will be no lunch hour for today. There is time fixed for 4 P.M. today, for Mr. Bhupesh Gupta to move a motion. With the permission of the House and with his permission, if that could be postponed till tomorrow 4 P.M. we could finish both the Bills to amend the Constitution.

SHRI BHUPESH GUPTA (West Bengal): Yes.

HON. MEMBERS: Yes, yes.

THE CONSTITUTION (FIFTEENTH AMENDMENT) BILL, 1963— *continued*

SHRI P. N. SAPRU (Uttar Pradesh): I was suggesting day before yesterday when the House adjourned that the age of Judges should be fixed at 65. It was said that as the Chief Justice of a High Court will not accept a Supreme Court Judgeship, it was desirable to have a difference of three years for that reason. My answer to that argument is that a Judgeship of the Supreme Court gives a unique opporunity to a jurist to leave his mark on the case law of the country and I do not think that any Judge who is stepped in the legal tradition will care to refuse a Supreme Court Judgeship. If he refuses it, then he is not worth being a Chief Justice.

I will come now to the question of retiring age which has now been fixed at sixty-two. I am in favour of the age being raised to sixty-five. I am quite agreeable to its being raised for the time being to sixty-two. I raise no objection to sixty-two being the retiring age and as the age is being raised only to sixty-two, I do not think it is necessary for us to go to the extent of laying down that retired Judges shall not be permitted to practise in the Supreme Court and cannot be permitted to practise in courts other than the courts of which they were members. I would not make them ineligible for quasi-judicial appointments. I think it is undesirable that they should be appointed to executive posts. I do not think they should be appointed as Ambassadors or as Governors of States.

Then I would like to say—and I want to co-operate with you in finishing this matter quickly—that the determination of the question of the age of a Judge is most important. The age should be fixed at the time of his appointment and there should be no interference with that age thereafter. As there are certain cases, as circumstances have arisen which make it necessary or desirable for us to interfere, I have suggested a *via media*. I have suggested that the matter of age should be decided by a board consisting of three Supreme Court Judges. I would not leave it to the sole discretion of the Chief Justice. I would not make the Chief Justice the sole adviser of the President in this matter. The age of the Chief Justice himself may be in question.

I would like to say one or two words about article 311. That article is more happily phrased than it was before. I think it will provide for a more acceptable procedure. If principles of natural justice had been borne in mind in framing the new clause which will substitute article 311 and though a second opportunity has not been provided in the sense that the Supreme Court contemplates it, it carries in spirit and in letter the observations of the Judicial Committee of the Privy Council in such case The second opportunity will be limited to representation regarding the punishment to be meted out to the person concerned on the evidence adduced before the tribunal. I suppose all the principles of natural justice will be respected and the person concerned will be charge-sheeted and opportunity will be given to him to adduce evidence and there is no reason, therefore, to deplore the disappearance of article 311 in its original form.

[Shri P. N. Sapru.]

I would like to say a word about vacations. The House will remember that I spoke strongly in this House against the curtailment of vacations and interference of the executive with the vacations of High Courts. My view was not accepted by the House then and I do not think it necessary to reagitate the matter. I, therefore, raise no objection to the word "organisation" including vacations.

I would like to say a word about article 226. Under this article, the only court which could deal with cases relating to the Central Government matters was the Punjab High Court. It was a ridiculous interpretation, if I may say so with all respect, which the Supreme Court had put upon article 226. I had to consider the scope of article 226 in another capacity and I pointed out that we were a federal Government or a quasi-federal Government and in a quasi-federal Government where you have two parallel Governments, you cannot say that Delhi as the capital of India is like the headquarters of any corporation or of any company. The Union Government is, like God, all-pervading and, therefore, I had said that but that view was not accepted by the Supreme Court and I am glad that that meaning has been made clear by the new amendment to article 226.

Before I conclude, I would like to say a word about the pensions payable to the Judges. I think their pension rules need to be revised; their pensions need to be liberalised. We must get the best talent available, so as to attract the best talent available for our future Judges. They have to perform some very heavy responsibilities and the liberty of the subject has, I hope, meaning in the life of a democratic Community and, therefore, it is essential that our High Court Judges should get adequate pensions. I say nothing about their salaries because I know that we are a poor country and we cannot afford to pay our High Court Judges at the rates at which they are paid in England. In England a High Court Judge gets a salary of £8,000 a year but we cannot do that. They have to be content with the salaries that they get and only the pensions need to be revised.

Thank you very much.

SHRI G. S. PATHAK (Uttar Pradesh): Madam Deputy Chairman, I pay a tribute to the Joint Committee whose report is very instructive and contains dissenting opinions which I consider very valuable. But I have to make some observations because this Bill raises some vital issues of constitutional importance. This Bill has naturally created grave doubts in the public mind with regard to the advisability of some of its provisions and I feel that I owe it to the rule of law and to the profession to which I belong and which I have served for about 45 years and to this Parliament that I should freely and frankly express my views and the doubts raised in the public mind so that the Government may be in a position to remove those doubts.

Madam Deputy Chairman, there is first the question of the determination of the age of Supreme Court Judges. So far no Supreme Court Judge has raised any dispute about his age and I have got a genuine belief, knowing the Supreme Court Judges as I do, that there shall never be a dispute with regard to the age of any Supreme Court Judge. I feel that when future appointments are made the Government will take ample care to have sufficient proof of age. If they care they can put down the age in the warrant of appointment or they can have a declaration or even an agreement. The question then is, why put an unnecessary provision in this constitutional amendment. We know that our Constitution has been the subject of study throughout the world among the jurists and international organisations and they will get the impression that after so many years of independence some questions have been raised about the

age of the Judges which required constitutional amendment. That will cast a reflection upon the dignity of the judiciary. If we find that there is only just a stray case or two in which the question of the age of the Judge is involved—in no case the question of the age of a Judge of the Supreme Court is involved—will it then be necessary to amend the Constitution? When there is no case about a Supreme Court Judge and no circumstance has arisen which calls for an amendment of the Constitution, we must not do anything against public feeling—I am voicing the public feeling here—which may even remotely cast a reflection upon the dignity of our Judges.

Now, Madam Deputy Chairman, the provision regarding the determination of the age of High Court Judges is still more important and I believe that that deserves our very careful consideration. Now, the provision in this Bill is that the President shall decide in consultation with the Chief Justice. The judge in this dispute between the executive and a Judge will be the head of the State, will be the head of the executive, and the Chief Justice comes in only as a consultant. Now, this question of age is, what we call, a justiciable question. It is like the question of misbehaviour or the question of incapacity of a Judge. In other words this is a question which will depend upon the determination of a dispute on an appraisement of evidence produced before the person deciding. Therefore, it is like a question of misbehaviour or incapacity of a Judge. Now, since the year 1700 in England there have been three principles recognised, which have not been departed from in any civilised country, and in particular in any democracy, and which assure the independence of the judiciary and it is acknowledged on all hands that the independence of the judiciary is an essential condition of democracy. These three principles are, tenure 'during good behaviour', not 'during pleasure' as in the case of civil servants, *i.e.* so long as the Judge has good behaviour no one has got a right to remove him. The second is, fixity of salary, and fixation of allowances by Parliament, not by the executive. The third principle is, no interference by the executive at any stage and if the Judge has to be removed on any ground then it must be the Parliament sitting as a court which has got to decide this question, not the executive. And in such a case the Parliament functions as a court, as a judicial body, and it is the duty of Parliament to hear the Judge in the exercise of this judicial function. Now, this has been incorporated in our Constitution in article 124 and if we bear in mind the constitutional history of the appointment of Judges we will find that in cases where Parliament is functioning it is only after a judicial determination by Parliament on this question of misbehaviour or incapacity in the presence of the Judge that a formal order would be passed by the Head of the State. Nowhere has the head of a State acted as a judge in person. The Constitution has entrusted the question of the decision of disputes between a private party and the State to the judiciary and the question then arises whether this Bill has departed from this principle. If this Bill has departed from this principle, then an inconsistency has been introduced and while in article 124 the question of a justiciable issue or a dispute has been assigned to Parliament, the question of age, which stands on the same footing as a question of incapacity, because it is a dispute with regard to the tenure, has been assigned to the executive.

SHRI AKBAR ALI KHAN (Andhra Pradesh): Not of the same intensity.

SHRI G. S. PATHAK: Well, in principle, intensity does not matter, if our Constitution is based on some principles. Whether a person was born on one date or another, whether he has committed a default or mis-

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conduct, whether he is incapacitated or not, these are all questions of fact. These questions depend on evidence and you cannot distinguish between these questions so that Parliament can decide one set of questions and not the other. Now, this is a matter which deserves serious consideration. This is what the public outside say. Since 1700 any dispute regarding the tenure of a Judge has never been decided by the executive. Shall we, the biggest democracy in the world, be the first to depart from that principle? When we had no Parliament in this country, it was always the Judges who decided a question between a Judge and the State. When Parliament came into existence, we adopted the principle of the British Constitution, and this principle is in force in many democracies in the world. I have examined many Constitutions. Therefore, the question is whether this is a proper provision. First, as regards consultation of the Chief Justice. Now, the roles are reversed. Ordinarily, when the executive is in need of a judicial decision on any matter in dispute, the executive takes the help of the judiciary. Here, the President decides. The Chief Justice merely becomes a consultant. It is true that under the Constitution the Chief Justice is consulted but that is on an executive matter. Where there is a question of the appointment of a Judge, it is an executive function of the President. The Chief Justice is consulted there because the Chief Justice knows the members of the Bar. He is able to say who is fit to be appointed. But that is entirely an executive function. Is there any provision in our Constitution which lays down that a judicial function will be exercised by the executive, while the head of the judiciary shall be a mere consultant? Now, how will he be able to give consultation or advice? Will he be able to give consultation or advice in a disputed matter without hearing the parties concerned? In fifteen cases, there has been no dispute and they have been settled amicably. But if there is a dispute, will it not embarrass the Chief Justice if he decides the dispute *ex prate*, without hearing the particular Judge? And if he hears the matter in the presence of that Judge, are there not two parallel judicial proceedings, one before the President and the other before the Chief Justice, and the Chief Justice, the head of the judiciary, is merely acting as an aid to the President? Now, this is a very odd situation which is presented by this provision in the Bill.

So far as the President is concerned, will he decide the matter in his individual judgment, according to this Bill, or will he decide this matter on the advice of the Prime Minister?

SHRI K. SANTHANAM (Madras): There is no individual judgment.

SHRI G. S. PATHAK: That is the point. As my friend, Mr. Santhanam, points out, there is no individual judgment under the Constitution, because it will be a retrograde step. There was individual judgment in relation to certain matters under the Government of India Act. When the President became the constitutional head, there was no question of any individual judgment. Then, the question is: Who will decide? It will be some Minister—the Prime Minister or the Home Minister. The question then will be: Will it not embarrass the Home Minister to decide a dispute between the Judge and the executive himself or will he assign it to his Secretary? Then, what will happen to the dignity of the judiciary if the Judge stands as a suppliant before the Secretary in the matter of the dispute between him and the executive? Even the Prime Minister would not like a Judge standing before him as a suppliant in a dispute between him and the Prime Minister's Cabinet. Now, this is the situation which is created by this Bill. The point, therefore, is that for the reason that the head of the State never becomes a Judge—that is the princi-

ple—and for the reason that the executive is a party to this dispute and further for the reason that the Constitution has assigned the decision of all disputes to Judges—not to the executive—the question of age of a Judge cannot be assigned to the executive These are matters which are discussed outside this House and the question, therefore, is whether this Bill requires reconsideration

Now, it is no coincidence that you find nowhere in any Constitution such a provision relating to the determination of the age of Judges by the executive or by anybody else These are matters of detail These are not matters which can find an appropriate place in the Constitution The result of this will be that while under article 124 Parliament is the body which may decide a dispute between a Judge and the executive, here the head of the executive will be the judge These are inconsistencies which, I submit with all respect, should not be introduced

Then, this is made retrospective How many cases are there where such a dispute has arisen? I do not want to refer to any particular case, but any decision arrived at by us here will affect a pending case That is the position resulting from making it retrospective One would feel that if you adopt the procedure of ascertaining the age at the time of appointment and leaving it there, no difficulty will arise Now, there is this writ of *quo warranto*, to which I must make a reference, which makes it absolutely unnecessary to introduce any change in the Constitution That writ means that anyone who is not entitled to fill an office is required to prove that he is so entitled, if he has passed the correct age, the court can call upon him to show that he has not passed it Now, this provision is there in article 226 of the Constitution and that is an ample provision All that is said against this is that the proceedings there will attract public notice The Judge will be cross-examined There will be discussion Now, can that not be solved by a mere procedural provision that the proceedings shall be held in camera? Both the Supreme Court and the High Courts are entitled to make rules for having trials in camera. If the trials are held in camera, then the judiciary will decide the dispute without attracting public notice And this objection which is said to be the reason for the enactment of this amendment of the Constitution, I submit, appears to be an illusory objection Then we come to to point that there is no necessity for making such a provision and if there is no necessity for making such a provision, then to provide against one or two cases, you do not change your Constitution, particularly when you introduce some principles which are in conflict with the principles adopted by the Constitution-makers Therefore, this matter should be left as Dr Sapru, said, to the judiciary There may be a board, there may be other methods provided That is a mere procedural thing but the matter of the judiciary can never be assigned to the executive That is the public view

Then, it is said there is uncertainty in the court's decision or judgments. There is no question of any judgments, if by one writ of *quo warranto* the matter is decided by the High Court, that will be the final decision And people prefer—the Government itself prefers—the judgment, of the courts to the judgment of the executive Therefore, this question of uncertainty, I submit, is not a relevant question

Then a very important question must be considered, namely, this Do you see anything in this Bill which abrogates the writ of *quo warranto* Do you see anything in this Bill which says that no suit can be filed? If that is so, then you are amending the Constitution keeping intact the ordinary provisions of law, *quo warranto* and civil suits and what would be the result of the introduction of this provision when ordinary remedies are still available? You do

[Shri G. S. Pathak.]

not want ordinary remedies. But they are still available; they may be resorted to. Therefore, the result is that in some matters the judiciary will decide and in other matters, the executive will decide.

About this age of 65 or 62, what I would say is, this. I was a member of the Law Commission. I still stick to the view that there should be no disparity between the age fixed for the High Court Judges and the age fixed for the Supreme Court Judges. The climate is the same, the conditions are the same. And all the evils which may be pointed out in connection with this matter will be avoided, if you fix the age at 65. Then there will be no expectation of jobs at the age of 62; then there will be no competition between retired Judges and the younger members of the Bar.

One word on the question of compensatory allowance. If this principle is adopted, the result will be that out of two Judges in the same court one Judge will be getting a salary of Rs. X while the other will be getting a salary of Rs. X plus Rs. Y with such allowances. Such invidious distinctions are not really called for.

Then, so far as clause 7 is concerned, that raises a question of principle. The principle is that it must be Parliament which should fix the allowances of the Judges, not the executive. In article 221 and in article 125, that principle has been adopted. In this clause, it will be the executive which will determine the allowances. That again is a departure from that principle. I may be happy on personal considerations—although I am past 65—that I can be appointed as a Judge under this clause, but that does not matter. It fixes no age-limit.

Then, about article 311, clause (b) of this causes some concern—the matter is assigned to the subjective discretion of the Government—whether it is final or it is not final. It will be difficult to reconcile oneself with such a situation. That is the public view.

Now, lastly I submit that we are having too many amendments of the Constitution—both private and Government Bills are introduced. And we are forgetting that there is a concept of amendment of the Constitution itself. Unless there is some necessity created by economic and social conditions, unless there is a discovery of some serious omission and unless some territories have to be incorporated, you cannot amend the Constitution. But are you going to amend the Constitution simply because there are one or two stray cases found in the country which have to be met? That is a matter of principle, and the submission is that the fundamental principle that the executive should not interfere with anything connected with the judiciary should not be sacrificed to any matter of convenience. And there are, therefore these inherent limitations on the question of the amendment of the Constitution, inherent limitations imposed by the very fact that the Constitution is permanent in character and therefore we must exercise self-restraint in this matter. Otherwise, the result will be that there will be a danger of upsetting the scheme of our Constitution, a danger of making some parts of the Constitution inconsistent with the other parts. Thank you.

SHRI A. D. MANI (Madhya Pradesh): Madam Deputy Chairman, I should like to say that I have apprehensions about some clauses of the Bill, particularly the clause relating to the President being given the power to determine the age of a Judge in consultation with the Chief Justice of India. We are all aware that this particular amendment under clauses 2 and 4 relates to a recent case in which a Judge of the High Court had to resort to legal proceedings to determine his age. I do not think that it will increase the prestige of the judiciary

if the President of India is given the power as executive head to determine the age of a Judge. In a matter of this kind, it is very easy for the President to state in the warrant of appointment that the age of the Judge has been fixed as such and such with the consent of the Judge, because there will be some correspondence between the President and the Judge concerned regarding his own age, and the age can be fixed by common consent in the warrant of appointment. This should have been the procedure that should have been adopted by the Government and the Government should not have brought forward a Bill giving the President the power to determine the age of a Judge.

Madam, I would like to refer to clause 5 of the Bill relating to the transfer of Judges from one court to another. The Home Minister is here and I should like to point out to him that one of the methods by which we can promote the forces of integration to work fully is to transfer the Judges of one High Court to another High Court. It should be made a condition of the appointment of the High Court Judge that he should be willing to serve in another High Court if he is asked to do so. I do not see any reason for the Government or for Parliament . . .

SHRI AKBAR ALI KHAN: Under the British Constitution, he can be transferred but the convention has been not to transfer without consent.

SHRI A. D. MANI: I understand that in some States the Governments have objected to such a transfer. I would like to request the Home Minister when he replies to the debate, to throw some light on the matter. In any case, if this country is to be united, if the forces of integration are to be strengthened, these transfers should be in the course of things, and it should be one of the conditions of appointment of a Judge that he should be willing to be transferred if the President so desires, and I do not see any reason why any compensatory allowance should be given to a Judge who is transferred. I have listened to the arguments and I have read the arguments put forward in the other House in defence of the provision. It may be that the Judge may have to keep two establishments but it is purely a personal matter. When a Judge is transferred, he is expected to take his family with him and not maintain two establishments. Madam, therefore I do not support the proposals contained in this clause relating to the transfer of Judges with their previous consent.

Madam, regarding the age of the Judge, which has been fixed at sixty-two years in this Bill, I may point out that, when the Constitution was being drafted, the Judges of the Federal Court, at that time, recommended that the age of the Supreme Court Judges should be fixed at sixty-eight years, and those of the High Court at sixty-five years. Now, I do not want to touch on a delicate matter but I understand that on account of ill health some Judges are not functioning at all. I do not want to go into the details of the cases but, if there are cases where Judges of High Courts are not functioning on account of ill health and are being kept in office somehow or the other with the help of the Chief Justice of the High Court concerned, it is not a state of affairs over which we can feel very happy. Men get very old at the age of sixty-five years, but if sixty-five is fixed as the age for retirement of a Supreme Court Judge, it is only fair that Judges of the High Court also should be allowed to retire at sixty-five so that there is no competition for jobs among retired Judges for posts, like Chairmen of Commissions, Vice-Chancellors of Universities, and the like. I should also like to suggest that in consideration of our raising the age of High Court Judges, the High Court Judges should be prohibited from practising in any court of the country including the Supreme Court. I believe that the Supreme Court Bar today has got a surplus, more or less, of retired Judges of High Courts and retired Chief Justices of High Courts, and this has

[Shri A. D. Mani.]

prevented juniors in the profession from coming up in their calling and strengthening their practice. In the interests of allowing the junior members of the profession to improve their prospects, High Court Judges should not be permitted to practise after their retirement, and it may be that, for enabling them to lead a life of happy retirement, we may have to increase the pensions of Judges, but this is a sacrifice that has got to be made.

Madam, I should like to refer to this controversial clause of the Bill, clause 10, regarding amendment of article 311. I have gone through the article, as it was in the Constitution, and the amendment which has been proposed and I must say that in some respects there is an improvement over the existing article 311, and in some respects the position is unsatisfactory. If the House would refer to article 311, as it was, there is no reference to the word 'inquiry'. There a person is given a reasonable opportunity of showing cause why a penalty should not be inflicted on him, but there is no reference to the word 'inquiry' there.

SHRI B. D. KHOBARAGADE: (Maharashtra): But this article has been interpreted by the High Court and the Supreme Court to the effect that an 'inquiry' should be held.

SHRI A. D. MANI: Yes, it has been, but in this Bill the word 'inquiry' occurs for the first time, and wherever the word 'inquiry' occurs, it must be a fair inquiry. It must be an inquiry determined by considerations of natural justice. There have been a number of judgments of the Supreme Court, Labour Tribunals, and the like, which have said that when the word 'inquiry' is mentioned, it is always a fair inquiry, where the other party is given a reasonable opportunity to rebut the charge and to produce evidence in support of its case. While this has been an improvement, I am not able to understand why the Law Minister insisted in the other House that this sub-clause should be inserted in clause 10 reading in part—

> "but only on the basis of the evidence adduced during such inquiry".

Now, it may be that when a person wants to appeal against a penalty which is proposed, he may try to bring into his representation the services that he has rendered to the State in various directions. For example, if an officer in N.E.F.A. had been on hazardous operations during the recent Chinese aggression and he has rendered meritorious services and subsequently, some years hence, he is caught on some charge and the Government proposes to penalise him, he may recount the services he has rendered to the Government in the N.E.F.A. operations. Now, why should the Government stand in the way of an officer bringing into his representation all materials which, in the opinion of the officer, afford the extenuating circumstances of his case? In the amendment which I have tabled I have sought to delete those portions dealing with this matter and I have suggested that the phrase—

> "but only on the basis of the evidence adduced during such inquiry."

should be deleted, since Government has accepted the position that there should be a fair inquiry and that after the inquiry is over, the officer should have an opportunity of appealing against the penalty proposed. It will be fair for Government to drop out this phrase altogether. I would like government particularly to bear this in mind because a certain measure of feeling has gone abroad that this restrictive provision would prevent an officer from making an appropriate representation to Government.

Madam, I have also moved an amendment in regard to article 311 wherein I have suggested that even in cases where a person is sought to be removed from service or reduced in

rank, and where it is not practicable to hold an inquiry, the President may have the power, in the interests of the security of the State, to refuse the officer concerned a reasonable opportunity to clear himself in an inquiry but then, before reaching such a conclusion he should consult the Attorney-General on the case Now, Madam I have gone through the proceedings relating to this article when this matter was discussed in the Constituent Assembly There were a number of Members who protested against the provision, as it stands in the Constitution before this Bill was brought before the Legislature for consideration Mr Naziruddin Ahmad, speaking in the Constituent Assembly on 8th September, 1949, said

> 'I think no purpose will be gained by introducing this imposing expression 'security of the State' At this expression everyone will jump and cry out—'security of State security of State, security of State' I submit that if the security of India would be seriously affected by giving an officer opportunity to show cause, if the security of India is based on this, I think there is no security in India, India must be dangerously insecure if her security is based upon a refusal to give an opportunity to an humble officer What happen in such cases is that men are dismissed by higher officers, on insufficient cause, sometimes on bias and not always with a sense of impartiality"

Thus there was considerable opposition to the article as it was adopted by the Constituent Assembly

Dr. Ambedkar, replying to the debate, said that the officer concerned had the right to appeal to the Union Public Service Commission if a penalty of this kind was sought to be imposed What I have said in my amendment is that before Government takes action on this matter the papers shall be placed before the Attorney-General for his consideration The Attorney-General has become a far more effective officer now, on account of present circumstances, than in the past. He is being consulted on the Compulsory Deposit Scheme Bill He is being consulted on the Serajuddin case So, the Attorney-General is fulfilling all the functions necessary for his office, and which are contemplated in the Constitution, and as a measure of safeguard for persons who may be dismissed under article 311, I would suggest that the President shall place the matter before the Attorney-General and take his advice. He need not be bound by his advice, but there must be some judicial scrutiny at some stage, and this is a measure of protection which the Government servants who are loyally serving the Indian Republic deserve and I hope Government will accept my amendment

Thank you

SHRI SANTOSH KUMAR BASU (West Bengal) Madam Deputy Chairman as a Member of the Joint Select Committee to which this Bill was referred for consideration, I accord my support generally to this Bill as has been reported on by the Joint Select Committee and as passed by Lok Sabha. But there are certain very important provisions in this Bill with which even at this stage, I will express my disagreement

The whole underlying idea is that there must be some machinery for determining the age of a Judge in case of any doubt or difficulty Now that is the one supreme consideration which had to be taken into account by the sponsors of the Bill and by the Joint Select Committee The idea which I I had the honour to sponsor before the Joint Select Committee was that at the time of the appointment of the Judge the final determination of his age should be made and that should be stated in his warrant of appointment and that statement should be considered to be final for all purposes If that amendment had been accepted—I
12 NOON am not disclosing any secret as to what transpired in the Select Committee—and had not been

[Shri Santosh Kumar Basu.]

defeated by a very, very narrow majority, we would have been in a much better position with regard to the future appointment of Judges than we are today, because if the warrant of appointment contained a statement as regards the age of the Judge at the time of his appointment, there would have been a provision, effective and conclusive, for automatic determination of the age at any stage thereafter whenever such a question might arise for consideration. Unfortunately, that view did not find favour with the majority in the Select Committee as it was constituted on that particular day. But I find from the notes of dissent that considerable support has been extended to this idea by Members of both the Houses who came to sit on the Select Committee. It was a great opportunity which has been thrown away for settling this question once and for all. So far as the future incumbents of this exalted office are concerned, that has not been done. Now, what has been done is that the question of age, whenever any doubt or difficulty arises, should be determined by the President. But the Select Committee has made a very important addition by providing "after consultation with the Chief Justice of India".

Now, my esteemed friend, Mr. Pathak, has contended that that gives no safeguard that the independence of the judiciary will be maintained, and also that it is humiliating for a Judge, so far as the principles of democracy are concerned, that the executive should have any hand whatsoever in the matter of determining the age of the Judge. If we look to the practice which prevails now, it is the Chief Justice of India who is consulted in such matters. But there is no provision anywhere in the Constitution for any such procedure.

The Select Committee has gone one step further and have provided that the Chief Justice of India must be consulted in each case. And if the Chief Justice of India is consulted, I do not think that in any case of doubt whatsoever the Government or the President will go back upon that advice of the Chief Justice and arrive at a decision of their own contrary to the decision of the Chief Justice.

Madam, consultation with the Chief Justice means that the enquiry will have to be held by the Chief Justice. In fact, in the Bill as it was introduced in the Lok Sabha originally, there was no such procedure. But two kinds of enquiries were envisaged, one by the executive and one by the Chief Justice. At present it is only one enquiry which is envisaged by the provision, namely, an enquiry by the Chief Justice, and the result of that enquiry will be placed before the President, and his determination of the age cannot be contrary to the decision by the Chief Justice of India.

Incidentally, Madam, this procedure is exactly the procedure which is laid down for the appointment of a Judge, namely, "the President after consultation with the Chief Justice of India shall appoint a Judge". This formula is used there in the relevant article as regards appointments and has been repeated in this Bill, namely "the President, after consultation with the Chief Justice of India, shall determine the age". I am not very happy with regard to this provision. But having regard to the fact that something has got to be done now which would bring about a speedy determination, away from the public gaze, without any opportunity being given to the public to question the evidence of the Judge in any way whatsoever, and without any opportunity being given to the lowest civil court in the country to pronounce upon the veracity of a Judge so far as the question of his age is concerned, this is the only possible alternative which could have been adopted by the Select Committee and the Lok Sabha.

My esteemed friend, Mr. Pathak, has said that there would be only one or two cases which might arise and which might be disposed of by *quo warranto* proceedings in the High Court.

Madam Deputy Chairman, it is not a question of only one or two cases to be disposed of by *quo warranto* proceedings. Each and every litigant may desire to question an adverse judgment passed by a High Court Judge. He may, in some cases, like to go to the Munsif's court and raise the question there by way of a declaratory suit that that decision is wrong, *ultra vires,* because the Judge has exceeded his age limit, and any Munsif may be called upon to decide whether the Judge has exceeded his age limit or not and whether on that ground his decision is absolutely *ultra vires.*

SHRI BHUPESH GUPTA (West Bengal): But then the burden of proof will fall on the person.

SHRI SANTOSH KUMAR BASU: Yes, it will fall upon the person concerned who is challenging that decision. But that is a question of procedure and that is a question of the law of evidence. It brings down the question of the Judge's age to the same category as any other petty point of fact which is raised in the court of a Munsif. Undoubtedly, the burden will be upon him.

SHRI BHUPESH GUPTA: But this thing against him remains.

SHRI SANTOSH KUMAR BASU: It does not remain. That is the next point that I am coming to. That is the point which Mr. Pathak raised that the same thing remains, that the right to sue is not taken away of this Bill. I am coming to that immediately because that is a moot point which has got to be considered. Even after providing for determination of the age by the President after consultation with the Chief Justice of India, if the same position remains, namely, that any litigant can go to a court and re-open the question, then nothing is gained by this Bill. I entirely agree. But that is not the position. I at once go to the provisions of the Bill to show that that is not the position.

What is the position in the Bill? Clause (3) of article 217 of the Constitution says:—

> "If any question arises as to the age of a Judge of a High Court, the question shall be decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final."

Therefore, it cannot be raised by any one in any court whatsoever after the decision has been given.

SHRI BHUPESH GUPTA: That is all right. I understand it. But before the question has arisen, it may be that the person has gone, as you rightly said, to a civil court saying that the judgment was wrong because the Judge gave it while exceeding his age limit. Only after the matter has been referred to him and the President has given his decision, the decision is final, I agree. But as it is, when he goes to a court of law, the President has to be brought in. But suppose it is stated in the warrant of appointment. Then the same thing will arise. The court will refer to the warrant of appointment and find out as to what age is given and on the basis of that the court will decide whether the dispute is right or wrong. In any case as long as you keep it open for a person to question it in a court of law, he can go and question it and then the question arises how the matter will be finally finished.

SHRI SANTOSH KUMAR BASU: I follow what the hon. Member means. The warrant of appointment would contain the age but that has not been provided in the Bill. But so far as the determination of the age by the President, after consultation with the Chief Justice of India, is concerned, it has been provided that that would be quite final. But as has been referred to by

[Shri Santosh Kumar Basu.]

my hon. friend, Mr. Bhupesh Gupta, suppose a plaintiff goes to the court of a Munsif questioning the age of a particular Judge when he gave a decision against him because the decision is adverse to him, well, as soon as the President makes a determination of his age, that litigation would be quashed at once. But if it is pending, or it is in the appellate stage, the decision of the President will have to be given its proper place in the determination of this question and the whole litigation will have to be controlled by that decision of the President. Therefore, this decision, when it becomes final, becomes final for all purposes and any pending litigation will have to be controlled and governed by the decision made by the President, whether it is *post facto* decision after the institution of the proceedings or during the pendency of the proceedings. Therefore, there will be no difficulty and I am sure the Government will take the earliest possible opportunity of coming to a decision in such matters as soon as doubts and difficulties arise with regard to a Judge's age.

Now, we have to consider and decide between two alternatives, whether we should allow this question to be justiciable in a court of law, whether we should allow a Judge or a litigant to raise all the dust and din in the court and all the indignity that attaches to a Judge who has gone as a suppliant before a court of law of the lowest local jurisdiction for the determination of the question of fact which cannot be determined in *quo warranto* proceedings. *Quo warranto* and writ proceedings in High Courts will not apply for obtaining a decision on a question of fact. Any litigant who wants a determination of the age has to go to a civil court of the lowest jurisdiction in a declaratory suit. Therefore, you cannot avoid the contingency of a court of law challenging the veracity of a Judge either in his own court where he is functioning as a Judge or in a court of the lowest jurisdiction. Between this alternative and the other alternative of consultation with the Chief Justice of India and determination by the President thereafter, this House has to decide. I submit that by no manner of means can it be considered that the first one is a better alternative to the one that has been proposed in this Bill.

Shri Pathak says that the question of age is justiciable and if the matter comes up before Parliament, on a question of misbehaviour or incapacity, Parliament will be a judicial body for determining that question. I do not think we could go as far as that. It is not justiciable in the case of proceedings before Parliament under article 124 and it will not be justiciable in the case of proceedings before the President after consultation with the Chief Justice. So the question of justiciability will not at all stand in the way of this provision in the Bill being accepted.

Having said that, I submit once again that the Government would have done well if it had brought up an amendment even at this late stage to allow a provision in the Bill that the age should be entered in the warrant of appointment and that should be final. That would set at rest for all time with regard to future incumbents this vexed question of age. I do not know why it was not done.

As regards the Supreme Court Judges, the Select Committee suggested, not the determination by the President, not any entry in the warrant of appointment but that by a special law Parliament will determine the procedure for determining the age of a Supreme Court Judge. There is no justification for proclaiming to the whole world that there is something so fundamentally wrong with regard to the question of age of Judges of the Supreme Court, that Parliament itself should fix the procedure for the purpose and enact a law with regard to that. That puts an entirely wrong complexion upon the whole question

so far as the Supreme Court Judges are concerned. I do not find any justification whatsoever for that.

There were some other points raised to which I should make a passing reference. With regard to the question of transfer of Judges, there is already a provision in the Constitution that Judges can be transferred from one High Court to another and a convention has grown up that they cannot be transferred without their consent. But the question of making some compensatory allowance available to them has been raised by Mr. A. D. Mani. They will have to maintain their establishments at two places. That would certainly justify a payment of compensatory allowance. But it has been left to the discretion of the executive in each case to determine what compensatory allowance should be paid. I raised my voice in the Select Committee to ensure that that also would be provided in the Constitution itself and some definite formula should be evolved which should be applicable to all Judges so that no discrimination may be possible with regard to individual Judges because we want to keep the Judges as free as possible from individual predilections. But that has not been accepted.

As regards article 311, it provided that there should be notice to show cause why action should not be taken against a particular public servant after a full enquiry had been made as regards the facts of a particular case. That involved, according to some friends, two enquiries and the second enquiry is sought to be dispensed with by the provision in this Bill. That is not so in my submission. There were no two enquiries there was only one enquiry. That has been held by the Supreme Court. That has been repeated by the workers' representatives themselves that there was only one enquiry. The only difference was that at the subsequent stage, they could demand a copy of the proceedings regarding the evidence and they could make their submission as regards whether they should be at all held guilty and as to what punishment they should be given. In the present Bill, it has been provided that no second enquiry will be held. The record which has already been made of the evidence in the case during the enquiry could be made available to the particular worker or public servant and on that he will be entitled to make a submission with regard to the punishment that is to be awarded in the case.

I would submit that that was just what they were asking for, that they must have some opportunity of seeing what the record contained against them, how the evidence had been recorded and that they should be enabled to make their submission with regard to the punishment. These two have been amply provided for in the Bill. The record will be made available to them and they will be entitled to make a submission on the punishment. Why not a second enquiry? It is because that would open the floodgates of a roving enquiry once again. They could call witnesses again and examine them, etc. with the result that the proceedings would be inordinately delayed and in these days when efforts are being made to check corruption in the public services, side by side with providing the amplest of opportuntity to defend themselves, steps should be taken effectively and in a determined manner so that the proceedings may not be delayed and the ends of justice may not be defeated.

I would conclude by saying that under article 309 the Government can make rules to give effect to these provisions and such rules can be framed as would give effective protection to the public servants. These rules also will have a constitutional backing as they will be framed under article 309 of the Constitution. I do submit that the Home Minister will kindly consider the necessity of evolving such elaborate rules as early as possible.

