such manner as the Chairman may direct, one member from among themselves to be a member of the Advisory Council of the Delhi Development Authority."

The question was put and the motion was adopted.

MR. CHAIRMAN: I have to inform Members that the following dates have been fixed for receiving nominations and for holding election, if necessary, to the Advisory Council of the Delhi Development Authority:—

1. Number of Members to be elected.	One.
2. Last date and time for receiving nominations.	14th April, 1960 (up to 3 P.M.)
3. Last date and time for withdrawal of candidature.	16th April, 1960 (up to 3 P.M.)
4. Date and time of election.	18th April, 1960 (between 3 P.M. and 5 P.M.)
5. Place of election.	Room No. 63, First Floor, Parliament House, New Delhi
6. Method of election.	Proportional representation by means of the single transferable vote.

THE SUPREME COURT (NUMBER OF JUDGES) AMENDMENT BILL, 1960—*continued*

SHRI P. N. SAPRU (Uttar Pradesh): Mr. Chairman, when I came to this House on Thursday, I did not think that the Bill which Shri Datar had introduced was a controversial Bill. I looked upon it as a very innocent measure, and he made, as is usual with him, a very moderate and cogent argument in his speech in support of the increase recommended in the number of the Judges of the Supreme Court. I was, however, surprised, I was astounded, I was amazed, when I found that certain legal luminaries held forth on the undesirability of allowing article 136 of the Constitution to remain as it was. Shri Kaushal—I am sorry he is not here—took my breath away when he said that we did not need any appeals to the highest court of justice. All that you need is one court of appeal—it may be in a district or it may be in a taluk or it may be in a village or it may be in a *tehsil*. And he attempted to define what thinkers from the days of Plato and Aristotle have not been able to define. He came out with this most wonderful definition of justice—"Well justice is that which is administered by the highest court"—and the highest court in his scheme of things or in his scheme of government will be the *tehsildar* in a *tehsil* or the District Magistrate in a district or the Munsiff or the Civil Judge in a district. There will be, Sir, under his scheme no uniformity of laws, no assurance that the laws shall be administered with impartiality. There will be, under his scheme, no guarantees of what we call equality before the law or the equal protection of the laws. There will be no consistency in the administration of justice. I should be sorry, Mr. Chairman, if such a development were ever to take place in this country for, if it did, this country would not be a place worth living in. We who call ourselves believers in socialism and who work for a democratic society should understand what the judicial process is, what it means in the life of a community. I venture to think that the power which article 136 of the Constitution vests in the Supreme Court is a very important power; it is a power which enables the highest court of justice to ensure that the citizen goes without injustice. Mr. Chairman, Mr. Kaushal argued that the power is of a very restricted character, is not really an appellate power; it is a power in the discretion of the court. Well, he does not know—he ought to have known as a lawyer of standing—that when the word 'discretion' is used, no arbitrariness is implied. The discretion

[Shri P. N. Sapru.]

vested in the Supreme Court is a judicial discretion and a court of superior record must have the discretion to interfere where justice demands that it should interfere. This is the power which was vested in the old Judicial Committee of the Privy Council; the Supreme Court has taken the place of the Judicial Committee of the Privy Council; it is a power which makes it possible for us to achieve in our judicial hierarchy something like equality before the law, because the meanest subject has a right, provided he has a substantial question of law affecting the community generally, to go to the Supreme Court and ask for redress from that court.

Mr. Chairman, Mr. Kaushal made another astounding statement. He thought that the powers under article 226 or article 227 were of an illusory character and that they should be done away with. Now, it is true that under article 226 the High Court has limited power in the sense that it interferes only where there has been an excess of jurisdiction vested in a court by law or where a court has failed to exercise a jurisdiction vested in it by law or has acted contrary to the principles of natural justice or there is an error apparent on the face of the record. But those are not illusory powers. They are vast powers. They enable the Court to exercise a supervisory jurisdiction over subordinate courts and under article 227 you have that supervisory power in a more direct manner, and I venture to submit that if article 226 or article 227 were to disappear from the Constitution, inefficiency in our courts would increase.

SHRI AKBAR ALI KHAN (Andhra Pradesh): But nobody has suggested that.

SHRI P. N. SAPRU: Well, he almost suggested it. And if they were to disappear from the Constitution, I do not know how the integrity of the judges will be maintained and I should like this House to know that the High Courts perform a function which is not generally known. Each High Court gets statements of Sessions cases of every case which is tried before a Court of Sessions or which is tried before a magistarte; a record of each such case is sent to the High Court, and these cases are distributed among the judges, and they go through these records to see that the concerned courts have functioned properly, that no injustice has been done, that there is nothing in the judgment to suspect the impartiality or the integrity of the judge. This power is a very valuable safeguard; it keeps our magistrates and our judges under control. Now if you were to do away with this power and decentralise justice to the extent suggested by Mr. Kaushal, the administration of justice would come farcical in this country, would become tyrannical in this country. I suggest therefore that suggestions of this nature should not be made.

Sir, I was glad to find that Dr. Gour took a more sober line, and though as a labour leader he was not satisfied with—what he called—the justice of some of the judgments of the Supreme Court, he did not challenge the authority of the Supreme Court to interfere in these cases—he did not want article 136 to be eliminated. He just pointed out that the Supreme Court had not been consistent in its interpretation of its powers under article 136. Well, the old Privy Council never looked upon itself as a court of criminal appeal; it was really rare for the Privy Council to interfere in criminal cases. They laid down that they would only interfere where there had been a failure of natural justice—some grave irregularity which had affected the decision of a case—and they consistently maintained this principle. The Supreme Court has been more liberal, as was pointed out by the Law Commission in interpreting its powers under article 136, particularly in crimi-

nal matters. So far as labour matters are concerned, the trouble is that labour matters can go now direct to the Supreme Court under article 136; we have eliminated the Labour Appellate Court and there are no benches of High Courts to sit in appeal over the decisions of the Labour Tribunals which have been constituted. Naturally therefore interference by the Supreme Court has been greater. I think the situation regarding these labour matters requires reconsideration. Either we should have some special benches of High Courts to deal with these labour matters, or we should revive the old Labour Appellate Tribunal. I can understand the necessity for such a tribunal, and I would like to say that I am myself of the opinion that some such step should be taken at an early date. Here I would like to say that it is of fundamental importance that the highest court of appeal should not be in arrears—nothing discredits the administration of justice more than arrears; many of the things that are said about our courts are due to the fact that they are in arrears though, for the arrears, our courts are not responsible. I think only judges work very hard and a judge's work is of a personal character; he can take no assistance—such as a Minister can—from his secretariat, or from his assistants. Even for the commas and semi-colons in his judgment or in his order he is personally responsible. The way he has to exercise his mind over a case is an exacting work, work which involves heavy mental strain. Therefore, I do not think, Sir, that you can reasonably blame your Judges for these arrears.

It may be, Sir, that the efficiency of our highest courts is not as high as the efficiency, shall I say, of the highest courts in Britain or the United States. But then our general national efficiency is not as high as the national efficiency of the United States or Britain or of the Union of Soviet Socialist Republics.

SHRI BHUPESH GUPTA (West Bengal): In Britain the Prime Minister does not send a telephone call to a Governor to interfere with the judgments.

SHRI P. N. SAPRU: We are now digressing. Let us talk over this matter in the Lobby.

SHRI B. K. P. SINHA (Bihar): May I inform the hon. Member that there are no Governors in Britain? The Prime Minister sends telephone calls to Governors General.

SHRI BHUPESH GUPTA: As far as I know, there is no Governor General in Britain.

MR. CHAIRMAN: He is talking of Governor Generals of Canada and Australia.

SHRI P. N. SAPRU: I should like this Parliament to ensure that the standards of the Supreme Court are maintained and indeed enhanced.

Our Supreme Court was a first class court. We had some Judges in our first Supreme Court who might have well been regarded as first class Judges had they been sitting in the Court of Appeal or the House of Lords or the Judicial Committee of the Privy Council or the Supreme Court of the United States.

[MR. DEPUTY CHAIRMAN in the Chair]

That was the standard. It should be the endeavour of the Government and of the Chief Justice of India to ensure that that standard is maintained. I would, therefore, like to say that we should in selecting our Judges not recruit only the retired or about-to-retire High Court Judges for the Supreme Court Bench, but we should recruit men at a younger age to the Supreme Court, and we should also recruit men direct from the Bar to the Supreme Court.

[Shri P. N. Sapru.]

The other day I found that an appointment had been made in the United States of a Judge to the Supreme Court who was only 43. They do not look upon 43 as a very young age. They think that by and large at 43 a man is mature enough to be a Supreme Court Judge.

SHRI BHUPESH GUPTA: But you can have Law Ministers here of that age.

SHRI P. N. SAPRU: That, I think, is a different matter. If you look round, I venture to think, you will find between the age group of 45 to 50 or 50 to 55 first class men at the Bar, men who will not only make good Judges, but who will also be able to leave a permanent impression upon our case law.

I find, Sir, that references are made every day in our courts to the opinions, as we call them, of the Supreme Court of the United States or the judgments of the House of Lords or of the Court of Appeal or even of the High Court of London. But I do not find our cases cited in United States courts or Canadian courts or Australian courts or British courts. Surely there is a reason for that. We must ourselves find out whether it is due to the fact that we come of a different race or colour or whether that is due to the fact that the originality, the research, the intellectual or the mental approach, which marks the judgments of these courts, are often lacking in the judgments of our own courts.

You may be a first class District Judge or you may be a first class lawyer and yet you may not have the juristic skill or the juristic knowledge to be a good Supreme Court Judge. You want in a Supreme Court Judge qualities different from what you want in a High Court Judge or in a District Judge. You should recruit, therefore, a superior class of persons for your Supreme Court.

SHRI P. D. HIMATSINGKA (West Bengal): Where will you get them from?

SHRI P. N. SAPRU: You can get them if you look round. I can tell you, not here in this House, but in the Lobby.

SHRI BHUPESH GUPTA: Young people?

SHRI P. N. SAPRU: Yes, young people, people who know the philosophy of this country, people with a modern outlook on law, people who understand the judicial process and can deliver judgments of value. You have put a premium on seniority. You have got some standardised methods of selection. Well, I think you have to think in these matters on new lines if you want this land to be definitely on the legal map of the world. I think we in this country have got high judicial traditions.

SHRI BHUPESH GUPTA: May I draw your attention to one point? It seems that according to this Government only the presidentship of the Congress and the A.I.C.C. is meant for young people.

SHRI N. M. LINGAM (Madras): What has the Government got to do with the Congress Organisation?

SHRI AKBAR ALI KHAN: So far as my friend is concerned, his Party and the Government are the same. So he thinks in the same way.

SHRI BHUPESH GUPTA: I was just pointing out where the young blood flows.

SHRI FARIDUL HAQ ANSARI (Uttar Pradesh): How are we concerned with the Congress here?

SHRI P. N. SAPRU: So far as the Government is concerned, it tries to do its best in recruiting Judges for the Supreme Court or the High Courts. I had occasion, when I was dealing with the Law Commission's report, to point out that all the blame the Law Commission, has fathered on the Home

Ministry is not entirely correct. The Home Ministry cannot be justly accused for that. I venture to think that if there is anything wrong, it is wrong everywhere, and what I am concerned here with is not the past; what I am concerned with is the future. I would make a plea for direct recruitment of men from the Bar to the Supreme Court. In Britain it has often happened that a man has been appointed direct to the House of Lords or to the Court of Appeal. The most distinguished members of the Bar are generally appointed directly to the Court of Appeal or to the House of Lords. You know that Sir Cyril Radcliffe, now Lord Radcliffe, was appointed direct to the House of Lords. I gave you one example that came to my mind. Therefore, I want the Supreme Court Bench to be strengthened by the appointment of new blood, by people who will bring to bear upon their work a new outlook, who will be steeped in the legal philosophy of the age. I think a Supreme Court Judge should breathe law in his being, he should scintillate it, I mean, there should be an aura of legal learning, legal lore surrounding him.

Sir, just one word more before I conclude. For a minute I would like to revert to the speech of Mr. Kaushal and I shall give one or two cases—at least one—which will illustrate forcefully how necessary is this power of interference by the higher court in jurisdictional matters. I remember a case—I had something to do with it in another capacity—and it was like this. The case had been tried by a Panchayat Adalat. I have often said that Panchayat Adalts function moderately satisfactorily. I am not a critic of the institution of Panchayat Adalats as such. I have said that before in this House. The case was fixed before the Panchayat Adalat on the 28th November. But the Panchayat Adalat on the 16th November—I forget the year—found that they were without work. So they said, "Let us take up some case and so they took up the case which was fixed for the 28th of November. Naturally the accused person was not present in court and the evidence was heard in the absence of the accused and the accused was convicted and sentenced to a small fine, or something like that. Well, we have revisional courts and the revisional court here was the Tehsildar's Court and under Mr. Kaushal's scheme, the Tehsildar's court would become the final court. All that is administered by the highest court is justice and this being the highest court of review of judgments for the Panchayat Adalat, its judgment would become final. This accused person went to the Tehsildar and he wrote this magnificent judgment—I see no reason to interfere with this judgment of the Panchayat Adalat. Well, the man came up, under article 226, to the High Court and naturally the High Court had to interfere. What else could it do? And it came down upon that Tehsildar and said that he should have looked into the matter, that this was not the sort of judgment to write. Suppose we were to abolish all superior courts, then we would get judgments like this and the poor man would get justice of that type.

Sir, it is said that the number of Supreme Court Judges will go on increasing annually if we do not limit the jurisdiction of the Supreme Court. We started with eight, a very small number, I think, for a country of this size. Sir, the Supreme Court has more powers than the Supreme Court of the U.S.A. It is not realised that it has appellate jurisdiction, it has original jurisdiction, it has advisory jurisdiction, it has special jurisdiction in constitutional matters and it is the protector and guardian of the Fundamental Rights guaranteed by the Constitution. In the United States of America, the Supreme Court is a constitutional court. The U.S.A. is an enormous country and the Supreme Court there has got fifteen judges. We have got only eleven and now we shall have thirteen or rather fourteen. I do not like the number thirteen.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI B. N. DATAR): Thirteen plus one.

