

NOES

Akkamma Devi, Shrimati
 Alva, Shri Joachim
 Anjanappa, Shri
 Babunath Singh, Shri
 Balmiki, Shri
 Basappa, Shri
 Basumatari, Shri
 Baswant, Shri
 Bhanja Deo, Shri L. N.
 Bhatkar, Shri
 Bist, Shri J. B. S.
 Brij Rai Singh, Shri
 Chandrasekar, Shrimati
 Chavda, Shrimati Zolrabehn
 Das, Shri B. K.
 Deo Bhanj, Shri P. G.
 Dhuleshwar Meena, Shri
 Dighe, Shri
 Dubey, Shri R. G.
 Ganapati Ram, Shri
 Gupta, Shri Shiv Charan
 Hansda, Shri Subodh
 Hanumanthaiya, Shri
 Jadhav, Shri M. L.
 Jadhav, Shri Tulshidas
 Jedhe, Shri
 Jena, Shri
 Kappen, Shri
 Kedaria, Shri C. M.
 Keishing, Shri Kishang
 Khadilkar, Shri
 Kotaki, Shri Liladhar
 Koya, Shri
 Lalit Sen, Shri

Laskar, Shri N. R.
 Mahadeva Prasad. Dr.
 Mahishi, Shrimati Sarojini
 Malhotra, Shri Inder J.
 Maniyangadan, Shri
 Mehta, Shri Jashvant
 Mengi, Shri Gopal Datt
 Mishra, Shri Bibudhendra
 Morarka, Shri
 Mukane, Shri
 Munzni, Shri David
 Muthiah, Shri
 Niranjan Lal, Shri
 Pande, Shri K. N.
 Pandey, Shri Vishwa Nath
 Parasbar, Shri
 Patel, Shri N. N.
 Patel, Shri P. R.
 Patel, Shri Rajeshwar
 Patil, Shri D. S.
 Patil, Shri S. B.
 Pottakkatt, Shri
 Prabhakar, Shri Naval
 Pratap Singh, Shri
 Raghavan, Shri A. V.
 Raghunath Singh, Shri
 Rajdeo Singh, Shri
 Raju, Dr. D. S.
 Ram, Shri T.
 Ram Sewak, Shri
 Ram Swarup, Shri
 Ramaswamy, Shri V. K.
 Rane, Shri
 Ranga Rao, Shri

Rao, Shri Jaganatha
 Rao, Shri Muthyal
 Rao, Shri Rameshwar
 Rao, Shri Thirumala
 Saha, Dr. S. K.
 Samanta, Shri S. C.
 Sanji Rupji, Shri
 Saraf, Shri Sham Lal
 Shah, Shrimati Jayabehn
 Sharma, Shri A. P.
 Sharma, Shri D. C.
 Sheo Narain, Shri
 Shinkre, Shri M. P.
 Siddiah, Shri
 Sidheshwar Prasad, Shri
 Singh, Shri D. N.
 Sivapraghassan, Shri K.
 Sonavane, Shri
 Soundaram Ramachandran,
 Shrimati
 Subbaraman, Shri C.
 Sumat Prasad, Shri
 Surendra Pal Singh, Shri
 Thevar, Shri V.
 Tiwary, Shri R. N.
 Tombi, Shri
 Tyagi, Shri
 Uikey, Shri
 Valvi, Shri
 Varma, Shri Ravindra
 Vyas, Shri Redhelal
 Yadav, Shri Ram Harkh

Mr. Deputy-Speaker: The result of 15.26 hrs.
 the Division is:

CONSTITUTION (AMENDMENT)
 BILL

Ayes: 10; Noes: 98

(Amendment of articles 124 and 217)
 by Shri K. C. Sharma

The motion is not carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Mr. Deputy-Speaker: We will now take up the next Bill. Shri K. C. Sharma.

Shri K. C. Sharma (Sardhana): I beg to move:

The motion was negatived.

"That the Bill further to amend the Constitution of India, be taken into consideration."

[Shri K. C. Sharma]

Although it is a two-line Bill, it is very important because it deals with social structure and order in society. It is Dharma meaning "Dharmodharayate Praja". It relates to human order and rule of law. That is what Manu, the first law-giver, gave to the world.

First, a law was brought into ensure social order and social order could not be maintained with the progress of human intellect and human organisation, through human aspirations unless something is also enjoined to see that the social order is made to be based on sounder and more definite principles. So, the Romans brought what is called the secular law. It is a very much misunderstood expression. Secular law meant justice, order, reason and humanity and when you use this term it means that all these constituent principles are involved there. Further on, there were the Roman lawyers who said that world law and order, stability and order in society, though necessary for human progress, a socially stabilised order is not enough to meet the human aspirations and social needs. So, they brought in *Omines Homines. Natura Adnokacy Senta*, that is, it is the natural law, namely, everybody is equal before the court of law. Everybody, every citizen, every man, should be equal before the law. This went on, and in the French Assembly in 1789, the cry was that all men are equal, and then in the American Declaration of Independence also, it was declared that all men are born equal. Grotius, in his international law, took from the Roman law and said that all States are equal. All sovereign States are equal. Then, after the English Constitution, the Indian Constitution lays down that all citizens are equal before the law. What does it mean? It means that when they are equal, the judge will dispense justice to every citizen without any bias or prejudice, and he would be impartial and independent. Indian judges, and judges all over the world,

claim to be independent and intelligent and impartial. But the bones and flesh of a human being are influenced by one thing: one is born and bred up and nourished and educated in a particular atmosphere. A lawyer who goes to the high court or to the Supreme Court has his association with the rich clientele. He is not to look into what the poor man does; he is not to look into the eye of the poor man; he has no occasion to have a glimpse at the naked woman; he does not go in the street and see the hungry children waiking around. To him, the law is the same for the prince as it is for the beggar. Beggary is a crime. The beggar begs for food, because his stomach is empty. The prince descends from dignity because some screw is loose in his brain when he begs. There is a difference. But, for the judge, it is all the same.

15.30 hrs.

[SHRI SONAVANE in the Chair]

Life is different, but the law is the same, and the judgment is the same. Why? Because the lawyer that goes to the high court and to the Supreme Court is not the man from the street. He is not a man from the poor people. He is not the people's man. He is something above the people. So, here, the difference is that so far as procedure is concerned, so far as the letter of the law is concerned, so far as the meaning in the dictionary of the words used in the law is concerned, the judges are equal to everybody. But so far as putting the facts in certain moulds, in certain case laws is concerned, the judge plays a different part.

