CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 24*th May,* 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten minutes past Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

The Honourable Shri Ghanshyam Singh Gupta (C.P. & Berar : General): Sir, could we not do something to be punctual? It pains me very much to see that we commence our business eleven minutes late. This is very bad for us and it ought to be a matter worthy of your consideration that we should be punctual.

Mr. Tajamul Husain (Bihar: Muslim): For that we are to blame. The fault is ours. We do not come here in time.

The Honourable Shri Ghanshyam Singh Gupta : What I once did in the C.P. Assembly was that I entered punctually and when I found that there was no quorum, I told honourable Members that I would retire for five minutes to see whether there was quorum. This was the solitary instance and I have found that I have not to wait even for five seconds. It is a matter of very great concern that this august House should commence its work eleven minutes after time.

Mr. President : I am glad that the honourable Member has drawn attention to this. I myself have been waiting for the past twenty minutes in the chamber. I hope the point that he has raised will receive due consideration at the hands of honourable Members and it will not be necessary for me to take the step which he took in the C.P. Assembly. From tomorrow we shall always be here exactly in time.

We shall now take up article 103.

DRAFT CONSTITUTION—(*contd.*)

Article 103

Mr. Tajamul Husain : Mr. President, Sir, my amendment is a very simple one. I beg to move:

"That in clause (1) of article 103, before the words 'Chief Justice' the word 'Supreme' be inserted."

Now I will read article 103, clause (1).

"There shall be a Supreme Court of India consisting of a Chief Justice of India and such number of other judges not being less than seven as Parliament may by law Prescribe."

If my amendment is accepted, the amended clause will read:—

"There shall be a Supreme Court of India consisting of a Supreme Chief Justice of India, etc."

According to this article, the Chief Justice of the Supreme Court will be called the Chief Justice of India and the Chief Justice of a provincial High Court will also be called a Chief Justice. I am of the opinion that there must be a distinction between these two. No doubt the Chief Justice of

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India is called the Chief Justice of India and the other is only a Chief Justice. We have distinguished between the Prime Minister of India and the provincial Prime Ministers. The Prime Minister of India will be called the Prime Minister but the provincial head will be called only the Premier. Then again, the Advocate-General of India will be called the Attorney-General, while in a province he will be called the Advocate General. We have distinguished here also. The Auditor-General of India will be called the Auditor-General, while in a province he will be called only the Auditor-in-Chief. Therefore in order to distinguish between the Chief Justice of a provincial High Court and the Chief Justice of the Supreme Court, we should call the Chief Justice of India the Supreme Chief Justice of India instead of merely the Chief Justice of India. With these words I move my amendment and I hope it will be accepted.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. President, Sir, I move:

"That in clause (1) of article 103, for the words 'and such number of other judges not being less than seven, as Parliament may by law prescribe' the words 'and until Parliament by law prescribes a larger number, of seven other judges' be substituted."

The object of this amendment is that the constitution of the Supreme Court should not be held over until Parliament by law prescribes the number of Judges. The amendment lays down that seven Judges will constitute the Supreme Court.

(Amendment No. 1815 was not moved.)

Shri Krishna Chandra Sharma (United Provinces: General): Sir, I move:

"That for clause (2) of article 103 the following be substituted:—

'Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a Judge, other than the Chief Justice, the Chief Justice of India shall always be consulted.' "

Sir, read with article 61, my amendment would carry the same meaning and purpose as the provisions of Section 200 of the Government of India Act, 1935. Under that Section the Chief Justice and the other Judges of the Federal Court are appointed by the King and the King is supposed to act on the advice of his Ministers. Now under article, 61, the President of India shall act on the advice and instance of his Ministers. Again, Sir, in the United States of America, the Chief Justice of the Supreme Court is appointed by the President on the advice and with the consent of the Senate. In the other Dominions also, the representative of the King, on the advice of the Ministry concerned, appoints the Chief Justice and other Judges of the Supreme Court. So my amendment is quite in accord and in line with what prevails in the United States, is provided in the Government of India Act, 1935, and is the practice in the other Dominions as well. Sir, I move.

Mr. President : There are two other amendments which are more or less to the same effect that is, 1822 and 1823. I do not think it is necessary to move those amendments separately, but I will take them as representing more or less the same view-point as conveyed in amendment No. 1816. We shall take the amendment which may be considered to be the best from the point of view of language.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. President, Sir, I move:

"That for clause (2) of article 103, the following clauses be substituted:—

'(2) The Chief Justice of Bharat, who shall be the Chief Justice of the Supreme Court, shall be appointed by the President subject to confirmation by two-thirds majority of Parliament assembled

in a joint session of both the Houses of Parliament.'

'(3) Every judge of the Supreme Court, shall be appointed on the advice of the Chief Justice of Bharat by the President under his hand and seal and shall hold office until he attains the age of sixty-five years."

Provided that :

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

(b) a judge may be removed from his office in the manner provided in clause (5)."

Sir, in this amendment I have provided that the Chief Justice of the Supreme Court shall be appointed by the President, but it shall be confirmed by at least two-thirds majority of both the Houses. At present, clause (2) provides that the President shall appoint the Chief Justice of the Supreme Court, which means that the Prime Minister or the Executive shall appoint him. The Chief Justice of the Supreme Court should be completely independent of the Executive and it is this principle which I want to introduce in this section. At present he shall be a creature merely of the executive and the President shall appoint him on the advice of the Prime Minister. This will take away some independence of the Supreme Court. We are here providing for the highest tribunal of justice in our country. This tribunal should be above suspicion and no executive should be able to have any influence upon him. If the Chief Justice is appointed by the President or the Prime Minister then his independence is compromised. I therefore want, Sir, that the Chief Justice shall be appointed by the President of course, but at least two-thirds members of the Parliament shall approve his name. This means that the President shall and will be the prime mover in the appointment but if the name he chooses is not one which can be approved by the members of Parliament by at least two-thirds majority, then that name shall be changed and another name shall be proposed which shall be acceptable to two-thirds majority of both Houses. In this manner, there is some initiative to the President also. He will be the man who will give the names, but the name will only be accepted if two-thirds majority of both the Houses support him, so that the President shall have the initiative, but the man chosen will be such who shall enjoy the confidence of both the Houses of Legislature. This method has two advantages; it gives the executive the right of choosing the person who they think will be proper, but it will not exercise that right in a party spirit but shall decide it in a manner that all the members of both the Houses, or at least a two-thirds majority of them, shall approve that name. Therefore, Sir, I think that the provision which I am suggesting will be a far better provision than the one contained in the draft already. At present, Sir, the judges also have not to be appointed on the advice merely of the Chief Justice of the Supreme Court, but they are appointed in consultation with the Supreme Chief Justice, which means even in their appointments the Executive has got the major hand. I think, Sir, that this should not be. Every Judge of the Supreme Court should be appointed on the advice merely of the Supreme Judge of the Supreme Court, so that they may derive their authority from the Chief Justice and not from the Executive. This, I think, Sir, is a very important thing and should be incorporated in our Constitution. We have all along said that we want an independent judiciary; that is the pride of many peoples and that is the pride of the United States of America. I think we too want that our Chief Justice and the Supreme Court should be above suspicion. These should be completely independent, so that a man can feel that they shall be absolutely independent of the Executive. To my mind my amendment is very important and I, therefore, hope that the Members here

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will see that they make some changes so that the Chief Justice of the Supreme Court does not become a creature merely of the Executive, and the President appoints him on his recommendation.

I also feel, Sir, that this provision about consultation with the High Courts in States is an anachronism. The States shall now not have an independent existence as they have merged. Probably it was intended when they were not given that right, but now this should not be there. I hope, Sir, that Dr. Ambedkar will see that this is removed and things are brought up to date, and we shall have an independent judiciary which shall be absolutely independent of the Executive. I have already provided that the initiative shall be entirely that of the President, which means that the Executive shall have the right to suggest the names, but out of the names, it will be the Assembly, the joint session of both the Houses which will choose the name they think proper, by the two-thirds majority in a proper manner. Sir, I move.

(Amendment No. 1818 was not moved.)

Mr. B. Pocker Sahib (Madras: Muslim) : Sir, I move:

"That for clause (2) and the first proviso of clause (2) of article 103, the following be substituted:—

'(2) Every judge of the Supreme Court other than the Chief Justice of India shall be appointed by the President by warrant under his hand and seal after consultation with the concurrence of the Chief Justice of India; and the Chief Justice of India shall be appointed by the President by a warrant under his hand and seal after consultation with the judges of the Supreme Court and the Chief Justices of the High Court in the States and every judge of the Supreme Court shall hold office until he attains the age of sixty-eight years.' "

Now, Sir, in giving this amendment, I wanted to see that the appointment of the judges of the Supreme Court is not in any way affected by political influences. It is with that view that this amendment has been given and in that view. I am very strongly supported by the opinions given by the Federal Court and the Chief Justices of the various High Courts, which have been submitted to this body. That memo has been circulated to the honourable Members of this House. Sir, you will permit me to read only some of the sentences from that memo. This is what it says:

"It appears that a certain provincial Government has issued directions that the recommendations of the Chief Justice, instead of being sent to the Premier, should be sent to the Chief Secretary, who, in some instances, has asked the Assistant Secretary to correspond further with the High Court in the matter. Thus, there seems to be a growing tendency to treat the High Court as a part of the Home Department of the province. With a view to check this tendency which is bound to undermine the position and the dignity of the High Courts and lower them in the estimation of the public, the Judges assembled in conference were unanimously of opinion that a procedure on the following lines must be laid down for the appointment of High Court Judges:

"The Chief Justice should send his recommendation in that behalf directly to the President. After consultation with the Governor, the President should make the appointment with the concurrence of the Chief Justice of India."

This procedure would obviate the need for the Chief Justice of the High Court discussing the matter with the Premier and the Home Minister and justify his recommendations before them. It would also ensure the recommendation of the Chief Justice of the High Court being always placed before the appointing authority, namely, the President. The necessity for obtaining the concurrence of the Chief Justice of India would provide a safeguard against political and party pressure at the highest level being brought to bear on the matter."

It is said later on that *mutatis mutandis*, the very same principles apply to the appointment of the Judges of the Supreme Court. The same memo points out:

> "It is therefore suggested that article 193 (1) may be worded in the following or other suitable manner. 'Every Judge of the High Court shall be appointed by the President by a warrant under his hand and seal on the recommendation of the Chief Justice of the High Court after consultation with the Governor of the State and with the concurrence of the Chief Justice of India.' "

Further, it is stated:

> "The foregoing applies *mutatis mutandis* to the appointment of the Judges of the Supreme Court. Article 103 (2) may also be suitably modified."

I submit, Sir, the views expressed by the Federal Court and the Chief Justice of the various High Courts assembled in conference are entitled to the highest weight before this Assembly, before this provision is passed. It is of the highest importance that the Judges of the Supreme Court should not be made to feel that their existence or their appointment is dependent upon political considerations or on the will of the political party. Therefore, it is essential that there should be sufficient safeguards against political influence being brought to bear on such appointments. Of course, if a Judge owes his appointment to a political party, certainly in the course of his career as a Judge, also as an ordinary human being, he will certainly be bound to have some consideration for the political views of the authority that has appointed him. That the Judges should be above all these political considerations cannot be denied. Therefore, I submit that one of the chief conditions mentioned in the procedure laid down, that is the concurrence of the Chief Justice of India in the appointment of the Judges of the Supreme Court, must be fulfilled. This has been insisted upon in this memo and that is a very salutary principle which should be accepted by this House. I submit, Sir, that it is of the highest importance that the President must not only consult the Chief Justice of India, but his concurrence should be obtained before his colleagues, that is the Judges of the Supreme Court, are appointed. It has been very emphatically stated in this memo that it is absolutely necessary to keep them above political influences. No doubt, it is said in this procedure that the Governor of the State also may be consulted; but that is a matter of minor importance. It is likely that the Governor may also have some political inclinations. Therefore, it is that my amendment has omitted the name of the Governor. That the judiciary should be above all political parties and above all political considerations cannot be denied. I do not want to enter into the controversy at present, which was debated yesterday, as to the necessity for the independence of the judiciary so far as the executive is concerned. It is a matter which should receive very serious consideration at the hands of this House and I hope the Honourable the Law Minister will also pay serious attention to this aspect of the question, particularly in view of the fact that this recommendation has been made by the Federal Court and the Chief Justices of the other High Courts assembled in conference. I do not think, Sir, that there can be any higher authority on this subject than this conference of the Federal Court and the Chief Justices of the various High Courts in India.

