[Shri Abid Ali.]

had come previously they would have been accepted.

Now, about accidents I stick to what I have said that not only with regard to death and permanent disablement, but the figures quoted here are regarding temporary disablement also. It is: in 1955—17·8; and in 1956—16·76.

With regard to the difficulty which he has pointed out, now after the amendment was accepted this morning, the waiting period has been reduced to three days. Therefore, persons who were not getting compensation up to this time will also be entitled to it. Only those few who will be having minor injuries and who will recover within three days will not be coming within the scope of this Bill. Even for three days and very small injuries, how can it be possible, practicable, to overburden the Factory Inspectorate? A person just gets a small cut, which is a very minor cut, where the application of tincture iodine may make the injury all right within twelve hours—should that be reported to the Factory Inspectorate?

Then, section 16, which the hon. Member must have persued, makes it compulsory on the part of employers, of course after the necessary notification is issued by the State Government, to submit the returns. It says: "a correct return specifying the number of injuries in respect of which compensation has been paid by the employer during the previous year and the amount of such compensation, together with such other particulars as to the compensation as the State Government may direct." Therefore, all these accidents will be reported.

About cardamom, as I have already made it clear on two occasions, it is for the State Government, they can by notification cover the workers in cardamom plantations also. There is nothing else that the hon. Member has mentioned.

Regarding the time, some rules are to be framed, as you have rightly remarked. As soon as this Bill will be through the other House also—if there is no amendment and if it does not become necessary to come here again—we will communicate with the State Governments. Rules will be drafted.

DR. R. B. GOUR: States will have to draft the rules?

SHRI ABID ALI: Yes. After this Bill is passed, it will be necessary for State Governments to frame rules. These will have to be drafted and notified. The parties concerned have to be consulted and only thereafter it will be possible to put this into effect. So, the time necessary will be taken. But I can assure the House that we will bear in mind the necessity of enforcing these provisions at the earliest possible date. Only that much I can say. Thank you.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill, as amended, be passed."

The motion was adopted.

THE HIGH COURT JUDGES (CONDITIONS OF SERVICE) AMENDMENT BILL, 1958

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI B. N. DATAR): Mr. Deputy Chairman, I beg to move:

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

This Bill has been brought forward for the purpose of amending the 1954 Act which originally applied to Part A State High Courts, but after the reorganisation has been so adapted as to make it applicable to all the High Courts in the present States. Formerly, so far as the then British India was concerned, we had the Order of 1937 under the Government of India Act of 1935. That Act or the Order was in force as amended or adapted from time to time. Then, you are aware that the Constitution was passed and according to the Constitution certain rules were laid down

both in the body of the Constitution itself, as also in one of its Schedules. So, certain conditions of service were specified, as for example, the question of the remuneration of the High Court Judges and the Chief Justices in the various High Courts. But some matters remained and, therefore, in 1954 an Act was passed by Parliament so far as the then Part A State High Courts were concerned. Before that, Sir, you are aware that after the integration of States, we had under the Constitution what was known as Part B States, and there were High Courts therein. So far as these High Courts were concerned, an order was passed in 1953 governing the conditions of service of the Part B States High Court Judges. Subsequently, after the reorganization of the States, you are aware, Sir, that advantage was taken of the amendments to the Constitution in certain respects so far as the High Court Judges were concerned, and those amendments actually came into effect from 1st November 1956. Thus you will find, Sir, that from 1st November 1956 we have the High Court Judges Act of 1954 duly adapted after reorganization. That is the main Act or, as it is sometimes called, the parent Act, which is now sought to be amended in respect of certain matters.

One is with regard to leave, and it is considered necessary to specify certain circumstances. The second is about the making of some of these rules applicable to Acting or Additional High Court Judges because special provision was made in the Constitution by, I believe, the Seventh Amendment, under which it was made possible for the President to appoint either an Acting Judge or an Additional Judge. Now an Acting Judge or an Additional Judge might be made permanent or their services might be terminated after the particular period for which they were appointed.

Now in, this Bill it has been made clear that so far as these Acting Judges and Additional Judges are concerned, their service as such will be counted for the purpose of pension only if they are subsequently made permanent Judges. Otherwise, for example, if no such provision was made, then their services for the purpose of pension would be counted only from the time they are made permanent. But here it has been made clear that in case they are made permanent, their previous service as an Acting or Additional Judge will also be taken into account for the purpose of their pension. That is point number one.

So far as leave is concerned, whatever leave they would be entitled to in view of the period of service that they have put in as Acting Judge or Additional Judge will be taken into account, and under the scheme of leave as mentioned in the Act of 1954 they would be entitled to a period or periods of leave as then laid down.

Then, Sir, after this a very important question arose so far as the unexpired leave was concerned as also the question of the pensions of the former Part B States High Court Judges who were continued as Judges in the new High Courts that were established on the reorganization of States. We had some High Courts, as you are aware, in Part B States. When under the Constitution these Part B States themselves ceased to be as such and they were placed in the reorganized States of India, naturally the High Courts in Part B States also disappeared. So far as these Judges were concerned, a very large number of them were ultimately appointed as Judges in the new High Courts under the States Reorganization Act, and naturally a question arose as to what is to be done so far as the period of service that they had previously put in the Part B States High Courts was concerned. A question arose as to whether the period of service that they had put in as a High Court Judge, including in some cases as Chief Justice, should or should not be taken into account, or whether some other formula should be introduced by which a particular period and not the whole period should be taken

[Shri B. N. Datar.]

into account. In this connection two questions arise. One is about leave. If, for example, they were entitled to certain periods of leave and then by the time the new High Courts came into existence they were appointed or they continued in effect to be High Court Judges, what was to happen to the unexpired leave period to which they would have been entitled had the Part B States High Courts continued? This is so far as leave is concerned. So far as pension is concerned, as you are aware, the service of a High Court Judge as such is taken into account ordinarily for the purpose of pension. Now a question arose whether their previous service in the High Courts in the Part B States should or should not be taken into account or whether the period should be reduced. After full consideration, Government came to the conclusion that in all such cases the whole of the unexpired period of leave under the order of 1953 would be taken into account for leave, and for pension, the whole period of service that they had put in in the Part B States High Courts would be taken into account and it would be added on to the period of service that they would put under the Reorganization Act. These two provisions have been purposely made with a view to seeing that they would be entitled to the unexpired period of leave, and secondly that they would also be entitled to count for their pension not only the actual service they would be putting in after 1st November 1956, provided they are appointed to one of the High Courts on that date, but the previous service they had put in as a High Court Judge or as a Chief Justice in the former Part B States High Courts. On both these questions you will find, Sir, the Government have taken the view that the whole period should be taken into account. That is only fair to them, and therefore a provision has been made in the present Bill to regularise this particular view that the Government have taken, so that they will be entitled to count for pension all the period after 1956 as also the period before 1956 so far as their service in a Part B State High Court is concerned. Both these periods would be added on so far as pension is concerned, and the rate of pension also has been mentioned. It would be very clear that these conditions are extremely fair, if not to a certain extent generous, so far as those Judges are concerned.