[Shri Santosh Kumar Basu]

My final appeal would be that this Bill, when passed by this House, should be sent to the States as early as possible so that the approval of the States, if necessary, can be given in order that the provisions of this Bill raising the age of the High Court Judges from sixty to sixty-two can be made effective at the earliest possible date

श्री विमलकुमार मन्तालालजी चौरड़िया (मध्य प्रदेश) माननीय उपसभापति महोदया, जो बिल प्रस्तुत किया गया है उसमे कछ ऐसा लगता है कि हमारे शासन की इच्छ के विपरीत जब कभी भी उच्च न्यायालय कोई निर्णय दे दे या कुछ ऐसे केसज क विरुद्ध अपनी राय दे दे जिसमे शासन की विशेष दिलचस्पी रहती है, तो वह उस कानून मे या सविधान मे सशोधन ले आती है। सरकार को बेशक बिल लाने का अधिकार है और माननीय उपसभापति महोदया, मै यह भी नही कहता कि सविधान मे बिल्कुल परिवर्तन नही होना चाहिये और न यह कहता हू कि इसे एकदम करान और गीता की तरह पूज्य मानकर चलना चाहिये तथा उसमे कोई सशोधन करने का अधिकार नही है। लेकिन इसके साथ ही साथ यह भी आवश्यक है कि हम इस बात पर विशेष ध्यान दे कि बार बार थोडे थोडे से मामले के लिए जैसे कानपुर मे लैड एक्वीजिशन का झगडा हो गया, तो लैड एक्वीजिशन कानून मे सशोधन आया तथा श्री मित्तर का केस आने पर सविधान मे सशोधन आया, इन सब बातो को ध्यान मे रख कर इस तरह का सशोधन लाया जाय, यह ठीक नही है। सरकार जरा जरा सी बातो के सबध मे सशोधन लाये तो यह मुझे कोई न्यायसगत प्रतीत नही होता है।

इस विधेयक को देखा जाय तो इसमे सब से पहले जज की उम्र के बारे मे और राष्ट्रपति महोदय के निर्णय को अन्तिम मानने के बारे मे कुछ सशोधन दिये गये है। उपसभापति महोदया, मेरा यह निवेदन है कि हाई कोर्ट जज के स्टेटस के आदमी के लिये उम्र के मामले मे कोई झगडा उत्पन्न हो तथ वह चलता रहे तो वह उस पद का जो बडप्पन है उसके लिये बहुत नुकसान पहुचाने वाला है। ऐसा आदमी पद को बनाये रखने के लिए उम्र के आधार पर कोई झगडा करने को प्रेरित हो तो फिर पद का जो स्टेटस है, जो स्तर है वह गिरता है और यह मामला एक मजाक सा बन जाता है। मेरी समझ मे नही आता कि जब नियुक्ति होती है, तभी इसके बारे मे निश्चय क्यो नही होता। साधारण सी नियुक्ति की एप्लीकेशन मे उम्र का वर्णन होता है, तब ही इसको क्यो नही निर्णीत कर लिया जाय? बाद मे यह कोई झगडे का कारण क्यो बने और उच्च न्यायालय वगैरह मे यह झगडा जाय? यह उम्र का मामला झगडे का कारण बने और यह उस पद की प्रतिष्ठा को नुकसान पहुचाये--कुछ न्यायसगत प्रतीत नही होता। मामूली सी नौकरी के लिये जब एप्लीकेशन वगैरह लेते है तब सारा का सारा जन्म तारीख वगैरह का हिसाब किताब ठीक लगाना पडता है, छोटे से छोटे कर्मचारियो के लिये भी यह सब होता है, तो मै जानना चाहता हू कि क्या कारण था कि इस केस मे भी ऐसा क्यो नही हुआ कि आखीर मे हाई कोर्ट के जज कहते है कि हमारी उम्र कम है और हम को इस का लाभ मिलना चाहिये? इतने वर्षो तक जिस उम्र का लाभ लिया अब उसमे परिवर्तन चाहना गलत है। तो इस जरा से उम्र के झगडे को लेकर इतना बडा विवाद हुआ कि इसके लिये एक सशोधन भी लाना पडा? अच्छा होता कि जब इसमे माननीय मत्री जी सशोधन लाने वाले थे, तो इस आशय का सशोधन लाते कि एपाइटमेट के समय ही सारा उम्र का मामला फाइनल हो जायगा और उसके बाद कुछ सुनवाई नही होगी और तब न प्रेसिडेट के जजमेट का सवाल आता और न किसी और बात का सवाल आता।

मान लीजिये कि राष्ट्रपति महोदय फाइनल करके एज सर्टीफाई भी कर दें कि इनकी उम्र का है, तो भी कास्टीट्यूशन के अन्तर्गत हमें अधिकार है कि हम चाहें तो एक पेटिशन दाखिल करके कह सकते है कि यह गलत उम्र तय की है और फिर से इसको विवाद का विषय बनाया जा सकता है । तो हाई कोर्ट के जज के बारे में इस तरह से उम्र के संबध में एक विवाद का विषय बने यह कुछ न्यायसंगत प्रतीत नही होता ।

दूसरे, हाई कोर्ट के जजेज की सेवा मुक्ति की उम्र के बारे में बताया है कि साठ से बासठ करना चाहते है । तो जहां तक बासठ करने का सवाल है, मेरा निवेदन है कि इसको ही क्यों एक लक्ष्मण रेखा माना है, न साठ को माना और न पैसठ को माना बल्कि बासठ को माना । जो ला कमीशन आपने इस बारे में जाच करने के लिये नियुक्त किया था उसने विदेशों में उम्र के बारे मे जो स्थिति है, स्वास्थ्य सबंधी सुविधाओं को देखकर, रहने के स्तर को देख कर, उस का अध्ययन कर लेने के बाद बताया कि विदेशों में उम्र के बारे मे कोई प्रतिबंध नहीं दिखाई देता है, केवल एक ही स्थान पर बन्धन है लेकिन वहा भी पैसठ वर्ष से अधिक है--जब दूसरे देशों के न्यायाधीश यहा आ कर देखते है कि यहा उम्र के बारे में प्रतिबंध है तो यह उन्हे कुछ उचित प्रतीत नही होता है । हा, हमारे यहा की कहावत है कि "साठी और बुद्धिनाठी" साठ वर्ष के बाद बुद्धि ठीक नही मानते है। यह पुराने जमाने की कहावत है कि उम्र का ड्यूरेशन कम था लेकिन अब तो हमारे यहा मेडिकल साइस इतनी डेवलप हो गई है, रहन सहन का स्तर इतना ऊंचा हो गया है जितना कि पहले नही था । तो उस समय सम्भवत: यह बात कुछ समझ में आ सकती थी, लेकिन आज अच्छे स्तर के रहने वालों के लिये नही और आज तो मुरारजी भाई ने सोने के प्रति जो लोगों को मोह था कि सोना ही सब कुछ है--पुरानी परिपाटी मे सोने मे ही सब कुछ था--उसको बदलने का प्रयास किया है । तो जब कि हमारी मेडिकल साइंस डेवलप हो गई है और रहन सहन का स्तर ऊंचा हो गया है तब ऐसी स्थिति में लॉ कमीशन में बैठे लोगो की यह राय रही कि यहा पर इन लोगों को कम से कम पैंसठ वर्ष की उम्र तक रखना चाहिये जिससे कि उनके इतने दिनों के अनुभव का लाभ लिया जा सके और उनका जो विकसित ज्ञान है और इतने दिनो तक हाई कोर्ट मे सर्विस कर के या संसार मे रह कर इन्होंने जो ज्ञान का बर्धन किया है उस का लाभ ले सके । तो उन्होंने जो सुझाव दिया था, वह न मान करके हमने साठ भी नही रखा और पैसठ भी नही रखा बल्कि बीच में से बासठ को लाकर रख दिया--यह कुछ समझ में आने सरीखी बात नही है । मैने इस सबंध मे संशोधन दिया है और जब उस पर चर्चा होगी, तब उसको अगर माननीय मत्री महोदय स्वीकार करेंगे, तो बडी कृपा होगी ।

इसके साथ साथ, उपसभापति महोदया, इसमें यह भी दिया गया है कि रिटायर होने के बाद भी जजों को रखा जा सकता है और उन की राय ली जा सकती है, उनको कम्पेन-सेशन दिया जा सकता है, उनको मुआविजा वगैरह दिया जा सकता है और वह दिया भी जा सकता है तो एक्जिक्यूटिव की मार्फत--जैसा कि माननीय पाठक साहब ने भी कहा । उपसभापति महोदया, हमारे यहां पर कुछ गलतियां और लूपहोल्स होने की वजह से, हाई कोर्ट के जजेज की नियुक्तियो मे एक्जिक्यूटिव का हाथ होने की वजह से, चाहे हम जितना न्यायसगत आधार पर, न्याय के आधार पर, और ईमानदारी के आधार पर हाई कोर्ट के जजेज को नियुक्त करने का प्रस्ताव रखें फिर भी कई लोगो के हृदय मे ऐसी भावनाये आती है कि इसमे राजनीति चलती है। जो बार के मेम्बर्स लॉ मिनिस्टर की खुशामद करते है या गवर्नमेंट से, शासकीय दल से, विशेष सम्बन्ध रखते है, उनको थोडा जल्दी एपाइंट-

[श्री विमलकुमार मन्नालालजी चौरड़िया]

मैंट मिला करता है, प्राथमिकता दी जाती है, आदि-आदि । ऐसा भ्रम कई लोगों में जो पैदा होता है--चाहे यह सत्य हो या सत्य नहीं हो--लेकिन जहा तक हाई कोर्ट के जजेज का सवाल है, शासन के कार्य लोगों के मन में इस तरह की भावना पैदा करें, यह कुछ न्याय-संगत प्रतीत नहीं होता । प्रजातंत्र मे गवर्नमेंट को सावधान बनाये रखने के लिये जैसे लेजिस्लेचर है, एकाउंटेंट जेनरल का आफिस वगैरह है और भी व्यवस्था है, वैसे ही प्रजातंत्र में हाई कोर्ट आदि भी हैं जो कि एक इंडिपेंडेंट बाडीज है और अगर हमारा प्रजातंत्र का घोड़ा मस्त हो कर, अपने नियमों को भूल कर, अपने नियमों को छोड़ कर एकदम उच्छृंखलता के साथ चलने लगे तो उस पर नियंत्रण करने के लिये हाई कोर्ट का ब्रिडिल ऐसा है कि उस के द्वारा उसको खीच कर रोका जा सकता है । मगर जब हाई कोर्ट में राजनीति का प्रवेश कर देते है--प्रत्यक्ष या अप्रत्यक्ष रूप से--तो फर बड़ी कठिनाई है । हम उनसे अपेक्षा करते है कि वह प्रजातत्र को ठीक मार्ग पर चलाने में सहयोगी हों लेकिन जिनके माध्यम से हम सहयोग लेने वाले है वे लोग ही यदि प्रशासन की मेहरबानी पर, उनकी कृपा-दृष्टि पर, निर्भर करते हों तो फिर हमे शंका हो जाती है कि हम न्याय विभाग से न्याय प्राप्त कर सकेंगे और ऐसा होना कुछ उचित प्रतीत नही होता है । ऐसी स्थिति मे मै यह अपेक्षा करता था कि हमारे यहा इस बारे में पहले से जो कमजोरी है कि ला मिनिस्टर या चीफ मिनिस्टर की सिफारिश पर हाई कोर्ट के जज निर्भर करे उस स्थिति को वह समाप्त करेंगे और पूरी की पूरी जुडीशियरी इंडिपेंडेंट सरीखी बनायेंगे, एपायंटमैंट्स के बारे में केवल हाई कोर्ट या सुप्रीम कोर्ट के चीफ जस्टिसेज की राय को मानना चाहिये और उनके द्वारा ही नियुक्तियां होनी चाहियें--हमारे यहां किसी और की सिफारिश की आवश्यकता नही होनी चाहिये, ऐसा मैं मानता हूं । तो ऐसा करना तो दूर रहा, एक और रास्ता निकाला जा रहा है कि रिटायरमैंट होने के बाद किसी भी जज का चाहे एपाइंटमैंट कर सकते है, उन की राय लेने के लिए और उन की बुद्धि को उपयोग में लाने के लिये ऐसा कर सकते है --उन की बुद्धि को उपयोग में लाने को मैं मना नही करता, लेकिन इससे रिटायर्ड हाई कोर्ट जजेज को थोड़ा सा आकर्षण आप दे रहे है और वह रिटायर होने से पहले भी शासक-वर्ग को प्रसन्न करने के लिए ऐसी कार्यवाही कर सकते है जोकि न्याय से परे हो । दूसरी बात यह है कि वह अपना सम्पर्क प्रशासन से बराबर बनाये रखना चाहेंगे, इसलिए कि रिटायर होने के बाद कही मौका मिले तो हमें पोजीशन भी मिल सके और नौकरी भी मिल सके और कुछ विशेष फायदा मिल सके । तो ऐसी स्थिति में हम उनसे न्याय की अपेक्षा करें, ऐसा नहीं लगता है, बल्कि ऐसा लगता है कि हम प्रति दिन हाई कोर्ट्स में भी पालिटिक्स को घुसेड़ते जा रहे है जिस से कि आज नही तो आगे आने वाले कुछ वर्षो में प्रजातंत्र को बहुत बड़ा खतरा होने वाला है । ऐसी स्थिति में यह अत्यन्त आवश्यक है कि हम ऐसे अमैंडमैट्स लाये, जिससे कि जुडीशियरी का जो स्टेटस है वह बना रहे और अभी लोगों के मन में उस के प्रति जो श्रद्धा है, वह बराबर बनी रहे । जो बुराइयां अभी इस में घुस आई हैं उनको निकालने का प्रयास करते, तो ज्यादा अच्छा होता ।

तीसरी बात यह है कि इस में आर्टिकिल ३११ के बारे मे संशोधन किया गया है । उपसभापति महोदया, मै तो यह मत रखता हूं कि आर्टिकिल ३११ मे इस तरह के संशोधन की कोई आवश्यकता नही थी । हमारे यहां प्रजातंत्र है, हालाकि यह स्थिति जरूर है कि आज कांग्रेस दल बहुमत में है और इतनी अधिक मेजारिटी मे है कि उस को आज बदला जा सके, यह प्रश्न पैदा नही होता, मगर प्रजातंत्र में ऐसा अवसर भी आ सकता है कि आज जो राज है, उसके बजाय दूसरा हो, वह बदले, जैसीकि फ्रांस में स्थिति है कि आज

एक दल का प्रशासन है तो कल दूसरे दल का राज है और फिर तीसरे दल का राज है लेकिन वहां पर एडमिनिस्ट्रेशन की, प्रशासन की साख इतनी मजबूत है कि किसी भी दल का राज होता रहे और बदलता रहे, मगर प्रशासन में कोई किसी तरह का विघ्न नहीं पड़ता। वहां पर किसी तरह की अव्यवस्था होने की संभावना इसलिये नहीं रहती है कि वहां की प्रशासन व्यवस्था को बहुत मजबूत बनाया गया है। वहां पर इसी आधार पर एडमिनिस्ट्रेशन लाज बने है और उसके अन्तर्गत एडमिनिस्ट्रेटिव ट्रिब्यूनल वगैरह कायम किये हैं और जो कर्मचारियों के झगडे वगैरह हैं, वे सब एडमिनिस्ट्रेटिव ट्रिब्यूनल्स के अन्तर्गत आते हैं। हमारे यहां ऐसा कोई व्यवस्था नही की गई है और मैं मानता हूं कि सुनवाई के लिये जो व्यवस्था थी, इंक्वायरीज के बारे में जो व्यवस्था थी, उस के बारे में सुप्रीम कोर्ट ने ठहरा दिया है कि दो इंक्वायरी हो सकती हैं तो हमारे होम डिपार्टमेंट को कुछ ऐसा लगा कि इस से काफी गड़बड़ होने की संभावना है, इस के पक्ष में भी आर्गूमैंट्स हो सकते हैं और विपक्ष में भी हो सकते हैं और इसलिए उन्होंने यहां पर संशोधन दिया है और ऐसा संशोधन दिया है कि केवल एक ही इंक्वायरी रहे---कुछ केसेज के आधार पर यहां यह संशोधन दिया गया है। तो मेरा यह निवेदन है कि क्यों नहीं कुछ ऐसी व्यवस्था करें कि एक इंडिपेंडेंट ही उनकी ट्रिब्यूनल हो।

अभी वैसे कुछ दलील के लिये भी कहा जाता है कि हमारे संविधान में ऐसी व्यवस्था है कि पब्लिक सर्विस कमीशन के माध्यम से भी ऐसे लोगों के खिलाफ कार्यवाही की जाती है और पब्लिक सर्विस कमीशन एक इंडिपेंडेंट बाडी है, सारी की सारी बातें कही जाती हैं। परन्तु इस के साथ साथ मेरा यह निवेदन है कि पब्लिक सर्विस कमीशन केवल कुछ स्तर के कर्मचारियों के बारे में निर्णय दे सकती है, समस्त कर्मचारियों के बारे में वह निर्णय नहीं दे सकती। उन के [illegible] कर्मचारियों के केसेज़ जाते नही थे। ऐसी स्थिति में यह अत्यन्त आवश्यक था कि हम इस दिशा में गंभीरता से सोचते और यह संशोधन लाने की अपेक्षा हम यहां पर यह विचार करते कि हम अपने यहां भी अपने ऐडमिनिस्ट्रेटिव लॉ का निर्माण करते। पब्लिक सर्विस कमीशन एक अपाइंटिंग अथारिटी के रूप मे रखे और एक हमारा ऐडमिनिस्ट्रेटिव ट्रिब्यूनल रहे, जो स्वतंत्र रूप से कर्मचारियों के खिलाफ़ की गई शिकायतों को सुने, जांच करे, अपना निर्णय दे और किसी को निकालने का काम उनके जिम्मे रखे। आज यह स्थिति है कि पब्लिक सर्विस कमीशन के माध्यम से जब हम किसी की नियुक्ति करते है तो उस संस्था का सदस्य होने के नाते एक मोह रहता है उनसे जिन लोगों को उसी संस्था ने नियुक्त किया। उनके खिलाफ इन्क्वायरी कराते है, तो वे बड़ी काशशली डील करते है। इस वजह से अगर हम उन कर्मचारियों में कुछ विशेष बुराइयां निकालते है तो ठीक सी बात नहीं होगी। इस तरह का एक साइकालाजिकल असर रहता है, जिससे वे नहीं चाहते कि उन के द्वारा चुने गये लोग, जब तक कि उनके खिलाफ विशेष एविडेन्स न हों, बुराई का पात्र बनें। इसलिए उन से जो हम न्याय की अपेक्षा करते है या हम चाहते हैं कि अपराधी आदमी के खिलाफ सख्त कार्यवाही की जाय, वैसा उनके लिये साफ्ट कार्नर होने की वजह से कर नहीं पाते। इसलिये मेरा निवेदन था कि पब्लिक सर्विस कमीशन का केवल अपाइन्टमेंट के बारे में ही उपयोग लिया जा सकता है, मगर उनके केसेज को डील करने के लिये, उनको निकालने के लिये, उनके खिलाफ कार्यवाही करने के लिये, उनके बारे में और सब बातों का निर्णय देने के लिये हमने अलग से एक ट्रिब्यूनल, चाहे तो धारा ३११ में संशोधन करके, बनाना चाहिये। कांस्टीट्यूशन के अन्तर्गत अभी उनको इतने व्यापक अधिकार नहीं हैं कि इन्क्वायरी होल्ड करें या न करें, कारण बतायें या न बतायें। तो ऐसी स्थिति में यह अत्यन्त

[श्री विमलकुमार मन्नालालजी चौरड़िया]

आवश्यक है कि हम यह संशोधन लाने की अपेक्षा एक एडमिनिस्ट्रेटिव ट्रिब्यूनल का, एडमिनिस्ट्रेटिव लॉ का, निर्माण करते और उसके अन्तर्गत हमारे कर्मचारियों के केसेज का निर्णय होता ।

माननीय उपसभापति महोदया, अगर देखा जाय, तो भारतवर्ष में हमारी सर्विसेज का अमला जितना लम्बा चौड़ा होता जा रहा है और उसकी संख्या जितनी बढ़ती जा रही है, उसी के अनुसार उनकी शिकायतों की संख्या भी बढती जा रही है और उनके निर्णय वर्षों तक होते नही है, पेंडिग पड़े रहते हैं । तो इसका कारण क्या है ? क्योंकि जितने इस संबंध मे केसेज है, उनके बारे में लम्बी चौड़ी इन्क्वायरी करनी पड़ती है और जांच करने वाले कम है । हमारे कई कर्मचारी ऐसे हैं जिनको सस्पेंड कर रखा है, लेकिन उनको सस्पेन्शन अलाउन्स नही मिलता है । मैं चाहता हू कि जब किसी मामले में तीन महीने, चार महीने या छः महीने तक सुनवाई नहीं होती और अगर उस अवधि के लिये सस्पेंशन अलाउन्स देना पड़ता है तो उसका भी हमारी ट्रेजरी पर असर पड़ता है और ऐसा होने के बावजूद कई लोगों के केसेज निर्णीत नहीं होते और उसका एकमात्र कारण यह दिया जाता है कि काम अधिक होने की वजह से हम उनका निर्णय शीघ्र नहीं कर पाते । तो इसलिये इस दृष्टिकोण से भी अत्यन्त आवश्यक है कि हम अलग से एडमिनिस्ट्रेटिव लॉ बनायें, एडमिनिस्ट्रेटिव ट्रिब्यूनल बनायें और उनके द्वारा सारे केसेज के निर्णय करायें, तो बड़ी अच्छी बात होगी ।

इन शब्दों के साथ मैं यह कहना चाहता हूं कि उम्र के बारे में मेरे संशोधन पर चर्चा होगी, तब मैं अपने विचार व्यक्त करूंगा । आपने जो समय दिया, उसके लिये धन्यवाद ।

SHRI B. D. KHOBARAGADE: Madam Deputy Chairman, I cannot support any of the provisions of this Constitution (Fifteenth Amendment) Bill. So far as the question of determination of the age of Judges is concerned, it is not in good taste that any controversy should have been raised at all. As explained by my friend, Mr. Chordia, the persons who are occupying such high offices should not have raised any such controversy at least publicly and if there was any difference of opinion on this issue it should have been settled amicably. Even though there have been certain cases of this nature I do not think that there is any necessity to bring forward this amending Bill before this House because it was explained by the hon. Law Minister himself the other day that the situation had slightly improved after 1958 and there had been fewer cases and even those cases had been settled amicably. Madam, according to the provisions of this Bill the age of a Judge will be determined by such authority and in such manner as Parliament may by law provide. In this respect I have to submit that the age of a Judge should be determined on the basis of documents like the school certificate or the college transfer certificate etc., wherein the date of birth is mentioned. Usually we appoint people as Judges after they are 45 years of age or when they are about 50 years. If they did not question the validity of their date of birth up to the age of 45 or 50, how can we allow them to question their age at this time? It means that for some ulterior motive they want to change their date of birth with a view to gaining some benefits and this should not be allowed. If there was really any dispute or controversy about their date of birth, they should have settled it long before. What did they do up till the age of 45 or 50? What did they do before they were appointed as Judges to get their date of birth corrected? If we allow this procedure to be followed, then it will be that in some cases we will be doing some favour

to certain Judges. If certain favours are done to certain Judges, I doubt whether after their appointment as Judges they will be able to discharge their responsibilities fairly and impartially. Therefore, there should be no provision of this nature at all. The date should be fixed from the documents available; the date given in the school certificate or transfer certificate should be accepted.

The second question is the one relating to the raising of the age of retirement. I oppose this provision also. It is not necessary at all to raise the age of Judges for retirement. It has been mentioned that it is essential to raise their retirement age because we should be benefited by the maturity of thought, by their wisdom. But, Madam, this would be applicable in the case of other Government employees also. But we are making them retire at the age of 58. Are we to understand that we should not be benefited by the maturity of thought and wisdom of other Government employees? I think if we are asking the other Government employees to retire at the age of fifty-eight, there is no necessity to raise the age of retirement of Judges to sixty-two because it means that we are creating inequality. Both are officers and there should be no inequality so far as the retirement age is concerned. It has been claimed that the Judges are indispensable, that we are not getting a good number of Judges who can preside over courts and therefore it is essential that we should raise their age of retirement to sixty-two. But in this respect also I beg to differ from Government. There are a number of young persons who can shoulder that responsibility; not only that but there is a keen competition to get appointment as High Court Judges. Madam, in this respect I would like to quote Mr. Setalvad. He gave evidence before the Joint Committee on this Bill and he gave the reasons in support of raising the age of retirement of High Court Judges. He said—

> "Now he has to retire at 60 when he generally is very fit to work and perhaps he has got children who have not completed their education and he has to pay heavy taxes on his salary. So it is rather hard on the man to be without employment."

So, Mr. Setalvad here gives the reason that he might be unemployed, that there might be certain liabilities so far as his children are concerned and therefore he should be allowed to continue till sixty-five. In his evidence Mr. Setalvad has not said that people are not available to preside over courts, that people are not available for being appointed as High Court Judges. He has given entirely different reasons. If we accept the version of Mr. Setalvad, I want to ask the Government whether the same condition would not be applicable to other Government employees who are made to retire at the age of fifty-eight. Will they not be unemployed? Do they not have some responsibility so far as their children are concerned? In spite of all these, we are making them retire at the age of fifty-eight. If so, why should we allow the High Court Judges to retire at the age of sixty-two if the considerations are the same for both?

This will mean frustration amongst the junior members. I know there are a number of persons who are occupying posts of District and Sessions Judge and they are looking forward to be promoted as High Cour Judges. If we allow these Judges to continue up to the age of sixty-two, the persons who are looking forward to be promoted as High Court Judges, will not be able to get the advantage of promotion and they can never in their life be High Court Judges. Because in the case of those persons who are holding the office of District and Sessions Judge, the age of retirement is fifty-five. If they do not

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get any chance for being appointed as High Court Judges before fifty-five, then perhaps they will have to retire as District and Sessions Judges only.

There is another aspect also. There are a number of young persons from the Bar who would like to be elevated to the Bench. If we want to raise the age up to sixty-two, then those young people, who want to be appointed as High Court Judges, will not get any opportunities for some more years.

It has been stated that in order to maintain the independence of the judiciary, it is essential that we should increase the emoluments of the High Court Judges. I read the amendment which has been passed by this House. We have made a provision that High Court Judges, after their retirement, can practise in the Supreme Court. It has been pointed out in this Evidence by Mr. Setalvad that a large number of High Court Judges are practising in the Supreme Court at present and they are doing well. So, this provision is quite sufficient for the High Court Judges to enable them to obtain and supplement their income so as to discharge their responsibilities towards their children. Therefore, it is not essential that we should raise the age of retirement of the High Court Judges so as to enable them to obtain a good salary and to discharge their responsibilities.

Now, I will come to article 311. I do not know why this amendment has been introduced in this House. The other day, while speaking in the Lok Sabha, the hon. Law Minister said that the interpretation of the Supreme Court, in some cases, was that this article involved two enquiries at two different stages. I do not know on what basis the hon. Law Minister made this statement, because the opinion of eminent jurists of this country is to the contrary. The article as it stands now and as it has been interpreted by the different High Courts and the Supreme Court, does not involve two enquiries. There is only one enquiry. When the enquiry is complete and the enquiring officer comes to the conclusion that the concerned employee is guilty, then he should serve a 'show cause notice', pointing out what punishment is to be given to him. He should be asked to show cause and explain as to why that punishment should not be given to him. Therefore, this procedure does not mean that there will be two enquiries. I will quote only two or three persons who have clearly pointed out that the present article does not involve two enquiries. Shri M. C. Setalvad has said:

> "I do not think any Court has held that the second opportunity involves a right of cross-examination. All that the Courts have held is that on the occasion when a certain punishment is decided upon, the servant should be told what the proposed punishment is and he should be given an opportunity of making a representation against the proposed action, which means that, being furnished with the report of the Inquiring Officer and what the Government proposed to do, he can make another representation to Government."

This is what Shri Purshottam Trikamdas, representing the Bar Council of India, has said:

> "....the second opportunity is not a fresh inquiry at all. The record is there and the officer before whom the second inquiry takes place is not going into the facts over again."

THE VICE CHAIRMAN (SHRI M. P. BHARGAVA) in the Chair.]

Shri S. T. Desai, representative of the Supreme Court Bar Association, says:

"In practice there has never been the duality of enquiry. I can assure you this from a number of cases that have come before me."

So, considering all these opinions of eminent jurists, we come to the conclusion that it is not at all necessary to have two different enquiries. It is one and the same enquiry. It is a continuous process. Therefore, the explanation offered the other day by the hon. Law Minister is incorrect. I do not know why the hon. Law Minister should try to deceive the House in this way. Though there is no such case which has been reported, which has been decided by the High Court or the Supreme Court —and the opinions of eminent jurists have been mentioned—I do not know why the hon. Law Minister should come and say that it would mean two different enquiries. In this connection I must tell the House that the Government has got the support of a majority and if they want to do anything, they can do it. They must do it. But then, they should not give a wrong notion or they should not try to mislead the House. This is most unfortunate that in order to get the measure passed by this House the hon. Law Minister is indulging in misleading the House.

Now, why do we say that the present provision in the Constitution should be maintained. It is because if we amend this article, it will mean that we are depriving the Government employees of their inviolable right. Already the Government employees stand on a different footing so far as the other employees are concerned. Even the employees working in private concerns have got the right to refer their dispute to a tribunal. There is the Industrial Disputes Act to resolve all such disputes. They can get their grievances redressed. But so far as the Government employees are concerned, they cannot take recourse to law. In France we have noticed that there are administrative tribunals to which all such disputes are referred. There is no such provision in this country. Therefore, the poor Government employees will not get any chance or opportunity to get their wrong redressed. Therefore, I would say that the employees should get all the advantages that were bestowed upon them by the Constitution. Considering the fact that this article was adopted in the Constitution entirely from the 1935 Act, I do not think there are any reasons for amending this article. It will mean that the Government employee will be handicapped. He will not have any remedy against the action of the Government authorities. Already we have come across so many cases where they have been harassed. Their cases have been arbitrarily decided according to the whims of the presiding officers . . .

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): There are quite a number of speakers. You must wind up.

SHRI B. D. KHOBARAGADE: Yes, Sir. Please give me two minutes more. Therefore, if this constitutional remedy is removed, then there will again be trouble and there will not be any remedy to safeguard his interests. Moreover, it is against the natural justice. We are punishing the Government employee without giving him any opportunity to show cause why he should not be punished. During the enquiry, the only enquiry made is whether he is guilty or not guilty. No punishment is suggested, no penalty is suggested. He does not know, if he is found guilty, what penalty he would receive. Therefore, once he is found guilty, then it is essential that he should be told that he has to be penalised in such and such a manner for these charges, and he should be asked to show cause.

In view of all these reasons, I do not find that there are any grounds or any reasons to support any of the clauses mentioned in this Constitution Amendment Bill and therefore, I oppose this .....

PANDIT S. S. N. TANKHA (Uttar Pradesh): Mr. Vice-Chairman, Sir, after the illuminating remarks on the Bill which have been made by my hon. friend Mr. Pathak, who has preceded me, my task has been considerably lightened. In fact, he has said all that could be said on the various clauses of the Bill.

However, as you will see, Sir, there are four or five major changes contemplated under the Bill. Coming to the first of them, namely, regarding the determination of the age of High Court and Supreme Court Judges, I am in entire agreement with the formula which was proposed by my friend, Mr. S. K. Basu, in the Select Committee on this matter, namely, that instead of this matter being allowed to be agitated after the appointment of the Judges, it would certainly have been good if the formula had been accepted to the effect that before the appointment is made whether of a Judge of the Supreme Court or of the High Court, the person to be appointed should be asked to state his age and if any enquiry is needed by the Government into the matter, it should be done before his appointment is gazetted. This would avoid all the difficulties in the future. And it could also have been mentioned in the Bill that once the person to be appointed as a Judge has stated his age and the age has been accepted by the Government prior to his appointment, no further question will be considered in the matter either at the instance of the appointed Judge at a later date, or at the instance of the Government on the question of age. I really do not see any reason why the Government did not accept such a reasonable proposal. After all, taking this matter either before the Supreme Court or before the President does not add to the credit of either the judiciary or the executive or the Law Ministry which has brought forward this Bill. However, Sir, in the matter of the age of the High Court Judges, it has been provided in the Bill that if any question arises about their age, the matter will be decided by the Chief Justice of the Supreme Court. But as regards the determination of the age of the Judges of the Supreme Court, it has, according to the Bill, to be determined by the President. Now, Sir, this is not a very wholesome provision which should be adopted. We know after all, that the President acts under he advice of the executive and if the executive really wants t be the determining factor in fixing the age of the High Court Judges or the Supreme Court Judges, then there was no point in specifying that the matter would be decided by the President since the President as we know cannot, under the Constitution, act on his own personal judgment, but he has to be guided in the matter by the Government, and the Government means the executive. Therefore, this provision is hardly a wholesome procedure.

Then, Sir, coming to the question of the age of retirement of the High Court and the Supreme Court Judges, rather about the High Court Judges only, I am glad that the Government has decided to raise their age from sixty to sixty-two years, but at the same time I am sorry that the Government has thought it fit to raise their age only by two years and not by five years, as proposed before the Joint Committee. I fail to appreciate any of the arguments which have been put forward by the Government for not accepting the proposal to raise the age to sixty-five years. After all, if a person can act as a Judge of the Supreme Court till the age of sixty-five I see no reason why the same person, if he was acting as a Judge of the High Court, cannot be expected to put his mind on . . .

SHRI AKBAR ALI KHAN: That is not the objection. High Court Judges may get an opportunity in the Supreme Court afterwards.

PANDIT S. S. N. TANKHA: That is one of the reasons also which has

been put forward by the Law Minister. But I have not . . .

SHRI K. SANTHANAM: We require only a few Supreme Court Judges while we require a large number of High Court Judges.

PANDIT S. S. N. TANKHA: But I have not been able to appreciate what is there to prevent the executive from taking the Judges from the High Courts to the Supreme Court at an earlier age. Why should it wait till the last moment to give the lift when the man is about to retire and then say, "Now come to the Supreme Court and we are leaving a gap of three years for you to work there"? The Judges in the High Court in my opinion are fully competent at the age of sixty or even earlier to resume the duties of the Judges of the Supreme Court, and there is not one but several cases in which even before the age of sixty, men from the High Courts have risen to the Supreme Court Bench. There have been instances from my own State High Court, in which the Judges have gone to the Supreme Court before the retirement age. Then, why should this plea be put forward that there should be a margin of three years at least between the age of retirement of a High Court Judge at sixty-two and of a Supreme Court Judge at sixty-five?

SHRI SANTOSH KUMAR BASU: I may make one suggestion for his consideration. In that case, it cannot be a rule that persons who are lower in service so far as their age and length of service are concerned, should be ordinarily given the lift. Only in exceptional cases can they be given a lift. Otherwise, there will be cases of discrimination and supersession and it will create heart-burning among the Judges in the High Courts if this becomes a common, usual practice, of giving a lift to junior men, to go to the Supreme Court.

PANDIT S. S. N. TANKHA: I am not saying that a junior man only should be given the lift. What I am saying is that from among all those who attain the age of sixty years or so in the High Courts, the seniormost of them or those who are deserving should be brought to the Supreme Court Bench. I do not say that they should be brought in only because they are nearing the age of sixty or so. It is only those persons who are considered fit for the work in the Supreme Court, those who are good Judges and mentally fully alert and who have a good physique and who are found deserving, only they should be given the appointments. Therefore, Sir, I am definitely of the opinion that the age of retirement of the High Court Judges should have been fixed at sixty-five and not at sixty-two years only.

1 P.M.

The Law Commission, I might mention, had in its report recommended that the age of retirement of the High Court Judges should be increased to sixty-five, and not to sixty-two only, and it had at the same time suggested that no practice after retirement should be allowed to them. I am in full agreement with this recommendation also. The addition of retired Judges in the profession is not a very healthy practice. It is true that they are men of merit, they can handle difficult and complex cases very efficiently, but at the same time we have also to see the interest of those lawyers who have been working for years to come up in the profession by sheer dint of their merit and hard work. Now, when they reach that stage, they find that a member from the Bench comes down to compete with them. Is it fair? Is it at all right? Knowing as we do the mentality of the clients, the moment they come to know that a retired High Court Judge has come to practise, they rush to him, however competent the other lawyers may

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be. And it is this that goes against the interests of the profession. Moreover you will see that it often acts disadvantageously in the case of the litigants too, because it is not all of them who can have the means to employ the services of retired High Court Judges. Now, if one party employs a retired High Court Judge, the other finds himself at a disadvantage, only because he has not the means to employ the services of a retired High Court Judge from his side. And then above all it cannot be gainsaid that the dignity and the name of the retired High Court Judges carries much weight with the courts before whom they practise—that cannot be denied. The court may not deliberately act wrongly on points of law placed before them but all the same, wherever a judicial discretion has to be exercised or a different point of law to be decided, they are liable to be influenced in such matters by the pleadings of the retired High Court Judges, and therefore it is to the disadvantage of the litigant public as well as to the disadvantage of the men in the profession and as such the present practice of allowing High Court Judges to return to the bar after retirement should be stopped.

It has been accepted by the Law Minister that the average span of life in India has risen from, say, 27 years or so during the last decade or two, to about 48 years now, and he also recognises that Judges at the age of sixty are generally in good physical health and mental alertness and are capable of carrying on to their work up to the age of sixty-five years. Then why should he not have accepted this amendment regarding the age of retirement, I am unable to understand.

