs. 2,000 but in Travancore-Cochin, the Chief Justice gets Rs. 2,000 and the puisne judges Rs. 1,500 whereas in the High Court in PEPSU which gets only one-third of the revenues of Travancore-Cochin, the Chief Justice is getting Rs. 3,000 and the puisne judge gets Rs. 2,500/-. This anomaly should be got rid of and I just wanted to intervene in the discussion to bring forward this matter to the notice of the Home and States Ministries.

The Constitution of India treats all judges equally so that there is no meaning in having different cadres for different High Court judges. So long as we do not introduce uniformity in this matter, the article which my friend Shri Raghuramaiah referred to, namely, article 222, will remain a dead letter. How can we have transfer of judges from one High Court to another High Court so long as the scale of salary is not uniform or the scale with regard to other allowances and emoluments is not uniform? I wish to lay emphasis on this aspect and as early as possible a Bill may be brought at least having uniformity with regard to the salaries of High Court judges in Part B States.

Shri Joachim Alva: May I put in a plea? This is an important Bill and we should be given twenty minutes. This is something very very important and we have got some valid points and so please allow us 20 or 25 minutes.....

Mr. Chairman: Order, order. He was perhaps not present when I took the sense of the House. The House agreed that at 11.30 I should close the first reading and we will take one and a half hours for the second reading—the clause by clause discussion—and for the third reading, half an hour. This was the time-table agreed to by the House and I propose to follow it. If I allow speeches like this, it will take away the time allowed for clause by clause consideration. I am sorry I cannot accept it.

Shri Joachim Alva: I have stood here and I have a number of points...

Mr. Chairman: What is this? There is no end to this.

Shri Joachim Alva: The previous speaker has taken twenty-five minutes.

Mr. Chairman: What does it matter? The hon. Member should not persist in bringing these matters to the notice of the Chair. Does the hon. Member mean to say that as soon as a Member has spoken for ten minutes, I should ask the hon. Member to stop even if he is making good points? After all, the Chair has been invested with the discretion and the hon. Member knows it himself; he has been making speeches in the House so many times taking more time than others. The Chair is invested with discretion to allow an hon. Member more time; otherwise, it will be very difficult to regulate the debate. No grievance on this score need persistently be urged.

Shri Joachim Alva: Sir, Mr. Frank Anthony.....

Mr. Chairman: There is no question of replying to the remarks of the Chair. I deprecate this attitude very much.

Dr. Katju: Mr. Chairman, during the debate on this Bill, you were pleased to allow discussion on questions relating to the appointment of judges which really are not relevant but I greatly regret that many things

[Dr. Katju]

have been said on this point which, unless you allow me two or three minutes to deal with, is likely to create great misunderstanding.

It has been said broadly without any justification whatsoever—I say so with the greatest emphasis—that political considerations are allowed to come into play in the appointment of judges of the High Courts—whether Part A or Part B States. I should like to say with emphasis that this is far from truth; nothing like that happens. Please remember: what is the provision in the Constitution?

If a judge of the High Court has to be appointed, then the usual procedure is this: the matter begins from the Chief Justice of that High Court. He initiates and he says: 'My brother judge is retiring and there is going to be a vacancy; I considered all the possible claimants and this is my proposal.' He addresses the Chief Minister. The Home Ministry has circulated about four years ago what the procedure should be. On that recommendation of the Chief Justice, under the Constitution, the Governor, which means the constitutional head, and the Chief Minister have to express their opinion. The Home Ministry's circular says: in this matter you not only send us the opinion of the Chief Minister but also the personal opinion of the Governor. The Governors—I know that there are one or two exceptions—go outside the province. When the matter comes to the Home Ministry—to the Central Government—there are three papers before them—the opinion of the Chief Justice, the personal opinion of the Governor and the opinion of the Chief Minister representing the State. On those papers we consult the Chief Justice of India. The whole file is sent to him. He has his personal knowledge, he makes his comments. And then the matter is submitted to the President in the regular manner.

Some hon. friend suggested—I was rather surprised—he said this is a matter of such importance that the President should be guided by the advice of the Chief Justice of India, and the Central Government should stand aside. I do not know whether this observation was made with a clear forethought of what actually it meant. Suppose the Chief Justice of India becomes the adviser of the President in this particular matter. Is the sovereign Parliament going to abdicate its functions? Because, under the Constitution, the President is the constitutional head of the State, and he must act on advice. And for this my hon. friend suggested the Chief Justice of India, because all the Ministers are suspect because they have got political affiliations, because they have relations, brothers, sons-in-law, and goodness knows what; therefore they ought not to be trusted. They may be trusted with everything in the world, question of war and peace, every appointment, enormous appointments. But the judiciary must be independent; therefore it should be the Chief Justice of India. Now, suppose the Chief Justice of India gives some advice. Parliament cannot discuss him; the Chief Justice of India is not here. Under the Constitution a judge may be appointed. But, having been appointed, he cannot be removed. Please remember everywhere, under every Constitution the independence of the judiciary is guaranteed not by the method of appointment of the judge but by the fact that the judge becomes absolutely certain of his security of office. He is above all suspicion. He has no apprehension that if he decides a case this way or that way it may please some people or it may not please some people. The Chief Justice of India cannot be removed. No judge can be removed. Suppose you are not satisfied—I am taking a pure illustration—suppose you are not satisfied with a particular appointment. You can at present move a vote of no-confidence in the Central Government as a whole, or you may pick out...

Shri K. K. Basu: The Home Minister.

Dr. Katju: Yes, the Home Minister, as you are so fond of him, all of you; and say all fine things about him and send him to the gallows. That is a different matter. My hon. friends could not think of these. They are trying to set up a Constitution unknown, namely, that in this particular matter the usual advisory channel should be interrupted, somebody else should be brought in, and that somebody else is not to be subject to the authority of Parliament. We have a phrase—sometimes judges have said it to me—this is not even a statable proposition, what to say of an arguable proposition. It is not even a proposition which can be stated. It is so much devoid of—I do not want to use any unparliamentary expression—

An Hon. Member: Commonsense.

Dr. Katju: Devoid of any sound sense. My hon. friend Mr. Basu...

Shri S. S. More: Who are the judges who said so? Sir, to strengthen his argument he mentions that certain judges have said this. We must know the quality of the judges.

Mr. Chairman: Order, order. It is his own opinion. He is only supplementing it by referring to the observations of some judges.

Dr. Katju: Please remember in the United Kingdom—I am not mentioning the United Kingdom by way of any sort of precedent which we must follow always—but in the United Kingdom, I understand, judges are appointed by the King or the Queen on the advice of the Cabinet, and that advice is given by the Prime Minister. And the Prime Minister consults the Lord Chancellor. Now, the Lord Chancellor himself is a member of the Cabinet. He is not a *pucca* man; he goes in and out of the Cabinet. It is a political appointment; only the judge stays on permanently. There are the judges and the Chief Justice of England. So, I do not know of any precedent where, in making appointments the constitutional head of the States goes outside the Ministry and says: 'I am going to consult AB or CD.' There must be some limit to your suspicion and to your casting aspersions on the Ministry as a whole. Any moment you may come this side, as you hope to come this side some day.

Several Hon. Member: No, no.

Dr. Katju: Then, what will happen to you? You will all be tarred with the same brush with which you are tarring us; perhaps much more thickly.

Shri S. S. More: We cannot remove the men appointed by you.

Dr. Katju: Then I come to another point. I rather regret to have heard what my friend Mr. Basu said. He was talking of the Calcutta High Court. He said that the judges go to parties; they go to Government Houses and so on. He has made this very argument many times. Anyone may like to go to Rashtrapati Bhavan. What is the good of talking and talking in the old terms? Formerly, the Viceroy was the seat of executive power; the Governors in the Provinces were the seat of executive power. In both these places now our own man is the head of the State and if the head of the State, at ceremonial functions, State occasions like celebration of Independence Day, Republic Day or some such other functions, invites judges, do you mean to say that the judges should not go or accept the invitation? That will be the highest discourtesy.

Shri K. K. Basu: Apart from the ceremonial days, as the Mover himself has said, are not the judges invited on other days?

Dr. Katju: Now, do not try to drag me; I have already been sufficiently dragged. I have got a table of rules for myself. The judges come to me; talk to me and we discuss about Bengali art, dancing, music, literature; discuss about Rabindra Nath Tagore and so on. Therefore, I say, please do not import anything by way of illustration from the days of old when the Viceroy and Governors were entirely different

[Dr. Katju]

individuals. I object to this way of thinking; this suspicious way of thinking. My hon. friend, who has gone away, says that the judge of a High Court is also a suspect. Of course, he may be a Hindu or a Muslim. He has got his sons. Therefore, do what? Transfer him and let him not remain in the same High Court for more than three years? In Allahabad we had a Justice in the High Court, Mr. Banerji, who was there continuously for 30 years; one of the greatest judges I have seen and come across. Many other have remained for ten, twelve or fifteen years. According to my friend they must be transferred after three years It is very easy to say that. Now, here is this great urge for regional languages. I do not know how far the public of any particular State will tolerate the continuance of English as the court language. Therefore, supposing there is a gentleman from Tamil Nad.

Some Hon. Members: Say, Andhra

Dr. Katju: Alright I withdraw; I will say Andhra. He should not serve in *Andhradesh*. I do not know what sort of reception he will receive in Tamil Nad when he goes there. Supposing you do not send him there and instead, put him in Bengal and Bengali litigations and files come before him. Will he ask for a translation in Telugu or in any other language? He does not know Hindi at present. Then after three years send him to Punjab. He will have to learn Punjabi. After three years,—he may continue in service for 12 years—he will have to be sent to Gujerat or Maharashtra. He will have to learn the Marathi language. It is ridiculous. It really makes me grief-stricken to hear this thing.

Shri Raghuramaiah: Now that the hon. Minister has been good enough to refer to me, may I say that just as in the Supreme Court, every judge is not necessarily familiar with every language in this sub-continent and still we carry on, the same thing should apply to the High Courts.

Shri S. V. Ramaswamy: The High Court judge is not a magistrate to be transferred from court to court.

Dr. Katju: I entirely dissociate myself from and disagree with this sentiment and the insinuation underlying it. In India by the grace of God, our judiciary has won a great name throughout India. They have continued in their own High Courts and there have been no transfers. There is that question which means transfers. This goes to say in a light manner that no judge should be allowed to serve in his own province because he cannot be trusted. I say this is not a proper insinuation against our own judges. That is all I have to say about this.