Then, there are one or two other smaller matters. One is the question of the vacation of the various High Courts. You are aware, Sir, that a similar provision has been made in the Supreme Court Judges Act which was recently passed, and here a clause has been included according to which in respect of each of these High Courts the period of vacation or vacations would be fixed by the President. The object is that as far as possible there ought to be a uniform period so far as all the High Courts are concerned, and in fixing up this particular vacation or vacations, naturally the number of days that a High Court is actually working should be taken into account. You are aware, Sir, that some time ago a Law Ministers Conference was held, and thereat opinion was expressed that the number of working days should be as large as possible, consistent with other circumstances. The view that was given expression to and generally agreed to was that the total period of working days should be about 210. Generally, Sir, I am very happy to find that when this question was first mooted round about 1956 and also taken up with the various High Courts, naturally there was a fairly good response, and the number of working days has fairly increased, though they do not yet come up to what has been the general view that as far as possible the working days should be 210. There ought to be a fair number of working days and in the light of this, they have also other holidays—the holidays in the State as also Saturdays and Sundays. After taking all these into account, formerly there were very large vaca-

tions. Now they are being gradually curtailed or brought down. So the object is, to the extent that it is possible, the total period of the vacation or vacations should be uniform. For that purpose, it has been laid down that the President would fix up a new section which would be added to the parent Act. That is section 23A, according to which every High Court shall have a vacation or vacations for such period or periods as may from time to time be fixed by the President and this order will naturally have the effect. So far as the fixation of the period or periods of vacation or vacations is concerned, it has been made clear that whenever the President makes any such order fixing the period as also the number of days, then every order made under this section, that is sub-section (1) of section 23A, shall be placed before each House of Parliament.

Then, other smaller and minor changes have been made. One of them is with regard to the leave. In the case of High Court Judges they can either have leave with allowances or in some cases, they may have leave without any allowances. Now, in all these cases, a certain period was fixed under the Act of 1954—generally six months. This period of leave was to be taken only at one time. That was found rather inconvenient to the High Court Judges. Therefore, what is provided is that the total period fixed either under the rule about the ordinary leave or under the rule about extraordinary leave shall not exceed, but it can be taken not necessarily only once, but in more batches than one as the Judge might find it necessary to do so. That is a small matter which has been provided for.

Another small matter is that in all these cases, the computation with regard to either the pay or the pension or leave allowances shall be naturally in terms of rupees and not in terms of Sterling. We are now independent. You know the historical circumstances under which this was to be calculated in terms of the Sterling. Now, the times have changed and therefore, it has been considered necessary that a proper change should be made in this respect.

Then, two other provisions have been made. One is in the proviso to clause 5, namely, that if a Judge at the time of his appointment is in receipt of a pension in respect of any previous service under the Union or under the State, the pension payable under this Act shall be in lieu of, and not in addition to, that pension, so that he will not get pension twice under different categories. That also has been made clear.

There is one clause by way of a clarificatory nature which has been added, that is, clause No. 9 under which it has been made clear that there will be no change in the conditions of service so far as the High Court Judges are concerned and that they will not be given any conditions which are less favourable so far as their allowances or rights in respect of leave, etc., are concerned.

Thus, you will find, Sir, that so far as this Bill is concerned, the provisions go to a large extent in making the conditions as liberal as possible for the High Court Judges in all the States. Therefore, I am hoping that the provisions of this Bill will commend themselves to the approval of this hon. House.

MR. DEPUTY CHAIRMAN: Motion moved:

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

DR. R. B. GOUR (Andhra Pradesh): Mr. Deputy Chairman, I rise to speak on this Bill at this stage to specifically point out the question of Part B States judges as a whole, particularly those judges . . .

AN HON. MEMBER: There are no Part B States now.

DR. R. B. GOUR: There have been. More particularly, judges of Part B States who come from ex-princely States because they were Part B States. They come from Part A States also. There were some among the Part B States judges who come from Part A States also.

The point is that the present Bill the Government is sponsoring only validates the Part B State Judges Order of 1953. I am going to ask the hon. Deputy Minister certain specific questions in relation to the treatment that has been meted out to these judges. Well, I thought—I was under the impression—that it is only the parties of the Opposition that get a raw deal from the Home Ministry. But today, I understand that even High Court judges can expect only a raw deal at the hands of the Home Ministry. Let me say, Sir, that the hon. Minister or the Home Ministry of the Government of India is taking advantage of the fact that these judges cannot challenge the orders of the Home Ministry in a writ petition in any High Court. They are only taking benefit, taking shelter, behind this disability under which the High Court Judges are suffering. I would like to ask, how is it that the Home Ministry or the Government of India, even as early as 1953, had tried to roll in all the ex-princely State judges into one category? That order says that for the purposes of leave, leave allowances, pension, etc. the past service of the judges will be calculated only partially; except in the case of the Chief Justices of the ex-princely States, only half of the service of the judges of the ex-princely States will be included. I should like to know why, under what law or what convention or what moral principle do you want to deny those judges the services that they have rendered?

Then, Sir, they have categorised all the judges of Part B States into four from the point of view of salary —those drawing up to Rs. 1,500, then Rs. 2,000, Rs. 2,500 and Rs. 3,000. This distinction between Rs. 1,500 and Rs. 3,000 in the salary of the High Court judges of Part B States, as they came into existence, was, I should say, an *ad hoc* distinction. The argument that may be advanced is that a High Court judge in Jodhpur or Bikaner State who was drawing Rs. 500 a month was made a judge of the Rajasthan High Court and therefore, he could be given only Rs. 1,500 and could not be given Rs. 3,500 as that of a judge of a Part A State. But I should like to ask, was there any scale, was there any formula, any idea, any principle, behind your fixation of new salaries under the 1953 order? For example, a High Court judge in the ex-Hyderabad State—a princely State—was drawing Rs. 2,400 monthly in Hali currency—Rs. 2,400 free of income-tax.

SHRI LAVJI LAKHAMSHI (Bombay): May I know how is it directly related to this?

DR. R. B. GOUR: It is all relevant. Please listen to me. You have not read the relevant Order of 1953, and therefore, it will not be relevant to you. But not so to me. You say the leave allowances are going to be based on this. A High Court judge drawing in Indian currency the sum of Rs. 2,100 free of income-tax was placed on Rs. 2,500. A High Court judge drawing Rs. 500 was fixed at Rs. 1,500 in Rajasthan. And a High Court judge drawing Rs. 2,100 income-tax free was placed on Rs. 2,500. Now, on the basis of that schedule, you want to give leave allowances, etc. I am questioning the very principle of the Government's Order of 1953 which you want to validate under this Bill. It is that order which you are now seeking to validate and the leave allowances will be made on the basis of this scale. There was no forum for us to speak about that 1953 Order. It was not an Act. It was not produced in the form of a Bill. It was an Order. What was the principle underlying the fixation of salaries under that Order on which now you want to give leave allowances?

SHRI P. D. HIMATSINGKA (West Bengal): How is it connected with this?

DR. R. B. GOUR: It is connected.

SHRI P. D. HIMATSINGKA: The salary has got nothing to do with the pension.

DR. R. B. GOUR: Leave allowance is part of this Bill. Please see it. Leave allowance also forms a part of this Bill and the leave allowance will be paid on the basis of this. Then, Sir, there is the biggest injustice that has been done to the judges of the former Part B States at the time of States' reorganisation. Now, Sir, I do not think Mysore and Hyderabad stand on the same footing even on the question of reorganisation. Now after reorganisation there were certain new States, and certain continuing States. Mysore State, even though it continued as the same State in all respects, just because the Rajpramukh became the Governor it became a new State whereas, so far as Andhra was concerned, Andhra was a continuing State and a part of Hyderabad was attached to it. Now what happened was that the Mysore High Court became a new High Court; likewise Kerala High Court became a new High Court. When the Hyderabad High Court was abolished—of course Mysore High Court was abolished and likewise, those of Rajasthan and Saurashtra were abolished—some Judges went to Bombay and some remained in Hyderabad. Now those who remained in Hyderabad were made Judges of a continuing High Court, which is the Andhra High Court. Those who went to Bombay were made Judges of the Bombay High Court, which was a continuing High Court. None went to Mysore, but if one had gone to Mysore, he would have become the Judge of the new High Court, which was the Mysore High Court. Now comes a basic anomaly. Now when a Judge of the Hyderabad High Court goes to the Bombay High Court or remains with the Andhra High Court he is considered for all purposes of seniority as a Judge appointed on the 1st of November, 1956. Now I have tabled an amendment that for purposes of seniority his past services must be counted. I should like to ask a straight question of the Home Ministry? As the architect of the States' Reorganisation Commission Report I think Dr. Kunzru owes an explanation on this point because . . .

