THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): We shall now take up the clause by clause consideration of the Bill.

Clauses 2 and 3 and the Schedule were added to the Bill.

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

SHRI B. R. BHAGAT: Sir, I move:

"That the Bill be returned."

The question was put and the motion was adopted.

THE CONSTITUTION (FIFTEENTH AMENDMENT) BILL, 1963

THE MINISTER OF LAW (SHRI A. K. SEN): Sir, I move:

"That the Bill further to amend the Constitution of India, as passed by the Lok Sabha, be taken into consideration."

This is what is known as the Constitution (Fifteenth Amendment) Bill, 1963 which was referred originally to a Joint Select Committee which gave valuable consideration to this Bill and made certain substantial alterations which the hon. Members will find in clauses 4, 5 and 10. And these alterations were accepted by the Lok Sabha and I have now come here. The Bill seeks to make amendments with regard to a variety of matters. I am afraid that because we had included several matters for which amendments were found to be necessary, we were criticised in the other House for not bringing separate Bills relating to separate provisions. Well, as I said, there is nothing in the art of amending the Constitution that requires that each separate provision should form the subject-matter of a separate Bill. On the contrary, we have told this House and the other House on several occasions that the Constitutional amendments which have been found necessary are sought to be collected together so that there may be one consolidated Bill dealing with all those, Nevertheless, it becomes necessary even sometimes to bring in almost immediately separate amendments. For instance, one of the amendments which would be coming up before the hon. Members would relate to what is called the anti-national and secessionist activities of certain people. Then the next would be one which has again been rendered necessary by the recent decision of the Supreme Court—by which the very concept of article 31 has undergone a change—that the various land reform measures including the Kerala Land Reform Bill are *ultra vires* the Constitution. And we have found therefore that it is absolutely necessary to bring forward an amendment even after this. In fact, when these amendments were moved originally the Supreme Court's decision had not come before us and the judgment was delivered when this matter was before the Joint Select Committee or possibly immediately it had left the Joint Select Committee.

Now, Sir, this Bill deals primarily—first of all, hon. Members will see clause 4—with the age of retirement of a High Court Judge. We are raising it from sixty to sixty-two years. The Law Commission had recommended a higher age of retirement but we thought it advisable to keep up the difference between the age of retirement of a Supreme Court Judge which is sixty-five and that of a High Court Judge which we are now seeking to fix at sixty-two, so that normally . . .

SHRI MULKA GOVINDA REDDY (Mysore): The Law Commission . .

SHRI A. K. SEN: The provision speaks for itself because unless it is made retrospective expressly, it will only be prospective. That means those who retire are not in for new appointments those who retire after the passage of this Bill and after it becomes law will have the benefit of the higher

age of retirement. It is not a question . . .

SHRI MULKA GOVINDA REDDY: He said that the Law Commission recommended that the age should be raised to sixty-five. Did they recommend it for the sitting Judges or for the new appointments?

SHRI A. K. SEN: They recommended it for all Judges. They made no distinction as far as my recollection goes.

SHRI BHUPESH GUPTA (West Bengal): Why is this discrimination made between the High Court Judge at sixty-two and the Supreme Court Judge at sixty-five?

SHRI A. K. SEN: Because otherwise no Chief Justice of a High Court and rarely a Puisne of a High Court would have any inducement to come to the Supreme Court, if the age of retirement becomes the same.

SHRI BHUPESH GUPTA: In the case of the Chief Justice, you can make it.

SHRI A. K. SEN: We will make it when you come to power, Mr. Gupta. We will put your beautiful ideas into action.

SHRI BHUPESH GUPTA: I tell you, in the younger generation there may be some women too.

SHRI A. K. SEN: I entirely agree with you there. If we have worthy Judges, who will be recommended not merely for their age but also for their ability, I entirely agree with you that we should have tried to have them, as many as possible, because, by the time they become mature, they will have a large number of years to their credit, during which time they will certainly gather experience and wisdom, and I am certainly in favour of appointing Judges at an early age so that they may have long experience by the time they retire.

[THE DEPUTY CHAIRMAN in the Chair.]

Now, Madam, the next point which has raised a little bit of controversy is with regard to the question of determining the age of a High Court Judge in case there is a dispute.

SHRI BHUPESH GUPTA: It is a big problem.

SHRI A. K. SEN: Well, it is a problem, but unfortunately it is not a big problem. About 15 cases had occurred since the Constitution. In each case, whenever there has been a dispute, the Chief Justice's advice has been accepted by the Judges concerned. It is only in one unfortunate case that the person concerned did not accept the decision of the Chief Justice, as communicated to him.

SHRI B. D. KHOBARAGADE (Maharashtra): On a point of information. May I know from the hon. Minister whether those 15 Judges mentioned their dates of birth when they were appointed as Judges?

SHRI A. K. SEN: Well, otherwise there would have been no dispute; I mean, it goes without saying that every Judge has to mention the date of birth at the time he is appointed. Originally, before 1958, that age was accepted without any further verification, as was being done since the creation of the High Court. From 1958, in order to prevent future trouble, a procedure has been evolved by which there is a verification with reference to matriculation certificates and other documents at the time of the appointment of the Judge concerned so that the date of birth given by him is verified and then accepted. So from 1958 the problem has become easier, but with regard to old ones the problems arose in many cases. The details need not be gone into, because these are not questions which should be publicly discussed so much, because one case has brought this matter very much into the public forum unfortunately, and our whole principle has been that the question of dispute about a Judge's age cannot be decided in a public forum, unless we do so at the cost of doing incalculable harm to the dignity and the prestige of the judiciary, be-

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cause it is certainly reprehensible and odious that a Judge's testimony is being challenged by cross-examination and by other methods of verifying the testimony of a witness, either documentary or oral, in an open forum, under the public gaze, and either a Judge's version is accepted publicly, or rejected publicly, so that the public sees that there may be cases whether a Judge appointed had given a wrong age. I have really wondered at those people who think that the prestige and independence of the judiciary would be safeguarded by agitating these matters in odd civil courts, instead of the matter being determined away from the public gaze, away from public controversies, by the President in consultation with the highest judicial authority of the country, namely the Chief Justice of India. I was really amazed when some people came to give evidence before us, and I told them, I asked a question, and I want this to be repeated, because repeatedly I find that when the Government's version is being reported in the press, important statements are left out. The reason is very simple, why we have chosen this method of determining such a dispute, a delicate question, which touches not merely the public but a very important institution of a democratic Constitution, namely, the judiciary, in relation to which it is of the utmost importance that public faith and confidence remain unimpaired in the integrity, truthfulness, character and veracity of the Judges concerned. And to allow these matters to be agitated in open court has several evil consequences, and I want this again to be noted by those who are responsible for reporting speeches of Parliament, that these should be reported as policies enunciated on behalf of the Government, and the evils of having a controversy relating to a Judge's age being so agitated in an open court are manifold, apart from the injury that it involves in the reputation, prestige and respect of the judiciary. The first evil consequence is an element of uncertainty.