Shri Frank Anthony needs no reply because his usual practice is to make a speech and go away. Then comes my hon. friend's suggestion about Part B States. Probably, Members know that on the 16th December, we have gazetted the rules by the President relating to the Part B States covering the entire field. If the hon. Members desire that this matter should be discussed in Parliament, I shall see to it that a Bill is brought forward in the House. They are of the same nature. There is really no matter of urgency. If the House expresses a desire to discuss them, I will consider that and we will bring forward a parliamentary legislation.

Lastly, some hon. Members said that pension should be a minimum pension of Rs. 1000. I say that has not been the practice here. In one breath you say, social justice all salaries should be reduced. The Minister in the States—not in the Central Government —are getting Rs. 1000 or Rs. 1200 or Rs. 750; in Travancore-Cochin probably less.

Shri K. K. Basu: What about their illicit income?

Dr. Katju: These High Court judges stand on a peculiar footing. I do not want to go into all those traditions. I take it that it is the deeper conception of professional tradition in India The

judges who had accepted office, were making large sums. About the late Lord Sinha and many others, I really do not know. I know, in Allahabad many people. Always large incomes were discarded and they accepted Rs. 4,000 as salaries. A sum of Rs. 500 does not make much of a difference. So far as pension is concerned, we have considered this. The pension has always been Rs. 1,100. The only distinction is that you cannot get pension if your service has been less than 7 years. I may assure the House one thing. We shall take care to see, and we have already set this practice in motion, that no one could be appointed a judge of a High Court in any part of India unless on an average he has at least to put in five years of service. I am not talking of exceptional cases 6 months this way or that. Some Minister or somebody shoving in some one as a judge for some time and then giving him a pension of Rs. 500/- for the rest of his life, up to 90 years, and the tax-payers continuing to pay all these years, is non-existent. So far as the amount of pension is concerned. it has been the standing rule here ever since High Courts were founded, namely £1,200 for an English judge, an Indian judge getting something like that. And we are continuing that. Therefore, I do not want to take up any more time, but I was really rather sorry that arising out of this Bill certain aspersions should have been cast on the judiciary, the methods of their appointment and that they were rather going down. That is not a fact.

Mr. Chairman: The question is:

"That the Bill to regulate certain conditions of service of the judges of High Courts in Part A States be taken into consideration."

The motion was adopted.

Clause 2— *(Definitions).*

Shri K. K. Basu: I beg to move:

In page 1, line 16, *after* "President of India" *insert* "and nominated by the Chief Justice of the High Court or by the Chief Justice of India or Parliament by resolution".

"Actual service" has been defined to include the time spent by a judge on duty as a judge or in the performance of such other functions as he may, at the request of the President of India, undertake to discharge. After the words "President of India" I want to add "and nominated by the Chief Justice of the High Court or by the Chief Justice of India or Parliament by resolution".

As I have already said in my speech on the general consideration, my whole idea is to see that the appointment of judges to discharge functions other than those of a judge should be restricted. In many of our Acts we make this provision that a judge should either preside over a Tribunal or somehow be connected with it or provisions are made where a Judge should be there. So, I quite visualise there may be occasions when judges have to be appointed for duties other than those of a judge, but I only want that such appointments should be restricted, and that such appointments should be made by the President on the suggestion of the Chief Justice concerned, or, if necessary, on a resolution of Parliament. We have seen what has happened. Of course, Dr. Katju will say it is casting an aspersion. It is not a question of our casting any aspersion. It is what the people feel. Even in this case I give an example. In our parts there are judges about whose judicial capabilities there is no doubt. They are brilliant, first-class judges. But when they are appointed to other duties, for instance to enquire into the tramfare increase agitation, to enquire into police atrocities, or to enquire into such other things, it is often seen that a particular judge is appointed. Even the people have a feeling that if a special tribunal is to be appointed regarding certain allegations against the Government or the Ministry, this particular judge is appointed. It may be because of his efficiency, but the people have developed this feeling that by his close connection with the executive, by frequent appointments in such executive tribunals or such enquiry committees, he is more influenced by his executive

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friends. Therefore, I want that if we need a High Court judge to be appointed for a particular purpose, other than the function of the judiciary, he should be appointed on the nomination of the Chief Justice of the particular High Court or Parliament by a resolution may do so. This is the only short point I want to make.

Mr. Chairman: Amendment moved:

In page 1, line 16, *after* "President of India" *insert* "and nominated by the Chief Justice of the High Court or by the Chief Justice of India or Parliament by resolution."

May I know the reactions of the hon. Minister?

Dr. Katju: I am unable to accept this amendment because it introduces a very novel and very dangerous principle. My hon. friend now says that the President of India should not be able to act on his own authority. He should get the nomination made by the Chief Justice of the High Court or by the Chief Justice of India or by Parliament by a resolution. I suggest that all that has been said of the Ministers today—they have become accustomed to it—will in future be said in regard to the appointments made by the Chief Justice of any High Court or by the Chief Justice of India, because it would be suggested that so-and-so has been appointed by the Chief Justice, and all sorts of allegations will be made. I do not want that the Chief Justice of India or the Chief Justice of any High Court should be brought under public discussion.

So far as nomination by Parliament is concerned—my hon. friend says this matter should be brought before Parliament by a resolution—this is again, he will forgive me for saying so, not a statable proposition.

Mr. Chairman: Shall I put the Amendment to the vote of the House?

Shri K. K. Basu: Yes.

Mr. Chairman: The question is:

In page 1, line 16, *after* "President of India" *insert* "and nominated by the Chief Justice of the High Court or by the Chief Justice of India or Parliament by resolution."

The motion was negatived.

Mr. Chairman: There are two amendments in the names of Shri N. C. Chatterjee and Shri Amjad Ali. The hon. Members are absent. Then, there is another amendment in the name of Shri K. K. Basu. Is the hon. Member moving it?

Shri K. K. Basu: I beg to move:

"In page 2, *omit line* 22."

By this amendment, I seek to omit the words 'joining time on return from leave out of India'. I do not understand why such a provision is necessary in the present context. These things might have happened in the period when we had a large number of British judges. As long as vacations were meant for going home, they used to go there, and oftentimes it so happened that they used to add two or three more days, so that they could enjoy the benefit of a full week. But now when we have mostly Indian judges,—there may be one or two foreigners, and even these, we hope, will not be there in the near future—I do not understand why a provision of this nature is necessary. Therefore, I move that this phrase be omitted in clause 2.

Mr. Chairman: Amendment moved:

"In page 2, *omit* line 22."

Dr. Katju: I am in sympathy with what my hon. friend has said, and I would not like any Indian judge to go on leave out of India, for that has become meaningless at present. But we have got some judges who were enjoying the benefit of this condition of service. Under the rules, they were entitled to some leave out of India, and here, that has to be

guaranteed and porvided for. So, in framing this Bill, we had to take that into consideration. But I quite agree that when that generation is exhausted, there would not arise any opportunity or any occasion, when any such leave would be granted to any judge.

Shri K. K. Basu: Is it your idea that if you remove this provision, the guarantees, that you had given to the judges prior to the Constitution, would be violated?

Dr. Katju: Yes.

Shri K. K. Basu: In that case, I would like to withdraw my amendment.

Mr. Chairman: Has the hon. Member leave of the House to withdraw his amendment?

Several Hon. Members: Yes.

The amendment was, by leave withdrawn.

Dr. Katju: I beg to move:

(1) "In page 2, line 12, *after* 'means' *insert* 'the High Court at Rangoon'."

(2) "In page 2, line 15, *after* 'Part A State', *insert* 'and includes a High Court which was exercising jurisdiction in the corresponding Province before the commencement of the Constitution'."

(3) "In page 2, line 35, *omit* 'in a Part A State'."

My first amendment is intended for this purpose. We have got one judge who was transferred from Burma to Allahabad. It was done on the occasion when Burma was a part of the British Empire, and the transfer was made with consent. So, that judge has to be provided for.

The same really is the reason for the other amendments also, which seek to treat all the High Courts on one and the same basis.

Mr. Chairman: The question is:

"In page 2, line 12, *after* 'means' *insert* 'the High Court at Rangoon'."

The motion was adopted.

Mr. Chairman: The question is:

"In page 2, line 15, *after* 'Part A State' *insert* 'and includes a High Court which was exercising jurisdiction in the corresponding Province before the commencement of the Constitution'."

The motion was adopted.

Mr. Chairman: The question is:

"In page 2, line 35, *omit* 'in a Part A State'."

The motion was adopted.

Mr. Chairman: The question is:

"That clause 2, as amended, stand part of the Bill."

The motion was adopted.

Clause 2, as amended, was added to the Bill.

Clause 3 was added to the Bill.

Clause 4— (*Leave account etc.*)

Shri K. K. Basu: I beg to move:

(1) In page 3, line 8, for "one-forth" *substitute* "one-eighth".

(2) In page 3, line 13, *omit* "double".

My first amendment relates to the time spent by him on actual service. Instead of 'one-fourth', I want to put it as 'one-eighth'. The second one is regarding the compensation for vacation not enjoyed. Here it is said that "as compensation for the vacation not enjoyed, a period equal to double the period by which the vacation enjoyed by him in any year falls short of one month". I want to delete the word "double". I find support in this in the introductory speech of the Home Minister—I do not know if he will stick to

[Shri K. K. Basu]

it. Judges have been enjoying holidays not commensurate with those enjoyed by other public servants. Whatever might have been the conditions, because we know the British Judges were there and they wanted long holidays. But now—as he said, in some High Courts, our judges of their own volition have reduced the holidays they enjoy. Therefore, I feel that this special advantage which is not given to other types of public servants should not be extended to judges—when some of them have already cut so many holidays. If they are asked to serve on a committee on account of which they could not enjoy, the vacation, they can only be compensated for the period they have not been able to enjoy. Why should there be double the period? If he enjoys a certain period of vacation and if he is put on some other work and thereby he does not enjoy the vacation, he should not get double the period by which the vacation enjoyed by him in any year falls short of one month. Therefore, I would say that in the present context of things and in view of the reduced holidays, we expect our public servants to be public-spirited and work in the interests of the country. The judges, I should say, are the most respected and superior type of public servants. They should enjoy the same benefit or suffer the same privation, if I may say so. I understand some of the judges have already reduced their holidays. So I urge the Home Minister to accept my amendments.

Mr. Chairman: Amendments moved:

(1) page 3, line 7, *for* "one-fourth" *substitute* "one-eighth".

(2) In page 3, line 13, *omit* "double".

Dr. Katju: I am unwilling to accept these amendments for a number of reasons. The first one is that it means a departure from a very long-standing practice. The second is that while on paper, it looks very large, namely, granting a judge leave to the extent of one-fourth of the time spent by him on actual service, there are several provisions here which take away a great deal, for all practical purposes, from the generosity of this rule. Now, you take, what we call, service for pension. I refer to the clause which has just been passed—clause 2, sub-clause (h):

> "Service for pension includes actual service".

namely, when you are actually serving, and the second,

> "one month or the amount actually taken, whichever ... of each period of leave on ... allowances".

