

"That the Bill be returned"

The question was proposed

SHRI LOKANATH MISRA Madam Deputy Chairman

THE DEPUTY CHAIRMAN The time allotted was only one and a half hours and we have already .

SHRI LOKANATH MISRA I will take only one minute

THE DEPUTY CHAIRMAN I am sorry The question is

"That the Bill be returned"

The motion was adopted.

THE DEPUTY CHAIRMAN The next Bill

THE HIGH COURT JUDGES (CONDITIONS OF SERVICE) AMENDMENT BILL, 1964

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI JAISUKHLAL HATHI) Madam Deputy Chairman, 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"

Madam this is a very small measure and is a non-controversial one. It is really a consequential amendment, if I may say so. As the House is aware this House passed the Constitution (Fifteenth Amendment) Bill under which the age of retirement for the High Court Judges was raised from sixty to sixty-two years. Under the High Court Judges (Conditions of Service) Act, under section 14 thereof, they are eligible for pension when they attain the age of sixty years. Now, when this House has

passed this Amendment to the Constitution and raised their age to sixty-two years, naturally, they would be eligible for pension when they reach the age of sixty-two years. So the only change that this Bill envisages is in making that change in section 14 of the High Court Judges (Conditions of Service) Act, of raising the age from sixty to sixty-two years. That is one change.

The second change that is sought to be made in clause 2 of this Bill is that if the High Court Judges who were already serving on the date on which this Constitution Amendment was passed, that is, on 5th October, 1963, want to retire when they attain the age of sixty years, they should be permitted to do so, that is, they should not then be told that as they have not reached the age of sixty-two years they are not eligible for pension, that they must go on up to sixty-two, that is to say, those Judges who had been serving all along and who were actually in service on the date on which this Amendment was passed, that is on 5th October 1963, they can retire at the age of sixty years, if they so wish. This is the second amendment.

And the third amendment is that in the matter of the transfer of Judges from one High Court to another, which we have now been doing, even the High Court Judges of Jammu and Kashmir are transferable from that State to any other State. Now, when they are transferred from Jammu and Kashmir State to other States and if they retire from other States, their services in Jammu and Kashmir State should be taken into consideration for purposes of pension, as is the case with the other Judges also. As the House knows, under the Presidential Order we have extended so many subjects the jurisdiction of the Election Commission, the jurisdiction of the Supreme Court, the Customs, excise and labour laws, to extend to the State of Jammu and Kashmir also. So the third amendment which

is sought to be made is that the past services of the High Court Judges of Jammu and Kashmir, when they are transferred to other States, should be taken into consideration for purposes of their pension.

And the fourth amendment is that for the purpose of calculating the amount of leave of the High Court Judges of Jammu and Kashmir transferred to other States, their past services in Jammu and Kashmir should also be taken into consideration for purposes of leave, etc.

SHRI AKBAR ALI KHAN (Andhra Pradesh): That is part of the third amendment itself.

SHRI JAISUKHLAL HATHI: So there are only three amendments in the main. One is, raising the age from sixty to sixty-two has made it necessary to also make an amendment in section 14 of the Act. The second is allowing the existing Judges as were serving on 5th October, 1963 to retire at sixty if they so choose. And the third is that the past services of the High Court Judges of Jammu and Kashmir, when they are transferred to other High Courts, should be taken into consideration.

Thus, Madam, it would be seen that this is a non-controversial Bill; there is nothing new from that point of view. I can understand that if it was a question of discussing whether the age of retirement should be sixty-two or sixty, it could have been possible for us and for the House to express their views, but that, I think, we had expressed at great length when that Constitution Amendment was discussed here. Similarly, if it was a question of the determination of the age of a High Court Judge and who should determine the age of the High Court Judges, that question also, in the same Amendment, we had discussed here—the procedure, etc. Therefore all these matters have been discussed at length here. Now this Bill has a limited scope and I do not, therefore, think, that I should take much time of this House. I hope the

House will readily accord its approval to this Bill.

Madam, I move.

The question was proposed.

THE DEPUTY CHAIRMAN: One hour is allotted to this Bill and there are quite a few names before me. Therefore I hope the Members would give each other some chance if they keep to a time-limit of 5 to 7 minutes.

SHRI JAIRAMDAS DAULATRAM (Nominated): Madam Deputy Chairman, as the time available to the House is very limited, I will be exceedingly brief in my remarks and not elaborate my points. I do not know whether what I say will be considered relevant on this occasion or not. But as I feel strongly on the matter I will venture to express my views.

I know that the question of the age of retirement has been discussed and debated often enough. But I believe we cannot discuss and debate it too often. I think it is in the national interest, apart from the interest of any individual concerned, that we must raise the age of retirement both for the High Court Judges and also for the Services generally, including the Technical Services, including even the Defence Services. I think the nation is unnecessarily losing the benefit of maturity of judgment, ripeness and width of experience by forcing people to retire at the age of 58, 60 and 62. We see what is happening in the case of our political life. We see what is happening in the case of the political life of many countries. I do not wish to give illustrations of the age of retirement of the judiciary in several other countries. But looking to our own conditions, to our own needs and also the evidence that is confronting us visibly that the health of the nation is improving, we find that the capacity of men to work beyond the age of 60 is undoubtedly there. I do not see why we should not, in the case of High Court Judges, go as far

[SHRI JAIRAMDAS DAULATRAM]
as even 70 years, provided the man has fitness, efficiency and is competent. If 70 years is too staggering a figure, we can have a slightly lower figure. So also in the case of the Army I think the nation is unnecessarily losing the experience of our Army Generals by forcing them to retire too early. Similarly in the case of the Technical Services and also in other services I think the point should be discussed again and again whether we cannot suitably, properly, reasonably and beneficially raise the age of retirement with regard to all these Services.

