

[Shri P. C. Sethi]

company we will examine the set-up of the existing management and see how far they have fared, in the past two or three years and if we find that they have been lacking in management or if there is anything wrong about them, we would not hesitate to remove them. She has also suggested that the workers' representatives should be taken into confidence and be asked about the affairs of the company. I assure her that we would certainly do it.

Shastriji has said that the persons who are holding the management of this company should have an outlook of managing the public sector companies, they should not be persons who are interested to carry on the interests of the private sector. I assure him as also the entire House that we will put in such persons who believe in the public sector and who would like to do work in the public sector industriously.

With regard to the expansion of the company, I have already said that our first task would be to modernise it, and the second task would be to diversify it. And as has been suggested by Shri Mohammed Ismail, whatever patent medicines were being produced by this company based on the formulations or prescriptions given by Dr. Roy, we would certainly try our best to manufacture them in big quantities and varieties. Secondly, when we go in for further expansion of these things, we would also keep in view the suggestion given by Shastriji that some life saving drugs should also be produced in this company.

As far as the IDPL and Haldia units are concerned, I am going to Haldia on the 28th along with the Chief Minister and we hope we would be able to do something about the problems they are facing in Haldia, particularly when you are asking for a new unit there. Our old unit of Fertilizers is stranded there; we are paying wages for nothing because the power is not available.

SHRI SOMNATH CHATTERJEE: The file is lying with your Energy Minister. He is busy correcting 'Who is Who'.

SHRI P. C. SETHI: If we are assured of all the cooperation and help, we would certainly try and do our best whatever we can do for Haldia. Now, it would not be desirable as wanted by Shrimati Geeta Mukherjee that I should go there and announce something on the 28th when the House is sitting. If I do that, you will put me in the dock here. So, I do not want to do that.

I again thank the hon. Members and request that the Bill, as amended be passed.

SHRI ANANDA GOPAL MUKHOPADHYAY (Asansol): Sir, I am thankful to Shastriji for pointing out the association of Bengal Chemicals with the fight for freedom of the country. One thing has perhaps been missed, and that is the association of the greatest scientist of the day, Dr. Pratulla Chandra Roy. I would request the hon. Minister to commemorate the memory of this great scientist, who was the founder of this company and also a pioneer in the chemical industry in the whole of country. While keeping the interests of this company, I hope, the hon. Minister will take care to commemorate the memory of this great personality.

MR. CHAIRMAN: The question is: "That the Bill, as amended, be passed".

The motion was adopted.

15.40 hrs.

HIGH COURT AND SUPREME COURT JUDGES (CONDITIONS OF SERVICE) AMENDMENT BILL.

MR. CHAIRMAN: The House will now take up the High Court and Supreme Court Judges (Conditions of Service) Amendment Bill. Shri Shiv Shankar to move.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI P. SHIV SHANKAR): Mr. Chairman, Sir.

SHRI SATISH AGARWAL (Jaipur): On a point of order, Sir, under Rule 69.

MR. CHAIRMAN: Let him move the motion.

SHRI SATISH AGARWAL: After his moving the Bill, where is the question of raising my point of order?

MR. CHAIRMAN: Before putting it to vote, you can express your views.

SHRI SATISH AGARWAL: I am rising on a point of order under Rule 69. There is no question of taking an objection after it is moved.

MR. CHAIRMAN: You can express your views afterwards.

SHRI SATISH AGARWAL: Mr. Chairman, my point of order is that the Bill as presented to the House cannot be taken into consideration and he cannot be permitted to move it, because it is a mandatory provision which has been violated in this case. I draw attention to Rule 69:

"A Bill involving expenditure shall be accompanied by a financial memorandum which shall invite particular attention to the clauses involving expenditure and shall also give an estimate of the recurring and non-recurring expenditure involved in case the Bill is passed into law." In this particular Bill, no doubt, a test contained in the financial memorandum. In this particular Bill, you are going to make a certain provision to one High Court Judge. Regarding estimate, Rs. 13,500 crores has been given in this Bill. But, so far as the other expenditure, it is to be incurred from the consolidated fund of India, on account of some concessions to be made for leave allowance etc. from 45 days to 120 days. You have given some statistics that in the case of a Chief Justice, the difference will be something near about Rs. 20 for such and such month. In the case of others, the difference will be so much, six plus and minus, which

can go up. We would like to know on what basis on the past experience how much percentage of the High Court and the Supreme Court Judges are availing of this benefit of medical leave, how much additional payment you have to make on that account and how much additional expenditure this Parliament is to incur on that score, that estimated expenditure. In the financial memorandum you have not given, you have simply not given the figure. You have simply given the figure that they are being paid for 45 days. Now they will get this full salary on medical grounds for four months. I would like to know what is going to be the total expenditure, estimated expenditure, approximate expenditure, out of the Consolidated Fund of India which is to be paid to the High Court Judges, which is to be paid to the Supreme Court Judges, to the High Court Judges from the Consolidated Fund of the States? But, so far as the Supreme Court Judges are concerned, that expenditure has to be out of the Consolidated Fund of India. You are duty-bound because the provision under Rule 69 says that you shall indicate the total recurring and non-recurring expenditure. Unless this particular point is mentioned, unless this is known to the House, there is no point, because Rule 69 clearly lays down and it is a mandatory clause. Without complying with this, the Bill cannot be permitted to be moved.

SHRI MOOL CHAND DAGA (Pali): The Bill has already been moved and now it is for consideration. Therefore, the question does not arise at this time. The Bill has been moved for consideration.

SHRI SATISH AGARWAL: The Bill has not been moved as yet.

SHRI P. SHIV SHANKAR: Mr. Agarwal is very well aware that I have never practised astrology in my life and it is not possible for me exactly to say at this stage how many judges will go on leave and for how many days so that I should be able to put in a consolidated from the approximate amount. That is why I have made it out approximate taking into considera-

[Shri P. Shivshankar]

tion the days. Suppose a man takes 75 days leave, what will be the position and so on and so forth. That is approximate and that should satisfy my friend and he may now allow me to proceed.

MR. CHAIRMAN: Now you may please proceed in the light of the clarification made by you. Now, he will allow you.

