

[Shri Thillai Villalan]

said the Governors have got constitutional obligations. They are only the representatives of the Central Government and not the stooges of the Central Government. I do not want that he must be the stooge of the State Government or the Chief Minister. We are witnessing that politicians and party men become Governors in different States. They are participating in the inner politics of the States and the political parties. This should be avoided.

Sir, I thank all the hon. Members who have participated in the discussions and have given their views. I request the hon. Minister to assure that the convention of getting the consent of the Chief Minister by way of consulting him before the appointment of Governors will be upheld. I will not press this Bill if the hon. Minister makes such a statement.

SHRI F. H. MOHSIN I have already made myself clear. I have nothing to add. I have already stated that there is already a convention of consulting the Chief Minister while appointing the Governors. Therefore, consultation is there. If the hon. Members want that the consent of the Chief Minister should be taken, I cannot agree to it.

SHRI THILLAI VILLALAN In view of the assurance given, I withdraw this Bill.

The Bill was, by leave, withdrawn

THE CONSTITUTION (AMENDMENT) BILL, 1969

(Omission of Article 220)

MR. DEPUTY CHAIRMAN Mr. Thillai Villalan, you move your next Bill.

SHRI THILLAI VILLALAN (Tamil Nadu): Sir, I beg to move

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

Mr. Deputy Chairman Sir, the present Bill is intended to remove the ban on the retired High Court Judges from practising. In the Statement of Objects and Reasons, I have said that Article 220 of the Constitution prevents a person who has held office as a permanent Judge of a High Court from

pleading or acting in any court or before any authority in India except the Supreme Court and the other High Courts. With the meagre amount of pension they get and the small earnings they make by pleading or arguing in a court where they are comparatively unknown, the restriction placed by the said Article causes undue hardship to such persons. It is felt, therefore, that this restriction should go. Only with this object I am bringing this amendment. Article 220 reads

"No person who, after the commencement of this Constitution, has held office as a permanent judge of a High Court, shall plead or act in any court or before any public authority in India except the Supreme Court and the other High Courts."

My amendment is for total omission of Article 220. For the purpose of getting persons of talent to the Bench, we have to make the post of Judge attractive. Therefore, we have to find out ways and means by giving higher salary, higher pension or higher opportunities to the persons who are adorning the Benches, after retirement so that they need not go in for any employment or they need not go in for any practice in any court after retirement. This sort of things should be done. So in the prevailing circumstances I humbly submit that my amendment removing the whole of 220, that is, ban on retired judges is necessary. If we take up the service conditions, the salary and the pension of judges, we will see that they are not attractive. I will tell you about the conditions of service and salary of judges in detail. I have prepared a note and I request the House, I crave permission of the House, to refer to my notes now and then. I have also noted the conditions of service of judges in America and England and I wish to compare before you those conditions with the service conditions of our judges. In England and America judges are given pensions after their retirement virtually as high as the salary drawn by them while functioning as judges. As regards whether they have a right to work after retirement, there is no ban either constitutionally or otherwise, but in practice they never return to practice in court. Therefore, for the loss of their right to practice in the High Courts of States in India in which they had functioned as judges, they must be sufficiently compensated by way of substantial pensions.

There ought not to be also a sliding scale of pensions in proportion to the number of years of service as Judges. What is more important is not the number of years, but the fact of service to the State as a Judge. It is only as a result of certain fortuitous circumstances one Judge serves for longer number of years than another and that ought not to be made a ground for providing for differential rates for scales of pension. The conditions of service of Judges must be so altered that there ought to be one uniform and universal provision for a substantial amount of pension for Judges.

The rationale behind one uniform and universal amount of pension which must be considerable and substantial, is to ensure absolute independence of the judiciary, so that Judges after retirement may not seek favours from the Executive. If they are constrained to seek favours from the Executive after retirement by reason for poor pittance of pension, the independence of the judiciary may be affected or attenuated or open to serious or sceptical doubt.

While commenting on the inadequate remuneration of Judges Mr H. M. Seervai has made some very relevant remarks which I want to quote. He says

"The salaries of High Court Judges had been fixed about seventy years before the Indian Draft Constitution was framed. The general pattern of salaries was Rs 5,000 a month to the Chief Justices of the High Courts and Rs 4,000 a month to puisne Judges. When the Federal Court was constituted under Government of India Act, 1935, the salary of the Chief Justice was fixed at Rs 7,000 a month and of the other Judges at Rs 5,500

The selected documents published in the framing of India's Constitution show a series of mischances which dagged the judiciary, but the documents leave certain questions unresolved. Draft Article 197 contained a proviso that the salaries of High Court Judges should not be less than those mentioned in the Second Schedule. The Draft Constitution was forwarded to Judges of the Federal Court for their comments. But having regard to the important questions raised by the provisions relating to the judiciary, the Chief Justice of the Federal Court called a conference of Judges of the Federal Court and the Chief Justices of the High