Take the history of the United States. The judges that come from the upper classes stood against the right of labour. It was a United States judge who said that slavery was a legal institution. Even Aristotle did not see anything wrong in slavery, because he used to live with the

princes. He had not to work in the field or work as a slave and so he did not know what slavery meant. He said that the progress of humanity has to go on. And so it is here that I beg to submit that there should be some institution, there should be brought about certain environments where it should be reasonably possible that the judge, when administering the law, would be equal to the beggar as he is to the prince. He will feel the pain of hunger as he enjoys the luxury of abundance.

In the modern age it is all the more necessary, because, as Banerjee says:

"Laws and lawyers are today the most important directive elements in our civilisation. Our technique of production, transportation and communication may be determined and controlled by science and machinery. But our institutional life is dominated by law and lawyers. Ours is as much a lawyer-made civilisation on its institutional side as the civilisation of Syria and Rome was a military one and that of the middle ages a religious one."

So, we are living in a world where the judge's word with regard to the rights of man is the final word.

An American authority says that the Supreme Court has ceased to be a court in the old common law sense. It decides for the most part technical cases involving petty legal quarrels of private litigants. It has tended to become through the years a great public law court confining its attention more and more to broad, fundamental constitutional issues where technical and knowledge of the law is only one of many sources of knowledge which may be drawn upon in seeking a wise decision. Again, in this process, the Supreme Court not only applies precedents and established principles in deciding cases but actually makes new law in many cases. The highest tribunal further on calls for the capacities

that are demanded of the historian and the philosopher and the prophet.

I beg to submit that the judges make the law as they made the common law of England and as they made the Roman law in old Roman Empire. Today also they make the law. So, in making the law, there should be something that, in this instrument of the highest importance, to the structure of a human society, should command respect and regard and that should have the knowledge to use the great work that they are entrusted with.

As I said, in other countries, for example, in the United Kingdom and the USA, a judge is appointed for life. They are expected to retire at the age of 75, and after retirement in the United States his full pension is paid to him. But he is at liberty, if his faculties are in order and if he is fit to work, to continue in office. In our Constitution, the high court judge is expected to work up to 60 years. Now, it is 62 years. I moved an amendment that instead of 60, 62 should be there. A Supreme Court Judge has to retire at the age of 65. My purpose in moving this amending Bill is that a High Court Judge from the bar should be appointed at the age of 50 and he should be given 15 years to make law, to make up his mind to lay down a new rule of law, a new principle of jurisprudence. 15 years is not a very long time. What is the use of appointing a man at 58 or 60 and asking him to go away at 62? In two years, what law will he lay down? After all, law is not like Alif-Laila. It is not a fairy girl's story. It is the basic principle for the structure of society. Even a marble piece in Taj Mahal took thirty years to be chiselled and put in that grand edifice. If it took thirty years for a marble to be beautifully placed in a building, do you think the human mind, so fine a structure, would take only, two or three years to produce a fine piece of art?

It is the saddest spectacle in modern human history that a Supreme Court

[Shri K. C. Sharma]

Judge comes in at the age of 60 and says goo-bye at 65. What a fun it is! With whom are we dealing? We are dealing with the final master of the structure of the society, the man who gives the final word about the rights of a citizen. With this exalted office, how do you behave? We say, come in at 60, remain for 5 years and go away. This is something which reason does not accept. So, it must be changed. With all the emphasis and force at my command, I submit that it is wrong, a grievous wrong to the society that judges should be placed in a position where they are not able to lay down the rule of law and the principle of jurisprudence, because they do need time enough to be matured, experienced, and enlightened enough to build up something that would add to the credit of India. We are like a light to the smaller countries around us. We are the central country and so many other countries look to us. What is the light? It is the light that guides the structure of life and it is the court of law. It is the Judge. So, I plead that this change should take place. The age of retirement should be 65 instead of 62 in the case of High Court Judges and 70 instead of 65 in the case of Supreme Court Judges.

In USA, over a hundred and fifty years, there have been only 14 or 15 Chief Justices of this Supreme Court in such a long span of years. But in India every third year, there is a new Chief Justice. They do not get enough time to frame a new structure, to give something fresh, which may guide the judiciary, to adjudicate rightly in the matter of citizens' rights. So, again I submit, it is not simply a question of a certain gentleman sitting in the exalted office having five years more. It is a question of giving to the ordinary citizen equal right before the court of justice. Who will lay down the rule of law? Only the Supreme Court Judges can do it. They will be able to do it if they have time and opportunity to appreciate the changes

of life and the new forces of life, to look ahead and find out where the light has faded and where new light has to be lit.

With these words, I appeal to the hon. Members that this amendment of the Constitution may be accepted, because it is necessary and it would be basically good to do so.

Mr. Chairman: Motion moved:

"That the Bill further to amend the Constitution of India be taken into consideration."

1½ hours have been allotted for this Bill and the time for this Bill would be up to 5 P.M. I would request hon. Members to be brief.

Shri D. C. Sharma (Gurdaspur): Sir, the eloquent speech of the hon. Member has moved me tremendously. I congratulate him on giving a survey of the legal institutions, the legal precedents, etc. beginning from the Greeks and coming down to the modern world of the U.K. and USA. I think all the Judges all over the world must be grateful to him for the very noble things that he has said about them. He has made a very fervent plea on the office of the Judge and on his duties. He has not done so only in terms of law, but he has done so in terms of social justice and all those things.

But I am afraid that his speech was meant to turn the Judges into a special class or an exceptional class. While I was listening to him, I felt that he was almost following in the footsteps of Manu, the great law-giver of India, who introduced the caste system in India. He divided human beings into four classes. The Brahmins were the highest people. Next came the Kshatriyas. Then came the mercantile class and last of all the workers and toilers. We do not want to create another class of High Court Judges and Supreme Court Judges.