SHRI SATISH AGARWAL: On the basis of the experience, the hon. Law Minister can very well tell the House, because there are more than 500 vacancies in the High Courts and the Supreme Court and you are not going to grant the leave like that. (*Interruptions*) You can say on the basis of estimate that in the past annually so many High Court judges and Supreme Court Judges were on medical leave. (*Interruptions*).

SHRI P. SHIV SHANKAR: The House is aware that with the advent of the Constitution on 26th January 1950, the salaries of the Judges of the Supreme Court and also the High Courts including that of the Chief Justice of the Supreme Court as also the Chief Justices of the High Courts had come into force in the manner provided in the Constitution. The salaries of the Supreme Court Judges including the Chief Justice and the salaries of the High Court judges including the Chief Justices are referable to Article 125 and Article 221 respectively read with Part D of the Second Schedule to the Constitution. Under Clause (2) of Article 125 every judge of the Supreme Court is entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as is determined by or under law made by Parliament from time to time. Clause 2 of Article 221 is in *para meteria* with clause (2) of Article 125 for the privileges, allowances and the rights relating to the judges of the High Courts.

In terms of the legislative power, the Parliament in terms of Clause (2) of Article 125 enacted in 1958, the

Supreme Court Judges (Conditions of Service) Act 1958, as Act 41 of 1958 to regulate certain conditions of service of the judges of the Supreme Court. Earlier thereto, the High Court Judges (Conditions of Service) Act, 1954 was brought on the anvil of statutes in 1954 as an Act to regulate certain conditions of service of the judges of the High Courts. These conditions of service *vis-a-vis* the judges of the Supreme Court as also the judges of the High Courts were modified by amendments from time to time.

The Hon'ble Members are aware that right from the ushering in of the Constitution, there was no revision in the salaries of the judges of the Supreme Court and also the High Courts. Form time to time what was sought to be provided and revised was their conditions of service *via-a-vis* certain fringe benefits.

Supreme Court Judges have been entitled without payment of rent to the use of an official residence by virtue of Section 23(1) of the Supreme Court Judges (Conditions of Service) Act 1958 and also under Act. 125 read with Part D of Second schedule of the Constitution. Likewise, the High Court Judges are entitled without payment of rent to the use of an official residence under the High Court Judges (Conditions of Service) Act, 1954. The value of rent free accommodation provided to judges is being treated as a perquisite under the Income Tax Act and they are being taxed accordingly. At the time of amendment of the Acts relating to the service conditions of judges of the Supreme Court and the High Courts in 1976, the then Chief Justice of India had suggested that the value of rent free furnished accommodation provided to judges should be free of Income Tax and also pointed out that if it was not made free of Income Tax, the proposed benefits to be given would be illusory. It was requested that this benefit be treated as a privilege and not as a perquisite. On a careful consideration, it is deemed fit that the value of rent-free accommodation provided

to the judges of the Supreme Court and the High Courts or the allowance given to the High Court judges in lieu thereof should be made free of income tax. It is with this objective that Section 23(d) is sought to be inserted as an amendment to the Supreme Court Judges (Conditions of Service) Act 1958 and section 22(d) as an amendment to the High Court Judges (Conditions of Service) Act 1954.

Judges of the Supreme Court and High Courts as on today are entitled to a leave on full allowance equal to monthly rate of pay for a period upto 45 days if such leave is availed of on medical grounds. It has been felt that this period should be extended upto a maximum of 120 days instead of the present entitlement for 45 days. It is with this objective that amendment is sought in both the Supreme Court Judges (Conditions of Service) Act 1958 and also the High Court Judges (Conditions of Service) Act 1954 by substitution as also addition in the relevant provisions.

For the purpose of calculating pension under the High Court Judges (Conditions of Service) Act 1954 and the Supreme Court Judges (Conditions of Service) Act 1958, a person who held a 'pensionable civil post' before becoming a judge of the High Court or the Supreme Court is entitled to count his service as a judge of such court as service in that post and also to a special additional pension for such service. The benefit is not available to a person who has held a 'pensionable military post' before becoming a judge of the High Court or of the Supreme Court.

SHRI SATISH AGARWAL: Only one person. You are now providing for this.

SHRI P. SHIV SHANKAR: Only one person who was appointed much earlier than we took over. It is accordingly proposed to remove this distinction and necessary amendment for that purpose is sought to be

brought by virtue of the amendment Bill in relevant provisions of both the enactments dealing with the conditions of Service of the Supreme Court judges as well as the High Court judges.

AN HON. MEMBER: Has he not retired already?

SHRI P. SHIV SHANKAR: Thus, this Bill seeks to amend the High Court Judges (Conditions of Service) Act 1954 and the Supreme Court Judges (Conditions of Service) Act 1958 to achieve the above objectives.

I beg to move*:

"That the Bill further to amend the High Court Judges (Conditions of Service) Act, 1954, and the Supreme Court Judges (Conditions of Service) Act 1958, be taken into consideration."

MR. CHAIRMAN: Motion moved:

"That the Bill further to amend the High Court Judges (Conditions of Service) Act, 1954 and the Supreme Court Judges (Conditions of Service) Act, 1958, be taken into consideration."

SHRI SATISH AGARWAL: Section 22(d) is being added which gives retrospective effect from 1975 and which says that rent shall not be computed for income-tax purposes.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS AND DEPARTMENT OF PARLIAMENTARY AFFAIRS (SHRI P. VENKATASUBBIAH): It is a novel method.

SHRI SATISH AGARWAL: I want a clarification from the hon. Minister so that the debate is purposeful. Otherwise, I will exercise my right to vote and say so many things. We are lawyers and we can speak for hours without a point. Mr. Shiv Shankar knows it well.

The clarification I want is this. Clause 5 seeks to make an amendment which will have retrospective effect from 1975, and it says that they are entitled to rent-free accommodation

*Moved with the recommendation of the President.

[Shri Satish Agarwal]

and no income-tax will be paid on that. Is it that the none of the income-tax returns of the High Court and the Supreme Court Judges have been finalised and no tax has been levied on them? Is it the position that for five years they have not been assessed to income-tax. If they have been assessed to income-tax, are you going to reopen the assessments? There is no provision for refund in the Bill.