SHRI BHUPESH GUPTA: On a point of order. The point of order is this that, although he is not mentioning any name, from public knowledge, there is only one and one conclusion, that it relates to a particular case, because there are not two cases pending before the High Court or the Supreme Court; there is only one case and that comes from the Calcutta High Court. Therefore public will have got the impression, from what the hon. Law Minister is saying, that it relates to the case of that particular Judge, which is a *sub judice* matter Now, Madam Deputy Chairman, you may say that the hon. Law Minister is referring to the matter in general terms. I wish it were understood by the people in the same way, but it will not be so understood because there is only one case so far, since the Constitution, which has come up before a court of justice, High Court and the Supreme Court, there has been no other case pending in the past, or pending now before the High Court or Supreme Court, and the inference will be clearly and irretrievably this that the hon. Law Minister is dealing with that particular case, although he may not, in this case, mention the name of either the Judge or the particulars . . .

SHRI SONUSING DHANSING PATIL (Maharashtra): May I rise on a point or order? Is it a point of order, or a speech?

SHRI BHUPESH GUPTA: It is a point of order.

SHRI SONUSING DHANSING PATIL: A point of order must be specific.

SHRI BHUPESH GUPTA: I know that.

THE DEPUTY CHAIRMAN: I have allowed him to say.

DR. SHRIMATI SEETA PARMANAND (Madhya Pradesh): It is for the Chair to say whether a Member can raise a point of order or not and not for Mr. Bhupesh Gupta.

THE DEPUTY CHAIRMAN: Yes, Mr. Bhupesh Gupta is on his feet.

SHRI BHUPESH GUPTA: My point of order is this; I think I should have made it clear that you cannot make reference to a *sub judice* matter-number one; reference to a matter which involves a Judge or who claims that he should have been the Judge now—number two. These are the two points that I make in this connection.

THE DEPUTY CHAIRMAN: Yes, you have made yourself very explicit.

SHRI BHUPESH GUPTA: Therefore I say that the Law Minister can propound a theory, if he likes, or deal with, very generally, avoiding reflections on the conduct of a Judge in a *sub judice* matter.

THE DEPUTY CHAIRMAN: What is your point of order, Mr. Patil?

SHRI SONUSING DHANSING PATIL: Madam, my learned friend on the Opposition made a speech. He did not make out a specific point, and there was no reference particular to any Judge. If he, by inference, points out to a particular Judge, it may be in his mind. So there cannot be a point of order.

THE DEPUTY CHAIRMAN: Yes, the Minister.

SHRI A. K. SEN: I am very obliged, Madam, for the hon. Member reminding me of a rule of caution and prudence which, in my humble submission, all of us should follow without violation. In fact, he should have addressed that caution to his colleagues in the other House who had specifically not only raised this question but read out extracts from the judgment—I shall deal with that presently—and I cautioned them, Madam as the proceedings will show—that it was a *sub judice* case, because we should never go into such cases, and you will forgive me if I say that I was not attempting to relate my arguments to any particular case. I was attempting to trace the views of the Government as to why they thought that such matters cannot be left for adjudication in open courts of law but should be left to be determined, away from the public gaze by the Head of the State in consultation with the highest judicial authority of the country.

SHRI SANTOSH KUMAR BASU (West Bengal): Does it not go to the very basis and foundation of this Bill? If that is left out, then nothing can be discussed here.

SHRI A. K. SEN: Madam Deputy Chairman, in fact the hon. Member's colleagues belonging to his Party, who were Members of the Joint Select Committee, had given notes of dissent on this very point, and it is my duty to assist the House in arriving at proper conclusions regarding the merits of the Bill. Why is it that we have not left it to the uncertainties of litigation in a civil court? Because it is not a method which has the effect of deciding it without raising public controversies so that the judiciary remains unimpaired so far as its prestige and independence and other things are concerned.

Reverting back, Madam, to the views which I was trying to express on behalf of the Government with a request to the press that they may be good enough to report these views of the Government correctly, I shall presently explain why I am appealing to the press in this matter of reporting. But you will allow me to do so a little later.

Madam, the reasons are, as I said, that many evil consequences would follow if controversies relating to the age of a Judge and dispute concerning the Judges assertion about a particular date of birth being correct or not, are allowed to be decided in a court, involving a cross-examination of the Judge, the procedure of taking evidence being laid down either to contradict him or to support him, evidence brought either oral or otherwise in order either to support the Judge or to contradict the Judge, with ultimately the risk of the verdict going right up to the Supreme Court through the usual processes of our law, the risk involved of openly pronouncing that a Judge had given a wrong age and the

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whole country knowing this as they must when a decision of a tribunal is known.

The other consequence is the uncertainty involved in the process of civil litigation, and the various courts in which they may be challenged, the various cases in which they may be challenged, and so on. It is now decided beyond all dispute because of the Constitutional provision making it mandatory for a Judge to retire after the age of 62. Now if a Judge, who reaches the age of 60, remains a Judge, all his judgments, after the age of 60, would be invalid because he would be *functus officio*, as has been explained in a recent Punjab High Court judgment. Now, what is the danger of it, Madam?

Several judgments were delivered by a particular Judge who, let us assume, has not reached the age of 60 as he says, but who in fact has reached the age of 60—either judgment, in favour of a particular litigant or against a particular litigant, in favour of the State or against the State, either in a criminal action or in a civil action —dozens of judgments were delivered by him. Then they are challenged in dozens of cases because according to those who are very solicitous about the independence and integrity of our judiciary, and according to some witnesses who came and gave evidence before us in the Select Committee, these should be left to be determined in odd actions, civil actions. declaratory suits, in Munsif's court. So the Munsif decides it. Let us say, 12 Munsifs decide them. There are 12 judgments. They declare them either invalid or valid. There are conflicting judgments, some Munsifs deciding this way, some Munsifs deciding another way, then going up to the High Court, then to the Supreme Court, involving five or six years of uncertainty and the fact of this judgment or that judgment remains to be decided and yet we are led to assume that great public good will result if such a vital matter is left for the most uncertain way of determining a Judge's age through civil actions, challenging a particular judgment as either valid or not valid. Disputed questions of fact have to be decided in declaratory suits, and in the meantime, the poor litigants who arrive at a judgment will find that they are deprived of the fruits of that judgment. Those who have been affected in criminal cases, they will be let off or a retrial ordered because the Judge has been found in civil action to have reached the age of 60. Therefore, the very certainty which sustains our judicial system, the very element of a litigant enjoying with a certain amount of certainty the fruits of litigation, that would be taken away from the judiciary. Is it not, therefore, infinitely much better that a system is devised where people do not at all know the controversial questions so delicately affecting the procedure of the judiciary, and where this uncertainty involved in a method of adjudicating directly or indirectly upon the age of a particular Judge, either validating or invalidating a series of judgments delivered by the particular Judge, would be completely obliterated, and where the interest of the judiciary, their independence and everything would be completely safeguarded. And in my submission, Madam, the device which the amendment seeks to graft into the Constitution is admirable from both these points of view. The President, as the Head of the State, decides in consultation with the head of the judiciary. And, as I have said, even when that Constitutional provision was not there, in all the cases decided so far the President has not only decided in consultation but the decisions have been the decisions of the Chief Justice. And yet, Madam, I was very pained when several Members, particularly Mr. Homi Daji . . .