Sir, I will be always opposed to any kind of stratification of society in terms of caste, whether it refers to money, privilege or anything else. This Bill in the first place seeks to perpetuate a caste system of a kind which has not been heard of in India so far. The second thing is these judges are already enjoying privileges in the country which are not given to other servants of Indian nation and servants of Indian Government. What is the retirement age for persons who work in our Civil Departments? Well, I think the age is 58. The retirement age of those who work in the Army is lower than that; those who work in the Air Force is still lower and so on and so forth. Of course, in some of the Universities it has been decided that the age of retirement of Professors should be raised and it has been done in some Universities.

The fact of the matter is that we are going to create a special class of judges, High Court and Supreme Court, who will have greater advantages in the matter of retirement age than any other functionary in our free country. They will be placed at a greater advantage than the civilians, than the Army people and others. I would say, Sir, this is too much for the free citizens of India to swallow.

We have all respect for the Judges. I think it is the Parliament and the State Assemblies that make laws. The judges are very honoured persons and they interpret the law. As it has been said, sometimes they interpret laws in terms of precedents which are, I am quoting, moth-eaten, which are too old, too antiquated. But, all the same their function is very very useful in society. I do not want that the judges should have special prerogatives and we should upgrade the retirement age to 65 and 70.

We have already done something for them. The honourable Member introduced this Bill on 17 August 1962. The Government passed a Bill

on 1st June 1963 by which the age of retirement of High Court judges was raised from 60 to 62. So, already the Government of India have put them in a special class. But the honourable Member wants that they should be put in a special class—that their age of retirement should be raised to 65 from 62 and to 70 in the case of Supreme Court Judges.

Of course the expectancy of life has been raised in India, has been advanced in India. It is all due to our economic standards going up. Of course, they are not going up as fast as they should do, but still it is something to be proud of. During the period of last 17 years we have been able to step up the expectancy of life in this country. But, everyone should reap the advantage from that and not only one section. The age-limit of civil servant should be upgraded; the age-limit of Army officers, the clerk, class IV, Class III, Class II and Class I officers should be advanced in order to give them the corresponding advantage. But that has not happened. My honourable friend, who is a very eminent lawyer, has tried to do this as a gesture of his friendship for these people.

He says that the High Court and Supreme Court Judges should continue to be in office as long as they live. Why should you not make this rule applicable to all the servants of our country? Cannot we, the members of Parliament, continue to be members of Parliament as long as we live? This thing may have happened in some country, but it cannot happen in every country. The conditions in our country differ from the conditions prevailing in other countries. We belong to a tropical climate, which is not conducive to longevity of life. In Punjab, I do not find there are many persons who live up to 90. Of course, in Maharashtra, the longevity of life is very great. I congratulate the Maharashtrians for the wonderful way in which they preserve their energy and life.

Shri Nambair (Tiruchirappalli): What about Punjab?

Shri D. C. Sharma: Living in the tropical climate saps your energy, undermines your physical strength and gradually weakens you. I think it would not be possible for a High Court judge to do his duty properly if he becomes 70 years old. We all suffer from a kind of diminishing physical and mental energy, as time passes. Some persons are lucky to be born with a constitution which is a kind of iron constitution. They have a mind as strong as steel. They have a soul which rises above the limitations of the flesh and the mind. They are great people. It is their soul which conditions their body and mind. But in most cases you find that the rot begins to start when one is about 50. Of course there are some exceptions. So, taking into account the conditions of living in this country, taking into account the climate of this country, I would say that 65 for a High Court Judge should be too much and 70 for a Supreme Court Judge would also be too much. Sir, for the discharge of judicial duties in such an exalted position as the High Court Judge or Supreme Court Judge, you require the alertness of mind in the highest degree; you require memory which is tenacious and retentive and which can be put to use at any moment. You require the command of all your faculties, mental and physical. You require a tongue which can modulate and pronounce and intone words properly. You require all those things. You know, Sir, as time passes our mind begins to wander; our body begins to decline in strength and our tongue sometimes does not modulate words properly. That is what happens.

Shri Nambiar: But these are all undisputed points. There is no controversy about that.

16.00 hrs.

Shri D. C. Sharma: Therefore, I think, that it is not the right approach

to this problem. My hon. friend, **Shri Bade**, is not here. If he had been here, he would have been able to throw some light on this Bill. I remember, when he was speaking the other day, **Shri Bade** said—I am quoting him—

“Retired High Court Judges talk only of gout, diabetes and things like that.”

He made a statement on the floor of this House, meaning thereby that they become infirm after some time.

I feel that free India has done well by the High Court Judges by raising their age of retirement to 62 and has already done well by the Supreme Court Judges by raising their age of retirement to 65. I do not see any reason why this should be further up-graded.

Another point and I will sit down. I think, we should not play with the Constitution like this. Unfortunately, I find a tendency amongst ourselves to bring forward constitutional amendments without giving due thought to them. The Government introduced a change only a year ago and I do not see that any new set of circumstances has come into being after that which necessitates the bringing forward of this Bill. I would, therefore, say that, though I have the utmost respect for my learned friend, the hon. Mover of this Bill, taking into account everything else, this Bill should be opposed and we should not give to the Judges much more than what we have given to other functionaries of our State.

Mr. Chairman: I would like to know as to how many Members want to participate in the debate on this Bill.

Some Hon. Members rose—

Mr. Chairman: **Shri Hanumanthaiya.** After him, I will call **Dr. Lohia.**

Shri Hanumanthaiya (Bangalore City): Mr. Chairman, Sir, when a Bill is sponsored by my hon. friend, Shri Sharma . . .

Shri D. C. Sharma: K. C. Sharma.

Shri Hanumanthaiya: . . . it is entitled to our respectful consideration. He is one of the leaders of our country. He has been in the Congress for a long time and he has contributed a great deal towards winning the freedom of this country. Besides, he has participated in the Constitution-making as well. He is an eminent lawyer. These are his high qualifications that make this Bill worthy of consideration by this august House.

Any measure that is brought forward has to be supported not merely by the weight of the person who brings it forward but also by the reason he adduces. The reason my hon. friend has adduced for the change is that the average age in India has increased to 47½ years from 32 years since the Constitution was made. He has given the physical reason, that is, the average age has increased. He has not summoned courage enough to say that the average wisdom has also increased.

Shri Ravindra Varma (Thiruvella): He was not sure.