Another point, which I have raised in my amendment is that the age of retirement of the Supreme Court Judges should be raised to 68. It has been found in recent years that there are many High Court Judges who have retired at the age of sixty, who are very energetic and who are well fitted to discharge the duties for a number of years more. Apart from that, there are very cogent reasons given in this memo. Why the age of retirement of the Judges of the Supreme Court should be raised to sixty-eight. In this memo it is stated that there may be a difference of three to five years between the age of retirement of a Judge of a High Court and that of the Supreme Court. The very same

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memo, says that the age of retirement of the High Court Judges may be fixed at sixty-five and that of the Judges of the Supreme Court may be fixed at sixty eight. As regards the age of retirement of the Judges of the High Court, the matter has to be discussed when those relevant sections are taken up for consideration. I do feel, Sir, that the age of retirement of the High Court Judges should be raised to sixty-two or sixty-three, and that of the Judges of the Supreme Court should be raised to sixty-eight as recommended by the Federal Court and the Chief Justices of the various High Courts of India. I submit, Sir, that this is a matter which should receive very serious attention at the hands of the honourable the Law Minister, in view of the fact that I am supported in my amendment by the recommendations of the highest judicial authority in the country.

(Amendment No. 1820 was not moved.)

Shri H.V. Kamath (C.P. & Berar: General): Amendment No. 1821 is purely of a drafting nature. I leave it to the Drafting Committee.

Mr. President : Amendment Nos. 1822 and 1823, as I said, are covered by amendment No. 1816 which has been moved.

Prof. K.T. Shah (Bihar: General): Sir, I beg to move:

"That in clause (2) of article 103, after the word 'with' the words 'the Council of States and' be inserted."

The amended proposition would read:

"Every judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with the Council of States and such of the judges of the Supreme Court and of the High Courts in the States as may be necessary for the purpose and shall hold office until he attains the age of sixty-five years:"

Sir, this is an amendment seeking to make the appointment of Judges free from any particular influence. My amendment is that the President, if he makes the appointment, will naturally do so on the advice of the Prime Minister. In my opinion, Sir, if I may say so with all respect, this Constitution concentrates so much power and influence in the hands of the Prime Minister in regard to the appointment of judges, ambassadors, or Governors to such an extent, that there is every danger to apprehend that the Prime Minister may become a Dictator if he chooses to do so. I think there are cases which ought to be removed from the political influence, of party manoeuvres. And here is one case, *viz.* Judges of the Supreme Court, who I think should be completely outside that influence. I am, therefore, suggesting that the appointment of the Judges should be made by the President, after consultation not only with the Judicial services proper, but also with the Council of States so that the party element may be eliminated or minimised, and any political influence also may be avoided.

The suggestion has further this argument in its support that just as in regard to the financial powers the Lower House or the House of People is made supreme, so in matters of this kind, in matters of making high appointments as a pure consideration of balance of power I suggest that the Council of States should be associated, if only to avoid the influence that is likely to dominate when the Prime Minister alone advises the President on such matters.

The Council of States composed, as it is of representatives of States as well as certain interests, would be, I think, more able to be balanced in this matter. Accordingly, the addition of the Council of States as an advisory body to the President in such matters will not be in any way objectionable.

There is of course the obvious precedent of the U.S.A. Senate which is associated in such matters, even though the Constitution of the U.S.A. is based, fundamentally speaking, on a somewhat different principle than that which we have adopted in this draft. Nevertheless, here is a case in which I think it would be well for us to adopt that line and associate the Council of States for advising the President in the appointment of the Supreme judiciary. I hope this will be accepted.

(Amendment Nos. 1825, 1826 and 1828 were not moved.)

Mr. President : No. 1827 is covered by other amendments moved.

The Honourable Shri K. Santhanam (Madras: General): Sir, I beg to move:

"That in clause (2) of article 103, for the words 'may be' the words 'the President may deem' be substituted."

As the clause stands the words 'may be' may come before a Court of law because somebody has to decide about the necessity and so my amendment seeks to give the President the discretion to decide which Judges it will be necessary to consult. I think the amendment is essential as otherwise the words are left vague.

Mr. President : No. 1830 and No. 1831 are already covered by No. 1829.

Prof. K. T. Shah : Mr. President, Sir, I beg to move:

"That in clause (2) of article 103, for the words 'until he attains the age of sixty-five years' the words 'during good behaviour or until he resigns; provided that any such Judge may resign his office at any time after 10 years of service in a judicial office and if he so resigns, he shall be entitled to such pension as may be allowed under the law passed by the Parliament of India for the time being in force' be substituted."

The amended proposition would read:

"Every judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the judges of the Supreme Court and of the High Courts in the States as may be necessary for the purpose and shall hold office during good behaviour or until he resigns; provided that any such Judge may resign his office at any time after 10 years of service in a judicial office and if he so resigns, he shall be entitled to such pension as may be allowed under the law passed by the Parliament of India for the time being in force."

This is another way in which I am trying to secure the absolute independence of the judiciary. This means that the appointments will be not for a definite period, or within a prescribed age-limit, on attaining which a Judge must compulsorily retire, but, as is the case in England, and as was quite recently the case in the United States of America, judges, particularly of the Supreme Court, should be appointed for life. They should not, in any way be exposed to any apprehension of being thrown out of their work by official or executive displeasure. They should not be exposed to the risk of having to secure their livelihood by either resuming their ordinary practice at the bar, or taking up some other occupation which may not be compatible with a judicial mentality, or which may not be in tune with their perfect independence and integrity.

I suggest, therefore, that the practice which exists in England, and which existed quite recently in U.S.A. of allowing judges to continue in their office during good behaviour, that is, practically for the rest of their lives, should be accepted.

If, however, any judge feels that, due to mental or physical causes, he is unable to carry on or do full justice to his functions, it may be open to him to resign I suggest, after ten years of service in a judicial capacity; and if he so

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resigns, I further suggest that he should be exposed to no want, no fear as to his ordinary livelihood. He must be completely secure in his social position, in his economic position, and as such he must be allowed a reasonable pension.

I leave the amount of this pension to be determined by law by Parliament, not for a particular judge, if and when he resigns, but as a rule for general application. Whatever be the law in force at that time, a retiring judge after ten years of service should be allowed the benefit of that law by way of a pension.

Speaking for myself, I would suggest that the pension for the such judges should be not less than their own salary while in office, so that there is no temptation left to them either to seek any other employment, or carry on any other occupation or profession by which they could eke out their existence. If the salary was sufficient to maintain them in a given standard of life, the pension also should be of a similar nature.

This, however, is my personal opinion which I do not wish to be included in the Constitution, and I suggest it may be left to the law to be made by Parliament in that behalf. But the supreme principle that I have all the time been pressing upon the House is the necessity of securing the absolute independence of the judges. That I have attempted to secure, first, in the previous amendment, by the procedure for their appointment, and here, secondly, by the term of their appointment being made for the duration of good behaviour, that is to say, practically for the rest of their lives. If for any reason it becomes necessary for a judge to wish to retire from his office, or even to be removed, without of course any censure being attached, then he should be entitled to pension sufficient to maintain him in independence and in perfect security and comfort, not necessarily affluence, during the rest of his life. This, Sir, is such a simple principle that I hope there will be no objection taken to it and that the proposition will be accepted.

Shri Jaspat Roy Kapoor (United Provinces: General): Mr. President, Sir, I beg to move:

> "That in clause (2) of article 103, for the word 'sixty-five' the word 'sixty' be substituted and the words 'The President, however, may in any case extend from year to year the age of retirement up to sixty-five years' be added."

Sir, my reasons for moving this amendment are three. Firstly, the ordinary age of retirement in the case of government servants is 55 years, but in the case of High Court Judges it has been raised to sixty. I see no reason why a further extension up to the age of sixty-five should be granted in the case of judges of the Supreme Court. They must, after putting in long years of service retire and make room for others to come in. I know that the Chief Justices in a conference which they held some time ago, recommended that the age of superannuation of the judges of the Supreme Court should be sixty-five. I have not been able to find in the proceedings of that conference any cogent reasons urged by the learned Chief Justices. The main reason which they have urged is that if the age of superannuation is not raised to sixty-five years, there will not be enough attraction to the High Court Judges to accept posts in the Supreme Court. I must confess that I felt considerably disappointed at this sort of argument being urged by the learned Chief Justices. We should not accept this recommendation of the Chief Justices merely in order to provide attraction to such Judges of the High Courts with whom monetary considerations weigh the most.

My second reason is, and I urge this reason with due respect to such honourable Members of this House who are above the age of sixty, that very often a person who has gone beyond the age of sixty is not very fit and is not

mentally alert, to perform the strenuous duties of a judge of the Supreme Court. I know that sometimes there have been judges in the High Court who even before they have attained the age of sixty are not mentally fit to discharge the functions of a High Court Judge. Sometimes, we have found High Court Judges—and I say this with due respect to them—we have found them sleeping and snoring when the learned advocate is going on speaking.

Mr. President : That does not depend upon age.

Shri Jaspat Roy Kapoor : Of course, not always, Sir, I only say that sometimes it happens that a person who is even nearing the age of sixty is not fit to perform the strenuous duties of a High Court Judge, and much less to be able to perform the duties of a judge of the Supreme Court. I know that we cannot say that generally it is so, but I can say that sometimes it is certainly so. Therefore, my submission is that if we make it a definite rule that every Judge of the Supreme Court shall go up to the age of sixty-five, it may not be safe to do so. I know, of course, honourable Members of this House, a good many of them, are beyond the age of sixty and they are an ornament to the country. But it is not everybody who goes beyond the age of sixty that continues to be so fit and so mentally alert.

And then, Sir, my third reason is—and that is the most important of the reasons—that one who has served and has earned handsomely from the Government up to the age of sixty years should be prepared to retire and serve the society thereafter in an honorary capacity. Society has a right to expect of everyone who has attained the age of sixty to work honorarily for the benefit of the society. In our country, Sir, the ideal, the ancient ideal has been that every person in the fourth stage of his life must become a *Sanyasi* and must serve society in an honorary capacity. This is the standard which has been set before us by our ancient sages, and I think, Sir, we can reasonably expect of everybody, and more particularly of the learned ones like the Judges of the Supreme Court, to set a good example for everybody else, of service to the country in an honorary capacity after the age of sixty years. I have often thought that Government servants who are on pension after retirement and free from worry about earning a living may very well serve society in an honorary capacity in doing constructive work, in which case we may have a very good army of social workers in various spheres of activity. My amendment, however, does not absolutely bar the continuance of judges of the Supreme Court in service after the age of sixty. What I say is that ordinarily they shall retire at sixty but in exceptional cases the President, if he thinks the Judge is exceptionally capable and should be retained in the interest of good judicial administration, may keep him till sixty-five, but only by giving him extensions from year to year. I hope this amendment will be acceptable to the Honourable Dr. Ambedkar and the House.

(Amendment Nos. 1834 and 1835 were not moved.)

Shri Satish Chandra (United Provinces: General):

"That in clause (2) of article 103, for the words 'until he attains the age of 65 years' the words 'for such period as may be fixed in this behalf by Parliament by law' be substituted."

