

Business	Time Allotted
1. Consideration and passing of— (i) The Public Premises (Eviction of Unauthorised Occupants) Amendment Bill, 1980, as passed by the Lok Sabha.	1 hr. . 30 mts.
(ii) The Jute Companies (Nationalisation) Bill, 1980, as passed by the Lok Sabha.	1 hour.
2. Discussion on the Statutory Resolution seeking disapproval of the Auroville (Emergency Provisions) Ordinance, 1980 and consideration and passing of the Auroville (Emergency Provisions) Bill, 1980, as passed by the Lok Sabha.	1 hour.
3. Discussion on the Statutory Resolution seeking disapproval of the Forest (Conservation) Ordinance, 1980 and consi- deration and passing of the Forest (Conservation) Bill, 1980, as passed by the Lok Sabha.	1 hour.
4. Discussion on the Statutory Resolution seeking disapproval of the Code of Criminal Procedure Ordinance, 1980 and consideration and passing of the Code of Criminal pro- cedure (Amendment) Bill, 1980, as passed by the Lok Sabha.	2 hrs. 30 mts.

श्री शिव चन्द्र झा (बिहार) : जो बिजनेस आपने एडवाइजरी कमेटी का पड़ा है उस पर मेरा प्वाइंट आफ ऑर्डर है। जो आप ने अभी पढ़ कर सुनाया उस पर मैं कहना चाहता हूँ।

श्री उपसभापति : यह तो टाइम अलॉटमेंट के बारे में है।

श्री शिव चन्द्र झा : मैं यही कहना चाहता हूँ कि जो हम लोगों को मोशन देने का अधिकार है उसको खत्म कर दीजिए ताकि हम न दे सकें। हम यह सोच कर देते हैं कि जो हम मोशन दें उन पर कभी न कभी चर्चा हो। आप को हम ने प्लानिंग कमीशन के बारे में, छठी पंचवर्षिय योजना के

बारे में, अटॉमिक एनर्जी पालिसी के बारे में, न्यूक्लियर पालिसी के बारे में, फारेन अफेयर्स के बारे में, इण्डो, इराक-इरान वार के बारे में लिख कर दिया हुआ है। आप उन सब विषयों पर चर्चा क्यों नहीं कराते।

श्री उपसभापति : ये सब प्रश्न बिजनेस एडवाइजरी कमेटी के सामने विचाराधीन हैं। पहले भी विचार हुआ है और आगे भी विचार होगा ऐसा आप मान कर चलें।

THE HIGH COURT AND SUPREME COURT JUDGES (CONDITIONS OF SERVICE) AMENDMENT BILL, 1980

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHIV SHANKAR); Sir, I move:

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

Mr. Deputy Chairman, Sir, the framers of the Constitution have devoted a great amount of labour in working out the provisions regarding the Union Judiciary and the High Courts in the States. As the hon. Members are aware, a chapter is devoted to the former and another to the High Courts in the States. The establishment and constitution of the Supreme Court and salaries etc. of the Judges are regulated by Articles 124 and 125 of the Constitution. "Similar provisions with regard to the High Courts have been made in Articles 216, 217 and 221.

The High Court Judges (Conditions of Service) Act, 1954 was the first limb of legislation to be enacted by Parliament for the implementation of the said various provisions of the Constitution regarding the High Court

[Shri Shiv Shankar] Judges. This principal Act of 1954 underwent amendments from time to time in 1958, 1961, 1964, 1971 and 1976. The 1971 amendment provided for leave on full allowances on medical grounds for 45 days. The amendment made in 1976, provided for family pension and gratuity, facility for rent-free accommodation besides medical facilities for the retired Judges. A similar enactment in respect of the Supreme Court was brought on the anvil of the statutes as the Supreme Court Judges (Conditions of Service) Act, 1958 which underwent amendments in 1971 and 1976. The important features of the 1971 and 1976 amendments were the provisions for family pension and gratuity, conveyance allowance, sumptuary allowance and medical facilities for retired Judges. The Bill which is now brought up for consideration in this House has the sole purpose of further improving the service conditions of the Supreme Court and High Court Judges. The gist of the changes which are sought to be made by the Bill is as follows:

(1) The value of rent-free accommodation provided to the Judges of the Supreme Court and the High Courts or the allowances given to the High Court Judges in lieu thereof are sought to be made free of income-tax retrospectively from the 1st April, 1974.

(2) Leave on full allowances equal to the monthly rate of pay for a period up to a maximum of 120 days is sought to be allowed to each Judge of the Supreme Court and the High Courts instead of the present entitlement of 45 days, if such leave is availed of on medical grounds.

(3) Removal of distinction between "civil posts" and "military posts" held by a person prior to becoming a Judge for calculating pensionary benefits.

The Bill has already been discussed at length on the 20th and 26th November, 1980 in the Lok Sabha and was passed in that House on the 26th November, 1980.

Sir, I move.

The question was proposed.

MR. DEPUTY CHAIRMAN: Shri Dhabe.

SHRI S. W. DHABE (Maharashtra): Sir, what about the amendments? We will have to move them.

MR. DEPUTY CHAIRMAN: The amendments are to the clauses?

SHRI S. W. DHABE: Yes.

MR. DEPUTY CHAIRMAN: They will come when the clauses are taken up. If there is any amendment to refer it to a Select Committee, then it is taken up at this stage.

SHRI S. W. DHABE: Mr. Deputy Chairman, Sir this Bill which has been moved—the High Court and Supreme Court Judges (Conditions of Service) Amendment Bill, 1980—speaks of only two items, about the leave allowances to be given in full and secondly about the removal of the distinction between the military posts and civil posts.

SHRI B. D. KHOBRA (Maharashtra): And the house rent to be made income-tax free.

SHRI S. W. DHABE: And also about the house rent, I was going to say about that separately. It is not clear as to how many persons who are holding military posts are appointed judges. Only one judge, I was told...

SHRI SHIV SHANKAR: He was a Judge-Advocate...

SHRI S. W. DHABE: In Assam?

SHRI SHIV SHANKAR: ... who was appointed to Assam and because his pension was being affected adversely, this amendment was necessary.

SHRI S. W. DHABE: Then the third concession is that the house rent will be free from income-tax.

Sir, the Minister has quoted some earlier amendments also and said that amendments were made from time to

time looking to the problems which came up. Even this Bill, Sir—it is to have retrospective effect from the 1st April, 1974—touches only one or two items. So it is done on an ad hoc basis. There is no integrated approach to the problem of service conditions of the High Court and Supreme Court Judges. Sir, the conditions of service today, as the Law Minister is aware—he was himself a High Court Judge and he resigned because the salary was poor . . .

SHRI SHIV SHANKAR: Oh, no.

SHRI S. W. DHABE: You can explain. But many Judges have resigned... (*Interruptions*).

SHRI SHIV SHANKAR: That is not the reason.

SHRI S. W. DHABE: But everybody knows. (*Interruptions*).

SHRI B. D. KHOBRADE; Mr. Gokhale resigned like that.

SHRI S. W. DHABE: He knows all the names. High Court Judges have resigned, and many lawyers who are practising in the Supreme Court have refused to become Supreme Court Judges because the salary is very poor. Sir, in the Supreme Court, special leave petitions...

SHRI B. D. KHOBRADE. I would like to ask one question, if an advocate is getting Rs. 25,000, would you advise that the Supreme Court Judges should get Rs. 25,000?

SHRI S. W. DHABE: If you hear me, you would not ask that question. I am only saying that the salary which was fixed long back has not been revised. My friend, Mr. Khobrade thinks how a lawyer getting Rs. 25,000 a month will join the Supreme Court...

SHRI B. D. KHOBRADE: You wanted their salaries to be raised so as to make the posts attractive. I asked you since the lawyers are getting Rs. 25,000 as legal practitioners whether

you want the salaries of judges to be raised to Rs. 25,000.

SHRI S. W. DHABE: Why are you so hasty without understanding my point. My point is this. The salaries of Supreme Court Judges and High Court Judges were fixed by the Constitution in the Second Schedule. Under Article 125 it is said, "They shall be paid a salary as per the provision made in the Schedule...". The Schedule given in the Constitution is a Constitutional guarantee that a Supreme Court Chief Justice will be given Rs. 5,000, any other judge will be given Rs. 4,000, and similarly for the High Court Chief Justice Rs. 4,000 and Rs. 3,500 for the puisne judge in the High Court. This was fixed in 1950 when the Constitution was adopted. And then the salary which was thus fixed under the Constitution was not liable to be changed or amended by an Act of Parliament; it is a Constitutional provision and it cannot be altered unless the Constitution is amended. The net result is that the salary so fixed for the Supreme Court Judges, after deduction of income-tax comes today to about Rs. 2,200, whereas many executive officers working in the different public sector undertakings and many chairmen of companies are paid much more than what a Supreme Court Judge or a High Court Judge actually gets today.

Now I come to the point made by Mr. Khobrade. The conditions of service of judges are so unattractive that many leading lawyers do not want to join the Bench. It was not the position in 1950 or in 1960. You see the list of persons who sacrificed their earnings at the bar to join the Bench. The value of Rs. 4,000 was still an attraction at that time. But the inflationary trend is so high—it is as high as 22 per cent a year—the value of the rupee has gone down so low. And is it correct or is it proper to say that we can give judges only Rs. 2,200 as salary and expect that lawyers will accept to become judges? Therefore, what I suggest is that there must be a realistic approach, if necessary, the

[Shri S. W. Dhabe]

Constitution should be amended. Their service conditions, salary, etc. should come under the purview of Parliament's powers, so that Parliament can revise the salary and service conditions and give them appropriate salary and proper service conditions. You compare the salaries of our judges with those of other countries and you will see that the salaries paid to judges in other countries are much higher than what they are in our country. For example, in the U.S.A. in 1948 the annual salary of the Chief Justice of the Supreme Court and the puisne Judges was fixed at US \$20,500 and US \$ 20,000; that has been increased by four times—in 1960, 1969, 1976 and 1980—bringing the salary in 1980 to US \$ 75,000 and US \$ 72,000 respectively. Even in England the salary has been increased from time to time. In 1954 the Chief Justice was getting £ 11,000 and a Junior Judge was getting £ 8,000, in 1966 it was £ 12,500 and £10,000, and by 1970 it was raised further to £14,000 and £11,500. Therefore, what I suggest is that there should be an integrated approach to the whole problem. And from that point of view it will be very necessary to make the salary attractive even to a very successful lawyer. I entirely agree with my friend, Mr. Khobragade, that the salary should be attractive even to a successful lawyer to join the Bench. Therefore, a reasonably high level of salary and appropriate service conditions are very necessary...

SHRI B. N- BANERJEE (Nominated): What do you say about Mr. Khobragade's point about the reasonable level?

SHRI S. W. DHABE: It can be Rs. 6,000, Rs. 7,000, whatever it is. Why don't you take into consideration the value* of the rupee in 1960 and today in 1980? Rupees four thousand was fixed in 1950. Now we are in 1980 and what is the value of the rupee today? It is hardly 16 paise...

SHRI B. D. KHOBRADE; Your party accepted the principle that the

ratio should be 1 : 10 instead of 1 : 30. In that connection what do you suggest the salary of a judge should be?

SHRI S. W. DHABE: I am only saying a reasonable salary should be paid. If you think the salary which was fixed in 1948 or 1950 is good enough for a judge today, well, I have nothing to say. Why are you increasing the allowances or exemption them from income tax and why are you giving rent-free accommodation? It is because you feel that the emoluments paid are not adequate. My suggestion is that instead of trying to improve their conditions, indirectly through perquisites, why not restructure the entire salary structure which was fixed long ago? Then only talented lawyers will be attracted to the Bench. In this connection I would like to say that it was held by the Supreme Court in the USA that any tax on the income of the Judge dilution of his salary and hence *ultra vires* not withstanding 16th Amendment which permitted to levy tax on incomes. On the 16th Amendment the Supreme Court there held that any dilution of the Judge's salary below the salary fixed by the Constitution by means of tax, will be *ultra vires*. Here in this country it was fixed at Rs. 4,000/-, but actually the Judge gets only Rs. 2,200/-. This is also dilution.

There are other problems also. What is their real accumulation of leave? I think it is upto four months. If they do not avail of it, then the leave lapses. Therefore, their leave facility also will have to be reconsidered, if we really want to attract talented lawyers to the Bench.

Lastly, the question of rent-free accommodation comes to my mind. I will say more on this when I move my amendment. That should be furnished accommodation. That will make a lot of difference to a Judge. As it is, so far as official free residence is concerned, he does not get complete relief.

When we speak of Judge's salary, what comes to one's mind in the large number of cases in arrears both before the Supreme Court and various High Courts. More than one lakh of cases are pending in various High Courts and even special leave applications and other matters 26,000 in number, are pending in the Supreme Court _____

SHRI B. D. KHOBRADE : They should appoint more Judges.

SHRI S. W. DHABE: I do not think Shri Khobragade is the Law Minister. He has a solution for every problem. It is better if the Law Minister vacates his post and puts Mr. Khobragade in his place.

Article 130 of the Constitution provides for Benches to be constituted at various places. A very good suggestion has been made by the Chief Justice of India that one or two senior Judges of the High Court should sit with them and dispose of the cases at different places. That will also reduce cost of litigation to people coming from distant places such as Kerala to the Supreme Court. Their coming and going and payment to a senior lawyer at the rate of Rs. 1,500/-per day today cost them a huge money. If this suggestion is accepted, it will go a long way in solving the problem of arrears. The Supreme Court cases should be heard in High Court Benches, wherever they are. In Nagpur we have a very big High Court building and Supreme Court Judges can come there and dispose of cases. We have eleven Judges there and still there are huge arrears.

The second suggestion is very important. The Supreme Court should have jurisdiction only over questions of Constitutional interpretation, inter-State matters and other matters arising out of the Constitution. So far as civil appeals and criminal appeals are concerned, they are also in large numbers and they go up to the Supreme Court and still it takes a long time for the High Courts or the Sup-

reme Court to dispose of these appeals. So, Sir, I would like to know whether it would be possible to have a Courts of Appeal having concurrent jurisdiction which will dispose of civil and criminal appeals and they can be like the Benches of the Supreme Court. Such Benches can be constituted at different places in India. This can be done so that civil appeals and criminal appeals are taken away from the Supreme Court which will be here attending to constitutional matters. These two suggestions that I have made are worth considering, Sir, and the Minister should consider these questions seriously so that such a Court of Appeal and other Benches are constituted and the arrears are disposed of quickly. Every year the institution of cases is more and the arrears are mounting. But no solution has been found so far. I would like to tell the Minister one thing and I think he also knows it because he comes from Hyderabad. Sir, he might be knowing that Mr. Mahajan, the former Chief Justice of India, himself went to Hyderabad along with many cases and within three months he disposed of a large number of cases at Hyderabad and all the arrears were wiped out. Therefore, in order to wipe out arrears, it is necessary to see that the work of the Supreme Court is properly decentralised and the Benches are constituted at different places in the country. Consideration should also be given to the question whether we can have a Court of Appeal for civil appeals and criminal appeals but also for appeals in labour matters.

Lastly, Sir, I would like to say that these are all the most important questions, which should be properly considered if we really want the Supreme Court and the High Court Judges to function properly and with independence. Independence of the judiciary is the cornerstone of our democratic way of life and if it is to dilute it, then it will be very bad. I

[Shri S. W. Dhabe]

heard that in Bombay he criticised the Supreme Court judgments and the judiciary. I think he has made a statement that the Supreme Court judgments on the Kesavananda Bharati case and other cases are against the principle of the Constitution. I would like to correct what he has said. Sir, the Law Minister should act as a bridge between the Government and the judiciary and he has got dual responsibilities. He cannot say something and then say that it is his personal view and his view as the Law Minister is different. Much has been said about the transfer of Judges and it has been said that the Chief Justice should be also transferred and three Judges should be from outside the State. Under article 222 of the Constitution, Sir, it is purely a matter of individual judgment of the President. It is very clear. It is very clear that in every case in which a Judge is to be transferred, it is to be considered separately. But I have not been able to understand what the Government representatives talk about policy on transfer. I do not know what purpose it will serve if we transfer the Chief Justice and if we have three Judges from outside. Sir, it has nothing to do with the growth of independence of the judiciary or with their giving good judgments. What is required today—I am afraid, and I do not know whether Mr. Khobragade will agree with me—is that more Judges should be appointed and a larger machinery is required and also a quick machinery has to be created for the disposal of cases as early as possible. But, merely saying that the Chief Justice should be transferred or that three Judges should come from outside is not going to solve the problem. An impression is already there that you want to browbeat the judiciary and you want a subservient judiciary. By saying all these things about the transfer of Judges, you only help in strengthening this impression. Therefore, Sir, I have raised all these questions. In individual cases, the transfers might be

be done, as I have said. These are important questions which require to be considered seriously.

Now, Sir, I would like to know something from the Law Minister. The Legal Aid Committee has acquired very great importance. The Legal Aid Committee was appointed and the then Janata Government bungled it by appointing a departmental Committee to consider the report of the Bhagwati Committee.

MR. DEPUTY " CHAIRMAN: I do not think this comes under the present Bill.

SHRI S. W. DHABE: The legal aid question is very much covered by this and proper justice should be done.

MR. DEPUTY CHAIRMAN: This is about the High Court and Supreme Court Judges and you are bringing in all kinds of questions relating to the judiciary.

SHRI S. W. DHABE: Otherwise, Sir, we don't get a chance. We don't get a chance to mention all these matters—either directly or indirectly.

MR. DEPUTY CHAIRMAN: Please conclude now.

SHRI S. W. DHABE: I only wanted to mention that in Maharashtra, out of the money allocated for this purpose, a sum of five lakhs has been spent on the TA and DA of the Committee. The actual amount paid for legal aid was very meagre. Even the Law Minister of Maharashtra has said that the entire amount was spent on the TA and DA of the Members of the Committee. I would like the Minister to consider the question because legal aid to the poor should be properly given.

MR. DEPUTY CHAIRMAN: Please conclude now. You have got many amendments also.

SHRI S. W. DHABE: If you do not allow me to speak, then it is all right. But I know the time-limit and I know what the time-limit of our party is. I am the only speaker from our side.

Sir, there is another thing which I would like to suggest. The Law Minister should not make statements about the appointment of Judges on the basis of caste or community. In the highest judiciary it was never considered whether a man belongs to one community or the other... (*Interruptions*).

SHRI B. D. KHOBRAGADE: You have already announced a judgment that it should not be on ... (*Interruptions*).

SHRI S. W. DHABE: I am only saying that this cannot be the criterion in the highest judiciary for national integration. The case of a community should not come in the way... (*Time bell rings*). If a particular person from one section or religion has to be appointed, I think it will not go a long way in the true integration of our country.

Lastly, Sir, I think that the Law Minister is very much concerned about the difficulties of the Judges, being himself a High Court Judge. He knows the difficulties of the Judges. I feel the conditions of service of High Court judges and Supreme Court Judges should be properly improved and their allowances raised so that we can have an independent talent.

MR. DEPUTY CHAIRMAN: Dr-Rafiq Zakaria.

DR. RAFIQ ZAKARIA (Maharashtra): Sir, at the outset, I would welcome this Bill with the extra facilities that the Law Minister has sought to provide to the Judges of the High Court and Supreme Court. I think this measure was long overdue. The Judiciary should be really independent. We must try to see that they are kept as far away as possible

from any kind of temptation by malting their life as comfortable physically as possible. The Law Minister himself has been a very distinguished High Court Judge, and I suppose, from his own personal experience, he realises that something has got to be done in this regard. It is not often that when people shift from one sphere to another that they remember the difficulties and agonies of what they suffered when they were in the other sphere. Sir, the Law Minister has said that the lower judiciary is becoming increasingly corrupt. That was the statement that I have seen in the press; I do not know for certain whether it is correct and I am subject to correction. But, Sir, even if he has stated it with certain qualifications and reservations, the fact remains that ...

SHRI SHIV SHANKAR: I referred to the staff in the lower judiciary.

DR. RAFIQ ZAKARIA: I suppose the staff says that they receive something on behalf of the Judges or whatever it is.

SHRI SHIV SHANKAR: I never referred to the lower judiciary.

DR. RAFIQ ZAKARIA: That is why I said that I am subject to correction. But whatever that be, the fact remains that there is a general impression that some part of our judiciary has started being corrupt and we must go into it because the emoluments and the facilities that we are giving to the members of our judiciary either of the lower courts or the higher courts are certainly not commensurate with the requirements of a proper standard of living and, therefore, what has been done is good, but I think it is not enough. I would not mind making even the salaries of the Judges exempt from income-tax because, then alone, we would be in a position to get not only the best talents but also we will be able to safeguard their integrity and their incorruptibility. I hope this is the first step in that direction and

the Law Minister will be bold enough to come forward with further facilities of this type.

C, I had asked the Law Minister about the composition of the Judiciary in the last thirty years—class-wise and community-wise. He has replied, but in a rather unsatisfactory manner. Those who have made a study of this question have come to the conclusion that the judicial posts have been occupied, in the last 30 years or more, by members of a particular caste and, of course, higher caste. This is a serious matter and it is a matter which certainly affects the whole outlook and approach of the judiciary in regard to various socio-economic measures that we have to take for the amelioration of the poor and the down-trodden. It has been admitted even in the United Kingdom to which we look for guidance, in all these matters. There is a sensational book which came out recently in London, called "The Politics of Judiciary" wherein, on this basis, by an analysis, the author has been able to establish how the family background, the social environment and the class from which the Judges come have invariably affected their judgments. Therefore to say that don't bother about caste or community with reference to our efforts to establish an egalitarian society is not correct. The Law Minister has shown some courage. But when he is attacked by the vested interests, he develops cold feet.

MR. DEPUTY CHAIRMAN: He must be defended and supported.

SHRI SHIV SHANKAR: I will never develop cold feet.

MR. DEPUTY CHAIRMAN: Then, Dr. Zakaria should support him.