Now, Sir, this matter brings me to another point and that is regarding the age of retirement of Members of the State Public Service Commissions. Under article 316(2), as you know, Sir, the age of retirement of the Chairman and Members of a State Public Service Commission is fixed at sixty years and that of the Members of the Union Public Service Commission at sixty-five. This provision is analogous to that of the retirement of High Court Judges and the Supreme Court Judges, and now, when a change is being made in the age of retirement of High Court Judges, I see no reason why a corresponding increase in age should not be provided for under article 316(2) as well. This Bill has not taken care of that and I would ask the Law Minister to keep this in mind and when he finds an opportunity to see to it that the benefit of the increase in age of retirement goes to those persons also.

Then, Sir, coming to the matter of retired High Court Judges or Supreme Court Judges being taken on the Bench of the High Court or Supreme Court as *ad hoc* Judges, I entirely favour the idea, but what I very much dislike is this. You may kindly read article 128 whereby retired Judges of High Courts are to be brought in as *ad hoc* Judges. Here it is said that they shall have all the jurisdiction, powers and privileges, but shall not be deemed to be Judges of that High Court. Now this is rather a derogatory and anomalous position. Same provision exists for the re-employment of the Supreme Court Judges also. I do not see why it should be so. This gives rather a derogatory position to the *ad hoc* Judges and I would suggest that they should be deemed to be Judges of the Court except for purposes of payment of their salaries, provident fund and the like. Except for these matters they should be deemed to be Judges of the High Court or the Supreme Court as the case may be. The present position regarding the emoluments paid to the *ad hoc* Judges, I understand is very unsatisfactory, and I am told that one or two retired Judges have refused to work on that basis because, according to the rules, they are paid a daily allowance—not on a monthly basis

but only for the number of days they sit on the Bench. Thus out of the seven days of the week they are not to be paid any allowance for the days the Courts do not sit, for example, on Saturdays and Sundays. They are just paid for five days in the week. This is very wrong and humiliating for the Judges After all, if you need their services, you must appoint them for a definite period, not for a week, or ten days or fifteen days, but, say, for six months or one year and then pay them the salary which they were drawing in the Supreme Court or the High Court before retirement, less the pension which they are getting. Why should they be treated on a separate footing and be paid on a daily allowance basis? Therefore, I would suggest, Sir, that this matter needs to be gone into very carefully by the Law Minister if services of *ad hoc* Judges are to be utilized I now come to the question of compensatory allowance, which has to be paid to High Court Judges on their transfer from one High Court to another This practice of their being transferred from one High Court to another already exists In fact, Judges from the High Court of my own State of U P. have been transferred to other States and if they have not been paid any compensatory allowance so far, I do not see why this question of payment of compensatory allowance is being brought in now After all, the salaries which we are paying to the High Court Judges today are fairly decent, but if it is considered that they are not decent, or not enough for their decent living then of course you might increase their salaries or pensions, as the case may be, but paying them a compensatory allowance is not quite proper, specially when we are not paying any compensatory allowance to our Government Officers and Administrative Servicemen who are being transferred from one part of India to another, almost every two or three years or so. Then why should this question arise for the High Court Judges? It is said that the High Court Judges have to maintain their dignity, they have to keep two houses. Have the other people not got families? Do they sometimes too not keep two houses? Do they not incur the expenditure which is necessary for keeping the dignity of their post? Then why the special plea for paying a compensatory allowance to Judges?

It is said that Judges do not agree to be transferred But I submit that the moment you make this provision of paying compensatory allowance, you will see that there will be a rush of High Court Judges wanting transfers from their courts to other courts. Is it right? Is it proper? They may even be running about to the Home Ministry or the Law Ministry or to the Supreme Court asking for their transfers This will be very degrading.

SHRI AKBAR ALI KHAN: It would not be a tempting compensation.

PANDIT S. S. N TANKHA: I do not know It may be tempting, it may not be tempting Nothing has been fixed How do you say that it will not be tempting?

SHRI AKBAR ALI KHAN: Because that Bill has yet to be introduced.

PANDIT S. S. N. TANKHA: Once you say that a compensatory allowance has to be paid, the compensatory allowance can be Rs 50 and it may even be Rs 500. However, I am against the provisions of this Bill. Actually . . .

THE VICE-CHAIRMAN (SHRI M. P BHARGAVA): That will do.

SHRI KUREEL: Just ten minutes.

SHRI N. C. KASLIWAL Rajasthan): Could you kindly let us know when do you have the first division because if we go for lunch and then you ring the bell, it will be difficult?

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): No definite idea can be given But it will be round about 2 o'clock

کی جا رہی ہے یہ ایسی چیز ہے جس کو چیف جسٹس کے اختیار میں ہونا چاہیئے تھا اور یہ جو انکے ریٹائر ہونے اور ٹرانسفر کا سوال ہے یہ بھی سب انہیں کے ہاتھ میں ہونا چاہیئے تھا -

میں یہ دیکھ رہا ہوں کہ سرکار جوڈشیری کے آفیرس میں بھی انٹرفیر کرنے جا رہی ہے - موجودہ حالت میں جہاں تک ڈسٹرکٹ ایول کا تعلق ہے یو - پی کے بارے میں میں جانتا ہوں کہ وہاں اس طرح کی باتیں ہوتی ہیں - اسی طرح سے دوسرے صوبوں میں بھی جوڈشیری میں انٹرفیر ہوتا ہوگا - سرکار کی اور سے یہ کہا جاتا ہے کہ جوڈ شیری کو ایکزیکٹیو سے الگ کر دیا گیا ہے اور ایگزیکٹیو کا جوڈشیری پر کوئی پریشر نہیں ہے - مگر آپ دیکھ لیجئے کہ جتنے جوڈشیل آفیسر ہیں جہاں تک ان کی سروسز ریکارڈ اور ترقی کا تعلق ہے یا چھٹی کا تعلق ہے یا اور چھوٹی چھوٹی باتوں کا تعلق ہے وہ عام طور پر ڈسٹرکٹ مجسٹریٹ کے ماتحت رہتے ہیں - جب کسی ضلع میں ۱۴۴ دفعہ لگا دی جاتی ہے تو جوڈشیل آفیسروں کی بھی ڈیوٹی لگا دی جاتی ہے اور یہ بات عام طور پر آپ ہر ضلع میں اچھی طرح سے دیکھ سکتے ہیں - عام طور پر یہ دیکھنے

شری پیارے لال کریل "طالب"

(اتر پردیش) : مہودیہ - میں آپ کا زیادہ سمے نہیں لونگا اور جو باتیں میں کہنا چاہتا تھا وہ اپوزیشن کی طرف سے کہی جا چکی ہیں - سب سے پہلے جس بات پر میں زیادہ زور دینا چاہتا ہوں وہ یہ ہے کہ ہمارا سنودھان جو ہے وہ ایک سیکریولر ڈکومنٹ ہے پوتر گرنتھ ہے - ہم یہ دیکھتے ہیں کہ آئے دن سرکار کانسٹی ٹیوشن میں امنڈ منٹ لاتی ہے اور بغیر اس کے لائے وہ اپنا کام نہیں کر پاتی ہے کوئی سیشن ایسا نہیں ہوتا جس میں اس طرح کے بل نہ آتے ہوں اور کانسٹی ٹیوشن میں امنڈمینٹ نہ کیا جاتا ہو -

جس بات کے لئے ہمارے کانسٹی ٹیوشن کو امینڈ کرنے کی کوشش کی جا رہی ہے وہ ایسی اہم بات نہیں ہے جس کے لئے کانسٹی ٹیوشن کو امینڈ کیا جائے - بہت ہی معمولی بات ہے اور اس معمولی بات کے لئے کانسٹی ٹیوشن کو امینڈ کرنا جائز نہیں ہے اور میں سمجھتا ہوں کہ سرکار کو ایسا نہیں کرنا چاہئے - اس سے ہمارے سنودھان کی مریادا کم ہوتی ہے - اور ہماری سرکار کی عزت لوگوں کے دلوں میں کم ہوتی ہے - مثلاً ججوں کی عمر کی توسیع کے لئے یہ جو امینڈمینٹ کرنے کی کوشش

نہ کیا جائے - ججوں کو ایگزیکٹیو کے نیچے لانا کوئی اچھی بات نہیں ہے اور ان کو اس طرح سے مجبور کرنا میں اچھا نہیں سمجھتا ہوں اس طرح سے ہائی کورٹس جو ابھی تک انڈیپینڈنٹ ہیں انکی آزادی کے ختم ہو جانے کا اندیشہ ہے - یہ سب کام چیف جسٹس کے ہاتھ میں چھوڑ دیا جائے اور ان کو یہ اختیار دے دیا جائے کہ اس معاملہ میں وہ خود ہی فیصلہ کر لیں - اسی طرح سے ہائی کورٹ کے ججوں کی عمر بڑھانے کا جو سوال ہے اس کو بھی ختم کرنے کی ضرورت ہے - سپریم کورٹ اور ہائی کورٹ کے ججوں کی عمر ایک ہو ی چاہیئے -

ایک اور خاص بات کی طرف میں آپ کی توجہ دلانا چاہتا ہوں اور وہ ہے ہائی کورٹ کے ججوں کے ریٹائر ہونے کے بارے میں - جب ہائی کورٹ کے جج ریٹائر ہو جاتے ہیں تو ان کی جگہ سینیر لائرس مقرر کئے جاتے ہیں اگر کوئی لائر کسی مقدمہ میں اھمیت پا جاتا ہے تو اس کا کاروبار چل جاتا ہے اور وہ سینیر بن جاتا ہے اور اس طرح سے جونیر لائرس ہوتے ہیں وہ منہ تکتے رہ جاتے ہیں اور ان کو آگے بڑھنے کا موقعہ نہیں ملتا چاہے وہ کتنے ہی قابل کیوں نہ ہوں - جتنے بھی کیسیز ہوتے ہیں وہ سینیر لائر کے پاس چلے جاتے ہیں - اب اس میں آتا ہے کہ جوڈشیل آفیسر جو مقدمات کرتے ہیں ان کے اوپر ایگزیکٹیو کی طرف سے انٹرفیرنس ہوتا ہے - بعض وقت یہ بھی دیکھنے میں آتا ہے کہ ان جوڈشیل آفیسروں سے یہ کہا جاتا ہے کہ اس مقدمہ کے معاملہ میں فلاں فلاں آدمی کی ضمانت مت کرو - اور جہاں تک ہو سکے فیصلہ ایسا ہونا چاہئے یا یوں ہونا چاہیئے - بہت سے جوڈشیل آفیسر جو انڈیپینڈنٹ ورک کرتے ہیں انہیں شہروں میں ڈسٹرکٹ مجسٹریٹ کے تحت کام کرنا پڑتا ہے اور اس لئے انہیں ان کی باتوں کو ماننا پڑتا ہے -

ایک تھوڑی سی امید تھی کہ ہائی کورٹ انڈیپینڈینٹ ہے - جوڈشیوی ایگزیکٹو سے الگ ہے اور ایگزیکٹیو کا جوڈشیری پر کوئی اثر نہیں ہوتا ہے وہ سب ختم ہوتا دیکھائی دیتا ہے - یہ جو بل لایا گیا ہے اس کے ذریعہ گورنمنٹ یہ کوشش کر رہی ہے کہ جوڈ شیل سروس میں اس کا انٹرفیرنس ہو سکے اور وہ بھی اس کے ہاتھ میں آجائیں - ابھی تک ہائی کورٹ کے ججوں کی ایک اپنی سوشل پر سٹیج بھی سماج کے اندر ان کا ایک الگ استھان بن گیا تھا لیکن اس بل کے ذریعہ انہیں ذرا ذرا سی بات کے لئے ایگزیکٹیو کے پاس جانا ہوگا کہ ہماری سروس کو دو سال کے لئے اور بڑھا دو اور ہمیں ابھی ریٹائر

اپنے افسر کو اس کے ذاتی کام میں خوش نہیں کر سکتا ہے تو وہ افسر اس کو ہیرس کرے گا اور آخر کار اس کو برخاست کر دے گا - اس بل میں ایسی کوئی چیز نہیں ہے جس سے کہ اس آفسر کو اس طرح کی برخاستگی کرنے سے روکا جا سکے - اس لئے میں عرض کرنا چاہتا ہوں کہ ہمارے سرکاری ملازمین کو ہر طرح کی سیکورٹی ملنی چاہیئے تاکہ انہیں کسی طرح کا اندیشہ نہ ہو اور وہ اپنی خدمات اچھی طرح سے سرانجام دے سکیں -

موجودہ حالات میں میں یہ نہیں سمجھتا ہوں کہ جب ملک میں ایمرجنسی ہے تو ایسے موقعہ میں آرٹیکل ۳۱۱ کو امینڈ کیا جانا کیا ضروری ہے - اگر سرکار یہ بات کرتی ہے تو گورنمنٹ ملازمین کے اندر قس سیٹسفیکشن بڑھے گا - اور ان کو خیال ہوگا کہ گورنمنٹ ہمارے مفاد کے خلاف کام کر رہی ہے اور ہماری سروس کی سیکورٹی کے لئے کو وشش نہیں کر رہی ہے تو میں سمجھتا ہوں کہ جس طرح سے مزدوروں کے لئے انڈسٹریل ٹریبونل ہیں اسی طرح سے ان کے لئے ایڈمنسٹریشن ٹریبونل بنائے جانے چاہیئں اور انہیں موقعہ دیا جائے کہ وہ اپنی صفائی اچھی طرح سے کر سکیں - میں جانتا ہوں کہ

[شری پیارے لال کریل ددطالب]

بل کے پاس ہونے سے ان کی عمر دو سال اور بڑھ جائیگی اور سینیر لائرس کو ان کی جگہ لینے کا موقعہ نہیں ملیگا اور اس طرح سے جونیر لائرس کو بھی کوئی موقعہ نہیں ملیگا - اس لئے میں سمجھتا ہوں کہ اس بل میں ریٹائر ہونے کی جو عمر ۶۲ رکھی گئی ہے وہ موزوں نہیں ہے - اگر آپ چاہتے ہیں کہ ججوں کی تنخواہ کم ہے تو اس کو بڑھا دیا جائے یا ان کو کچھ الاونس دے دیا جائے یا انکی پنشن بڑھا دی جائے - یہ سب کچھ آپ کر سکتے ہیں لیکن ۶۰ سال کے بعد جو آپ عمر بڑھا رہے ہیں اس سے دوسروں کو موقعہ آگے بڑھنے کا نہیں ملے گا - اس لئے میں اس کی مخالفت کرتا ہوں -

اس کے بعد میں سرکار کی توجہ آرٹیکل ۳۱۱ کی طرف دلانا چاہتا ہوں جس کو سرکار امینڈ کرنے جا رہی ہے - ہماری گورنمنٹ سرکاری نوکروں کی بدولت اپنا کام کاج چلاتی ہے اور یہ لوگ سرکار کی بیک بون کہلائے جاتے ہیں - اس لئے انہیں زیادہ سے زیادہ سیکورٹی ہونی چاہیئے سیٹیسفیکشن ہونا چاہیئے کہ ہمارے ساتھ زیادتی نہیں ہوگی مگر موجودہ ایکٹ میں ہم یہ دیکھتے ہیں ، سرکاری نوکروں کو کوئی بھی افسر اگر وہ کسی سے ناخوش ہو تو وہ اس کو برخاست کر سکتا ہے - اگر کوئی سرکاری نوکر

مخالفت کرتا ہوں - یہ جمہوریت اور ان بنیادی حقوق کے خلاف ہے جو سودھان میں ہمیں اور سول سرونٹس کو حاصل ہیں -

†[श्री प्यारे लाल कुरील "तालिब" (उत्तर प्रदेश) : महोदय, मैं आपका ज्यादा समय नहीं लूंगा और जो बातें मैं कहना चाहता था वह सब अपोजीशन की तरफ से कही जा चुकी हैं। सब से पहले जिस बात पर मैं ज्यादा जोर देना चाहता हूं वह यह है कि हमारा संविधान जो है, वह एक सेक्रेड डाकुमेंट है, पवित्र ग्रंथ है। हम यह देखते है कि आये दिन सरकार कांस्टीट्यूशन में अमेंडमेंट लाती है और बगैर इसके लाये वह अपना काम नहीं कर पाती है। कोई सेशन ऐसा नहीं होता जिसमें इस तरह के बिल न आते हों और कांस्टीट्यूशन में अमेंडमेंट न किया जाता हो।

जिस बात के लिये हमारे कांस्टीट्यूशन को अमेंड करने की कोशिश की जा रही है, वह ऐसी अहम बात नहीं है जिसके लिये कांस्टीट्यूशन को अमेंड किया जाये। बहुत ही मामूली बात है और इस मामूली बात के लिये कांस्टीट्यूशन को अमेंड करना जायज नहीं है और मैं समझता हूं कि सरकार को ऐसा नहीं करना चाहिये। इससे हमारे संविधान की मर्यादा कम होती है, और हमारी सरकार की इज्जत लोगों के दिलों में कम होती है। मसलन जजों की उम्र की तोसीह के लिये जो अमेंडमेंट करने की कोशिश की जा रही है, यह ऐसी चीज है जिसको चीफ जस्टिस के अख्तियार में होना चाहिये था और यह जो उनके रिटायर होने और ट्रांसफर का सवाल है, यह भी सब उन्हीं के हाथ में होना चाहिये था।

†[ ] Hindi transliteration

کس طرح عدالت ایکزیکٹیو کے ومس پر کام کرتی ہیں - ایکزیکٹیو جوڈشری پر انٹرفیر کرتی ہے اور سرکاری ملازمین کو برخاست کرنے کے لئے ایکزیکیٹیو آفیسر جوڈشیل آفیسروں کے اوپر دباو ڈالتے ہیں - اس طرح سے دیکھنے میں آیا ہے کہ بہت سے کیسیز میں سرکاری ملازمین کو صرف ایکزیکٹیو کے دباو کے بنا پر کنویکٹ کیا جاتا ہے - چونکہ سرکاری ملازمین غریب ہوتے ہیں ان کے پاس اتنا پیسہ نہیں ہوتا ہے کہ وہ ڈسٹرکٹ کورٹ و ہائی کورٹ اور سپریم کورٹ میں اپیل کر سکیں اور اپنی صفائی پیش کر سکیں اب جو آپ بل لا رہے ہیں اس سے آپ اس اپیل کرنے کی بات کو بھی چھین رہے ہیں تاکہ سرکاری ملازمین کو موقع نہ مل سکے کہ وہ اپنی صفائی پیش کر سکیں - اور اپنے کو بے قصور ثابت کر سکیں - میں سمجھتا ہوں کہ یہ بڑی زیادتی ہے گورنمنٹ سرونٹس کے ساتھ جو نہیں ہونی چاہئے - آپ اس طرح سے ان کے بنیادی اور مولک حقوق کو پامال کر رہے ہیں جسے آپ کو نہیں کرنا چاہئے - اس بارے میں بہت سی باتیں اپوزیشن والے کہہ چکے ہیں - میں سرکار سے کیول یہی کہوں گا کہ سرکار اس بل کو پاس کرنے سے پہلے ان تمام باتوں پر غور کرے گی اور اس بل کو واپس لے لے گی میں اس بل کی

[श्री प्यारे लाल कुरील "तालिब"]

मै यह देख रहा हू कि सरकार जुडीशियरी अफेयर्स मे भी इटरफियर करने जा रही है। मौजूदा हालत मे जहां तक डिस्ट्रिक्ट लेवल का ताल्लुक है, यू० पी० के बारे मे मैं जानता हू कि वहा इस तरह की बाते होती है। इसी तरह से दूसरे सूबो मे भी जुडीशियरी मे इटरफियर होता होगा। सरकार की ओर से यह कहा जाता है कि जुडीशियरी को एग्जिक्यूटिव से अलग कर दिया गया है और एग्जिक्यूटिव का जुडीशियरी पर कोई प्रभाव नही है। मगर आप देखेगे कि जितने जुडिशियल आफिसर है, जहा तक उनकी सर्विसेज, रेकार्ड और तरक्की का ताल्लुक है या छुट्टी का ताल्लुक है या और छोटी-छोटी बातो का ताल्लुक है, वे आम तौर पर डिस्ट्रिक्ट मजिस्ट्रेट के मातहत रहते हे। जब किसी जिले मे १४४ दफा लगा दी जाती है तो जुडिशियल आफिसरो की भी ड्यूटी लगा दी जाती है और यह बात आम आम तौर पर हर जिले मे अच्छी तरह से देख सकते है। आम तौर पर यह देखने मे आता है कि जुडिशियल आफिसर जो मुकदमात करते है उनके ऊपर एग्जिक्यूटिव की तरफ से इन्टरफियरेस होता है। बाज वक्त यह भी देखने मे आता है कि इन जुडिशियल आफिसरो से यह कहा जाता है कि इस मुकदमे के मामले मे फला-फला आदमी की जमानत मत करो। और जहा तक हो सके फैसला ऐसा होना चाहिये या यू होना चाहिये। बहुत से जुडिशियल आफिसर्स जो इन्डिपेडेट वर्क करते है उन्हे शहरो मे डिस्ट्रिक्ट मजिस्ट्रेट के तहत काम करना पडता है और इसलिये उन्हे उनकी बातो को मानना पडता है।

एक थोडी-सी उम्मीद थी कि हाई कोर्ट इडिपेडेट है। जुडीशियरी एग्जिक्यूटिव से अलग है और एग्जिक्यूटिव का जुडीशियरी पर कोई असर नही होता है। वह सब खत्म होता दिखाई देता है। यह जो बिल लाया गया है उसके जरिये गवर्नमेट यह कोशिश कर रही है कि जुडीशियल मैटर्स मे इसका इन्टरफियरेस हो सके और वह भी उसके हाथ मे आ जाये। अभी तक हाई कोर्ट के जजो की एक अपनी सोशल प्रेस्टीज थी। समाज के अन्दर उनका एक अलग स्थान बन गया था। लेकिन इस बिल के जरिये उन्हे जरा-जरा सी बात के लिये एग्जिक्यूटिव के पास जाना होगा कि हमारी सर्विस को दो साल के लिये और बढा दो और हमे अभी रिटायर न किया जाये। जजो को एग्जिक्यूटिव के नीचे लाना कोई अच्छी बात नही है और उनको इस तरह से मजबूर करना मै अच्छा नही समझता हू। इस तरह से हाई कोर्टस जो अभी तक इन्डिपेडेट है उनकी आजादी के खत्म हो जाने का अन्देशा है। यह सब काम चीफ जस्टिस के हाथ मे छोड दिया जाये और उनको यह अख्तियार दे दिया जाये कि इस मामले मे वह खुद ही फैसला कर लें। इसी तरह से हाई कोर्ट के जजो की उम्र बढाने का जो सवाल है उसको भी खत्म करने की जरूरत है। सुप्रीम कोर्ट और हाई कोर्ट के जजो की उम्र एक होनी चाहिये।

एक और खास बात की तरफ मै आपकी तवज्जो दिलाना चाहता हू और वह है हाई कोर्ट के जजो के रिटायर होने के बारे मे। जब हाई कोर्ट के जज रिटायर हो जाते है तो उनकी जगह सीनियर लायर्स नियुक्त किये जाते है। अगर कोई लायर किसी मुकदमे में अहमियत पा जाता है तो उसका कारोबार चल जाता है और वह सीनियर बन जाता है और इस तरह से जो जूनियर लायर होते है वे मुह ताकते रह जाते है और उनको आगे बढने का मौका नही मिलता चाहे वे कितने ही काबिल क्यो न हो। जितने भी केसेज होते है, वे सीनियर लायर्स के पास चले जाते है। अब इस बिल के पास होने से जजों की उम्र दो साल और बढ जायेगी और सीनियर लायर्स को उनकी जगह लेने का मौका नही मिलेगा। और इस तरह से जूनियर लायर्स को भी मौका नही मिलेगा। इसलिये मैं

समझता हूं कि इस बिल में रिटायर होने की जो उम्र वासठ रखी गई है वो मौजूं नही है। अगर आप चाहते हैं कि जजों की तनख्वाह कम है तो उसको बढ़ा दिया जाये या उनको कुछ ऐलाउन्स दे दिया जाये या उनकी पेंशन बढ़ा दी जाये। यह सब कुछ आप कर सकते है लेकिन साठ साल के बाद जो आप उम्र बढ़ा रहे हैं उससे दूसरों को मौका आगे बढ़ने का नहीं मिलेगा। इसलिये मैं इसकी मुखालफ़त करता हूं।

इसके बाद मैं सरकार की तवज्जो आर्टिकल ३११ की तरफ दिलाना चाहता हूं जिसको सरकार अमेंड करने जा रही है। हमारी गवर्नमेंट सरकारी नौकरों की बदौलत अपना काम-काज चलाती है और ये लोग सरकार की बैक बोन कहलाये जाते है। इसलिये उन्हें ज्यादा से ज्यादा सिक्योरिटी होनी चाहिये। सेटिसफैक्शन होना चाहिये कि हमारे साथ ज्यादती नही होगी। मगर मौजूदा ऐक्ट में हम यह देखते है कि सरकारी नौकरो को कोई भी अफसर अगर वह किसी से नाखुश हो तो वह उसको बरख्वास्त करा सकता है। अगर कोई सरकारी नौकर अपने अफसर को अपने ज़ाती काम में खुश नहीं कर सकता है तो वह अफसर हरास करेगा और आखिरकार को बरखास्त कर देगा। इस बिल में ऐसी कोई चीज़ नहीं है जिससे कि इस अफ़सर को इस तरह की बरख्वास्तगी करने से रोका जा सके। इसलिये मैं अर्ज करना चाहता हूं कि हमारे सरकारी मुलाज़मीन को हर तरह की सिक्योरिटी मिलनी चाहिये ताकि उन्हें किसी तरह का अंदेशा न हो और वे अपनी खिदमात अच्छी तरह से सरअंजाम दे सकें।

मौजूदा हालात में मैं यह नही समझता कि जब मुल्क में एमरजेंसी है तो ऐसे मौके में आर्टिकल ३११ को अमेंड किया जाना ज़रूरी है। अगर सरकार यह बात करती है तो गवर्नमेंट मुलाजमीन के अन्दर डिससेटिस्फेक्शन बढ़ेगा और उनको ख्याल होगा कि गवनमेंट हमारे मफ़ाद के खिलाफ़ काम कर रही है और हमारी सर्विस की सिक्योरिटी के लिये कोई कोशिश नही कर रही है। तो मैं समझता हूं कि जिस तरह से मजदूरों के लिये इण्डस्ट्रियल ट्रिब्यूनल है, उसी तरह से उनके लिये एडमिनिस्ट्रेशन ट्रिब्यूनल बनाये जाने चाहियें और उन्हे मौका दिया जाये कि वो अपनी सफाई अच्छी तरह से कर सकें। मैं जानता हूं कि किस तरह अदालत एग्जिक्यूटिव के व्हिम्ज पर काम करती है। ऐग्जिक्यूटिव जुडीशियरी पर इण्टरफियर करती है और सरकारी मुलाज़मीन को बर्खास्त करने के लिये ऐग्जिक्यूटिव आफिसर जुडिशियल आफिसरों के ऊपर दबाव डालते है। इस तरह से देखने में आया है कि बहुत से केसेज में सरकारी मुलाज़मीन को सिर्फ एग्जिक्यूटिव के दबाव के बिना पर कन्विक्ट किया जाता है। सरकारी मुलाज़मीन गरीब होते है, उनके पास इतना पैसा नही होता है कि वे डिस्ट्रिक्ट कोर्ट, हाईकोर्ट और सुप्रीम कोर्ट में अपील कर सकें और अपनी सफ़ाई पेश कर सकें। अब जो आप बिल ला रहे है, उससे आप इस अपील करने की बात को भी छीन रहे हैं ताकि सरकारी मुलाज़मीन को मौका न मिल सके कि वे अपनी सफ़ाई पेश कर सकें और अपने को बेकसूर साबित कर सकें। मैं समझता हूं कि यह एक बड़ी ज्यादती है गवर्नमेंट सर्वेन्ट्स के साथ, जो नही होनी चाहिये। आप इसी तरह से उनके बुनियादी और मौलिक हुकूक को पामाल कर रहे है जिसे आपको नहीं करना चाहिये। इस बारे में बहुत-सी बातें अपोजीशन वाले कह चुके है। मैं सरकार से केवल यही कहूंगा कि सरकार इस बिल को पास करने से पहले इन तमाम बातों पर गौर करेगी और इस बिल को वापिस ले लेगी। मैं इस बिल की मुखालफ़त करता हूं। यह जम्हूरियत और उन बुनियादी हुकूक के खिलाफ है जो संविधान में हमें और सिविल सर्वेन्ट्स को हासिल हैं।

SHRI NIREN GHOSH (West Bengal): Mr. Vice-Chairman, Sir, it is unfortunate that this Constitution (Fifteenth Amendment) Bill has been at all brought forward.

[Shri Niren Ghosh.]

As regards the independence of the judiciary, I think I am in general agreement with the arguments put forward by hon. Mr. Pathak. He has ably argued the case why there should not be, directly or indirectly, any interference from the executive into the affairs of the judiciary. It sounds a bit ludicrous that the President has to determine the age of Judges. The high post of President of the Union of India should not be dragged into such a petty matter. It is also quite true that there has been a plethora of amendments to the Constitution and the majority of the amendments have not been in the direction of extending democracy or democratic rights. They were rather to curtail those rights. That is why a feeling has grown among the public that more and more an authoritarian shape is being sought to be given to the Constitution.

I will particularly come to article 311. During the British days, the Britishers tried their utmost to curb, curtail and restrict the rights of the civil servants but unfortunately in the post-independence period, what the Britishers did not dare to do though it was there in the law, it is being done. It is known to everybody that political victimisation of civil servants takes place. As a matter of fact from the Opposition this matter has been brought forward again and again in almost every session. I am at one with what Mr. Krishna Menon said in the other House that you are snatching away the rights which even the Britishers gave to the civil servants. So, it is absolutely unnecessary to bring forward the amendment to article 311. As is well known, the Law Minister could not give any supporting evidence of his contention that any Central Trade Union Organisation has supported the Government in this measure. Rather all of them unanimously spoke that the amendment was seeking to restrict the liberties of the Government servants. That is why this is all the more deplorable.

It is being argued that the present amendment, as adapted by the Lok Sabha, rather improves on the article as it is in the Constitution. That is not true. I think a false and wrong impression is being given to this House. After an enquiry is made and the enquiring authority comes to the point of determination of what penalty should be given to the civil servants, this is what the Railway Board circular says:

> "give him a notice stating the action proposed to be taken in regard to him and calling upon him to submit within a specified time, ordinarily not exceeding one month from the date of such notice, subject to a minimum of 7 days, such representation, as he may wish to make against the proposed action."

That is, a civil servant at present enjoys the right of making a second representation and in that he can bring forward whatever arguments he likes, whatever supporting evidence he wants to place before the disciplinary authority. But in the present amendment he can make a second representation only on the basis of the evidence already adduced in the course of the enquiry. That means the right to make a second representation is becoming quite a formal affair. It is there in order to say that there is a second representation but he cannot bring in any new argument or give any supporting evidence. There is no right to cross-examine. So, there is no question of second enquiry. Normally, it is a representation so that he can make it comprehensive, he can learn many things during the enquiry and so it is a petition that he makes to the authority so that it can finally come to a proper judgment. This right is now taken away. When there is widespread suspicion and it has been brought again and again that there is political victimisation even in respect of civil servants, this minimum guarantee that was there you are taking away by this amendment.

When you accuse a person or bring a charge against a person, it is incumbent on the person who accuses to bring forward evidence to prove that the person accused is guilty. But the position is quite otherwise in the case of civil servants in the courts of enquiry. It is for the civil servant and the onus is on him to prove that he is not guilty. The onus is not on the enquiring authority or the disciplinary authority to prove that he is guilty.

So, the whole proceeding is vitiated from the beginning. When the second representation is also taken away, the democratic right is being curtailed and abridged seriously. It should not be done. Unfortunately, among the Opposition, a feeling is growing that the democratic rights are being curtailed and an emergency without an emergency is being continued and this sort of amendments are being brought forward and the rights of States are more and more being curtailed. We are giving more and more a unitary shape to our State. It is not now a federal State. The rights of the States are being curtailed. So we have a feeling that more and more centralisation of power is taking place and an authoritarian State is being created. That impression the Government should take particular care to remove and I hope that this amendment, particularly as regards the civil servants should be done away with. It should be there in the Constitution that all reasonable opportunities should be given as already established by conventions and practices, so that he can make a really second representation and you do not make it a formal affair. If it is passed in this form, denying appeals of civil servants—and there are serious apprehensions in their minds—and if it is done without heeding to our advice—we can only plead—then I would say that this amendment would go down as a bloody Bill. With this I conclude.

DR. SHRIMATI SEETA PARMANAND (Madhya Pradesh): Mr. Vice-Chairman, I know we are very short of time and I will try to be as brief as possible with my remarks. With regard to clause 5, sub-clause (2), referring to compensatory allowance, I for one, fail to understand why this had to be re-introduced. In the original Constitution as passed in 1950, it was already there and it seems to have been removed by the Ninth Amendment Bill which became the Constitution (Seventh Amendment) Act and the Statement of Objects and Reasons for the removal of that section only mentions in brief nothing more, namely—

Article 222 empowers the President to transfer Judges from one High Court to another. Clause (2) of this article goes on to provide that when a Judge is so transferred, he shall be entitled to receive, in addition to his salary, a compensatory allowance. It is felt that there is no real justification for granting such an allowance and it is accordingly proposed to omit this clause (2).

I feel that it is a pity that we should bring changes in the Constitution with such ease within a period of 5 or 6 years. Only in 1956 we removed this important section of the original Constitution as we had passed. Of course circumstances changed. But particularly this clause is not of such a nature that it should warrant a change within such a short period once again and that also justifiably makes Members always level the charge that the Constitution amendments are brought in this manner.

I would like to make a reference particularly in view of the other clause wherein a change has been brought in referring the determination of the age to the President and the Chief Justice of the Supreme Court in the case of High Court Judges. This is not made applicable

[Dr. Shrimati Seeta Parmanand.]

to the Supreme Court Judges. This seems rather strange that the question of the age of Supreme Court Judges is not raised here at all. Perhaps, it is considered not as important as that of the High Court Judges. It is understood that this amendment was accepted at the eleventh hour in the Lok Sabha. This House would be perfectly justified in not accepting it but what is the position we are reduced to? Time is wasted because there has got to be reference back and ultimately, again, if both the Houses do not agree, there may have to be a joint sitting. I for one feel that the suggestion may be considered that in case of constitutional amendments in future the Bills should be brought before a joint sitting of both the Houses and for this purpose the constitution will have to be suitably changed first. That alone will give, in my opinion, the real weight that should be attached to any changes that should be made in the Constitution. Members of both the Houses will be able together to put forward their argument and whatever the conclusion arrived at may be, it will be as a result of mature deliberation of both the Houses.

I would like now to refer to the question of compensatory allowance, to the question of practice of High Court Judges. Much has been said about not permitting a Judge or creating a convention by which Judges of the High Courts and the Supreme Court do not practise. I think it is very essential that this should not be so and I feel, in view of the fact today that the fees of both High Court and Supreme Court advocates are rising in a spiral—no High Court advocate gives advice for less than five hundred rupees a day and no Supreme Court advocate for less than fifteen hundred rupees a day with the result that the poor people are really deprived of the remedy of going to the High Courts and Supreme Court because of the lawyers' fees—something should be done to make the advice of these retired High Court and Supreme Court Judges available through a fixed fee and through a Solicitors' Advice Cadre or some such machinery. This will serve a very useful purpose from many points of view. I will not go into the details.

I will now turn to article 311. Much has been said by Members of the Opposition. People on the Congress side also are aware of the rights of workers, etc. There is no doubt that the people should not have their *rights curtailed and yet experience* has shown of late that even a class IV servant what works under an officer, howsoever indisciplined he may be, cannot be turned out without going through a lengthy process. The result of this is that many cases of indiscipline continue. There is also another side to the question. Sub-clause (2) of clause 10 says:

> "No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges", etc.

I would like to bring to the notice of the hon. Minister here that the words "reduced in rank" deserve to be amplified or clarified and that is, reduction in rank could have a wider connotation that requires to be made clear. "Reduced in rank" should not necessarily mean demotion. Reduction in rank is also usually experienced as supersession and when it is accepted that a person has to suffer supersession because of certain things attributed to him that he has done, acts of commission or omission or even for not doing something because it was not good work, then he may be given a chargesheet in writing pointing out his drawbacks. Those rules are there but are not put into practice and an officer is not warned in time of his alleged drawbacks.

As we are short of time, I would now refer to clause 11 which deals with article 316 referring to the Members of the Union Public Service Commission. I feel that this Bill has been made a hotchpotch of various matters and all extraneous matters have been brought in. While referring to the question of the Members and Chairman of the U.P.S.C., the question of pensions for these people who serve on the U.P.S.C. should have been considered. This matter has been raised on the floor of the House several times and this is a grievance that has gone unredressed for a long time. If we here are thinking of the difficulties that members of the judiciary have to suffer, the disadvantages to which they have been put by having to give up a lucrative practice, we have also to think that people who come forward to serve on the Public Service Commissions, especially those that do not have any Government service at their back and have been only in public life, it is but necessary that they should not, in these days of rising cost of living be left to their own resources. Some sort of pension should be provided which would make it possible for them to lead a respectable retired life.