There has arisen a lot of controversy over the question of age-limit which is prescribed in this clause. My honourable Friends Mr. Pocker Saheb, Mr. Naziruddin Ahmad and Mr. Mahboob Ali Baig wish it to be raised to sixty-eight years, while Shri Jaspat Roy Kapoor and Shri Mohanlal Gautam would like it to be reduced to sixty. I think our constitution is being unduly burdened with age-limits in various articles here and there. The question of age is one which can be left safely to the future parliaments to be decided and fixed, in particular circumstances, according to the needs and exigencies of the time.

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I endorse most of what Shri Jaspat Roy Kapoor has said and do not wish to repeat the arguments. My feeling is that this House, composed as it is of elderly gentlemen has been unfair to young men at various stages in fixing the age-limits. Our constitution has provided for the membership of Legislatures minimum age-limits which are highest in the world; and, but for the one amendment that was accepted about the eligibility for the Upper Chamber of Parliament, the age-limits should have been higher than the highest in the world. I hope my amendment will be accepted and it will be left to the future Parliament to decide the age-limit in this case. I think after the age of sixty, physical and mental incapacity overtake most people, although there are always exceptions. However I do not wish to enter into that controversial point and desire to leave such questions of detail to the future Parliament.

(Amendment Nos. 1837 and 1838 were not moved.)

Mr. Mahboob Ali Baig Sahib (Madras: Muslim): Sir, I beg to move:

"That in the first proviso to clause (2) of article 103, for the words 'the Chief Justice of India shall always be consulted' the words 'it shall be made with the concurrence of the Chief Justice of India' be substituted."

Under our proposed constitution the President would be the constitutional Head of the executive. And the constitution envisages what is called a parliamentary democracy. So the President would be guided by the Prime Minister or the Council of Ministers who are necessarily drawn from a political party. Therefore the decision of the President would be necessarily influenced by party considerations. It is therefore necessary that the concurrence of the Chief Justice is made a pre-requisite for the appointment of a Judge of the Supreme Court in order to guard ourselves against party influences that may be brought to bear upon the appointment of Judges.

This is a salutary principle and it is necessary that the concurrence of the Chief Justice should be made necessary for the appointment of the Judges of the Union Judicature. It may be said that there might be disagreement between the opinion of the President and the Chief Justice and there might be a sort of deadlock. I submit, Sir, at that higher level between the Supreme Judge and the President, there is not likely to be any such difference of opinion. Even if there was any such difference of opinion it is open to the President to just propose another name which will be acceptable to the Chief Judge. So there cannot be any serious objection to make the concurrence of the Chief Justice a necessary pre-requisite for the appointment of the Judges of the Union Judicature and that will certainly guard us against any party influences being brought to bear upon the appointments.

(Amendment Nos. 1840 and 1841 were not moved.)

Dr. P. K. Sen (Bihar: General) : Sir, I move:

"That after the second proviso to clause (2) of article 103, the following new proviso be inserted :—

'Provided further that where a Judge resigns his office on grounds of ill-health, he shall be entitled to pension as if he has continued in service until the age of sixty-five years.' "

The object of this amendment, Sir, is to keep the Judge, who has to retire on account of impairment of health, free from fear or temptation and free from the allurements of holding some office in the executive line or in the political field. It is an admitted principle, and no one in this House, I am sure, will take exception to it, that the Judge of the Supreme Court, or the Judge of the High Court, should be above all fear and temptation. Now, here is the case of a man who has served at the time when he was in health, but while

he is fifty-seven or say sixty-one or even sixty-two he feels that any day he might have to retire on account of ill-health. Well, there is a natural temptation to provide something during the period when he will be out of office: We are not unaccustomed to the spectacle of a man in this country who has been a Judge of a High Court, then a Member of the Executive Council of the Governor-General of India, then back again to his province as a Member of the Executive Council of the Province, and further again transported to the Bench of the High Court. Well, this sort of thing should be avoided, and as a matter of fact if a man feels that he has got no provision at all, then he may have to go a begging as it were for some employment or office or occupation, which may keep the wolf from his door. This is the object. I think in this connection. I may draw the attention of the House to clause (7) of article 103, which is also germane to this issue. It 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."

Although it is not really directly relevant, I may mention that I have also tabled another amendment—it is new article 103A—in which I have said that a person who is holding or has held the office of Judge of the Supreme Court shall not be eligible for appointment to any office of emolument under the Government of India or a State other than that of the Chief Justice of India of Chief Justice of High Court, provided that the President may with the consent of the Chief-Justice of India depute a Judge of the Supreme Court temporarily on other duties: provided further that the article shall not apply in relation to any appointment made and continuing while a proclamation of an emergency is in force if such appointment is certified by the President as necessary in the national interest.

Barring those exceptions, I desire that the Judge who has retired will not be able to engage himself in any office of emolument under the Government in any other field of activity, and that is exceedingly necessary, because otherwise there is always the phenomenon of the Judge while in office aligning himself with a political party or with commercial caucuses, which is a very undesirable thing. If all those safeguards are to be adopted, one of the most essential things to be done is also to give him the pension as if he had served up to the age of sixty-five, the utmost limit provided for by the Constitution.

It may be said that all this will be provided for by the rules. I doubt if there is any such thing in the Constitution, and when there is the express provision in the Constitution that he has to serve up to sixty-five years of age, if he does not serve—whether it be on account of ill-health or any other consideration—the result will be that he will only get proportionate pension or very little pension perhaps and naturally in that case not only will it affect his attitude while he is in office, because he will try and look about for something which he may get for the purpose of saving him from penury. I do think that the Judge should be made perfectly independent so that he can live in dignity when he is in retirement, although the retirement may be premature—before the age of sixty-five.

I hope, Sir, that in the wilderness of amendments with which we are surrounded, this little amendment will not be thrown away as if it were not necessary. I think it is very essential in the public interests of the country.

Prof. K. T. Shah : Sir, I beg to move amendment No. 1843:

"That after clause (2) of article 103, the following new clause be added:—

'(2A) Any person who has once been appointed as Judge of any High Court or Supreme Court shall be debarred from any executive office under the Government of India or under that of any unit, or, unless he has resigned in writing from his office as judge, from being elected to a seat in either House of Parliament, or in any State Legislature.' "

[Prof. K. T. Shah]

This follows the general principle I have been trying to lay before the Houses *viz.,* or keeping the Judiciary completely out of any temptation, and contact with the executive or the legislative side. Whether during his tenure of office, or in the ordinary course of judgship or even on retirement, I would suggest that there should be a constitutional prohibition against his employment in any executive office, so that no temptation should be available to a judge for greater emoluments, or greater prestige which would in any way affect his independence as a judge.

I further suggest also that a judge should be free to resign his office and then it would be open to him to have all the rights of an ordinary citizen, including contesting a seat in the legislature, but certainly not during his tenure of office. I consider that these are so obvious that no further words need be added to support it. I would only say once more that in the past we had bitter experience of high-placed Government servants who had risen fairly high in the scale of service, used to secure on retirement influential positions in Britain or directorships in concerns operating in this country. On account of the official position which they had held here in the past, they were able to exercise an amount of undue influence. Such practices the Congress and other parties had frequent occasion to object to. As such I suggest that that practice should now be definitely avoided. I take it that this is also on a par with that principle, and as such should be acceptable to the House.

Shri Jaspat Roy Kapoor : Mr. President, I beg to move:

"That in amendment No. 1843 of the List of Amendments, for the proposed new clause (2A) of article 103, the following be substituted:—

'(2A) No judge of Supreme Court shall be eligible for further office of profit either under the Government of India or under the Government of any State after he has ceased to hold his office.' "

Sir, I am in agreement both with the principle and with the substance of Professor Shah's amendment No. 1843. But I am moving my amendment because I find that Professor Shah's amendment is defective in two respects. Firstly, in his amendment we have the words "Any person who has once been appointed as Judge of any High Court or Supreme Court shall be debarred from any executive office". It means that he shall be prevented from performing any duties under the Government of India or the Government of any other State even in an honorary capacity. I think it should be open to the Government of a State or the Centre to utilise the services of retired Supreme Court Judges in an honorary capacity.

The second defect in the Professor's amendment is that it unnecessarily lays down that a judge of a Supreme Court shall be eligible to be a member of either House of Parliament after resigning his seat. I think, Sir, it shall be applicable to every Government servant that so long as he is holding any office of profit he shall not be eligible to be a member of any legislature, be it provincial or Central. So this part of the amendment of Professor Shah is unnecessary. Hence I am moving my amendment.

Sir, the Professor has rightly said that in order to maintain the independence of the judiciary there should be no temptation before any Supreme Court Judge of the possibility of his being offered any office of profit after retirement. That is the first reason. Secondly, as I said while moving another amendment a few minutes ago, the Judges of the Supreme Court, after retirement should be prepared to offer their services to society in an honorary capacity. Thirdly, I find that this principle is going to be accepted in the case of the Auditor-General. According to article 124(3), with which we shall deal after sometime, provides that the Auditor-General shall not be offered any office after

his retirement. The same principle should be made applicable in the case of the Supreme Court Judges. While I was discussing this point with a very learned Member of this House I was told that it should be open to the State to utilise the services of retired Supreme Court Judges in various capacities. I have absolutely no objection to that. But no emoluments should be offered to the retired Supreme Court Judges. A retired Supreme Court Judge may be called upon to perform various and important duties. But then he should be content with the pension which he must necessarily be receiving and no further emoluments should be offered to him.

With these words, I move my amendment and hope it will be accepted by the House.

(Amendment No. 1844 was not moved.)

Shri H.V. Kamath : Sir, I move:

"That in clause (3) of article 103, the following new sub-clause be added :—

'(c) or is a distinguished jurist.' "

The object of this little amendment of mine is to open a wider field of choice for the President in the matter of appointment of judges of the Supreme Court. The House will see that the article as it stands restricts the selection of judges to only two categories. One category consists of those who have been judges of a High Court or of two or more such courts in successionand the second category consists of those who have been advocates of a High Court or of two or more High Courts in succession. I am sure that the House will realize that it is desirable, nay it is essential, to have men—or for the matter of that, women—who are possessed of outstanding legal and juristic learning. In my humble judgment, such are not necessarily confined to Judges or Advocates. Incidentally I may mention that this amendment of mine is based on the provision relating to the qualifications for Judges of the International Court of Justice at the Hague. I hope the House will see its way to accept my amendment and thus give a wider choice for the President in the matter of appointment of Judges of the Supreme Court.

(Amendment Nos. 1846 and 1847 were not moved.)

Mr. Mohd. Tahir (Bihar: Muslim) : Sir, I move:

"That after sub-clause (b) of clause (3) of article 103, the following new sub-clause be inserted :—

'(c) has been a pleader in one or more District Courts for at least twelve years.' "

Sir, clause (3) of article 103 lays down the qualifications of Judges of the Supreme Court. The clause reads:

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

(a) has been for at least five years a judge of a High Court or of two or more such courts in succession; or

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

So far as the qualifications for the appointment of Judges are concerned, I want that the pleaders should also be qualified for appointment as Judges of the Supreme Court. My reason for this is that the qualification of an Advocate and the qualification of a pleader is the same. An advocate is not better qualified than a pleader. Of course an Advocate generally practises in a High Court, and a pleader practises in the District Courts, but this is a matter of convenience and nothing else. In these days, a pleader also can become an advocate by depositing a certain amount of money with the Association. As soon as

[Mr. Mohd. Tahir]

he deposits the money, he becomes an Advocate. May I know, Sir, whether by simply depositing a certain amount of money he becomes more qualified than he was before? Therefore my contention is that so far as the qualifications are concerned, both the Advocates and the pleaders have got the same qualifications. Besides this, Sir, if pleaders have not got a chance of being appointed as Judges of the Supreme Court, a great injustice would be done to the class of pleaders. That is the class, Sir, which, as everybody knows, has gone through greater sacrifices in achieving the independence of the country. I do not say that it was only the pleader class that fought for the independence of the country. There are other classes who fought for it, but so far as the lawyer class is concerned, you will find that only a very few advocates or almost none of the advocates have taken part in the fighting for the independence of the country. When we are making our Constitution, it will be a great injustice if we are not going to give a chance to the pleaders as such of being appointed as Judges of the Supreme Court. Some of my friends might say that even the briefless pleaders of the District Courts will have the right to be appointed as Judges of the Supreme Court. That is not the position. There are many advocates who are briefless. Moreover, when a man is appointed as a Judge of the Supreme Court, certainly it will be seen that he is qualified to be appointed as such. My point is that so far as the qualifications are concerned, there is no difference whatsoever between the pleaders and the advocates. Therefore, if an advocate is entitles to be appointed as a Judge of the Supreme Court, there is no reason why a pleader should not be entitled to be so appointed. With these words, Sir, I move.