SHRI P. SHIV SHANKAR. I am aware that my hon. friend has better knowledge about assessment because he was the Minister concerned for three years from 1977 to 1979. I may bring to the notice of the House that this amendment was brought into force from 1-10-1974 and we did a little exercise as to what benefit we are going to give to them if we are going to give retrospective effect from 1-10-1974. It is a small benefit, not more than two and half or three lakhs of Rupees for the whole country. We thought that this benefit should be provided to them from 1-10-1974, because the idea behind, when the amendment was moved in 1976 itself, was that it should not be taxed. It was a small benefit. Now, if I am aware Sir, in many cases unfortunately, perhaps Mr. Agarwal is much better aware of the many a Judge has preferred the appeals, some are also pending in the High Court. We do not want to create a situation. These matters should be heard and decisions either way could be taken. We would like that the benefit should be provided from 1-10-1974 and if at all, in the case of any person if the assessment has already been completed, necessarily, they would be given that part of the money, having regard to the fact that the law is retrospective, because it would be deemed that there was no law on such date for the purpose of assessment and necessarily the refund will have to be given. That is the position.

MR. CHAIRMAN: Thank you very much. Mr. Somnath Chatterjee.

SHRI SOMNATH CHATTERJEE: (Jadavpur): Sir, by this bill some small relief is being intended to be provided to the Judges of the Supreme Court and the High Courts and we do not have any objection to granting this relief and to the objects of the Bill, unless of course the Government intends to recruit henceforward Judges from the military for manning the highest courts in this Country and the States. But Sir, what we object to is the method of piecemeal legislation on important matters like the salaries of Judges. Sir, in matters like this I believe that the Government should not, as it has become its habit, rely on *ad hocism*. When a problem comes up if you tackle it piecemeal, in an *ad hoc* manner, the overall problem still remains. Sir, what we want is—and it is essential—that in matters like this after due deliberation and consultation with the concerned people, comprehensive legislative measures should be brought having in built provisions for adjustment taking into account the rise in the cost of living—thanks to their economic policy. Sir, we know that this is the only service where the emoluments have gone down since the days of Independence, and probably that had prompted my Hon. friend to come out of his job as soon as he got an opportunity. Now this is almost a vicious circle. We don't get good people unless we offer them good emoluments and we also don't have a good judiciary unless we get good people. This is the vicious circle we have. People in various spheres of life in our country may wonder—where there is abysmal poverty and more and more people are going down the poverty line—as to why the Judges should get Rs. 3,500 or Rs. 4,000. But, Sir, we don't want famished Judges. Sir, we ought to have at least in the higher judicial service—I advocate for all, the whole judiciary upto the lowest subordinate courts—judges with proper emoluments and proper terms and conditions of service.

MR. CHAIRMAN: For the advocates also? You can advocate for the advocates also?

SHRI SOMNATH CHATTERJEE:
 Advocates Sir? We have to earn by our own merit. I earn a lot in spite of the Government or sometimes with the help of the Government, because of the wonderful orders they pass. Sir, the position is that there is a feeling in the country that there is too much of a difference between the salaries of the Judges and the salaries of other people, especially when more and more people are going below the poverty line.

16.00 hrs.

But in the context of the set-up that we have in this country, the role of the judiciary has to be acknowledged. We have no illusion that we cannot remove poverty from this country nor can we usher in a welfare society only through the help of the judiciary. There are many deficiencies and weaknesses in our judicial system. But what we feel is that we must have a strong and independent judiciary because in the context of authoritarian and draconian laws in this country having a field day, judiciary apart from the peoples' movement, according to us, provides a bastion against such attacks. That is why, we want an independent and fearless judiciary to meet the challenges of an executive which is always seeking to get more and more power—draconian power for that matter. We have no doubt that in the days to come when incompetence, the inefficiency and the mal-functioning of this Government are more and more exposed, there will be greater and greater risk of more and more draconian and dictatorial powers being arrogated by this executive; otherwise, they cannot govern. That is why, within a few months of the coming into power of this Government we have found that black laws have been enacted completely subverting the very basis of the constitutional set-up. In this country, the role of the law is being thrown to the winds. What we find today is that the people are again being made targets of authoritarian powers and laws. In such cases, the people will be forced

to take recourse to the judiciary to meet the challenges of the executive. That is why, we have seen the other day one of our esteemed colleagues here, was arrested under this infamous black Ordinance. He had had to go to the Supreme Court. When he went to the Supreme Court, his release order was made. But he has taken up the challenge before the Supreme Court and now, he has filed a petition. I hope, he succeeds against this black Ordinance. Therefore, although we have no illusion, we cannot afford in this country a weak judiciary or a judiciary which is not able to withstand the other influences which may be brought to bear upon them. For the sake of the people, for the sake of preserving their minimal rights in this country, it cannot but be accepted that we want a free, independent and fearless judiciary. We have seen and it has been not in the too distant past, how the voices of the people were muted by various types of laws and how attempts were made to make the judiciary subservient with expectation of commitment. We heard about committed judges—commitment not to the rule of law but to one individual and one party. We have seen that whenever one party comes to power, there is not only erosion of the peoples' rights but there are always serious dangers of the people losing more and more of their rights. What we have noticed is that a calculated attempt is always made to mount up a sustained attack on the judiciary. What are the methodologies adopted? We have seen recently—I may not be misunderstood—the tantrums by lilliputians by staging a command performance in the guise of the so-called lawyers, inference. The Constitution of this country had been framed under the leadership of persons like Pandit Jawaharlal Nehru. We have many reservations about the present Constitution. When the occasion comes to discuss about the merits or demerits, we hope to get that opportunity in this House to make our submissions, but what we find is that an attempt is being made to denigrate the judiciary, to mount an attack on the judi-

[Shri Somnath Chatterjee]

ciary by people who have overnight become eminent lawyers, people whose names were not heard at all in the past. They are now advocating how this judiciary has to be curbed, how the constitutional set up has to be changed, and for what objective? To teach the opposition a lesson. They are saying "these people are going beyond control, this judiciary is standing in the way of progress, therefore, curtail their power". But when the question is asked point out one instance where the judgment has gone wrong, except for your own defective laws, we do not find any example.

Well, I am not holding any brief for the judiciary, which is not attuned to the urges and aspirations of the people of this country. The people have been at the receiving end for too long; they had great hopes and expectations, which have been belied for 33 years in this country . . . (Interruptions) Unfortunately, it has been in your hands, in the hands of people like you

You are always in the look out for scape goats. What we object is, to explain away your deficit, deficiencies and mal-functioning, you are always searching for scape goats—the opposition, foreign agencies, judiciary bureaucracy and so on and so forth. But you do not search your own heart, you do not try to find out why this country is in this morass today, which provision of the Constitution is standing in your way.