SHRI V. K. DHAGE (Bombay): He has not framed the Act.

DR. R. B. GOUR: His report was responsible for the Act. Now what is it that you are doing for the Judges of the ex-Hyderabad State or for that matter of even Rajasthan? Now fortunately for Rajasthan the entire Rajasthan High Court before the Reorganisation and after the Reorganisation—the entire High Court continued. Even though it became a new High Court there was no difference: no question of any difficulty arose. But the major difficulty arose only in the case of Hyderabad. Now that difficulty is very simple. Andhra High Court also was a new High Court when it was formed in 1954 but the Madras Judges came to the Andhra High Court. At least the Chief Justice came from Madras, and the Judges who came from Madras to Andhra were continuing Judges. They were only transferred to a new High Court. They might have been appointed in 1952 or in 1953, but their entire service was absolutely intact because they were transferred to a new High Court. Now what happened was that when the Judges of the ex-Hyderabad State joined the Andhra High Court under the States Reorganisation Act you sent an order to them that "you" will occupy a rank below the rank of the Andhra High Court Judges. Why?

SHRI V. K. DHAGE: There is no order.

DR. R. B. GOUR: Yes, there is order. I am asking the hon. Minister if they had not done so.

SHRI V. K. DHAGE: How can the rank be affected?

DR. R. B. GOUR: That is the exact question—let him answer—that those Judges will have to occupy a rank below the rank of Andhra High Court Judges because "your" position is that "you" have been appointed on the 1st of November, 1956, whereas the point is this, that here is a Judge appointed in 1946 . . .

SHRI V. K. DHAGE: Dr. Gour, you are speaking in terms of seniority or in terms of rank?

DR. R. B. GOUR: Rank means seniority, my dear Sir, Because of this. . . .

SHRI M. GOVINDA REDDY (Mysore): No question of seniority is involved.

DR. R. B. GOUR: I am saying that. A Judge appointed in Hyderabad in 1946 or in 1947 or in 1951 was occupying a rank below a Judge of the Andhra High Court appointed in 1954 or in 1955.

SHRI M. GOVINDA REDDY: Naturally they came after the continuing Judges.

DR. R. B. GOUR: Exactly, why so? That is my question and that is exactly the point. If any High Court Judge of ex-Hyderabad State has to go to any court, then you will get the music of it. I will tell you what is it you have done. Under the States' Reorganisation Act under sub-section (1) of section 50 you abolished the old High Courts of Part B States and under sub-section (2) of section 50, even before the appointed day—the words are very clear, "even before the appointed day"—I would request Mr. Govinda Reddy to kindly listen to me—under that sub-section (2) you have specified the Judges of ex-Part B State High Courts to become Judges of the new High Courts, and that too "before the appointed day." The appointed day is the 1st of November, 1956. Now before the appointed day the President specifically mentioned—as he thought fit—that all those Judges would become the Judges of the new High Courts. The words are very clear. The purpose of the States Reorganisation Act was not to reappoint the Judge. The purpose of the States Reorganisation Act was not to terminate their services along with the High Courts and reappoint the man a Judge in a new High Court. The purpose was this. You specified him to become a Judge of a new High Court—the question is very clear. That is, on the 1st of November, 1956 Judge X of ex-Hyderabad State becomes a Judge of the Andhra High Court. Is he appointed under any relevant articles of the Constitution? It is not. Then how can you clean cut off his past service for the purpose of seniority? That is a very straight question I am putting. Why 1st of November, you have specified it on the 28th of October, itself, that "you" will become a Judge of the Andhra High Court or a Judge of the Bombay High Court, or that of Rajasthan, etc. etc. But subsequently you send another order that you become Judges of the new High Courts but you will occupy a rank below the Judges of the Andhra High Court because you are a new Judge appointed on the 1st of November, 1956, and you have been asked to take the oath also. So it is a very clear question. It is a legal question and I want a legal answer. Is he appointed under the Constitution ignoring his past service for purposes of seniority or is it just out of convenience because of the States Reorganisation? The President has specified those Judges to become Judges of the new High Court. There is no word as appointment, reappointment, fresh appointment or . . .

SHRI P. D. HIMATSINGKA: Which clause is Dr. Gour criticising?

DR. R. B. GOUR: You see my amendment to clause 7 of the Bill. Not only for purposes of leave allowances and pension but also for the purpose of seniority past service should be counted, that is my amendment. Therefore this question has become a

very serious question, that High Court Judges, Sir, who have worked since 1946 suddenly are made juniors and placed below the rank of a Judge who has been appointed in 1954 or even in 1955. Then there is another anomaly. Well the gentleman who was appointed in 1946 was appointed by the old Princely order or a rotten order. But what about the gentleman who was appointed after the 26th of January 1950, who of the same princely Hyderabad State was appointed by the President after the promulgation of the Constitution as a Judge of the Hyderabad High Court? Even he loses his service just because the Prince was there. It was not because of our liking or the Judge's liking that the Prince was there. Yet even after the promulgation of the Constitution, well, he loses his seniority and everything. Between the years of 1948 and 1950 the Princely order remained in Hyderabad not because of the Judge's choice. So why do you want to halve their service even for the period of 1948 to 1950? The point is very simple and I should say you have committed a serious mistake even constitutionally. I want Mr. Datar to tell me whether appointment or reappointment under the States Reorganisation Act is to be construed to mean an appointment under the articles of the Constitution. Well, if it is so, then let him say so. They cannot occupy a rank below the rank of all the Judges of the Andhra High Court. Now, Sir, this is a very serious question; it is a question of seniority. A question of law under the Constitution is involved and I do not think the purpose of the States Reorganisation Act was to terminate the services of the Judges of the High Courts that are going to be liquidated or closed down. The purpose may be that the number of Judges was to be more and therefore the number of High Courts was to be less, and the Constitution put a ceiling on the number of Judges in the High Courts. You could not appoint all the Judges in the High Court. Therefore you had to do some screening and some Judges only could be appointed as continuing Judges and others had to be appointed newly and you say even after the "appointed day" if he is appointed, he will be considered a continuing Judge. That is quite correct and just because on the appointed day or before the appointed day you could not appoint him as such because the number of Judges was less. Now this Mr. Justice Kumaraiah in the Andhra High Court was left out and he was appointed in 1957. Now he becomes a continuing Judge even though he was appointed in 1957, long after the appointed day in the States Reorganisation Act, but he will be a continuing Judge under the present scheme of this Bill and his service under the old Hyderabad High Court of six months or one year or a year and a half will be counted for purposes of pension and leave allowances also.

MR. DEPUTY CHAIRMAN: But we are not concerned with individual cases.