I do feel that if this House, with so much difference of opinion, particularly on one or two amendments, does vote in favour of the Bill, it would do so because of necessity or one may say because of party discipline. There is no question that Members of the Congress Party also have expressed their views and their difference of opinion and, therefore, I feel that it is not very right to bring such Bills in such a hurry at the fag end of the session and ultimately it would have been better, as I said, to think, in the light on this experience particularly in respect of this Bill, whether the time has not come to revise the Constitution so as to make it possible to bring in Constitutional Amendment Bills before a joint sitting of both the Houses only.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI R. M. HAJARNAVIS): Mr. Vice-Chairman, we have carefully listened to the debate and it is my regret that in spite of the very clear and detailed exposition of the case by the Law Minister, doubts still continue to be expressed about the purpose of this amendment. Sir, the Law Minister has stated more than once and I state with all the emphasis that is at my command that in this Bill there is no attempt, there is no desire to interfere in any way with the independence of the judiciary. Government realises as every Member of this House realises, as every citizen of this country also realises, that our judiciary is the bulwark of the liberties that we enjoy and it is a condition of that liberty that the judiciary should continue to be independent and that is the function of every one, every citizen, every Member of this House and of the Government to so act that this independence should be continued and fostered. Does it matter, Sir, to the Government very much that in a given case a Judge in a controversy before him does not agree with the interpretation of the Government? In important matters it is within the knowledge of all of us that a single Judge does not decide according to his personal opinion. The matter always goes before a Bench of at least two or three Judges. Therefore, there can never be an occasion that a single Judge's judgment is likely to invoke any feeling of animosity or hostility in the Government. It often happens that decisions are given against our point of view and we all learn to respect them and tolerate them and give effect to them, however disappointed we may be that a particular point of view which we thought was correct was not accepted. Suppose a Judge has given a decision which we think is not correct, then we have the remedy of appeal to the Supreme Court so that to accuse that because a Judge's judgments are not approved by a par-

[Shri R. M. Hajarnavis.]

ticular individual in the Government therefore this provision is liable to be used is not to understand how the judiciary functions in this country.

After all, what is the purpose of this amendment? As was explained by the Law Minister and further elaborated, if I may say so, with greater effect by the hon. Mr. S. K. Basu, the age of a Judge is not a personal matter; it is not an individual controversy between the Judge and the Government. If a Judge has written judgments up to 7th May, 1963 there is no reason why we should not continue to respect his judgments and execute them after 7th May, 1963. If we think that his judgment requires correction we will go to the Supreme Court but the Constitution having placed and age limit upon his tenure, a controversy arises whether he is working beyond his tenure. If any judgment is given by a person who is a Judge after he has reached the age of sixty, then objection is liable to be taken, likely to be taken, by a private individual as to whether he had the necessary capacity to invest his opinion with the authority of the State so that that judgment becomes executable with all the power and authority of the State. A judgment is an opinion of one or two individuals but it derives its potency from the fact that this opinion is the basis of rights which the State will recognise and will enforce. If the Constitution says that he cannot function beyond sixty then any person who is aggrieved by that decision or judgment is bound to raise the question as to whether that individual under the Constitution could function as a Judge. The Law Minister said in his speech when he moved this Bill in the House and Mr. Basu also pointed out that any person who wants to attempt to get rid of that judgment would question the capacity of the Judge.

[THE DEPUTY CHAIRMAN in the Chair.]

This is exceedingly undesirable. This has not happened before but the point arose in one case and that made us think as to the proper method of resolution of this controversy. Should it go to the *Munsif* as it would doubtless go under section 9 of the Civil Procedure Code, as the hon. Mr. Basu pointed out, because all questions of a civil nature are cognisable by the *Munsif*? A civil court can be approached saying that 'A' cannot act as a Judge because he is beyond sixty. Now, should this be decided in a *Munsif* Court? Should it be decided by a District Judge? Should it be decided by his own colleagues? After all, somebody must decide this controversy, as an issue of fact has been raised. There are two propositions contended by the opposing sides as to what is his age and someone must decide the issue. Having come to this stage, having been confronted with this problem that such a controversy needs to be decided by someone, who could be a better authority to decide this question both by judicial training, by authority and by association with the judiciary, than the head of the judiciary namely, the Chief Justice of India? The Chief Justice will decide the question as to what is the date of birth of this particular individual. It is a very simple question; anyone can decide it. A *Munsif* can decide it but looking to the status of the institution of which the particular individual is a component, namely the High Court, realising that it is necessary to maintain the prestige of that institution, the independence of that institution, the dignity of that institution, it is essential to provide that such a question must be decided by the highest individual in the judicial system, the head of the judiciary. Therefore we have committed the decision of this question to the Chief Justice.

Then how does the President come in? The President makes the appointment. If any decision is to be

made in respect of a Judge, affecting a Judge, could it go in the name of anyone with lesser authority than the President? Could we say that the Chief Justice could do it, his own colleague or someone else, that the District Judge could do it or the *Munisf* could do it? Therefore, reading the amendment it is quite clear that so far as the decision on the controversy is concerned, it shall be left to the Chief Justice and if there is any apprehension . . . .

SHRI A. D. MANI: May I ask . . .

SHRI R. M. HAJARNAVIS: The hon. Member will allow me to continue the sentence.

. . . the Home Minister has indeed commanded me to convey to the House that in each case the decision of the Chief Justice will be respected by the executive. That is the intention. The President comes in because he is the appointing authority; he is the head of the State; and in order to invest that order with that amount of dignity, with that amount of formality, with that amount of prestige high office of High Court Judge requires, the decision will formally be that of the President but the actual decision shall be that of the Chief Justice of India. The Government in their turn are prepared to accept and abide by the decision of the Chief Justice of India. Can there be a single Judge who would say that in a controversy he will not accept the decision of the Chief Justice of India? As I said, nothing is farther from our mind than to interfere with the freedom, with the independence of the judiciary. The independence of us all including those of members of Government entirely depends upon the functioning of the judiciary without fear or favour. We ourselves are subjected to various kinds of charges and who will protect us except the judiciary? Whether we are innocent or not, where can we vindicate ourselves except in our courts? Therefore—I again emphasise—it pains the Government exceedingly that doubts should have been expressed that in a matter like this we are trying to interfere with the independence of the judiciary.

Then, I come to clause 2. Now, I have forgotten to say something which, again, is important and which the hon. Home Minister has asked me to convey to the House. In regard to the controversy that has arisen, it will have to be decided. But in order that in future such controversies may not arise, Government will, in each case before the appointment is made, enquire and find out what the date of birth is. If there is any question of further enquiry or further elucidation, it shall be obtained from the individual who is to be appointed as the Judge. Before he takes his seat or before he takes the oath or before he assumes his office, he will be told that Government propose to accept a particular date as the date of his birth. It is for him to accept or not to accept it. It shall continue to be accepted by the Government and there will be no recourse to this clause in the Bill. The Home Minister is clearly of opinion that there shall be no recourse to this clause for raising a further controversy, except in a case where the Judge himself raises the question that he is of a younger age than the had claimed when he was appointed. So, resort to this clause will only be in case the Judge himself makes such a claim. Otherwise, after the appointment is made in future, Government will abide by the date which is fixed when the appointment is made. I hope this will go a long way to meet, in fact this meets entirely, the point of view of the hon. Member, Shri S. K. Basu, namely that no Judge will be able to say that his tenue is in jeopardy, that his period is in doubt and that the executive will be able to raise the question. That is how this clause is to be imple-

[Shri R. M. Hajarnavis.]

mented. Then, I come to clause 2. Clause 2 reads:

> "The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.".

That is to say, no machinery as at present devised, no law is there to determine the age of the Supreme Court Judge. The whole Government and the Home Minister particularly accept the observation of the hon. Member, Mr. Pathak, that our Judges of the Supreme Court are honourable men and they ought to be trusted in respect of their date of birth. We accept it unreservedly. No controversy has arisen. The Home Minister expects that no controversy will ever arise, except as it has arisen in an unfortunate case in Calcutta. We regard it as exceedingly unfortunate. Now, the controversy has gone to the court. I will not say more about it because it is *sub judice.* I will not make any observation on it. We very much regret that such a case should have arisen. So far no case has arisen in the case of a Supreme Court Judge. No doubt has been expressed about the date of birth declared by a Judge of the Supreme Court and I sincerely hope and trust that no such controversy will arise. Unless such a controversy arises, unless there is a real need for it, there will be no legislation undertaken under clause 2. That ought to allay all kinds of apprehension that there is any design to abridge in any way the freedom of the judiciary of this country.

Then, about article 224A, Mr. Pathak observed that for some time at least the allowances of the Judges who are transferred will be determined by the executive. Now, when the Judges are to be transferred—at present there is no legislation—there is bound to be some kind of hardship because they will have to meet additional expenses. So, it is merely for the interregnum. It is only to tide over the period before the legislation is undertaken when this will prevail. Otherwise, there will be a considered legislation as to what the allowances should be and on what basis they ought to be paid.

As regards article 311, the Law Minister said that except for a certain part of the amendment, it gave satisfaction to the civil servants themselves. The present amendment guarantees two things, namely firstly, showing cause against the finding that the Government servant is liable to penalty. Secondly, there will be a further opportunity to show cause as to why the penalty proposed ought not to be imposed. These are the two rights which are available to him under the present law, under the present Constitution, and they continue to be enjoyed by him, except that it makes it clear that there shall be no fresh reopening of the case by leading evidence. So, the rights which are vested in the civil servant under article 311 of the Constitution, I believe, are in no way abridged or diminished or in any way interfered with.

SHRI BHUPESH GUPTA: In that case, what was the need for this amendment? If it does not abridge and materially alter it, what was the need for this amendment?

SHRI R. M. HAJARNAVIS: As I understand article 311, the first finding is that the civil servant is guilty of a breach with which he is charged. After that he is given a notice showing the penalty proposed. When that is done, the case law is quite clear on this point that no fresh evidence is to be given. On the question of penalty, of course, he may refer to the evidence. He may go into the question of evidence to see whether the penalty proposed is severe, is more drastic than the facts of the case justify. To that extent he goes into the evidence. But whatever doubts there may be on these points, these are sought to be resolved by saying that there will be no question of

any fresh evidence. This is the present law and the amendment makes it quite clear that we have abandoned our attempt to combine the two stages. The two stages are finding him guilty and imposing penalty for that. We have abandoned that position. We have reverted back to the old position. We have made it clear that when the second notice is given, at the stage of the second notice, no fresh evidence will be taken. That is the purpose.

SHRI NIREN GHOSH: What Mr. M. C. Setalvad says is this. All that the Government propose to do is, you can make another representation to the Government, which the Government may consider and then finally decide what punishment they are going to give him. In what manner he will plead in that representation and what arguments he will bring forward are not limited in any way whatsoever. He makes a representation in his own way, putting forward his arguments by citing cases or anything else. Now, you seek to limit that, so that the second opportunity becomes merely a formal thing, shorn of all the content, whatever was there.

2 p.m.

SHRI GOPIKRISHNA VIJAIVARGIYA (Madhya Pradesh): May I know from the hon. Minister whether he has satisfied himself . . .

THE DEPUTY CHAIRMAN: Mr. Vijaivargiya, please sit down, the Minister will reply.

SHREE GOPIKRISHNA VIJAIVARGIYA: . . . if a third chance should be given to make representation?

SHRI NAFISUL HASAN (Uttar Pradesh): At the stage when a notice to show cause is given after the finding of the enquiring officer that he is guilty, is it open or is it not open to the person to say that the finding of the enquiring officer is erroneous? Or can he only say that instead of being dismissed, I may only be removed? Will it be open to him to say that or not? I am asking this question because the enquiring officer is not always the appointing authority or the person who has to pass an order as far as removal or dismissal is concerned. May I know whether on the basis of that report which has been recorded by an officer who is not the appointing authority, it will be open for the person charged to say to the appointing authority—whether it is the Government or the head of a department—that the finding of his guilt as arrived at by the enquiring officers is erroneous? That is what I want.

SHRI R. M. HAJARNAVIS: I shall not hazard—I ought not to hazard—a legal opinion on the spur of the moment. I have done it once and come to grief. But, as far as I understand, it is always open to the Government servant to say, while arguing against his penalty, that he has not committed the offence.

AN. HON. MEMBER: On what ground?

SHRI A. D. MANI: May I ask the Minister of State a question on a point of information? If it is already laid down in law that on the question of penalty, there shall be no reference to matters outside the evidence, why put it in the Bill in the form in which it has been done? If that is the law that he shall refer only to the evidence, it is superfluous.

SHRI R. M. HAJARNAVIS: If the words make clearer the meaning, if the words make explicit what is already implicit, I do not think anyone should complain about it.

SHRI NIREN GHOSH: Is it only for this purpose that you brought forward the Bill to amend the Constitution?

SHRI BHUPESH GUPTA: In that case, he could have put it as an explanation to the clause or the article, instead of having a substitute draft.

SHRI GOPIKRISHNA VIJAIVARGIYA: I also add a question. I wanted to know whether it will not be doing

[Shri Gopikrishna Vjaivargiya.]

greater justice if a chance of third representation is also given to him?

THE DEPUTY CHAIRMAN: Now, the Minister will explain.

SHRI R. M. HAJARNAVIS: In conclusion, I am very happy to say at this stage that I was associated in another capacity with the proposal for amendment of article 226 of the Constitution and there I said something which I would repeat. So far as article 226 is concerned, I said:

"So far as article 226 is concerned, we regard it as a most precious jewel, as a most scintillating ornament, in our Constitution. This Government takes its stand firmly upon the rule of law. It is sustained and nourished by the moral force which results from the rule of law. The moment it loses the confidence of the people as not being based on the rule of law, it loses all its authority. And the rule of law is sustained—very ably sustained—by our Judges who are people of very great learning and erudition and are thoroughly independent. It has never occurred to this Government at any time that the citizen should be impeded in any manner in appealing to the High Court under article 226. For one case which goes to a High Court, there are a large number of cases which are not at all challenged in the courts. But in each case, we are mindful of the fact that if the citizen has a grievance, he can certainly go to the High Court under article 226. We function here with the greatest amount of confidence because we know that our courts function independently. If we at any time swerve from the path of justice, from the path of fairness, then the courts will certainly be appealed to by the citizen and that mistake would certainly be corrected by the courts."

I am happy, Madam, that the observations which I expressed then are being realised in this amendment of the Constitution by widening the remedies available to the citizen under article 226 so that even in respect of a grievance against the Government of India a citizen shall be able to appeal to the local High Court as against the present provision where by the interpretation of the Supreme Court he had only to come to Delhi to approach the Punjab High Court. Madam, I have done.

THE DEPUTY CHAIRMAN: The question is:

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

The House divided.

THE DEPUTY CHAIRMAN: Ayes—132; Noes—17.

AYES—132

Abid Ali, Shri.
Agrawal, Shri J. P.
Ahmed, Shri Syed.
Anis Kidwai, Shrimati.
Anwar, Shri N. M.
Arora, Shri Arjun.
Asthana, Shri L. D.
Bansi Lal, Shri.
Barooah, Shri Lila Dhar.
Basu, Shri Santosh Kumar.
Bedavati Buragohain, Shrimati.
Bharathi, Shrimati K.
Bhargava, Shri B. N.
Bhargava, Shri M. P.
Chakradhar, Shri A.
Chatterji, Shri J. C.
Chaturvedi, Shri B. D.
Chauhan, Shri Nawab Singh.
Chavda, Shri K. S.
Dasgupta, Shri T. M.

Dass, Shri Mahabir.
Deb, Shri S. C.
Desai, Shri Suresh J.
Devaki Gopidas, Shrimati.
Dharam Prakash, Dr.
Dikshit, Shri Umashankar.
Doogar, Shri R. S.
Dutt, Shri Krishan.
Ghose, Shri Surendra Mohan.
Ghosh, Shri Sudhir.
Gilbert, Shri A. C.
Gopalakrishnan, Shri R.
Gupta, Shri Gurudev.
Gupta, Shri Maithilisharan.
Hathi, Shri Jaisukhlal.
Jairamdas Daulatram, Shri.
Kakati, Shri R N.
Kalelkar, Kakasaheb.
Karayalar, Shri S. C.
Karmarkar, Shri D. P.
Kasliwal, Shri N. C.
Kathju, Shri P. N.
Kaushal, Shri J. N.
Keshvanand, Swami.
Khan, Shri Akbar Ali.
Khan, Shri Pir Mohammed.
Krishna Chandra, Shri.
Kulkarni, Shri B. T.
Kumbha Ram, Shri.
Kurre, Shri Dayaldas.
Lakshmi N. Menon, Shrimati.
Lingam, Shri N. M.
Lohani, Shri I. T.
Mahesh Saran, Shri.
Mallik, Shri D. C.
Malviya, Shri Ratanlal Kishorilal.
Mathen, Shri Joseph.
Maya Devi Chettry, Shrimati.
Mehta, Shri M. M.
Mishra, Shri S.
Mishra, Shri S. N.
Misra, Shri M.
Mitra, Shri P. C.
Mohammad, Chaudhary A.
Mohanty, Shri Dhananjoy.
Muhammad Ishaque, Shri.
Nafisul Hasan, Shri.
Nandini Satpathy, Shrimati.
Nanjundaiya, Shri B. C.
Narasimha Rao, Dr. K. L.
Neki Ram, Shri.
Pande, Shri C. D.
Pande, Shri T.
Panjhazari, Sardar Raghbir Singh.
Parmanand, Dr. Shrimati Seeta.
Patel, Shri Maganbhai S.
Pathak, Shri G. S.
Patil, Shri P. S.
Patil, Shri Sonusing Dhansing.
Pattabiraman, Shri T. S.
Pillai, Shri J. S.
Punnaiah, Shri Kota.
Rajagopalan, Shri G.
Ramaul, Shri Shiva Nand.
Ray, Dr. Nihar Ranjan.
Ray, Shri Ramprasanna.
Reddi, Shri J. C. Nagi.
Reddy, Shri K. V.
Reddy, Shri N. Narotham.
Reddy, Shri S Channa.
Rohatgi, Dr. Jawaharlal.
Sadiq Ali, Shri.
Sahai, Shri Ram.
Samuel, Shri M. H.
Santhanam, Shri K.
Sapru, Shri P. N.
Saraogi, Shri Pannalal.
Sarwate, Shri V. V.
Satyacharan, Shri.
Satyanarayana, Shri M.
Savnekar, Shri Baba Saheb,
Seeta Yudhvir, Shrimati.
Shah, Shri K. K.
Shah, Shri M. C.
Shetty, Shri B. P. Basappa.
Shukla, Shri M. P.

Siddhu, Dr. M. M. S.
Singh, Sardar Budh.
Singh, Dr. Gopal.
Singh, Shri Mohan.
Singh, Shri Santokh.
Singh, Shri Vijay.
Sinha, Shri B. K. P.
Sinha, Shri R. B.
Sinha, Shri R. P. N.
Sinha Dinkar, Prof. R. D.
Syed Mahmud, Shri.
Tankha, Pandit S. S. N.
Tapase, Shri G. D.
Tara Chand, Dr.
Tara Ramachandra Sathe, Shrimati.
Tariq, Shri A. M.
Tayyebulla, Maulana M.
Thanglura, Shri A.
Tripathi, Shri H. V.
Uma Nehru, Shrimati.
Varma, Shri B. B.
Venkateswara Rao, Shri N.
Vijaivargiya, Shri Gopikrishna.
Wadia, Prof. A. R.
Warerkar, Shri B. V. (Mama).
Yajee, Shri Sheel Bhadra.

NOES—17

Chordia, Shri V. M.
Dave, Shri Rohit M.
Desai, Shri D. B.
Ghosh, Shri Niren.
Gupta, Shri Bhupesh.
Gurupada Swamy, Shri M. S.
Khandekar, Shri R. S.
Kureel Urf Talib, Shri P. L.
Mani, Shri A. D.
Misra, Shri Lokanath.
Narasimham, Shri K. L.
Patel, Shri Dahyabhai V.
Reddy, Shri K. V. Raghunatha.
Singh, Shri D. P.
Sinha, Shri Rajendra Pratap.
Subba Rao, Dr. A.
Vajpayee, Shri A. B.

The motion was adopted by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting

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

Clause 2—Amendment of article 124

SHRI K. V. RAGHUNATHA REDDY (Andhra Pradesh): I move:

1. "That at page 1, for lines 7 to 9, the following be substituted, namely:—

'(2A) The age of a Judge of the Supreme Court shall be determined by the President at the time of his appointment and shall be specified in the warrant of his appointment and such determination of the age shall be final and shall not be disputed in any court of law.'"

Madam, this clause deals with the provision to be made by Parliament for the purpose of determination of the age of Supreme Court Judges. I had been listening very carefully to the speeches of hon. Mr. Pathak and the hon. Mr. Santosh Kumar Basu, and I respectfully state that I share their views in a very large measure. Now, having listened to the hon. Minister I am still not convinced for what purposes this amendment has been brought forward even though there is no question of any dispute pending or likely to arise in future. If at all, in future, a Supreme Court Judge comes forward and says that his age has not been properly determind, it would be only proper for the Government to accept his statement and allow him to continue, instead of bringing a Supreme Court Judge

to a point of dispute and make him a litigant as any other litigant, however esteemed the tribunal enquiring into this matter might be. It has been said, Madam, by Blackstone:

> "In this distinct and separate existence of the Judicial power, in a peculiar body of men, nominated indeed but not removable at pleasure of the Crown, consists one main preservative of the public liberty."

We can recall on this occasion what Coke has said, when he refused to obey the command of King James to stay proceedings. He said:

> "Obedience to His Majesty's command to stay proceedings would have been delaying of justice, contrary to law and contrary to oaths of Judges."

We often recall to our mind these remarkes when we consider the question of independence of Judges. It is very unfortunate that this question has been brought forward in such an arbitrary manner so as to provide a law by Parliament for the purpose of determination of the age of Supreme Court Judges. If I look at another provision, whereas it is considered expedient to provide a basis for determination of the age of a High Court Judge—that is a constitutional provision—it is unfortunately left for subordinate legislation to be made as far as determination of the age of the Supreme Court Judges is concerned.

In this context, Madam, I might again say, while dealing with the question of distribution of powers between the judiciary and the executive, on the separation of powers, Arthur T. Venderbilt, in his book "Doctrine of Separation of Powers" has said on page 4:

> "The independence of the judiciary in any system of law is the best test of the actuality of the rights of individual."

And on page 9 he says:

> "Judicial independence is the keystone of constitutional Government by which we seek to uphold both our national security and individual freedom. That keystone may be impaired or even destroyed, by (1) Legislative encroachments, (2) Executive interference and (3) Judicial inaction."

It is a pity that we do not uphold the dignity of the Judges and try to provide a law for the determination of the age of the Judges without accepting their word. Even if it is wrong it is better to accept their word and leave it at that. Hence I move this amendment.

The question was proposed.

SHRI BHUPESH GUPTA: Madam Deputy Chairman, we have listened with great care and interest to the speech made by our eminent jurist in this House, Mr. Pathak and I think, after his speech, Government should have accepted the suggestion that has been made in this amendment, or what they made in the course of their speeches—Mr. Pathak and Mr. Santosh Kumar Basu. Therefore, Madam, this is not a party question at all. We are all interested in settling the matter in the best interests of our judiciary, of its independence, and of the country I regret very much that even in this House, after hearing these cogent arguments in favour of the proposition of this amendment, the hon. Minister should not have thought fit to accept it with good grace. Madam Deputy Chairman, this amendment will be a sad commentary on our approach to matters relating to the judiciary, specially at its highest level, the High Court and the Supreme Court. Why the Judges' age could not be settled at the time of giving the appointment, I cannot understand. Everybody will tell his age when the matter is taken up before the appointment is actually given. Should the executive feel that the age that has been given is not the right age, then and there it can make enquiries, and if it thinks that there is the danger of a controversy arising later, in that case, the Judge, the

[Shri Bhupesh Gupta.]

particular candidate, may not be chosen But it is open to them to settle the age then and there I do not know of any Constitution where you have, in a constitutional provision, a procedure of this kind, where the age of a Judge is to be settled I think it is an announcement to the world at large, by an amendment of the Constitution, that we are in such a sorry state of affairs that we have to amend our Constitution to settle the age of our Judges, that controversy arises and that we have to create constitutional guarantees against it It is a reflection on the Judges as a whole, it is a reflection on our state of affairs which should have been avoided, and I think the whole approach has been wrong

Madam Deputy Chairman, you see how the bar is reacting to this matter I shall just read out a resolution which has been passed by the Calcutta Bar Association, which was reported in yesterday's paper:

> "The Calcutta High Court Bar Association has taken strong exception to Union Law Minister A K Sen's speech in Parliament criticizing the judges of the High Court and their judgment in the J P Mitter Case
>
> During the debate on the Constitution Amendment Bill Mr Sen is reported to have made a speech which the Bar Association regards as showing 'utter disrespect' to the three judges of the High Court in a case which is *sub judice* 'thereby interfering with the course of justice'
>
> The resolution said This association considers the said speech as unbecoming of the Law Minister and condemns the attitude displayed in his comments which brings the entire judicial system in the country into ridicule "

This is the considered opinion of the Calcutta Bar Association of which Mr Santosh Kumar Basu is a distinguished member, and I further say that, when this matter was yet to be discussed, the Calcutta Bar Association reacted in this manner The controversy that we have raised in this House and the other House has resulted in certain remarks being made by a Bar Association in another place The remarks have now been made in this maner by no less important a Bar Association than the Calcutta Bar Association. Where are we going? I ask The hon. Law Minister yesterday said that the age had to be determined in this manner in order to avoid controversy But is it not indulging in controversy in such a manner—if I may say so, unseemly manner which provokes the Calcutta Bar Association to come out with this powerful, justified stricture against the Law Minister? Now, is it right for the Law Minister of the country to take upon himself all this criticism from his brothers in the profession? And you can understand what will happen later on Therefore, Madam Deputy Chairman, still I would appeal to the hon Home Minister to accept this thing There is no hurry Next session it can be sent to the other House and settled. There is no hurry at all with regard to this matter One or two cases should not hustle the Government into proposing an amendment of this kind I have never seen such a case being so forcefully put in this House from the constitutional angle as this morning Mr Pathak has done And am I to take counsel as a Member of the House, as a layman, from the legal department which gives very often wrong advice to the Government or from a man like Mr Pathak? This is what I do not understand I think I would be inclined to take his advice

Madam Deputy Chairman, I do not know why Mr Pathak is not supporting our amendment I do not know He should support it because if the Government wants to pass it, it will be passed because one vote less than the Congress Party's

will not make any material difference to this amendment But at the same time, I think that a good Advocate representing the Bar of India, the Judges of India and the public opinion all have made their say felt They have all powerfully put forward the case and I think he should at least not let us down But all the same, we shall carry forward the battle he has started Madam Deputy Chairman I finally plead again to the hon Minister that we are not suggesting a revolution here We are only suggesting them to put down the age of a Judge as entered in his warrant of appointment That is all and he can accept it

SHRI R M HAJARNAVIS Madam, if any one has his doubt that the group to which the hon Mr Bhupesh Gupta belongs partakes in the debates of the House from a partisan point of view, such a doubt is completely dispelled by his speech and by the amendment which has been moved by his colleague I conveyed to the House the assurance of the hon Home Minister that the age of the Judges, as declared by the Supreme Court is accepted and will continue to be accepted, as Mr Pathak said We share that conviction with him that there will be no legislation undertaken unless a specific question arises If that is the position with which we are presented today then accepting the amendment by which enquiry shall be made and the age shall be entered in the warrant of appointment is a retrograde step If we accept what they have said and bring the age into controversy and enter it in their warrant of appointment, that is certainly absolutely derogatory to the high dignitaries The age is accepted it will continue to be accepted because the Judges of the Supreme Court are very honourable men as Mr Pathak said And any pretence that Mr Pathak accepted his plea and the Home Minister did not, I think, will not bear a moment's scrutiny

THE DEPUTY CHAIRMAN The question is

"That at page 1, for lines 7 to 9 the following be substituted, namely —

'(2A) The age of a Judge of the Supreme Court shall be determined by the President at the time of his appointment and shall be specified in the warrant of his appointment and such determination of the age shall be final and shall not be disputed in any court of law'"

The motion was negatived

THE DEPUTY CHAIRMAN The question is

"That clause 2 stand part of the Bill"

The House divided.

THE DEPUTY CHAIRMAN Ayes—133 Noes—19

AYES—133

Abid Ali, Shri
Agrawal Shri J P
Ahmad, Shri Syed
Anis Kidwai, Shrimati
Anwar, Shri N M
Arora, Shri Arjun
Asthana, Shri L D
Bansi Lal Shri
Barooah Shri Lila Dhar.
Basu, Shri Santosh Kumar.
Bedavati Buragohain Shrimati.
Bharathi, Shrimati K
Bhargava, Shri B N
Bhargava, Shri M P

Chakradhar, Shri A.
Chatterji, Shri J. C.
Chaturvedi, Shri B. D.
Chauhan, Shri Nawab Singh.
Chavda, Shri K. S.
Dasgupta, Shri T. M.
Dass, Shri Mahabir.
Deb, Shri S. C.
Desai, Shri Suresh J.
Devaki Gopidas, Shrimati.
Dharam Prakash, Dr.
Dikshit, Shri Umashankar.
Doogar, Shri R. S.
Dutt, Shri Krishan.
Ghose, Shri Surendra Mohan.
Ghosh, Shri Sudhir.
Gilbert, Shri A. C.
Gopalakrishnan, Shri R.
Gupta, Shri Gurudev.
Gupta, Shri Maithilisharan.
Hathi, Shri Jaisukhlal.
Jairamdas Daulatram, Shri.
Kakati, Shri R. N.
Kalelkar, Kakasaheb.
Karayalar, Shri S. C.
Karmarkar, Shri D. P.
Kasliwal, Shri N. C.
Kathju, Shri P. N.
Kaushal, Shri J. N.
Keshvanand, Swami.
Khan, Shri Akbar Ali.
Khan, Shri Pir Mohammed.
Krishna Chandra, Shri.
Kulkarni, Shri B. T.
Kumbha Ram, Shri.
Kurre, Shri Dayaldas.
Lakshmi N. Menon, Shrimati.
Lingam, Shri N. M.
Lohani, Shri I. T.
Mahesh Saran, Shri.
Mallik, Shri D. C.
Malviya, Shri Ratanlal Kishorilal.
Mathen, Shri Joseph.
Maya Devi Chettry, Shrimati.
Mehta, Shri M. M.
Mishra, Shri S.
Mishra, Shri S. N.
Misra, Shri M.
Mitra, Shri P. C.
Mohammad, Chaudhary A.
Mohanty, Shri Dhananjoy.
Muhammad Ishaque, Shri.
Nafisul Hasan, Shri.
Nandini Satpathy, Shrimati.
Nanjundaiya, Shri B. C.
Narasimha Rao, Dr. K. L.
Neki Ram, Shri.
Pande, Shri C. D.
Pande, Shri T.
Panjhazari, Sardar Raghbir Singh.
Parmanand, Dr. Shrimati Seeta.
Patel, Shri Maganbhai S.
Pathak, Shri G. S.
Patil, Shri P. S.
Patil, Shri Sonusing Dhansing.
Pattabiraman, Shri T. S.
Pillai, Shri J. S.
Punnaiah, Shri Kota.
Rajagopalan, Shri G.
Ramaul, Shri Shiva Nand.
Ray, Dr. Nihar Ranjan.
Ray, Shri Ramprasanna.
Reddi, Shri J. C. Nagi.
Reddy, Shri K. V.
Reddy, Shri N. Narotham.
Reddy, Shri N. Sri Rama.
Reddy, Shri S. Channa.
Rohatgi, Dr. Jawaharlal.
Sadiq Ali, Shri.
Sahai, Shri Ram
Samuel, Shri M. H.
Santhanam, Shri K.
Sapru, Shri P. N.
Saraogi, Shri Pannalal.
Sarwate, Shri V. V.
Satyacharan, Shri.

Satyanarayana, Shri M.
Savnekar, Shri Baba Saheb.
Seeta Yudhvir, Shrimati.
Shah, Shri K. K.
Shah, Shri M. C.
Shetty, Shri B. P. Basappa.
Shukla, Shri M. P.
Siddhu, Dr. M. M. S.
Singh, Sardar Budh.
Singh, Dr. Gopal.
Singh, Shri Mohan.
Singh, Shri Santokh.
Singh, Shri Vijay
Sinha, Shri B. K. P.
Sinha, Shri R. B.
Sinha, Shri R. P. N.
Sinha Dinkar, Prof. R. D.
Syed Mahmud, Shri.
Tankha, Pandit S. S. N.
Tapase, Shri G. D.
Tara Chand, Dr.
Tara Ramachandra Sathe, Shrimati.
Tariq, Shri A. M.
Tayyebulla, Maulana M.
Thanglura, Shri A.
Tripathi, Shri H. V.
Uma Nehru, Shrimati.
Varma, Shri B B.
Venkateswara Rao, Shri N.
Vijaivargiya, Shri Gopikrishna.
Wadia, Prof. A. R.
Warerkar, Shri B. V. (Mama).
Yajee, Shri Sheel Bhadra.

NOES—19

Chordia, Shri V. M.
Dave, Shri Rohit M.
Desai, Shri D. B.
Ghosh, Shri Niren
Gupta, Shri Bhupesh.
Gurupada Swamy, Shri M. S.
Khandekar, Shri R. S.
Khobaragade, Shri B. D.
Kureel Urf Talib, Shri P. L.
Lal, Prof. M. B.
Mani, Shri A. D.
Misra, Shri Lokanath.
Narasimham, Shri K. L.
Patel, Shri Dahyabhai V.
Reddy, Shri K. V. Raghunatha.
Singh, Shri D. P.
Sinha, Shri Rajendra Pratap.
Subba Rao, Dr. A.
Vajpayee, Shri A. B.

The motion was adopted by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 2 was added to the Bill.

Clause 3—Amendment of article 128

THE DEPUTY CHAIRMAN: The question is:

"That clause 3 stand part of the Bill"

The House divided.

THE DEPUTY CHAIRMAN: Ayes—134; Noes—18.

AYES—134

Abid Ali, Shri.
Agrawal, Shri J. P.
Ahmad, Shri Syed.
Anis Kidwai, Shrimati.
Anwar, Shri N. M.
Arora, Shri Arjun.
Asthana, Shri L D.
Bansi Lal, Shri.
Barooah, Shri Lila Dhar.
Basu, Shri Santosh Kumar.
Bedavati Buragohain, Shrimati.
Bharathi, Shrimati K.
Bhargava, Shri B. N.

Bhargava, Shri M. P.
Chakradhar, Shri A.
Chatterji, Shri J. C.
Chaturvedi, Shri B. D.
Chauhan, Shri Nawab Singh.
Chavda, Shri K. S.
Dasgupta, Shri T. M.
Dass, Shri Mahabir.
Deb, Shri S. C.
Desai, Shri D. B.
Desai, Shri Suresh J.
Devaki Gopidas, Shrimati.
Dharam Prakash, Dr.
Dikshit, Shri Umashankar.
Doogar, Shri R S.
Dutt, Shri Krishan.
Ghose, Shri Surendra Mohan
Ghosh, Shri Sudhir.
Gilbert, Shri A. C.
Gopalakrishnan, Shri R.
Gupta, Shri Gurudev.
Gupta, Shri Maithilisharan.
Hathi, Shri Jaisukhlal.
Jairamdas Daulatram, Shri.
Kakati, Shri R. N.
Kalelkar, Kakasaheb.
Karayalar, Shri S. C.
Karmarkar, Shri D. P.
Kasliwal, Shri N. C.
Kathju, Shri P N.
Kaushal, Shri J. N.
Keshvanand, Swami.
Khan, Shri Akbar Ali.
Khan, Shri Pir Mohammed.
Krishna Chandra, Shri.
Kulkarni, Shri B T.
Kumbha Ram, Shri.
Kurre, Shri Dayaldas.
Lakshmi N. Menon, Shrimati.
Lingam, Shri N. M.
Lohani, Shri I. T.
Mahesh Saran, Shri.
Mallik, Shri D C.
Malviya, Shri Ratanlal Kishorilal.
Mathen, Shri Joseph.
Maya Devi Chettry, Shrimati
Mehta, Shri M. M.
Mishra, Shri S.
Mishra, Shri S. N.
Misra, Shri M.
Mitra, Shri P. C.
Mohammad, Chaudhary A.
Mohanty, Shri Dhananjoy.
Muhammad Ishaque, Shri.
Nafisul Hasan, Shri.
Nandini Satpathy, Shrimati.
Nanjundaiya, Shri B. C.
Narasimha Rao, Dr. K. L.
Neki Ram, Shri.
Pande, Shri C. D.
Pande, Shri T.
Panjhazari, Sardar Raghbir Singh.
Parmanand, Dr. Shrimati Seeta.
Patel, Shri Maganbhai S.
Pathak, Shri G. S.
Patil, Shri P. S.
Patil, Shri Sonusing Dhansing.
Pattabiraman, Shri T. S.
Pillai, Shri J. S.
Punnaiah, Shri Kota.
Rajagopalan, Shri G.
Ramaul, Shri Shiva Nand.
Ray, Dr. Nihar Ranjan.
Ray, Shri Ramprasanna.
Reddi, Shri J. C. Nagi.
Reddy, Shri K V.
Reddy, Shri N. Narotham.
Reddy, Shri N. Sri Rama.
Reddy, Shri S Channa.
Rohtagi, Dr. Jawaharlal.
Sadiq Ali, Shri.
Sahai, Shri Ram.
Samuel, Shri M. H.
Santhanam, Shri K.
Sapru, Shri P. N.
Saraogi, Shri Pannalal.