SHRI P. N. SAPRU: I would like them when they sit together at dinner without any fear. So, considering our population, considering our size, considering the complexity of our Constitution, considering also the complexity of the problems of the modern day . . .

SHRI BHUPESH GUPTA: And considering frequent violations of the fundamental Rights.

SHRI P. N. SAPRU: And considering the violation of the Fundamental Rights, certainly, and the vagaries of the executive, which are too frequent in our country or for the matter of that, in any country, the size of the Supreme Court is not too large and it would be a grievous blunder on our part to grudge the Supreme Court an addition of three more Judges.

Before I conclude, Sir, I would like to say that I hope that the Home Minister will consider the case for adding judges to courts which are in heavy arrears, because some of our States are as big or even bigger than big European States. It may be that they have 24 or 27 judges, but then they have populations of 67 millions or more and they have vast jurisdiction over various types of litigation, new types of litigation are springing up. For all these reasons, it is necessary that the problem of adding more judges to these courts should also be looked at from a fresh angle. Sir, I give this Bill my whole-hearted support. I give it my support not in a grudging way but in a whole-hearted manner and I congratulate the Home Minister on bringing forward this Bill before this House.

SHRI MAHESWAR NAIK (Orissa): Except for the number thirteen.

SHRI P. N. SAPRU: That number thirteen has been explained away and it will actually be fourteen. I should like the hon. Home Minister to take into consideration the plea which I have made for direct appointments from the Bar to the Supreme Court. Also I would like him to take into consideration the fact that seniority of a judge should not determine his claim or title to a seat in the Supreme Court. I was also rather struck by the suggestion which Dr. Gour made, namely, that we might requisition the services, when there are heavy arrears, of retired Supreme Court Judges.

SHRI BHUPESH GUPTA: We should get young blood.

SHRI P. N. SAPRU: Well, I am rather inclined to agree with Mr. Bhupesh Gupta. I think a man in retirement should rest in retirement and I rather agree with Mr. Bhupesh Gupta that we should have young blood in the Supreme Court. Thank you very much.

SHRI NAFISUL HASAN (Uttar Pradesh): Sir, I rise to support the motion made the other day by the hon. Minister that the Supreme Court (Number of Judges) Amendment Bill be taken into consideration. Originally I had no idea of speaking on this motion. When I read the Bill and the Statement of Objects and Reasons, I thought that it was a most non-controversial matter. The work in the Supreme Court had increased and the hon. Chief Justice of India wanted an increase in the number of Judges and I thought that the Government had in right time responded to that request of the hon. Chief Justice of India. We know that in certain High Courts there are huge arrears and how to wipe off those arrears has been a problem for the Government. We also know that recently the vacations in the High Courts have been reduced in order to bring down the arrears and all other steps are being taken to that end. That justice delayed is

justice denied cannot be questioned by anybody. In the High Court of Allahabad I know that there are a number of first appeals which have been pending for the last at least eight or nine years. They have not come up for hearing still. So if the hon. Chief Justice of India has moved the Government long before the work in the Supreme Court falls into heavy arrears, I think he deserves our thanks for that. I thought that the Bill would have a quick passage in this House. I was therefore not a little surprised when I found a number of speeches being made in opposition to the Bill. I was particularly surprised —rather more pained than surprised— at the speech made by an hon. Member of this House, Dr. Raj Bahadur Gour. I think the hon. Member was trying to sit in judgment over the decisions of the Supreme Court. He quoted, Sir, three cases. One of them related to a person probably from Hyderabad, if I am not mistaken whose case was first considered by a Bench of two Judges in the High Court. One of the Judges was of opinion that he was guilty but the other Judge did not agree. Therefore the case had to be referred to a third Judge for his opinion and that third Judge agreed with the finding of guilty. Therefore the Order of the Court was that his appeal was dismissed. He came in appeal to the Supreme Court and the Supreme Court allowed his appeal and acquitted him. That was all that was put before this House by the learned Dr. Gour. He is not a lawyer and therefore it may look odd to him that the Supreme Court is acquitting a person who has been found guilty by the High Court. It was a case in which at least one of the three Judges of the High Court was of opinion that the person was not guilty. Even if there had been a concurrent finding of guilty by both the Judges who heard the appeal in the High Court, the Supreme Court has full power to acquit and it is not uncommon that a person who has been found guilty by the High Court is acquitted by the Supreme Court. I nnd nothing surprising in it and I do not think there was any material for the hon. Member to mention the case.

He then referred to the application of article 136. He said that probably in the year 1952 or 1953—I am not sure of the year he mentioned—an application for special leave to appeal was rejected by the Supreme Court on the ground that it did not involve any substantial point of law and according to him the later trend of the pronouncements of the Supreme Court has been that even if there was no substantial point of law involved they would admit the application and would give special leave to appeal. My learned friend, the hon. Mr. Sapru, has already dealt with the necessity for the provisions of article 136. They are the powers which have been given by the Constitution to the Supreme Court and they are very necessary. If we look at the provisions of article 136, we find that according to these provisions the powers of the Supreme Court are not limited by the requirement of a substantial question of law being involved. Article 136 reads:

> "Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India."

So when the Supreme Court has to consider an application for special leave, the consideration is not confined to whether a matter involves a substantial question of law or not. It may be that they may feel that although there is no substantial point of law involved there has been a clear miscarriage of justice by a court or tribunal.

[Shri Nafisul Hasan.]

The third case which Dr. Gour referred to was about a lady stenographer. Her services had been terminated and she went to the Supreme Court and the Supreme Court came to the finding that her removal from service was due to her taking part in trade union activities and the order of termination of service was considered to be unjustified dismissal. The Supreme Court instead of directing that she be reinstated ordered payment of damages to her. The objection of Dr. Gour was that the Supreme Court should not have ordered payment of damages, but must have directed her reinstatement. Probably he himself said that the reason given was that her position as stenographer was such that she must enjoy the confidence of the officer under whom she was to work. The Supreme Court have got wide powers to give relief and what sort of relief they ought to give is determined by them according to the circumstances of each case. I do not know what damages were awarded, but I am certain that the amount of damages must have been determined on a sound and rational basis. So, all these three cases, which were referred to by Dr. Gour, to my mind, gave him no ground whatsoever for opposing this Bill. They are not even relevant to the issue before us. We are only concerned, at the moment, with the number of Judges. If we are not satisfied with the working of a particular Court or the way in which any particular Judge thereof is conducting himself, of course we have got the power under the Constitution to remove him by an address, which has to be considered by Parliament. What I am most concerned with is that such utterances in Parliament, in which suspicion is thrown on the impartiality or the competence of Judges of the Supreme Court, are not likely to help us in the development of democracy. The rule of law is absolutely necessary for the working of democratic institutions and unless our people have implicit confidence in the impartiality of our Judges who preside over our courts and who have to take decisions in matters not only between citizen and citizen but also between the State and a citizen, we cannot expect proper development of our democratic institutions. Therefore, I am of opinion that at least we should not do anything which may in any way impair or undermine public confidence in the impartiality of our Courts.

Another hon. Member made a suggestion to the hon. Minister to consider the desirability of appointing retired Judges of the High Courts, as is permitted under the Constitution. The hon. Minister himself said that Government did consider this point, but they had not come to a decision, probably because they could not get persons to work. My personal opinion is that, although our Constitution permits re-employment of retired Judges, it will not be in public interest to re-employ Judges who have already retired. It was after due consideration that the age of retirement was fixed at 65. If necessary, it can be raised if it is considered proper in public interest. But there should be no occasion for making any invidious distinction between one retired Judge and another. Such a course is likely to undermine public confidence in the Judges and I am glad that the Government have at least at present decided not to re-employ any retired Judge. A Judge of the Supreme Court, who has to retire at the age of 65, should have no possible hope of being re-employed by the executive Government. Otherwise, as I have already submitted, public confidence will go down.

With these observations I wholeheartedly support the motion that the Bill be taken into consideration.

SHRI P D. HIMATSINGKA: Mr. Deputy Chairman, I support the Bill. In doing so, I have not been able to follow the reasoning of Dr. Gour. As you know, the number of cases pend-

ing in the Supreme Court has been given by the hon. Home Minister If you look into the number of cases, you will find that the present strength of Judges will not be sufficient to dispose of them in time. You may take about 200 days as working days of the Supreme Court, with three Courts functioning. If there are regular appeals, as you know, at least one day will be taken by any important appeal. So, taking three courts and 200 working days, only about 600 appeal cases can be disposed of. At present there are more than 2,500 cases to be disposed of. I am merely putting it on the basis of arithmetic. If you want really justice to be done, this being the highest Court, you cannot expect the cases to be disposed of in a hurry or without proper consideration being given to them. The lawyers of both parties must be given sufficient time to place their case properly for consideration by the hon. Judges. The Judges also have got to consider them carefully. Therefore, if you look into the number of cases itself, without going into the intricacies thereof, you will find that the present strength will not be sufficient. Apart from these cases, as you know, sometimes important points of law are referred to the Supreme Court for opinion. These sometimes take a number of days. When such cases are referred to for opinion, sometimes all the Judges sit together for hearing them. That means that no other case can be taken up. The Berubari case took about, I think, 8 or 9 days for the Judges. Apart from that, as you know, the hurried doing away with the Labour Appellate Tribunal has added a lot of work to the Supreme Court. Now, the labour cases are being disposed of in different States by the first Court which is not properly manned in the sense that you have not got Judges of some calibre who can take all the facts and merits into consideration, who can look to social justice and the capacity of the industry to pay, and so on. Therefore, it has almost become the practice in the case of decisions that are arrived at by the different Courts in the different States, that whichever party loses comes to the Supreme Court in appeal under article 136, which is wide enough to give scope to the Judges to give special leave, whenever there is the slightest suspicion or slightest indication that justice has not been done. That has added a lot of work to the Supreme Court, and I think about 200 cases of labour only are pending. One of the suggestions made was that the Labour Appellate Tribunal be revived and that all appeals may be allowed to be filed in the High Court by proper legislation being enacted. That certainly will reduce some of the work of the Supreme Court, and therefore that is a thing to be considered. Specially in labour cases, though Dr. Gour wanted to argue that they being of a special nature and special social justice being necessary . . .

1 P.M.

MR. DEPUTY CHAIRMAN: You can continue after lunch. The House stands adjourned till 2.30.

The House then adjourned for lunch at one of the clock.

The House reassembled after lunch at half-past two of the clock, THE VICE-CHAIRMAN (SHRI DAHYABHAI V. PATEL) in the Chair.

SHRI P. D. HIMATSINGKA: Mr. Vice-Chairman, before recess I was saying that after the abolition of the Labour Appellate Tribunals the Labour Courts in the different States are giving decisions which are not on a uniform basis. Cases of the same kind involving the same points are being decided differently, and as a result the parties who are not satisfied with such decisions have no other

[Shri P. D. Himatsingka.]

course left but to take recourse to article 136 and come to the Supreme Court by way of special leave. In such cases generally they do get the leave almost for the mere asking. That has added to the work of the Supreme Court. Another reason which was advanced by Dr. Gour for not allowing appeals to the Supreme Court is in my opinion exactly the reason why they should be allowed. He said that labour cases crop up in spite of contracts and in spite of agreements. The Courts are free to give such decisions as they think fit in order to do social justice or in order to provide living wages or proper wages, and so on. Therefore, you need Judges of a high standard who will be in a position to take everything into consideration and give proper decisions which will be acceptable to the parties concerned. That is exactly the reason why either some provision should be made by way of appeal, and for that proper Judges may be appointed to hear appeals from the different Labour Court decisions, or some provision should be made by way of appeal to the High Court. Therefore, either the Labour Appellate Tribunal should be revived or some provision should be made in order that some sort of uniformity may be obtained in the decisions in such cases.

As I have said, Sir, the number of cases is increasing, and that also means more Judges. Another difficulty that has cropped up is the finding of proper persons to become Judges. As you know, Sir, the salaries of the High Court Judges had been fixed some time before 1870 perhaps or earlier than that at Rs. 4,000. There was no income-tax practically at that time, and that was the amount that they were getting then. Today it is not only not Rs. 4,000 but it has been reduced to Rs. 3,500, and therefore you find the position that a number of persons, practitioners who are offered, who are invited to become Judges, do not come forward. As a matter of fact it was unheard of before that a person who was invited to become a Judge would refuse that offer. No one could think of that position before 1940 or so. Now you find that a number of persons who are invited do not come forward, because the salaries the Judges get after deduction of the income-tax and so on come to Rs. 2,600 or Rs. 2,700, whereas their income in practice is much more. Therefore, you do not have Judges of the same calibre as you used to have before. That is another reason why the Government should take note of the position and try to evolve some method whereby proper persons will be available to man the judiciary so that the high standard that is there can continue to be maintained.

Sir, I support the Bill.

SHRI M. P. BHARGAVA (Uttar Pradesh): Mr. Vice-Chairman, this Bill as it is before the House looks a non-controversial Bill. At the outset I want to make it clear that I am one of those who believe that the number of Supreme Court Judges should be as small as possible. But we have to take the situation as it stands today and tackle the problem. Keeping that point in mind, we have to decide what should be the strength of the Judges.

The hon. Minister while moving the Bill has made it very clear that the present strength of the Supreme Court Judges cannot cope with the rising work in the Supreme Court and that an increase is inevitable. Now the only question that remains is whether the increase should be as proposed in the Bill or it should be higher still. If we see the arrears which Mr. Datar himself has given, we find that at the end of 1957 there were 2,272 cases pending in the Supreme Court. In 1958 the figure had gone up to 2,428, and on 30th November, 1959 it stood at 2,556. Now this is an alarming figure of arrears, and it is absolutely necessary that we should take steps to reduce the arrears as far as possible on the one hand and on the other to cope with the day-to-day new

cases, which are being brought to the Supreme Court. These are the two things which have to be done.

