

# The Gazette of India

EXTRAORDINARY  
PART II—Section 2  
PUBLISHED BY AUTHORITY

No. 50] NEW DELHI, FRIDAY NOVEMBER 23, 1962/AGRAHAYANA 2, 1884

LOK SABHA

The following Bills were introduced in Lok Sabha on the 23rd November, 1962:—

\*BILL No. 115 OF 1962

*A Bill further to amend the Income-tax Act, 1961 and the Wealth-tax Act, 1957.*

BE it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:—

1. This Act may be called the Taxation Laws (Amendment) Act, Short title, 1962.

43 of 1961.

5 2. In section 2 of the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act), in clause (14), after sub-clause (iv), the following Amendment of section 2. sub-clause shall be inserted, namely:—

“(iv) 6½ per cent. Gold Bonds, 1977 issued by the Central Government.”.

10 3. In section 88 of the Income-tax Act,—

Amendment of section 88.

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

15 “(1) Subject to the provisions of this section, the assessee shall be entitled to a deduction from the amount of income-tax on his total income with which he is chargeable for any assessment year of an amount equal to the income-tax calculated at the average rate of income-tax on any sums paid by him in the previous year—

20 (i) as donations to the National Defence Fund set up by the Central Government; or

(ii) as donations to any other fund or any institution to which this section applies; or

\*The President has, in pursuance of clause (i) of article 117 and article 274 of the Constitution of India, recommended to Lok Sabha the introduction of the Bill.

## \*BILL No. 111 OF 1962

*A Bill further to amend the Constitution of India.*

BE it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:—

- Short title.      1. This Act may be called the Constitution (Fifteenth Amendment) Act, 1962.
- Amendment of article 124.      2. In article 124 of the Constitution, after clause (2), the following clause shall be inserted, namely:—
- “(2A) If any question arises as to the age of a Judge of the Supreme Court, the question shall be decided by the President after making such inquiry as he may deem necessary and his decision shall be final.”.
- Amendment of article 128.      3. In article 128 of the Constitution, after the words “Federal Court”, the words “or who has held the office of a Judge of a High Court and is duly qualified for appointment as a Judge of the Supreme Court” shall be inserted.
- Amendment of article 217.      4. In article 217 of the Constitution,—
- (a) in clause (1), for the words “sixty years”, the words “sixty-two years” shall be substituted;
- (b) after clause (2), the following clause shall be inserted and shall be deemed always to have been inserted, namely:—
- “(3) If any question arises as to the age of a Judge of a High Court, the question shall be decided by the President

\*The President has, in pursuance of clauses (1) and (3) of article 117 of the Constitution of India, recommended to Lok Sabha the introduction and consideration of the Bill.

after making such inquiry as he may deem necessary and his decision shall be final.”.

5. In article 220 of the Constitution, the following proviso shall be inserted before the *Explanation*, namely:—

Amendment  
of article  
220.

5 “Provided that where a Judge is transferred from one High Court to another High Court and he serves as a Judge of that High Court for a period of not less than five years immediately before retirement, he shall be entitled, on retirement, to plead or act in the Supreme Court and all the High Courts except the  
10 High Court to which he was so transferred.”.

6. In article 222 of the Constitution, after clause (1), the following clause shall be inserted, namely:—

Amendment  
of article  
222.

15 “(2) When a Judge is so transferred, he shall, during the period he serves as a Judge of the other High Court, be entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament by law and, until so determined, such compensatory allowance as the President may by order fix.”.

7. In article 224 of the Constitution, in clause (3), for the words  
20 “sixty years”, the words “sixty-two years” shall be substituted.

Amendment  
of article  
224.

8. After article 224 of the Constitution, the following article shall be inserted, namely:—

Insertion of  
new article  
224A.

25 “224A Notwithstanding anything in this Chapter, the Chief Justice of a High Court for any State may at any time, with the previous consent of the President, request any person who has held the office of a Judge of that Court or of any other High Court to sit and act as a Judge of the High Court for that State, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by  
30 order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that High Court:

Appoint-  
ment of  
retired  
Judges at  
sittings  
of High  
Courts.

35 Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that High Court unless he consents so to do.”.

9. In article 226 of the Constitution.—

Amendment  
of Article  
226.

(a) after clause (1), the following clause shall be inserted namely:—

“(1A) The power conferred by clause (1) to issue

directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action for the exercise of such power arises, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.”;

(b) in clause (2), for the word, brackets and figure “clause (1)”, the words, brackets, figures and letter “clause (1) or clause (1A)” shall be substituted.

Amendment  
of article  
276.

10. In article 276 of the Constitution, in clause (2), for the words “two hundred and fifty rupces”, wherever they occur, the words “five hundred rupees” shall be substituted.

Amendment  
of article  
297.

11. In article 297 of the Constitution, after the words “territorial waters”, the words “or the continental shelf” shall be inserted.

Amendment  
of article  
311.