DR. RAFIQ ZAKARIA: I want to say that he is going on right lines. But he should not falter now. He

should not falter because in order to save his skin, knowing fully well as to what the right course is, he may, like so many of us, deviate from the right path. He should take care of that. We must have facts and figures. Why should we be ashamed of it? Let us know what the facts and figures are. Let an analysis be made on the basis of the judgments that have been delivered. Even a man like Mr. Justice Gajendragadkar, a former Chief Justice of the Supreme Court, in some of his judgments, has dilated on this aspect. This is a hang-over of the old British days. There is a feeling that Judges have to be very talented. They have to be very sophisticated. They have to be very learned. If so then we have to draw them from one particular caste only. Even in the case of other communities, an apologetic approach has always been made. Somebody has to be put there. Therefore, what is to be done? It is not so. It is not just a question of how learned one is in law. It is also a question of what one's approach is in deciding the judicial matters, in trying to understand what the hopes and aspiration of the people are and what has been enshrined as the Directive Principles in our Constitution. Then, on the basis of that, making that as the touch-stone, we cannot decide the measures. This is what is

opening today. Hundred and thousands of cases are pending. Anybody can go to the courts on a small pretext and our entire work in this regard which is meant for the upliftment of our own down-trodden is held up. Do you mean, to say that the people are going to tolerate it? When something like this is said,

[he says that he does not believe in the independence of judiciary. There have been very few democrats who have had such dedication and devotion to democratic values and ideals as the late Franklin Roosevelt. When Roosevelt became the President of the United States of America, one of the first warnings that he issued was to the Supreme Court. He said,

in effect, "If you do not realise what the situation is and if you are going to be an obstacle in the Government's way of ameliorating the conditions of these people, then I might have to pack the Supreme Court with the Judges of my choice." If Roosevelt said that, it is all right. But if Mrs. Gandhi says it, it is wrong. Of course, Mrs. Gandhi has not said it. But the Law Minister has started saying it in a guarded manner. Let him have the courage of Roosevelt if he wants really to transform this judiciary so that ...

SHRI NARASINGHA PRASAD NANDA (Orissa): Mr. Zakaria, he can only have the courage of Shiv Shankar, not of Roosevelt. Roosevelt had no love for India.

DR. RAFIQ ZAKARIA: Sir, I stand corrected. He, perhaps, knows more of Shiv Shankar. But from what the late Chief Minister of our State, Mr. Kannamwar, used to tell me—again I am subject to correction—Shiv Shankar has the capacity to swallow the poison and to do all that kind of things. And if that is so, let him really follow Shiv Shankar, and perhaps it will be better than even following Roosevelt.

Therefore, Sir, as I said earlier, this question of composition of the judiciary is also important in terms of the amenities and facilities that are provided for the Judges because, Sir, if we draw Judges from the real heart of our people, people who have not been nurtured in affluence, perhaps, this kind of hue and cry that is made here and there that unless they get palaces, unless they get all these facilities and amenities, they do not feel comfortable. Will not be there. As I said at the outset, amenities and facilities should be provided. But, Sir, this is also linked with the class from which one comes. This is also linked with the social status that one has. And, therefore, Sir, if this country cannot afford to give all that a flourishing lawyer can have if that

flourishing lawyer is to be elevated to the Bench and if he feels uncomfortable, then let us also take into consideration that to those persons who have the capacity, who have the ability but who have been deprived of these positions as a result of certain historical processes. To them these amenities and facilities would be good enough to safeguard the independence of the judiciary.

Sir, the Law Minister has made a declaration the other day that, of course, for the first time a Harijan has been appointed as a Judge of the Supreme Court. Of course, he coupled it with the appointment of a Muslim also. Muslims have been appointed in the past. But as I said earlier, it is in an apologetic manner, not really on the basis of that kind of consideration which should be there with the Government. Sir, I want to know from him this. What has he done as far as women are concerned? Despite the fact that we have a great woman as our Prime Minister, what is the position of women today? They still remain a neglected community.

SHRI S. W. DHABE: Yes, yes.

DR. RAFIQ ZAKARIA: Sir, it is surprising that in this age people are able to organise in our country a revival for *sati*. I am not commenting on it in an irrelevant manner.

SHRI S. W. DHABE: How is it concerned with this?

DR. RAFIQ ZAKARIA: I am saying that it is relevant because we have to think of women as our equals. We have to think of women as deserving of the same consideration[^] is given to, men in every respect.

MR. DEPUTY CHAIRMAN: You can continue after lunch

सदन की कार्यवाही 2 बज तक के लिए
स्थगित की जाती है ।

The House then adjourned for
lunch at one of the clock.

The House reassembled after lunch at three minutes past two of the clock, Mr. DEPUTY CHAIRMAN in the chair.

MR. DEPUTY CHAIRMAN: Dr. Zakaria.

DR. RAFIQ ZAKARIA: So, Sir, as I was saying, he has shown some boldness, a little courage, in breaking through this casteist stranglehold on the judiciary by announcing the appointment of a Harijan and, as I said in an apologetic manner, of a Muslim, because I am not giving the credit to him for having appointed a Muslim because Muslims were appointed in the past also; the credit for appointing the first Harijan judge of course, goes to the Law Minister...

SHRI SHIV SHANKAR: It goes to my Prime Minister.

DR. RAFIQ ZAKARIA: Yes, to the Prime Minister but you represent the Prime Minister and since you represent her and the Government here, through him I am conveying this sentiment to her also. But Sir, as far as women are concerned, I do not understand why he is not awakened to the necessity of appointing a woman as a judge of the Supreme Court. The situation there is worse in fact women constitute almost half of our population. A large number of women have taken to the legal profession and they are also among the lower judiciary, among District Court Judges and so on. But as far as the High Courts are concerned, the picture is very dismal. Out of the 405 Judges of the High Court, thirteen are Muslims, only five are Harijans—I do not think there is a single Scheduled Tribe Judge—and nine are women Judges. But there is still no women Judge in the Supreme Court. Does the Law Minister mean to say that they are not competent to occupy these positions? Sir, I do not want to give examples. I have great regard for my friend, Mr. Bhandare, he is a very flourishing lawyer who is practising

in the Supreme Court. I think, he is

! qualified. U. bacom? a High Court Judge or ?ven a Supreme Court Judge.,

MR. DEPUTY CHAIRMAN: Don't recommend personal names. This may cause some embarrassment also.

DR. RAFIQ ZAKARIA: Mr. Deputy Chairman, I am telling you something else. But Mrs. Bhandare is, to my mind, if not more qualified, at least equally qualified, to be considered for any judicial appointment

SHRI SHIV SHANKAR: Equally qualified as the husband.

DR. RAFIQ ZAKARIA: But Sir, why should be there this hesitancy on the part of the Law Minister not to give equality of consideration and opportunities to women? These nine Judges, women Judges, in the various High Courts, have distinguished themselves. I must congratulate really West Bengal. Out of these nine Judges, four are in West Bengal, one is in Kerala, one is in Delhi, one is in Bombay and one is in Andhra Pradesh. I know, Sir, these Judges are as good as the Judges that are sitting on the Benches of the Supreme Court today. They can give as good an account of themselves and help in the judicial process in this country. Hence, I would like to, have a categorical assurance from the Law Minister that in the vacancies which are available, the Government shall appoint a woman as a Judge of the Supreme Court. Let him not indulge in hedging, in regard to qualifications and so on. He is a good lawyer. Hence he knows how to get out of a situation. But what is important is, we have to see that every section of our population is represented in the third important wing, or Estate as we call it, of our Constitution. Judiciary is important. We have to safeguard its independence. I am one with my friends on the other side who have spoken in this regard. But, Sir, by making it a monopoly of a particular type of people, of a particular class of people, of a particular sex, by this

male chauvinism, we are not going to succeed in bringing our judiciary in tune with the hope and aspirations of our people. I repeat this again since the Law Minister might not have been attentive. I would like to have a categorical assurance from him that this process which he has begun would encompass women also. Sir, he must also continue the right approach that he has begun. Simply because there is an extremely successful lawyer, simply because he has fought some very important cases and, therefore, he becomes an extremely distinguished lawyer, should be considered for the highest judicial appointment—nothing of the kind, Sir, there are people who, have qualms of conscience, who would not take up cases wherein they feel that the larger social interest would not be properly served. That was the teaching to the father of our nation, Mahatma Gandhi, and it is in that spirit that we must look at the composition of our judiciary. Otherwise, the present criteria are not going to do good to the country. I know, I have been in the Government also, the present criterion, are how many years a lawyer has been in the legal professions, how many years he has put in in the judicial service not his outlook, his approach. I am not talking of 'committed' judiciary in that sense that Judges have to be committed to whatever Government is there. It is not that. What is important is that several good socio-economic measures which are going to affect the lives of the millions of our people must be viewed by the judiciary in that spirit. Merely on the basis of technicality or merely on the basis of somehow or other seeing as to how a law should be declared *ultra vires*, so that the benefits might not accrue to those lower below; if that approach is brought to bear on the composition of our judiciary, our future is dismal and dark. Therefore, as I said, the criterion has to change. The criterion has to take into consideration other aspects. Sir, here I am reminded of an Urdu couplet:

“बात सिर्फ इतनी है कि जिन्दगी की राहों
में रास्ता जो चलते हैं हम-सफर नहीं
होते।”

I will tell you that simply because the Judges have to be drawn from the legal profession and whoever is successful in the legal profession becomes entitled to be appointed to the highest judicial post—this has got to be given up because as the Poet says, on the highways of life all those who walk together are not necessarily like-minded travellers. What is required is there must be a unity of approach and thinking as far as the larger perspective and higher values are concerned. The Law Minister has explained his approach in a very careful manner by saying, the commitment has to be to the Preamble.

SHRI SHIV SHANKAR: Not only to the Preamble, but to the Constitution also.

MR. DEPUTY-CHAIRMAN: Preamble is also part of the Constitution.

DR. RAFIQ ZAKARIA: Yes, when you say 'Constitution', that Constitution gets interpreted by people having different outlook, by distorting the Constitution itself and it becomes a document which is not what the fathers of our Constitution or the founders of our Constitution had intended it for our people to be. It is a huge Constitution. It is a very large document wherein all kinds of provisions are there; efforts have been made in the past to twist and turn the scope of the contents in such a manner that even the most revolutionary measures which this Parliament has passed, have been declared *ultra vires*. And those measures, whether constitutionally correct or not according to the thinking of the highest judiciary, nobody can deny, were in the larger interest of the teeming millions of our people. Therefore, it is in that context that I have the urge the question of appointment upon the Law Minister.

[Dr. Rafiq Zakaria] »

Now there is already much talk and I need not go into the transfer of Judges. Why did the fathers of the Constitution keep that provision? When it suits critics, they talk of the constituent Assembly, of what the fathers of our Constitution did. But when it does not suit them, they just ignore it. Why was that article right from the inception kept? It was kept with a view that no vested interest in judiciary may be created and where the Government comes to the conclusion that such vested interests are created, then the comforts and conveniences of the judges should not be the criteria but their approach and outlook. The criteria must always be what is in the larger public interest. . And from that point of view, again I will, say—of course,, the transfer should not be done *malafide*; the transfer should not be done in a vindictive manner; the transfer should not be done—because somebody is to be punished—but, certainly, if a particular High Court develops a particular kind of rigid, anti-social attitude, then it is the duty of the Law Minister to see that proper balance is created. It is in that spirit that I leave this question of the transfer of the judges also in the hands of the Law Minister and I hope if it is to be done, it will be done in such a way that the larger good is the criteria and the basis in doing so.

SHRI GHANSHYAMBHAI OZA (Gujarat): Mr. Deputy Chairman, Sir, so far as the provisions of the present Bill are concerned, they are hardly controversial. In my humble opinion, not only we should not grudge what is being accorded to them under the present Bill, But I would go further and say that whenever there is a reasonable request from the Supreme Court or any High Court about some amenities here and there, I don't think we should grudge them.

As has been rightly pointed out, people with lucrative practice are not willing to come over to the Bench.

Amdt. Bill, 1980

Unfortunately, there is no tradition in our country, as has developed in some countries, that whenever High Court judgeship or any post of judiciary is offered to any practising lawyer, he cannot refuse it; he has got to accept it. This is the way in which this profession is looked at. But, unfortunately, for reasons which all of us know, today this is not the situation and many posts are not accepted by friends with very lucrative practice. I thought that, money apart, they are more than compensated by the status, by the dignity with which the society holds them. Therefore, I think whatever little amenities they seek from the Government, we should ungrudgingly give them.

I will pick up the thread from the last speaker. He made out a case that people from minorities should be appointed judges, that people from the Scheduled Castes and Scheduled Tribes also should be selected as judges and with utmost emphasis he put the case about female judges. I may immediately say—not that I have got any allergy about a judge coming from a particular caste or community or sex—not at all—but I do not think that we should insert this thinking in the selection of judges also. He was complimenting the Law Minister, and through him the Prime Minister, for selecting a judge from the Scheduled Castes. I may tell you that only yesterday the Supreme Court has held that a judge selected is not selected because he is coming from a particular community or because he is a Scheduled Caste man, but because of his ability and integrity. I am very happy. This should be the standard. Look at the Constitution. We know the founders of the Constitution very well realised what sort of injustice was perpetuated for centuries on the Scheduled Caste and the Scheduled Tribe fellows. They had to be protected, they had to be given certain privileges, they had to be accommodated in Assemblies and in the Lok Sabha and in some other places some reservation had to

be made for them. They have gone further and said in article 335 that we should make reservations for them in the Executive, in the Services also—may be this includes the High Court Judges also; I do not grudge there—consistent with the requirements of efficiency. They have to be accommodated in all Services, even on the Executive side, but it should be consistent with efficiency. It is said; "The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration ..." So while their share in the administration is to be taken care of, their efficiency should be the standard; it must not be at the cost of efficiency. Don't you think it is much more necessary to keep this criterion in view when you appoint the High Court Judges or the Supreme Court Judges? Integrity, efficiency and all these things should be looked into. • Otherwise, I think ultimately a time may come when we will all repent for this. After all, what are the instruments of development of this country? Our administration is the instrument of development. We collect crores of rupees through our administrative machinery and we spend them right from the village level to the public sector undertakings. So a poor country cannot afford to sacrifice efficiency. Efficiency should be there. I do say that we have social injustices perpetrated on the Scheduled Castes and the Scheduled Tribes, but we have to compensate them for those things in so many other ways, not by bringing down the standard of efficiency in the administration—that is what I would urge upon the Law Minister—because otherwise we would be doing disservice to the whole community. I do not think I need press this point any further.

SHRI BUDDHA PRIYA MAURYA:
(Andhra Pradesh): Kindly give your views on one thing more. Why this portion "consistently with the maintenance of efficiency of administration" which is inserted in article 335 is not

being inserted in articles 330 and 332? Efficiency of the Assemblies and Parliament is paramount. But why is this not being put there? Would you please let me know your reaction to this?

SHRI GHANSHYAMBHAI OZA:
Because there laying down the policy and influencing the thinking of the Government is necessary. But in administration efficiency should be the standard. Suppose it is left to them, they will not be able to come and influence the deliberations in the Assemblies and Parliament and, therefore, they must be given proper.....

SHRI BUDDHA PRIYA MAURYA:
What I was saying is.....

SHRI GHANSHYAMBHAI OZA: You will have your time.

MR. DEPUTY CHAIRMAN: You can explain it later on.

SHRI GHANSHYAMBHAI OZA: For the benefit of knowledge of my friend I may tell him that I started my public life in the service of the Harijans. For many years I was the President of the Harijan *Sevak* Samgh in my district. Even today I have the greatest regards for them—my friend from Gujarat will bear me out. I have the least grudge about those things. But, after all, when we are running the country and we want to develop a poor country, we have to keep it in view. What is the percentage of people who will be benefited by this? They may be compensated in so many other ways, through education, employment and improvement of their economic standards. I do not have any quarrel about that aspect. But, at the same time we cannot sacrifice efficiency at the altar of communalism which is pressed by my friend. Now, Sir, a point was also made that we have got huge arrears of cases in the Supreme Court and in the various High Courts. It is a big tragedy that the Supreme Court takes so much time in disposing of cases. In the High Courts also, we

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know, there are arrears—in some High Courts more, in some High Courts less. Now on the one side we have got this picture of huge arrears. On the other side, what is the picture? There are so many vacancies in the High Courts, and in the Supreme Court. I know the Government has an explanation for that. The Government has an explanation for anything which is going wrong in this country today. I think they must thank their stars that at least for three years some other Government was in power because they can always make them scapegoats for whatever is going wrong even after that Government has gone. So, he will also find some scapegoats and say, "This thing was happening, that thing was happening and, therefore, there are so many vacancies in the Supreme Court which are still unfilled." If it had been a case of only the Supreme Court and the High Courts having vacancies, I would have perhaps accepted the argument, and I would have rather yielded. But I find that there are vacancies in so many other places, for instance, in the public sector. So many persons are on deputation. The IAS people are on deputation. There are so many vacancies and things are not getting on well. There are so many vacancies in other places also. Why should we go far? In the Khadi and Village Industries Commission, there is a statute, there is a law that there shall be a statutory meeting every month, and three will be the quorum. For six months, only the Chairman was there. Who prevented you from filling up the vacancies in the Khadi and Village Industries Commission? For six months, the statutory meetings could not be held because the Government could not decide as to who should be appointed on a body like the Khadi and Village Industries Commission. Therefore, they had to carry on their work in the absence of a quorum, in the absence of the statutory meetings, in violation of the provisions of the law. Who prevented them from filling

ing up those vacancies? I am just illustrating. I do not know what their difficulties are. (Interruptions). I can reply to him if he has any question.

MR. DEPUTY CHAIRMAN: Please go on.

SHRI GHANSHYAMBHAI OZA: Who prevents them from filling up such vacancies? But I know the pulls and pushes which this Government has to pass through. Maybe it is their care and they should worry about it. But I urge upon him, as he has taken up this case of appointing one Judge of the Supreme Court—maybe for reasons best known to him; I do not know; anyway I am happy that a man with integrity and ability has been appointed—in the same way he should collect courage to appoint Judges in the various High Courts and also in the Supreme Court.

Now, Sir, every now and then this concept of social justice is brought in. My friend who preceded me drew the attention of the House to the Preamble of the Constitution. The Preamble says:

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;"

This is written there in the Preamble. Now, what is the definition of "social justice"? Like the Chancellor's foot it will vary from individual to individual. Social justice is social justice. If you try to bring in your interpretation of social justice, then you will be tampering with something for which we shall all have to repent some time. Therefore, we should be very careful. He said in the Lower House that the Government does not want a committed judiciary. He says

that the Government does not want a committed judiciary. But he does want a judiciary which has the same concept of social justice as he has. It will be tragic if the judiciary must have the same sense of social justice as he has. He will immediately throw back, at me the Directive Principles of the Constitution. I know the big controversy that is going on between Fundamental Rights and Directive Principles. I also know the sanctity of the Directive Principles. But so many jurists have said that the Fundamental Rights have never come in the way of implementing the Directive Principles of the Constitution. So many eminent jurists have said it. Fundamental rights have never come in the way of implementing what directive principles have said. So let us not take liberty with something which is very sacred. The Minister was telling us of what was going on in England. I just tell him that a fundamental thing is fundamental to the Constitution. You cannot compare our situation with what is going on in England. In England Parliament grew from precedent to precedent over a number of years, from the time when the Magna Carta took place. The whole context is different. You may say, for example, truth, compassion, integrity, may have to be set aside to fulfil the directive principles of the Constitution. These are fundamental things. What has been enshrined in the Article dealing with fundamental rights in our Constitution is fundamental to our Constitution, to the structure of the society. If you tamper with them, you will do so at your cost and you will rue the day if you do it. Therefore, I urge upon the Minister not to take lightly all that has been enshrined in the Constitution and not to go by temporary interpretation. Fundamental rights are fundamental. As I said, truth, integrity, compassion, all these things are also fundamental to the structure of the society, as the fundamental rights are.

Then I come to the question of transfer of judges. I cannot understand the whole business of transfer of judges. They are not tehsildars, they are not collectors, that they are to be transferred. I am much against the transfer of judges. Judges should be allowed to stay in their own State and only in exceptional cases should there be a transfer. It is true there is provision for transfer of judges. But you should not transfer them lightly. I know that there is a feeling amongst the judges that these transfers take place as a sort of punishment to them because they take certain attitudes, because their thinking differs from the thinking of the Government which may be in power for five years. The Damocles's sword is there always hanging on the judges, that if they displease the Government in power, then they will stand the order of transfer. Therefore, I say we should make it an exception, only in a very rare case should that be done. I know of a case. I do not want to give the details. There was a very big crisis in a particular High Court. I had to approach the then Prime Minister. He said, "Mr. Oza, they are not tehsildars, they cannot be transferred just like that, just because there is a certain incident or there is incompatibility." Not a single transfer too often over a number of years. Then now what do you see? Even a Chief Justice is to be transferred. I do not agree with what Mr. Shanti Bhushan said. I do not agree either with him or with anybody that they are in favour of transfer of Chief Justices. I think it will not be proper. After all we want to encourage the people. A Chief Justice living in a particular community, in a particular society, and knowing that particular language, knows all the facts, the susceptibilities, the structure of that particular society and it is good if he is left there.

Now about the legal system. I may just draw the attention of the honourable Minister as to why these things

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are going on, why there are distortions in our judicial system. Simply because, we have established a judicial system which is perhaps not suitable to the social climate and other climate, prevailing in this country today. We have taken it from abroad, from the British jurisprudence, and we have established courts, all our procedures and Acts, along those lines. Now the distinction between the two structures of society can be truly appreciated ... (Interruptions). Unfortunately the Minister is not listening to me. I request him kindly to listen to me for a moment. We have all to think in a fundamental way. There is no use tinkering with the problems the country is facing. In such a situation, not only about judiciary, not only about democracy, about so many institutions, unless all of us put our heads together and evolve some solutions. I do not think we will be able to solve the huge problems that are facing us from day to day. I am not happy and I do not lay the blame for what is happening today at the doors of the ruling party. I tell you all politicians who are participating in the public life of this country are responsible for what is happening today in this country. What is happening in Bihar or what has happened in Baghpat or anywhere else is because we have not been able to create a social climate in this poor, democratic country. That is why we are facing this situation.

Legal system is also a profession. I would request the hon. Minister to go to the Tee? Hazari Court which is under his very nose and see for yourself whether it has remained a profession or canvassing business. Just go there *incognito* and see what is the state of affairs in that court. There is no use tinkering with the problem here and there. We have to see how best we perform this country democratically. Unless we preserve democratic norms. I do not think we will be able to make any progress in future,...

MR. DEPUTY CHAIRMAN: Please resume your seat. Mr. Jaswant Singh.

SHRI GHANSHYAMBHAI OZA: This is what I wanted to bring to the notice of the Government. Since I was asked to resume my seat, I do so.

SHRI JASWANT SINGH (Rajasthan): Mr. Deputy Chairman, this is just a formality that has to be gone through. Anyway this gives us an opportunity to say certain things bearing on the total question of the judicial system. As far as the current Bill before the House is concerned, I welcome it. I think anything which goes towards improving the conditions of service of Justices, whether of the High Court or of the Supreme Court, is welcome. But I am sorry to say that the logic underlying behind this Bill has not been carried to its natural conclusion, namely, the lower judiciary. The benefits contained in the Bill, are not being given to the lower judiciary. That which prompted to improve the working conditions of the Judges has again not been carried to its logical conclusion. I will come to it a little later.