DR. R. B. GOUR: It is not an individual case that I am citing; it is a collective case of all the Hyderabad Judges; it is a question of the Judges of the old Hyderabad State. This must be the case with all other old Part B High Courts, and their services should not be terminated with the termination of the High Courts. But they should be counted for the purpose of seniority. That is what I say. Suppose a Mysore High Court judge today, who is also a continuing judge, is transferred to, say, Madras. Then his service will be counted from 1st of November 1956. So there is a serious handicap under which you have placed the judges of the ex-Part B States. Now I would like to ask: Is there any difference under the Constitution between the judge of a Part B State High Court and a judge of a Part A State High Court? Is there any intrinsic and qualitative difference or any difference on account of judgements? Can you say that a Part B State judge could not decide writs or petitions concerning the Constitution because he was inefficient? Well, the Constitution does

[Dr. R. B. Gour.]

not recognise any qualitative difference between a Part B State High Court and a Part A State High Court. The only difference is the difference in their salary, and that is because the paying capacity of the States is involved. I therefore raise this very specific question here. Well, Sir, very likely they will quote the precedent of the Allahabad High Court. But what is that Allahabad precedent? Before the Constitution was promulgated in this country, when the Oudh Bench was abolished, those judges were made the judges of the Allahabad High Court and they lost their past services. But today it is the Constitution that governs our judges and protects our judges. So if the Government takes any shelter behind the Allahabad precedent, well, that precedent does not hold good today. That was before the Constitution came into force.

SHRI P. N. SAPRU (Uttar Pradesh): A Part B State High Court Judge is as good as a Chief Court Judge.

DR. R. B. GOUR: The hon. Member, Dr. Sapru, who was himself an eminent judge is trying to add something to the Constitution. Well, let the Constitution say that Part B State High Court judges were something like Chief Court judges. But there is no such provision in the Constitution. The Constitution does not discriminate between a Part B State judge and a Part A State judge. Unfortunately his wish cannot add anything to the Constitution, and fortunately in this case. So this is the whole difficulty. Even in those days when the Supreme Court suggested that a particular judge of a Part B State should be transferred to the High Court of a Part A State, the Chief Minister of that particular State objected to it. He objected to it on the ground that Part A State judges will feel frustrated. So, Sir, this kind of discrimination—this question of superiority complex in the case of Part A States and inferiority towards Part B States— has been lingering on behind this whole question. Sometimes, Sir, they say that the writs and judgments of the High Court of Mysore and other States are not quoted. In that connection, may I ask one question? In what respect is the Orissa High Court different from the High Court of Hyderabad? In what way is the Mysore High Court different from the Punjab High Court? So far as their judgements are concerned, if you do not cite any judgements in support of your argument, then it is lack of your own knowledge. In what way are the High Courts of Assam and Orissa different from those of Hyderabad and Mysore? I can challenge that the administration, judicial or otherwise of the Hyderabad State was far better than that of either Orissa or Assam, even though Orissa and Assam were Part A States. The administration of Mysore was far superior to the administration of Punjab. How then can you discriminate between Part B States and Part A States? What is the principle and what is the relevant article of the Constitution behind it? What is the moral principle behind it? It is therefore, Sir, that I suggest that this injustice should be done away with. It is a very serious problem, because some of the judges are a victim to this thing. Therefore, Sir, their seniority must be restored. That letter of yours which is unconstitutional must be withdrawn and their seniority must be restored. That is point number one.

Then, Sir, my second point is this. Because the number of judges was more than the number that you could appoint under the Constitution—the number of States was reduced—you screened out some. I want you to give us a categorical assurance here on the floor of this House that all those who have been screened out will be appointed as additional judges or in other capacities before the expiry of their fifty-fifth year. Something must be done in that regard because after all they were High Court judges.

The retiring age for a tribunal judge or a district judge is 55, that for a High Court judge is 60 and for a Supreme Court judge it is 65. At least in the case of Hyderabad I am unable to understand how they were screened out. If any judicial examination is held, maybe that some of those who have been screened out would prove better than those who have actually been appointed. So, there is no principle. Well, Sir, these are some of the point which I wanted to express at this stage, and I have now done. Thank you.

SHRIMATI YASHODA REDDY (Andhra Pradesh): Sir, the only objection which I want to raise in this Bill is regarding the clause which deals with vacation of High Courts. Sir, all of us do feel that independence of the judiciary should be preserved, and I am sure the Minister concerned also is as jealous in that respect, if not more, as we are. We are all along talking about the sacrosanct principle of the separation of judiciary from the executive, and as a matter of fact we have introduced this principle as a Directive Principle in our Constitution. But, Sir, as the days are progressing and as certain things are happening, I feel that encroachment of the executive into the field of judiciary is increasing instead of decreasing.

Sir, here clause 23A says that hereafter all these vacations will be fixed by the President. No doubt the hon. Minister was pleased to say that whenever such an order is passed, it would be brought before Parliament and there need be no fear on that score, because Parliament will have time to look into it. Although, Sir, Parliament is supreme, yet I do feel that as far as vacations are concerned, the judiciary must have its say and the executive should not interfere or tamper with this thing. I am not able to reconcile myself with the idea of tampering with judges' vacations. The hon. Minister was pleased to say that in many High Courts arrears were piling up. What does the hon. Minister mean by saying that by cutting the vacation or restricting the vacation or the President having the right to dictate the term of vacation things can improve? The hon. Minister knows that the judges' work is utterly different from the work done by other. They sit from 10 A.M. to 4 P.M. and they have got to be very attentive to their work and the mental and physical strain exerted by them is much more than done by any of our Cabinet Ministers here. We know that our Ministers can go out and have a chat and have some leisure, and even the Parliamentary Secretaries can do that. But an hon. Judge of the High Court or of the Supreme Court for that matter cannot do that. He was saying 'What about Saturdays and Sundays? About Saturdays and Sundays I have some experience. On Saturdays and Sundays, most of the time is utilised in dictating judgments and reading voluminious reports which have come down from the various Courts. To say that cutting down the vacation or increasing the number of working days will cut down the arrears of cases is a wrong approach to the whole problem. Just because in one or two High Courts work is accumulating, that all the High Courts in India should suffer is not, I think, a good principle to follow. Moreover it is just like telling a school-boy 'If you don't do your home work you are not going to get your holiday on Saturday or if you don't do this work, you cannot go to the picture this evening'. Is this the way that you are going to dictate terms to your High Court Judges? If you say 'If you don't do your work, your holidays will be cut', that only means two things. One is they will dispose of the cases summarily wihout giving a complete hearing. After all, our High Courts are meant to be supreme courts. Most of the time they are the final courts. That is where we go for some justice and if you say just because there are arrears of work and your time is limited, they should limit their vacation, they will be bound to dismiss them summarily. We are not doing justice. May be justice delayed is justice denied, but here you are denying justice even without giving enough

[Shrimati Yashoda Reddy]

time to the complainant or the people concerned to express all that they want, to the courts.

One thing will be that they will either summarily dispose of cases or the other is, they will not admit them. When there are a number of cases, what they will do is, if they have 100 cases on the list to-day, they will say 'Let us take one or two'. They will just come to that conclusion. Irrespective of the fact as to how many are justified for admission or not, they will just admit one or two and say that we are not admitting others.' We will be forced to make our judges work that way; though they might feel like looking into things, because of the arrears and the fact that their vacation might be cut, they will be working in a wrong way.

Another thing that I wanted to say is—it may not be coming directly under this Bill but I would like to say —the judges who are appointed in the High Courts, when they are recruited from the bar or from the subordinate judiciary, should be, as recommended by the States Reorganization Commission, appointed to the different High Courts and especically the Chief Justices concerned should not be belonging to the same place and not even the other judges. I know and I don't question the independence and integrity of our judges and I am very happy to say that if there is one Department in this country which we can be proud of and which has not been touched by corruption or bribery, it is the judiciary. In spite of that, human nature being what it is, we do feel that when one particular man who has been an advocate for a number of years is appointed as a judge, the public has a feeling 'let us appoint or get his junior who was working in his office as most probably there will be a better treatment to him'. This sort of psychology is there in the public. I don't say that the judges are discriminating or that they are not fair but that sort of public opinion is there in the country. So I feel that this recommendation made by the S.R.C. should be put into practical use a little more early.

