

(i) A copy of the Government of Mysore Notification G.S.R. No. 39 dated the 28th January, 1971, publishing the Mysore State Police (Disciplinary Proceedings) (Amendment) Rules, 1971, under sub-section (4) of section 163 of the Mysore Police Act, 1963, read with clause (c) (iv) of the Proclamation, dated the 27th March, 1971, issued by the President in relation to the State of Mysore.

(ii) A statement (in English and Hindi) giving reasons for not laying simultaneously the Hindi version of the above Notification on the Table.

[Placed in Library. No. See LT-1347/17 for (i) and (ii)]

STATEMENT BY MINISTER *RE*.
GUARANTEES GIVEN BY GOVERN-
MENT OF GUJARAT

THE MINISTER OF STATE IN THE MINISTRY OF STEEL AND MINES/इस्पात और खान मंत्रालय में राज्य मंत्री (SHRI SHAH NAWAZ KHAN): On behalf of Shrimati Sushila Rohargi, I beg to lay on the Table a statement (in English and Hindi) of Guarantees given by the Government of Gujarat during the period from the 18th June 1971 to the 6th November, 1971, under section 2 (2) (a) of the Gujarat State Guarantees Act, 1963, read with clause (c) (v) of the Proclamation (G. S. R. No. 691), dated the 13th May, 1971, issued by the President in relation to the State of Gujarat. [Placed in Library. See No. LT-1344/71]

PETITION SIGNED BY THE RE-
SIDENTS OF THE NEW RAJENDER
NAGAR COLONY NEW DELHI *RE*
GRANT OF OWNERSHIP RIGHTS
TO THE ALLOTTEES

श्री लाल आडवाणी (दिल्ली) : श्रीमन्,
मैं आपकी आज्ञा से न्यू राजेन्द्र नगर कालोनी
नई दिल्ली में भूमि के अलाटियों को स्वामित्व

के अधिकार प्रदान करने के सम्बन्ध में उस
कालोनी के पैतालीस निवासियों द्वारा हस्ताक्ष-
रित एक याचिका प्रस्तुत करता हूँ।

THE SUPREME COURT JUDGES
(CONDITIONS OF SERVICE)
AMENDMENT BILL, 1971

THE MINISTER OF STATE IN THE
MINISTRY OF LAW AND JUSTICE/
विधि तथा न्याय मंत्रालय में राज्य मंत्री
(SHRI NITI RAJ SINGH CHAUDHURY) :
I move :

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

In the matter of conditions of service like leave, leave salary and pension, the Judges of the Supreme Court are governed by the provisions of the Supreme Court Judges (Conditions of Service) Act, 1958. Under the Act governing the Supreme Court Judges, when a Judge of the Supreme Court avail of leave on full allowances, he is entitled to full salary (equal to monthly rate of pay) for the first 45 days and leave allowance at the rate of Rs. 2,220 per month for the rest of such leave whereas the Government servants get 4 months' leave on average pay. If a Judge is forced to take long leave reasons of illhealth, he has to avail of leave on half allowances during which period he is entitled to an allowance of Rs. 1110 per month only. To give some relief in such cases, it is proposed to extend to the Judges of the Supreme Court the facility of commuting leave on half allowances into leave on full allowances on medical certificate upto a maximum period of three months during the entire service as Judge on the analogy of provision obtaining for Government servants.

At present, when a Judge of the High Court is appointed to the Supreme Court, the losses all the unavailed of leave earned by him as a Judge of the High Court. In order to remove the hardship caused on this account, it is proposed to provide for carry

[Shri Niti Raj Singh Chondhury]

forward of such leave upto a maximum of four months on half allowances subject to the following conditions :

(i) The period of four months will be included in the total period of leave admissible during the entire service as Supreme Court Judge.

(ii) The leave allowance admissible during the period of leave so carried forward will not exceed the entitlement as a High Court Judge.

(iii) The allowance for such leave will be payable by the State Government concerned.

The Supreme Court Judges (Conditions of Service) Amendment Bill, 1971 has been passed by the Lok Sabha without any amendment. I now move that this Bill be taken up for consideration by this House.

The question was proposed.

SHRI KALYAN ROY (West Bengal) : Sir, the Bill intends to increase the fringe benefits and the salaries of the Supreme Court Chief Justice and the Judges when they are on leave. The increase by itself is not very significant but the issues which are raised are highly significant. Sir, is it the time to increase the salary of those who are getting Rs. 2,000/- to Rs. 3000/- per month. Are they the most exploited class when the bulk of the workers in the defence industries and in mines are not getting even one day's leave? Sir, only the other day we entered into an agreement with the Minister of Mines on behalf of nearly 10,000 workers of the National Mineral Development Corporation, Workers of iron ore and other mines were to get some extra wages and fringe benefits from the 15th December under the agreement but we are told that the Government has stopped it in view of the emergency. So I do not think it is proper or fair to increase the benefits of the Judges at this stage. My main criticism are however not this. My criticism is this; has the Government ever evaluated or assessed the composition, the work, the performance, the functioning of the judiciary? If the Government had assessed it, they would have found that the whole judi-

ciary is in an utter mess. Not only that, today if there is so much of discontent and frustration in the working class it is because of the present composition of the judiciary and because of its composition it has openly and unashamedly sided with the employers.

MR. CHAIRMAN : Mr. Kalyan Roy, I appeal to you not to attack the judiciary in this manner.

SHRI KALYAN ROY : I am not attacking personally any day. I say the whole judiciary is in a mess because of the policy which is being persuaded by the Government of India. We have found that whenever the working class has gone to the judiciary for justice, justice has been denied. In any conflict between working class and capitalists which we have tried to solve within the jurisdiction of the high courts and the judiciary we have found that the High Courts and the judiciary are not neutral at all. The judiciary has always sided with the employers and for this I accuse the Government of India and the Law Ministry for they are responsible for this composition of the judiciary. Most of the High Court Judges and the Supreme Court Judges unfortunately come from the landlord class and the capitalist class.

SHRI MAN SINGH VARMA (Uttar Pradesh) : Do you mean to say that the landlords are all dishonest?

(Interruption)

SHRI KALYAN ROY : I am only criticising the composition of the judiciary.

SHRI T. V. ANANDAN (Tamil Nadu) : The hon. Member wants committed Judges?

(Interruptions)

SHRI KALYAN ROY : I am not attacking anybody; I am criticising the selection. In the United States of America when a Supreme Court Judge is appointed, their appointment is subject to the approval of the Congress. Some such sort of thing should have been here. And Because of this composition of the Supreme Court and the High Courts the working class do not get fair

treatment. When this is the composition are we not surprised when we find that Mr. Nayak who was the main culprit in scuttling the Barauni-Haldia pipeline which is the lifeline of this country was reinstated in November-December 1971 by orders of the Court while in the same Supreme Court four leading trade unionists of Delhi Cloth Mills were allowed to be victimised, rather their victimisation which had been declared illegal by the Tribunal was upheld by the Supreme Court. The mass scale closures of factories and mines has come about unfortunately from wrong decision of the Supreme Court? Previously what used to happen was when a closure took place because of a *mala fide* action on the part of the management the working class had the right to raise an industrial dispute and they used to get compensation for *mala fide* closure or *mala fide* look-out. All these rights were taken away by a stroke of pen of the Supreme Court when it said in a Judgement that even if the factory is closed because of a *mala fide* action of the management the workers have no right to raise an industrial dispute. I have appeared in case after case; I can mention a number of cases like the *mala fide* closures of the Dhemo Main Colliery, a concern of a Surajnagar Mal, Benali Colliery of Karnani, S. K. Jambad Colliery, a Goenka concern and so on. The Tribunal Judges were sympathetic but because of the Supreme Court judgment even if it is *mala fide* closure they could not take any steps and they said the workers cannot raise industrial disputes. As a result you will find in 1967-68 after this decision of the Supreme Court the closures jumped up by 100 per cent. Now what is happening is even for a trifle, for a small dispute, the management is declaring closures. They close it down in order to suppress the workers, in orders to force them to surrender to the employers. And after we surrender, they open the concerns up. And we cannot go to the court and the court cannot take the cases. Is it fair? Over a period of five years if you study the cases of dismissals of leading trade union workers, the cases which have gone to the Supreme Court, you will find, Sir, that in 99% of the cases the dismissals have been upheld, because Supreme Court said that the court cannot sit and hear appeals arising out of the inquiries by the managements. Because of these decisions the managements are happy, they

only have to issue a chargesheet, hold fake inquiry and dismiss the worker. These are the positive failures of the Supreme Court which are today creating tension, creating anger. I can mention the latest case. The Ministry of Mines took over 214 coking coal mines; this was absolutely essential. But the mine owners, before the take-over, had removed the machinery, removed the equipment, removed the pumps and removed the cash, and I find that Mr. Ashok Sen goes to the High Court and gets an injunction from the Judge, Mr. Deb, who, before he became a Judge, was appearing as counsel on behalf of some collieries. Is it fair? Is it proper? Is it proper for the Supreme Court Judges and the High Court Judges to spend their time with the employers; I have seen them in the biggest hotels along with the representatives of the Chambers of Commerce sharing cocktails, and after the evening cocktails come the midnight judgments. What I am criticising, Sir, is performance because I have been raising question after question in this House as to what is the performance of the Judiciary. I would put before you three questions and answers. The first question and answer was in 1962. I asked the question about the arrears of cases which had piled up.