SHRI SANTOSH KUMAR BASU: You cannot refer to Lok Sabha Members.

SHRI A. K. SEN: I can certainly express because you will find Mr. Daji's note of dissent is there. He says that it is a method of coercing the judiciary, a sword of Damocles, that we

are trying to, more or less, make the Judges our stooges. Well, if that is so, the appointing authority is still the President. People forget that we need not appoint people of independence and quality if we try to make stooges of them. If we wanted to make stooges of our Judges, we would appoint stooges which we have not up till now. The appointing authority still remains the President.

SHRI MULKA GOVINDA REDDY: They are even now appointed on extraneous considerations.

SHRI A. K. SEN: *Ipse dixit* do not prove an assertion. If *ipse dixit* proved such assertions, we would have been in a precarious position from day to day. Now, Madam, may I point out that Mr. Homi Daji . . .

SHRI BHUPESH GUPTA: If you point out to his note of dissent, you should read this thing out.

SHRI A. K. SEN: I do not want to take the time of the House. It is there for any one to read it.

SHRI BHUPESH GUPTA: He has not said that. He has said that he considers it most unseemly to allow the question of a High Court Judge's age to be a matter of controversy.

SHRI A. K. SEN: That is what I am saying. He says that it is most unseemly—I do not want to quote the exact thing. If the hon. Member wants me to read the exact thing I can do so, but I am giving a substance of it.

SHRI BHUPESH GUPTA: He agrees with you that it should not be a matter of controversy.

SHRI A. K. SEN: Now, Madam, I was surprised when I found that some hon. Members brought up the matter in the House and judgments were quoted. It is said that Judges have appealed to Parliament against the amendment. I said it is reported because there has been a good deal of, I find, misunderstanding because Judges think that it is not good when I said that it would be an end of the judiciary if Judges start making appeals to Parliament and enter politics. I said, Madam, clearly that Judges are not meant to appeal to any one. The question of appeal against their judgment is regulated by our law. They will neither appeal to Parliament nor to the Government, and I said that I shall be happy to find that the interpretation put on that judgment was wrong, and that it was wrong to say that they have appealed to Parliament. I still maintain, Madam, that if a day comes *when—as is claimed that Judges have* started appealing to Parliament against a proposed measure—they start appealing against a proposed measure, that will be a bad day for our judiciary. I still maintain that. What I said was not by way of criticising a judgment. I am told—I do not know how reports have gone—but I read the P.T.I. report. It was a correct report, it quoted first of all a Member who said that Judges have appealed to the Parliament against the amendment and I said that Judges are not meant to appeal to the Parliament. Their judgments are judgments on which they should rely themselves . . . (*Interruptions*) I am not thinking of this particular thing. They were talking of a particular judgment of Judges who are still there and they said—and an interretation was put—that they were appealing to the Parliament against the amendment. I said that they never do that and that interpretation was wrong and I said, the moment the Judges start entering into the realms of politics, it will be the end of judiciary and they should never do so. Far from appealing to the Parliament, on a particular measure, they would not do so even on a measure which has already been passed. Anyway, that is what I wanted to say, and I understand—I have received some letters, I do not want to say—one or two even from Judges, who have apparently from some reports which

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have not given the whole facts, purported to say that I was dealing with a judgment and have criticised the judgment. I have never dealt with the judgment. I cautioned those who tried to quote extracts from judgment that it is a *sub judice* case and it should never be quoted in the Parliament. What I said was by way of repelling the assertion that Judges have appealed to the Parliament. That was the expression used. It was used twice that these learned Judges have appealed to the Parliament and I said that it was a wrong thing to say so, that it will be the end of the Judiciary when they start appealing to the Parliament. Then the Judges will leave their judicial seclusion and will try to enter into the realms which are not meant for them. It is designedly that we have kept the two spheres completely separate.

Now, therefore, in my submission, this so-called controversial question about this provision that we are seeking to introduce as a proper and appropriate method for determining such disputes is a proper measure and I completely refute any suggestion that it is intended as a sort of device to coerce the Judges. In fact the history of governmental action in such matters even before this obligation to consult the Chief Justice was brought in has been one of deciding in conference with the Chief Justice and actually on the advice of the Chief Justice in such matters. The President's name is there because he is the Head of the State, otherwise in substance, in each case it has been the decision of the Chief Justice concerned.

Then the next important provision is the provision relating to the question of compensatory allowance for Judges who are transferred from one High Court to another. There has been some controversy with regard to that also. Hon. Members will see from the Notes of Dissent certain misunderstandings on this question. As I said, it has been felt all over the country that just as our I.A.S. and some higher services are organised on an all-India level, we cannot bring about a proper national bias in our highest courts unless a certain percentage of our Judges happen to be drawn from outside the States. They give a national outlook to a particular High Court apart from giving an element or introducing an element in every High Court which is free from local bias, prejudices, likes and dislikes. Members of the bar know that when Judges are appointed from the Bar, they carry with them their likes and dislikes born during their association with the Bar.

SHRI BHUPESH GUPTA: They sometimes go on the basis of likes and dislikes.

SHRI A. K. SEN: That is quite true because Chief Justices, like others, cannot be expected to be 100 per cent. objective.

SHRI BHUPESH GUPTA: Chief Ministers . . .

SHRI A. K. SEN: No. I have had criticism even with regard to the nominations made by the Chief Justices.

SHRI BHUPESH GUPTA: The Governor recommends through the Chief Minister . . .

SHRI SANTOSH KUMAR BASU: Madam, is it necessary for the hon. Minister to take notice of every interruption and to reply to it?

SHRI A. K. SEN: Not every interruption but Mr. Gupta happens to be a special Member in this House. We all have grown . . .

THE DEPUTY CHAIRMAN: Mr. Gupta, why do you not listen to the Minister?

SHRI A. K. SEN: Madam, we all have grown not only used to him but we have also developed a sense of tolerance for him.

SHRI SANTOSH KUMAR BASU: That has to be brought to an end.

SHRI BHUPESH GUPTA: Yes, not Mr. Santosh Basu.

SHRI SANTOSH KUMAR BASU: There are other people of my way of thinking who will not have that tolerance.

SHRI BHUPESH GUPTA: I agree with you.

SHRI A. K. SEN: I have been reminded that I have been suffering from the lapse of addressing you 'Sir', occasionally. This is a bad habit but as a lawyer you will know, Madam.

THE DEPUTY CHAIRMAN: It does not matter.

SHRI A. K. SEN: We respect you all the same, Madam.

SHRI BHUPESH GUPTA: Even if we address you as 'Sir'.