We mouth lot of opinions about socialism, about equality and about the ratio between the highest paid and the lowest paid. The question is about the basic underlying philosophy of the judicial system. Those that work or interpret this system. I feel, need to be given that which is in harmony with the kind of judicial system that we want. Here is a pay-scale or salary or emoluments structure which was fixed in the late forties. We are now in the eighties. A very elementary arithmetical exercise on the inflationary spiral since then and secondly the fall of rupee value since then would indicate how meaningless those benefits and service conditions are. In the late forties we fixed a salary of Rs. 4,000 a month for the Judges. What relevance has that figure in the present day? I believe there are Constitutional barriers.

And, Sir, one does not want to go into the aspect of having a constitutional amendment, etc. There are, I notice, some benefits provided here. After all, what are the benefits that this Bill is talking of? This Bill is talking of a house which is to be tax free, of certain medical leave and of pensionable post. These are the three basic things. Now, house has been made tax-free. It is purely an administrative action which has been taken and it is very welcome. If there is any difficulty in raising the salary, I would go to the extent of making a recommendation that salary should be made tax-free. If you cannot raise it beyond four thousand rupees, then at least you can make it tax-free. You should make the working conditions and living conditions of the Judges really worthwhile. They have no relevance to the times in which they are living because these were decided long ago. I think one is going back to the question of the basic philosophy and it is this: What are we wanting out of our judicial system? Here, Sir, I would beg leave of the House and I would mention that the viability or the relevance of a judicial system can only be viewed in the specific setting of a given society. We are talking about a judicial system in a specific setting of our society. What is its background? What is the background of the Indian situation? The background of the Indian situation is, firstly, the inheritance of the Anglo-Indian Judicial system. I think there are some very wonderful things in the Anglo Indian Judicial system and we should not reject that system outright. I think, the concept of *habeas corpus*, the concept of providing the guilt and of not having to prove the innocence—because innocence is taken for granted—and such other concepts are all civilized concepts and they continue to be relevant to the Indian situation. When we talk critically of having inherited an Anglo-Indian Judicial system, let us by all means be critical. But let us not be critical of the totality of it. I think when one talks of the

relevance of the judicial system, one cannot help coming back to the first promise of the National Charter—and the first promise of the National Charter is Justice, Social, Economic and Political—and by asking the question how we are going to achieve that promise. We have the system which is failing because of the weight of its own inner contradictions and the contradictions have nothing to do with the problem and the contradictions have nothing to do with the totality of the Anglo-Indian system, but they have something to do with the functioning of the system. What we need is this: We have heard speeches here in which the Bench is found to be wanting and fault is found with the Bench. I think there is really a need for a reincarnation not only of the Bench, but also of the Bar. I think there is a reincarnation needed for the Bar also. It is fashionable these days to talk about the relevance of the Bench, the social relevance of the Bench. But the Bench, after all, comprises of people, people like you and me and it is not an extraneous body and it is reflective of that which the whole nation is all about. *(Interruptions)*. Sir, I think there is some disturbance in the galleries.

MR. DEPUTY CHAIRMAN: That is all right. Please continue.

SHRI JASWANT SINGH: I think they are not interested in hearing my speech.

MR. DEPUTY CHAIRMAN: Please go on. There is no disturbance.

SHRI JASWANT SINGH: Now, Sir, I think it has become fashionable these days to criticise the judiciary. One talks about the social relevance of the judiciary and one talks about the judiciary not moving fast enough and not keeping pace with the changing political opinions. I think there is a saving grace in that. It is just as well. Secondly, when we talk of social relevance to the judiciary, why are we not talking of the Bar as well? Is the Bar repository of all that is good and is the judiciary repository

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of all that is bad? I have not got much time. There is this question of delay. I think it is a very vital question. Justice delayed is justice denied. It does automatically come to one's mind. There is delay. It is perceptibly there; it is undeniably there. (*Time bell rings*). Now, I will quote from a speech given by a very eminent jurist:

"Please be shocked to know that cases where death sentences have been awarded have been pending for years! Can there be anything more unconscionable about the justice system than this? Many civil cases pending in the trial court or higher court for decades, with the result that ultimate disposal takes so long as to bring heirs on the scene and to bankrupt, in the bargain, both sides equally. By the time, the Supreme Court disposes of a civil case, a quarter of a century would have elapsed since its institution in the court of first instance. Even criminal cases exceed a decade of longevity. It is terrible that hundreds of cases from numerous States have come to the notice of the Supreme Court where large numbers of people, in total disregard of human liberty, have been languishing in prisons, sometimes in fetters, sometimes in solitary confinement, with no court being aware of or expressing concern for the prisoner or the commencement or completion of his trial."

Then, I think there is the absence in our total system of inter-communication between the Legislatures and the Judiciary. They are not two rival organisations; they are complementary. There is the instance of Bangalore Sewerage case, to which attention was drawn by the Supreme Court that Parliamentary drafting has resulted in the situation wherein there is an impasse. So it is not as if we are the repository of all that is good collectively or individually and the Benches are all wrong. So about the absence of inter-communication bet-

ween the Houses and the Bench, I think I can only borrow it from some, where and ask for a New Deal for Indian Judiciary. We need a new judicial plan, a national judicial plan. A national judicial plan, I think in which the people matter, not as if individuals matter; individuals matter but not as an individual. Now, I think that is the crux of the matter. If people matter and if the judicial system was such as was geared to people, then we would not have Baghpat, we would not have Belchi, we would not have Bihar. This is reflective of the sickness within ourselves—politically. I accept that I must also be contributing something to the social illness which is resulting in the barbarity which is taking place in Bihar. I am just as much responsible as you are. You are perhaps more responsible because you have the Government in your hands.

There is the question of the cost of justice.

MR. DEPUTY CHAIRMAN: Please conclude.

SHRI JASWANT SINGH: I will take only two minutes. There is the question of the cost of justice. I need hardly emphasize the point. You may have the finest law on the statute Book. You may have the most capable Bench and the most perfect cooperation of the Bar. But is the people are not able to reach that point of justice. The people are denied it because the system is such. The existing reality of the Indian situation is poverty. Sir, if the system is such that they cannot reach to the point of justice, then is no good. Sir, having the on air has no relevance. As I started by saying—the hon. Minister was unfortunately preoccupied elsewhere—the judicial system has to have relevance to a society and in that I think this cost and delay are two factors. That is why I talk of a new national judicial plan as if people mattered. Finally, there are Members from the Bench. I won't

repeat it. But J will say that you cannot compromise on judicial independence. I will not go into the question whether judicial independence is compromised by the executive having the right to transfer and promote and all the rest of it. Somebody has to transfer and somebody has to promote. But there has to be a method in these things. It is the question of an attitude of mind. As long as the attitude of the mind says that judicial independence is there, it is there. The second question which I keep on emphasizing is about reform. It is a very short quotation and I will conclude after it:

"Reform of justice has many facets, but the ideology of reform is the constitutional fundamental of equal justice under the law. (I repeat it: the constitutional fundamental of equal justice under the law). Equal justice postulates independence of the justices, equal access to justice and law being an effective delivery agent of dharma. By dharma I mean those finer norms which command the assent of the community as a whole and sustain the social order as a healthy organism with a forward-looking perspective and emphasis on developmental dynamics. The goodness of man or *satwa* is, in this context of central significance."

Thank you, Sir.

श्री नानेश्वर प्रसाद साहू (उत्तर प्रदेश):
डिप्टी चेयरमैन साहब, मैं इस विधेयक का समर्थन करते हुए निवेदन करना चाहता हूँ कि इस तरह का पीयमील संशोधन करने से मंत्री जी का जो लक्ष्य है वह हासिल नहीं होगा। मंत्री जी इस बात को याद करें कि जिस समय सुप्रीम कोर्ट और हाई कोर्ट के जजों का वेतन निश्चित किया गया था उस समय एक विधायक का वेतन 200 रुपये प्रति माह था, 1937 में और इस समय वह उत्तर प्रदेश में 1000 है और हरियाणा में 1500 है और किन्हीं

किन्हीं स्टेट्स में वह 2000 रुपये तक है। तो इस पर आप गौर करेंगे, चूंकि समय कम है इस लिये मैं उस के डिटेल् में नहीं जाऊंगा।

एक माननीय सदस्य : यहाँ भी बढ़ाने की बात करो न।

श्री नानेश्वर प्रसाद साहू : तो मैं निवेदन कर रहा था कि उस समय गांधी जी ने कहा था मंत्रियों के वेतन के बारे में कि वह 500 होगा, जिस समय सुप्रीम कोर्ट और हाई कोर्ट के जजों का वेतन निश्चित हुआ था। जिस माप दंड पर और जिस विचार से उस समय मंत्रियों का वेतन 500 किया गया था। विधायक का वेतन दो सौ, आप उसी हिसाब से लगा लें। इस समय मंत्रियों का इमोल्यूमेंट क्या है, मैं नहीं कहना चाहता।

संसद कार्य विभाग में राज्य मंत्री (श्री सोता राम केसरी) : 1937 में कहा था आप ने ? . . .

(Interruptions)

श्री नानेश्वर प्रसाद साहू : जी हाँ। 1950 की बात समझ लीजिए, उस समय घटबढ़ नहीं चलती थी। कीमतें बराबर चलती थी। रुपये का दाम ऐसा नहीं था जैसा आज 20 पैसे हो गया है। मंत्री जी इस बात को ध्यान में रखें कि इस समय रुपये का दाम 22 पैसे है।

श्री बुद्ध प्रिय मौर्य : भाई साहब एम0 पीज0 के बारे में कहो कि बढ़ाओ।

श्री नानेश्वर प्रसाद साहू : इस समय दूसरी चीज चल रही है, इसको बीच में क्यों लाते हैं ? . . .

(Interruptions)

[श्री नागेश्वर प्रसाद शाही]

ता श्री मन्, इसमें रेडिमेंस की बात आपने कही है कि उस में फर्निशड होनी चाहिए। लेकिन जो आप के लिए सीमा है, वह वहां भी होनी चाहिए।

श्री शिव शंकर : है, है ।

SHRI NAGESHWAR PRASAD SHAHI: Thank you very much.

उसी तरह से मैं निवेदन करूंगा कि जैसा श्रीर साधियों ने कहा आज अच्छे एडवोकेट्स जज होना पसन्द नहीं करते। इसलिए कि, जमा करेंगे कहने के लिए मुझे, एडवोकेट्स और डाक्टर्स अपना इनकम टैक्स रिटर्न जो देते हैं उसमें दसवां हिस्सा इनकम भी नहीं जो करते हैं। अगर एडवोकेट्स और डाक्टर्स एक बटा दस भी इनकम दिखाये

श्री उपसभापति : सब को एक साथ मत कहिये, उसमें एक्सेप्शन भी होंगे।

SHRI NAGESHWAR PRASAD SHAHI: Exceptions are there. I am talking generally. There are exceptions. There are very honest people, very eminent people. I do not say about them

एडवोकेट्स अपनी इनकम पर सही इनकम-टैक्स देना शुरू कर दें तो शायद वह हाई कोर्ट और सुप्रीम कोर्ट का जज होना पसन्द करें। नहीं देते हैं, इस लिए यह मतभेद होता है। उसको देखते हुए श्री मन् आज हाई कोर्ट के जज अपनी रिटायरमेंट जब नजदीक आने लगती है तो ला-मिनिस्टर से फीक्वेण्टली मिलना शुरू कर देते हैं।

(Interruptions)

श्री शिव शंकर : मेरे से कोई नहीं मिलता है।

श्री उपसभापति : यह बात मत कहिये।

श्री नागेश्वर प्रसाद शाही : मैं आप के बारे में तो कहता हूँ कि I am talking generally. Nobody can question your integrity, your honesty, Sir. वह तो एक्सेप्टेबल है। लेकिन मैं यह कहना चाहता हूँ कि जो आज कल इमौल्यूमेंट्स हैं उसको देखते हुए वह इसलिए ऐसा करते हैं कि रिटायरमेंट के बाद जो उनको पेंशन मिलती है वह इतनी कम मिलती है कि वह उस से अपनी गुजर नहीं कर सकते हैं, अपना स्तर मैनटेन नहीं कर सकते हैं। इस लिए वह इस बात की कॉन्शियस में जाते हैं कि हमारे लिए कोई न कोई कमीशन इन्श्योर हो जाए आफ्टर रिटायरमेंट। ला-मिनिस्टर से या चीफ मिनिस्टर से या और किसी फक्शनरी से मिलते हैं ताकि आफ्टर रिटायरमेंट कोई न कोई कमीशन मिल जाए और कहीं एम्बेसेडर बना कर या हाई कमिश्नर बना कर चले जाये। जब उन के मन में यह विचार आता है तो आप समझ लीजिए कि उनके जजमेंट विजियेट होने लगते हैं। फिर वह मजबूर हो जाते हैं कि अपने फैसले में, अपने आर्डर में प्रो-नॉनमेंट टेन्डेसी रखें। दे कीप इट इन माइंड। इसलिए मैं आप से यह निवेदन करना चाहता हूँ कि अगर आप चाहते हैं कि आपके हाई कोर्ट और सुप्रीम कोर्ट विदाऊट स्टिग्मा रहें, उन में ऐसे स्तर के लोग जायें जो सुप्रीम कोर्ट और हाई कोर्ट के सम्मान को रख सकें तो लाजिम है कि उनके बेतन और उनकी पेंशन और दूसरे इमौल्यूमेंट्स आप इतने रखें कम से कम कि रिटायरमेंट के बाद भी, सविस काल

3 P.M.

में तो रखें हीं, उसके बाद भी, किसी की तरफ देखने की या झांकने की आवश्यकता उनको महसूस न हो। इसलिये श्रीमन्, मैं आप से निवेदन करूंगा कि आप उनके वेतन को भी रिवाइज करें और यदि संभव हो तो उसको भी टैक्स फ्री करें। 4 हजार, 5 हजार बहुत छोटी रकम हो गई है रुपये के मूल्य को देखते हुए आज के इनफ्लेशन को देखते हुए।

श्री रामानन्द यादव (बिहार) :
नपरासी की भी तो बताइये।

श्री नागेश्वर प्रसाद शाही : मैं अभी उस पर भी आ रहा हूँ। आप छेड़िये नहीं हम को। मैं वहीं आ रहा हूँ। (Interruptions)
यह बहुत कम है। आप कहते हैं कि कंस्टीट्यूशन में अमेंडमेंट नहीं हो सकता। मैं कहता हूँ कि अमेंडमेंट हो सकता है। आप क्यों ऐसी बात करते हैं कि अमेंड नहीं हो सकता। आप इसको इस स्तर पर रखें कि उनके ऊपर कोई प्रभाव न हो। श्रीमन्, हमारे साथी धाबे साहब ने यू०एस०ए० के जजेज की सेलरी और अमोलुमेंट्स कोट किये। लेकिन मैं उससे कम्पेयर करने को तैयार नहीं हूँ। अगर यू०एस०ए० के जजेज की सेलरी से यहां के जजेज को कम्पेयर करेंगे तो हमें अपने मजदूरों की सेलरी को भी कम्पेयर करना होगा।

SHRJ S. W. DHABE; I have not said that you should compare their salaries with those in the USA. I said that increases have been given in their salaries from time to time.

श्री नागेश्वर प्रसाद शाही : एनी हाऊ। 1950 की बात है, जहां तक मेरा ख्याल है, जब पंडित जवाहर लाल नेहरू लंदन गये थे तो उन्होंने हाई कमिशनर की अम्बेसडर गाड़ी को देख कर कहा कि तुम रोलसरोइस गाड़ी खरीद लो और उन्होंने अगले दिन वह गाड़ी खरीद ली। उस समय कंस्टीट्यूट असेम्बली

में यह मामला उठा था और कंस्टीट्यूट असेम्बली में यह कहा गया था। आपने अपने हाई कमिशनर को कम्पेयर कर दिया यू०एस०ए० के अम्बेसडर से। अगर आप ऐसा करते हैं तो आप अपने देश के मजदूरों को क्यों नहीं उनसे कम्पेयर करते। इस मामले में कहता हूँ कि हम अपने देश में ऊंचे या नीचे आदमियों के वेतन या एमोलुमेंट्स को तय करते समय कभी यू०एस०ए० को दिमाग में न लाएं और न कभी उनसे कम्पेयर करने की कोशिश करें। वरना सभी रैंकों के लोग कहेंगे कि यू०एस०ए० में इतना है हमारा भी इतना करो। इसलिये कहता हूँ कि कम्पेयर न करें। इस बात का ध्यान रखें कि उन्हें अपने सेवाकाल के बाद अपनी पेंशन के वक्त दूसरी तरफ देखने की जरूरत पड़े।

एक बड़ी इम्पोर्टेंट चीज इस समय चल पड़ी है। माननीय मंत्री जी ने भी कहा कि पहली बार एक हरिजन सुप्रीम कोर्ट में जज नियुक्त किया गया। मेरा ख्याल है कि पालिटिकल लाभ उठाने के ख्याल से, दलीय लाभ उठाने की दृष्टि से यह कहा हो। लेकिन वह हरिजन अपनी योग्यता के आधार पर नियुक्त किया गया। इसलिये नहीं किया गया कि वह हरिजन है या वह मुसलमान है। वह अपनी योग्यता के आधार पर नियुक्त होता है।

श्री भा० दे० खोबरागडे : यह कहिये कि शेड्यूल्ड कास्ट्स लोग इतने पढ़े गये हैं कि सुप्रीम कोर्ट के जजेज बन सकते हैं।

श्री नागेश्वर प्रसाद शाही : मैं बहुत अदब से निवेदन करना चाहता हूँ कि वह राजनीतिक लाभ उठाने की दृष्टि से यह कहा है। उनको यह नहीं कहना चाहिए था। मैं बड़ी जिम्मेदारी के साथ कहता हूँ कि रिजिजन के आधार पर, कास्ट के आधार पर हाई कोर्ट में या सुप्रीम कोर्ट में जजेज नियुक्त नहीं होते।

श्री रामानन्द दादव : डिस्क्रिमिनेशन होता है। धर्म के आधार पर, जाति के आधार पर रॉबिन्सन में डिस्क्रिमिनेशन होता है। हरिजन या मुसलमान हाई कोर्ट के या सुप्रीम कोर्ट के जज हो जाएं तो शाही जी जैसे समाजवादी व्यक्ति को इसका वैल्यू करना चाहिये।

श्री उपसभापति : वह विरोध कहाँ कर रहे हैं।

श्री नगेश्वर प्रसाद शाही : श्री रामानन्द दादव जी, मैंने यह कहा है कि हरिजनों में भी ऐसे योग्य व्यक्ति हैं जो हाई कोर्ट और सुप्रीम कोर्ट के जज हो सकते हैं।

श्री रामानन्द दादव : आप उनको जज नहीं बनाते हैं, सोसायटी बनाती है। But it is the care which our Government have taken to bring a Harijan into the Supreme Court. You should give credit to us, Mr. Shahi.

MR. DEPUTY CHAIRMAN: He is not opposing it.

श्री जे. के. जैन (मध्य प्रदेश) : आप जिस नेता के चले हैं वह हरिजन विरोधी है। अगर कोई हरिजन इतनी ऊँची गद्दी पर आता है तो आप उसको कभी बर्दाश्त नहीं कर सकते हैं। मंत्री महोदय ने जो कुछ बताया है उस पर इनका तकलीफ क्यों हो रही है? ये जिस लीडर के चले हैं वह हरिजन विरोधी रहा है। हरिजनों के साथ उन्होंने अत्याचार किये हैं। हरिजनों को वोट नहीं देने दिये हैं। ये लोग कैसे इस चीज को होने देंगे... (Interruptions)

श्री नगेश्वर प्रसाद शाही : उपसभापति महोदय, अगर इस तरह से बातें होंगी तो जो बात आपने पहले कही है और जो नोटिस दिया है उसको आप वापस लीजिये... (Interruptions)

श्री उपसभापति : मैं उनको भी रोक रहा हूँ।

श्री नगेश्वर प्रसाद शाही : मैंने श्रीमती इन्दिरा गांधी के बारे में कभी कुछ नहीं कहा है।

श्री जे. के. जैन : तुमने सारे देश की श्री नगेश्वर प्रसाद शाही : देखिये, हर बात का जवाब दूंगा।

श्री उपसभापति : आप इसको छोड़िये, इस बिल पर बोलिये।

श्री नगेश्वर प्रसाद शाही : सन् 1947 से पंडित जवाहरलाल जी इस देश के प्रधान मंत्री थे जो कि वर्तमान प्रधान मंत्री के पिता थे। उन्होंने कितने हरिजनों को सुप्रीम कोर्ट में नियुक्त किया, मैं पूछना चाहता हूँ। उन्होंने कितने हाई कोर्ट के जज नियुक्त किये। आप सन् 1966 से भी देखिये... (Interruptions)

श्री हरिसिंह शणुभावा महिडा (गुजरात) : आप तब कहाँ थे ?

श्री जे. के. जैन : तुम हरिजन विरोधी और हरिजनों को मौत के घाट उतारने वाले हो। तुमने हरिजनों की हत्याएँ की हैं। तुम क्या श्री जवाहरलाल जी से मुकाबला करोगे? ... (Interruptions)

MR. DEPUTY CHAIRMAN: Mr. Jain, do not disturb him. You will have your chance. You should have patience. Do not be impatient.

श्री नगेश्वर प्रसाद शाही : ऐसे ही लोगों को यहाँ किसी परपज के लिए लाया गया है।

MR. DEPUTY CHAIRMAN: Why do you interrupt him? Let him make his point. He is not opposing the appointment. He is making his point. Why do you disturb him?

श्री जे० के० जैन : हम यहाँ सोने के लिए नहीं आए हैं। हम तो दस साल तक चास काटते रहे और देश को गलत रास्ते पर ले जाते रहे।

श्री नगेश्वर प्रसाद शाही : मैं पूछना चाहता हूँ कि आज की प्रधान मंत्री ने सन् 1966 से 1976 तक कितने हरिजनों को जज बनाया है? ... (Interruptions)

MR. DEPUTY CHAIRMAN: Mr. Jain, why are you disturbing him? Let him speak. You will have your chance. He has right to say whatever he wants to.

श्री नगेश्वर प्रसाद शाही : सन् 1966 से 1976 तक कितने हरिजनों को आपने सुप्रीम कोर्ट और हाई कोर्ट में जज नियुक्त किया है?

श्री पी० एन० शुक्ल (उत्तर प्रदेश) : सन् 1977 का भी बताइये।

श्री बुद्ध प्रिय मौर्य (आंध्र प्रदेश) : शाही जी, आप मुझे क्षमा करें। आप कितने पीरियड तक कांग्रेस में रहे हैं और कितनी बार आपने ऐसी मांग की कि ऐसा होना चाहिए?