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

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

Provided that this clause shall not apply—

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

(b) where the authority empowered to dismiss or remove a person is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

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

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person shall be final.”.

13. In article 316 of the Constitution, after clause (1), the following clause shall be inserted, namely:—

Amendment  
of Article  
316.

5           “(1A) If the office of the Chairman of the Commission becomes vacant or if any such Chairman is by reason of absence or  
for any other reason unable to perform the duties of his office,  
those duties shall, until some person appointed under clause (1)  
to the vacant office has entered on the duties thereof or, as the  
case may be, until the Chairman has resumed his duties, be  
performed by such one of the other members of the Commission  
10 as the President, in the case of the Union Commission or a Joint  
Commission, and the Governor of the State in the case of a State  
Commission, may appoint for the purpose.”

14. In the Seventh Schedule to the Constitution, in List I, in  
entry 78, after the word “organisation”, the brackets and words  
15 “(including vacations)” shall be inserted and shall be deemed always  
to have been inserted.

Amendment  
of the  
Seventh  
Schedule.

## STATEMENT OF OBJECTS AND REASONS

Several amendments to the Constitution have been under consideration for a long time. The Constitution (Fifth Amendment) Bill was introduced in Lok Sabha in November, 1955, to give effect to some of them. For various reasons, the Bill could not be proceeded with, and it was allowed to lapse except the one relating to the amendment of article 3 of the Constitution. This article was amended separately by the Constitution (Fifth Amendment) Act, 1955. The present Bill contains some of the proposals included in the Constitution (Fifth Amendment) Bill and, in addition, there are a few more proposals for amendment of the Constitution. The proposals relating to articles 276, 297, 311 and 316 of the Constitution were contained in the Constitution (Fifth Amendment) Bill and they have been adopted with some minor modifications. The new proposals relate to articles 124, 128, 217, 220, 222, 224A, 226 and entry 78 of the Union List.

2. It is proposed to amend article 217 so as to raise the age of retirement of High Court Judges from sixty years to sixty-two years. When any question arises to the correct age of a Judge of the Supreme Court or of a High Court, the question has to be decided by the President. It is proposed to make the position clear by making a specific provision in articles 124 and 217. It is considered desirable in the public interest that Judges should be transferred from one High Court to another. Such transfer is expected to impose additional financial burden on the Judge who is so transferred. It is, therefore, proposed to pay him some compensatory allowance in addition to his salary. When a Judge is transferred from one High Court to another, he cannot, in view of the provisions of article 220, resume practice in any of the High Courts in which he has held office as a Judge. The provisions of article 220 therefore put a check on the proposal for the transfer of any Judge of a High Court. It is, therefore, proposed to amend article 220 so that the restriction regarding resumption of practice should apply only to the High Court from which the Judge retires, provided that he had served in that High Court for a period of at least five years immediately before retirement. Such a provision would facilitate the transfer of Judges. Under the existing article 226 of the Constitution, the only High Court which has jurisdiction with respect to the Central Government is the Punjab High Court. This involves considerable hardship to litigants from distant

---

places. It is, therefore, proposed to amend article 226 so that when any relief is sought against any Government, authority or person for any action taken, the High Court within whose jurisdiction the cause of action arises may also have jurisdiction to issue appropriate directions, orders or writs. The other new proposals are of a minor character.

3. The notes on clauses appended to the Bill explain the provisions thereof.

NEW DELHI;

A. K. SEN.

*The 14th November, 1962.*

*Notes on clauses*

*Clause 2.*—Under clause (2) of article 124, a Judge of the Supreme Court holds office until he attains the age of 65 years. When, however, any question arises as to the correct age of a Judge, it has to be decided by the President. It is considered desirable to have a specific provision to make the position clear. This clause seeks to achieve this object.

*Clause 3.*—Cases have arisen when, due to the absence of a Judge or Judges of the Supreme Court for any reason, it has become necessary to require the attendance of a retired Judge of the Supreme Court at the sittings of the Court. The number of retired Supreme Court Judges being small, and in view of the age of retirement provided for Supreme Court Judges, this field cannot be expected to be wide at any time. It is, therefore, necessary to suitably amend article 128 so as to enable the Chief Justice of India, with the previous consent of the President, to require the attendance of a retired Judge of a High Court, who is duly qualified for appointment as a Judge of the Supreme Court, at the sittings of the Supreme Court. This clause seeks to amend article 128 for achieving the above mentioned object.

*Clause 4.*—Under article 217, a Judge of a High Court is entitled to hold office until he attains the age of 60 years. The Law Commission in their Fourteenth Report had recommended that the retiring age be raised to sixty-five years. It was felt that the retiring age should be raised to sixty-two years. It is proposed to amend clause (1) of article 217 to raise the retiring age from 60 to 62 years.