SHRI A. K. SEN: I was saying—I forget really due to Mr. Gupta's interruption what I was addressing—about the compensatory allowance. It has been decided as a matter of national integration that we must have Judges drawn from other States. To appoint them initially is a difficult matter because the Chief Justices nominate and they cannot nominate members of the Bar of other States, they do not know them. For instance, the Chief Justice of Allahabad nominating Judges for appointment in the Allahabad High Court, would not know who is a good member of the Bar in Patna or in Bhopal or in Bombay or in Calcutta. Therefore he naturally nominates a member of the Bar belonging to the Bar of that High Court, but later on, we know who are the Judges who are shaping so well in their respective High Courts and we like to have them brought from one State to another. In fact many of the cases where good Judges have been transferred as Chief Justices have proved a great success. I do not want to mention those names, they are well known. It has therefore been decided on very high authority and on a national level in the National Integration Conference and in other allied conferences that we must shape our High Courts so that they reflect the national outlook and they draw a certain element from outside. If we accept the principle and convention which we have followed so far that the President shall exercise his power of transfer only with the consent of the transferee and not against his consent, then we have found it extremely difficult to get good judges consent to a transfer unless we make it worth his while because he has to maintain, in most cases, two establishments—there is the expense of moving to another place away from his home and surroundings and so on and therefore we found that it will be impossible to give effect to this most urgent need of having our High Courts composed of Judges drawn from outside the States unless we pay some sort of compensatory allowance. We have left it to the Parliament to determine by law what compensatory allowance will be fixed. It will be for the Parliament to decide having regard to all the circumstances. It may be that the compensatory allowance for a place like Bombay will have to be more than for a place like Cuttack because living expense will be very much more than in a small place but that is entirely for the Parliament to determine.

Another matter which has raised a little controversy is with regard to the question of appointing *ad hoc* Judges in the High Courts. There has been some misunderstanding about what *ad hoc* Judges mean. They are different from Additional Judges. They are appointed during the temporary absence of a sitting Judge either through illness or otherwise. In the Supreme Court we have a provision for appointment of *ad hoc* Judges but in the High Court unfortunately we have not As a result, if a Judge is absent for six months, we have to appoint an Additional Judge to fill his place though it may not be necessary. So we have found it

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absolutely appropriate to have a similar power taken for the High Courts so that we appoint during such temporary absence of sitting Judges not Additional Judges who are bound to be made permanent later on but *ad hoc* Judges drawn from those who have been Judges already. It is not that a new person would become a Judge for six months and then go back to the Bar with added prestige.

Then, the next matter . . .

5 P.M.

SHRI SANTOSH KUMAR BASU: Madam, in this connection, there is just one point which I want to get clarified. In the last line, it is said . . .

SHRI BHUPESH GUPTA: Must we now have all this interruption? Madam, Deputy Chairman . . .

THE DEPUTY CHAIRMAN: Mr. Bhupesh Gupta, it is for the Chair to allow or not, the interruption.

SHRI SANTOSH KUMAR BASU: I want to raise as a matter of clarification. I am strictly within rules and I would like to raise it with the permission of the Chair.

SHRI BHUPESH GUPTA: Then why don't you allow me?

SHRI SANTOSH KUMAR BASU: I will just ask one question. It is said that the Judge shall—

> ". . . be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of but shall not otherwise be deemed to be, a Judge of that High Court."

What is the nature of this 'otherwise'?

SHRI A. K. SEN: There may be other privileges, I do not know but this is the same provision as applies to the Supreme Court. There may be the question of pension or other financial rules. Perhaps these may not be added on to his service as a Judge for purposes of calculating his pension. This is the same thing that we have in the case of *ad hoc* Judges for the Supreme Court.

The next provision which is a little controversial is with regard to article 311. Madam, it will be noticed that leading members of the Opposition admitted that the present law as has been interpreted by the Supreme Court is in favour of giving a second opportunity to show cause against the punishment proposed. It is confined only to the question of punisnment and it does not give power to demand or to order a second enquiry in the guise or pretext of making a representation against the punishment proposed. Unfortunately, there has been a good deal of misunderstanding on this point and though leading members of the Opposition, including Mr. Frank Anthony and others, had admitted this, yet others said that a great constitutional safeguard had been taken away especially when we have made it clear that what is sought to be done is to clarify the position as has emerged after a series of Supreme Court decisions. Charges, enquiry and even the finding of facts is over and on the provisional decision being taken on the punishment, an opportunity only to show cause against the punishment proposed is given to the civil servant concerned. In fact, the draft put in as amendment, almost the substance of it, was word for word the same as was given to me by representatives of the civil servants who came and saw me. They said that they did not want any second hearing. In fact, they said they knew that the law was against the second hearing. All that they wanted was a clarification that the right to show cause against the proposed punishment was not taken away. I accepted it and I was most pained, Madam, when I found that notwithstanding my acceptance of what the civil servants had given—and I am not flattered by the thanks expressed to me . . .

SHRI AKBAR ALI KHAN (Andhra Pradesh): The original was also moved in the Select Committee.

SHRI A. K. SEN: Yes. When I put in this amendment making it clear that the second opportunity of showing cause against punishment was not taken away, the representatives of the civil servants came out and openly thanked me in the corridors and everywhere and yet I am amazed when I find that the Government is accused of taking away valuable safeguards which were supposed to be somewhere hidden and which were not found out by anyone, and it was also admitted by lawyer members of the Opposition as not being there. What we want to do, Madam, is not to create the same dilatory procedure in connection with disciplinary proceedings started against defaulting or guilty civil servants as we have in courts of law. We do not want to repeat the court procedure in these disciplinary proceedings. We want to give a fair opportunity to the civil servant concerned, appraise him of all the charges, give him a proper hearing and after the facts are found, give him the right to show cause against punishment.

SHRI NIREN GHOSH (West Bengal): I would like to have one clarification. I want to know whether any organisation of the trade unions or of the Government employees or the All-India Trade Union Congress, the INTUC or the HMS has supported the Government in the move to amend the article which is sought to be done in this Bill.

SHRI A. K. SEN: I do not know which organisation . . .

SHRI NIREN GHOSH: Any organisation.

SHRI A. K. SEN: I do not know to which organisation they belong. They came to me as representatives. Mr. O. P. Gupta was there and others. Hon. Members should know because they supported the last strike. Mr. O. P. Gupta came to me, and the hon. member who knows Mr. O. P. Gupta can ask him. He came to me along with his colleagues and said that they supported the Bill. I am absolutely sure they will bear me out. I told him that I would accept it only after consulting the Home Minister and taking the permission of the Prime Minister and others and when I accepted the amendment, I was thanked in the corridor. I am not saying something which is not correct. This is the position and I am absolutely convinced that all lawyer friends—there are plenty of them here—will bear me out that this clarifies the position as has emerged by the Supreme Court decision interpreting article 311 and I strongly repudiate any suggestion that we are taking away any safeguard which has been there in article 311.

SHRI NIREN GHOSH: No. no.

SHRI A. K. SEN: You read the speeches in the Lok Sabha. If the Deputy Chairman permits, I will read the speeches in the Lok Sabha before I move the amendment. This will support my contention that the law is not for second hearing but it is only an opportunity to show cause against the punishment. He can read the proceedings in the other House. (*Interruptions*) I am sorry I succumbed to this. I should perhaps have told them 'Get it written down by the leaders of the opposition and then I will accept it'. Next time I will do it. I will take that precaution.

Madam, these are my submissions and in my submission they are fair amendments necessitated by a series of decisions and our experience of the working of those vital articles of the Constitution during the last thirteen years.

With these words, Madam, I commend this Motion.

SHRI J. N. KAUSHAL (Punjab): May I seek one clarification? The hon. Minister stated that provision exists already for transferring Judges but

[Shri J N. Kanshal.]

that they never tried to transfer a Judge without his consent. Are we to understand that after this compensatory allowance is introduced, the previous convention of taking their consent will be followed or not?