SHRI BHUPESH GUPTA (West Bengal) Madam Deputy Chairman, I should also like to offer my remarks very briefly. But it is a point to be considered as to what should be the age of retirement in respect of the various services in the State. I do not wish to embark on any discussion on this subject. While we should like to have the richness of experience, wisdom, width of judgment or whatever it is, we should also be interested in having the freshness of youth, the vigour of youth and all the rest of it. Therefore, the problem is one of combining youth with age, freshness with the other things, richness, experience, that age gives. How to strike a golden mean, it is for us to consider in our good time and settle. Therefore, I do not wish to say anything more on this subject.

Let me start with two criticisms on a Bill seemingly non-controversial. The first criticism is this. We do not like the Home Ministry entering into this sphere of the judiciary even in respect of appointments. The President appoints the Judges, but it is the Home Ministry which advises the President. We should like the Home Minister and his Ministry to go completely out of the picture, because we have apprehensions and we have knowledge also in this matter, that sometimes things are settled in a colourable way, not always keeping

in view the aspect of the independence of the judiciary in mind. It is a very ticklish point and, therefore, I would not like to say much on this subject. But I do not like the picture of our aspirants to judgeship waiting upon the Home Ministers of the country. I have seen it myself. I would not name anybody. I am sure if my hon. friend Shri C. D. Pande spoke on this subject and recollected the visitors, he would have enlightened us in this matter a little more than I can. I have also known, Madam Deputy Chairman, the question of Judges being discussed between the Chief Minister and others over the telephone and sometimes from a political angle. Therefore, I think the Home Ministry should go out of the picture and the matter should be left entirely in the hands of the judiciary. The advice should come from the judiciary and the President should be the appointing authority under the Constitution.

I will give one example of how the Home Ministry treats sometimes the High Court. The Judges of the Calcutta High Court were faced with the problem of increasing their working days in a year.

SHRI ARJUN ARORA (Uttar Pradesh) Does the hon. Member want the President not to be the Constitutional Head of the Government in the matter of the appointment of High Court Judges? Does he want him to become an absolute authority?

SHRI BHUPESH GUPTA: It is a good question.

SHRI P. N. SAPRU (Uttar Pradesh): I will reply to that.

SHRI BHUPESH GUPTA: I say it is a good question. I do not wish the President to be anything more than the Constitutional Head.

SHRI ARJUN ARORA: Then he will have to act on the advice of one Ministry or the other.

SHRI BHUPESH GUPTA: You may be enamoured of your Ministry. I say he should act on the advice of the panel of Judges and the matter should be left to the Chief Justice of India. He should form a proper body from among the number of Judges in order to offer advice to the President in this particular matter.

SHRI AKBAR ALI KHAN: Who should be responsible to Parliament? Which Minister will be responsible to Parliament?

SHRI ARJUN ARORA: He wants to curtail the powers of Parliament.

SHRI BHUPESH GUPTA: Hon. Members are not aware of their powers at the moment. You cannot discuss the conduct of the Judges even in Parliament, except on a substantive motion, you know. Therefore, I say this here.

I was narrating a story. The Calcutta High Court was asked to increase its working days and to give effect to certain rules framed here. They wanted time and they said they would do it a little later, from the next term, or the next time or term, whatever you call it. But they wanted to force the Calcutta Judges and you will be surprised to hear the Home Ministry wrote a letter to the Judges of the Calcutta High Court and the Calcutta High Court was told "Unless you do it now, we shall get it done by Government order." and the West Bengal Government was asked to move in this matter. A letter was sent and at least three or four meetings of the Judges of the High Court of Calcutta were held at which the Judges attended and by a majority they rejected the Government's position, and they had certain criticisms to make on the manner in which the Home Ministry behaved towards the whole High Court of Calcutta, and the Chief Justice of the Calcutta High Court. The letter was meant for all the Judges of the High Court. That is how they behave in such matters. Therefore, we would like to hear why it happened. I want

to defend the High Court from bureaucratic interference, from bureaucratic arrogance, shall we say, in this matter. The Judges did not say they will not implement the Government's decision. They said, "We will do it, but let us do it from the next term. That is our view." And nothing would have been lost. But the Central Government said, "No". They must force the Calcutta High Court and that is why they wrote such a letter.

With regard to the question of age and other things, well, sometimes senility starts much earlier. Sometimes in some people it is at about the age of 35 or 40, may be between 35 and 40. I cannot say when it will start in my case or in Dr. Pande's case. But perhaps Dr. Pande would lead me in this matter also.

Let this position be discussed because I think this question needs discussion. With regard to the services and others, I think the younger people should get promotion and their chances should not be barred.

Independence of the judiciary is what we want. The main condition, so far as the judiciary is concerned, is independence and unless the judiciary is saved from the hands of the Home Ministry, there is no independence of the judiciary at all. Certainly, semblance of independence is there but they are cutting at the very substance of independence. You have seen, Madam Deputy Chairman, how in this very House whenever a judgment goes against the Government the Law Minister or the Home Minister will get up and deride the judgment of the High Court Judges, deride the Judges. Only the other day, with regard to a particular judgment in Gonda, the judgment of the Election Tribunal, given in a judicial capacity, the Law Minister got up and criticised it in a manner which was not very pleasant and becoming of the Judge and the judgment. Similarly, it had been done in the U.P. Assembly and at other places.

[Shri Bhupesh Gupta]

Therefore, I should like it to be taken absolutely outside the purview of politics. The Judges today are afraid of political forces and the political force here means especially the Congress Party, not the others, those who control the Ministry. This is their fear and I think they should be free absolutely from this apprehension and fear.

As far as Judges are concerned, the other day I brought to the notice of the hon. Minister the judgment of Mr Justice Gajendragadkar, Chief Justice of India, with regard to the manner in which illegal detention was ordered of certain Members of Parliament and others. You noticed how light heartedly those observations were taken by the Home Ministry. It is not for me to advise anybody but I am sure our Judges will know how to protect themselves and we should also help them in this matter.