श्री नगेश्वर प्रसाद शाही : एक बार नहीं, हजारों बार ऐसी मांग की है। आप यहाँ को प्रोसीडिंग्स उठा कर देख लीजिये।

SHRI BUDDHA PRIYA MAURYA : At least not in Parliament.

श्री जे० के० जैन : आपको कांग्रेस पार्टी से इसलिये निकाला गया कि आप हरिजन विरोधी हैं। इसीलिए आपको कांग्रेस में नहीं लिया गया है ... (Interruptions)

MR. DEPUTY CHAIRMAN: Mr. Jain, you are unnecessarily standing up.

श्री नगेश्वर प्रसाद शाही : क्या इस हाउस को गुण्डाइज्म के लिए बनाया गया है? आप यहाँ पर गुण्डाइज्म करेंगे? This House is not meant for goondaism... (Interruptions)

श्री हरीशंकर भाभड़ा (राजस्थान) : उपसभापति महोदय, यह कोई तरीका नहीं है। ...

SHRI NAGESHWAR PRASAD SHAHI: Sit down, sit down. (Interruptions)

MR. DEPUTY CHAIRMAN: You have got a right to make your point. You can also reply to his point. Mr. Jain, I will request you not to disturb him. ... (Interruptions) He has said nothing which can be removed.

PROF. SOURENDRA BHATTACHARJEE (West Bengal): Mr. Deputy Chairman, one must speak in a decent way and maintain the decorum of the House.

MR. DEPUTY CHAIRMAN: I am asking them, let them not unnecessarily get up and speak.

SHRI P. RAMAMURTI (Tamil Nadu): May I tell the ruling party people that if some facts are given and they have got something to refute, they can do so when an opportunity is given to them to speak, but there is no use hurling abuses at the speaker, whether he did it in the past or not? If a wrong has been done, it does not mean that the same wrong should be repeated again by him. Is it a sensible thing to shout like that?

I want to point out to Mr. Kesari in this connection that after all, when two hands strike there is noise and if one hand strikes, there is no noise. Suppose, we in the opposition shout. Unfortunately, the Opposition is not

[Shri P. Ramamurti]

a single party. It consists of so many parties. I am holding myself responsible for the member\$ of my party, I cannot be held responsible for the members of other parties. But looking to the composition of the House, where there is one single ruling party, monolithic party, is it not for the leader of the party to see that the members of his party did not indulge in this kind of talking over every word? Is it the* way of talking? They are disturbing the entire parliamentary system. If there are arguments from one side, the other side could also argue out the case, refute the charges and finish up the matter. That is how I am accustomed to.

Therefore, I will request them to follow some decorum.

MR. DEPUTY CHAIRMAN: Please let him say whatever he likes.

श्री नगेश्वर प्रसाद शाही : डिप्टी चैयरमैन साहब, मैं यह कह रहा था कि अपर कास्ट के लोग जो समाज में डोमिनेट करते रहे हैं, सुप्रीम कोर्ट और हाई कोर्ट में भी वे डोमिनेट करते रहे हैं। उसकी वजह हमारा सोशल स्ट्रक्चर है। आज मोसाइटी में देखिये इसी की वजह से आज हमारा एकानामिक स्ट्रक्चर बना हुआ है। केवल जूडीशियरी में मत देखिये आप चारों तरफ देखिये यहां आक्सफोर्ड और लंदन का एक कल्चर बन गया और जो वहां के पड़े लिखे लोग थे उन्हें हर जगह प्राथमिकता मिलती थी और अपर कास्ट के लोगों को एकानामिकली बहुत ही वेल-आफ होने के कारण उन सारे क्षेत्रों में प्राथमिकता मिलती थी और वे डोमिनेट करते रहे। यही वजह है कि सुप्रीम कोर्ट और हाई कोर्ट के अप्वाइन्टमेंट में अपर कास्ट के लोग एकानामिकली . . .

श्री भा० दे० खोबराशडे : अपर कास्ट नहीं ब्राह्मण कहिये।

श्री नगेश्वर प्रसाद शाही : ब्राह्मण ही कह लीजिये, मुझे इसमें कोई एतराज नहीं। जब आप यह कहते हैं तो यह ठीक है ब्राह्मण . . .

श्री उपसभापति : आप जो ठीक समझते हैं वह कह सकते हैं।

श्री नगेश्वर प्रसाद शाही : श्रीमन्, मैं कह रहा हूं कि अपर कास्ट के लोग, जिन्हें माननीय सदस्य ब्राह्मण कह रहे हैं, इसलिये यहां डोमिनेट करते रहे क्योंकि वे समाज में डोमिनेट करते रहे थे और इसीलिये उनका सुप्रीम कोर्ट और हाईकोर्ट में डोमिनेशन था।

श्री श्रीधर वासुदेव घाबे : पोलिटिक्स में भी।

श्री नगेश्वर प्रसाद शाही : पोलिटिक्स भी समाज का हिस्सा है और जब तक समाज का स्ट्रक्चर नहीं बदलेगा, जब तक समाज में उनका डोमिनेशन खत्म नहीं करेंगे तब तक यह सम्भव नहीं है कि सुप्रीम कोर्ट और हाई कोर्ट के जजेज के अप्वाइन्टमेंट में उनका डोमिनेशन खत्म हो। इसलिये श्रीमन्, मेरा निवेदन यह था कि जजेज के अप्वाइन्टमेंट के समय सोशल स्ट्रक्चर देखा जाय और एकानामिक बेसिस पर जो क्लास बने हैं उस क्लास स्ट्रक्चर को देखा जाय। जो शोपक क्लास के लोग हैं चाहे वे किसी जाति के हों उनके मुकाबले शोषित जो हैं, डाउजट्रोडन और एक्सप्लायटेड क्लासिज के जो लोग हैं उनको वहां पर अवसर दिया जाए क्योंकि आलरेडी हमारे मुल्क में कास्ट और कम्युनिटी की चर्चा इतनी डेजरस हो चुकी है कि इसको हम और आगे बढ़ायेंगे तो और भी खतरनाक होगा। इसलिए कास्ट बेसेज प्रिफरेंस के समय आप न रखें, क्लास बेसेज रखें। श्रीमन्, मन्त्री जी ने अपने स्टेटमेंट में कहा, कई बार उसको रिपीट किया कि हम कमिटीज जजेज नहीं चाहते लेकिन ऐसे जजेज को चाहते हैं जो कमिटीज दू दी कांस्टीट्यूशन हों और कमिटीज दू दी सोशल जस्टिस हों। मगर एक्शन में

हम देखते हैं, हालांकि मंत्री जी, सुप्रीम कोर्ट में 6 जगह खाली है, उन्होंने अभी तक दो मिलेक्शन किया है। उनके कहने के अनुसार रिपोर्ट्स आने में देर हुई और कई जगहों में कमलेशन होता है। उसके बावजूद मितम्बर में उनके पास रिपोर्ट्स आ गई। और आज दिसम्बर है, चार महीने हो गए वे फैसला नहीं कर पा रहे हैं इसमें ऐसा लगता है कि वे कहते तो हैं कि हम ऐसे जजेज को चाहते हैं जो कमिटेड टू दी काम्पेट्यूशन एंड सोशल जस्टिस हों लेकिन ऐसा लगता है कि स्वर्गीय कुमारामगलम साहब की ध्योगी के अनुसार वे ऐसे जजेज की खोज में हैं जो कमिटेड टू हिज ओन पालिसी हों, to the policy of the ruling party हों अन्यथा अगर इस तरह की खोज न होती तो एमीनेंट लोगों की माननीय शिव शंकर जी की जानकारी है, अधिकांश एमीनेंट ज्यूरिस्ट, एडवोकेट्स को पर्सनल जानकारी उनको है। ऐसी हालत में उनको हृद निकालने में और मिलेक्शन करने में देर नहीं लगती। लेकिन ऐसा लगता है कि वे ऐसे जजेज की खोज में हैं जो कि कमिटेड टू हिज ओन पालिसी हों। इसलिए देर हो रही है। थोमन्, एकाबात कह कर खत्म करता हूँ। जो आजकल ट्रांसफर की चर्चा चल रही है वह सभी को मालूम है। हम लोग राज्यों में देखते हैं officers of the rank of District Magistrate and S.P., when they get the transfer orders, or when they apprehend that transfer orders are coming, they start approaching the M.L.As. and M.Ps. for cancellation of these orders आप उत्तर प्रदेश विधायक निवास में अगर देखें तो जूने अधिकारियों को भी आप पायेंगे जो कि सिफारिश में लगे हुए हैं कि मेरा ट्रांसफर आर्डर कैंसिल कर दीजिए। कानूनगो और तहसीलदार की बात तो छोड़ दीजिए, आई० ए०एस० अधिकारी भी आपको वहां मिलेंगे। हाईकोर्ट के जजेज में ऐसे लोग जाते हैं जो बार

से आते हैं। ऐसे लोग जाते हैं जिनको इतमिनान रहता है कि हैदराबाद में ही है और वहां पर ही बसे हुए हैं, उनका अपना मकान है, बच्चों की शिक्षा वहां पर चल रही है। अगर जनरल रुल के तौर पर ट्रांसफर का इस्तेमाल होगा तो हैदराबाद का आदमी कभी गोहाटी में जाना पसंद नहीं करेगा। उसके लिए कितना हेराममेंट होगा और फिर वह अप्रोचिज करेगा ता मिनिस्टर के पास, इसका क्या असर होगा? इसलिए मैं निवेदन करता हूँ कि हाई कोर्ट और सुप्रीम कोर्ट में, स्पेशली हाई कोर्ट में ट्रांसफर की जहां तक बात है, जजेज बार से आते हैं। अब इलाहाबाद का आदमी कभी बंगलौर ट्रांसफर कर देंगे तो वह इस्तीफा दे देगा। वे प्रैक्टिस शुरू कर देंगे और बैरियस रीजन्स ट्रांसफर के हैं अभी इलाहाबाद में अगड़ा चल रहा है और इलाहाबाद के अगड़े के पीछे कास्ट बेसिस है आप जानते हैं तो इस हालत में मैं यह जरूर कहूंगा कि ट्रांसफर का अधिकार आपको है लेकिन उसका इस्तेमाल बेरी बेरी एक्सेप्शनल केस में होना चाहिए जहां पर कि आप सैटिसफाईड हों कि उनका यहां रहना न्याय की और व्यवस्था की दृष्टि से ठीक नहीं है। एज ए जनरल अगर आपने एप्लाइ किया तो उनका स्टेटस तहसीलदार और डिप्टी कलेक्टर का हो जायेगा और वही जैसे हम भीड़ देखते हैं विधायक निवास में आई० ए० एस० आदि की ट्रांसफर और कन्सिडरेशन के लिए वही पोजीशन जजेज की हो जायेगी। इसलिए मैं मंत्री महोदय से निवेदन करता हूँ कि आप इस पर गंभीरता से विचार करें, और आपने मैं आज्ञा भी करता हूँ कि आप एक हेल्थी ट्रेडीशन कायम करेंगे। आपकी अलेक्सी और इन्टेग्रिटी में हम इस मामले में आपने उम्मीद करते हैं कि आप इस दृष्टि से देश में एक हेल्थी ट्रेडीशन कायम करेंगे जो चलता रहे।

श्री उपसभापति : समाप्त करिये।

श्री नगेश्वर प्रसाद शाही : आखिरी बात कह दूँ कि जिस समय आप हाईकोर्ट और सुप्रीम कोर्ट के जजेज के इमालूमेंट्स पर विचार कर रहे हैं उस समय आप अपने सामने लोअर जुडीशियरी को भी रखें, क्योंकि आपको मुझसे ज्यादा मालूम है कि किस कारण से वहाँ करप्शन पनप रहा है।

श्री उपसभापति : लोअर जुडीशियरी उनके हाथ में नहीं है, यह स्टेट के हाथ में है।

SHRI NAGESHWAR PRASAD SHAHI: The advice is there; the ion is there from the Govern ment of India. Advice has got very

SHRI P. RAMAMURTI: Moral force.

SHRI NAGESHWAR PRASAD SHAHI: Yes, it has great moral force.

ना हालात यह है, देखिए डिप्टी कलेक्टर, उसी रैंक का डिप्टी कलेक्टर है पी सी एस ऑफिसर जब मकान के एलाटमेंट का सवाल आता है तो जजेज का कलेक्टर के हाथ में मकान का एलाटमेंट रहता है, वे जजेज को मकान एलाट नहीं करते डिप्टी कलेक्टर को पत्रले करते हैं। एकजीक्यूटिव के लोगों को यह सहूलियत है। उनको प्रिकरेंस मिल जाता है। जब परेशानी हो जाती है तो डिप्टी को मिल जाता है। इसी तरह से डिप्टी कलेक्टर को हर एक को फ्री व्हीकिल मिलता हुआ है और इवन टेलीफोन भी U.P. all the SDOs have got telephones at their residences. ये सुविधाय न व्हीकिल की और न टेलीफोन की जजेज को हैं। इसके अलावा मैं नहीं कहना चाहता हूँ कि एकजीक्यूटिव ऑफिसर को और क्या-क्या सुविधायें हैं, कुछ को तो शायद अपने वेतन में से कुछ खर्च ही नहीं करना पड़ता है और जजेज को अपना सारा वेतन खर्च करने के बाद भी तीसरे हफ्ते में सब तनख्वाह खत्म हो जाती है। तो इन सारी परिस्थितियों को देखते हुए ऐसी हालत में जजेज के लिए ईमानदार रहना

मुश्किल होता जा रहा है धीरे-धीरे क्रमशः इसलिए श्रीमन् आप अपने पद का उपयोग करके इस ओर ध्यान दें। उनके इमालूमेंट, उनकी सेलरी के कन्टेक्ट में देखें कि एकजीक्यूटिव ऑफिसर को क्या-क्या सुविधायें हैं, क्या-क्या ब्रेनीफिट्स हैं जो उतना ही वेतन पाता है। इन्हीं शब्दों के साथ मैं इस बिल का समर्थन करता हूँ।

SHRI P. RAMAMURTI: Mr. I Deputy Chairman, Sir, as far as this Bill is coccoered, I support it. But I do not think jt goes far enough. Because what is the position in the country today? Today, the position that with the value of the rupee in tremendously and with d chartered accountants like my ftiend Mr. N. K. P. Salve I do not know about you, but I am laying friends like you—earning in five figures and even six figures per month ...

SHRI SHIV SHANKAR: He goes oven figures.

SHRI P. RAMAMURTI: All right, seven figures. I stand corrected. I accept the amendment. You see, talented lawyers are not attracted to the Bench. This is the real position today. Therefore, something must be done with regard to this in order to attract talented people to the Bench. Therefore, I am not opposed to it. Even if something more is to be done, xtremely happy about it. But, Sir, in this connection I would like to point out one or two things which are not strictly germane to the to the three clauses that are there in the Bill, but which are germane to the administration of justice, the appointment of judges and all these things in this country. After all, during the last 30 years our social values have completely deteriorated. The fine values that we built up during the struggle against British

perialism have been completely obliterated, and judges are no exception. As part of the society, they are

also influenced by that erosion of social values. Therefore, I do not blame any particular individual. After all: the nature of the society also reflects on the nature of the judges, on the calibre of the judges that we get. Certainly there are exceptions to that, but that is a different matter. This is the position today. How to stop the rot? Something must be done to stop the rot. In this connection, Sir, I would like to point out that the Law Commission as early as 1956 or 1957—I do not remember—pointed out that "appointment of a judge has now become a political appointment". I am not saying this. This is what the Law Commission said. So it has started much earlier. Political pulls determine the appointment of judges. This was stated by the Law Commission after going into the various appointments that had been made. Political pulls may be exercised in so many devious ways. We cannot prove it. Political pulls have hundreds of threads and they are not known to the public. So my friend knows how they are exercised. When he was a lawyer he knew about it. Now when he is a Minister, he must be knowing much more about it. Therefore political pulls are exercised, and the moment political pulls begin to operate, the quality of the Bench Judges and the Supreme Court Judges begins to suffer. Therefore, one of the important factors is to see that in the appointment of judges, political pulls play no part. Once that is introduced, all sorts of problems will come up. So political pulls should play no part in it. I do not want to dilate upon that.

Now, in this connection, if you want to guard the independence of the judiciary, then you should put an end to the appointment of retired judges to lucrative posts under various things. I can understand that if a commission of enquiry is needed to go into some atrocities and so, on, a retired High Court Judge or a retired Supreme Court Judge should be ap-

ated. But now there are so many different lands of things that a Supreme Court Judge, after retirement, aspires for or a High Court Judge aspires for. Once that aspiration is there and knowing human nature to be what it is, a High Court Judge or a Supreme Court Judge will always try to please the powers that be. This is the actual position. That is why you are not able to get today people who are absolutely above board, who will not hanker after other jobs after retirement. If they do not hanker after other jobs after retirement, they will be totally independent. He will have the courage, whatever the consequences, whatever the Government may think, whatever the party in power may think, to say, "I will stand by my convictions." Otherwise this will not happen. For example, the Public Service Commission people who have retired cannot be appointed to any other office. Similarly as far as the Judges are also concerned, it must be done. I know the case of Mr. Sivashanmu—Probably he has been the best Speaker. He had been a Member of this House. In 1953 he was offered appointment as a member of the Public Service Commission. Rajaji persuaded him. He came to me at that time. I told him "Don't accept this office. If you accept this office, they will say you are not fit for any other office later. Don't accept this office." Despite my advice, Rajaji was able to prevail on him and he accepted it. Then he came here as a Member of the Rajya Sabha. And when the time came for the election of Deputy Chairman, I suggested his name for the office. When I suggested his name for Deputy Chairman or some such thing, at that time, I remember, Mr. Gobind Ballabh Pant had stated that it was an office of profit and he could not be appointed...

SHRI B. D. KHOBRA: A
wrong Interpretation.

SHRI P. RAMAMURTI: Whatever it might be, I am not concerned whether it was right or wrong. That interpretation prevailed. What can we do? Our interpretation does not prevail. So the point is at that time it was stated that Mr. Siva Shanmugam Pillai could not be elected because he was an ex-Member of the Public Service Commission. That was the position at that time. He was an eminent man. In fact, I had never seen a better speaker than him in the Madras Assembly. He used to pull up the ruling party also. Many of the friends here were not there at that time. At rate, that is a very salutary rule that once a person was appointed to a high office, afterwards if he can get some alluring thing, then, he will always aspire for that alluring thing and he will be hankering after that and therefore he will try to please the powers that are in position to give him that allurements. Therefore, it is absolutely necessary that after a Supreme Court or a High Court Judge retires, he will not be appointed to any office of profit, whether you call it office of profit or by a different name, he should not be appointed thereafter. On any commission of service for a public purpose if a retired judge is to be appointed, it is entirely a different matter, for example, a commission is needed to go into the Moradabad riots or Harijan atrocities and things like that, it is a different matter. But appointment as a Law Commission Member, this, that, all these things will not do. This is what I would like to point out first.

Then the other point I want to stress is the question of transfer of judges. So much is said about transfer of judges. They are even talking of transfer of Chief Justices from one State to another, their attitudes and so on. I am attacking this argument from a different point of view. I am not talking from a political point of view. Many people might speak about

it from the point of view of political motivation. But I am talking from the point of view of development and democracy in this country. By democracy I mean in this context judicial democracy. Judiciary has got to inspire confidence among the people. Before the judiciary even an ordinary man must be in a position to go, and argue his case even without the help of an advocate. The time is coming, with more education, people are prepared to argue their own case. Now, unless the language of the High Court is the language of the common people, how can you expect the ordinary people to communicate with the court direct? , You see a poor man from a village appoints somebody as his lawyer. And when this lawyer speaks in the court, how is the poor man to know whether the lawyer is speaking really for him or against him? Because, there are lawyers these days who collect bribe from the other party and are prepared to speak to the detriment of their client (who does not understand what is going on). The client from the village does not understand what the argument of his own lawyer is. This is the position. I am talking of some extreme cases. I am not saying that this is the normal case. But, after all, there are also lawyers like that. My friend there knows them, he even knows them by name. There are also lawyers of that type. Therefore, the point I stress is you have to have a court which inspires confidence; - the common people that justice is being done. Unless the proceedings of the High Court are also in the language of the State in which it is sitting you cannot inspire confidence in the common people and justice cannot be done. And therefore democracy also cannot flourish. Languages, also, after all, cannot grow like that. English language grew in its stature because English language is used for all purposes as far as that country is concerned. Similarly in other countries their respective languages have flourished because they use their language. They use that

language for administrative purposes, for educational purposes, for parliamentary debates, for administration of justice, for teaching science, for teaching economics, for every purpose they use that language. It is how a language grows. A language does not grow merely because of a Shakespeare or somebody else. A language grows as a result of the people's contribution and the people developing it. That is a democratic process. Therefore, from the point of view of development of a language, from the point of view of the fact that the common people must be able to participate in the administration and in the functioning of the courts, and they must see that the courts are functioning independently, our goal must be that the mother tongue of a particular State should be used even in the highest court. This must be the position. If you send somebody from other State to another State as Judge, he cannot understand the language of the State and the clients have perforce to engage lawyers. There are many people in my State who do not know English, but at the same time who can argue their case. Why should they be forced to engage lawyers? Therefore, from the popular point of view, from the point of view of development of democratic norms and from the point of view of development of different languages of this country and making them compete with all the languages of the world, the idea of transferring Judges or even the Chief Justice is wrong, though some recommendations have been made to this effect as somebody has said.

the Vice-Chairman (Dr. Raflei Zakaria) in the Chair]

If you consider this broad aspect of the long-term development of all the language and the participation of the people in all walks of life, this proposal to transfer Judges will not fit into it. After all, democracy means involvement of common people even the process of judiciary. "For that purpose this kind of transfer will only

hamper that process. I know this is not the subject under discussion. But since this is an occasion for us to speak about the entire gamut of judiciary, I am taking advantage of that. Normally I am not accustomed to widen the subject. Since I have got to support this measure, I could have done it in one sentence. But I am taking advantage of the conventions and practices in this House and I am putting forward these points for Mr. Shiv Shankars consideration and the consideration of the Government of India.

THE VICE-CHAIRMAN (DR. RA-FIQ ZAKARIA): Mr. Bhandare. I would request Members to kindly be brief because by 5 o'clock...

SHRI MURLIDHAR CHANDRA-KANT BHANDARE (Maharashtra): I will not take longer than what my predecessors have taken.

THE VICE-CHAIRMAN (DR. RA-EIQ ZAKARIA): This does not apply to you only. It applies to all those who will follow you.

SHRI DINESH OOSWAMI (Assam): Why can't you be a little more liberal with Mr. Bhandare for reasons best known?

