

13.33 hrs

HIGH COURT JUDGES (CONDI-  
 TIONS OF SERVICE) AMENDMENT  
 BILL

**Mr. Speaker:** Now, we shall take up the High Court Judges (Conditions of Service) Amendment Bill. Shri Hathi.

**Shri Hathi rose—**

श्री हुकम चन्द कच्छवाय : (देवास)  
 अध्यक्ष महोदय, हाऊस में इस समय कोरम नहीं है।

**Mr. Speaker:** The bell is being rung . . .

[MR. DEPUTY-SPEAKER in the Chair]

**Mr. Deputy-Speaker:** Now, there is quorum. The hon. Minister may start his speech.

**The Minister of State in the Ministry of Home Affairs (Shri Hathi):** I beg to move.

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

**An Hon. Member:** How much time has been allotted for this Bill?

**Mr. Deputy-Speaker:** 2 hours.

**Shri Hathi:** This Bill will not take more than fifteen minutes. This is a very small and non-controversial measure. This amending Bill has been necessitated because of the Constitution (Fifteenth Amendment) Act, 1963 by which we raised the age of retirement of the High Court judges from 60 to 62.

Clause 2 of the present Bill seeks to amend section 14 of the present High Court Judges (Conditions of Service) Act. The House will see that this is really a consequential amendment. Section 14 provides that a judge will be normally entitled to pension when he completes the age of 60. Since we have raised the age of retirement from 60 to 62 under the

constitutional amendment, in this section also, the age should be raised from 60 to 62. That is the only change sought to be made in this section.

The second amendment seeks to provide that in the case of those judges who were serving on that particular date, namely the 5th October, 1963, when the age of retirement was increased from 60 to 62, if they want to retire at the age of 60, they will be permitted to do so, and they will be entitled to pension at the age of 60 because they had joined service earlier.

The third amendment relates to the High Court judges of Jammu and Kashmir. Now, the High Court judges of Jammu and Kashmir also are transferable to other parts of the country. There is a provision in the present Act that the services of the judges in the other States will also be taken into consideration for the purpose of pension, leave etc. That provision should be applied to the judges who would be transferred from Jammu and Kashmir to other parts of the country.

These are the three amendments which are proposed in this Bill. So, this is a very simple and non-controversial Bill, and I commend it for the acceptance of the House.

**Mr. Deputy-Speaker:** Motion moved:

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

**Shri H. N. Mukerjee (Calcutta Central):** Mr. Deputy-Speaker, Sir, I agree with my hon. friend the Minister that this amending Bill is a consequential measure, and in regard purely to the substance of it, there is not going to be any controversy in this House. But, I wish to intervene because, since it refers to the conditions of service of High Court judges

[Shri H. N. Mukerjee]

and the fixation of their ages at 62 as settled by the recent amendment of the Constitution, it is perhaps necessary to remind the Government of its responsibility in regard to the position of our judiciary. And I say this because the question of the fixation of the age of judges has recently caused a certain amount of excitement in the country; I say 'excitement' because in relation to High Court judges and people in that category, we are accustomed to ascribe to them sobriety of the highest order, but it has happened that some High Court judges have discovered rightly or wrongly, it is not for me to say at the moment, that in regard to the fixation of age, the executive has appeared to act in a manner which is derogatory to the dignity of the judiciary. I know that it is not an one-sided story either, and I feel so that sometimes our own judges have perhaps not been adequately conscious of their responsibility in this regard.

It gives us no pleasure to find High Court judges having to go to court in order to secure what they consider to be their rights in regard to the ascertainment of their age. It gives us no pleasure also to be told, for instance, as I have been told lately, that the Chief Justice of one of our leading High Courts, I shall not mention the name of the High Court, has been found by some people, again rightly or wrongly I do not know, to have given an age which was not quite correct, and a representation has been sent to the President signed by all sorts of people asking for an ascertainment of the age of that particular judge, even though he happens to hold a very important position in the judiciary.

It gives us no pleasure to have to refer to these things, and I mention it only in order to impress on our judges, if I may with all due respect, that from them also the country's expectation is that they should be able to command not only the confidence

of the public, but also the esteem of the executive.

Having said that, I would like to impress upon the executive, because it is with the executive that we have our contact in this House, their responsibility to maintain the highest possible regard to the position of the judges. I say this because there is at the moment pending in the Supreme Court the case of one ex-Judge of one of our High Courts in regard to the ascertainment of his age. In regard to this matter, many interlocutory proceedings have taken place, and certain observations have been made by High Court judges which have been reported in the papers, which throw a flood of light on the recent emergence of a practice on the part of the executive to interfere, rather unwarrantedly, in matters relating to the position of the judiciary.

This question of the fixation of the age of High Court judges, and Supreme Court Judges for that matter, is a very delicate question, and on behalf of the judges the proposition has been put forward that if an age has been accepted at the point of time of the judge's appointment, and also gazetted for the information of the public, then there cannot be a deviation from acceptance of that age subsequently unless the judge is found, on investigation, to have committed perjury at that point of time, and therefore he deserves removal from his position. The Judges have, therefore, tried to say that at the point of time of appointment, their ages should be ascertained in the normal way, and that should be the age considered to be the rightful age, which is not going to be contested in future. But what has happened is that in the particular case which is now pending before the Supreme Court for final adjudication, the judge's age was determined at a particular point of time by the executive, and the judge was asked to quit, against which the judge is trying to have his remedy in court.

My feeling is that for the executive to arrogate to itself the duty of ascertaining the age of a particular Judge, without reference to the judge himself, is something which detracts very seriously from the dignity of the judiciary and is going to prejudicially affect the work of the judiciary.

In regard to this also, a point has been raised that whenever the Union Government here ascertains the age of a judge at a particular point of time it sometimes asks the Chief Justice of India, or some such highly placed person. On this point, a judge of the Calcutta High Court has made an observation to this effect, namely that the judiciary should not be made the consultant of the executive unless the law requires it in express terms; that is to say, a decision of the Union Government in relation to a judge of a High Court somewhere in the country should not merely receive a special warrant because of a consultation having been held with the Chief Justice of India or some such person, that after all, the judiciary should not lend itself to the kind of consultation which is involved in the determination as made in this kind of case. Therefore, I feel that some stable principles should be involved in regard to how the age of judges is going to be determined, how they are going to be published, and how they are going to be questioned in the future. Unless this is done, the judges are in a very delicate position, and at any point of time, a hostile member of the executive might put him in jeopardy. And this is exactly what appears to have happened.

In the case of the Calcutta High Court judge, whose name I need not mention here, which has gone to court, there were some interlocutory proceedings in the Calcutta High Court, and Mr. Justice P. N. Mookerjee gave a judgment in the course of which he was constrained to say—I am quoting his words:

"It (the case which he was disposing of at that time) might evoke sad and unpleasant memo-

ries, as it had witnessed criticism of judges in Parliament by no less a responsible person than the Union Law Minister."

A High Court judge of Calcutta has been constrained to remark that Judges who are not represented here, who are not present here, who are not in a position to have their point of view conveyed to this House, have been the victims of attack by no less a person than the Law Minister of the Union Government.

And this Judge, Mr. P. N. Mookerjee, went on to add:

"Such criticism (by the Union Law Minister) only shows how unsafe is the position of Judges here in spite of the protection and immunity afforded by Article 121 of the Constitution. It will, indeed, be a matter of the deepest regret if an unwritten constitution in this behalf, as in England, turns out to be more powerful and much more effective than the written Constitution of our land. Unless persons in authority are conscious of their responsibilities and realize the importance of such consciousness, there are immense possibilities of the gravest consequences, and problems may arise which may baffle all solution. While judges are doubtless bound by their oath to uphold the Constitution and so to permit no infraction of Articles 106 and 194, they may justly and reasonably claim for the safe due discharge of their duties that others in authority ought similarly to be alert that constitutional protection and immunity of judges under Article 121 is not violated."

I am quoting from a monthly journal called *Public Administration*, which is here in our Library, from where I have borrowed this copy, and these extracts are from the judgment given in the Calcutta High Court by a special bench which was set up earlier this year.

[Shri H. N. Mukerjee]

My point, therefore, is that this particular case, which might be unfortunate in some of its implications, throws a great deal of light on the way in which certain things have been done, and continue to be done in our country. And there has appeared a recent tendency on the part of the judiciary also to behave as if they depend upon the good pleasure of the executive in order to be able to avoid unpleasant consequences, or in order to achieve some greater success in their own status in life, which is already high, but some of them who want to go higher still, want to be in the good books of the executive. A state of things where the highest judiciary comes to feel a sort of dependence on the executive is something which goes right against the grain of democracy, particularly where a written Constitution has to be interpreted by the judiciary, which really has the last say in this matter.

So, in regard to the fixation of the age of Judges, some very serious thought needs to be given by Government and by the country, and it is therefore I suggest that while we can have no objection to having some consequential changes because the age of retirement of judges has been increased from 60 to 62,—there can be no objection to that—the process of the determination of the age of judges should be laid down in terms which would be in conformity with the dignity of the judiciary, that the executive should not be in a position to dole out favours to the judiciary, or frowns if it is so inclined, that any suggestion of the executive having the whip hand over the judiciary also should be eliminated.