I think the question of transfer should also be gone into. I would like an arrangement whereby the Chief Minister cannot exercise much influence. The Chief Minister of a State is the greatest trouble today. They do not know how to run their party properly, they do not know how to run even their own factions properly and, of course, the country has been landed in a difficult position and they have now started in many cases interfering in the affairs of the judiciary. The lower the level the greater the interference, in the higher level interference is still there though in a subtle form. I think this should be stopped. Transfer is good in a way because if people could be had from some other State, if I could send some Judge from Calcutta to Andhra, Mr Brahmananda Reddy, Mr Sanjiva Reddy's friend may not find it easy to influence such people. Language difficulty and other problems will be there, and *vice versa*. Now, the question of language is very important and, therefore, I do not want to pursue it but if we can solve this

problem of language, then we should have some arrangement of that kind in order to ensure in practice, the independence of the judiciary. This is with regard to transfer.

As far as the other things are concerned, the High Court Judges who want to leave will certainly leave.

The provisions of this Bill are undoubtedly non-controversial. One matter has pained us very much and that is the controversy that arose in Calcutta over the age of a Judge. In the High Court writ after writ was sought and the Government fought the case. Was it not possible for the Government to have the matter settled in a manner?

SHRI C. D. PANDE (Uttar Pradesh): That would be interfering with the work of the Chief Justice. Judicial administration rests with Chief Justice and Government did not like to interfere in it.

SHRI BHUPESH GUPTA: It is not interference of that kind. We could have seen to it that litigation in this form did not come about. That is what I want to avoid, public exhibition of the litigation, Judge says, "I was born on such and such a date" but somebody else says, "No, you were born on such and such a date". Madam Deputy Chairman, . . .

SHRI AKBAR ALI KHAN: The Judge himself had said previously that he was born on an earlier date.

SHRI BHUPESH GUPTA: He could not have been born on two dates. One date must be right. It is not possible for a person to be born on two dates, not even Congressmen can be born on two days, I can tell you that. Therefore, the correct date was one. If the date was one who is the authority, most reliable authority, to say this? The mother of the Judge? The Judge himself getting information from his mother? Now, would I want to know when Mr Akbar Ali Khan was born from Chiang-kai Shek

in Taiwan? No. I will ask him or his family people. If he gives a date, I should be satisfied with it but here the controversy is there. We know that sometimes the time of the bourgeois order is wasted on such matters when others things wait for attention. This has become a scandalous thing and you know, Madam Deputy Chairman, the interest people in Calcutta have taken some how or other in this. They cluster round him wherever that particular Judge goes to court and four or five hundred people follow him. This is a very interesting aspect. Why are all these things happening? Was it not possible somehow or other to settle the problem of age? Therefore, this question of age should be so fixed and settled that never does arise the controversy as to when one was born, least of all in the case of Judges.

These are the points I wanted to make but once again I say that the Home Ministry is the most objectionable element in the context of the independence of the judiciary, at the Central level and at the State level and I would not like to see, if I can help it, the Home Minister bringing forward such Bills. Let us have a Minister of Justice, if we can, who can function on behalf of the judiciary of the country, an independent authority, and speak on behalf of them, getting such instructions as may be passed on to him but here we have the Home Ministry coming with such measures dealing with the problems of the judiciary even at the highest level.

SHRI LOKANATH MISRA (Orissa): It is an octopus.

SHRI BHUPESH GUPTA: Well, an octopus sometimes is very moderate and less harmful but the octopus of the Home Ministry that is gripping the judiciary is a dangerous octopus and I would not like the judiciary to fall into the grip and clutches of that octopus. Here, the judiciary has been driven to a position today, un-

der certain circumstances, where it has to be under this octopus or whatever you call it. Madam Deputy Chairman, the only criticism I would make is this: Mr. Hathi, in so far as the judiciary is concerned, should liquidate himself. That is to say, he should never come any more with such Bills and the whole matter should be discussed.

SHRI JAISUKHLAL HATHI: Shall I go back to my old profession, the Bar?

SHRI BHUPESH GUPTA: I can tell him that if he goes back to his profession in the Bar, he will make a better man. I have no doubt because he is doing all kinds of mischievous things in the Home Ministry. He is an honourable and a good man temperamentally and I see day by day the corroding influence of that particular Ministry eating into the very vitals of Mr. Hathi as an individual and injecting into him all the insidious things that the Home Ministry generates. Therefore, the sooner he goes back to the Bar, the better.

SHRI AKBAR ALI KHAN: Very uncharitable.

SHRI BHUPESH GUPTA: I do not wish to say anything more. Time is short but this question should be discussed, and the other point raised by Mr. Daulatram. Time and again we have had to criticise seriously the Home Ministry with regard to the judiciary. They do not know how to protect their judiciary, their judicial officers; that we have seen. We have seen recently how one of their judicial officers, law officers was killed in Delhi where the Judges go unguarded. This is how they treat their Judges and others. The Ministers and others have plenty of guards, even in regard to those whose lives should be as safe as anybody else's. Therefore these are matters we should consider but I would like to hear what

[Shri Bhupesh Gupta.]
 he has to say with regard to the gross and impermissible interference that they are indulging in with regard to the High Court of the State from which I come.

SHRI P. N. SAPRU: Madam Deputy Chairman, Mr. Bhupesh Gupta has to a certain extent anticipated what I wanted to say on this Bill. To a certain extent the Bill is non-controversial but there are certain basic questions which have got to be considered in regard to the future of the judiciary. I think it is fundamentally wrong in principle for the Home Minister to be in charge of the judiciary. The Lord Chancellor is the highest authority in England so far as the appointment of judges is concerned. It is he who recommends the appointment of judges of High Courts and he is a member of the Cabinet. Now the history of the Lord Chancellor's office goes back to centuries and I do not wish to go into that but I think we should have what they normally have in other countries, namely, a Minister of Justice. It is wrong for a Minister who has to administer the Police to be also the authority to appoint judges.

