

PARLIAMENT OF INDIA

RAJYA SABHA

DEPARTMENT RELATED PARLIAMENTARY STANDING COMMITTEE ON
PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE

THIRTY FOURTH REPORT

ON

THE HIGH COURT AND SUPREME COURT JUDGES
(SALARIES AND CONDITIONS OF SERVICE)
AMENDMENT BILL, 2008

(PRESENTED TO THE RAJYA SABHA ON 18TH FEBRUARY, 2009)
(LAID ON THE TABLE OF THE LOK SABHA ON 18TH FEBRUARY, 2009)

RAJYA SABHA SECRETARIAT
NEW DELHI
FEBRUARY, 2009/ MAGHA, 1930 (SAKA)

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COMPOSITION OF THE COMMITTEE (2008-09)
(Constituted on 5th August, 2008)

1. Dr. E.M. Sudarsana Natchiappan — Chairman

RAJYA SABHA

2. Smt. Jayanthi Natarajan
3. Dr. Abhishek Manu Singhvi
4. Shri Balavant *alias* Bal Apte
5. Dr. (Shrimati) Najma A. Heptulla
6. Shri Virendra Bhatia
7. Smt. Brinda Karat
8. Shri Tariq Anwar
9. Shri Ram Jethmalani
10. Sardar Tarlochan Singh

LOK SABHA

11. Shri Raj Babbar
12. Shri N.S.V. Chitthan
13. Shri Chhattar Singh Darbar
14. Smt. Tejasvini Gowda
15. Shri N.Y. Hanumanthappa
16. Shri S.K. Kharventhan
17. Shri A. Krishnaswamy
18. Dr. C. Krishnan
19. Shri Shailendra Kumar
20. Shri Harin Pathak
21. Shri Dahyabhai Vallabhbai Patel

22. Shri Varkala Radhakrishnan
23. Prof. M. Ramadass
24. Adv. P. Sathedevi
25. Shri Bhupendrasinh Solanki
26. Smt. Krishna Tirath
27. Shri Devendra Prasad Yadav
28. Shri Dharmendra Yadav
29. Vacant
30. Vacant

SECRETARIAT

Shri Sham Sher Singh, Joint Secretary


Shri K.P. Singh, Joint Director

Shri K.N. Earendra Kumar, Deputy Director

Smt. Niangkhanem Guite, Committee Officer

INTRODUCTION

I, The Chairman of the Standing Committee on Personnel, Public Grievances, Law and Justice, having been authorised by the Committee, present this Thirty-fourth Report of the Committee relating to the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill, 2008 (See Annexure A).

2. In pursuance of the rules relating to the Department-related Parliamentary Standing Committee, the Hon'ble Chairman, Rajya Sabha referred  the Bill, as introduced in the Lok Sabha on the 22nd December, 2008 to this Committee.

3. The Committee decided to issue Press Release in print, audio, visual and electronic media to solicit views/suggestions from interested individuals/organisations/ experts/institutions on the various provisions of the Bill. The Press Release appeared in print media on the 22nd January, 2008.

4. In response thereto, 38 memoranda containing the suggestions were received by the Committee which were subsequently forwarded to the Department of Justice, Ministry of Law and Justice for their comments thereon.

5. The Committee considered the Bill and heard the presentation of the Additional Secretary, Department of Justice, Ministry of Law and Justice and took oral evidence of Bar Council of India, the Supreme Court Bar Association and Rakshak Foundation to have better appreciation of the subject.

6. While considering the Bill, the Committee took note of the following documents/information placed before it:--

- (i) Background note on the Bill received from the Department of Justice;
- (ii) The High Court Judges (Salaries and Conditions of Service) Act, 1954;
- (iii) The Supreme Court Judges (Salaries and Condition of Service) Act, 1958;
- (iv) Views/suggestions tendered by the witnesses who appeared before the Committee;
- (v) Report of the Committee of Judges, Constituted by the Chief Justice of India on the salaries, allowances and other service conditions of Chief Justice of India and Judges of Supreme Court and Chief Justice of High Court and Judges of High Courts.
- (vi) Written submission received from the Delhi High Court;
- (vii) Written submissions received from the Bombay High Court (Aurangabad Bench); and
- (viii) Comments of the Ministry of Law and Justice on the views/suggestions contained in the memoranda submitted by individuals/organisations/experts on various provisions of the Bill.

7. The Committee held 4 meetings to discuss the Bill in details.
8. The Committee adopted the Report in its meeting held on the 16th February, 2009.
9. For the facility of reference and convenience, the observation and recommendations of the Committee have been printed in bold letters in the body of the Report.

New Delhi;
16th February, 2009

E. M. SUDARSANA NATCHIAPPAN

Chairman
Committee on Personnel,
Public Grievances, Law and Justice

REPORT

1.0. The High Court and Supreme Court Judges (Salaries and Conditions of Services) Amendment Bill, 2008 introduced in Lok Sabha on 22nd December, 2008 seeks to revise by increasing the (a) Salaries of Judges of the High Courts and the Supreme Court; (b) Doubling the existing rate of sumptuary allowance and scale of free furnishing admissible to the Judges; (c) Pension, additional pension and maximum pension of the Judges of the High Courts and the Supreme Court; and (d)

Additional quantum of pension and family pension as applicable in the case of the Central Government pensioners and family pensioners.

1.1. To attain the objective, the Bill seeks to amend the High Court Judges (Salaries and Conditions of Service) Act, 1954 and the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958 by substituting the word “thirty thousand rupees per mensem” with the word “ninety thousand rupees per mensem” and “twenty six thousand rupees per mensem” with the word “eighty thousand rupees per mensem” in Section 2 of the said relevant Acts. The Bill was referred by the Hon’ble Chairman, Rajya Sabha, in consultation with the Hon’ble Speaker, Lok Sabha to this Committee on 31st December, 2008 for examination and report on or before 15 February, 2009

1.2. The statement of objects and reasons appended to the Bill elucidate the reasons and the need for bringing forth the present Bill. It states as under:-

“The need to increase the salaries, allowances and pension of the Judges of Supreme Court and High Courts has been necessitated because of the increase in the salaries and allowances and pensions of the central Government employees on acceptance of the recommendations of the Sixth Central Pay Commission by the Government. The Bill also seeks to revise the rates of the sumptuary allowances and scale of free furnishing admissible to the Judges of the Supreme Court and High Courts by doubling the existing with effect from the 1st day of September, 2008”.