I wish, therefore, that the Minister keeps this in mind and tries to evolve certain formulae by which the ascertainment of the age of the judges can be done in such a way as would not militate against their dignity and self-respect, would in no way weaken their responsibility of interpreting the Constitution, because in that regard

they are the repositories of the truth of the Constitution, they are going to interpret how the Constitution can warrantably be applied in the conditions of our country.

With these words, I have no objection to the Bill being accepted, but I press again on the Minister that he gives his mind to this aspect of the matter.

**Shri Vidya Charan Shukla (Mahasamund):** Sir, the question of judges and their transfer from State to State has been agitating the minds of the Home Ministry and the State Governments for a long time. I want to take this opportunity of requesting the hon. Minister to enlighten the House on this question of transfer of judges from one Bench to another, that is, from one State to another and tell us how many judges have been transferred from one State to another, and if this process is found difficult by the Government, what are the impediments that come in the way. I say this because this particular system has been found to be very laudable and a lot of things have been said about the merit of this system, but I think, and my personal opinion is, that because of political pressures or the reluctance of the judges themselves, such transfers have not been possible. But still it would be very interesting for the House to know the number of judges that have been transferred from one State to another, say, in the past 10 years.

Another point that I want to make is about the appropriate choice of the persons who have to sit in this high pedestal of justice. I have a little experience of high courts and the Supreme Court, and I can say that most of the judges that have been elevated to this high office do amply deserve it, but still there have been cases in which such appointments have been made on considerations other than judicial or merit. There is a case of

a particular high court judge who happens to be an ICS official, who has been taken from State to State; none of the States wanted that civil servant, that ICS officer. He is not even a law graduate. He was shunted from Bihar cadre to the Orissa cadre; the Orissa people shunted him away to the Central Government, and again, from the Central Government he was shunted out to one of the Part C States, and when he was not wanted anywhere, though he was not a lawyer, he was dumped into the M.P. Court. Since then, he has been making a nuisance of himself there. (Interruption). It is a fact. It is on the record that he is not a law graduate. Just because he is an ICS officer and is not wanted anywhere . . .

**Shri Bade (Khargone):** Can he say that he is making nuisance—that a judge is like that? I know where his shoe pinches.

**Shri Vidya Charan Shukla:** He cannot challenge my facts. They are clear and are on record.

**Shri Bade:** He is not a nuisance in Madhya Pradesh. He may be a nuisance to you.

**Shri N. C. Chatterjee (Burdwan):** He cannot say of a sitting judge like that.

**Mr. Deputy-Speaker:** Order, order.

**Shri Vidya Charan Shukla:** I have not mentioned the name of the judge.

**Shri Bade:** He should withdraw the words that "he is making a nuisance of himself." A judge cannot be a nuisance.

**Shri Vidya Charan Shukla:** The general procedure or principle has been that judges are appointed only from out of the practitioners who practise at the high courts. I am sorry to say that this practice is also not adhered to in certain States. These appointments are sometimes unfortunately made out of political considerations. It would be a very sorry

day, and it would be a very tragic thing for our judiciary, if political considerations ever enter into the appointment of High Court or Supreme Court judges. (Interruption).

There were some appointments, not in my home State but elsewhere also, which have been motivated not by considerations of merit but may be on political considerations. I cannot make a definite statement whether it was on political considerations. I know of a particular case in which a district court lawyer was elevated to the Bench and there was a lot of protest from the judges and from the Bar Association also, but it was not heeded. I do not know what the reasons were. I wish that while the hon. Minister replies to this debate, he makes some pointed reference to these things and tell us whether this is a frequent thing or it has been stopped or what his information about that is.

**श्री यु० सि० चौधरी (महेन्द्रगढ़):**  
उपाध्यक्ष महोदय, जो संशोधन विधेयक आया है वह इतना छोटा है कि उसके ऊपर अधिक चर्चा नहीं हो सकती है। लेकिन इससे सम्बन्धित कुछ बातें हैं जिनका सम्बन्ध सीधे इस संशोधन विधेयक से है और उनकी मैं चर्चा करना चाहता हूँ।

पहली बात का तो सम्बन्ध पीछे जो संविधान में संशोधन करने वाला विधेयक आया था उससे है। उस वक्त यह प्रश्न उठा था कि 60 साल की जगह हमारे हाई कोर्ट्स के जजों की आयु रिटायर होने की 62 साल कर दी जाए। इस सारी की सारी बात का क्या आघार है, यह क्यों किया गया है, इस विषय में मैं विस्तार से तो नहीं जाना चाहता हूँ लेकिन एक बात जिस की मेरी राय में भ्राम शिकायत की है इस सारे मामले के अन्दर वह मैं निवेदन कर देना चाहता हूँ। इसी संदर्भ में वह बात आती है। भ्राम उससे बड़ी परेशानी उस जनता को हो रही है जो जनता किसी कारणवश मुकदमों के अन्दर फंसी हुई है। यह परेशानी हाई

[ श्री यु० सि० चौधरी ]

कोर्टस के बारे में खास तौर से है। सरकार भी इस बात को भली भांति जानती है कि मुकदमों के निपटारे में बहुत देर होती है, मुकदमों के फंसले होने में बहुत देर होना है। यह बहुत ही महत्वपूर्ण प्रश्न है कि मुकदमों के फंसले जल्दी से जल्दी हुआ करें। कहीं यह देर 62 साल की उम्र जो रख दी गई है, उस वजह से तो नहीं होती है। हो सकता है कि इस वजह से कोई...

**Shri Hathi:** We can discuss anything we like—delay in the judiciary etc. But this is a specific point; Shri Mukerjee was pinning it to a particular point.

**श्री यु० सि० चौधरी :** मैं आपकी बात मानता हूँ। मैं यह कह रहा था कि देरी होने का कारण कहीं यह तो नहीं है कि एक खास उम्र में पहुंच जाने के पश्चात उनमें काम करने की जो क्षमता है, उसके अन्दर कुछ कमी आ जाती है। यह बात मैं जजों को सब सम्मान देते हुए कह रहा हूँ। संविधान का जब पंद्रहवां संशोधन विधेयक आया था उस वक्त मैं नहीं कह सका था। लेकिन मैं यह अनुभव करता हूँ कि जो बौद्धिक वर्ग है और जिस के अन्दर वकील, जज, पालियामेंट के मॅम्बर आदि आते हैं, आज के हमारे सामाजिक ढांचे के अन्दर, उसके स्वास्थ्य का हितर वह नहीं रह पाता है जो रहना चाहिये जिस कारण से देरी हो जाया करती है। आज देखने में आता है कि 302 के मुकदमों के अन्दर मुनवाई में छः छः और सात सात महीने लग जाते हैं। यह तो फौजदारी मुकदमों की बात हुई। दीवानी मुकदमों में तो डेढ़ डेढ़ और दो दो साल लग जाना मामली बात है। 302 के मामलों के अन्दर जिन लोगों को छूटना होता है अपील में, उनके फंसले होने में जब इतनी देर लग जाती है तो यह जो

सजा होती है वह तो उनको भुगतनी ही पड़ जाती है और अगर जल्दी इनके मुकदमों का फंसला हो जाया करे तो इनको ये सजायें न भुगतनी पड़ें। मेरे कहने का तात्पर्य यह है कि यह इस सारे सिलसिले में कहीं यह बात तो नहीं है कि उम्र के बढ़ाने की वजह से उनके कार्य करने की जो क्षमता है.....

**Shri Hathi:** This is not a Bill to increase the age of judges.

**श्री यु० सि० चौधरी :** चूँकि आप उनकी सर्विस कंडिशन से सम्बन्धित यह कानून ला रहे हैं, इस वास्ते मैं यह बात कर रहा हूँ। संविधान का संशोधन करके उनके रिटायर होने की आयु 60 से 62 साल कर दी गई थी।

एक दूसरी बात जो श्री हीरेन मुर्जी ने भी कही है, मैं भी अर्ज करना चाहता हूँ। जो जनतांत्रिक देश है, उन में और उसी तरह से हमारे देश में भी यह होना चाहिये कि जो ज्यूडिशरी है, जो न्यायपालिका है, वह कार्यपालिका से जितना अधिक सम्भव हो सके, उतना अधिक अलग हों। किसी भी मामले के अन्दर किसी भी क्षेत्र के अन्दर जहां तक हो सके, कार्यपालिका का न्यायपालिका के ऊपर कोई प्रभाव नहीं होना चाहिये, कोई कंट्रोल नहीं होना चाहिये। इसे एक आधारभूत बात मान करके लोकतंत्र को मानने वाले देश चला करते हैं। इसका हमें भी पालन करना चाहिए। हमारे हीरेन मुर्जी साहब ने कहा और हमारे शुक्ल जी ने भी कहा है, कि उम्र बढ़ाने के मामले के अन्दर या जजों की एप्वाइंटमेंट के मामलों के अन्दर कोई राजनीति नहीं आनी चाहिये। राजनीति इसके अन्दर आ सकती है, इसका भय भी देश के निवासियों के मनों के अन्दर नहीं आना चाहिये कि कार्यपालिका का उनकी एप्वाइंटमेंट्स पर काबू है, उनकी सर्विस के जो नियम हैं, उनको बदलने का अधिकार