So far as the question of retirement age is concerned, I have always taken the view that life tenure or new life tenure is the basis of the independence of the judges. The appointing authority must be the Executive. The Executive being the appointing authority, the question is, how are we to secure the independence of the judges? The only method which the democratic world has been able to discover is life tenure or near life tenure. Judges must not be appointed to other offices after their retirement. They must not be made to visit the corridors of the secretariat for getting jobs for themselves after their retirement. Therefore I am, having regard to the conditions in this country, for having 65 as the maximum age and a reasonably good pension.

Then I would like to say a word about this question of the age of judges. It has really assumed scandalous proportions. This question of age has been raised in a rather unfortunate form by a Calcutta Judge. I should like the age of a judge to be determined at the time of his appointment and to be stated in the warrant of his appointment. That statement should be final and thereafter the Home Minister or the Minister of Justice should have no power to interfere and the judge also should have no right of asking for a revision of his age which is stated in the warrant of his appointment.

So far as appointments in the High Courts are concerned, I should like that the Chief Justice of the High Court should have direct relationship with the Chief Justice of India. Fortunately we have today as Chief Justice of India a jurist of the highest eminence and the Chief Justice of India should be able to select proper judges. The appointment as such cannot be made by the Chief Justice of India because he is not responsible to this House. The appointing authority will have to be the Cabinet or the Minister of Justice will have to be the appointing authority but there should be a convention that the views of the Chief Justice of India shall prevail in all cases. If you do that you will be ensuring the independence of the judiciary.

Then I am all in favour of young men being appointed as judges. You want in your judges a new outlook. You do not want judges who know the thirteenth century or the fourteenth century precedents very well or who have read Blackstones very well. You want judges who have a modern mind, who know something of sociology who know something of the main trends of life and thought in the country they are serving. Now you have at the Bar men of that character, men who have a wide cultural background and it should be

your endeavour to recruit your judges from that class of persons I am one of those persons who think that it is fundamentally wrong to have civil servants as Chief Justices of High Courts I have many friends in the Civil Services I have got good Civil Service Chief Justices as friends of mine and I do not mean any disrespect in the slightest degree to them but I should like to have as Chief Justice a man who breathes law, who has been brought up in the traditions of the law and that is why the British never used to appoint ICS persons as Chief Justices

May I also say before I conclude that the problem of arrears needs to be considered from a broad perspective? We have had the Report of the Law Commission but I think the Law Commission did not view the question from the point of view of comparative law or comparative jurisprudence There are systems of law other than the British, I have very great respect for the British system of law My friend, Mr Bhupesh Gupta, called me the other day Anglo-Saxon and I think he is perhaps right in his description

SHRI C D PANDE According to you he is always right

SHRI P N SAPRU He is more right than we generally are I have a very great regard for British traditions but I think there are other systems of law which suit the genius of this country than the English system We want to associate the common man in the administration of justice It may be that the jury system which exists in Britain does not suit the genius of our people but I think there is no reason why we should not have at all events for petty criminal cases or civil cases peoples courts with a professional judge and two laymen who also act as judges Why should not we have in our country a system of jury modelled on the lines of the French jury system The jury in France has to determine questions of fact and sentence and

the French jury system suits the conditions of people like us better than the British system What we have done is we have abolished the jury system We have abolished the system of assessors There is no association of the lay public with the administration of justice My fundamental proposition is that parliamentary democracy and the rule of law should go together If you interfere with the rule of law then you interfere with parliamentary democracy It is, therefore, undesirable for us to have legislation which is restrictive of the freedom of the individual in normal times The word 'emergency' must not be used to cover even normal times I, therefore, think that a reconsideration or re-thinking on these legal issues is necessary in our interest When I was hearing the speech of my friend, Mr Mukut Behari Lal, of what happened in Bihar, I was rather sorry or I was rather grieved at the fact that no enquiry had been instituted into how MPs came to be treated in the manner in which he said they had been treated Now I think these are things which do not make for the greatness of a people I do not believe in coercion I do not believe in force as the main agency on which the State must rest for its authority I believe in a policy of firmness plus conciliation and it is from that point of view that I think fundamentally you should have a system of justice in this country which inspires confidence in the common man, which makes you respected in the eyes of the common man You should have Judges who inspire confidence in the common man You should have Judges who are not identified in the eyes of the common man with Governor so and so, with Vice-President so and so or with Minister so and so

Madam these are all the remarks that I have to make

SHRI C D PANDE Madam . . .

THE DEPUTY CHAIRMAN Do you want to speak or you ask for clarification?

SHRI C. D. PANDE: Two minutes I want. I was rather surprised that the hon. Member, Mr. Sapru, remarked that he agreed with Mr. Bhupesh Gupta, but when I heard him speaking I felt that on essential points he did not agree with him.

SHRI P. N. SAPRU: I said I would rather agree.

SHRI C. D. PANDE: Mr. Bhupesh Gupta is opposed to all interferences, interference of any kind in the appointment of Judges. Of course, High Court Judges cannot be appointed from the heaven. There must be some agency and Government must be responsible for their appointment. Instead of the Home Minister, he says it is better to have a Minister of Justice, whereas our friend, Mr. Gupta says that no government agency should be allowed to interfere in the appointment of the Judges of any High Court. This was his main theme. He said whenever Government appointed a Judge there was some injustice or some bungling. I will tell you about the system of appointment today. I am aware of the whole thing. Therefore, I shall just take a little time of the House. The Chief Justice of a High Court recommends a person to the Chief Minister of that State. He screens that and passes it on to the Home Minister.

SHRI P. N. SAPRU: Are there no compromises?

SHRI C. D. PANDE: No, never. I will tell you. Then, the Home Minister consults the Chief Justice of India and passes on the papers to the President of India. Do you believe that the Chief Justice of a High Court is less amenable to flattery, cajolery or partisanship than these four agencies? The Chief Justice recommends and then it is vetted by the Chief Minister. It is again screened by the Home Minister. He again consults the Chief Justice of India and finally the President passes orders.