Now that means a judge may be entitled to a maximum of three years leave, but if he does take that, that is not counted for pension. The result has been that very few judges have taken this maximum three years' leave. They do so when they are compelled by some very overriding reason, either because of their illness or because of some urgent, domestic reason or something like that. Then you have the allowances. For the first month of leave, the salary is Rs. 4,000, for the second and third month of leave, it is Rs. 2,200 or thereabouts. Then there is a break. For this three years' leave—you cannot exceed three years—you are only allowed half allowances. If you want Rs. 2,200, it is cut down really to 18 months. Out of these 18 months, you have only got Rs. 4,000 for two months. Calculating on that basis, you can only get 6 months. So I would request my hon. friend, as a member of the Bar, not to insist on this. Let the present procedure stand. It is very satisfactory to the judges and they like it. It has stood the test of time for a hundred years.

Shri K. K. Basu: At his request, I beg leave of the House to withdraw my amendments.

The amendments were, by leave, withdrawn.

Mr. Chairman: The question is:

"That clause 4 stand part of the Bill".

The motion was adopted.

Clause 4 was added to the Bill.

Clause 5.—(*Aggregate amount of leave etc.*)

Shri K. K. Basu: I beg to move:

(1) In page 3, line 21, *for* "three years" *substitute* "one-twelfth of the period spent by him on actual service or three years whichever is greater";

(2) In page 3, line 31, *for* "five months" *substitute*—"three months";

(3) In page 3, line 32, *for* "sixteen months" *substitute* "ten months".

In the first of these three amendments, I have suggested one-twelfth of the period. Of course, as the Home Minister just now said, there may be difficulties in calculating the pension. But if a judge has been really in service for a period of seven or eight years, and if leave is allowed for three years, it would not be fair for that amount of leave to be sanctioned to him. Therefore, I have tried to put in a period of one-twelfth, as in the case of other sections of the public service including magistrates and others. If a judge is there only for a period of 6 or 7 years, he is not entitled to enjoy the benefit for three years. The period should be limited to one-twelfth of the period of his service. In the case of judges who may be in the Bench for 16 years or so, the case is different, and they can be allowed such a period.

In the second amendment, I have reduced the period to three months. As I have said before, it is more or less the reiteration of the same argument. The period allowed—five months and sixteen months—looks disproportionate when compared to the facilities enjoyed by other members of the public service. Of course, the Home Minister said that it is the continuation of the old system, but he forgets that on the 26th January, 1950, our country has adopted a Constitution which made many changes. We also expect many changes in the future. Those who are drawing high salaries may not be drawing them at some time in the future. Whatever it may be, the conditions in our country are changing, and will change. Therefore, there is no point in saying that so long as the condition given in 1865 or earlier than that period, stands, that condition must be continued. When we expect a change of structure, when we accept a new welfare state to be built up, we should also feel that the judges should not enjoy those benefits which look rather disproportionate to those enjoyed by other sections of the public service,—far less,—the common men. That is why I want these two latter amendments also to be adopted.

Mr. Chairman: Amendment moved:

(1) In page 3, line 21, *for* "three years" *substitute* "one-twelfth of the period spent by him on actual service or three years whichever is greater."

(2) In page 3, line 31, *for* "five months" *substitute* "three months"

(3) In page 3, line 32, *for* "sixteen months" *substitute* "ten months"

Dr. Katju: My hon. friend has very kindly agreed to my request to withdraw his amendments to clause 4. Now also I shall make the same request to him. The whole structure is this. There is a sort of an account opened in favour of the judge just as you have the credit account in banks. The Accountant-General keeps that account. Supposing on that basis, a judge has two years' leave outstanding to his credit, we say "You cannot be paid for more than sixteen months at any time. But please remember that if you take that leave which is due to you, for the first month, you will get Rs. 4,000, for the remaining four or five months, you will get only Rs. 2,000 and for the remaining ten months you will get only Rs. 1,100." This is a financial check, which is so great in practice that no judge ever applies for that leave, unless he is driven to do it. There is also other check, namely, the calculation of his leave for pension purposes. These two checks or counter-checks work in such a strong fashion that the so-called liberality of it never really comes into operation. It is only

[Dr. Katju]

for contingencies. There may be exceptional cases where a man may be so ill with cancer or some sort of lung disease and the doctor says, "You must remain in hospital for twelve months." So, in those cases even Rs. 1,100 may or may not be sufficient. Otherwise, he will have to go out. My hon. friend may trust me to see to it that it is really not causing any great loss to the public exchequer. Please also remember that so far as the leave rules are concerned,—I am not quite familiar with the rules—three or four years' leave could be accumulated. Then there is half-pay leave up to two years, and then there is unlimited leave without pay for another three years. I am quite conscious of the fact that long vacations make a great deal of change, but so far as judges are concerned, there are some of them—elderly people—who may fall ill, and they may be entitled to go on leave. If they are entitled to that leave, let them have it.

I repeat again, the rule has stood for a very long time and it has caused no harm to anybody.

Shri K. K. Basu: I request that my amendments may be put to the House and a voice vote taken.

Mr. Chairman: The question is:

In page 3, line 21, *for* "three years" *substitute* "one-twelfth of the period spent by him on actual service or three years whichever is treater".

The motion was negatived.

Mr. Chairman: The question is.

In page, 3, line 31, *for* "five months" *substitute* "three months".

The motion was negatived.

Mr. Chairman: The question is:

In page 3, line 32, *for* "sixteen months" *substitute* "ten months"

The motion was negatived.

Mr. Chairman: The question is:

"That clause 5 stand part of the Bill."

The motion was adopted.

Clause 5 was added to the Bill.

Clauses 6 to 13 were added to the Bill.

Clause 14.—*(Pension payable to judges)*

Shri K. K. Basu: I beg to move:

In page 5, line 2, *for* "twelve years" *substitute* "eight years."

I have sought to reduce the period from 12 years for earning the maximum pension to eight years. My idea is this. Since you have made it a condition that our judges should retire at the age of sixty our forms of education being such, it would be hardly possible for any person to come to the top, except in the case of exceptional genius, at an early age. In many cases, the judges are appointed not before they reach the age of 50 or 52 years. Therefore, I wanted by this reduction, that there might be possibilities of getting better men and it would obviate the difficulties experienced by Government in getting good persons. Otherwise, they would refuse to serve on the Bench. My idea is that if you reduce the period from twelve years to eight years, we can get a good many persons who would, normally in the present context, not be prepared to serve Government because of the conditions laid down in the Constitution. This is the point I want to make.

Mr. Chairman: Amendment moved:

In page 5, line 2, *for* "twelve years" *substitute* "eight years".

Dr. Katju: Mr. Chairman, I fear that my hon. friend is labouring under a misapprehension. This clause has to be read as a whole and this clause provides the period for earning the right to pension. Three contingencies are provided. Either you serve for

twelve years or you retire at the superannuation age or you are medically certified to be unfit to render service. The idea was, supposing a man is employed as a judge at the age of 45. The moment he puts in a service of 12 years and reaches the age of 57, it is open to him to tender his resignation and then say, 'I have earned my pension, I want to go'. If my hon. friend's amendment were to be accepted, the result would be that at the expiration of eight years of service, which means 45 plus 8, i.e., 53, at the age of 53 he tenders his resignation to the President and walks away with his pension. What I am anxious is that we should have the benefit of the experience and learning of every judge at least for twelve years if he is within the age of superannuation. If a Judge is appointed at the age of 45, then, I think the country is entitled to expect that he may serve, unless he is declared medically unfit, for at least twelve years. I do not want that he should have us in the lurch and go away. If we appoint him at the age of 48 he may retire at 60. We want to have him there till the age of superannuation

Shri K. K. Basu: Is it your idea that as in the case of the Civil Service where he earns a pension as soon as he puts in a service of fifteen years, a similar provision is to be made saying that after putting in twelve years he may retire?

Dr. Katju: Yes.

Shri K. K. Basu: Then I was wrong. I would withdraw my amendment.

The amendment was, by leave, withdrawn.

Mr. Chairman: The question is:

"That clause 14 stand part of the Bill."

The motion was adopted.

Clause 14 *was added to the Bill.*

Clauses 15 *to* 25 *were added to the Bill.*

First Schedule

Shri K. K. Basu: I beg to move:

(1) In page 7, line 20, *for* "seven years" *substitute* "five years".

(2) In page 7, line 24, *for* "seven", *substitute* "five".

In page 7,—

(i) in line 31, *for* "shall be classified as follows:—" *substitute* "shall include service as a Judge and/or Chief Justice in any High Court.", and

(ii) *omit* lines 32 and 33.

As I said in my introductory speech, I am against the provision of no minimum period that a judge should serve for earning his pension. I want to reduce the period to five years from seven. The Home Minister has himself suggested that no man should be appointed as judge who is not in a position to serve for five years at least. There may be very seldom occasions where this is not possible and you have made special provision for retired judges being re-appointed, irrespective of the age. There may be occasions when in a particular High Court there is all of a sudden a necessity for the appointment of many judges for a short time and you may not be able to find enough people to fill the posts, you may get a judge transferred from another High Court. Supposing a judge is not available for the Punjab High Court.....

Mr. Chairman: Why Punjab?

Shri K. K. Basu: Let it be Calcutta, I do not mind. So many important judges and the Chief Justice for the Punjab have come from outside. We have provided for such transfers of the High Court judges, and so we can get any of the judges of the High Court transferred to meet the situation and there is also a provision to appoint retired judges as judges for a short time. I do not see therefore the object

[Shri K. K. Basu]

of making the provision here that a person will be entitled to earn a basic pension only if he has at least put in seven years of service as judge or an *ad hoc* pension if below the period. In view of the peculiar conditions here that many of our persons do not attain eminence before they are advanced in age, I suggest that the minimum period of service should be reduced from seven to five years. We have a feeling that these provisions for doing away with the minimum period are brought forward to accommodate the judges who are executive minded. It is not a question of what he thinks about a judge, but it is a question of what the people feel about our judges, which is the criterion for our having the judicial service. As I have accepted some of the Home Minister's suggestions, I request that he will also accept these amendments of mine.

Mr. Chairman: Amendments moved:

(1) In page 7, line 20, *for* 'seven years' *substitute* 'five years'.

(2) In page 7, line 24, *for* 'seven' *substitute* 'five'.

(3) In page 7,—

(i) in line 31, *for* "shall be classified as follows:—" *substitute* "shall include service as a Judge and/or Chief Justice in any High Court."; and

(ii) *omit* lines 32 and 33.