The hon. Minister was saying about appointing temporary judges because of the accumulation of work. I have only one objection to that. If the hon. Minister feels that more judges should be appointed because of accumulation of work, I feel that they should right away appoint permanent judges; but this appointment of temporary judges for a tenure of one or two years is not, I feel, very good because psychologically there is a certain feeling that the judges are a bit dependent on the Government or the executive authorities. I don't want to say much on this matter but I feel that this appointment of temporary judges should not be used very much. If there is any question of arrears, if there is need felt for more judges to be appointed, I feel the judges should be appointed on a permanent basis rather than take to the necessity of employing temporary judges for a short term of one or two years and then to extend that period after one year or so. Thank you. This is all that I wanted to say.

SHRI V. K. DHAGE: Mr. Deputy Chairman, I shall be very brief in my speech and shall only deal with a few points. I support the point of view placed by Dr. Gour and would point out certain points which arise out of the S. R. Act as well as the Constitution. It will be noticed that the S.R. Act did not contemplate, when certain High Courts were abolished, that there should be any change in the conditions of service. You will see that under section 49 of Part V of the Act it stated in sub-section (1) that some of the High Courts will continue to remain even though the territorial organisation of the State has changed, namely, the State of Bombay, Madhya Pradesh, Punjab etc. but as far as the Part B States were concerned, under section 50, all the Part B State High Courts were abolished. It reads:

"50(1) As from the appointed day, the High Courts of all the existing Part B States, except Jammu and Kashmir, and the Courts of the

Judicial Commissioners for Ajmer, Bhopal, Kutch and Vindhya Pradesh shall cease to function and are hereby abolished"

But with regard to some other Part B States, they have created new High Courts, namely, under section 49(2); it says:

"As from the appointed day, there shall be established a High Court for each of the new States of Kerala, Mysore and Rajasthan".

Mysore and Rajasthan were the former Part B States. Kerala consisting of Travancore-Cochin also was a part B State.

MR. DEPUTY CHAIRMAN: Kerala was not a part B State.

SHRI V. K. DHAGE: Travancore-Cochin was a part B State which forms a major part of Kerala. I am not saying entire Kerala was a part B State but major part of the Kerala State was a Part B State, namely Travancore-Cochin but even if you leave that, the Mysore State was a Part B State and so was Rajasthan.

MR. DEPUTY CHAIRMAN: Not the present Mysore.

SHRI V. K. DHAGE: My point is that the Mysore High Court and Rajasthan High Court are not continuous High Courts. They are new High Courts. What Dr. Gour said was that Rajasthan and Mysore High Courts were continuous ones as the Andhra Pradesh High Court is a continuous High Court. My point is that it is not so. Mysore and Rajasthan, despite the fact that they were part B States, are having new High Courts as much as Andhra Pradesh. Under section 50 it is stated:

"50. (3) Every such judge of a High Court abolished by sub-section (1) as the President after consultation with the Chief Justice of India may, by order made before the appointed day, specify shall as from that day, become a judge, or if so specified the Chief Justice, of such High Court as the President may in that order specify."

If sub-section (3) of Section 50 is applicable to the Andhra Pradesh High Court or the judges of the Andhra Pradesh High Court, then the same thing should be applicable also to the High Courts of Mysore, Rajasthan and Kerala.

That is the point. In the case of the Judges who have come from the Part B State of Hyderabad to Andhra Pradesh High Court, if their conditions of service with regard to seniority have been affected, then also on the same ground, the conditions of service of the Judges of the former Mysore High Court and of the Rajasthan High Court must be likewise affected. I would like to know from the hon. Minister as to whether any such thing has happened with regard to the Judges of the High Courts in Mysore and Rajasthan. If that is not the case, then I would like to know whether it is legal, whether it is proper for a differentiation to have been made in the case of the Judges of the former Andhra High Court and the former Hyderabad High Court who have been appointed to the present High Court of Andhra Pradesh. That is one point.

My own feeling is that the States Reorganisation Act did not contemplate any change in the service conditions whether with regard to seniority or with regard to pension or rules in the case of the Judges of Part B State High Courts on their becoming judges of a Part A High Court or the Andhra Pradesh High Court of now-a-days. That could not also have been done because of the constitutional provisions. Let us see the qualifications laid down by the Constitution for appointment as Judges of a High Court. There is no differentiation with regard to the qualification for appointment as a Judge, whether of a Part B State High Court or a Part A State High Court and, neither is there any change with regard to the conditions of service as laid down in article 217:

"Every Judge of a High Court shall be appointed by the President

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

It goes on:

"and shall hold office, in the case of an additional or acting Judge, as provided in article 224, and in any other case, until he attains the age of sixty years".

The date of retirement or the vacation of office is either:

"(a) a Judge may, by writing under his hand addressed to the President, resign his office;"

or

"(b) a Judge may be removed from his office by the President in the manner provided in clause (4) of article 124 for the removal of a Judge of the Supreme Court;"

or

"(c) the office of the Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India."

These are the conditions which govern the appointment of the High Court Judges be they in a Part B State High Court or in a Part A State High Court formerly. Now who can be appointed as a Judge under the Constitution, whether in a Part A State High Court or in a Part B State High Court? The Constitution says:

"A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and—

(a) has for at least ten years held a judicial office in the territory of India; or

(b) has for at least ten years been an advocate of a High Court or of two or more such Courts in succession."

If he is from the Bar, then he should have been in practice continuously for more than ten years in one High Court or in succession of two or more High Courts, whether of a Part B State High Court or of a Part A State High Court. This does not contemplate any discrimination in regard to the service conditions of Judges. Now, take the case of the Andhra Pradesh High Court or the old Hyderabad High Court. Towards the end of October, 1955, a practising lawyer was appointed to the Andhra Pradesh High Court.

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Under the dispensation that has been given by the Home Ministry, a person who became a Judge and came from the Bar in Andhra Pradesh in the year 1956 will become senior to a Judge who has been in practice for ten years before 1955 or 1950, after the promulgation of the Constitution. This seems to be a very anomalous situation and seems to be very unjust to the same class of people who have been recruited for the purpose of the High Court.

There is another thing that I would like to point out. That too is in the Constitution. You will see that the President has not made any discrimination between a judge of a Part A State High Court and a Judge of a Part B State High Court. If you look to the Warrant of Precedence—I am reading to you from India, 1957, page 479—promulgated by the President as on July 1956...

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): That is the strongest argument.

SHRI V. K. DHAGE: Thank you, Sir. It will be seen from the Warrant of Precedence that there is no distinction maintained between a Judge of

a Part B State High Court and a Judge of a Part A State High Court. Item No. 30 is Puisne Judges of the High Courts. When the President of India has not made a distinction with regard to the rank of a Part B State High Court Judge and a Part A State High Court Judge, I do not understand why, for the purpose of counting the seniority, there should be any such distinction made between a Judge who has come from a Part A State High Court and a Judge who has come from a Part B State High Court to the new Andhra Pradesh High Court.

Another thing that I want to point out is that in Hyderabad or the Andhra Pradesh, the question of seniority is not considered on the basis of emoluments or the remuneration that one receives. It is nowhere counted and particularly that is the case in Andhra Pradesh where the salary is not taken into account in determining the seniority. In the former Hyderabad State the grades of persons in certain categories were much higher than the grade for gazetted officers.

SHRI ANSARUDDN AHMAD (West Bengal): The salary is not the only criterion which establishes the seniority of an officer. This holds good elsewhere too.

