[Mr. Speaker]

Act, 1934 (32 of 1934), this House approved of the Notification of the Government of India in the Ministry of Commerce No. S.O. 3460, dated the 11th November, 1966, increasing the export duty leviable on tea."

The motion was adopted.

13.10 hrs.

CONSTITUTION (TWENTY-THIRD AMENDMENT) BILL

Mr. Speaker: Shri Chavan.

Shri S. M. Banerjee (Kanpur): On a point of order.

Mr. Speaker: Let him move the motion, first.

The Minister of Law (Shri G. S. Pathak): Sir, on behalf of Shri Y. B. Chavan I beg to move:

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

The Minister of Parliamentary Affairs and Communications (Shri Satya Narayan Sinha): No time has been allotted to this Bill; this matter did not come up before the BAC. I therefore request you to take the sense of the House how much time the House would like to have for this Bill, because there is a special voting for this, and the approximate time may be fixed so that hon. Members must be informed to be present here in the House.

Shri S. M. Banerjee: Sir, in this connection, may I remind you that this is a most controversial Bill; the purpose for which this question has been asked is, because they are short of men.

Mr. Speaker: Whether they are short of men or not is not the concern now. The question before the House is, how much time should be given.

Shri S. M. Banerjee: Three hours.

Mr. Speaker: If he is satisfied if I give three hours, all right.

Shri S. M. Banerjee: Yes, Sir.

Shri Satya Narayan Sinha: We agree; we shall keep up to that.

Mr. Speaker: Shri Banerjee has proposed it and I have accepted it.

The Minister of State in the Departments of Parliamentary Affairs and Communications (Shri Jaganatha Rao): The voting will be at 4 O'clock.

Mr. Speaker: Yes; the first voting. It is only the approximate time.

Shri G. S. Pathak: Mr. Speaker, Sir, this Bill has become necessary because of certain constitutional defects discovered in the appointments of district judges and in the orders of transfers relating to district judges, and the Supreme Court has in two decisions laid down the law which would apply not only to those district judges who were concerned with those cases but also with other district judges because the Supreme Court has given a declaration of law which would apply to all cases.

This Bill does not effect any change in the substantive provisions of any article of the Constitution. It merely seeks to validate the past appointments of the judges and the judgments and orders of transfer, and it really implements the two decisions of the Supreme Court. Those who were found not eligible for appointment by the Supreme Court under the Constitution are excluded. Their appointments are excluded from this Bill; only their judgments are sought to be validated.

Before I proceed further, may I invite the attention of the hon. Members of this House to the relevant articles of the Constitution which created the difficulty and which were the subject-matter of the Supreme

Court decision? Article 233(1) reads as follows:

> "Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State."

Now, the question arose whether selection by a committee in which there were to judges and the judicial secretary would be a consultation within the meaning of article 233(1) even though the High court may have sent the list prepared by the selection committee to the Governor. That was one question. The other question was whether the word "posting" would cover the case of transfer. The controversy was that "posting" meant the first posting after the appointment; that it does not mean any order of transfer which may take place after the first posting. That was the second controversy.

Clause (2) of article 233 reads as follows:

> "A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment."

Therefore, for direct recruitment from the Bar, the recommendation by the high court was essential. If the hon. Members will kindly refer to article 236, they will find that the expression "district judge" is of a very wide import and it includes several kinds of judges. Article 236 reads thus:

> "In this Chapter—
>
> (a) the expression "district judge" includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge;"

Article 235 would also be necessary; the control over district courts and courts subordinate thereto including the posting and promotion of, and grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the high court. Therefore, if the word "control" includes transfer, then transfer could be made only by the High Court. If the word "posting" in article 233 did not include transfer, than the Governor could not pass an order of transfer. It can only be the High court which could pass an order of transfer, because the power of control over district courts belongs to the high court. That was the second controversy.

In April, 1953, the Government made rules purporting to act under article 309 for the appointment of district judges in both the cases, viz., where promotions had to be made from the subordinate judicial service and where there was going to be direct recruitment from the Bar. Under these rules, a selection committee was appointed consisting of two high court judges and the judicial secretary of the Government. That selection committee had to make a selection not only for promotion from the subordinate judicial service to the post of district judges but also for direct recruitment from the Bar. The selection committee had to place the list of candidates selected before the High court, and the High court had to transmit the list to the Governor who had to make the appointment. This was the procedure.

One Chandra Mohan, an officer belonging to the judicial service, filed a writ petition in the high court challanging the validity of these rules, and his case was that the consulation with the selection committee did not amount to consultation with the High court;

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that it should be the entire high court which should have consultation with the Governor. That was the point raised. The High court upheld the validity of the rules presumably on the ground that ultimately it was the high court which sent the list and that involved approval. But Chandra Mohan took the matter to the Supreme Court in appeal. The Supreme Court said that the selection committee is not a substitute for the High court and therefore these rules are invalid both under article 233(1) and article 233(2).

Shri Tyagi (Dehra Dun): Were the two judges of the committee nominated by the High court's Chief Justice or by the Government themselves?

Shri G. S. Pathak: It must have been done with the consent of the High court; they must have been nominated by the High court. I find from the judgement of the Supreme Court that even approval is mentioned while transmitting; yet the Supreme Court holds that this is not consultation with the High court. Therefore, these rules are void and consequently all appointments made under these rules are void. That is what the Supreme Court said.

May I, with your leave, read just a few lines from the Supreme Court's judgement which will emphasis the point that I am making?

> "For the foregoing reasons, we hold that the rules framed by the Governor empowering from the recruit District Judges from the judicial officers are unconstitutional and for that reason also the appointment of respondents so and so was bad."

The operative part of the judgment says:

> "In the result, we hold that the UP Higher Judicial Service Rules providing for the recruitment of District Judges are constitutionally void and therefore the appointments made thereunder were illegal."

This is not a decision which operates only between the parties or which governs only the persons whose appointment was challenged in this case. This is a declaration of law made by the Supreme Court which will apply to all cases where consultation in the sense defined by the Supreme Court was not had.

I shall read a few more lines from this judgment because there is some misapprehension about what the Supreme Court laid down and which made this Bill, to use the language of Mr. Banerjee, controversial:

> "We would, therefore, hold that if the rules empowered the Governor to appoint a person as District Judge in consultation with a person or authority other than the High Court, the said appointment will not be in accordance with the provisions of article 233(1) of the Constitution.
>
> While constitutional provisions say that the Governor can appoint District Judges from the service in consultation with the High Court, these rules say that the Governor can appoint in consultation with the Selection Committee, subject to a kind of veto by the High Court, which may be accepted or ignored by the Governor...
>
> The position in the case of District Judges recruited directly from the Bar is worse. Under article 233(2) of the constitution, the Governor can only appoint advocates recommended by the High Court to the said service"—i.e. not recommended by the Selection Committee.