Shri Hanumanthaiya: Secondly, I fail to see why he makes a distinction between the Supreme Court Judges and the High Court Judges. After all, we are in an age where equality is the basis on which the social superstructure has to be built. We are against all privileges either based upon age, caste or social strata. Why should a period of five years be made as the distinguishing feature between the High Court Judges and the Supreme Court Judges? Is it that my hon. friend expects a High Court Judge to be less wise, less learned and less shrewd? The High Court judgements are cited with respect and authority in a given case. No doubt,

the Supreme Court case is entitled to better respect, being the highest court of judicature. But in the matter of appointment and the period of service, to make a distinction between a High Court Judge and a Supreme Court Judge goes against the very tenor of our thought, namely, equal treatment. Maybe, there is an argument, namely, why should there be Ministers whether it is in the Government of India or in the State Governments, who are more than 70? Why should not same privilege be extended to judges? The distinction is this. Here you want to extend the service of a judge not on account of the sanction he derives from the people but by the authority of the Constitution. The members of a legislature have to seek suffrage every five years. People freely vote and that is an accepted test of the suitability of a person for a particular job created under the Constitution, namely, the membership of this House or any other House and membership of the ministry consequent upon that membership of the legislature. Therefore the Ministers and members of the legislature are subjected to periodical elections or tests whether they are fit to occupy the respective places they do. In case of Judges, there is no such test. It is a question of a queue system. If a man is standing in a queue, even if he is dozing and is otherwise inefficient, by the very force of the people who are behind him, he is pushed forward. In the resolutions of great political parties, like the Congress and others, we have repeatedly said that merit ought to weigh even against seniority in a given case. If it is merely a question of a queue system, you will get officers or the personnel who are, no doubt, aged but that does not necessarily show that they are more efficient or more honest. I do not want this queue system to be constitutionally sanctified. This is the second argument that I advance against the provisions of this Bill.

I had an idea years ago that officers, whether in the judiciary or in the

[Shri Hanumanthaiya]

civil service, who retire may work in fields like education and cooperation. Dr. Pattabhi Sitaramayya, was an eminent leader of our country. He himself was a doctor by profession. He used to say that if a person marries at the age of 20 or 25, he marries a life partner and that he marries a disease at the age of about 50.

In most of the cases, people who come to the age of 50 will develop one of these diseases, may be Asthma or blood-pressure or diabetes or it may be some other thing. If you ask the Doctor who treats the Members of Parliament, you will find that most of us will be subject to one type of disease or another. One or the other disease marries a person at about the age of 50. Unless he is very careful and unless his constitution is very strong, he is likely to be overpowered by that disease. That is the established fact according to medical science. Therefore, we have to be very careful when we want a person to continue in office beyond the age of 55. That is why Government has very wisely made a provision for people to retire at the age of 55. If they are otherwise found fit, there is much to be done in the country. There is the field of co-operation, there is the field of education. In non-official life, one can really contribute a great deal towards the growth of our country in various fields of activities if one is really patriotic and if one is really healthy. To make a person perpetually the occupant of an office and leave the rest of our people who are equally qualified to go about in the streets without work, would not be in consonance with the social justice we have in view.

Having said this, I would also bring to the notice of the hon. Member that very recently we passed a measure in this House fixing the age of the judges at 62. Even that measure, though it is now more than a year, has not found the required acceptance at the hands of our State Legislatures. It

would, therefore, be very strange or out of tune with the temper of the times to ask for the age to be increased by three or five more years. In fact, if the Bill had contemplated equal treatment in regard to the age both for the High Court judges and the Supreme Court judges, I would have congratulated the hon. Member. That would have been in consonance with the equality of treatment. I, therefore, have to request my hon. friend to withdraw this Bill and bring a better Bill for the consideration and acceptance of the House.

Mr. Chairman: Dr. Lohia. After Dr. Lohia, I shall call Dr. Sarojini Mahishi.

16.14 hrs.

डा० राम मनोहर लोहिया (फर्रुखाबाद):
मनापति यहोऽप्य, मय से पहले तो मैं अर्ज करूँ कि अंगित उम्र बढ़ने की बात कही जरूर जाती है लेकिन उन का आधार अभी तक नहीं बनाया गया है। कैसे हम लोग इस नतीजे पर पहुँचे हैं यह नहीं बनाया गया। तो मुझे तो अब तक शक है कि आसत उम्र बढ़ी है, और अगर बढ़ी भी है तो इतनी नहीं बढ़ी है जितनी कही जाती है। आधार जब तक सरकार नहीं बनाती तब तक इस तरह के आंकड़े बेमतलब होते हैं। दूसरी बात यह कि जो बच्चे पैदा होते हैं वे कुछ वर्षों पहले तक छः महीने या साल भर की उम्र तक मर जाया करते थे ज्यादा संख्या में। अब वह कम मरते हैं। इस का यह मतलब नहीं हो गया कि जो ज्यादा उम्र के लोग हैं, वयस्क हैं या अघेड़ हैं, उन की उम्र बढ़ी है। असल में बच्चों के न मरने के सबब से जो आसत उम्र है वह बड़ी हुई प्रतीत होती है। वह खाली आभास है, वस्तुतः वह बढ़ी नहीं।

इतना कहने के बाद मैं श्री शर्मा के बिल की मुखालिफ्त इसलिये भी करता हूँ कि हम जर्जों से जिस बात की अपेक्षा करते हैं उस

पर इस बिल का ध्यान नहीं है। कुछ इधर उधर की लीपा पोती की बातें हैं जो कि अलग बगल की हैं।