SHRI A. K. SEN: Of course, the convention is still there. If we compensate them, it does not mean that the convention would not be followed. The convention has been a good one.

SHRI MULKA GOVINDA REDDY: Why was this provision for compensatory allowance in the Constitution deleted in 1956 and what are the reasons now for introducing it?

SHRI A. K. SEN: It was never deleted. It was the unfettered power of the President to transfer a Judge from one place to another, one High Court to another and when a Judge took the appointment, he knew that the President had that power but by convention—the convention was developed by which—the President never exercised that unbounded power without the consent of the person sought to be transferred and that convention we intend to follow and in order to give effect to this policy of transfer through consent we find that it is necessary to provide for compensatory allowance.

SHRI MULKA GOVINDA REDDY: Madam, I want to know . . .

THE DEPUTY CHAIRMAN: I think you will speak on this Bill and you can raise all the points then.

The question was proposed.

THE DEPUTY CHAIRMAN: Three hours have been allowed for this Bill. There are thirteen names before me. Mr. Bhupesh Gupta.

SHRI BHUPESH GUPTA: That is all right. Three hours have been allotted excluding the Minister's speech.

SHRI MULKA GOVINDA REDDY: Till what time are we sitting?

THE DEPUTY CHAIRMAN: If the House agrees, we can sit even till 6·30 P.M.

HON. MEMBERS: No.

THE DEPUTY CHAIRMAN: I think the House can sit till 6 O'clock. The House will sit till 6·00 P.M.

SHRI BHUPESH GUPTA: Madam Deputy Chairman, nobody would like to discuss, as far as the provisions relating to Judges are concerned, in a spirit of acrimony or controversy. At least I do not like to do so. Unfortunately the Law Minister's speech at certain points gave rise to an element of controversy. I wish that was avoided. Right at the beginning I should like to say that with regard to the age, we do not have any objection in principle to the proposal, namely, that it may be raised to 62 from 60. We do not know why it was put in the Constitution at 60, nor do we know exactly why it is being raised to 62. But one thing naturally occurs in our mind which I wish to express and it is this that the junior people, I hope, would not be made to suffer as a result of this, those who are on the Bench. I do realise that judicial talent, if physically fit otherwise, should be sought to be utilised for longer periods than we utilise them but that objective we can achieve by making early appointments, by making appointments at a younger age rather than extending it at a later period towards the end of the career. I think that would be the right approach and I am glad that the hon. Law Minister agreed with me when I made the suggestion that younger people should be appointed as Judges. The experience of the Calcutta High Court for example is somewhat stimulating because we find some of the younger people who were elevated to the Bench gave an excellent account of themselves as Judges and made good in their posts and positions. Therefore I say that we can with a measure of assurance and confidence put more and more young people in judicial positions in the High Courts and in the Supreme Court.

With regard to this question of 62 and 65, I do see the point that unless there is discrepancy between the maximum age in the High Court and the maximum age in the Supreme Court, it may not be possible to draw upon the leadership of the High Courts into the Supreme Court. I do understand it but then perhaps exception could have been made in the case of the Chief Justice of the Supreme Court. Anyhow if the Law Minister thinks that at the age of 65 one can even be the Chief Justice of the Supreme Court, on what logic, does he, one may ask, say that one must cease to be qualified to be a Judge of the High Court when one is over 62 because it looks as though there is no principle involved in it. Because there also in the case of High Courts perhaps one might say that one could be expected to continue to discharge the responsibilities and functions as a Judge even at a higher age than 62. Therefore there remains a certain anomaly which has to be set right.

Then came the question of the age. Much has been said about this matter. When I made the interruption it was not my intention to give my views on the subject. Maybe in many of the things that the Law Minister said I am in agreement with him; that is to say, the age of a High Court Judge, or for that matter, of any responsible public man should not be debated in courts of law in public in the manner sometimes they are debated. I agree with him that it brings no good to the institution or to our public life. But the question arises as to why the situation came to such a pass. Today we have got no satisfactory answer and whether Mr. S. K. Basu likes my speech or not . . .

SHRI SANTOSH KUMAR BASU: I do like it.

SHRI BHUPESH GUPTA: .... I have to criticise the Government over this matter. I think the Government have mismanaged initially the entire question which is why a controversy of the kind that many of us have in mind arose. Personally I should have liked to avoid this controversy at all costs. I make it absolutely clear but then the controversy arose and the controversy was not conducted in an illegal way—you may say not in a proper way—but then we clearly see that even the Judges have different views over this matter. The Executive has one view and the Judges have another view and so on. That is how the controversy goes on. Of course I do feel that that should have been avoided but why did not the Government make earlier provisions so that such controversies would never occur? Did they think that the Judges would always be satisfied with the determination of their age by the President or by the Executive or even by the Supreme Court? If the Judge concerned thought that the conclusions of the Supreme Court Judge or the Government in the matter conflicted with the fact, the fact of his birth date, what is one to do in such a situation? And if I find that a conflict has arisen how is it to be taken that only I shall be wrong and the other party must necessarily be right? When the matter relates to my age how is it to be thought that the age that is given to me or rather the date of birth which I am told by my parents or others is not the date of birth but that it should be decided by somebody else? I think the Government should have foreseen such an eventuality, more especially when the Law Minister has himself made it clear that if judgments have been delivered after the age of 60 in the case of High Court Judges all such judgments would be considered to be null and void. If the Government have made such a thing, one wonders what they were doing all these years in order to set matters right and to create a situation which would not give room for any controversy of this kind at all.

Therefore, Madam Deputy Chairman, I accuse—I shall not mine words because that is what I am here for; otherwise I would be belonging

[Shri Bhupesh Gupta.]

to the Congress Party—the Central Government. The Central Government exercised the rule of the thumb in this matter. I say Central Government because the responsibility in this matter rests with the Central Government. They have made rules with regard to the work of the High Court and Supreme Court Judges in courts and so on or advice was given by them in the matter. And from newspaper reports we gather that conferences were also held of the High Court Judges. Why could not a solution be found so far? I think if the Judges were left to themselves to find a solution in relation to a conflict of the nature that we have in mind, long ago a solution would have come from the Judges themselves. It would not have been necessary for us now to lay down such a thing. Therefore I say that I do not personally like the controversy at all but it is there and it has given rise to all kinds of talks in the country. Let it not be thought that public opinion is absolutely in favour of what the Law Minister is saying. I wish it was so but public opinion is divided over this matter. The opinion among the lawyers is also divided over this question. Madam, therefore, was it not possible for the Central Government to have further consultation with the person or persons concerned or involved in this controversy to see that such controversies do not arise and have the matter settled in camera? Should not the Government have taken the initiative, going if necessary a little out of the way to make it understood by the Judge or Judges concerned that such a controversy needed to be avoided in the interests of public life and in the interests of the judiciary itself or the Judge or the Government, whichever you like? It appears to me that some Ministers of the Government and some authorities of the Government are engaged directly or indirectly in a public debate over this matter. Therefore, the situation in this respect has been aggravated. There again I disagree with the attitude and position of the Government. I realise the difficulties on the part of the Government.