है, उनकी भ्रम्र घटाने बढ़ाने का अधिकार है इसका सन्देह नहीं रहना चाहिए। मैं मानता हूँ कि बहुत से मामलों में सुप्रीम कोर्ट है जिस को इस प्रकार के अधिकार प्राप्त हैं। लेकिन स्पष्ट दिखाई दे रहा है कि सुप्रीम कोर्ट या विधि मंत्रालय इस वक्त यहां नहीं है, यहां तो कार्यपालिका के ही मंत्री बैठे हुए हैं और वही इस संशोधन को पेश कर रहे हैं। इसके बारे में कोई संशय न हो, कोई सन्देह की गुंजाइश न हो आम लोगों के दिलों में कि कार्यपालिका जो है वह जजों के स्वतंत्रतापूर्वक कार्य करने का जो तरीका है, उसमें दखल देती है, इसकी आपको व्यवस्था करनी चाहिये। लोगों को बड़े सुचारू रूप से और प्रभावशाली ढंग से न्याय मिलता है, यह पक्का विश्वास लोगों के दिलों में होना चाहिये। इसके बारे में कोई संशय अथवा सन्देह की गुंजाइश नहीं होनी चाहिये। मैं यह बात बहुत ही जोरदार शब्दों में कहना चाहता हूँ कि यह सारी की सारी बात जो है इसको राष्ट्रपति जी के निर्देश के ऊपर, सुप्रीम कोर्ट के ऊपर छोड़ दिया जाना चाहिये। सुप्रीम कोर्ट इस का निर्णय करे। सुप्रीम कोर्ट सर्वोच्च न्यायालय है देश का। चूंकि न्यायालयों का देश में सब से ऊंचा स्थान है, इस लिये सुप्रीम कोर्ट ही हाई कोर्ट के जजों के बारे में सारी की सारी बातों का निर्णय करे चाहे वह उन के अप्वाइंटमेंट के बारे में हो या उम्र घटाने बढ़ाने के बारे में हो।

14.00 hrs.

दूसरी बात जो मैं कहना चाहता हूँ वह जजों के अप्वाइंटमेंट के बारे में है। अभी जैसा मैं ने बतलाया और जैसा श्री शुक्ल ने भी अभी कहा, मुझे इस बारे में जो भायंका या भय है—हो सकता है कि इस में मेरी गलती हो, अगर गलती हो तो उस को ठीक कर दिया जाये—लेकिन जो भय है वह यह है कि जजों के अप्वाइंटमेंट के बारे में स्टेट गवर्नमेंट्स का बहुत हाथ होता है। चाहे वह बाहर से लिये जायें चाहे किसी पब्लिक प्रोसिक््यूटर को लिया जाये

या चाहे किसी सेशन जज को ही हाई कोर्ट में लगाया जाये, उन को स्टेट गवर्नमेंट की रिक्मेन्डेशन पर ही रक्खा जाता है। उस रिक्मेन्डेशन की डिगरी क्या है इस बारे में मैं स्पष्ट नहीं हूँ, लेकिन राज्य सरकारों से पूछा जरूर जाता है इस मामले में। और अगर मैं गलती नहीं करता तो अगर राज्य सरकार किसी आदमी के बारे में कह दे कि यह आदमी ठीक नहीं है हाई कोर्ट में जाने के लिये तो उसे चान्स मिलना सम्भव नहीं होता, भले ही हाई कोर्ट के चीफ जस्टिस या सुप्रीम कोर्ट के चीफ जस्टिस उस आदमी के बारे में कोई भी राय रखते हों। यह कितनी न समझ में आने वाली बात है। इस पर सरकार गहराई से क्यों नहीं सोचती। जब हम एक तरफ कहते हैं कि सारे के सारे मामले में कहीं पर भी राजनीति नहीं आती और हम सब समझते हैं कि राजनीति आनी भी नहीं चाहिये, तो इस तरह का निर्णय करने में राजनीति नहीं आती तो क्या होता है। आखिर जो प्रादेशिक सरकारें हैं वे किसी न किसी राजनीतिक दल की हैं। जब उन से पूछ कर जजों को रक्खा जायगा तो राजनीति कैसे नहीं आयगी। मुझे एक घटना याद आती है। पंजाब में एक सेशन जज था। पंजाब के भूतपूर्व मुख्य मंत्री श्री प्रताप सिंह कैरों ने उस से कह दिया था अगर तुम मनुख आदमी के मुकदमे में उस के हक में फैसला कर दोगे तो मैं तुम को हाई कोर्ट का जज बनवा दूंगा, वरना तुम्हारे खिलाफ करप्शन का चार्ज लगा कर तुम को रिटायर करवा दूंगा। मुझे पता नहीं उस मामले में क्या हुआ, लेकिन मैं कहना चाहता हूँ कि सारी की सारी न्यायपालिका के न्यायाधीशों का अप्वाइंटमेंट आप स्टेट गवर्नमेंट की मर्जी पर क्यों छोड़ते हैं। अगर कांस्टिट्यूशन में कोई कमी हो इस सम्बन्ध में तो अमेंड किया जाये और राष्ट्रपति के निर्देश पर और केवल सुप्रीम कोर्ट का जो चीफ जस्टिस हो, सर्वोच्च न्यायाधिपति हो, उस के फैसले पर उस का अप्वाइंटमेंट हो। सिर्फ हाई कोर्ट के जज का ही नहीं बल्कि मैं तो कहूंगा कि जो डिस्ट्रिक्ट जज हैं उन के

[श्री यू० सि० चौधरी:]

अप्राइमेट से ले कर सुप्रीम कोर्ट के जज के अप्राइमेट तक सारे के सारे होने चाहिये राष्ट्रपति के निर्देश पर और सुप्रीम कोर्ट की राय पर। किसी भी रूप में गृह मंत्रालय का यहां बैठना इस मामले में, श्री हाथी का यहां बैठना, श्री नन्दा का यहां बैठना हमारे दिलों के अन्दर शक पदा करता है, और हम यह मानने के लिये तैयार नहीं हैं कि अगर आप जजों के वास्ते कोई अधिकांश अपने हाथ में लेते हैं तो हमें कचेहरियों में न्याय मिलेगा। हमें हाजिज न्याय नहीं मिलेगा। जिस दिन आप यहां नहीं बैठेंगे, उस दिन हम समझेंगे कि हिन्दुस्तान के अन्दर न्याय बिल्कुल ठीक मिल रहा है और कार्यपालिका का कोई प्रभाव हमारे ऊपर नहीं है। इस लिये मैं फिर प्रार्थना करता हूँ कि जितनी जल्दी हो सके श्री हाथी की जगह विधि मंत्री यहां पर आयें।

**Dr. L. M. Singhvi (Jodhpur):** Sir, while the Bill itself is a consequential enactment and as such it is unexceptionable, I think it is appropriate, contrary to the submission made by my hon. friend, the Minister of State for Home Affairs, that we consider the larger question of the conditions of service relating to our Judges. To preface my submissions, I would like to say that it is most deplorable and regrettable that this opportunity was not taken to bring a comprehensive piece of legislation before this House to alter, modify and improve the conditions of service of our High Court Judges.

It is customary for us in this House to extoll the independence and integrity of our judiciary. It is the judiciary which is the custodian of our Constitution, but we have done precious little to improve their conditions of service and to ensure that the most talented in the Bar and in the subordinate judicial services would be attracted to our higher judiciary, because this is the very crux of the successful working of our Constitution.

I am sorry to say that the ample evidence before the Joint Select Com-

mittee on the Fifteenth Constitution Amendment Bill, over which you presided, has been ignored or neglected. Need I remind my hon. friend, the Minister, that in this committee various ex-Chief Justices, particularly one ex-Chief Justice and several other persons who were highly knowledgeable about the conditions of service prevailing in our country had deposed and said that at present the conditions are not good enough to attract the best in our legal profession. You cannot expect independence or integrity or competence from those who are recruited from the second or third lines in the profession. We want the very best for our judiciary, because on the functioning of our judiciary depends the whole future of our democracy and the rule of law in this country. I hope the Minister would be able to give us an assurance of his earnestness in the matter and of his willingness to bring about a comprehensive piece of legislation to alter and improve the conditions of service relating to High Court Judges. This would indeed be in fulfilment of an assurance given by the Law Minister in the committee as well as on the floor of this House. I think these changes are over due and should be considered and brought before the House at the very earliest.

I should like to say also that the procedures for recruitment leave much to be desired. I have heard from a former illustrious Chief Justice of India that in certain cases, State Chief Ministers are known to set up competing candidates for elevation to the High Court. I am quite sure that the observation of the former Chief Justice, a great jurist of our country, was based on facts and based on his anguish regarding the procedures which are sometimes set into motion by the executive Governments in our various States. I should like the Minister to tell us frankly and fully what insidious and surreptitious role, which time and again it has been alleged the State Chief Minister happen to play in the selection of High Court Judges. If

there is even a grain of truth in these allegations, if there is any basis for the statement to which I made reference just now, I think it is a matter which is exceedingly serious and which demands the first attention.