(Amendment No. 1849 was not moved.)

Mr. Mohd. Tahir : Sir, I beg to move:

"That after Explanation I to clause (3) of article 103, the following new Explanation be inserted and the subsequent Explanation be re-numbered accordingly:—

'Explanation II.— In this clause District Court means a District Court which exercises or which before the commencement of this Constitution exercised jurisdiction in any district of the territory of India.' "

I do not wish to make a speech in support of this amendment because this is only consequential on the amendment that I have moved just now. So, no further explanation is necessary.

Sir, I also move:

"That in Explanation II to clause (3) of article 103, after the word 'advocate' wherever it occurs the words 'or a Pleader' be inserted and for the words 'a person held judicial' the words 'such person held judicial' be substituted."

I am not going to say anything more on the first part of this amendment. So far as the second part of this amendment is concerned, if we look at the Explanation, it runs thus:

"In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person held judicial office after he became an advocate. Shall be included."

Instead of "a person held, etc." it should be "such person held, etc." Instead of article "a", it should be "such".

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in Explanation II to clause (3) after the words 'judicial office' the words 'not inferior to that a district judge' be inserted."

I also move:

"That in clause (4) of article 103, for the words 'supported by not less than two-thirds of the members present, and voting has been presented to the President by both Houses of Parliament' the words 'by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President' be substituted."

Mr. President : There is an amendment to this amendment by Dr. Bakshi Tek Chand, of which he has given notice. It is No. 101 in the printed pamphlet containing the amendments to amendments.

Dr. Bakshi Tek Chand (East Punjab: General): Sir, I do not want to move that.

Mr. President : There is another amendment, I am afraid.

Is Mr. B. Das moving his amendment No. 102? He has given notice of an amendment to this amendment, that is No. 102 in the printed list.

(The amendment was not moved.)

Shri H. V. Kamath : As regards my amendment No. 1854, it being more or less of a drafting nature may be left to the Drafting Committee. Therefore, I do not move it.

Mr. Tajamul Husain : Mr. President, Sir, I move:

"That in clause (4) of article 103, after the word 'passed' the words 'after a Committee consisting of all the Judges of the Supreme Court had investigated the charge and reported on it to the President and be inserted."

With your permission, Sir, I will read clause (4) of article 103.

"A judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address supported by not less than two-thirds of the members present and voting has been presented to the President by both Houses of Parliament in the same session for such removal on the ground of proved misbehaviour or incapacity."

Therefore, Sir, clause (4) of article 103 deals with the procedure for the removal of a judge. It says that the President can remove a judge after an address is presented to the President by both Houses of Parliament. In my opinion, Sir, to remove a judge on the recommendation of the Parliament would be wrong in principle. If the majority party in the parliament is not in favour of a particular judge, then removal will become very easy, and the judge should always be above party politics. He should be impartial and he should never look up to the Government of the day and he must carry on his work. It does not matter who is in power. If there is an allegation against a judge, I submit, Sir, that the allegation must be enquired into first. Therefore, I suggest that all the judges of the Supreme Court from themselves into a Committee, and this Committee should investigate the charge against the particular judge, then submit its report to the President and then the President is to remove him in consultation with the parliament, provided the charges are proved against him. Therefore, Sir, my amended resolution, if accepted, will read in this way:

"A judge of the Supreme Court shall not be removed from his office except by an order of the President passed, after a Committee consisting of all the Judges of the Supreme Court had investigated the charge and reported on it to the President and etc."

I think, Sir, it is the best course we can take as far as the removal of the judges is concerned.

Mr. President : Amendment No. 1856 stands in the name of Mr. Mohd. Tahir. I do not think it is necessary to have any speech on this. It only substitutes the words "a majority" for the words "not less than two-thirds". I take it that it is moved.

Mr. Mohd. Tahir : All right, Sir. I have no objection to it.

Mr. President : Amendment No. 1857 is a verbal amendment.

Amendment No. 1858 stands in the name of Professor K.T. Shah. Is not that covered by the words 'incapacity and misbehaviour'?

Prof. K. T. Shah : I would accept it if you think that they are covered. I do not move it.

Mr. President : Amendment No. 1859. That is also more or less covered by the amendment which has been moved by Mr. Tajamul Husain.

Amendment No. 1860 also goes with Amendment No. 1859.

Amendment No. 1861 is a verbal Amendment.

Amendment No. 1862 stands in the name of Dr. B. R. Ambedkar. That is also a formal amendment to substitute for the words "a declaration" the words "an affirmation or oath". We have made similar changes wherever that expression occurs in other parts of the Draft Constitution. I take it that it is moved.

The Honourable Dr. B. R. Ambedkar : Sir, I formally move:

"That in clause (6) of article 103, for the words 'a declaration' the words 'an affirmation or oath' be substituted."

Mr. Mohd. Tahir : Sir, I beg to move:

"That clause (7) of article 103, be deleted."

The article runs thus:

"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 clause, as it is, would, I think, make a person quite useless after he retires from the office of a Judge. Suppose a man is appointed as a Judge of the Supreme Court and he retires and after that he has got enough ability and capacity as well to work and do many other jobs in the affairs of the world; then, Sir, making a constitution which makes a man unable to do what he wants to do, I think, is quite unjustified. A constitution should not contain such provisions by which the activities of a person should be limited even if he has got the capacity to do it. Therefore, I think those persons who have worked as Judge of the Supreme Court and retired in due time, if they have got the capacity to work in other fields, they should be allowed to do as they are able to do. With these words, I move.

(Amendment No. 1864 was not moved.)

The Honourable Shri K. Santhanam : Sir, I beg to move:

"That in clause (7) of article 103, after the words 'any authority' the words 'or shall hold any office of profit without the previous permission of the President' be inserted."

I want to put in the words "of profit".

Sir, it has been argued by many that a Supreme Court Judge after retirement should not seek any office. To make such a complete prohibition will land us in difficulties. There is for instance, the Income Tax Investigation Commission of which Mr. Justice Varadachariar is the Chairman. Similarly, we may have Enquiry Commissions and other Commissions for which these retired Judges may be the fittest persons. But my amendment tries to prevent them from holding any office of profit without the express permission of the President. Ordinarily, the President will not give such permission unless it is an office which does not militate against the independence of the Judge. Particularly, I want to prevent Supreme Court Judges from taking office in private companies such as Chairman of the Board of Directors, etc. This is absolutely

essential if we want to keep our judiciary beyond all possibility of temptation. Therefore, I suggest that my amendment carries out all these purposes with the least complication or difficulty. I commend it to the House.

(Amendment No. 1866 was not moved.)

Mr. President : Amendment No. 1867: there is another article 196 in the Constitution which deals with the Judges of the High Courts. I think this is covered by that article. Do you insist on moving the amendment here also?

Prof. K. T. Shah : I do not move, Sir.

(Amendment Nos. 1868 and 1869 were not moved.)

Mr. President : We have now disposed of all the amendments of which I had notice. Those who wish to speak on any of the amendments or on the original article may do so now. I would request the Members to be brief. We have already taken two hours in moving amendments in one article.

Pandit Thakur Das Bhargava (East Punjab: General) : Sir, I support amendment No. 1817. According to the provisions of this amendment, confirmation of the appointment of the Chief Justice of the Supreme Court must be made by a two-thirds majority of the total number of members of Parliament assembled in a joint session of both Houses of Parliament. If you kindly refer to clause (4) of this article, it will appear that so far as removal of a Supreme Court Judge is concerned, an address supported by not less than two-thirds of the members present and voting should be presented to the President by both Houses of Parliament in the same session. I beg to submit that this principle is quite sound that the dismissing authority should be the appointing authority also. Therefore, the objection that the legislature should not have any influence in regard to the Judges of the Supreme Court has been laid at rest by this provision about removal. There can be no such valid objection so far as the appointment of the Chief Justice of the Supreme Court is concerned. No doubt, the appointment should be made by the President; but what is sought now is that the confirmation may be got to be made by a two-thirds majority of the total number of members of Parliament. This would inspire much more confidence in the Chief Justice of the Supreme Court and at the same time, the Chief Justice also shall get more influence and prestige when it is known that his appointment has not only been supported by the President, who practically represents the majority in the legislature, in so far as that it will be the Prime Minister who will give his advice to the President. All the same, if a two-thirds majority is insisted upon, it shall give him more influence and prestige. Moreover, the objection relating to amendment No. 1813 is also removed because the name which has been given is 'Chief Justice of Bharat'. This will be different from the name given to the Chief Justice of the High Courts.

I want to make one observation more in regard to amendment No. 1843. It has been pointed out that after retirement, no Judge of the Supreme Court should hold any office of profit, nor should he be allowed to practise in any of the courts. So far as it goes, this provision is quite wholesome; but at the same time, the restriction put upon his activities in amendment No. 1843 is not justifiable. According to me, a Judge of the Supreme Court, after retirement, is perfectly fitted to become a member of the House of the People or of the Council of States. Therefore, I am of the view that though a Judge should not be allowed to practise in any subordinate Court subsequent to his retirement, he should be allowed to continue his activities as a Member of the legislature.

The Honourable Shri Jawaharlal Nehru : (United Provinces: General): Sir, I wish to say about one particular matter with which some amendments have dealt, that is, the age-limit of the Supreme Court Judges. Some Members have proposed an amendment reducing the proposed age-limit to sixty; one of them suggested increasing it to sixty-eight. It is rather difficult to give any particular reasons for a particular age, sixty-five or sixty-six; there is not too much difference. After much thought, those of us who were consulted at that stage thought that sixty-five would be the proper age limit.

This business of fixing age-limits in India in the past was, I believe, governed by entirely the service view. The British Government here started various services, the I.C.S. which was almost manned entirely by Britishers and then later on some Indians came in and other services. The whole conception of Government was something revolving round the interests of the services. No doubt, these services served the country; I do not say anything against that. But, still, the primary consideration was the service and all these rules were framed accordingly.

Now, the other view is, how you can get the best service out of an individual for the nation. Each country spends a lot of money for training a person. Now, we have to get the best out of the training you give to a person. You should not, when he is quite trained and completely fit, discard him and get an untrained person to start afresh. Now, it is difficult, of course, to say when a person is not working to the peak of his capacity. In different professions the peak may be different with regard to age. Obviously a miner cannot work as a miner at sixty or anywhere near sixty. An intellectual worker may work more. So also about writers. It will be manifestly absurd to say that a writer must not write after a certain age, because he is intellectually weak. Or for the matter of that, I rather doubt whether honourable Members of this Assembly will think of fixing an upper age-limit for membership of this Assembly, or for any Cabinet ministership or anything of that kind. We do not do it. But the fact is, when you reach certain top grades where you require absolutely first-class personnel, then it is a dangerous thing to fix a limit which might exclude these first-rate men. I would give you one instance which came up in another place. It was the case of scientists. In such a case, can we say that he cannot work because he has reached the age of sixty? As a matter of fact, some of the greatest scientists have done their finest work after they reached that age. Take Einstein. I do not know what his age is, but certainly it should be far above sixty; and Einstein is still the greatest scientist of the age. Is any government going to tell him, "Because you are sixty, we cannot use you, you make your experiments privately"? There are some scientists in India—first class scientists—and the question came up before me, should they retire? I pointed out that we are already short of first-rate men, and if you just push them out because of some rules fixed for some administrative purposes, which have nothing to do with the highest class of inventive brain work, it would be a calamity for us. We would not get even the few persons we have got for our purpose.