With regard to the question of the Judges, what really we should do now is we should prevent private practice of the Judges after they retire from the High Court. That we should prevent, and also employment to other positions of the Judges after retirement should be stopped. I think it is not enough to settle this controversy of age in this manner. Here again I should say that I do not like the President to settle the issue. It is abhorrent in principle, it is against commonsense. Why should it not be made clear in the warrant of appointment or whatever it is what the age of the Judge is at the time of appointment? If you do this thing, then that matter is clinched and settled, it should not be a subject-matter of controversy. If a controversy were to come, let the controversy come before the appointment is made. If you think that a particular candidate or choice nominee of yours is so cussed about it and is so controversial in his approach and wants so much of debate, then you need not recommend his name. You are free not to recommend his name to the President.

SHRI AKBAR ALI KHAN: For future appointments we will do it.

SHRI BHUPESH GUPTA: No, no. Here you say that the President will settle it. I say that the Judge's age should be put down in the warrant of appointment, in the very appointment letter you give him.

DR. NIHAR RANJAN RAY (West Bengal): What about the older appointments ?

SHRI BHUPESH GUPTA: It is a little difficult. Therefore, I say that under no circumstances should you ask the President to settle it. As far as the older appointments are concerned, I do not think there are

very many public controversies. I think here the commonsense approach should be adopted. Is it good even in private for the executive to enter into a controversy with the Judges in this manner and over such a matter as age, assuming that it is not known outside? Do you think that it will be kept a secret in the legal profession or at least in the High Court concerned? No. It will not be. It will be known. Therefore, my suggestion would be that it should be settled in camera through discussion where things are already there. But in future the President—it means the Central Government—the Central Government need not take upon itself the responsibility of seeing always who was born when. Let it be given by documental evidence by the person concerned, or if there is no such irrebuttable evidence available, through a statement of fact it should be included in the letter of appointment. I am very sorry that Mr. Sen misquoted Mr. Homi Daji with regard to this matter, and he almost suggested as if Mr. Daji in the other House was trying to say something which was not only illogical but absurd. I say that it was not being fair to a colleague of his in the other place. I shall read from the joint note of dissent; this is what he said:

"It is most unseemly to allow the question of age of the High Court Judge to be a matter of controversy. Such a controversy or even a chance of a controversy makes the tenure of a Judge insecure and dependent upon either the executive or any stray citizen who chooses to raise the issue. Even if the executive revises the age in favour of a Judge, that too creates an unsavoury atmosphere and is not free from objections. The question should in no case be left to be decided by the President, that is the executive, even on the advice of the Chief Justice. It should be settled once and for all at the time of appointment in the warrant of appointment itself, and that should be final. For the existing cases the normal course of law should be left unaltered. It is wrong even to create an impression that the tenure of a Judge can be varied to his advantage or disadvantage, for whatever reason, by a decision of the executive."

After this, will it be right to attack Mr. Daji of making an absurd suggestion? You may or may not agree with him, but here is a line of reasoning which need not be rejected out of hand. That is what I am saying, but then sometimes we do such things. Therefore, I say that I share the viewpoints expressed here by Mr. Daji, and I have no doubt in my mind that many others perhaps also think on similar lines, if not exactly agree with all that he has said.

Now as far as the Judges are concerned, in the Supreme Court the Judges should retire after 65, and in the High Courts you are providing for 62. Let them retire. They are given pension. If you think that the pension is inadequate—I do not think so—increase the pension a little if you like, but you do not keep alive the situation where we see our Judges seeking jobs. That demoralises the judiciary and the administration and, if I may say so, sometimes opens the door to certain unhealthy trends which we should all avoid. I do not like Judges to be made Governors, for example. I do not like it because appointment of a Governor, is an executive thing, and whether a Judge is good or bad is not the point. But objectively speaking, when there is a chance, it is possible for the Government to appoint a retired Judge as a Governor, that is, there is that inducement, that temptation. Whether a particular Judge or Judges will be carried away by such a thing is a different matter. It relates to the sphere of subjective approach, but objectively we should not even keep alive the situation where things

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operate to the detriment of the standards of public morality. I think we can find Governors easily from other places. Similarly also in other spheres of appointment we find Judges. Why a Judge, for example, should necessarily be a Vice-Chancellor of a University I cannot understand.

SHRI AKBAR ALI KHAN: That is an academic job.

SHRI BHUPESH GUPTA: I know that. Some universities may appoint them, some universities may not. If the Judge has very high academic qualification, I can perhaps understand it, but you can well understand, having spent thirty or forty years at the Bar sunk in law books and so on within the precints of the Court, that very little of academic accomplishment will remain. Mr. Akbar Ali Khan should know this thing more than anybody else. You may be a great jurist but not necessarily a great academician to be at the head of a university which has many sides and branches of knowledge and so on. I do not mean any disrespect to our Judges, but I ask why we should have it. I say we do not have very good experience as far as this matter is concerned. It should be stopped. I know that the Judges are not perhaps allowed after retirement to practise in the High Court in which they had practised, but they are allowed to go to some other Court, to the Supreme Court, and so on. We need not perpetuate this thing. Let younger men come up in the legal profession at the Bar. Let their path in the first place be not barred by such intrusions or incursions, whatever you call it, by the superannuated legal talents It is no good. Secondly, it does create certain bad influences. You can understand it. The Judge is appearing before another Judge who had been his junior or some such thing, and always there is some danger of undue influence operating, perhaps sub-conscious if not conscious, on the parties concerned. As far as clause 12 of this Bill is concerned, I do not see as to why this question of vacations, etc. should be determined by the Central Government; it should be left entirely to the Judges concerned. I think we can trust our Judges in this matter. My experience of the Calcutta High Court—not my personal, direct experience but my knowledge of the affairs of the Calcutta High Court—compels me to say this thing on behalf of the Calcutta High Court because in this very House and in the other House it has been suggested in reply to questions and otherwise that the Judges of the Calcutta High Court are not working enough, that they should increase their working time, that a lot of arrears has accumulated and so on. Well, they are not in the traditional sense reflections on the Judges but certainly these things that have been said about the Judges of the High Court of Calcutta do not sound well. Therefore, the Judges of the Calcutta High Court are as good and as industrious as the Judges of any other High Court, I say, and if they have certain difficulties, they should be gone into. I do not think that they work less than in other places. But this you can find out. I know that in this matter the Government ignored many of the resolutions passed by them or the contentions made by the Judges of the Calcutta High Court. They have implemented the common decisions made at the Judges' Conference and yet, unfortunately, the Calcutta High Court Judges have been subjected to an unmerited criticism over a matter of this kind. I am sorry for that I think Mr. Basu will know how to defend the Judges of the Calcutta High Court. I venture, in all humility, to leave the task to him, for the rest to be done by him.

[THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN) in the Chair.]