The result is that all the appointments which were made without consultation with the High Court, whether

from the Bar or from the judicial service, are unconstitutional. Further, all judgments given by them would be a nullity and would have no legal effect.

After this, a question arose in the Allahabad High Court whether the judgments given prior to the date when the Supreme Court made the law clear were not binding upon the citizens. The full bench sat to decide this and there was a conflict of view. One judge said that even though the judgments were pronounced before the declaration of law by the Supreme Court, i.e. prior to 8-8-66, the judgments would be a nullity.

Shri S. M. Banerjee: Which was the case? Jaikumar case?

Shri G. S. Pathak: Yes, that is the only full bench case. But the majority of the judges said that during the time when a judge functions under colour of office and he is a *de facto* judge and the defect in appointment is not exposed—to use the language of the judges—the judgments would bind the citizens. This had to be considered along with a decision of the Supreme Court which said that...

Shri S. M. Banerjee: What was that case?

Shri G. S. Pathak: It was J. P. Mitter's case. The dispute in that case was what would happen to the actions of a judge who has exceeded the age of superannuation. This was in 1965. The Supreme Court held as follows:

> "If the decision of the President goes against the date of birth given by the appellant, a serious situation may arise, because the cases which the said judge might have determined in the meanwhile would have to be reheard, for the disability imposed by the Constitution when it provides that a judge cannot act as a judge after he attains the age of superannuation will introduce a constitutional invalidity in the decisions of the judge."

Leave for appeal to the Supreme Court has been granted in that full bench case and the matter will be coming up before the Supreme Court. Either the appeal has been filed or is going to be filed.

I wish hon. members to bear in mind the date 8-8-66. Prior to that date, the question would arise whether the majority view taken in the full bench case is correct or not. If that majority view is upheld by the Supreme Court, the judgments prior to 8-8-66 might remain valid. But after 8-8-66, when the defect was exposed and when everyone knew that there was no consultation with the High Court as required by the Constitution, their judgments would not be valid. There should not be any dispute about it.

Shri Tyagi: Why were they allowed to sit after that date?

Shri G. S. Pathak: Because the courts will have to function with the aid of the judges. The courts could not remain empty as there would be numerous cases to be decided. So far as the latter part is concerned, it is necessary to validate the appointments whenever made since 1954, because if the appointments are invalid, they could not pronounce judgments even after 8-8-66 and five of these judges are in the High Court today. They were appointed there because their appointments as District Judges were valid. This is the position.

In order to remedy these defects, it became necessary to validate only the appointments and judgments. It is not as if this Bill wants to introduce any change in the law saying that such appointments should be made in future also. New rules will have to be made for the new appointments. By this Bill, I am merely having the validation of the appointments made prior to the 8th August, 1966, and also validation of judgments and all acts done by these judges; nothing further. I also want that the transfers should also be validated, because instead of

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the High Court the Governor made transfers. That was another decision of the Supreme Court in which the Supreme Court held that the word 'control' includes 'transfer', the word 'posting' does not include 'transfer'. This is the position.

Now, so far as the factual position is concerned, I may be permitted to mention it before the House.

Shri Nath Pai (Rajapur): How many judges are affected.

Mr. Speaker: The hon. Member wants to know how many judges are affected.

Shri Nath Pai: He is putting an appearance as if the entire judiciary has collapsed.

Shri G. S. Pathak: It is precisely for this purpose that I am stating what is the actual position prevailing.

Shri Nambiar (Tiruchirapalli): How can such a glaring mistake creep in?

Shri G. S. Pathak: The glaring mistake was committed not only by the Government but also by the High Court. Both of them were working together and they were working in the belief that when the Selection Committee prepares the list and makes the selection, the High Court should be deemed to have approved the slection and therefore there was in consultation with the High Court. That is how this mistake has been continuing since 1954. No one raised the question in any court.

Shri Nath Pai: This is in your own State, not everywhere.

Shri G. S. Pathak: There are several States. In Rajasthan a Selection Committee was appointed consisting of the Chief Justice, the Administration Judge and another nominee of the Chief Justice. A writ was filed in the Rajasthan High Court. There also the matter is under dispute. The matter now is in the Supreme Court and, if my information is right, the case has not been taken up. I have been informed that it is probably because this amendment is pending here. Now, all the State Governments were written to, after this decision of the Supreme Court, and we found that there are two appointments which might also be defeated, in Mysore—the Chief Justice's own appointment and one more. That is my information. So far as the question of transfer is concerned, almost every State has asked for the amendment of the Constitution so that the orders of transfers might be validated. That is the position.

Shri Nambiar: The entire jails will have to be thrown open.

Shri G. S. Pathak: Yes, yes; if there is no validation. That is why we have brought in this validation Bill.

Mr. Speaker: There are those that have been sentenced to death and hanged.

Shri G. S. Pathak: I may inform the hon. Members that numerous petitions by way of writ have been filed in the High Court and in one petition bail application has been allowed in a capital sentence case because the death sentence will be invalid by reason of defective appointment. Numerous cases are pending there.

An hon Member: Who is responsible?

Shri G. S. Pathak: Whoever may be responsible, the people should not suffer because, if this mistake continues since 1954 and both the High Court and the Governor had been acting under a misapprehension about the validity of their laws then, in that case, you cannot say that this was something deliberate or done for any ulterior purpose.

Sir, you wanted some information

from me. I have taken informaution from the U.P. Government. There are 38 promotees selected by the Selection Committee in the years 1954-57 and 11 by direct recruitment in those years. Then there are 29 promotees on recommendation of the Administrative Committee of the Judges. Please remember that the Administrative Committee of the Judges to which this work of consultation might have been entrusted would be as legally bad as any other Selection Committee, because according to the decision of the Supreme Court there must be selection by the High Court. As I said, there are 29 promotees on recomendation of the Administrative Committee in 1961 and 1963. There are 116 promotees on recommendation of or in consultation with the Administration Judge alone. Then there is another group of cases where about 100—I cannot give you the exact figure—judges were not appointed in the usual way by the Selection Committee but powers of Sessions Judge were conferred upon these judges under the Criminal Producedure Code and then on the recommendation of the Administration Judge they were treated as District Judges—'treated' in the sense that though constitutionally they would not be District Judges everyone considered them to be District Judges because they acquired the powers of Sessions Judges on the recommendation made by an Administration Judge.

It is not a question of numbers. Even if ten judges were involved, they must have delivered numerous judgments since 1954 and 1957. It is not a question of appointment of one judge, two judges or a hundred judges. The judgments would be not only in civil cases where decretal monies must have been paid, properties must have changed hands, rights must have been determined and all those judgments will be set aside and titles unsettled and in criminal cases where people have suffered punishment and sentences have been executed....

