

agencies do purchase the produce, compulsory insurance of onion and cotton crops free of cost by the Government and for certain welfare measures for the growers and for matters connected therewith or incidental thereto.

The question was put and the motion was adopted.

SHRI RAJKUMAR DHOOT: Sir, I introduce the Bill.

The Constitution (Amendment) Bill, 2012 (Amendment of Article 124)

SHRI H.K. DUA (Nominated): Mr. Deputy Chairman, Sir, I move:-

That the Bill further to amend the Constitution of India, be taken into consideration.

Sir, I had introduced this Bill nearly two years ago in the House. Now I consider myself lucky it has found a place in the ballot and the Bill is before this House for consideration. It deals with a matter of high importance of public policy and it also has a bearing on the credibility and independence of the highest court of the land. Sir, during the last Sixty seven years, important institutions of the State Parliament, Judiciary and Executive have suffered a decline in their working, functioning and the values. I am not going into the working of the Parliament and the Executive in this Bill. My Bill focussed only on the working of the Judiciary at the highest level. The working of the Judiciary has become a subject of considerable conversation among the common people.

THE MINISTER OF COMMUNICATIONS AND INFORMATION TECHNOLOGY AND THE MINISTER OF LAW AND JUSTICE (SHRI RAVI SHANKAR PRASAD): Sir, may I make one request? Certainly, this Bill has been moved, but while debating on the Judiciary, a degree of restraint needed should be maintained. That is the only request I am making to the House.

MR. DEPUTY CHAIRMAN: That is quite correct. Self-restraint is needed.

SHRI H.K. DUA: Certainly, Sir. No names will be given and restraint will be exercised. I am very conscious of that factor which the Law Minister has mentioned, and I am glad that he has reminded us of that. I, Personally, also believe in keeping the dignity and independence of the Judiciary in view in whatever I say, about it my speech will be brief and to the point.

Sir, this Bill is focused on only the working of the Judiciary, and it is sad that the Judiciary should become the subject of conversations among the people at different levels. The reason being that the functioning of the Lower Courts is really bad and people are feeling disillusioned with their working. The High Courts also, during the last few years,

[Shri H.K. Dua]

are coming up for adverse comments. Arrears are piling up by the day. Justice is delayed and denied, the quality of justice is suffering and the redress is not available. The last hope for the people is the Kacheri of the Supreme Court of India. This Bill focusses on one aspect of the Supreme Court's functioning not on the wider reforms in the functioning of the Supreme Court, which people talk about, say, appointments of judges, accountability, the functioning of the Collegium, etc. I am not going into all that. This Bill meant for amending Article 124, only clause 7 of this, which forbids retired judges of the Supreme Court, including Chief Justices, from doing Chamber practices, giving opinions in private—after their retirement, which I wish to emphasise again—indulging liberally in arbitrations where big companies of the corporate sector are involved. Now should they take up such assignments or not? Clause 7 of Article 124 forbids it. But then this clause is being violated or, to put a better word, ignored by retired judges of the Supreme Court, including some retired Chief Justices. They are liberally doling out opinions in their Chambers. They are liberally taking up arbitration cases and offering their opinions and awards. Hearings are held in Geneva, or London, or New York or Tokyo or wherever it is convenient for them, at a high cost. Personally, I think, the Supreme Court Judges should not take up those assignments. Clause 7 forbids it. But they are ignoring the spirit and the letter of clause 7 of Article 124.

Why are they attracted to it? Once upon a time, they were very eminent lawyers who became High Court Judges and then came to the Supreme Court, which is the Apex Court. The highest honour, which the country can give to a judge, is to make him a member of the Supreme Court. Should that kind of dignified status in the country's constitutional scheme of things go down in public esteem by doing legal practice for the sake of earning money, the kind of money which, apparently, they would not get while on the Bench? By choosing to dole out opinions in arbitration cases, where both the companies have to give the fee, their incomes go up and they earn much more than what they would have got through their salaries or retirement benefits. Not only is the spirit of clause 7 of Article 124 being ignored or violated, but essentially what forbidden is also being practised. Maybe, forbidden fruit is always sweeter and they are enjoying the fruits of retirement. Who suffers? It is the prestige of the Supreme Court that suffers and it is the prestige of the highest Court of the land. The last hope of people to seek justice is the Supreme Court. If the prestige and the credibility of the Supreme Court suffer, the country suffers and that loss of credibility leads to loss of respect of the people and if people lose respect of the highest court of the land, then, its independence can also suffer in a way. I would like this clause to be amended and made more tighter so that in future judges and Chief Justices of Supreme Court do not take post retirement engagement with dispensation of Chamber justice. I would read Article...

MR. DEPUTY CHAIRMAN: Duaji, what is the harm in using their experience and expertise by the Government? What is wrong in that?

3.00 P.M.

SHRI H. K. DUA: I will give a remedy for it. Article 124(7), Mr. Deputy Chairman, Sir, of the Constitution reads, "No person who has held office as a judge of a Supreme Court shall plead or act in any court or before any authority within the territory of India." This prohibition is very clear. There is no ambiguity about it. It is well settled principle of law that anything which is forbidden to be done directly cannot also be done indirectly. The judges of the Supreme Court and some of the former chief justices are doing what is forbidden. I am not giving the names. The names are known to the people and it is not proper to give their names when they are not present in the House. I would simply like this clause to be amended and the amended clause would read, "No person who has held office as a judge of the Supreme Court shall plead or act or express written opinion or engage in arbitration in any court or before any authority within the territory of India and outside India...." "...provided that he may do so upon a request made by the President or the Prime Minister of India or the Governor or the Chief Minister of a State in a matter of national importance." Supposing an inquiry commission has to be appointed or a retired Supreme Court judge is needed for appointment as Chairman of the Human Rights Commission, that is the matter of the State and is of the highest public importance. Those kinds of assignments are valid, but doing private chamber practice or arbitrations is forbidden and should not be availed by the judges. Mr. Deputy Chairman, Sir, way back in 2004, a former Attorney General, Mr. Soli Sorabjee, expressed grave concern at a former chief justice of India filing affidavits on behalf of private litigants in the US Court.

[THE VICE-CHAIRMAN (SHRI V. P. SINGH BADNORE) in the Chair]

I am sure the Law Minister knows the name. I don't have to mention the name of the Judge, there are several other instances impinging upon the credibility of the institution on which lies the greatest responsibility for preserving of Constitution.

A former Chief Justice of India one of the more respected Chief Justices who is no more now none else than Justice J. S. Verma, even wrote a letter to the then Prime Minister on this vital question. I will quote from the letter. It was about accountability etc., but it is a related issue he referred to "A related issue assuming significance in recent years must also be addressed." He is pleading with the Prime Minister. "There is public disquiet voiced often in private about some post-retirement engagements of the Supreme Court judges and Chief Justices."

"Chamber practice in the form of written opinions, under signature, given for use in any court, tribunal or authority and paid arbitration work done while heading a

[Shri H.K. Dua]

Commission, availing the benefits and perquisites or salary of a sitting judge are some of the disturbing trends. It is a serious issue relating to judicial accountability requiring clarification without further delay. It is time that Article 124(7) is made more specific to remove any ambiguities or grey areas amenable to different individual interpretations in respect of prohibited activities after retirement from the Supreme Court”.

Chief Justice Verma never gave an opinion or took up any arbitration. Justice M. N. Venkatachaliah, and several other judges, before the 1980 liberal practice of private engagements or post-retirement engagements started taking place - he also never gave private opinion, and there are many other illustrious Chief Justices of India. But these days, well, the spirit and letter of Article 124 are being violated very extensively.

Through the amendment of the clause, I would recommend this august House to remove the grey area to ensure that the judges do not take up private practise. Certainly, they will lose income. It is a high income. I don't know whether they can spend that kind of money in their life time; they cannot. That kind of fees are available! But they should be compensated. We should not be unfair to the judges, and I would suggest, if the Law Minister should come forward with a Bill to enhance the judges retirement age. At the moment, the Supreme Court Judges retire at the age of 65. It can be raised up to 70. Give them five years more. So, the time they are spending and the effort they are spending in dispensing justice outside...

THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE): Like as long as the politicians.