I should also like in this connection to say that the judiciary in our country should be brought under the Ministry of Law, not because I expect a millennium to dawn upon us as soon as this transfer is effected, not because I think that the competent hands of Mr. Nanda or Mr. Hathi are inadequate for the exigencies of this particular branch of administration, but because I think it accords with propriety and principle. A demand to this effect was made by my friend, Mr. Chatterjee, himself a former Judge of a High Court and an illustrious jurist of our country and this demand received support from no less a person than the present Chief Justice of India, who said that it is only in the fitness of things that the judiciary should have to deal with the Ministry of Law rather than the Ministry of Home Affairs. I hope, Sir, that the Minister would be able to clarify the Government's position in this regard.

Before I conclude I should like to refer to our growing anxiety about the growing size of our judiciary, and with it the growing arrears; and in various High Courts where the judiciary has been enlarged mainly to deal with arrears you will find that Law's delays have become much greater and the arrears have become much more. On the other hand, I would like, as a lawyer particularly, to emphasise that sometimes law's hurry appears to have taken a heavy toll. I am told that in the work of our judiciary, particularly the subordinate judiciary, certain maxima are laid down for them, they have to dispose of that many cases quantitatively, as if the dispensation of justice or the administration of justice can be quantified in this manner. I do think that this ought to be revised and some other means should be found to tackle this problem.

Once again, Sir, before I conclude I would like the Home Minister to give us a definite assurance that the conditions of service of the higher judiciary in our country would be improved, and the parent Act in which this amendment is sought to be made would be altered in order to improve the conditions of service of our judiciary, so that it would attract the very best of talent in our country.

**Shri N. C. Chatterjee:** Mr. Deputy-Speaker, Sir, I reiterate the suggestion that I put forward in this Lok Sabha when I first came here in 1952 that in the fitness of things we should give up the old British bureaucratic method of placing the High Courts or the judiciary in this country under the Home Minister. That was done because the Home Minister was always an ICS man who would look to the British interests and the Law Minister from Lord Sinha right down to the last day always came from the legal profession. Therefore they did not venture to trust a Law Minister with the important function of looking after the judiciary. That is unheard of in England and in other democratic countries. Then the Home Minister, Dr. Katju, said "I cannot understand what Mr. Chatterjee is saying because we are a government with collective responsibility." It is not a question of collective responsibility. There are many things: we do not know who the Home Minister will be, he may not have any legal training or legal background at all. Dr. Katju was an exception; he was a very illustrious member of the legal profession. But in the fitness of things I do reiterate the suggestion that I made that we should discard the old British method and place the judiciary under the Law Minister. I am very happy that after the speech that I made the other day in this House, the Chief Justice of India Mr. Justice Gajendragadkar has again voiced the same feeling. That should be respected.

Sir, I remember, in one Select Committee I pleaded very hard that the judge's age should be raised from

[Shri N. C. Chatterjee]

sixty to sixty-two. The late Shri Pant was the Home Minister at that time and he was in the Chair. He said, "Mr. Chatterjee, you as ex-judge are not permitted to plead for your tribe?" It is not a question of pleading for anybody, it is a question of principle. Just go to the Supreme Court. Most of the Judges are over sixty. When Chief Justice Warren came here I had a long discussion with him. You know, Sir, he is the Chief Justice of the Supreme Court of America. He avowed this: "Mr. Chatterjee, in your country Supreme Court Judges are recruited from the legal profession, not from the public life of India. Look at me. I have been a successful Chief Justice according to you, and I tell you I am successful because I was for twelve years functioning in very important capacities, either as Governor or as Senator or in other very important and responsible positions. That has given me a wider outlook which has impelled me to take a proper view of things."

**Shri Ranga (Chittoor):** And bring politics into the Supreme Court?

**Shri N. C. Chatterjee:** And you know, Sir, in the racial crisis cases the Supreme Court of America has delivered judgments which have attracted the attention of the entire civilised world and it has received encomiums from all liberty-loving people.

I do maintain that the age sixty-two is the proper thing to fix. I cannot understand what is the objection to that. When we appoint Judges from the High Court and take them to the Supreme Court they are fit enough to continue till sixty-five; but when they get into the High Court they become derelict and absolutely inefficient after they cross the age of sixty? That is not fair. And I can tell you from my experience. I have been at the Supreme Court Bar from 25th January, 1950. I tell you that our Judges were mostly above sixty and they have rendered distinguished service to the administration of justice. And our

Supreme Court can compare favourably with any other supreme court in the world.

I am also gravely disappointed that with regard to the case of one High Court Judge, Mr. Justice Mitter, our Calcutta High Court has gone down and the entire judiciary has been dragged down because of this unfortunate incident of a judge's age being questioned later on. You know, Sir Trevor Harris sent for him and went into the matter. Thereafter his age was accepted both by the Government and the Chief Justice. And that should be made final. A salutary principle should be laid down, let the executive through whatever process it likes determine the age of a judge at the time of appointment, but there should be no further reopening of that matter at a later stage. Otherwise there may be a danger of the executive interfering with a judge's age because he has acted in a manner which is not palatable to them.

For years together from the platform of the Indian National Congress every session we used to pass a resolution that there must be complete separation of the judiciary and the executive. That has not been done in independent India in a number of States. Punjab is one example, and you know what disaster took place there, a good deal of corruption. I had been associated with the Grewal case and a number of important cases in the Punjab, and I know how the stream of justice was sought to be deflected because of executive interference and interference from higher quarters. Fortunately the Supreme Court ordered that this should not be tried by Punjab judges and ultimately they got justice, both in Kapur's case and in Grewal's case. Therefore, it is absolutely imperative that there should be no executive interference at any stage or in any form with the judges.

Particularly with regard to the age of a judge I think the suggestion

should be accepted that only the Supreme Court Chief Justice should be in a position to deal with the matter if there is any question, and I fully endorse the suggestion made by Shri Mukerjee that that point should be clarified.

I am sorry that there is a good deal of law's delays. The day I resigned my High Court Judgeship I went to bid good-bye to the Chief Justice—you know Sir Trevor Harris, a very distinguished Chief Justice—and he told me, "Mr. Chatterjee, you are going, look at the commercial courts, on the original side there are 11,000 suits pending." And when I went to the Allahabad High Court some years later to appear in an important case I met Chief Justice Mullick of the Allahabad High Court and later I met Justice S. R. Das of the Supreme Court and I asked him "what is the position with regard to law's delays?" He said "The Calcutta High Court has been beaten hollow by the Allahabad High Court; there the arrears amount to 51,000 cases." It is a horrible thing. I hope things have improved. But there is a lot to be done in that direction. It is not a question of an individual ICS officer. Some remarks have been made against him. It is not fair. He cannot defend himself here. But all that I am saying seriously is that some attempt should be made to improve and upgrade our judiciary. And that can be made provided you make it possible by offering better and more attractive terms and conditions of service and tenure to the High Court Judges. And that should be done. It will be a false economy if you do not do it. And law's delays will to a large extent be negated or curtailed if you have the right type of judges and upgrade the judiciary.

Lastly, I am making one more suggestion, and that is this that no scope should be given for a writ petition to be filed or allowed to be filed to question the age of a Judge. I had been to your State. Mr. Deputy-Speaker, I was invited by the Bangalore Bar Associa-

tion to deliver a course of lectures on comparative constitutional law in the month of July. When I was there I was snocked to hear that a writ petition had been filed in the Madras High Court challenging the legality of the continuance of the Chief Justice in office, because his age was questioned. When I went to Mysore I asked the Chief Minister and other friends and I came to know that it was true, that this writ petition was pending there. This sort of disreputable state of things must end and it can only end provided you decide once for all that only the Chief Justice of India should have the final say in the matter, that he should look into it and completely determine it. You should not allow the executive to have any say in the matter in any shape or form.

Finally, I want to make one suggestion. With regard to the appointment of a High Court Judge, let not the Chief Minister at all interfere. Why allow the Chief Minister to interfere in the appointment of a High Court Judge? The Chief Justice of the State and the Chief Justice of India should decide the matter, the moment you allow the Chief Minister to come in and have a say, as Dr. Singhvi just now said, politics comes in, political influence comes in, then there is the question of negotiation, there is the question of scratching each other's back, the Chief Justice may have a nominee of his, the Chief Minister may have a nominee of his, then they will pair them together and other unfortunate things follow. Unfortunately, this sort of things have happened. The Chief Justice of India should deal with these things. One Chief Justice of India has expressed that this is a very melancholy state of affairs and it should be done away with. It can be done away with, as I said, if we do not allow the Chief Minister to have any say in the matter. Let the highest man in the judiciary of the State directly deal with the highest judicial officer or authority in India. Let them decide as to who is the man who is competent to be appointed to the high post of a

[Shri N. C. Chatterjee]

High Court Judge. That should be the desirable objective. That should eliminate all chances of any further degradation of the judiciary. I want that this disreputable state of affairs of over-litigation, of *mandamus* petition or *quo warranto* petition filed in court after court questioning the judges' ages should come to an end. That can only be stopped if the executive definitely declares that the Chief Justice of India shall be vested with that authority and his determination shall be accepted as final. I am quite sure the judiciary in India will accept that verdict and I am sure it will be a very desirable objective.