Now if we go back to the Law Commission Report, we will have an idea about the arrears which Mr. Datar has only given in total figures, but in the Report, there are more figures. In paragraph 48 of Volume I about arrears they say:

> "The statements show that under article 32 applications have been pending for more than 3 or 4 years. Ordinary civil appeals and other matters raising constitutional questions more than four years old are also pending."

Now, if constitutional points are pending for over four years in some cases, they lose the very purpose for which they are filed. If an elucidation is sought at a particular time, say in July 1956 and if no decision is given up to February or March 1960 on a constitutional issue, what is the necessity, what is the purpose in filing such cases? Then the Report goes on:

> "Even some criminal appeals of 1955 have remained undisposed of. The effect of the recent increase in the strength of the Supreme Court does not seem to have yet made itself felt on the pending file."

This relates to criminal appeals of 1955. It means that four and a half years have already elapsed. There are criminal appeals of all types. A man may be awaiting execution, and to keep him in suspense for such a long time—well, it is better that he is executed and done away with rather than giving him a chance of his appeal being heard in the Supreme Court. Just imagine the agony of the man for four and a half years. Everyday he thinks that his appeal will be heard the next day or the day after, but there is no relief. What is this? If I may say so, justice delayed is justice denied. In these cases that is what is happening.

SHRI B. K. P. SINHA: May I correct the hon. Member? Death sentence cases are disposed of within three months. That is the practice.

SHRI M. P. BHARGAVA: Well, that may be Mr. B. K. P. Sinha's experience, but I know of cases which are pending for a long time, and I have not heard of anyhing being decided in the Supreme Court as at present in three months.

Then further on they say:

> "Of the 2126 civil appeals only 274 were admitted by special leave, but of the 794 criminal appeals as many as 548 were instituted by special leave. It is obvious that in addition to the time taken in hearing the appeals themselves, the disposal of special leave applications must have occupied a great deal of the court's time."

This again is a serious recommendation, and the authorities concerned must take note of it and try to find out some method by which the special leave appeals can be disposed of in an expeditious manner.

Then they say—

> "On the 1st January, 1958, nine petitions under article 32 pending from 1954 or earlier years were ready for hearing but had not been listed."

Pending from 1954! Even after six years, appeals under article 32—Fundamental Rights—have not been listed.

> "Of the twenty-three ordinary civil appeals pending from 1953 and earlier years two were ready and four were part-heard on that date, eighteen civil appeals raising constitutional issues pending from 1954 were also ready for hearing. Out of the hundred and eighteen appeals of 1955 which were pending on that date thirty-eight appeals were ready but not listed. Eighteen ordinary criminal appeals

[Shri M. P. Bhargava.]

of 1955 and ninety-four of 1956 were also ready at the commencement of 1958. Out of the forty-five criminal appeals filed from 1953 to 1955, in which constitutional issues arise, twenty-four were also ready for hearing. All these ready cases have not yet been listed, presumably for want of time."

From what I have read from paragraph 48, you can just consider how serious the problem is of arrears. It is not a question of disposing of one hundred or two hundred cases. It goes into thousands. At the end of that chapter, they have given a summary of the cases pending, and I will give some figures from that, to show how petitions under article 32 have been rising. There were four pending in 1952; in 1953—4; in 1954—13; in 1955 they go to 162; in 1956 they are 82 and in 1957 they are 110 and the total is 375. Similarly in civil appeals also, the number in 1954 was 18 and the present figure is 428. The number of criminal appeals is 53. The number of pending special leave petitions is: civil—127; criminal—43. The number of ordinary civil appeals is 980 and that of ordinary criminal appeals is 243. The number of transfer petitions is two. These are the figures as on 1-1-1958 and you can imagine how many cases would have been added to the present list.

When we were discussing this Bill on Thursday, Shri Misra said that the Law Commission had made no reference about the adequacy of the strength in the Supreme Court at present. I am sorry I have to contradict him, and in this connection I will refer the House to paragraph 49 of the Law Commission's Report where they have clearly stated that eight were not enough for the Supreme Court. The strength was raised to eleven in 1956 but no appreciable difference has been noticed by the increase of three Judges and the case files and the pending cases are increasing everyday. So, it is not that they have not referred to this question in their Report; they have dealt with it but they have left the question of deciding the ultimate strength—whether it should be 11 or 14 or 17—to the executive authorities, and the Law Commission has not given any definite, specific opinion that the number of Judges should be so much.

Now, my hon. friends, Shri Kaushal and Shri Dave, referred to some fundamental points—why the cases in the Supreme Court were so delayed, why so many pending cases were there and how the labour appeals were clogging the working of the Supreme Court. All these are very basic things, and I am sure the Government is dealing with them while considering the Law Commission's Report. It will take time for a decision to be taken on those basic things but it does not mean that till a decision is taken on those basic issues, the Court should be left to its own fate. We have to see that the Court is provided with an adequate number of Judges. Then there are other reasons why there should be an increase in the number of Judges. As the House is aware, the jurisdiction of the Supreme Court is going to be extended to the State of Jammu and Kashmir which it did not have so far. Then, the other day we were discussing the Bill about the reorganisation of the Bombay State, which means that there will be an increase of work from one more State, and therefore the work of the Supreme Court is bound to go up. Then the labour cases are coming in numbers—there is not the least doubt about it—and unless the lawyers and the Government can devise some way, the labour cases are also going to increase very much. Therefore, it is necessary that more Judges are given to the Supreme Court. Now, what do we find? In 1951 we had eight Judges. In 1956 the Government had to come here to ask for an increase of three and now, in 1960, they want an addition of three Judges more, after four years. My point is, we

have the past experience; we have seen how much the arrears are. So, instead of coming to Parliament every four years, let us have a provision for the increase of Judges. Having a mere provision does not mean that you have to appoint that particular number of Judges. Shri Datar, while moving the Bill, himself said that it was not the intention to appoint all the Judges asked for in the Bill immediately; that the appointments would be made as and when necessary. Well, if this principle is accepted by Shri Datar, I do not think there will be any difficulty for him to accept my amendment which says that the number of Judges should be sixteen and not thirteen as proposed in the Bill. If we have the figure sixteen excluding the Chief Justice, we will have the power to appoint the Judges up to that number in consultation with the Chief Justice of India as and when it is necessary. Once we clear the arrears, it is for us not to make any further appointments and not to fill any vacancies which might occur and in that way, we can bring down the number to the strength which we might require in the circumstances prevailing at that time. The whole Bill, and the amendment too, are both very clear. In the Bill they want that the number should be increased to thirteen. I want that the number should be increased to sixteen so that it is not necessary to come to Parliament again and again.

SHRI B. K. P. SINHA: Mr. Vice-Chairman, the necessity for this Bill arose because of the backlog of cases before the Supreme Court. Arrears have piled up and they do not seem likely to diminish in numbers unless something is done. Two courses have been suggested in this House for that. Number one is that the jurisdiction of the Supreme Court should be reduced. The other course which this Bill propounds is that for removing the back-log, the Supreme Court should be numerically strengthened by adding three more Judges. Sir, I need not deal in detail with the first remedy suggested by some hon. Member of this House. Speaker after speaker, of whom the most notable is Shri P. N. Sapru, has made it clear that any paring down, or any diminution in the jurisdiction of the Supreme Court will seriously affect what we call the rule of law; will seriously affect the efficient functioning of the judicial system and incidentally of the democratic machinery that we have built up. The remedy suggested by those who stand for paring down the jurisdiction or reducing the jurisdiction of the Supreme Court is the remedy suggested by Mr. Pickwick. A child with a squint eye was taken by his parents to Mr. Pickwick. They requested Mr. Pickwick to cure that child of the squint. Mr. Pickwick cut off the head of that child and said, "Now the child does not squint." So that remedy is a remedy of despair. The better and proper remedy is that suggested by this Bill.

Sir, some people say that the Supreme Court should work for a larger number of days and for a larger number of hours each day. But then the Supreme Court of India has to apply its mind to extremely momentous issues, issues which require painstaking and reflective consideration, and if their time for such application is reduced I am afraid the cause of justice will suffer. Therefore that remedy is also not proper. The proper remedy is that which is being given by this Bill. In the matter of working hours, our Supreme Court compares very favourably with the Supreme Court of the United States of America. Whereas that Court sits for nearabout 135 days in the year and for 4 hours each day, our Supreme Court sits for nearabout 190 days in the year and for 4½ hours each day. Therefore the only remedy is the expansion of the Supreme Court by the addition of more Judges.

SHRI P. N. SAPRU: Is it not for 5½ hours each day in our Supreme Court?

SHRI B. K. P. SINHA: It is 4½ hours this way. They sit from 10·30 in the morning to 1·0 in the afternoon

[Shri B. K. P. Sinha.]

and again from 2·0 to 4·0 in the after noon with an hour's recess between 1·0 and 2·0 whereas in the United States they sit from 12·0 to 4·30 with half an hour for recess.

I next come to a very vital issue, a question to which attention was drawn by some Members of the Opposition and very pointedly by Shri P. N. Sapru—recruitment of Judges to the Supreme Court and the method of their recruitment. I feel that a sort of convention is growing that only Judges of the High Courts shall be elevated to the Supreme Court. This system, in my opinion, is not a very proper system inasmuch as it affects to some extent what is known as the independence of the judiciary. Sir, in this connection I would like to read out a few lines from the famous lectures delivered by Sir Alfred Denning, one of the Lord Justices of Appeal in England:

> "While speaking of the independence of the judges, there is another factor which must not be overlooked. We have no system of promotion of judges in England. *** *** A man who accepts the office of a judge in England must reckon that he will stay in that position always. He has taken it on as his life work and must stand by it. This is the same whether he is a High Court judge or a County Court judge or a stipendiary magistrate. Each normally stays where he is throughout his judicial career. The reason is that we think that the decisions of a judge should not be influenced by the hope of promotion."

And then, later on, Sir, in the same lecture he compares the English system with the French system and this is what he says about the French system.

> "French judges do, I believe, enjoy security of tenure but, as one of their leading writers says, 'its benefits are perceptibly diminished when the promotion of judges is at the discretion of the Government... advancement has continued to be largely in the hands of the Minister of Justice, a political official. The present system still leaves a large scope open for favouritism and influence.' We must never allow that to happen in England."

So that is the opinion of an eminent judge and an eminent jurist based on a wide experience of the judicial system not only of England but of other countries of the world. Therefore I feel that the convention that is growing in this country of promoting judges from one cadre to a higher cadre and from the High Court to the Supreme Court ultimately works to the diminution of the independence of the judiciary. I therefore feel that there is a case, and a very strong case, for direct recruitment to the Supreme Court Bench from the Bar itself. In making those appointments I must say, Sir, that so far that salutary provision of the Constitution which lays down that jurists of eminence shall be appointed both to the High Court and to the Supreme Court Benches has been ignored. I have to strike a personal note here about a gentleman with whom you are familiar, a gentleman who has written a remarkable commentary on the Indian Constitution and whose excellence has been recognised by legal opinion throughout the world and who had the honour of serving this House for some time. Now he is a man of the State Judicial Service and the system of gradation stands in his way and therefore, though he has written such a remarkable book, has put in great labour in the production of that remarkable book, we cannot find out ways of taking him in either a High Court or in the Supreme Court. Now this system, I think, must change, and that article of the Constitution which lays down that jurists of eminence should be drafted both to the High Courts and the Supreme Court should be respected at least in the future more in observance than in breach.

Sir, I next come to a discussion of the type of men who should be recruited to the higher courts of this country. Now, Sir, there is a general impression as if judges of the higher courts or, for that matter, a judge of any court has to perform merely a mechanical function. A judge in popular parlance or in popular theories is supposed to be a mere 'oracle of law', 'speaking law' his function is thought to be only interpretation of the law. But that theory of law, which is known as the Phonographic Theory of Judicial Functions is an exploded theory. We have to recognise that jurists in every part of the world have come to recognise that the judge does not perform merely a mechanical function. He does not do any arithmetic, not add two and two and come to the conclusion that two and two make four. Law, Sir, is a mere skeleton, and the flesh, the blood and the veins of that law are supplied by the Judges; life is given to that law by the judges, and in interpreting the law, the judges really make laws. Dicey says, "Judge-made law is real law though made under the form of and often described by judges no less than jurists as the mere interpretation of law." This is not only the view of Dicey; this is the view of other jurists also including Sir Henry Pollock, Hain and other eminent jurists of the West, and in interpreting the law, Sir, the judge's own personality is projected. As Holmes says, "Law cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics". The judges are influenced in their interpretations by their undisclosed attitudes which, as Holmes says, function as inarticulate and unconscious premises of every law-making person of every nation. Sir, we are all born in a particular context. Nobody's mind in his infancy is a blank piece of paper. When we are born, we inherit some things from our ancestors and when there is the process of formal and informal education, the mind goes on developing and it develops certain likes and certain dislikes, certain traits and certain dispositions.

3 P.M.

As a man's birth has influence on his ideas, a man's environment has influence on his ideas. There are so many imponderable factors which go to make a man. All these factors come into play when a Judge starts interpreting a law. This is more accurate in the case of the Judges of the higher courts, especially when they are interpreting the Constitution.

Now, the Constitution speaks of "reasonable restrictions", or "public policy". These are all abstract notions. These abstract notions are given a sort of concreteness by the Judges in their opinions. When they start giving concreteness to these ideas, they project their whole personality in the process of giving that opinion. As Schiller, the famous philosopher, says:—

> "In every case of actual thinking the whole of a man's personality enters into and colours it in every part."

Sir, to add one more quotation. As a Judge of great eminence, a Judge whose opinions have been considered epoch-making not only in the U.S.A. but in all those countries of the world, whose jurisprudence is based on the same principles on which our jurisprudence is based, Mr. Justice Oliver Wendell Holmes says:

> "The life of the law has not been logic; it has been experience."

Therefore, we really come to the position that a Judge's personality matters. Their outlook, their training, their birth are factors that influence the opinion of Judges, that influence the process of judicial law making. And when we consider our Constitution and the abstract terms in which some of its important provisions are couched, we come to the conclusion that it is extremely reasonable and useful that in making appointments of Judges we should consider all these factors.

[Shri B. K. P. Sinha.]