THE MINISTER OF STATE IN THE DEPARTMENT OF PARLIAMENTARY AFFAIRS/संसदीय कार्य विभाग में राज्यमंत्री (SHRI OM MEHTA): How can Mr. Kalyan Roy know about the cocktails unless he was there with them?

SHRI KALYAN ROY: Unfortunately, I have never been to a cocktail. I have been pointing out the arrears of cases which had been accumulating and which the Minister admitted.

MR. CHAIRMAN: Please be brief. There are a large number of Bills to be taken up and finished.

SHRI KALYAN ROY: In reply to Question No. 491 the Minister of Justice, Mr. Gokhale, said that the Calcutta High Court arrears were round about 72,000 cases, over 72,000 cases in 1969-70. In the Allahabad High Court there was over 63,000 cases. And the cases which were pending for more than two years were over 34,000 in Calcutta and over 27,000 in Allahabad,

[Shri Kalyan Roy]

Like that he gave the list of arrears of other High Courts and said that in order to cope with this problem the number of Judges all over India had been increased from 245 to 300 during the last three years and in the Supreme Court the number of Judges had been increased from 11 to 12 in 1969. Sir, I expected that after the appointment of more Judges in the Calcutta High Court—the increase had been from 32 to 39—definitely the arrears had been cleared up. No, the arrears have gone up. And what is the latest answer given by the Minister of Justice? After the appointment of nine additional Judges and after confirming ten Judges as permanent, the accumulation had gone up from about 72,000 to about 75,000 in 1971. What a wonderful performance for the extra benefit, for the extra privilege, for the extra demand; Not only that. My last point is this. I raised this question last month and asked if it was not true that there was terrible discontent because of the failure of the Judges to clear the arrears. And the Minister replied—I read from the reply given on the 15th of November—“Yes”. So there is terrible discontent. He said that the arrears were going up and that a committee had been appointed with a Supreme Court Judge as Chairman. What are they doing? A poor man today is afraid to go near a High Court because he knows he can never get Justice. Not only that; I am shocked to find the Chief Justice going openly to the press and making a statement, as it appeared on the 15th of March, and the statement by the Chief Justice was that there must be increase in salary and improvement in service conditions. Is that the way the Judges will demand their salary? I am against an increase in their salary because we have seen that the working class and the poor people of this country have everything to lose from the judiciary, and nothing to gain. So, the time has come when you should not succumb to the pressure tactics, but change the whole judiciary lock, stock and barrel, only then the poor people of the country can get remedy and the biggest impediment to social advance—unfortunately I am forced to say it—is the judiciary and because of the composition of the judiciary as selected by the Ministry of Law.

SHRI C. D. PANDE (Uttar Pradesh):
What about Barristers?

(Interruptions)

MR. CHAIRMAN : Mr. Shejwalkar. Let us go on with the business. I expect brief speeches today because there is a lot of work. (Interruption). Mr. Kulkarni, will you please allow the work to go on?

श्री ना० कृ० शेजवलकर (मध्य प्रदेश) :
अध्यक्ष महोदय, मेरा भी विचार ऐसा था कि संक्षेप में इस बिल के सम्बन्ध में अपना निवेदन करता, परन्तु अभी हमारे मान्यवर सदस्य ने जो बात कही उसके ऊपर विचार करना आवश्यक हो गया।

सबसे पहले मैं यह निवेदन करूंगा कि जहां तक बिल का प्रश्न है, मैं यह अपेक्षा करता था कि श्री चौधरी साहब के बजाय श्री गोखले साहब इस बिल को प्रस्तुत करते तो ज्यादा अच्छा होता; क्योंकि मुझे याद आ रहा है कि पिछले समय में जब वे हाई कोर्ट के जज थे, उन्होंने असन्तोष व्यक्त किया था कि जजेज की तनखाह कम है और वह बढ़नी चाहिए। मुझे मालूम नहीं कि जब से वे मंत्री हुए हैं, उनको कुछ लाभ हुआ है या नहीं, जिस स्थिति में वे हैं वे जाने।

इस बिल में जो छोटे-छोटे सुधार किए गए हैं, उनका मैं समर्थन करता हूं, परन्तु मैं फिर से शासन से आग्रह करूंगा कि जजेज की तनखाह, वेतनमान आदि के बारे में विस्तृत सुधार लाने चाहिए। होता यह है कि जजेज, एडवोकेट से जज बन कर आते हैं आयु के आखिरी दिनों में सुप्रीम कोर्ट के जज तो प्रेविटस कर ही नहीं सकते, हाई कोर्ट के जज दूसरी जगह प्रेविटस कर सकते हैं, अपने हाई कोर्ट में प्रेविटस नहीं कर सकते, इन सब कठिनाइयों को देखते हुए यह समझना चाहिए कि एक तरह से उनके लिए इस आयु में काम करने में स्वतंत्रता नहीं है, बंधन हैं। जजेज से किसी भी तरह से राजनीतिक कार्य कराना या उन्हें कमिशन में बिठाने की तजवीज करना या रिटायरमेंट के

बाद एम्प्लायमेंट देना, जिसको लालच कहा जाता है, वह लालच न दिया जाय, यह हमारे दल का दृष्टिकोण रहा है। रिटायरमेंट के बाद जज को एम्प्लाय करने की परिपाटी का हमारे दल ने विरोध किया है। इसको ध्यान में रखते हुए मैं यह आवश्यक समझता हूँ कि इसके बारे में पुनर्विचार किया जाय और उनको कम से कम इस स्थिति में लाया जाय कि वे अपने पद से जब रिटायर हों तो उसके बाद साधारण अच्छे नागरिक की भांति अपना जीवन-यापन कर सकें, इसकी व्यवस्था करनी चाहिए और लीव और एकोमोडेशन के जो छोटे-छोटे सुधार लाए हैं, उनकी जगह विस्तृत सुधार लाना मैं आवश्यक समझता हूँ।

जहां तक हमारे बन्धु ने जो विचार प्रगट किए उनका सम्बन्ध है, मैं यह कहूंगा कि उसके बारे में मुझे थोड़ा आश्चर्य भी है और थोड़ा खेद भी है। एक दृष्टि से विचार किया जाय तो वास्तव में जिस दल का वे प्रतिनिधित्व करते हैं, उसकी दृष्टि से आश्चर्य वाली बात नहीं है। आज प्रश्न यह है कि हमको किस प्रकार की न्याय-पद्धति चुननी है। यह मूल सवाल है। मेरे मित्र बैरिस्टर हैं। हमने ब्रिटिश न्याय पद्धति का अनुसरण किया है। लगभग सौ-डेढ़ सौ वर्ष से जिस पद्धति को अपनाए हुए है उस पद्धति में एक विशेषता है—अच्छी है या बुरी है यह मैं नहीं कहता। उसकी विशेषता यह है कि न्यायालय का काम यह है कि जो कानून बनते हैं उनका इंटरप्रिटेशन करना, उसका मतलब निकालना। मतलब निकालते समय जो मोटिव इम्प्यूट करने वाली बात कही गई है, मैं उसको बिलकुल उचित मानता। मोटिव की बात कही जाय तो मनुष्य हम सभी है, हर एक में कुछ न कुछ कमजोरी होती है और उनमें वह कमजोरी की मात्रा ज्यादा है यह कहना गलत है। मेरे मित्र ने कहा कि वे एक विशेष क्लास से हैं, इसलिए उस प्रकार से विचार करते

हैं, मैं इस बात का घोर विरोध करता हूँ। अगर ऐसा होता तो वे स्वयं इस सम्बन्ध में जो विचार उन्होंने रखे वे न रखते। मैं समझता हूँ वे आनेष्ट आदमी हैं, सच्चाई से अपने विचार प्रगट करते हैं, उनके प्रति मैं बड़ी श्रद्धा रखता हूँ। वे इस सभा के अन्दर बैठे हुए हैं, हमारे जैसे सदस्य हैं और यद्यपि वे किसी अच्छे घर के हैं, जमींदार भी हैं, बैरिस्टर भी हैं, लेकिन इसका मतलब यह नहीं कि जो यहां पर वे विचार रख रहे हैं...