Courts in India. The Chief Justices of all High Courts except two attended, the two High Courts being represented by senior Judges with authority to speak for these High Courts. The conference authorised the Chief Justice of the Federal Court to submit a memorandum expressing its views. The memorandum said that the observations made in it were based on the paramount importance of securing the fearless functioning of an independent, incorruptible and efficient judiciary. That memorandum recommended that in Draft Article 104 a provision fixing salaries by reference to minimum salaries should be made for Judges of the Supreme Court as it had been made for Judges of the High Courts. It was further stated that the salaries of High Court Judges had been fixed seventy years earlier, and there was no justification for scaling them down. The memorandum pointed out the difficulty of inducing leading lawyers to accept a judgeship because of the unattractive terms and conditions of service. The memorandum recommended more liberal pensions.

A note from the Office of the Constitutional Adviser on a proposed amendment to Article 104 stated, *inter alia*, that it would be unjust to treat judges differently from public servants in other departments. The Drafting Committee decided to add a proviso to Article 104 that the salaries of Supreme Court Judges should not be less than those contained in the Second Schedule. The published documents do not show by what mischance Articles 125 and 221 of our Constitution prescribe fixed salaries for Supreme Court and High Court judges, so that today these salaries can be raised only by an amendment of the Constitution. The conference of judges cannot be blamed for this mischance.

Why were the salaries scaled down? That existing salaries had become inadequate was obvious. The reason given in a Note from the Office of the Constitutional Adviser states that as the Drafting Committee had proposed a salary of Rs 5,500 a month for the President of India, the salaries of the Chief Justices and Judges of the Supreme Court and the High Courts were scaled down as shown in the Second Schedule. And there is a statement to the same effect in Shri Alladi Krishnaswami Iyer's Note on the Judges Memorandum.

[SHRI THILLAI VILLALAN]

The scaling down of judicial salaries by reference to the salaries to be paid to the President and the Governors is open to two serious objections—one of fact and the other of principle. As a matter of fact, the salaries of the President and the Governors finally fixed in our Constitution were Rs 10,000 per month and Rs 5,500 per month. When this was done, the question of upgrading judicial salaries on a reasonable basis ought to have been considered afresh, but it seems to have been overlooked or forgotten. Secondly, there need be no necessary correlation between the salaries paid to the President of India or to the Governors of the States and the salaries paid to Judges. The President and the Governors are given a salary considered appropriate to a political office, the salaries paid to Judges are salaries which are paid for the discharge of legal and judicial functions and must, therefore, be salaries appropriate to distinguished and leading practitioners at the Bar. The British Parliament found no difficulty in giving a salary of £10,000 to the Lord Chancellor, with a pension of £5,000, at a time when the salary of the Prime Minister was £5,000 per annum without any pension. The position has now been changed. But even so, the Lord Chancellor gets a salary of £14,500, when all other Cabinet Ministers get a salary of £8,500. Again, the Attorney-General gets a salary of £13,000. Therefore, on principle, the question of judicial salaries should have been considered afresh.

In order to secure the independence of the Comptroller and Auditor-General of India and the Members of the Union Public Service Commission, our Constitution provides that, on ceasing to hold these posts, the incumbents cannot hold any office under the Government of the Union or the States. In the Constituent Assembly, Prof K T Shah moved an amendment about the Supreme Court and High Court Judges, which in substance, provided that a Judge, on ceasing to hold office, should be similarly disqualified. In opposing the amendment relating to the Supreme Court Judges, Dr Ambedkar said that the judiciary decided cases in which Government had no interest; the judiciary had to decide issues between citizens and very rarely between citizens and the Government and, therefore, the chances of Government influencing the judiciary were remote. He repeated the same view with reference

to High Court Judges and added a new ground, namely, that the terms and conditions of a Judge's appointment were so unsatisfactory that Prof. Shah's proposal would place too heavy a burden on those who accepted a Judgeship. These replies were remarkable, because it is amazing for a lawyer to say that Judges of the Supreme Court and the High Courts, possessing as they do the power of judicial review, rarely come into contact with Government, for it is obvious that they have to adjudicate between the rights of the citizen, on the one hand, and the rights of the Legislature or of the Executive on the other. The statement is also remarkable because the unsatisfactory terms and conditions of a Judge's appointment were openly admitted, and yet no steps were taken to improve them, so that a prohibition designed to secure the independence of the judiciary, similar to that embodied in the Constitution for other high offices may not be burdensome. I think that Prof K T. Shah was clearly right. His amendment applied to the judiciary a principle embodied in our Constitution. As will presently appear, the fixation of Judges' salaries in the Constitution was to have a strange sequel in the years to come.