“The rates of pension of the Judges of the High Court and Supreme Court were last enhanced with effect from 1st January, 1996 by the High Court and Supreme Court Judges (Salaries and Conditions of Services) Amendment Act, 1998 and the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 2005. The Sixth Central Pay Commission recommended revision in the pensionary benefits of the Central Government employees

including the members of the All India Services. The revised pension rules have come into force on the 1st day of January, 2006. It is, therefore, necessary to increase suitably the existing pension, additional pension and maximum pension of the Judges of the High Court and the Supreme Court”.

1.3. The statement of objects and reasons further states:-

“Based on the recommendations of Sixth Central Pay Commission the Central Government has decided to grant additional quantum of pension and family pension with reference to the age of the Central Government pensioner and family pensioner. On the same analogy, it has been decided to extend the similar benefit to all retired Judges”.

1.4. While considering the Bill, the Committee decided to invite views/ suggestions from various individuals/organisations/stakeholders on the subject matter of the Bill. The Committee accordingly authorized the Secretariat to issue a press release for inviting views/suggestions on the Bill. Accordingly, the Secretariat issued a press release on the Bill on 22nd January, 2009 which was published in the major English and Hindi dailies and vernacular newspapers all over the country. In response, thereto, a number of representations/memoranda were received.

2.0. The major points raised in various representations/memoranda (total 51 memoranda) were considered and, a list of individuals/organisations who submitted the memoranda is at (***Annexure B***) are summarized as follows:-

(i) The Pay of Chief Justice of India is against his decorum. Now it is less than the pay of a Governor. While before it was Rs. 9000 when the pay of the President of India was Rs. 1000 i.e. 90%. But proposed pay is only 66.66%. An Advocate of High Court earns Rs. 1,00,000 per month. So a worthy and intelligent advocate will not come in Judiciary. This step deemed in public as to control and make pressure over the Judiciary.

- (ii) The salaries/ perks/ service condition of the judges can be increased based on their performances.
- (iii) The world is seeing such a recession because of which everybody everywhere is talking about job cuts and pay cuts, so it is highly strange that we are thinking about the pay and perks for the judges. But if we go ahead with the proposed pay and perk hikes, will they agree to disclose the property at the time of joining?
- (iv) The salaries/ perks of the judges should be increased on one condition that they must accept unconditional and full accountability to the people of this Democracy, Democratic Republic of India.
- (v) The Judges of the Supreme Court and the High Courts should declare their assets to the President of India and he/she should then release their full details for public information and scrutiny. Those who impose high standards of conduct on others should themselves also appear to follow them in their own lives.
- (vi) The retired Judges suffer from some ailment or disability after retirement and they are unable to drive their cars themselves. Hence, retired judges may be given Rs. 6000 per month for engaging a driver, Rs. 4000 as sumptuary allowance, 300 litres of petrol, 2000 free telephone calls.
- (vii) It is senseless to fulfill formality of inviting suggestions when the changes including salary hike listed in draft bill have already been affected through an ordinance. Any increase in salaries, pensions and other facilities of judges from higher courts should only be affected simultaneously with other pending bills concerning judiciary like 'Judges Inquiry Bill 2008'. Other aspects including reforms in judicial system like constitution of Nation Judicial Commission for appointment and probe of complaints of

Judges should also be taken simultaneously with bill about salary for judges. In view of recent controversy on declaration of wealth and assets by judges, provision for making wealth and assets of judges and their family members should be made public, rather provision of declaring gifts received by them and revealing personal expenses made above rupees 20000 should also be made. It may be noted that USA has a system where judges have to make their wealth and assets public apart from declaring received gifts worth above 50 US Dollars.

(viii) The salaries of Judges should be made very attractive. The enhanced salary and allowances are proposed to take effect from 1st September, 2008. There is no justification for this, particularly when the increase is being provided pursuant to the report of the Pay Commission.

(ix) Pay and Perks be correlated to performance and other higher services in the Government of India. These should not be arbitrarily increased, but correlated to the highest service in the Government.

(x) Every Judge should give full details of expenses for which allowances are allowed to him.

(xi) A healthy revision of 15% to 30% of salary hike of High Court and Supreme Court Judges is permissible for the Bill which is pending before the House. It would be necessary to trim and provide the economical luxury to High Court and Supreme Court Judges for the benefit of the nation.

(xii) Increasing the salary and improving the conditions of service of High Court and Supreme Court Judges is a welcome step which was long due in ensuring that the esteemed judges receive the requisite compensation for their hard work and service.

(xiii) This Bill in its present form seeks to increase the salary of judges

nearly threefold and pension amount almost 2 times, which is substantial by any standard and rarely seen in revision of Government pay scales or of any constitutional post. The Government must ensure that this increase in the salary ensures that the esteemed Judges are held responsible and do everything within their means to ensure the speedy and quality disposal of the cases before them. In response to the increase in salary and conditions of service, Hon'ble Judges must be held accountable and responsible to demonstrate their commitment towards the citizens of India by (a) reducing their own yearly vacation time; (b) reducing the number of adjournments per case; (c) restoring public trust in judicial system and integrity by declaring their total assets yearly (d) working towards clearing the huge backlog of cases before them.

(xiv) It is high time that the salaries of judges should be linked with the quality of judgments delivered. In our country, emphasis has always been on the quantity of cases disposed off by judges, but never on quality of judgments.

(xv) The annual increase in salary should be directly linked with the performance of each judge to be reviewed by the Judicial Commission. Since the information about the Act and rules that are sought to be amended is not available in Public Domain, we suggest that the existing and proposed cost to country of each judge is published and then the suggestions form public be invited and the contributors may please be invited to place their views before the Hon'ble Committee.