SHRI KALYAN ROY : On a point of personal explanation. I am not a Barrister. Mr. Pande even said that I take Rs. 1,000 for brief. That is not correct. I always appear in cases as a trade union representative.

SHRI BHUPESH GUPTA (West Bengal): Sir, on a point of order. Can an hon'ble Member cast reflection on Mr. Kalyan Roy by calling him a Barrister?

SHRI SASANKA SEKHAR SANYAL (West Bengal): May I tell him that Mr. Kalyan Roy is not ashamed of being a Barrister's son?

MR. CHAIRMAN : He just looks like one.

SHRI BHUPESH GUPTA : Sir, one of the stupidest thing on the earth is to become a Barrister.

SHRI C. D. PANDE : And you are one such.

श्री ना० कृ० शेजवलकर : तो मैं यह कह रहा था कि बैरिस्टर न सही, बैरिस्टर न हों तो मैं समझ सकता हूँ कि इंटरप्रिटेशन का क्या तरीका है वह नहीं समझ पा रहे होंगे और एडवोकेट होने से एक विशेष दृष्टिकोण से उस बात को हम समझ सकते हैं, वह दृष्टिकोण आप का नहीं हो सकता है, लेकिन जहां तक आप के अच्छे कुल का होने का संबंध है, जहां तक आप के जमींदार खानदान के होने की बात है, जिनको आपने, व्हाइट कालर्ड कहा, जज को कि वह

[श्री ना० कृ० रोजवलकर]

रेस्पेक्टेबिल फैमली के हैं, तो मैं इतना तो कह सकता हूँ कि जैसे अच्छे विचार रखने की बात आप अपने लिए कह सकते हैं, वैसी ही अपेक्षा आप जजेज से भी रख सकते हैं। आपको उन के द्वारा अच्छे विचार रखने की अपेक्षा ही रखनी चाहिए। वैसे एक्सेप्शन तो हर जगह हो सकते हैं, अपवाद हर जगह हो सकते हैं स्वाभावतः अगर आप हर किसी आदमी को यह कह कर कि वह बेईमान हैं, वह गलत दिशा में विचार करता है, यह विचार कर के चलेंगे तो मैं समझता हूँ कि जीवन में आपको सिवाय निराशा के और कुछ हाथ नहीं लगेगा। प्रत्येक मनुष्य का आप को विश्वास करना चाहिए और प्रत्येक का अदब करना चाहिए। जहाँ तक आपने केसेज के उदाहरण दिये, मैं समझता हूँ कि उसका कारण एक ही है कि इंटरप्रिटेशन का जहाँ तक सवाल है, आप कानून बनाइये, आज हमने संविधान को भी परिवर्तित कर दिया है और इस तरह से हमारे बनाये कानूनों पर सुप्रीम कोर्ट ने जो निर्णय लिया है, वह मैं यह समझता हूँ कि उन्होंने स्वतंत्र विचार से निर्णय लिया है। स्वतंत्र विचार ही उन निर्णयों के आधार है। उनकी समझ से कानून सही नहीं है। आपने उसके बाद दूसरे कानून बनाये। तो आप दूसरों को दोष क्यों देते हैं। आपने इंडस्ट्रियल डिस्प्यूट्स ऐक्ट के बारे में बताया। जो कानून है उसका उन्होंने अपनी बुद्धि के अनुसार इंटरप्रिटेशन किया। अगर आप कानून में त्रुटि समझते हैं तो आप उसको फिर परिवर्तित कर दीजिये। यदि आप समझते हैं कि मूलभूत कानूनों में आपको परिवर्तन करना है तो सारे एक सिस्टम को बदलिये, आप समझते हैं कि सारे जुडिशियल सिस्टम को बदलने की जरूरत है तो उसमें मैं समझता हूँ कि आपकी यह पार्लियामेंट भी आ जाती है। आज आप कहते हैं कि हम गरीब क्लास को रिप्रेजेंट नहीं करते हैं। आज पार्लियामेंट का

मेम्बर बनने के लिए जो खर्च करने की इजाजत आपने कानून के अनुसार दी है, वह रकम 35 हजार रुपये की है . . .

श्री सभापति : अब आप खत्म करिये।

श्री ना० कृ० शंजवलकर : तो मैं जानना चाहता हूँ कि कौन वर्किंग क्लास का आदमी है ऐसा जो कि चुने जाने के लिए 35 हजार रुपये खर्च कर सकता है ? तो यह सारा जो सिस्टम है, उस पूरे सिस्टम को आपको परिवर्तित करना होगा वरना जैसा आप कह रहे हैं, यह चीज मेरी समझ में नहीं आती। जब तक आप कोई आल्टरनेटिव उसके लिए नहीं रखते कि इस प्रकार की कोई न्याय की प्रणाली होनी चाहिए, तब तक केवल इस प्रकार चिल्लाने से कोई फायदा नहीं होगा। आपको सफाई से इसके लिए कोई धारणा बनानी पड़ेगी। यह कहते हुए मेरा फिर से आग्रह है कि इस सम्बन्ध में शासन फिर से विचार करे और अगर संभव हो तो शासन इस बात पर ध्यान दे कि जजेज को रिटायरमेंट के बाद किसी दूसरे काम का सहारा न लेना पड़े और वे अच्छी तरह ये रह सकें, इसके लिए उचित व्यवस्था की जाय और उन को कोई दूसरा एम्प्लॉमेंट न दिया जाय इसका प्रबंध किया जाय।

SHRI THILLAI VILLALAN (Tamil Nandu) : In participating in the discussion on the Supreme Court Judges (Conditions of Service) Amendment Bill, 1971, I want to make certain suggestions for the consideration of the hon'ble Minister. On the 6th of this month I have submitted a memorandum to the hon'ble Minister of Law and Justice, Mr. Gokhale. I would take this opportunity to underline certain important portions in the memorandum regarding the service conditions of the Judges of the High Court and also in the Supreme Court and conclude my speech. Sir, in the memorandum itself I have made clear that the salary and other monetary benefits which the judges are now deriving are not sufficient. I shall now quote the relevant portions and conclude.

Before the Constitution came into force, the chief Justice of the Federal Court, i.e. the predecessor of the Supreme Court, received a salary of Rs. 7,000 p.m. and the Judges, Rs. 5,500 p.m. Most of Chief Justices of High Court got Rs. 5,000 p.m. and the Judges, Rs. 4,000 p.m. These salaries had been fixed 80 years earlier. But though the Constitution threw a vastly increased burden on these courts which have to adjudicate on the validity of various enactments, it was found necessary to reduce these salaries. This was because it was at first thought that the President of India should get a salary of Rs. 5,500 a month and since nobody should get a higher salary, the salary of the Chief Justice of India was fixed at Rs. 5,000 and of the Judges at Rs. 4,000. The salary of the Chief Justices of the High Courts was fixed at Rs. 4,000 and of the Judges, at Rs. 3,500. Ultimately, the President's salary, which was tax-free, was fixed at Rs. 10,000 p.m. But the Constitution Drafting Committee, which had admitted that reducing the salaries of the judiciary was not desirable, clean forgot to raise the judges' salaries correspondingly.

Since then various efforts have been made by people anxious that the judiciary should be able to maintain the highest standards and should attract the best legal brains in the country, to raise the judges' salaries at least to compensate them for the increase in the cost of living and in taxation. But all these efforts have so far failed to move the Government to action. As late as 1963 a Committee of three Supreme Court Judges suggested marginal increase in the emoluments of the higher judiciary. Its recommendations were.

	Present salary	Recommended salary
	Rs.	Rs.
Supreme Court Judges	4,000	4,500
High Court Chief Justices	4,000	4,500
High Court Judges	3,500	4,000

Sir, even these very modest recommendation were rejected by the Government.