Then, let me come to the controversial article 311 of the Constitution. I do not see the Law Minister here. He

spoke in an angry accent over this matter and he sought to make out that certain trade union leaders accepted the amendment. Mr. Niren Ghosh. Very well. He took it for granted. I do not know if he knows him, met him but he gave him the kudos of accepting the amendment suggested by him. That is to say, the trade union leaders having got the Law Minister accept it, now these leaders are letting him down. And then the Law Minister proceeds to say that the next time he will not accept any such proposal for an amendment unless it has been certified by the leaders of the Opposition. I am thankful to him if he will assure himself that he has the backing of all the leaders of the Opposition. But I think that in this particular case he has not been fair. I am aware of the controversy over this matter through the trade union and other documents when this matter first came out. And I can tell you that Mr. Asoke Sen should not forget that in the country there are trade unions which are strongly, politically affiliated to the Congress Party. I have in mind the trade union, the Indian National Trade Union Congress, and they have a weekly organ which is described as the organ of the INTUC. In an editorial written on 25-2-1963 they wrote—

> "The proposed amendment of Article 311 is unwarranted and may create discontent among the Civil Servants. We appeal to the Home Minister to reconsider the measure."

Similar opinions were expressed by the AITUC and so on. And then you have the opinion of 'The Statesman' where the Law Minister like any other Minister would always like to read his speeches reported well. There is no doubt about it. They are fond of 'The Statesman' giving their own speeches. Their 'Statesman' said—

> "If the Government still feels that there is a balance of advantage in getting this amendment through despite the misgivings it will create, it must at least provide assurances that the only opportunity to be given to an employee will be adequate for his defence; a wiser step would be to drop the proposal."

In fact, 'The Statesman' which you cannot characterise as a party paper and which is biased heavily in favour of the Government, advises that this particular amendment had better be dropped. This was the opinion given by 'The Statesman'. Earlier also, 'The Statesman' wrote in a similar strain. Therefore, it is not a party issue at all. The question arises whether the rights of the working people and of the employees are curtailed or not. The view was taken by the trade unions in the country and by many other eminent people belonging to the Congress Party and others as well that this did, in its original form, seek to curtail the rights of the employees, the Government servants here. Now here the Law Minister has changed it. I am not saying that he has changed it for the worse. I do maintain that as a result of the constant deputations and advice coming from the Government employees and others, the Government did make certain modifications in the original amendment and we now get it in the finalised form. He means that it is an explanation. Well, he seems to make out here that the present amendment is in line with the decision of the Supreme Court. That is to say, he is straightening out the matter. If it were so simple, then the amendment could have been given by way of an explanation rather than by proposing substitute sub-clauses under article 311. It was open to the Government to do so but the Government has not done it. Therefore, I regret that this approach is not a right one.

Now, a question arises here. You read the amendment. This amendment in clause 10 says—

> "....making representation on the penalty proposed, but only on the basis of the evidence adduced during such enquiry:"

There is a divergence between what appears in the Constitution and what

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appears here. Lawyers will have explained it better but according to me, it seems that in the case of a show-cause notice against the proposed action, the Government employee concerned, the Government servant, cannot rely on any other evidence except that which has been already adduced in the course of the enquiry. That is to say, in the matter of show-cause, he cannot bring in new evidence to justify his contention. He has got to be limited to the evidence already adduced. I think this certainly is not helpful from the point of view of safeguarding the rights and interests of the Government servants. Anyhow, it was possible for the Government to give it as an explanation. Now, what will happen in the courts, you will understand. If it is the contention of the Law Minister that essentially no change has been made compared to what is in the original form in the Constitution today, then the courts may ask: Why in that case did it become necessary for having substitute sub-clauses? The inference will be that the framers of this particular amendment did have some other intention or meaning in mind than what is contained in the relevant sub-clauses of article 311. Therefore, I do not know how the Supreme Court will view this matter or how it will be translated into practice. But I do feel that the Government needlessly tampered with this provision when everybody was satisfied with it. On the contrary, if any amendment should have been made, it should have been made to clearly enlarge the rights and safeguards of the Government servants rather than treat them somewhat vaguely or abridge such rights and interests of the Government servants. My fear is this that in this particular case it does seem to me that there has been some little abridgment of the right even as compared to the existing provision. As far as article 311 is concerned, as you know, the Governor has plenty of powers to dismiss anybody even without showing any cause. Therefore it is already very harsh. I can tell you that many Government employees have fallen victims to this peremptory power that is given under clause (2)(c) of article 311 to the Governor or the President to take action against people without even showing any cause. Many have fallen victims to the assault of this article. Now this article should have been amended really in order to do away with all kinds of arbitrary actions, dismissals or disciplinary actions taken, whether by the President or by the Governor, because that has been an engine of oppression as far as the Government servants are concerned. I think the Government has taken a tardy attitude over this matter and we have been left in doubt exactly what are the implications of the present amendment which is proposed. We would seek more light in the course of the discussion, because many lawyers will have spoken and the Law Minister will have given his answer, but let him not be angry over this matter, because the Government servants are certainly entitled to have the clearest categorical assurance from the Law Minister. Whatever he has in mind, the law should be such as does not curtail their rights; on the contrary, enlarge them and extend them in the interests of all concerned.

Thank you.

SHRI MULKA GOVINDA REDDY: Mr. Vice-Chairman, most of the provisions of this Constitution (Fifteenth Amendment) Bill, 1963 are not acceptable to me. Time and again we have stated that we should not resort to amendments to the Constitution very lightly and very often. But unfortunately it has become a disease with the Government to bring forward Constitutional amendments very often, and sometimes it seems ridiculous that some of the provisions that had been in the Constitution previously and were deleted are now sought to be incorporated by some of the amendments that are now adumbrated in this very Bill.

Mr. Vice-Chairman, I agree with the Law Minister when he says that the

judiciary should be independent. It should be very independent if we want the parliamentary system of democracy to prevail in this country and to survive in this country So we should do nothing to hamper the independence of the Judges, either directly or indirectly. But the way in which the amendments are now being sought to be moved makes one feel that the Government wants to throw a bait to the Judges and thus disturb that independence. Mr. Vice-Chairman, they have brought forward an amendment to increase the retirement age of the Judges of the High Court from 60 to 62. Now, many a time, many members of the bar associations have stated that at 60 most of the Judges of the High Courts are not fit to discharge the responsibility they are expected to do, and so to raise their retirement age from 60 to 62 is, to my mind, absurd and unnecessary, and I cannot lend my support to the amendment to raise the age of the High Court Judges from 60 to 62.

Regarding the determination of the age of Judges of the Supreme Court and of the High Courts, different methods have been formulated in this amending Bill. Under clause 2 they would like that the age of the Supreme court Judges should be determined in such manner as Parliament may by law provide. But with regard to the age of the High Court Judges, it is stated that the age of a High Court Judge will be determined by the President in consultation with the Chief Justice of India. This double standard, I do not approve. There should be one standard for determining the age of a Judge, whether he is of the Supreme Court or of a High Court. With regard to future appointments it is better that in the warrant of appointment of a Judge of a High Court or of the Supreme Court the date of birth should be mentioned, and that should be a final settlement of the issue. It looks really ridiculous and shameful that the age of a Judge of a High Court should be fought out in a court of law. If this amendment that has now been proposed to be moved by Mr. Raghunatha Reddy and Mr. Venkatappa is accepted, then there won't be any dispute with regard to the age of Judges who are going to be appointed to the Hight Courts or to the Supreme Court.