Shri Nath Pai: You are trying to impress the House by creating the bogey of invaliation of judgements...

Shri G. S. Pathak: I will tell you about the consequences and then sit down. Please consider the consequences if you do not validate the past appointments and past judgments and orders of tranfer. All cases will be re-heard. Certainly, judgments after 8th August, 1966 will have to be vacated. Prior to that the judgments will have to be vacated if the Supreme Court accepts the earlier decision in J. P. Mitter's case or the dissenting judgment in the Full Bench case of Allahabad. These writ petitions are hanging over the heads of these judges like Damocle's sword. They do not know what would happen to them. The number of cases to be re-heard would be numerous, properties would have changed hands and so on and so forth, as I have already stated. There may be numerous cases of damages against the Government itself on the ground that it was the Government's agent, who was not a District Judge and who could not be protected as a District Judge, who was responsible for all these changes in the titles, imprisonment etc. etc.

So far as the Judges are concerned, without the removal of this uncertainty it is not possible that the judiciary in that State can function properly. That is the position. It is very easy to say that the High Court was wrong or that the Governor was wrong and so on and so forth, but look at the inconvenience and hardship which the people will suffer; look at the very fact that so many cases which were decided since 1954, will have to be decided again. This is the position.

Shri D. C. Sharma (Gurdaspur): Have you ever been a Judge of the Supreme Court?

Shri G. S. Pathak: I submit that this Bill should be aproved by the House unanimously.

Mr. Speaker: Motion moved.

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

Shri S. M. Banerjee: On a point of order, Sir. I tabled a motion under

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rule 184 that the Attorney General should be summonded and should be asked to address this House under article 88 of the Constitution.

Mr. Speaker: I have got his motion all right and I will put it before the House.

Shri S. M. Banerjee: I have a point of order on how it could be rejected.

Mr. Speaker: I am allowing it. I have not rejected it.

Shri S. M. Banerjee: It was not circulated.

Mr. Speaker: I have got it and I am allowing it.

Shri S. M. Banerjee: Are you allowing the first motion or the second motion?

Mr. Speaker: I am allowing the first one. The second was barred, but the second one also I will allow. I will waive the delay. Now, has he a point of order?

Shri Nambiar: The point of order was about the admission. Now that it has been admitted, there is no point of order.

Mr. Speaker: There is a motion by Shri Yashpal Singh saying that the debate on the Constitution (Twenty-third Amendment) Bill, 1966, be adjourned. Is he moving it?

Shri Yashpal Singh (Kairana): I am moving No. 4 which says that the Bill be circulated for the purpose of eliciting opinion thereon by the 31st March, 1967.

Mr. Speaker: That will come afterwards. So, No. 5, he is not moving.

Shri Yashpal Singh: No.

Mr. Speaker: Then comes Shri Banerjee's motion that the House resolves that the Attorney General be summoned to Lok Sabha to give his opinion on the Constitution (Twenty-third Amendment) Bill, 1966, and Government should take necessary steps in regard thereto. Is he moving it?

Shri S. M. Banerjee: I am moving it.

Mr. Speaker: Then, there is one motion by Shri Yashpal Singh saying that the Bill be refered to the Supreme Court for its opinion. Is he moving it?

Shri Yashpal Singh: I am not moving that.

Mr. Speaker: Then there is another motion by Shri Banerjee saying that the Bill be referred to the President for obtaining the opinion of the Supreme Court. Is he moving it?

Shri S. M. Banerjee: Yes, Sir; I am moving it.

Mr. Speaker: Then, Again Shri Yashpal Singh's motion that the Bill be circulated for eliciting opinion thereon.

Shri Yashpal Singh: I am moving it.

Mr. Speaker: All these will be treated as moved.

Shri S. M. Banerjee: I beg to move:

(i) "This House resolves that the Attorney-General be summoned to Lok Sabha to give his opinion on the Constitution (Twenty-third Amendment) Bill, 1966 and Government should take necessary steps in regard thereto." (6)

(ii) "This House resolves that the Constitution (Twenty-third Amendment) Bill, 1966 be referred to the President for obtaining the opinion of the Supreme Court under article 143 of the constitution on the following question of law:— Whether the judgements and orders passed by the District Judges appointed by the U.P. Government where

appointments have been declared *ultra vires* by the Supreme Court in a recent writ petition are valid or not." (7)

Shri Yashpal Singh: I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st March, 1967." (4)

Mr. Speaker: All these motions are before the House. We will have a discussion on them; I will hear the Members and then I will put them to the vote of the House. Shri Nath Pai.

Shri Nath Pai: Mr. Speaker, I was a little distressed to listen to the presentation of his case by the Law Minister.

Shrimati Renu Chakravartty (Barrackpore): It is an understatement.

Shri Nath Pai: Yes. I was deeply distressed. I should say, because in the first place he has not missed a single opportunity to mis-state the law of the land. I am sorry that in his eagerness to persuade the House to accept the Constitution (Amendment) Bill about which I doubt if he himself is fully convinced, he has tried to raise the bogies of all kinds of dangerous consequences that may follow. He has tried to refer to the hardships of the people that may result if this amendment is not rushed through. I am afraid, the people's lot under his party's rule has been of hardships; so his shedding these tears about the so-called hardships were rather crocodile tears.

Shri D. C. Sharma: No, no.

Shri Nath Pai: I should like to point out to you, Mr. Speaker, first the statement of objects and reasons where he states:—

"As a result of these judgement, a serious situation has arisen because doubt has been thrown on the validity of the judgments, decrees, orders and sentences passed or made by these district judges and a number of writ petitions and other cases have already been filed challenging their validity. The functioning of the district courts in Uttar Pradesh has practically come to a standstill."

I beg to submit that both these statements are far from being accurate. I am afraid, he should not take my statement remiss if I say that both these statements are not only exaggerations but both the statements are untrue. Seldom has the statement of objects and reasons been couched in such loose terms which is so far removed from the reality that prevails in UP.

First of all I would take the statement that the functioning of the district courts in Uttar Pradesh has practically come to a standstill. Is that really so?

13.47 hrs.

[SHRI SHAM LAL SARAF *in the Chair*]

According to the facts which he later on supplied to this House, the figures which he gave to us, it is only a certain number of appointments which have been invalidated. It is not the entire district judiciary of UP that has been paralysed as he sought to make out. It is only a certain number and, if I am right, it is only 11 judges, out of which four were direct parties to these cases, who have been directly affected.

I think, the law of the land also he has mis-stated. I should here like to say that when he said that the judgements,, decrees, orders and sentences passed by these judges, whose appointments have been held irregular, are also invalid, I was deeply embarrassed to hear an eminent lawyer like him and the Law Minister of India making such a wide and sweeping statement.