**Shri Ranga:** Mr. Deputy-Speaker, Sir, I agree with all the observations made by my hon. friend, Dr. Singhvi. I am also very keen that the Chief Justice of the Supreme Court alone should be made responsible to settle questions of doubt that arise in regard to the date of birth of these High Court judges. The present practice of leaving it to the executive is not healthy and in the recent instances it has led to a lot of speculation and rumours, the details of which I need not give now.

Sir, to place all these High Court judges—there are quite a large number of them—and also the Supreme Court judges at the mercy of the executive is really not dignified. Secondly, it is not conducive to the independence of the judges and it would not be in keeping with the status that we have endowed them with in our Constitution.

I am particularly anxious, Sir, that the transfers that are being made of High Court Judges should not be made merely by the Home Ministry or the Law Ministry as is now being suggested by Shri Chatterjee. It should be made by the Chief Justice of the Supreme Court; otherwise, again, political influence and mischief are likely to come into play.

And, in regard to this question of transfers, it is not only the High Court judges but the Chief Justices also must be capable of being transferred as and when found necessary by the Chief Justice of the Supreme Court. I am very glad the healthy practice of appointing some judges to any one particular High Court from outside the jurisdiction of that particular court or from some other State has come to stay and is being utilised. I would like this practice to be extended so that a decent enough proportion of High Court judges in any High Court would be those who have come from outside that particular State.

Then there is the question of conditions of service. I learn that in very many places the High Court judges are hard put today to have a decent enough accommodation. While the Government have been going out of their way to providing housing accommodation for many officers of much lower grade, much lower status and on a large scale too in almost all the States, I do not see any reason why the Government should not hasten to make funds available and help the High Courts to construct decent enough quarters for the High Court judges and place them free of rent at their disposal in many of the States. I say "free of rent" for this reason that the salaries that are being paid to our High Court judges, I learn, are not attractive enough to induce the most eminent lawyers who are available to offer themselves for appointment as High Court judges. I know also of instances where several leading practitioners did not wish to accept these appointments just because—they had two objections—firstly, they were earning so much more and they did not want to sacrifice and, secondly, they felt that political influences which were raging in their States were likely to come in their way of getting their appointments in a decent way. They did not

wish to be insulted by being dropped at the instance of local political bosses.

That brings me to the question of the manner in which these High Court judges are being appointed. I am in agreement with my hon. friend, Shri Shukla, from the Congress benches, in his observation that political influences are being brought to bear in the selection of people as High Court judges. This is not a new evil. Even when the British were here they used to favour some of their political favourites, and that was one of the instruments which they used against our Nationalist Movement. Unfortunately, our Swaraj Government also has fallen into that bad practice and our Chief Ministers at the State level have only been too glad to take advantage of this. I would like to know whether even one-tenth of the total number of appointments that have come to be made ever since we have achieved freedom in regard to High Court judges have come to be made entirely on of non-political and purely judicial basis.

**An Hon. Member:** Not even one per cent.

**Shri Ranga:** It is very difficult for anybody to say that political influences have not been brought to bear upon this. And, political influences have not always been used in a healthy manner or a wholesome manner. Often they have been used also to punish or insult some people who are entirely deserving and who command the respect of their local bars. Therefore, I want this practice to be put an end to. I do not know how soon it will be put an end to. One of the ways by which, I think, we can avoid this evil is by transferring the jurisdiction of administration of High Courts and Supreme Court from the control of the Home Ministry to the Law Ministry.

Then, Sir, there is the question of the age problem. I agree with my

hon. friend Shri Chatterjee, that it is good that it has been raised so far as the State High Court judges are concerned. But I do not agree with my friend when he said that there are many cases pending just because so many of these judges are over-aged. That is not so. The real reason for that, I think, is that there are not sufficient number of judges appointed and I would like my hon. friend, the Home Minister, to look into this matter and see that they are helped.

But I do not agree with one suggestion made by Shri N. C. Chatterjee, namely, that direct recruitment should be made even to the Supreme Court. In the light of the harsh and the bad experience that we have had in the appointment of High Court Judges till now, I would like the present practice to be continued, that is, the recruitment of Supreme Court Judges from functioning High Court Judges.

**Shri N. C. Chatterjee:** I can tell my hon. friend that we have departed from that practice and the Government of India has approved of it. The learned gentleman who was the Advocate General of Punjab has been recruited directly from the Bar and that has proved to be a great success.

**Shri Ranga:** An exception cannot prove the rule. I do not know anything about this particular gentleman; therefore, I do not wish to say anything about it. I am prepared to accept what Shri Chatterjee has said that it is an excellent, happy example of appointment through direct recruitment; but in the light of what has happened now in regard to High Court Judges, I would rather that we would be cautious enough and see that we restrict the appointment of Supreme Court Judges to High Court Judges and not give so much freedom and latitude to the Home Ministry or the Law Ministry at the Centre.

Lastly, I am particularly anxious that there should be a change in the

[Shri Ranga]

attitude of the Chief Ministers as well as the ministries here of the Government of India towards our High Courts and the Supreme Court. Whenever there is any doubt I would like them not to use their own judgment but to refer it to the Chief Justice of the Supreme Court and accept his judgment in regard to the recruitment, appointment, sanction of leave, transfer and all these things, leaving it to the Chief Justice and in that way maintain the prestige as well as the impartiality and non-political character of the Supreme Court and High Court Judges.

**Shrimati Yashoda Reddy** (Kurnool): Mr. Deputy-Speaker, Sir, of late the Parliament and the people in general have become more and more critical about the judiciary. It is one of our departments of which I have been very proud. Our judges were above suspicion but, I must confess, of late for a variety of reasons which, I think, do exist, our confidence not in the judges themselves but in the judiciary is lessening and it is a very sad thing.

My hon. friend, Shri Ranga, said that the Chief Ministers are interfering too much. I do not agree with him; but certainly this much I am prepared to concede that there is a feeling that there is a bit of political intervention in the appointment of High Court Judges. It will do well for the Government, whether it is State or Central, that this impression, however right or wrong it may be, should be curbed in the interest of our own people and in the interest of our administration of justice.

I would like to agree with Shri N. C. Chatterjee about the age of High Court Judges. It is not the question of the President or the Executive or X, Y or Z deciding whether it is right or not. Why should that question at all arise? Why could it not at the time of appointment, once and for all, be made clear? What

prevents it? What is the difficulty? When you appoint a gentleman as a judge of the High Court, let it be made clear and final what the age of the judge is and let not there be a question of decision at any time. We should not unnecessarily bring in the President or his name. It must be assured by the Ministry that hereafter, whatever might have happened in the past, never again will this question of age arise as far as the Indian judiciary is concerned.

About the separation of the judiciary, in the days of the British we went on shouting that we wanted separation of the judiciary and we promised our own people that there will be separation of the judiciary. No doubt, we have been acting on those lines but in many States they have not done that. Moreover, we feel that the separation of the judiciary from the executive ends only with removing the magistrates from the control of the District Magistrate. That may be one aspect of the thing; but there are so many other things. Under our statutes and laws more and more administrative departments are being made final in their decisions. The High Courts and the Supreme Court are also remote from the decisions of the administration and the executive. People are being stopped from going to the courts of law because they are not able to get relief and whatever the executive authority says is final. Whatever may be the efficiency of the administration, we must concede that the administration cannot be the sole judge of its own discrepancies even if it is working in favour of the person who is complaining. I do not know what to suggest, but there must be an independent tribunal, apart from the administration or executive officers, who can deal with all administrative disputes.

About the recruitment to the judiciary, Shri Gajendragadkar said that apart from other reasons for the law

delays, one important thing was that the judges who were being appointed, specially at the lower judiciary level, were not well-equipped or trained. This he says, is due to the fact that most of our young people who come out of the universities go in for administrative jobs because they are more lucrative and that they take to the Bar or to the judiciary only as a last resort. So, my appeal to the Government is that the status of the lower judiciary should be raised. At least, they should make it an all-India service. I know, replying to the Budget debate, I think, Shri Sen, said that the State Governments will oppose it. Maybe, the State Governments will oppose it—and a number of things they do oppose—but in the interest of justice, at least they must make it an all-India service and recruit to the subordinate judiciary from universities, give them better pay and also give a sort of legal training for a year or two so that they may have enough legal equipment and training when they go to the courts to decide cases.

About litigation, it has become very costly. In one or two seminars Shri Chatterjee had appealed that litigation as such is very costly and the poor people in India, not because of any intention of the Government but because of the circumstances prevailing, are certainly shut out from getting justice. Shri Sen himself appealed to the House and said, "I am one with the Members for giving some legal aid to the poor and bringing down at least the cost of litigation"; but, I think, he did say that the Finance Ministry had come in his way—It may not be the same Finance Minister—and that they cannot spare money as far as affording some sort of aid to poor people who are in dire need of justice is concerned. I would request the Government, the public and even the eminent lawyers at the Bar to evolve a method as to how we could be able to solve this problem of giving some

aid to the poor people who are being denied justice just because they are not rich enough.