Dr. Katju: There is no question of bargaining in these matters. Let me put before the hon. Members the pension structure. The pension structure is, firstly, if you have seven years of service and you then retire, you earn what is called the 'basic' pension of Rs. 5,000.

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To that basic pension as a puisne judge is added for each year of service Rs. 470. If you have a little pencil and paper before you Rs. 5000 plus Rs. 3,000 or Rs. 2,000 odd will give you about Rs. 600 to Rs. 700 a month. If you complete eight years of service then you get a double advantage. Rs. 470 remains where it is, but for 8 years of service you get an additional Rs. 1,000 added to your basic pension, namely Rs. 600. If you put 9 it becomes 7; if you put 10 it becomes 10. But 10 is the maximum. To Rs. 10,000 as the basic pay if you serve for 12 years you will get Rs. 10,000 basic pay plus Rs. 470 x 12. There again there is a maximum of Rs. 16,000. On the top of all this: supposing you do not put in 7 years' service, you put in only 6 years' service, then this rule Rs. 5,000 basic pay and Rs. 470 annual increment does not come into operation at all. You get Rs. 6,000 as fixed sum for your being a judge.

My hon. friend's scheme is entirely different. He says, make it from 7 to 5, give him a basic pay of Rs. 5,000 and give him no annual increment.

Mr. Chairman: I doubt if the hon. Member wants to convey that there should be no annual increment.

Shri K. K. Basu: I said instead of 7 years five years should be the period which entitles a judge to earn the basic pay.

Dr. Katju: Mr. Chairman, there is an amendment in his name—I do not know whether he is going to press it. It is amendment No. 21 suggesting the omission of lines 32 and 33.

Mr. Chairman: I take it that the hon. Member does not want to press it. It will mean that the annual increment will be stopped. The amendment as moved has that effect.

Shri K. K. Basu: If he accepts Amendments Nos. 19 and 20, 21 and 22 will not be necessary.

Mr. Chairman: Then I take it that if the first two amendments are accepted, he would not press the remaining ones.

Shri K. K. Basu: I think the purpose of my amendment No. 21 is not the same. 19 and 20 are the same, and

I want to reduce the period from seven years to five years.

In 21 I say that there should not be any difference between the Chief Justice and other judges and therefore in 21 I say that his service as judge including as Chief Justice of any High Court, or whatever it may be, should be taken into consideration in determining his additional period of service. I never dispute that a judge is entitled to earn additional pension if he puts longer years of service than the minimum period for which he is entitled to basic pension.

Mr. Chairman: We have got it under Clause 5—the question about the enhanced pension.

Dr. Katju: Mr. Chairman, this Bill as it stands and the pension structure have been very carefully worked out and is an improvement on the old standing practice. Let me repeat it once again. We want to have our judges to serve for long periods of time; at least a minimum of seven years. It will be the concern of the Government to see that the judges are appointed on a ten or eight year basis normally. In order to induce them to come while they can put in seven years we say: if you come in seven years you will get Rs. 5,000 basic *plus* seven times Rs. 470/-. My hon. friend reduces it. He says make it five. The result will be that a judge may come when he is 54. What is the difference if he comes for five years and then he gets Rs. 5,000 basic and five times Rs. 470 which will be Rs. 2,350? The total pension that he will get will be Rs. 7,350. I do not want to be so generous. What I say is this: if you serve for less than seven years, you will get a lump pension of Rs. 6,000 a year.....

Shri K. K. Basu: That applies only for a few years.

Dr. Katju: That will be a matter for the appointing authority. He will see to it that no one is appointed unless he can serve for 4, 5 or 6 years. Unless there is—I repeat it for the fourth time—some very exceptional contingency, the House may take it from me that short-term appointments will not be made. But there may be something, some problem and there may be a man of exceptional eminence. The High Court may be confronted with an exceptional class of litigation in which one particular advocate may be very proficient. I cannot say which. But we want judges to serve at least seven years and we do not want to lessen the attraction. The net result is this: that in the pension of Rs. 6,000 a year we have provided, my hon. friend wants to add another Rs. 1,300 to which I am not willing to agree; that is what it comes to and the whole structure stands. In justification of this I say this: Up till now unless a judge serves for seven years, he was not entitled to get a single penny. Mr. Chairman, you may be aware of such instances. For them we are providing Rs. 6,000. Otherwise, the old structure stands and there is no reason why we should interfere with it in any particular way.

Mr. Chairman: I put the amendments to the House.

The question is:

(1) In page 7, line 20, *for* 'seven years' *substitute* 'five years'

The motion was negatived.

Mr. Chairman: The question is:

In page 7, line 24, *for* 'seven' *substitute* 'five'."

The motion was negatived.

Mr. Chairman: The question is:

In page 7,—

(i) in line 31, *for* 'shall be classified as follows:—' *substitute* "shall include service as a Judge and/or Chief Justice in any High Court"; and

(ii) *omit* lines 32 and 33

The motion was negatived.

Shri K. K. Basu: Sir, I beg to move:

In page 8,—

(i) *Omit* line 5.

(ii) in line 6, *omit* 'Grade II'.

and No. 2. and the last amendment also relating to the omission of sub-clause 9. I beg to move:

In page 8, *omit* lines 20 to 24.

Mr. Chairman: Is he moving his third amendment also?

Shri K. K. Basu: Yes, Sir. I beg to move:

In page 8, line 18, *for* "Rs. 20,000" *substitute* "Rs. 16,000".

The first point is very short and simple. My whole idea is that so far as pensions are concerned there should not be any difference between a judge and a Chief Justice of a High Court. You, Sir, have been in the Constituent Assembly which framed the Constitution after much deliberation, and there we have deliberately scaled down the difference in the pay only to five hundred rupees. That is because we feel that Chief Justices have to perform more or less the same work as other judges, apart from some executive or administrative work, and therefore we feel that there should not be much difference between the two. Formerly, excepting in one or two High Courts, no Indian was appointed as Chief Justice. It was as late as 1918 or 1919 that Sir Shadi Lal was appointed as the Chief Justice of the Lahore High Court, the first Indian to be appointed as Chief Justice. Though we had brilliant Indian judges they were never appointed as Chief Justices. In 1934 the Britishers appointed in the Calcutta High Court a gentleman as Chief Justice who had served in a country court in England or the Isle of Man or something like that, who knew very little of the legal principles. In the British days the Chief Justiceships were meant for Englishmen and therefore they kept a wide gap between the salary of the Chief Justice and that of other Judges. And the Chief Justice of the Calcutta High Court used to get Rs. 6,000 in comparison to the Rs. 5,000 that the other Chief Justices were getting. When our Constitution-makers deliberately scaled down this difference to only five hundred rupees—that is, Rs. 3,500 for a judge and Rs. 4,000 for a Chief Justice—I do not see why any difference should be there in the pension. Because after retirement it does not matter whether one was a Chief Justice or an ordinary judge. The fact is that he had been on the Bench of a High Court and has rendered service in the capacity of a judge of a High Court. Therefore I have moved this amendment so as to see that there is no classification or class among judges. They should all be put together and this classification should not be there. We have the classification between Chief Justice and other judges only for the purpose of certain administrative duties and for being at the head of a particular High Court.

In the last one I reiterate the same point. Whatever the period, he is entitled to draw a pension. I shall give one example. I may be wrong about what transpired. But Shri Lakshmipat Jha served only for two years. It is talked about that the Bihar State Government did not like the other seniormost judge of the High Court, who has a claim to be appointed as Chief Justice, to be appointed. And they prevailed upon the Advocate-General of the State to accept the post. And he served only for two years and a few months. The information may be wrong, but people in Bihar openly talked about it. We must guard against the seniority of people being overlooked. It is not a

question of a judge committing a mistake. It may be in the interests of the Bihar State that Shri Lakshmipat Jha had to be appointed. The hon. the Home Minister may say that there may be occasions when certain persons have to be appointed. But I shudder to think that persons who are not nearing the age of superannuation should not be available in the whole of India. Our country can boast of fine examples of legal luminaries on the national or international forum. The whole idea must change. It is the feeling of the people which must be taken into consideration, and due to outside pressure somebody should not be shoved in because they do not want to consider the claims of the other man.

I therefore urge upon the hon. Minister to accept the proposition. If we can only get a person who is fifty-eight and a half there is no point in appointing him because he will hardly serve for two, two and a half or three years. We can go the whole length of the country to find out a suitable person. Considering the prestige of our country and the feeling and the rights that the people expect to get from the independence of the judiciary, I submit that this principle should be accepted that no person should be appointed who is nearing superannuation and the right to earn pension should not be there.

This is all the submission I have to make on this.

Mr. Chairman: Amendments moved:

(1) In page 8,—,

(i) *Omit* line 5.

(ii) in line 6,—*omit* "Grade II".

(2) In page 8, *omit* lines 20 to 24.

(3) In page 8, line 18, *for* "Rs. 20,000" *substitute* "Rs. 16,000".

Dr. Katju: Which is that amendment?

Mr. Chairman: Amendments numbers 22, 23 and 24. He wants to remove the distinction between Chief Justice and Judges in the matter of pension.

Dr. Katju: I do not really understand what my hon. friend has said. It has nothing to do with the amendments.

Mr. Chairman: The amendments relate to pension. He says that there should be no difference between the Chief Justice and Judges.

Dr. Katju: Does he really desire that there should be no distinction between the Chief Justice and Judges?

Shri K. K. Basu: Why have these classes? The British for their own purposes paid the Chief Justice Rs. 1,000 more, but here according to the Constitution there is only a difference of Rs. 500.

Dr. Katju: Even in olden days in the Calcutta High Court the difference was Rs. 2,000, therefore, it was very striking. But, in the place from which I come, the difference is Rs. 1,000—the Chief Justice Rs. 5,000 and all the judges Rs. 4,000. But, the distinction in pension has always been there. The pension paid to a judge was £ 1,200; to a High Court judge it was £1,500 and in the Calcutta High Court it was £1,800. Now, to suggest that the distinction between the pension of Chief Justice and a judge should be abolished, seems to be a remarkable proposition. Secondly, please remember, that while on the judicial side there is no distinction between a Chief Justice and judge; when they hear a case the voice of both prevails equally, but outside, when they are off from the court, the burden of justice, administration of lower courts and the High Courts falls on the Chief Justice. The Chief Justice discharges very onerous administrative duties. I know from personal knowledge that the Chief Justice has to work in discharging these administrative duties for something like two hours every day.

[Dr. Katju]

Apart from the distinction of the office, there is this additional responsibility for which, I think, a higher salary is paid and the pension he is entitled to. This distinction has to be made. It will be a sort of revolutionary thing to say that for pension purposes only the Chief Justice and the judge should be ranked together, to which I cannot agree (*Interruption*).