Sarwate, Shri V. V.
Satyacharan, Shri.
Satyanarayana, Shri M.
Savnekar, Shri Baba Saheb.
Seeta Yudhvir, Shrimati.
Shah, Shri K. K.
Shah, Shri M. C.
Shetty, Shri B. P. Basappa.
Shukla, Shri M. P.
Siddhu, Dr. M. M. S.
Singh, Sardar Budh.
Singh, Dr. Gopal.
Singh, Shri Mohan.
Singh, Shri Santokh.
Singh, Shri Vijay.
Sinha, Shri B. K. P.
Sinha, Shri R. B.
Sinha, Shri R. P. N.
Sinha Dinkar, Prof. R. D.
Syed Mahmud, Shri.
Tankha, Pandit S. S. N.
Tapase, Shri G. D.
Tara Chand, Dr.
Tara Ramachandra Sathe, Shrimati.
Tariq, Shri A. M.
Tayyebulla, Maulana M.
Thanglura, Shri A.
Tripathi, Shri H. V.
Uma Nehru, Shrimati.
Varma, Shri B. B.
Venkateswara Rao. Shri N.
Vijaivargiya, Shri Gopikrishna.
Wadia, Prof. A. R.
Warerkar, Shri B. V. (Mama)
Yajee, Shri Sheel Bhadra.

NOES—18

Chordia, Shri V. M.
Dave, Shri Rohit M.
Ghosh, Shri Niren.
Gupta, Shri Bhupesh.
Gurupada Swamy, Shri M. S.
Khandekar, Shri R. S.
Khobaragade, Shri B. D.
Kureel Urf Talib, Shri P. L.
Lal, Prof. M. B.
Mani, Shri A. D.
Misra, Shri Lokanath.
Narasimham, Shri K. L.
Patel, Shri Dahyabhai V.
Reddy, Shri K. V. Raghunatha.
Singh, Shri D. P.
Sinha, Shri Rajendra Pratap.
Subba Rao, Dr. A.
Vajpayee, Shri A. B.

The motion was adopted by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 3 *was added to the Bill.*

Clause 4—*Amendment of article* 217

SHRI K. V. RAGHUNATHA REDDY: Madam, I move:

2. "That at page 1, lines 15 and 16 be deleted."

3. "That at page 2, for lines 3 to 6, the following be substituted, namely:—

'(3) The age of a Judge of a High Court shall be determined by the President at the time of his appointment and shall be specified in the warrant of his appointment and such determination of the age shall be final and shall not be disputed in any court of law.'"

(The amendments also stood in the name of Shri J. Venkatappa)

SHRI V. M. CHORDIA: Madam, I move:

11. "That at page 1, line 16, for the words 'sixty-two years' the words 'sixty-five years' be substituted."

The question was proposed.

SHRI K. V. RAGHUNATHA REDDY: This clause deals with two aspects of the matter, one in relation to giving a rise to the retiring age of the Judges and the other regarding the tribunal meant for determining the age of the Judges if the question arises as a matter of dispute. Now, the first amendment in this aspect is in regard to raising the age of Judges for retirement to sixty-two. While I am aware that quite a number of eminent Judges like Dr. Sapru, with their passion for social progress and justice, could have been well on the Bench in order to contribute their knowledge and give guidance in interpretation of laws for the social progress of this country, I am quite aware of the reasons why the Members of the Constituent Assembly deliberating on this matter, did not choose to raise the age of retirement to sixty-two or sixty-five as far as the High Court Judges are concerned. Though they were fully aware of the eminent persons, they have taken into consideration the whole case of an average Judge who has to dispose of matters both in relation to his mental efficiency as well as physical health. In dealing with this matter they had to take into consideration the experience which they had gained from the working of institutions like the High Court and the Federal Court ever since they had come into existence.

Again the retired Judges are still allowed to practise as practitioners. I could have as well understood if they had come forward with a constitutional provision that the retired Judges are not allowed to practise but the retired Judges are still allowed to practise and at the same time given the benefit of a rise in age of retirement It is said that laws cannot be made for a fraction of persons however eminent they may be but the laws are meant to be made only taking into consideration the average persons in whatever walk of life they may be. While taking into consideration the question of age and the mental efficiency, it has been said that there is a rise in the expectancy of age in this country. Therefore it is a strong argument for raising the age of Judges. The rise in the expectancy of age in this country, any economist would know, refers to the lowest level and not to the highest level because any expectancy of rise in the age of any Indian means that instead of lying at a particular minimum average age, the people are living up to a higher age. That is the meaning of rise in the expectancy of age.

In regard to the conditions relating to mental efficiency the Joint Select Committee had not taken into consideration the opinion of any medical experts on this question. I may quote for the consideration of this House an eminent authority on the problem of the old age dealing with this question. Dr. Cowdry of America had said in his book, at page 30:

"First, the general developmental age curve for psychological capacities makes clear that the involutional period cannot be considered as a unitary part of the life span. In general, the curve follows a parabolic form. There is a rapid increase in effiency of psychologic function up to the early or mid-twenties followed by a period of very gradual decline continuing until late middle age, after which the negative gradient becomes much

steeper. Stieglitz suggests that the span of life beyond 40 years of age be divided into three phases: later maturity (40 to 60), senescence (60 to 75), and old age (75 and over). It is obvious that this more discriminative breakdown has value in overcoming a common tendency to lump all older people into a single category and to treat them as though their problems were identical and unchanging."

This is an authoritative statement on the mental efficiency of persons who grow old.

THE DEPUTY CHAIRMAN: By whom?

SHRI K. V. RAGHUNATHA REDDY: By Dr. Cowdry, one of the eminent authorities on the problem of old age and who is respected throughout the world on this aspect of the matter.

THE DEPUTY CHAIRMAN: 'Age' and 'old age' are different things.

SHRI K. V. RAGHUNATHA REDDY: I am speaking of mental efficiency as it relates to old age. Now, I will illustrate my point by two examples. One of the Judges in the course of his judgment had said that there cannot be a discharge under the Criminal Procedure Code without a charge being framed. I know, any lawyer here would say that this is a perverse statement of law. Another Judge dealing on a different occasion in relation to a matter which arose before him, on an appeal in a criminal case, while he, as a single Judge, was dealing with this matter, when there was no appeal against an acquittal preferred by the State, reversed the order of acquittal and ordered re-trial of the case on a matter in which the accused person had been acquitted by the lower court. When a plea of *Autrefois acquit* had been taken before the lower court, the District Judge dismissed that plea and the person came up on a revision petition before the High Court. A Full Bench of the High Court sat and decided that unless the State files an appeal against the acquittal, no Judge can ever have a right or power to disturb the findings of an acquittal passed by a District Judge. This is an elementary law under the Criminal Procedure Code. Now in spite of the Full Bench judgment of a High Court, the same learned Judge on a different occasion, when the matter came up before him, decided again in the same manner.

SHRI R. M. HAJARNAVIS: Can the conduct of a Judge, when acting in a judicial capacity, be the subject of discussion here in this House?

SHRI K. V. RAGHUNATHA REDDY: I am not referring to the conduct of a Judge. I am purely discussing the merits of a judgment.

SHRI R. M. HAJARNAVIS: What has that to do with this Constitution (Amendment) Bill? It is thoroughly irrelevant.

THE DEPUTY CHAIRMAN: Are you referring to it in a descriptive form or have you in mind a particular case?

SHRI K. V. RAGHUNATHA REDDY: These are illustrations of how Judges are passing wrong judgments and probably this is all due to growing age.

SHRI R. M. HAJARNAVIS: What has that to do with the age aspect? A Judge is entitled to say whether it is right or wrong . . .

SHRI SANTOSH KUMAR BASU: My friend is criticising old age in the House of elders. It is rather inconsistent.

SHRI K. V. RAGHUNATHA REDDY: I may be rather on a slippery ground as far as that matter is concerned to criticise the matter in a House of elders. I place reliance on this aspect

[Shri K. V. Raghunatha Reddy.]

of the matter because it is said that though injustice is done in homeopatnic doses, it is still injustice and it cannot be condoned.

The next aspect of the matter is it has been said . . .

THE DEPUTY CHAIRMAN: I hope this is the last aspect.

SHRI K V. RAGHUNATHA REDDY. Yes, Madam.

It has been said that law as it is is under the influence of the philosophy of positivism. Under the influence of the philosophy of positivism law and lawyers become generally conservative. The tradition, the culture and the sociological patterns play an eminent part in the determination of cases and influence Judges . . .

THE DEPUTY CHAIRMAN: Is all this relevant?

SHRI K. V. RAGHUNATHA REDDY: Yes When we are dealing with a social process, when we are going ahead with the formation of a socialistic pattern of society we certainly need Judges who would be able to come out of the old moors and be able to interpret the laws of the State in consonance with the Directive Principles of the Constitution and in this context also we need younger men to be raised to the Bench There are people fit for jobs, the Public Prosecutors, District Judges and the Government Pleaders who are eminent in the field and who can fill places without much difficulty.

As far as the second amendment is concerned, I plead with the Government to take a considerate view of this matter. I have suggested in this amendment that the age must be decided at the time of the appointment.

SHRI K SANTHANAM: It has already been covered by the previous amendment.

THE DEPUTY CHAIRMAN: I think that is enough.

SHRI K. V. RAGHUNATHA REDDY: The matter should be settled without allowing this matter to be agitated so that the Judge may not be brought to ridicule and justice may not become a farce.

THE DEPUTY CHAIRMAN: I think you have made yourself clear. Mr. Chordia.

श्री विमलकुमार मन्नालालजी चोरड़िया: महोदया, संविधान में हाई कोर्ट के जजों की उम्र साठ साल रखी गई है और अब सरकार प्रस्तुत बिल द्वारा उसको बासठ साल करना चाहती है और मैं अपने संशोधन द्वारा पैंसठ साल करना चाहता हूं । जैसा कि मैंने पहले निवेदन किया था कि इस बारे में कोई हार्ड एण्ड फास्ट रूल नहीं बनाया जाना चाहिये और न ही हमें कोई लक्ष्मण रेखा ही खींच देनी चाहिये कि अमुक उम्र ठीक रहेगी और अमुक उम्र ठीक नहीं रहेगी । इस सम्बन्ध में जो आयोग बैठा था उसने अच्छी तरह से जांच करके यह महसूस किया था--अन्य देशों की स्थिति को देखते हुए और हमारे देश की स्थिति को भी देखते हुए--कि हाई कोर्ट के जजों की उम्र पैंसठ साल होनी चाहिये । उसके लिए जो कारण मालूम किये गये थे वे ऐसे थे कि हमारे यहां भी साइन्स में डेवलपमेंट होने की वजह से लोगों की जीने की शक्ति बढ़ गई । हाई कोर्ट के जजों के रहने का स्तर अच्छा रहता है और वे पैंसठ साल की उम्र तक अपना काम अच्छी तरह से कर सकते हैं । पुराने उदाहरणों को सामने रख कर भी हम यह कह सकते हैं कि जो रिटायर्ड जज किसी कमीशन में काम करता है, विदेशों में राजदूत बन कर चला जाता है या अपनी वकालत शुरु करता है, वह इन कामों को

बहुत अच्छी तरह से करता है । विदेशों में भी इस तरह का कोई प्रतिबन्ध नहीं है कि जज लोग पैंसठ साल की उम्र तक काम न कर सकते हों । इन सब आधारों को सामने रख कर ही आयोग ने सुझाया था कि जजों की उम्र पैंसठ साल तक कर दी जानी चाहिये । शासन द्वारा जो बासठ वर्ष की उम्र रखी गई है उसको मैं पैंसठ साल करना चाहता हूं ताकि अच्छे जजों का हमारे यहां उपयोग हो सके और उन्हें इस बात की प्रेरणा मिल सके कि वे बासठ साल के बाद भी अच्छी तरह से काम कर सकते है । जब आयोग ने पैंसठ साल तक की उम्र रखी है तो सरकार को भी यह बात मान लेनी चाहिये । उसी आधार को सामने रख कर मैंने अपना यह पैंसठ साल उम्र बढ़ा देने का संशोधन रखा है और आशा करता हूं माननीय मन्त्री जी स्वीकार कर लेंगे ।

SHRI R. M HAJARNAVIS: I wonder whether Mr. Raghunatha Reddy profits by the wisdom which falls from Mr. Bhupesh Gupta who, in an earlier theme, had criticised the Law Minister for referring to the judgements of the High Court and criticising them. I hope his speech here will not receive adverse criticism at the hands of the Bar of which he may be a member.

AN. HON. MEMBER: He is not.

SHRI R. M. HAJARNAVIS: I am sorry. He displayed so much legal learning that I mistook him for a very, shall I say, top lawyer?

As regards Mr. Chordia's amendment, for a long time we had the age as sixty and now we have increased it to sixty-two. Time alone will show whether it should be increased.

SHRI SANTOSH KUMAR BASU: He is not a member of the Bar Association but he is certainly a Barrister—Mr. Gupta.

SHRI R. M. HAJARNAVIS: I meant MR. Raghunatha Reddy.

SHRI SANTOSH KUMAR BASU: He is a lawyer and he is a very good lawyer.

SHRI R. M. HAJARNAVIS: Mr. Reddy is a Member of the profession I had once the honour to belong.

THE DEPUTY CHAIRMAN: Mr. Basu, you draw attention to the fact that everybody should address the Chair but you are forgetting it yourself.

SHRI SANTOSH KUMAR BASU: I am sorry.

THE DEPUTY CHAIRMAN: The question is:

2. "That at page 1, lines 15 and 16 be deleted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

3. "That at page 2, for lines 3 to 6, the following be substituted, namely :—

'(3) The age of a Judge of a High Court shall be determined by the President at the time of his appointment and shall be specified in the warrant of his appointment and such determination of the age shall be final and shall not be disputed in any court of law.' "

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

11 "That at page 1, line 16, for the words 'sixty-two years' the words 'sixty-five years' be substituted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

"That clause 4 stand part of the Bill."

The House divided.

THE DEPUTY CHAIRMAN: Ayes—134; Noes—17.

AYES—134

Abid Ali, Shri.
Agrawal, Shri J. P.
Ahmad, Shri Syed.
Anis Kidwai, Shrimati.
Anwar, Shri N. M.
Arora, Shri Arjun.
Asthana, Shri L. D.
Bansi Lal, Shri.
Barooah, Shri Lila Dhar.
Basu Shri Santosh Kumar.
Bedavati, Buragohain, Shrimati.
Bharathi, Shrimati K.
Bhargava, Shri B. N.
Bhargava, Shri M. P.
Chakradhar, Shri A.
Chatterji, Shri J. C.
Chaturvedi, Shri B. D.
Chauhan, Shri Nawab Singh.
Chavda, Shri K. S.
Dasgupta, Shri T. M.
Dass, Shri Mahabir.
Deb, Shri S. C.
Desai, Shri Suresh J.
Devaki Gopidas, Shrimati.
Dharam Prakash, Dr.
Dikshit, Shri Umashankar.
Doogar, Shri R. S.
Dutt, Shri Krishan.
Ghose, Shri Surendra Mohan.
Ghosh, Shri Sudhir.
Gilbert, Shri A. C.
Gopalakrishnan, Shri R.
Gupta, Shri Gurudev.
Gupta, Shri Maithilisharan.
Hathi, Shri Jaisukhlal.
Jairamdas Daulatram, Shri.
Kakati, Shri R. N.
Kalelkar, Kakasaheb.
Karayalar, Shri S. C.
Karmarkar, Shri D. P.
Kasliwal, Shri N. C.
Kathju, Shri P. N.
Kaushal, Shri J. N.
Keshvanand, Swami.
Khan, Shri Akbar Ali.
Khan, Shri Pir Mohammed.
Krishna Chandra, Shri.
Krishnamachari, Shri V. T.
Kulkarni, Shri B. T.
Kumbha Ram, Shri.
Kurre, Shri Dayaldas.
Lakshmi N. Menon, Shrimati.
Lingam, Shri N. M.
Lohani, Shri I. T.
Mahesh Saran, Shri.
Mallik, Shri D. C.
Malviya, Shri Ratanlal Kishorilal.
Mathen, Shri Joseph.
Maya Devi Chettry, Shrimati.
Mehta, Shri M. M.
Mishra, Shri S.
Misha, Shri S. N.
Misra, Shri M.
Mitra, Shri P. C.
Mohammad, Chaudhary A.
Mohanty, Shri Dhananjoy.
Muhammad Ishaque, Shri.
Nafisul Hasan, Shri.
Nandini Satpathy, Shrimati.
Nanjundaiya, Shri B. C.
Narasimha Rao, Dr. K. L.
Neki Ram, Shri.

Pande, Shri C. D.
Pande, Shri T.
Panjhazari, Sardar Raghbir Singh.
Parmanand, Dr. Shrimati Seeta.
Patel, Shri Maganbhai S.
Pathak, Shri G. S.
Patil, Shri P. S.
Patil, Shri Sonusing Dhansing.
Pattabiraman, Shri T. S.
Pillai, Shri J. S.
Punnaiah, Shri Kota.
Rajagopalan, Shri G.
Ramaul, Shri Shiva Nand.
Ray, Dr. Nihar Ranjan.
Ray, Shri Ramprasanna.
Reddi, Shri J. C. Nagi.
Reddy, Shri K. V.
Reddy, Shri N. Narotham.
Reddy, Shri N. Sri Rama.
Reddy, Shri S Channa.
Rohatgi, Dr. Jawaharlal.
Sadiq Ali, Shri.
Sahai, Shri Ram.
Saksena, Shri Mohan Lal.
Samuel, Shri M. H.
Santhanam, Shri K.
Sapru, Shri P. N.
Saraogi, Shri Pannalal.
Sarwate, Shri V. V.
Satyacharan, Shri.
Satyanarayana, Shri M.
Savenkar, Shri Baba Saheb.
Seeta Yudhvir, Shrimati.
Shah, Shri K. K.
Shah, Shri M. C.
Shetty, Shri B. P. Basappa.
Shukla, Shri M. P.
Siddhu, Dr. M. M. S.
Singh, Sardar Budh.
Singh, Dr. Gopal.
Singh, Shri Mohan.
Singh, Shri Santokh.
Singh, Shri Vijay.
Sinha, Shri B. K. P.
Sinha, Shri R. B.
Sinha, Shri R. P. N.
Sinha Dinkar, Prof. R. D.
Syed Mahmud, Shri.
Tankha, Pandit S. S. N.
Tapase, Shri G. D.
Tara Chand, Dr.
Tara Ramachandra Sathe, Shrimati.
Tariq, Shri A. M.
Tayyebulla, Maulana M.
Thanglura, Shri A.
Tripathi, Shri H. V.
Uma Nehru, Shrimati.
Varma, Shri B. B.
Venkateswara Rao, Shri N.
Vijaivargiya, Shri Gopikrishna.
Warerkar, Shri B. V. (Mama).
Yajee, Shri Sheel Bhadra.

NOES—17

Chordia, Shri V. M.
Dave, Shri Rohit M.
Ghosh, Shri Niren.
Gupta, Shri Bhupesh.
Gurupada Swamy, Shri M. S.
Khandekar, Shri R. S.
Khobaragade, Shri B. D.
Lal, Prof. M. B.
Mani, Shri A. D.
Misra, Shri Lokanath.
Narasimham, Shri K. L.
Patel, Shri Dahyabhai V.
Reddy, Shri K. V. Raghunatha.
Singh, Shri D. P.
Sinha, Shri Rajendra Pratap.
Subba Rao, Dr. A.
Vajpayee, Shri A. B.

The motion was adopted by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 4 was added to the Bill.

Clause 5—Amendment of article 222

THE DEPUTY CHAIRMAN: The question is:

"That clause 5 stand part of the Bill."

The House divided.

THE DEPUTY CHAIRMAN: Ayes—134; Noes—17.

AYES—134

Abid Ali, Shri
Agrawal, Shri J. P.
Ahmad, Shri Syed.
Anis Kidwai, Shrimati.
Anwar, Shri N. M.
Arora, Shri Arjun.
Asthana, Shri L. D.
Bansi Lal, Shri
Barooah, Shri Lila Dhar.
Basu, Shri Santosh Kumar.
Bedavati Buragohain, Shrimati.
Bharathi, Shrimati K.
Bhargava, Shri B. N.
Bhargava, Shri M. P.
Chakradhar, Shri A.
Chatterji, Shri J. C.
Chaturvedi, Shri B. D.
Chauhan, Shri Nawab Singh.
Chavda, Shri K. S.
Dasgupta, Shri T. M.
Dass, Shri Mahabir.
Deb, Shri S. C.
Desai, Shri Suresh J.
Devaki Gopidas, Shrimati.
Dharam Prakash, Dr.
Dikshit, Shri Umashankar.
Doogar, Shri R. S.
Dutt, Shri Krishan.
Ghose, Shri Surendra Mohan.
Ghosh, Shri Sudhir.
Gilbert, Shri A. C.
Gopalakrishnan, Shri R.
Gupta, Shri Gurudev.
Gupta, Shri Maithilisharan.
Hathi, Shri Jaisukhlal.
Jairamdas Daulatram, Shri.
Kakati, Shri R. N.
Kalelkar, Kakasaheb.
Karayalar, Shri S. C.
Karmarkar, Shri D. P.
Kasliwal, Shri N. C.
Kathju, Shri P. N.
Kaushal, Shri J. N.
Keshvanand, Swami.
Khan, Shri Akbar Ali.
Khan, Shri Pir Mohammed.
Krishna Chandra, Shri.
Krishnamachari, Shri V. T.
Kulkarni, Shri B. T.
Kumbha Ram, Shri.
Kurre, Shri Dayaldas.
Lakshmi N. Menon, Shrimati.
Lingam, Shri N. M.
Lohani, Shri I. T.
Mahesh Saran, Shri.
Mallik, Shri D. C.
Malviya, Shri Ratanlal Kishorilal.
Mathen, Shri Joseph.
Maya Devi Chettry, Shrimati.
Mehta, Shri M. M.
Mishra, Shri S.
Mishra, Shri S. N.
Misra, Shri M.
Mitra, Shri P. C.
Mohammad, Chaudhary A.
Mohanty, Shri Dhananjoy.
Muhammad Ishaque, Shri.
Nafisul Hasan, Shri
Nandini Satpathy, Shrimati.

Nanjundaiya, Shri B C
Narasimha Rao, Dr K L
Neki Ram, Shri
Pande, Shri C D.
Pande, Shri T
Panjhazari, Sardar Raghbir Singh
Parmanand, Dr Shrimati Seeta
Patel, Shri Maganbhai S
Pathak, Shri G S
Patil, Shri P S
Patil, Shri Sonusing Dhansing
Pattabhiraman, Shri T S
Pillai Shri J S
Punnaiah, Shri Kota
Rajagopalan, Shri G
Ramaul, Shri Shiva Nand
Ray, Dr Nihar Ranjan
Ray, Shri Ramprasanna
Reddi, Shri J C Nagi
Reddy, Shri K V
Reddy, Shri N, Narotham
Reddy, Shri N Sri Rama.
Reddy, Shri S Channa
Rohatgi, Dr Jawaharlal
Sadiq Ali, Shri
Sahai, Shri Ram
Saksena, Shri Mohan Lal
Samuel, Shri M H
Santhanam Shri K
Sapru, Shri P N
Saraogi, Shri Pannalal
Sarwate, Shri V V
Satyacharan, Shri
Satyanarayana Shri M
Savnekar, Shri Baba Saheb
Seeta Yudhvir Shrimati
Shah, Shri K K
Shah, Shri M C
Shetty, Shri B P Basappa
Shukla, Shri M P
Siddhu, Dr M M S
Singh, Sardar Budh.
Singh, Dr Gopal
Singh, Shri Mohan
Singh, Shri Santokh
Singh, Shri Vijay
Sinha, Shri B K P
Sinha, Shri R B.
Sinha, Shri R P N
Sinha Dinkar, Prof R D
Syed Mahmud, Shri
Tankha, Pandit S S N
Tapase, Shri G D
Tara Chand, Dr
Tara Ramachandra Sathe, Shrimati
Tariq, Shri A M
Tayyebulla, Maulana M
Thanglura, Shri A
Tripathi Shri H V
Uma Nehru, Shrimati
Varma Shri B B
Venkateswara Rao, Shri N
Vijaivargiya, Shri Gopikrishna
Warerkar, Shri B V (Mama).
Yajee Shri Sheel Bhadra

NOES—17

Chordia Shri V M
Dave, Shri Rohit M
Ghosh, Shri Niren
Gupta, Shri Bhupesh
Gurupada Swamy, Shri M S
Khandekar, Shri R S
Khobaragade, Shri B D
Lal Prof M B
Mani, Shri A D
Misra, Shri Lokanath
Narasimham, Shri K L
Patel, Shri Dahyabhai V
Reddy, Shri K V Raghunatha
Singh Shri D P
Sinha, Shri Rajendra Pratap
Subba Rao, Dr A
Vajpayee, Shri A B

The motion was adopted by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 5 was added to the Bill.

Clause 6—Amendment of article 224

THE DEPUTY CHAIRMAN: There are two amendments. Amendment No. 4, by Shri Raghunatha Reddy is being disallowed as it seeks to delete the clause.

Amendment No. 12, Mr. Chordia.

SHRI V. M. CHORDIA: Madam, I move:—

12. "That at page 2, line 18, for the words 'sixty-two years' the words 'sixty-five years' be substituted."

SHRI R. M. HAJARNAVIS: Madam, on a point of order as it is printed here, the amendment reads that for the words "sixty years" the words "sixty-two years" be substituted

SHRI A. B. VAJPAYEE (Uttar Pradesh): That is only a typing mistake.

श्री विमलकुमार मन्नालालजी चौरड़िया : उपसभापति महोदया . . .

कुछ माननीय सदस्य : छोडो भी अब, छोडो भी ।

(Interruptions.)

THE DEPUTY CHAIRMAN: Order, order.

श्री विमलकुमार मन्नालाल जी चौरड़िया : उपसभापति महोदया, मैंने रिक्वेस्ट कर दिया है कि जो संशोधन सर्कुलेट हुआ है उसमें गलती रह गई है । यह स्लिप आफ पेन है, नहीं तो वह मैं लाया ही नहीं होता क्योंकि जैसा छपा है उसका कोई अर्थ ही नहीं था ।

माननीय उपसभापति महोदया, जब मैं इस संशोधन को पेश करने के लिये खड़ा हुआ तो ऐसा शोर मचा कि उससे मुझे ऐसा लगता है कि माननीय सदस्य बड़े उतावले हो रहे हैं और समझ रहे हैं कि मैं कोई ऐसी आश्चर्यजनक बात कहने जा रहा हू जिससे कि उनके मन को कुछ तकलीफ होगी . . .

श्री अर्जुन अरोड़ा (उत्तर प्रदेश) : जी नहीं, आप समझे नहीं ।

श्री विमलकुमार मन्नालालजी चौरड़िया . ऐसी हालत को देख कर मुझे एक शेर याद आ गया—

"कद्रदानों की महफिल में ऐसा रंग आ रहा है, कि बुलबुलों को हसरत है हम उल्लू न हुए ।"

(Interruptions.)

شری اے - ایم - طارق - (انڈیپنڈنٹ) یہ شیر جو الو کا ذکر ہے - یہ آپکے محبوب کا نام ہے یا آپکا تخلص -

†[**श्री ए० एन० तारिक** (जम्मू और काश्मीर) : यह शेर में जो उल्लू का ज़िक्र है, यह आपके महबूब का नाम है या आपका तख़ल्लुस ?]

श्री विमलकुमार मन्नालालजी चौरड़िया : उपसभापति महोदया, मैंने जो संशोधन प्रस्तुत किया उस संशोधन के साथ जो शेर सुनाया उसके तख़ल्लुस को माननीय तारिक साहब अच्छी तरह से समझ गये कि यह उनके लिये ठीक लागू होता है । जहां तक संशोधन का सवाल है, इसके बारे में दलील थी वह मैंने पहले अपने भाषण मे दे दी है और माननीय मन्त्री जी ने भी अपने जवाब मे स्वयं कहा है कि जब समय पकेगा तब इस बारे मे संशोधन करेंगे । ऐसा लगता है कि वह राह देख र हैं क कोई रिटायर होने वाला है या नहीं या

†[ ] Hindi transliteration.

कोई नया जज आने वाला है या नही और तब वह अपना सशोधन करेगे । बार बार पीसमील सशोधन सविधान मे करना कोई न्यायसगत प्रतीत नही होता । जब आप इसके इरादे से सहमत है और जब स्वय महसूस करते है कि समय पकेगा तो सशोधन करेगे तो ऐसी स्थिति मे आज ही इस सशोधन को क्यों न स्वीकार कर ले ? क्या आगे के लिये भविष्य मे कोई और काम रहने वाला नही है कि यह काम बाकी रखे कि आगे इस तरह का संशोधन प्रस्तुत करेगे । अपने भारतवर्ष मे इतना काम है, बहुत कुछ करने को है, तो ऐसी स्थिति मे जबकि आप स्वय महसूस करते है कि ऐसा करना है तो फिर आगे के लिये इस सशोधन को पेडिग रखना कोई न्यायसगत प्रतीत नही होता । इसलिये मैं माननीय मन्त्री महोदय से प्रार्थना करूगा कि वह इसको स्वीकार कर ले और अगर माननीय मन्त्री महोदय नही स्वीकार करते है तो फिर मै प्रार्थना करूगा कि इस सदन के सदस्य इसका स्वीकार करके इसमे शामिल कर दे ।

The question was proposed.

SHRI R M HAJARNAVIS: I might inform the hon mover why his amendment provoked so much of mirth. It is this that in both articles 217 and 224 there must be identical age. There cannot be one age for acting Judges and another age for the permanent Judges. Once his amendment to clause 4 has been negatived, there was no point in moving this amendment to clause 6 The age has got to be sixty-two in both cases.

THE DEPUTY CHAIRMAN: The question is:

12. "That at page 2, line 18, for the words 'sixty-two years' the words 'sixty-five years' be *substituted.*"

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

"That clause 6 stand part of the Bill."

The House divided.

THE DEPUTY CHAIRMAN. Ayes—134; Noes—17.

AYES—134

Abid Ali, Shri
Agrawal, Shri J. P.
Ahmad, Shri Syed.
Anis Kidwai, Shrimati.
Anwar, Shri N. M.
Arora, Shri Arjun
Asthana, Shri L. D.
Bansi Lal, Shri.
Barooah, Shri Lila Dhar.
Basu, Shri Santosh Kumar.
Bedavati Buragohain, Shrimati.
Bharathi, Shrimati K.
Bhargava, Shri B. N.
Bhargava, Shri M P.
Chakradhar, Shri A.
Chatterji, Shri J. C
Chaturvedi, Shri B D.
Chauhan, Shri Nawab Singh.
Chavda, Shri K. S.
Dasgupta, Shri T. M.
Dass, Shri Mahabir.
Deb, Shri S. C.
Desai, Shri Suresh J.
Devaki Gopidas, Shrimati.
Dharam Prakash, Dr.
Dikshit, Shri Umashankar.
Doogar, Shri R S.
Dutt, Shri Krishan.
Ghose, Shri Surendra Mohan.
Ghosh, Shri Sudhir.

Gilbert, Shri A. C.
Gopalakrishnan, Shri R.
Gupta, Shri Gurudev
Gupta, Shri Maithilisharan.
Hathi, Shri Jaisukhlal.
Jairamdas Daulatram, Shri.
Kakati, Shri R. N.
Kalelkar, Kakasaheb
Karayalar, Shri S. C.
Karmarkar, Shri D P.
Kashiwal, Shri N. C
Kathju, Shri P N.
Kaushal, Shri J. N.
Keshvanand, Swami.
Khan, Shri Akbar Ali.
Khan, Shri Pir Mohammed.
Krishna Chandra, Shri.
Krishnamachari, Shri V. T.
Kulkarni, Shri B. T.
Kumbha Ram, Shri.
Kurre, Shri Dayaldas
Lakshmi N Menon, Shrimati.
Lingam, Shri N M.
Lohani, Shri I. T.
Mahesh Saran, Shri.
Mallik, Shri D C.
Malviya, Shri Ratanlal Kishorilal.
Mathen, Shri Joseph.
Maya Devi Chettry, Shrimati.
Mehta, Shri M M
Mishra, Shri S.
Mishra, Shri S N.
Misra, Shri M.
Mitra, Shri P. C.
Mohammad, Chaudhari A.
Mohanty, Shri Dhananjoy.
Muhammad Ishaque, Shri.
Nafisul Hasan, Shri
Nandini Satpathy, Shrimati.
Nanjundaiya, Shri B C.
Narasimha Rao, Dr. K. L.
Neki Ram, Shri.
Pande, Shri C D
Pande, Shri T.
Panjhazari, Sardar Raghbir Singh.
Parmanand, Dr. Shrimati Seeta
Patel, Shri Maganbhai S.
Pathak, Shri G S.
Patil, Shri P. S
Patil, Shri Sonusing Dhansing.
Pattabiraman, Shri T. S.
Pillai, Shri J. S
Punnaiah, Shri Kota.
Rajagopalan, Shri G.
Ramaul, Shri Shiva Nand.
Ray, Dr Nihar Ranjan.
Ray, Shri Ramprasanna.
Reddi, Shri J C Nagi
Reddy, Shri K. V.
Reddy, Shri N. Narotham.
Reddy, Shri N Sri Rama.
Reddy, Shri S Channa.
Rohatgi, Dr. Jawaharlal.
Sadiq Ali, Shri.
Sahai, Shri Ram
Saksena, Shri Mohan Lal.
Samuel, Shri M H
Santhanam, Shri K
Sapru, Shri P N
Saraogi, Shri Pannalal.
Sarwate, Shri V V.
Satyacharan, Shri
Satyanarayana, Shri M
Savnekar, Shri Baba Saheb.
Seeta Sudhvir, Shrimati.
Shah Shri K K.
Shah, Shri M C
Shetty, Shri B. P Basappa.
Shukla, Shri M P.,
Siddhu, Dr M M S
Singh, Sardar Budh
Singh, Dr Gopal.
Singh, Shri Mohan.
Singh, Shri Santosh
Singh Shri Vijay.
Sinha, Shri B. K. P.

Sinha, Shri R. B.
Sinha, Shri R. P. N.
Sinha Dinkar, Prof. R. D.
Syed Mahmud, Shri.
Tankha, Pandit S. S. N.
Tapase, Shri G. D.
Tara Chand, Dr.
Tara Ramachandra Sathe, Shrimati.
Tariq, Shri A. M.
Tayyebulla, Maulana M.
Thanglura, Shri A.
Tripathi, Shri H. V.
Uma Nehru, Shrimati.
Varma, Shri B. B.
Venkateswara Rao, Shri N.
Vijaivargiya, Shri Gopikrishna.
Warerkar, Shri B. V. (Mama).
Yajee, Shri Sheel Bhadra.

NOES—17

Chordia, Shri V. M.
Dave, Shri Rohit M.
Ghosh, Shri Niren.
Gupta, Shri Bhupesh.
Gurupada Swamy, Shri M. S.
Khandekar, Shri R. S.
Khobaragade, Shri B. D.
Lal, Prof. M. B.
Mani, Shri A. D.
Misra, Shri Lokanath.
Narasimham, Shri K. L.
Patel, Shri Dahyabhai V.
Reddy, Shri K. V. Raghunatha.
Singh, Shri D. P.
Sinha, Shri Rajendra Pratap.
Subba Rao, Dr. A.
Vajpayee, Shri A. B.

The motion was adopted by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 6 was added to the Bill.