With regard to judges, and Federal Court Judges especially, we cannot proceed on the lines of the normal administrative services. We require top men in the administrative services. Nevertheless, the type of work that a judge does is somewhat different. It is, in a sense, less physically tiring. Thus a person normally, if he is a judge, does not have to face storm and fury so much as an administrative officer might have to. But at the same time it is highly responsible work, and in all countries, so far as I know, age-limits for judges are far higher. In fact there are none at all. In America the greatest judge

that I believe the Supreme Court produced went on functioning till the age of ninety-two—Holmes—and he went on functioning extremely well up to the age of ninety-two for thirty or forty years running. If you go to the Privy Council of England I do not know what they are now, but some years back when I went there I saw patriarchs sitting there with long flowing beards; and their age might have been anything up to a hundred years, so far as looks were concerned. May be, you may over do this type of thing. But the point is we must not look upon this merely as a question of giving jobs to younger people. When you need the best men, obviously age cannot be a criterion. A young man may be exceedingly good, an old man may be bad. But the point is if an old man has experience and is thoroughly fit, mentally and otherwise, then it is unfortunate and it is a waste from the State's point of view to push him aside, or force him to be pushed aside, and put in some one in his place who has neither the experience nor the talent, perhaps. We are going to require a fairly large number of High Court Judges and Supreme Court Judges. Of course the number of Supreme Court Judges will be rather limited. Nevertheless, there are going to be more and more openings, and the personnel at our disposal is somewhat limited. Judges presumably in future will come very largely from the bar and it will be for you to consider at a later stage what rules to frame so that we can get the best material from the bar for the High Court or Federal Court Judges. It is important that these judges should be not only first-rate, but should be acknowledged to be first-rate in the country, and of the highest integrity, if necessary, people who can stand up against the executive government, and whoever may come in their way. Now, taking all these into consideration I feel that the suggestion made by the Drafting Committee with regard to Federal Court Judges, that the age-limit should be sixty-five, is by no means unfair, for it does not go beyond any reasonable age-limit that might be suggested. Many of us here are, as you are aware, dangerously near sixty or beyond it. Well, we still function, and function in a way which is far more exhausting and wearing than any High Court Judge can be. We are functioning presumably because in the kindness of your heart, in the country's heart, you put up with us, or think us necessary. Whatever it be, you can change us and push us out if you do not like us. There is no age-limit. But the High Court Judges and Federal Court Judges should be outside political affairs of this type and outside party tactics and all the rest, and if they are fit, they should certainly, I think, be allowed to carry on. Of course every rule that you may frame may give rise to some difficulties and undesirable men may carry on. But a man appointed to the Federal Court is presumably one who has gone through an apprenticeship in the High Court somewhere. He cannot be absolutely bad, otherwise he would not have got there. He must have justified himself in a High Court as Chief Justice or something. So you are fairly assured that he is up to a certain standard. If so, let him continue. Otherwise the risk is greater, of pushing out a thoroughly competent man because of the age-limit, because he has attained the age of sixty. So I beg the House to accept the age-limit of 65 for Federal Court Judges that has been suggested.

Shri R. K. Sidhwa (C.P. & Berar : General): Mr. President, Mr. Kapoor's amendment says that the age-limit should be curtailed from 65 to 60, and Mr. Satish Chandra suggests that the age should be left to the Parliament to decide. Sir, Mr. Kapoor himself was not sure in his argument whether the age sixty was the right age. He said that a judge under sixty he had come across was mentally unfit. Well, if the judge under sixty was mentally unfit, then the appointing authority, according to me, must have been mentally unfit, because it is not expected that a judge will be mentally unfit, which means mentally unsound or mad. Such a man cannot be allowed to continue. Sir, it has been argued that persons who have crossed the age of sixty are

[Shri R. K. Sidhwa]

generally unfit, that they have lost all their energy. Let me tell my Friends who hold such a view that there are thousands of persons who have crossed the age of sixty, but they are younger in energy, younger in ability, younger in activity and younger in common-sense than so many of the young persons who boast of possessing these qualities. That is a fact which cannot be denied. Therefore those who say that a man after sixty is insane do not know the youngsters today. Today their constitution is such that a man of forty looks like one of sixty. Medical science says that a person is necessitated to wear glasses after forty-five, but you find youngsters of thirty years wearing glasses. The youngster of today is an old man at forty, whereas there are thousands of men above sixty who are stronger in their constitution than young men. In the judiciary older persons bring a lot of knowledge and experience. I know the Pay Commission has recommended the extension of the age of pension. I do not know what Government have done about it. Of course from the administrative point of view it will block the promotion of younger people, but to say that a man is insane after sixty is nonsense. I know two Judges who lost their eyesight sat on the bench and used typewriter and they were two of the very best Judges this country has ever had. After all the Judges have got to be able and impartial, and age does not count in this matter. I myself claim to be younger than many of the young people although I have crossed sixty. It is ability that counts; and if a man has got energy and ability and perseverance, he should be kept in public service even if he is over sixty. I lay stress on this because I want that we should not be carried away by sentiment merely because we have to give a chance to younger people. You cannot discard people merely because they are over sixty years of age.

Now coming to the amendment of Professor Shah, he wants the Council of States to decide the question of the appointment of Judges. This I must strongly oppose. We want impartial and independent Judges; and if you leave it to the Council of States there is bound to be individual canvassing, in which case the question of ability, etc, will be set aside. Of course from the point of democracy it may be good to consult them because we want wider consultation and discussion but there must be a limit to it. And if you leave it to the Council of States to appoint Judges, that will be going too far. After all our Prime Minister will be a responsible person; Professor Shah stated that the Prime Minister has to make appointments of Ambassadors, Governors, Judges etc. This is true; he is likely to make appointments of his choice or show favoritism, but surely he is subject to our votes. You cannot have it decided by a Council of 150 people or more; canvassing will go on and ability will be discarded. I can only say that I am surprised that of all persons Prof. Shah should have moved this amendment.

My honourable Friend, Mr. Mohammad Tahir, wants that pleaders of district courts of twelve years standing should be considered for the posts of Judges of the Supreme Court. Sir, we know of briefless and duffer barristers and lawyers who wander in the corridors of courts; are these people to be appointed Supreme Court Judges? The Supreme Court Judges should be men of experience and knowledge gathered in the High Courts and from that point of view the amendment of Mr. Tahir is objectionable.

Coming to the article itself, clause (4) contains an important provision about the removal of Judges. It says that the President can remove a Judge on an address presented by the House of Parliament and if two-thirds of the members present have voted for it. I do not know any case of removal of a Judge except a recent one in the United Provinces where the Governor-General at the instance of the Premier of the U.P. removed a Judge for misbehaviour. I did not know the Governor-General had this power because it has never been used

although I know of one Judge who has been guilty of misuse of power. I am glad our Governor-General has made history; other Judges also will learn from this a lesson to be more careful about their character and behaviour in future. You now want in this constitution that if two-thirds majority of the two Houses sitting together want a Judge to be removed the President will dismiss him. It is good to give wide powers to legislature but it will lead to all kinds of outside influences being brought to bear on the question and no Judge will ever be dismissed. In this U.P. case several things could not be proved against the Judge and circumstantial evidence only had to be taken into account. If we leave it to the two Houses it will be difficult to remove a Judge even if he is guilty. In spite of our wanting wider powers for the legislature I cannot support this and I am surprised that this provision has been proposed in the constitution. If you leave it to the President and he misbehaves he will be accountable to us; and be will not act in an injudicious manner.

I oppose this age-limit amendment and I support the proposition as stated *minus* the power that is vested in the Legislature in both Houses to remove a Judge.

Shri Biswanath Das (Orissa: General) : Sir, a number of important issues have been raised in the course of the discussions on article 103. Of these, the first one that I would like to discuss is the introduction of the system of elections into our Judiciary. Sir, it has been proposed that a joint Session with a two-third majority is one way of selecting the Chief Justice of India. Prof. K. T. Shah contracts the process of the election by having the election of Judges to be done by the Council of States. In any event, be it by a joint Session of Parliament or by the Council of States, the fact remains that we are trying to import a very dangerous principle, namely the process of electing Judges of the Supreme Court in place of the one that we have, namely the process of selection. Sir, intense thought has been given up this aspect of the question, whether Judges have to be selected or elected, and we have rejected the one and retained selection as the proper mode of appointing Judges.

Prof. K. T. Shah : On a point of personal explanation, I have not said that they should be elected. I have said that the Council of States should be consulted.

Shri R. K. Sidhwa : It comes to the same thing.

Shri Biswanath Das : Consulting the Legislature and election are certainly technical two different processes. But in a democracy functioning, as we propose it should, under this Constitution, is it anything less to say that my Friend, Prof. Shah, wants to import election into the appointment of the Judges? I think there is nothing for me to stand corrected by the revised version given by my honourable Friend, the learned professor. We have seen the difficulties and distress of countries which have accepted the principle of such election. If you once accept the principle of election what reasons could you assign to exclude the subordinate? As has been done in America, even Public Prosecutors are to be elected by a defined electorate.

Under these circumstances, Sir, I plead with my friends that the system of appointment by a process of election be shunned and be given up for good.

Sir, I come to the question of the age-limit of the Honourable Judges of the Supreme Court. We have in ordinary Government service fifty-five years. This has been extended to sixty years in the case of the Judges of High Courts and the Supreme Court the Drafting Committee, I am afraid, have not given convincing and adequate reasons why this change was made. I see a note in which some explanation has been given, but I claim that the

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explanation that they have given is not adequate. One fact we cannot forget namely, that the Judges of the Supreme Court and the High Courts who are bound to be practitioners in the Bar or subordinate judicial officers, who have risen by dint of merit-in any case the private property which they have earned age their property. The constitution gives them ample safeguards regarding the tenure of service, their freedom of judgment and safeguards from interference so far as the discharge of their functions and responsibilities are concerned. Under these circumstances, I am afraid, that further reasons are necessary if my honourable Friends want us to accept even the age-limit of sixty-five years. Sir, in a country where the average duration of life was twenty-eight years under the British rule, and I believe the same period is being continued even today, there is little justification for the Honourable Judges of the High Court to go on functioning up to sixty-five years. The great Seers of Hindu society have prescribed the ways of life for us. They have provided that the closing stages of life should be reserved for *Vanaprasth* or *Sanyas*. Are you going to close these chapters. So far as such Judges of the High Courts and Supreme Court are concerned for *Vanaprasth* and *Sanyas*? It is a very important stage of life in Hindu society. In other societies, such as among the Christians and the Muslims, they have also the necessary and natural expectation that people at the last stages of life shall have time to devote themselves either to God or to free social work. Man must have some leisure to devote himself, at least in the last days of his life, to some other work-either spiritual or social. Under these circumstances, I believe that the honourable Members of this House should not give the go-by to that normal and general expectation of society and that the limitation of sixty-five years be given up in favour of allowing the Honourable Judges of the Supreme Court, from whom the society, the country and the State expect much, either to live a *Vanaprasth* or a life of a *Sanyasi*, so that they could devote themselves to their Maker and for those who do not believe in God, at least to the service of society.

I now come to the proviso in clause (2) of article 103. It has been said: 'Provided that in the case of a judge other than the Chief Justice, the Chief Justice of India shall always be consulted.' I do not know of any reason or justification for the retention of this proviso. The Chief Justice is a very responsible person and there is no reason why he should not be consulted in the case of the appointment of the Chief Justice who is to be his successor. I think in the matter of the selection of a person to succeed the Chief Justice it will be doing an injustice to the place and position of the Chief Justice himself not to be consulted.