Mr. Chairman: Order, order. The question is:

In page 8,—

(i) *omit* line 5.

(ii) in line 6, *omit* 'Grade II'.

The motion was negatived.

Mr. Chairman: The question is:

In page 8, line 18, *for* 'Rs. 20,000' *substitute* 'Rs. 16,000'.

The motion was negatived.

Mr. Chairman: The question is:

In page 8, *omit* lines 2 to 24.

The motion was negatived.

Mr. Chairman: Shri Tek Chand is not here.

Dr. Katju: I beg to move:

"In page 9, line 12, for 'exceeding' *substitute* 'such additional pension together with the additional or special pension, if any, to which he is entitled under the ordinary rules of his service shall exceed'."

This amendment, Sir, is purely for the purpose of clarification. When a judge is appointed from the Service, on such appointment he becomes entitled to an increase in his pension. He is getting a certain salary as a subordinate judge. When he becomes a district judge, he gets an annual increment in his pension. When he becomes a Judge of High Court, he becomes entitled to another annual increment. There was an idea in our mind that we may not be misunderstood. Anybody may ask: "Well, we are entitled to both the increments—number one as a Judge in the District Court and number two, as Judge in the High Court." This amendment is intended to clear the point that these two annual increments are to be added together and must not exceed Rs. 500 a year and a total of Rs. 2,500. This is purely a clarification.

Mr. Chairman: The question is:

"In page 9, line 12, *for* 'exceeding' *substitute* 'such additional pension together with the additional or special pension, if any, to which he is entitled under the ordinary rules of his service, shall exceed'."

The motion was adopted.

Mr. Chairman: The question is:

"That the First Schedule, as amended, stand part of the Bill."

The motion was adopted.

The First Schedule, as amended, was added to the Bill.

Second Schedule was added to the Bill.

Clause 1 was added to the Bill.

The Enacting Formula and the Long Title were added to the Bill.

Dr. Katju: I beg to move:

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

As there is some time, hon. Members who were very anxious to speak on the first reading, may now have an opportunity of benefiting the House with their views.

Mr. Chairman: Motion moved:

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

Shri Joachim Alva: I support the main principles of the Bill. This Bill

has really come in time in the sense that the High Court Judges should not be made footballs of our party politics. They should be treated as roses in the garden of our Constitution. They should be above reproach. They should not speak; they should not lend their ears and their tongues off the Bench.

It was particularly distressing to hear my hon. friend Shri Frank Anthony. He forgets that in his spiritual lands of the United Kingdom and the U.S.A., controversies have arisen in regard to the appointment of judges, more vociferous than have ever occurred in this country. When the late President Roosevelt appointed a series of judges on the Supreme Court Bench of the U.S.A., there was a terrible controversy. When the late Lloyd George sent Lord Reading, then Lord Chief Justice of England, as the Viceroy of India, it was condemned as a political appointment. I remember, reading as a school boy, a paper attacking the appointment and containing details of the Marconi affair, a famous controversy with which the name of Lord Reading was associated. Yet my hon. friend Shri Frank Anthony did not seem to remember that the appointment of the Lord Chief Justice as the Viceroy of India was attacked at that time.

Judges are human beings. They should be paid well. They should be above worries. They have their family affairs; they have got wives and children.

Some Hon. Members: Family Affairs?

Shri Joachim Alva: As I said, they should not lend their ears and tongue for discussing legal disputes off the Bench. They cannot also go about pressing their personal claims. I am glad that the hon. Home Minister has brought this Bill. I would have liked to see him even for one day sitting on the Bench of a High Court or the Supreme Court. With his varied experience and career as a great politician, as a great statesman and as a great lawyer from the time of the Meerut Conspiracy case which he argued so ably, I would have been happy to see him on the Bench in any court.

Shri Velayudhan: (Quilon *cum* Mavelikkara—Reserved—Sch. Castes): You are contradicting yourself.

Shri Joachim Alva: I am not contradicting; please don't interrupt. I say in the sense that the best talents of the lawyers and Ministers should be enlisted for these offices. It is no doubt true that one of our great Legislators, a former Member of the Central Legislative Assembly the late Shri Abhyankar, when he was put up before a Nagpur Tribunal, for disqualification as a practising Barrister, declared thus: "I would like to be a man amongst lawyers and not a lawyer amongst men". This should be the practice, the tradition of our lawyers. They should not be contented with merely amassing fortunes. They should not be content with merely increasing their bank balances. The time has come in their career when their services should be placed at the disposal of the State.

We should not break the golden rule. As far as possible, no Governor's posts or Ambassador's posts or other high appointment should go to the Judges I may say that I appreciate one point made by Shri S. S. More. In clause (4) of article 148, it is provided that the Comptroller and the Auditor-General shall not enjoy any other office. No doubt, in exceptional cases or in many cases, judges can be honoured with Commissions or Enquiries or even Committees.

They shall not be deflected from one post to another, or upto the posts of Governors. We had the case of a retired Supreme Court Judge being appointed to a Governorship. He was a man of exemplary behavior and character, and I have nothing to say against his patriotism, but I do hope that it will be the last case. I mean Shri Fazl Ali who earlier acquitted himself well in the Naval Mutiny Inquiry Commission in 1947 and also as Governor, and now in the most important appointment as Chairman of the States Reorganisation Commission.

[Shri Joachim Alva]

I would say that we do not want also to have political judges. Judges can indulge in harmless political maxims, but they shall not indulge in political controversies. Today, the judges, some of them, are apt to lend their ears and also to wag their tongues on political controversies. The day our judges do that, the foundations of our State will be broken up. They are our guardians; they are the roses in our Constitution. We shall respect, and we shall not trample upon these roses. We shall smell the scent of these roses, but they must take more precaution in keeping themselves aloof from political controversies, and above all in not lending their ears to such controversies. They should have the reputation of being above corruption. Very few judges have been accused of corruption, but our judges are expected to set up the highest standards.

Sir, you may permit me one minute more. I recall the great trial of one of our greatest leaders Dr. Syama Prasad Mookerjee, along with that of Honourable Members Shri N. C. Chatterjee and Shri Nandlal Sharma. I was present there and the memory of that trial shall for ever be impressed in my memory. When the Solicitor General to Government stood up before the five honoured Judges, headed by the ex-Chief Justice, *rishi*-like Patanjali Sastri, and said: "You are making a political trial", all the Judges hit him and said: "Will he withdraw?", and the Solicitor General, Shri Daftari had to withdraw and say: "My Lords, I am sorry" He said it twice. That shows that arguments put forward by my hon. friend Shri Anthony reveal where in the boot lies. Even when the highest law officers have erred, the judges of the Supreme Court have hit back. When Shri Daftari said "You are making political capital out of this case", they hit back, and they delivered the famous judgement acquitting Dr. Mookerjee. I think two propositions could have been laid down as a result of that judgment: (1) that no one shall be arrested unless it is very essential, and (2) that no one shall be arrested except by very proper means.

We must be proud of our judges. The Supreme Court of the Union of India is an institution of which we are really proud. They are also served at present by an illustrious lawyer as Attorney-General, Shri Setalvad, who created a profound impression on us all when he last addressed this House. I think they can stand comparison with their counterparts in any part of the world. We are granting these emoluments and concessions to keep them above worry, so that it shall not be said that after their retirement they went painfully touting for briefs or jobs. We shall establish great traditions for our Bar, traditions which today have not been lowered but held aloft, which will stand best comparison with those of the United Kingdom and America to which the hon. Member Shri Anthony always harks back but is not here to hear our reply.

Shri H. N. Mukerjee (Calcutta North-East): I would like to say a few words in regard to this Bill which we shall be passing in a very short while.

I participate in this debate because I do consider that this Bill relates to a matter which requires very serious thought on our part. The role of the judiciary in India today is so much more important than it was before 1950 that it is incumbent upon us to see to it that our High Court Judges and our Supreme Court Judges satisfy certain criteria which the country demands of them.

I am reminded of the days of the 17th century in England when Francis Bacon, the Lord Chancellor, once said that he expected the judges of England to be like the lions under Solomon's throne. He wanted them to be lions, but lions under the throne. To this point of view, however, Coke, who stood for the majesty of the law, said he would not subscribe. As we know he had a feud with Francis Bacon, and he said: "Judges have to be lions but not lions under the throne".

Now, that we have a Constitution, a written Constitution, which, in spite of its many deficiencies, guarantees to the

citizens of our country certain fundamental rights, and now that it is the duty and the obligation of our Judges in the High Courts and in the Supreme Court to expound what those rights are and to see to it that the rights of the citizens are not infringed, it is very important for us to take every precaution so that our judges really behave like lions, but not like lions under the throne, which is represented by the Treasury Benches. I say this because, as has already been pointed out at an earlier stage of the discussion, occasionally there have been instances, sometimes glaring instances, which are rather significant, and which are rather suggestive of a very dangerous influence being excercised by the executive upon the judiciary.

I happen to belong to an organisation of members of the English Bar in Calcutta, the Calcutta Bar Library Club, and I remember that the late Shri Sarat Chandra Bose took the initiative in getting a resolution unanimously passed by that Club, expressing its view that judges should not hobnob with Governors and other representatives of the executive. Things had gone to such an extremity that the members of the Calcutta Bar Library Club had to get together and pass a resolution unanimously, saying that judges should not behave in a fashion which they were sometimes found to be behaving in. It happened because our friend the hon. the Home Minister was, at that time, as far as I remember, Governor of West Bengal. Now possibly, it was absolutely innocent. He was a lawyer himself, and he possibly wanted to talk to fellow lawyers, and he possibly wanted to meet these judges just because they were fellow lawyers. But anyhow, in spite of there being nothing necessarily suspicious about it, there was a feeling in the country that this kind of an association, a close, intimate and day to day association of the judges with members of the executive, and even the Governor of the Province, who is supposed, but only supposed to be above politics was creating a lot of suspicion in the country. That is why I say that every care ought to be taken that the judiciary is beyond reproach. The country is very generous as far as the payments to the judiciary are concerned, and the country has a right to expect that the behaviour of the judiciary should be according as it should be.

Certain other instances have been referred to, but I want to repeat one instance which was mentioned by my hon. friend Shri K. K. Basu, and that was the instance of the former Chief Justice of the Calcutta High Court. I cannot, for the life of me, imagine how a judicial personality of the eminence of the Chief Justice of the Calcutta High Court could go to the length of accepting the job of Legal Adviser to the Government of West Bengal. I cannot imagine how in a healthy atmosphere reports of this kind, which materialised in actual fact, could circulate. You can quite imagine the result that that kind of a report circulated produces upon the conduct of the judiciary and you can quite conceive how it prejudically affects the confidence of the people in the judiciary.