What is the law with regard to a judgement passed by a judge whose

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appointment subsequently comes to be invalid? Is the law as he stated or is the law something different? He has quoted Justice Mitter's case. I think, he knows the case of justice Ramachandra Iyer. Justice Ramachandra Iyer continued to be in the High Court of Madras on the false pretense that he had not reached the retiring age. He continued to deliver judgments, hear case and pass orders in the court. When his younger brother had completed and celebrated his *sasthiabdapoorthy*, the elder brother was still 58 years of age. This matter was brought to the notice of this House and the necessary proceedings were taken Later no, Justice Ramachandra Iyer had to retire.

I do not go into this sad episode. It was a lamentable lapse on the part of a man who was not qualified but who continued to cling to office. This is a malady which is not only limited to High Courts. We see its blatant example on the Treasury Benches every day. But you know, Mr. Chairman, and the Law Minister ought to know that the judgements passed by him were not invalidated. In a collateral proceedings judgements cannot be invalidated. It is only when a *quo warranto* has been taken the judgement can be vitiated, not subsequently if the Judge has acted *defacto*. I think, I am quoting the law here correctly. It is the majority judgement in the Allahabad High Court that accept where the judges are directly parties as to their appoitment or as to their character when the judgements can be vitiated, in collateral proceedings where the appointment is not question.....

Shri G. S. Pathak: That is only one proposition. There was another proposition laid down by the High Court which you will kindly read.

Shri Nath Pai: I will. I say the law of this country is very sound. It bases itself on the law and practice in the United Kingdom. The practice in the United States of America and Canada, where we follow the basis of the common law, is identical that the judge's appointment may be subsequently found to be invalid, unconstitutional or illegal, but you cannot invalidate—how can you?—the criminal proceedings in which a death sentence was passed against a criminal offender. But is it possible, therefore, to restore the man to life? No. This judgement, whatever the validation or invalidation of the particular appointment, stands. That is the law. I do not think that he should have stated that every judgment has been vitiated. It is not so; it remains valid. That is a very clear law.

He quoted the majority judgment in the Allahabad High Court; he tried to fight in the House to get his amendment accepted by saying that one judge has dissented and he has cast some doubts with regards to the validity of the judgements, orders and writ petitions heard by these judges. I want to take a very serious point after telling him that it is far from being fair to the House, it is almost irresponsible to state.....

Shri G. S. Pathak: If you will allow me, I would like to say this. I have very clearly stated that, after the 8th August, when the Supreme Court delivered the judgment, the position will be very different because the law was made clear that the defect in the appointment was exposed. The controversial area is only prior to 8th August when it was not known whether the appointments were valid or not and the full Bench was concered with appointments prior to 8th August, prior to the exposure of the defect

Shri Nath Pai: The general proposition which I tried to make has been upheld in this case. I could not get an easy reference from the library. It is so difficult to get quick references when you need from time to time, and when you have to confront an eminent lawyer like the Law Minister. The principle underlying them

has been applied to certain cases. I think I wanted this case of Pullan Behari. Kink Emperor, 15 Calcutta Law Journal full bench judgment, in which a similar question had come and it is well established. I would like you to help me to get that reference and I would read you the relevant chapter about it.

Mr. Chairman, why do all these things happen? I would like to draw his attention because this a deeper malady. You say that appointments have been made wrongly. It is a constant practice in U.P. and in some States, I know, unfortunately, to tamper with the independence of the judiciary by tampering with the appointments. Mr. Chairman, I am quite sure you have seen what the Law Commission had to say about this. The malady begins with the tampering of appointments. This is not accidental. The present executive has made it a practice, has made a virtue of it. This has been a thorn in the flesh of independent judiciary. They have tried to control it by having hand-picked men to fill the vacancies. I would like to say this. At the opening of the Supreme Court, Chief Justice Kania had this to say about this pernicious practice. It is this practice that a Selection Board was created in U.P. consisting of the Judicial Secretary and two judges. He could not give a categorical reply whether the High Court Chief Justice was consulted. He said, 'yes', but it was such a mild 'yes', an unconvincing 'yes'. That made it very clear..... (*Interruptions*). It can be mild and also true.

You can say that he was embarrassed by the question of Mr. Tyagi who asked whether the Chief Justice had been consulted with regard to the choice of the two judges who were to be the members of the Selection Board. What do we find, Sir? This is how this pernicious practice continues.

I am now quoting:

> "In order that the Supreme Court may have the full assistance in its work, the High Courts will have to be strong in their personnel. For some years before 947, there was a policy to appoint members of different communities, in some pproportion in the services, including the High Courts. In theory, it appears to be now accepted that appointments will be only on merits. The policy, however, does not appear to have been completely abandoned. We hope that political considerations will not influence the appointments to High Courts."

I want to remain him against of this malady. In the Law Commission they have pointed out this. I am reading from the Law Commission's Report, from page 69. What is this glaring indictment against the practice of the executive, about the appointments of hand-picked men, ineligible men, submen? (*Interruptions*).

Shri G. S. Pathak: Is it the first Report?

Shri Nath Pai: This is "Reform of Judicial Administration, Vol. 1, Chapters 1-29, page 69.

Shri G. S. Pathak: I was probably a party to it.

Shri Nath Pai: I would read here:

> "The almost universal chorus of comment is that the selections are unsatisfactory and that they have been induced by executive influence. It has been said that these selections appear to have proceeded on no recognizable principle and seem to have been made out of considerations of political expediency or regional or communal sentiments."

Finally I will say this. This was what the former Chief Justice of India had said:

> "The Chief Minister now has a hand, direct or indirect, in the

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matter of the appointment to the High Court Bench. The inevitable result has been that the High Court appointments are not always made on merit but on extraneous considerations of community, caste, political affiliations, and likes and dislikes have a free play. This necessarily encourages canvassing which, I am sorry to say, has become the order of the day."

This is the underlying malady with which we are confronted. Now he wants to get an amendment passed. To regularize what? To regularize the failure of the Government in upholding the provisions of the Constitution. He has been trying to take an umbrage under the fact that two judges were associated and, therefore, he made a statement that the High Court has been remmiss. Is that the thing? No. This kind of fictitious committees are created, so that right from the lowest rung of the judiciary to the highest level possible, they can have judges who will not be looking to the law of the land, who will not be looking to the previsions of the Constitution but will be passing judgements which come in handy for those who are in power.