One other point and I shall have done. It has been stated that no office of profit should be offered to a judge in office or after retirement. I do not see much logic in this amendment. The judges of the Supreme Court are granted the highest scale of salaries, barring the Governor-General and the Governors. If at any time an office of profit under the Government is to be offered to a judge of the Supreme Court it is either the same or some other allied office involving semi-judicial functions. That being so, I do not find any justification for a restriction of the kind proposed. I do not therefore agree with those friends who hold this view. Such a proviso merely reveals a fear complex. I would appeal to my friends to give up this fear complex. I feel that the system of election as has been proposed, direct or indirect, to be imported into the appointment of judges of the Supreme Court should not be thought of and that the age-limit should be fixed at sixty and not at sixty-five. The proviso to clause (2) of article 103 is unnecessary and the restrictions sought to be imposed upon the appointment of judges of the Supreme

Court to offices of profit under the State are needless restrictions which reveal nothing except fear complex.

Shri Rohini Kumar Chaudhari (Assam: General): Mr. President, I have come here purposely to warn the House against the acceptance of the suggestion made by my Friend Mr. Shibban Lal Saksena. He seems to think that any appointment which is made should be subject to confirmation by two-thirds majority of the Houses of Parliament. I submit that this is a very dangerous principle. Confirmation by two-thirds majority of the Houses of Parliament means that the appointment will be at the pleasure of the leader of the majority party. Already there have been suggestions that the present Government—the Ministers in different provinces— are interfering at times with the administration of justice. Recently, very adverse remarks were made by Mr. Justice Beaumont, Judge of the Privy Council. In the course of delivering a judgment, the Judge observed that he was constrained to say that the Congress was at one time very anxious to have separation of the judiciary and the executive and now that it has come to power they seemed to like that the old system should continue. This utterance by a very eminent Judge that there is at times room for the executive to interfere with the course of justice and this might lead to very serious consequences in future. I would therefore warn the House not to accept any proposal aimed at giving the House power to confirm the appointment of judges or agree to the suggestion that action for the removal of a judge can be taken by Parliament itself. That sort of thing should not be allowed to be accepted for a moment.

Next I come to the consideration of age. In my opinion what we have to do is to fix the minimum age of a judge and not the maximum age. We know that in England there is no age-limit for a High Court Judge or a Supreme Court Judge. A man of any age, provided he is able to conduct the judicial proceedings properly can be admitted to the Bench. It is a very wrong principle to compel a man, particularly a man of advanced age, to declare his age. In this connection I would like to warn the leaders of people, distinguished men, not to celebrate their birthdays. If at all they want to celebrate their birthday, let them not disclose their age. It is a very sad thing that a particular person whom we consider to be young—I have in mind our leader Pandit Jawaharlal Nehru—should give out that he is nearly sixty, when he allowed his birthday to be celebrated. People now know his correct age. He was very easily passing for a man younger by ten years. Not that he wanted to do so. It is a wrong thing to remind people of one's age.

Further, so far as age is concerned, there seems no bar to the appointment of a female as Supreme Court Judge. I would ask you, Sir, where is the sensible woman who would declare her age as fifty-five even if she is fifty-five in order to get appointed to the Supreme Court Bench? Now even for the Kingdom of England would a women say she is fifty or sixty years old— much less in order to continue as a High Court Judge. Not even for a Kingdom would a woman say so. Therefore it is a wrong principle to have the age prescribed. A man is not necessarily old because he is old in age or a woman is necessarily old because she is old in age. The maximum age should not be fixed now. It should be left to be decided by persons competent to judge in this matter.

I would refer in this connection to the amendment of Mr. Satish Chandra. He wants that the age should not be prescribed here and should be left to be fixed by the future Parliament. If we agree to that, there would be one difficulty. After the Constitution is adopted, we may have to appoint a Chief Justice for the Supreme Court and for the High Courts. If at that time no age

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limit is fixed there would be difficulty, if we say that it should be fixed by Parliament sitting. We would not know what sort of people we should exclude.

I want now to say a word about 'consultation'. In my opinion the amendment suggested by Dr. Ambedkar for the deletion of the line where it is said that after consultation with such of the judges of the Supreme Court and of the High Courts in the States where necessary should be accepted. After all, this is a matter which should be entirely dealt with by the President. He can, if he likes, consult anybody; if he does not like, he need not consult anybody. If he knows the man to be of outstanding ability, it is not necessary for the President to consult anybody. It should not be made obligatory. I think that the interpretation of this article is that the President is not bound to consult anybody if he does not consider it necessary to do so. If that is the interpretation, well and good. If that is not the interpretation, then I submit that it will not be proper to say that the President is bound to consult the High Court Judge. After all, the Chief Justice of the Supreme Court is a person of superior position in relation to the High Court Judges. It seems rather queer that the President will have to select a person of higher grade only after consulting persons of a lower grade, but that may be the tendency of democracy now-a-days. We are finding students claiming that they should be consulted over the appointment of teachers and even in the promotion of the teachers. Sometimes we come across cases where the students demand—engineered no doubt—that a particular teacher should be made the headmaster. But that is not the proper way, and I submit, Sir, that a person of a lower grade should not be consulted over the appointment of people of a higher grade. We have the curious position in some parts of the country where the Public Service Commission is consulted over the appointment of a Sub-Judge or a Judge. The Public Service Commission may not have any member who has ever practised in a court of law or who has any knowledge of the qualifications or a Judge, but still the Public Service Commission is consulted. This is rather absurd. In some places a Sub-Judge has to sit for departmental examinations in law, which is held by an officer who has no idea of law. That sort of thing ought not be allowed. I therefore submit, and submit strongly, that the procedure for consulting a judicial officer of a lower grade for making appointments to a higher grade is rather unreasonable.

Then, Sir, I have to say a word about my honourable Friend, Dr. Sen's amendment. It is definitely worthy of consideration. If a High Court Judge who joins the bench after giving up practice, next year on account of illness resigns and finds himself without any resources, it will be a very sad thing. He must have some security for the future and that security should be given to him by providing for a pension. We have found cases where a member of the Judiciary has had to resign on account of illness brought about by hard mental labour. In such cases there should be some provision for pension. I am not sure, Sir, whether such a provision should be made in the constitution itself or whether it should be left to Parliament to decide or whether it should be left to the President to decide. The President may even specify in the terms of appointment of a Judge that if on account of illness he is forced to resign, he will get a pension.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, we have now reached in the discussion of this constitution, a stage which according to me is one of the most important stages if not the most important stage in the discussion of this constitution. The Supreme Court is the watchdog of democracy. In an earlier part we enacted the Fundamental Right and we are very anxious to provide the means by which these Fundamental Rights could be

guaranteed to the citizens of the Union. This is the institution which will preserve those rights and secure to every citizen the right that have been given to him under the Constitution. Therefore naturally this must be above all interference by the Executive. The Supreme Court is the watchdog of democracy. It is the eye and the guardian of the citizen' rights. Therefore at every stage, from the stage of appointment of the judges, their salaries and tenure of office, all these have to be regulated now so that the executive may have little or nothing to do with their functioning. The provisions, that have been made, have been made with an eye towards that. If amendments are moved now, each amendment must be judged by the test whether it secures the independence of the judiciary which this Chapter attempts to provide for.

Now, Sir, two formal amendments have been moved, amendments Nos. 1813 and 1840, relating to the nomenclature. They want the Chief Justice of India to be called the Supreme Chief Justice. When we come to the High Court, this means that we should call the Chief Justice of the High Court as High Court Chief Justice or High Chief Justice. Supreme Chief Justice, High Chief Justice or Law Chief Justice— I have never heard of such a nomenclature being given to Judges. A Supreme Court is not a peculiar institution to this Country. There are Supreme Courts in America and in various other places. These amendments are absolutely unnecessary and should be rejected.

Then as regards the number of judges, inasmuch as the Supreme Court has appellate jurisdiction in various matters, the number seven is not big at all. The Parliament is given the power to increase this number seven according to the needs and circumstances.

The important amendments that have been moved relate to the necessity for the President consulting the judges of the High Court in the States. Now, consultation with the Chief Justice is necessary for making appointments of Puisne Judges of the Supreme Court. So far as the Chief Justice himself is concerned, there is no higher judicial authority who may, be consulted.

Therefore that provision will have to remain. Now, as regards the appointment of Puisne Judges, the Chief Justice will be consulted, but the objection is to the consultation with the Judges of the High Courts in the States. If the President considers that such consultation is necessary, I feel that it should be open to him to do so. Whether it is necessary to consult the judges of the High Court is left to the discretion of the President. The Chief Justice of the Supreme Court may be drawn from one of the provinces of this country and might not be able to suggest as to who should be appointed Judges of the Supreme Court. Naturally therefore the President would not be able to get the necessary advice from the Chief Justice alone and would have to consult the Judges of the various High Courts. It is not obligatory on him to consult everyone of the Judges. It is optional to him, wherever he considers it necessary in the interests of proper administration of justice. That power must be given to him.

Then, it is almost fantastic—I hope the honourable Members who have moved the amendment would forgive me for saying so—but I cannot use a milder word than 'fantastic' to characterise the suggestion that the Chief Justice of India should be appointed on the recommendation of the majority of the Members of the Council of States. This will reduce it to an election and there will be canvassing to get the majority of votes. This is inconceivable and unheard of in any part of the civilised world.

Then as regards the age, some young friends want it to be reduced from sixty-five to sixty and others want to raise it from sixty-five to sixty-eight.

[Shri M. Ananthasayanam Ayyangar]

In Canada the upper limit is seventy-five. Up to the age of seventy-five, judges can go on being in office. That may be a cold country where the age seventy-five may be the upper limit. So for as the Privy Council is concerned in Great Britain, I am told that the age for retirement is seventy. In America there is no age-limit at all. The judge of the High Court retires normally under existing law at the age of sixty and if be was appointed a few years before that, there is absolutely nothing to say against it. Our Friend, Mr. Munshi—he may not accept this, is he is offered—is quite strong and healthy and for another twenty-five or thirty years he will be able to judge between man and man and persons of that caliber must be available and the age sixty is too early an age and even in a hot climate like ours, I would like to go even to seventy, but let us be somewhat careful. So sixty-five seems to be a proper limit. Therefore the age sixty-five need not be raised nor cut down to sixty. Younger man on account of their enormous energy may go into various other fields which are open to them. For the judiciary there must be a balanced mind. Immature minds are useless. They must have sufficient experience; they must judge calmly and coolly. Old judges will not stand in the way of younger men, but the younger men may have a lot of other things to do. Youth ought not to come in the way of proper judgment and therefore, older men alone must be chosen; but there is nothing preventing a young man of extraordinary ability if he possesses a balanced mind, an enormous capacity and intellect to judge between man and man. The Chief Justice of the Madras High Court is barely forty-three and he can go on mature in age until the age of sixty-five. These are exceptional cases; otherwise you do not expect a judge to be a very young man to judge between man and man.

Then, Sir, I agree with my honourable Friend, Mr. Kamath, when he says that the choice of Supreme Court judges ought not to be limited to judges already in service and of ten years' standing. He has moved that it ought to be open to the President, if he so chooses, in the interest of proper administration of justice, to include a distinguished jurist. His amendment does not make it obligatory upon the President to choose only a jurist only among jurists. In various cases a Supreme Court has to deal with constitutional issues. A practicing lawyer barely comes across constitutional problems. A person may enter the profession of Law straightaway. He might be a member of a Law College or be a Dean of the Faculty of Law in an University. There are many eminent persons, there are many writers, there are jurists of great eminence. Why should it not be made possible for the President to appoint a jurist of distinction, if it is necessary? As a matter of fact, I would advise that out of the seven judges, one of them must be a jurist of great reputation. I am told, Sir, by my honourable Friend, Shri Alladi, whom I consulted, that some years ago President Roosevelt in the U.S.A. appointed one Philip Frankfurter. He was a Professor in the Harward University. That was a novel experiment that he made. Before that, barristers were being chosen and also persons from the judiciary. This experiment has proved enormously successful. He is considered to be one of the foremost judges, one of the most eminent judges in the U.S.A. Therefore, Sir, I am in agreement with the proposal to add a jurist also, a distinguished jurist, in the categories for the choice of a judge of the Supreme Court.