It has also been said that it is not right that our judges should be expecting, as they near the time of superannuation, to be appointed to certain kinds of jobs, tribunals of all sorts labour or income-tax or whatever it might be. If necessary, let us extend the period of time, for which the judges can work. But let us not put the judges to this predicament that they are driven to try for jobs after retirement. I know of one case, a very independent Judge of the Calcutta High Court, who had a reputation for almost militant independence, but I know how he was driven to look for some kind of a job, after superannuation, under Government. This is a sort of thing which is very bad, and that is why I say that selection of the judges is a matter which has to be done by those who are the powers that be, very much more carefully than it is done today.

I know that certain qualities are required, if a person is to be a very successful practitioner, but the qualities of a successful practitioner of law are

[Shri H. N. Mukerjee]

not necessarily the qualities of a judge. A judge requires a certain dispassionate character. Now, many of the very successful practitioners of law are the go-getter type; they have a resilience of character; they have a kind of adjustability in their words, or even in their thoughts; they have a kind of adaptability which we see illustrated in lawyer Members of this House.

Now, the go-getter lawyer is not necessarily of the judicial type, and we have to be very careful about it. To our shame, it has to be admitted that our country has not produced lawyers of an academic character. We have not contributed anything of substantial value to jurisprudence, and we have got a kind of identification between the successful lawyer and the successful judge. This should not happen. As far as appointments to the judiciary are concerned, as far as appointments to the Public Service Commission are concerned, as far as such appointments as the appointment of the Comptroller and Auditor-General of India are concerned, we want people with a judicial personality, with a kind of mind which is not prejudiced which is not pre-inclined one way or the other, which is not unnecessarily flashy, which does not have a weakness for the airs and graces of "smart" society. That is what we want of our judges I know there are people in this country who know some law, who at the same time have certain other qualifications which are not exactly judicial qualifications, and I want Government to be very careful when they are making appointments.

That reminds me of the kind of suspicion which is sometimes noised about regarding judges. I remember one case—I shall not name it. There was a report in the Calcutta High Court when a Full Bench was constituted of five judges and a matter relating to preventive detention had come before it. The judgment went against the detenus by three against two. Three of the judges upheld the detention and two of the judges said the detention was bad.

For sometime everybody in the Calcutta High Court was hearing the story—good, bad or indifferent, right or wrong, I do not know—that one of the judges, the person who gave his judgment last, had changed his judgment at the last moment on account of certain pressure having been brought upon him. I do not say that this report was correct. But this kind of report circulates because we have got on the Bench people who do not have that kind of dispassionate mind, who do not represent the ideal of justice which is blind, which does not look at the faces of the people, which does not try to gauge things which are irrelevant to its duty. We want justice to be dispensed properly; we want judges to be above suspicion; we want that things done in regard to the judiciary should be absolutely above board and we want that the Government comes forward with such schemes as would really enthuse intellectual people in this country who happen to know some law so that they can feel that by accepting the position of a judge, they are really devoting themselves to the service of the community. Now if we can do that, if we can guarantee the appointment of such people, then and then alone shall our judiciary perform those functions which the Constitution has imposed upon them. I say, Sir, since the Constitution has now elevated the position of the judiciary to a very high level, we have to make sure that our judges shall not be lions under the throne but shall be lions in their own right always standing up for the freedom of the citizen, always trying to see to it that the freedoms conferred by the Constitution are not vitiated by any kind even of suggestion of executive interference or processes of that kind.

श्री सिंहासन सिंह (जिला गोरखपुर दक्षिण) : सभापति जी, यह जो विधेयक आज भवन के सामने उपस्थित है और अभी

चन्द मिनटों में पास हो जायेगा, बहुत ही आवश्यक विधेयक है और इसके अनुसार जो कुछ सुविधायें जजों को मिलनी चाहियें, वह उनको मिलें और आज भी उचित ढंग से मिल रही हैं।

इस विधेयक के सम्बन्ध में मुझे एक बात कहनी है कि जहां संविधान के आर्टिकल २२० के अनुसार कोई जज रिटायरमेंट के बाद प्रैक्टिस नहीं कर सकता और उसी के अनुरूप इस विधेयक में रिटायर होने वाले जजों के लिये ६ हज़ार रुपया सालाना पेंशन का प्राविज़न किया गया है। ऐसे लोगों के लिये जो कि सात वर्ष से भी कम सर्विस कर चुके हों अर्थात् जो वकील रहने की अवस्था में जज बनें और सात वर्ष के अन्दर रिटायर हो जायें और उन्हें सात वर्ष पूरा करने की अवधि न मिले तब भी उन्हें कम से कम ६ हज़ार रुपये की पेंशन मिले और सरकार की ओर से उनके रिटायर होने के बाद उनके जीवन यापन के लिये समुचित प्राविज़न हो। यह जो प्राविज़न इस विधेयक में रखा जा रहा है यह बहुत ठीक और उचित है और मैं भी चाहता हूं कि इस तरह का प्राविज़न होना चाहिये। साथ ही मैं यह भी कहना चाहता हूं कि जहां जजेज़ को रिटायरमेंट के बाद पुनः प्रैक्टिस करने की आज्ञा नहीं है, उसी तरह अगर विधेयक में इस बात का भी प्राविज़न कर दिया जाता जिससे कोई जज रिटायर होने के बाद किसी सरकारी नौकरी में पुनः नहीं रखा जायेगा तो यह हमारे जजों की आज़ादी और उनकी स्वतंत्रता और निष्पक्षता में अधिक सहायक होता। जब से हमारी अपनी सरकार आई है तब से ३० हाईकोर्ट के जजेज़ रिएपाइंट (Reappoint) हो चुके हैं, यह बात मेरे एक प्रश्न के उत्तर से, जो सरकार ने दिया, मालूम हुई और उन रिएपायन्टमेंट्स में एक सबसे अनोखी बात यह हुई है कि एक जज महोदय जो सन् १९३६ में रिटायर हुये, उनको हमारी इस सरकार द्वारा सन् १९४७ में पुनः नियुक्त किया गया। वे साठ वर्ष की उम्र में अपने कार्य भार से मुक्त कर दियें जाते हैं और ११ वर्ष के रिटायरमेंट के बाद इस सरकार द्वारा उनको पुनः ७१वें वर्ष में एपायन्ट किया जाता है और शायद दो वर्ष में वे स्वर्ग धाम को भी चले गये, पता नहीं कि क्या हुआ, सिर्फ दो वर्ष वे सर्विस में रहे। मेरा यह कहना है कि जजों को जजी की गद्दी पर बैठते हुये कभी उनके मन में यह भावना नहीं होनी चाहिये कि उनकी पुनः नियुक्ति होने वाली है क्योंकि अगर यह भावना उनके मन में रहेगी तो इससे उनके स्वतंत्र और निष्पक्ष व्यवहार में बाधा पड़ेगी और जिस वक्त गवर्नमेंट के विरुद्ध कोई अभियोग होगा और उनके सामने पेश होगा तब उनको उसमें ठीक बैलेंस मेंटेन करने में कुछ दिक्कत और मुश्किल होगी और वे जिस प्रकार निष्पक्षता का व्यवहार उनसे अपेक्षित है, उसको मेंटेन करने में दिक्कत महसूस करेंगे। जैसे कि अभी श्री आल्वा साहिब ने कहा कि जब सुप्रीम कोर्ट के सामने श्री श्यामा प्रसाद मुकर्जी का केस पेश था तब वकील सरकार ने उसको शायद एक पोलिटिकल नेचर के केस का रंग देना चाहा और तब उन्होंने उसके लिये चीफ जस्टिस से डांट खाई और वह उचित ही था जब उन्होंने यह कहा कि वह इस सम्बन्ध में किसी रूप से भी गवर्नमेंट की मातहती कबूल करने को तैयार नहीं हैं। और जजेज़ इस तरह से तभी व्यवहार कर सकते हैं जब उन के दिल में यह खयाल हो कि उनको गवर्नमेंट से, अपनी सर्विस के बाद किसी तरह की सहायता और कृपा मिलने वाली नहीं है, लेकिन अगर जज के मन में यह खयाल रहेगा कि रिटायरमेंट के बाद मुझे गवर्नमेंट की कृपा पर निर्भर रहना पड़ेगा और मैं उसी अवस्था में कोई लाभ का पद प्राप्त कर सकंगा तो वह इस तरह

[श्री सिंहासन सिंह]