MR. CHAIRMAN : Please conclude, Mr. Villalan.

SHRI THILLAI VILLALAN : One or two more points and then I will conclude.

SHRI BHUPESH GUPTA : Sir, he is very relevant.

MR. CHAIRMAN : Other Members also want to speak. And there are eight Bills to-day.

SHRI THILLAI VILLALAN : Sir, I am pleading for the High Court and Supreme Court judges. They cannot come and plead here.

MR. CHAIRMAN : Plead, but do not read. Plead very briefly.

SHRI THILLAI VILLALAN : Yes, Sir. In a similar situation, countries like Britain and the USA which are anxious to maintain judicial independence and standards, have reacted vastly differently. In this connection, Sir, Justice Denning has given his opinion on the salary increase. I will take one or two minutes and conclude. He has 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 their 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 £3,000 a year."

The last most telling comment of Lord Denning was :

"Such is the price England readily pays so as to ensure that the Bench shall commend the finest character and the best legal brains that we can produce."

Then, Sir, the present pension is also very meagre. The true remedy to make the Bench more attractive, however, is to provide for substantial pensions. The Law Commission in 1958 recommended fixed pensions of Rs. 2,000 a month for Chief Justices of High Courts and Rs. 1,750 per month for Judges.

[Shri Tnillai Villalan]

The Government rejected this suggestion as also the 1953 suggestion of the Committee of Supreme Court Judges for the following scales of pension for each completed year of service : High Court Judges—Rs. 2,000; High Court Chief Justice—Rs. 2,250; Supreme Court Judges—Rs. 2,500; and Supreme Court Chief Justice—Rs. 2,750. This is subject to a limit of Rs. 7000 per year for a High Court Judge and Rs. 10,000 per year for a Supreme Court Judge. This is also rejected. So, on this occasion I want to stress that the present salaries of the Judges of the High Courts and the Supreme Court should be revised. These points must be considered by the honourable Minister.

With these words I support this Bill.

SHRI SHYAM LAL YADAV (Uttar Pradesh) : I want to submit my remarks on the two Bills—that is, also on the Bill yet to be moved—because I do not want to speak again. My submission is that from the speeches made so far and from the representations and the public opinion prevailing in the country it is clear that the emoluments and other privileges available to the Judges of High Courts and the Supreme Court are not commensurate with their work of independence and impartial justice. I think that requires a comprehensive legislation. Another matter that requires consideration is that the Judges should have freedom and they should be care-free; they should not have to bother about their future, particularly about their pension and other allowances. As you know, many young persons from the war go to the Bench and they sometimes have very little experience at the bar. So sufficient emolument and privileges should be provided as recommended—this was mentioned earlier by my friend, Mr. Villalan—by the committee of eminent High Court—I think the Supreme Court—Judges, That should be accepted by the Government. There is an impression that Judges rush round for appointments and gaining favour from the Government after retirement. There is one reason for that because they do not find sufficient the emoluments and privileges available to them after retirement. As you know, people with long experience at the bar, eminent lawyers having a good practice, are not very much inclined to go to the Bench. That is why many young lawyers are

being promoted, and that too with great difficulty. There is another aspect which my learned friend, Mr. Kalyan Roy, also stated. It is not that Judges of the Supreme Court and High Courts always decide cases between employers and employees. If you go by the figures, I think of all the litigation that is pending before the Supreme Court and High Courts, hardly 5 per cent cases may be relating to workers. It is not that Judges always deal with workers alone. A large number of the population in the country, agriculturists, farmers, traders, businessmen, small people, are also there. Their interests are also to be looked after by the Judges; it is not only the workers, the small organised sector, always supported by our friends over there, the Government employees, who rule the country. And during this emergency this Government was pleased to grant them over a crore of rupees dearness allowance. They are Government servants, the country is ruled by them. If the people grudge, it is because of the Government servants. They are getting good salaries. My friends will support their cause still more. But what about the poor traders, small labourers, small people? A trader does not mean that he is invariably a lakhpati or a karorpati. Every trader is not so. There are small traders, they are small people, having small earnings. You are ignoring them. They form the majority in the country. What has the Government done for these various small people? What has it done to increase their income? The farmers, workers, in the villages, they do not get any increases of dearness allowance which the Government employees get. What about the labourers? Whenever there is a rise in prices, the Government employees get extra dearness allowance. But actually it is this awarding of dearness allowance which causes price-rise. And who is going to support the common people against such rise in prices? They have to pay more while they do not get anything more. My friend said Judges must sympathise with the workers and their cases. No doubt they should do. But it is not failure on the part of the judiciary, but it is failure on the part of the political leadership. The law as you made is not to our liking. The law is always interpreted by the Judges and they cannot go beyond the sphere of the law, the law as it is. Besides, there are economic disparities in our country. Our country particularly is a caste-ridden

country, ours is a caste-ridden society. That overrides all types of inequalities in this country. There may be inequality of income and other things. But the caste-ridden society overrides everything and I submit the sections constituting the vast majority of population in this country are not represented either in High Courts or Supreme Court. Farmers and people coming from villages, backward classes and Scheduled Caste people are not represented in the Benches of High Courts and Supreme Court. This Government and Chief Justices have never cared for Scheduled Castes and backward class people and therefore justice is denied to these sections. Government will be well advised—this government which is professing socialism, progressivism and secularism—to care for these down-trodden people, Scheduled Castes and backward class people. They should be represented in the Benches of High Courts and Supreme Court. Unless that is done we cannot expect justice to them. Lastly, I would emphasise that Judges should be given sufficient pension, salary and allowances.

SHRI AKBAR ALI KHAN (Andhra Pradesh) : So far as this Bill is concerned, it has a limited purpose. . .

SHRI LOKANATH MISRA (Orissa) : May I suggest that though we take both Bills separately whoever wants to speak can speak on both ?

MR. CHAIRMAN : The understanding is that there will be no speeches on the next Bill.

SHRI AKBAR ALI KHAN : I support this Bill and I am glad that the government has come with small mercies so far as Judges are concerned. I think, before I try to meet some of the points brought out by other friends, I would like to say that so far as pension of the Judges is concerned, it is a matter which should be very seriously looked into by the government. I fully appreciate the point of view of my friend Shri Yadav and the D. M. K. leader that Judges, according to our society, according to our Constitution and according to things as they stand, have a place and place of respect in our Constitution and in our society. If you want to change the whole

structure, it is entirely a different thing and it is in the power of the Parliament to change it. But so long as we are in the present situation, they have to be respected. Who can appreciate this better than you, Sir, because you had been a Judge and a distinguished lawyer. We have a system which gives confidence to the people that they are getting justice. Man does not live by bread alone. Of course, that is necessary. At the same time it is necessary that the society should feel that justice should be done, and justice is being done . . .

SHRI BHUPESH GUPTA : The hon. Member is speaking with such heroism and gusto as if he has won the battle of Chamb. . .

(*Interruptions*)

SHRI AKBAR ALI KHAN : The difficulty with my friends Shri Bhupesh Gupta and Shri Kalyan Roy is that they are not fully alive to the human aspirations emotions, and other things. Unfortunately they cannot realise the life of a man. I they had been married follows, they would have been in a better position to realise human life.

SHRI BHUPESH GUPTA : My friend is happily married. Still how is it that he has not become a Judge ?

SHRI SASANKASEKHAR SANYAL : Sir, so far as Members of Parliament are concerned, is there any difference between bachelor and a married man ?

MR. CHAIRMAN : There is no difference.

SHRI BHUPESH GUPTA : Undoubtedly there is difference, because 51 in one case becomes 626 in the other.

SHRI AKBAR ALI KHAN : Coming to the question of salaries of Judges, they are experts and they occupy a place where they have to be impartial and just. Therefore, I think, as already suggested by some, their salary should be reviewed. Similarly, even in the socialist countries, the experts get large fees. These people are experts and you must appreciate that fact.

Sir, the other thing that I wanted to tell is that our Judges, whether in the High Courts or in the Supreme Court, have done well and earned our respect. It may be that we do not agree with them.

SHRI BHUPESH GUPTA : Mr. Akbar Ali Khan, did you as a Barrister get a favourable judgment ?

SHRI AKBAR ALI KHAN : This is too much, Sir. I would say. . . .

SHRI KALYAN ROY : Judges have done very well for the capitalist class.