I would normally have restrained myself from participating in any debate in this session but one could not sit idle when one sees what he is asking for. He is asking for an amendment of the Constitution. For what purpose? The Constitution is not to be easily tampered with. The Constitution is not sought to be amended to regularize the irregularities and illegalities committed by the executive. It is only when the need is so imperative, over-powering, and convincing, with regard to social objectives where the law of the land is lagging behind—imperative social changes—that the Constitution has to be amended. They are making a mockery of this provision of amending the Constitution—Article 368—just by coming whenever they are in the wrong. Now like a clever judge he tries to say a very nice sentence, which he said and which is likely to recommend itself to a member who is not alert or who is not on his guard. It is this:

> "It is with a view to implementing the judgment of the Supreme Court that I want to introduce this amendment."

Mr. Chairman, you know that such an appeal is likely to find itself to be acceptable to you, to me and to anybody, if we do not go behind.

I was wanting to conclude in this matter about the whole procedure of appointments. I have cited the practice in the Supreme Court and the High Court. I now conclude with this chapter of it by quoting:

> "If the State Ministry (Minister in the State Government) continues to have a powerful voice in the matter, in my opinion, in ten years' time...."

This is a High Court judge giving evidence before the Law Commission.

> "...in my opinion, in ten years' time, or so, when the last of the judges appointed under the old system will have disappeared, the independence of the judiciary will have disappeared and the High Courts will be filled with judges who owe their appointments to politicians."

Here is a warning. This warning has come to us today. What happened in U.P.? Now we have the Law Minister of India coming and asking us to regularize these practices. I want to warn this House—I will have an opportunity, I think, when he comes to the Third Reading of this Amendment Bill, to speak—that this House should not be a party to this kind of an almost flippant amendment

of the Constitution. In the first place, there are only a few judges who are affected by this and they can be alternatively provided. This bogey of a large number of judgements and orders passed being invlidated is not tenable if we look to the current practice. He has no reply to the cases decided by Justice Ramachandra Iyer.

14 hrs.

Shri G. S. Pathak: May I just interrupt for a minute?.....

Shri Nath Pai: Yes.

Shri G. S. Pathak: I am very grateful to the hon. Member for allowing me to interrupt

Shri Nath Pai: I hope he will teach his colleagues also to practice this gallantry when a Member wants to make a point.

Mr. Chairman: Is the hon. Minister clarifying some issue?

Shri G. S. Pathak: I just want to mention one fact. Probably, it is not within the hon. Member's knowledge. The case of Shri Ramachandran never came before the Supreme Court, and the Supreme Court never decided anything about it.

Shri Nath Pai: The hon. Minister is absolutely right this time. But what I was trying to say was this. I was citing a concrete example. Here was a judge who was continuing in the office, and his continuance in office later on was found to be totally unconstitutional. I hope I am right on that point. In the interim period, that is, after he had reached the age of retirement when under false pretensions he continued to be in the chair of the judge, he delivered a large number of judgements, and those judgements have never been held to be invalid or unconstitutional.

I would, therefore, say that these judgments *prima facie* or *per se* do not become invalid; they continue to be valid except in a particular case where the judgment was delivered by a judge whose appointment was challenged. I would plead with the hon. Minister that there are several other means open to him regarding those unfortunate men who had got promotion. I have already pointed out the methods of this promotion and appointment. They should never commend themselves to you and to us if we are keen on having some liberty left in this land. This kind of procedure, far from being regularised, should be struck down, and Parliament should be the one body which should not be a party to the encouragement of this kind of flippant tampering with the independence of the judiciary.

Then, I would submit that the Constitution must not be so light-heartedly sought to be amended in this House. I want to make a plea that this should not be made a party issue. Whenever the Constitution is at stake, we should forget our loyalty to this party or that party and we should remind ourselves of the fact that our first and elmentary and primary duty and loyalty is to the Constitution. Even Parliament takes its place under the Constitution. This is the law of the land.

I would, therefore, say that we should not be misled by considerations of the inconvenience to a few individuals. We have to guard the independence of the judiciary for a long time to come. We have to see that the sanctity of the Constitution is not tampered with by Government or the executive being allowed, whenever it suits its convienence, to come before the House, use their majority and have the Constitution amended. I hope that my plea for taking this matter very seriously and resisting this amendment will be taken note of.

Regarding those unhappy individuals, there are a thousand means available to the hon. Minister. I shall just recall one incident before I con-

[Shri Nath Pai]

clude. During the tenure of office of the late Pandit Jawaharlal Nehru, a Bill was sought to be brought before this House giving amnesty—I hope my hon. friend Dr. L. M. Singhvi would recall this—whole-hog amnesty to the then Government for the illegal acts that might have been done by the executive following the emergency, when the emergency was to be lifted. We told the Prime Minister that this kind of thing would be analogous to the enabling Act which the Reichstag passed under the aegis of a man who came to be known as *Schickelgrubber* Adolf Hitler. This phrase so worried the late Prime Minister that immediately Shri M. C. Chagla was advised to look into the whole matter and the Bill was dropped.

Even at this late stage, may I make a plea with the Law Minister that he may consider whether he has no other means of regularising the so-called acts, and whether the individuals cannot be protected in any other manner under an ordinary law and whether it is necessary to amend the Constitution? I think we should not give our consent to this kind of tampering with our Constitution. Other measures can be thought of with regard to appointments. But certainly that is not the issue before this House. I hope, therefore, that my hon. friends, irrespective of their party loyalty, will support me in my plea that we should not give our consent to this tampering with our Constitution.

Shri Joachim Alva (Kerana): I support the Bill moved by the hon. Minister of Law for amending the Constitution. This Bill is called the Constitution (Twenty-third Amendment) Bill. But I would like Government to move as few amendments as possible to the Constitution, whether it be in the life-time of this Parliament or in the future.

Shri Nambiar: Already we have had three in a period of 19 years.

Shri Joachim Alva: This 23rd amendment is in the long line of lists of amendments. I would like that we should move fewer and fewer amendments; for, if the number of amendments is less and less, we should be adding more grace to our Constitution.

The hon. Minister deserves to be congratulated for having printed a small hand-book embodying the Constitution of India. It is a very handy book. In fact, the Constitution should have had as few articles as possible, just like the American or the Russian Constitution. In the old days I used to carry in my hand-bag all the three Constitutions, but I found that our own Constitution was rather bulky, while the Soviet Constitution, I think, had less than 15 articles, if I am not mistaken and the American Constitution contains less than 25 articles; I am giving these figures from memory.

In our Constitution, the fathers of our Constitution have incorporated so many articles. So, we find that the Government of India are compelled to move amendments not all because of any sins they had committed but because of some lapses which others have committed or which the other branches under them have committed namely the States of India or perhaps because of some little mistake that we may have committed by not having been present in the House when any vital issue was being discussed here. The Constitution is a very sacred and important document. Forutnately or unfortunately, this piece of legislation has come before us on the last day or almost on the last day of the session. But I would emphasise once again that the Constitution is a very sacred document and must not be burdened with so many amendments.