आज़ादी और निष्पक्षता के साथ अपना काम नहीं कर सकेंगे। इसलिये यह बहुत ज़रूरी है कि जजों को रिटायरमेंट के बाद उनको पुनः नियुक्त न किया जाय, क्योंकि इस चीज़ के रहने से उनके स्वतंत्र और निष्पक्ष रीति से काम करने में बाधा पड़ने की संभावना है। यह नितान्त आवश्यक है कि जनता के दिल में यह भावना बनी रहे कि हमारे जजेज़ पूर्णरूपेण स्वतंत्र और हर तरह से एग्ज़ीक्यूटिव असर और दबाव से बाहर हैं और उन की अदालत में चाहे छोटा हो या बड़ा सब के साथ एक सा न्याय किया जायेगा और न्याय देने में किसी तरह का भी फर्क नहीं बर्ता जायेगा और यह तभी हो सकता है जब कि हमारे जज लोग बिल्कुल निष्पक्ष हों और उन में किसी तरह की आकांक्षा न रहे, क्योंकि हम यह जानते हैं कि ज्यों ज्यों आदमी वृद्ध होता जाता है उसमें मोह माया बढ़ती जाती है और हर एक आदमी सोचता है कि अभी नाती को पढ़ाना है या नतनी की शादी करनी है और यह मनुष्य स्वभाव है कि वह सोचता है कि मैं अभी कोई नौकरी दुबारा क्यों न कर लूं और मेरा कहना है कि जहां यह भावना उसके दिल में आयी, तो उसकी आज़ादी की भावना में कुठाराघात होने की संभावना है। मैं सरकार से कहना चाहूंगा कि आपका तीस, तीस हाईकोर्ट के जजेज़ को रिएपायन्ट करना इस आकांक्षा की भावना को उनके दिलों में प्रज्ज्वलित करना है और उसके मन में सदा यह बना रहेगा कि अगर मैं सरकार का कृपा पात्र बना रहा और सरकार मुझ से खुश रही तो मुझे रिटायर होने के बाद फिर कहीं न कहीं एपायन्ट कर लिया जायेगा और इस भावना के रहते वह आज़ादी और पूर्ण निष्पक्षता से अपनी ड्यूटी को अंजाम नहीं दे सकेगा और मैं चेतावनी देना चाहता हूं कि जजों द्वारा इस तरह का आचरण देश और प्रजातंत्र के हित में नहीं होगा क्योंकि लोगों का विश्वास हमारी जुडिशयेरी में नहीं रहेगा। जज के पद पर जो आसीन हो उसे तो शत प्रतिशत निष्पक्ष और स्वतंत्र होना चाहिये। इस सम्बन्ध में मैं आपको बतलाऊं कि एक वक्त जब श्री टंडन जी यू० पी० असेम्बली के स्पीकर थे, तो उन्होंने यह ऐलान किया था कि मैं इस पद पर तभी तक बना रहूंगा जब तक विरोधी पक्ष के एक भी मेम्बर मेरे प्रति अविश्वास की भावना नहीं रखता और अगर विरोधी पक्ष का एक भी आदमी को मेरी निष्पक्षता में विश्वास न हो तो मैं इस गद्दी को तत्काल छोड़ दूंगा, मैं उसी तरह की भावना अपने जजों में देखना चाहता हूं। इसके अलावा आप जानते हैं कि हाईकोर्ट के जज ६० वर्ष की अवस्था में रिटायर होते हैं और सुप्रीम कोर्ट का जज ६५ वर्ष की अवस्था में रिटायर किया जाता है और मैं समझता हूं कि इस अवस्था में कोई काम सम्हालना ठीक भी नहीं रहता है क्योंकि यह अवस्था तो सिर्फ शान्ति से भगवत भजन करने की होती है, यह अवस्था दुबारा नौकरी करने की नहीं होती है। मैं सरकार से कहूंगा कि वह इधर ध्यान दे और ऐसा नियम बनाये जिससे वे रिटायर होने के बाद दुबारा नौकरी न कर सकें। गृह विभाग की रिपोर्ट से मालूम होता है कि १३०० अवकाश-प्राप्त व्यक्तियों की पुनर्नियुक्तियां हुई हैं जब कि बेकारी बढ़ रही है। बिल्कुल उल्टा किया गया है। जैसा कि मैंने कहा था—एक तरफ तो देश में बेकारी बढ़ती जा रही है और दूसरी तरफ सरकार रिटायर्ड व्यक्तियों की पुनर्नियुक्ति करती है। यह कुछ ठीक नहीं जंचता। एक तरफ तो देश में बेकारी फैल रही है, लोगों को काम नहीं मिल रहा है और दूसरी तरफ इस तरह के रिएपायन्टमेंट्स किये जाते हैं, आखिर किसी जगह पर तो एक आदमी को

रिटायर करना ही पड़ेगा और मुझे बड़ी खुशी हुई जब हमारे माननीय मंत्री ने पेप्सू में एक सभा में बोलते हुये कहा था कि वकीलों को भी रिटायर करने की अवधि मुकर्रर होनी चाहिये, उन के लिये भी एक मियाद नियत होनी चाहिये जिसके बाद वह आगे प्रेक्टिस का धंधा न कर सकें और उन्होंने आगे कहा था कि अगर ऐसा न किया जायेगा तो समाज उन को रिटायर करेगा। मैंने उस अवसर पर उनको इस कथन के लिये मुबारकबाद दी थी और उनके विचार का समर्थन किया था। जजों के रिटायर होने के बाद उनकी पुनः नियुक्ति हो, यह देश के लिये एक बड़े संकट की बात है। मैं चाहता हूं कि गवर्नमेंट मेरे सुझाव पर गौर करे। इन शब्दों के साथ मैं इस बिल का समर्थन करते हुये अपना भाषण समाप्त करता हूं और चाहता हूं कि यह इस सदन द्वारा शीघ्र से शीघ्र पारित किया जाय।

डा० सुरेश चन्द्र (औरंगाबाद) : सभापति महोदय, मुझे इस समय केवल दो मिनट में एक बात कहनी है, और वह यह कि यह विधेयक जो हमारे सामने प्रस्तुत हुआ है वह सिर्फ पार्ट ए स्टेटस के लिये है। मैं समझता हूं कि यह बहुत ही आवश्यक विधेयक है, लेकिन इस विधेयक में सिर्फ जो पार्ट ए स्टेट्स के हाईकोर्ट्स हैं उन .....

Mr. Chairman: Probably, the hon. Member was not here. The hon. Home Minister referred to it and gave a reply to this aspect of the question. He gave a very satisfactory reply. I would just request the hon. Member to kindly see that reply and he will feel satisfied. If he has got any other point, he can make.

Dr. Suresh Chandra: Thank you, Sir.

Dr. Katju: Mr. Chairman, this Bill, as you were pleased to observe, has given rise to many comments which really do not arise out of the Bill at all but they are matters of very great importance. My hon. friend, Prof. Mukerjee who is not here just now referred in his usual very lucid and very eloquent manner to the distinction between what he called a successful advocate and a successful judge. I entirely agree with him. But the difficulty is that there is no thermometer or any other instrument by which you can get hold of the successful judges whom my hon. friend had in mind. His experience, of course, lies in politics and there he deals with politicians and it has now become a matter of general practice for the politicians to abuse lawyers whenever they get an opportunity. He put it in a very beautiful way (*Interruption*). He said a successful lawyer acquires a certain adaptability, flexibility to say things he likes. He may argue for the negative proposition, he may argue for the positive proposition or he may say there are two sides and say nothing. He said that so far the judges are concerned, he is to give a judgment. My hon. friend omitted to consider one matter. A judge has primarily to assess evidence. He is not always dealing with very nice points arising out of the Constitution or constitutional quibbles or interpretation of laws. The primary point is who is telling the truth. Is this case a false one or a right one? Who acquires that? Not a professor. I am talking seriously, not a professor of politics, nor even a professor of Law. The only man who can acquire the gift of assessing evidence and judging which persons are telling the truth and which are playing with the truth is a successful lawyer who works out his cases year after year, who meets with every cross-section of the society, who deals with industrialists and labour, who deals with servicemen, doctors, and engineers. Every section of society comes before a successful lawyer for examination; he knows the working of their minds, their outlook on life, what attracts them and what does not attract them and he is the only person. I tell you after a good deal of experience, who can assess the evidence. I can understand that as regards temperament you can have a professor of Law.

[Dr. Katju]

What is called for is a judicious habit of mind and it pre-supposes a man who never makes up his mind right up to the end. I have hear judges saying, 'Well, our minds are open right up to the end. I have heard judges saying, the assessment of evidence. I have known cases of professors becoming judges and they have made a sorry spectacle. They have no human experience.

Then, my hon. friends referred to judges being appointed to tribunals. Parliament must shoulder responsibility to some extent, for this kind of thing. Because in every Act which is passed, Industrial Tribunals, Income-tax Tribunals and Appellate Tribunals of all sorts are indicated and the provision is that they should be persons competent to be appointed judges, retired judges or present judges. My hon. friends both Prof. Mukerjee and Mr. Alva—and even my hon. friend from Gorakhpur—should have stood up at that time and said that out of the category of persons who could be appointed judges of these Tribunals, retired judges should be eliminated.

Shri Sinhasan Singh: So far as I remember, I have moved this amendment that 'retired judges' should be deleted.

Dr. Katju: Then he has failed. I am only talking of parliamentary responsibility. You cannot say that out of the 500 voices, you raised your voice, but that voice did not prevail. So, Parliament's responsibility remains.

My hon. friend then said that they should not be appointed anywhere after retirement. I do not know what he wants to do with them. It really is not reaching the point. The point is that if a man is liable to be re-appointed, his honesty would be open to suspicion, and therefore, there should be a bar put before him "thus far and no further" so that it may entail his independence. Now, I am not speaking as a Home Minister, but am speaking as a man who has experience in these matters. This is a completely wrong approach. It is the professional opinion or what may be called 'public opinion' that attracts and that acts as a great deterrent. Do you mean to say that a judge is suspected of giving wrong judgments out of improper motives either of pleasing the Government or, I will go further and say, of pleasing the gallery? Both are good human factors for diverting correct judgement. If the judges really do so, what is the impression that they allow to be formed in the world at large, in the Advocates Association, in the Bar and everywhere? They are condemned by the Bar and the Association. If it is a proper Bar, a well-organised Bar and expressing its proper opinion, it will not conceal its views. It will say to the judge by its conduct "We do not place any confidence in you; and we do not place any trust in you, nor do we honour you." All this acts as a deterrent. Suppose I am 52 today and am going to retire at the age of 60. You say that I begin thinking eight years in advance and I deliver a judgment in the Preventive Detention case upholding the view of the Government in the hope that eight years later I may get some appointment. But why do you confine yourself to these poor judges? They have got their sons, sons-in-law, nephews and friends in the same way as others. I say that the approach is wrong. The correct approach is the building up of a strong public opinion or professional opinion which looks down upon a judge who, while in office, does not do his duty fearless of consequences—without fear or favour or things of that kind. My hon. friends have been insistent here, and they said that the judges are not to be appointed as Governors, Ambassadors or Members of Tribunals. Some one said "Give him his pension and let him go to the roof or to sleep." Do you want that he should become a *sadhu* or a *sanyasi* after retirement? There is no objection to his entering private employment and you do not want to stop that. My hon. friend

mentioned the case of a Chief Justice, whom I know and who is a man of great honour. I only mention this because my hon. friend mentioned the Judge by name. Wherever he went, he earned a great reputation for his high ability and integrity. He started in Allahabad; he went to Bihar as the Chief Justice; then he went to the Punjab, and from the Punjab, he went to Calcutta, and I was also there. If he had been allowed to continue as the Chief Justice of the Calcutta High Court, that proposal would have been welcomed by everybody in Calcutta.

Shri K. K. Basu: What happened during the last two years?

Dr. Katju: Very well, what is wrong with him? The Bengal Government wants some expert opinion upon the drafting of laws, and how laws should be drafted. My hon. friend said that this is very unfair and that stories had gone about already regarding the appointment. How can I prevent stories going round anywhere? If people want to say anything, or condemn, they may condemn anybody.

Shri K. K. Basu: May I enquire one thing? Has ever before, apart from this case, any retired judge, or Chief Justice of a High Court accepted any job in the Writers Building, or in a Government Department?

Dr. Katju: You have got a greater opportunity of knowing these small details, whether it is in the Writers' Building, or anywhere else. I confess my ignorance of it. I am only saying to all Members that we are functioning here as the sovereign Parliament of India. Everything that is uttered here is reported. So, we must not really say things which are likely to cause embarrassment, or which may really cause pain and suffering to many many individuals who are not here to defend themselves. In one breath we are saying that our judiciary is one of the finest. That is the opinion I share. In the other breath Member after Member rises and says that they are people who are largely swayed by dishonest considerations, because you open temptations before them. That means that your praise of the judiciary is insincere. The mere fact as to what is going to happen to me after five years, that I am going to be appointed on an Appellate Tribunal, would not affect me in discharging the duty before me Either you do not trust the judiciary, or you do not indulge in these hyperbole, contrary talks.