You have amended the Constitution so many times. Until you were thrown out, for 42 times the Constitution was amended under the Congress Party regime. It was under the guiding spirit of Pandit Jawaharlal Nehru that this Constitution was framed and there were giants to help him. If you now find that a particular provision of the Constitution is standing in your way, you could change it. But you

have amended the Constitution for the purpose of providing immunity, even for criminal action, to the Prime Minister of the country; you amended the Constitution for the purpose of absolving all electoral offences of one individual in this country. What sort of people could have voted for such a measure? Were the provisions of the Constitution standing in the way of achieving a welfare State in this country? How long would you dance for the purpose of one individual, however great or important he or she may be? Therefore, do not find out scape goats. Your economic policy is there, your subservience to the monopolists of this country and giving them sustenance, the multi-nationals are flourishing in this country, there are more and more monopolists in the country in the sense they are bigger now with larger financial resources though lesser in number, there are more and more people below the poverty line, more and more unemployment, more and more uneducated people. Even after 33 years of independence, do you not feel ashamed that there are crores of people who are totally illiterate? Do you not feel ashamed that you have not been able to provide drinking water to the villages? Which provision of the Constitution has stood in your way?

I am supporting this Bill by which some improvement is being made in the conditions of service of the learned Judges. I know some unfortunate appointments are made but, by and large, let us hope the dark clouds which had engulfed the judiciary during the black days of the emergency are finally removed. We have to have a throbbing, Supreme Court, a resonant Supreme Court, which is attuned to the urges and aspirations of the people. As the Chief Justice the other day mentioned, where is the scope for confrontation with the executive? Suppose you pass a law, like the National Security Ordinance, and let us hope the Supreme Court strikes it down, will it be against the ethos of this Constitution? Will it be

a judgment against the people of this country? Will it be a judgment against an egalitarian society and Welfare State will it be constructive to the fundamental rights of the people? Will you then call the judges as subserving the vested interests if they strike down the National Security Ordinance?

The other day, the Supreme Court allowed the appeal on the writ petition which I had argued for the LIC employees. They have approved the demand for payment of bonus which was taken away by an executive fiat. Now, the Supreme Court has allowed it and this is your respect for the Constitution. Although the Supreme Court has delivered the Judgment 10 days back, not a single pie is being paid and the Chairman of the LIC said that 'as the Finance Ministry from Delhi has asked us not to pay, we won't carry out the Supreme Court order.' This is the way you are showing respect to the Constitution and the Supreme Court Judgment. I am sure, and I hope by this small pittance the Judges will not sell themselves. I have that much of faith in the Judges. But it is good. Whatever little good you are doing we are supporting it. We have supported the previous Bill strongly and wholeheartedly when you are nationalising an important concern in this country which has become sick due to mismanagement. We have supported it wholeheartedly. We are supporting you on this Bill. Now, you choose. Opposition sometimes, judiciary sometimes, bureaucracy sometimes, Constitution sometimes, but you never find any fault with you. My respectful submission to this venerable gentleman for whom I have a very high regard, personal regard, is: Don't be carried away by these emotions. I do not know if he was a free man and whether left to himself he would have mooted so many bizarre proposals that we are now finding. Transfer of 1/3rd Judges, transfer of Chief Justices in this country is there a functioning Government?

is anything working in this country? Can you imagine that for this country, the whole of India with 66 crores of people, out of a strength of 18 Judges in the Supreme Court there are vacancies of 8 Judges? Six Judges' vacancies are already there and in January next there will be another vacancy. Three court rooms of Supreme Court are lying locked up because there are no Judges and there is an alarming increase in arrears. Everybody knows this. Questions have been put on this. My hon. friend, the Law Minister is answering them, admitting those mounting arrears. Now, the State Governments cannot be blamed. So far as High Courts are concerned, I know the usual plea is: 'The State Chief Justice is not doing this and that etc., etc., what can we do?' But as far as the Supreme Court appointments are concerned, the State Governments have nothing to do. The Chief Justice of a State High Court has nothing to do with it. It is for the Central Government and the Chief Justice of India.

Sir, the date of retirement of a Judge is known. This is not correcting a 'Who is Who' where nobody knows what is going to happen. The date of retirement of a Judge is known from the date of his appointment. Therefore, there is nothing cropping up suddenly. These are not vacancies due to sudden deaths. These are vacancies due to superannuation. Why can't the process of consultation start? Why can't the appointments be made? Supposing the Chief Justice of India and the hon. Law Minister cannot agree and the Prime Minister cannot agree on certain appointments, the Supreme Court will be denuded of Judges ultimately and there will be no Judges. The Law Minister knows it and he owes an explanation to the country as to why there are no appointments made in the vacancies in the Supreme Court which are there for some time. I do not know. So far as High Courts are concerned, nearly 70 vacancies are there—you will correct me, probably

[Shri Somnath Chatterjee]

64 or 65. When there is a demand for increase in the strength of Judges in the different High Courts, even the original quota is not filled.

Sir, the High Courts are blamed in many cases. High Courts are to be blamed, we lawyers are to be blamed, the Civil Procedure has to be blamed. The procedure that has been there in this country also adds to the accumulation of arrears. All practising lawyers know that. Nobody is absolved of responsibility in that. But how do you solve it? By keeping vacancies in the strength of Judges, the number of Judges? My friend will say that the Janata Government did not do anything. But, with the anniversary of the Congress Party coming to power nearing, reliance on the Janata Governments inefficiency should reduce. One year is sufficient time at least for the appointment of Judges.

Let us assume that the Janata Government failed abjectly, totally failed. Where is your activity? You have been in power for ten months and six days, if my arithmetic is correct. A child can be born in ten months, and you cannot find out a Judge? This is the position in this country. What is the explanation?

SHRI JANARDHANA POOJARY (Mangalore): He is going outside the Bill and raising so many points which are not relevant.

SHRI MOOL CHAND DAGA: It is not within the scope of the Bill. The Bill has got limited scope.

SHRI R. K. MHALGI (Thane): This is the first reading.

