Transfer:— Now the power to transfer of the high court judges remains no more a method of control over the high court by the Union Government as the Supreme Court has prescribed a procedure for the purpose in a Reference[8] made by the President of India in exercise of his powers under Article 143. The Supreme Court opined that the Chief Justice of India should obtain the views of the Chief Justice of the high court from which the proposed transfer is to be effected as also that of the Chief Justice of the high court to which the transfer is to be effected (as was stated in the *Second Judges case* in 1993). The Chief Justice of India should also take into account the views of one or more Supreme Court judges who are in position to provide material which would assist in the process of deciding whether or not a proposed transfer should take place. These views should be expressed in writing and should be considered by CJI and the four senior most puisne judges of the Supreme Court. These views and those of each of the four senior most judges should be conveyed to the Government of India with the proposal of transfer.

What applies to the transfer of puisne judges of a high court applies as well to the transfer of the Chief Justice of a high court as a CJ of another high court except that in this case, only the views of one or more knowledgeable judges need be taken into account.

These factors, including the response of the high court Chief Justice or the puisne judge proposed to be transferred, to the proposal to transfer him, should be placed before the *collegium* — the CJI and his first four puisne judges — to be taken into account by it before reaching a final conclusion on the proposal.

(b) The constitution and organisation of high courts and the power to establish a common high court for two or more States and to extend the jurisdiction of a high court to, or to exclude its jurisdiction from, a Union Territory, are all exclusive powers of the Union Parliament.

It should be pointed out in the present context that there are some provisions introduced into the original Constitution by subsequent amendments, which affect the independence of high court judges, as compared with Supreme Court judges:

(a) Article 224 was introduced by substitution, in 1956, to provide for the appointment of additional judges to meet "any temporary increase in the business of a high court". An additional judge, so appointed, holds office for two years, but he may be made permanent at the end of that term. There is no such corresponding provision for the Supreme Court. It was introduced in the case of the high courts because of the problem of arrears of work, which was expected to disappear in the near future. Now that the problem of arrears has become a standing problem which is being met by the addition of more judges, there is no particular reason why the make-shift device of additional appointment should continue. The inherent vice of this latter device is that it keeps an additional judge on probation and under the tutelage of the Chief Justice as well as the Government[7] as to whether he would get a permanent appointment at the end of two years. So far as the judicial power of a high court judge is concerned, he ranks as an equal to every other member of a Bench and is not expected, according to any principle relating to the administration of justice, to "agree" with the Chief Justice or any other senior member of a Bench where his learning, conscience or wisdom dictates otherwise, or to stay his hands where the merits of a case require a judgment against the Government. The fear of losing his job on the expiry of two years obviously acts as an inarticulate obsession upon an additional judge.

(b) Similarly, clause (3) was inserted in Article 217 in 1963, giving the President, in consultation with the CJI, the final power to determine the age of high court judge, if any question is raised by any-body in that behalf. By the same amendment of