In September 1953 the Law Commission submitted its valuable Fourteenth Report. It was a brave report, for it stated the truth about the judiciary and judicial administration, instead of repeating conventional and ceremonial words of praise for the Judiciary. The Commission considered judicial salaries and painted a grim picture of their inadequacy. I have always felt that the Law Commission succumbed to the current climate on official salaries and it recommended every remedy except the right one, namely, a substantial increase in judicial salaries and pensions.

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To increase the age of judges in the High Courts and merely to increase their pensions, as the Commission suggested, is not a remedy. The Chairman of the Law Commission Shri M C Setalvad, has admitted in an article in *The Advocate* that the Commission did not recommend an increase in judicial salaries having regard to India's financial position at that time. In fact, the Law Commission's Report accepted the position that eminent lawyers would not accept judicial office on the salaries offered.

"It appears that except in the principal towns of Calcutta and Bombay, the income

of leading members of the Bar other than those who by their reputation and status have established an inter-State or all-India practice does not exceed in a substantial measure the sum of Rs 3,500"

SHRI RANBIR SINGH (Haryana) Is there any danger of my friend being appointed as a judge?

SHRI THILLAI VILLALAN I am a practising lawyer, you know. Therefore I am interested in the judiciary. Therefore, I am pleading for the salaries of the judges also. One time I may become a judge.

SHRI RANBIR SINGH Yes, that is your aspiration.

SHRI THILLAI VILLALAN In other words, the Commission fatalistically accepted the position that the best lawyers could not be secured for the Bench. However, the march of events has invalidated the Law Commission's views on judicial salaries. In July, 1966, a permanent judge of the Bombay High Court resigned his office stating publicly that because of the rising cost of living a judge could not maintain his position and status on salaries fixed sixteen years earlier, and it was not desirable that a judge should remain in office with a sense of resentment that he was not being fairly treated by the State. Two other judges of the Bombay High Court resigned after twelve years' service though they had nearly two years' service open to them as a result of the Constitutional Amendment which raised the retirement age of judges from 60 years to 62 years of age. This shows that increasing the age of retirement is not a remedy.

We have adopted the English system and it is not too late to profit by the English example. It is well known that round about 1954 two judges who had been appointed to the High Court intimated to the Lord Chancellor that they did not find it possible to continue on the Bench on the remuneration of £5000 per annum and that they proposed to resign and revert to the Bar. In England, persons who have been judges do not revert to the Bar. Judicial salaries were raised from £5000 to £8000 per annum and pensions were substantially raised. This is how Lord Denning describes the situation in his book *The Road to Justice*. After referring to a speech by

Sir Winston Churchill in proposing the increased remuneration, he said

"The independence of the Judges was threatened, not by political pressure, but by financial anxiety. Their salaries had not been raised for over a hundred years and the increase in the cost of living made it difficult for them to maintain a way of life suited to the gravity of the duties they had to discharge. On this occasion, Parliament unanimously voted them an increase in salary, raising it to £8000 a year, making them the highest paid servants of the State, except the Prime Minister and Chairman of one or two of the nationalised industries. Such is the price which England readily pays so as to ensure that the Bench shall command the finest characters and the best legal brains that we can produce. But I must remind you that their salaries are not nearly so high as they sound. Taxation reduces them to about £3000 or £3500."

The urgency of raising judicial salaries, with growing inflation and high taxation is even greater in India than it was in England, for the questions which our Courts are called upon to decide in the exercise of the power of judicial review have the most far-reaching effect on the questions of legislative power.

It may be said that we are a poor country and cannot afford to pay high salaries to judges. I would like to record my opinion that only an extremely wealthy country can afford the luxury of an ill-paid judiciary, and that the greatest sufferers of an ill-paid judiciary would be the Union and the State Governments because today the biggest litigant in India is the State.

"Lord Denning spoke truly when he spoke of paying the price so as to ensure that the Bench shall command the finest characters and the best legal brains that it can produce, and the reason is simple. The difference between a Judge who is a first class lawyer and a Judge who is a second class lawyer is so great as to be a difference in kind. Anyone who has attended the court of a first class judge and a mediocre Judge can see the difference at once. Liberties would not be taken with a first class Judge because members of the Bar do not wish to be made to look foolish by a person who is a master of the law and has high intelligence.

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Such a Judge would reject a spurious argument with the ease and certainty with which an expert from a mint spots and rejects a spurious coin. Today we hear much about arrears of work and the need for increased judicial personnel. In my opinion arrears of work cannot be diminished by diluting the quality of the judiciary. The correct remedy is to make a judicial career sufficiently attractive for lawyers of the highest standing.