SHRI V. K. DHAGE: That is exactly my point. When this point was raised in the other House, the Home Minister pointed out that the salary of a Judge of a Part B State High Court was Rs. 2,500 and that of a Judge of a Part A State High Court was Rs. 3,500 and that, therefore, in the matter of seniority, the salary has to be taken into account. Since the Judges of the Part B State High Courts drew less salary when they became Judges of the new High Court, they would certainly be considered junior to the High Court Judges from Part A State High Courts. That seems to be not exactly the case of Andhra Pradesh. Mr. Datar will be able to say how he is facing this problem there because people who are drawing very much less salaries as Superintendents on the Gazetted ranks are considered senior, to people who are even now drawing more salaries than those people and yet for purposes of seniority, their salary scales do not count. What I am trying to say is, as was said by my hon. friend from West Bengal, that mere salary is not the criterion for purposes of determining whether a person is senior or not. What is to be determined is whether a person was enjoying the same position.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): If salary was the criterion, then the Ministers, especially the State Ministers, would be nowhere.

SHRI V. K. DHAGE: Thank you, Sir. That is exactly what I was trying to say. The problem in Andhra Pradesh is how to balance this idea. I am not disputing that; I am only pointing out that the criterion of salary for purposes of seniority should not be there at all because, under the Constitution, the Judges of the Part B State High Courts enjoyed the same powers and same jurisdiction under the Criminal Procedure Code and under the Civil Procedure Code—whatever the law was—that the Judges of the Part A State High Courts enjoyed. The salary was a matter which was necessitated clearly by the budgetary position of the States in which they served and the position is not affected even now under the Constitution as it now exists or as it existed before the amendment by the States Reorganisation Act. I would, therefore, like the Home Minister to see whether what they are now doing pertaining to the seniority of the Judges of the Andhra Pradesh High Court is according to the Constitution and is according to the State Reorganisation Act.

SHRI JASPAT ROY KAPOOR (Uttar Pradesh): Mr. Vice-Chairman, I consider it a very good luck of this House that this measure dealing with the conditions of service of High Court Judges should be discussed under the Chairmanship of one who had adorned a very important High Court of the country. While

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generally agreeing with the provisions of this measure, I would like to make a few observations with regard to the administration of justice in this country generally. I would take this opportunity of offering my humble and respectful tribute to the judiciary of this country for the very able, efficient and independent manner in which they have been administering justice in the country. All the High Courts generally speaking—why generally, invariably—have set a very high standard of judicial integrity and impartiality. Whatever may be said about any other executive department in the country, whatever may be said about officers in any other department of the country, executive, administrative or otherwise, hardly anything can be said against the judiciary and more particularly against the High Court or Supreme Court Judges. They have always been above approach and above reproach. It was, therefore, with considerable pain that we heard the criticism coming out from our hon. friend, Dr. Raj Bahadur Gour, to the effect that our Judges are not acting with the same impartiality or with the same freedom now, because the executive, the Central Government or the State Governments have been trying to interfere with their work. I am sure none else in this House will share that view. You, Sir, who had the privilege of adorning the Allahabad High Court for so many years, perhaps would straightway condemn such a criticism of the High Court Judges of any High Court in this country. We have been observing, more particularly after independence, that the High Court and Supreme Court Judges have been functioning in a very independent and fearless manner. As a matter of fact, their judgments after independence have been in very many cases containing expressions amounting to scathing criticism of the Government and Government officers, be it Central Government or State Government. That being so, I consider it highly improper on the part of any Member of this House to say that the Central or State Government are interfering with the administration of justice and it would be paying a poor compliment to our able Judges all over the country to say that they are liable to be affected by anything which the Central or the State Governments may do. Even if the Centre or the State Governments may ever be guilty of trying, in howsoever small a measure it be, to interfere with the administration of justice, surely we can safely rely on the strength of character of our High Court and Supreme Court Judges always to be stubborn in such a thing.

Having said that, I would like to deal with the question of the manner in which the appointment of High Court Judges should be made. You will remember that the States Reorganisation Commission in its Report had suggested that for the sake of eliminating linguism, parochialism in the country and for the sake of establishing unity in the country, it was very necessary that a substantial portion of the High Court Judges in any High Court should be recruited from outside the State High Court's jurisdiction. In this connection, with your indulgence, I would like to read para. 861 at page 233 of the Report of the States Reorganisation Commission. This is what they said:

"Guided by the consideration that the principal organs of State should be so constituted as to inspire confidence and to help in arresting parochial trends, we would also recommend that at least one-third of the number of Judges in a High Court should consist of persons who are recruited from outside that State. In making appointments to a High Court Bench, professional standing and ability must obviously be the overriding consideration. But the suggestions we have made will extend the field of choice and will have the advantage of regulating the

staffing of the higher judiciary as far as possible on the same principles as in the case of the Civil Service."

In the case of the Civil Service, the Commission had suggested that about 50 per cent. of the senior executive members in any State should be recruited from outside the State. But so far as the Judges of the High Court are concerned, they toned down their recommendations slightly and only suggested that at least one-third of the total strength of the High Court must be recruited from outside the State. This, I submit, was a very healthy and useful suggestion which the Commission had made and we were happy to find that the Home Ministry in its circular dated 19th September, 1956—it is a circular which was sent round to all the State Governments—had directed thus. This was from the Joint Secretary:

> "I am directed to enclose a copy of the memorandum on the subject of safeguards for linguistic minorities which was laid before and approved by Parliament, with the request that appropriate steps may kindly be taken by the State Government to implement the decision embodied therein."

The important and relevant decision which was arrived at by the Central Government and which was communicated to the State Governments was this:

> "Para 19 of the memorandum—Recruitment of one-third of the number of Judges from outside the State: The Commission's recommendations are being brought to the notice of the Chief Justice of India. There may be difficulties, in some cases, in implementing these recommendations, but it is intended that to the extent possible, they should be borne in mind in making further appointments."

Now, this is dated September 1956. But then let us see to what extent this decision of the Central Government was implemented by the States or by the State High Courts. I speak subject to correction, but I hope I am correct because Mr. Datar has been good enough to give me these figures out of his notes. The total number of new Judges appointed after 1st November, 1956, has been about 62. Out of these, 37 are Additional Judges and about 25 are permanent Judges. Now, out of these 62 newly appointed Judges, there are only about 4 or 5 who belong to a State other than the one in which the High Court is situated and to which they have been appointed. In U.P. 8 Judges have been appointed, not one of them from outside the State; in Andhra, 6—none from outside; in Bombay, 10—none from outside; in Assam, one, who happily comes from outside the State. Then again, Madras, 3, none from outside. Mysore, 8, only one from outside—but then not a newly appointed Judge but one who was transferred from another High Court, and I believe he was Chief Justice of the Mysore High Court. Patna 3, none from outside. Punjab as many as 7, none from outside. Happily, so far as Jammu and Kashmir is concerned, out of 2, 50 per cent. from outside.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): You forget the linguistic difficulties which a Judge from outside will have.

SHRI JASPAT ROY KAPOOR: So, my submission is that while we do find that about 4 Judges were appointed from outside the State, the overwhelming majority of Judges were appointed from within the State. Take the case of the U.P. Surely it should not have been difficult or impossible to recruit one or two Judges, say, from Bihar or from Punjab or from Madhya Pradesh. Now, in Bombay, out of 10 Judges, not one is from outside.