(xvi) Increase in salaries should be conditional on performance parameters. Scientific performance parameters/ quality audits should be the sole criteria for determining raises like cost to country per judgment etc

(xvii) The justification stated by Hon'ble Law Minister that the need to increase the salaries, allowances and pension of the judges of the Supreme Court and the High Courts has been necessitated because of the increase in the salaries and allowances and pensions of the Central Government employees on acceptance of the recommendations of the Sixth Central Pay Commission by the Government is totally ridiculous. Does this reasoning enough to give 300% salary hike to judges when the hard working central Government employees have been given merely 25% salary hike.

(xviii) Marginal hike may be given to the Judges at par with the Central Government employee and never with IAS or IPS etc. No hike to be given in the allowances. Pension to be provided on the similar pattern and rules as of central Government employees.

3. In order to be enlightened further on the issues involved in the Bill, the Secretary, Ministry of Law and Justice (Department of Justice) was requested to obtain the opinion/ view point of the Hon'ble Judges, Registrars, Registrar General of Supreme Court and High Courts for better and effective appraisal of the provisions of the Bill. In response thereto, the Committee received the comments/ views of the following:-

HON'BLE SUPREME COURT OF INDIA

“... Hon'ble the Chief Justice of India is in agreement with the recommendations of the Committee of Hon'ble Judges sent to Hon'ble Minister of Law and Justice and reiterates the same”.

HIGH COURT OF DELHI

3.1. “Not in a position to give any views in the matter”.

BOMBAY HIGH COURT (AURANGABAD BENCH)

3.2. "With reference to the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill, 2008, we are of the considered view that the pay structure envisaged under the proposed Bill is required to be in keeping with the suggestions of the Hon'ble Committee nominated by the Supreme Court of India. The recommendations of the Hon'ble Committee may be, therefore, implemented in letter and spirit.

3.3. We are of the view that Section 4 (2) (iii) and Section 4A of the High Court Judges (Conditions of Service) Act, 1954 require amendments. The outer limit for encashment of accumulated leave may be removed in context of the High Court Judges. The Judges of the High Court may be allowed to encash whole of the level to their credit at the time of retirement. The case of High Court Judges stands on totally different footings as compared to that of those covered under the All India Service (Leave) Rules, 1955. The employees of union or State, including the Judicial Officers working in the subordinate Courts and entitled to full pay and allowances for leave beyond 45 days. The High Court Judges, however, are entitled to full pay leave only upto 45 days. The subordinate Judicial Officers, in view of implementation of Shetty Commission Report, are entitled to encash leave at credit to the extent of 30 days in a given year. This facility is not available to the judges of the High Court. We recommend, therefore, following amendment in Section 4A:

3.4. The last sentence

"to the extent of the maximum period prescribed for encashment of such leave under the All India Service (Leave) Rules, 1955" be deleted from Section 4A.

3.5. The following section may be added by way of amendment:

"Section 4B : A Judge shall be entitled to encash the leave at his credit upto 45 days in each calendar year as per the availability of leave at his/

her credit."

4.0. The Committee, considered the background note submitted by the Ministry of Law and Justice (Department of Justice) which reads as follows:-

“The High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill, 2008 had been introduced in the Lok Sabha further to amend the High Court Judges (Salaries and Conditions of Service) Amendment Bill, 1954 and the Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill, 1958. Pursuant to the Sixth Central Pay Commission submitting its report to the Government, the Chief Justice of India constituted a Committee of three sitting Judges to recommend appropriate and revised salaries, allowances and other service conditions for the CJI, Judges of the Supreme Court and Chief Justices and Judges of the High Courts. CJI has suggested that this Committee’s report may be accepted by the Government and necessary orders be issued early to give effect to its recommendations. Hon’ble Minister of Law and Justice forwarded a copy of the letter from the Chief Justice of India with its enclosures to the Hon’ble Finance Minister for examination and comments of his Ministry. The Finance Minister vide his letter dated 08/10/2008 conveyed comments of his Ministry on the salaries, allowances and pension proposed in the report of the Committee of Judges. The salaries of Chief Justice of India and Judges of Supreme Court are prescribed in Section 12A of the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958 and that of Chief Justices and Judges of High Courts are prescribed in section 13A of High Court Judges (Salaries and Conditions of Service) Act, 1954 respectively. The Cabinet in its meeting held on 27th November 2008 had considered this Department’s note for the Cabinet dated 5th November 2008 and approved the proposals relating to revision in the salaries, house rent allowance, furnishing allowance and modified rates of sumptuary allowance etc of the Judges of the

Supreme Court and High Courts and pensions, gratuity etc, to retired Judges. To implement the decision of the Cabinet, a Bill namely “The High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill, 2008 was prepared and after securing approval of the President under Article 117 (1) of Constitution of India, the Bill was introduced in the Lok Sabha. The Bill, however, could not be taken up for consideration and passing in the Lok Sabha and meanwhile, both the Houses of Parliament have been prorogued. The Central Government Officers/ Staff are already drawing revised pay and enhanced pension etc, with retrospective effect on the basis of the recommendations of the 6th CPC, as accepted by the Government. The Judges of the Supreme Court and High Courts (both sitting and retired) have yet to get the revised salary, pension etc, that were approved by Government for want of an amendment in the relevant Acts. Keeping this in view, the Government has decided to bring an Ordinance to achieve the aforesaid objects”.