I would consider our attempt to tamper with the High Court judges as one of the gravest crimes of our land. The High Courts or other Judges, and the Supreme Court are our only

source of security and they are the sheet-anchor of our democracy. The day we tamper with it in any shape or form, either in the matter of appointment or in regard to the character, nature and integrity of our judges, shall be our day of doom indeed! Our Parliament shall not be worthy of its status if alongside us there are High Courts or Supreme Court where we have men about whose character we have doubt and about whose integrity we have suspicions or in whom moral courage is found lacking.

Lord Denning had come to India in December, 1963. I remember that day very well because I have taken some interest in law courts, lawyers, judges, criminals, convicts and so on, and in fact, some of the convicts who were in jails and who had been sentenced to death were my best friends. So, I used to take some interest. Unfortunately, however, I have come here now. I wish I had gone back to the law courts. I would like to encourage and urge my hon. friend Shri Nath Pai also to get back to the law courts so that we poor Members of Parliament could earn some money honestly through some briefs in our career so that we could keep our life moving when the amenities as M.P.s are so few.

Lord Denning was accompanied by his wife. Unfortunately I was not able to meet either of them. You know who Lord Denning was. He was the man whom the then British Prime Minister, Mr. Macmillan had asked to write a report on Mr. Profumo, which ultimately finished off the career of that Cabinet Minister. Lady Denning said something very important and which is worth remembering. She said that the VIPs should remember that they should not indulge in any trivialities or in other words that no trivialities should be associated with them. There is a great deal of truth in that statement. We often quote the British maximum but we do not practise it. We quote it whenever it suits us but we do not go after that in fulfilment. So far as the triviality in regard to the appointment of judges or tinkering with our Constitution is cocerned, we must take care to see that there is no triviality associated with the judges. Of course, I solidly support Government in their move to amend the Constitution, but I want to share these few remarks with the House.

The character and appointment of the judges is something very important. We must not pollute the very source of justice, and that source is the appointment. We had that unfortunate case in the Madras High Court. My hon. friend Shri Nath Pai has already, referred to it. Unfortunately in our country this question of age is a rotten affair and I shall come to that later. When a judge was appointed in the Madras High Court, a whole body of rules was changed by a Minister there who is a VIP now so that his cousin or brother-in-law or some relation could become a High Court judge. The Hindu of Madras wrote a very strong editorial about it and said that we could not do like that and we should not appoint judges in that manner. We cannot appoint all kinds of individuals to that high office; we cannot appoint our cousins or brothers-in-law as judges unless they are men of merit and character and some legal stuff. That is something very important to remember. Besides, we want men of courage also now. We do not have such types of judges now.

I had referred earlier on the floor of the House to that Bombay High Court judge who tried that long Blitz case; the case went on for a long time, but the plaintiff was not called at all in the box. It was a very rare thing that the plaintiff was not called into the box. We always look out for a defamation case when we can put the plaintiff into the box and fire him and cross-examine him and so on. But that was not done in that case. The plaintiff was no less a man that one who is the chairman of a large bank

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now. Rs. 10 lakhs were take as loan by a cousin of trying judge from another place, when the case was, actually on.

These are things which we cannot accept. Like Caesar's wife, we have to be above suspicion; like Caesar's wife, we must look very respectable and above suspicion. If Judges go on behaving like this, what can we do?

We have had enough charges of corruption, nepotism and other things. Let us keep the High Courts on a sacred pedestal. Let us keep our hands off the High Courts; let us keep our hands off the Supreme Court.

I was the only member who said on the floor of the House when the Vivian Bose Report came up here for discussion that it was very regrettable that the then Chief Justice of India—he is no more there—attended a tea party in honour of his 60th anniversary—I have nothing to say about their celebrating their 60th birthday— let them do that as they like and I wish them many more returns—given by one of those involved in the Vivian Bose inquiry. This is a scandalous state of affairs. It has never been done in Great Britain which still has got great traditions.

This year when we were in the Commonwealth Parliamentary Conference, we had the honour to meet the Lord Chancellor, Lord Gardiner and others. They are a very charming set of people. We have also amongst us great judges, man like Patanjali Shastri Sudhi Ranjan Das and others I cannot name all of them.

I was the only Member of Parliament from my Congress Party who was present in the Supreme Court when the great Shyama Prasad Mookerjee was put on trial. It was one of the greatest trials we have had. I then belt that there was no case and he would be acquitted. Later on when I met the then Chief Justie, he asked me, 'How did you come to that conclusion before?' I said 'There was no case which would have held water. The prosecution must not put up a case in which the prosecutor himself believes that there is no case.' That was what happened in the case of Shyama Prasad Mookerjee, the greatest orator this House has had. Both he and another M. P. belonging to the Ram Rajya Parishad were acquitted.

There is another episode, this one concerning the late Mr. Justice Kania who became the first Indian Chief Justice of India. There is a story concerning the appointment of that Chief Justice. My friend, Shri Raghunath Reddy of Rajya Sabha, who was also there, knows. We were there in the Queen's Party at Buckingham Palace when I met Sir John Beaumont, one of the great judges of India, who retired as the Chief Justice of the Bombay High Court. He said 'I recommended Mr. Setalvad to be my successor as the first Indian Chief Justice of Bombay. We all know Mr. Setalvad. He is one of the most distinguished of our lawyers. When he came and spoke in this House on a Constitutional issue, he thrilled us with his mastery of facts. He can be on the top of the legal world any time. He is a man of character and calibre, a great man who has kept up the highest traditions.

Sir John Beaumont said, 'I recommended Mr. Setalvad to be my successor. But he would not agree where upon the Secretary of State for India recommended a British successor, Sir Leonard Stone. Justice Kania was the seniormost among the Judges. He was angry with me and did not speak to me at all there after. He thought that I was resposible for all that. He did not know that I had nothing to do with that.' Of course Justice Kania became the first Indian Chief Justice of India. He was a very great man. I

mention this because it has come straight from the horse's mouth.

Regarding the appointment of district Judges and magistrates, we must see that the highest traditions are maintained and that there is no departure from constitutional regulation. Their competence for the job and no other consideration should prevail. You cannot just make a man a judge or a magistrate because he is the brother or son or cousin or class-mate of a V.I.P. That should not be done. These judges have to be men of calibre, character, competence and uprightness After all, there is God above and they have to account for their actions before Him, before the seat of conscience. So on no account should there be any departure from these standards.

In regard to age, I am sorry to say that the only community in India which correctly notes the date of birth is my own community of Roman Catholics. When we are baptised, the date of birth is immediately entered in the Church Register. We cannot fool with that document. A nephew of mine once got into trouble over this. He was a government scholar and this trouble arose. But here I find that people with grey hair coolly record their age as 45. People aged 65 claim that they are only 45 and so on. It is time that Government compelled every mother who bears a child to have the correct date of birth properly recorded in the books of government so that at least from 1967 onwards so that there shall be no tomfoolery about the ages of our children. We must have very high standards in this matter.