Clauses 7 to 9

THE DEPUTY CHAIRMAN: The question is:

"That clauses 7 to 9 stand part of the Bill."

SHRI BHUPESH GUPTA: Madam Deputy Chairman, this voting of the clauses taken together, I think, does not meet the requirements of the Constitution. I will tell you why; because it might be conceivable that an hon. Member may not like to vote for or vote against in regard to a particular clause but would like to reverse his stand in regard to another clause. But now he is denied the chance of doing so if all the clauses are lumped together and one vote is taken. You have put to vote three clauses together. Suppose, Madam, I wanted to vote differently on each of these clauses, I cannot have the chance to do so. I say that it is a serious matter.

(*Interruptions.*)

3 P.M.

THE DEPUTY CHAIRMAN: Please let him explain his point of view.

SHRI BHUPESH GUPTA: Hon. Members can rest assured that I am also in a hurry. I would like it that way, but I cannot just allow the constitutional point to escape. The point of order is this. Suppose in regard to the three clauses that you have put to vote I decide before I come to vote that in regard to one, I shall say 'Yes', with regard to another I shall say 'No' and with regard to the third I shall say I will abstain. Now, if you put them all together, I do not have a chance to distribute my votes accord-

[Shri Bhupesh Gupta.]

ing to my choice. This is all that I have to say. Otherwise, I have to give only one 'Yes', 'No' or abstention. Therefore, it defeats the purpose. (*Interruptions*). If you are satisfied that way, you can do it. I think you will agree that you can have it by a majority. That is the trouble with our Members. That is the trouble sometimes. Sometimes we are in a hurry.

THE DEPUTY CHAIRMAN: I think I have understood your point in saying that each clause should be put separately. But all these clauses were put to the House and if any Member wanted to oppose any one of them, he could have stood up and said so.

SHRI BHUPESH GUPTA: I am helping you in this matter. Am I in contradiction with you generally? Suppose you put all of them together, to vote, then I cannot say in the same voice as if I say 'Yes' or 'No' or abstention. I can only say 'Yes' or 'No'. The same thing applies here. Therefore, to put the record right constitutionally, you have to put them separately.

THE DEPUTY CHAIRMAN: I think I have heard all sides. As far as this August House goes, we have no particular rule. As far as the other House goes, there is a rule by which clauses could be put together and voted on.

SHRI BHUPESH GUPTA: We are not copying the other House.

THE DEPUTY CHAIRMAN: I am also not going by what is happening in the other House. If the House so desires, I shall put the clauses separately.

SHRI BHUPESH GUPTA: I say it is a requirement of the Constitution. You can rule it.

(*Interruptions*).

SHRI SATYACHARAN (Uttar Pradesh): Mr. Bhupesh Gupta has raised a constitutional point regarding the procedural wrangle. I would like to clarify that as far as the procedure is concerned, if it is silent in the matter of Rajya Sabha, we would follow the convention of the other House, since Parliament is just one, whether it is Rajya Sabha or Lok Sabha.

THE DEPUTY CHAIRMAN: It is not a question of following the convention of the other House, but we have so put clauses together in the past and, therefore, we are following the procedure that has been laid down by convention.

DR. A. SUBBA RAO: Therefore, I would like my vote to be recorded as 'No' only in respect of clause 7 and in respect of clauses 8 and 9 it would be 'Yes'.

THE DEPUTY CHAIRMAN: I shall put the clauses severally to vote.

The question is:

"That clause 7 stand part of the Bill."

The House divided

THE DEPUTY CHAIRMAN: Ayes—134; Noes—17.

AYES—134

Abid Ali, Shri
Agrawal, Shri J.P.
Ahmad, Shri Syed.
Anis Kidwai, Shrimati.
Anwar, Shri N. M.
Arora, Shri Arjun.
Asthana, Shri L.D.
Bansi Lal, Shri.
Barooah, Shri Lila Dhar.
Basu, Shri Santosh Kumar.
Bedavati Buragohain, Shrimati.
Bharathi, Shrimati K.
Bhargava, Shri B. N.
Bhargava, Shri M. P.
Chakradhar, Shri A.
Chatterji, Shri J. C.
Chaturvedi, Shri B. D.

Chauhan, Shri Nawab Singh.
Chavda, Shri K. S.
Dasgupta, Shri T. M.
Dass, Shri Mahabir.
Deb, Shri S. C.
Desai, Shri Suresh J.
Devaki Gopidas, Shrimati.
Dharam Prakash, Dr.
Dikshit, Shri Umashankar.
Doogar, Shri R. S.
Dutt, Shri Krishan.
Ghose, Shri Surendra Mohan.
Ghosh, Shri Sudhir.
Gilbert, Shri A. C.
Gopalakrishna, Shri R.
Gupta, Shri Gurudev.
Gupta, Shri Maithilisharan.
Hathi, Shri Jaisukhlal.
Jairamdas Daulatram, Shri.
Kakati, Shri R. N.
Kalelkar, Kakasaheb.
Karayalar, Shri S. C.
Karmarkar, Shri D. P.
Kasliwal, Shri N. C.
Kathju, Shri P. N.
Kaushal, Shri J. N.
Keshvanand, Swami.
Khan, Shri Akbar Ali.
Khan, Shri Pir Mohammed.
Krishna Chandra, Shri.
Krishnamachari, Shri V. T.
Kulkarni, Shri B. T.
Kumbha Ram, Shri.
Kurre, Shri Dayaldas.
Lakshmi N. Menon, Shrimati.
Lingam, Shri N. M.
Lohani, Shri I. T.
Mahesh Saran, Shri.
Mallik, Shri D. C.
Malviya, Shri Ratanlal Kishorilal.
Mathen, Shri Joseph.
Maya Devi Chettry, Shrimati.
Mehta, Shri M. M.
Mishra, Shri S.
Mishra, Shri S. N.
Misra, Shri M.
Mitra, Shri P. C.
Mohammad, Chaudhary A.
Mohanty, Shri Dhananjoy.
Muhammad Ishaque, Shri.
Nafisul Hasan, Shri.
Nandini Satpathy, Shrimati.
Nanjundaiya, Shri B. C.
Narasimha Rao, Dr. K. L.
Neki Ram, Shri.
Pande, Shri C. D.
Pande, Shri T.
Panjhazari, Sardar Raghbir Singh.
Parmanand, Dr. Shrimati Seeta.
Patel, Shri Maganbhai S.
Pathak, Shri G. S.
Patil, Shri P. S.
Patil, Shri Sonusing Dhansing.
Pattabiraman, Shri T. S.
Pillai, Shri J. S.
Punnaiah, Shri Kota.
Rajagopalan, Shri G.
Ramaul, Shri Shiva Nand.
Ray, Dr. Nihar Ranjan.
Ray, Shri Ramprasanna.
Reddy, Shri J. C. Nagi.
Reddy, Shri K. V.
Reddy, Shri N. Narotham.
Reddy, Shri N. Sri Rama.
Reddy, Shri S. Channa.
Rohatgi, Dr. Jawaharlal.
Sadiq Ali, Shri.
Sahai, Shri Ram.
Saksena, Shri Mohan Lal.
Samuel, Shri M. H.
Santhanam, Shri K.
Sapru, Shri P. N.
Sarangi, Shri Pannalal.
Sarwate, Shri V. V.
Satyacharan, Shri.
Satyanarayana, Shri M.

Savnekar, Shri Baba Saheb.
Seeta Yudhvir, Shrimati.
Shah, Shri K. K.
Shah, Shri M. C.
Shetty, Shri B. P. Basappa.
Shukla, Shri M. P.
Siddhu, Dr. M. M. S.
Singh, Sardar Budh.
Singh, Dr. Gopal.
Singh, Shri Mohan.
Singh, Shri Santokh.
Singh, Shri Vijay
Sinha, Shri B. K. P.
Sinha, Shri R. B.
Sinha, Shri R. P. N.
Sinha Dinkar, Prof. R. D.
Syed Mahmud, Shri.
Tankha, Pandit S. S. N.
Tapase, Shri G. D.
Tara Chand, Dr.
Tara Ramachandra Sathe, Shrimati.
Tariq, Shri A. M.
Tayyebulla, Maulana M.
Thanglura, Shri A.
Tripathi, Shri H. V.
Uma Nehru, Shrimati.
Varma, Shri B. B.
Venkateswara Rao, Shri N.
Vijaivargiya, Shri Gopikrishna.
Warerkar, Shri B. V. (Mama).
Yajee, Shri Sheel Bhadra.

NOES—17

Chordia, Shri V. M.
Dave, Shri Rohit M.
Dave, Shri Rohit M.
Ghosh, Shri Niren
Gupta, Shri Bhupesh
Gurupada Swamy, Shri M. S.
Khandekar, Shri R. S.
Khobaragade, Shri B. D.
Lal, Prof. M. B.
Mani, Shri A. D.
Misra, Shri Lokanath.
Narasimaham, Shri K. L.
Patel, Shri Dahyabhai V.
Reddy, Shri K. V. Raghunatha
Singh, Shri D. P.
Sinha, Shri Rajendra Pratap
Subba Rao, Dr. A.
Vajpayee, Shri A. B.

The motion was adopted by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 7 was added to the Bill.

THE DEPUTY CHAIRMAN: The question is:

"That clause 8 stand part of the Bill."

The House divided:

THE DEPUTY CHAIRMAN: Ayes—150; Noes—Nil.

AYES—150

Abid Ali, Shri.
Agrawal, Shri J. P.
Ahmad, Shri Syed.
Anis Kidwai, Shrimati.
Arora, Shri Arjun.
Asthana, Shri L. D.
Bansi Lal, Shri.
Barooah, Shri Lila Dhar.
Basu, Shri Santosh Kumar.
Bedavati Buragohain, Shrimati.
Bharathi, Shrimati K.
Bhargava, Shri B. N.
Bhargava, Shri M. P.
Chakradhar, Shri A.
Chatterji, Shri J. C.
Chaturvedi, Shri B. D.
Chauhan, Shri Nawab Singh.
Chavda, Shri K. S.
Chordia, Shri V. M.
Dasgupta, Shri T. M.

Dass, Shri Mahabir.
Dave, Shri Rohit M.
Deb, Shri S. C.
Desai, Shri Suresh J.
Devaki Gopidas, Shrimati.
Dharam Prakash, Dr.
Dikshit, Shri Umashankar.
Doogar, Shri R. S.
Dutt, Shri Krishan.
Ghose, Shri Surendra Mohan.
Ghosh, Shri Niren.
Ghosh, Shri Sudhir.
Gilbert, Shri A. C.
Gopalakrishnan, Shri R.
Gupta, Shri Bhupesh.
Gupta, Shri Gurudev.
Gupta, Shri Maithilisharan.
Gurupada Swamy, Shri M. S.
Hathi, Shri Jaisukhlal.
Jairamdas Daulatram, Shri.
Kakati, Shri R. N.
Kalelkar, Kakasaheb.
Karayalar, Shri S. C.
Karmarkar, Shri D. P.
Kasliwal, Shri N. C.
Kathju, Shri P. N.
Kaushal, Shri J. N.
Keshvanand, Swami.
Khan, Shri Akbar Ali.
Khan, Shri Pir Mohammed.
Khandekar, Shri R. S.
Khobaragade, Shri B. D.
Krishna Chandra, Shri.
Krishnamachari, Shri V. T.
Kulkarni, Shri B. T.
Kumbha Ram, Shri.
Kurre, Shri Dayaldas.
Lakshmi N. Menon, Shrimati.
Lal, Prof. M. B.
Lingam, Shri N. M.
Lohani, Shri I. T.
Mahesh Saran, Shri.
Mallik, Shri D. C.
Malviya, Shri Ratanlal Kishorilal.
Mani, Shri A. D.
Mathen, Shri Joseph.
Maya Devi Chettry, Shrimati.
Mehta, Shri M. M.
Mishra, Shri S.
Mishra, Shri S. N.
Misra, Shri Lokanath.
Misra, Shri M.
Mitra, Shri P C.
Mohammad, Chaudhary A.
Mohanty, Shri Dhananjoy.
Muhammad Ishaque, Shri.
Nafisul Hasan, Shri.
Nandini Satpathy, Shrimati.
Nanjundaiya, Shri B. C.
Narasimham, Shri K. L.
Narasimha Rao, Dr. K. L.
Neki Ram, Shri.
Pande, Shri C. D.
Pande, Shri T.
Panjhazari, Sadar Raghbir Singh.
Parmanand, Dr. Shrimati Seeta.
Patel, Shri Dahyabhai V.
Patel, Shri Maganbhai S.
Pathak, Shri G. S.
Patil, Shri P. S.
Patil, Shri Sonusing Dhansing.
Pattabiraman, Shri T. S.
Pillai, Shri J. S.
Punnaiah, Shri Kota.
Rajagopalan, Shri G.
Ramaul, Shri Shiva Nand.
Ray, Dr. Nihar Ranjan.
Ray, Shri Ramprasanna.
Reddy, Shri J. C. Nagi.
Reddy, Shri K. V.
Reddy, Shri K. V. Raghunatha
Reddi, Shri N. Narotham.
Reddy, Shri N. Sri Rama.
Reddy, Shri S. Channa.
Rohatgi, Dr. Jawaharlal.
Sadiq Ali, Shri.

Sahai, Shri Ram.
Saksena, Shri Mohan Lal.
Samuel, Shri M. H.
Santhanam, Shri K.
Sapru, Shri P. N.
Saraogi, Shri Pannalal.
Sarwate, Shri V. V.
Satyacharan, Shri.
Satyanarayana, Shri M.
Savnekar, Shri Baba Saheb.
Seeta Yudhvir, Shrimati.
Shah, Shri K. K.
Shah, Shri M. C.
Shetty, Shri B. P. Basappa.
Shukla, Shri M. P.,
Siddhu, Dr. M. M. S.
Singh, Sardar Budh.
Singh, Shri D. P.
Singh, Dr. Gopal.
Singh, Shri Mohan.
Singh, Shri Santokh.
Singh, Shri Vijay.
Sinha, Shri B. K. P.
Sinha, Shri R. B.
Sinha, Shri Rajendra Pratap.
Sinha, Shri R. P. N.
Sinha Dinkar, Prof. R. D.
Subba Rao, Dr. A.
Syed Mahmud, Shri.
Tankha, Panidt S. S. N.
Tapase, Shri G. D.
Tara Chand, Dr.,
Tara Ramachandra Sathe, Shrimati.
Tariq, Shri A. M.
Tayyebulla, Maulana M.
Thanglura, Shri A.
Tripathi, Shri H. V.
Uma Nehru, Shrimati.
Vajpayee, Shri A. B.
Varma, Shri B. B.
Venkateswara Rao, Shri N.
Vijaivargiya, Shri Gopikrishna.
Warerkar, Shri B. V. (Mama).
Yajee, Shri Sheel Bhadra.

NOES—Nil.

The motion was adopted by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 8 was added to the Bill.

THE DEPUTY CHAIRMAN: The question is:

"That clause 9 stand part of the Bill."

The House divided.

THE DEPUTY CHAIRMAN: Ayes—150; Noes—Nil.

AYES—150

Abid Ali, Shri.
Agrawal, Shri J. P.
Ahmad, Shri Syed.
Anis Kidwai, Shrimati.
Anwar, Shri N. M.
Arora, Shri Arjun.
Asthana, Shri L. D.
Bansi Lal, Shri.
Barooah, Shri Lila Dhar.
Basu, Shri Santosh Kumar.
Bedavati Buragohain, Shrimati.
Bharathi, Shrimati K.
Bhargava, Shri B. N.
Bhargava, Shri M. P.
Chakradhar, Shri A.
Chatterji, Shri J. C.
Chaturvedi, Shri B. D.
Chauhan, Shri Nawab Singh.
Chavda, Shri K. S.
Chordia, Shri V. M.
Dasgupta, Shri T. M.
Dass, Shri Mahabir.

Dave, Shri Rohit M.
Deb, Shri S. C.
Desai, Shri Suresh J.
Devaki Gopidas, Shrimati.
Dharam Prakash, Dr.
Dikshit, Shri Umashankar.
Doogar, Shri R. S.
Dutt, Shri Krishan.
Ghose, Shri Surendra Mohan.
Ghosh, Shri Niren.
Ghosh, Shri Sudhir.
Gilbert, Shri A. C.
Gopalakrishnan, Shri R.
Gupta, Shri Bhupesh.
Gupta, Shri Gurudev.
Gupta, Shri Maithilisharan.
Gurupada Swamy, Shri M. S.
Hathi, Shri Jaisukhlal.
Jairamdas Daulatram, Shri.
Kakati, Shri R. N.
Kalelkar, Kakasaheb.
Karayalar, Shri S. C.
Karmarkar, Shri D. P.
Kasliwal, Shri N. C.
Kathju, Shri P. N.
Kaushal, Shri J. N.
Keshvanand, Swami.
Khan, Shri Akbar Ali.
Khan, Shri Pir Mohammed.
Khandekar, Shri R. S.
Khobaragade, Shri B. D.
Krishna Chandra, Shri.
Krishnamachari, Shri V. T.
Kulkarni, Shri B. T.
Kumbha Ram, Shri.
Kurre, Shri Dayaldas.
Lakshmi N. Menon, Shrimati.
Lal, Prof. M. B.
Lingam, Shri N. M.
Lohani, Shri I. T.
Mahesh Saran, Shri.
Mallik, Shri D. C.
Malviya, Shri Ratanlal Kishorilal.
Mani, Shri A. D.
Mathen, Shri Joseph.
Maya Devi Chettry, Shrimati.
Mehta, Shri M. M.
Mishra, Shri S.
Mishra, Shri S. N.
Misra, Shri Lokanath.
Misra, Shri M.
Mitra, Shri P. C.
Mohammad, Chaudhary A.
Mohanty, Shri Dhananjoy.
Muhammad Ishaque, Shri.
Nafisul Hasan, Shri.
Nandini Satpathy, Shrimati.
Nanjundaiya, Shri B. C.
Narasimham, Shri K. L.
Narasimha Rao, Dr. K. L.
Neki Ram, Shri
Pande, Shri C. D.
Pande, Shri T.
Panjhazari, Sardar Raghbir Singh.
Parmanand, Dr. Shrimati Seeta
Patel, Shri Dahyabhai V.
Patel, Shri Maganbhai S.
Pathak, Shri G. S.
Patil, Shri P. S.
Patil, Shri Sonusing Dhansing.
Pattabiraman, Shri T. S.
Pillai, Shri J. S.
Punnaiah, Shri Kota.
Rajagopalan, Shri G.
Ramaul, Shri Shiva Nand.
Ray, Dr. Nihar Ranjan.
Ray, Shri Ramprasanna.
Reddi, Shri J. C. Nagi.
Reddy, Shri K. V.
Reddy, Shri N. Narotham.
Reddy, Shri N. Sri Rama.
Reddy, Shri S. Channa.
Rohatgi, Dr. Jawaharla..
Sadiq Ali, Shri.

Sahai, Shri Ram.
Saksena, Shri Mohan Lal.
Samuel, Shri M. H.
Santhanam, Shri K.
Sapru, Shri P. N.
Saraogi, Shri Pannalal.
Sarwate, Shri V. V.
Satyacharan, Shri.
Satyanarayana, Shri M.
Savnekar, Shri Baba Saheb.
Seeta Yudhvir, Shrimati.
Shah, Shri K. K.
Shah, Shri M. C.
Shetty, Shri B. P. Basappa.
Shukla, Shri M. P.
Siddhu, Dr. M. M. S.
Singh, Sardar Budh.
Singh, Shri D. P.
Singh, Dr. Gopal.
Singh, Shri Mohan.
Singh, Shri Santokh.
Singh, Shri Vijay.
Sinha, Shri B. K. P.
Sinha, Shri R. B.
Sinha, Shri Rajendra Pratap.
Sinha, Shri R. P. N.
Sinha Dinkar, Prof. R. D.
Subba Rao, Dr. A.
Syed Mahmud, Shri.
Tankha, Pandit S. S. N.
Tapase, Shri G. D.
Tara Chand, Dr.
Tara Ramachandra Sathe, Shrimati.
Tariq, Shri A. M.
Tayyebulla, Maulana M.
Thanglura, Shri A.
Tripathi, Shri H. V.
Uma Nehru, Shrimati.
Vajpayee, Shri A. B.
Varma, Shri B. B.
Venkateswara Rao, Shri N.
Vijaivargiya, Shri Gopikrishna.
Warerkar, Shri B. V. (Mama).
Yajee, Shri Sheel Bhadra.

NOES—Nil

The motion was adopted by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 9 was added to the Bill.

Clause 10—Amendment of Article 311

THE DEPUTY CHAIRMAN: Amendment No. 5 is out of order as it seeks to delete clause 10.

SHRI NIREN GHOSH: Madam, I move:

6. That at page 3, for clause 10, the following be substituted, namely:—

"10. In article 311 of the Constitution, for clauses (2) and (3), the following clauses shall be substituted, namely:—

'(2) No such person aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this clause shall not apply—

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;

(b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause; or

(c) where the President or Governor, as the case may be, is satisfied that in the interest of the security of the State it

is not expedient to give to that person such an opportunity.

(3) If any question arises whether it is reasonably practicable to give to any person an opportunity of showing cause under clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final.'"

SHRI K. V. RAGHUNATHA REDDY: Madam, I move:

7. "That at page 3, for lines 13 to 37, the following be substituted, namely:—

'(2) (i) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(ii) After such enquiry, if it is proposed to impose on such person any such penalty, an appeal shall lie to the High Court, by any such person.

(iii) In appeal, the High Court may reverse or alter the penalty or order further enquiry.

(iv) If such a person is under suspension before the appeal is filed in the High Court, notwithstanding anything stated in the articles of the Constitution, the High Court shall not grant stay of the order of suspension, during the pendency of the said appeal.

(v) Nothwithstanding anything contained in the foregoing provisions of this article, a person who is a member of a Civil Service of the Union or an all-India Service or a Civil Service of a State or holds a Civil Post under the Union or State, can be dismissed or removed or reduced in rank, by an authority not subordinate to that, by which he was appointed, without an enquiry mentioned in sub-clause 2(i),—

(a) on the ground of conduct, which has led to his conviction on a criminal charge, or

(b) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such an enquiry'."

SHRI A. D. MANI: Madam, I move:

8. "That at page 3, lines 20 and 21, the words 'but only on the basis of the evidence adduced during such inquiry' be deleted."

10. "That at page 3, after line 32, the following be inserted, namely:—

'Provided further that the President or the Governor, as the case may be, before reaching a conclusion in the matter shall consult the Attorney-General on the case'."

SHRI K. SANTHANAM: Madam, I move:

13. "That at page 3, lines 17 to 21, the words 'and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry' be deleted."

The questions were proposed.

THE DEPUTY CHAIRMAN: Mr. Niren Ghosh. Please be very brief.

SHRI NIREN GHOSH: Madam, I am always brief. I press this amendment because the hon. Minister said that the amendment that they have

[Shri Niren Ghosh.]

brought forward in this Bill to the original article of the Constitution did not mean any abridgment of the rights of the civil servants. If that is so, then what is the purpose of bringing forward this amendment? He said, "To make it explicit." No party, no responsible party, anywhere in the world, brings forward an amendment simply to make a thing explicit, when it is there in the Constitution. If it is the purpose of the ruling party in doing so, then I would say that it is childish. No Constitution should be tempered with in this way or no amendment should be brought forward in this way. But really there is a deep purpose underneath it, that is, they want to cover up, to restrict and abridge the rights of the civil servants. When I confronted the Minister with quotations from the Railway Board circular that is there is childish. No Constitution should —the right to try to make a second representation; it is not restricted in any way—then he could not answer the question. Why? It is there in the amendment that he can make the representation only on the basis of the evidence already adduced in the course of the enquiry, thereby seeking to make the second representation a merely formal affair. I say there is deep and widespread resentment amongst two millions of civil servants; it does not do any good to the country to make the civil servants discontented in this way. I earnestly request him, before proceeding, even at this stage, to reconsider it, it is a major right of the civil servants. I can only say that if the Government puts this into effect, the agitation to alter it throughout the length and breadth of the country, by all the trade unions of the civil servants and all the other trade unions, would continue, unless the decision is reversed. So, I earnestly request the Government, even at this late stage, not to bring forward this amendment, but to restore the present provision of the Constitution.

SHRI K. V. RAGHUNATHA REDDY: Madam, while I have moved this amendment, I am quite aware of the forceful argument put forward by the Minister of Law and the hon. Minister of Home Affairs, that there is absolutely no difference between article 311 which was incorporated previously in the Constitution and the amendment that has been brought forward in the resent amending Bill. The reasons that are given by them are that the present amendment is brought forward for the purpose of making the procedure that was followed under the provisions of article 311 more explicit and making it a part of the statute without giving any scope for any court to interpret one way or the other. There seems to be some force in the argument advanced both by the Law Minister and the Home Minister. Whatever may be the view to be taken on an interpretation of the present amendment that has been brought forward by the Government, I am not concerned with that aspect of the matter. As far as my amendment is concerned, it is my view that article 311—the existing article 311 or the article 311 that is brought forward in the form of an amendment now—belongs to the realm of administrative justice in administrative matters and this aspect of administrative justice both in relation to the tribunals as well as the other quasi-judicial bodies is a slowly growing phenomenon in this country. Now, when we deal with the administrative tribunals and the quasi-judicial bodies, whether the procedure originally prescribed by article 311 would be followed, is a matter for consideration. Article 311 is not explicit, in my submission that a quasi-judicial body is a *sine qua non.* On an interpretation of article 311, what is contemplated under article 311 is not necessarily a quasi-judicial body but any tribunal including an administrative officer is entitled to give notice, examine evidence and pass an order, and an

opportunity may be given to the aggrieved person for the purpose of explaining his case in relation to the penalty contemplated. What my submission is this. Whatever might be the administrative tribunals or the form in which they are constituted or the justice administered by them, I humbly feel that there are no substitutes for a judicial review of the case of a human being at one stage or another. If a man is aggrieved, if a penalty is sought to be imposed against anybody, that penalty at one stage or another must be subject to a judicial review, so that personal feelings of superior officers may not come into play in certain cases of people affected. Dr. Sapru has very pointedly said in his dissenting note in respect of certain classes of officers, clauses 3 and 4, that there is always the danger or at least a very reasonable feeling among the officers concerned, that their superior officer may not always take the right view and might even have a certain personal feeling. Having regard to all these conditions and circumstances, a judicial review must be given at some stage of the cases of such persons who are affected.

Now, a question has been put by one of the hon. Members to the Minister. Suppose a penalty is recommended by a tribunal which tries a man, after evidence is adduced. Here, the argument is that after tribunal comes to the conclusion and recommendation is made that the particular penalty can be imposed and a recommendation is made to the appropriate authority contemplated under clause (1) of article 311 and when this appropriate authority comes to the conclusion, gives notice, "Why should I not impose this penatly on you, please explain"; what is the position of an affected person. Now, by fixing or limiting the scope of the representation in relation to the penalty, the entire scope is limited to the evidence already recorded. I am quite aware—and to some extent sure—that in all cases it is not possible to enlarge the evidence after that stage of the enquiry but both under the civil law and the criminal law—the hon. Minister being a lawyer, he must know—in the case of appeals to the High Court, the court can call for further evidence and on application further evidence can be recorded for the purpose of adjudicating cases and rendering justice. For instance, suppose after the tribunal recommends a penalty and the show-cause notice is given by the authority concerned, some fresh evidence is discovered by the authority concerned or by the person who is aggrieved. Would such evidence be prevented from being led or would the authority not be authorised to look into such evidence? Should not be aggrieved person take advantage of such evidence?

Madam Deputy Chairman, you must be aware, especially the hon. Minister for Home Affairs must be aware that in criminal cases there was Adolf Beck's case. It was one of the famous cases in the law of evidence. The entire question was one of identification. One person was wrongly convicted thinking that he was the person who had been properly identified, instead of some other person, and after the man stayed in jail for a numebr of years, the Government discovered that the person who had been put in jail, though he was identical to another man, was not the man who ought to have been sent to jail. This is only an illustration I am giving. So, in cases where there is a reasonable possibility of discovering evidence for the purpose of proving one's innocence, such a possibility should not be precluded, and if such an occasion arises, the Government ought to consider, and the person who is aggrieved should have an opportunity to adduce evidence to that effect.

Now, when I suggest judicial review by the High Court, I do suggest that

[Shri K. V. Raghunatha Reddy.]

the High Court should have the power to judicially review this matter, and in all matters where the tribunal passes judgments and the Government takes the view one way or the other, in quite a number of cases, writs can be filed under article 226 of the Constitution, either a writ of *certiorari*, or any other writ. Now, within the writ jurisdiction a person cannot go into the quantum of evidence and appreciation of evidence, and when only an appeal is made, the judicial body can appreciate the evidence, and in the affairs of men and matters there cannot be a better institution which can judge, which can appreciate evidence in relation to matters which are decided upon than the judiciary. Now, in the case of a tribunal it should be noted that the evidence is recorded more or less following the Evidence Act and also following the rules of procedure, and the tribunal also is a judicial body or a quasi-judicial body which records evidence. After all, men may err. That is why a hierarchy of judicial institutions are set up so that even if one institution errs, another institution may rectify the mistake committed by a subordinate institution.

Now, if we take the second aspect of araticle 311, when we read article 311, it is said that in cases where there is the judgment of a criminal court convicting a person, there need not be any opportunity given at all. I quite agree. I want this point to be remembered that in those cases where there is a judicial determination of guilt of the person by the competent courts in this country dealing with this matter whether a person is guilty or not, when once a competent court finds him guilty, he has got all the remedies available under the Criminal Procedure Code, and only after the final judgment by the highest court in the country, the man could be touched. In one part of the article you provide all the facilities available even to any ordinary person under the Criminal Procedure Code, whereas in another part of the article he is denied the same if he has to face a different type of situation. So, Madam, I would request the House and the hon. Minister to consider whether it is not desirable to give an opportunity, for the purpose of giving a judicial review, to the person concerned. I also quite see the situation where, if the courts are given powers for the purpose of granting stay, where, if an officer is suspended, the court can come to the rescue of the officer and grant a stay, certain things might get upset. Hence I have contempleted in my amendment that if once an officer is suspended, in no circumstances will the courts have the power to grant stay except to adjudicate on the finality of the issue.

So with these remarks, Madam, I commend this amendment for the acceptance of the House.

SHRI A. D. MANI: Madam, I shall be very brief and I shall speak only on the second amendment which is listed last. The second amendment deals with my proposal that before Government takes action against a civil servant on the grounds of the security of State being involved, they shall place the necessary papers before the Attorney-General for his opinion. I made the point in my intervention in the debate this morning and I expected the Minister to reply to it. I would like to ask the Minister what difficulty is there in the way of the Government placing the papers concerned before the Attorney-General, of a civil servant, who is sought to be removed from service on the grounds of the security of the State being involved. I believe a few persons in the External Affairs Ministry have been removed under this article and this has made them feel very bitter about it. Some of them have seen me and told me that removal under this article is not only loss of job but also loss of prestige and reputation of the whole family. A person is branded as a traitor if he is removed under this article. So, I feel that before

Government exercises these extraordinary powers in removing a person on the grounds of the security of the State, they should place the papers before the Attorney-General. In other words, we want a judicial mind to be applied to the case and judicial advice tendered to the Government. Of course, the Government will be the final authority to decide whether the advice should be accepted or not, but I take it that where the Attorney-General gives his opinion that no such action should be taken, the Government will not take such action. I should like to ask the Minister of State what difficulty he has got in accepting my amendment.

SHRI K. SANTHANAM: Madam Deputy Chairman, my amendment seeks to restore the clause as it emerged from the Select Committee. In fact, that was the justification for bringing the amendment at all. Somehow or other the whole thing was messed up and I must say this clause, as it is, is a sort of constitutional misadventure; it has no purpose, and if the hon. Minister chooses, he can go back to article 311, as it is, and nobody will be the worse for it. But the main reason for bringing the original amendment was that the present procedure of having two stages, one stage, an inquiry commitee and finding, and another stage, giving the notice to show why the particular penalty should not be levied. Now, it is a sort of bonus for corruption that is being given. Today, between finding a man guilty and punishing him there is a big interregnum. It is used not so much for mitigating the penalty but to pull the wires from behind An official of the highest integrity told me that there is not a single case in which a penalty has been imposed without Herculean efforts being made to exempt it. The idea that innocent Government servants are being punished in this country is anything but true. There is no chance of any innocent Government servants being punished at all. There is only a 5 per cent. chance of a corrupt Government servant being punished. I believe out of the 20 lakhs of Government servants, 5 per cent. only are corrupt, another 15 per cent. are unfit, another 30 per cent. are lazy and indifferent, only 50 per cent. of the servants of the Government of India are doing honest work, and if by any chance we could keep only this 50 per cent. and get rid of the other 50 per cent., our country will be ruled in a most excellent manner. We will get the returns for the money we spend. But today everyone hates corruption in the abstract, but supports the corrupt man in practice. That is the position. There is not a single Government servant who has been corrupt, who has been found guilty and who is not finding support. Now, we do not want any interregnum between the finding of guilty and punishment. Punishment should follow the finding. Afterwards he may appeal. It is wrong to say that the Government servant has no appeal. There is an appeal in all cases except where the appointment is by the President in which case it goes to the Union Public Service Commission, and they scrutinise the whole thing. Therefore, I think the present position is wrong. It is in favour of those people who commit misconduct, and it is impeding the efficiency of the administration. Therefore, I think this amendment, which was moved so hastily by the Law Minister in the Lok Sabha, was a great mistake and, as I have called, it is a constitutional misadventure. Of course, the hon. Minister had to support it in some way, and he has supported it. Though I have moved my amendment, I am not going to press it for obvious reasons and therefore I request permission to withdraw the amendment.

SOME HON. MEMBERS: No, no.

SHRI GOPIKRISHNA VIJAIVARGIYA: Madam, I have to say only this. As Mr. Santhanam is saying that he stands for the draft as it emerged

[Shri Gopikrishna Vijaivargiya.]

from the Select Committee, I stand for the clause as it was originally suggested before the Select Committee, because there is talk in the whole country, from the Congress benches as well as from the benches opposite, that there is great corruption, and that corruption has to be removed. Therefore, I think that the clause as it was originally suggested should remain.

SHRI BHUPESH GUPTA: Madam Deputy Chairman, it is most unfortunate that an hon. Member of the House, Mr. Santhanam, chose to make a remark saying that 5 per cent. of the Government employees, or something like that, are corrupt. Well, I do not know how he has arrived at the precentage mentioned by him. But then nobody can be dealt with except under certain procedures of natural justice. His case should be dealt with properly and he should be given opportunities.

SHRI K. SANTHANAM: Does the hon. Member want opportunity for refuting the charges or for determining punishment?

SHRI BHUPESH GUPTA: Here you are not having a judicial enquiry. You are having a departmental enquiry dealing with certain charges. Why should you not give them the opportunity that are given at least under the Constitution which you gave as the framers of the Constitution to prove his innocence or to guard himself against unjust punishment?

SHRI K. SANTHANAM: I wish to point out to the hon. Member that the present Government Servents Conduct Rules provide a very elaborate procedure almost on all judicial enquiry.

SHRI BHUPESH GUPTA: No, it does not. I wish it was so. Therefore, I say that it is uncharitable on the part of Mr. Santhanam, and I do not see why he should change in a progressive world in a retrograde direction.

SHRI K. SANTHANAM: Because I want to get rid of corruption in this country from Government services.

SHRI BHUPESH GUPTA: Then I am all the more sorry for him. In the thirteen years he does not seem to have changed at all. I think he should change and change for the better. Now, Madam Deputy Chairman, I would invite his attention to the present procedure. What is the present procedure under article 311 (2), and I should like to know from the Home Minister whether under the existing provisions in the Bill clause (2) of article 311 requires an amendment? The procedure laid down is:—

(i) Framing charges and allegations and obtaining written statement of defence;

(ii) Holding an oral inquiry into the charges;

(iii) Issuing a show-cause notice proposing a provisional penalty and supplying the accused employee with—

(a) a copy of the report of the Inquiry Officer; and

(b) the findings of the punishing authority with reasons for his disagreement, if any, with the Inquiry Officer;

(iv) Obtaining the representation of the accused official showing cause as to why the proposed punishment should not be imposed; and

(v) Issuing final order.

This is the procedure laid down today.

SHRI K. SANTHANAM: This is the procedure for minor penalties. There is a bigger procedure for major penalties. I have got a note. The hon. Member can see it.