SHRI MURLIDHAR CHANDRA-KANT BHANDARE: Mr. Vice-Chairman, it gladdens my heart to see such a wide and sustained support for this measure which does so little for this very important and vital organ of our State, namely, the judiciary. When we discuss anything which concerns the amelioration of the conditions of the Judges, my mind goes back to the famous words of Winston Churchill while asking for a raise in the salaries of Judges of the Supreme Court of England. This is what he said:

"The service rendered by Judges demands the highest qualities of learning, training and character. These qualities are not to be measured in terms of pounds, shillings and pence according to the quality of work-done. A form of life and conduct far more severe and res-

[Shri Murlidhar Chandrakant
Bhandare]

tioned than that of ordinary people is required from Judges and, though ritten, has been most strictly served. They are at once privileged and restricted. They have to present a continuous aspect of dignity and conduct."

Therefore, it is all the more necessary that we maintain this vital organ as pure, as independent, as free from temptation, as free from fatigue,

free from anxiety, as possible to permit them to work and discharge their onerous and difficult duties to the best of their ability.

Sir, it would not be inappropriate on my part to remind the House that this position was recognised in the Constitution itself and their salaries are guaranteed and provided for in the Constitution itself. One finds that article 125 deals with the Supreme Court Judges' salaries and article 221 deals with the High Court Judges' salaries as laid down in the Second Schedule. And, Sir, it will be interesting to note that the founders of our Constitution thought that four thousand rupees would be an adequate salary for a Supreme Court Judge, though the Federal Court Judges earned much more, and they reduced the High Court Judges' salary from Rs. 4,000/- to Rs. 3,500/-. But they thought that what was Rs. 3,500/- should be consistent with the status and dignity of that high office. It is indeed tragic that we have allowed the real incomes of the Judges to be eroded, because, Sir, it was told by Finance Minister in August last the value of the rupee, as compared to 1961, has fallen to 16 paise today. Compare that with the salary of Rs. 3,500/- and you will appreciate how much drop or erosion in the real income of the Judges has been there. As a result of this, Sir, the consequences have been very grave and serious. The only field which deserves not admit of any remission, of any lowering of Standards, is the quality of the Judges and that quality has fallen and because of that quality

having fallen, the arrears are mounting and there is enormous delay in the disposal of cases. Days were there when everybody thought that the crowning moment for a lawyer was an invitation to join the Bench and, today, Sir, we find that all leading lawyers, all first-rate lawyers, are turning their backs against this high office. In this connection, I may do refer to what the former Chief Justice of India, the first Chief Justice of India, Mr. Justice Kania, said on occasion of the inauguration of Supreme Court on the 28th of January 1950. He said;

...ex 30 years ago, the offer of judgeship to a member of the Bar was considered a high honour the culminating apex of his career as a lawyer. A Judge was respected in people and recognised in all spheres. In those days, as you may all know, the attitude towards the courts was one of admiration and almost of worship. That honour and a life of comparative ease were considered sufficient compensation to balance the financial loss which a good practitioner suffered by Judgeship. Unfortunately, during the last 20 years, that respect for the position, status and dignity of a Judgeship has not been fully maintained. Without compensatory benefit or advantage difficult, to persuade a good practitioner to accept a Judgeship. We hope and trust that with the inauguration of the Republic... See the hope he expressed and the situation we find! The hopes that expressed have been belied and they remain shattered. He said:

"I trust that (he inauguration of the Republic, the honour due to the position and status of a Judge of a High Court and the Supreme Court will be fully restored. Unless the leading members of the Bar accept Judgeship, it will be difficult to strengthen the Bench and the hopes of producing great Judges cannot be realised."

And, Sir, in this context, I again hark back to what Sir. Winston Churchill said on the occasion which I have referred earlier. He said:

"The Bench must be the dominant attraction to the legal profession. Yet it rather hangs in the balance now and heavily will our society pay if it cannot command the finest characters and the best legal brains which we can produce and heavily will our country pay in an epoch where our relative material power has diminished and we do not sustain those institutions for which We are renowned."

Therefore, Sir, what has happened is that with the quality of the Judges going down, there is a large amount of dissatisfaction among the litigants and the result has been that there has been an unprecedented increase in the load of work of the Supreme Court. Formerly we had Judges like Justice Gajendragadkar, and when their judgments were written, nobody would think of advising the client to go to the Supreme Court. Today, in the case of 80 out of 100 judgments we look at, we advise the clients and say: Yes, you must go to the Supreme Court because all that is written there is really nonsense. I would appeal to the hon. Law Minister at least to provide a higher rise in their salaries as has been suggested by many Members or make their salaries income-tax free. I must say that somebody mentioned, and rightly so, that the Bar is also to be taken into account, and I would like to appeal to the hon. Law Minister to see that the lawyers are really deprived of the fringe benefits and cash incentives because of which they are easily tempted to turn their back to this office. I think that if one has to pay a part of what he has earned very correctly in the matter of tax, I do not think there would be much difference between what a Judge gets and what a lawyer would earn after meeting heavy expenses of his office. Therefore, I do appeal to the Law Minister to take steps in this direction. 1384 R.S.—8.

In this connection, I will invite the attention of the House to what the late Mr. H. R. Gokhale, when he resigned in 1966 as a Permanent Judge, on this issue said—I quote:

"It is not difficult to imagine the dangers inherent in a situation where the High Court Bench fails to attract leading members of the Bar—both in relation to the existence and the continuance of a strong and independent judiciary, which is a *sine quo non* of real democracy. Members of the Bar, I have resigned because I honestly feel that in the present conditions I shall be doing injustice to my work if I continue in this state of affairs; for, the compensations which go with a Judge's position have very nearly vanished. I carry no sense of injury but I do feel greatly concerned about this state of affairs. I know it as a fact that this concern is shared by many of my colleagues."

This was in 1966. And in 1980 things are worse. There is no time to lose and we must now catch up to see that the independence of the judiciary is preserved.

This brings me to certain aspects which it is customary to raise while debating such a bill. I advert to the question of appointment of Judges. I have carefully read the statement made by the Minister on the floor of the Lok Sabha, saying that delay in the appointment of Judges is, somewhat implicit. I wish to join issue with him. It has been repeatedly said that delay in the appointment of Judges results in loss, a very severe loss, of Judge-hours or Judge-days, whatever you may choose to call them. And if we have to clear up the arrears, the least that can be done is that appointments are made in time. I may tell the Law Minister that everyone knows when a Judge is going to retire, either in the High Court or in the Supreme Court. An exercise for appointment should be started well in time so that there is no delay. In this connection, I am

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bound to point out that very often it is the Chief Ministers of the States who do not forward the recommendations to the Central Government in time. I do hope that the Law Minister will send a circular to all the Chief Ministers, saying that there should be no delay in forwarding the recommendations to the Chief Justice of the High Court or their own recommendations so that appointments are made on time. (Interruptions)

When I speak of these appointments, I must also draw attention to the utter demoralisation which exists today among the members of the Bar over the manner in which the various Chief Justices of the High Courts have been recommending names. Caste-ism, favouritism and nepotism are playing havoc in the appointment of Judges. You make these appointments in one year or in a matter of 5 or 8 months and the youngest is appointed first without any rhyme or reason and the oldest is appointed last. It is all done in a matter of 3 or 4 months. I shudder to think as to what pulls weigh in the appointment of Judges. A time has come to implement and to give effect to the recommendations of the First Law Commission of which Mr. M. C. Setalvad, Attorney General, was the Chairman and of which both Mr. Chagla and Mr. Palkhiwala were Members. They unanimously said that there is a preponderance of opinion that the Chief Justice must be from outside the State. I do not know why there should be other considerations as pointed out by Mr. Ramamurti. We will see whenever such things come. I do not see why we are dragging our feet on this aspect of the matter. I do want to make it very clear that it is no use comparing the Judges with the Teh-sildars. Even in the Indian Administrative Service, top-most officers are transferred and no one says that because of their transfer they lose their independence. A Judge would not be worth his salt if he loses his independence on a transfer. We are here to preserve, enrich and enhance the

independence of the judiciary. We are doing it so that justice will mean what it should mean to the poorer people of the country. If transfers are to be done, they should be done on proper guidelines. Let them not be done on the whims of the executive. Let it not be done on the whims even of the Chief Justice. Let it be done on the proper guidelines which we lay down. We can lay down, for instance, that no Judge shall be Chief Justice in a particular High Court for more than 3 years so that after 3 years he goes to another High Court. Let transfer not be an instrument of wrecking vengeance, an instrument which will destroy the independence of the judiciary. Let us have proper guidelines. Let us have proper consultations. Let us look into individual cases so that no injustice is done. If there are favourites. I would request the Law Minister to start transferring the favourites first so that there is no allegation at all that you are using it as an instrument of oppression or an instrument which will affect or mar the independence of the judiciary. Therefore, I would appeal to you to see that the balance is restored and the confidence is restored. I said in an interview which I gave in November 1979 that the chances of my son becoming a Judge of a High Court are so bright that he need not prove his merit at all. The Judges can't be independent because they have to give independent and objective recommendations. The judges are the victims of the existing system in which, as pointed out by one of the Members, the important roles are played by the economic-forces, the background of the families and so on and so forth over which a person has no say at all when he is born. In this connection, I must say that the Consultative Committee of Law Ministry has done the correct thing. I am amazed that the Bar Council of India which in November 1979, in answer to a questionnaire, said that Judges should be transferred the moment the Government was changed, has changed its mind. I do not think that such a body has any right to speak on behalf of the Bar.

and to change its opinions conveniently and convert itself from a professional body into a purely political body. I think the hon. Law Minister should take proper cognizance of these things. What has happened is that whatever we do and whatever our party does is always misunderstood and misinterpreted. It is always said that we are out to destroy the independence of the judiciary and so on and so forth. The history has shown that nobody has done for the independence of the judiciary as much as our Party has done. It is our creed. And, therefore, I will tell you one thing, Sir. If you want that the judiciary's independence should be enriched, I suggest that three things should be done. One thing is that what was intended by the Constitution should be provided, that is, a salary of Rs. 3,500 in 1950, and its equivalent in 1980. I suggest that you provide an adequate pension for the Judges so that they do not practise. I know, originally there was a bar and that bar has been removed. It has been adversely criticised. And this adequate pension, I would suggest, should be at least half the salary of the Judges, and it will be quite fair compared to the pensions which the members of the Armed Forces get or the members of the Administrative Service or the Foreign Service get. But I do feel that this should be provided so that the dignity and the independence of the judges is maintained, so that they do not look forward this way or that way, and as somebody said that they do not go on paying visits to the Ministers, particularly the Law Minister, the present company being an exception...

THE VICE-CHAIRMAN (DR. RA-FIQ ZAKARIA): If the Law Minister had continued to be a Judge, he would have been entitled to a pension.

SHRI MURLIDHAR CHANDRA-KANT BHANDARE: And, thirdly, Sir, I think, there is some mis-conception. So far as I know the bungalow is there. But one thing which I can say is that the Judges are getting a travelling allowance of Rs. 300. The

price of petrol has doubled. Now, you should increase that allowance of Rs. 300 to Rs. 600 if you really want to see that what you have given them is maintained. Sir, when I think of this, I must come to make two further references before I conclude my speech. One is the recent suggestion of the Chief Justice of India. On the one hand, from what one reads in the newspapers, the Supreme Court seems to be resisting the transfers—this is from what we read in the newspapers because I have not talked to any Judge to find that out. I do not know why there should be a resistance if the transfers are on the basis of proper guidelines and after consultation with the Chief Justice of India. On the other hand, the learned Chief Justice says that some Judges of the High Court should sit on the Supreme Court Bench, and some Judges of the Supreme Court Bench should go and work on the High Court Benches. The fallacy is obvious.

Sir, the last point to which I will make a reference—because it has been misunderstood and it has not been put in its proper perspective—is about one of the two recent appointments made by the present Government. For the first time a distinguished Judge of the Madras High Court, who happens to be a Harijan, has been appointed a Judge of the Supreme Court. I take this opportunity to congratulate the Government for making these bold appointments. Let it not be forgotten that somebody who has been a Judge of a High Court, somebody who has been the Chief Justice of a High Court is *ipso facto* eligible to be the Judge of the Supreme Court. But we are proud that out of this large net that we could throw, out of the extremely wide choice we have, we have chosen a Judge who is not only eligible by reason of his ability and merit but also belongs to a class in the society which had no representation in the highest citadel in the highest temple of justice.

SHRI B. D. KHOBRADE: Pre-viously we had Muslims.

THE VICE-CHAIRMAN (DR. RA-FIQ ZAKARIA): I said that. The Muslims had the representation in the highest court.

SHRI MURLIDHAR CHANDRA-KANT BHANDARE: Sir, particularly I am happy because in my younger days, I worked for four long years among the Harijans in the Mazagon and the Grant Road areas. So, I know what it means to be brought up

in those conditions. I know 4 P.M. how difficult it is. People

who do not know can only say it; but I am glad that it is only under our Government led by Shri-mati Indira Gandhi we have reached that position where on merit a Hari-jan has become a judge of the Supreme Court of India. I do hope that this character of the Supreme Court will be maintained. I shudder, people say we are the best from Bombay—I also say the same thing to my clients—but I shudder if we were to have a Supreme Court comprised entirely of Bombay stock or this stock or that, Supreme Court, in order that it becomes an apex court, must represent all the regions. It must represent the south; it must represent the north; it must represent the east and it must represent the west because it is then that the true picture of India, the true picture which is necessary for justice in our country is seen.

And lastly, I would only say...

THE VICE-CHAIRMAN (DR. RA-FIQ ZAKARIA): You are forgetting women. You talked of the north, south, east and west and you forget the other half of your own people... (*Interruptions*) I am only reminding him when he is talking in that vein, that an important omission is being made by Mm.

SHRI MURLIDHAR CHANDRA-KANT BHANDARE: Sir, all that I can say is that under the Indian Penal Code, man includes a woman but I also agree that we should now, keeping in tune with modern things, think of it. I am quite sure, my friend

Mr. Kulkarni will move an amendment that a woman should include a man.

After all this is said, one thing I find...

SHRI ARVIND GANESH KULKARNI: I can move any amendment you like but your friend Mr. Antulay wants another system.

SHRI MURLIDHAR CHANDRA-KANT BHANDARE: There is only one thing which I shall mention and I have done. I find that in our administration of justice, as pointed out by my esteemed friend Mr. Jaswant Singh, there is no place for litigants. At present, the whole system is as if it is a badminton match between the judge and lawyers. You go to any court. There are no waiting halls or common convenience for the litigants where they come with their woes and worries, sit there for five hours and sometimes day after day till their matter reaches and then it is suddenly adjourned. Therefore, I do hope that with the brilliant background of the present Law Minister, whenever he thinks of doing anything, he would keep the interests of the litigants for whom the entire system of judiciary exists, in mind and see that proper legal aid is provided for, proper facilities are provided for, delays are avoided and justice is made cheap so that we really look forward to a truly democratic and socialistic Indian Republic. Thank you.

SHRI R. RAMAKRISHNAN (Tamil Nadu): Mr. Vice-Chairman, Sir, I rise to support this Bill which by itself is a very innocuous and a simple one. But as most of the hon. Members before me have raised very large issues, I will first confine myself to three very simple provisions of this Bill. The first one is about leave with full allowances; second one is about civil pensionable posts being changed and the third one is about rent-free official residence. One point more and that is that the speakers before me have all spoken so well

and high about the High Court judges. But even the High Court judge is not to be believed, according to this Act, because even he has to produce a medical certificate from a doctor. Do you think that a person who is going to deal with the lives of the millions of people should be asked to produce medical certificate if he is sick? You can take his word for that. I would request the hon. Minister to delete the words "The judge should produce medical certificate" A judge is not a child and he should not be asked to produce a medical certificate like we were used to do in schools and colleges. Coming to the emoluments of the judges, all the previous speakers before me... (Interruptions)

SHRI S. W. DHABE: Sir, there is nobody in the Treasury Benches. (Interruptions)

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): I have noticed it.

SHRI R. RAMAKRISHNAN: It does not matter. This is the regard which they give for the judiciary. (Interruptions)

SHRI S. W. DHABE: There should be somebody from the treasury benches, who should hear your speech.

SHRI R. RAMAKRISHNAN: All that matters is... (Interruptions)

SHRI B. D. KHOBRADE: At least, one Minister should be present in the House, if not from the game Ministry, at least some other Minister.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Mr. Pandey, will you please find out?

SHRI SUNDER SINGH BHANDARI (Uttar Pradesh): Until the Minister comes, we should adjourn the House.

DR. BHAI MAHAVIR (Madhya Pradesh): There may be some would-be Minister, if you happen to know. He can substitute for the Minister.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): The Minister of State was here.

SHRI SHIV SHANKAR: Sir, I am very sorry.

SHRI R. RAMAKRISHNAN: Ho. Minister, I did not raise any objection.

SHRI SHIV SHANKAR: Sir, I sincerely offer my apologies. I had to go out just for a minute.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): When the Law Minister went out, the Minister of State was here. I think, he did not realise.

SHRI SHIV SHANKAR: I am sorry for the inconvenience.

SHRI R. RAMAKRISHNAN: Sir, I would request the hon. Minister, as he has come back now, to delete this medical certificate business and not to treat the Judges of the High Court and the Supreme Court as school boys.

In this connection most hon. Members have asked for an increase in the emoluments of the High Court and the Supreme Court Judges. There can be no two opinions about it. My friend, Mr. Bhandare, who is a senior advocate of the Supreme Court, has talked about the car allowance to the judges. I should say what should be given is not Rs. 300 per month but 300 litre? per month. In these days, when the oil prices are being increased by the OPEC and other oil-producing countries, if you fix a standard that so many litres per month would be given, this would help the judges to go about a little more care free.

Now, I would like to mention one point. Of course, it may sound rather ludicrous on my part to mention it. But I am sure, in their heart of hearts, most of the hon. Members would echo my sentiments. Four hundred and fifty Member[^] of Par«

[Shri R. Ramakrishnan]

liament out of a total of 780 Members in both the Houses- have signed a petition for an increase in the emoluments of Members of Parliament. But the newspapers, my friends who are sitting there in the Press Gallery, made much about it and they gave a long list of the privileges enjoyed by Members of Parliament and I am told, the Prime Minister was reminded about the 40 or 50 per cent of the people living below the poverty line and said this is not proper for them. I would like to remind the Prime Minister as well as the Law Minister and the Finance Minister that if the Members of Parliament are to be very honest and if they should not be treated as some persons who should only sacrifice and provide national service, the emoluments of the Members of Parliament should also be suitably in-creased. This is only by the way.

Now, Sir, coming to the most important issues, the hon. Law Minister has talked about the wholesale transfer of Judges and also the question of appointing the Chief Justice of a High Court from outside the State. He wants a national debate on this. I do not know whether the august judiciary should be the subject-matter which should be taken to the street corners and talked about. Is it not enough if the Members of Parliament, who are duly elected by the people and by the States, talk about it and if they come to any conclusion that a particular system is best suited, it should be done.

Sir, I do not agree with Mr. Rhandare. I do not know about the previous Bar Council. But the Bar Council as it exists today, has expressed an opinion and you will appreciate that the Bar Council is a duly elected and legally constituted body representing various interests. I know other lawyers have also held a conference and expressed an opinion. This Bar Council has, in no uncertain terms, expressed an opinion

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that the independence of the judiciary will not be there if this transfer of judges is effected. In this connection, I would like to refer to the 80th Report of the Law Commission of India, in regard to the transfer of High Court Judges. On page 95, they have said:

"We shall now advert to the question of transfer of Judges of the High Court. Regarding this question we would like to emphasise that we are normally against the transfer of Judges of High Court from one Court to the other as such power is liable to be abused and impinge upon the independence of the judiciary."

Even in the 14th Report, the earlier Law Commission at page 99 has said: It would be unjust to treat members of the Bar of the service, appointed to the High Court, as suspect who need to be transferred from place to place to get them to correct standards. Free transfers are, therefore, inadvisable and the power given under article 222 of the Constitution should be used as an exception rather than a rule. This is what the Law Commission has reported in the 14th Report, many many years back when luminaries like Justice Setalvad and other were there. It is there even in the 80th Report of the Law Commission. Therefore, if the Government has to respect the report of the Law Commission, they should also see what the Commission has to state and not merely go by what the people or the committed people have to say.

Here I would like to state one more thing about the question of appointing Chief Justices from outside the State. For example, in Tamil Nadu they have passed a legislation and I think it echoes the sentiments of 4 and a half crores of people who speak Tamil, that Tamil should be the Court language. Our Chief Minister, Mr. M.G. Ramachandran, has stated on 8th August that it is the right of the people of Tamil Nadu to

have Tamil as the Court language. The Government is also making serious efforts to extend the use of Tamil to all branches of the judiciary, to facilitate a complete switchover. Tamil Shorthand is also being improved. Therefore, it would not be proper to impose Judges of other States who do not know Tamil. Therefore, Sir, Tamil Nadu will not agree to the proposal that the Chief Justices or the Judges of the High Court should be from outside the jurisdiction of the State. I think it is quite legal and just that the State is consulted in this matter. I would request the Law Minister that instead of having a national debate he should write to all the Chief Justices and get opinion of all the persons before taking a final decision on this matter.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): You see, time is allotted according to the party. So, you must realise that, because we are scheduled to adjourn at 5 O'clock and still there are about six speakers. The Minister has also to reply and then the Bill has to pass. So, some time limit has got to be placed.

SHRI SUNDER SINGH BHANDARI: The ruling party Members could have been restricted to use a lesser time.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Why should it be? In fact, as far as the ruling party is concerned, only two Members have spoken from that side. When you are talking, you must also see to that. You are a responsible Member. You see, what is happening is, the speakers who are remaining..

SHRI NARASINGHA PRASAD NANDA: Now you are in the Chair. Let the ruling party speak for itself.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Even if I am in the Chair, I have got to give an

assessment. There is no question like that, Mr. Nanda. You sit down. 'Mr. Bhandari, my difficulty is that many of the remaining Members are from the group 'Others' who have very little time in allocation.

SHRI SUNDER SINGH BHANDARI: I do not dispute your discretion.

SHRI AMARPROSAD CHAKRABORTY (West Bengal): This is such a matter where we would also like to be given a chance to speak.

SHRI B.D. KHOBRADE: At the same time, the Members from other groups are always suffering. Firstly, they do not get enough time. Secondly they are called at the far end of the debate so that all the points are already covered by other speakers.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): That depends upon the strength.

SHRI B. D. KHOBRADE: During the whole session I have not made a single speech. I will be speaking for the first time in this session. In that case, will my time be taken away because I belong to 'other groups'? I must be given enough time.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Mr. Khobragade, you have occupied this Chair with distinction. You know the difficulty under which the presiding officer has to function in a democratic set-up. After all, the strength of the various parties and groups have got to be taken into consideration while allocating time. Moreover, the time allocation is made by the Business Advisory Committee and still I am trying, as far as possible, to adjust all. As far as you are concerned, Mr. Khobragade, I am prepared, taking into consideration your seniority in public life, to see that you are properly accommodated.