SHRI P. N. SAPRU. May I just intervene to say this? In fairness to the Home Minister and the Home Ministry I must say that their interference is not there, but I am not prepared to say the same thing about the Chief Ministers.

SHRI C. D. PANDE: Once before this House or in the other House a question was raised when Pandit Govind Ballabh Pant was the Home Minister. Eighty-six cases of appointments of Judges were made during the time of Pandit Govind Ballabh Pant's tenure a Home Minister. All those 86 cases were scrutinised. In no case did the appointment differ from that suggested by the Chief Justice or Chief Justice of the High Court. If you can show . . .

SHRI P. N. SAPRU: The point is what happened in between.

SHRI C. D. PANDE: He had been the Home Minister. He had been the Chief Minister also. Can Mr. Sapru say that if only the Chief Justice of the High Court was allowed to recommend, he would be infallible? Is he not likely to be influenced? (*Interruption.*) Have some faith in your Chief Minister and Home Minister. Instead of the Home Minister, you can have a Minister of Justice, but Government must come in at one stage. As far as confidence in the judiciary is concerned, I tell you, Mr. Sapru, today there is a vast opinion in the country that the judiciary is absolutely independent. Otherwise, you could not see a single case of writ against the Government, whereas invariably in 80 per cent of the cases the writs are against the Government. If the judiciary had any apprehension of interference from the Government the judgments would not have been in the manner they have been in the country. I have not an iota of doubt about the independence of the judiciary in the country. I think it is unfair to say otherwise about our judiciary. It is a contempt of the judiciary. You are

not fair to the judiciary by saying that they are influenced by Government.

SHRI BHUPESH GUPTA: Magistracy.

SHRI C. D. PANDE: We are dealing with the appointment of Judges. We are not dealing with the appointment of judicial magistrates. Do not confuse issues. Do not condemn the Government in season and out of season. Of course, he has said that instead of the Home Minister, you can have a Minister of Justice in his place. Otherwise, the machinery as it is today is better than what Shri Bhupesh Gupta suggests.

SHRI MULKA GOVINDA REDDY (Mysore): Madam, we should be really proud of our judiciary, particularly the High Court Judges have behaved in such a manner, without caring for the persons against whom they had to write judgments. They have done it in such a way that they have shown their independence and they have not yielded to any pressures whatever. Mr. Krishnan. of Madhya Pradesh High Court, who had to give his judgment with regard to Chadarwala alias Khadiwala, and Mr. Choudhuri . . .

THE DEPUTY CHAIRMAN: I do not think you can discuss individual cases of judgments. Please stick to the scope of the Bill.

SHRI MULKA GOVINDA REDDY: Yes We should be really proud of these Judges. They have gone into these cases and they have given judgments. We should all be proud of them. It is, therefore, necessary that the Judges should be independent and they should not owe their appointments to the favours of the Chief Ministers. I entirely agree with some of the suggestions made by some Members that the appointment of Judges in High Courts should be entirely made in consultation with the Chief Justice of the particular High Court by the Chief Justice of India. The Chief Ministers should not come

into the picture at all. If they are to come into the picture, they will have their own preferences and being political beings, they are amenable to pressures of this group or that group, of this candidate or that candidate. The Chief Justice of any High Court is unapproachable for appointing a particular person as Judge of the High Court. Therefore, it is fair and proper that the Chief Minister should not come into the picture for appointment of Judges of the High Court.

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With regard to the appointment of District Judges also and their transfers, the High Court should be free to appoint whomsoever they like and to transfer whomsoever they like to whichever place they like.

Madam Deputy Chairman, in most of these High Courts and in the Supreme Court there are a large number of cases pending, appeals, second appeals, writ petitions, and so on. Thousands of writ petitions are pending in some of the High Courts. In Mysore there are nearly 4000 writ petitions pending. Either the Judges should take care to see that these petitions are disposed of as early as possible—particularly if the writ petitions are not disposed of quickly, the very purpose of the writ will be defeated—or the strength of the High Court should be increased or temporary additional appointments should be made for a period of two or three years so that those writ petitions and other appeals that are pending are disposed of as early as possible. In the Allahabad High Court I understand that . . .

THE DEPUTY CHAIRMAN: The scope of the Bill is not what you are mentioning. The scope is only conditions of service.

SHRI MULKA GOVINDA REDDY: I am sorry that most of the speakers who have spoken on this Bill have not referred to the clauses that are adumbrated in this Bill but have given a general survey of the situation, and

[Shri Mulka Govinda Reddy.]
I do not know why I should be asked to stick to that particular course in making my speech.

SHRI AKBAR ALI KHAN: She says that you must be relevant.

SHRI MULKA GOVINDA REDDY:
I am not irrelevant. I am relevant to the point.

PROF. M. B. LAL (Uttar Pradesh):
He is as relevant as others were.

The DEPUTY CHAIRMAN: You carry on.

SHRI MULKA GOVINDA REDDY:
I was telling the House that thousands of cases are pending in some of these High Courts, and if they are not disposed of as early as and as quickly as possible, the very purpose of justice will not be there. Justice delayed is justice denied.

Another point I would like to add is that litigation has become very costly nowadays, and steps should be taken to see that the expenses of litigation in the High Courts and in the Supreme Court are reduced to the minimum, and that can be done if the delays are avoided. I therefore urge that the Home Minister should take care to see that pendency in most of the High Courts and in the Supreme Court is reduced to the minimum. Thank you.