अब आप देखिये कि हम जज में क्या उम्मीद करने हैं। यह कि वह हमारी जान और माल का, आजादी की रक्षा करेगा। मुझे गिरफ्तारों से रचायेगा, नाजायज और गैर कानूनी गिरफ्तारों से। अगर मैं कहीं पर किसी कारणवश, चाहे कार्यपालिका के कारण, चाहे विधायिका के कारण गैरकानूनी ढंगसे गिरफ्तार कर लिया जाऊँ और मुझे सजा दी जाये तो उस वक़्त मैं जज से यह अपेक्षा करूँगा कि जो संविधान की धारा २० और २१ है उस की वह मुझे पूरी तरह से मदद देंगे। लेकिन वस्तुतः यह बात ही जाती है कि संविधान की यह धारारों में कभी कभी बेकार साबित हो जाती हैं, या तो कार्यपालिका के कारण या अगर कहीं कोई विधायिका अपने मन में यह ठान लेती है कि वे इन धाराओं को भी तोड़ देंगे उस के कारण। वस्तुतः गिरफ्तारों का, सजा का, फाँसी का जो कुछ भी कानून उन देशों में है जहाँ संविधान है, मैं इंग्लिस्तान की बात नहीं कह रहा हूँ, जहाँ कहीं भी संविधान है, जहाँ यह सब धारारों न्यायपालिका के अधीन है। वहाँ मुकदमा जाता है, मुकदमे के ऊपर मारी बात चीत होती है, जज को पूरा हफ़ा होता है कि वह कानून के मुताबिक किसी नाजायज तौर पर गिरफ्तार किए हुए आदमी को छोड़ दे। मैं चाहता था कि हिन्दुस्तान में कोई ऐसा मस्विदा पूरी तौर से आ जाये और पास हो जाये ताकि इस के बारे में, कहीं कोई शक की गुंजाइश न रहे। यह जो इधर उधर की बातें आ जाती हैं, उन से काम चल नहीं पाता।

दरअसल अगर आप देखें तो हमारा जो अपना संविधान है उस में बिल्कुल साफ बात है कि २० और २१ जो धारारों हैं उनके साथ

साथ जो जुड़ी हुई एक बात है वह यह है कि किसी भी हालत में न्यायपालिका के प्रख्यार को कम नहीं किया जा सकता। अगर कोई भी मुकदमा उस के पास जाता है तो वह सुनती है। खाली एक अपवाद है कि जब कभी कोई ऐसी संवत्कालीन स्थिति आ जाय जब कि राष्ट्रपति साधारण संविधान की धाराओं को हटा देते हैं, तब बात अलग है, वना उसे संविधान की धाराओं का मान करना ही पड़ेगा।

16.17 hrs.

[MR. DEPUTY-SPEAKER in the Chair].

ऐसी अवस्था में अगर कोई संविधान की धाराओं को तोड़ता है, जब तक संवत्कालीन कानून का ऐलान नहीं हो जाता है जिस के अनुसार जजों का अख्यार छीन नहीं लिया जाता, तब तक अगर किसी भी नागरिक की आजादी का अपहरण होता है तब मैं यह उम्मीद करूँगा कि जज उस की पूरी तरह से रक्षा करेगा। लेकिन वस्तुतः ऐसा हो जाता है कि जज को यह ताकत रह नहीं जाती। तो सब से पहले तो मैं यह चाहूँगा कि श्री शर्मा कोई ऐसा कानून लायें जिस से जज अपनी जजी की कार्रवाई में जो कुछ भी करे उस के खिलाफ कुछ न हो सके, वह गिरफ्तार न किया जा सके, उस को किसी तरह से रोकना न जा सके। अगर कोई ऐसा मस्विदा आता तब अलबत्ता मैं समझता कि हाँ, कोई कानून आया जिस से हिन्दुस्तान के संविधान की रक्षा हो रही है।

आप अच्छी तरह से जानते हैं कि कभी कभी कोई कोई विधायिकायें भी अपने मन में ठान लेती हैं कि जो कुछ नागरिकों के अधिकार हैं उन को दबाया जाय या रोकना जाय। कई दफे तो वह अपने मान के ऐसे सवाल उठाती हैं कि हमारी मानहानि हो गई या किसी तरह से हमारे अधिकारों के ऊपर कुठाराघात हो गया और तब वह यह

[श्री राम मनोहर लोहिया]

भी कह दिया करती हैं कि जो कुछ वह नियम बनाती हैं उन के अनुसार लोगों को चलना चाहिये। मैं सब से पहले तो फर्क करूंगा नियम में और कानून में। हमारा संविधान साफ कहता है कि वह मान, वह ताकत, वह अख्यार, जो कानून द्वारा माने गये हैं नियमों के द्वारा नहीं। नियम और कानून में बड़ा फर्क है। लेकिन अक्सर यह होता है कि नियमों में अधीन बहुत सी करवाइयां कर दी जाती हैं, और जज जज नियम और कानून में फर्क करता है तो उन के काम में हस्तक्षेप होता है। तो मैं चाहूंगा कि जज ऐसी अवस्था में सुरक्षित किया जाय, उस पर आंच न आवे, नहीं तो नतीजा यह होगा कि कोई विधायिका कभी किसी हालत में किसी को गिरफ्तार करके मजबूत दे देगी। विधायिका इस बारे में अपने नियम बना सकती है और चूंकि मजबूत के बारे में कुछ लिखा नहीं है, इसलिए चाहे तो फांसी भी दे दे। बहुत संख्या कमी कमी ऐसी दी जाया करती है कि अपने मन में सब कुछ करने की ठान ले और बंधा कर दे। तो इस बिल के सम्बन्ध में मैं इतना जरूर कहना चाहूंगा कि जज और न्यायपालिका सुरक्षित रहें, ताकतवर रहें, संविधान की धाराओं को लागू करने की उनकी पूरी क्षमता रहे और किसी तरह भी संविधान की धाराएं तोड़ी न जा सकें। ऐसा कानून आवे तब हम उपाय समर्थन कर सकते हैं।

बेकन ने जो कि अंग्रेजों का एक बड़ा भारी जज हुआ है, कहा था कि जज शेर हैं, लेकिन तख्त के नीचे। उस बेचारे ने यह अपने अनुभव से कहा था। उन दिनों इंग्लैंड में भी जजों में और पार्लियामेंट में बड़ी लड़ाई चला करती थी। वह तेजस्वी और विद्वान था उस ने कहा था कि जज शेर होते हैं, लेकिन तख्त के नीचे। मैं यह कहना चाहता हूँ कि हमें ऐसे जजों की रक्षण की इच्छा है जो

शेर जरूर हों, लेकिन तख्त के नीचे नहीं, तख्त के बगल में, जिनमें कि हम हिन्दुस्तान के नागरिकों की आजादी की रक्षा हों सके।

एक माननीय सदस्य : तख्त के ऊपर क्यों नहीं।

डा० राम मनोहर लोहिया : तख्त के ऊपर मैं उनको नहीं रखना चाहूंगा। मैं नहीं चाहता कि जज पार्लियामेंट के ऊपर बैठे। जहां तक कानून बनाने का मवाल है वहां तक आप लोगों का सर्वोपरि स्थान है, पर जहां पर कानून पर निर्णय लेने का सत्ता है वहां पर जज सर्वोपरि स्थान रखे। यह सिद्धांत आप लोग मान लें तो बहुत कुछ दिक्कतें हल हों जायें।

Dr. Sarojini Mahishi (Dharwar North): I appreciate the sympathy which my hon. friend Shri K. C. Sharma extends towards the judges of the High Court and also the judges of the Supreme Court. I am sorry he has not been able to extend his sympathy towards the judges of the district courts also who unfortunately are required to retire at the age of 55 or so.