SHRI H.K. DUA: Yes, that is right. For that, I think, another discussion would be needed, Sir, including the media, you might say. So, we give them five years extra, and the hard work they are doing in dispensing justice after retirement should be given to the country, to the Supreme Court itself. The Supreme Court continues to have the benefit of their background, prestige and experience in the dispensation of justice. So, let them have five years more. If the Law Minister brings forward that Bill - I have not included the superannuation clause in this amendment - I am sure, this House and the Parliament as such, the other House also, will support it. That will be a much better way. Their post-retirement perks can be improved so that there should not be any temptation to go in for extra curricular practice. Their families should not suffer because of the loss of income. But still no salary given by the Government or perks given by the Government or by the State can match the kind of incomes they get for arbitrations. But these judges should have known while taking up the judgeship of

the Supreme Court the most prestigious posts which a person can reach cannot give them the income which the corporate sector can give outside. But the demands of a prestigious post presume that there are limitations which you have to accept before taking up the demanding, prestigious, challenging and most respectable job.

Sir, I will repeat I have a great respect for the Judiciary. I have always supported the judiciary as a newsman, I have always supported, as an Editor, the judiciary's independence. There have been major controversies when its independence was sought to be throttled Court, but some journalists including me did stand up for the Supreme Court.

Another reason I respect the Supreme Court's independence is that it has always supported the Freedom of the Press. The Right to free expression. Also it has always supported fundamental right except during Emergency when it failed the common man. Even the Right to Life was also given up. But the same Chief Justice later on said it was a mistake. Second thoughts are also important if they are helping the people. Essentially, I have respect for Supreme Court. If I have moved this amendment, it is because I would like the Supreme Court to retain the kind of prestige it has enjoyed. It should not go down in the people's eye. I hope this House will support my amendment. I am sure the Law Minister will also support it. I take this opportunity to point out Mr. Vice-Chairman that nearly two years ago I had brought another Constitution (Amendment) Bill.

THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE): How long will you take?

SHRI H.K. DUA: Just one minute more. This is just an addition since I have got this opportunity for the first time. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE): But you have got a lot of supporters. I do not know if they are going to be your supporters or not, but there is a long list.

SHRI H.K. DUA: I will take one minute more. ...*(Interruptions)*... I would have met the new Law Minister otherwise also. But this is for the first time I have got a chance to speak when Mr. Ravi Shankar Prasad is the Law Minister. He may remember that his response was positive and encouraging when I brought an amendment to prevent the misuse of resignation to sent by a Judge to the President who was sought to be removed by a motion in this House after the Judge appeared before the House.

[Shri H.K. Dua]

It was Mr. Soumitra Sen's impeachment motion. The House was unanimous that he should be removed. They passed the motion. Before it went to the Lok Sabha, he resigned. So, the entire process of removal envisaged in the Constitution was frustrated by a slip of paper called resignation. He wrote his resignation and sent it to the President. The President does not have to accept the resignation. The Constitution is very clear about it. So, I moved the amendment that so long as a Judge is sought to be removed, and removal proceedings in Parliament, including its inquiry instituted by Parliament, his or her resignation should be formally approved by the President and only then he can be relieved. No President will let an errant Judge to run away from the process of justice. ...(*Interruptions*)...

THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE): I think the message was passed. ...(*Interruptions*)...

SHRI H.K. DUA: I would like the Law Minister to look at the proceedings of that debate when my Bill was discussed two years ago. An assurance was given by the Government at that time that they will bring forward a Bill whether it is Constitution or otherwise. I do not think there is a way out but for the Constitution, but they said they would come forward. They accepted in principle. So, I do not know whether this Government would live up to the assurance of the previous Government, but I know Mr. Ravi Shankar Prasad's views at that time. He was supportive and very encouraging and outside he told me, 'A very good Bill you have brought forward.' Sir, I am taking this opportunity to plead with him that he should accept that amendment also.

Thank you very much and I hope the House will accept my present amendment of article 124, Clause 7.

Thank you, Mr. Vice-Chairman.

The question was proposed

SHRI SHANTARAM NAIK (Goa): Sir, I stand here to support the Constitution (Amendment) Bill, 2012 moved by Duaji. Sir, the aspect of arbitration is not new in India. Let me first highlight the background of passing the arbitration laws in this country. The Arbitration and Conciliation Act, 1966 which is the preset law replaced three legislations, namely, the Arbitration Act, 1940, the Arbitration and Protocol Convention Act, 1937 and Foreign Awards (Recognition and Enforcement) Act, 1961. These three legislations were replaced by the new legislation, namely, the Arbitration and Conciliation Act, 1966. Now the alternate redressal mechanism which has become

very popular in this country and elsewhere also perhaps plays an important role in judicial dispensation.

As I said, we also had an old practice of resolving issues outside the forums of court. Our own *panchayats* have resolved lakhs and crores of day-to-day disputes of villages by calling them under a banyan tree. No doubt, aberrations have also occurred because of certain *khap panchayats* and others. But, by and large, petty issues, pertaining to villagers, were resolved through the panchayat mechanism. That was also the beginning of ultimate redressal mechanism. Many family disputes, before they are brought up before a court of law, are also resolved with the intervention of relatives and friends. This is also one of the ultimate redressal mechanisms. And, this mechanism prevails even today. Though we have got all the forums, that is, the High Courts, the Supreme Court, etc., In the present setup, the attendance before ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE): But, Mr. Naik, this Bill is basically regarding the Supreme Court judges.

SHRI SHANTARAM NAIK: Please try to understand, Mr. Vice-Chairman, Sir, this refers to ...*(Interruptions)*... If this approach is taken, nobody will be able to say anything. It is a part of alternate redressal mechanism. Incidentally, I have been the Chairman of the Parliamentary Standing Committee on Law and Justice. I have dealt with this matter. Therefore, I have a solid background. If you ask me only to speak whether Judges should be ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE): I was just mentioning something. You can speak whatever you like on the redressal system.

SHRI SHANTARAM NAIK: Secondly, what I am trying to impress upon is, though the Judiciary is independent, yet the Government should have some mechanism to evaluate, not interfere, the judgements of the courts of law. It will help in day-to-day functioning of the Ministry of Law also. But, presently, I don't think any such mechanism is there. I would like to request the hon. Law Minister to study the judgements passed, especially with regard to corporate bodies, so that at the time of retirement also you know what types of judgements are given with respect to corporate bodies. This is absolutely required in the context of *Duaji's* Bill. Apart from this straightway alternate redressal mechanism, there is a very good legislation, that is, the Consumer Protection Act, under which also there is an alternate redressal mechanism. There are the district forums, the State forums, etc. But some people have not found

[Shri Shantaram Naik]

it suitable. I do not know why. They say lawyers go there, they argue, a lot of petitions are pending, etc., etc. They compare arbitration and use these forums to make a point.

We tried to bring in the Judicial Standards and Accountability Bill. This Bill is pending. Through this Bill we tried to lay down a code of conduct for Judges. Why did this occasion arise? Because, apart from certain provisions of Constitution, we, as a Government, found that there was no control over the functioning of the Judiciary. But there was a view that some conduct of theirs should be regulated. Therefore, a Bill has been introduced. But, unfortunately, there was a strong opposition from the Judiciary itself that such a Bill should not be there. In the course of that Committee, which I was presiding over, a subject also came that whether off the cuff remarks passed by the judges saying "Was Parliament sleeping? What were they doing?" should be allowed to be passed by the judges. This is also a subject which comes under this Bill.

THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE): You have another one minute. Is that okay? Because there are about 12 speakers.

SHRI SHANTARAM NAIK: On Private Member's Bill, I have never been stopped, Sir. If you allow me only for five minutes, then, I will withdraw my name, because, ultimately, you can't speak on such a subject in five minutes.

THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE): But this Bill has so much of enthusiasm from the Members that they all want to speak. Usually, only two, three Members speak.

SHRI SHANTARAM NAIK: Then, I stop here, Sir.

THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE): I give you another two minutes. Please carry on.

SHRI SHANTARAM NAIK: This should have been told to me in the beginning itself. On Private Member's Bill, we have many options.

Now, another reason why arbitration should not be taken up by the judges is this. This type of arbitration, despite the facilities being provided by the Government and the Law Ministry, takes place in Five Star hotels. And, as it has rightly been pointed out, most of these arbitrations also take place in foreign countries. That is the attraction for the Supreme Court judges to involve themselves in arbitration.