It is also proposed to insert a new clause (3) in article 217 to make a specific provision enabling the President to determine the age of a Judge of a High Court. In some cases, decision has already been taken by Government determining the age of a Judge. It is, therefore, proposed to give retrospective effect to this clause.

*Clause 5.*—If a permanent Judge of a High Court is transferred to one or more High Courts, he cannot, in view of the provisions of article 220, resume practice after retirement in any of the High Courts in which he had held office as a Judge. The provisions of article 220, therefore, put a check on the proposal for the transfer of any Judge of a High Court. It is considered that a provision should

be made to the effect that when a Judge is transferred from one High Court to another, the restriction regarding resumption of practice, after retirement, should apply only to the High Court from which the Judge retires, provided that the Judge had served in the High Court for a period of at least five years immediately before retirement. Such a provision would facilitate the transfer of Judges of the High Courts. This clause seeks to achieve this object.

*Clause 6.*—The transfer of a Judge from one High Court to another is expected to impose additional financial burden on the Judge who is transferred. Hence it is proposed to pay to the Judge some compensatory allowance in addition to his salary. It is proposed that such compensatory allowance may be fixed by Parliament by law and until so determined, it may be fixed by an order of the President. This clause seeks to amend article 222 for the purpose.

*Clause 7.*—This clause amends article 224 on the lines proposed in respect of clause (1) of article 217.

*Clause 8.*—This clause seeks to insert a new article, namely article 224A, which would enable the Chief Justices of the State High Courts, with the previous consent of the President, to require the attendance of retired High Court Judges at the sittings of the High Courts.

*Clause 9.*—The recent decision of the Supreme Court, reported in A.I.R. (1961) S.C. 532, has established beyond doubt that as the seat of the Government of India is in New Delhi, the only High Court which will have jurisdiction under article 226 with respect to the Central Government would be the Punjab High Court. This would involve hardship to litigants from distant places. It is, therefore, necessary to amend article 226 so that the High Court within whose jurisdiction the cause of action arises may also have jurisdiction to issue directions, orders or writs to any Government, authority for person, notwithstanding that the seat of such Government or authority or the residence of such person is outside the territorial jurisdiction of the High Court.

*Clause 10.*—The ceiling of Rs. 250/- fixed by clause (2) of article 276 as the maximum leviable by way of taxes by local authorities on professions, trades, callings and employments in respect of any person is considered to be too low. It is, therefore, proposed to raise the limit to Rs. 500/-.

*Clause 11.*—India's sovereign rights under International Law over the sea-bed and sub-soil of the continental shelf adjoining its territory and beyond its territorial waters have already been asserted

in a President's proclamation. As a corollary to that proclamation, article 297 is sought to be amended suitably by this clause.

*Clause 12.*—Article 311 is being amended so as—

(a) to make it clear that only one opportunity should be given to a Government servant in respect of any departmental enquiry against him; and

(b) to ensure that reduction in rank does not stand on a par with the more severe punishments of dismissal or removal from service and thus get a constitutional safeguard.

*Clause 13.*—There is no provision in article 316 for the appointment of an acting Chairman of a Public Service Commission when that office is vacant or when the permanent Chairman is on leave or is otherwise unable to perform the duties of his office. It is accordingly proposed to amend article 316 to provide for such appointment.

*Clause 14.*—A special Bench of the Calcutta High Court made an observation in the case reported in 65 C.W.N. 920, to the effect that the expression "organisation" occurring in entry 78 of List I of the Seventh Schedule to the Constitution does not include "vacations". The present clause seeks to amend the said entry with a view to make it clear that the expression "organisation" occurring therein includes "vacations". It is proposed to give retrospective effect to the proposed amendment.

## FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the appointment of a retired Judge of a High Court to sit and act as a Judge of the Supreme Court. This only enlarges the field of appointment of Judges already existing under Article 128 of the Constitution and does not involve any additional expenditure.

2. Clause 4 of the Bill provides for the raising of the age of retirement of a High Court Judge from 60 to 62 years. Clause 7 similarly provides that an Additional Judge can continue to hold office up to the age of 62. This would result in increased pensions in certain cases. The pensions payable to the Judges are first charged on the Consolidated Fund of India under Article 112(3) (d) of the Constitution, but these amounts are subsequently recovered from the States concerned under Article 290 of the Constitution.

3. Clause 6 of the Bill provides for the payment of compensatory allowance to a Judge on his transfer from one High Court to another. The additional expenditure on this account will depend on the number of Judges transferred and the exact allowances fixed. It is not possible to give an accurate estimate of the amount of extra expenditure involved. This addition, however, would not be on the Consolidated Fund of India but on the Consolidated Fund of the States concerned.

4. Clause 8 of the Bill provides for the appointment of a retired High Court Judge to sit and act as a Judge of a High Court. Some additional expenditure will be involved when such an appointment is made, and it will be a charge on the Consolidated Fund of the State concerned.

5. It will thus appear that ultimately no additional expenditure from the Consolidated Fund of India would be involved.