SHRI B.D. KHOBRA: It is not a question of an individual. I am making a different case for other •mailer groups. Their legitimate rights must be considered.

SHRI SITA RAM KESARI: Sir I would like to inform that according to the allocation made by the Business Advisory Committee every party has been given time according to their strength and for 'Others' there are 19 minutes only, still the speakers take more time than they are given.

SHRI AMARPROSAD CHAKRABORTY: 'Others' must be given more time.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Only co-operate with me by being brief.

SHRI R. RAMAKRISHNAN: Sir, for both the interruptions I was not responsible. Earlier the Minister left. So the time must be credited to me.

Coming to the points, I want to say that in Andhra Pradesh the Chief Justice had to go to the court for getting a medical advance. The reason why I am bringing it here is that it is said that the Judiciary has to function free from the Executive and the Legislature, I do not know what considerations weighed not to grant him the medical advance when he asked to go to the United States and then he had to go to the court and fortunately they directed the Government to give him the advance. What I am coming to say is that the Judiciary should be kept high. It is the last bastion for saving democracy in this country and it is, therefore, necessary that all sort of personal whims and fancies should not be brought. I am sure hon. Shri Shiv Shankar is quite convinced about what I say.

Now I come to one very important issue. The Judges of the High Courts and the Supreme Court should be given a higher order in the warrant

of precedence and protocol which is maintained by the Home Department or the External Affairs Department or some such Department. Now the Supreme Court Judge is ranked as a Minister of State. It is only fit that he should be ranked as a Cabinet Minister or above. That is a small point, which, I think, the Law Minister can consider.

Another important point on which the Minister made pronouncements in and outside the House is about the composition of an All-India Judicial Service. We are surely open to suggestions in this regard. If something practical can be worked out, our State and my Party will be too willing to cooperate.

One more thing, the final thing, is that the cost of legal aid is becoming more and more.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): That is not within the scope of this Bill.

SHRI R. RAMAKRISHNAN: So many other things have been referred to.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): I am sorry I will not allow it. Legal aid has nothing to do with the Bill.

SHRI R. RAMAKRISHNAN: What I was coming to say is that it is very difficult for a person from Madras to come to the Supreme Court. We are saying that a person has to incur a lot of incidental expenditure. Therefore, what I am trying to plead for is a Supreme Court Bench at Madras. Madras is well known for its Judiciary. We should have a Supreme Court Bench at Madras. And also our Government has been asking for « High Court Bench at Madurai. All these things will help democratic India. I am sure our hon. Prime Minister as well as you and the Law Minister will agree to these proposals in the right perspective. (Time-belt rings) sir, since you are ringing the bell, I do not protest like others, but I keep note of this that in this

House only the crying babies get milk. I want to remind you that you will see it in the remainder of your career that I will also be sitting there by the Grace of God.

Thank you.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Mr. Gopal-samy. But please be brief.

SHRI V. GOPALSAMY (Tamil Nadu): Mr. Vice-Chairman, Sir, Judiciary is the only system in which the emoluments have gone down since the days of Independence. Sir, I will fail in my duty if I do not congratulate the hon. Law Minister and the Government for appointing an eminent person hailing from a section which was suppressed for thousands of years in the name of religion, in the name of the caste system, according to my view, in the name of God, to the highest forum of the Judiciary in our country. My hats off to the Government. I beg to differ with Mr. Oza and also with Mr. Shahi. They were saying that these people have been appointed because they have got merit; so there is no credit for the Government. I differ with them because, when two persons have the same merit and the same ability, we have to give weightage and preference to the man who belongs to a particular section which has been deprived of the opportunity in the society. Sir, in this context, I remember when my Party, DMK, was ruling in Tamil Nadu, when Mr. Karunanidhi was the Chief Minister, in the history of 125 years of Judiciary, it is we who appointed a person coming from the Harijan community to the High Court, and that person was none other than hon. Appaji Varadarajan, who has been elevated to the Supreme Court. And I may also refer to the fact that it is we who appointed a person coming from a backward community, a particular martial community, for the first time in the history of Judiciary in Tamil Nadu. I refer to Justice Rathnavel Pandian. Now they have distinguished them-

selves as men of calibre and capacity. So I say this aspect should be looked into.

As the time at my disposal is very short and Mr. Vice-Chairman, as you have also directed me to be brief, I want to confine myself to the relevant points that have been raised in this Bill. This Bill speaks about some benefits to the High Court and the Supreme Court Judges. The first benefit is that of rent free accommodation provided for or the house rent allowance in lieu thereof has been made free of income-tax. I welcome it. The next thing is that the Judges of the High Courts and the Supreme Court will be entitled to leave on full allowances equal to the monthly rate of pay for 120 days as against 45 days, if the claim was made on medical grounds.

Sir, I would like to appeal to the hon. Law Minister that these amenities are not at all adequate because the Judges hardly ever speak in their own case, it is we who have to decide things. Unless we are prepared to provide better amenities, better emoluments, it will be very difficult to draw the best talent from the Bar to the Bench. Sir, if there is no feasibility to raise the salary of the Judges, then such other things as the other Members suggested like raising the car allowance of Rs. 100 to these Judges by making it triple on account of a huge hike in petrol price should be taken into account. Also one more point. The sumptuary allowance of Rs. 300 that the Judge* of the Supreme Court and the Chief Justices of the High Courts get should be increased since they have to receive a number of callers, including delegations. So that can be raised to Rs. 600. Sir, the Judges' retirement benefits need our attention. Pension should be made almost three-fourth of the monthly salary at the time of retirement. The present scale is Rs. 2,200 per annum for the High Court Judges and Rs. 2,800 for the* Chief Justices of the High Courts and the Judges of the Supreme Court. So

[Shri V. Gopalsamy,]

that can be increased and should be increased. And also the retiring Judges should be given priority in acquiring houses. (Time-belt *rings*) Sir, I have still to make some more points. Please be reasonable. So in that regard, in various Government-sponsored housing schemes, the organisations should be directed to give priority to the retiring Judges. In this context, it will be very relevant if I bring to the notice of the Government the conditions of the members of the lower Judiciary also. Their conditions are very bad. They should be improved. Sir, I am told that they are suffering a lot. They do not get medical facilities. They do not get any medical allowance as the High Court Judges get. Yesterday I went through a letter to the Editor in the *Indian Express* of the 2nd December. It says;

I refer to the pathetic report from Madras about some subordinate judges in Bombay being slum dwellers while some others travelling about 80 kms. daily to reach their offices. "The living conditions of these judges left little time to read, reflect, recollect or decide. This left them at the mercy of the enemies of social justice."

They have to travel in the crowded buses in the company of litigants and the accused and carrying papers, case files. This involves a great risk also. So transport facilities should be given for them. Also their living conditions are very bad. They cannot afford to give proper education to their children. That is why they are open to temptations of various kind.

Sir, judiciary is the bulwork of our democracy. The judges hold a unique place in our society. Edmund Burke said 'Judiciary is the aim of all law and Government and the guiding principle of a civilised society.' Two thousand years ago, Socrates narrated the qualities of a good judge. He said, first, a judge

should hear cautiously; secondly, a judge should answer wisely; thirdly, a judge should decide soberly; and fourthly, a judge should deliver justice impartially. These were the characteristics which he mention. Sir, great men think alike. The hon. Vice-Chairman also gave a very good couplet in Urdu. I remember also, one couplet from "Tirukkural" written by the great Tiruvalluvar:

"Saman seithu seerthookkhum
kol pol

Amaindoru pfel Eodamai sanrui-
rukku ani."

It means, like the balance holdings the scales equal, a poised mind is the jewel of the wise. So, even 2,000 years ago our great scholars have thought like that. So, judiciary holds an important place in our system. (Time-bell *rings*) One word more. The judiciary is not a stumbling block for the welfare of our country or for the development of our country. I would like to quote here what the Chief Justice of the Supreme Court, Hon'ble Mr. Chandra-chud said when he inaugurated the city civil court at Bangalore, as reported in the Hindustan Times of the 18th November:

"Inaugurating the Bangalore city civil court, he said the judiciary was the most powerless wing of the administration. It had neither the power of the sword nor the power of the purse, he said and pointed out that any judgment by the court could be subsequently reversed by the Government through amendment to the Act concerned. He regreted that whenever an Act was struck down or a dissenting note expressed, some termed it as a confrontation between the judiciary and the Government. The judges were no stumbling block in realising the social goal. They only interpreted the laws framed by Parliament"

So they are not contradictory, **they** are complementary to each other,

the judiciary and the executive. It is we here who enact laws for the welfare of the country. The judiciary is respected not only in our country but throughout the world also. So, in this context I would like to request the Law Minister to consider whether some more amenities and facilities and increased salaries can be given to the judges. Thank you very much.

SHRI B. D. KHOBRA: Mr, Vice-Chairman, Sir, I rise to support this Bill. Because of the inflationary pressures which have been increasing tremendously during the last so many years, the value of the rupee has been eroded. Therefore, nobody should grudge an increase in the emoluments of the judges. The emoluments of the judges should be increased and their service conditions also must be improved so that we can attract to the Bench better qualified persons. Of course, it will not be possible for us to attract the best advocates because as pointed out by so many Members earlier, the lawyers are after their lucrative practice. Advocates who are earning thousands of rupees per month will not give up such lucrative practice to come on the Bench of the High Court or the Supreme Court. Therefore, it will not be possible for us to attract the best talent. But even then we can have better judges if we make improvements in the service conditions and the emoluments of the judges. This is very important because we want to maintain the independence of judiciary. For successful functioning of democracy an independent judiciary is most important. Therefore we must make every effort to see that the independence of judiciary is in no way hampered. But it does not mean that for the independence of judiciary we should have a committed judiciary. Now-a-days the phrase 'committed judiciary' has acquired a particular meaning. It means that the judiciary should be committed to an individual or to a party. We do not want such

sort of committed judiciary. Of course, at the same time I would like to emphasise that judiciary should not create obstacles in bringing about social and economic changes which are most essential for the progress of this country. From that point of view I would like to suggest that even though we do not have any committed judiciary, even then judiciary should function in such a manner that we can bring about social and economic changes in this country.

So far as the functioning of the judiciary is concerned, some Members have already referred to the arrears of cases. Thousands of cases are still pending in the Supreme Court and the High Courts. There are hundreds of cases which are pending for more than ten years. Thousands of such cases are pending for more than ten years. As some honourable Members have, pointed out earlier, justice delayed is justice denied. If cases cannot be decided within a short time, then I think justice is not done; on the contrary, injustice is done. We have, therefore, to take that factor into consideration and see that proper steps are initiated so that the arrears in the Supreme Court and the High Courts can be wiped out. Many suggestions have been made in this respect by honourable Members. The Law Commission has also gone into this problem. I would request the Minister to study all these suggestions and make an effort to reduce the arrears in all the courts. In this connection I would like to make one suggestion. The Supreme Court and the High Courts enjoy long vacations. Would it not be possible to curtail the vacations, so that the judges of the Supreme Court and the High Courts can devote more time for hearing and deciding the pending cases and thus reduce the arrears? I would like the honourable Minister to take this aspect into consideration for reducing arrears of cases in the Supreme Court and the High Courts.

[Shri B. D. Khobragade]

Some honourable Members have made a reference to the appointment of a Scheduled Caste judge in the Supreme Court for the first time. I would like to join other Members in congratulating the honourable Minister on making this appointment to the highest judicial forum in this country. Even then I am surprised that there are certain individual in this country who do not like this. They have gone to the Supreme Court challenging this decision of the Government. However, I am happy that the Supreme Court has rejected the petition and stated that the appointment of the two judges is legal and according to the provisions of the Constitution. The Chief Justice, Mr. Justice Chandrachud and Justice A. P. Sen have said in their judgment yesterday that these appointments have not been made or recommended for any extraneous considerations of caste, community or religion. This is what they have said in their judgment. On the other hand, both of them have said that these appointments were made because of the ability and integrity of the two individuals concerned. Therefore, This is the first time any Scheduled Caste man has been appointed to the highest forum of judiciary and I extend my congratulations to the honourable Minister. At the same time I also congratulate the two judges of the Supreme Court for upholding the decision of the Government. The Law Minister was jubilant because a person from the Scheduled Caste has been appointed. Is that a cause for jubilation? Let there be three or four Judges in the Supreme Court belonging to Scheduled Castes. Then only it should be a cause for jubilation. In the judgement they have said that the appointment is not on considerations of caste or community but because of their integrity and ability I would like to ask the hon. Minister whether there are no Advocates or persons who are competent and full of integrity among Scheduled Castes? If there are, why don't you appoint more judges to the Supreme Court,

or—let me come down to the level of High Courts—High Courts? Let the hon. Minister stand up and tell us how many Scheduled Castes Judges are there in various High Courts? Not many. In many High Courts there is not even a single Judge from the Scheduled Caste...

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): I gave the figure. Out of 405 only 5 Judges are there.

SHRI B. D. KHOBRAGADE: Is it flattering for the Government or the Minister? Is there any cause for the hon. Minister to feel jubilant?

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): If you congratulate him, will he not feel jubilant?

SHRI B. D. KHOBRAGADE: I congratulate him. He should feel happy and satisfied, not jubilant.

Then, what about subordinate judiciary? I will quote from our experience in Maharashtra. There are 80 District Judges and out of 80, there is only one from the Scheduled Castes. There are hundred of Assistant Judges, but there are only two or three from the Scheduled Castes. Is there any reason for the hon. Minister to be satisfied on this account also?

SHRI SHTV SHANKAR: I am not satisfied.

SHRI B. D. KHOBRAGADE: There is no question of not being satisfied. He is occupying a position of authority and it is his responsibility to see that the policy of the Government is implemented in the judiciary also.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Let the vacancies occur.

SHRI B. D. KHOBRAGADE: There are number of vacancies, but they are not being filled in by candidates from Scheduled Castes for the alleged reason that they are not qualified-

fied or competent or efficient. In this connection, I would like to draw the attention of the Minister to the policy of the Maharashtra Government[^] so that other States also can adopt the same policy. Maharashtra Government has said that even in judiciary there should be reservation in the matter of recruiting Judges and judicial Magistrates. When there is a question of promotion from civil judge to Assistant Judge or from Assistant Judge to District Judge and so on the High Courts are prevailing upon the State Governments not to promote the Scheduled Caste Judges. The Maharashtra Government wants people to be appointed in the judiciary service from Scheduled Castes, Muslims and other weaker sections. Whenever they make such a proposal the High Courts are not paying any attention. I may recall one incident. Now Mr. Antulay happens to be the Chief Minister. Some years ago he was the Law Minister. He turned down three or four times the proposal sent by the Bombay High Court just because it did not do any justice to the weaker sections. We want persons like Mr. Antulay who has raised his voice against the judiciary, though I do not agree with him in what he said about Presidential form of Government. I do not agree with what he said in this respect. But I appreciate his courage as then Law Minister in throwing away the list submitted by the High Court and saying: I do not accept it unless and until representation is given to the weaker sections. There should be proper representation given to the Scheduled Castes, Muslims and other weaker sections in the subordinate judicial services. Not only that, I have already said that Scheduled Caste candidates are competent and they are not less qualified, they are not less efficient, than any other general candidate. You leave aside the question of giving any privilege or preference to them. I may draw the attention of the honourable Minister to the cases of injustice done. There are many people who are qualified and who

have put in more service and even then they are not promoted, but they are being superseded. A number of Scheduled Castes Subordinate Judges have been superseded. Why should they be superseded? In Maharashtra, there were about 5 Judges belonging to the Scheduled Caste who should have been promoted as AJs and DSJs. But none of them has been promoted. Only one of them, probably, has been promoted and the others have been side-tracked. Since they have crossed the age-limit, they will not be eligible for promotion as DSJs, and their prospects for a whole life have been marred. Why does it happen so? I will quote one instance here. One Judge, Mr. Ukey, was removed from service for the alleged reason that he pronounced the judgment without having written it. Of course, he pleaded his case and said that that was not correct. He said that he had prepared the notes and had prepared rough draft and pronounced the judgment and later typed the judgment. Assuming that the allegation made against him "was correct, the punishment of removal from service was not proper. Was it proper? In his appeal to the Government, he has cited hundreds of cases where the Judges do not write their judgments, but who just pronounce them. They are warned only but they are never removed from service. In one case the Judge was transferred. It was noticed that he had not written the judgment. He was sent on leave to earlier place of posting so that he could complete the judgment and come back. But no action was taken against him. This Judge did not write the judgment before pronouncing it. Mr. Ukey appealed and he appealed at the time when Mr. Antulay was the Law Minister there. This appeal is still pending when the Indira Government is there in Maharashtra and Mr. Antulay is the Chief Minister. The appeal has been pending for the last four or five years. Why is it happening? Our friend, Mr. Shahi, said that the judiciary is being dominated by the high-caste Hindus. Later on,

[Shri B. D. Khobragade] he said that it is being dominated by the Brahmins. Today, Sir, the Brahmin community is reigning supreme in the Supreme Court and the High Courts and in the judiciary there is rule of Pesawai, i.e. the rule of Brahmins. he should take up this cause which deserves proper attention and see that the representation for the Scheduled Castes and the Scheduled Tribes is increased in the judiciary as also for other minorities like the Muslims. Thank you, Sir.

SHRI S. W. DHABE: What about politics?

SHRI B. D. KHOBRADE: And, Sir, in politics, Brahmins like Mr. Dhabe dominate.

SHRI SUNDER SINGH BHAN-DARI: And a Prime Minister like Mrs. Gandhi.

SHRI B. D. KHOBRADE: It is for you to tell.

SHRI SUNDER SINGH BHAN-DARI: Why me? You should have completed the sentence.

SHRI B. D. KHOBRADE: Therefore, Sir, I would like to tell the Law Minister that he should not feel satisfied after having appointed one person as the Judge of the Supreme Court from among the Scheduled Caste people. He should go into the problems of the Scheduled Caste people and their representation in the judiciary and he should make efforts to see that proper persons are appointed as the High Court Judges and also as the lower rungs of the judiciary. Sir, if the honourable Minister wants, I can give a long list of persons who can be appointed as Judges. Let him examine each and every case on merit. I do not want any favour and I do not want any nepotism and he need not relax any rules in flavour of the Scheduled Castes and the Scheduled Tribe people. I will give the names of competent persons who would not only be equal, but also better person, who can be appointed as the High Court Judges. Therefore, Sir, instead of -being satisfied with what he has done, I would appeal to him that

श्री बुद्ध प्रिय मौर्य : : श्रीमन्, मेरे विचार जातीयता के आधार पर संरक्षण के बारे में इस सदन में और सदन के बाहर सभी जानते हैं । मैं उस समाज को कोई आदर्श समाज नहीं मानता जहाँ पर विशेष जाति के लोगों ने पूरे समाज पर कब्जा कर लिया, विशेष जाति के लोगों ने पूरे साधनों पर कब्जा कर लिया और विशेष जाति के लोगों ने पूरी ताकत, शक्ति पर कब्जा कर लिया और शोषित समाज, शूद्र कहे जाने वाले लोगों को कोई भी मानवीय अधिकार नहीं दिया गया । क्या उनको यहां मजबूर नहीं किया गया कि वे विद्याभ्यास न करें, क्या उनको बस्तियों से बाहर नहीं रखा गया, क्या शूद्र कहे जाने वाले लोगों को सदियों तक अस्पृश्य कहकर उनको बहिष्कृत नहीं किया गया ? इसका इतिहास सबके सामने है । मैं तो बड़े अभिमान से कहता हूँ कि शोषित समाज में शोषित बीरांग-नाओं ने अपनी कोख से ऐसे सपूत भी जन्मे हैं जो ला मिनिस्टर की हैसियत से आज श्री शिव शंकर बैठे हैं । ऐसे सपूत भी जन्मे जिन्होंने अम्बेदकर के रूप में संविधान की रचना की । ऐसे सपूत भी जन्मे हैं जो जनरल सीट पर जीत कर आते हैं, जैसे आपका खादिम बी. पी. मौर्य । श्रीमन्, मैं यह निवेदन करना चाहता हूँ कि जो बाधाएं हमारे और हमारे पूर्वजों के खिलाफ यहां पर समाज में रखी गई थी वे बाधाएं समाज के किसी और अंग के सामने रखी जाती तो शायद वह अंग आज दिखाई भी नहीं देता । मैं इन बातों को इस वास्ते नहीं दोहराना चाहता हूँ क्योंकि इससे भावनाएं

उमड़ती हैं। श्रीमन्, मैं आपसे निवेदन करना चाहता हूँ कि जब जातियों के आधार पर इस समाज में एक मुख्य समाज के अंग ने यहां सजाएं दी हैं तो जातियों के आधार पर कुछ लोगों को विशेष सुविधाएं भी देनी पड़ेंगी। यही वजह थी कि विशेष सुविधाओं की व्यवस्था संविधान में रखी गई। यह विशेष सुविधाएं दो प्रकार की हैं। इस पर बहुत सी बहस हो चुकी है। असैम्बलीज और पार्लियामेंट में अपने इशारों पर चलने वाले लोगों को सुरक्षित स्थान पर लाते समय योग्यता नहीं देखी जाती लेकिन जब कभी जिले का जज बनाने की बात उठती है हाई कोर्ट और सुप्रीम कोर्ट का जज बनाने की बात उठती है, आई. ए. एस., आई. पी. एस. बनाने की बात उठती है, किसी पब्लिक सेक्टर का चेयरमैन बनाने की बात उठती है तब यही योग्यता की बात कही जाती है। माननीय ओझा जी ने यही कोट किया आर्टिकल 335

I quote:

"The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency in the administration...