As regards good behaviour, my honourable Friend, Prof. Shah wants that the tenure of office must be during good behaviour. He has evidently forgotten that provision is coming later. No doubt in the earlier portion in clause (2) it is not definitely prescribed to continue only during good behaviour, but later on there is a provision for the removal on the ground of proved misbehaviour or incapacity. I understand this to mean that they do not want

such an eminent person as the judge of the Supreme Court, his tenure ought not to be linked even at the start with, or that anyone should have, a suspicion that he may be guilty of misbehaviour. In the Australian Constitution they say that the appointment should endure so long as he is of good behaviour. Later on a provision is made that in case of misbehaviour, he may be removed. In substance there is provision here for removing a judge who is guilty of misbehaviour. Even at the outset, it is something like thinking even at the time of marriage—if the man dies, what happens. It is only certain communities that think of the death of a son-in-law even at the time of marriage and make provision for that, while other communities are a little more anxious to avoid this possibility. I would not like to lay down that a judge must be appointed only during good behaviour; there is enough provision for his removal, in case he proves himself incapable or is of bad behaviour.

Then I come to 'office'. Mr. Santhanam referred to clause (7) and says that a person who was a judge of the Supreme Court ought not to hold any office of profit except with the consent of the President. I have seen and we have seen a number of cases where important Secretaries who were drawing Rs. 3,000 to 4,000 while in office have helped some person in some industries and immediately they retired, they become Managers of this Institute or that Institute. I want to avoid this kind of selling away. Particularly, a judge cannot decide in favour of a particular person and then join his service. It is not as if this provision is absolute and it is a prohibition. With the consent of the President, he will decide as to whether this new office is or is not inconsistent with the office he held, and the President may give due permission in proper cases. I would urge upon the House to accept the amendment moved by honourable Friend, Mr. Santhanam, regarding the prohibition that a person who holds the position of a judge of the Supreme Court ought not to accept an office of profit except with the consent of the President.

Coming to Dr. Sen's amendment that person who hold the office of judgeship ought to be given pension even if for reasons of illness they are unable to continue in office before the period is over. Person that are going to be appointed judges are of there classes. A person in service will always get his pension. He is entitled to retirement in advance. Therefore, this amendment does not apply to such a person. A person who straightaway is drawn from the bar, a practicing lawyer, if he is old by the time he is appointed a judge of the Supreme Court, he must have attained sufficient reputation and amassed a sufficient sum of money. With respect to him, it may not be necessary. I no doubt agree with him that with respect to not only of judges of Supreme Court but in respect of ministers also there must be a National Pension Scheme and, in fact, with respect to all persons who have rendered great service to the nation. After giving up their jobs or after the country no longer feels them necessary for public work, they ought not to be thrown no the streets, and some such person scheme must be started. That must be an all-round scheme and ought not to be confined to the judges of the Supreme Court only.

I oppose the other amendments, barring those which I have accepted. I would appeal to the House to see that the other amendments are of a formal nature, or go against the scheme of this provision which makes the judiciary absolutely independent of the executive.

Mr. President : Mr. Naziruddin Ahmed. He will be last speaker. After his speech, we shall close the discussion.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, we are indebted to the Honourable Prime Minister for his illuminating speech giving a true picture of men of high intellect. You can put no age-limit to men of real worth. Two honourable Members have tried to put the age-limit not only to Judgeship of the Federal court, but to all mental efficiency at sixty. I submit if this test is to be applied, Pandit Jawaharlal Nehru, who is about sixty-one would be unfit for public office. Mr. K. M. Munshi who is sixty-two would be equally unfit. Mr. Alladi Krishnaswami Ayyar who is sixty-six would be more unfit, and Sardar Patel who is seventy-four, who is an ornament of the country, and whose intellect is as keen as ever, would according to this argument, be equally unfit. To put the age-limit for men of real worth at sixty is meaningless. I should say childish. One Member has gone so far as to say that at sixty, a man is intellectually defunct and becomes absolutely unfit for any mental activities. His view is that the younger the man, the greater is his intellect. In fact, he would prescribe a formula that mental capacity increases in the inverse proportion to the advance in years. In other words, the younger the man he is, the more he is mentally fit for high judicial or other intellectual work. These are absurd propositions to be laid down.

While the Honourable Prime Minister has laid an age-limit at sixty-five, I shall, with due respect to him, try to support the age-limit as sixty-eight. My reasons are these. Men in the legal profession, who are very efficient, earn a very high income. If they are to be appointed judges that means a heavy sacrifice. If you put the age-limit at sixty-five, you discourage high legal talents from accepting high judicial appointments. While you put the age-limit at sixty-five, in clause (6) you require him not to plead or act in any Court. That is a highly desirable condition; but it goes against the age-limit of sixty-five. At the age of sixty-five, very efficient people are highly alert and if they are not to be allowed to practise in the Courts, which I concede is a desirable condition, you must raise their age-limit. In fact, Judges of the Supreme Court will have very high judicial duties to perform. If you put the age-limit of sixty-five, you will be shutting out from the service of the country men of real worth and ability at the very height of their efficiency and experience. In these circumstances, I should think that the age-limit should be sixty-eight.

To ask a Supreme Court Judge to take up any position of profit under the Government with the consent of the President would be to introduce a pernicious principle. Judicial officers, especially of the highest rank should never be induced to accept any Government job. When they retire, they should never like up to Government for some sort of job after their judicial career is ended. The difficulty which has been felt by Mr. Santhanam in shutting out men of ability is not met by his amendment, but rather would be met by raising his age-limit to something like sixty-eight. In England the age-limit of ordinary Judges is 72, but there is no age-limit for Judges who are Law Lords. They hold office during the pleasure of His Majesty and that means efficiency. In England, there are various ways of ascertaining the efficiency of a Judge. There, the usual age of the highest judicial officers in the Privy Council and in the House of Lords is about seventy at the lowest. The average of men in the highest judicial posts, the Law Lords, is about eighty. We have heard from the Honourable Prime Minister that men of ninety of even above that are in a very good alert condition of mind. Some of the greatest judgments of the Privy Council and of the House of Lords, were delivered by men who were above eighty, some at ninety. It has been suggested that the climate of India does not reconcile high age with efficiency. I submit that is a fallacy. The British put down the

age-limit for High Court Judges as sixty and for ordinary officers as fifty-five. They never allowed any efficiency to be developed. They allowed something like mechanical efficiency or a kind of clerical ability in their officers. They allowed no initiative, no freedom of action, no freedom of thought; they crippled the men's intellect while in Government service. Now, Sir, all these adverse factors would be gone. We are breathing a free atmosphere; the ability of our officers will increase. They will have enough initiative, enough patriotism behind them to do the best work for the country. The artificial age-limit of fifty-five and sixty and the reasons therefore no longer apply. For all these reasons, I think the age-limit should be enhanced. Especially in high judicial posts, I am of opinion, not without much careful thought, that the minimum should be sixty. Efficiency as high judicial officers can rarely being before sixty. Ripe experience and alertness of mind of high judicial talents really asserts itself after sixty. I should have been very happy to put the age-limit even higher. But, that would have necessitated the condition of his being in office during the pleasure of the President. It is considered that this may be utilised or used to the detriment of high judicial abilities. Therefore, I do not wish to limit the duration of high judicial service during the pleasure of the President. I should therefore strike a *via media* between sixty-five, and putting no age-limit, that is at sixty-eight. The duties of a judicial officer are extremely high. They do not earn their pay for nothing; they have to work very hard. They should look forward to a long career of usefulness, to induce them to give up their profession at the bar to accept high judicial post. In fact, it has been suggested against this that a man should make it as a matter of sacrifice for public service. I think, however, that a man who gives up a lucrative practice at the bar makes a tremendous sacrifice. To sacrifice and sacrifice, there must be some limit. From these considerations, I submit that the age-limit to the judges should be enhanced, and also in another context I should submit that their pay should also receive due consideration. I submit that this debate has been of a very revealing character fully deserving our attention. It has dispelled once for all the impression that any age above sixty means inefficiency. I submit that though the amendment which I have sponsored may not be accepted in the House today, its principles would be remembered and a day would come when will be compelled to raise the age-limit, at least of our highest judicial officers.

Mr. President : I think we had better close the discussion now. We have had so many speeches.

Shri B. Das (Orissa: General): But till now we have had all speeches from lawyers.

Mr. President : If you wish to speak I will not stop you. But I should think we have had a full discussion. And all the speeches were not from lawyers. For example, Mr. Sidhva is not a lawyer.

Dr. Ambedkar, would you like to say anything about the amendment.

The Honourable Dr. B.R. Ambedkar : Mr. President, Sir. I am prepared to accept two amendments. One of them is No. 1829 moved by Mr. Santhanam, and the other is No. 1845 moved by Mr. Kamath, by which he proposes that even a jurist may be appointed as a Judge of the Supreme Court. But with regard to Mr. Kamath's amendment No. 1845, I should like to make one reservation and it is this. I am not yet determined in my own mind whether the word "distinguished" is the proper word in the context. It has been suggested to me that the word "eminent" might be more suitable. But as I said, I am not in a position to make up my mind on this subject;

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and I would, therefore, like to make this reservation in favour of the Drafting Committee, that the Drafting Committee should be at liberty when it revises the Constitution, to say whether it would accept the word " distinguished" or substitute " eminent" or some other suitable word.

Now, Sir, with regard to the numerous amendments that have been moved, to this article, there are really three issues that have been raised. The first is, how are the Judges of the Supreme Court to be appointed? Now grouping the different amendments which are related to this particular matter, I find three different proposals. The first proposal is that the Judges of the Supreme Court should be appointed with the concurrence of the Chief Justice. That is one view. The other view is that the appointments made by the President should be subject to the confirmation of two-thirds vote by Parliament; and the third suggestion is that they should be appointed in consultation with the Council of States.

With regard to this matter, I quite agree that the point raised is of the greatest importance. There can be no difference of opinion in the House that our judiciary must both be independent of the executive and must also be competent in itself. And the question is how these two objects could be secured. There are two different ways in which this matter is governed in other countries. In Great Britain the appointments are made by the Crown, without any kind of limitation whatsoever, which means by the executive of the day. There is the opposite system in the United States where, for instance, officers of the Supreme Court as well as other offices of the State shall be made only with the concurrence of the Senate in the United States. It seems to me in the circumstances in which we live today, where the sense of responsibility has not grown to the same extent to which we find it in the United State, it would be dangerous to leave the appointments to be made by the President, without any kind of reservation or limitation, that is to say, merely on the advice of the executive of the day. Similarly, it seems to me that to make every appointment which the executive wishes to make subject to the concurrence of the Legislature is also not a very suitable provision. Apart from its being cumbrous, it also involves the possibility of the appointment being influenced by political pressure and political considerations. The draft article, therefore, steers a middle course. It does not make the President the supreme and the absolute authority in the matter of making appointments. It does not also import the influence of the Legislature. The provision in the article is that there should be consultation of persons who are *ex hypothesi*, well qualified to give proper advice in matters of this sort, and my judgment is that this sort of provision may be regarded as sufficient for the moment.

With regard to the question of the concurrence of the Chief Justice, it seems to me that those who advocate that proposition seem to rely implicitly both on the impartiality of the Chief Justice and the soundness of his judgment. I personally feel no doubt that the Chief Justice is a very eminent person. But after all the Chief Justice is a man with all the feelings, all the sentiments and all the prejudices which we as common people have; and I think, to allow the Chief Justice practically a veto upon the appointment of judges is really to transfer the authority to the Chief Justice which we are not prepared to veto is the President or the Government of the day. I therefore, think that is also a dangerous proposition.