5.0. The Chief Justice of India / Chief Justice of High Courts and other Judges of the Supreme Court/ High Courts were getting the Salary of Rs.33,000/Rs.30,000 and Rs.30,000/Rs.26,000 per month respectively. Now, with the introduction of the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill, 2008, it seeks to amend section 12A of the Supreme Court (Salaries and Conditions of Service) Act, 1958 and section 13A of the High Court Judges (Salaries and Conditions of Service) Act, 1954 to substitute the words “ thirty-three thousand rupees per mensem” with the “one lakh rupees per mensem” and “thirty thousand rupees per mensem with the “ ninety thousand rupees per mensem” in the case of CJI/ Supreme Court Judges and to substitute the words “thirty thousand rupees per mensem” with the “ninety thousand rupees per mensem” and “ twenty-six thousand rupees per mensem with the “eighty thousand rupees per mensem” in the case of the Chief Justice of High Courts/ Judges of High Courts. The resultant increase in salaries would be as follows:-

SUPREME COURT

	Pre-revised	Revised
Chief Justice of India	Rs. 33,000 + DP	Rs. 1,00,000 p.m
For other Judges	Rs. 30,000 + DP	Rs. 90,000 p.m

HIGH COURT

	Pre-revised	Revised
Chief Justice	Rs. 30,000 + DP	Rs. 90,000 p.m
For other Judges	Rs. 26,000 + DP	Rs. 80,000 p.m

6. Similarly in case of pensioners, the Judges of Supreme Court and High Courts were earlier getting Dearness Relief equal to 50 percent of the pension which was merged with the pension and shown distinctly as Dearness Pension from 1st April, 2004. Now, the present bill seeks to amend section 16A of the Supreme Court Judges Act and section 17A of the High Court Judges Act by omitting the words “plus fifty per cent of his dearness pay” and “plus thirty percent of his dearness pay” from the section 16A and 17A and by inserting a new section 16B and 17B in the Supreme Court Judges Act and High Court Judges Act respectively. After this Amendment every retired Judge of the Supreme Court/ High Court or after their death, their family, as the case may be, shall be entitled to an additional quantum of pension or family pension in accordance with the following scale:-

Age of Pensioner or Family Pensioner	Additional Quantum of pension or family pension
From eighty years to less than eighty-five years	Twenty percent of basic pension of family pension
From eighty years to less than ninety years	Thirty percent of basic pension of family pension
From ninety years to less than	Forty percent of basic pension of

ninety-five years	family pension
From ninety-five years to less than hundred years	Fifty percent of basic pension of family pension
From hundred years or more	Hundred percent of basic pension of family pension

6.1. The Chief Justice of India/ Judges of the Supreme Court and the High Courts are entitled for rent free furnished accommodation or HRA of 30% of Pay per month (income tax free) in lieu of official residence in line with the recommendations of the Sixth Pay Commission.

7.0. The Chief Justices and Judges are required to hold periodical meetings with brother Judges, Judicial Officers and members of the Bar. Sumptuary allowance is paid to the Judges to entertain the guests at such meetings, with tea, snacks, etc. The rates of sumptuary allowance were last fixed in 2004. Keeping in view the increase in costs of such items and the number of dignitaries who call on the Chief Justice of India and the Judges of the Supreme Court and High Courts, especially in view of the globalization trends, the rate of sumptuary allowance is proposed to be revised. For this purpose the words “ plus thirty percent of the dearness pay” in section 23 of the Supreme Court Judges Act and section 22A of the High Court Judges Act has to be omitted and in section 23B of the Supreme Court Judges Act and in section 22C of the High Court Judges Act, the following is to be substituted :-

	Pre-revised	Revised
Chief Justice of India	Rs. 10,000	Rs. 20,000
Judges of the Supreme Court	Rs. 7,500	Rs. 15, 000
Chief Justice of the High Courts	Rs. 7,500	Rs. 15,000
Judges of the High Courts	Rs. 6,000	Rs. 12,000

DELIBERATIONS OF THE COMMITTEE

8.0. In the meeting held on 7th January, 2009, the Committee heard the presentation of Additional Secretary, Department of Justice. The Chairman of the Committee in its opening remarks made the following observation:-

“.....we find that there was news in the media that already an Ordinance has been promulgated for that purpose. Even then, since the Hon’ble Chairman of the Rajya Sabha has referred this Bill to this Committee, we are taking up this Bill for discussion. I hope, you have made this Ordinance on the basis of this Bill itself, and there is no change in that. Therefore, it will not be a futile exercise to go into it and then present a report to Parliament.

On the face of it, you have come forward with enhancement of salary to the different judges, High Courts and the Supreme Court, which is a very good effort. But, at the same time, we find that you are making some structured pension system. Is there in any other Department or any other services wherein this type of structured pension system is there because you are saying that when age goes up, you are increasing the pension structure also.

What we would like to know is the basis on which you have fixed their salaries. We would like to know whether there is any report given by the judiciary itself or you yourself have drawn inspiration from the Pay Commission recommendations. How have you come to the conclusion? Then only would we be able to study and understand. We would try to improve upon their salary and other things based on this study. Regarding MPs' salaries, there is no question; but the question is, the judicial officers are speaking outside that their salaries are very low as compared to the international judicial officers. We would like to know whether our judicial officers are at par with the international judicial officers. We do not want to make a recommendation without studying this aspect also. There could be guidelines for the future fixation of the salaries of the judges also. You know very well that they have a restriction with regard to

expressing their views. They can express their views only in the annual conferences or in their judgments. Instead of allowing them to express their views, why should we, the Members of Parliament, realise their needs and come out with certain recommendations? That is the effort of the Committee."

9.0. The Additional Secretary, Department of Justice, in her presentation before the Committee made the following observation:-

"...as regards the structured pension, we are following the same system as has been recommended in the Sixth Pay Commission. It has been done on the basis of, also, the number of years of individual so that there is an enhancement in the basic pension. If a person is between the age of 80 and 85, 85 and 90, 90 and 95, and, of course, 95-100, the increase goes on up to 50% of the basic of the pension. If the individual is above 100, it would be double. This is provided to bring them in line with the general spirit of the Pay Commission recommendations.

Sir, enhancement of the salary has been done in the basic spirit of the Pay Commission recommendations, not in the context of allowances. Allowances are something which are specific to the Supreme Court judges and the High Court judges. They have no parity at all with any of the Government servant. That is something which they are continued to enjoy and there is an enhancement depending on the increase in the general cost of living".