SHRI D. THENGARI (Uttar Pradesh): Madam Deputy Chairman, as has been rightly said, this Bill in itself is a consequential and therefore non-controversial one. But I feel that the situation demands introduction of a non-consequential, that is, a more comprehensive and maybe a more controversial Bill. Now there are certain important points which have been discussed here. First of all it is with regard to the selection or appointment of Judges. Notwithstanding whatever was said earlier by some of my friends it is a fact that directly or indirectly the executive

exerts its influence in this matter. I should like to emphasise that the State Chief Ministers should not be allowed even indirectly to influence the selection or appointment of High Court Judges. The matter should be left entirely to the Chief Justice of the State and also the Chief Justice of India. The High Court Judges should be offered more attractive terms and conditions of service because it is necessary to attract the best talent in the legal profession for these posts. Unless the talents are the best, it is quite possible, quite likely, that the independence of the judiciary may not be maintained. They may be susceptible to certain pulls and pressures from the executive, and therefore this would necessitate the introduction of a more comprehensive Bill so as to improve the service conditions of the High Court Judges.

In the case of transfers from one State to another, I should suggest that some compensatory allowance should be offered to the Judges transferred. That would facilitate the mobility of talents.

Another point is that those in authority should not attack the High Court Judges on the floor of Parliament, because Judges are neither present nor represented here. Therefore, it would not be decent to attack them here. Unfortunately the age of High Court Judges has recently been a matter of some controversy. I would suggest that the age should be ascertained at the time of appointment. Subsequently it should be treated as a non-contestable issue, and even if it is questioned at a later stage, it should be decided upon by the Chief Justice of India and he should be the final authority in this matter. The executive should not arrogate to itself either the rights or the responsibilities of ascertaining the age.

In short, the judiciary should be completely free from the influence of the executive, and the executive should learn to pay due regard to the judi-

ciary In this context I should like to quote Justice P N Mukherjee who has said

"While Judges are doubtless bound by their oath to uphold the Constitution and so to permit no infraction of articles 106 and 194, they may justly and reasonably claim for the safe, due discharge of their duties that others in authority ought similarly to be alert that constitutional protection and immunity of Judges under article 121 is not violated"

There is one more important problem, Madam, which is also discussed. The present Chief Justice of India, Mr Gajendragadkar, has said that it is only in the fitness of things that the judiciary should have to deal with the Ministry of Law rather than the Ministry of Home Affairs. This view must be taken into consideration with the seriousness it deserves, and we must make a departure from the British bureaucratic ways. In no democratic country the judiciary is placed under the Home Ministry.

With these remarks, Madam, I conclude my speech.

SHRI K V RAGHUNATHA REDDY (Andhra Pradesh) Madam Deputy Chairman, this is undoubtedly a non-controversial Bill the scope of which is very much limited, but still dealing with the doctrine of relevancy one might argue on a question of certain aspects being part of *res gestae*, and therefore on this question, Madam, I may be permitted to refer to a few aspects of the problems that have been raised on the floor of the House.

Mr Bhupesh Gupta has raised a very relevant question both in relation to the question of the age of retirement and also the nature of appointments. Madam, to shorten argument on this question, I can say without any contradiction that there

is no constitution in the world of any country which has laid down that the executive has nothing to do with the appointment of High Court Judges or the Supreme Court Judges, and if you take any constitution in the world, maybe of a socialist country, maybe of a capitalist country, it contemplates some kind of association of the executive with the appointment of High Court Judges or the Supreme Court Judges or as a matter of fact the entire judiciary as such. There is quite a justifiable theory behind this. It is not because somebody wants executive power, it is not because the judiciary is not contemplated to be an independent limb of the democratic life of this country. Madam Deputy Chairman, Dicey himself has recognised it; we always quote the English Judiciary as one of the illustrious examples as to how efficiently the administration should be conducted. In his book "Law and Public Opinion in England", Dicey has said, so far as the legislature is concerned—

"The legislature reflects the ebb and flow, the action and counter action of every aspect of current public feeling or conviction strong enough to arrest the attention of Parliament"

Members of Parliament just as the executive, will have to go before the public and answer all criticisms that may be raised by it in relation to the conduct of public affairs. But as far as the judiciary is concerned, those people sit in an ivory tower, we cannot attack them from any angle. They sit in a protected sanctuary where any criticism directed cannot reach. They are protected by the Constitution and by convention and by precedent. Therefore, it is wrong to say that the Judges do not enjoy independence. When once they are appointed, their emoluments are protected by the Constitution and they cannot be removed at the whims and fancies of the executive; they will have to be removed through a certain procedure laid down and writ-

[Shri K. V. Raghunatha Reddy.]

ten in the Constitution. Therefore, it is wrong to say that the judiciary in this country is not independent. If the executive has no choice or to say at all in the appointment of Judges, the ebb and flow of public opinion cannot be gauged. With social values changing so rapidly in this country, in a developing economy the executive has to have a say as to what kind of person it would like to have as Judge. One is reminded of what happened in Roosevelt's time in America. Every measure of New Deal which had been introduced by President Roosevelt had been struck down by the Supreme Court of America as unconstitutional. Then the President was forced to increase the number of Judges with the sanction of the Congress and then he had to appoint those Judges who really believed in the policy of New Deal and not in the outmoded ideas of American life. Hence it has come to be known as the 'packed court' under Roosevelt's time. Even a packed court is necessary in order to usher in a social change and give it a momentum. It is absolutely necessary that the executive must have a say in the appointment of Judges in the interests of building up a democratic and socialist society in this country; otherwise, what may be called a judicial feudalism might develop if the whole matter is left only to the judiciary in relation to the appointments. If Mr. Bhupesh Gupta had been here, he would have considered me as one who is expounding ideas which are outmoded and anti-democratic. One should understand the nature of the social change and should be responsible for democratic socialism to be ushered into this country. I can quote any constitution in the world to show that under no constitution is the executive prevented from having a say in the appointment to the judiciary of the country. The independence of the judiciary as contemplated is only after the appointment. The Judges cannot be removed at the fancy of

the Government and their emoluments, their conditions of service, are protected under the Constitution. Their independence is not before their appointment. That is what is meant by the independence of the judiciary. Otherwise, if the entire matter is left to the judiciary, I again repeat, instances are not lacking to come to the conclusion that what may be called a judicial feudalism may be created in this country.