SHRI AKBAR ALI KHAN : . . . that so far as the working class is concerned, whatever amenities, whatever benefits, they must get, for those things you make laws and tell them to interpret. So long as there is a law, it is their duty to interpret that law and if you want to change it, it is your province and if you do not do it, it is your failure and not the failure of the judges.

Then, Sir, I would like the Government to consider the question of pension of the judges very urgently and, in that case, Sir, we can say that they should not be given any job after retirement. I agree with some of the hon. Members who said that the judges should not look to the favours or avouritism of the Government. This is very necessary. But, Sir, you must also see that when they retire, they do not starve. I feel, Sir, that this Bill should be passed and I would say, Sir, that the question that has been raised by Shri Kalyan Roy is entirely irrelevant (*Inter-uptions*). The points raised by Shri Kalyan Roy are entirely irrelevant and we do not improve of them and we have great confidence in our Judges. Thank you, Sir.

श्री ए० पी० जैन (उत्तर प्रदेश) : साहब, न्होंने बड़ी मेहनत की, आज इनका एलाउन्स बल करवा दीजियेगा ।

MR. CHAIRMAN : Yes, Mr. Lokanath Misra.

SHRI LOKANATH MISRA : Mr. Chairman, Sir, I was shocked when I listened to some of the speeches made in the hon.

House, particularly the speech made by the CPI Member, Mr. Kalyan Roy.

SHRI KALYAN ROY : I wanted you to be shocked. I am happy that you were shocked.

MR. CHAIRMAN : You have shocked him and that is enough. Please sit down.

SHRI BHUPESH GUPTA : Presently I am shocked, Sir.

SHRI LOKANATH MISRA : I shall be happy if you are ever shocked. Sir, I was shocked as I said. . . .

MR. CHAIRMAN : This is not a debate on shocks.

SHRI LOKANATH MISRA : Primarily it is a debate on shocks, because, Sir, extraneous matters were brought into the debate on the Bill and I hope that there would be at least some warning from the Chair. . .

MR. CHAIRMAN : All right. Please finish quickly.

SHRI LOKANATH MISRA : . . . and when I found that he was going scot-free with everything that he could say against the Judges, I thought it my duty to get up and speak in order that I could defend the dignity of the judiciary in the country. Sir, there are some people who are in the habit of quarrelling with their tools, because they do not know how to use them and Mr. Kalyan Roy is one of those parliamentarians who do not know how to use their tools. . .

SHRI BHUPESH GUPTA : Mr. Kalyan Roy is not a Palkhiwala.

SHRI LOKANATH MISRA : Yes, I am against Palkhiwalas and Bhupesh Guptas. Sir, he is a Bar-at-Law and he should be sent to the land from where he got his degree in order to plead there and India is not the place.

Now, Sir, coming back to the Bill, . . .

SHRI KALYAN ROY : Sir, he should have gone to Orissa. . .

(Interruptions)

MR. CHAIRMAN : Mr. Kalyan Roy, I cannot allow you to interrupt like this. Please sit down.

SHRI LOKANATH MISRA : Sir, my friend, Shri Kalyan Roy and others profess socialism. I am against the so-called socialism and I have no doubts about it, no hallucinations about it and no illusions about it. But these people who profess the so-called socialism should prepare the law in order to get the objective justice from the courts. If they make defective laws and put them to the Judges, in order to interpret them, naturally, in their objectivity, they give judgments which they feel they must. Therefore, if you want socialism to be ushered in your own way, you cannot expect the High Court Judges to be your banner holders or to be your followers and they have to be as objective as they have been and, Sir, I take off my hat to them, because they have been very objective. Sir, the point that I wanted to make is that the salaries of the High Court Judges were fixed some twenty-five years ago. Many salaries have been revised in the meantime. I do not want any revision of their salaries. What I want to be revised is that they must be given proper allowances and proper facilities to carry on in a dignified way. That is not being done. If you raise their salaries, you tax them and you take away whatever additional benefit they get. Therefore, what is needed is that in order to maintain their dignity you must provide for some facilities. Supposing you give them a free house, you give them free stenographers, this and that—whatever is needed for good life—that must be provided for.

So far as the post-retirement benefits some of the judges get, are concerned, I am against it. I have talked about them. If the judges, after their retirement, join politics as people's representatives, we have nothing against it. If the people choose them, so much the better. But if the Government provides them with some job which they look forward to during their tenure of judgeship that is something to be condemned. If the Government is doing it, the Govern-

ment is to be condemned. If any of the judges is looking forward to it, he is also to be condemned. That tendency must be curbed. That tendency, of late, has been growing.

Sir, my last point. The system of judiciary we have in this country is not accessible to the poor man. Mr. Kalyan Ray made only this good point. Who is responsible for it? The middlemen like Mr. Kalyan Ray, Mr. Bhuosh Gupta, Mr. Akbar Alli Khan. Sir, they charge they are so called socialist alwayers something like Rs. 3200 or Rs. 3300, and they stand between the poor man and the judiciary. Therefore, the common man does not have access to the highest judiciary in the country because these 'Shylocks' who stand in the way in the name of socialism, debar them. They must be prevented from getting such fat fees, Thank you.

MR. CHAIRMAN : Mr. C.D. Pande. Be brief.

SHRI C.D. PANDE : Mr. Chairman, Sir, in this House there is no one more competent to understand the difficulties of the judges than you and the hon. Minister of Justice Shri R.R. Gokhale. By virtue of your eminence, you were raised to the Bar 30 year ago. You resigned from the Bench because it was not worth while to stay there with that salary

(Interruptions)

SHRI BHUPESH GUPTA : Very great reflection on you, Sir, that you are after money, I cannot allow my Chairman to be . . . *(Interruption)*. You left the Bench because of money; that is what he is saying

MR. CHAIRMAN : It is not his concern as to why I left the Bar.

SHRI C.D. PANDE : But Mr. Gokhale made a public statement which was printed in all the papers of India that the conditions of services of the judges are so bad, and he resigned. That is known to Mr. Bhupesh Gupta and others.

SHRI PITAMBER DAS: (Uttar Pradesh) Economically bad or otherwise bad?

SHRI C. D. PANDE : Economically, of course. The hon. Member, Mr. Niti-Raj Singh Chaudhury, who is very prosperous lawyer, knows it. Sir, I feel that what we pay to the judges is not enough, to keep them in dignity and comfort. And, therefore, when they retire, they are looking for some job. They are generally made members of this commission or that commission of inquiry and they prolong their tenure of job as long as they can. Therefore, to avoid all these things, we must raise their salaries and their pension so that when they retire they have not to look for anything else.

The other point which Mr. Kalyan Roy made, which has been replied to by Mr. Lokanath Misra, is that compared to the salary of the judges the fees that these barristers and lawyers take are huge. Look here. There is the Chief Justice of the Supreme Court—no less able than any person appearing before him. He takes Rs. 17.50 a day by way of his fee, known fees; we do not know what is passed under the table.

MR. CHAIRMAN : Don't make such observations.

SHRI C.D. PANDE : The lawyer appearing before him will take Rs. 1700 a day, while the judge, who is presiding, who has to give the judgment, who has to balance the arguments here and there, gets only Rs. 100 or Rs. 150 a day. I think there is no more inequitable thing as it is between the bar and the bench. Therefore, one thing that you can do to bring socialism is to limit the fees of the members of the bar to a reasonable amount. I do not say that they should be given just a hundred rupees a day. Fix at Rs 500 a day at the most so that even a brilliant lawyer like Mr. Setalvad or Mr. Chari or Mr. Krishna Menon wants or anybody who want to take up a case can have Rs. 500 a day which is a very big sum. Therefore, I stand firmly for reducing the fees of the bar and for raising the salary, emoluments, pension, etc. of the bench. Thank you.

SHRI K. CHANDRASEKHARAN (Kerala) : Sir, there is very little in this legislation which really gives benefit to the Judges. I would like to say that it is something like a piecemeal legislation for there are only two aspects touched in this legisla-

tion, particularly in relation to the High Court Judges. Thirty days' full salary leave is being converted into 45 day' full salary leave and a total extent of three months of commuted leave commuting half salary leave into full salary leave is also being made available.

Much has been said in regard to the mode of appointment of Judges and the quality and type of their work. It may be that there is necessity to democratise the mode of appointment of Judges, but so far as the quality and the type of their work is concerned, much of the criticism that has been made in this House and outside, I should think, was unwarranted, particularly in view of the fact that we ourselves in Parliament are in a way responsible for most of the judgments because the fundamental rights chapter had come up against a lot of difficulties in so far as the judicial approach was concerned. It was only a few days back that the hon. Minister for Law and Justice admitted on the floor of the House that the provisions in the fundamental rights chapter of the Constitution has been rather exploited by the rich few and dividends have gone to the rich few and that was the reason why the Constitution itself was being amended.