The most important thing that Shri Gajendragadkar said is that law's delays were not just because there were not enough judges. He did not agree with Shri Ranga's view. He said that even under the present circumstances if the judges worked a little harder and the members of the Bar co-operated, the law's delays and accumulation of work must be very little. In this connection I would like to quote what the late Prime Minister said in 1956 presiding over a seminar. Inaugurating the First State Law Ministers' Conference he characterised the working of the Indian judiciary as belonging to a more leisurely bygone age and not at all in keeping with the needs of the fast changing social order. I do understand the feelings of eminent members like Shri N. C. Chatterjee. I do not say that it is entirely the fault of the judges, but with due respect to them I only appeal to the judges and the members of the Bar that they should co-operate because, being a poor country, as we are, maybe we are not able to give as many judges as we would like to have.

Lastly, I would like to say a word about the transfer of judges. In spite of the assurances of the Central Government I feel that judges are not being transferred in good numbers from the States from which they are recruited. From my own personal experience, I would like to say that when a member from the Bar is recruited to the High Court Bench, somehow there is a feeling in the mind of the litigants that they might not get justice from such a judge because he having been an advocate in the same High Court, it is just possible that some of the litigants may be his own ex-clients. Whatever may be the reasons, it should be a healthy convention, and I am glad we have started it, that transfer of judges should be made from one State to another.

[Shrimati Yashoda Reddy]

Further, I would say that I agree with my hon. friend Shri Ranga—though I very rarely agree with him; not because I am as intellectual as he is, but with my limited intelligence I sometimes differ—when he says that even the Chief Justices, wherever possible, should be recruited from the other States.

I hope also that the Home Ministry would like note of the criticism that there is a feeling in the country that there is political interference in regard to the judiciary; though it is not as much as the Opposition seems to make out, yet we must remember that justice should not only be done but it should seem to be done. We should try to eliminate even any suspicion in this regard, and we should all co-operate and not create unnecessary confusion in the minds of the people that politicians are playing havoc with the judiciary.

**Shri Gauri Shankar Kakkar** (Fatehpur): I agree with the hon. Minister that the Bill which is before us is a very simple Bill and it has come only as a consequential amendment with regard to the raising of the age of retirement of High Court judges. After hearing hon. Members who have spoken from both sides of the House, I feel that it seems most proper that a comprehensive Bill should have been brought forward in this House clearing the position in regard to the appointment and other conditions of service of the High Court judges.

Since we have pledged ourselves to a democratic form of government and that can be possible and that can be guaranteed only when there is a judiciary above all suspicion, with a view to placing the judiciary above all suspicion, there should have been rules framed to ensure that there would be the least chances of political interference at the time of appointment of judges. I would welcome if the Home Minister brings forward a comprehensive legislation where all such things would be

cleared so that there may not be any chance for any sort of suspicion in the fairplay of the judiciary.

I know that it has been admitted that there has been political interference by the Chief Ministers of various States at the time of appointment of judges. There have been cases where judges have been appointed from among very ordinary lawyers who were politicians or Members of the Legislature, for political reasons, and those persons now find a place on the Benches of the High Courts. When such instances are there, you will agree that it is almost an agreed proposition today that political interference has taken place in the appointment of judges.

Now, I would like to say a word about the separation of the judiciary from the executive. There have been resolutions passed on this matter, and it has been the policy of our national government to see that there is complete separation of the judiciary from the executive. But there are certain States which have not effected this separation yet. Even in those States where the separation has been implemented I would submit that that is there only in name, and it has been done in the most imperfect manner. The judicial officer in UP is still at the mercy of the ADM who is only an executive officer of the cadre of sub-divisional officer. So, even where there has been an implementation of the scheme of separation of the judiciary from the executive there has not been a complete separation and the executive is still dominating over the judiciary.

In regard to the age of judges, I would submit that it is really unfortunate that whenever the question of age of a High Court Judge comes up, it becomes the subject-matter of court litigation. Such things should be avoided. I understand that henceforth the rules would be there and there would be no such cases, and the age would be made clear and deter-

mined finally at the time of appointment. But what about those cases where with the enforcement of the Constitution (Fifteenth Amendment) Act, the difficulty has arisen? I think that it would be a safe thing that where such difficulties have arisen or where the matter has actually become the subject-matter of litigation, the Chief Justice of the Supreme Court should be given the power and authority to decide the matter, and if any amendment is required to settle the controversy, it should be done straightway, because it is a sad tragedy that the judges of High Courts should be going to the High Court or the Supreme Court for the determination of their actual ages, in order that they may get the benefit of the Constitution (Fifteenth Amendment) Act and this present Bill.

In conclusion, I would request the Home Minister to come forward very soon before this House with a comprehensive Bill which will make the position clear once and for all about the appointment of judges, their tenure of service etc. and which will eliminate all chances of political interference by the executive and which will also ensure that the age of judges would be determined once and for all and it may not be questioned later on in any court. If we do this, I am sure that we can succeed in assuring our people of the fairplay of the judiciary in running the democratic set-up for which we are all striving.

**श्री यशपाल सिंह (कैराना) :** उपाध्यक्ष महोदय, जहाँ तक कांस्टीट्यूशन का ताल्लुक है, हम उसके सामने सिर झुकाते हैं। लेकिन भारत की बढ़ती हुई जरूरतों को देखते हुए यह अच्छा नहीं लगता है कि न्यू हैडज, फ्रेश हैंड्स, जो फ्रेश ग्रुजुएट्स यूनिवर्सिटीज से निकल कर आ रहे हैं, जो ऊँची से उंची काबलियत वाले लोग आ रहे हैं आई० ए० एस० में और ज्युडिशरी में ऊँचे से ऊँचे ब्रेन वाले आ रहे हैं उनको पीछे धकेल दिया जाए। हम देखते

हैं कि एक एक केस हाई कोर्ट में सोलह साल से अटका रहता है। इसका साफ मतलब यह है कि जस्टिस डिलड, इज जस्टिस डिनाइड वे केसिस सोलह सोलह साल से इसलिए अटके हुए हैं कि ऐसे लोगों को भी लगा रखा गया है जो काम नहीं कर सकते हैं। एक तरफ हम कहते हैं साउंड माइंड इन ए साउंड बाडी एक तरफ हम कहते हैं कि जिस का दिल और दिमाग काम करते हैं, जिसकी आँखें दुबल हैं, वही काम करेंगे और दूसरी तरफ हम देखते हैं, कि हमारे यहाँ इस तरह के आदमा भी रख छोड़े गये हैं, जो अच्छी तरह से काम नहीं कर सकते हैं। हमारे नंदा जो ने जोसदा चार कमेटी बनाई है उसका बाहर वाले सदाचार कमेटी कहते हैं, लेकिन मैं नहीं कहता हूँ, उस में भी इस तरह के लोग रख छोड़े गये हैं चेयरमैन इत्यादि पदों पर जिनको न तो दिखाई देता है, और न ही मुनाई देता है। अगर इस तरह से चला जाएगा तो कैसे देश आगे बढ़ सकता है..

**श्री श्यामलाल सराफ (जम्मू तथा काश्मीर) :** मेरे दोस्त यहाँ तो इस बात को कह सकते हैं लेकिन इसको वह बाहर न कहें।

**Mr. Deputy-Speaker:** There should be some relevance also.

**श्री यशपाल सिंह :** लोग सदाचार कहते हैं, मैं तो सदाचार कमेटी ही कहता हूँ।

**श्री म० ला० द्विवेदी (हमीरपुर) :** सदाचार समिति का इस बिल से क्या सम्बन्ध है।

**श्री यशपाल सिंह :** सारा उसका इस बिल से ताल्लुक है।

**Mr. Deputy-Speaker:** The hon. Member should not talk so lightly like that.

**श्री म० ला० द्विवेदी :** जो विषय विचाराधीन है, उससे सम्बन्धित बात कहनी चाहिये।

**श्री यशपाल सिंह :** अगर आप कहें तो मैं बैठ जाता हूँ और आपको बोलने का टाइम दे देता हूँ।

श्री म० ला० द्विवेदी : नहीं आप बोलें, लेकिन इसके सम्बन्ध में बोलें ।

श्री यशपाल सिंह : हाई कोर्ट से जिस बात का ताल्लुक है, वही कह रहा हूँ । यही मैं कह रहा हूँ कि वहाँ पर सोलह सोलह साल से केस अटके हुए हैं । हम जनरली यह मानते हैं कि नयों को मौका दिया जाए । पुराने लोग अपने जवानों और नवयुवकों के लिये, फ्रेश हैंड्स के लिये कुछ जगह खाली करें । जब तक ऐसा नहीं होगा देश आगे नहीं बढ़ेगा ।