Secondly, there is a charge that judges provide for themselves a post upon retirement. There are various Corporations and Commissions. I am not blaming any Government. Even during our time, these laws were there. It is not that these laws have been created by them. But judges have got all arrangements made upon their retirement - Chairmanship of some Commission, some Inquiry Commission, etc. Apart from this, if they are also allowed to be an arbitrator and to also do Chamber practice, both have been included, then there will be no end to this. Therefore, there must be some limit laid down.

Thirdly, judges do not inspire. If you see their overall judgements, you will find that they don't inspire. They encroach day-in-and-day-out upon the Parliamentary realm. We have seen it. We have discussed it several times. Whatever legislations are passed by the Parliament of India, they pass in the name of guidelines. There are some powers which our Ministries and Department exercise now. The powers that you are exercising will be exercised by the Empowered Committee of the Supreme Court from time to time. Where is the Ministry of Environment today? The Ministry of Environment hardly has got any power. The Empowered Committee will decide what should be done with respect to environment. Now, the Special Investigation Team or criminal laws will be handled by them in most of the cases. Therefore, if these are to be allowed-this is what the inspiration from the Supreme Court is-then, I think, the Bill of Duaji should be respected and it should be allowed to be passed. Thank you.

THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE): Avinash Rajji, Mr. P. Rajeeve wants to go and take a flight. If you are going to be in the House, can I request you to give him five minutes?

SHRI AVINASH RAI KHANNA (Punjab): Okay, Sir.

SHRI P. RAJEEVE (Kerala): Thank you Mr. Vice-Chairman, Sir. Very happy to see you on the Chair. All of us are well aware of the normal fate of the Private Members' Bills. But this is an opportunity to invite the attention of the Government to certain issues which need a legislation or which need an amendment to the existing Acts.

Sir, I rise to support this Bill and I would like to congratulate Duaji for moving this important Constitution (Amendment) Bill. Clause 124 (7) says, "No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India." This is a pre-globalization clause. At the time of framing this clause, the activities of companies were confined within national territories. This clause is suitable for that day. But now we are living in a globalized world. A company can run an office in the United States of America and

[Shri P. Rajeeve]

they can run their activities in India as well. Indian companies are running several businesses outside the country in America, in Britain and in several other countries. The global capital flow from one country to another country wherever they get more-profit. Now, the global capital has no specific national interest. So, this clause should be amended because there is no confinement of any company within the territory of a nation. Therefore, this should be amended. That is the need of the day.

Sir, Duaji, in his speech, mentioned several incidents. But I would not like to take more time on this issue. From my memory, I recall that while participating in a debate, the Leader of the House—the then Leader of the Opposition—made a very valid point. Nowadays, the courts itself have created their own post-retirement vacancies. While hearing the case of an educational institution, the apex court made a verdict. In that verdict, it said, ‘it is the duty of the Executive to constitute a Committee under the leadership of a retired Judge.’ That is ensuring a post-retirement vacancy. Recently, hearing a case on accidents and traffic rules, the apex court made another verdict. In that verdict, the court itself created a Committee to review the laws.’ Sir, it is a responsibility of the Legislature to review an Act and come up with any amendment needed on a given day. But the Supreme Court in its verdict has created a Committee and appointed retired Judges in that Committee. So, on that day, the Leader of the Opposition correctly stated that the courts themselves created their own after-retirement vacancies. This should be noted and that should be included in a comprehensive Constitutional Amendment to avoid those types of activities.

The third point that I would like to make is regarding arbitration cases. The former Attorney-General publicly mentioned that not only the Judges of the apex court, but the former Chief Justice of the country are appearing for a private company in the United States of America. What would they think about the independence or the credibility of the judicial system of our country? We have a very good reputation about our judicial system. But our Chief Justices are appearing for a private company in a court in the United States of America. We are living in a globalized world. It is an era of globalization process. So, this clause should be amended. I think, the Government should take note of this and come up with a proper amendment to the Constitution.

Sir, I would like to make one more point. In the Statement of Objects and Reasons of the Bill, Duaji correctly stated that the proposed amendment in Article 124 of the Constitution is required to ensure and strengthen the judicial independence and maintain the credibility of the higher judiciary. Recently, the Chief Justice of our country made a public remark. It is a very important issue. It is an attack on the independence of our judicial system. We have a collegium system. All of us are well aware that there is no provision of a collegium in our Constitution. The last Government came with a Constitutional amendment on that. They were in very hurry;

without sending that Bill to the Standing Committee, all of us passed that Bill. But the Government was not ready to move that Bill in the other House. That was the fate of that Bill.

The collegium process is the rule of the day. The collegium sent their proposal to the Government. The Government segregated that one name and approved the other three names. I think, for the first time in history, the Chief Justice of India made a public remark against this Government. This is an attack on the independence of Judiciary. I think that such a thing should not happen. We have our own *lakshman rekha*. I fully support the idea that the existing system of judicial appointments should be amended and the Executive and Legislature should have some say in it. I fully agree with that argument, but this is the rule of the day. We are creating loopholes for the Judiciary to constitute a collegium because we fail to do our duty. But before amending the existing legislative mechanism, it is the duty of the Executive to ensure the independence of the Judiciary.

I think the Government should review the approach they had taken on that issue. I would also request the Government to come up with a judicial reforms commission, a judicial appointment authority, taking into account the views expressed by all stakeholders.

With these words, I conclude and support this Constitutional Amendment.

श्री अविनाश राय खन्ना : सर, श्री एच.के. दुआ जी ने इस बिल को मूव किया है, जिन्हें बतौर एक पत्रकार व एक पॉलिटिशियन बहुत अच्छा एक्सपीरिेंस है। मैंने उन्हें “द ट्रिब्यून” में काम करते हुए पर्सनली देखा है। वे बड़ी मेहनत से पॉइंट्स निकालकर लाते हैं और कोई-न-कोई नई बात करवाने की कोशिश करते हैं।

महोदय, हमारे मंत्री महोदय, जो खुद एक बहुत बड़े वकील हैं, इस बिल का जवाब देंगे। महोदय, मैंने भी 10-12 साल एज ए लॉयर प्रौक्टिस की है और यह अनुभव किया है कि जजेज के बारे में लॉयर्स और आम लोगों का ऑपिनियन “नेक्स्ट टू गॉड” की तरह का होता है। जैसे कि एक डॉक्टर के बारे में कहा जाता है कि ही इज “नेक्स्ट टू गॉड” उसी तरह जो लिटिगेंट है, वह भी जज को परमात्मा के रूप में देखता है और जब वह उसे परमात्मा के रूप में देखता है, तो उसकी सेलरी क्या है, उसे क्या पर्स मिलते हैं, वे बातें छोड़कर वह क्या निर्णय देने वाला है, इस की बड़ी अहमियत रहती है। महोदय, मैंने इस लाइन में देखा है कि बहुत से एडवोकेट्स, जिनकी करोड़ों की प्रैक्टिस होती है, वे उसे छोड़कर जज के रूप में इसलिए अपॉइंट हो जाते हैं क्योंकि उन्हें लगता है कि वे एक रिस्पेक्टफुल पोस्ट पर जा रहे हैं।

महोदय, मैं अपना एक एक्सपीरिेंस आप से शेयर करना चाहूंगा। मैं जब लोअर कोर्ट में प्रैक्टिस कर रहा था, तो वहां दो कोर्ट्स बनीं। वहां की दूसरी कोई के उदघाटन के मौके पर

[श्री अविनाश राय खन्ना]

लोगों ने वहीं के रहने वाले हाईकोर्ट से रिटायर्ड एक जज को बुलाया और कहा कि आपके शहर में एक कोर्ट आ रही है, आप इसके उदघाटन के मौके पर आइए। वे बड़ा आग्रह करने के बाद वहां आए और उनसे बोलने के लिए भी कहा गया। उन्होंने उस मौके पर बोलते हुए कहा कि जितने समय मैं जज रहा, मैंने कभी भी अपने को इंसपैक्टिंग जज के लिए ऑफ्ट नहीं किया। मुझे जब भी कोई इंसपैक्टिंग जज बनाता था, तो मैं उसे रिफ्यूज कर देता था। इस का कारण यह है कि जिस ढंग से स्वागत हो रहा है, पार्टी हो रही है, यह सब कहां से और कैसे मैनेज होता है, इस से मुझे डर लगता है। यह उन्होंने वहां पब्लिकली कहा। वहां आज भी उन्हें इतने रिस्पेक्टफुल ढंग से देखा जाता है कि कभी ईमानदार जजों का नाम आता है, तो उनका नाम सबसे पहले लिया जाता है। तो एक आदमी के लिए एडमिनिस्ट्रेशन के, पॉलिटिकल - सब रास्ते बंद हो जाएं, तो जूडिशियरी ही एक रास्ता होता है, जहां जाकर उस इंसान को रिलीफ मिलती है।