Sir, I would very much like to know why it has not been found possible to appoint about one-third of these 62 Judges from outside the State. It may not have been possible to appoint

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exactly one-third of this number, but surely a fairly large number could have been appointed from outside the State. Sir, I do not think that practising lawyers in Bihar would not like to be appointed on the Bengal High Court or that practising lawyers in Bengal would not like to be in Assam or Orissa. Similarly, lawyers practising in Allahabad surely would not dislike to be appointed in Bihar, Rajasthan, Madhya Pradesh or even in Punjab. Take the case of the South—Madras, Andhra, Kerala and Mysore. Lawyers practising in these States, I am sure, would not dislike to be appointed in States other than their own. In this obviously there are certain advantages which will accrue to the Court as a whole and even to the Judges themselves. You may remember, Sir, that recently we have amended the Constitution providing that retired Judges may practise in a High Court in which they have not served. A lawyer or an advocate belonging to Uttar Pradesh would surely like to work in the Punjab High Court or Madhya Pradesh High Court, so that after retirement at the age of 60 he may be able to settle down in his home State and practise in the High Court of his State. I think that lawyers would prefer to be appointed in the High Court of a State other than their own. What was the difficulty then in implementing the decision to which I have already made a reference?

Then, Sir, as the Commission itself has so wisely and properly said, if we resort to this practice, we will have a much wider field for selection than we have at present. You can cast your eyes all over the country while you are in need of Judges. Often it is said that prominent advocates do not agree to serve as Judges, but I think if you take the country as a whole, you will not find it difficult to get senior advocates coming forward to serve as High Court Judges, specially if you are prepared to appoint them in the High Court of a State other than their own. The main difficulty standing in the way of eminent advocates accepting appointments for judgeship is that after a few years, when they retire, they will be sitting idle in their home State. After the age of 60, you cannot expect them to go over and settle in any other State. Naturally, therefore, if you are prepared to offer senior advocates appointment in the High Court of a State other than their own, they would be easily available.

Now we find, Sir, that the High Court Judges, after their retirement, all go over to the Supreme Court. It is easier for them to settle in Delhi rather than to go to a different State and practise in the High Court there. I find, Sir, that generally speaking retired High Court Judges throng into Delhi, and with such a huge competition even retired High Court Judges may in due course find it a little difficult to have a lucrative practice. So, considered from whatever point of view, from the point of view of the unity of the country, good administration of Justice, securing good Judges, from all these points of view it is necessary that this recommendation of the Commission, rather I should now say the decision of the Central Government, should be implemented.

Now, it may be said that there is the language difficulty, the manners and customs difficulty, and all that sort of thing, and it is easy to exaggerate difficulties, but why were these difficulties not considered to be insurmountable in the pre-independence days? When the European I. C. S. Judges whom we had in large numbers could do very well, why could not Judges from distant parts of our country do as well or even better in a State somewhat different from their own?

Sir, there is one other thing to which I would like to make a reference, and that is the practice of the Central Government and the insistence of Parliament also on appointing High Court Judges to various commissions and committees. So far as the Central Government is concerned, on more

occasions than one I have emphatically submitted here that it is not a healthy practice. Retired High Court Judges generally speaking, barring some exceptional cases when their need may be so strongly felt as not to be ignored, should not be appointed to committees or commissions. I make this submission—and I believe this is also your view if I remember aright—because these temptations should not be hanging before the High Court Judges. While I make this submission, far be it from me to suggest that any High Court Judge, because he has his eye on a certain thing which at a subsequent stage after retirement he may be able to get from the Government, will not dispense justice impartially. Not that, Sir. But all the same, High Court Judges like any other are human beings, and there is likelihood, there is possibility howsoever distant and remote it may be that they might be unconsciously affected by this consideration. Now High Court Judges retire after the age of 60; others in executive service retire at 55. In our State of Uttar Pradesh the age has been increased to 57 or 58 or something like that—I do not know what the decision of the State Government ultimately may or may not be. In any case the Judges retire at 60. After retiring at 60 I do not think there will be many retired High Court Judges who will be anxious to get any new job. They would like to spend the rest of their time in social service, probably many of them. Why should we hold out this temptation before them? I submit it is not a healthy practice. But the Parliament itself is in no small measure responsible for this. Whenever we have a measure, we insist that the Chairman of the Commission or Committee should be a high Court Judge. Of course, we do not say that they should be retired High Court Judges, but then, when we say it must be a High Court Judge, the Government naturally have to select from retired High Court Judges, because so far as the existing High Court Judges are concerned, their hands are already much too full. We too therefore have to be a little cautious in this respect and not be too much insistent always that the Chairman of such committee or commission should be a High Court Judge. But the Government should not take refuge behind this insistence of ours because they can as well appoint the existing judges on such committees or commissions and in the temporary vacancies that occur in the High Court additional judges could be appointed. There should not be much difficulty in that. There may be some difficulty, but no good thing can be done without facing some sort of a difficulty. I, therefore, submit with all the emphasis at my command that this practice should be given up or at least should be restricted to very, very few cases. These retired judges have been getting pension after the age of 60 and I think the society has a right to claim their honorary services for as much time as they can spare out of their practice in the Supreme Court or in any other High Court where they may like to practise. I think the retired High Court judges would be setting a very good example to other retired persons also if they devote the rest of their time particularly in the social services and in the Bharat Sewak Samaj.

Coming to one of the provisions of this measure relating to the fixing of vacation by the President, I submit that much of the criticism has certainly some force which must be considered. Would it not be possible for us to have an assurance from the Government that they will see to it that a healthy convention is established to the effect that, while the period of vacation in any High Court is fixed, the Chief Justice of the Supreme Court and the Chief Justice of the High Court concerned will be consulted? And though they may only be consulted, I hope that that would mean that an effort would be made to arrive at an agreement with the Chief Justice of the Supreme Court and the Chief Justice of the High Court concerned. There

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may be a sort of an unwritten convention like this. If we have an assurance to this effect, I think, all the criticisms that are levelled against this new provision may be easily nullified and those who have been offering criticisms, to some extent may be satisfied.

May I also, Sir, in this connection submit that clause 7 which deals with this subject under sub-clause (2) may be slightly amended? There, it is said:

> "Every order made under sub-section (1) shall be laid before each House of Parliament"

That is good so far as it goes. But why not go a little further and say that this Order shall be laid before each House of Parliament for thirty days and that it may be modified by Parliament in such manner as it may like either in the session in which it is placed or in the session following it? Look at clause 8. There, you say, all rules made under this section—which means section 24 of the original Act ...

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): You may put it like this—"Shall not come into effect until Parliament approves of it by a Resolution to that effect."

SHRI JASPAT ROY KAPOOR: That would be still better, Sir. But I was suggesting a much humbler thing. I was reading clause 8 which says:

> "All rules made under this section shall be laid for not less than thirty days before each House of Parliament as soon as may be after they are made and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following."

As the rules would be subject to modification by us, similarly this fixation of vacation order may also be made subject to modifications by us within thirty days. This is now usually the formula which is incorporated in every measure with regard to rules. All the rules that are framed under the various Acts are now laid before us for thirty days and it is open to us to modify them in the manner we like. If we modify them, they stand modified. If we do not, of course, they stand as good as law. I do not know whether this phraseology had been purposely omitted or it is merely by an oversight or I do not know whether they attach any importance to the omission of this. I hope not. When they say that it will be laid before each House of Parliament, obviously Parliament is seized of it and they can make any recommendation, they can pass any Resolution, with regard to it as they like. But there is some slight difference, and that is of considerable importance. In the first case, if they are only laid before us, we have to seek special time for it. We are not automatically authorised to suggest any modification. If my suggestion is accepted as I believe it will be, we automatically will have the right to modify it. If these two suggestions of mine—firstly, the convention to which I have referred and secondly, the modification of sub-clause (2) of clause 7—are accepted, it will be good and I think it will be readily acceptable to every section of this House.