10.0. The Committee heard the views of Chairman, Bar Council of India in its meeting held on 28th January, 2009. In his opening remark, the Chairman of the Committee observed:

".....as you all know very well, judges are elevated from the Bar. They have the rich experience and as a member of the Bar, they contribute a lot in developing the legal system and other things. After going through this Bill, we find that a

structured pension system is given. This system is already in existence. On the basis of the basic rule, if a person has worked for at least for 14 or 15 years, he is entitled to 50 per cent additional pension. If this particular scale is applied to the members of the Bar who are elevated as judges, then, the persons who have worked for five years or seven years as High Court judge will be entitled to only 20 per cent of additional pension. That is why attraction towards this profession is nowadays going down. And if we do this, then, we feel that many of the legal luminaries will not choose this position. Therefore, there is a feeling amongst us that let us make it 50 per cent. We can give them even full provided that they do not go for any other job. If that is done, the system would work very well and corruption will soon be history. We feel that the salary system of judges should not be compared with that of the bureaucrats. Then only, this system will be able to address the need of the hour. Their way of working and perquisites are different. As regards the Judiciary, it is totally different. They work in completely different conditions. Again, they go back to the same position; only the cycle is completed. If they become the Supreme Court Judges, they have got no other opportunity except for having some position by way of the Chairman of a particular Statutory Committee or something like that. The average lifespan has increased. The normal age nowadays is 90 years. Therefore, we have to consider all these things. Kindly come out with some more ideas/suggestions, because we do not want to be very conservative in this aspect. We think the Judicial service is the best service people can join, with all peacefulness and without worrying about the financial aspect. They should not have the worry as to how their family will be looked after their demise. We think the Bar Council of India is the best forum which can air its views on this particular subject."

11.0. The Chairman, Bar Council of India then made the following observation:-

".....we would suggest that in order to attract talents from the Bar to join Judicial Service, the Judge's Salary, which has been fixed, requires further

enhancement so that a lawyer of good standing may choose to join Bar because these days what is happening is that the lawyers' with lucrative practice, even if offered, refuse to join the High Court judgeship. Therefore, though the salaries have been enhanced, yet I think, it should be further enhanced and it should be made tax-free. That would be the suggestion. So, Sir, so far as this aspect is concerned, the Bar Council of India has no objection in this regard.

We are seeing every day that our boys and girls who are coming out of the National Law Schools choose to go to corporate or other sectors. But they are not coming to the litigation. That is the whole trouble. Ninety-five per cent of them go for that. You see, Sir, in the beginning, a lawyer has to face great hardship. That is the known fact. There should be some legislation to attract all those boys who are coming out from these good schools and colleges, all meritorious boys. At our end, we are also going to put a check on it saying that 'look here, if you don't qualify like this, you can't be allowed to go for practice. You will be disallowed. There will be no licence.' We are proposing for that also. But be that what it may be, at present, talents, which are coming out from the schools, are not coming to join Bar. Unless they join Bar, how can they become a Judge? They remain there in the company from 8 a.m. to 8 p.m. They get a salary of Rupees one lakh just the next day. But our Judges are getting one lakh at the fag end of their career. Therefore, these young boys and girls choose to go there. So, there must be some legislation to attract those boys to come here. For example, in the beginning, they should be provided some facilities so that they may establish their office, etc”.

12.0. The Committee also heard the President, Supreme Court Bar Association on the provisions of the Bill. The Chairman of the Committee made the following observation:

“....that is what we cannot understand because when you make it proportionate,

a person who has been promoted from a District Judge to the High Court, his service as a District Judge is calculated for the purpose of pension. But, if a lawyer, who has been practising till that date, his practice is not counted for the purpose of pension. That is why, Bar members are not ready to become Judges. Someone cannot sacrifice his entire life's experience just like that. If a lawyer having a good practice in a High Court is elevated as Judge at the age of 58 years, then he will have only four years of service as Judge. And, after retirement, he cannot practise in the High Court; he will have to go to the Supreme Court. So, we have to understand their constraint also. In many cases, you have elevated lawyers at the age of 58 years. That means, they will serve only for four years as Judges. They cannot practice in the same High Court. They have to shift to Delhi, and shifting to Delhi is not an easy job. Therefore, you have to give a blanket 50 per cent pension”.

13.0. In his presentation the President, Supreme Court Bar Association stated that:

“....with respect to the Judges who are directly taken from the Bar, a situation arose in the case of Justice Kuldeep Singh. As you know, in the Supreme Court, we had only six Judges who were directly recruited from the Bar. Our Constitution prescribes three sources. First one, of course, is the High Court Judges coming to the Supreme Court; second is the eminent jurists where a Member of the Bar can be taken up, and, moreover, even an academician can become a Supreme Court Judge, although that has never been done. As far as the Members of the Bar are concerned, only six of them have become Judges. When Justice Kuldeep Singh retired, he was not getting full pension, and, in fact, on behalf of Justice Kuldeep Singh, I had the privilege of filing a Writ Petition in the Supreme Court wherein this issue, which you just mentioned, was taken up that a Member of the Bar who is directly recruited couldn't have sufficient number of years of service as a Judge. There are many who are District Judges,

who become High Court Judges and then come to the Supreme Court. Those who are High Court Judges, they would have sufficient number of years of service to get full pension. So, full pension must be given when you recruit someone directly from the Bar. It is well known that those whom you recruit directly from the Bar are really earning well. I do not know whether it is a correct criterion or not but having good practice is taken as a correct criterion for appointment as a Judge. So, there should not be any discrimination between them."

"He further informed the Committee that there was an association called the Retired Judges' Association in which the retired Judges of the Supreme Court and High Courts are Members. Justice Santosh Hegde was also another direct recruit to the Supreme Court. After he retired, an amendment came which gave him the benefit, but, because it has not been given retrospective effect, Justice Kuldeep Singh does not get its benefit. So, Justice Santosh Hegde, who retired subsequently, has got the benefit. The retired High Court Judges are asking for the same thing. They are speaking about the High Court Judges who are appointed as High Court Judges directly but do not go to the Supreme Court. There also, the discrimination is there between those who come from the District courts and those who are recruited directly. This Bill covers only the Supreme Court Judges and has a prospective effect, which only helps Justice Hegde and not Justice Kuldeep Singh. It is very, very necessary that we take care of this and I agree with the observation that you made with respect to the service that they render as Members of the Bar. At least, some part of it can be included and that will be good enough for them to see that they get full pension.

As far as the Supreme Court is concerned, from 1950 till today, there have been only six Judges who were directly recruited. There is not a single direct recruit Judge functioning in the Supreme Court today. So, the budgetary provisions are not going to be affected too much. So, I think, it should be done to

give full pension to those who are directly recruited. When you recruited them, you knew that they would not be having sufficient number of years of service to get the full pension, but you still decided to recruit them.