SHRI MOOL CHAND DAGA: He has raised a valid point that it is not within the scope of the Bill.

SHRI RATANSINH RAJDA (Bombay South): He is entitled to say that it is a still-born Government.

SHRI SOMNATH CHATTERJEE:

So long as the present system of government and the constitutional set-up continue in this country, it has to work, however imperfect it may be. Some people may have dreams of changing it, but as long as they do not succeed in realising their dreams, this system has to work. But if you bring about a situation which shows that the entire edifice is crumbling down, how are you going to solve these pressing problems in this country? The whole edifice seems to be crumbling down. No. Judges; the Supreme Court Judges are not there.

We have been hearing so many time, we are sick of it, about legal assistance to the poor. There was one committee over which another committee sits, over which yet another committee sits. How many committees have been set up by the Government I do not know. Krishna Iyer, Bhagwati, Bhagwati and Krishna Iyer, separately and jointly, I lose track of the permutations and combinations in the membership of these committees. When I was in the Consultative Committee I raised this question. Their answer was: it is being studied. Sometimes it was under consideration, at others it was under active consideration. Now that Mr. Stephen is a Minister now, he knows what the differences are. Our Vice-President has given certain meanings of these terms. Therefore, the position today is that there is almost a non-functioning state of affairs.

This failure to fill up the vacancies can be due to either of two reasons. Either it is motivated, i.e., they cannot find people to their complete satisfaction, or it is due to their utter incompetence bordering on abdication of their minimum responsibilities to the people of this country in fulfilling their constitutional obligations. If it is motivated and they want to find out people of their liking, who will decide who is to their liking? We have heard the phrase "committed Judges". What is that commitment, please tell us. Who finds out the commitment of the Judge? If a practising lawyer is

sought to be brought in, or a person from the judicial services is promoted to the High Court, or an appointment is made to the Supreme Court, what are the commitments that should be there? We heard about it earlier also. Is it due to their failure to find out committed Judges that these vacancies are there, that they cannot deal with the problem of arrears, that they cannot provide a scheme of legal aid to the poor.

Who is going to decide as to who is a committed judge? The other day, the Prime Minister of India made a charge against the West Bengal Government that it is putting committed judges, they are interfering and they have got committed judges in the High Court. I do not know who briefed her. The State Government does not appoint a judge. During the time of the present Left Front Government, the two appointments were made but their names had been approved earlier than the Left Front Government had been installed. The process of appointment was gone through even before the Left Front Government was there. With regard to this, this is a charge made by the Prime Minister of India.

What is happening in this Ministry I do not know. I had great hopes. Still, I hope that he will rectify himself, he will energise himself and he will get out of the groove. I think, his hands are tied down too much. We have seen him in the past; we have seen him initially. We had great hopes in him. I am not saying this for the sake of speaking in front of him. We had hopes because when we have to tolerate this Government, let us have some good people. But when we find that there is a complete standstill, we cannot help bringing this to the notice of this highest forum in this country. Therefore, my submission before the august House is this, let these very important matters be dealt with.

Please do not bring out theories like this, namely, transfer of judges whole-

sale or one-third. Six Chief Justices in this country are Acting Chief Justices. What will be the morale. What will be his position? They are Acting Chief Justices. This proposal of transfer of Chief Justices, this tendentious proposal, is acting against maintenance of a proper morale. After all they are also human beings. They had the taste of ruthlessness during the Emergency. How many judges were transferred? Now, the Supreme Court has said that without their consent, they should not be transferred. The Government treats the Supreme Court judges or the High Court judges as ordinary employees. Even ordinary employees ought to have their rights regarding transferr. They cannot be arbitrarily transferred. There is no proposal, no method to find out on what considerations they are going to be transferred. Is it with the objective of national integration? Are they going to take the consent of the State Governments concerned, as if they have nothing to say?

While we support the Bill, my request is that there are various important matters which require immediate attention. Otherwise, in this country even the imperfect judicial system is coming to a grinding halt. Please do not preside over the liquidation of whatever judicial system we have in this country. We will give our support. But be a free man yourself and do it. Thank you.

SHRI H. K. L. BHAGAT (East Delhi): Mr. Chairman, Sir, I have very great respect for the hon. Member, Shri Somnath Chatterjee. I heard him with respect and rapt attention. It does not give me pleasure today to say this that I did not expect this from him. At least they profess to be a progressive party. He spoke as a spokesman of that party. I expected from him that when he was traversing beyond the limited scope of the Bill that he would put the situation in the country in a proper perspective with regard to justice and judicial system.

I am sorry to say that after hearing him, I have come to this painful conclu-

[Shri H. K. L. Bhagat]

sion that he has acted like a status quoist. If you take the burden of his whole speech he thinks, well, the only place where the whole thing can be managed to his satisfaction is judiciary, the courts and so on and so forth; somebody is attacking them; the Government is attacking them and, therefore, they can get the support from there. That is where he began his speech and that is where he ended his speech. It was very amusing for me to hear from him. Do not be carried away by emotions'. Well, Sir, we thought we were elected to Parliament always on the basis of certain ideas, certain ideologies and certain thoughts for the people which were based on emotions. Emotions play a very important part in the life of a nation, in the life of a Party. I would say that Mr. Somnath Chatterjee spoke like an emotionless person. Now, after all, what is the true perspective today? I have very great respect for the Judges; I mean no disrespect to them. My Party and I stand for a free and independent Judiciary, certainly, and we have done nothing to denigrate the Judiciary; I wish to say that. Now, making general allegations like that is meaningless. My friend said 'You did this; you did that; you passed the Constitution Bill; you did that' etc. All these issues were settled by whom? It was not by you and me; they were settled by the people of India in the 1980 Elections. All these issues which he raised.. (Interruptions).

They settled all these issues which my friend was talking about. He went on talking during the Elections, he went on talking after we lost the Elections; all these issues were settled by the people of India who are sovereign.

Now, for example, my friend was trying to give an impression that they stand for Parliamentary democracy and we are opposed to it, that we are going to destroy the system

and they are the defenders of Parliamentary democracy. Mr. Somnath Chatterjee's Party is working—somewhat working—under the leadership of Shri Charan Singh: they have made some kind of a joint front. Shri Charan Singh, almost immediately after they were defeated in the Lok Sabha Elections, said that Parliament has become irrelevant. Now, leaders of the Opposition Parties who call Parliament irrelevant come forward today and say 'we stand for Parliamentary democracy'!