Society is changing. The nation is changing. In 1947 or 1948 we made a break from the past, a past of two hundred years or a thousand years of slavery, a past in which the values were different from what the values are today. We are operating now in a free country. We have now wedded ourselves to different values. When laws have to be interpreted in this context, in this environment, in this atmosphere, it is but proper that the Judges should be men who have the spirit of the new age, men who have in them the spirit of a free India, men who are motivated by the most progressive philosophies of today. Only such persons should adore the Benches of the High Courts or of the Supreme Court.

SHRI BHUPESH GUPTA: I suggest that the Supreme Court advocates like you should also be motivated by the same spirit.

SHRI B. K. P. SINHA: Yes, we are.

Therefore, I feel that there is a strong case for making appointments on a basis slightly different from those on which the appointments have been made so far. People very often say that appointments must be made only on merit. But what is "merit", Mr. Vice-Chairman? Merit does not mean only the amount of money that a man finds in his pocket at the end of a lawyer's day. Merit is something which is made up of so many elements. His personality, his approach to social and political and economic problems also are a part of that merit. Therefore, in making these appointments we must consider these factors also.

Sir, here I am reminded of a story from the legal history of the U.S.A. When President Roosevelt came into power and he became the President for the first time in 1932 he passed that new set of legislation known as the New Deal. That legislation was struck down by the then Supreme Court of the U.S.A. Thereafter, President Roosevelt introduced a Bill or perhaps made it clear that he was going to introduce in the Congress a Bill for increasing the number of Judges. And the purpose was—he made it very clear—that he would augment the strength of the Supreme Court to such a number that the new judges imbued with the philosophy of the New Deal would uphold as Constitutional, uphold what had been struck down as unconstitutional by the court as it was then constituted. The result was that another case shortly came up and the Supreme Court—God knows for what reasons—changed its mind and went back on its old judgement and upheld some of the legislations of the New Deal. Even in England in making such appointments a man's approach to the important issues that arise for consideration is always taken into account.

In this connection I am reminded of the present Chief Justice of the United States of America, Earl Warren. He was a lawyer or a solicitor, but for nearabout twenty years he had been out of the profession of law. He had been a politician. He was appointed Chief Justice of the Supreme Court of the U.S.A. immediately thereafter—I must remind this House—he delivered the remarkable judgment on racial segregation which advanced further the cause of emancipation of the Negroes. Therefore, in making these appointments we must keep all these factors in mind.

Lastly, not with a spirit of running down, not with a spirit of criticism, I say, what has been the effect of appointing Judges in the way that we have been appointing them? We have been following the traditional methods of the British. And what has been the effect? Our higher courts are now full of Judges who have always look-

ed upon the British as the sole repository of wisdom. While the sun rises for us in the East , to them it has always risen in the West. These higher courts even now, after twelve years of independence, derive their wisdom from the judgments of the courts of foreign countries. I could understand the Judges of the higher courts accepting the reasonings that are embodied in the judgments of these courts. But, then, I feel uneasy when I read a judgment of a higher court now—not one but dozens of cases are quoted; judgments of the United States Supreme Court, of the courts of the United Kingdom, of the courts of Canada, of the courts of Australia are referred to as precedents. I am sure that if, say, after four hundred or five hundred years any man would set himself to carry on research in this aspect of our law, he would feel that while India had become politically free, judicially India had passed under the condominium of the U.K. and the U.S.A. with Canada and Australia trailing behind as minor partners.

SHRI BHUPESH GUPTA: Condominium or Consortium?

SHRI B. K. P. SINHA: I am sorry, I mean condominium, not consortium. When one reads these judgments in cold print, because they contain these copious references to these foreign judgments, I for one at least feel that they make very pathetic reading. I, therefore, feel that this fact should be impressed on the people, those who grace the Benches. This has to be impressed on the executive especially on the Home Ministry that has to make the appointment to these exalted offices. For heaven's sake, let us appoint as Judges in these courts persons who have in them the spirit of a free country, the spirit of a free India, who would breathe the fresh air of freedom, who would inhale or exhale the fresh air of independence.

[MR. DEPUTY CHAIRMAN in the Chair]

Sir, I feel there is a strong case for the expansion of the Supreme Court by the addition of three more Judges and I support this Bill with these observations.

SHRI BHUPESH GUPTA: Mr. Deputy Chairman, for once I have heard Mr. Sinha speaking somewhat progressively, though he is a man of extreme conservatism in other matters. I welcome that. I welcome not only his change of seat but also the change of . . .

SHRIMATI YASHODA REDDY (Andhra Pradesh): He has not changed his seat.

SHRI BHUPESH GUPTA: He has moved from that side and nearer to you.

(Interruption by Shrimati Yashoda Reddy)

I do not know, it is an encroachment and that again nearer you. Anyway, it is a welcome thing and much of what he said I support especially what he said with regard to the appointment of Judges.

SHRI B. K. P. SINHA: May I correct my hon. friend? We are not static like the Members of the Communist Party.

SHRI BHUPESH GUPTA: No, no. You are so dynamic that you not only move, but you move too fast and it seems others should take care of themselves.

Anyway, Sir, when we see that the judicial system is sought to be interfered with, when there is executive interference, sometimes even over the telephone and the trunk lines going from the South Block of the Secretariat to the Sachivalia or Government House in Bombay, we are interested in strengthening the judiciary. We are greatly interested in strengthening it in every possible way including the matter of the personnel of the

[Shri Bhupesh Gupta.]

Supreme Court of the country. There cannot be two opinions over this matter, for the Supreme Court has a very important function to fulfil, a very important role to discharge, not only in upholding the existing rights and liberties of the people but in enlarging upon them so that human liberty becomes a dynamic conception and the blessings of it fall on the multitudes of the people. This is of fundamental importance to a progressive society and especially when we have this kind of a parliamentary system, it is important that we should have such a judicial system and above all, a type of judiciary which is courageous, which is full of integrity, which has vision, which combines knowledge and learning with love and affection for the people and their rights. It is from this angle that we shall today approach this question.

Here the suggestion made is that the number of Judges should be increased. Shri P. N. Sapru somewhat hesitatingly pointed out or complained that the number thirteen might be deemed unlucky. Well, Sir, I do not believe in that kind of thing. I think until and unless we make our position clear and make up our mind over this matter, it is quite conceivable that situations might arise in the judicial system when even our Judges might consider it a matter not of luck but rather an unlucky matter to be on the Bench. You have seen what happened recently in the case of an executive fiat to halt the process of law. The Prime Minister sent a directive or instruction, whatever it is and . . .

SHRI B. N. DATAR: Sir, I do not know how this is relevant here.

MR. DEPUTY CHAIRMAN: No, it is not relevant.

SHRI BHUPESH GUPTA: It is relevant and I will tell you how it is relevant. You don't get annoyed Sir.

MR. DEPUTY CHAIRMAN: Order, order.

SHRI BHUPESH GUPTA: Sir, much has been said about the strengthening of the judiciary. I say, do strengthen the judiciary not merely in number, but what is more important, you should stay your hands from the judiciary. That is what I say. It is relevant. Other speeches have been made here, Sir, and I have read every speech made here very carefully and I find much has been said about the theory of it, and the need to strengthen the judiciary. In this connection I am only mentioning that strengthening of the judiciary does not take place merely by increasing the number of the Judges. By all means increase their number. But along with that, we must develop the proper attitude towards the judiciary. We must give it more powers, powers not only in law but also in the facts of life. That is very important and the Home Minister should not get fidgety about it the moment I mention that topic. Sir, the source of the trouble lies here in the manner in which they are dealing with the Constitution. Now, what does our Constitution say about the appointment of Judges? Here the appointment of the Judges is made by the President. There is no suggestion of any advice by the Government or the Cabinet, to the President. But the principle of parliamentary democracy as it is understood in other fields is applied in this case and it is a common practice for the Treasury Benches and the Home Ministry in particular to give advice to the President as to who should or who should not be appointed as a Judge. I am opposed to the Home Ministry's interference in this matter.

An HON. MEMBER: Why?

SHRI BHUPESH GUPTA: You might say it is a convention. Well, it may be a convention and under certain set of circumstances an agreeable convention. Yet in certain other set of circumstances it may not be an agreeable convention and in the course of

the twelve years of their rule if they have proved anything to the hilt, it is this, that the Home Ministry should have no place or say in the matter of the selection and appointment of Judges. I make that very clear, because I do not trust the Home Ministry. Its advice is suspect to me. I see it is questioned by the people, not only by those who sit in the Opposition but it is being questioned by the people for it is suspect in the eyes of the people. That is because every day people say that whenever it does not suit the executive, the executive comes down upon the process of the judiciary and seeks to interfere with the normal processes of law. That is the position. Therefore, my submission in this particular context would be this, that the President should make the appointment absolutely on his own. I do not seek an amendment of the Constitution. The only thing I want here is that the convention that operates that the Government should advise the President in the matter of the appointment of Judges should be completely given the go-by and should not be followed at all. Here you have got the Supreme Court with ten or eleven Judges. Now it will be thirteen or fourteen Judges, sitting together. You have got in the Supreme Court the Chief Justice of India who is supposed to be an esteemed lawyer, an eminent man, a man of character and integrity in the country and the matter should be left entirely in his hands. I deliberately use the word "entirely", because I know the Chief Justice has a say in the matter, but I want that, as far as advice to the President is concerned, nobody else should advise him in this matter, except the Chief Justice of the Supreme Court. Any other advice, anything from the Home Ministry, should be torn to pieces and thrown into the waste-paper basket. That would be my suggestion. Now, how would we suffer for it? No, we would not suffer. Mind you, I am not saying that you should ask for our opinion. I am only saying that they should leave the matter in the hands of the President constitutionally, otherwise in the hands of the Supreme Court Judges, the Chief Justice in particular. I would like this procedure to be followed in this matter.

SHRI P. N. SAPRU: May I ask a question? The appointment is an executive act. For appointments somebody must be responsible to this House. If you make the President responsible, then how will he be responsible to this House.

MR. DEPUTY CHAIRMAN: That is his view of things.

SHRI P. N. SAPRU: Has the hon. Member considered the suggestion of the Law Commission that there should be a special Ministry of Justice for that?

SHRI BHUPESH GUPTA: I am coming to that. I understand the point but let us first of all liberate it from the hands of the Home Ministry. The problem is not one of building a house but the problem is one of getting land, liberating it from the encroachers and occupiers. There is no question but that the Judges are to be on a different footing altogether. We cannot question the conduct of the Judges except through a procedure laid down in the Constitution. Let the President appoint the Judges. You will say, "Who will be responsible?". So far as the constitutional responsibility is concerned, it should be that of the Ministry of Justice or Ministry of Law but then, as you know, in this case, Parliament has very little scope for deliberation and discussion because the Constitution provides that except through an address presented by both the Houses of Parliament, we cannot remove a Judge or bring in many things. You have seen that when I mentioned the Prime Minister he jumped up because he is a friend of the Prime Minister and he feels that otherwise the Prime Minister may take him to task. If you want that

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there should be a measure of Parliamentary responsibility, then that can vest in the Ministry of Justice or Ministry of Law, if you do not want to re-organise the Ministry of Law to cover many aspects which can come under the Ministry of Justice. First of all, let us declare that we want to get rid of the Ministry of Home Affairs in this respect. Let them look after the police; let them look after the traffic; let them look after the bandits, the thieves and the smugglers; let them look after the corrupt officials through their regional departments but why should they interfere in affairs like the appointment of Judges, as to who should be a Judge and who should not be? It is none of their business. I will tell you why I do not want them to come in here. Here political prejudices come in. I do not think the Supreme Court would be guided by such prejudices. I have greater faith in the Supreme Court which will be guided by the fundamental primary considerations of justice and naturally they would bring their broader judgment to bear upon the subject, not only without any prejudice but with knowledge and learning. These gentlemen in the Treasury Benches, especially in the Home Ministry, I do not know what learning they have got but certainly they suffer from a terrible lack of objectivity in such matters. They look at things with blinkered eyes, through coloured glasses. Extraneous considerations are allowed to vitiate and frustrate their judgment so that the best men sometimes are not appointed. That is why I would ask them to spare us their kindness and affection as far as the appointment of Judges is concerned. Let us see how things work if the Judges are appointed by the Supreme Court without taking any note of what the Home Ministry feels; let us also see how it will work if the Ministry of Law becomes responsible to Parliament for the appointment of Judges. We can discuss these questions later on, but we must make a break.

Article 124(3) (b) provides for the appointment of advocates of a High Court as Judges of the Supreme Court. It reads as follows:

> "(3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and—
>
> * * * *
>
> (b) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession;"

Therefore, it is open to the Government to appoint an advocate directly as a Judge of the Supreme Court. Why has not that been done? What is the objection to this provision being made use of? Why has this particular provision of the Constitution been frozen? You always appoint Judges from the High Court Benches rather than getting people from the Bar of the various High Courts or even from the Bar of the Supreme Court itself. The Government owes an explanation. So far we have not had any satisfactory explanation from them. There must be some reason why they are not appointing Judges direct from the Bar. They should take us into confidence. Am I to believe then that in our country in the various Bars there are no eminent people available fit to become Judges of the Supreme Court? If that is so, then let them tell us so. Or, am I to understand that at the High Court Bars in the various High Courts there are people fit to become Judges of the High Courts but not of the Supreme Court? I would like to know from them. On the contrary, we find that in the various Bars, there are very eminent lawyers, advocates, with considerable experience and learning who could be straightway appointed as Judges of the Supreme Court and be given that responsibility. This will also bring about a greater synthesis between the Bar and the Bench, if I may say so, because the Bench will always look forward to the Bar for the right type

of talent and the Members of the Bar would look forward to the Bench where they can go and serve the nation and serve the cause of justice. Somehow or the other, they are completely ignoring this particular provision without any justification. I would, therefore, suggest that these three new Judges who will be appointed now should be appointed from the Bars of the various High Courts or the Supreme Court Bar, if you like instead of promoting—I have nothing against High Court Judges. They should be promoted—but why always Judges of the High Courts? I should like to hear the hon. Minister on this subject. It is important.