SHRI BHUPESH GUPTA: I do not say Mr. Santhanam is deliberately misleading. But he may be suffering from misjudgment of things. I say that this is the procedure laid down under article 311(2). It may have other ramifications or elaborations but this is the essence of it. Now, do I understand from the hon. Home Minister that this procedure will be followed. He should answer—I can pass on the copy to him. He can check it up—whether this procedure will be followed, as it is, even under the amendment. He should make a clear statement which would enable Government employees to understand where they stand after the amendment, in what way the procedure so far followed is going to be modified, if at all that is going to be modified. That is all that I have to say.

Madam Deputy Chairman, it is most unfortunate that the Government thought it fit to bring in an amendment to article 311 despite the opposition of so many people in the country and of almost all the trade unions, and Opposition parties, of course. I think it was unnecessary, it was redundant if the amendment is nothing but the old thing. Suspicion is there that it means something, otherwise the Government would not have come out with this amendment. Therefore, I think the matter should be reconsidered by the Government even at this late stage. Employees have their fears and apprehension. They are confirmed from the very fact that instead of explaining the statute, Government have come out with substitute amendments to the particular provisions of the Constitution. I would like to know where do we stand with regard to the procedure.

श्री एम० पी० शुक्ल (उत्तर प्रदेश) : उपसभापति महोदया, मैं निवेदन करना चाहता हूं कि प्रस्तावित क्लाज़ पर जो संशोधन प्रस्तुत किये गये हैं मैं उनका विरोध करता हूं ।

वास्तव में प्रस्तावित क्लाज़ की आवश्यकता जिन कारणो से पड़ी उन में से एक मैं यह भी कहूं, कि विरोधी दल के सदस्यों का अधिक योग है तो कोई अनुचित नही होगा । जितना देश में और विशेषकर सरकारी कर्मचारियों में भ्रष्टाचार है उससे कई गुना बढाकर हमारे विरोधी दल के लोग इस सदन में और देश में चारों ओर प्रचार करते रहते हैं । यह आवश्यक हो गया है कि इस भ्रष्टाचार को दूर करने के लिये सख्त कदम उठाये जायें । इस सम्बन्ध में आर्टिकल ३११ में जो व्यवस्था दी हुई थी वह बहुत ही बाधक हो रही थी, जिसके कारण इस बात की आवश्यकता पडी कि भ्रष्टाचार के मामले में सरकारी कर्मचारियों को जब तक कटोर रूप से नियंत्रित नहीं किया जायेगा या उनके दंडित होने का उपाय नहीं होगा तब तक यह भ्रष्टाचार दूर नही हो सकता ।

महोदया, जहां तक कि जांच का और इस प्रकार की सारी सुविधाएं देने का प्रश्न है, जो यह व्यवस्था संशोधन लाकर की जा रही है यह, जो पहले आर्टिकल ३११ के दूसरे खंड में व्यवस्था थी, उससे कही अधिक उदार है और कही ज्यादा अवसर उनको मिलता है । उस में इस प्रकार की कोई व्यवस्था नही थी कि कोई जाच होगी, कोई सबूत लेने की आवश्यकता होगी, कोई सुने जाने का भी अवसर होगा, केवल एक मौका देने की व्यवस्था उस में थी । लेकिन जो वर्तमान संशोधन संविधान में प्रस्तावित हुआ है उस में खंड २ में जो व्यवस्था की गई है उसकी तरफ ध्यान दिया जाय तो स्पष्ट होगा कि जब किसी भी सरकारी कर्मचारी को बिना उसको पूरा मौका दिये, बिना उसकी बात सुने बिना उसकी शहादत लिये और बिना उसकी शहादत के आधार पर निर्णय पर पहुंचे कि वह अपराधी है, दंडित नही किया जा सकता । इसलिये जहां तक सरकारी

[श्री एम० पी० शुक्ल]

कर्मचारी का प्रश्न है उसको पहले से अधिक मौका दिया गया है। लेकिन पहले वे छोटी से छोटी बातों के आधार पर संविधान की धारा ३११ का आश्रय लेकर हाईकोर्ट तक चले जाते थे, और रिट प्राप्त कर लेते थे तो इस प्रकार वर्षों तक मुकदमा चलता रहता था और अन्त में यदि किसी साधारण कारण से मुकदमा उनके खिलाफ नहीं सिद्ध होता था तब उनको छुट मिल जाती थी, तब फिर विभागीय कार्यवाही उनके खिलाफ नहीं हो सकती थी। इसलिये संविधान में जो कार्यवाही की जा रही है, देश की वर्तमान परिस्थिति को देखते हुए वह अत्यन्त आवश्यक है और जब तक यह ससद सरकार को इस अधिकार से अधिकृत नहीं कर देगी तब तक कभी भी सरकारी कर्मचारियों के भ्रष्टाचार को हम दूर कर सकते हैं, इस में संशय है।

महोदया, मैं समझता था कि इस संशोधन पर इस सदन में किसी प्रकार की आपत्ति नहीं होगी और विशेषकर उस ओर से जिधर से कि भ्रष्टाचार की बहुत निन्दा की जाती है। परन्तु यदि वे ही भ्रष्टाचार की निन्दा करते हुए कोई उपाय नहीं बता सकते कि किस प्रकार भ्रष्टाचार को हम दूर कर सकते हैं और जब हम भ्रष्टाचार दूर करने के उपाय सुझाते है तो उस में विरोध करते हैं, आपत्ति करते हैं कि यह हमारे सरकारी कर्मचारियों के मौलिक अधिकारों पर आधार है तो यह उचित नही प्रतीत होता। इन कारणों से मैं संशोधनों का विरोध करता हूं और संविधान में जो व्यवस्था प्रस्तुत की गई है उसका समर्थन करता हूं।

SHRI R. M. HAJARNAVIS: Madam Deputy Chairman, this clause has evoked extraordinary heat and passion. Mr. Santhanam spoke with experience and with knowledge . . .

SHRI AKBAR ALI KHAN: He invariably does so.

SHRI R. M. HAJARNAVIS: . . . in this case with intimate knowledge because he headed the committee which had been appointed by the Government to suggest methods for rooting out corruption. Therefore, when he gave facts, percentages, it is on the basis of data which has been collected.

Now, the proposal which was contained in the original Bill was based upon the report of the Pay Commission, and there they seem to arrive at the same conclusion as was mentioned by Mr. Santhanam that if there is a delay between the finding of guilt and imposition of punishment, then there are so many Herculean efforts—that was the phrase used by Mr. Santhanam—by the civil servant to escape the punishment that it becomes difficult for the authority imposing discipline to give him adequate punishment. Now, it is necessary in order that discipline should be maintained that those who are guilty should meet with swift punishment. There can be no doubt—none could join issue on the proposition—that innocent should never be punished but it is the observation of every one including Mr. Santhanam that the innocent is never punished.

Now, here the whole procedure to which reference has been made by Mr. Gupta is based on compliance with article 311(2). There, as a matter of judicial interpretation by the Privy Council—it was not something which was there contained by express words but as a result of interpretation by the Privy Council—I. M. I Lal's case that it was ruled out that it is necessary to divide the enquiry into two stages—one finding of guilt and second, imposition of penalty. This has one disadvantage. One is delay and the second is the attempt made by the civil servant who is proceeded against to influence the authority considering the question. In no other judicial proceeding with which you are familiar, is the finding of guilt and conviction divided into two stages. A man is held guilty and certain punishment is given under the Criminal law

at the same sitting but this position arose because of the interpretation given by the Privy Council . . .

AN HON. MEMBER: There is no judicial trial.

SHRI GOPIKRISHNA VIJAIVARGIYA: Much more than judicial trial.

SHRI R. M. HAJARNAVIS: . . . in the I. M. Lal case. The Pay Commission said: 'This ought not to be allowed to be prolonged, both these stages should be combined into one'. But it was decided in the other House: 'No, the position should be restored'. But in answer to Mr. Gupta's question, I want to say that whatever procedure is devised, the procedure that he read out is not something which in terms is prescribed by article 311(2) but what is to be ensured, what anyone who considers the legality of the action taken under article 311(2) would see, is not whether those various steps in terms are literally complied with it but whether there is general and substantial compliance with article 311(2). Therefore, what the procedure would be, even if article 311(2) is not amended, whether those steps may be recast is a question which I am not bound to answer because as I said, that procedure may be modulated from time to time even in an individual case provided the substantial provisions of article 311(2) are not transgressed. If there is a judicial review, then that judicial review is only confined to the High Court satisfying itself that article 311(2) is not infringed. The High Court is not constituted into an appeal court over the findings of the disciplinary authority. Therefore, the procedure in each case or in a class of cases can always be modulated within the terms of article 311(2).

As regards Mr. Mani's amendment, I did not refer to it in the earlier stage because it appeared to me that he has not grasped the actual dimensions of the problem or nature of the problem. I suggest to him that before he presses this solution, he might see how many cases arose under this clause and whether it would be possible for any Attorney-General or half-a-dozen Attorney-Generals to devote their whole attention to consider this matter. I thought it was so obvious and though he chose to mention them, I had ignored it.

SHRI A. D. MANI: I would like to mention that some persons were dismissed from the External Affairs Ministry under article 311. I am not going into the question of the dismissals. Those persons approached jurists in Delhi and wanted their protection. They wanted to know whether this matter could be made justiciable and all the jurists said that the clause in 311(2) was a retrograde clause and that there should be some method of relaxation. Since we are bringing up the matter again, it is all right for the Minister to say that he ignores this because he is not the person affected but let him put himself in the position of a man who is dismissed under this article. It is not only dismissal, it is perhaps branding the man as a traitor. Now, is it right that the Government should do it without the Attorney-General giving his opinion on the merits of the case.

AN HON. MEMBER: How many cases are there?

SHRI A. D. MANI: There are only 4 or 5.

SHRI R. M. HAJARNAVIS: Apart from the External Affairs case, I know personally that there are cases which have arisen practically in every Ministry and the fact that a person in service is terminated from service under this section, I do not think, can be looked at like this. In a matter of national safety, the question of caution comes in. The question of extra caution comes in. Therefore, action is taken but in spite of this I might assure the hon. Member that these cases are scrutinised at the highest level thoroughly. Every aspect of it

[Shri R. M. Hajarnavis.]

is considered and no useful and loyal Government servant need fear that action will be taken against him unless the matter is considered at the highest level.

THE DEPUTY CHAIRMAN: Mr. Ghosh, are you pressing your amendment?

SHRI NIREN GHOSH: In view of the Minister's reply I think it is really meant as an abridgment of the rights of the civil servants. I, therefore, press.

THE DEPUTY CHAIRMAN: The question is:

6. That at page 3, for clause 10, the following be substituted, namely:—

"10. In article 311 of the Constitution, for clauses (2) and (3), the following clauses shall be substituted, namely:—

'(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this clause shall not apply—

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;

(b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause; or

(c) where the President or Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity.

(3) If any question arises whether it is reasonably practicable to give to any person an opportunity of showing cause under clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final.' "

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

7. "That at page 3, for lines 13 to 37, the following be substituted, namely:—

'(2) (i) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges

(ii) After such enquiry, if it is proposed to impose on such person any such penalty, an appeal shall lie to the High Court, by any such person

(iii) In appeal, the High Court may reverse or alter the penalty or order further enquiry.

(iv) If such a person is under suspension before the appeal is filed in the High Court, notwithstanding anything stated in the articles of the Constitution, the High Court shall not grant stay of the order of suspension, during the pendency of the said appeal.

(v) Notwithstanding anything contained in the foregoing provisions of article, a person who is a member of a Civil Service of the Union or an all-India Service or a Civil Service of a State or holds a Civil Post under the Union or State, can be dismissed or removed or reduced in rank, by an authority not subordinate to that, by which he was appointed, without an enquiry mentioned in sub-clause 2(i),—

(a) on the ground of conduct, which has led to his conviction on a criminal charge, or

(b) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such an enquiry.'"

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

8. "That at page 3, lines 20 and 21, the words 'but only on the basis of the evidence adduced during such enquiry' be deleted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

10. "That at page 3, after line 32, the following be inserted, namely:—

'Provided further that the President or the Governor, as the case may be, before reaching a conclusion in the matter shall consult the Attorney-General on the case'."

The motion was negatived.

THE DEPUTY CHAIRMAN: Mr. Santhanam, are you pressing amendment No. 13?

SHRI K. SANTHANAM: I am not pressing.

THE DEPUTY CHAIRMAN: Has he the leave of the House to withdraw?

HON. MEMBERS: No.

THE DEPUTY CHAIRMAN: The question is:

13. "That at page 3, lines 17 to 21, the words 'and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry' be deleted."

The motion was negatived.

THE DEPUTY CHAIRMAN: The question is:

"That clause 10 stand part of the Bill."

The House divided.

THE DEPUTY CHAIRMAN: Ayes—135; Noes—22.

AYES—135

Abid Ali, Shri.
Agrawal, Shri J. P.
Ahmad, Shri Syed.
Ammanna Raja, Shrimati C.
Anis Kidwai, Shrimati.
Anwar, Shri N. M.
Arora, Shri Arjun.
Asthana, Shri L. D.
Bansi Lal, Shri.
Barooah, Shri Lila Dhar.
Basu, Shri Santosh Kumar.
Bedavati Buragohain, Shrimati.
Bharathi, Shrimati K.
Bhargava, Shri M. P.
Chakradhar, Shri A.
Chatterji, Shri J. C.
Chaturvedi, Shri B. D.
Chauhan, Shri Nawab Singh.

Chavda, Shri K. S.
Dasgupta, Shri T. M.
Dass, Shri Mahabir.
Deb, Shri S. C.
Desai, Shri Suresh J.
Devaki Gopidas, Shrimati.
Dharam Prakash, Dr.
Dikshit, Shri Umashankar.
Doogar, Shri R. S.
Dutt, Shri Krishan.
Ghose, Shri Surendra Mohan.
Ghosh, Shri Sudhir.
Gilbert, Shri A. C.
Gopalakrishnan, Shri R.
Gupta, Shri Gurudev.
Gupta, Shri Maithilisharan.
Hathi, Shri Jaisukhlal.
Jairamdas Daulatram, Shri.
Kakati, Shri R. N.
Kalelkar, Kakasaheb.
Karayalar, Shri S. C.
Karmarkar, Shri D. P.
Kaslıwal, Shri N. C.
Kathju, Shri P. N.
Kaushal, Shri J. N.
Keshvanand, Swami.
Khan, Shri Akbar Ali.
Khan, Shri Pir Mohammed.
Krishna Chandra, Shri.
Krishnamachari, Shri V. T.
Kulkarni, Shri B. T.
Kumbha Ram, Shri.
Kurre, Shri Dayaldas.
Lakshmi N. Menon, Shrimati.
Lingam, Shri N. M.
Lohani, Shri I. T.
Mahesh Saran, Shri.
Mallik, Shri D. C.
Malviya, Shri Ratanlal Kishorilal
Mathen, Shri Joseph.
Maya Devi Chettry, Shrimati.
Mehta, Shri M. M.
Mishra, Shri S.
Mishra, Shri S. N.
Misra, Shri M.
Mitra, Shri P. C.
Mohammad, Chaudhary A.
Mohanty, Shri Dhananjoy.
Nafisul Hasan, Shri.
Nandini Satpathy, Shrimati.
Nanjundaiya, Shri B. C.
Narasimha Rao, Dr. K. L.
Neki Ram, Shri.
Pande, Shri C. D.
Pande, Shri T.
Panjhazari, Sardar Raghbir Singh.
Parmanand, Dr. Shrimati Seeta
Patel, Shri Maganbhai S.
Pathak, Shri G. S.
Patil, Shri P. S.
Patil, Shri Sonusing Dhansing.
Pattabiraman, Shri T. S.
Pillai, Shri J. S.
Punnaiah, Shri Kota
Rajagopalan, Shri G.
Ramaul, Shri Shiva Nand.
Ray, Dr. Nihar Ranjan.
Ray, Shri Ramprasanna.
Reddi, Shri J. C. Nagi.
Reddy, Shri K. V.
Reddy, Shri N. Narotham.
Reddy, Shri N. Sri Rama.
Reddy, Shri S. Channa.
Rohatgi, Dr. Jawaharlal.
Sadiq Ali, Shri.
Sahai, Shri Ram.
Saksena, Shri Mohan Lal.
Samuel, Shri M. H.
Santhanam, Shri K.
Sapru, Shri P. N.
Saraogi, Shri Pannalal.
Sarwate, Shri V. V.
Satyacharan, Shri.
Satyanarayana, Shri M.
Savnekar, Shri Baba Saheb.

Seeta Yudhvir, Shrimati.
Shah, Shri K. K.
Shah, Shri M. C.
Sharma, Shri L. Lalit Madhob.
Sharma, Shri Madho Ram.
Shetty, Shri B. P. Basappa.
Shukla, Shri M. P.
Siddhu, Dr. M. M. S.
Singh, Sardar Budh.
Singh, Dr. Gopal.
Singh, Shri Mohan.
Singh, Shri Santokh.
Singh, Shri Vijay.
Sinha, Shri B. K. P.
Sinha, Shri R. B.
Sinha, Shri R. P. N.
Sinha Dinkar, Prof. R. D.
Syed Mahmud, Shri.
Tankha, Pandit S. S. N.
Tapase, Shri G. D.
Tara Chand, Dr.
Tara Ramachandra Sathe, Shrimati.
Tariq, Shri A. M.
Tayyebulla, Maulana M.
Tripathi, Shri H. V.
Uma Nehru, Shrimati.
Varma, Shri B. B.
Venkateswara Rao, Shri N.
Vijaivargiya, Shri Gopikrishna.
Wadia, Prof. A. R.
Warerkar, Shri B. V. (Mama).
Yajee, Shri Sheel Bhadra.

NOES—22

Annadurai, Shri C. N.
Chordia, Shri V. M.
Dave, Shri Rohit M.
Gaikwad, Shri B. K.
Ghosh, Shri Niren.
Gupta, Shri Bhupesh.
Gurupada Swamy, Shri M. S.
Jahanara Jaipal Singh, Shrimati.
Khandekar, Shri R. S.
Khobaragade, Shri B. D.
Kureel Urf. Talib, Shri P. L.
Lal, Prof. M. B.
Mani, Shri A. D.
Misra, Shri Lokanath.
Narasimham, Shri K. L.
Patel, Shri Dahyabhai V.
Reddy, Shri K. V. Raghunatha.
Singh, Shri J. K. P. Narayan.
Sinha, Shri Rajendra Pratap.
Solomon, Shri P. A.
Subba Rao, Dr. A.
Vajpayee, Shri A. B.

The motion was adopted by a majority of the total Membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 10 *was added to the Bill.*

Clause 11—*Amendment of article* 316

THE DEPUTY CHAIRMAN: The question is:

"That clause 11 stand part of the Bill."

The House divided.

THE DEPUTY CHAIRMAN: Ayes—149; Noes—3

AYES—149

Abid Ali, Shri.
Agrawal, Shri J. P.
Ahmad, Shri Syed.
Ammanna Raja, Shrimati C.
Anis Kidwai, Shrimati.
Anwar, Shri N. M.
Arora, Shri Arjun.
Asthana, Shri L. D.
Bansi Lal, Shri.
Barooah, Shri Lila Dhar.

Basu, Shri Santosh Kumar.
Bedavati Buragohain, Shrimati.
Bharathi, Shrimati K.
Bhargava, Shri M. P.
Chakradhar, Shri A.
Chatterji, Shri J. C.
Chaturvedi, Shri B. D.
Chauhan, Shri Nawab Singh.
Chavda, Shri K. S.
Chordia, Shri V. M.
Dasgupta, Shri T. M.
Dass Shri Mahabir.
Dave, Shri Rohit M.
Deb, Shri S. C.
Desai, Shri Suresh J.
Devaki Gopidas, Shrimati.
Dharam Prakash, Dr.
Dikshit, Shri Umashankar.
Doogar, Shri R. S.
Dutt Shri Krishan.
Ghose, Shri Surendra Mohan.
Ghosh, Shri Sudhir.
Gilbert, Shri A. C.
Gopalakrishnan, Shri R.
Gupta, Shri Bhupesh.
Gupta, Shri Gurudev.
Gupta, Shri Maithilisharan.
Gurupada Swamy, Shri M. S.
Hathi, Shri Jaisukhlal.
Jahanara Jaipal Singh, Shrimati.
Jairamdas Daulatram, Shri.
Kakati, Shri R. N.
Kalelkar, Kakasaheb.
Karayalar, Shri S. C.
Karmarkar, Shri D P.
Kashiwal, Shri N. C.
Kathju, Shri P. N.
Kaushal, Shri J. N.
Keshvanand, Swami
Khan, Shri Akbar Ali.
Khan, Shri Pir Mohammed.
Khandekar, Shri R. S.
Krishna Chandra, Shri.
Krishnamachari, Shri V. T.
Kulkarni, Shri B. T.
Kumbha Ram, Shri.
Kurre, Shri Dayaldas
Lakshmi N. Menon, Shrimati.
Lal, Prof. M. B.
Lingam, Shri N. M.
Lohani, Shri I. T.
Mahesh Saran, Shri.
Mallik, Shri D. C.
Malviya, Shri Ratanlal Kishorilal.
Mani, Shri A. D.
Mathen, Shri Joseph
Maya Devi Chettry, Shrimati.
Mehta, Shri M. M.
Mishra, Shri S.
Mishra, Shri S. N.
Misra, Shri M.
Mitra, Shri P. C.
Mohammad, Chaudhary A.
Mohanty, Shri Dhananjoy.
Nafisul Hasan, Shri.
Nandini Satpathy, Shrimati.
Nanjundaiya, Shri B. C.
Narasimham, Shri K. L.
Narasimha Rao, Dr. K. L.
Neki Ram, Shri.
Pande, Shri C. D.
Pande, Shri T.
Panjhazari, Sardar Raghbir Singh.
Parmanand, Dr. Shrimati Seeta.
Patel, Shri Dahyabhai V.
Patel, Shri Maganbhai S
Pathak, Shri G. S.
Patil, Shri P. S.
Patil, Shri Sonusing Dhansing.
Pattabiraman, Shri T. S
Pillai, Shri J. S.
Punnaiah, Shri Kota.
Rajagopalan, Shri G
Ramaul, Shri Shiva Nand.
Ray, Dr. Nihar Ranjan.

Ray, Shri Ramprasanna.
Reddi, Shri J. C. Nagi.
Reddy, Shri K. V.
Reddy, Shri N. Narotham.
Reddy, Shri N. Sri Rama.
Reddy, Shri S. Channa.
Rohatgi, Dr. Jawaharlal.
Sadiq Ali, Shri.
Sahai, Shri Ram.
Saksena, Shri Mohan Lal.
Samuel, Shri M. H.
Santhanam, Shri K.
Sapru, Shri P. N.
Saraogi, Shri Pannalal.
Sarwate, Shri V. V.
Satyacharan, Shri.
Satyanarayana, Shri M.
Savnekar, Shri Baba Saheb.
Seeta Yudhvir, Shrimati.
Shah, Shri K. K.
Shah, Shri M. C.
Sharma, Shri L. Lalit Madhob.
Sharma, Shri Madho Ram.
Shetty, Shri B. P. Basappa.
Shukla, Shri M. P.
Siddhu, Dr. M. M. S.
Singh, Sardar Budh.
Singh, Dr. Gopal.
Singh, Shri Mohan.
Singh, Shri Santokh.
Singh, Shri Vijay.
Sinha, Shri B. K. P.
Sinha, Shri R. B.
Sinha, Shri Rajendra Pratap
Sinha, Shri R. P. N.
Sinha Dinkar, Prof. R. D.
Solomon, Shri P. A.
Subba Rao, Dr. A.
Syed Mahmud, Shri.
Tankha, Pandit S. S. N.
Tapase, Shri G. D.
Tara Chand, Dr.
Tara Ramachandra Sathe, Shrimati.
Tariq, Shri A. M.
Tayyebulla, Maulana M.
Tripathi, Shri H. V.
Uma Nehru, Shrimati.
Vajpayee, Shri A. B.
Varma, Shri B. B.
Venkateswara Rao, Shri N.
Vijaivargiya, Shri Gopikrishna.
Wadia, Prof. A. R.
Warerkar, Shri B. V. (Mama).
Yajee, Shri Sheel Bhadra.

NOES—3

Annadurai, Shri C. N.
Khobaragade, Shri B. D.
Reddy, Shri K. V. Raghunatha.

The motion was adopted by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 11 *was added to the Bill.*

Clause 12—*Amendment of the Seventh Schedule.*

THE DEPUTY CHAIRMAN: The question is:

"That clause 12 stand part of the Bill."

The House divided.

THE DEPUTY CHAIRMAN: Ayes—140; Noes—16.

AYES—140

Abid Ali, Shri.
Agrawal, Shri J. P.
Ahmad, Shri Syed.
Ammanna Raja, Shrimati
Anis Kidwai, Shrimati.

Anwar, Shri N. M.
Arora, Shri Arjun.
Asthana, Shri L. D.
Bansi Lal, Shri.
Barooah, Shri Lila Dhar.
Basu, Shri Santosh Kumar.
Bedavati Buragohain, Shrimati.
Bharathi, Shrimati K.
Bhargava, Shri M. P.
Chakradhar, Shri A.
Chatterji, Shri J. C.
Chaturvedi, Shri B. D.
Chauhan, Shri Nawab Singh.
Chavda, Shri K. S.
Dasgupta, Shri T. M.
Dass, Shri Mahabir.
Deb, Shri S. C.
Desai, Shri Suresh J.
Devaki Gopidas, Shrimati.
Dharam Prakash, Dr.
Dikshit, Shri Umashankar.
Doogar, Shri R. S.
Dutt, Shri Krishan.
Ghose, Shri Surendra Mohan.
Ghosh, Shri Sudhir.
Gilbert, Shri A. C.
Gopalakrishnan, Shri R.
Gupta, Shri Gurudev.
Gupta, Shri Maithilisharan.
Gurupada Swamy, Shri M. S.
Hathi, Shri Jaisukhlal.
Jahanara Jaipal Singh, Shrimati.
Jairamdas Daulatram, Shri.
Kakati, Shri R. N.
Kalelkar, Kakasaheb.
Karayalar, Shri S. C.
Karmarkar, Shri D. P.
Kasliwal, Shri N. C.
Kathju, Shri P. N.
Kaushal, Shri J. N.
Keshvanand, Swami.
Khan, Shri Akbar Ali.
Khan, Shri Pir Mohammed.
Khandekar, Shri R. S.
Krishna Chandra, Shri.
Krishnamachari, Shri V. T.
Kulkarni, Shri B. T.
Kumbha Ram, Shri.
Kurre, Shri Dayaldas.
Lakshmi N. Menon, Shrimati.
Lal, Prof. M. B.
Lingam, Shri N. M.
Lohani, Shri I. T.
Mahesh Saran, Shri.
Mallik, Shri D. C.
Malviya, Shri Ratanlal Kishorilal.
Mani, Shri A. D.
Mathen, Shri Joseph.
Maya Devi Chettry, Shrimati.
Mehta, Shri M. M.
Mishra, Shri S.
Mishra, Shri S. N.
Misra, Shri M.
Mitra, Shri P. C.
Mohammad, Chaudhary A.
Mohanty, Shri Dhananjoy.
Nafisul Hasan, Shri.
Nandini Satpathy, Shrimati.
Nanjundaiya, Shri B. C.
Narasimha Rao, Dr. K. L.
Neki Ram, Shri.
Pande, Shri C. D.
Pande, Shri T.
Panjhazari, Sardar Raghbir Singh.
Parmanand, Dr. Shrimati Seeta.
Patel, Shri Maganbhai S.
Pathak, Shri G. S.
Patil, Shri P. S.
Patil, Shri Sonusing Dhansing.
Pattabiraman, Shri T. S.
Pillai, Shri J. S.
Punnaiah, Shri Kota.
Rajagopalan, Shri G.
Ramaul, Shri Shiva Nand.
Ray, Dr. Nihar Ranjan.
Ray, Shri Ramprasanna.
Reddi, Shri J. C. Nagi.

Reddy, Shri K. V.
Reddy, Shri N. Narotham.
Reddy, Shri N. Sri Rama.
Reddy, Shri S. Channa.
Rohatgi, Dr. Jawaharlal.
Sadiq Ali, Shri.
Sahai, Shri Ram.
Saksena, Shri Mohan Lal.
Samuel, Shri M. H.
Santhanam, Shri K.
Sapru, Shri P. N.
Saraogi, Shri Pannalal.
Sarwate, Shri V. V.
Satyacharan, Shri.
Satyanarayana, Shri M.
Savnekar, Shri Baba Saheb.
Seeta Yudhvir, Shrimati.
Shah, Shri K. K.
Shah, Shri M. C.
Sharma, Shri L. Lalit Madhob.
Sharma, Shri Madho Ram.
Shetty, Shri B. P. Basappa.
Shukla, Shri M. P.
Siddhu, Dr. M. M. S.
Singh, Sardar Budh.
Singh, Dr. Gopal.
Singh, Shri Mohan.
Singh, Shri Santokh.
Singh, Shri Vijay.
Sinha, Shri B. K. P.
Sinha, Shri R. B.
Sinha, Shri R. P. N.
Sinha Dinkar, Prof. R. D.
Syed Mahmud, Shri.
Tankha, Pandit S. S. N.
Tapase, Shri G. D.
Tara Chand, Dr.
Tara Ramachandra Sathe, Shrimati.
Tariq, Shri A. M.
Tayyebulla, Maulana M.
Tripathi, Shri H. V.
Uma Nehru, Shrimati.
Varma, Shri B. B.
Venkateswara Rao, Shri N.
Vijaivargiya, Shri Gopikrishna.
Wadia, Prof. A. R.
Warerkar, Shri B. V. (Mama).
Yajee, Shri Sheel Bhadra.

NOES—16

Annadurai, Shri C. N.
Chordia, Shri V. M.
Dave, Shri Rohit M.
Gaikwad, Shri B. K.
Ghosh, Shri Niren.
Gupta, Shri Bhupesh.
Khobaragade, Shri B. D.
Misra, Shri Lokanath.
Narasimham, Shri K. L.
Patel, Shri Dahyabhai V.
Reddy, Shri K. V. Raghunatha.
Singh, Shri J. K. P. Narayan.
Sinha, Shri Rajendra Pratap.
Solomon, Shri P. A.
Subba Rao, Dr A.
Vajpayee, Shri A. B.

The motion was adopted by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 12 was added to the Bill.

THE DEPUTY CHAIRMAN: The question is:

"That clause 1, the Enacting formula and the Title stand part of the Bill."

The House divided.

THE DEPUTY CHAIRMAN: Ayes—135; Noes—2.

AYES—135

Abid Ali, Shri.
Agrawal, Shri J. P.
Ahmad, Shri Syed.
Ammanna Raja, Shrimati C.
Anis Kidwai, Shrimati.
Anwar, Shri N. M.
Arora, Shri Arjun.
Asthana, Shri L. D.
Bansi Lal, Shri.
Barooah, Shri Lila Dhar
Basu, Shri Santosh Kumar.
Bedavati Buragohain, Shrimati
Bharathi, Shrimati K.
Bhargava, Shri M. P.
Chakradhar, Shri A.
Chatterji, Shri J. C.
Chaturvedi, Shri B. D.
Chauhan, Shri Nawab Singh.
Chavda, Shri K. S.
Dasgupta, Shri T. M.
Dass, Shri Mahabir.
Deb, Shri S. C.
Desai, Shri Suresh J.
Devaki Gopidas, Shrimati.
Dharam Prakash, Dr.
Dikshit, Shri Umashankar
Doogar, Shri R. S.
Dutt, Shri Krishan.
Ghose, Shri Surendra Mohan.
Ghosh, Shri Sudhir.
Gilbert, Shri A. C.
Gopalakrishnan, Shri R.
Gupta, Shri Gurudev.
Gupta, Shri Maithilisharan.
Hathi, Shri Jaisukhlal.
Jairamdas Daulatram, Shri.
Kakati, Shri R. N.
Kalelkar, Kakasaheb.
Karayalar, Shri S. C.
Karmarkar, Shri D. P
Kasliwal, Shri N. C.
Kathju, Shri P. N.
Kaushal, Shri J. N.
Keshvanand, Swami.
Khan, Shri Akbar Ali.
Khan, Shri Pir Mohammed.
Krishna Chandra, Shri.
Krishnamachari, Shri V. T.
Kulkarni, Shri B. T.
Kumbha Ram, Shri.
Kurre, Shri Dayaldas.
Lakshmi N. Menon, Shrimati.
Lingam, Shri N. M.
Lohani, Shri I. T.
Mahesh Saran, Shri.
Mallik, Shri D. C.
Malviya, Shri Ratanlal Kishorilal
Mathen, Shri Joseph.
Maya Devi Chetty, Shrimati.
Mehta, Shri M. M.
Mishra, Shri S.
Mishra, Shri S. N.
Misra, Shri M.
Mitra, Shri P. C.
Mohammad, Chaudhary A.
Mohanty, Shri Dhananjoy.
Nafisul Hasan, Shri.
Nandini Satpathy, Shrimati.
Nanjundaiya, Shri B. C.
Narasimha Rao, Dr. K. L
Neki Ram, Shri.
Pande, Shri C. D.
Pande, Shri T.
Panjhazari, Sardar Raghbir Singh
Parmanand, Dr. Shrimati Seeta.
Patel, Shri Maganbhai S.
Pathak, Shri G. S.
Patil, Shri P. S.
Patil, Shri Sonusing Dhansing.
Pattabiraman, Shri T. S.
Pillai, Shri J. S.
Punnaiah, Shri Kota.
Rajagopalan, Shri G.
Ramaul, Shri Shiva Nand.

Ray, Dr. Nihar Ranjan.
Ray, Shri Ramprasanna.
Reddi, Shri J. C. Nagi.
Reddy, Shri K. V
Reddy, Shri N. Narotham.
Reddy, Shri N. Sri Rama.
Reddy, Shri S. Channa.
Rohatgi, Dr. Jawaharlal.
Sadiq Ali, Shri.
Sahai, Shri Ram.
Saksena, Shri Mohan Lal.
Samuel, Shri M. H.
Santhanam, Shri K.
Sapru, Shri P. N.
Saraogi, Shri Pannalal.
Sarwate, Shri V. V.
Satyacharan, Shri.
Satyanarayana, Shri M.
Savnekar, Shri Baba Saheb.
Seeta Yudhvir, Shrimati.
Shah, Shri K. K.
Shah, Shri M. C.
Sharma, Shri L. Lalit, Madhot
Sharma, Shri Madho Ram.
Shetty, Shri B. P. Basappa.
Shukla, Shri M. P.
Siddhu, Dr. M. M. S.
Singh, Sardar Budh.
Singh, Dr. Gopal.
Singh, Shri Mohan.
Singh. Shri Santokh.
Singh, Shri Vijay.
Sinha, Shri B. K. P.
Sinha, Shri R. B.
Sinha, Shri R. P. N.
Sinha Dinkar, Prof. R. D.
Syed Mahmud, Shri.
Tankha, Pandit S. S. N.
Tapase, Shri G. D.
Tara Chand, Dr.
Tara Ramachandra Sathe, Shrimati.
Tariq, Shri A. M.
Tayyebulla, Maulana M.
Tripathi, Shri H. V.
Uma Nehru, Shrimati.
Varma, Shri B. B.
Venkateswara Rao, Shri N.
Vijaivargiya, Shri Gopikrishna.
Wadia, Prof. A. R.
Warerkar, Shri B. V. (Mama)
Yajyee, Shri Sheel Bhadra

NOES—2.

Ghosh, Shri Niren
Khobaragade, Shri B. D.

The motion was adopted by majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

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

SHRI R. M. HAJARNAVIS: Madam, I move:

"That the Bill be passed"

The question was proposed

SHRI SANTOSH KUMAR BASU: Madam, at this final stage of the consideration of this Bill, I do not desire to take much time of the House. I find that the hon. Home Minister has authorised the hon. Minister of State in the Ministry of Home Affairs to give a categorical assurance that the age of a Judge will be determined at the time of his appointment on such material as are made available and after consultation with the Judge himself who is going to be appointed and that at no later stage will this determination of the age be departed from unless the Judge himself desires to reopen the question. Madam, I consider that this is a complete satisfaction of the point which had been raised by me subject, however, to the extent that it falls short of being embodied in the

[Shri Santosh Kumar Basu.]

Constitution. So far as the merits of the question are concerned, it secures in a complete manner the desired objective of the amendment which I had sponsored in the Select Committee.