Now, lawyers held a Conference in Delhi. He said it was a command performance, that they are unknown people and not known people. My friend talks of democracy, professes to have faith in democracy, but lawyers who are opposed to their views have no right to call a conference and the Prime Minister has no right to go there! In this country, tremendous problems are there, and you shut your eyes! I do not want any confrontation between the Parliament and the Judiciary. I do not want it; nor does the Government want it. But the basic fact remains that in India the question before us in Parliament and the question before the people of India is whether the Directive Principles of state Policy enshrined in the Constitution will have precedence or not. That is the question and, on that, many things depend. He said he could cite judgments. I can cite scores of judgements where social justice has been stalled. Now, sometimes there is a conflict between social justice, technical justice and judicial justice. They might be right in their own way to give the judgements they give, but the net effect of it is that social justice is stalled. Have we to help the people of India or not? I want to ask Shri Charan Singh whether the people of India are satisfied today with the justice they were giving. I am not blaming the Judiciary alone: it is the system. Are

we giving them quick justice? Are we giving them timely justice? Is this not an issue? I expected him to raise this vital question and say that something radical must be done to improve the system. There is no use sleeping over it. You are a lawyer; I am also a lawyer. We use precedents; we are *status quo* minded. When we argue a case in 1980 we talk of judgments in 1925, we talk of judgments in 1940. We are, in approach *status quo* minded; we go into precedents. I thought Mr. Chatterjee would say 'Let us start a new precedent, create a new precedent: The judicial system must be completely overhanded; its procedure must be simplified; there must be changes'. I personally believe that the present system of the Judiciary or the judicial system needs drastic changes, whereby quicker justice is given. I believe in association with representatives of the people while deciding a case. I am for it, strongly for it. My friend has shut his eyes and said: "Wel, Mr. Shiv Shanker, a child is born in ten months, but you have not been able to appoint for delievery this appointment of judge." I would say, 'Mr. Shiv Shanker, quickly produce these appointments, but do not indulge in and abortion which the West Bengal Government has done'. I refer to the mess you have made in West Bengal, the misrule, the situation of choas and anarchy that you have created there. And you talk of the rule of law! You have no face... (Interruptions).

SHRI SATYASADHAN CHAKRABORTY (Calcutta South): Do not attack the State Government.

SHRI H. K. L. BHAGAT: I will.

SHRI SATYASADHAN CHAKRABORTY: You cannot. Then you must substantiate it. (Interruptions) Mr. Chairman, he is attacking a State Government without substantiating it. Has he any right to do it?

MR. CHAIRMAN: When I think that he is going beyond the scope of

the discussion, I will prevent him. Now let him continue.

SHRI H. K. L. BHAGAT: I am only commenting on what hon. Shri Somnath Chatterjee has said. He said, "Look, these lawyers these small fries, get together and they want to tell the Opposition as to what they should do"...

MR. CHAIRMAN: As lawyers, you must be friends.

SHRI H. K. L. BHAGAT: I would only say this. He may have developed a big name today. I may have developed a little name today. But my friend must remember that this is democracy; people who are not known today become known tomorrow: people who work today become leaders of tomorrow. Why should these lawyers not discuss this question of the role of the Opposition? He was asking, "Are they going to teach us?" Yes, you need to be taught. You are indulging in the worst kind of political duplicity at this time. On the one hand you are telling the farmers in India, "Look do not take the foodgrains to the Government; do not give the foodgrains to the Government; ask for a higher price". You should know that our Government, our Party, has been much more sympathetic to the farmers, did much more for the farmers, than what the Lok Dal and the Janata Government did and whom you had supported. On the one hand you tell them, "Look, do not take the foodgrains to the Government" and on the other hand you tell the city people—there are posters from BJP and others—"Look, this Government is not giving you foodgrains; they will raise the prices". You ask the farmers to ask for a higher price and at the same time you ask the consumers to agitate. You say one thing to the farmers and other thing to the consumers. This was what you did in 1971 when you were defeated and this is what you are doing now also. You are trying to sabotage the hole procurement scheme the whole distribution system. You say that this is a Government

[Shri H. K. L. Bhagat]

which is not functioning. What are you doing? The people of India need to teach you. They taught you a lesson. Still they need to quit you. What do we see here? We see a totally desperate and a disparate Opposition today, not reconciled to the defeat, even after their defeat, and trying to create more and more difficulties for the Government. (Interruptions). Now, what I say is this. This is where the people of India, the lawyers including, have a right to tell you how the Opposition should be have. They were within their rights to do so and the Prime Minister was right in going there and addressing them. Have we not to think as to what is to happen to this country, where are the difficulties, what are the difficulties and what are we to do? Are we to go on the dotted lines? My respectful submission to the Government is this: you have got a verdict for changing the conditions in the country; act bravely, act courageously; do not vacillate; act with courage and in time otherwise, time will overtake you. People will not hear any alibi, they will not hear excuses from you—"Well we did not do that because they did not want it or these people did not want it".

Therefore, my submission in regard to the judicial system also is that the Government must think radically, must come forward with radical measures. I am in agreement with him there. He says that Government have brought forward a piecemeal thing and adds, at the same time, that it is a good thing. What is wrong in bringing forward even a piecemeal thing which is good? My submission is this. I would demand of this Government that they should appoint a Judicial Reforms Commission—not the usual type which goes on recording statements after statements for years together and ultimately produces a report which remains locked up for years.

Appoint a Judicial Reforms Commission which does not have the

people of status quo mind. A small period should be fixed for this Judicial Reforms Commission to come out with basic things. There is no conflict on the principle. The fundamental rights will prevail. There the conflict is still there. He knows it. The whole country knows it.