The Supreme Court has a number of very important functions. There are the constitutional matters of very great importance which the Supreme Court deals with either in its original jurisdiction or through appeals. Then there are matters of law which are also important which come up before the Supreme Court. There are other cases also. I need not go into all that but it is the Supreme Court that sets the standard of justice in this country. It is the Supreme Court that sets the tune of law and justice as a living force in this country. It is the Supreme Court to which the entire judicial structure looks forward for guidance, direction, assistance, counsel, advice and so on. Therefore, it is not merely from the point of view of enumeration of functions that the Supreme Court is important but it is also from the point of view of the manner in which it functions, the personnel there functions and the way the administration of justice is made. It is from all these points of view that the Supreme Court acquires an important position in the context of our judicial system. Everyone, more especially, Members of Parliament, should be interested in this whole matter. I read Mr. Datar's speech. It is a disappointing speech. He does not throw any light on this aspect of the matter. That is the trouble with the Home Ministry. It does not know the problems, the worries and anxieties, the aspirations and strivings of the judiciary. If we had a Minister of Law or a Minister of Justice speaking on the subject drawing upon his experience and knowledge, perhaps he would be in a position to enlighten us over the problems that we have to face; but nothing of that kind was done by the Minister. He wants the number to be increased and that must be increased. That is all that he has said.

Now, Sir, in the matter of appointment of Judges of the Supreme Court, it is very very important as to who are appointed, more especially when the Government gives advice. In this matter, Sir, I think we are suffering from some conservative outlook, and I think there is a tendency to hang on to the legacy of the past. There is an attempt to cling to the past, to the British, in this matter and function as if we are living quarter of a century back, in the old days under the British. The position is entirely different today. The world is changing. It is not merely that; we, in our own humble way, are trying to change the face of India in every sphere of public activity. In the economic field, we want to bring about changes; in our social legislation and in other matters, we want to bring about changes; in our system of governance, we want democratisation and in our system of judiciary too we want changes of a really dynamic nature. Now, until and unless we put good people, effective people, not effective in the abstract sense but effective in the light of the realities of the situation, effective from the point of view of the functions that in a given period of social progress one has to fulfil, unless we find such people, we cannot expect to attain much results. As far as the problem of the appointment of judges is concerned, it is a big question. It is not a question to be settled merely by looking at certain briefs or certain notes coming from some quarter. First of all, those who are in

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authority to make the appointments must have clear vision of the type of judiciary which we are going to create. The Constitution does not say much beyond laying down the broad principles. The Constitution does not say much beyond laying down the number and the manner of appointment. Much is left unsaid. Here the conventions come in; the practices come in; the manner of selections comes in; the outlook, approach, everything comes in. In our Constitution we have got Directive Principles which are more forgotten than remembered by hon. Members on the Treasury Benches opposite. When you make appointments of judges to the Supreme Court and to the High Courts, do you see that you are appointing such personnel who more or less conform to the ideas and ideals contained in these Directive Principles? This is a question which arises from the Constitution itself. It is not something which is posed by me. I think and I dare say that the Government forgets it even in the case of appointment of Supreme Court judges. They do it as a sort of a routine business. That is my regret. Since we have laid down certain objectives, certain principles of social and economic justice, we must see that we choose such men as would uphold those principles of social and economic justice, develop upon the theme of justice and equality and expand it. That should be the approach. Do they do it? I find they don't. People who have been old-timers under the British come in by way of routine arrangement. I do not have any personal reflection to make against any of them but some of them may not be quite fit for the requirements of the time. Otherwise they may be excellent persons but they may not be suitable for the type of thing that we want to be done in the present situation. Therefore, Sir, here the question comes in. The Government has failed; the Home Department has miserably failed in this matter. I know it for a fact that in some cases before the appointment of judges was made to the Supreme Court, High Court judges felt that they should at least make a call on the Home Minister. It is not good. I do not want to say anything against any individual but let them say that there has not been a single case when a High Court Judge did call on the Home Minister and he was later to become the Supreme Court Judge. I would like to know; I would like to be reassured, Sir, on this.

SHRI P. D. HIMATSINGKA: Not one.

SHRI B. N. DATAR: My friend is making an allegation which is entirely wrong.

SHRI BHUPESH GUPTA: I can quite understand Mr. Datar answering because no High Court Judge would call on him.

MR. DEPUTY CHAIRMAN: Order, order.

SHRI BHUPESH GUPTA: I do not think . . .

MR. DEPUTY CHAIRMAN: You cannot make vague allegations like that.

SHRI BHUPESH GUPTA: You want the name? I do not want to give the names. That is the difficulty. If I give the name, you say I should not name. If I don't give the name, you say I am making allegations.

MR. DEPUTY CHAIRMAN: You write to the Government.

SHRI BHUPESH GUPTA: I do not write to the Government. They do not reply. I want here to repeat what I have said.

SHRI B. N. DATAR: My friend's allegation is entirely wrong.

SHRI BHUPESH GUPTA: Yes, Sir, I am very glad. I stand corrected. I hope it is not the case. Now, what is the position?

We know that some Chief Ministers talk to judges over the telephone. can lie deny it? He can't, because there are judges who left the Bench and came to the Bar and revealed the story.

MR. DEPUTY CHAIRMAN: It is not relevant here.

SHRI BHUPESH GUPTA: It is relevant here—the manner in which things happen.

SHRI B. N. DATAR: The hon. Member is speaking about the Chief Justice and the Chief Ministers.

SHRI BHUPESH GUPTA: I am speaking about the Chief Ministers.

MR. DEPUTY CHAIRMAN: They are not here.

SHRI BHUPESH GUPTA: The Chief Ministers will never be here; otherwise they would not be Chief Ministers in the States.

MR. DEPUTY CHAIRMAN: It is not relevant here.

SHRI BHUPESH GUPTA: You may not like it.

MR. DEPUTY CHAIRMAN: You should not make such allegations.

SHRI BHUPESH GUPTA: But it is absolutely relevant. I will tell you how.

MR. DEPUTY CHAIRMAN: Your Party can raise it in the State Assemblies if they are on sure grounds.

SHRI BHUPESH GUPTA: It is not a question like that. I am absolutely on sure grounds.

MR. DEPUTY CHAIRMAN: Not here.

SHRI BHUPESH GUPTA: My point is this. This is executive interference.

MR. DEPUTY CHAIRMAN: We have nothing to do with what happens elsewhere.

SHRI BHUPESH GUPTA: It happens in Delhi also.

MR. DEPUTY CHAIRMAN: He has denied it and you have accepted it.

SHRI BHUPESH GUPTA: He is an honourable man. How can I say, 'No; he is telling a lie'? I do not say that. These are important matters. If you want us to throw bouquets to the Government all the time, we are not here for that. I make it very clear. These are the criticisms that we shall make over this matter.

MR. DEPUTY CHAIRMAN: Yes; it should be relevant.

SHRI BHUPESH GUPTA: It is the inherent right of a Member of Parliament, when a Bill of this kind is discussed, to raise a matter of public importance of this kind. You may silence me because you have the authority.

MR. DEPUTY CHAIRMAN: It should be relevant.

SHRI BHUPESH GUPTA: It is absolutely relevant.

MR. DEPUTY CHAIRMAN: It is not. About relevancy I have to decide; not you.

(Interruptions.)

SHRI BHUPESH GUPTA: I will make it very clear. I will submit to whatever decision you give.

SHRI MAHESWAR NAIK: On a point of order, Sir. I want to know whether the hon. Member should abide by the decision of the Chair or we will have to abide by his decision.

SHRI BHUPESH GUPTA: Sir, you can tell the hon. Member that he need not suffer from any apprehension. I

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will abide by your ruling. That is the point. But I am very sorry. I suggest when such things happen, Secretary should kindly note. I am a member of the Privileges Committee. All these things should be laid there. I would request the Secretary to place every word that I uttered before the Chairman tomorrow. I think a special meeting of the Privileges Committee should be called. If it is not done, what purpose will be served by being on the Privileges Committee, is not clear.

SHRI B. N. DATAR: Once you have given your ruling, it is finished. He cannot speak about the Privileges Committee. When, for example, the Chair gives a ruling, every hon. Member of the House has to accept the ruling.

SHRI BHUPESH GUPTA: You do not know. Sir, I do not mean you; he does not know much of the rules. Shall I send my May's Parliamentary Practice to him? I will do it tonight if you like.

MR. DEPUTY CHAIRMAN: Order, order.

SHRI B. N. DATAR: He cannot improve an argument by personal attack.

SHRI BHUPESH GUPTA: It is not a question of personal attack.

SHRI B. N. DATAR: I know May far better than him.

SHRI BHUPESH GUPTA: It does not seem so; I wish it were so.

MR. DEPUTY CHAIRMAN: All right; go on.

SHRI BHUPESH GUPTA: He has understood what I have said. Sir, you can look after yourself very well. I see that you do it. Why has he got up? Mr. Datar is a very exciting person.

Now, as I was saying, the appointments should be of the right type. Mr. Sapru was speaking about young blood being appointed and I would support that point. As I said then—you were not here; I do not know whether you were here or not; at that time I made an interruption—it is good we hear about young blood and we would like to have young blood at the Bar and also on the Bench. Young blood should not always be for the secretaryship of the A.I.C.C. or the presidentship of the Indian National Congress. They should go to the Bench.

MR. DEPUTY CHAIRMAN: We are not concerned with them here.

SHRI BHUPESH GUPTA: You are quite right. Here if young blood is attracted that way, we will get them. That is the point. It is very very important that young blood should be brought in but that you cannot do except through recruitment because if you have a policy of promotion from the High Court Bench to the Supreme Court Bench, then generally it can be taken for granted that you will not have young blood. In the very nature of things it will not be possible with all your best intentions. Therefore in order to attract young blood to the Supreme Court Bench we must open the door of direct recruitment and young blood means young people. But young people also can be very conservative. When I say young blood, I do not mean young in age also. I mean young in outlook and social ideas and so on. Such people should be brought in.

Now, Sir, it is said sometimes that young people do not have much experience. I can understand that. If we judge it merely from the point of view of time one has served on the Bench, to some extent that experience would be lacking in the case of a young person immediately recruited from the Bar. But then he will bring in other things, which may be lacking in the older men. The whole thing should be so developed that it becomes mutually complementary. Young people—I take it that they will have some knowledge of law, necessary knowledge of law, the minimum,

requisite knowledge of law—will bring with them a bold outlook, sensitiveness to social problems, a different way of looking at things, more responsiveness to the vital problems in matters of law and judiciary, especially in regard to the fundamental rights and liberties of the people. A young person will have more courage and he will have more initiative in the matter, because a Judge of that kind would like to excel not through age, nor by putting in a greater period of service, but by making certain positive, creative contributions to the development of the entire system of law. Therefore, it is very essential that young people are recruited and I think almost in every High Court Bar we can get some young people—by young I do not mean 25—over the age of 40 or so, who can discharge the responsibilities and who can be safely entrusted with the discharge of this responsibility. The Government should seriously consider as to why we should keep stuck up to the old system or arrangement in this matter when we can try it. Now, if they had tried it and found something wanting, I could have understood this system or this approach of recruiting young people to the Bench not being pursued. But they have not done it. The risk, I think, is well worth taking. I do not think it is a risk. If there is a risk, I would suggest that this risk be taken if only by way of an experiment to see how things work. We can give up this kind of approach if it is found unsatisfactory.

Then, Sir, many things have been said about the cases in arrears and so on. Cases will accumulate before the Supreme Court. Why? Because growingly there will be conflict between the propertied classes and those classes which do not have property or have very little property. The vested interests are bound to come up against resistance and opposition on the part of the 'have-nots' and the underdog in society. If we at all mean to advance in our national remaking, then this will, under the present system of law—Statute law, constitutional and other case laws—give rise to a whole number of litigations. And I am not surprised that the litigation is increasing, having seen how, whenever a thing goes against the employer in an industrial dispute or a tribunal, the boss class rushes to the Supreme Court and appoints important lawyers. Some of them are now, of course, members of the Swatantra party. They appoint them to conduct the cases on Rs. 5,000 a day.

MR. DEPUTY CHAIRMAN: Some may be in your Party also.

SHRI BHUPESH GUPTA: We do not allow generally. Since you have made that remark, I will make enquiries. But generally we appear on the side of the underdog in a legal suit. In any case we do not take Rs. 5,000 as fees and then criticise the Congress Government and join the Swatantra party.

MR. DEPUTY CHAIRMAN: Are you sure?

SHRI BHUPESH GUPTA: Well, absolutely sure, Sir, I can tell you, at least over this matter. Now, that is the position. Therefore it will come up. The number of cases is 2500 or so. I do not see any possibility of this number decreasing for two reasons. The vested interests will more and more come to the Supreme Court under article 136 and sometimes by invoking the fundamental rights to challenge even the progressive legislations of the Government and the progressive decisions of the tribunals. Did we not see how when certain laws were passed, they went to the Supreme Court to challenge the actions of the Government, because to some extent they affected the interests of the upper classes? Now, we have seen recently a spate of cases cropping up in the Supreme Court or coming to the Supreme Court, because they are not satisfied. The vested interests are not satisfied with the decisions of the tribunal or similar bodies. Therefore I take it that they will grow. Bu

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then that is also setting the pattern. All the cases, by and large, the Supreme Court Judges will have to tackle. We are not living in the old times when Courts used to deal with a fight between two great landlords or a fight between a great landlord and somebody else in the town. It is not like that. We are coming up more and more against this conflict of different contending social interests in the courts of law. The fight is being fought out in the factories and in the fields and it is taken sometimes to the courts of law for a decision under the authority. This is bound to grow. Nobody can stop it. Naturally we must have Judges keeping these in view. The nature of cases that they have to deal with must be constantly kept in view. If you have that in view, what type of Judges do you require? You require Judges who believe in, broadly believe in—I would not suggest that they should believe in any political philosophy or any political party—social justice. Justice will have to be meted out to them who have been long denied this justice through centuries of denial. That is the position. Therefore, we must have Judges who have sympathies towards the common man, towards the worker, towards the peasant, towards the middle class employee and others in a social sense. I do not mean it in a narrow partisan sense. After all our Constitution is supposed to uplift the conditions of these people, to remove disparities in income, to remove inequalities, to hold the balance of justice evenly and more specially—when it is tipping on the other side—in favour of the poor. If that is so, what kind of Judges do we recruit? My regret is that the Government does not pay any attention to this aspect of the matter—not that the Judges they have appointed are bad. This progressive approach has to be developed more and more as we go ahead. Reference was made to President Roosevelt. Yes, he did it when he wanted some very limited measures for the improvement of their economy not for improvement actually but when there was recession in the whole of Europe and the situation became very critical even in the United States of America. Roosevelt contrived his New Deal measures and the moment they were contrived, they came up against the stony walls in the Supreme Court, in the judiciary, when he had to put in more judges, in order to get a proper type of judgement, if not proper types of Judges. Now, let us not go to that position. It is possible now steadily to reorientate the whole thing and find a good type of people, real, effective type of people from the point of view of social justice. I think this is a very important consideration.