SHRI A. D. MANI (Madhya Pradesh): May I ask the hon. Member a question? He spoke about democratic socialism. Are we going to appoint Judges on the basis of their knowledge of socialism or on the basis of their knowledge of law? If Judges have got to be appointed, it is only on the basis of their legal standing that you have got to appoint them. Whatever his personal views may be on questions like private property or democratic socialism or revolutionary socialism, all these were irrelevant as far as the appointment of the Judges is concerned. Would the hon. Member throw some light on this subject?

SHRI K. V. RAGHUNATHA REDDY: I thought that Mr. Mani, the hon. Member for whom I have got very high regard, is a very learned man, but his learning on this question seems to be not of a very high order. In the development of jurisprudence, there is what is called sociological jurisprudence which has taken precedence over analytical jurisprudence I think the Chief Justice of India had been referring to this aspect of the problem very often and all credit must go to him; he had been saying that the content of law cannot be static always, that the law must act as a flexible instrument for evolutionary and revolutionary changes in this country. Therefore, if my friend, Mr. Mani, had read a little bit about sociological jurisprudence on which subject Roscoe Pound has written, he would not have asked this question.

As far as the retirement age of the Judges is concerned, though it is not a controversial issue, I would prefer younger people to be encouraged in this sense that a person who is younger will be able to concentrate his energies better and will be nearer to the ebb and flow and tide of life than people who are older in age, who may be indisposed and who may not be able to exercise their mental faculties without undue strain.

SHRI JAISUKHLAL HATHI: Madam Deputy Chairman, what I expected has come true. I started by saying that the Bill was a non-controversial one. At the same time I did mention that questions such as the appointment of High Court Judges, the determination of their age, their age-limit, etc. might exercise the minds of hon. Members here. But since I thought that they were not very relevant to the measure which I have brought before the House, I did not think it proper to touch any of those points. But now that hon. Members like Shri Jairamdasji, Shri Bhupesh Gupta, Shri Sapru and others—I do not find many of them here now—have touched on these points, I think it is my duty—not only duty but courtesy demands—that I should clarify some of the points which have been mentioned by hon. Members here.

I shall start with the observations of Shri Bhupesh Gupta who is not here. I am thankful to him for taking . . .

THE DEPUTY CHAIRMAN: He has arrived.

SHRI JAISUKHLAL HATHI: Madam, I was mentioning that I am thankful to Shri Bhupesh Gupta for his kind feelings and for his anxiety for my career. He does not want me to be in the Home Ministry thinking that . . .

SHRI BHUPESH GUPTA: You ask me.

SHRI JAISUKHLAL HATHI: . . . a good man is being spoiled. I know the cause of his wrath; that is the detention of the Communist Members of Tripura. And he said . . .

SHRI BHUPESH GUPTA: Telephone tapping.

SHRI JAISUKHLAL HATHI: I do not take it lightly. I may assure him that the arrest of a single individual, whether he is a Member of Parliament or otherwise, is not a matter of light-heartedness to me. I take it seriously. I am pained at it. A single moment's detention of any citizen of this country is a matter of pain and distress to me. It is not a matter of pleasure to me. But if in the interest of the country, the local administration and the State Government think it their duty, I have to uphold them.

SHRI BHUPESH GUPTA: Mr. Pratap Singh Kairon put us in jail in the national interest.

SHRI JAISUKHLAL HATHI: His point was illegal detention. While I was replying to the House, I made it very clear, Madam, that it was a question of interpretation. The Administrator in his opinion found, when he reviewed the cases, that they should be released. He ordered release of 25 out of 65 detenus and detained the others. He had applied his mind to all the cases and therefore he did not think it necessary to write fresh orders. On appeal the Judicial Commissioner upheld the view of the Administrator. When the matter came up before the Supreme Court, they held that it is not enough that he should simply say that 25 people are released and others are detained but fresh orders should be issued in each case. It was this interpretation that the Administrator gave to that provision of the Defence of India Rules that led to this detention which now is being called illegal by Shri Bhupesh Gupta.

[Shri Jaisukhlal Hathi]

Shri Bhupesh Gupta knows that we have respected the judgment of the Supreme Court and we always respect it. He also knows that the Members are still free; they are not arrested. The intention of the Administrator was simply to put them behind the bars. If there was some other motive they could have been arrested next moment. Nobody could have stopped them. But, as I said, detention of any citizen is not a matter of pleasure to us, specially not to me. And therefore while I am in charge of the Home Ministry, let him not think that everything that the Home Ministry does is bad. If it is unpleasant to him, it is more unpleasant to me. But if it has to be done in the national interest, it has to be done. It cannot be helped.

Then, Mr Bhupesh Gupta mentioned about the appointment of Judges that the Home Ministry should not have anything to do with it. Shri Sapru made a sort of shorter suggestion that it should be under the Ministry of Justice or some other Ministry. So far as the Home Ministry is concerned, or the executive is concerned, the executive has to have some say in the appointments. Under article 217, Madam.

SHRI BHUPESH GUPTA That we know

SHRI JAISUKHLAL HATHI And still you distort

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

Now, Madam, questions are raised and an atmosphere is sought to be created about some kind of political pressures. I for one would say that today our judiciary is independent. It has a

reputation of being an independent judiciary in the world. We have respect for the judiciary and it is our duty to maintain this tradition of independence of the judiciary. I for one, Madam, would be the first to see that the independence of the judiciary is maintained. Having been at the Bar for some time, though not arisen up to the office of a High Court Judge, I have at least been a District Judge and I feel at home when I talk of High Court Judges. I feel as if independence of the judiciary is a subject which I love most. The honour of the Judges, respect for them and their dignity is a thing which I value most. Madam, it pains me much when I hear this sort of talk about political pressures all round in the appointment of Judges. But as Shri Pande said and I can also say that almost in hundred per cent cases we have followed the advice of the Chief Justice of India. And still if there is anything to be done, we will take up the matter further with the Chief Justice of India. I may tell the House here and now that the Home Minister is further going to discuss this matter, not that there is anything wrong, but with a view that even this talk should not at all be carried on and that no atmosphere should be created. It will mean a woeful day for us when we shall tarnish the good name of the judiciary of this country. It is, therefore, that the Home Ministry would be the last Ministry to make any interference with the appointment of Judges or anything of the sort.