इस के साथ ही साथ मैं यह भी मानता हूँ कि जजेज के जो अप्वाइंटमेंट्स होते हैं वे विधि मंत्री के अधीन होने चाहियें । जो हमारी ला मिनिस्ट्री है यह उस के मातहत होने चाहियें । होम मिनिस्ट्री से इस का क्या ताल्लुक है । होम मिनिस्ट्री तो यह देखेगी कि कौन वहाँ किस तरह से आतंक कायम कर सकता है । लेकिन इस का ताल्लुक आतंक के साथ नहीं है । हम कहते हैं कि जूडिशियरी जो है वह गार्जियन है हमारे कांस्टिट्यूशन की । जब वह हमारे कांस्टिट्यूशन की गार्जियन है तो उसे होम मिनिस्ट्री के नीचे नहीं आना चाहिये । इस महकमे से उस का क्या ताल्लुक है । होम मिनिस्ट्री देखती है एग्ज्यूटिव प्वाइंट आफ व्यू से लेकिन हम देखते हैं जूडिशल प्वाइंट आफ व्यू से । हमारी जूडिशियरी को जूडिशल प्वाइंट आफ व्यू से इतना मजबूत होना चाहिये कि उस में चीफ मिनिस्टर्स दखल न दे सकें । आज तक हम देखते थे कि हाई कोर्ट के जजेज किस तरह रहते थे । वह उसी तरह रहते थे जैसे कि हिन्दू विधवायें रहती हैं । उन का पब्लिक से कोई ताल्लुक नहीं होता । लेकिन अब हम देखते हैं कि वह मिनिस्टर्स की दावतों में शामिल होते हैं, मधवरो में शामिल होते हैं । इस लिये जहाँ तक इस चीज का ताल्लुक है, मैं मंत्री जी से यह प्रार्थना करना चाहता हूँ कि आज जो हालत है उस को इम्प्रूव करने के लिये और लोगों को इन्साफ मिले यह हालत पैदा हो, इस को विधि

मंत्रालय के अधीन होना चाहिये । आज हम देखते हैं कि चार चार साल तक केस चलते रहते हैं । मैं ने ऐसे केस देखे हैं कि अगला एलेक्शन आ गया है लेकिन पिछले एलेक्शन की पिटीशनों के फंसले नहीं होते हैं । ऐसी हालत में सब से ज्यादा जरूरी है कि चीफ मिनिस्टर्स की रिफोर्मेडेशन को हटाया जाये । इस से भी ज्यादा जरूरी यह है कि इस महकमे को होम मिनिस्ट्री जो है उस से ले कर विधि मंत्रालय के अधीन किया जाये और सब से ज्यादा जरूरी यह है कि जो हमारा सुप्रीम कोर्ट बैठा हुआ है, जिस के सामने मैं सिर झुकाता हूँ, जिस के फंसले के सामने, जिस के इन्साफ के सामने, मैं नतमस्तक होता हूँ, उस को अधिकार दिया जाये, सुप्रीम कोर्ट के चीफ जस्टिस को अधिकार दिया जाये कि उस के मशवरे से जजेज के अप्वाइंटमेंट्स हों और होम मिनिस्ट्री की दखल इस में से निकाला जाये । मेरा सर शर्म से झुक जाता है, मैं नाम नहीं लेना चाहता क्योंकि मुझे किसी से व्यक्तिगत ट्रेन नहीं है, लेकिन मेरा सर शर्म से झुक जाता है जब मैं देखता हूँ कि मद्रास के जज साहब की पोजीशन के एक शख्स ने, जब वह छठवें या सातवें क्लास में पढ़ता था, उस वक्त के सर्टिफिकेट में उम्र के मामले में गड़बड़ की । एक हाई कोर्ट के जज से हम यह उम्मीद नहीं रखते हैं कि जब वह छठवें में पढ़ता था उस वक्त के सर्टिफिकेट में उम्र के मामले में गड़बड़ करे और उसे घटाये या बढ़ाये । इस तरह की चीज को देख कर मेरा सर शर्म से झुक जाता है । इस लिये मेरी आप से रिक्वेस्ट है कि आप इस को पोलिटिकल प्वाइंट आफ व्यू से न देखें । अगर आप इस को पोलिटिकल प्वाइंट आफ व्यू से देखेंगे तो हमारी जूडिशियरी कायम नहीं रह सकेगी जिस को हम अपने कांस्टिट्यूशन की गार्जियन कहते हैं । हम देखते हैं कि पड़ोसी मुल्क पाकिस्तान तक अपने सुप्रीम कोर्ट के फंसले के सामने पर सर झुकाता है । फिर हम तो जनतंत्र की गति पर खड़े हुए हैं, हम लोग बिमोफ्रेसी के लिये खड़े हैं । इसके

लिये हम लोग दिन रात कोशिश कर रहे हैं। ऐसी हालत में किसी भी तरफ से अगर कोई प्रेशर होगा हाई कोर्ट के मामले में तो इन्साफ नहीं हो पायेगा। अगर हाई कोर्ट के जज को इल्मीनान हो जाता है कि चीफ मिनिस्टर उस से खुश है तो उस को दुबारा नौकरी दिलवा सकता है, तो इन्साफ कभी कायम नहीं रह सकता है। हमारे कांस्टिट्यूशन में लिख दिया गया है कि आफ्टर रिटायरमेंट उन को इस तरह का कोई प्रलोभन नहीं दिया जायेगा और हम लोग अपने कांस्टिट्यूशन के सामने सिर झुकाते हैं।

इस के साथ साथ देश की प्रगति का रास्ता यह है कि जहां तक हो सके हम उम्र बढ़ाये नहीं बल्कि घटाये। जो न्यू हैड्स आ रहे हैं, जिन के पास फेश नालेज है, जिन्होंने बहुत कुछ देखा है, जो गुलामी में पैदा नहीं हुए हैं बल्कि गांधी जी की दी हुई आजादी में पैदा हुए हैं, नेताजी सुभाषचन्द्र बोस की दी हुई आजादी में पैदा हुए हैं, जिन के अन्दर इन्साफ का मादा है, निभिकता का मादा है, उन को लाया जाये और जो गुलामी के दिनों में पैदा हुए हैं जितनी जल्दी हो सके उन से पिंड फुड़ाया जाये। नये नये लोगों को, जिन के दिल व दिमाग पर कोई गवर्नमेंट का प्रेशर न हो, होम मिनिस्ट्री का प्रेशर न हो, जिन के ऊपर किसी तरह का चीफ मिनिस्टर का कोई गलत इम्प्रेसन न हो, वह लोग लगाये जायें। तभी हमारी जुडीशियरी सही तरीके से रन कर सकेगी।

इन शब्दों के साथ मैं आप को इस चीज के लिये और ज्यादा प्रेरित करूंगा कि इस मामले को होम मिनिस्ट्री के हाथों से लेकर विधि मंत्रालय के सुपुर्द किया जाये।

**Shri Hathi:** I did not think that I would get this unanimous support for this measure. Everybody who has spoken has supported it.

**Shri Y. S. Chandhary:** Including Shri Yash Pal Singh.

**Shri Hathi:** So far as the measure is concerned, in respect of the increase of age from 60 to 62 for eligibility to pension and taking into consideration service in Kashmir in respect of Kashmir Judges transferred to other parts, nobody has opposed, but they have dealt with a number of other points, and I am happy at the anxiety and the sentiments they have expressed about our judiciary.

This country can be proud of its judiciary. We have an independent judiciary, and we have respect for the judiciary. Shri N. C. Chatterjee and Dr. L. M. Singhvi are not here, but as members of the bar, they have contributed a great deal. Shri Mukerjee also, during the debate, has made pointed reference to the question of the determination of the age of Judges. Other Members also have pointed out the various other factors which engage their attention. These points attract not only their attention, but it is equally a matter which Government is looking into.

So far as the judiciary is concerned, and the respect and the position of the Judges are concerned, I for one would be the first to see that our Judges are respected, that the Judges maintain their standard, and that the judiciary maintains these traditions which the country wants for an independent judiciary. I cannot claim to be an eminent lawyer like Shri Chatterjee, but for a number of years I have been in the profession, and therefore there is that personal inclination or affiliation to the Judges and to the bar also.

Coming to the point raised by Shri Mukerjee, perhaps he recollects that in the Fifteenth Amendment of the Constitution which this House passed only some months back, we have said that if any question arises as to the age of the Judge of a High Court, the question shall be decided by the President after consultation with the Chief Justice of India, and the decision of the President shall be final.

[Shri Hathi]

This was a recent amendment, but after this controversy started. Therefore, I may say that everybody would deplore this situation that there should be writ petitions and all sorts of litigations and that somebody should decide about a Judge's age, or that the Judge should try to change the age. This is not really in good taste and we would not like it. It is therefore that this very House passed the amendment that it will be done in consultation with the Chief Justice of India.

Then, the other point that Dr. Singhi and others raised was about the arrears in the High Courts. This matter also was considered at the conference of the Law Ministers, at the Chief Ministers' conference and the Chief Justices' Conference, and their recommendation about appointment of additional Judges etc., whatever they have recommended, have been implemented.

Then there is the question about the transfer of judges from outside.

**Dr. M. S. Aney (Nagpur):** Was there any representative of the Home Ministry in those committees?

15.00 hrs.

**Shri Hathi:** There was. There were conference of the Law Ministers, then Chief Ministers and then the conference of Chief Justices; those were the conferences and representatives of the Home Ministry, and in some cases, the Home Minister, was there except in the conference of Chief Justices. Their recommendations have been implemented.

Then, Shri Vidya Charan Shukla wanted to know about the appointment of judges from one high court to another, or, their transfer. Appointments of judges from outside the States are being made. 18 such appointments have been made after we have tried this. But there, the difficulty envisaged was that they really

wanted some compensatory allowance; the judges were not very willing to go from one State to another, and they wanted some compensatory allowance, travel facilities and concessions. We have agreed to that also so that the transfer of judges from one State to another may be easy and the judges would not feel embarrassed or unhappy at being transferred from one State to another. In fact, that would be a good thing and we encourage it.