About their dealing with cases, now I do not blame the Supreme Court Judges. Some hon. Members have pointed out that so many cases are piling up. Maybe, some are slow and some are not so fast. You may say all those things. I do not know anything about it. Sometimes it is in the interests of the propertied classes to see that the trials are prolonged and protracted. And the manner in which they conduct cases on the side of the prosecution in such cases and on the side of the employers leads to delay in the matter of law. I have known of cases where just for the sake of harassing the employees and the workers the advocate on the side of the employer tries to get as many adjournments as possible, because every adjournment brings a big gain for him by way of Rs. 5,000, Rs. 3,000, Rs. 2,000 or so. This causes terrible loss to the employees and the workers. I know how difficult it is for a union representative from Calcutta to come here to Delhi to conduct cases. And I know equally how lucrative it is for the lawyers on the employers' side to get the case postponed, because every day it means more money.

The employers are in a position to pay that cash. This is the position. Therefore, Sir, that delay occurs due again to a wrong social approach to this matter. I think some procedural

laws have to be changed, and naturally we would expect the Judges to take a serious view when, with a view to harassing the employees and workers, for such vexatious purposes, adjournments and other things are resorted to. There will be legitimate cases for both sides for adjournment, I am not contesting that, but sometimes it is done with a view to overawing the workers and the people by sheer weight of money, by sheer power of mony. That should not be allowed. I am sure the Judges of the Supreme Court would take proper notice of this kind of thing.

Then, Sir, I come to Fundamental Rights. Unfortunately, except in the case of certain things, we cannot directly approach the Supreme Court. In other cases we have to go to the High Court for proper jurisdiction. I think the question of Fundamental Rights is a matter in which the Supreme Court should take more interest and in which I think the Judges should also take more interest. No doubt they are taking interest, but for that if more Judges are needed, we should have them. Vigilance is not an abstraction. It is not a metaphysical conception. Fundamental Rights are being violated, as I said, in different parts of the country and so we must have a proper judiciary, and the Supreme Court is the topmost body with its eyes wide open to what is happening in the country. It would be good if we have the vigilance emanating from the Supreme Court.

There is another reason why I support the increase in the number of Judges, provided the right type of Judges are appointed and the right functions are assigned to them. About the labour cases, I do not want to say much, because many things have been said by my colleague, Dr. Raj Bahadur Gour. But some hon. Member took exception to some of the things he said. It is not our point here at all to criticise the Judges. We do not know very much as to what they are doing, but all that we know is that sometimes things happen which create a kind of uncertainty, which create feelings of sorrow and dismay amongst various people, and I would not like our judiciary to function in such conditions of disappointment and frustration on the part of the people. I should like the judiciary to function in such a manner, and more especially the Supreme Court to function in such a manner, that confidence in the Supreme Court grows day by day, and that people look forward to the Supreme Court as an intrepid guardian of justice and law. That is what I would like. Therefore, these feelings of sorrow and anxiety on the part of the people should be taken note of by those who handle the affairs in the Supreme Court or matters connected therewith. That is what we say, because we are not competent to say which judgment is right and which judgment is wrong. We do not spend time reading judgements. Otherwise we would have been in the court of law practising; nor does Mr. Datar believe in reading judgments, otherwise he would have been practising in a court of law. But this is beside the point. What we want is this: these feelings are there and, as I said, the feelings are due to the fact that somehow or other, however much the Supreme Court wants to function in that manner, it is surrounded by certain interferences from the executive, certain influences from the executive on all sides. That shakes the confidence of the people. That is what I say, and I do not blame Mr. Datar personally for it. Therefore, he should not take anything in person because I have no personal enemies in this world.

MR. DEPUTY CHAIRMAN: Come on, Mr. Bhupesh Gupta.

SHRI BHUPESH GUPTA: That is another matter. Then again, another reason for the delay and distortion in the administration of justice is the cost and so on, as you know, Sir. I have in mind a person who has to spend, would be expected to spend, several thousands, not several thousands but Rs. 30,000 or so in order to

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get the appeal filed, because the printing has to be made in a particular manner through the Government agency, as paper costs so much and so much material is required. It takes time. It takes time for him to find the money, for which he would require adjournments, and for the entire machinery to get things ready so that the process of law could immediately start at the highest level. Some such thing also happens. Therefore, it is not a question of blaming any individual that way. We have got into a circle which frustrates what we want to do. That is the position. This is another aspect of the matter.

As far as arrears are concerned, I want speedy justice. But somebody today made an interesting suggestion here—you were not here then, Sir—it was made by an eminent speaker from those benches—that if a man is condemned to death, he should rather be executed immediately than that his case should be kept on the pending file. I would ask the hon. Member to discuss this with a man under orders of execution and find out how he feels about it. A person who has never faced execution can say this thing that the person can be executed, say, "Let him be executed, I do not want justice to be delayed", but I do not want it to be enforced by a ready-made execution of this kind because when a person has been sentenced to death, I want his case to be taken up with all sympathy and seriousness not distracting from the judicial processes. Therefore, if time is needed, time should be given, and nobody should come out with a suggestion like the one which was made here that it is better to execute the fellow instead of keeping him waiting for the judgment to come some day. I had lived very near a condemned cell, and some of my colleagues in Bengal lived in condemned cells and went to the gallows, and I know what their feelings were. Always there was an expectation that probably their life would be saved. I would not like to deny the person condemned to death this last privilege of his life if it is ever possible, if it is at all possible to continue it in that manner. Therefore, that is not a good argument. There are many other cases which should be dealt with expeditiously. But then, Sir, what is the use of telling the Supreme Court Judges? What can they do? We have got the Civil Procedure Code, we have got the Criminal Procedure Code, the Constitution, interpretation, case law, and we have got many advocates the size of whose fees equates with the size or the length of their arguments. Here we speak. Even if I speak for ten days, my salary remains Rs. 400. Not much but Rs. 400, it does not go up. But if, shall we say, Mr. Munshi makes an address to the Supreme Court . . .

MR. DEPUTY CHAIRMAN: No names.

SHRI BHUPESH GUPTA: You are quite right, Sir. If an eminent person, an ex-Governor, now a lawyer and sometimes a politician argues a case for ten days before the Supreme Court, well, the fee goes up every day, Rs. 2,000, Rs. 4,000 and so on. Like a taxi-meter it goes on rising as the argument proceeds. It is increasing. How to stop it? What can the Judges do? It is always possible for a Supreme Court advocate, especially when he has got a name and fame, to appear before the Supreme Court with one hundred law books and then confuse everybody and continue to argue. It is possible because money comes. Hon. Members should therefore think how we can eliminate this thing. There is a tendency on the part of some people to blame the Judges all the time as if the Judges are not doing work. They say that the Judges should do more work and that the Saturdays should be taken off, and so on. I am not going into that question. If individual Judges are there, they can be asked, letters could be written to them. But that should not be discussed in this manner here because by and large these people are hard-work-

ing people. Many of our friends have become Judges, I find, in the Calcutta High Court and other places. They are hard-working people. When they built up their practice, they did hard work. Only by doing hard work they build up their practice. When they go to the Bench, they retain the habit of hard work, and so on. Therefore, I cannot say that the Judges are not hard-working. Sir, here is Mr. P. N. Sapru sitting, a former Judge of the Allahabad High Court. See how in this very old age he is hard-working. He comes here and makes speeches, very instructive and enlightening speeches. . .

MR. DEPUTY CHAIRMAN: Please do not go into personalities.

SHRI BHUPESH GUPTA: All right, Sir.

MR. DEPUTY CHAIRMAN: It is time for you to finish. You are rambling now.

SHRI BHUPESH GUPTA: I am not rambling. I am saying that he makes very good speeches.

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Therefore, they are hard working. I just give an example. It should not be so. If the cases are in arrears, it is not because they do not work hard or because there is some kind of lapse on their part. I think that is not the real problem. As far as I can understand, the problem arises from causes much deeper. Therefore that has also to be taken into account; necessary changes have to be made in the procedure in law, in the rules of the High Court, in the rules under which the Registrar of the Supreme Court functions, so that the speed is greater.

I do not want to say much. The only thing that I would like to stress here before I sit down is this. The point that many of us have made out here is about the direct recruitment from the Bar. I think the hon. Minister should accept this suggestion and the right type of people should be recruited from the Bar, and especially in this case where you are going to add three more Judges to the Supreme Court, I think it would be a good and welcome departure if at least we take two out of the three to begin with from the Bar, for a change. That will be a good thing. Secondly, Sir, I would also ask—I have suggested this —that this convention of the Home Ministry going into this matter should be given up and if any Ministry were to look into this question, it should be the Ministry of Law. And in any case, here the President should be allowed to function and decide his course of action in the matter of appointments solely and mainly on the advice of the Supreme Court Chief Justice and on the advice or suggestion, direct or indirect, of nobody else.

SHRI T. SRINIVASAN (Madras): Mr. Deputy Chairman, I rise to support the proposal made by the Government to increase the number of the Judges of the Supreme Court. I believe, this sort of increase in three or four years is inevitable because of the nature of our Constitution and the work of our Supreme Court, because our Supreme Court is not merely the custodian of the Constitution as the American Supreme Court is, it also is there to ensure the uniformity of the civil and criminal laws all over the country. So our Supreme Court bears a double task, of not merely interpreting the Constitution but of acting as the final court of appeal in all civil and criminal matters.

I say that in a country like ours materially improving and administratively progressing, it is inevitable that the number of Judges must increase from time to time and not remain static as it has been doing in America. Secondly the principles on which our Supreme Court and our whole judicial system are based are something taken over from the heritage of democracy in England as well as in America, what we broadly call the rule of law,

[Shri T. Srinivasan.]

and the rule of law means, I believe, that Parliament must lay down the objective principles of justice, social and individual. And it is for the Judges merely to interpret that law and not go behind those principles. I believe—as pointed out by one of the erudite speakers previous to me—the reason why Mr. Roosevelt was compelled to interfere with the judiciary was a double-edged weapon. Mr. Roosevelt wanted to introduce the principle of New Deal which was new to the American Constitution. On the other hand, the judges were die-hard conservatives. If we are to set the example and create that tradition, it is for the representatives of the people in Parliament to lay down the principles that shall prevail in the administration of the country. Therefore, the main qualification which we require in our Judges is learning and impartiality—very high learning, the highest learning possible, and absolute impartiality. I do not think that any fairminded man who studies the records of our High Courts or of our Supreme Court can lay his hand on his conscience and say that our Judges allow themselves to be swayed one inch to the right or to the left. On the other hand, it has been a shining record of absolute impartiality, standing up against the Government when it is necessary and holding the scales of justice even. I would not give up the present system for any other method of recruitment or any other new principles to be laid down. For example, the appointment of the Judges by the executive is a well-tried method in England, in the United States, in France, in all countries where democracy has been working for a long period. After all if you cannot trust the Cabinet, how can you—I say this with all respect—trust the President? How can you trust the Supreme Courts? In the end, the executive is the custodian of the government of the country and as a Latin proverb, says. "Who will be the custodian of the custodian?" We must trust somebody, and I say, in India the traditions of the past thirteen years deeply and firmly laid down, show that the executive will not swerve from its principle of impartiality. Can you say really that political or party considerations have been there in the making of any single appointment in the course of the past thirteen years? I say with all the emphasis at my command that this judiciary has kept the scales even between the majority and the minority, between the Government and the people and between the labour and the capitalist I say that this method which has ensured such a shining example of judicial impartiality must continue, must expand and must be reinforced with all the support that Parliament can command.

SHRI AKBAR ALI KHAN: Mr. Deputy Chairman, so far as this Bill is concerned, many suggestions have been made—some relevant and some irrelevant—in connection with the judiciary and the judicial system in this country. Before I say anything regarding the provisions of the Bill, I consider it my duty to make definitely clear my view regarding the two observations, one made by Dr. Raj Bahadur Gour in connection with certain Supreme Court decisions and his comment regarding inconsistency and so on, and the other made by Shri Bhupesh Gupta that some telephonic communications went on not only elsewhere but in Delhi also. I strongly object to and repudiate the allegations. It is no doubt that here we have the privilege and honour to talk on any subject and express our view on it as humble Members of this sovereign Parliament but it is up to us to keep restraint and see that what we say and do, we do it with full responsibility and with restraint. I submit that we have the fullest confidence . . .

SHRI BHUPESH GUPTA: Telephone from Delhi to Bombay.

SHRI AKBAR ALI KHAN: You said 'in Delhi' so far as the Judges were concerned.

Sir, I say that we have the fullest confidence in the Judges of the Supreme Court: we have the fullest confidence in the Judges of the High Courts, and if there is anything in what my friend has suggested and if he really feels strong about it, let him give the statement in public and not in Parliament and we will know whether it is correct or he will have to face the consequences. He does not want to face the consequences but he wants to take advantage of the privileges of this House and say things which I think as Leader of the Opposition do not behove him.

Now, Sir, . . .

SHRI BHUPESH GUPTA: I shall invite the hon. Member to the public meeting where I propose to make that statement.

MR. DEPUTY CHAIRMAN: Order, order.