So, the amendments in respect of the Supreme Court Judges should be made applicable for the High Court Judges also and it should be given retrospective effect so that those who are not getting the full pension today become eligible for the same. This is with respect to the first point.

On the issue of equating a Supreme Court Judge with the Cabinet Secretary and a High Court Judge with a Secretary to the Government of India in terms of the salary which they get. He stated that the Statement of Objects and Reasons says that because we have increased the salaries of the Central Government employees, we are thinking of increasing the Judges' salaries. Otherwise, we all had forgotten Judges since 1996. They got it from 1.1.1996. After that, they were forgotten. And, it says, because of the Sixth Pay Commission, we are thinking of giving an increase.

The President, Supreme Court Bar Association then suggested that there should be a separate Pay Commission to look into the emoluments of the judiciary. It is not correct to equate a Supreme Court Judge with the Cabinet Secretary. I am not demeaning what the civil servants do for us. They are absolutely necessary; they are part of the system, and, we need them. However, in today's situation, with respect to the type of work that the Judges put in, I agree that there are many problems where you can make criticism, and, I will also join you because of certain things, which are happening in judiciary. When you are equating a High Court Judge with a Secretary to the Government of India -- of course, they also work hard -- I am sure that Judges do much more hard work than that. There is an impression about the Supreme Court Judges that they do not work as much as they should. But, I think, they really work very

hard. On Saturdays and Sundays, they do the work of readings of all the briefs.

He told the Committee that in present situation, where things have changed and a lot of responsibilities have come -- whether you may call it over-reacting or whatever -- the common man still has a lot of faith in our judiciary. Fortunately, the Chief Justice had appointed a three-Judge Committee comprising of Justice Kabir, Justice Ashok Bhan, and, Justice A.P. Shah, who was the Chief Justice of Madras High Court at that time, and, now he is the Chief Justice of Delhi High Court. This Committee made a recommendation, which the Chief Justice, finding it to be reasonable, forwarded to the Government. Now, when that Committee's recommendation is accepted, it really makes a difference of ten thousand rupees more to be given to the Judges.

The Committee was further informed that at the time of Independence, the salary of the Secretary to the Government of India was Rs. 3,000 p.m. and the salary of a High Court Judge was Rs. 3,500. At that time, the difference between the two was there. It is only in 1965 that the salary of the Secretary to the Government of India was increased to make it at par with the salary of the High Court Judge. It does not send a good signal when we say that they would be treated at par. As I said, I am not at all demeaning the contribution of the civil servants. You cannot function without them. But the High Court and the Supreme Court Judges are discharging functions, which perhaps the Cabinet Secretary or the Secretary to the Government of India is not discharging, or, is not empowered by the Constitution to discharge, and, is not factually doing. About the hard work, I won't say any thing. Of course, there are many Secretaries who are working very hard. The High Court Judges are now given Rs. 80,000/- p.m. and the Committee has recommended to make it Rs. 90,000/- p.m. Similarly, the Supreme Court Judges are given Rs. 90,000/- p.m. and the Committee has recommended to make it Rs. 1,00,000/- p.m. So, my submission is that this

linkage between the two should be stopped. Right now, this is reflected in the Statement of Objects and Reasons which says that because of the increase in salary of the Secretary to the Government of India, after the implementation of the Sixth Pay Commission, let us make the High Court Judge equivalent to the Secretary to the Government of India, and, make the Supreme Court Judge equivalent to the Cabinet Secretary.

Referring to the Statement of Objects and Reasons of the Bill, he stated that the statement mentions that the salary, allowances and pensions of the Judges of the Supreme Court and the High Courts were last revised w.e.f. 1st January, 1996 as per the High Court and Supreme Court Judges Salaries and Conditions of Service (Amendment) Act, 1998. Then, it says about the Sixth Pay Commission. So, probably, they did not increase it at the time of Fifth Pay Commission.

The Committee was further told that now, secretarial allowances are given to the retired Chief Justice of India and the Supreme Court Judges, but not to the retired High Court Judges. He then suggested that it should be applied to them also. You may give a little less than what you give to the retired Supreme Court Judges. And, now, retired Supreme Court Judges are given 1500 calls per month free and that Committee has recommended to make it double. But the retired High Court Judges are not getting this. These are all minor things in terms of revenue expenditure to the Government. But they do matter. We must respect people who have retired. They are told to come in the queue is not a good thing. I will be able to send you copy of both these writ petitions”.

14.0. While deposing before the Committee, the Director, Rakshak Foundation made the following observation:-

“.....anything that can be measured counts and can be improved, so, continuous performance measurement should be there. We believe that the four

metrics mentioned by us should be used. In metrics criteria one, we have given how to measure impartiality and integrity of judges. We have given some subtitles which can be used. In metrics two, we have mentioned how to measure expertise of judges, treatment and attitude of judges, etc.

Sir, the last point is about shortcomings of this Bill. One shortcoming is this. Attractive salaries are being given to judges, but there is no commitment for better performance, accountability, declaration of assets, etc. Also, it has not really taken into account the additional burden that will be incurred by the Government if 30 per cent vacancies, which are currently there in the high courts, get filled up. They have recommended that the number of judges be increased four-fold. If this is implemented, then, what will happen in terms of financial burden to the Government? These things need to be taken into account. Our prime focus is, 'yes', they must have better pay and perks, but, they must also, in turn, give us the assurance that there will be more speed and better efficiency. Certainly, one important thing is voluntarily reducing the vacation time and making themselves available to the general public under the RTI. I don't mean what their judgements are because they are already in the public domain. I mean to say that information about their assets and other personal information should be disclosed."

15.0. In his written submission Justice R. Jayasimha Babu, former Judge of High Court of Madras and Karnataka informed the Committee on the issues of retirement benefits to the permanent judges of High Court elevated from the Bar. He stated that:

"Judges of the High Courts are recruited either from the Bar (2/3rds to 3/4th of the strength of the Court) or from among persons in the cadre of District Judges or Judicial members of Tribunals (1/4th to 1/3rd the Strength of the court). The vast majority of those recruited from the Bar are 50 and over in age at the time of their appointment, more particularly in the Southern States. The age at which a member of

the Bar is offered appointment is not in the hands of the appointee. The appointment process is complex, and several factors, disclosed and undisclosed affect the time at which and the person to whom the appointment is offered.