Then the other question which was touched upon by several Members was the question of delays. I have already mentioned that this very point was considered at these conferences and steps have been taken for the appointment of additional judges, etc.

Then comes the question of appointment of high court judges. Here, much has been said about political pressure. I may, however, say that the appointments of judges to the high courts are made after consulting the Chief Justice of India, and I do not remember any case, except one, where the appointments have been made without the consultation of the Chief Justice. But I may assure the House that this sort of impression is also not good for us. We should try to remove this impression and should see that the appointment of high court judges is made on merits, in consultation with the Chief Justice of the high court concerned and the Chief Justice of India. Because, if you allow this sort of atmosphere to grow, then the very confidence which we have today in the judiciary will be destroyed, and therefore it is that I for one and the Government is eager to see that these considerations do not come in the way.

I referred to the important points raised. Other points have been raised and hon. Members have discussed many things which are not quite relevant to the present Bill. But I have tried to deal with other points

also although not relevant and which were raised by hon. Members and which are important really. I can only assure this House that whether it may be the Law Ministry or it may be the Home Ministry, it is not a question of the person who is in charge. It is the question of the outlook, and the outlook of the Government as such. Is it the intention of the Government to see that the judiciary is independent? Is it the desire of the Government to see that the people have confidence in the judiciary? Is it the desire of the Government to be in preparedness to see that impartial justice is being meted out to the people? Is it the desire of the Government to see that there are no delays in the dispensation of justice? If this is the outlook, if this is the approach, that is good. It may be Mr. Hathi or Mr. Nanda; that does not much matter; may be a lawyer or may not be a lawyer. But the question is one of outlook of the Government as a whole, and so far as that is the outlook, I do not think that the question of internal distribution should come in the way.

With these words, I commend this Bill to the acceptance of the House.

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

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

*The motion was adopted.*

**Mr. Deputy-Speaker:** We shall now take up clause-by-clause consideration of the Bill. There are no amendments to clauses 2 and 3.

श्री बागड़ी (हिसार) उपाध्यक्ष महोदय, यह बिल बिना कोरम के पास हो रहा है

**Mr. Deputy-Speaker:** The bell is being rung— Now there is quorum. The question is:

"That clause 2 stand part of the Bill."

*The motion was adopted.*

*Clause 2 was added to the Bill.*

*Clause 3, was added to the Bill.*

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

**Shri Hathi:** I beg to move:

"That the Bill be passed."

**Mr. Deputy-Speaker:** Motion moved:

"That the Bill be passed."

**Shri H. N. Mukerjee** (Calcutta Central): Sir, I would not normally have intervened at this stage because obviously perhaps I am tiring the patience of some very distinguished Members, but while I appreciate very greatly the capacity for sweet reasonableness which my hon. friend the Minister of State possesses in plenty, I am afraid he has not quite given us the satisfaction which I was asking for, may be a little unreasonably.

I am quite aware that in the Constitution amendment there has been inserted a provision regarding the President having the duty, in cases when they are relevant, to determine the age of the judge and that is going to be final. But what has disturbed me is certain proceedings to which I tried to draw the attention of the House. In the case of J. P. Mitter, a former judge of the Calcutta High Court, in the Special Bench matter to which I made a reference a little while ago, it came out and it is stated in the judgment not only Mr. Justice P. N. Mookerjee but also of the others who gave judgment in a different way, that the Advocate-General of West Bengal had made a definite statement that the Union Home Ministry had given a direction to the Chief Justice of the Calcutta High Court that so and so having passed the age of 60 should no longer be permitted to act as judge, and that judge, claiming that he had not passed that age, was trying to establish his right. I am not going into the rights or the wrongs of the matter, but it is rather dangerous: the Union Home Ministry gave direction to the

[Shri H. N. Mukerjee]

Chief Justice and all the judges who comprised the Special Bench—five very distinguished judges—commented on this; they said that it is a very dangerous state of things when the Union Home Ministry, as Union Home Ministry, gives this direction to the Chief Justice of a high court. I do not quite know what was the actual text, but from the judgment it would appear to be so.

If there was a specific statement that in conformity with the provisions of the latest amendment of the Constitution, the President, according to proper processes has gone through the different mechanisms for ascertaining the age of the judge and if the facts of the ascertainment by the President himself of the age of that particular judge had been communicated to proper quarters, I can understand the feasibility of the proceedings.

But from what I have found in reports—and I have quoted from a journal called *Public Administration*, where all the relevant extracts from the judgment of the Special Bench are put together—it appears that the Union Home Ministry gave a direction on the Calcutta High Court's Chief Justice. If my friend would please look into the proceedings before the Calcutta High Court, it came out that the Chief Justice himself was put in a quandary and all kinds of allegations have been made against the conduct of the Chief Justice himself in covering up a matter which was rather difficult to cover up. This ex-Judge, J. P. Mitter, has been fighting a lone battle, a valiant battle. It may be something on the merits of which we cannot pronounce—it is not our business—but alone he has been fighting this battle and he has drawn the attention of the juristic world all over our country. In the course of the proceedings, it came out that the Union Home Ministry gave this direction which I do not like. I wish some kind of clarification is given about this.

Another point which came up in the course of the discussion to which

also he has not given a satisfactory answer is this. The Chief Minister of a State seems to have a great deal of say in the selection of Judges. It is not only the Chief Justice of the High Court and the Chief Justice of the Supreme Court who decide this matter, but the Chief Minister has a lot of say in this matter. We do not like this at all. Chief Ministers are generally very estimable people, but occasionally all kinds of things are noised about in regard to their activities. I heard once from a very eminent person—I would not name the State to which he belongs—he told me once about a function held in one of our States where a new High Court was being set up and the Chief Minister went and spoke there, being a very important dignitary. The Chief Minister congratulated the Judges on dispensing with justice. We speak a language which is not our own and we are all liable to make mistakes. But perhaps Judges dispense justice while Chief Ministers in many cases dispense with justice and they had advised Judges to do dispensation with justice rather than dispensation of justice, which is their duty.

In regard to Chief Ministers, so many people have so many grouses of so many descriptions that for the Chief Minister to have a hand in the pie of selection of High Court Judges is a very dangerous proposition. From the Government I want an assurance that in regard to the appointment of High Court Judges, functionaries like the Chief Minister or comparable people, who may be very estimable and very important in our economy, should have nothing to do, and that is a matter on which the Government should make up its mind and tell the House.

**Dr. M. S. Aney:** The hon. Minister has made a very reasonable speech and tried to convince House that the Government is of the same point of view as the hon. Members. One of the things that hon. Members wanted was that the Minister should bring a comprehensive Bill incorpo-

rating all the reforms suggested by them. In his reply, he has omitted that point altogether. I would like to know whether it is in the contemplation of the Government to consider this and if so whether it is likely that before the end of this Parliament, he will introduce a Bill like that.

**Shri P. Venkatasubbalah:** (Adoni): There has been some misapprehension in the minds of the people that there has been inordinate delay in appointing Judges once the proposals are sent by the Chief Justice of a State. In my own State, a proposal has been sent for the appointment of two judges. This matter has been pending for a long time, more than a year. An apprehension has been created that there is some hitch between the Chief Justice of the State and the Chief Justice of India and the Union Ministry. I would like the Minister to remove this misapprehension.

**Shri Hathi:** I am sorry Mr. Mukerjee was not satisfied with the reply I gave. So far as issuing some-direction was concerned, that was altogether a new point which he has not mentioned in his earlier speech. I shall certainly look into that.

So far as the appointment of Judges is concerned, as the provisions stand at present, article 217 says:

"Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State and in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court..." etc.

It has been said that there is some political pressure that should not be there. The Home Minister is going to discuss it with the Chief Justice of India as to whether anything further is necessary in this regard.

Mr Deputy-Speaker: The question is:

"That the Bill be passed."

*The motion was adopted.*

15.15 hrs.

DIRECT TAXES (AMENDMENT)  
 BILL

**The Minister of Finance (Shri T. T. Krishnamachari):** I beg to move\*:

"That the Bill further to amend certain laws relating to direct taxes be taken into consideration."

This is a short Bill which seeks to amend the Income-tax Act, 1961, the Estate Duty Act, 1953 and the Expenditure-tax Act, 1957, within a limited compass, for making certain provisions for removing hardship and providing relief to assesses in certain situations, and also removing certain difficulties arising in the operation of some of the provisions in these Acts. Some of the provisions in the Bill are designed to strengthen and improve the machinery of the Income-tax Act for tackling evasion and avoidance of tax.

First I shall refer to the main provisions of the Bill relating to income-tax. One of these provisions for giving relief to assesses relates to the taxation of the distribution made to the shareholders of a company by liquidator during the course of winding up of the company. Under the present law, the amount of such distribution, to the extent it is attributable to the accumulated profits of a company prior to its liquidation, is taxed as dividend in the hands of the shareholders. This provision is meant to prevent the avoidance of tax by the shareholders of a company through the device of accumulating its profits for several years and then taking the company into liquidation so that these

\*Moved with the recommendation of the President.