SHRI AKPAR ALI KHAN: I would willingly go and join you and hear what you say.

What I was just saying is that so far as increasing the number of judges is concerned—and that also with the commendable object of clearing the arrears—I do not think there can be two opinions. But we have to go a little deeper into the matter. We started with eight judges including the Chief Justice ten years ago. Later we proposed and passed an amendment increasing the strength by three more judges. Now the Government has come with an amendment for a further increase of three judges. I have no doubt, Sir, that within another three or four years he is bound to come with another amendment asking for more judges. So let us consider what is at the root of it and let us grapple with the question. I would suggest that the Government as well as the Chief Justice who have recommended the increase, should look into the matter in greater detail. As my learned friend, Mr. Sapru, has said, the Supreme Court is not only the final court of appeal, is not only the custodian of our Fundamental Rights, is not only the original court in matters between State and State, it not only functions in an advisory capacity when the President seeks its advice in some important matters, but it has also been given, under article 136, very wide power of appeal against any judgment of any tribunal or court in matters civil or criminal. It is that provision which has led to an increase, a disproportionate increase in the work of the Supreme Court, and if that continues, I am afraid Sir that even if we have thirty judges, in view of the vastness of our country, in view of the increase in the country's industries and the attendant labour problems and in view further of the taxation questions and the cases thereon, it would be entirely inadequate. That is one submission. The other is: Are we going in any way to weaken our High Courts? High Courts are also courts of record, and to a great extent—I would submite—the cases should finish there. The High Court, under article 227, has got supervisory power; they have not the right to grant appeal in each and every case whereas, under article 136, there is a right of appeal given to the Supreme Court in practically every case. And what is the result? Those who have gone through the Law Commission's reports must have seen that in hundreds of cases applications have been put in, and in civil matters 10 per cent have been admitted. I have got also other figures in respect of other matters and since it will take a long time I shall not go into those figures. So far as criminal cases are concerned, 90 per cent have been admitted, and so far as labour matters are concerned, even to the extent of 95 per cent they have been admitted. With the increase in labour problems—the law standing as it is today—how can we cope with this situation? So I would suggest that the Government in consultation with the Chief Justice of India and

[Shri Akbar Ali Khan.]

other jurists should consider modifying article 136. Of course the Supreme Court must have its final say but its power of superintendence may be maintained in the manner as given to the High Courts in article 227. Make the High Court a court of appeal in all cases, apart from those under article 132 in respect of civil matters, under article 134 in respect of criminal matters and under article 32 in respect of Fundamental Rights—the jurisdiction of the Supreme Court is supreme. So far as the power given to the Supreme Court under these articles is concerned, it is perfectly legitimate but then so far as every case is concerned, the discretion is there and of course they have been trying to exercise it with caution and yet they have to admit a good number as is evident from the Law Commission's reports.

The other thing of course is that we have to revive the Labour Appellate Tribunal to hear appeals arising from the awards of Labour Tribunals. I would suggest that either have the Labour Appellate Tribunal or better still, give the High Courts the right of appeal; let there be a labour bench and all these labour matters should go and end there. I say this for another reason also—a reason advanced by my hon. friend, Mr. Bhupesh Gupta and I ask how many people, especially the weaker elements of our society, can afford to engage lawyers in the Supreme Court, Eminent lawyers naturally charge a thousand and two thousand rupees per day and of those people who come to the Supreme Court and get redress, 99 per cent of them are monied people spending a lot of money. Now, with the change of society, with our new progressive ideas of the society growing, the continuance of such a course would indirectly place the weaker section of our society in a still weaker position and the monied people in a better position. Not only that, Sir even the High Courts have expressed their resentment against the Supreme Court becoming another appellate court in all criminal and petty civil matters. So bearing all that in mind, unless we tackle the problem under article 136, suitably modifying that article, while fully maintaining all the other provisions relating to the power of the Supreme Court, I am sure, Sir, Government will be forced to bring, after every three years, a Bill for adding three more judges. Ultimately it will be a burden on the taxpayer; it will be a strain on our exchequer. Certainly, for the best administration of justice I am not one of those who will grudge expenditure on that account but still, if we can maintain a balance between the High Courts and the Supreme Court, and at the same time see that the people get justice at the level of the High Court itself, and only in very rare cases at the level of the Supreme Court, I think that would be an ideal thing in the best interests of our people and in the best interests of the administration of justice. Recently in election cases we have given the power to High Courts, Similarly immediate steps should be taken so far as labour matters are also concerned, to make the provision that the High Court is competent to hear the appeals in labour matters. It is only then that we will be able to meet this problem. I submit, Sir, that so far as this Bill seeking to increase the strength of the Supreme Court by three judges is concerned, I have nothing to say against it; it has my support, but these fundamental matters should be looked into.

As regards recruitment to the Bench, the method of recruitment, etc., my learned friend, Mr. Sapru, and other hon. Members of this House have made suggestions, and there is much in them. I am sure Government will give due consideration to all the suggestions that have been made so far as recruitment to Judgeships of the High Courts and the Supreme Court is concerned, and if it is necessary to create confidence, as my

friend, Mr. Bhupesh Gupta, has said let it be entrusted to the Law Ministry instead of the Home Ministry. In any case some Ministry of the Government will have to be responsible; such Ministry should command the confidence of the people that these appointments are made in an absolutely fair and just manner.

With these observations, Sir, I support the Bill.

SHRI BHUPESH GUPTA: You agree with most of my observations.

SHRI B. N. DATAR: Mr. Deputy Chairman, Sir, I heard very carefully the discussion that we had some days ago and today. Even my hon. friend, Shri Bhupesh Gupta, finds nothing wrong in asking for an increase in the number of Judges to the Supreme Court. Therefore, Sir, so far as the main question is concerned, I take it that there is absolute unanimity about the provision of this Bill, the only one provision.

Incidentally, Sir, a number of hon. Members have raised very important questions. They have gone over the whole field of judicial administration not necessarily confining themselves to the Supreme Court. All the same, Sir, I am obliged to the hon. Members for the various suggestions that they have made, and I should like to make a brief reference to such of the points as require a reply.

In the first place, Sir, so far as the provision of this Bill is concerned, it is true that we have asked for an increase in the number of Judges only by three. Three hon. Members—Shri Bhargava, Shri Sinha and Shri Akbar Ali Khan—have also suggested, or rather have prophesied that after three years again we shall come before the honourable Parliament to ask for a further increase. May I point out in this connection that we are guided, in asking for the number of Judges that we have done, by the valuable opinion of the Chief Justice of India himself. Therefore, at present we are anxious to have only the power for the President to appoint three Judges more according as the need arises in the opinion of the hon. Chief Justice of India. That is the reason why I am extremely satisfied at the measure of confidence that a number of hon. Member have shown in the Home Ministry, though as usual without any relevance my hon. friend as usual made a tirade this time against the Home Ministry. He wants some object, so far as the Government machinery is concerned, to condemn, and the Home Ministry for the time being is what a red rag is to something else. Whatever it is, my hon. friend will understand that the Government is one, that the Government's duties so far as the administration is concerned, are one; the responsibility is joint and indivisible, and no purpose will be served by telling us that one Ministry is better than the other.

SHRI BHUPESH GUPTA: Yes, the responsibility is divisibile; otherwise there would not be a division of portfolios and specific responsibilities.

SHRI B. N. DATAR: The division of portfolios is for the purpose of facility of work, not for the purpose of any discrimination at all, and my friend's reference to either the Ministry of Justice or the Ministry of Law is only a left-handed compliment to these Ministries.

MR. DEPUTY CHAIRMAN: He will attack them when they come into the picture.

SHRI B. N. DATAR: Therefore, it is only for the purpose of carrying on different types of work that the Ministries have been formed.

Here, in this case, may I point out that the Home Ministry does not deserve even a single word of criticism much less condemnation that the hon. Member has chosen to shower upon the Home Ministry? Whatever he

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said, he has not been able at all to show what the Home Ministry has done. That is my direct question to my hon. friend. Now, there is one single, highly effective answer to all the criticism or condemnation by my hon. friend.

May I point out, Sir that after the Constitution was inaugurated in 1950, there were 19 appointments made to the Supreme Court during the last ten years. In all these cases—I say it with all the emphasis at my command—the appointments have been made with the fullest concurrence of the Chief Justice of India. In these circumstances, Sir, I fail to understand why the Home Ministry should come into the picture at all. It is the President's privilege to ask for the advice of the Government and it is our privilege to tender advice on behalf of the Government of India.

SHRI BHUPESH GUPTA: And it is our privilege to be apprehensive.

SHRI B. N. DATAR: Under these circumstances when we are asked to tender advice, and when the President as the Constitutional head of the Government makes certain appointments and when these appointments are absolutely unexceptionable that is a point which I should like my hon. freind to remember if he cares to remember. In all these nineteen cases we have been guided entirely, cent. per cent., by the advice, by the concurrence of the Chief Justice of India. Under these circumstances, it does not lie, rather it ought not to lie, in his mouth to say that the Home Ministry should not interfere in this matter at all. My simple answer is that we have never interfered and all these apointments have been made, as I have stated, with the fullest concurrence of the very authority whom he wants to be the appointing authority.

Now, these are matters of administration and that is the reason why the Constitution-makers in their wisdom stated that the appointments of the High Court Judges and of the Supreme Court Judges are to be made by the President, naturally on our advice.

Under these circumstances, so far as this particular question is concerned, I would submit, Sir, that there is absolutely no substance in the usual condemnatory remarks that my hon. friend has made.

Now, I would pass on to certain other points. Why we have asked for three Judges is because we are confident that within the next few years the arrears would come to the normal. What happened in this case was this. When in 1957, the number was increased, simultaneously there was another circumstance as a result of which the work also was increased, namely, there was the deletion of the Labour Appellate Tribunal. That is the reason why there appears to be some increase in the quantum of work after 1957. But may I point out, Sir, that when more Judges were appointed, there was also a larger disposal of work? I will give the figures in respect of matters disposed of.

In 1957, there were 1931 disposals. In 1958, it increased to 2.326, and in the last year, 1959 the disposals amounted to 2.479. So, these are the figures which have to be taken into account in the context that I have pointed out. While it is true that on the one hand a number of Judges were appointed by the amendment of the law, there was the other circumstance namely, an increase in the volume of work on account of the deletion of the Labour Appellate Tribunals. That is the reason why there was this larger volume of work and the Chief Justice of India feels that the work is likely to go down in the course of a few years if more Judges are given to him. As the House is aware, they have already increased their working days to 187 and they sit for four and a half hours, as an hon. Member pointed out. Therefore, the honourable Judges of

the Supreme Court are dealing with the question of arrears in as best and vigorous a manner as possible. Under these circumstances, if the Chief Justice of India feels that this much is sufficient, namely an increase in the number by three, I think we might accept his opinion. I might also incidentally point out to this House that the Government in the Labour Ministry are considering the question as to whether the Labour Appellate Tribunal should be re-established. They have not taken any decision at all and the matter is under active consideration. In case any such Tribunals are appointed, it is natural that the work is likely to go down. That is the reason why for the time being, we shall be satisfied, as the Chief Justice of India will be satisfied, with an increase in the number of Judges of the Supreme Court by three more. For this reason we are not making any request for a larger number. May I also add that we do not desire it, for in spite of what my hon. friend says against us, we are realistic enough and we want to take only the minimum powers to ourselves, not the maximum. Under these circumstances I wish my hon. freind had some fairness in him to accept the position that we have not asked for more judges at all. I am obliged to two hon. Members on this side of the House, because they suggested that we might have more. One of them, Shri Bhargava, has put in an amendment also and he wants to move an amendment to the effect that in place of 13, we should have 16. That is his suggestion. I am obliged to the hon. Member for the suggestion that he has made for, it indicates a measure of confidence in the Government which my hon. friend over there may kindly note. All the same, we are not going to take more power than what is absolutely essential and we should be better guided by the views of the Chief Justice of India.

Next I pass on to certain other points which hon. Members have raised. Some hon. Members from this side and also from the other, have raised certain fundamental questions. One of the questions that they raised was that in these things oftentimes there is delay. There are delays in courts of law. Mr. Bhupesh Gupta also complained and said that all those matters which increased or which encouraged delays ought to be brought down, that they should be cut down as much as possible. I may tell him in this connection that at present the Law Commission are examining the two Codes—the Code of Civil Procedure and the Code of Criminal Procedure—and it will be open to the Law Commission to make proper suggestions for the purpose of incorporating in these Codes provisions with a view to seeing that what causes unnecessary or avoidable delay is done away with. I also agree with Shri Bhupesh Gupta that we should not at the cost of justice, do anything with a view to finishing the matter or with a view to expediting the matter. After all, justice is most important and that point has to be fully taken into account. Of course, where they are avoidable, we should try to avoid these delays. But where they are not avoidable, we have to see what can be done Sometimes you have to pass through a particular process which is a reasonable process in accordance with the fundamental principles of justice and in such cases we should not be impatient because, after all, full justice has to be done to the various matters connected with the administration of justice.

One hon. Member suggested that the recruitment should be of persons who are extremely fit and who have, as an hon. Member stated, imbibed new notions. So far as this is concerned, may I point out to the hon. Member that in respect of justice, we have got the Preamble to our Constitution and it is one of the finest preambles that there could be to any constitution in the world, and that Preamble states at the very first:

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"to secure to all its citizens:
Justice, social, economic and political;"

SHRI BHUPESH GUPTA: May I suggest to the hon. Home Minister that he should read it every morning before he comes here? It will be good.