I will pass on to the present amendment. Before 1-11-56 article 220 read like this —

“No person who has held office as a Judge of a High Court after the commencement of this Constitution shall plead or act in any court or before any authority within the territory of India.”

Under this article no retired Judge could practice anywhere in India after his retirement. Then after the Seventh amendment the article has been amended like this

“No person who, after the commencement of this Constitution, has held office as a permanent Judge of a High Court shall plead or act in any court or before any authority in India except the Supreme Court and the other High Courts.”

By this amendment they have given restricted liberty to the restricted rights to the retired High Court Judges. They can practise in the Supreme Court. They can practice in the High Courts other than the High Court in which he was the Judge. By the Seventh Amendment to the Constitution in 1956 this article has been substituted with the following object —

“An important factor affecting the selection of High Court Judges from the bar is the total prohibition contained in article 220 on practice after their retirement from the bench. It is proposed to revise the article so as to relax this complete ban and permit a retired Judge to practise in the Supreme Court and in any High Court other than the one in which he was a permanent Judge.”

This prohibition also applied to Judges appointed before commencement of the Constitution but continuing in office thereafter. In other words, ‘High Court in this article also includes the ‘Provincial’ High Courts existing before the commencement of

the Constitution. But the bar under article 220 is applicable only to such persons who have continued to hold the office of a Judge after the commencement of the Constitution.

Here I would like to quote the views expressed by Mr Justice P B Mukherji. He has dealt with this problem elaborately in his book ‘The Critical Problems of the Indian Constitution’.

“A more serious threat to the judiciary in India is the confiscation of the Judges’ right to practise in his own High Court, a professional right for which he has qualified in his life. Today the price of a seat on the Bench is the confiscation of that professional right to practise in the High Court of his home in the High Court where he was enrolled and where he practised before being elevated to the Bench.”

When the Constitution came into force in 1950, confiscation of this right to practise was total and complete and a Judge of the High Court could not practise before any court or tribunal anywhere in India. The folly and injustice of such a confiscation were soon realised and by the Constitution (Seventh Amendment) Act on the 19th October, 1956, a limited right to practise was granted to Judges of the High Court who leave the Bench. That right of practice for a High Court Judge was given only before the Supreme Court and High Courts other than the High Court of which he was a Judge. This was hardly any relief. For a Judge from Maharashtra, Kerala, Andhra or Calcutta to go after his retirement or earlier after leaving the Bench, to practise before the Supreme Court at Delhi and other High Courts of other States is not a practical proposition with any practical benefit to the Judges of this class at that age leaving their house, family and the associations they have. The very principle by which a Judge of the High Court is debarred from practising in the High Court of which he was a Judge is a sinister principle and an insult to the judiciary, the legal profession and to human dignity and nature. Neither Great Britain nor America has such a confiscatory provision in their Constitution. It is also a serious threat to the independence of the judiciary. A permanent Judge in a State High Court, if he has a difference with the Government

an wants to resign on that ground cannot do so for the simple practical reason that if he has to earn his livelihood thereafter by practising his profession for which he is qualified in life, in his town in his own context, he cannot do so. Why is it that this ban is imposed? When the reason is analysed the only ground for this ban appears to be the preposterous consideration that somehow or other a person who has once been a Judge in the High Court can, after coming back to the Bar of that High Court, influence the other Judges and the administration of justice. Sir this is an insult to the Judges and the judiciary and the administration of justice in the country. Judicial work is done in open court in the presence of contesting parties before the legal profession and before the public, by Judges who have to deliver reasoned and considered judgments in open court. Their errors can be corrected by a hierarchy of courts in appeal and revision. They are not like other administrative officers in the Income-tax Department and the Audit services, where orders can be made departmentally and whose sittings are not open to the public as a general rule.

A person who has been a Judge of the Supreme Court is debarred from practising in any court within the territory of India under article 124(7) of the Constitution. This again is a badge of slavery. This bar is irrational and cannot be supported on the very same reasons given above. A person who has been a Judge of the Supreme Court at Delhi cannot by the wildest latitude of imagination be thought of as influencing the administration of Justice if he returns to private practice either at the Supreme Court or in the High Court of his home State or in any other High Court that he may choose.

This constitutional bar and restriction on Judges preventing them from coming down from the Bench to practise at the Bar strikes at the very root of the independence of the Judiciary. The confiscation of the professional right to practise tends to induce servility in the Judges and the judiciary. It is submitted that this ban and restriction on the Supreme Court and High Court Judges should immediately be removed from the Constitution of India. That will improve the quality and standard of Judges in India and go a long way to ensure their real independence.