Sir, I want to state that there is not much of a reason for the increase in the salary of the Judges or in the retirement age fixed for Judges. In fact, an increase in the salary or an increase in the retirement age would not solve the problems. The problem would have to be tackled in a different way and in a different atmosphere. May I state that the first and foremost thing that should be made available to the Judges is rent-free Government quarters ? So far as the Supreme Court Judges are concerned, Government quarters are available for them, but as far as the High Court Judges are concerned, no Government quarters are available for them and most of them are accommodated in private rented quarters which really creates delicate and embarrassing problems.

The second point is the question of fixation of a conveyance allowance. A conveyance allowance would be very essential,

particularly in view of the increasing cost of conveyance.

The third thing I want to stress is something in pursuance of the Constitution (Fifteenth Amendment) Act. Under the Constitution (Fifteenth Amendment) Act, article 222 (2) was incorporated. But I should think that so far as article 222 (2) in relation to the transfer of High Court Judges from one High Court to another High Court is concerned, really that article has not been worked and the real reason why it has not been worked is that the service conditions that exist now for Judges are inadequate. The compensatory allowance to a transferred Judge which Parliament has, by law, to fix under article 222 (2) has not been fixed so far. There has also not been any general order of the President fixing such compensatory allowances. I may particularly appeal to the Government to see that conditions are created for the working of article 222 (2) so that the purpose of the Constitution (Fifteenth Amendment) Act could be implemented.

One more thing and I conclude. That point concerns the judges who are retired. It has often been repeated on the floor of the House that appointments should not be given to retired judges. I am of the view, Sir, that particularly certain types of appointments in private companies etc. should be debarred so far as the retired judges are concerned, but certainly the retired judges would be very useful so far as the appointments in quasi judicial commissions are concerned. Thank you.

श्री जगदीश प्रसाद माथुर (राजस्थान) : मैं एक तो इस समय जजेज की जो सेवा की शर्तें हैं, उसके साथ में जजेज की नियुक्ति के संबंध में निवेदन करना चाहता हूं। जो इन्डाय-रेक्ट रिक्रूटमेंट होता है, जो सर्विसेज में आलरेडी हैं, वहां तो समझ में आता है कि जो सीनियर जजेज होते हैं, डिस्ट्रिक्ट जजेज होते हैं, उनमें से आप हाई कोर्ट के जजेज बनाते हैं, लेकिन जहां आप प्राइवेट एडवोकेट्स को इसमें लेते हैं उसके संबंध में मैं सरकार से निवेदन करूंगा कि मेरे

पास एक ऐसा उदाहरण है सभापति महोदय, कि दल-बदल की प्रक्रिया जजेज के लिए भी होने लगी है, जैसे दूसरी पार्टी के लोगों का दल बदलाव करते हैं वैसे ही एक उदाहरण राजस्थान में मिला है कि किस प्रकार अपोजिशन को खत्म किया जाए, इसलिए जो वहां लीडर अपोजिशन थे, उसको परचेज करके हाई कोर्ट का जज बना दिया और अपोजिशन को सफर करना पड़ा। अगर इस प्रकार की स्थिति, पोलिटिकली मोटिवेटेड ऐक्शन कहीं पर होता है, तो यह उचित बात नहीं है, वरना कोई पेनल हो और उसमें जो माने दिये एडवोकेट्स हैं, वे चाहे किसी भी पार्टी में हों उसको सरकार लेती है तो हमें पता नहीं, लेकिन यह जो मोटिवेशन वाली बात है यह नहीं होना चाहिए। सभापति महोदय, जो हाई कोर्ट जजेज हैं, सुप्रीम कोर्ट जजेज हैं, उनकी जब पेनल में नियुक्ति का सवाल आता है, उनको जब किसी कमीशन का अध्यक्ष बनाया जाता है तो उनके मन में भी एक भावना रहती है सरकार के प्रति; क्योंकि देखा गया है कि जिन जजेज ने सरकार की आलोचना की है अपने निर्णयों के अन्दर, उन जजेज की पेनल में नियुक्ति या किसी कमीशन में नियुक्ति होने का कम अवसर हुआ है, क्योंकि उनकी नजर कड़ी होती है और वे निष्पक्षता से चलते हैं। तो मेरा यह भी कहना है कि केवल कुछ जजेज की बार-बार कमीशन के अन्दर नियुक्ति करना—यह हमने अपने प्रान्त में देखा कि कहीं भी फायरिंग के सम्बन्ध में इन्क्वायरी हुई तो एक ही जज रखा जिसने कि . . .

श्री सभापति : आपने कह दिया। दुहराने की जरूरत नहीं।

श्री जगदीश प्रसाद माथुर : सरकार की तरफदारी की उसको दुबारा भी नियुक्त करेंगे। तो इस प्रकार से भी आगे जाकर जजेज की नियुक्ति में सरकारी पक्ष लेने की बात आती है।

अभी कल्याण राय जी ने एक प्रश्न उठाया था, एक सवाल का उत्तर देते हुये कि जजेज के पास मामले बहुत ज्यादा पेन्डिंग हैं और उसके सम्बन्ध में न्याय नहीं कर सकते। तो इसलिए मैं इस सम्बन्ध में माननीय मंत्री जी का ध्यान दिला कर अपना स्थान लूंगा कि अपने देश के अन्दर हाई कोर्ट की जो व्यवस्था है वह भिन्न-भिन्न प्रकार की है। कहीं पर यूनीफाइड हाई कोर्ट हैं, कहीं पर हाई कोर्ट की बेंचें हैं। अब इस बारे में सरकार एक दृष्टिकोण पर नहीं पहुंच सकी। जहां तक सस्ता और जल्दी न्याय मिलने की जनता की मांग है, उसके लिए जहां कई प्रांतों में आपने बेंच बना रखी है, वहां मैं यूनीफाइड हाई कोर्ट की मांग रखता हूं। यह राजस्थान की भी मांग है और अन्य प्रांतों की भी मांग है कि हाई कोर्ट का फुल बेंच बना कर लोगों को सरलता से न्याय मिल सके। इस नाते से आप विचार करें तो मैं समझता हूं कि यह उपयुक्त अवसर होगा।

SHRI G. A. APPAN (Tamil Nadu) : Mr. Chairman, Sir, I entirely agree with the objects of the amending Bills before the House today. I only want to make certain observations from my practical knowledge and experience in respect of cases that are going in the High Courts and the Supreme Court. I agree with the House and the sponsors of these amendments that the status of judges should be improved. The status of any profession or person does not improve by the amount of salary that he receives in terms of rupees, annas and pies. That will not do. One has to content him-

12 NOON

self with the type of work that is assigned to big professions like the judiciary. If the respect or the status of any profession is to be measured by the amount of salary that one gets, do you mean to say that the Members of Parliament or the Legislatures are inferior to those in the judiciary? I do not think anybody will agree with that. So one has to contend with the amount of work and the nature of work given and the responsibility vested on the broad shoul-

ders of the judicial personnel. Here I am really very pained to see that in the whole of this vast country not a single Scheduled Caste member is a Judge in the High Courts or in the Supreme Court. Should not the country be ashamed to say that this is democracy, this is secular when they put a bar on the members of the Scheduled Castes to occupy the Benches of the judiciary? Do you mean to say that we do not have sufficiently qualified people, efficient people, eminent people, honest people, hard-working people from this community and from the working classes also? I have seen that when one member of a community gets into the judiciary, he takes only his own relatives into the judiciary ranks. The Government should take care that once a man is in the helm of the judiciary not a single man from his community or his kith and kin comes into the ranks of the judiciary. I want an assurance on the floor of this House from the Minister and I implore on the Prime Minister. Shrimati Indira Gandhi, who speaks so much about this and the great benefactor of the protest classes and the depressed classes to instruct all the High Courts to appoint Judges from the Scheduled Castes within a month or two and at least 20% of the Judges in the Supreme Court from this community. The workload has to be fixed for every Judge if we want proper justice from the judiciary. Let the Government appoint more people rather than delay justice. Justice delayed, is justice denied. I have known cases going on for years and years. I want the Judges to study the cases before entertaining the cases. I have known cases where Judges do not do justice by not studying the cases. The Government should also make it a point not to give any job or assignment to Judges after retirement. Thinking they will be put in charge of some commission they may even miscarry justice. Do you mean to say that the juniors cannot take up the vacancies? When so many of our people are unemployed, why should you appoint these retired people who sometimes retire even after 65? Sir, let them take their well-deserved rest than be parasites on the poor man's revenue and block the younger people from entering into the judiciary. On the other hand they should be encouraged to form themselves into free legal aid societies to render free service rather than trying to grab more and more money in this way.

