

भारत का राजपत्र
The Gazette of India

प्रसाधारण
EXTRAORDINARY

भाग II—खण्ड 2

PART II—Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 70] नई दिल्ली, शुक्रवार, दिसम्बर 8, 1972/अग्राहायणा 17, 1894
No. 70] NEW DELHI, FRIDAY, DECEMBER 8, 1972/AGRAHAYANA 17, 1894

इस भाग में निम्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation.

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 8th December, 1972:—

I

BILL NO. XXXII OF 1972

A Bill further to amend the Code of Criminal Procedure, 1898.

Be it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

1. This Act may be called the Code of Criminal Procedure (Amendment) Act, 1972. Short title.

6 of 1898. 2. In the proviso to sub-section (1) of section 421 of the Code of Criminal Procedure, 1898, the words and figures "presented under section 419" shall be omitted, Amendment of section 421,

STATEMENT OF OBJECTS AND REASONS

Under the existing proviso to section 421 (1) of the Code of Criminal Procedure, 1898, no appeal presented under section 419 can be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same. However, no such right is given to the appellant who is in jail and presents his petition of appeal under section 420. There is no reasonable basis for granting the right of addressing the Appellate Court to appellants under section 419 and refusing this right to appellants under section 420. The classification which the proviso to section 421 purports to make has no intelligible relation to the object sought to be achieved and the denial of right of being heard to appellants in Jail under section 420 violates article 14 of the Constitution of India inasmuch as equality before the law has been denied to those who do not possess means to engage a Counsel or who are not out of jail. The proviso to section 421 of the Code of Criminal Procedure which makes such an invidious distinction between appellants under section 419 and appellants under section 420 makes a classification on the basis of wealth and reduces a poor man's right of being heard in Appeal to a farce and mockery, and is also in conflict with the provisions of sections 418, 340 and 440 of the Code of Criminal Procedure. The consideration that the deletion of this provision for summary dismissal of Jail Appeals will greatly add to the work of the High Courts which already have a huge and alarming amount of arrears cannot be accepted as the valid reason for keeping on statute a provision which is *ultra vires* of the Constitution of India nor can it be an excuse for denying justice to a poor man specially when instances are not wanting that the High Courts after dismissing a jail appeal summarily later allowed it when it was filed through a Counsel. It is, therefore, proposed to amend the Code of Criminal Procedure so as to confer the right of being heard also on appellants presenting appeals under section 420.

ANAND NARAIN MULLA.

II

BILL No. XXIX OF 1972

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 1972.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In article 39 of the Constitution, after clause (f), the following clause shall be inserted namely:—

“(g) that conversion from one religion to another sought to be attained by threat, undue influence, allurement or wrongful inducement is not permitted.”

Short
title
and-com-
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ment.
Amend-
ment of
article
39.

STATEMENT OF OBJECTS AND REASONS

One of the Fundamental Rights enshrined in the Constitution is the right to profess, practice and propagate religion of one's choice.

Conversion from one religion to another done by free consent and will, cannot be questioned. But State protection is required where it is sought to be attained by threat, undue influence, allurement or wrongful inducement. The importance of providing this protection to persons belonging to the Scheduled Castes and Scheduled Tribes is all the more necessary and cannot be ignored. The policy of the State should be directed to achieve this aim.

Hence this Bill.

OM PRAKASH TYAGI.

BILL No. XXVIII OF 1972

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 1972.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. For article 220 of the Constitution the following article shall be substituted, namely:—

“220. No person who, after the commencement of this Constitution, has held office as a Judge or Additional Judge of a High Court shall plead or act in any court or before any authority in India except the Supreme Court and the other High Courts.”

3. After article 220 of the Constitution, the following article shall be inserted, namely:—

“220A. No person who, after the commencement of this Constitution, has held office as a Judge or Additional Judge of a High Court shall be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office”.

Short
title

and com-
mence-
ment.

Substitu-
tion of
article 22.

Restric-
tion on
practice

after
being a
Judge.

Insertion
of new
article
220A.

Prohibi-
tion

as to the
holding of
offices
after
being a
Judge.

STATEMENT OF OBJECTS AND REASONS

Our Constitution contains various safeguards to ensure the independence of Judges when they are in office but it provides none for this very independence in so far as it may be affected by prospects after their retirement. Appropriate provisions exist which debar the Comptroller and Auditor-General of India and the members of the Union and State Public Service Commissions from employment by the Union or the State Governments after their retirement but such provision does not exist in the case of High Court Judges where similar considerations do apply. Article 220 of the Constitution is only applicable to persons who have been permanent Judges of a High Court. It is essential that restriction on practice and prohibition as to holding of offices after retirement should also apply to a person who has worked as a Judge or Additional Judge of a High Court in India. It has happened, as a matter of fact, that a person working as an officiating Judge of a High Court, before confirmation resigned and started practice in that very court where he once sat as a Judge. Recently, a retired Judge of a High Court was appointed as a Governor of a State. Appointment of a retired High Court Judge as a Governor is not in keeping with the tradition of maintaining the independence of judiciary. The Law Commission has also testified that the existing provisions are not satisfactory and can affect judicial independence. Thus the proposed amendments are necessary for ensuring and strengthening judicial independence which is absolutely necessary for enforcing the Rule of Law.

Hence this Bill.

OM PRAKASH TYAGI.

BILL No. XXX OF 1972

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 1972. Short title and commencement.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. Insertion of new article 137 A.
2. After article 137 of the Constitution, the following new article shall be inserted, namely:— General Power of transfer and withdrawal of cases.

“137A. (1) Notwithstanding anything contained in this Chapter, Supreme Court may, in its discretion on an application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, at any stage, withdraw any suit, appeal, writ or other proceedings pending before a particular Judge or Judges of a High Court and

transfer the same to any other Judge or Judges of the same High Court or to any other High Court in the territory of India.

(2) Where any suit or proceeding has been transferred or withdrawn under clause (1), the Court which thereafter tries such suit or proceedings may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purpose of this article, the Courts of single Judge and Division Courts of the High Court shall be deemed to be subordinate to the Supreme Court,

STATEMENT OF OBJECTS AND REASONS

Our judicial system is based on the well known maxim that "Justice must not only be done but must appear to have been done". This maxim lays down a rule of conduct for the Judges that whenever there is a reasonable apprehension in the mind of a litigant that he would not get justice from a particular Judge then in that event the principles of natural justice demand that the particular Judge should not decide a particular matter. Even the Supreme Court (in A.I.R. 1965 Supreme Court 1303) has made a pointed reference to this elementary rule of natural justice. As the Law stands at present, general powers of transfer and withdrawal of proceedings pending in the District Courts vest in the High Court (*vide* Section 24 of the Code of Civil Procedure, 1908). But strangely enough no such provision exists for Judges of the High Court. No specific provisions exist for enabling the aggrieved parties to seek withdrawal and transfer of proceedings pending before High Court Judges even when sound and reasonable apprehension exists for the same.

It is, therefore, necessary that such a provision be made and power should be conferred upon the Supreme Court to transfer and withdraw proceedings pending before a Judge or Judges of High Court to any other Judge of the same High Court or to any other High Court. Such a provision would be fair to the Judges and to the litigants, thereby ensuring and strengthening judicial independence which is absolutely necessary for enforcing the Rule of Law.

Hence this Bill.

OM PRAKASH TYAGI.

B. N. BANERJEE,
Secretary.