A bar like the one imposed by article 220 is found nowhere in any Constitution of any other country in the world. Even in India prior to 21-6-1960 there was no similar bar. There are a good number of eminent lawyers who have acted for some time as Judges, resigned their offices and resumed their practice in the same High Courts like Bombay, Calcutta, Allahabad and Madras. In order to attract the best talent from the Bar for appointment of High Court Judges, this bar embodied in article 220 must be removed.

Therefore, Sir, I am moving this amendment Bill to remove article 220. With these words, I commend the Bill to the House.

The question was proposed.

[The Vice Chairman (Shri Yogendra Sharma) in the Chair]

SHRI LOKANATH MISRA (Orissa)

Mr Vice-Chairman, Sir, I listened to the speech of the Mover of the Bill with as much attention as possible. But I could not persuade myself, even after the elaborate quotations he gave from great personalities in the legal profession and from elsewhere, that the retiring Judges should be allowed to practise in the same High Court. I do not have to tell you, Sir, nor to the hon. Members of this House, that this Government has scant respect for the judiciary. It has become evident of late. Therefore, I stand to oppose the proposal of Mr. Tinnai Vallalan all the more. The respect that the previous judiciary used to have during the British rule when India was not independent, is no more there. There has been a consistent attempt by the executive to bring it down as far as possible in the public eye. I do not know whether our Government has borrowed the idea from one of our friendliest countries to bring in the people's court into this country ultimately. If that be so, then the question of dignity and respect of the judiciary would have no place. Anybody, including our Chowdhary from Haryana, can be the Chief Justice of the High Court. But till our courts have not been turned into people's courts, we have to plead with the Government to retain the dignity of the judiciary as far as possible. And, therefore, I thought it my duty to stand up and speak a few words, even though I differ from the contention

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of the Mover of the Bill I agree with him that the emoluments should be raised. There was some interruption from the Congress benches when he was moving the Bill that we are a poor country and that we cannot afford to pay our Judges more. If we are a poor country, the Congress benches can go further and say that we cannot even afford a judiciary and therefore we want a people's court and those who would not take any emoluments at all would serve as judges because they would live on their own earnings, whatever be the source of their earning. That might be the contention also at one point of time if we cannot afford to keep up the dignity of the judiciary. Why does the ruling Party pay so much to their Governor, who are redundant and useless and with absolutely no job to do? If they can maintain people who can act as their spies and agents in the States and can afford to pay them Rs 5,000 each can't the democratic minded people in this country demand that the Judges should be allowed to maintain their dignity?

Therefore, I plead that emoluments should go up. But if more emoluments through salary are given to them, then income-tax would take its share out of it and probably no judge would like to get a higher salary in order to keep an elaborate income-tax account. What is needed is some kind of assistance to the judges, say, in the shape of a free bungalow, in the shape of one or two assistants at their residence, etc. That would probably go a long way in making judges more efficient. The mover gave examples of America and U.K. As you know, in the United States of America a judge does not have to retire unless he wishes himself. Unfortunately in this country nobody wants to retire, whether it is a politician or a judge or anybody occupying any position. He does not want to retire. A Minister is a Minister even when he is 75 years of age. And therefore, if a judge is allowed to be a judge, he might die as a judge just as a Minister dies as a Minister provided he can retain his seat. Therefore, in this country nobody wants to retire. Once he gets hold of some position, he wants to stay on there. So is the case with Members of Parliament. So is the case with Members of State Legislatures. Nobody wants to go out of the position unless he is elbowed out or is thrown out. Therefore, there should be something

in the rules that exist. We cannot compare everything *in toto* between the United States of America and India because the situations are different and, may be, many other things are different. I will not go into those details because that would take away my time. So we have to have some retirement age here and that is why we had prescribed it. But as I was saying, we cannot pay our judges as much as the United States of America pays or the U.K. pays. But we must pay them honourably well so that they can live as honourable men in this country, as dignified personalities. They have to keep aloof from the people at large, because the only knowledge that a judge is supposed to have is what is acquired by him through evidence. A judge is not supposed to go and collect information from different sources around, from the society and then deliver his judgment, nor is he supposed to colour his judgment by such private information. Therefore, he has to keep aloof in this country and more particularly so where our Government wants committed judges. If a Minister's influence is near at hand then the judge has to take care of it. So he has to keep aloof. If he has to keep aloof from a Minister, he has to keep aloof from the rest of the people. He cannot single out a Minister and say I will not go to his house nor do I invite a Minister. He has to keep out from the rest of the people in order that he preserves his dignity, his independence of judgment. So, as I was saying, he must be given enough of emoluments in order to keep his dignity, the dignity of the chair he occupies. Sir, the mover referred to talented people being attracted by higher salaries. I cannot probably support his contention. If the best talent in this country is to be attracted, then the salary of a judge has to be in the neighbourhood of Rs 30,000 to Rs 50,000 a month. That is what is the normal earning of a best talented man in this country in the metropolis, in Madras, in Calcutta, in Bombay or in Delhi.