महोदय, अभी शान्ताराम नायक जी बात कर रहे थे कि जजेज जब आउटसाइड द कोर्ट कंप्रोमाइज करवाते हैं, तो उसका कितना इम्पैक्ट रहता है। महोदय, मैं एम.एल.ए. था और प्रैक्टिस भी करता था, तो एक 800 रुपए की लक्कड़ से संबंधित केस के सिविल और क्रिमिनल 16 केसेज बन गए। वहां जज बहुत अच्छे थे। उन्होंने मुझे कहा कि आप एक एम.एल.ए. हो, यह आपकी कांस्टीट्यूएन्सी का केस है और आप इसमें एक तरफ वकील भी हो, आप इसे खत्म क्यों नहीं करवाते? मैंने उनसे कहा कि यह खत्म नहीं होगा, लेकिन इसे आप खत्म करवा सकते हो। आप हमें बाहर निकालिए और दोनों पार्टीज को स्ट्रॉगली कह दीजिए कि मैं दोनों को अंदर भेज दूंगा, नहीं तो आप कंप्रोमाइज कर लीजिए। जब हम मालूम करने गए, तो हमसे कहा गया कि आप जरा, बाहर जाइए, मैंने क्लाइंट से बात करनी है। आधे घंटे बाद दोबारा आवाज लगी, तो उन्होंने डेट दे दी। उसके पांच मिनट बाद दूसरा क्लाइंट मेरे पास आया और कहने लगा कि साहब, हमारा राजीमाना करवा दो। उस एक राजीनामे ने, उस एक कंप्रोमाइज ने जज की इंटरवेंशन से 16 केस खत्म करवा दिए।

जज की अपनी एक इम्पोर्टेन्स रहती है। लोग जज को एक देवता के समान समझते हैं। कई जज या एडिशनल सेशन जज जब रिटायर होते हैं, तो अपनी प्रैक्टिस शुरू करते हैं, लेकिन उन्होंने सेल्फ स्टैंड रखा होता है, कि जो जज उनके नीचे कभी भी, किसी भी सर्विस के दौरान काम करके आया है, उनकी कोर्ट में कभी भी पेश नहीं होना है और वे कभी भी उनकी कोर्ट का कोई केस नहीं लेते। वह सेल्फ रिस्ट्रिक्शन होती थी। यह जो अमेंडमेंट आया है, मैं समझता हूं कि यह एक एथिकल अमेंडमेंट है। जब आर्टिकल 124 लिखा गया था, तो उस समय एक बहुत ही इम्पोर्टेंट बात इस आर्टिकल के सब-सेक्शन 7 में लिखी गई थी कि “No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.” यह ठीक बात भी है, क्योंकि जहां आपने एज ए जज ऑफ सुप्रीम कोर्ट काम किया हो, वहीं पेश होकर काम करना वैसे ही शोभा नहीं देता। समय में परिवर्तन आया, बहुत से कमिशन बने, बहुत से एक्ट बने, तो उनमें जो जूडिशियल और लीगल लोग थे, उनकी इन्वॉल्वमेंट आगे बढ़ने लगी और इसलिए फिर आफ्टर रिटायरमेंट असाइनमेंट्स लेने का समय आ गया। असाइनमेंट लेने के साथ-साथ पर्स, एलाउन्सेज भी इतने बढ़ते गए। मैं

मिश्रा साहब से बात कर रहा था कि कई बार आपका ओपीनियन, जैसे आपने कोई जज एपायंट किया है, आपने कोई रिटैन ओपीनियन दी है, जब वह ओपीनियन उस जज के पास चली गई, तो फाइल में उसका माइंड बायस्ड हो सकता है। हो न हो, वह बाद की बात है, उसे माने या न माने, बाद की बात है, लेकिन उसका माइंड है, हो सकता है कि ओपीनियन देते समय, इंटरप्रिटेशन देते समय बायस्ड हो।

महोदय, मैं ज्यादा लंबी बहस में नहीं जाऊंगा। इस देश में कभी भी किसी पैसे वाले की पूजा नहीं हुई। इस देश में बहुत पैसे वाले लोग हैं, मगर आप यहां पार्लियामेंट में देख लीजिए, हॉल में देख लीजिए, किसी के घर में देख लीजिए, कहीं भी किसी अमीर आदमी का चित्र नहीं देखेंगे। अगर हमारे बाप-दादाओं ने भी बहुत पैसे कमाए हो, तो ड्राइंग रूम में एक चित्र लग जाएगा, उसके गले में एक हार पड़ा होगा, जो इंट्रोडक्शन के लिए होगा कि यह हमारे दादा थे, इन्होंने बहुत पैसा कमाया, फैक्टरी बनाई, यह घर बनाया, लेकिन अगली जनरेशन आकर उसे भी उतार देती है, क्योंकि जब उसका दादा गुजर जाता है तो उसका चित्र वहां लग जाता है। कहने का मतलब यह है कि कभी भी किसी अमीर आदमी का चित्र किसी पड़ोसी के घर में नहीं लगता। किसका लगता है? उसका लगता है, जिसने देश के लिए, समाज के लिए काम किया होता है और वह भी ईमानदारी से काम किया होता है। ऐसे आदमी की हर जगह पूजा होती है। इस देश में पैसे का कोई महत्व नहीं है जब हम जज बनकर जाते हैं, तो उस समय हमें पैसे या पर्स का मोह नहीं रहता, हमारे मन में रहता है कि हमारी इज्जत बनी रहे, हम जो फैसला देने वाले हैं उस फैसले से हम देश का, समाज का या क्लाइंट का भला कर सकें, जजेज लॉ के अंतर्गत फैसला दें। हम देखते हैं कि हम उसका कितना पालन करते हैं, हम उससे कितना भला कर सकते हैं।

महोदय, मैं समझता हूं कि चाहे वह छोटी अमेंडमेंट है, लेकिन दुआ जी बहुत मेहनत से इसे लाए हैं और इसमें बहुत इंटेलिजेंटली एक प्रोविजो भी दिया है। अगर देश को ऐसे किसी जज की जरूरत है, जिसकी ओपीनियन प्रजीडेंट या प्राइम मिनिस्टर, चीफ मिनिस्टर या गवर्नर चाहता है, तो उसकी ओपीनियन आये, वह स्टेट को या देश को रिप्रजेंट करे। ऐसी कंडीशन में उसकी सेवाएं ली जा सकती हैं। मैं समझता हूं कि हमारे लॉ मिनिस्टर खुद एक बहुत काबिल वकील हैं, इसलिए मैं इस बहस को आगे न ले जाते हुए, उनसे निवेदन करूंगा कि कोई न कोई ऐसा रास्ता निकालें, जिससे इस बिल में जो कहा गया है, उसकी भावना की भी रिस्पेक्ट हो, सारे देश में और पब्लिक में हमारे जजों का मान-सम्मान बढ़े और जुडिशियरी में लोगों का और विश्वास बढ़े।

उपसभाध्यक्ष जी, इन्हीं शब्दों के साथ एक बार फिर मैं आपका बहुत-बहुत धन्यवाद करता हूं और माननीय मंत्री जी से निवेदन करता हूं कि इसका कोई न कोई रास्ता निकालें। बहुत-बहुत धन्यवाद।

सरदार सुखदेव सिंह ढिंडसा (पंजाब) : उपसभाध्यक्ष महोदय, पहले तो मैं आपका आभारी हूं कि आपने मुझे पहले बोलने का समय दिया, क्योंकि मुझे ट्रेन पकड़नी थी। आपने मुझे थोड़ा सा पहले बोलने का मौका दे दिया, इसके लिए I am grateful to you. दूसरा, श्री एच.के. दुआ...

