

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.

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 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 are 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 in 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 States are needless restrictions which reveal nothing except fear complex.