What I would like to give them is not the full compensation of what they were earning in the courts. What we should give them should be enough to make a honest living with dignity. That is why I said that their emoluments must be raised. I do not suggest that the emoluments should be in the neighbourhood of what they were earning as talented lawyers. But they should be in context of the rising prices. Prices

have gone up twenty-fold whereas the Judges salaries were initially fixed during the British rule. There must be some rise in their emoluments.

The amendment of the mover is that a Judge should be allowed to practise in the same court where he was a Judge on the ground that he is not allowed enough pay that he will have to resign if he has some difference with the existing Government, etc. First of all a Judge would never have such a confrontation where he has to resign. If there is such a Judge, he can go to some other High Court. If he has to depend on the same High Court for his earning after resigning, then he is not worth the name of judgeship. He has to face tribulations. Let him learn to fight, if he wants to resign. So, that does not convince me very much. If he has some confrontation with the Government, he can go to some other High Court.

The other point is that he must have higher emoluments or else he must be given a chance to practise. That is also a point on which I cannot agree. My contention is that we have to keep the dignity of the High Court and Supreme Court and for that they should get higher emoluments. If they are allowed to practise in the same High Court, there are many dangers. I had indicated on many occasions in the past that retired Judges should never be considered for executive appointments, ambassadorial, diplomatic or otherwise. They could head commissions of purely judicial nature. Even there, with the present Government which want a committed judiciary, it is difficult for them to function because they will be persuaded to do many things and they cannot work there with a clear conscience. If a retired Judge is allowed to practise in the same High Court, then there will be many other allurements from the Executive. I am dead against that. If a retired High Court Judge starts practising in the same High Court, there is the danger of his being appointed as the Advocate General and he will get all Government cases whether he is capable of handling them or not. Even before retirement he will start cultivating the judiciary in order to get those cases.

Therefore, it would stand as a danger to the independence of the judiciary. I am against any retired Judge being allowed

to practise in the same High Court from where he retires.

Sir, I wanted to mention one more point. These days there have been many suggestions from many quarters that the emoluments of the Judges should be raised. Even our Law Minister, Shri Gokhale, I am told resigned from his Judgeship because he thought that in view of the scanty emoluments paid to the Judges, it would not be possible for him to carry on with his job and he did it with some kind of rancour against the Government. If it was the case with him then, it would not be difficult for him at least now to realise that it would be the case with every Judge in the country. He took a bold step and I call it bold because he did not go after it thereafter. He fought an election, got through, and fortunately, Sir, he was bestowed with a Ministership by the mercy of the Prime Minister. But I have nothing to say against it. But Sir, having attained a position where he could help his colleagues whom he had left in the lurch of still continuing as Judges, he should have done something. Having forsaken the profession in order to boost up his own future he should not have neglected the case of his other colleagues. I hope that he would remember the days when he was a Judge and when he must have a conflict in his mind at least for a week or for ten days or for a month before resigning, because he could not have straightaway signed his resignation letter overnight. He must have given some thought to it and given some thought to the possibility of a rise in the emoluments of the Judges and when he found that it was not there, he resigned. Now that he is in a position to eradicate that evil to the rest of his colleagues who are still suffering there in their positions, I would request Mr. Gokhale, who is not here unfortunately, to immediately look into the case and do whatever is possible and, Sir, whatever is possible must be done in a dignified way. You cannot expect the Judges to hold a red flag under the Communist banner and walk in the streets saying that they have formed a trade union and you should meet their demands. If Mr. Niti Raj Singh Chaudhury or our Deputy Home Minister, Shri Mohsin, is expecting them to come out in a procession before they raise their emoluments, they are mistaken. It must be done with the greatest amount of dignity. We have to keep up their dignity.

[Shri Lokanath Misra]

You see, a time has come now when most of the cases unfortunately are fought between a private citizen and the Government. At one point of time, as indicated by Mr. Denning, who was quoted here by the mover of this Bill, most of the cases were between the private citizens. Now, in these days of progressive slogans, things are moving in such a direction where each citizen's freedom is eroded.

On many occasions he has to go to a court of law. There are many occasions when there would be cases between a private citizen and the Government. Therefore, it is all the more necessary that the private person should have the feeling that the judges do not have any commitments at all, they do not have anything to look forward to as a favour, they are as independent as any person can be on earth. That is the reason why in a democracy it is the duty of every member of the judiciary, every Member of the legislature, to keep up that dignity, so that people would continue to have faith in the judiciary and also in the democratic system in this country.