Therefore, my submission, with all respect, is this that the scope of this Bill is very limited. It is very unfortunate that instead of cooperating, he says that the Government is non-existent. I say you are no alternative. My friend says that the instrument has failed. Why are you not responding? My friend knows that you were then there but you were found wanting. We are here because you were found wanting when you were here. That is how we are here. Now you say we are useless. I say you were proved useless. Do you want someone from outside? Mr. Chatterjee would like someone to be imported; he may have some imported ideas, certain men in his mind. But the Indian people know it well. There are tremendous difficulties that they are facing. I say the difficulties created and the developments in the country were because of three years' grave misrule of the Janata Government. I agree with them that for long we cannot go on giving these alibis. Therefore, we have got to correct these things. This Government has to conquer them. This Government under Mrs. Gandhi's leadership can conquer them with determination and tact. Prophet of doom may have said many things many times. I have said both inside and outside that the country would march forward under Mrs. Gandhi's leadership. That had proved correct.

With these words, I support this Bill.

MR. CHAIRMAN: Mr. Bhagat, you forgot to thank Mr. Chatterjee. All was said and done. He assured you of his support as also his party's support. But you forgot to thank him.

SHRI H. K. L. BHAGAT: I very warmly thank him.

MR. CHAIRMAN: Mr. Mayathevar.

SHRI K. MAYATHEVAR (Dindigul): Mr. Chairman, Sir, I welcome this Bill on behalf of my party. My learned friend, Shri Chatterjee mentioned that this is a piecemeal bill. I say we can come to certain conclusions even though it is a piecemeal bill. Something is better than nothing. So you will have to be satisfied with this.

We expected more from the Government and from the Law Minister. In this Bill, the hon. Law Minister was kind enough to provide certain more facilities by way of giving exemption from the assessment of income-tax on the House rent allowances alone. Underline the word 'alone'. I expected more from this hon. Minister because the hon. Minister was contacted many high court judges and so he knows fully well about the difficulties of the judges. This is according to our own personal knowledge. He knows what they have in their minds.

Although I welcome this Bill giving the exemption for the house rent allowance, he should have given exemption for their car allowance also. You are giving them a car allowance of Rs. 300 per mensem for high court and supreme court judge. Can you imagine or dream that Rs. 300 is sufficient and adequate for a judge of the high court or the supreme court to use the cars for the official purposes? I am having bitter experience with the present state of affairs. There is a hike in petrol and diesel. I am here concerned with petrol price which has been raised. We expect to spend more on this. In my constituency I spend Rs. 250 per day for 25 litres of petrol for one Ambassador Car. The petrol cost is sufficient for one or two days. The allowance which you are paying covers one or two days' petrol for the cars of the judges of the high court or the supreme court. I request the Law Minister to raise the allowance for the car upto Rs. 750 per mensem for the judges. I am sure the

Finance Minister who is here is kind enough to agree to this because he has also applied his mind judiciously. I hope he would agree to this after hearing our voices here and in consultation with the Law Minister. That is why he is very much present here.

Therefore, the car allowance should be raised to Rs. 750 from Rs. 300. Regarding salaries, as several learned friends have said, that after independence, the salary of the High court judges was reduced from Rs. 4,000 to Rs. 3,500 per mensem it seems. I am subject to correction. I am told they were receiving Rs. 4,000 per mensem prior to 1950 and after the institution of our Constitution of India that salary was reduced to Rs. 3,500. This is not advisable nor welcomed by anyone in this House.

With the present cost of living the present quantum of salary paid to High Court judges is not sufficient. I would like to request the Government to bring forward a more comprehensive Bill covering all these points which may satisfy adequately the judges of both High Courts and Supreme Court.

Sir, as has been told to me, there has not been any change in the salary of these judges for the last 120 years. Although amendments were made in 1954, 1958 and 1976 yet these amendments did not touch even an iota of increasing the basic salary of High Court and Supreme Court judges. When we want an independent judiciary and also the judges to be above politics, suspicion and corruption then we should provide all the amenities to them satisfactorily. Therefore, I would request both the Law Minister and the Finance Minister who are sitting here to apply their judicial mind and consider favourably raising their salaries to a great extent.

Sir, today eminent lawyers are not coming forward to accept the post of High Court judge because the salary is not adequate and sufficient. To attract eminent lawyer to these posts we must enhance the salary.

[Shri K. Mayathevar]

Sir, in Madras High Court out of twenty-five judges as many as four vacancies are lying unfilled. I will request the Law Minister to fill up these vacancies as early as possible.

SHRI P. SHIV SHANKAR: Till recently the Chief Justice said that is not necessary to fill them up.

SHRI K. MAYATHVAR: I want that these vacancies in the Madras High Court be filled up.

MR. CHAIRMAN: Do you want to go against the Chief Justice's advice?

SHRI K. MAYATHEVAR: Sir, I am not at all going against the advice of anybody. I will be within that ambit, I will be within the four corners of the advice of the learned people in this country. Delay defeats justice, as we all know only too well. We want appointment of more judges in the High Court and the Supreme Court. I am myself a lawyer. The Law Minister also knows the position very well. He is having lot of experience in this profession. Thousands and thousands of cases are pending, especially civil cases; appeals and revisions cases are pending and they run into many thousands, 40,000, 50,000 etc. in the Appellate side in the High Court and in the Supreme Court. This is the case not only in the Madras High Court, but this is the case in various other High Courts in the other States of the country. There is need for having more judges so that these cases can be disposed of quickly and justice could be rendered to the litigants at the earliest possible time. Justice delayed is justice denied and litigants should be rendered justice at the earliest possible time. So, I recommend for the appointment of more judges.

You are having the Supreme Court only in Delhi and people have to come all the way to Delhi and the Supreme Court is always crowded. I want you to open a branch or a bench of the Supreme Court in Madras to cater to the Southern States. The common

man should not be put to the trouble of going to the Supreme Court at Delhi alone. So, the hon. Minister should take steps to open a bench or a division of the Supreme Court at Madras or at any other place in the Southern Region, for the convenience of the people of the Southern Region of the country. We should have such bench of the Supreme Court in the South for the convenience of the people of the South. This is my earnest request to the hon. Minister and I trust he will agree to my suggestion.

Regarding my own district, I would say this: We are having high courts only in the capital towns and cities of the various States. In Tamilnadu, the people have unanimously demanded for the setting up of a division of the High Court at Madurai. Our hon. Finance Minister knows about this demand of the people very well. Our hon. Law Minister can get guidelines from the hon. Finance Minister. There was this unanimous demand for the setting up of a Bench of the High Court at Madurai. This demand of the people has not been acceded to and this demand has been pending for a long time. I request him to look into the matter.