उपसभाध्यक्ष (श्री वी.पी. सिंह बदनौर) : ट्रेन वाली बात के लिए तो मुझे सबसे परमिशन लेनी पड़ती, लेकिन अभी आपका ही बोलने का नंबर है।

सरदार सुखदेव सिंह ढिंडसा : ओ.के., थैंक यू सर। तो अभी एच.के. दुआ साहब का जिक्र खन्ना साहब ने भी किया। दुआ साहब देश के बहुत बड़े जर्नलिस्ट हैं, बहुत बड़े-बड़े अखबारों के चीफ एडिटर रहे हैं, एडिटर-इन-चीफ भी रहे, इंग्लिश भाषा के तो बहुत सोचकर, देखकर, अपने एक्सपीरिएंस से ये इस बिल को लाए हैं और जैसा कि लॉ मिनिस्टर साहब ने कहा कि यह बिल कोई ज्यूडीशियरी के खिलाफ नहीं है, बल्कि मैं समझता हूं कि सुप्रीम कोर्ट के जो जजेज रिटायर होते हैं, यह उनकी इज्जत बचाने के लिए है या ज्यूडीशियरी की इज्जत बचाने के लिए है। सर, चाहे ज्यूडीशियरी हो, एक्जीक्यूटिव हो, कोई भी हो, आप तो जानते ही हैं कि हर जगह सभी लोग तो अच्छे हो नहीं सकते। कोई न कोई, कोई भी एक शक्स रिटायरमेंट के बाद ऐसा काम कर ले, तो सारी ज्यूडीशियरी बदनाम हो जाती है। तो यह एक ऐसा अमेंडमेंट है, जिसे मैं समझता हूं कि सारा हाउस एडॉप्ट करेगा। और यही नहीं, इन्होंने कुछ सुझाव भी दिए हैं, जिनको मैं सपोर्ट करता हूं और मैं इनके साथ हूं कि या तो उनकी एज बढ़ाई जाए, क्योंकि जजेज का बहुत बड़ा रुतबा होता है, खास कर सुप्रीम कोर्ट के ऊपर तो कोई होता नहीं। खन्ना साहब ने बिल्कुल ठीक कहा कि वे किसी को फांसी से बचा सकते हैं, किसी को फांसी दे सकते हैं और इससे बड़ा किसी के पास क्या अधिकार हो सकता है? लेकिन उनके ऊपर इतना विश्वास लोगों का रहना चाहिए कि कहीं ऐसा न हो कि किसी के साथ बेइसाफी हो। तो उसके लिए जैसा खन्ना साहब ने कहा कि जिसने उसके अंडर काम किया हो या उन्होंने उसे जज बनाया हो, तो यह कुदरती है कि उस जज के फैसले पर उसका असर होगा ही होगा। सर, मैं समझता हूं कि अमेरिका में जज रिटायर ही नहीं होते। जब तक उनकी डैथ नहीं होती, वे रिटायर ही नहीं होते। ऐसा ही कोई ऐसा प्रोविजन आप इसमें डाल दे कि वे रिटायरमेंट तक चले या पांच साल उनकी एक्सटेंशन हो जाए, क्योंकि हजारों नहीं, लाखों केस पेंडिंग पड़े हैं। लॉ मिनिस्टर तो ज्यादा जानते हैं। जैसे खन्ना जी ने कहा कि लाखों केस पेंडिंग पड़े हैं, दस-दस, बीस-बीस, तीस-तीस साल के केसेज आज कोर्ट्स में पड़े हैं, तो उसके लिए भी हो सकता है कि उनको एक्सटेंशन दी जाए या कॉस्ट्रैक्ट बेसिस पर जजेज को नियुक्त किया जाए, ताकि उन केसेज का भी निपटारा हो सके। किसी को इन्साफ चाहिए, तो कभी-कभी चालीस साल तक केस चलते हैं, वह बेचारा आदमी इस दुनिया से भी चला जाता है, लेकिन उसका केस पेंडिंग पड़ा रहता है, तो उसका भी कोई न कोई इंतजाम होना चाहिए। उनको अगर एक्सटेंशन मिल सकती है तो एक्सटेंशन दें या उनकी एज बढ़ा दें, ऐसा किया जा सकता है।

सर, मैं लॉ मिनिस्टर साहब से एक रिक्वेस्ट करूंगा कि कुछ लोग ऐसी पोजिशन में बैठे होते हैं, जो कांस्टीट्यूशनल पोस्ट्स होती हैं, जैसे चीफ इलेक्शन कमिशनर, इलेक्शन कमिशनर या सी.बी.आई. का डायरेक्टर होता है। तो ये कुछ ऐसी पोस्ट्स हैं कि उनके रिटायरमेंट के बाद उनको कोर्ट भी ऐसी जगह नहीं मिलनी चाहिए, क्योंकि वे मौके की सरकार को फायदा पहुंचाने के लिए कोई न कोई ऐसे फैसले कर देते हैं, जो मेरा ख्याल है कि उस पोजिशन को बचाने के लिए होते हैं। अब चूंकि श्री नरेन्द्र मोदी की सरकार आई है, तो लोगों में बड़ा उत्साह है। लोग

चाहते हैं कि वे कोई नई चीज पैदा करेंगे, कोई कीर्तिमान स्थापित करेंगे, कोई अलहदा बात करेंगे, तो लॉ मिनिस्टर साहब भी कुछ न कुछ ऐसी बात करें कि लोगों को इंसाफ भी मिले। तो बड़े-बड़े ओहदों पर लोग बैठे हैं, रिटायरमेंट के बाद उनमें से कोई राज्य सभा में आता है, कोई किसी पोजिशन पर चला जाता है, कोई किसी संस्था का चेयरमैन बन जाता है, तो उनको रोकना चाहिए, ताकि लोगों को इंसाफ मिल सके। श्री दुआ एक ऐसा अमेंडमेंट लाए हैं, जिसको सारा हाउस सपोर्ट करता है, ऐसा मेरा ख्याल है। वाइस चेयरमैन सर, मैं इसको सपोर्ट करने के लिए ही खड़ा हूँ और ये बहुत सोच-समझकर इसको लाए हैं, जो ज्यूडीशियरी की इज्जत बचाने के लिए, सुप्रीम कोर्ट के जजों का stature बढ़ाने के लिए है।

SHRI BAISHNAB PARIDA (Odisha): Mr. Vice-Chairman, Sir, I would like to thank you for giving me the opportunity to say a few words on this important amendment. I rise to support the amendment moved by Mr. Dua who is one of the prominent journalists of our country. Sir, judiciary is one of the pillars of our democracy. Millions of our countrymen expect justice from our judiciary. At the same time, a democratic set up also needs the role of judiciary as a watchdog of our democracy. It is our duty to see that the independence and the dignity of the judiciary is maintained by Parliament and by our people also.

Sir, Article 124 of our Constitution mentions certain things, which strengthen the independence and the dignity of the judges of the Supreme Court. It is said that the judges of the Supreme Court are forbidden to take any assignment in any court of this country and also to participate in any arbitration inside India, and, now-a-days, abroad also. But it is found, in many cases, some of the judges could not uphold this principle laid down by our Constitution. They indulge in some works, in some arbitration works after their retirement, which hampers the prestige and dignity of the judiciary.

Sir, now-a-days, in many quarters, we see that the people, who view the judiciary as the last hope of getting justice, sometimes, criticize the judiciary by saying that these days, justice is not given, justice is sometimes purchased or bought. It is a great insult to our judiciary, to our democracy. So, it is also the duty of the Parliament to maintain the independence and dignity of the judiciary. In this declining trend of the prestige of judiciary in many cases, the Parliament should think of making some rules to strength the judiciary, its independence and its dignity as well. It will help to strengthen the democratic set up of our country. Mr. Dua has brought this amendment. It is a very important and also a very timely one. He mentioned that it took two years to bring this Bill to this House, but ultimately, it has come. I think everybody has acclaimed that our Law Minister is one of the leading luminaries of our judicial system. He has proved his credibility. And our Finance Minister is one of the topmost advocates of our country.

(MR. DEPUTY CHAIRMAN in the Chair)

I hope the intention of Mr. Dua is shared by us. We support his amendment and request the Government, especially our Law Minister, to make this amendment a part of our Constitution. Thank you, Sir.