The second issue that has been raised by the different amendments moved to this article to the question of age. Various views have been expressed

as to the age. There are some who think that the judges ought to retire at the age of sixty. Well so for as High Court are concerned, that is the present position. There are some who say that the Constitution should not fix any age-limit whatsoever, but that the age-limit should be left to be fixed by Parliament by law. It seems to me that is not a proposition which can be accepted, because if the matter of age was left to Parliament to determine from time to time, no person could be found to accept a place on the Bench, because an incumbent before he accepts a place on the Bench would like to know for how many years in the natural course of things, he could hold that office; and therefore, a provision with regard to age, I am quite satisfied, cannot be determined by Parliament from time to time, but must be fixed in the Constitution itself. The other view is that if you fix any age-limit what you are practically doing is to drive away a man who notwithstanding the age that we have prescribed, *viz*., sixty-five, is hale and hearty, sound in mind and sound in body and capable for a certain number of years of rendering perfectly good service to the State. I entirely agree that sixty-five cannot always be regarded as the zero hour in a man's intellectual ability. At the same time, I think honourable Members who have moved amendments to this effect have forgotten the provision we have made in article 107 where we have provided that it should be open to the Chief Justice to call a retired Judge to sit and decide a particular case or cases. Consequently by the operation of article 107 there is less possibility, if I may put it, of our losing the talent of individual people who have already served on the Supreme Court. I therefore submit that the arguments or the fears that were expressed in the course of the debate with regard to the question of age have no foundation.

Now, I come to the third point raised in the course of the debate on this amendment and that is the question of the acceptance of office by members of the judiciary after retirement. There are two amendments on the point, one by Prof. Shah and the other by Shri Jaspat Roy Kapoor. I personally think that none of these amendment could be accepted. These amendments have been moved more or less on the basis of the provision that have been made in the Draft Constitutions relating to the Public Service Commission. It is quite true that the provision has been made that no member of the Public Services Commission shall be entitled to hold an office under the Crown for a certain period after he has retired from the Public Service Commission. But it seems to me that there is a fundamental difference between the members of the judiciary and the members of the Federal Public Services Commission. The difference is this. The Public Services Commission is serving the Government and deciding matters in which Government is directly interested, *viz*., the recruitment of persons to the civil service. It is quite possible that the minister in charge of a certain portfolio may influence a member of the Public Services Commission by promising something else after retirement if he were to recommend a certain candidate in whom the minister was interested. Between the Federal Public Service Commission and the Executive the relation is a very close and integral one. In other words, if I may say so, the Public Services Commission is at all times engaged in deciding upon matters in which the Executive is vitally interested. The judiciary decides cases in which the Government has, if at all, the remotest interest, in fact no interest at all. The judiciary is engaged in deciding the issue between citizens and very rarely between citizens and the Government. Consequently the chances of influencing the conduct of a member of the judiciary by the Government are very remote, and my personal view, therefore, is that the provisions which are applied to the Federal Public Services Commission have no place so far as the judiciary is concerned. Besides there are very many cases where the employment of judicial talent in a specialised form is

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very necessary for certain purposes. Take the case of our Friend Shri Varadachariar. He has now been appointed members of a Commission investigating income-tax questions.

Shri Jaspat Roy Kapoor : Let it be in an honorary capacity.

The Honourable Dr. B. R. Ambedkar : No, he is paid. It is an office of profit under the Crown.

Therefore, who else-can be appointed to positions like this, except persons who had judicial talent? It would be a very great handicap if these very persons who possess talent for doing work of this sort were deprived by provisions such as Shri Jaspat Roy Kapoor suggests. And I have said that the relation between the executive and judiciary are so separate and distant that the executive has hardly any chance of influencing the judgment of the judiciary. I therefore suggest that the provision suggested is not necessary and I oppose all the amendments.

Mr. President : The question is:

"That is clause (1) of article 103, before the words 'Chief Justice' the word 'Supreme' be inserted"

The amendment was negatived.

Mr. President : The question is:

"That in clause (1) of article 103, for the words 'and such number or other judges not being less than seven, as Parliament may by law prescribe' the words 'and until Parliament by law prescribes a larger number, of seven other judges' be substituted".

The amendment was adopted.

Mr. President : The question is:

"That for clause (2) of article 103 the following be substituted:—

'Every Judges of the Supreme Court shall be appointed by the President by warrant under his hand and seal and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a Judge, other than the Chief Justice, the Chief Justice of India shall always be consulted.' "

The amendment was negatived.

Mr. President : The question is:

"That for clause (2) of article 103, the following clause be substituted:—

'(2) The Chief Justice of Bharat, who shall be the Chief Justice of the Supreme Court, shall be appointed by the President subject to confirmation by two-thirds majority of the total number of members of Parliament assembled in a joint session of both the House of Parliament.'

'(3) Every judge of the Supreme Court, shall be appointed on the advice of the Chief Justice of Bharat by the President under his hand and seal and shall hold office until he attains the age of sixty-five years.'

Provided that:

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

(b) a judge may be removed from his office in the manner provided in clause (5).

The amendment was negatived.

Mr. President : The question is:

"That for clause (2) and the first proviso of clause (2) of article 103, the following be substituted:—

(2) Every judge of the Supreme Court other than the Chief Justice of India shall be appointed by the President by warrant under his hand and seal after consultation with the judges of the Supreme Court and Chief Justices of High Courts in the States and with the concurrence of the Chief Justice of India; and the Chief Justice of India shall be appointed by the President by a warrant under his hand and seal after consultation with the judges of the Supreme and the Chief Justices of the High Court in the States and every judge of the Supreme Court shall hold office until he attains the age of sixty-eight years.' "

The amendment was negatived.

Mr. President : The question is:

"That in clause (2) of article 103, after the word 'with' the words 'the Council of States and' be inserted."

The amendment was negatived.

Mr. President : The question is:

"That in clause (2) of article 103, for the words 'may be' the words 'the President may deem' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That in clause (2) of article 103, for the words 'until he attains the age of sixty-five years', the words 'during good behaviour or until he resigns; provided that any such Judge may resign his office at any time after 10 year of service in a judicial office and if he so resigns, he shall be entitled to such pension as may be allowed under the law passed by the Parliament of India for the time being in force' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in clause (2) of article 103, for the word 'sixty-five' the word 'sixty' be substituted and the words 'The President, however, may in any case extend from year to year the age of retirement up to sixty-five years' be added."

Shri Jaspat Roy Kapoor : Sir, I beg leave of the House to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : There is the amendment of Shri Mohan Lal Gautam—No. 1834. I did not allow him to move it in the first instance because it was covered by amendment No. 1833. Does he want me to put it to the House?

Shri Mohan Lal Gautam (United Provinces: General): Sir, I beg leave of the House to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is:

"That in clause (2) of article 103, for the words 'until he attains the age of sixty-five years' the words 'for such period as may be fixed in this behalf by Parliament by law' be substituted."

Shri Satish Chandra : Sir, I beg leave of the House to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is:

"That is the first proviso to clause (2) of article 103, for the words 'the Chief Justice of India shall always be consulted' the words 'it shall be made with the concurrence of the Chief Justice of India' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That after the second proviso to clause (2) of article 103, the following new proviso be inserted:—

'Provided further that where a Judge resigns his office on grounds of ill-health, he shall be entitled to pension as if he has continued in service until the age of sixty-five years.'"

The amendment was negatived.

Mr. President : There is an amendment to this amendment by Shri Jaspat Roy Kapoor. It is in List No. II, amendment No. 41, namely:—

"That in amendment No. 1843, of the List of Amendments, for the proposed new clause (2A) of article 103, the following be substituted:—

'No Judge of the Supreme Court shall be eligible for further office of profit either under the Government of India or under the Government of any State after he has ceased to hold his office.' "

Shri Jaspat Roy Kapoor : I do not desire that this very useful amendment should be defeated. I, therefore, beg leave of the House to withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : I shall then put Professor K.T. Shah's original amendment to the House.

The question is:

"That after clause (2) of article 103, the following new clause be added:—

'(2A) Any person who has once been appointed as Judge of any High Court or Supreme Court shall be debarred from any executive office under the Government of India or under that of any unit, or, unless he has resigned in writing in writing from his office as Judge, from being elected to a seat in either House of Parliament or in any State Legislature.' "

The amendment was negatived.

Mr. President : I shall put amendment No. 1845 as amended.

The question is:

"That in clause (3) of article 103, the following new sub-clause be added:—

(c) or is an eminent jurist.' "

The amendment was adopted.

Mr. President : The question is:

"That after sub-clause (b) of clause (3) of article 103, the following new sub-clause be inserted:

'(c) has been a Pleader in one or more District Courts for at least twelve years.' "

The amendment was negatived.

Mr. President : The question is:

"That after Explanation I to clause (3) of article 103, the following new Explanation be inserted and the subsequent Explanation be renumbered accordingly:—

'Explanation II.— In this clause District Court means a District Court which exercises or which before the commencement of this Constitution exercised jurisdiction in any district of the territory of India.' "

The amendment was negatived.

Mr. President : The question is:

"That in Explanation II to clause (3) of article 103, after the word 'advocate' wherever it occurs the words 'or a Pleader' be inserted, and for the words 'a person held judicial' the words 'such person held judicial' be substituted.' "

The amendment was negatived.

Mr. President : The question is:

"That in Explanation II to clause (3) after the words 'judicial office' the words 'not inferior to that of a district judge' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That in clause (4) of article 103, for the words 'supported by not less than two-thirds of the members present and voting has been presented to the president by both Houses of Parliament' the words 'by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That in clause (4) of article 103, after the word 'passed' the words 'after a Committee consisting of all the Judges of the Supreme Court had investigated the charge and reported on it to the President and' be inserted."

The amendment was negatived.

Mr. President : The question is:

"That in clause (4) of article 103, after the words 'not less than two-thirds' the words 'a majority' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in clause (6) of article 103, for the words 'a declaration' the words 'an affirmation or oath' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That clause (7) of article 103, be deleted."

The amendment was negatived.

Mr. President : The question is:

"That in clause (7) of article 103, after the words any 'authority' the words 'or shall hold any office of profit without the previous permission of the President' be inserted."

The amendment sad negatived.

Mr. President : I shall now put the article as a whole, as amended by the amendments which have been accepted.

The question is:

"That article 103, as amended, be adopted."

The motion was adopted.

Article 103, as amended, was added to the Constitution.

Article 103-A

Dr. P. K. Sen : I do not wish to be long in my observation on this amendment. As a matter of fact it will be remembered that when I was moving my amendment No. 1842, I did refer to this amendment also and to the principle that underlines it, namely, that the man who has held the office of a Judge should not be under the necessity of seeking office afterwards, and for that purpose wooing political parties and causes or other persons, and thereby lowering the dignity of the office which he has held. As a matter of fact, this has been touched upon at various stages of the debate to which we have just listened and I have nothing further to say except this that I do not see in the Constitution as it stands now any definite provision of this character and I think it is absolutely essential that a Judge should be precluded from trying to get some office or other after he has vacated office. For that reason this provision is important, especially in this country, where we have known of person having filled offices in the Judiciary and then in the Executive and then again in the Judiciary. This sort of thing should be stopped and for that reason I do move my amendment and I hope that the House will accept it.

Mr. Naziruddin Ahmed : But the amendment has not been formally moved!

Mr. President : He says he has moved it!

Dr. P.K. Sen : I have not actually moved it now. I read it out on the last occasion when I was referring to it while moving my amendment No. 1842. Sir, I therefore move formally:

"That after article 103, the following new article be inserted:—

'103-A. A person who is holding or has held the office of Judge of the Supreme Court shall not be eligible for appointment to any office of emolument under the Government of India or a State, other than that of the Chief Justice of India or the Chief Justice of a High Court:

Provided that the President may, with the consent of the Chief Justice of India, depute a Judge of the Supreme Court temporarily on other duties:

Provided further that this article shall not apply in relation to any appointment made and continuing while a proclamation of Emergency is in force, if such appointment is certified by the president to be necessary in the national interest.' "