Thank you.

SHRI G. A. APPAN (Tamil Nadu) : Mr. Vice-Chairman, Sir, I am beholden to my rev. colleague, Mr. Thillai Villalan, at least for taking into consideration that the retired judges will have to face any pecuniary aspect after their retirement. Perhaps it may not be out of place for me to say that Mr. Thillai Villalan may also become a judge of some High Court and perhaps he may also be placed in such a situation.

Mr. Vice-Chairman, Sir, what is the status, the decorum, the decency, the esteem that a judge of the High Court possesses or should possess? After a lengthy period of experience and service, people are elevated to this very high office. It is supposed to be unassailable. Here we have every reason to say that judges, after their retirement, should be free from pecuniary indignities. It is not only for the judges. It may be the case with every Government employee or private employee. Nobody should be in pecuniary indignities. What is the speciality that our friend Mr. Thillai Villalan should think about only this one sector?

A few days back I was travelling with Mr. Venkataraman our ex-Minister of the Central Cabinet and once a Member of the Planning Commission also. I was asking him What do you do, Mr. Venkataraman? Many of the Ministers, even Members of Parliament, though they would like to go to practise at the Bar, are supposed to be the masters of this whole country. They go and say, "My Lord . . .". Give me the whole world, Mr. Vice-Chairman, but I shall not go to this extent. One's respect is greater than anything else. Mr. Venkataraman said "Mr. Appan, you know, I have been responsible for the elevation of a number of my friends or lawyers to the status of judges. Perhaps you cannot expect me to go there and say, 'My Lord . . .'. This should be the attitude of everybody. I was discussing this aspect with my rev. colleague and my Party leader. Why should they practise in the same court?"

They will keep their respect if they keep away from that particular court where they had been functioning. He can call other people 'My Lord'. He will not mind it. But what is the fun of trying to address somebody who was junior to you and who has stepped into your shoes may be immediately or long afterwards, as 'My Lord'. Mr. Deputy Chairman, I would say that no retired Judge should be permitted even to practise in any court. He should also not be appointed to any Commission or Council. It is for this reason that they start favouring the Government and become committed judiciary. Everybody should be above wants. That is a small thing. The Judges are allowed even to work up to 65 years. A Government servant cannot serve after 55 years. They go up to 65 years. After that, they are appointed in Commissions and Councils. Like this, they become committed judiciary. I will request the Minister of Law to bear this in mind.

Mr. Vice-Chairman, Sir, the Judges are highly paid at the State level and at the Centre level. Nobody will be satisfied with whatever he gets. If you pay him one lakh of rupees a month, he will not be satisfied. So, we can do one thing. Please see that the lives of these Judges are insured for a sufficient amount to keep the wolf out of the door and to keep them away from any pecuniary wants. Furthermore, what else can we do? How

is this justified I do not know how many of you would agree with me. I think even for private practice there should be an age limit. When young people are not able to get employment and make both ends meet, these old people go on practising upto 75 or 85 years of age. They are not able to walk. Still they go on snatching money or grabbing money. I do not know myself. But my wife who is a Member of the Bar tells me that some senior advocates get Rs. 1,700 or Rs. 1500 per day. What are they doing with this money? Are they eating money? How can you allow this? These people should be taxed. Nobody should be given more than Rs. 51 per day. As Members of this Parliament, we get only Rs. 51. Do you mean to say that an Indian family should require more than Rs. 51 per day? Why should you allow other people to earn more than this?

The law profession should be taxed sufficiently and nobody should be allowed to go like that. Let that money go to the Government Exchequer.

Furthermore, unfortunately, I have got into some litigation by one man, a landlord whose land I occupied for school and public purposes. He has dragged me into a court of law. The court has given an injunction, a temporary injunction it is called and what a pity? It has not been vacated even after five years. For what is the temporary injunction? It is because the school which is run by Mr. Appan should not have a *pucca* roof, it should have a tiled roofing, this school should not have cement flooring. I do not know what type of this Judge is. Could any judge tolerate a temporary injunction for five years preventing the school authority from putting a *pucca* roofing and cement flooring for public purposes? What is this? Should there not be some justification that the temporary injunctions should be vacated within a certain period of time?