DR. E.M. SUDARSANA NATCHIAPPAN (Tamil Nadu): Thank you, Mr. Deputy Chairman, Sir. This Bill is a very important Bill. The seniormost journalist and the hon. Member, Mr. H.K. Dua, has taken up the second issue regarding the judicial regulations. We know that our hon. Law Minister is well-versed in law practices. He is having a very high reputation. He has got a chance now in the history to bring some sort of regulations in the judicial system. Within the four walls of the Constitution, many attempts were made by different Governments. Since there had been many types of coalitions, compulsions and other things for the last twenty years, the executive powers were more or less taken away from the Executive to the Judiciary, and in many of the cases, the Executive started to push their file to the Judiciary in order to let them be relieved of taking a decision. Therefore, Judiciary is now the highest accepted institution in India to give a clear verdict on any controversial issue. The Constitution makers were very clear in that aspect. When they made States, they thought about having the separate Judiciary for States just like the United States of America. But finally, they came to the conclusion, after two-three days of discussion, that we should have a unitary system of Judiciary, even though we might be having a quasi-federal system of the Executive and the Legislature. The Legislature is having a separate list of powers to make the laws in the State Governments. But, at the same time, the Executive is having exclusive way of implementing those laws and looking at the welfare of the state. In case of Judiciary also, looking at the same way, people were recruited from the same State and they were elevated to the Judiciary and they become the Chief Justice of a particular State to show that this is the ethnic group, this is the linguistic group. This is the way the States were thinking about the judicial aspect. This is the way India has run for many decades. Unfortunately, when the Executive becomes weak, the Judiciary started to take away certain things out of it. At that time, the Constitution makers had come out with a very good proposition that if there was a dispute between two States or between a State and the Union, that dispute could be solved by the Supreme Court of India. The original jurisdiction was also opened up for the Supreme Court. This was not happening in the United States of America. The United States of America is having a Supreme Court for every State. They are having district courts also.

Two types of judicial systems are available in the United States. But we are having only one system of judiciary. I want to quote one of the observations of Granville Austin, the famous author of *The Indian Constitution: Cornerstone of a Nation*'. He expired last week at the age of 84. It is given at page No. 230.

"Ambedkar was perhaps the greatest apostle in the Assembly of what he described as 'one single integrated Judiciary having jurisdiction and providing remedies in all cases arising under the constitutional law, the civil law, or the criminal law'. For him, such a judicial system, plus uniformity of law, were 'essential to maintain the unity of the country'."

This was the thinking of makers of the Constitution. Nowhere in the world such a powerful Supreme Court is available. It is only in India that a law made by Parliament or a Legislative Assembly can be set aside by the Supreme Court of India. They have this power of review. Even in the UK, the court cannot set it aside. The term used there is 'recommend' or that this has to be considered.

In the United States, they can comment upon it. But it is only in India that they can set it aside or annul it. After that, the Executive or the Legislature has to look into it whether they are within the powers of the Constitution. Such supreme powers are given to the Supreme Court Judges. They should come forward with certain things which could not be done by others. The restriction in the Article says that they should not practice after that. But we have to see the humanitarian aspect also. A judge stays there up to 65 years of age. Now many people become wise only after 65! Average period of a Supreme Court Judge is only around three years. If a judge has a tenure of five years, he retires at 65. His law practice and learning in the system should not go waste.

MR. DEPUTY CHAIRMAN: Why not extend the retirement age of a Supreme Court Judge?

DR. E.M. SUDARSANA NATCHIAPPAN: Yes, Sir. I want to submit that also. We have borrowed from the systems of the United States of America and the United Kingdom. In both the countries, the judiciary does not have any age of retirement. They can voluntarily withdraw themselves. But they are entitled to all the perquisites which were given to a sitting judge. If India takes that position then we have to say that judges need not do other business. Globalisation has brought knowledge regime. They can go anywhere to deliver lecture. They can go for any training programme. Once the seat of the Vice-Chairman of the Rajya Sabha was adorned by the Chief Justice of a ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: Even the Chairman.

DR. E.M. SUDARSANA NATCHIAPPAN: This is the way the judiciary's well-trained people have to be accommodated. Many people are vying to occupy the statutory positions. Some of them even want to relinquish the post of the Chief Justice of a High Court to join the Supreme Court simply because the statutory positions are available for them after retirement. We have created many Human Rights Commissions, tribunals and many regulatory authorities. Even the matter relating to Competition Commission was pending before the Supreme Court till we accepted that the judiciary can be part of it. They allowed it to pass only when the Executive had accepted it. This is the way the judiciary is making demands. The question is whether they should be prohibited from doing any other practice by using that knowledge for the society, or they should be restricted only to Government nominations, or they should be asked to deliver lectures and get salary from the exchequer. This is the question which has to be answered. The Government can consider that question so that the judicial system is independent. They should not do something which will create stigma in their life to say that they have taken a decision in a particular judgment because they sought for Governorship or they sought for Rajya Sabha membership or they sought for a particular position in the Human Rights Commission or in a Tribunal or any such position. They should behave being an independent body as the Constitution makers have provided for. Thank you.

SHRI A.V. SWAMY (Odisha): Mr. Deputy Chairman, Sir, I thank you for giving me this opportunity. I have only three points to submit. After having such output of wisdom for Members and after their vast experiences having been shared, I don't have much to add to that. But I would quickly like to make three points.

Firstly, the society and most of the social workers like us have lost faith in the various Organ of The Government including Legislature, Executive and also other institutions which have been created. The only hope lies in judiciary for most of the people for justice and which has met the challenges of a society with depleting trust in the society's other instruments and, therefore, we should hold it up and do whatever is possible to keep up its prestige and credibility.

I congratulate Duaji for having brought forward this particular amendment to the Constitution, if it is not accepted, it will reduce the prestige of the judiciary further in the minds of the common man because they are resorting to chamber practice after retirement. That means, he is becoming another wage earners and not a person who dispenses justice. This is the second point which I wanted to make.

4.00 P.M.

Thirdly, Sir, I am not in favour of increasing the age limit of members of judiciary for the simple reason that age has its own impact on the reflex action of any person. I am 84. I have started feeling it even though I try my best to be what I was at 25. But, it is difficult. I think if you want to be kind to good judges, let them be given better benefits at the time of their retirements and not increase their age limit.

Sir, finally, I would thank Mr. Dua for having made one point very, very clear. He was concerned not so much about the system and all that. With the depleting values that we are facing in the society, some people to whom the common man can look up to and say here is someone he can trust, that is only judiciary. Therefore, I fully agree with the Constitutional amendment. Chamber practice would certainly affect the credibility, prestige and independence of the judiciary and also, the prestige of the nation as a whole. Thank you very much for giving me an opportunity.

DR. K. KESHAHA RAO (Andhra Pradesh): Sir, thank you very much. I want to be very brief because the Minister has also requested me. We have a brilliant Law Minister today who is a lawyer. You understand the academics too. So, I would not like to dwell on that because the debate has been stretched so long that every aspect of the judiciary, jurisprudence and arbitration has been taken up.

[THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE) in the Chair]

The Minister wanted us to restrain ourselves, but in a relative term. So, I would rather like to be silent than to talk. Sir, today, the question is very simple. I have only one or two points to make. This is about a man who is holding the highest position after his experience and the nation has accepted his expertise and he has got into a big position. Now, should he take up the other position which is a bit little, I would not say, lower, but which perhaps compromises his own stands? The Deputy Chairman asked why we should not use the expertise of a person who has so much of expertise. What happens in arbitration, perhaps, he may run the risk of giving an arbitration award which may go against one of the awardees. That is one thing.

Mr. Dua was an Ambassador. He knows what kind of money people will give. It is not about the money, but it is about the prestige and dignity of the office that we hold. Let us not compromise on it. This is exactly what I wanted to say.

I want to say one more thing about the retirement. My hon. friend, Mr. Natchiappan says at 65 a man may feel young; and at 70 also he may feel young as long as he is in office. This is for the Government to do. As I said, we have a responsive Law

[Dr. K. Keshava Rao]

Minister, I am sure, he will respond to it. But today he is a popular Law Minister. He should know all the Members sitting in the House have supported Mr. Dua's Bill. He should also take the popular view of the House; and what exactly his answer should be. But anyhow I stand to commend the Bill.

SHRI D. RAJA (Tamil Nadu): Mr. Vice-Chairman, Sir, I will be very brief. I rise to support the Bill moved by our beloved colleague, Mr. H.K. Dua.