4 P.M.

After having said that, I would only refer to another matter which has arisen in the course of the discussion at the instance of my hon. friend, Mr. Bhupesh Gupta. He has drawn attention to a Press report regarding a resolution which is reported to have been passed by the Bar Association of the High Court in Calcutta. I am not going to put up any defence or any explanation of what the Law Minister had said or might not have said. It is not necessary, nor is it desirable that I should take upon myself that burden. The Law Minister may deal with it if an occasion arises if he so chooses. I only desire to utilise this occasion for saying that in the course of nearly half a century of practice in the Calcutta High Court I have come to entertain a very high regard for the Judges in that Court. In my capacity as Chairman of the Centenary Committee of the Bar Association of the High Court in Calcutta in July last it fell to my lot to pay, in my own humble way a tribute to the sense of justice, fairness and impartiality of the Judges of the Calcutta High Court with whom I had the honour of coming into contact in my professional capacity. And if any aspersion even in a remote manner is sought to be cast by anyone upon their integrity or impartiality and their sense of fairness to dispense justice without fear or favour, I would certainly enter my caveat. Our Constitution in article 121 has provided in a most effective manner that no discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or the High Court in the discharge of his duties except upon a motion presented and addressed to the President praying for the removal of the Judge. Now we have taken our oath of allegiance to the Constitution and I am sure the hon. Home Minister and the hon. Minister of State will be the first persons to come forward and reiterate their allegiance to this provision in the Constitution. The honour and dignity of the High Court will be at stake if we depart even for a single moment from the wholesome provisions of the Constitution. I am glad to have had this opportunity of reiterating my greatest possible regard and esteem for the hon. Judges of the Calcutta High Court.

SHRI BHUPESH GUPTA: Madam Deputy Chairman, I also rise to associate myself with the sentiments expressed by Shri Santosh Kumar Basu. Well, he may feel very deeply about it because he is a Member of the Bar Association and he has had intimate first-hand knowledge of how matters are handled at the Calcutta Bar by the Bench and what sort of people we have there as Judges in Calcutta but I come not from the Bar Association; formally I belong to the Calcutta Bar Library which unfortunately is still exclusive for barristers or whatever they are called. Now, I think the Home Minister, if I may say so, should take serious note of the resolution which has been passed by the Bar Association of Calcutta, one of the outstanding Bar institutions in our country, condemning the action of the Law Minister and pointing out that the Law Minister had gone out of his way to violate the Constitution and indulge in a discussion of the conduct of three Judges of the High Court and cast reflections on them. If that is the resolution, well, I think the Home Minister will be doing justice to himself, to his Government and to the country and to the Bench if he would cause a public apology to be issued to the Judges of the Calcutta High Court in the name of the Government. We do not apologise—I say Government—because we have done nothing; on the contrary we are defending the Calcutta High Court in this matter. I say this

thing in order only to emphasize how sometimes even people who should be particularly careful about not discussing the conduct of the Judges in this manner go astray and indulge in a discussion in order to meet certain opposition arguments. I could have understood it if it had come from anyone of us or from Members opposite who are not on the Treasury Benches but imagine this kind of indictment of three Judges of the Calcutta High Court coming from the Law Minister of the land. For the last 12 or 13 years I had been in Parliament but never have I come across such statements on the part of a Law Minister indicting the Bench or the three Judges of the High Court in this manner. I leave it to the Government, to the Prime Minister and to the Home Minister to do what they think best but the least that is expected of them is a categorical public apology to the Calcutta High Court and to the Judges of the High Court.

Madam, I think the entire Bill is conceived in that wrong spirit and that is why Mr. Sen was emboldened to cast reflection in such a cavalier manner because I think this Bill means interference with the independence of the judiciary. Imagine now how their age will be determined. Whatever you may say, the Secretaries will determine the age. The age of the Judges will not be determined by what their own parents say or on the basis of their matriculation certificates, nor by what they say initially but ultimately by the Secretary of the Home Ministry or of some other Ministry. I do not think Shri Lal Bahadur Shastri and others will have enough time to sit with the papers relating to the Judge's age. They will, in the very nature of things, rely on the reports that come from the States and the notings given by their Secretaries. Now, we are placing this question of the age of the Judges in the hands of those in the South Block Secretariat, a thing that should never have been done. I do not see as to why the Government should not accept our suggestion for including it in their warrant of appointment and excluding the President from the picture. Therefore, Madam, we have been opposed to this thing and we registered our opposition in regard to this matter. It is most unfortunate that the judiciary is sought to be tampered with in this manner; it is not tampering with particular cases but this is an approach which is abhorrent when we have the ideas of rule of law and when we seek to enshrine the principle of the independence of judiciary not only on the pages of our Constitution but in the practice of our life. We are opposed to this kind of thing.

And this is one of the constitutional amendments perhaps in recent years which has been opposed by the entire Opposition. Let it be known; let it be recorded that the entire Opposition sitting here opposed it. Numerically we may be small but if you take into account the representation in the country, we are not so small as we look here in number. I wish, Madam Deputy Chairman, that the Constitution had provided not for this half the majority of the total membership and two-thirds majority of Members present and voting but they had provided, at least as far as the Lok Sabha is concerned, that it should be reckoned in terms of the electoral support of the number of votes got. Then we would have seen who is in the majority in this matter. I say that the Government does not carry with it the country's majority in this matter. I make bold to say that because we of the Opposition not only numerically together but collectively represent an overwhelming bigger majority of the electorate than the Congress majority here. And in this matter we also know that many who sit on the Congress benches would like some other arrangements and not this kind of thing. They would not like this interference. There speeches were made by Congress Members which showed that they would not like inter-

[Shri Bhupesh Gupta.]

ference with the judiciary in this manner, nor would they like article 311 to be amended in that way. Therefore, we oppose it.

One thing should be known in this connection. That is why I put the question by way of deciding the procedure of the department. It is clear now from the reply the hon. Minister has given that the latest amendment to article 311 (2) does not retain exactly the old position. There has been a change and this change is to the detriment and prejudice of the Government employees. Let it be clearly understood from the replies which he has given. I would expect the Government employees to be under no illusion. An attempt was made to throw dust in the eyes of Members of Parliament by indulging in legal rigmarole and certain casuistry in constitutional law. But when we put the question: Did they consider that it might stand by the procedure laid down under article 311 (2), the answer was, well, something which was not a categorical 'Yes' at all. On the contrary what he said was something in the nature of a 'No'. Therefore, this is also exposed. I do not wish to say much on this subject.

As far as the other things are concerned, even the Judges' vacations are interfered with under this measure. Let the Judges decide their vacation. Have we got our Home Ministry to do everything? Cannot the Judges be left alone to decide as to how they should arrange their vacation? Are they not a dependable lot in this matter? Why should the Home Ministry come in? Let it look after the Home Ministry itself better than it is looking after today. Let it look after the South Block and the North Block in a much better way than looking after the High Courts. They would be doing a better job of it. Therefore, as you know, essentially and on all fundamentals we are opposed to this measure. The entire Opposition is opposed to this measure. Therefore, the Government should remember the fact that by the strength of their majority undoubtedly, they have passed this measure, but here is a Constitution amending Bill which has evoked unanimous opposition and resistance on the part of the entire Opposition in the country, in this House and the other House. I see Mr. Lal Bahadur Shastri is nodding his head, but I do not know whether in approbation or disapprobation of what I am saying. But I hope that he appreciates what I am saying. Now, that the Bill is going to be passed—we shall vote again against it—by the look of the majority, a threatening majority, I would request him to remember what we have said and the Members of the Opposition over the Constitution amending Bill which he could have easily avoided but did not avoid, so that in future when he formulates the rules and regulations he will bear all this in mind. Again, I would appeal to him to tender an apology to the Calcutta High Court Judges for the action of his colleague, Mr. Asoke Kumar Sen.

श्री ए० बी० वाजपेयी (ग्वालियर) : महोदया, संविधान में संशोधन का यह विधेयक अनावश्यक है, असामयिक है और कुछ दृष्टियों से अनुचित है। संविधान के प्रति जो रवैया शासन का है और जिस प्रकार संविधान में संशोधन किये जा रहे हैं वह संविधान के प्रति लोगों में निष्ठा बढ़ाने का तरीका नहीं है। मैं ऐसा नहीं कहता कि संविधान कोई पूजा की वस्तु है जिसमें कभी किसी प्रकार का संशोधन नहीं किया जा सकता। आवश्यकता पड़ने पर संविधान संशोधित होना चाहिये। लेकिन इसकी आवश्यकता निर्विवाद हो, असंदिग्ध हो, उससे लोगों के मन में शंका उत्पन्न न हो।

जजों के सम्बन्ध में जो संशोधन है उसके बारे में काफी कहा जा चुका है। शासन कोई भी ऐसा काम करे जिससे यह धारणा पैदा हो कि कार्यपालिका न्यायपालिका में हस्तक्षेप करना चाहती है तो यह कोई अच्छी बात नहीं है। मैं अभी तक यह नहीं समझ सका कि सुप्रीम कोर्ट और हाई कोर्ट के जजों की उम्र

में अन्तर क्यों किया जा रहा है । एक जज पैंसठ साल तक काम कर सकता है तो दूसरा पैंसठ साल तक क्यों नहीं कर सकता ? उम्र बढ़ाई गई है तो दोनों के लिए क्यों नही बढाई गई ? सुविधाएं दोनों के लिए ही बढ़ती हैं । लेकिन यहां सर्वोच्च न्यायालय और उच्च न्यायालय के न्यायाधीश के कार्यकाल के संबंध में अन्तर किया जा रहा है, उसके लिए कोई औचित्य नही । मंत्री महोदय उस अन्तर की पुष्टि तर्क देकर, तथ्य देकर नहीं कर सके । कहते है कि अभी सर्वोच्च न्यायालय के जजों की उम्र बढा दी है और बाद मे विचार करके उच्च न्यायालय के जजो की उम्र बढ़ा देंगे । इस का अर्थ यह है कि हमें संविधान में एक और संशोधन के लिए तैयार होना चाहिये ।

सब से अधिक आपत्ति की बात धारा ३११(२) के संशोधन के बारे में है जो कि असामयिक है । केन्द्रीय कर्मचारियो ने इस संकटकाल में शासन के साथ पूर्ण सहयोग किया, गृह मंत्री जी ने उनकी सभाएं बुलाई, उनका समर्थन मांगा, सहयोग मांगा । और अपनी मांग से पीछे हट कर वे महंगाई भत्ते को बढ़ाने के प्रश्न को सामने न लायें । केन्द्रीय कर्मचारियों ने शासन के साथ मिलकर काम करना चाहा किन्तु उसके बदले में उन्हें यह पुरस्कार दिया जा रहा है । कहा जाता है कि भ्रष्टाचार के निवारण के लिए यह आवश्यक है । क्या सारा भ्रष्टाचार क्लास तीन और क्लास चार के कर्मचारी ही करते हैं ? अभी स्पेशल पुलिस इस्टेबलिशमेन्ट की रिपोर्ट आती है जिस में लिखा है कि इतने अपर डिवीजन के क्लर्क निकाल दिये गये हैं और इतने लोवर डिवीजन के क्लर्क निकाल दिये गये हैं । क्या भ्रष्टाचार को रोकने का जो जाल है उस में छोटी मछलियां हर दम फंसती रहती हैं और बड़े बड़े मगरमच्छ उस में से निकल जाते है ? क्या उस जाल को कड़ा करने के लिए संशोधन लाया जा रहा है ? क्लास वन और क्लास सेकन्ड के अफसर यूनियन पब्लिक सर्विस कमिशन के सामने अपना मामला रख सकते हैं और उस पर विचार हो सकता है लेकिन क्लास तीन और क्लास चार के कर्मचारियों के सामने अपील का कोई रास्ता नहीं है ।

SHRI K. SANTHANAM: They have got.

श्री ए० बी० वाजपेयी : संविधान दो बार अपील करने का अवसर देता है ।

SHRI K. SANTHANAM: No appeal. Stage of enquiry.

श्री ए० बी० वाजपेयी : जांच के दो स्तर हैं जिन में यदि चाहें अपने मामले को फिर से रख सकते है, यह कह सकते है कि उन्हें यह सजा मिलनी चाहिये, यह सजा गलत ढंग से दी जा रही है, उसे मैं अपील कहता हूं और आप उसे अपील नहीं कहते हैं, दोनों का भाव एक है लेकिन शब्दों में अन्तर है ।

SHRI K. SANTHANAM: May I point to my friend that once a man is punished under clause 4 and clause 3, he has got a formal right of appeal to the higher authorities? That is the point.

SHRI A. B. VAJPAYEE: If the right is there, then why is this amendment? You want to take out something from the right that has been given to the Central Government employees.

SHRI K. SANTHANAM: To reduce the delay.

श्री ए० बी० वाजपेयी : देखिये, मेरा निवेदन है कि आप कर्मचारियों को नौकरी से निकालने के बारे में अगर देर लगा सकते हैं तो वह इतना गुनाह नहीं है, कर्मचारी को नौकरी से निकाला जाय यह सब से बड़ी सजा है और संसद् भवन में बैठ कर नौकरी से निकाले गये कर्मचारियों की स्थिति को हम ठीक तरह से अनुभव नही कर सकते हैं । इसका अर्थ यह है कि भ्रष्टाचार करने वाले कर्मचारियों को संरक्षण दिया जाय । लेकिन कोई ऐसा कर्मचारी भी न निकाल दिया जाय

[श्री ए० बी० वाजपेयी]

जो निर्दोष हो और जिसे अपना दोष प्रमाणित करने का पूरा मौका न दिया जाय। यह न्याय का सिद्धान्त है कि अगर १० लोग दोषी छूट जाय तो आपत्ति की बात नही, मगर एक निर्दोष दडित नही होना चाहिये। लकिन भ्रष्टाचार केवल कर्मचारियो मे नही है। एक कर्मचारी के खिलाफ जाच हो तो पहला काम यह होता है कि कर्मचारी को मुअतल कर दिया जाता है। मगर हमारे एक कैबिनेट मिनिस्टर की जाच हो रही है, वह इस्तीफा देने के लिए तैयार है मगर उनका इस्तीफा लिया नही जाता। दो माप दण्ड है--कर्मचारियो के लिए एक और मत्रियो के लिए एक। दो तराज है भ्रष्टाचार को तोलने के, दो गज है आचरण की पवित्रता को निर्धारित करने के। यह कर्मचारियो मे भ्रष्टाचार के खिलाफ काम करने की भावना को जगाने का तरीका नही है। मेरा निवेदन है कि केन्द्रीय कर्मचारियो से सम्बन्धित सशोधन लाने से पहले उनके सगठनो से विचार करना चाहिये था कि वे भ्रष्टाचार के निवारण मे योग देना चाहेगे? श्री सतानम ने स्वीकार किया है--यद्यपि मै उनके आकडो से सहमत नही हू--९५ फीसदी कर्मचारी ऐसे है जो भ्रष्टाचार से अलग है--वह कर्मचारी भ्रष्टाचार करना चाहे, भ्रष्टाचार को सरक्षण देना चाहे यह समझने का कोई कारण नही है--यदि ५ फीसदी ऐसे है जो भ्रष्टाचार करते है तो उनके लिये भी ९५ फीसदी के अधिकारो का हनन किया जा रहा है। केन्द्रीय कर्मचारियो मे सशोधन की प्रतिक्रिया अच्छी नही है। कोई ऐसा रास्ता निकालना चाहिये था कि हम भ्रष्टाचार के खिलाफ कडा कदम भी उठा सकते और केन्द्रीय कर्मचारियो को भी यह अनुभव न होना कि जो बात अग्रेजी-काल से उनके अधिकार-क्षेत्र मे थी उसे कम किया जा रहा है, अब उसे छीना जा रहा है। सकट-काल ऐसे विधेयक को लाने का समय नही है, मगर यह शासन कब क्या करना चाहिये इसका विवेक अभी तक रख सका है ऐसा विश्वास के साथ नही कहा जा सकता और यह मत्रालय के राज्य-मत्री महोदय ने एक प्रश्न के उत्तर मे जो कुछ कहा है उससे इस आशका की पुष्टि होती है कि सविधान मे सशोधन स्वीकृत होते ही केन्द्रीय कर्मचारी और एक नये सकट के शिकार बन जायेगे, उन्हे अफसरो की दया पर छोड दिया जायगा और उन्हे यह शिकायत रहेगी कि हमारे सहयोग के हाथ को शासन ने स्वीकार नही किया तथा ससद मे अपने प्रचड बहुमत का लाभ उठा कर भ्रष्टाचार के निराकरण के नाम पर सविधान मे ऐसा सशोधन किया है जो उनको दिये गये अधिकारो को कम करता है यह भावना केन्द्रीय कर्मचारियो मे पैदा हो, यह शासन के लिये ठीक नही है, देश के लिये भी ठीक नही है मगर केन्द्रीय शासन अगर तुला हुआ है तो वह अपने बहुमत से इसे पास करा सकता है, हमारी आवाज तो इसके विरोध मे उठेगी ही।

SHRI ROHIT M DAVE (Gujarat) Madam, it is unfortunate that in spite of the unanimous opposition of all the Opposition parties in the House and also the advice of those supporting the ruling party, people who are competent to express their opinion and give advice to the Government in this matter, the Government has thought it fit to press on with this amendment and put it on the Statute Book We are opposing this Bill because of our apprehension that the independent judiciary in the country is to be affected and is to come under at least the indirect pressure of the executive In case all these various provisions are placed on the Statute Book, it is possible that the executive might exercise self-restraint, might always consult the Chief Justice of India in all matters concerning the judiciary and might accept his advice as a matter of course But even if this restraint is exercised by the executive, as has been expressed that it will exercise, the fact remains that a new equation between the executive and the

judiciary is being attempted and that equation is not desirable from the point of view of maintaining and strengthening the democratic set-up in the country. The suspicion of those who are coming to the view that there is a certain amount of impatience on the part of the executive about the role which the independent judiciary is playing in our country at the present moment is strengthened by the unfortunate remark of the hon. Law Minister regarding the conduct of the three Judges of the Calcutta High Court. It may be just inadvertence, it may be just a slip of the tongue. But the entire approach seems to be in that direction of getting more and more impatient with the role of the judiciary and even the status of the judiciary which are prescribed in the Constitution. It is because of these apprehensions that we are examining, rather critically, any attempt made by the Government—though right in the Constitutional law of the land—to use the provision, if so desired, as an indirect pressure on the judiciary. Therfore, now that this Bill is likely to be enacted in a short time, it is desirable that the executive should revise its opinion regarding the role of the judiciary. And whatever may be the philosophy that might be actuating our judiciary to take and give decisions from time to time, we would be extremely careful to see that we do not impose the will of the executive on that of the judiciary in one part or another.

The second part of this Bill is also equally undesirable and the argument that has been put forward to the effect that all the rights of the civil servants are safeguarded even under the new provision seems to be unconvincing. There was a definite gap contemplated in the Constitution between the fixing of guilt and the awarding of punishment and this gap and the procedure relating to this gap are now being removed and abridged. It is here that a certain amount of safeguard was provided to that clause whereby employees in our country who had been denied a certain normal access to the judiciary were getting their grievances redressed. Because of this fact, the compensatory provision which was written after much consideration in the Constitution acted as a special safeguard and now that safeguard is sought to be removed, there is an apprehension in the minds not only of the civil servants in the country but also in the minds of those who are interested in the trade union activities and their relationship, that some justice is being denied to these civil servants. In the face of the unanimous voice of those who are interested in trade union activities, it would have been much better if more thought had been given to this question of the safeguard provided for the civil servants in our Constitution and the hasty amendment had not been brought forward.

Madam, at this stage, all that we can say is that the Bill is unfortunate and we will have to oppose it.

THE DEPUTY CHAIRMAN: The Minister.

SHRI DAHYABHAI V. PATEL (Gujarat): Madam, please allow me one minute.

It was a sad day for this country . . .

SEVERAL HON. MEMBERS: No, no.

SHRI DAHYABHAI V. PATEL: . . . when the majority party started tinkering with the sacred Constitution that was framed in this country with the goodwill of all parties, by a national government formed by all parties, not only the party that worked for the independence of this country. Although large-heartedness was shown by the majority party, under the guidance of the Father of the Nation who was alive at that time, in taking everybody into confidence and then framing a Constitution, which would remain alive, which would safeguard human liberty and human dig-

[Shri Dahyabhai V. Patel.]

nity for all time, it was a sad day when the majority party started tinkering with it and began making amendments, one after another, then, and since then, and this is but one such more amendment added to it. I will not repeat the argument that my friends of the Opposition have advanced here, but the fact remains that every single Member of the Opposition is against this measure, and I am sure many in the Congress Party would like to act like us . .

HON. MEMBERS: No, no.

SHRI DAHYABHAI V. PATEL: . . . but for the whip. Loud voices do not alter facts. There are some people at least who have yet a conscience and are willing to listen to us. We all know it. Madam, I do not know what prompted Government to do this. Was it because the House, not formally but informally, at least all Opposition Parties, opposed the contemplated amendment or opposed the feeler that was sent out, of combining the office of the Attorney-General and the office of the Law Minister? Is it in return for that we are getting this measure: I am not yet able to think of any other reason. But how can the confidence of the country be maintained if the Constitution is to be tinkered with like this at every stage? The assurance that the advice of the judiciary will be taken is not convincing when Government does not take the advice of the judiciary in matters that do not suit them. There was a certain matter concerning a Minister and certain money transactions, which has been referred to in this House again and again, and on which the Prime Minister said that he would take the advice of the judiciary. Has the advice of the judiciary been taken? If so, what is the advice? Persistent rumours are that adverse opinion of the judiciary has been received, but it is concealed from this House. So, how can this House have confidence in assurances of this type? How can the impartiality of the judiciary be maintained when such types of subtle pressures are worked from all sides? It is for this reason that we all oppose this measure.

THE MINISTER OF HOME AFFAIRS (SHRI LAL BAHADUR): Madam, I did not want to intervene in the debate, but as Shri Bhupesh Gupta and also, in a way, Shri Basu, have mentioned something about the independence of the judiciary and what the attitude of the executive should be towards them, I thought I should say a few words I need not repeat that judiciary is an important and vital part of democracy and that its independence and integrity has to be fully maintained. It is the judiciary which evokes the general confidence of the people; it is the judiciary which can express its independent views on the action of the executive or on the actions of the Government, and if there will be no agency, no independent agency in the country, which can freely criticise the actions of the Government, it will undoubtedly reduce the confidence of the people in democracy and in the democratic form of Government. We, therefore, consider it absolutely essential that there should be an independent judiciary if democracy has really to succeed. We have, during the last 14-15 years, by our actions, completely shown that we have full faith in our High Courts and the Supreme Court, and I can assure the House that we consider it as an important objective of our Constitution and of all our actions, and we do hope that no doubts or suspicions will ever arise in that regard. As my colleague has said, I have myself suggested it and given a categorical assurance to this House that insofar as the age of the Judges is concerned, the executive will have almost a secondary role to play. The question now really arises as to what will happen in future. And in regard to future we have decided that it will be for the person who would be appointed as Judge to give his age before he is actually appointed, and once that age has been accepted, if

there is any doubt, it wil be cleared up with the person concerned himself, and once the age given by that person is recorded, it would be final for the Government unless he himself raises it at a later date. Then, of course, the Government, as proposed in this Bill, will decide finally in the matter.

In regard to the age of the Supreme Court Judges, my colleague and I, we both, consulted among ourselves, and as he has said, we do hope that no eventuality will arise when a legislation will have to be made in accordance with the provision made in this Bill. Unless it becomes absolutely essential, we do not propose to make any law on the subject, and I have no doubt that there will never arise any dispute on the question of age between the Government, and the Judge who will be appointed to the Supreme Court. In all these matters it has also to be remembered that it is the Chief Justice of India who will be advising, in each and every case, to the Government, and the opinion of the Chief Justice of India will be more or less or generally always acceptable to Government. It is not a new matter; in the appointment of all the Judges of the High Court there has been no exception, except for one, in which a decision was taken against the wishes of the Chief Justice of India. Even in the matter of the age of the various Judges, in which some dispute had arisen, I had made it a rule to refer each and every case to the Chief Justice of India, and only very recently, in three or four cases, the Chief Justice left it to me to decide the matter, but I again requested him, sent him back the papers suggesting that I would only like to go by his advice and I should be grateful if he would look into those cases. He was good enough to do that, and I have hundred per cent. agreed with his views. Therefore, I would like again to mention to this House and to beseech the House to completely dispel the idea that there will be any kind of conflict or dispute between the judiciary and the executive, and if there is, it would be a bad day for us, and I have no doubt that both the judiciary and the executive, in all important matters, except of course judicial pronouncements, etc. which is the exclusive concern of the judiciary, in all administrative matters, we will pull together and will work in unison and in co-operation.

As regards article 311, Madam, I am extremely sorry it has created some confusion. Of course, it is a well known fact that delays take place in the disposal of cases, but I might make it clear to Mr. Vajpayee—he is somewhat mistaken—that this is applicable to all classes of servants, whether Class I, Class II, Class III or Class IV. It is not meant only for Class III and Class IV services, and I remember one or two important cases of I.C.S. officers, who prolonged the consideration of their representations because the provision of issuing of two notices was there. So there was the general feeling, that we should not have the second notice, the provision of the second notice being there. On the one hand Vajpayeeji always complains against the Government that there are delays in the disposal of cases, but when it comes to taking some action to remove it, Vajpayeeji criticises the Government and says that, well something is being done against the interest of the workers or the employees.

Anyhow, Madam, we had almost stopped thinking over it. But the last Pay Commission considered this matter and recommended that this provision of giving the second notice should be given up and should be dropped. When the Pay Commission made that recommendation, and as the House is aware, for some time we did differ on certain matters with the recommendations of the Pay Commission, but later on the Cabinet decided that we would accept each and every recommendation of the Pay Commission, and we did so.

[Shri Lal Bahadur.]

Therefore, we decided that in this case also we should accept the recommendations of the Pay Commission, and we came forward with the amendment of the Constitution with the help of this motion, Madam, which is before the House.

However, when we came up with the Bill there were lot of representations, especially representations from employees' unions and associations. They also approached the Select Committee. The Select Committee considered over the matter and decided to make an important amendment. I shall not go into that because it will take the time of the House. The Select Committee agreed and the Government also accepted.

Then remained the second part of it in which the second notice has to be issued. And may I inform Mr. Bhupesh Gupta as well as Shri Vajpayeeji that it was the Members of Parliament belonging to the party of Shri Bhupesh Gupta who proposed this amendment? I mean, actually the language was, more or less, drafted by the Law Minister in accordance with the wishes expressed by those Members. And the other Members of the Opposition Parties also said that it was all right. I do agree that it does not make much difference. Our purpose has not been served We accepted that amendment and the Law Minister actually drafted the amendment sitting in the Lok Sabha, and it has gone through. I myself do not feel wholly satisfied with it, yet it is now there, and I have absolutely no doubt that practically the same position, as it was before, continues. It is more or less *status quo*. To create any kind of feeling amongst the employees or the workers that some change has been made which will go against the interest of the workers would be wholly unjustified. And, therefore, I would beg of Shri Bhupesh Gupta and Shri Vajpayeeji and Mr. Dave to consider this matter carefully. They should not run away with certain ideas which they prepossess in their minds or they have perhaps somehow got it here. In regard to the employees the position is that if we can avoid delay we will try to avoid it. The only amendment which has been made is when the notice is given. Then they will have to give their explanation on the basis of the evidence already adduced. They cannot furnish fresh evidence, and as far as the practical question goes, even before more or less the explanations were given on the evidence furnished already by the employees. So even in that, from a practical point of view, no difference has been made. Purely from a technical and legal point this is the only difference which the hon Members will find in that clause of this Bill. I would, therefore, suggest that no hurried decision should be taken in this regard, and as has been proposed, it should be accepted.

Madam, I need not go into the general matters which were raised by Shri Vajpayeeji. I am surprised that so much should have been said about corruption when it is not very relevant. It is not a question of corruption. This matter really pertains to delay. It is true that delays in various fields lead to corruption. But here it is not exactly corruption which is in our minds. We came up with this proposal with a view to removing the delay so that it causes less inconvenience to the employees as well as to the Government. It will be much better that the case is not left hanging and it is decided one way or the other. I do not think that in what the Prime Minister has done recently in regard to a case concerning his own colleague, anything further could be done. An absolutely fair decision has been taken by the Prime Minister, a very bold, courageous action, and I have no doubt that the House fully endorse what the Prime Minister has done.

THE DEPUTY CHAIRMAN: The question is:

شری پیارے لال کریل دہ طالب ؎ :

میں ایک بات کہنا چاہتا ہوں - یہ بل سنودھان کے خلاف ہے اور اس سے سنودھان کا النگھن ہوتا ہے - سنودھان میں جو بنیادی حق ملتا کو اور سیول سرونٹس کو ملے ہوئے ہیں ان پر اس بل کے ذریعہ کٹھاراگھات ہوتا ہے - اس لئے میں اس ہاؤس سے واک آوٹ کرتا ہوں -

†[**श्री प्यारेलाल कुरील 'तालिब'** : मैं एक बात कहना चाहता हूं । यह बिल संविधान के खिलाफ है और इस से संविधान का उल्लघन होता है । संविधान में जो बुनियादी हक जनता को और सिविल सर्वेंट्स को मिले हुए हैं, उन पर इस बिल के जरिये कुठाराघात होता है । इस लिये मैं इस हाउस से वाक आउट करता हूं ।

THE DEPUTY CHAIRMAN: Please sit down.

[*The hon. Member then left the Chamber.*]

THE DEPUTY CHAIRMAN: The question is:

"That the Bill be passed."

The House divided

THE DEPUTY CHAIRMAN: Ayes 136; Noes—20.

AYES — 136

Abid Ali, Shri
Agrawal, Shri J. P.
Ahmad, Shri Syed
Ammanna Raja, Shrimati C.
Anis Kidwai, Shrimati.
Anwar, Shri N. M.
Arora, Shri Arjun.
Asthana, Shri L. D.
Bansi Lal, Shri.
Barooah, Shri Lila Dhar.
Basu, Shri Santosh Kumar.
Bedavati Buragohain, Shrimati.
Bharathi, Shrimati K.
Bhargava, Shri M. P.
Chakradhar, Shri A.
Chatterji, Shri J. C.
Chaturvedi, Shri B. D.
Chauhan, Shri Nawab Singh.
Chavda, Shri K. S.
Dasgupta, Shri T. M.
Dass, Shri Mahabir.
Deb, Shri S. C.
Desai, Shri Suresh J.
Devaki Gopidas, Shrimati.
Dikshit, Shri Umashankar.
Doogar, Shri R. S.
Dutt, Shri Krishan.
Ghose, Shri Surendra Mohan.
Ghosh, Shri Sudhir.
Gilbert, Shri A. C.
Gopalakrishnan, Shri R.
Gupta, Shri Gurudev.
Gupta, Shri Maithilisharan.
Hathi, Shri Jaisukhlal
Jairamdas Daulatram, Shri.
Kakati, Shri R. N.
Kalelkar, Kakasaheb.
Karayalar, Shri S. C.
Karmarkar, Shri D. P.
Kasliwal, Shri N. C.
Kathju, Shri P. N.
Kaushal, Shri J. N.
Keshvanand, Swami.
Khan, Shri Akbar Ali.
Khan, Shri Pir Mohammed.
Krishna Chandra, Shri.
Krishnamachari, Shri V. T.
Kulkarni, Shri B. T.
Kumbha Ram, Shri.
Kurre, Shri Dayaldas.
Lakshmi N. Menon, Shrimati.
Lingam, Shri N. M.
Lohani, Shri I. T.
Mahesh Saran, Shri
Mallik, Shri D. C.
Malviya, Shri Ratanlal Kishorilal.
Mathen, Shri Joseph.
Maya Devi Chettry, Shrimati.
Mehta, Shri M. M.
Mishra, Shri S.
Mishra, Shri S. N.

‡[ ] Hindi translation.

Misra, Shri M.
Mitra, Shri P. C.
Mohammad, Chaudhary A.
Mohanty, Shri Dhananjoy.
Muhammad Ishaque, Shri.
Nafisul Hasan, Shri.
Nandini Satpathy, Shrimati.
Nanjundaiya, Shri B. C.
Narasimha Rao, Dr. K. L.
Neki Ram, Shri.
Pande, Shri C. D.
Pande, Shri T.
Panjhazari, Sardar Raghbir Singh.
Parmanand. Dr. Shrimati Seeta.
Patel, Shri Maganbhai S.
Pathak, Shri G. S.
Patil, Shri P. S.
Patil, Shri Sonusing Dhansing.
Pattabiraman, Shri T. S.
Pillai, Shri J. S.
Punnaiah, Shri Kota.
Rajagopalan, Shri G.
Ramaul, Shri Shiva Nand.
Ray, Dr. Nihar Ranjan.
Ray, Shri Ramprasanna.
Reddi, Shri J. C. Nagi.
Reddy, Shri K. V.
Reddy, Shri N. Narotham.
Reddy, Shri N. Sri Rama.
Reddy, Shri S. Channa.
Rohatgi, Dr. Jawaharlal.
Sadiq Ali, Shri.
Sahai, Shri Ram.
Saksena, Shri Mohan Lal.
Samuel, Shri M. H.
Santhanam, Shri K.
Sapru, Shri P. N.
Saraogi, Shri Pannalal.
Sarwate, Shri V. V.
Satyacharan, Shri
Satyanarayana, Shri M.
Savnekar, Shri Baba Saheb.
Seeta Yudhvir, Shrimati.
Shah, Shri K. K.
Shah, Shri M. C.
Sharma, Shri L. Lalit Madhob.
Sharma, Shri Madho Ram
Shetty, Shri B. P. Basappa.
Shukla, Shri M. P.
Siddhu, Dr. M. M. S.
Singh, Sardar Budh
Singh, Dr. Gopal.
Singh, Shri Mohan.
Singh, Shri Santokh.
Singh, Shri Vijay.
Sinha, Shri B. K. P.
Sinha, Shri R. B.
Sinha, Shri R P. N.
Sinha Dinkar, Prof. R. D.
Syed Mahmud, Shri.
Tankha, Pandit S. S. N.
Tapase, Shri G. D.
Tara Chand, Dr.
Tara Ramachandra Sathe, Shrimati
Tariq, Shri A. M.
Tayyebulla, Maulana M.
Thanglura, Shri A.
Tripathi, Shri H. V.
Uma Nehru, Shrimati.
Varma, Shri B. B.
Venkateswara Rao, Shri N.
Vijaivargiya, Shri Gopikrishna.
Wadia, Prof. A. R.
Warerkar, Shri B. V. (Mama)
Yajee, Shri Sheel Bhadra.

NOES — 20

Annadurai, Shri C. N
Chordia, Shri V. M.
Dave, Shri Rohit M.
Gaikwad, Shri B. K.
Ghosh, Shri Niren.
Gupta, Shri Bhupesh.
Khandekar, Shri R. S.

Khobaragade, Shri B. D.
Lal, Prof. M. B.
Mani, Shri A. D.
Misra, Shri Lokanath.
Narasimham, Shri K. L.
Patel, Shri Dahyabhai V.
Reddy, Shri K. V. Raghunatha.
Singh, Shri J. K. P. Narayan.
Singh, Shri Kamta.
Sinha, Shri Rajendra Pratap.
Solomon, Shri P. A.
Subba Rao, Dr. A.
Vajpayee, Shri A. B.

The motion was adopted by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

THE CONSTITUTION (SIXTEENTH AMENDMENT) BILL, 1963

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI R. M. HAJARNAVIS): Madam, I beg to move:

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

Madam, written in golden letters are the rights of freedom guaranteed to the citizens of this country and the first right is under article 19(1) that all citizens shall have the right to freedom of speech and expression. This right is guaranteed and protected by the State which came into being on the 26th of January, 1950 and at the head of the document which recorded the compact of the people of India are these words: "WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC". Now, what constitutes the base of this national entity which came into being on 26th January, 1950 is the solemn resolve which is contained in the words that the people of India constitute a sovereign democratic republic. That is the fount-head of the power of all the institutions which function in this country. All those, therefore, who enjoy the rights which this State grants and protects, must, in return, pledge themselves to respect the sovereignty and the democracy and the republican character of the State. It therefore follows that the right of freedom of speech and expression is conditioned upon the acceptance of democracy, sovereignty and integrity of this country. Whoever casts doubts upon the sovereignty of this country, whoever is prepared to surrender or barter the integrity of this country is out of the compact. Therefore, under no pretext whatsoever, any citizen of this country is entitled to contend that the right guaranteed to him under article 19(1) of freedom of speech and expression includes right to cast any kind of doubt upon the sovereignty of this country or to demand that the integrity of this country should be broken. Now, therefore, even without an amendment to clause (2) of article 19, I, speaking for myself, would have had no doubt that it would be regarded as a gross abuse of the power or the right of freedom and expression that a person would bring into doubt, bring into controversy the sovereignty of this country and also would demand a division of this country. I know there is article 368 in the Constitution which permits the structure to be changed by the will of the people but that does not permit sovereignty to be questioned, nor does it permit the integrity to be divided but in order that there should be no doubt in any one's mind, it is now being proposed that clause (2) should be amended so as to include that the right of freedom of speech and expression does not extend to questioning the integrity and sovereignty of India and Parlia-