Shri Sinhasan Singh: What let to the incorporation of article 220 in the Constitution debarring High Court Judges from practising in any Court in India since the commencement of the Constitution. Before that there was no such bar. They could practise in any court. When India became free we framed this provision, article 220. What considerations weighed with the framers of the Constitution, of which Dr. Katju was one?

Dr. Katju: Unfortunately Dr. Katju was not there. Had Dr. Katiu been there, then he would have attempted to say that practice at least in High Courts and Supreme Court should not be forbidden. When practice was allowed, I am not aware that any injustice was done anywhere.

Let me now come to another point My hon. friend Shri Sinhasan with his usual clarity said: "Do not offer anything to them." Judgeship of a High Court is up to the age of sixty: that is part of the Constitution. Judgeship of the Supreme Court is up to the age of 65: that is also part of the Constitution. But you can generally elevate judges from the High Court to the Supreme Court. According to my hon.'s suspicion or apprehension, every judge is looking for a judgeship of the Supreme Court and wherever there is a case in which Government is interested he would have his eye on a post in the Supreme Court and think for himself: "Let me decide the case in Government's favour, so that I may have a fairly good chance." I tell you, I hate this attitude. It is not fair to the Judges. You go on praising them;

[Dr. Katju]

at the same time you go on distrusting them. In your conception they are people who are liable to be tempted, who are liable to fall victims to do this that and the other. You may make as many attacks as you like on Ministers. They are here to take your abuses. You may say they are liable to be tempted by contractors, by engineers, this, that and the other, or they may favour anybody. Very fair game— and we would try to retaliate those abuses. But the poor judges are not here. They are doing their work, hard work, and you start with a praise, but you do not end even with a faint praise, but you end with condemnation. I say this is not a fair attitude.

Mr. Chairman, I should just like to say something—I do not know whether I dealt with it or not—about the Rajasthan judge. Now, I am not divulging any secret here. I do not know his politics, probably he was on the other party. But his name was recommended in the strongest language by the Chief Justice of Rajasthan. I have not seen him: I do not know him personally. But he said that he is a judge of great integrity, great learning, great experience, and enjoyed a high reputation and status at the Rajasthan Bar.

1 p.m.

What is wrong? The Chief Justice of India who knew them all accepted the recommendation. So—you will forgive me—sometimes he says these things without probably full thought but they go very far and go into the countryside.

My hon. friend was insisting that the people have a suspicion. Does it ever strike you that the speeches that you make here engender that suspicion in the public mind? He and Prof. said: there is something wrong; very seriously wrong. He said something is wrong at Gorakhpur. And if I say anything in reply they say: well, here is Dr. Katju; it is his function to praise anybody; but, we here are independent Members not connected with office, the great critics of the whole of India and we are saying these things and they must be accepted. Are you allaying this suspicion or creating that suspicion?

Pandit S. C. Mishra (Monghyr-North East): It is against the Government. Whatever accusations were levelled against the Government, why are you transferring them to our Judges; no body accuses the Judges.

Dr. Katju: I am glad. You close the last line of the debate that this Parliament as a whole, irrespective of parties, expresses its greatest respect, admiration, honour and trust for our Judges.

Mr. Chairman: The question is:

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

The motion was adopted.

LUSHAI HILLS DISTRICT (CHANGE OF NAME) BILL

The Minister of Home Affairs and States (Dr. Katju): Mr. Chairman, I beg to move:

"That the Bill to change the name of the Lushai Hills District, as passed by the Council of States, be taken into consideration."

After a rather full debate, the House will consider it as a soothing syrup because this is a purely formal Bill. It only means this. Out of the six hill districts in Assam, as you, Mr. Chairman, know—they are called hill districts—the people of one district, namely Lushai Hills, have been highly agitating for a change in their name. This district is largely inhabited by tribes who are collectively known as "Mizos"—"Lushi" being only one of those tribes. There has, therefore, been a demand that the district should be re-named 'Mizo' District. The demand is being accepted. I move.

Mr. Chairman: The motion moved:

"That the Bill to change the name of the Lushai Hills District, as passed by the Council of States, be taken into consideration."

Shri N. B. Chowdhury (Ghatal): It is very well known that the tribal people are reputed for their collective life and their community life, and so, when they themselves were agitating about the collective name of the areas, it is only proper that we should accept that suggestion. But there is one doubt in my mind as to why their suggestion about this name being "Mizoram" is not accepted. In their language, the expression "Ram" means territory. So, why do not Government accept the expression? "District" is not some word which is to be found in respect of every other area. We say Muzaffarpur district. Midnapur district and so on. So what is the harm if we accept their suggestion Mizoram District? I think there is no objection to the change of this name.

Along with that I have another thing to say. With regard to the Lushai Hills I would like to know whether the Hill extends beyond the areas inhabited by the Lushai Tribes. If so, why don't we change the name of the Hill also to Mizo Hill? That is all that I have to submit.

Mr. Chairman: The question is:

"That the Bill to change the name of the Lushai Hills District, as passed by the Council of States, be taken into consideration."

The motion was adopted.

Mr. Chairman: There are no amendments.

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.

Dr. Katju: I beg to move.

"That the Bill be passed."

Mr. Chairman: Motion moved:

"That the Bill be passed."

Shri Sadhan Gupta (Calcutta—South-East): Before the Bill is passed I want to say something about the position in the Tribal territories. I agree with Mr. Chowdhury that the sentiment of the tribal people should be respected as far as the naming of their land is concerned. The term Lushai Hills and all those terms were introduced by the British who had no respect about the sentiments of the tribal people. It is a good thing that we have come forward to respect their sentiments today and to change the name of the territories in accordance with their wishes. I also agree with Mr. Chowdhury that we should completely respect their wishes and, instead of calling it Mizo District and thereby making a hotchpotch of an English and a native name, we might call it Mizoram, or whatever they want it to be called.

There is another point. Apart from the changing of names, let us also see that the other factors which disturb the equanimity of the tribal areas are taken notice of. We know that there are certain missionaries working there. I do not agree with some hon. Members who think there is something very wrong in missionaries as such. We have recognised our State as a secular State, and that necessarily implies that there is freedom of propagation of every religion. There is no harm in that. But what we are concerned about is that in the name of propagation of religion politics is not propagated, disruption is not spread; that in the name of the gospel of Christ the gospel of Eisenhower is not preached That is the thing we are anxious about. And so with the changing of names I hope this aspect of the thing will be looked into, not from the point of view of persecuting another religion. We need not persecute any religion. I am not

[Shri Sadhan Gupta]

afraid of religious preaching. Let as many religious people as may like it preach their religions. But we must be careful in guarding against this that in the name of religion political disruption is not spread in India, that in the name of religion a backward section of the Indian people, a gullible section of the Indian people, whom our erstwhile rulers had kept backward, whom they had not raised to an intellectual level so that they may be able always to understand what is good and what is bad for them. I am anxious that these people are not led away astray in the name of religion and that the aids we receive from certain quarters may not deter our determination to stop the activities of people who, in the name of religion, are carrying on disruption, preaching political doctrines and seeking to infiltrate influences in our country which are positively harmful to our country.

Dr. Katju: My hon. friend has just referred to a different matter altogether, which has nothing to do with this Bill. We are all alive to those contingencies, and as I have said on previous occasions, we wish all our co-citizens, whether in tribal areas or in plains, the fullest possible liberty in matters of religion, trade, customs and other things; but the unity of India comes foremost . There can be no possibility of disruptionist tendencies being encouraged anywhere. As a matter of fact this Bill is intended to promote the unity and to bring the tribal areas with the rest of India.

Mr. Chairman: The question is:

"That the Bill be passed."

The motion was adopted.

MESSAGE FROM THE COUNCIL OF STATES

Secretary: Sir, I have to report the following message received from the Secretary of the Council of States:—

'In accordance with the provisions of sub-rule (6) of rule 162 of the Rules of Procedure and Conduct of Business in the Council of States, I am directed to return herewith the Appropriation (No. 2) Bill, 1954, which was passed by the House of the People at its sitting held on the 17th April, 1954, and transmitted to the Council of States for its recommendations and to state that the Council has no recommendations to make to the House of the People in regard to the said Bill."

ABSORBED AREAS (LAWS) BILL.

The Minister of Home Affairs and States (Dr. Katju): I beg to move:

"That the Bill to extend certain laws to the areas which, prior to the commencement of the Constitution, were administered as excluded or partially excluded areas and which, on such commencement, were absorbed in certain States, as passed by the Council of States be taken into consideration".

This is a very formal matter on the inclusion or absorption of these areas in the neighbouring States. Those very States have extended laws or Acts which have been passed by those States themselves and which they could do by their own executive action. There were other Acts which have been passed by Parliament and which could not be extended by their own authority. So, we have endeavoured in this Bill to have those Acts extended, and the result is that the States are different, but the Act applies to all those States; we have simply to name the Acts which apply to particular States and finish it.

Mr. Chairman: Motion moved:

"That the Bill to extend certain laws to the areas which, prior to the commencement of the Constitution, were administered as excluded or partially excluded areas and which, on such commencement, were absorbed

in certain States, as passed by the Council of States, be taken into consideration."

श्री अजबाड़े (सन्थाल परगना व हजारीबाग) : माननीय चेयरमैन महोदय, भारत को स्वाधीनता प्राप्त किये हुये करीब सात वर्ष होने को आये, आज स्वाधीनता के सातवें वर्ष जो यह विधेयक लाया गया है, तो उसको देख कर एक थोड़ा सा अचरज और हैरानी होती है। अंग्रेजी सल्तनत के काल में मानव समुदाय को वहां के साधारण जन अधिकार से वंचित रखा गया था। इस बिल के स्टेटमेंट आफ आब्जेक्ट्स में यह बतलाया गया है कि जो एरियाज एक्सक्लूडेड और पार्शियली एक्सकलूडेड हैं, उनको भी उसी स्तर में लाने के लिये और वहां पर भी केन्द्रीय सरकार के विधान को लागू करने के लिये सरकार चेष्टा कर रही है। वहां दूसरी तरफ मैं देखता हूं सरकार ने उन हल्कों को वंचित कर रखा है जिन्हें इन अधिकारों का उपयोग करने का पूरा मौका मिलना चाहिये था।

Mr. Chairman: The hon. Member may continue his speech on the next day.

Now, the House will stand adjourned to meet again at 8·15 A.M. on Monday.

The House then adjourned till a Quarter Past Eight of the Clock on Monday, the 26th April, 1954.