This particular rule, that the judges of the High Court were required to retire at the age of 60 and that the judges of the Supreme Court were required to retire at the age of 62 perhaps was the remnant of those good old days when the ICS people were taken into the judicial service. I do not know why there should be this distinction between the age of retirement of the judges of the High Court and that of the judges of the Supreme Court. Does it reflect upon the ability and efficiency of the High Court judges that they are required to retire at the age of 62 at present? If judges from the High Court are to be drawn to the Supreme Court for further service, I submit that that can be done even if the age of retirement

of the High Court judges is fixed at 65; they can be still drawn for service in the Supreme Court till they reach 65, the age of retirement of the Supreme Court judges. Therefore, I find no reason and no ground for fixing the age of retirement as 62 and 65 respectively in the case of the High Court and Supreme Court judges.

When the Bill came up before the House for increasing the age of retirement of the High Court and Supreme Court judges, I put forward this very ground for opposing the same. Now, my hon. friend has brought forward another amendment to the Constitution, particularly to articles 124 and 217, trying to increase the age of retirement of High Court judges to 65 and that of the Supreme Court judges to 70. The reason that he has given is that the longevity of average life in India has increased. I do not know whether it reflects upon the mental capacity of the persons also. But, anyway, we cannot compare our conditions with those prevailing in America where even at the age of forty, they feel that they are quite young whereas in India they say that everything is over at the age of forty. I do not wish that we should compare ourselves.

Anyway, India has got a very brilliant galaxy of brilliant judges at the High Court and the Supreme Court level, who have been very ably discharging their duties. The onus or the responsibility of a judge, especially in a federal country like ours where the judiciary plays a very prominent role, is very great. The judiciary is the interpreter and the custodian of the Constitution, and it is the judiciary which settles and dispute that may arise between different parties at different levels in the country. The Supreme Court and also the High Courts deal with the original side and the appellate side; the Supreme Court, in addition deals with the consultative side also and with those cases where the parties are some distinguished persons including the original native States where the ques-

tion of settling the assets and liabilities etc. may arise the Supreme Court deals with all such cases. Therefore, there is a great responsibility on the Supreme Court judges to interpret the Constitution and to entertain cases on the original side as also on the appellate side. And the Supreme Court being the final court of appeal in the country it is quite necessary that there should be a specific age of retirement, and that cannot be increased at random also. It is quite right that the age of retirement of the Supreme Court judges has been increased to 65, but my only grouse is why the age of the retirement of the High Court judges also should not be raised to 65.

I remember that the Law Commission recommended that the age of retirement should be the same at both the levels. I do not know how the Cabinet came to the conclusion that it should be 62 in the case of the High Court judges and 65 in the case of the Supreme Court judges. Only a few minutes back, I was told a story in this connection. Napoleon used to inspect his military camps every day after the war. The medical officers used to visit those camps and used to make a note of those unfortunate soldiers who were dead and also those who were seriously ill and who were to be removed from the camps. One day, it so happened that a particular person who was alive was being carried as a dead person. The man who was being carried suddenly got up and asked 'Why are you carrying me? I am alive'. But the people said 'It has been recorded in the papers that you are dead, and this is the opinion given by the medical advisers also. Therefore, we are carrying you'. Such a thing carries no meaning.

Therefore, I hope that Government will reconsider the position, and I wish that my hon. friend Shri K. C. Sharma will bring forward a better amendment to the Constitution in this regard. I do appreciate his sympathies towards the judges. Justice in India, especially in our federal form

[Dr. Sarojini Mahishi]

of government, is very important, and justice not only means written law but conventional law also. As it is said:

श्रुतिः स्मृतिः सदाचारः
स्वस्य च प्रियमात्मनः,
सम्यक् संकल्पजः कामो,
धर्मं मूलं भिदं स्मृतम् ॥

Srutit, smriti, the good conduct of the people and the experience of the wise people etc. are all being included in the term '*dharm*' or justice. That is the body of justice in India. Our great law-makers and propounders of law were men of *arshyadrishti*, that is, men with the insight of a sage. It was they who propounded the laws. Subsequently, of course, the laws underwent certain changes also according to the exigencies of the times and the changing values in the country also. The English judges who were deputed to India to interpret the Indian law were also given this instruction by their people that they should interpret law according to equity, justice and good conscience. Whether it is a small offence or a big offence, or an ordinary civil case involving a sum of Rs. 100 or a big case involving Rs. 10,000 and so on, whatever may be the nature of the case, the same insight, the same presence of mind, the same sense of equity, the same sense of justice and the same sense of good conscience etc. are required. As such, we cannot make any distinction between the age of retirement of the High Court and Supreme Court judges as far as this capacity is concerned. Therefore, I wish that my hon. friend Shri K. C. Sharma would bring forward a better amendment. I wish that the hon. Minister also would reconsider the amendment made earlier and also the recommendations made by the Law Commission and see that the age of retirement of the judges of the High Court as also that of the Supreme Court judges is raised to 65, and if he is a bit too liberal, I hope

that he will extend that increase to the age of retirement of the district court judges also.

Shri Oza (Surendranagar): I am afraid I have also to oppose this Bill. Only last year, this House in its wisdom adopted an amendment to the Constitution, the 15th amendment, by which we raised the age of retirement of High Court Judges from 60 to 62 and did not raise the age of retirement of Supreme Court Judges from 65 to any other age. The reason advanced by the Mover is that the average age in India has increased to 47 from 32 since the Constitution was made, but I hope not since the last amendment was adopted. At the time of adopting the last amendment, we took into consideration all these factors and we thought in our wisdom to raise the age of retirement of High Court Judges only to 62 and not to raise the age of retirement of Supreme Court Judges to 70, as has been proposed.