SHRI B. N. DATAR: So this is what I suggest to my hon. friend. What is dynamism? How are we to find out whether a particular person who is being considered for appointment either to the Supreme Court or to the High Court possesses a tendency or a natural attachment to these principles? Therefore, I would submit to the hon. Members that it is not quite correct to bring in all these things and to put them in a more or less, airy or theoretical way. What we have to do is this. Our approach is that the Indian Constitution is the most dynamic Constitution in the world and it is an idealistic Constitution which enjoins upon us, the Government and the people alike, to strive their utmost for the purpose of fulfilling the objectives that have been laid down in the Preamble to the Constitution. Certainly, this is one way of bringing in dynamism into our acts. Secondly, whenever any laws are passed, those laws should contain dynamism and they ought to contain a new deal, they ought to contain new ideas and then it will be open to the Judges to deal with these laws and to administer those laws against the background of complete justice. This is the proper procedure so far as the approach to this question is concerned. I do not understand how while considering all the other circumstances there can be any such overriding consideration as to the views of a particular judge or a particular person who is to be appointed as a Judge of the Supreme Court or High Court. This is the reason why when the Constitution was framed, they did not lay down any more particular qualification than what they had actually stated in the provisions of the Constitution. Under these circumstances, naturally, whenever appointments are to be made either to the High Courts or to the Supreme Court, may I point out to my hon. friend that the initiative lies with the Chief Justice of India in the case of the Supreme Court and with the Chief Justice of the State in the case of the High Court concerned? Therefore, we have got here the initiative given to the highest judicial officer either in the State or in the whole of India. It is for such persons to make recommendations. Then in the case of the recommendation for the High Court, the Chief Minister has to be considered. You cannot dispense with his views, because he is the head of the administration so far as the actual affairs are concerned. And here the President is the head of the administration in the Centre. That is the reason why the Constitution has provided for the initiative being taken by the Chief Justice of India or the Chief Justice of the State, respectively. Therefore, that solves the problem to a very large extent and while making their recommendations they take into account all the circumstances that constitute what you can say dynamic eligibility for holding the post that is going to be filled. Therefore, it is the Chief Justice of India in one case and it is the Chief Justice of the High Court in the other and they look into all these matters. They consider their merits, their personality and other matters. These are also taken into account and ultimately it is they who make the recommendations after what can be called an overall assessment of the particular person concerned.

Then a suggestion was made by an hon. Member here and also some hon. Members from the other side, namely, that there ought to be direct recruitment to the Supreme Court from the Bar. Now, when this question was under consideration, I remember in connection with the States Reorganisation Bill and the consequent Cons-

titution Amendment Bill, this point was raised very strongly both in this House and also in the other and then we stated on behalf of the Government—if I mistake not, I myself stated it—that Government had no objection provided they got the people ready to accept such appointments. May I tell the hon. Member that we are ever ready to take in competent, experienced advocates for direct appointment to the Supreme Court.

SHRI BHUPESH GUPTA: Was any offer made?

SHRI B. N. DATAR: Let the hon. Member wait for a minute. I did not, though his speech was unnecessarily provocative, interrupt.

SHRI BHUPESH GUPTA: Kindly tell us whether any offer was made.

SHRI B. N. DATAR: Had he listened to the next sentence I wanted to say, the answer would have been there.

SHRI BHUPESH GUPTA: It is only intelligent anticipation.

SHRI B. N. DATAR: I do not know whether my hon. friend has that intelligence or appreciation.

SHRI P. N. SAPRU: If you made the offer to a man aged 62 or 63, he is not likely to accept it. The point is that the offer should be made at an age at which the person concerned will accept it.

SHRI B. N. DATAR: May I point out to my hon. friend that we did approach some senior experienced advocates. After all, the work of a Judge of the Supreme Court has to be of the highest character, most responsible character. That is the reason why we did try to find out at least in two cases but unfortunately there was no proper response. That is the reason why we have not been able to make any appointments of advocates as Judges of the Supreme Court. That is our desire and in proper cases we shall be very happy to have advocates for direct recruitment to the Supreme Court. Under these circumstances, we are not responsible for the omission to have any direct recruits from the Bar on the Supreme Court Bench. This point should be understood clearly. We are always prepared to take them. After all, it is the Bar from which mostly the Judges are appointed on the High Court Benches and we shall be happy, if other conditions are satisfied, to have advocates for direct appointment to the Supreme Court also. I hope, Sir, that my hon. friend will agree that Government are not against direct recruitment of the advocates. Government do desire that there ought to be a tradition, as we have in England, that whenever an offer is made, it is accepted. There were very brilliant cases like those of Lord Reading and Cripps. When they were at the top of their practice, not only in England but in the world, when a particular post was offered, especially a judicial post, they accepted. There is also the other example of Lord Simon. Therefore, Sir, I hope that our Bar also which is equally competent and equally brilliant, will develop such a convention. My hon. friend said something about the Bar also as is his want to speak something in inglorious terms, in deprecatory terms about everything. That is their art. Their art lies in disturbance and in creating restlessness and not in constructive work. That is why they condemned the Bar as a whole.

SHRI BHUPESH GUPTA: I never condemned the Bar at all.

MR. DEPUTY CHAIRMAN: Only certain members of the Bar . . .

SHRI BHUPESH GUPTA: The Swatantra gentleman.

SHRI B. N. DATAR: Shall I clarify, Sir? "Some members of the Bar with political affiliations to his party." That is exactly what he wants.

[Shri B. N. Datar.]

So far as this point is concerned, we are anxious and we shall be happy to have senior, highly experienced and brilliant advocates of the Supreme Court Bar.

Now, sir, so far as article 136 is concerned, a number of hon. Members made suggestions. On the one hand, Dr. Gour and others stated that in order to lighten the task or reduce the work of the Supreme Court we should introduce amendments to article 136 so far as the present naturally unlimited powers of the Supreme Court are concerned. Now, this is a very large question. It is true that the Law Commission has dealt with this question but whatever recommendations they have made, they have done so in a guarded manner. I would like to point out what the Law Commission themselves have stated. They have, in the introductory portion of their recommendations, dealt with this question in a general way. They have also made reference to the observations of a Judge of the High Court wherein he had stated that such powers ought not to be exercised by the Supreme Court. After saying so, when they had to make a recommendation, this is the guarded manner in which they have stated it.

SHRI AKBAR ALI KHAN: But that conclusion is not supported by the facts and figures they have given.

SHRI B. N. DATAR: I would read to the hon. House what the Law Commission themselves have stated because this was referred to in the course of the debate by some hon. Members.

> "Although the exercise of the jurisdiction under article 136 of the Constitution by the Supreme Court in criminal matters sometimes serves to prevent injustice . . ."

Assuming for the sake of argument that even if in one case it is prevented, then naturally that power ought to be there. The Supreme Court is the highest court and it has sovereignty of justice so far as India is concerned and, therefore, personally I would say that even if in one case the prevention of miscarriage is there, this power should continue, this residuary power, special power, ought to be there The Law Commission have said:

> " . . . yet the Court might be more chary of granting special leave in such matters as the practice of granting special leave freely has a tendency to affect the prestige of the High Courts."

After all, the Constitution-makers have purposely used the words in a very comprehensive manner. They have purposely stated—

> "Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion . . ."

This chapter deals with the powers of the Supreme Court. Naturally, any discretion here has got to be judicial discretion. They have said that such discretion should be there with the Supreme Court to grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. This is the highest court in India and, therefore, Sir, the Constitution-makers considered it necessary that in all such cases it should be left to the Supreme Court to decide. What is done is that either the Supreme Court grants permission or does not grant. This is a power which has to be exercised judicially by the Supreme Court. The Law Commission themselves have made a recommendation hedged in with certain restrictions. They have put this in a very guarded manner. They agree that there might be circumstances where such power might be absolutely necessary in regard to exceptional circumstances. This is how the Law Commission have stated. In these circumstances, we are not in

favour of amending article 136 of the Constitution because as I pointed out earlier, this is the basis or the foundation on which the sovereign rights of the Supreme Court exist. In the interests of the administration of justice to which my hon. friends gave a tribute, we have to maintain article 136 as it is. We do not want to deal lightly with the wisdom of the Constitution-makers. After we received the Law Commission's Report, we requested the Judges of the Supreme Court to consider the matter. For example, they can develop a convention in regard to this matter. This is a judicial matter and with a judicial matter we should not deal lightly. Therefore, we are leaving the matter to the Supreme Court for such consideration as they consider necessary in this respect. Then certain hon. Members made a reference to some articles of the Constitution. Articles 127 and 128 were referred to. So far as article 127 is concerned, an *ad hoc* judge from the High Court could be taken when there is no quorum in respect of a particular Bench. When there are certain difficulties, only in those restricted conditions can this be done. Then again a reference was made to article 128, namely, that the retired judges of the Supreme Court should be called upon to serve whenever there is any need. May I point out in this connection that it is very difficult in the first place to have such a large number of retired judges of the Supreme Court? There were three occasions when we did avail ourselves of the services of the Supreme Court Judges. But the number of retired Supreme Court Judges is very small and they are called upon to take up other work of a public nature and that is the reason why especially when we have to deal with clearance of arrears which is a long-term measure—it cannot be finished immediately—powers under article 128 would not be sufficient for us.

My hon. friend brought in the question of seniority of judges. He stated that merit should be taken into account and not merely seniority. Sir, there are two sides to this question. Seniority also has to be given its due importance. You cannot dispense with seniority altogether. Especially when at the time of making appointments you just go through all the formalities—you make full enquiries and so on—and after you appoint them if certain judges become senior, then seniority also has to be considered. I do not say that seniority should be an infallible guide but that is a factor which also has to be duly taken into account.

My hon. friend, Dr. Gour, brought in the question of the judges of the Hyderabad High Court. I wish he had not done so because he has moved us a number of times and we have examined it.

SHRI AKBAR ALI KHAN: Justice should be done at any stage.

SHRI B. N. DATAR: That is all right Not only at his instance but on our own initiative also we examined the whole question very properly and when he purposely made a reference then we have again looked into the matter and may I tell the House that no injustice has been done to any judge of the Hyderabad High Court? On the other hand, the recent instance should be taken into account. An hon. Judge of the Andhra Pradesh High Court has gone to the Kerala High Court and has become the Chief Justice of the Kerala High Court. Therefore I would submit. . . .

SHRI P. N. SAPRU: When has that happened?

SHRI B. N. DATAR: It happened about four or five months back. Now, he has become the Chief Justice I believe—I speak subject to correction—from the 1st March.

SHRI AKBAR ALI KHAN: We have now two or three judges more and if they are also provided, it will be all right.

SHRI JOSEPH MATHEN (Kerala): Can we expect a Judge of the Kerala High Court to become the Chief Justice of other States?

SHRI B. N. DATAR: May I point out that we are not making any difference or discrimination between judges and judges? No distinction is made between the judges of what were formerly known as Part A States and those of Part B States because all the High Courts are placed on the same footing. As the House is aware, there was a proposal when the States Reorganisation Bill and the Constitution (Amendment) Bill were under consideration that there ought to be different scales of pay, one scale of pay for some High Courts and another scale of pay for the other High Courts. The Joint Select Committee, at our instance, removed this distinction and we have placed all the judges of the High Courts on the same footing. Therefore whenever any occasion arises we do consider the fitness or otherwise, or the eligibility of each on his own merits and take necessary action. Therefore let there be no mistrust; let there be no feeling that there is any discrimination in any quarter.

SHRI N. M. LINGAM (Madras): Some of the States are averse to taking judges from other States.

SHRI B. N. DATAR: So far as this question is concerned, may I point out to the hon. Member that the States Reorganisation Commission made a recommendation that there ought to be a certain proportion of judges on the Bench of a High Court from other States and now we are trying our best to induce the State Governments? There are certain difficulties also and in the circular letter that was issued on behalf of the Home Ministry in this respect, while accepting the principle, we pointed out certain difficulties. We have also assured the Parliament that this question will be constantly kept in view and therefore whenever occasions arise, we do try to implement to the extent possible the recommendation made by the States Reorganisation Commission.

SHRI P. N. SAPRU: This must not be done at the cost of efficiency. It may be difficult because there is the question of language.

SHRI B. N. DATAR: That is one of the difficulties that have been pointed out. The question of language is there; other difficulties are there. All the same, may I point out that we have succeeded in sending judges from one High Court to another at least in five or six cases? We have done that already; the exact number is not before me but we are aiming at the fulfilment of the objective to the extent that we can, keeping in view the difficulties that the hon. Dr. Sapru has pointed out. All the same, that matter is before us and we shall be happy to have as many judges from outside as possible subject to all these difficulties. Under these circumstances, may I point out that what has been done is perfectly proper and let not my friend bring in something which is either irrelevant or absolutely improper.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill to amend the Supreme Court (Number of Judges) Act, 1956, be taken into consideration."

The motion was adopted.

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

Clause 2 was added to the Bill.

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

SHRI B. N. DATAR: Sir, I move:

"That the Bill be passed."

The question was proposed.

SHRI BHUPESH GUPTA: Sir, I would like to clarify one or two points he made.

SHRI B. N. DATAR: Let him make new points. Let him not go on replying to what I have said.

SHRI BHUPESH GUPTA: Sir, I never made any reflection on the Bar whatsoever. On the contrary, my whole case has been that you should attract more people from the Bar which is a tribute to the Bar if anything.

The second point is, I was not dealing with the question of appointments from the point of view of concrete cases. I was questioning the whole principle. Now, the hon. Minister himself said that appointments had been made with the concurrence of the Supreme Court. You will have noted the expression 'with the concurrence of the Supreme Court'. What I would like is that the Supreme Court on its own initiative and from its own list should make the recommendation to the President and the Ministry should not have anything to do with it. So if it were a question of concurrence, it should come from the Ministry; it should be the other way round. We should like to be told that the Supreme Court made the appointments with the concurrence of the Law Ministry, if you like it that way. That is my second point.

Thirdly, I did not make any reflection on the judges. In fact, I would like to defend them against your encroachment. That is why I referred to certain instances and they should not be taken as any kind of reflection on the judges. By and large we have got a very good set of people. All that I want hon. Members here to see is—against Mr. Datar personally I have nothing—the Home Ministry has got so much to do today and they need not bother themselves about this

MR. DEPUTY CHAIRMAN: Yes; you have said that.

SHRI BHUPESH GUPTA: Not only have I said it, but you have got it.

MR. DEPUTY CHAIRMAN: Any reply?

SHRI B. N. DATAR: No reply is necessary.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at five of the clock till eleven of the clock on Tuesday, the 12th April 1960.

GMGIPND—R.S.—99 R.S.—26-5-60—550.