Sir, one more point. I think if the status of the judiciary is to be increased, the income of the advocates should also be reduced.

MR. CHAIRMAN : You cannot go on like this. You must finish now.

SHRI G.A. APPAN : The salary and income of the advocate, however eminent he may be, should be limited. It should not be more than Rs. 4000/- or 5000/- and he should not have a monopoly of all the cases starving the other poor entrants in the profession.

SHRI R. T. PARTHASARATHY (Tamil Nadu) : Mr. Chairman, Sir, I rise to support the Bill and I also wish to add that it has pained me greatly to listen to the arguments advanced by an hon. member of this House, Mr. Kalyan Roy. I would only describe his statement that the entire judiciary in the country is in a mess and some Judges are influenced by their evening cocktail parties where they are entertained, is nothing more than a travesty of truth. It is very unfortunate that a distinguished Member of this House should have indulged in such statements which I would describe only as a political harangue. Today if democracy is sustained in this country, if the rule of law is upheld in the country, it is because of the integrity, honesty and intelligence of our judiciary. To the High Court Judges and to the Supreme Court Judges I would like to pay my humble tribute on the floor of this House. The whole world has acknowledged that the Supreme Court of India, with its Judges is one of the best-constituted Courts throughout the world and there can be no doubt about it. It is in that context that I would like to add my tribute. And when I pay my tribute today I would like to take this opportunity to say that our Judges are the upholders of the rule of law just as much as Parliament is the upholder of the rule of law because both of us work under a democratic Constitution, a republican Constitution with separation of powers recognised and it is here I would like to emphasize that but for the judiciary and but for the co-ordination between Parliament and the Judiciary it will be impossible for us to work the democratic set-up and uphold the rule of law. It is for the Judges to inter-

pret the law and it is there that they render justice by applying the rule of law. May I quote on this occasion a very famous statement made by Pandit Jawaharlal Nehru on the floor of the two Houses of Parliament when he described the importance of the judiciary on the one hand and of the two Houses of Parliament on the other? He said let the Judges interpret the laws in the way they ought to be interpreted and leave the rest to Parliament to carry on the democratic way, of life. That why I used the word 'co-ordination' because Pandit Jawaharlal Nehru said on that occasion—I distinctly remember—that the judiciary has the most valuable role in the national life under the Constitution. At the same time referring to the conflict between the judiciary and Parliament Pandit Jawaharlal Nehru took care to tell the Judges and to tell all people who believed in the rule of law that it is not Parliament alone that decides it finally but it is the High Court of Parliament that does so. That was how he wanted the Administration of the country to be carried on. Here may I take this opportunity to say that it was very unfortunate that in one of the judgments the Judges might have erred and I do not attribute any motive for that—namely in the Golak Nath case. It is for the Judges to interpret the law as it should be and not import a political motive in their decisions. This is for the High Court of Parliament to quote the words of Jawaharlalji to decide the future of our country. I support this Bill, not only these leave benefits should be granted but I would take this opportunity to plead that the Judges of the High Courts and the Supreme Court with reference to their allowances should be treated on a par with Cabinet Members. Their status is in now way inferior to that of the Cabinet Members with reference to the various allowances like car allowance, housing accommodation, chauffeur allowance, stenographers and things like that, they should be treated on a par with Cabinet Members. There only there will be a sense of security and equality so that when a Judge retires he does not retire into oblivion but he retires with a sense of satisfaction that he has discharged his duties in the seat he had occupied, duties not only to the clients but duties to the country as a whole.

With these words I support the Bill.

SHRI BHUPESH GUPTA : Sir, we have been treated to a very excellent speech by my friend Mr. Parthasarathy who accused Mr. Kalyan Roy of delivering a political harangue. But I am not sure whether Mr. Parthasarathy's conscience does tell him that his performance has been the crass flattery of an ambitious lawyer knocking at the Supreme Court and the High Court. Now let us not go into a characterisation of speeches. If it were to be harangue or flattery, I would always prefer harangue to flattery.

SHRI C. D. PANDE : You can do better.

SHRI BHUPESH GUPTA : I am very glad that in the course of the discussion some very important points of principles have been raised. First of all, Sir, I must make it clear that we are not one of those who do not have proper respect for the judiciary in the abstract sense of the term or in theoretical terms. We do that. In every social system there will be a judiciary, and the judiciary is entitled to the respect due to it. But we are concerned with the concrete proposition of the judiciary as constituted in our Constitution, as it is functioning in our country, against the background of the compulsions of socio-economic changes. Sir, we view the judiciary not as some static gods, but as an institution which functions against the socio-economic background and, naturally, we expect them, even in interpreting law, to respond to the promptings of our people. This is something which cannot be regarded as heresy, as disrespect to the judiciary. You are aware, Sir, many hon. Members have paid tribute to you as a jurist and a lawyer. I share their sentiments. You have been an eminent lawyer. But then, Sir, learning is not always the quality of some of our speakers in this House. Sir, you know very well the English system itself has to undergo many changes. There was a time before the Industrial Revolution when the King was the fountain of justice, and afterwards, when Cromwell ordered and the King was beheaded, the Judges also reconciled themselves to this position. In fact, the English political system did develop at a certain point of time when there were severe conflicts, between the Judges on the one hand func-

tioning in the name of the King and trying to hold back society as at that time the bourgeoisie were trying to set at nought the House of Commons, and the elected representatives who wanted a change. Now this conflict is part of history. That way the judiciary has taken the society forward also. I do not see as to why, when we are making the criticism, we should be accused immediately of becoming some infidels, as if we have no regard at all for those institutions which are to be honoured, and so on. Nothing of the kind. Therefore I say, let us not go into this kind of thing. It is all right; since fortunately I am not a practising lawyer—I have never earned a pie as a lawyer nor do I intend to earn a pie as a lawyer—I do not care as to how the learned Judges, who still like to be called "My Lords"—and Judges in India like to be called still "My Lords"—I do not care how my "Lords" will feel when they hear about my speech. I am not bothered by "Lords", or my "Ladies" for that matter although Mr. Parthasarathy is sitting by a lady. Now, let us come to the proposition.

SHRI DAHYABHAI V. PATEL (Gujarat) : Why do you forget the fair lady in front of you?

SHRI BHUPESH GUPTA : I am speaking of the lady on that Bench sitting by his side.

MR. CHAIRMAN : You finish now.

SHRI BHUPESH GUPTA : Now, Sir, I have just started. I will not speak on the other Bill. We are not opposed to giving the Judges the necessary amenities and facilities and looking after them well, but whenever the workers demand something the Judges invoke all the laws from Balckstone downwards in order to see that the workers do not get it. The capitalist-class has a way of declaring lay-off and closure. We cannot do that kind of lay-off and closure. Then, the Judges would have understood what it means to fight for the workers' demands. Whatever is needed reasonably, let them have. We have no quarrel, but we are interested in seeing, when we sanction money or funds that they function well, that they function for the people. I am not speaking of any party. They should

interpret law keeping in view that the world is moving, that it is not static. They should be efficient, honest, impartial and above reproach. This is all that we want of the learned profession. In this regard it has to be stated very frankly that we have been disappointed by the system, by the judiciary at the highest level. Our Constitution requires drastic changes and certainly we can make some suggestions. It is our sovereign right. My suggestion is that Judges should be appointed, whether in the High Courts or in the Supreme Court, not in the way they are appointed. They should be appointed on the basis of a panel approved by Parliament in the case of the Supreme Court and the State Legislature in the case of the High Court. The panel should be discussed in the House so that we can, within limitations, discuss the merits and demerits of the names proposed and then approve a panel out of which Judges can be appointed. Why do I say so? The appointment of Judges should not be kept completely outside the purview or outside the competence of the representatives of the people. In other countries Judges are answerable to the Legislature. Judges can be impeached even in our House or in the other House in a manner. Therefore, I suggest that with the changing times let us appoint Judges. If we can elect the President and, if I may say so, if we can elect the Vice-President why cannot we, for that matter, choose, the Judges and put them in the Supreme Court or in the High Court? In that way we can have a panel of thirty names. Out of them you appoint them to fill the vacancies as you like. That should be the procedure. I think the Constitution requires change on that score. The appointment of Judges at present really is appointment by the executive and by the Home Minister or the Chief Minister. In Bengal we have known how Judges would be appointed over a telephone call. A telephone call from the Chief Minister was good enough for discovering the great learning and merit of the man who is to be put on the Bench. Dr. Bidhan Chandra Roy, I believe, was the biggest Judge-appointer than anybody in this country in those days.....