The previous speaker said that the age should be uniform in the case of High Court and Supreme Court Judges. She also pleaded for raising the age of retirement of District Judges. I am afraid I cannot subscribe to that argument also. We have to look at the whole problem in the social context in which we are existing today. For example, we fixed the age of retirement in our executive at 58. There are most brilliant persons rendering service in various fields as administrators, doctors, engineers and so on. They are also brilliant in their walk of life. But looking to the overall aspects of longevity and health of the nation, we have fixed the age of retirement at 58. However brilliant an administrator or doctor or engineer may be, we make him retire at that age. There must be a reasonable gap between the age of retirement of those who are doing this sort of duty and that of those in the judiciary. To widen that will not be cogent or logical. Looking at the health of the nation and the persons employed in various services and the fact that they are not getting senile after a par-

ticular age and their mental and physical faculties are intact, we raised their age of retirement in the government service from 55 to 58. I think it is quite reasonable.

There is one argument why High Court Judges should retire at 62 and the Supreme Court Judges at 65. It is only my conjecture. Supreme Court Judges are recruited from the High Courts. Those who in the view of the Chief Justice of India are likely to be able to render service upto 65 are recruited from the High Court Benches. They are not recruited direct. There are certain Judges in the High Courts who will not be useful after 62, but there are others who would be mentally and physically vigorous and capable of discharging their duties upto 65. So if there is a difference between the ages of retirement in the High Court and the Supreme Court Benches, I do not think it is absolutely without reason. It has a logic and a *raison d'être*. If there was direct recruitment, then there would be some force in the argument advanced. In view of this, I think the margin appears reasonable. There is a presumption that people at a certain age must be made to retire, considering the average mental and physical capacity of Indians in whatever walk of life they may be serving, the judiciary or executive. But it is also true that if there are persons who are quite healthy and vigorous their services may be continued. This must be the reason for the differentiation in the age of retirement. So I do not think we should make a departure by making the age of retirement in the case of Supreme Court and High Court Judges uniform. We should maintain the existing difference.

As I said, we have to look at the whole question in a certain context. For example, I am against raising the age of retirement of government servants to 58. Looking at the employment potential in the country, limited as it is, so many young people waiting in queues for employment in the va-

rious administrative and other services, as administrators, doctors, engineers and so on, have their careers blocked by extensions given to people who have served the best part of their lives and should be enjoying their pensions, with their sons also perhaps employed. In certain exceptions, their services may be extended, but by and large, the employment potential in the country being very poor, we cannot provide employment to our educated persons fully. That being so, we should not raise the age of retirement. We should keep it at a low level. Those who have served must be made to retire and enjoy their pensions so that we could give more and more opportunities to young men so that their energies and services may be utilised in the interest of the nation.

The Minister of State in the Ministry of Home Affairs (Shri Hathi): The hon. Mover has given one reason for bringing forward this measure in his statement of objects while during his speech, he put forward a number of other reasons. Taking all of them together, I have tried to understand his arguments for the acceptance of his proposal, but I am afraid I have not been able to convince myself of the reason and logic behind those arguments.

His main contention, namely, improvement of physical health, has been replied to by almost all Members who spoke. That cannot be the criterion for determining the age of retirement of a particular category of people. He paid a tribute to the work of the Judges in our country and their efforts to dispense justice. I would also like to join him there. Our judiciary has got a reputation of independence in the dispensation of justice. But when he said that we want a fresh outlook, we want people who can give something new, we have to remember that the duty of the Judges is to administer justice, to interpret the law as it is. But the function of legislating rests with this House. Anyway, I do not want to enter into these arguments.

[Shri Hathi]

The only argument I would advance against not accepting this measure would be, as Prof. Sharma and other hon. Members said, that his Bill was introduced in August 1962. That was pending when Government brought forward the Constitution (15th amendment) Bill which received the President's assent on the 5th October 1963. The question of the age of retirement of Supreme Court Judges and High Court Judges was discussed threadbare and it was after a full debate in both Houses that we ultimately got the Constitution amended, raising the age of retirement of High Court Judges to 62.

I do not think the Mover had moved any amendment or had said anything in support of the Bill which was already introduced and was being considered. But that does not bar him or the House from reviewing the position and also considering the reasons put forward by the hon. Member.

The reasons put forward by the hon. Member, I am afraid, cut at one another. In the first place, he said that every person should be equal in the eye of the law. That equality before the law itself is denied by him when he says that the retirement age of the Supreme Court Judges should be 70 and that of the High Court Judges should be 65.

Then he said that these Judges were people who were giving law, who were giving something to the present society, and therefore, there should be maturity. Is that maturity considered by him to be attained at 70 or 65? If the High Court Judges are mature at 65, the Supreme Court Judges also would be mature at 65. I do not think there is any logic in saying that there should be equality before the law on the one hand, and in the same breath saying that there should be difference between the age of retirement of the High Court judge and that of the Supreme Court Judge.

He had also argued that a person who is appointed a High Court Judge at 55, retires after five years at 60. But some Judges of the High Court are also appointed as Judges of the Supreme Court. Those who are brilliant, bright, have contributed something, have chances to come from the High Court to the Supreme Court, and their experience, their maturity, their knowledge are available. Therefore, it is not that the experience of these Judges is not availed of when necessary or to the extent possible.

The whole question is why the age of retirement of the Supreme Court Judges should not be raised to 70. This question also was discussed here. It has also been discussed threadbare by the Law Commission. Looking to the average life of the people and the onerous duties which the Supreme Court Judges have to perform, they thought the age of 70 was too much, and that 65 would be reasonable.

Having considered all these arguments, it was decided by this very House a year ago that the age of retirement of the High Court Judges would be 62, and that of the Supreme Court Judges would be 65. And there is reason behind it, which I have just explained.

I therefore think that the argument which the hon. Member has put forth in the Statement of Objects and Reasons, namely that the average age in India has increased to 47½ from 32, and therefore the age of retirement of the High Court Judges and the Supreme Court Judges should be extended to 65 and 70 respectively, is not a valid one. I am myself not convinced, nor has any of the Members who have participated in the debate, been convinced.