Sir, the discussion make it very clear that a country like ours should have the National Judicial Commission. Once we have such a commission, we can discuss about the appointment, the removal, the character and the integrity of all Judges who are going to occupy the highest positions in the judiciary. I think the time has come and the Government will have to apply its mind. Last time the previous Government had moved the Bill but it is pending in the Ministry. I think it is time that we take up that Judicial Commission Bill. Even a country like South Africa has got a Judicial Commission, why not India? We have a long tradition of law, jurisprudence and everything. Thanks to Dr. Ambedkar and to our Constitution which are holding the system so far in a balanced manner. We all stand for judicial independence. But it does not mean that there should not be accountability. While we talk about judicial independence, we also insist that there should be judicial accountability.

Now, there are many charges against the Judges or against the functioning of the judiciary; and it is a fact of life also. That is why the judicial accountability has become an urgent issue that the Government cannot avoid to address.

Sir, this time we talk about reforms. When we talk of reforms, we mean only economic reforms. But really there are other reforms. We can talk of broader political reforms which include electoral reforms. We should strive for better police reforms and judicial reforms. Now India has to move along with the time. Fortunately, we have a good Constitution. But even a good Constitution can fail if it is in the hands of bad people. A bad Constitution can turn out to be good if it is in the hands of good people. In the same way, if the judiciary is in the hands of the good people it can deliver justice. We are all for timely justice to the common people. "Justice delayed is justice denied". At the same time, "Justice hurried is justice burried". These are all known to us, but how to strengthen and revamp our judiciary. There, I think, our friend, Mr. Dua has taken up this initiative, and I support his suggestion that in article 124 of the Constitution for clause (7), the following shall be substituted, namely:-

"(7) No person who has held office as a Judge of the Supreme Court shall plead

or act or express written opinion or engage in arbitration in any court or before any authority within the territory of India and outside India.”

As my friend, Dr. Sudarsana Natchiappan, has said, whether we can increase the age limit for judges and whether we can increase the perks or benefits to judges, are also the issues. Clause 2 of the Bill says, “Provided that he may do so upon a request made by the President or the Prime Minister of India or the Governor or the Chief Minister of a State in a matter of national interest.” Here he clarifies that thing. But what can we do for the rest? That is a separate question. We have a very energetic and eminent legal mind as the Law Minister. Let him apply his mind. Whether he accepts the Bill or not, that is a separate thing. But the Government should address these issues with an open mind. I urge upon the Government to consider bringing back the National Judicial Commission Bill and the Judicial Accountability Bill because the time has come. We will have to move along with the time. We cannot delay it any further. You have a chance now. You are in the Government and you will get cooperation from all sections of the House as far as these issues are concerned. I urge upon the Government to give due consideration to the amendments proposed by my friend, Shri H.K. Dua. Mr. Minister, in a longer perspective, you will have to consider the National Judicial Commission Bill. These are my points. Thank you.

SHRI RAVI SHANKAR PRASAD: Mr. Vice-Chairman, Sir, I am, indeed, very grateful that the hon. Member, my esteemed senior colleague, Shri H.K. Dua, evoked such a lively debate by a Private Members' Bill. I could see nine people speaking on the Bill, including Dr. Sudarsana Natchiappan, Shri D. Raja, Sardar Sukhdev Singh Dhindsa, Shri P. Rajeeve, Shri Shantaram Naik, Shri Avinash Rai Khanna, Shri A.V. Swamy and Dr. K. Keshava Rao. I am grateful to Dr. K. Keshava Rao for agreeing to my request which I made to him personally. Secondly, I am really touched by the kind words which have been used about me by most of the Members. I am grateful that I have been the beneficiary of their love and affection. In my new role as Law Minister also, they have used the kind words for me for which I am very, very grateful to all the Members.

Before I come to the matter, as Shri D. Raja and Shri Shantaram Naik have stated, we will have a structured debate on the Judiciary separately. Some of the issues have been raised and they are relevant issues. We need to debate them at some appropriate time; the issue of backlog, the need for expedition. Now being the Law Minister of India, I am seeing it from inside that there are issues to be addressed. Some of the initiatives, very briefly, I have taken. I have written five letters to the Chief Justice of

[Shri Ravi Shankar Prasad]

India. One, to fill up all the existing vacancies in the High Courts. There are nearly 200 vacant posts. Nearly 4,000 posts are vacant in subordinate judiciary, which must be filled up at the earliest. I have also requested, which the earlier Government, in principle, had agreed, to enhance the strength of judges in the High Courts of India by nearly 20 per cent. Six State Governments have consented and with others I am pursuing. I have also written to the hon. Chief Justice and the Chief Ministers to expedite the hearings on cases of women, children, infirm people and elderly people in criminal cases on a fast track basis. All these things I am doing. I propose to monitor it. Yes, pendency is there. Hon. Dr. Natchiappan has rightly pointed it out. We have about 2.68 crore cases pending in the various subordinate courts of India. It is a matter of concern. Some pendency has gone down. But we have to work as a mission. So far as the National Judicial Commission is concerned, Dr. Raja, I will come to it separately. I see the point in what Shri Dua has said. Hon. judges of the Supreme Court, after demitting office today, cannot practise anywhere in the country.

“High Court Judges, after retirement, cannot practise in their own High Courts or Subordinate Tribunals in their jurisdiction. What Duaji has sought to highlight is that they must stop taking arbitrations and they must stop giving legal advices. About the legal advice part, I, totally, agree with the sense of the House. Speaking for myself, Mr. Vice-Chairman, Sir, when I used to appear in the Supreme Court, and when a client used to come with me, if he has the opinion of the Chief Justice of India, I would say gently, ‘We will decide it separately. There is no need to enclose it. Please don’t do it.’ And it will only be appropriate, in the fitness of things, taking into account the kind of concern expressed by Duaji that retired hon. Judges and retired hon. Chief Justices, even if they give their opinions, must say it very clearly and categorically that it should not be used for any pending legal proceeding.

THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE): I am sure, he has not used the word ‘ex-Ministers’.

SHRI RAVI SHANKAR PRASAD: No, Sir. There is a difference. The day we cease to be a Minister, we put on our black gowns and we are senior lawyers. Therefore, we don’t write ‘ex-Minister’s opinion’, but we only write, ‘senior lawyer’s opinion’. Mr. Natchiappan, after ceasing to be a Minister, I am sure, would have put on the black gown just as many of his other colleagues have done.

Sir, as far as the legal advice part is concerned, that has already caused deep distress in the Judiciary itself. And the Supreme Court, in the case of *Grenadiers*

Association, Rohtak Versus the Union of India, had itself come with the direction to the effect that if any case is filed, if any opinion of any retired Chief Justice or a retired Judge is imposed, then, the Registry must see to it that that is removed. This is a very salutary judgement given by the hon. Supreme Court of India. And based upon that, the Delhi High Court in a *Common Cause versus the Union of India* had also given it the same way that henceforward any written opinion of any retired judge or a retired Chief Justice shall not be made a part of any pending case or of the ones to be filed for any purposes. So, that concern of Duaji has been taken care of.

As far as the second plea of arbitration is concerned, I would like to say that the previous Government had already brought a Bill in February, 2014, called the Tribunals, the Appellate Tribunals and Other Authorities (Conditions of Service) Bill, 2014, which is pending in this hon. House. What does it say? It says, "If you become a member of any Tribunal, you will not undertake any arbitration. If you have any pending arbitration, you will complete it fully and you will not undertake any arbitration." That is point No.1. It further says, "If you are a member of the Tribunal, you shall not practise before the Tribunal in all these cases." Therefore, even that concern, Sir, with great respect, has been addressed by this Bill which is pending and which we will have the occasion to examine in detail. But there is a larger issue. The larger issue is that it is our Government's mission to make India a hub of international arbitration. I have also requested the Law Commission to kindly improve the existing Arbitration Act so as to make it more expeditious.

Now, Mr. Shantaram Naik was mentioning about an Alternative Dispute Redressal Mechanism. If we have to reduce the load of pending cases, then, we need to have an alternative forum. And we need judicial people trained for that alternative adjudication. Arbitration is a part of that. We have got very eminent Judges whose honesty, legal knowledge, judicial scholarship have been a matter of great standards. Therefore, Sir, I would request Duaji to kindly consider the fact that if we have a complete blanket ban that no retired judge can ever undertake any arbitration, then, maybe, wittingly or unwittingly, we are impinging upon the success of an alternative judicial mechanism. Even my friends would have had the experience that even Judges encourage parties to go for compromise, to go for arbitration, to go for variation and, at times, retired Judges of eminence are themselves chosen in the Court itself by a common consent. Now if we have a complete ban, then, that great window will be closed. Therefore, Sir, I note the concern of Duaji, but in the light of a healthy growth of alternative mechanism for judicial redress, I think, he will not insist upon that.