Sir, one last point to which, I think I need not refer in any elaborate manner, is with regard to the various delays. Everybody is agreed that justice delayed is justice denied. That is a proverb which is on everybody's lips and we will certainly very much like to know what specific steps the Government propose to take to reduce arrears and to see that justice is speedily administered. It is not for us to suggest any specific remedy. Some of them are obvious. But we do not know what the difficulty is in the way of resorting to those remedies.

Lastly, I have to make an appeal to the Bar Associations in the country generally. Of late, we have been finding that eminent members of the

Bar are not readily agreeable to accept position on the Bench. You will bear me out, Sir, when I say that it was considered to be a great honour by an eminent advocate to be called upon to sit on the Bench even though it almost always meant a heavy sacrifice, for to an advocate earning Rs. 20,000 or Rs. 30,000 or Rs. 40,000 a month, being called upon to work on the Bench, of course, meant a great scarifice. But hardly any lawyer, any eminent advocate, ever thought of refusing the offer. Now, why not that convention be once again established by our various Bar Associations? But there were difficulties generally created by our Constitution. In some measure, those difficulties have been remedied by amending the Constitution to the effect that the retired High Court judge may now practise in the High Court in which he has not sat, and in the Supreme Court. That difficulty has been removed. I think that eminent advocate should make it a point not to refuse an offer when it is made to them, particularly when that offer relates to their appointment in a High Court of a State other than their own. I do hope that Bar Associations all over the country will consider this appeal going from this House to them seriously and that they will respond to the requests or suggestions of this House.

That is all that I have to submit, Sir.

SHRI J. N. KAUSHAL (Punjab): Mr. Vice-Chairman, I rise to support this measure. This Bill that has been brought forward is of a non-controversial nature. It purports to provide mainly for two things, number one, the leave which a Judge of a Part B State High Court earned when he was a Judge, in that capacity, and number two, the length of service for which he was a Judge in a Part B State. This Bill authorises that Judge to avail of the leave which was standing to his credit and this Bill also postulates that that service will be counted towards his pension. Well, this is a measure which is very just and very appropriate. In fact, if this measure had provided in any other manner regarding the calculation of the service and the leave, probably the Bill would have been dubbed as discriminatory. I however do not understand as to why this Bill has been brought forward with such a great delay. The States Reorganisation Act came into existence on the 1st of November, 1956 and we are bringing this Bill after two years. The Government has tried to rectify this delay by making it retrospective, but I can bring to the notice of the Government at least one instance which is known to me in my State where an Hon'ble Judge retired before this benefit could be availed of by him. He was looking forward very eagerly to this measure being passed by Parliament so that he could take advantage of the leave which he had earned while he was in a Part B State High Court. I do not know actually why this small measure should have taken so long for the Government to decide. Probably somebody must have been insisting on a discriminatory treatment being shown to Part B State Judges. I am glad the Home Ministry has proved strong enough to resist that viewpoint because we have always maintained that it is very very wrong to discriminate between one Judge and another.

With regard to the point which Mr. Raj Bahadur has made, although I can see the force of the argument which has been advanced by him, I feel that it is absolutely out of the scope of this Bill. This Bill, as I started by saying, only has been brought forward in order to give the full benefit of the service as well as the leave which a Part B State High Court Judge earned. The fact as to how their seniority was fixed at the time the States Reorganisation Act came into force is not before us, although, since I come from a Part B State myself, I would have very much wished that no discrimination was shown between one Judge and another as soon as he was raised to the Bench of a Part A State High Court. Once the Government felt that that Judge was

[Shri J. N. Kaushal.]

competent enough to adorn the Bench of a Part A State, no further discrimination should have been shown; he should have been given the full benefit of his past service; as he is being given now so far as pension is concerned that concession or rather I would say that just thing should have been done even at that time. But now I feel it is too late in the day to cry over that matter since the matter is not before us.

With regard to the other subject with which this Bill deals, namely, the fixation of vacation, I would say that the one reason which seems to have prompted the Government to have to come forward with this measure is that the arrears in some of the High Courts are appalling and the Government therefore feels that the long vacation should be curtailed. I am one of those who believe that the vacation of the Judges should not be curtailed, because the Judges have to perform a very very arduous task; it is not performed by any other service, but I do feel that the arrears in the High Courts are bringing a bad name to the entire judiciary. Something has got to be done in order to get rid of those arrears. In some High Courts the cases are as many as 8 to 10 years old. This is certainly scandalous because by normal standards no case should be allowed to linger on in a High Court for more than two years. Therefore if the Government has thought fit to curtail to a small measure the long vacation of the Judges, well, I do feel our Judges will not grudge this small inconvenience and I do hope the Judges are patriotic enough to rise to that height; they will not mind the small inconvenience if it is needed in the interest of the country.

The other point which was tried to be made out by one hon. Member was that this is an encroachment on the rights of the judiciary. Well, I am a very strong supporter of the idea that the judiciary should be highly independent and completely separated from the executive, but I fail to see as to how this particular measure encroaches upon their independence and upon the principle of separation of executive from the judiciary. It is the privilege of Parliament to fix the conditions of service of the Judges, and the amount of vacation which the Judges should enjoy also falls to be determined by Parliament and Parliament today, looking to all the conditions in the country, is deciding that the President will in future decide the number of days which should form vacations and Parliament is retaining its control over that measure because that measure is going to be put before the Houses of Parliament and I do feel that, although this is not going to solve the problem of arreas to a considerable degree, it is a step in the right direction and something is better than nothing. The problem of arrears has, in any case, to be tackled by Parliament because I feel that the arrears which are in some High Courts are bringing a very bad name to each one who is connected with the administration of justice.

Since, Sir, the time at my disposal is very short I want to finish within these two or three minutes. The only one point which Mr. Jaspat Roy Kapoor drew attention to was as to the appointment of the Judges and the fact whether a Judgeship is attracting the best talent from among the lawyers. Well, I again say that it is very good of everyone to say that that English convention should be brought into being, namely, that whenever a Judgeship is offered to a lawyer he should not refuse it.

THE VICE-CHAIRMAN: (SHRI P. N. SAPRU): There is no such English convention.

SHRI J. N. KAUSHAL: But I would beg to draw the attention of the House to one fact, that in England there is no retiring age for a Judge and I very much wish that that particular provision were brought into existence in

our country. If we want that lawyers should never refuse any such offer, if it is made to them, we should also see that the lawyer should have the satisfaction that once he goes to the Bench he will not have to retire so long as he is physically and mentally fit, and I do feel that probably, if those conditions are brought in, any lawyer would be much too happy to serve his country because he knows that he can even die as a Judge in office and when once appointed he will not be thrown away again to practise in some other State or to come and settle in Delhi as Mr. Jaspat Roy Kapoor was hinting at because, I know, that it is very difficult for a person after the age of sixty to go and practise in some other State or even to go to the Supreme Court to practise. The other point in the same connection is that, if it is not possible for us to introduce no retiring age for Judges, at least the retiring age can be raised, and I do not know why a Judge of the High Court should retire at the age of sixty if a Judge of the Supreme Court can work till the age of sixty-five. I have not been able to appreciate that difference between the two. Therefore my respectful submission is that the retiring age for a Judge should be increased if we cannot actually bring forward that measure by which there will be no retiring age so long as a Judge is physically and mentally fit. I have done, Sir.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): The House stands adjourned till 11 A.M. to-morrow, Friday, November 28, 1958.

The House then adjourned at five of the clock till eleven of the clock on Friday, the 28th November 1958.