उन्होंने इस बात पर जोर दिया है : मैं आपसे निवेदन करना चाहता हूँ कि कौन एफिशियेंसी के बारे में तय करेगा ? कौन यह तय करेगा कि अमुक व्यक्ति योग्य है या नहीं ? यह वही करेगा जिनके पूर्वजों ने शोषण करना अपना धर्म समझा था। यह कोई मान्यता नहीं रह गई। श्रीमन्, इसलिए मैं तो कहूंगा आर्टिकल 335 में जो एफिशियेंसी वाली बाधा डाली गई आज वह अभिशाप बन कर शोषित समाज के रास्ते में, उसकी उन्नति के रास्ते में आती है। मैं यह

निवेदन करना चाहता हूँ कि जहां तक जूडिशियरी का सवाल है, इन्साफ कौन करे, किस के लिए करे, कैसे करे ? यह तीनों, जब तक इन तीनों का समन्वय नहीं होता है वह इन्साफ इन्साफ नहीं माना जा सकता। इन्साफ कौन कर रहा है ? इन्साफ किस के लिए कर रहा है ? इन्साफ का अर्थ निकलता है, कैसे कर रहा है ? अभी तक सुप्रीम कोर्ट में एक भी शोषित समाज का जज नहीं था। शैड्यूल्ड कास्ट, शैड्यूल्ड ट्राइब्स के लोग करीब 25 प्रतिशत इस देश में रहते हैं, इसके अलावा 50 प्रतिशत बैकवर्ड क्लास के लोग रहते हैं। यह करीब 75 प्रतिशत आबादी का प्रतिनिधित्व अभी तक सुप्रीम कोर्ट में नहीं हुआ। क्यों नहीं हुआ ? 75 प्रतिशत को इन्साफ कौन देगा ? 75 प्रतिशत को यह महसूस होना चाहिए कि उनके साथ इन्साफ हो रहा है। मेरी निगाह में कानून की इंटरप्रिटेशन क्या है, जूडिशियरी किस तरह से इसको लेती है, श्रीमन्, मैं कानून का विश्वार्थी होने के नाते, मैं कानून का अध्यापक भी रहा हूँ, कानून के मायने निकालने को कहा जा सकता है एक मोम की गुड़िया के समान जो कि मोम की गुड़िया के मुंह को, उसकी गर्दन को, उसके नाक को, उसकी आंख को जिधर चाहे उधर अपनी विद्वता के बल पर घुमा सकता है। फिर शोषित समाज को किस तरह से इन्साफ मिलेगा। इसलिए जो मित्र आज इस भावना को लेकर कहते हैं कि सुप्रीम कोर्ट का जज जो बनाया जाए, जाति का आधार न रखा जाए। मैं तो कहता हूँ शैड्यूल्ड कास्ट्स और शैड्यूल्ड ट्राइब्स और बैकवर्ड क्लास के लोग योग्य हैं, लेकिन उनकी नियुक्ति नहीं हो पाती क्योंकि वे शोषित समाज के हैं। मैं तो कहना चाहता हूँ शैड्यूल्ड कास्ट्स और शैड्यूल्ड ट्राइब्स के लोग जैने स्व में

[श्री बुद्ध प्रिय मौर्य]

पर इसलिए नहीं आ पाते हैं क्योंकि वे शैड्यूल्ड ट्राइव्स के हैं। आप चाहते हैं, हम चाहते हैं, हमारे देश की नेता श्रीमती इंदिरा गांधी चाहती हैं कि शैड्यूल्ड कास्ट्स और शैड्यूल्ड ट्राइव्स के लोग मैन-स्ट्रीम में आएँ तो फिर क्या वजह है अभी तक सुप्रीम कोर्ट में शैड्यूल्ड कास्ट्स या शैड्यूल्ड ट्राइव्स का कोई जज नहीं बना? क्या सुप्रीम कोर्ट के जज के पद के लिए क्या शैड्यूल्ड ट्राइव्स के अन्दर ऐसे व्यक्ति नहीं हैं। श्रीमन् ऐसे व्यक्ति हैं। मैं इस सदन का ज्यादा समय नहीं लेना चाहूँगा। मैं निवेदन कर देना चाहूँगा यहाँ पर इस बात को भी जैसे कि जुडिशियरी का प्रश्न मैंने उठाया था, अभी डिस्ट्रिक्ट जज की तादाद उठाकर देखिए, पूरे देश में कितने हैं। केवल उनमें तीन शैड्यूल्ड कास्ट और शैड्यूल्ड ट्राइव्स के हैं। पूरे देश में डिस्ट्रिक्ट जज तीन हैं। हाईकोर्ट में 352 में से तीन थे। आपने श्रीमन्, बताया था चार अब एक सुप्रीम कोर्ट में आ गया, एक रिटायर हो गये, एम. पी. हो गये, अब दो रह गये हैं पूरे हाईकोर्ट्स में और सुप्रीम कोर्ट में तो अब तक एक नहीं था। तो श्रीमन्, मेरा निवेदन यह है कि अब समय आ गया है यदि शिव शंकर जी इसको पूरा नहीं कर सकते तो इस विषय के प्याले को पीने वाला कोई और शिव शंकर नहीं आयेगा। इसलिए मैं उनसे आशा करता हूँ कि हाई कोर्ट्स में जो बहुत सी जगहें हैं, शोषित समाज में से जो योग्य हैं जो अपने कर्तव्य का पालन ठीक ढंग से कर सकते हैं उनमें से नियुक्ति करें।

श्रीमन्, जहाँ तक सुप्रीम कोर्ट के एक्वाइटमेंट का सवाल है

The appointment of Shri Appajee Varadarajan as a Judge of the Supreme Court of India is a step which

would be sincerely welcomed by all right-thinking sons and daughters of our motherland. It was an ardent wish and desire of the Father of the Nation, Mahatma jGandhi, to see a person from the Schduled Castes, adorning the chair of the highest judicial forum of the land. Rightly, though belatedly, this consumation has come and we have, thus, honoured and fulfilled one of the dearest wishes of Mahatma Gandhi. Shri Appajee Varadarajan would be assuming his chair in the Supreme Court under a shower of blessings from the departed leader to whom this nation owes so much.

To me particularly, this appointment affords a sense of personal relief. From the very beginning, first from outside the Parliament, and than since 1962 as a Member of Parliament, I have been strenuously advocating and demanding that the Supreme Court and every High Court should have adequate number of Judges from the Scheduled Castes, Scheduled Tribes and other backward classes because only thus can we demonstrate successfully and truly a casteless complexion of our approach to the question, of appointments to high offices in the land. This appointment being a step towards the fulfilment of this demand is naturally to be appreciated as a welcome gesture.

The experience of appointments to high (and not so high) offices of persons coming from the weaker sections of the society, has proved to be an unalloyed success and has dispelled all the prejudiced and biased notions that competence, intellectual or moral, is a monopoly of any particular caste or that caste can per se, be any criterion for judging the intellectual merit or moral fibre of any individual. The sole question, in the ultimate analysis, is one of getting and giving the opportunity. Human spirit and human qualities of head and heart blossom and thrive equally provided they are not inhibited or thwarted by any extraneous sinister handicaps, I want to congratulate

the Government of India, and particularly the Prime Minister and the Law Minister, on this sane and wise step and I wish we would succeed in building up a sense of confidence and trust in every citizen of India that, irrespective of his caste or creed, he is entitled equally to everything that the nation has to offer in terms of material gain and human honour.

श्रीमान्, इन्हीं शब्दों के साथ मैं सदन का ज्यादा समय न लेते हुए यह निवेदन कर देना चाहता हूँ कि श्रीमान्, इंसफ का वही सही अर्थ निकालेंगे जब जिसको इंसफ दिया जा रहा है उसको महसूस हो कि उसे इंसफ मिल रहा है। इसलिए मैं माननीय कानून मंत्री जी से वह आशा करता हूँ कि सुप्रीमकोर्ट में जहाँ उन्होंने एक शिड्यूल कास्ट का काविल इंसान जज बनाया है वहाँ एक शिड्यूल ट्राईव का भी काविल इंसान सुप्रीमकोर्ट में जज बनायेंगे और बैकवर्ड क्लास के कम से कम दो या तीन काविल इंसानों को नियुक्त करेंगे और साथ ही साथ हाईकोर्ट में भी जहाँ पर बहुत बड़ी तादाद में जगह खाली हैं वे इस बात का ध्यान रखेंगे। क्योंकि इसमें मैंने पहले ही कहा कि अम्बेदकर जब इस समाज में पैदा हो सकते हैं, शिव शंकर इस समाज में पैदा हो सकते हैं तो इसी तरह के महान पुरुष इसी तरह के इंटेलेक्चुअल्स और भी समाज में हैं वशर्ते कि उन्हें मौका दिया जाय। इन्हीं शब्दों के साथ मैं आपका हृदय से आभार मानता हूँ कि आपने मुझे विचार रखने का मौका दिया। जहाँ तक जुडीशियरी की बात है, ट्रांसफर हों या न हों इसके बारे में किस तरह से व्यवस्था की जाए, इस पर जब समय आया चर्चा करूँगा लेकिन निश्चितपूर्वक मैं मानता हूँ वह जज इंसफ नहीं कर सकता है जो एक खास सर्किल में बहुत मुद्दत तक, एक ही जगह पर, घूमता रहता है, उसके अपने हित बन जाते हैं, उसके अपने असोसिएशन बन जाते हैं। यहाँ नहीं, मैं तो सुप्रीम कोर्ट के बारे में

महसूस करता हूँ कि यह 70 करोड़ का भारतवर्ष, इसमें दिल्ली से ही इंसफ मिले, यह शोभा नहीं देता . . . (Time bell rings)। अब वक्त आ गया है कि दक्षिण भारत में भी, बल्कि मैं कहूँगा हैदराबाद का मौसम बड़ा ही सुहावना होता है, वहाँ पर भी सुप्रीम कोर्ट की बैन्च स्थापित की जाए।

इन्हीं शब्दों के साथ मैं इस विधेयक का हृदय से समर्थन करता हूँ और आपको हृदय से धन्यवाद देता हूँ।

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Now, as far as the 'Others' are concerned, they have already for exceeded the time allotted to them (*Interruptions*). This is position, Mr. Jha. I said factually that whatever time was allotted to them, they have far exceeded and still I have got two more speakers on the list. Therefore, I request both Mr. Chakraborty and Mr. Bhat-tacharya to be extremely brief. I cannot give you more than five minutes each and that too to accommodate you. Please make your points. As I said, I am, in fact, very liberal as far as the 'others' are concerned because I quite appreciate that in these party groupings, the 'others' do not get an opportunity sometimes to show their talents, their abilities and their devotion to a particular subject. So, please cooperate with me, Mr. Chakraborty and be brief.

SHRI AMARPROSAD CHAKRABORTY: Mr. Vice-Chairman, Sir, I am very much thankful to you for allowing me some time. Sir, I thank the Law Minister for bringing this amendment. I would have been happy, Sir, if he had brought an amendment making the entire salary income-tax free because, Sir, there are precedents in this respect concerning some men in high positions. So,

[Shri Amarprosad Chakraborty] if the Law Minister had brought such a Bill exempting completely the salary free from the income-tax, I would have been very happy. But, still, in appreciation of the fact that the salary received by the Judges is not adequate, they should get some relief, and with that end in view, this Bill has been brought forward, and I support it.

Sir, many things have been brought in the course of the discussion and specially regarding the accumulation of arrears in the High Courts, non-appointment of Judges, and also the transfer of Chief Justices from different High Courts. Mr. Bhandare put an argument that for maintaining the independence of judiciary, the Chief Justices may be transferred. So, may I presume, Sir, that by not transferring the Chief Justices for the last 33 years excepting in one or two cases—from my personal experience of Calcutta High Court, I know that Mr. Justice Das was transferred to Karnataka as a special case, and there were no other transfer—the independence of the judiciary was not maintained, as per his argument? Therefore, Sir, I do not follow this argument. Sir, our point is this. The Law Commission, the Chief Justices conference and the Bar Council, after giving a careful thought to this issue, desired that they should not be transferred in this way as is often stated by the Law Minister. These transfers will generate some other problems. Just presume, Sir, if Mr. Shiv Shankar would have been transferred to Bengal, what would have been his reaction. And actually, during emergency you know a judge was transferred and he died of heart failure.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): He would have liked it; Bangalore climate is better than Hyderabad's.

SHRI AMARPROSAD CHAKRABORTY; He was from Tamil Nadu. What will happen to such a person if he is transferred? He does not know the language; he has a different atmosphere and a different way of life and different State laws. It will only delay cases. These transfers will not help.

Mr. Bhandare referred to fall in BORTY: He was from Tamil Nadu calibre in every aspect of social life; there is no doubt about it. But that is not the only cause of accumulation of cases. Only yesterday, you might have seen in the Indian Express where it was mentioned that the judges are annoyed because the Government is not represented in spite of having received notice of the case. So I would request the Law Minister to enquire from all High Courts whether Government lawyers appear in time. Generally, the notice is not received in time and whenever a notice is sent, it comes back as the officer is not there and thus it takes a lot of time which results in accumulation of cases. I would request the Law Minister, let him change the procedure of serving notices and the procedure of giving notices to the Government.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA); We are discussing emoluments of the judges and not the procedure. Please conclude now.

SHRI AMARPROSAD CHAKRABORTY: I am not taking more time. I have only this point to add—though accumulation is not very relevant here but it is certainly connected. So, I hope the Law Minister would apply his mind to it. We thank him for his giving relief to the judges and I hope that he will bring a Bill in order to make the entire emoluments free from income tax. Thank you.

SHRI G. C. BHATTACHARYA (Tamil Nadu): Mr. Vice-Chairman, Sir, I rise to support the Bill. I also

join Mr. Khobragade and Mr. Maurya and demand that there should be a Supreme Court judge from the Scheduled Tribe and in these vacancies, one of them should be appointed.

So far as the Allahabad High Court is concerned, Scheduled Caste persons are not even appointed as Government briefholders. There are so many vacancies and you are going to fill them up. At least, you should consider that there should be at least one Scheduled Tribe and two Scheduled Caste judges for the Allahabad High Court.

So far as the minorities are concerned, when the Vice-Chairman was speaking, he said that he was very apologetic. Why should he be apologetic?

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): I was not apologetic; I said Government is apologetic while appointing a minority community person.

SHRI G. C. BHATTACHARYA: What I am saying is, after all, minorities . . .
(*Interruptions*).

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): But he is misquoting me.

SHRI G. C. BHATTACHARYA: If I misquoted, I withdraw.

THE VICE-CHAIRMAN: (DR. RAFIQ ZAKARIA): I said Government is apologetic while appointing.

SHRI G. C. BHATTACHARYA: I got this impression. Anyway, what I am saying is, there are one or two persons from the minority communities in the Supreme Court and one or two in some High Courts. How does that justify? There are brilliant lawyers, brilliant district judges who belong to minority communities. It is not a charity on the basis of community. If you go by merit also, you will have to appoint many per-

sons from the minority community as the Supreme Court and High Court judges. If you say that Government is apologetic, it need not be apologetic. Even on merit, I can assure you, you can have many many persons qualified both from the Bar and from the judicial service who are absolutely fit for being appointed as the Supreme Court and High Court judges. But as soon as same names belonging to the minority community come up, so much noise is raised. Why should it be so?

THE VICE-CHAIRMAN: (DR. RAFIQ ZAKARIA): That is what I meant when I said they are apologetic.

SHRI G. C. BHATTACHARYA: That should not be the attitude.

Secondly, where is the question of amending the Constitution so far as salaries are concerned? As Members of Parliament, we are getting Rs. 500 as salary and Rs. 500 as allowance. You can increase, by one stroke of pen, Rs. one thousand by way of allowance, in regard to the Judges. I hope the hon. Law Minister would consider this suggestion of mine. Don't make it a salary. You can give Rs. one thousand by way of allowance. Sir, from my own knowledge, I can say that 80 per cent of the Judges are indebted. They have taken loans from various High Court Cooperatives, from provident fund and so on. Eighty per cent of the Judges are indebted. They are living on loans. When this is the position, how do you expect independence of judiciary? This is the position. I hope the hon. Law Minister will consider this favourably. You can do it. You can give Rs. one thousand by way of allowance.

So far as transfers are concerned, -transfers affecting the independence of the judiciary, of course, are highly objectionable and nobody would support it. But do you know what is happening in my State, in U.P.? We have a Chief Justice—the Law

[Shri G. C. Bhattacharya] Minister knows it and I do not want to say many things—who has antagonised the entire Bar. Is it the way we are maintaining the independence of the judiciary that there is a Judge belonging to the community of the Chief Justice in almost every Bench and in every Division Bench? This is the position even in regard to disposal and admissions. What is the result? The result is that if a lawyer, a young lawyer, belonging to this community joins the Bar today, his *vakalat nama* is procured on payment of four figures and more so that he may be represented by the other party. Then, the Judges sitting on that Bench decide the case in his favour.

SHRI BUDDHA PRIYA MAURY A: He should be sent to Arunachal.

SHRI G.C. BHATTACHARYA: I am not saying that he should be sent to Arunachal. If this will satisfy my friend, I have no objection. I am only saying that this is not independence of judiciary. I have never heard it. This is preposterous. This introduces corruption. Hence, it is very good the Law Minister is thinking on it. He is also doing something. I would only appeal to him not to delay it. In this way, you are ruining the judiciary. So far as U.P. is concerned, the Allahabad High Court has now become a mockery. Hence, you should not delay it. Is anybody coming in your way? I know you will have to consult. But consultation is not binding on you. You have enough powers. Hence, kindly do not delay it. So far as independence of judiciary is concerned, I am for it. On the one hand, you are working for the betterment of the conditions of service of the High Court and Supreme Court Judges. On the other hand, there is confrontation. For this, the NSO has come. You cannot reconcile these two things. You will have to compromise, with this, I conclude.

SHRI SUV SHANKAR: Mr. Vice-Chairman, Sir, I, at the very outset,

express my thanks to the hon. Member, who have participated in this debate because everyone of them has supported the Bill.

SHRI NARASINGHA PRASAD NANDA: Mr. Minister, thank them also who have heard all these speeches.

SHRI SHIV SHANKAR: I also thank the hon. Members who have been very patient enough to hear.

SHRI LADLI MOHAN NIGAM (Madhya Pradesh): Specially the Chair.

SHRI SHIV SHANKAR: Unless you were there how was it possible for others to express themselves and got appreciated.

While the Bill has been supported, a wide spectrum of the arena has been covered by bringing in various subjects and aspects which, I personally feel that at least some of them have to be necessarily answered. Otherwise, I was thinking that, in view of the wide support that this Bill has received, it was unnecessary for me to speak on the Bill by way of a reply.

Sir, I am aware that this Bill gives only a pittance, but we had to embark on this Bill because of diversified reasons. I have taken note of the mood of the House and I am confident that at an appropriate time when I come for some more benefits, I would get the support.

SHRI G.C. BHATTACHARYA: Bring it in this session itself.

SHRI SHIV SHANKAR: No, not in this session possibly. I would be glad to receive the same support as I have received it now.

Sir, the question is as to why the salaries were not increased and why various steps were taken more as adjuncts. The hon. Members are aware that there are various things—

vices whose salary remains far below and we thought that if there is a steep rise in the Judges salary itself, perhaps, having regard to the concepts that we cherish, there would be a wide spectrum of criticism. So, it was deemed fit from time to time to consider if other fringe benefits could be provided to the hon. Judges then would not become the subject of criticism that they are receiving very high salaries. Sir, I get reminded of one of the hon. Judges of the Supreme Court who has said sometime back publicly that perhaps people do not know that there are certain talent benefits that the Judge, I received and if that also is calculated, he put the salary of the Supreme Court Judge at Rs. 10,000. I would not like to give publicity to this type of expressions, but the fact remains that if we are not in a position, for any reason, to enhance the salary of the Judges, we could provide the fringe benefits which could be real, in order to comfort them and to maintain the independence of the judiciary.

I am aware that quite a large number of Members have also complained that many a person, particularly, the lawyers, are not prepared to accept the Judgeship.

Sir, I do not think that the lawyers are not accepting the judgeship merely because the salaries are less. I am not one among those people who would like to contribute to this concept. After all, Sir, there are lawyers, I am aware, in the Supreme Court—quite a large number of them—who make not less than Rs. 50,000 a month. How is it possible to dissuade them? It is impossible. The point is that you have to take into consideration various factors. One of the factors is also the spirit of service. After all, for the great cause of justice, good lawyers have been sacrificing; it is not as though they have not sacrificed. But, then, there are some complication, in the system itself. My friend, Mr. Bhandare, made a reference that some are

picked up and recommended as judges. Then, what happens is that those who are a little older in age, or those who are already getting good practice but do not aspire to become the Chief Justice, at one point of time they come out and say: "Look, once you have thought of a man of the age of 38 or 39, I am 42, what is the purpose of my becoming a judge at this age as it would not even be some psychological satisfaction of my becoming a Chief Justice? Therefore, I would not accept it." So various reasons are there; I would not like to go into them. But to say that the reason is that the salary is less and therefore the Bench is not attracting the talent, in my view, is not entirely correct. There are various other grounds, which it is not possible for me, as holding a responsible position, to make them public.

Sir, I am aware about the arrears. Various steps are taken with regard to the arrears. In fact, sometime back on the 18th November, 1980, in answer to Starred Question No. 35 in the Lok Sabha, I had given various details as to what steps have been taken to curtail the arrears. It would be difficult for me to read the entire gamut of the reply which I have already given. But I can assure the hon. Members in this House and through this House to the nation that we are also having great anguish and anxiety. Different steps that have already been taken would be pursued and further steps would also be evolved, so that this problem, which is mounting from time to time, can be controlled.

Now one aspect about which some friend have made a reference—and on which particularly one very good friend of mine has gone on to advise me that I should not say 'caste' and 'community' when I speak of judges. Sir, I am aware of my responsibility and I have spoken in the other House sometime back—and I would not like to retrace—that Mrs. Indira Gandhi and her Government could take the

[Shri Shiv Shankar] legitimate credit for appointing the first Harijan Judge to the Supreme Court. One fact which I may say—frankly that if Mr. Varadarajan has been appointed to the Supreme Court, he has been appointed in his own right. It is not a case of bounty, or it is not a case of concession to him at all. What happens is this? Considered in the background of his merit and ability, what assumes importance is that he is the person who comes like me from a downtrodden position. Sir, may I tell you that it may not mean anything to him because after all he is a very able and meritorious man, but it has given a great psychological satisfaction to the teeming millions of the down-trodden people in this country?

SHRI BUDDHA PRIYA MAURY A: I agree. It is correct.