15.1. The present Scale of pension in the schedule to the High Court Judges (salaries and Conditions of service) Act 1954, as amended from time to time, are so structured that District Judges elevated to the High Court despite their tenure on the High Court being very often less than five years, become eligible to draw the maximum pension, while those elevated from the Bar who have also put in 5 years as High Court Judges, are only given a minimum pension which is less than 1/3rd of the maximum pension. (The maximum pension under the Act as amended by Ordinance 1/2009 is Rs. 40,000/- per month. The minimum pension payable to those appointed from the Bar with less than 7 years service on the High Court is Rs.13,139/-per month)

15.2. For those appointed from the Bar the present Rules require minimum of 7 years of service to qualify for pension and require 14 years service to earn full pension. For those who have put in less than 7 years service – be it two years or 1 day short of 7 years, only the minimum is payable. (that minimum works out roughly to a deemed service of 4 1/2 years). The result is, on a rough estimate more than about 60 percent of those elevated to the High Court from the Bar cannot draw full pension despite their substantial period of service on the High Court.

15.3. Judges, on retirement cannot practice law in the States in which they served as Judges. As the initial appointment of the Judge is always in his/her home State- the state in which he or she will live after retirement- reentering practice is not a serious option. Only a handful can afford to practice at Delhi before the Supreme Court, that too without any assurance of success. Some do serve on Tribunals but their pension are deducted from their total emoluments, and their number is a small percentage of the total number of retired Judges. The vast majority of retired Judges have to live on their pension. Law practice - the only profession they know apart from being Judges-

not being an option. They cannot live a decent and dignified life unless a reasonable amount is paid to them by way of pension.

15.4. Preparation for Judgeship at the High Court can either be by way of practice at the Bar till elevation, or service in the subordinate Judiciary. Both service, and practice require knowledge of law. The long years of practice cannot be completely ignored for those elevated from the Bar, while each year of service in the subordinate Judiciary is counted for those appointed to the High Court from the subordinate Judiciary for the purpose of pension.

15.5. Those elevated from the Bar should at the least, be on par with those elevated from the subordinate Judiciary for purposes of pension, and both should be enabled to reach the maximum pension for a High Court Judge within five years of service as High Court Judge.

15.6. Comparison with the executive is wholly inapposite. There is no High Court Judges Service for which a person can apply and get recruited at age 25 or any other young age. It is only those who are mature, experienced and skilled in law, and who would have been well past middle age, that are suitable and capable of being efficient and learned Judges of the High Court. Their age at the time of appointment as High Court Judge is almost never below 45 and the median age is well above 50.

15.7. There is an urgent and compelling need to revise downward the number of years of service as High court Judge for earning the maximum pension. Even the 6th Pay Commission for Central Government Employees has reduced the number of years of service required to earn the maximum pension from 33 years to 20 years (perhaps the maximum age at the entry level and the mandatory age for retirement have been the criteria). Adopting the same proportion of reduction in the number of years of service, the number of years of service as High Court Judge to earn the Maximum pension has to be revised from 14 years to 8 years.

15.8. The law as it now stands, though apparently requiring 7 years of service to qualify for pension, and 14 years of service to qualify for maximum pension, is in fact, in practice different for those elevated to the High Court from the subordinate Judiciary, as each year of their service in the High Court is deemed to be service in the cadre in which they were serving prior to their elevation, with an additional allowance towards pension being added for each year of service in the High Court.

15.9. The result is persons elevated to the High Court from the subordinate Judiciary earn the maximum pension for a high court judge even though they serve for five years or less in the high court. In contrast persons elevated from the Bar do not qualify for even one half of the maximum pension even if they have served as High Court Judges for a period of up to seven years. Such Judges are paid a minimum pension, which is less than 1/3rd of the maximum pension.

15.10. It is to be remembered that there is no scale of pay for High Court Judges, –and Supreme Court Judges. All Judges in the High Court except the Chief Justice are entitled to the same pay irrespective of the number of years of their service. The pay for the new entrant is the same as that of most senior piscine Judge. All of them are possessed of the same powers. The jurisdiction in which they exercise that power is determined by the allocation of the work within the Court. All permanent Judges on their retirement are subject to the same restriction against law practice before the Courts in which they had served and before all other subordinate Courts and Tribunals all over the country.

15.11. The age at which one becomes a Judge of the High Court is dependent more upon luck than any other factor. The fact that the invitation to become a Judge is received, when one is past the age of 52 or 55 is not indicative of any lack of ability prior to that age. The requirement of a long period of service of 14 years to earn maximum pension only results in unjust denial of a well earned benefit to those who for no fault of theirs receive the invitation to become a Judge only after they have

crossed the age of 50, 52 or 55 years of age

15.12. The years of service required to earn the maximum pension, has therefore, in the interest of fairness and justice required to be reduced to five years or at best 8 years, if the reduction is required to be in the same proportion as has been done for Central Government Employees. Such reduction should be for all retired permanent Judges and the benefit of the same should be payable from 1-1-2006.

15.13. Retired High Court Judges need health care and assistance at home, on the same lines as those afforded by the Central Government to the retired Judges of the Supreme Court. Retired judges of the Supreme Court are now entitled to health care and medical reimbursement (attended to by the Supreme Court itself) on par with the serving Judges of the Supreme Court. Similar provisions are urgently required to be made for all retired Judges of the High Courts, as part of the High Court Judges Conditions of Service and Pension Rules, as there is at present great disparity in the extent of health care and medical disbursement, provided by the States. Old age and illness are close companions, and retired Judges of the High Courts should be enabled to lead a decent and dignified life with adequate health care. Retired Judges ought not to be subjected to the indignity of waiting in endless queues to see CGHS specialists. They should have the freedom, as serving Judges do, to go to Doctors/ Hospitals of their choice and obtain full reimbursement, even as retired Judges of the Supreme Court, and retired Judges of some High Courts, such as, the High Court of Andhra Pradesh, do.