There was another aspect also. We do not want Judges to be very sensitive. We want them to be men of calibre and character who will not flinch from their convictions. Mr. Justice Lindsay, the Associate Judge of the Supreme Court of the USA who was here recently said that the only Judge to deliver a dissenting judgment in the South Africa case was an American Judge—I forget his name. For an American Judge to write a dissenting judgment on the colour prejudice question requires a lot of courage. We have also the example of a great and eminent judge of our country, Dr. Radha Binod Pal who wrote a dissenting judgment in the famous Tokyo Tribunal judgment regarding war judgment criminals.

I am mentioning all this to emphasise that we must have as our Judges men who are persons of courage, conviction, competence and integrity, who will not stray from the path of their duty. Today we are in a little mess. Uttar Pradesh I am sorry to say—Uttar Pradesh, that is Bharat—can be a leader to all of us in many things but sometimes, it misleads on many small matters also.

Mr. B. G. Horniman, one of our greatest journalists was ordered to be arrested and produced before the Judges of the Allahabad High Court. Mr. Pathak as a lawyer will know that case. What for was it? Mr. Horniman wrote a very inoffensive little article which was considered as contempt of the Allahabad High Court Judges. Again Sir John Beamount came to his rescue. He said, 'I shall not let Mr. Horniman be subjected to the tender mercies of the two European ICS Judges of the UP Court.' Even when Mr. Horniman was dead, they would probably have wanted his dead body to be produced before the court for contempt.

So we do not want our Judges to be very sensitive.

We do not want Judges to countenance the practice of their sons or nephews or other relatives appearing before them on fat briefs and arguing cases. We want the highest standards of impartiality and propriety to be maintained. I was active for nearly 10 years at the Bar and I have seen things for myself. We should keep our hands clean. That is the

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only way to engender confidence and respect.

Here I would also to pay a tribute to Mohammed Ali Jinnah. He was a great and courageous advocate. Once he was appearing and arguing before a European Judge in the Bombay High Court. The Judge at one stage told him, 'Mr. Jinnah, I am not a third class magistrate.' Quick came the retort from Mr. Jinnah I am not a third class lawyer.' Mr. Jinnah was a man of great courage. Whatever may have been his political views which led to the creation of Pakistan and all that division which took place in which the British took a leading part, he was a great advocate. When he died, the Bombay High Court owed him a vote of condolence. But no such condolence was offered. At the time of death, we must forget all our anger and enmity. It was our duty to attend funerals of both friends and foes just as when there is a marriage in our neighbour house, we should join in the festivities and offer good wishes, even if we have enmity. We should not carry our controversies unto the grave. In this respect, I must say that the Bombay High Court, which is the best High Court in India—I am not forgetting the Madras and Calcutta High Courts—lost that grace when it did not make a reference in memory of Mr. Jinnah, who was a brilliant advocate practising before it for many many years, who was one of the greatest lawyers of that time.

I would conclude by narrating one more incident. The Chief Presidency Magistrate, Bombay, had a case in which the lords of journalism were involved. That Magistrate had the courage to call a spade a spade. Mr. Sheani deserves all credit for it. It is such Judges and magistrates with such calibre that we shall always want in this country for the proper administration of justice. We must have in our judiciary men of the highest calibre and character, competence and courage, so that we can maintain the highest stndards in the judiciary.

With these words, I not only support the Bill but I hope that Government will bear all these things that I have said in mind.

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श्री सरजू पाण्डेय (रसड़ा) : सभापति महोदय, यह बड़े दुख की बात है कि हिन्दुस्तान के न्याय मंत्री साहब इस समय यह संशोधन हमारे संविधान में लाने जा रहे हैं। जैसा कि हमारे भाई नाथपाई जी ने अभी कहा है कि इस सरकार की नजर में संविधान की कोई इज्जत नहीं है, उन्होंने यह बात सही कही, अगर समाज में कोई ऐसा परिवर्तन आता है जिसकी वजह से संविधान की सीमाओं को बढ़ाने या घटाने की आवश्यकता होती है, तब तो संविधान का परिवर्तन समझ में आता है, लेकिन सिर्फ कार्यकारिणी के कुछ गलत कामों को वैधानिक रूप देने के लिये संविधान का परिवर्तन दुनियां के न्याय के इतिहास में कभी देखने को नहीं मिले। हमारे न्यायमंत्री और इस देश की सरकार ने जिस तरह से देश में प्रजातन्त्र के नाम पर सारे अप्रजातान्त्रिक चीजों को चला रखा है, जिस तरह से देश में योजना के नाम पर गैरी अनियोजित चीजें चल रही है, उसी तरह से अपने गलत कामों को कानूनी रूप देने के लिये बारबार संविधान में परिवर्तन करने के लिये इस सदन के सदस्यों से कहते हैं।

मुझे ताज्जुब होता है, मैंने सुना तो माननीय मंत्री जी से पूछा कि जो गलत नियुक्तियां हुई है, उसके लिये जिम्मेदार कौन है, उन जिम्मेदार लोगों को सजा न देकर संविधान को ही बदल दिया जाय और संविधान का बिल्कुल एक कागज के टुकड़े की तरह रोजाना तबदील किया जाय, मैं नहीं समझता कि यह कहां का न्याय है और उत्तर प्रदेश की सरकार जो हिन्दुस्तान में एक नम्बर की रद्दी और कानून तोड़क सरकार है, जहां कोई ला एण्ड-

आर्डर नहीं है, कोई कानून नहीं है, जहां संविधान और ज्यूडीशियरी बिलकुल इन मन्त्रियों के हाथ का खिलौना बन चुकी है, मुझे मालूम हुआ है, मैं कई ऐसी मिसालें दे सकता हूं कि जजेज की नियुक्ति में और सरकारी वकीलों की नियुक्ति में किस तरह से पार्टी बाजी से काम लिया जाता है और उनके आधार पर नियुक्त किये गये जजों को, जो संविधान के खिलाफ नियुक्त किये गये थे, आज उनको सही रूप देने के लिये माननीय मंत्री जी उत्तर प्रदेश की दुहाई देते है। उत्तर प्रदेश के अन्दर वहां के मंत्री लोग वहां के गवर्नर और वहां के हाई कोर्ट के जजेज से, मुझे ऐसी भी मिसालें मालूम हैं, जहां कह कर अपने हक में फैसला कराने की कोशिश की जाती है और उधर पूरी तरह से इस बात की कोशिश की है कि न्यायपालिका के अधिकारों को पूरी तरह से रद्दी की टोकरी में डाल दिया जाय।