Now a question was raised that appointment etc of the High Court and Supreme Court Judges should be with a Ministry other than the Home Ministry, the Ministry of Justice or the Ministry of Law. Madam, here it is a question of the attitude of the Government as a whole to the judiciary. Is it that the Government wants an independent judiciary? Is it that the Government wants that the traditions of the judiciary should be maintained? Is it that the Government wants that justice should be

dispensed independently and impartially? Is it that the Government wants that there should be no political pressure, bias, while justice is being dispensed? Is it that the Government wants that everybody should be treated equally in the eyes of law? If that is the approach of the Government, then whether it be the Home Ministry or the Ministry of Law or a new Ministry, it is not that particular Ministry it will be the whole Government, the whole Cabinet. That will be the approach of the Government to the judiciary. Today the approach is that the judiciary should remain independent and that its tradition should be maintained. If that is the approach of the Government as a whole, it does not matter with which Ministry the portfolio is today. It is a question of the whole approach.

The other question which Shri Daulatram raised was about the age of the High Court Judges namely, that it should be raised to 65. This House very well remembers that this question was also discussed when we took up the Constitution (Fifteenth) Amendment Bill. Then also some hon. Members suggested that the age should be raised to 65. But this House and Parliament decided that the age should be 62. If, at all, later on Parliament chooses and if Parliament pass a new Act, amending the Constitution, I mean, that the age of the High Court Judges should be raised to 65, I shall come again with an amendment of this particular Bill, namely The High Court Judges (Conditions of Service) Amendment Bill, 1964. There I shall say that instead of 62 the age should be 65. I have no objection. But that question is not before the House today. In fact that question was discussed at great length and ultimately this Parliament has passed the Constitution amendment where the age was fixed at 62.

Then the question is about the determination of the age. There also I suggest that it is not really a sub-

ject-matter which directly concerns this measure. Now that various Members have raised that point, I may say that we have already a provision now whereby it is the President who in consultation with the Chief Justice of India will decide the question in case any question arises and that decision of the President in consultation with the Chief Justice of India will be final. So there is that amendment which we have made. It is really also again unfortunate that the question should arise and the sooner they are decided the better, and the way to decide is

SHRI AKBAR ALI KHAN The suggestion of Dr Sapru is there

SHRI JAISUKHLAL HATHI That is a suggestion and we may consider that but that is not a part of the present Bill

Another Member raised the question of arrears of cases. Now arrears can be reduced in three ways. Either we increase the number of Judges, that is one. Secondly, we increase the number of working days and thirdly, the litigation is reduced. Now the reduction of litigation is not a matter for the Government. It is after all the people who want to approach the courts. What the Government can do are only two things—the addition of the number of Judges and the increase in the number of working days. So far as addition of Judges is concerned, this matter was taken up at the Conference of the Chief Justices and they made several recommendations and I may say that the Home Ministry had accepted the recommendations. We have appointed additional Judges and the arrears are on the decrease. Similarly the working days also have increased. Now 210 days should be there in all the High Courts. There are only two High Courts—Mysore and Calcutta—which were reluctant and therefore—what Mr Gupta complained is not correct—we wrote not to the High Court Judges but to the West Bengal Government to request the High Court that they

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should also fall in line and increase the number of working days to 210. Now if we want the arrears to be decreased, if we want that there should not be delays, if we want that there should not be many pending cases, if we appoint additional Judges and even then the cases are there, the other way, namely, the increase in the number of working days, has to be done and if even indicating that is taken to be an interference, I am sorry that kind of interference is not really an interference. It is a suggestion and that is what we have done.

I think I have dealt with all the points that have been raised. Maybe that some of the points may not have been covered but all the points that are important, which are major points, which require due consideration, I think, I have dealt with and I do not think I have much to add. I move.

THE DEPUTY CHAIRMAN: The question is:

"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."

The motion was adopted.

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

Clauses 2 and 3 were added to the Bill.

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

SHRI JAISUKHLAL HATHI: I move:

"That the Bill be returned."

The question was put and the motion was adopted.

THE REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL, 1964

THE DEPUTY MINISTER IN THE MINISTRY OF LAW (SHRI JAGANATH Rao): Madam, I beg to move:

"That the Bill further to amend the Representation of the People Act, 1950, and the Representation of the People Act, 1951, as passed by the Lok Sabha, be taken into consideration."

Madam, this is a simple measure and non-controversial. At present a member of the Armed Force of the Union, is by virtue of section 20(3) of the Representation of the People Act, 1950, deemed to be ordinarily resident in his home constituency and therefore is eligible for registration as a voter in the electoral roll for such constituency, although on account of exigencies of service he may be away from, and not ordinarily resident in the home constituency at the time of the preparation of revision of the electoral roll. As a corollary to this, a member of the Armed Forces of the Union is, by virtue of section 60 of the Representation of the People Act, 1951, entitled to give his vote by postal ballot.

These facilities are however, not available to the members of an Armed Police Force of a State even when they are serving outside the State. At present one battalion of the Malabar Special Police Force and one battalion of the Special Armed Police Forces of the State of Kerala have been deputed for operational duties in the border areas of the State of Nagaland. But the members of these Forces (including the camp followers) numbering about 3,000 cannot avail themselves of the facilities offered by the aforesaid sections of the Representation of the People Acts. The denial of franchise to such a large number of members of the State Armed Police Forces who are serving outside their State is patently unfair and may