15.14. Allowances now paid to the retired Supreme Court Judges for having the services of servant /driver, secretarial assistance is currently Rs. 14,000/-pm. Similar allowance for the retired Judge of the High Court, at Rs. 12000/-, should be paid by amending the High Court Judges` Condition of service Act/Rules, as there is at present wide disparity among the States with some of the state such Tamil nadu paying no allowance at all to the retired High Court Judges.

15.15. There is, as of now, no institutional mechanisms for determining what should be fair and just emoluments including pension and post retirement allowances and reimbursements, for Judges of the High Court and of the Supreme Court. The Pay Commission is for Government Employees and the Judicial Pay Commission is for members of the Subordinate Judiciary. The emoluments of the High Court and the Supreme Court Judges including pension etc., is now determined by bureaucrats who, naturally, regard themselves as the point of reference, and to whom it is apparently anathema to allow anyone outside their ranks to receive emoluments higher than what they receive. The result is Judges, in the calculations the executives, are made to become equivalent to some position in the executive hierarchy, and treated as if they are also members of the executive. To the executive which frequently is at the receiving end of the wrath of the courts in cases of illegal and unjust administrative actions, an objective recognition of the extremely important role of Judiciary in a Democracy with a written Constitution and guaranteed fundamental rights, is difficult to accomplish.

15.16. There is no rationale for making Judge's salary and pension dependent upon what some cadre in the bureaucracy receives as salary or as pension. The work and responsibility are vastly different. Judgeship of the High Court is a Constitutional position with enormous power and responsibility, while no position in the executive hierarchy is a constitutional one and is not vested with powers any where near to that exercised by the Judges of the High courts.

RECOMMENDATIONS

16.0. The Constitution of India mandates "Separation of Judiciary from Executive". Even though the Sixth Pay Commission Report has not been prepared by giving sufficient opportunity to them to explain the service conditions in Judiciary. The principle of application is made at par with Executive. The Judiciary and Finance Ministry are taking the adhoc

Committee's Report for fixing the salary and pension. The Committee therefore recommends to constitute a comprehensive National Judicial Service Commission on the basis of a Statue to have a permanent body to address these issues.

17.0. The Committee feels that all the suggestions/views expressed by the individuals/ experts/ stakeholders through their memoranda indicate towards the dire need for reforms in the Indian Judicial system, of which salaries, allowances and other perks are important constituents. Though the Government has proposed an increase in pension and other allowances to the Judiciary, through this legislation, there are certain other issues which need to be addressed simultaneously like huge accumulation of cases in the Supreme Court/ High Courts/ Subordinate Courts, vacancies of Judges, absence of infrastructural facilities, etc., which have posed greater challenges before the judiciary and have engaged attention of this Committee for quite sometime. The Committee therefore recommends that the Government should deal with these problems as part of judicial reforms and hope that the enhanced salary and allowances with these reforms may bring noticeable changes, both in the functioning of Judiciary and the perception of the people.

18.0. The Committee also recommends that the Government should immediately examine the feasibility of introducing the pattern of allowances and salary, applicable to the Judges of some advanced countries of the world by constituting National Judicial Service Commission with the powers to revise the salaries according to the service conditions and accountability.

19.0. The Committee makes a note of the suggestion/views expressed by the witnesses that only one-third Judges of High Courts enrolled from the Bar will become entitled to full pensionary benefits and similarly, many of the Judges of the Supreme Court inducted from the Bar do not get full pension, as they retire

before completing the qualifying period for full pension. The Committee is of the strong opinion that the differentiation between the Judges appointed direct from the Bar and promoted from State Judiciary need to be removed as the lawyer before elevation would have Income Tax Assessment to show on assessment of the income and expenditure and as per the Income Tax Act which should be taken into account for calculating full pension. The Committee feels that this is one of the reasons that talented legal persons are not joining or do not want to be elevated as judges of High Court and Supreme Court.

20.0. The Committee also feels that the post retirement benefits already given to the retired Judges of the Supreme Court are not given to the retired High Court Judges and due to this lot of problem are being faced by these High Court Judges. The Committee therefore recommends that Government should seriously look into the matter and extend basic facilities like medical, telephone, secretarial allowances etc to the retired High Court Judges by fixing a suitable quantum keeping their stature in mind.

21.0. The Committee has received lots of memoranda's from various Individuals/Organisation/Stakeholders wherein they have highlighted the issue of performance based salary structure, Accountability, corruption and other related issues. The Committee appreciates the concern shown by citizen's and recommends to the Government to immediately address issues appointing a Judicial Commission for the appointment of Judges of the High Court and Supreme Court, like increasing the age of Judges of High Court, revision of court fees in civil and criminal cases, Benches of Supreme Court, fill up the vacancies of Judges, pending cases, reference procedure recommended by the Committee in its 21st, 26th & 28th Reports etc other reports to improve and strengthen the entire judicial system in the country.

22.0. The Committee feels that the holidays to High Court and Supreme courts

should be at par with subordinate judiciary. As Bombay High Court (Aurangabad Bench) suggested “the subordinate judicial officers, in view of implementation of Shetty Commission Report are entitled to encash leave at credit to the extent of 30 days in a given year”. The Committee feels that this suggestion can be implemented in the case of High Court and Supreme Court Judges also.

23.0. The Committee recommends that the Government to constitute a Commission to go into the revenues through the Judicial system at the three levels such as Supreme Court, High Court and Subordinate Judiciary and create a system to balance revenue, expenditure and investment for this service industry.

24.0 The Committee, having regard to the explanation given by the Secretary, Department of Justice, and the statement of objects and reasons appended to the Bill, agrees with the proposals for increasing pension and other monetary benefits for judges of the Supreme Court and the High Court subject to the implementation of said recommendation for full pension instead of structured or scaled pension as proposed in the Bill. The Committee is optimist that Government would take into consideration the observations made by it in the preceding paras.

SUMMARY OF RECOMMENDATIONS OF THE COMMITTEE

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To be appended at printing stage

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