Mr. Vice-Chairman, I am now about 60. I have seen the previous judges at work, how hard, how seriously they worked. Nowadays, the judges absent themselves without notice. They simply absent themselves and do not sit in their chairs in time. They go as they please, they take leave as they please and still they are the representatives of the Government. For their lapse, for their delay, justice is being delayed. Justice delayed is

justice denied and unless there is some moral backbone, some law that particular cases should be decided within a particular period, there would be no justification for this type of people to be in their seats. And now you want to help them. The only course that is open and that will solve the problem is not to allow any judge, be he a Supreme Court Judge or the judge of any other court, to hold the post of any senior Government officer. Nobody who was in Government service, in the enjoying of the Government salary, should be allowed to get into other profession after his retirement. Retirement age for judiciary should be cut down from 65 to 55. In this way, there will be no discrimination between the judiciary and a common man or between the judiciary and the administration and things like that.

Mr. Vice-Chairman, one thing more. Please see that the judiciary people and everybody in Government service or private service are sufficiently protected by insurance of various kinds, that they are better off and that they are not in want of anything after their retirement.

Further, they should also see that they limit their families. You know, the financial position depends upon the number of family members that one produces. Here we are advised to limit our family to two or may be to three but how many judges are there who have less than three children? So, please see that they are sent out or they are not employed. No doubt, my plea may be a little whimsical but it is rational and practicable. Unless you have a norm like this, they will go on producing, multiplying like mosquitoes, frogs and like that. Not only do they do it but they do less work. They are not manual labourers.

In these circumstances I feel that we should congratulate my friend, Mr. Thillai Villalan, for taking their difficulties into consideration at least in his imaginary way. Not all people are in indigent financial circumstances. The Judges are well off. I do not know which Judge is finding difficulty for his food even. Which Judge is begging in the streets? They should also see that they do not borrow beyond their means. They should have the capacity before they borrow. We have to cut our coat according to the length of the cloth. We have to see that

[Shri G. A Appan]

we are able to manage our own budget within the limited resources. And there lies the beauty of a good wife for a good Judge. Like two cattle dragging a cart the Judge and his wife should manage their family in a wise and balanced way and that only can solve the trouble which my hon. friend has thought of and nothing else will do it.

PT BHAWANI PRASAD TIWARY (Madhya Pradesh) : Are you supporting or opposing it ?

SHRI G. A APPAN : What I would do if I were in the Government and what I would do otherwise ; that is what I said.

THE MINISTER OF STATE IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI NITI RAJ SINGH CHAUDHURY) : Vice-Chairman, Sir, at the outset I would like to thank the mover of this Bill, Mr. Appan and Mr. Misra who is incidentally not present in the House. I will not be straying here and there but I will confine myself to the Bill and the matter before the House. The mover desires that article 220 of the Constitution should be deleted so that a Judge of a High Court should be allowed to practise in that High Court or any other High Courts anywhere throughout the length and breadth of the country. Sir, restrictions on Judges practising in courts were first introduced in the year 1920 when along with the undertaking to retire on attaining the age of 60 years a person selected for appointment as Judge of a High Court was required before accepting office to give an undertaking that he would not practise in the High Court to which he was appointed. Thereafter the framers of our Constitution while enacting article 220 decided that no person who has held office of a Judge of a High Court after the commencement of the Constitution shall plead or act in any court or before any authority within the territory of India. That is to say, the restrictions imposed in the year 1920 were extended and a Judge of a High Court was not allowed to practise anywhere in the country. Thereafter in the year 1956 this article 220 was amended because it was felt that it was causing hardship and by that amendment the old

position that was prevailing in the year 1920 was restored and after this amendment the Judges of High Courts were allowed to practise in other High Courts or before the Supreme Court. The reason for this restriction was based on human considerations because there might be persons who might try to create an atmosphere favourable to them if they were allowed to practise in their own High Courts. Sir, if this article is omitted the purpose for which these restrictions were imposed would go away. Therefore it would not be possible for the Government to accept the motion of the mover and I would therefore request him to withdraw the Bill.

A point has been made, and a very valid point, by Shri Lokanath Misra. Though he is not here now I would like to reply to it. He said the conditions of service of the Judges should be changed. He also said that change of emoluments will not benefit them because most of them would go in taxes. I think he is right and I may state here that the matter is under the consideration of the Government.

Changing the conditions of service of Judges is engaging the attention of the Government and as soon as a decision in the matter is taken this House and the other House will be moved to effect necessary changes.

With these words, I request the Mover to withdraw his Bill and in case he does not I am sorry I will have to oppose it.

THE VICE-CHAIRMAN (SHRI YOGENDRA SHARMA) : Mr. Villalan, will you reply on the next day ?

SHRI THILLAI VILLALAN : Sir, I will reply on the next day.

THE VICE-CHAIRMAN : (SHRI YOGENDRA SHARMA) : The House now stands adjourned to meet again at 11 a.m. on Monday, the 6th August.

The House then adjourned at fifty-six minutes past four of the clock till eleven of the clock on Monday, the 6th August, 1973.