SHRI C. D. PANDE : And he appointed good Judges.

SHRI AKBAR ALI KHAN : They do it on the recommendation of the Chief Justice

SHRI LOKANATH MISRA : The fact that Dr. Bidhan Chandra Roy had not recommended your name shows how good he was at choosing Judges.

SHRI BHUPESH GUPTA : Only if I was in the legal profession my name could have been recommended, but my friend, Mr. Lokanath Misra, was in the film profession and he was a failure in that profession: That is why he has come here. I had never gone to the legal profession. So, I say you are better there. You are a charming man good at acting and you can do it. Therefore, one, Judges are biased in favour of the exploiting-classes because they come from the exploiting-classes. We are subject to our social environment. Even if we wish we cannot shake them off. We are conditioned by the society in which we live. We are conditioned by our families. We are conditioned by our education. We are conditioned by our friends and relations amongst whom we live. Therefore, the Judges are not angles. They do not live in heavenly abode. An unsuccessful advocate or politician can be a successful Judge, and *vice versa*. We have seen unsuccessful politicians becoming successful Judges . . .

MR. CHAIRMAN : NOW, Mr. Bhupesh Gupta . . .

SHRI BHUPESH GUPTA : This is an interesting point. I can give you examples. I have seen coming to the Bench good Judges after their defeat in the elections. I have also seen people leaving the Bench and becoming good Judges, or good Judges becoming bad politicians. In this House I have seen both. So, Sir, this is the position. So, I was saying that they are prejudiced. This is what you know of a recent judgment. Therefore, do not talk about their judgment because Judges differ amongst themselves Mr. Setalvad in his book has pointed out how the judgment sometimes is manipulated as in the famous Golaknath case. That statement has not yet been contradicted by Mr. Subba Rao or any of the Judges who produced that wonderful judgment in the Golaknath case. The gentlemen of the Golaknath case are eminently unfit to become not only a Judge but even a munsif . . .

MR. CHAIRMAN : Mr. Bhupesh Gupta please . . .

SHRI BHUPESH GUPTA : . . That point should be borne in mind. With regard to lawyers...

MR. CHAIRMAN : They do not require comparison.

SHRI BHUPESH GUPTA : But that is a relevant point. While the Judges get very little,, lawyers get much, and they belong to the same institution, namely, the Bar. Sir you would not have been what you are if you had not been at the Bar, and you would not have been at the Bench what you have been if somebody was not sitting with you on the Bench with whom you were talking all the time. I do not know whether there is any time limit there. You spoke well while at the Bar. I have heard you. I heard you in the court. You are always very brief and fortune smiled on you as you are smiling on me now. Therefore, Sir, that should be gone into. Why should the lawyers get Rs. 2,000 per day? Why, they even get Rs. 10,000. In my case an hon'ble Member of this house appeared for me at Rs. 3,000 per day— it was simple case --- because somebody was interested in getting me into trouble. Why should it be so? Surely, Sir, this discrepancy should be removed. I cannot ask the Judges to take less when the people appearing before them go on addressing them as "My Lord" four, five times. Therefore, it is a very valid point. My suggestion, therefore, will be : Abolish the present system of legal profession. Start a Collegium of Advocates, started not by the Government, but under the aegis of the state, if necessary by a provision in the Constitution, and the Collegium will distribute legal work to the lawyers on merit, nature of the cases having been taken into account, keeping in view that the Junior lawyers have to be built up and helped. The Collegium will determine the maximum fee which has to be paid as also the minimum fee. If the Collegium system is brought forth then you can stop concentration of wealth at the legal profession.

Sir, there are two categories of income tax evaders in the country. Apart from the big business, there are evaders in the profession of firm stars to which my friend Mr. Misra, belongs, and another is the profession of lawyers, the top ones...

SHRI C. D. PANDE : Excepting the Chair.

SHRI BHUPESH GUPTA : I know my lawyer friends must be angry with me. Sir you have been a big lawyer but you have never evaded income tax. Otherwise tell me, Sir, how can a lawyer become a multi-millionnaire? If he earns a lakh of rupees annually and pays income tax at the rate of 80 percent. How is it arithmetically possible for a lawyer to become a multi-millionnaire within a short time? It is not possible if he pays income tax at the existing level of income tax.

AN HON. MEMBER : Any exmple ?

MR. CHAIRMAN : All right.

SHRI BHUPESH GUPTA : Examples I can give. However, a prosperous lawyer is an income tax evader. The actual or potential burden of proof should be on him to show that he is not an income-tax evader.

MR. CHAIRMAN : Do not generalise.

SHRI BHUPESH GUPTA : These are some of the concrete suggestions. I think you will appreciate that it is no use trying to beat our breast all the time that lawyer's is a respectable profession. We have in the socialist countries the system of Collegium of Lawyers wherein cases are distributed and justice is distributed between lawyers and lawyers. This should be the approach. The legal profession at the top has become a money-grabbing profession. Palkhiwalas come in order to placate the big business people and then themselves become big businessmen and directors, polluting the legal system. If anybody is attacking the dignity of the legal system, it is these Palkhiwalas and others . . .

SHRI C. D. PANDE : Mr. Chari and Mr. Krishna Menon also.

SHRI BHUPESH GUPTA : Anybody—even if it is Bhupesh Gupta blame him. I am not concerned with individuals as such. Change the system.

MR. CHAIRMAN : Please conclude.

SHRI BHUPESH GUPTA : Lawyers should not be allowed to earn so much money. Therefore, these are some of the suggestions. What Mr. Kalyan Roy has mentioned is a very valid case. I say, give the lawyers the pension they want. I shall ask my friend Mr. Kalyan Roy not to grudge them this money. But they should come down to the earth to realise society's change . . .

MR. CHAIRMAN : You come down to your seat.

SHRI BHUPESH GUPTA : . . .to realise that the princes and monopolies are things of the by—gone days and that justice which is administered in favour of them is not only no justice but gross injustice to our people. We want our judicial system to be an instrument of social progress, to be an instrument of dynamism to be an instrument of social justice and not to be a shield for protecting monopoly interests, landlords and other vested interests and help in the concentration of wealth and economic power against the interests of our working people. That should be our approach and the judicial system has got to be radically changed by amendment of the constitution along the lines I have suggested.

SHRI NITI RAJ SINGH CHAUDHURY : Mr. Chairman, Sir, the scope of this Bill and the Bill to follow is very limited and I had thought that the debate would be limited to the points therein. But my hon. friends have been speaking as if we were discussing the judicial system and the legal system in this country. However, I will limit myself to the points that arise in the Bill. The Bill seeks to provide that the judges should be allowed to commute leave on half average pay. Normally a Government servant is allowed to commute his leave on half average pay to the extent of 240 days. In the case of these judges, such commutation is only for 90 days or three months. The other thing is, normally when a Government servant goes on leave, he gets average leave salary for four months. But in the case of these judges, they get it for 45 days and in the High Court, for 30 days. We are providing it for 45 days and for the rest of the period, they get only leave allowance.

About the other points, I have taken note of them and we shall bear them in mind. Mr. Kalyan Roy mentioned about the arrears and the committee. I would like to inform him that the committee is going to make its report next month and action would be taken.

Sir, I commend the Bill for the acceptance of the House.

MR. CHAIRMAN : The question is :

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

The motion was adopted

MR. CHAIRMAN : We shall now take up clause by clause consideration of the Bill.

Clauses 2 to 7 were added to the Bill.

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

SHRI NITI RAJ SINGH CHAUDHURY : Sir, I move.

"That the Bill be returned."

The question was put and the motion was adopted.

THE HIGH COURT JUDGES (CONDITIONS OF SERVICE) AMENDMENT BILL, 1971

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE/
 विधि तथा न्याय मन्त्रालय में राज्य मन्त्री
(SHRI NITI RAJ SINGH CHAUDHURY) :
 Sir, I beg to move :

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