मैं पूछना चाहता हूं मंत्री महोदय से मैं कोई कानूनी पंडित नहीं हूं, लेकिन मैं यह जानना चाहता हूं कि जिन जजों की नियुक्तियां हुई हैं, मुझे मालूम हुआ है कि 11–12 जजों के मामले हैं, लेकिन मंत्री महोदय कहते हैं कि 37–38 के मामले हैं, मुझे ठीक तादाद मालूम नहीं है इनके जो फैसले है, डिग्रियां हैं, उन्होंने खुद एक बिक्षाल देते हुए कहा है कि एक आदमी को कैपिटल पनिशमेंट दिया गया है, वह भी इनवॉलिडेट हो जायगा, तो इतने दिनों तक आप कहां थे, जब संविधान तोड़कर वहां की एक्जीक्यूटिव ने अपने फैसले लागू किये। जब सुप्रीम कोर्ट में मामला गया, तब चार वर्ष के बाद पता चला कि ये नियुक्तियां गलत थीं। यह बड़ा अजीब बात है, मैं तो इस सरकार से कहना चाहता हूं कि इस मुल्क में आप क्या करना चाहते हैं, देश में कोई भी व्यवस्था चलने देना नहीं चाहते हैं। जो भी यहां पर नियम कायदे बनाते है, उसी को तोड़ देते हैं, इन्होंने कसम खा रखी है कि जिस डाली पर बैठेंगे उसको काटे बिना नहीं छोड़ेंगे यह हालत इनकी है।

मैं माननीय मंत्री जी से पूछना चाहता हूं, वह हमारे ही सूबे के है, हमें मालूम हुआ है कि पिछले दिनों उत्तर प्रदेश की मुख्य मंत्री यहां ठहरी हुई थीं, यह कांस्टीच्यूशन अमेंडमेंट बिल इस अधिवेशन में आने वाला नहीं था, लेकिन बाद में मैंने अखबारों में पढ़ा कि श्रमती सुचेता कृपलानी यहां ठहरी हुई हैं और अपने गलत कामों को संवैधानिक रूप देने के लिये उन्होंने घूम घूम कर बाकायदा कन्वैसिंग किया है मैम्बरों के साथ और सरकार पर दबाव डाला है कि संविधान में यह संशोधन अवश्य किया जाय। यह एक गलत परम्परा है, संविधान का आदर करना चाहिये। अगर एक बार संविधान बनता है तो लाजमी तौर पर उस हालत में परिवर्तन नहीं लाना चाहिए जबकि आपने कोई गलत काम किया है। अगर कोई गलत काम किया है, जिनका एप्वाइन्टमेन्ट किया गया है या जो कुछ काम किया गया है, पहले उनकी व्यवस्था कीजिये। अगर बहुत आवश्यक है, मैं समझता हूं कि यह बहुत गम्भीर मसला है, अगर संविधान का परिवर्तन नहीं होता है तो यह बात सही है कि बहुत सारी कठिनाइयां उपस्थित होंगी, मगर उन कठिनाइयों के उपस्थित करनेवालों से पूछिये कि आखिर आपने संविधान को क्या समझ रखा है? इसलिये मैं चाहूंगा कि इस पर पुनर्विचार करें और संविधान का आदर करें और कोई ऐसा रास्ता निकालें, जैसा अभी हमारे एक माननीय सदस्य ने संशोधन पेश किया है कि इस पर सुप्रीम कोर्ट की राय मांगी जाय। जो फैसले और डिग्रियां उन जजेज को हो चुकी हैं, वे वैधानिक हैं या नहीं हैं, इस बात पर सुप्रीम कोर्ट की राय जानी जाय। अगर वह कहते है कि ये फैसले, डिग्रियां, जो उन गलत नियुक्त हुए जजेज ने की है, वे ठीक रहेंगी, तो मैं समझता हूं कि संविधान में परिवर्तन की आवश्यकता नहीं है। बल्कि उन जजेज को फिर उन

[श्री सरजू पाण्डेय]

जगहों पर जोर देना चाहिए और नियम के अनुसार उनका एप्वाइन्टमेन्ट होना चाहिए, वरना इस देश में ज्यूडिशियरी का नाम नहीं रह जायेगा। आधा आपने खा लिया है, आधा जो बाकी बचा है वह ठीक से नहीं चल सकेगा।

इसलिये संविधान में इस तरह से परिवर्तन मत लाइये और कम से कम इस प्रस्ताव पर सुप्रीम कोर्ट के जजों की राय जानिये कि इस सम्बन्ध में क्या किया जाय। इन शब्दों के साथ मैं इस संविधान के संशोधन का विरोध करता हूं।

14.26 hrs.

Dr. L. M. Singhvi (Jodhpur): Sir, after the Constitution (Amendment) Bill was introduced, it was kept in a state of suspended animation for sometime and hopes were aroused in the country that for once saner counsels might prevail on the Government. Once hopes were aroused that this matter would not be taken up so lightly and that the Constitution would be accorded the respect that is due to this sacred document. It is not adjudging us between servire judges and those directly recruited...

श्री राम सेवक यादव (बाराबंकी)। सभापति महोदय, सदन में कोरम नहीं है।

Mr. Chairman: Let the Bell be rung—now there is quorum.

Dr. L. M. Singhvi: It seems to me that the point at stake is far more serious and profound: are the facts placed before us in support of this Bill be correct and do those facts justify the bringing about of a constitutional amendment? I would like to refer to the expectation that was aroused by the decision of the Government to suspend action in this matter and to obtain the opinion of the Attorney General, and since he was not available, the opinion of Mr. Setalvad, the former Attorney General. The hon. Minister should tell us what that opinion was, whether their opinion was ever obtained or not and whether this Bill is being brought before us in consonance with the opinion of Mr. Setalvad. It is heartening and gratifying that while in this country we may disagree violently on many matters, in the matter of amending the Constitution the Opposition parties and indeed even the Members of the ruling party have been united. While Mr. Alva prefaced his remarks that he supported the Bill, he had not one word to say in support of this Bill and all that he said runs completely counter to the very principle of the Bill and to the suggestion that this Bill should be passed. The statement of objects and reasons appended to this Bill says:

> "Appointments of district judges in Uttar Pradesh and a few other States have been rendered invalid and illegal by a recent judgment of the Supreme Court on the ground that such appointments were not made in accordance with the provisions of article 233 of the Constitution."

In another judgment, the Supreme Court held that the power of posting of district judges under article 233 does not include the power of transfer of district judges from one station to the other, and the power of transfer is vested in the high court, under article 235 of the Constitution. It is quite clear that the action of the State Government in the appointment of these district judges has been contrary to the Constitution—

Mr. Chairman: Order, order. The hon. Minister of Commerce has to make a statement on the raw cotton supply situation, about which concern was expressed in this House.