I am sure that, seeing that all the Members who have participated in the debate have not agreed with him, are not in line with his thinking I am sure he would see the desirability of not pressing this Bill.

Shri Harish Chandra Mathur (Ja-lore): He is a great philosopher, much ahead of the times.

Shri K. C. Sharma (Sardhana): I am sorry the hon. Minister has not thought it fit to agree with me. In one of my speeches I had said that there should be a separate Ministry of Justice, and that the Judges should be under that Ministry. It is wrong that the Judges are appointed through the Home Ministry. I expected this, and I am sorry that the Home Minister does not understand the question at issue.

The question at issue is that a code of law has to be made and for a new system to be evolved, it takes at least 20 years. What is the span of tenure of the Supreme Court Chief Justice?—three to five years. It is a funny thing. Do we treat them as shop assistants, taking an assistant and asking him to go out in the evening? To lay down a system, to evolve a new code of jurisprudence, to bring a static jurisprudence into a dynamic mould, twenty years are required. It is a strange irony that a dynamic evolving society does not look to the new evolution of the law. What for is democracy if law is not being evolved?

It has been said, an engineer's age of retirement is 50, a military officer's age is 45, and thus, there is no such thing as equality between man and man or between cow and cow in all aspects. The difference goes with the function. Man is distinguished from his animal forefathers simply by this distinction and uniqueness of being more evolved. The more evolved, the better developed the man, the more he is different from any other man. It is the function that makes him different.

It is no favour to the judges. It is a necessity of the situation. A High Court Judge has a different function. His judgment is not the final law in most cases, but the Supreme Court Judge's judgment is the final law. Therefore, I stress that he should retire at 70.

As to the average age, I submit that we know that nowhere in the world the difference between the classes is so great as in India. The Judges come from a class where the age is longer, and all over the world, the Judges and the lawyers have the longest life. Why? Because they live in a different environment where what are called the rough, crude realities of life do not touch them. They are a finer class of people. Therefore, their age is longer, they have better facilities in life.

It is no argument to say that the average life is 47, and so Judges should not retire at 70. We have seen many lawyers working at 80. Sir Sapru and others used to work beyond 70; in the courts of law, from 10 A.M. to 4 P.M. they would argue cases. Shri N. C. Chatterjee is over 70, he is working like a young man in the Supreme Court. There are so many people like that, because life is different.

With all respect, I am sorry I differ from the hon. Minister. I take it as a fundamental question for the improvement of law and procedures of law, and creating better conditions for the administration of justice. Therefore, I press for the acceptance of the amendment.

Mr. Deputy-Speaker: This is a Constitution Amendment Bill. So, there has to be a division. Let the lobbies be cleared.

I shall now put the main motion to the vote of the House. This being a Constitution (amendment) Bill, voting has to be by Division. The question is:

"That the Bill further to amend the Constitution of India be taken into consideration."

The Lok Sabha divided:

Division No. 18]

AYES

[16.55 hrs.

Aney, Dr. M.S.
Balmiki, Shri K.L.
Banerjee, Shri S.M.
Kachhavaiya, Shri

Kapur Singh, Shri
Lohia, Dr. Ram Manohar
Seth, Shri Bishanchander
Sezhiyan, Shri

Sharma, Shri K. C.
Singh, Shri D.N.
Yadav, Shri Ram Sewak
Yashpal Singh, Shri

NOES

Alva, Shri Joachim
Basappa, Shri
Brahm Prakash, Shri
Brajeshwar Prasad, Shri
Brij Raj Singh-Kotah, Shri
Chandrabhan Singh, Shri
Chuni Lal, Shri
Das, Shri B.K.
Das, Shri N. T.
Deo Bhanj, Shri P. G.
Elayaperumal, Shri
Ganga Devi, Shrimati
Hajarnavis, Shri
Hanumanthaiya, Shri
Harvani, Shri Ansar
Ismail, Shri M.
Jadhav, Shri M.L.
Jain, Shri A.P.
Jena, Shri

Jyotishi, Shri J.P.
Kajrolkar, Shri
Kappen, Shri
Kotoki, Shri Liladhar
Lalit Sen, Shri
Laskar, Shri N.R.
Malhotra, Shri Inder J.
Mathur, Shri Harish Chandra
Mehdi, Shri S.A.
Mirza, Shri, Bakar Ali
More, Shri S.S.
Patel, Shri Rajeshwar
Patil, Shri D.S.
Patil, Shri M.B.
Prabhakar, Shri Naval
Ram, Shri T.
Ramaswamy, Shri V. K.
R ne, Shri

Ranga Rao, Shri
Rao, Shri Jaganatha
Rao, Shri Thirumala
Roy, Shri Vishwanath
Sahu, Shri Rameshwar
Samanta, Shri S.C.
Saraf, Shri Sham Lal
Sheo Narain, Shri
Shinkre, Shri M.P.
Siddiah, Shri
Siddheshwar Prasad, Shri
Sonavane, Shri
Subbaraman, Shri C.
Tiwary, Shri R.S.
Upadhyaya, Shei Shiva Dutt
Utiya, Shri
Valvi, Shri
Varma, Shri Ravindra

Mr. Deputy-Speaker: The result of the division is:

Ayes 12; Noes 55.

The motion is not carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voing.

The motion was negatived.

16.55 hrs.

PROTECTION OF CIRCUS EMPLOYEES BILL

(By Shri Nambiar)

Shri Nambiar (Tiruchirappalli):
Mr. Deputy-Speaker, Sir, I beg to move:

"That the Bill to protect the Circus employees by bringing them under the operation, of the Industrial Disputes Act, 1947 and the

Workmen's Compensation Act, 1923, etc. be taken into consideration."

Sir, I consider it a privilege to introduce and speak on this Bill. Some hon. Members may not know the contents of this Bill and may begin to think that it is about circus. This is not a Bill about the circus industry. This Bill only seeks protection to be given to the tens of thousands of employees working in the circus industry. This is a social security measure intended to give relief to these poor employees who are working day and night in these industries throughout the country. From the *Statement of Objects and Reasons*, the hon. Members may see that the idea is this. The circus employees who are not attached to any particular trade or industry do not have the benefit or relief of the Workmen's Compensation Act, Industrial Disputes Act and other labour laws. The purpose of the Bill is to bring them under the scope of these labour laws; that is, the artists