SHRI SHIV SHANKAR: It is purely from this point of view that I have adverted to this aspect. He has become a Judge of the Supreme Court in his own right. He has become a Judge there because of his ability and merit and it gives a great psychological satisfaction to all of us. And it is purely from that point of view that I have said—and I can say with confidence—that credit could be taken by Shrimati Gandhi and her Government. I do not deny that there are a large number of very good down-trodden gentlemen who are practising at the Bar, notwithstanding all the difficulties that one faces, who are quite competent enough to be appointed not only as High Court Judges but as Supreme Court Judges also. But the question is the manner of picking up the person. I may not be considered because I am a black man; I will not be considered for the simple reason that I do not come from a particular stock. If this is the approach which is taken, there can be no social justice. I have said this more from the point of view of social justice concept which is enshrined in the Constitution itself. Because some of the

hon. Members have made a reference to it, may I make it clear that under directions of my Prime Minister I have addressed letters to all the Governments and the Chief Justices that there is a concept of social justice which must weigh with them? It is an objective which has been enshrined in the Constitution. The Founding-Fathers of the Constitution in the Preamble had used the word "justice", qualified by "social, economic and political". Therefore, it is absolutely necessary that in order to achieve this objective, the various Governments and the Chief Justices should locate the talent from the Scheduled Castes and the Scheduled Tribes backward classes, minorities and women. This I have written under the direction of my Prime Minister, so that social justice concept may not remain mere illusory in the Constitution, it must become a reality. Sir, I am glad that there is an awareness about this in the country, in spite of the attitude of either the economically/ strong sections of the society or the strong castes. I am referring to this—though I feel ashamed to refer to this; but nonetheless the fact remains that in the Indian conditions as of today, whether you like it or not, people are conscious of the caste and the more one is an educated man, the more he suffers from this infirmity, I am sorry to say, but this is a reality. If this is the reality, what is wrong with this awareness? One more aspect I will say. From these classes also, the economically strong classes and also the upper castes, people are coming out—I am glad this is a matter of awareness—and they have started giving a clarion call that the down-trodden people must be given the same chance if equal opportunity is to have any meaning. It only means this that from the weaker sections of the society also people should be picked up. You should not neglect them. They should also be picked up. So it is a matter of some gratification and satisfaction to us. I have not made the reference. I am sorry if somebody has

understood it in this fashion. I have only said this much that it is a matter of credit for Shrimati Indira Gandhi and her Government. I have said this; it is right; but I did not say that he has been picked up merely because he is a Harijan. I have never said that. Some papers, I find, have said that the Law Minister made that reference. What a distortion! I am sorry...

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Why should you be apologetic?

SHRI SHIV SHANKAR: I am not.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): It is a plus point for you,

SHRI SHIV SHANKAR: That is why I said that I would not cast a reflection on the man who is sitting there. He is a very able man, a very meritorious man. There are many such persons. But then the whole point is, when it comes to the question of selection, there must be a will to think of such persons. It is purely from that point of view that I have said it.

Sir, you were kind enough to make references about women also. It is true. My own feeling is this. I have said sometime back that lawyers and judges should come from these sections "Is" - It is very difficult. I am aware of it because I have passed through this stage. It is very difficult for the lawyers coming from these sections to come to the top. It is impossible. Rarely one fellow comes up, but some fellow will drag him* down and the fellow will go into the gutter. I may tell you this much that the day when people from these classes will be brilliant lawyers and will occupy the benches, the constitutional philosophy will be interpreted in the manner in which the founding fathers of the Constitution wanted it to be interpreted. I am

aware that some of the persons who are economically strong, some of the persons who are coming from the upper classes, at least those who have seen the slums of Bombay, are also aware of this situation and they have started interpreting the Constitution in the manner in which the founding fathers wanted it to be interpreted. But they are only rare cases here and there. After all, one's own background, one's own upbringing, one's own society, one's own manner of thinking, is affecting, had been affecting the very concepts of the Constitution. Sir, in Golak Nath's case the judgment was six to five. In Kesavananda Bharati's case, the judgment on the question of basic structure is seven to six. That means, the judges are thinking in different manners. My own submission is that if the commitment is to the Constitution and its goals, this much of divergence would not occur. This is the approach which I have been advocating. Sir, it has also been said that I have been trying to criticise the judgments of the Supreme Court. Sir, I may say, with all respect to my hon. friend who has himself been a very great trade unionist that I have not in any speech tried to attack the judiciary. But supposing there is a judgment of the Supreme Court which I can explain in a different form, I can say, "Look, I feel that this judgment is not correct". What is wrong in it?

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): It is your right, I think.

SHRI SHIV SHANKAR: As the Government I may tell you, we are the greatest litigants in the Supreme Court because in every case the Government is the party on either side. I am only sorry...

SHRI MURLIDHAR CHANDRA-KANT BHANDARE: The Supreme Court itself overrules its own judgment.

SHRI SHIV SHANKAR: I am only sorry that we should be a party

[Shri Shiv Shankar] to litigation in such a large measure. But then this is the reality. If this be so, as the people who have elected us have some hopes and aspirations that their representatives would correctly represent them, necessarily we have to voice their feelings. As one of my friends said, there are more than 70 per cent of the people who are below the poverty-line. Now which man among them has gone and knocked at the door of the Supreme Court so far? Should not our judicial system subserve the vast segment of the society which has been totally neglected? If we say this, are we criticising the judiciary? We are criticising ourselves. I have never criticised the judiciary. In fact, I had been fighting for the independence of judiciary and I will stand by it. All the organs whether it is the legislature, whether it is the executive, whether it is the judiciary, we have all to work for the great goals that the Constitution seeks to achieve; otherwise, why this Constitution? Here is a principle of social justice. Should it not be translated into reality? If I say something, should I be accused, "Look, you talk for the downtrodden"? Supposing I speak for weaker sections that they should be protected. Does it mean that I am a biased man? After all, we have some values in the society. So far as these values are concerned, they are enshrined in the Constitution. The Constitution seeks to achieve a welfare State, an egalitarian society. All of us are working for that. Therefore, we need not be that touchy. If I say like this, does it mean that I do not agree? Does the honourable Member mean that? Whatever the Supreme Court has said, I never said that the Supreme Court's judgment is not binding on me. I never said that. In fact, I have said in this House that as long as Kesavananda Bharati case on the basic structure is there, it is our article of faith. What can we do? We may not agree with that. But the judgment is there, or does he go to the extent of saying that I should

not even say a word? If that is the intention, I am only sorry for that...

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): But why should we say an article of faith? You could say it is binding on me.

SHRI SHIV SHANKAR: I am using their expression so that my friends there may feel happy.

Then various questions have been raised on the transfer of Judges and Chief Justices. I will confine myself only to the transfer of Chief Justices. I have made it clear that so far as we are concerned, we have not come to a final conclusion. I am aware that the Consultative Committee attached to the Law Ministry had been very vocal and in fact a few Members—and those Members do not merely represent my party, there every party is represented—have expressed a feeling, in fact, it was a unanimous feeling of theirs that the Chief Justices should be from outside. When I speak about this, I should like to make an appeal, a very earnest appeal, to the House and the honourable Members that they should not look at this problem from the political angle. After all, all of us are interested in the independence of judiciary. And the position is this though, of course, as I said we have not taken a final decision, I have been receiving various complaints, and the complaints are about the recommendations made by the Chief Justices in respect of appointment of members of the bar or otherwise to the bench or to the various positions of Government pleaders or to the various positions of legal officers or legal advisers in public, corporations and so on and so forth, based on caste and other extraneous considerations. These are the complaints that I have been receiving. There are complaints against various Chief Justices about Constitution of benches to subserve particular interests, there are complaints of practice by relations of

judges and constitution of benches in order to help them and so on and so forth. There are complaints about the inbuilt prejudice of judges regarding some advocates; there are complaints regarding recommendations to various positions. I would not like to go deeper into this because this is not the occasion. As and when the Government takes a decision, certainly we will come forward...

SHRI G. C. BHATTACHARYA: These complaints are true,

SHRI SHIV SHANKAR: I may tell you I have received a large number of complaints...

SHRI G. C. BHATTACHARYA: They are true, but what is your reaction?

SHRI MURLIDHAR CHANDRA-KANT BH AND ARE: They are not without substance.

SHRI AMARPROSAD CHAKRABORTY: But you should not make generalizations.

SHRI SHIV SHANKAR: If you say I generalizations, you can say; maybe; so far as I am concerned, you might not accuse me of being partisan. But what about a large number of Bar Associations and Bar Councils?...

AN HON. MEMBER: And the Bar Council of India.

SHRI SHIV SHANKAR: My friend has made a reference to the Bar Council of India that within 8 months it has changed its colour. I do not want to go into it. Even a person like Mr. Shanti Bhushan has said that. I am not going into that question. For the benefit of one of the hon. Members who has spoken I might say that when I went to Madras I was invited by the Bar. And the Association President, while welcoming me, said—I have mentioned this on more than one occasion—that "I understand that the Consultative Committee attached to the Law Min-

istry has recommended that one-third Judges should be transferred and the Chief Justice should be 'from outside'. When he said this, it was received by a loud applause by all the sections there and there were more than 1,000 Advocates. They said: We request that so far as Madras is concerned, all the Judges should be transferred... (*Interruptions*).

AN HON. MEMBER: There is a case pending against him.

SHRI SHIV SHANKAR: The case may be there. I am aware why the case is pending. That also I know. Your Government has put him behind the bars. I am aware of that also. You must also be aware that the entire audience applauded. I may tell you why I say this. The whole thing is smoldering now. Only very few people are coming now. There will be a revolution in this profession and people will start rising and the whole system will break under its own weight. I am only worried about that. I am now trying to plug the loopholes in the system itself so that the system should not break. That is why I am appealing to the right-thinking people to rise above the party level and consider this aspect. I still feel that if there is a transfer, it would achieve the great objective of national integration. I do not know, whether my friend will laugh at it when I say that the English came from thousands of miles away. They held the offices of District Judges. They were also occupying small positions without knowing the local language. Still they administered justice exceedingly well. We have only inherited that system. I was thinking that an outsider as Chief Justice would not make any difference between X and Y. He would recommend people on merits. He would not be interested in constituting the Bench in a particular manner. He would not have any local prejudice or otherwise. I thought, after all the ills of the society are the ills of the nation. You will agree that our character is not that high as

[Shri Shiv Shankar] that of the founding fathers of our Constitution.) It becomes absolutely necessary for us to find some way out. The Government is taking its own time. I am aware of that fact that some of the opposition Members are asking us why we are not taking any decision. I have my own limitations. I am afraid they have got to be a little patient in this matter. We are marking time. Nonetheless we have to find a way out. Somebody or other may find fault with any system. But if it is going to be in the interests of the larger sections of the society, then I can assure you that this Government will never shirk to bring in such a measure... (*Interruptions*). I know you are one of the persons who had been banging me.

SHRI G. C. BHATTACHARYA: How long will you take?

SHRI SHIV SHANKAR: May I say this much?

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Mr. Law Minister, you talk in one breath about a revolutionary situation developing and in another, you say something else.

SHRI SHIV SHANKAR: I am grateful to you for having reminded me. But, Sir, in a democracy the wheels move slowly. But we want to make the wheels move surely, though slowly.

SHRI S. W. DHABE: What about the Allahabad Court? (*Interruptions*).

SHRI SHIV SHANKAR: Mr. Dhabe, *ou do not know.

SHRI G. C. BHATTACHARYA: What about that? You have not said anything. (*Interruptions*).

SHRI SHIV SHANKAR: Why do you talk so much unnecessarily? After all, if I would only request you to study this problem in a little depth, you will understand it much ! better because the manner in which >

the complaints are coming from all over is something which is very awful for the very system itself.

SHRI AMARPROSAD CHAKRA BORTY: Excepting UP and Bihar.

SHRI SHIV SHANKAR: You do not know the complaints I have received. Perhaps you seem to be more resourceful. If you have got very good intelligence, which I presume, you have, you will understand it. Let me give credit to you for this. But let me tell you that the complaints are from all over—This is the position—in one form or the other. Sir, I would not like to take the time of the House any more.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): You have not replied to my demand.

SHRI NARASINGHA PRASAD NANDA: Sir, on a point of order. (*Interruptions*). Can the Chair raise a demand?

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): It is not a demand from the Chair. I made a demand and I was speaking as a Member.

SHRI NARASINGHA PRASAD NANDA: But you are occupying the Chair now.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): But I can reply to him of what any honourable Member has been demanding.

SHRI K. K. MADHAVAN (Kerala): But you said, "my demand". (*Interruptions*).

SHRI MURLIDHAR CHANDRA-KANT BHANDARE: Sir, on a point of information. In 1975, which was the International Women's Year, Mrs. Gandhi was the Prime Minister and I believe the then Law Minister had issued a similar circular asking all the Chief Justices to make efforts to see that more and more lady judges were appointed.

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

The *motion was adopted.*

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): We shall now take up the clause-by-clause consideration of the Bill.

Clause 2 (*Amendment of section 2*)

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA); There is one amendment by Shri Chakraborty.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clauses 3 and 4 were added to the Bill.

Clause 5 (Insertion of new section 22D)

SHRI S. W. DHABE: Sir, I beg to move:

2. "That the Rajya Sabha recommends to the Lok Sabha that the following amendment be made in the High Court and Supreme Court Judges (Conditions of Service) Amendment Bill, 1980, as passed by the Lok Sabha, namely:—

'That at page 2, line 16, after the words "rent-free" the words "and furnished" be inserted.' "

3. "That the Rajya Sabha recommends to the Lok Sabha that the following amendment be made in

[Shri S. W. Dhabe]

the High Court and Supreme Court Judges (Conditions of Service) Amendment Bill, 1980, as passed by the Lok Sabha, namely: —

"That at page 2, after line 21, the following be inserted, namely:-

"22D(1). Notwithstanding anything contained in the Income-tax Act, 1961, salary per mansam shall not be included in the computation of his income chargeable under the head 'Salaries' under section 15 of the Income-tax Act, 1961.""

Sir, in clause 5 for the concession given free of income-tax the words used are "rent-free" official residence. Now, Sir, in the Lok Sabha debate, the Law Minister has quoted a sentence from the suggestion of chief justice, in 1976 and the suggestion was "rent-free furnished accommodation". I want to suggest to him that 'i.e. residence' does not include furnished accommodation, because the accommodation, furniture etc, will cost Rs. 3000 to 4000. Therefore, they will have to pay income-tax in view of this provision. He should accept my amendment so that the furnished residence will be free of income-tax. That is the purpose of my amendment.

The questions were proposed.

SHRI SHIV SHANKAR: Actually the position is that section 23 of the Supreme Court Judges (Conditions of Service) Act and section 22A of the High Court Judges Act here refer to the official residence. It says, "official residence in accordance with such rules as may from time to time be made in this behalf. In the Rules the accommodation is free furnished. Therefore, I do not think my friend's amendment has any relevance, I would request him to withdraw his amendment because already the Rules take stock of the situation.

श्री लालू मोहन निषांग : क्या इनकम टैक्स के अन्दर तो नहीं आयेगा ? क्या इसका एक्जोरेस आप देते हैं क्योंकि नौकर-शाही ऐसे लपज लगा देती है कि फिर किसी का नहीं चल पाती ।

श्री शिव शंकर : आज तक यह पोजिशन

SHRI S. W. DHABE: Sir, in view of the assurance given by the Law Minister, I would like to withdraw my amendments.

* Amendments (Nos. 2 and 3) were, by leave, withdrawn.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): The question is:

"That clause 5 stand part of the Bill."

The motion was adopted. Clause 5 was added to the Bill.

Clause 6 was added to the Bill. Clause 7 (Amendment of section 2)

SHRI AMARPROSAD CHAKRABORTY: Sir, I beg to move:

4. "That the Rajya Sabha recommends to the Lok Sabha that the following amendment be made in the High Court and Supreme Court Judges (Conditions of Service) Amendment Bill, 1980, as passed by the Lok Sabha, namely: —

"That at page 2, line 38 after word "salary" the words "and the monthly car allowance" be inserted."

Is income-tax charged on the car allowance or is it income-tax free?

The question was proposed.

SHRI SHIV SHANKAR: It is income-tax free.

*For the text of Amendments vide cols. 278-79 supra.

It has been explained. The Law Ministry explained it. It is exempt from Income-tax.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Mr. Chakra-borty, do you withdraw your amendment?

SHRI AMARPROSAD CHAKRA-BORTY): Yes, Sir, I withdraw my amendment.

** (Amendment No. 4 was by leave withdrawn)*

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): The question is:

"That Clause 7 stand part of the Bill." *The*

motion was adopted. Clause 7 was added to the Bill.

Clauses 8 and 9 were added to the Bill.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): Now we take up Clause 10. There are two amendments by Mr. Dhabe.

Clause 10—Insertion of new section 23D

SHRI S. W. DHABE: Sir, I move:

5. "That the Rajya Sabha recommends to the Lok Sabha that the following amendment be made in the High Court and Supreme Court Judges (Conditions of Service) Amendment Bill, 1980, as passed by the Lok Sabha, namely:—

"That at page 3, line 12, for the words "rent-free" the words "and furnished" be inserted."

6. "That the Rajya Sabha recommends to the Lok Sabha that the following amendment be made in

*For the text of Amendment Vide cols. 280 supra.

the High Court and Supreme Court Judges (Conditions of Service) Amendment Bill, 1980, as passed by the Lok Sabha, namely:—

"That at page 3, after line 15, the following be inserted namely:

'23D(1) Notwithstanding anything contained in the Income-tax Act, 1961 salary per mensem shall not be included in the computation of his income chargeable under the head "Salaries" under section 15 of the Income-tax Act, 1961.' "

I would only like to point out to the Minister two provisions with regard to my amendment about exemptions of salary from income-tax. Under Article 125 (2) of the Constitution, it is mentioned that the Judges' salaries are governed by the Schedule and that is fixed as Rs. 4000 right from 1950. Similar is the provision about the High Court Judges in Article 221(1) which says: "There shall be paid to the Judges of each High Court such salaries as are specified in the Second Schedule." I would like the Minister to see the provision in Article 59(3) of the Constitution about the President which says:

"The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule."

Now, the provision under Article 59(3) is entirely different from the provision about High Court and Supreme Court Judges which empowers the Parliament to make a law about salaries also. So far as the Supreme Court and High Court Judges are concerned, the salary is excluded

[Shri S. W. Dhabe]

because it comes under the Second Schedule and no provision is made for the Parliament to revise the law. I think that they are paid only Rs. 2200 per month and so much of tax is deducted. The Supreme Court of the U.S. has also taken the view that if it is under the constitutional guarantee, any dilution of the salary will be illegal. I would, therefore, suggest that you kindly reconsider the provisions under Article 59(3), 125(2) — and 221(1) of the Constitution so that this injustice is removed. I do not expect you to do it today. But you may accept it in principle today.

The questions were proposed.

SHRI SHIV SHANKAR: I cannot accept the amendmensts. The judgment of the Supreme Court of the United States is not a Bible for me. So far as we are concerned, we are governed by our Constitution and the laws as they exist today say that they are taxable. It is a matter about which I cannot give any word at this stage as to whether the whole salary would be exempt from income-tax. It is not possible for me to accept the amendment.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): The question is:

5. "That the Rajya Sabha recom mends to the Lok Sabha that the following amendments be made in the High Court onnd Supreme Conut Judges (Conditions of Service) Amendment Bill, 1980, as passed by the Lok Sabha, namely: —

'That at page 3. line 12, after the words "rent-free" the words "and furnished' be inserted'.

6. "That the Rajya Sabha recom mends to the Lok Sabha that fol lowing amendment be made in the High Court and Supreme Court Judges (Conditions of Service) Amendment Bill, 1980, as passed by the Lok Sabha. namely: —

'That page 3. after line 15, the following be inserted, namely: —

'23D (1). Notwithstanding anything contained in the Income-tax Act, 1961 salary per mensem shall not be included in the computation of his income chargeable under the head "Salaries" under section 15 of the Income-tax Act, 1961.' "

The Noes have it.

SHRI SHIVA CHANDRA JHA:
The Ayes have it.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): (After taking a count).

' 4

Noes More than 4

The motion was negatived.

THE VICE-CHAIRMAN (DR. RAFIQ ZAKARIA): The question is:

"That Clause 10 stand part of the Bill."

The motion was adopted.

Clause 10 was added to the Bill.

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

SHRI SHIV SHANKAR; sir, I beg to move:

"That the Bill be returned." *The*

question was proposed.

श्री शिव चन्द्र झा: मैंने नोटिस दिया हुआ है थर्ड रीडिंग पर बोलने के लिए। मैं बोलना चाहता हूँ।

उपसभाध्यक्ष (डा० रफीक जकरिया):
जा साहब, देखिए, अभी 6 बज रहे हैं।

श्री शिव चन्द्र झा : जी प्रार्थना है उसे
का पालन करें। आप दो मिनट बैठिये।

उपसभाध्यक्ष (डा० रफीक जकारिया) :
जब मैं खड़ा हूँ तो पहले आप बैठें।
पोजीशन यह है कि जो टाइम एलाट
हुआ था उस के अन्दर (Interruptions)
देखिए 6 बज रहे हैं

(Interruptions)

SHRI K. K. MADHAVAN: Mr. Vice-
Chairman, I do not understand this language

THE VICE-CHAIRMAN (DR.
RAFIQ ZAKARIA): Well, you can use the
ear-phone. You will understand it.

SHRI K. K. MADHAVAN: No, no.

THE VICE-CHAIRMAN (DR.
RAFIQ ZAKARIA): Mr. Jha has spoken in
Hindi and I must reply to him in Hindi. Why
don't you use the ear-phone?

SHRI K. K. MADHAVAN: It should not
be like that.

THE VICE-CHAIRMAN (DR.

RAFIQ ZAKARIA): अगर आप को कुछ
कहना है तो दो मिनट में कहिए।

श्री शिव चन्द्र झा : उपसभाध्यक्ष जी,
हिन्दी में कहावत है कि अपने मन मियां मिट्टू।
"patting on his own back".
तो मंत्री जी ने बहुत क्रेडिट लिया कि एक
हरिजन को सुप्रीम कोर्ट का जज बनाया। यह
क्रेडिट फलाने को गया। लेकिन हुआ क्या? देश
में जज से भी बड़ी पोस्ट है। जज की पोस्ट
बड़ी होती है लेकिन जज से थोड़ी पोस्ट

देश में है। मैं मंत्री महोदय से जानना चाहता
हूँ कि अभी आपकी ताकत है और आप अपने
खेमे से जो गांधी जी का सपना था कि
भारत का प्रधान मंत्री हरिजन हो, राष्ट्रपति
हरिजन हो। (Interruptions) तो उस
के लिए।

(Interruptions)

THE VICE-CHAIRMAN (DR.
RAFIQ ZAKARIA): I am sorry, Mr. Jha.
This is irrelevant. I rule it out.
(Interruptions).

आप बैठिए। आप भी बैठिए। झा
साहब प्रधान मंत्री से इस बिल का कोई
संबन्ध नहीं है।

श्री शिव चन्द्र झा : आप सुन तो लीजिए

(Interruptions)

उपसभाध्यक्ष (डा० रफीक जकारिया) :
आप एक्स्ट्रानुअस चीजें इसमें मत लाइये।
आप बैठ जाइए। आप बैठ जाइए।

(Interruptions)

The question is:

"That the Bill be returned."

The motion was adopted.

THE VICE-CHAIRMAN: (DR. RAFIQ
ZAKARIA): The House stands adjourned, till
11 A-M. tomorrow.

The House then adjourned at
fifty-eight minutes past five of the
clock, till eleven of the clock on
Friday, the 5th December, 1980.