[Shri Ravi Shankar Prasad]

But the other concerns have been addressed by the Bill which I referred to and by the judgments of the Supreme Court I referred to. This is what I would like to say. The issue which Mr. D. Raja in his eloquent style mentioned is about the larger issue of judicial reform. Yes, National Judicial Commission is also a matter of priority for our Government. It was also a matter of priority for your Government because it is not a political issue. It is a national issue because collegium system came in the year 1993. Concerns have been expressed even by many hon. judges who wrote the judgments that this system needs improvement. I remember even Law Commission Chairman publicly said that this system needs improvement. We have to debate it and let me tell you, the mission of our Government is very clear, hon. Mr. Vice-Chairman. We respect complete independence of judiciary. It is an article of faith for us, hon. Mr. Vice-Chairman and I would just like to highlight many of us and many Members of this Government have suffered in the 70s fighting for Press freedom, individual freedom and independence of judiciary. I know Mr. Raja also have very strong views about independence of judiciary. We all have the highest regard for the offices of Chief Justice and Judges but as far as...

THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE): Somebody from Rajasthan for the first time is Chief Justice.

SHRI RAVI SHANKAR PRASAD: Yes. I am grateful, hon. Mr. Vice-Chairman. But as far as the appointment process is concerned, National Judicial Commission is a serious issue. I am very shortly going to have a consultation with jurists and others. I will also revert to all of you and I propose to bring this whole legislation after consultation. Sir, lastly Mr. Rajeev pointed out an incident. I don't wish to go into the name. Just to highlight that even in the collegium system of appointment, the Government has got the right to be consulted, the Government has got the right to seek a reconsideration of the proposal made. Such a right is available to the Government in the domain of Supreme Court itself laying down the collegium system. The Government only exercised that right of reconsideration based upon cogent ground, objective, fair ground and based upon the past precedents. This is how the matter stands. Now the matter is closed. I thought Mr. Rajeev raised that. But on the larger issue of independence we are all completely one. Sir, what is the real consequence of the growth of Indian democracy? Indian democracy has matured. Rule of law has matured. People of India know they can unseat any leader, any party from power and people of India know that judiciary is important and independence of judiciary is equally important. If this is the image of India, I think, all stakeholders need to

understand that also impose a great responsibility on us of proper conduct, of proper accountability and a kind of behaviour and a scholarship which becomes a beacon for the coming generation. This is the larger issue that I would like to flag. As far as the question of age is concerned, that is a debatable issue, Sir. The Government has not taken a call. There are views for it. There are views against it. People say, 'why only judiciary, raise the age of all other Constitutional functionary who is holding posts in institutions like Commissions and other things.'

SHRI D. RAJA: Here also there are two views.

SHRI RAVI SHANKAR PRASAD: Yes, we have to take a call on that. But, yes, those wishes are there. So, with this, may I request hon. Duaji that he has flagged an issue of great Importance? On behalf of the Government, I take note of those concerns, but the Government is alive to that. Whenever judicial reform issue will be there, this will addressed. One Bill is there and judgment has come. So with this, I would appeal to hon. Duaji to kindly consider withdrawing his Bill. That is all I would like to say.

THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE): Thank you very much. Mr. Dua, you will have to reply because the Minister does not reply to this. You have to reply.

SHRI H. K. DUA: Certainly, Mr. Vice-Chairman. I am very thankful and almost overwhelmed with the response of the Members from all sides, from the people right to the left and the middle and behind me have supported the Bill which I moved. In fact, they have extended the debate to many; many related issues concerning the judiciary. I am really overwhelmed and thank every one of you. I was encouraged and heartened at the spirited reply the Law Minister has given on the questions I raised given in the House, giving an idea of what kind of judicial reforms he has in mind.

And on a vast number of issues he has listed, which are seen to on the top of his agenda, which he wants to tackle. In fact, within just a few days of the new Government taking over, he has listed the subjects which are on the top of his table and going to get attention.

It is heartening to know that he has already written a letter to the Chief Minister to fill the vacant posts of judges. If all these posts are filled, then, the dispensation of justice in the country will become faster and some of the arrears would be cleared and people's faith possibly will be restored. There are 4,000 posts vacant in subordinate

[Shri H.K. Dua]

courts and 200 in the High Courts, I am sure, when he is at it, and soon he will be able to fill these vacancies. Sir, 4,000 vacancies in subordinate courts is a vast number. If these are filled, then, 2.6 crore cases will certainly come down faster.

That he is mulling over other issues of judicial accountability and appointments of judges also and wants to hold wider consultations, in the House and outside with the Judiciary also, is encouraging. He has always maintained, and again he has reiterated today the Government's faith in the independence of the Judiciary. Nobody in this House wants to do anything which may even cut into independence of the Judiciary by an iota.

About arbitration, he wants India to be the hub of arbitration, and I can well understand why this alternative settlement of disputes is being preferred all over the world, and why not in India, where courts are overloaded with the work. Justice should be speedier, possibly, it should be cheaper also.

I did not know about the Arbitration Bill he has spoken about it is still pending. I would like that since the Minister is going to review that Bill he should see how contemporary it is, whether it meets all the concerns, that needs to be examined. He should see whether he can provide guidelines for the arbitration process because this is outside the court, you can't lay down the laws for this, but you can regulate it. And, if there are some guidelines which can meet most concerns about arbitration process, I think, that will be helpful, when he reviews the Bill which is already pending. Another look at the Bill will be helpful.

However, the point which I was making is that the Supreme Court Judges and the Chief Justices are doing arbitration cases. There the problem still remains. I think this question needs to be looked into when you examine the arbitration laws. The question is about the high fees which the arbitrators charge from the corporate sector, from both the companies, and the high fees which are paid, and sometimes arbitration hearings are held abroad. Well, in the globalized world, that can't be avoided. But, sometimes, for holiday purposes, arbitration proceedings are held abroad. There are so many instances, which are, frankly speaking, not noble things, which go with the arbitration process. I don't want to list those, but some guidelines, I thought, should be provided when the Law Minister will examine the question.

But on the whole, the Law Minister has been very positive about the judicial reforms, and if this debate has focussed and crystallized some issues before him, I am very happy about it. It is encouraging that the Law Minister is seized of these issues, and he has been very positive about it. In view of his assurances, I won't press the amendment Bill.

THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE): Does the hon. Minister want to say something more on to it?

SHRI RAVI SHANKAR PRASAD: Sir, I am really grateful for the indulgence and the highest consideration which Duaji in his very inimitable style has demonstrated, Sir. He has agreed. And, again, I repeat, Sir, when we will have a structured debate on national judicial reforms, all his concerns will be taken on board, Sir. About the other issue of guidelines, which he has mentioned, whenever the arbitration issues are discussed, surely, we will keep that in mind. I am really grateful to him, Sir.

SHRI H.K. DUA: I may ask what is Government going to do about the Bill, about the removal of the Judges which I had moved?

SHRI RAVI SHANKAR PRASAD: Earlier I was in opposition, Sir. Now as a Minister it is my new responsibility; I need to have a look at the entire Bill. I will surely look into it and revert.

SHRI H.K. DUA: His response to the Bill was very encouraging when he supported the Bill outside.

THE VICE-CHAIRMAN (SHRI V.P. SINGH BADNORE): I must say that we have had a very nice discussion on the Bill moved by Mr. Dua. Mr. Dua, are you withdrawing the Bill?

SHRI H.K. DUA: Sir, I withdraw the Bill.

The Bill was, by leave, withdrawn.

MESSAGE FROM LOK SABHA

The Andhra Pradesh Reorganisation (Amendment) Bill, 2014

SECRETARY-GENERAL: Sir, I beg to report to the House the following message received from the Lok Sabha, signed by the Secretary-General of the Lok Sabha:

“In accordance with the provisions of rule 96 of the Rules and Procedure and Conduct of Business in Lok Sabha, I am directed to enclose the Andhra Pradesh Reorganisation (Amendment) Bill, 2014, as passed by Lok Sabha at its sitting held on the 11th July, 2014.”

Sir, I lay a copy of the Bill on the Table.