Regarding the age of the sitting Judges there may be some dispute, and it should be solved, not in a public way, but in such a manner that the people do not have the doubt that even the Judges of the High Court resort to going to courts to settle the question of age. It should be accepted; whatever age has been recorded in the matriculation certificate is final and that should be the guiding principle while deciding the age of the High Court Judges.

Regarding clause 5, Mr. Vice Chairman, they want to throw a bait to some of the Judges so that they may be transferred from one High Court to the other. This particular provision was in the Constitution in article 222(2), but it was deleted in 1956, even after the recommendations of the States Reorganisation Commission were made known. The States Re-organisation Commission had stated that one-third of the Judges of a High Court should be appointed from outside a State and Government should have followed this salutary principle. That would have been a better course to bring about national integration, instead of throwing a bait to some of the Judges to go out of the High Court in which they are at a given time working, with this compensatory allowance. According to the Constitution, a Judge of the High Court is entitled to get a salary of Rs. 3,000, and I do not think it is reasonable and proper that they should throw this bait to the High Court Judges, the highest judiciary in a State, give some sort of inducement, in a way it is bribe I should say, so that he may accept a transfer, to go out of the High Court in which he is working. I think such transfers are taking place with regard to I.A.S. officers and I.C.S. officers and they are not given any compensatory allowance

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for their transfers for the transfers made with regard to the I.A.S. or I.C.S. or any other Administrative Service. So it is all the more necessary that we should not tempt these High Court Judges with this compensatory allowance. If necessary, and if it is found desirable, we may transfer some of the High Court Judges from one High Court to another. But this compensatory allowance should not be given.

Sir, article 226 is sought to be amended. I welcome this amendment. It gives powers to other High Courts to issue writs in certain cases. But I am not in agreement with this particular wording of this section which says:—

"....within which the cause of action....".

page 3, line 2 of the Bill. The words "cause of action" should be deleted.

Coming to clause 10 which seeks to amend article 311 of the Constitution, it is a very much disputed article. They want to amend article 311. The original amending clause was worse. Now they have improved the clause. But it does not satisfy the millions of Government employees. The opportunity that was given to them under article 311 is being abridged. The opportunity of a second trial in a way is absolutely necessary because as employees of the Government they cannot resort to strike or any other method or to direct action. They do not have bargaining power. So this simple opportunity which was guaranteed under the Constitution is now being dispensed with.

Sir, the Law Minister was saying how some of the leaders of the trade union movement went to him which made him accept the proposal to amend this particular article. We have received a copy of the memoranda from different organisations. I may quote for your information that about 13 organisations of the Central Government employees have sent a memorandum stating that the present amending clause to amend article 311 is not welcome and it should be approved. In the memorandum the Members of Parliament have been requested to oppose this, and their request appears to be very reasonable. It cuts across political parties. It cuts across every political affiliation of trade unions in the country. The A.I.T.U.C., the Hind Mazdoor Sabha and the I.N.T.U.C. are the three Central trade union organisation. They have all opposed this amending clause. In addition to that, many newspapers have opposed. Many important jurists have also stated that this clause should not be proceeded with, including Mr. M. C. Setalvad, our former Attorney-General, as also Mr. Purushottamdas Tricumdas, one of the leading advocates of the Supreme Court. They have also stated that this article should not be amended in the way in which the present amending Bill seeks to amend it.

THE VICE-CHAIRMAN: (SHRI AKBAR ALI KHAN): Shri S. K. Basu.

SHRI SANTOSH KUMAR BASU: Will you ask me to commence now? It is only five minutes left.

THE VICE-CHAIRMAN: (SHRI AKBAR ALI KHAN): Mr. Krishna Chandra.

SHRI KRISHNA CHANDRA (Uttar Pradesh): I would not be there on the morning of the next sitting.

SOME HON. MEMBERS: Why not we adjourn now?

THE VICE-CHAIRMAN: (SHRI AKBAR ALI KHAN): Is it the pleasure of the House that we adjourn now, or would any other hon. Member like to speak? Mr. Sapru.

SHRI P. N. SAPRU (Uttar Pradesh): I do not mind.

THE VICE-CHAIRMAN: (SHRI AKBAR ALI KHAN): If you do not mind, we will sit for five minutes.

SHRI P. N. SAPRU: But I will get only five minutes.

THE VICE-CHAIRMAN: (SHRI AKBAR ALI KHAN): You will get

five minutes today. You may continue later.

SHRI P. N. SAPRU: Mr. Vice Chairman, I have explained my point of view in a note which I have attached to the report of the Joint Select Committee and I stand by that note. The first question which is of importance in connection with this Bill is the fixation of the Judges' age. Now, I agree with the view which was ably put forward by Mr. Basu in the Joint Select Committee, and it has been put forward in this note also, that the age of a Judge should be determined at the time of his appointment and stated in his warrant of appointment. I think it is important from the point of view of the independence of the Bench that the age should be finally settled at the time of the appointment of the Judge. It should not be open to the executive Government to reconsider the question of his age at any future time nor should the Judge himself be allowed to raise it at any future time. Circumstances, however, have arisen—I need not go into those circumstances —which make it necessary, or which have made it necessary for this Parliament to lay down as to how the age of any existing Judge shall be determined should it become necessary to do so. I appreciate the reasons which have been given by the Law Minister in regard to the undesirability of a matter of this character being agitated in courts of law. I think it will put both the Government and the Judge, particularly the Judge, in an embarrassing position if his age were to be left to be determined by the law courts, if he were to agitate the question of his age by a writ application or if some one were to agitate the question of his age by a writ or *quo warrant*. That would be embarrassing and it would not be right. Therefore, I have suggested a way out of this difficulty. And the suggestion which I have to make is that it should not be left to the Chief Justice of India alone to advise or to make recommendations in regard to this matter to the President. It should be left to a Board of three Judges of the Supreme Court appointed by the President for this matter to settle a question of this character. They will, of course, sit in camera and they would advise the President much as the Privy Council advises the Queen in regard to appeals before it. The advice would be binding upon the President. That is how, I think the age of a Judge should be determined.

The second question, Mr. Vice-Chairman, is that of the retiring age of Judges. My view is that as the executive authority is the appointing authority, the greatest guarantee that has been discovered, so far as the independence of the Judges is concerned, is life tenure or near-life tenure. Now, I know that in the circumstances which exist in this country, it will not be possible for us, or it is not possible for us, to have a life tenure or a near-life tenure system. I have, therefore suggested that the recommendations, in regard to this matter, of the Law Commission should be accepted. That is to say, the age should be fixed at 65, and a Judge should be ineligible after retirement for any further appointment under the Republic. He should further be precluded from private practice. It should not be open to him to practise either in the Supreme Court or in any other court. It is undesirable for Judges to come into contact with the litigant public and even if you allow a judge to practise in the Supreme Court, there are objections to that course.

6 P.M.

THE VICE-CHAIRMAN: (SHRI AKBAR ALI KHAN): Dr. Sapru, you can continue on Thursday.

The House stands adjourned till 11 A.M. on the 9th May, 1963.

The House then adjourned at one minute past six of the clock till eleven of the clock on Thursday, the 9th May, 1963.

GMGIPND—RS—180 RS—27-6-63—550