Then, in Madras, out of 25 judges, 24 judges have got no official residence. It does not mean that they live in their own houses. That is not so. Many judges whom I contacted yesterday and day-before-yesterday tell me that they are living in rented houses. They are coming from ordinary, farmers' families and middle-class families. It is the Ministers who are encroaching all these houses. The State Government Ministers go and occupy all these Government residential houses. Do you think the State Ministers are better people and more honest people than these high court judges? I request him to provide Government residential accommodation for all the 25 High Court Judges to help their families and the future of their children. I am not against any community or any religion or any

religion or any political party. What I feel in the bottom of my heart and the wish of the people of Tamil Nadu also is that the vacancies in the posts of High Court Judges in Madras be filled from the Scheduled Caste and Scheduled Tribes and backward classes. At the time of the D.M.K. regime and also Congress-I regime in Tamil Nadu, appointment to the posts of High Court Judges were made from Scheduled Castes and Scheduled Tribes and also Backward Classes. But for the last 3½ years or so, we have not come across any appointment being made from the Scheduled Castes and Scheduled Tribes and Backward Classes. We earnestly appeal and plead to the Law Minister as also the Finance Minister to consider my request. At present, there are some vacancies existing for the posts of High Court Judges in Madras High Court. Please consider appointment of 3 or 4 judges from the Scheduled Caste and Scheduled Tribes and one or two from the backward classes. In this connection, I may submit that people who are backward should not be allowed to remain backward for ever. Otherwise this will create an awkward position in the days to come. You still have to protect them by giving encouragement and uplift them from their down-trodden condition. Our Hon'ble Prime Minister, while addressing the Seminar recently, had correctly state that the rule of law should be close to the rule of life.

Sir, all this time I was pleading for the High Court Judges and for their benefit and welfare. Now, I would like to appeal to the Supreme Court and High Court Judges, on behalf of common man in the street, that they should not attach more importance to the legality of every case when there is dispute over Part-III and Part-IV of the Constitution. Part-III deals with the Fundamental Rights and Part-IV deals with the Directive Principles of State Policy. When there is a clash between these two Chapters, all the judges should attach greater importance to the wel-

fare of the people, that is, Part-IV should be given precedence over Part-III because welfare of the poor people who constitute a majority should be the primary concern of everyone of us.

Sir, we are wedded to socialism. Some hon. Members had expressed that the Government was for a committed judiciary. I have no allegations against the present Government. In this country nobody else except Srimati Indira Gandhi would be able to protect the poor people. (*Interruptions*) That is why you were thrown out in the 1980 election. You could not continue for more than 2½ years. Within your party, there was dissension and your party was fragmented. Your party broke of its own. You are now divided so much that in future elections also, you have no prospects because there is no unanimity in your own party and you have no unity amongst yourselves. You cut your own throats. The impact of the downfall of your party is so much that it could be compared to that of a mud pot going to pieces when it falls on the ground. Therefore, please do not talk about the socialism, democratic socialism and national democracy. With these words, I welcome this Bill.

SHRI XAVIER ARAKAL (Ernakulam): Mr. Chairman, Sir, I rise to support this Bill. As a matter of fact, this Bill aims to amend the two earlier Acts, one Act of 1954 and two Act of 1958. With one amending Bill, it is seeking to amend these two Acts. This Bill proposes three things. One, the High Court and Supreme Court judges may be allowed full salary (equal to monthly rate of pay) for the first 120 days of leave on full allowances, if such leave is availed on medical grounds; two, the value of rent-free residence provided to High Court and Supreme Court Judges should be exempted from income-tax and three, distinction between persons who have held pensionable civil posts and pensionable military posts

[Shri Xavier Arakal]

before appointment as judges should be removed. Now, these are the three points involved in this amendment. But, Sir, the first Speaker on this Bill has taken us quite far off. I was really surprised to hear a Marxist member speaking for and on behalf of the High Court and Supreme Court judges and demanding higher and higher pay and more facilities. This is the ideology of my hon. Friend. I was really surprised to hear this..... (Interruptions). That was really a surprising event in this discussion, but I am not going to take on that point further.

16.56 hrs.

[MR. DEPUTY-SPEAKER in the Chair]

As I said, this is a Bill which has got three objects. Now, in our country, in our system two types of people always get more benefit than others. One is the organised militant unions, or labour force and the other class which always gets the benefit is the rich and the affluent. How many of us honestly think about poor and those who are below poverty line? How many of us honestly say that the Supreme Court and High Courts cater to the needs of the masses? That is why, we say that judiciary should not be static; it should always be changing according to the times.

The proviso to clause 3, chapter II says:

"Provided that where leave on full allowances is granted to a Judge on medical certificate the monthly rate of leave allowances shall, for the first one hundred and twenty days of such leave, be a rate equal to the monthly rate of his salary."

Now, what happens if he falls sick for a continuous period? Section 9 of the 1954 Act, as mentioned in the Annexure to the Bill says:

"The monthly rate of leave allowance payable to a Judge while on leave on full allowances shall be

for the first forty-five days of such leave a rate equal to the monthly rate of his salary, and thereafter two thousand two hundred and twenty rupees."

Will he now be able to get that benefit? My submission is....

MR. DEPUTY-SPEAKER: You may continue after the Assam budget is presented.

17.00 hrs.

ASSAM BUDGET, 1980-81

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI SAWAI SINGH SISODIA): I beg to present a statement of estimated receipts and expenditure of the State of Assam for the year, 1980-81.

Statement

BUDGET OF THE GOVERNMENT OF ASSAM FOR 1980-81

Sir, I lay on the Table of the House the regular Budget of the State of Assam for the financial year 1980-81.

2. The interim Budget of the State of Assam for the current year was presented to Parliament on the 14th March, 1980 and on that basis the House had granted supply for the first 4 months of the year (April to July, 1980). Later, a second Vote on Account for a further period of 4 months (August to November, 1980) was obtained to June, 1980. Though the term of the President's Rule in the State is expiring after about 3 weeks, the regular Budget for the current year is being presented in Parliament to keep the State Government in funds beyond November, 1980.

3. The revenue receipts are estimated at Rs. 298.73 crores as against Rs. 303.73 crores in the interim Budget. The estimates now presented show a deterioration of Rs. 27.87 crores in State's tax revenues and Rs. 17.19 crores in non-tax revenues but these are substantially offset by