HALF-AN-HOUR DISCUSSION ON POINTS ARISING OUT OF THE ANSWER GIVEN ON THE 18TH JULY, 1977, TO STARRED QUESTION 4 REGARDING EXPEDITIOUS DISPOSAL OF CASES IN THE SUPREME COURT AND HIGH COURTS

SHRI S. W. DHABE (Maharashtra) : Sir, a question was asked on the 18th July, 1977, from the hon. Law Minister whether Government had taken any decision in regard to the steps to be taken for the expeditious disposal of the cases in the Supreme Court and High Courts; and if so, what were the details thereof. The reply was given in two paragraphs, saying that the existing vacancies in High Courts were proposed to be filled up expeditiously, and wherever necessary, the Judge strength of the High Courts would be increased. Then the supplementaries were asked and one of the questions put was whether the amendment of Article 226 of the Constitution, by which Tribunals were to be constituted, would be helpful in the quick disposal of cases in the High Courts. The reply given by the Law Minister was that the abolition of the jurisdiction of the High Courts would not be an answer to the problem of arrears. This would not help in disposal of cases expeditiously and therefore this amendment was not of much use. I presume, from this reply, that he meant that the existing legislation must continue under Articles 226 and 227 and the High Courts' jurisdition in all matters, including service matters, labour matters, social welfare matters, land reforms etc. must continue, as it was before the amendment of the Constitution. Sir, he has also said that streamlining of procedures would be done and an expert committee would look into the matter and if any suggestions were made on this matter, certainly they could be discussed. In this connection, I would like to point out the position today in various High Courts. In the reply given on 11th April, 1977, it is stated that the total number of cases which are pending are 5,57,430.

[The Vice-Chairman (Shri U. K. Lakshmana Gowda) in the Chair]

These are civil and criminal cases. Besides that, under Unstarred Question No. 1195 dated 22nd March, 1976, information was sought with regard to the number of writ petitions pending in the different High Courts for the years 1973, 1974 and 1975. Complete information was given up -to 1974, that pending writ petitions in the various High Courts were 77,482. I think this number is beside the 5 lakh odd civil and criminal cases mentioned in the reply given by the hon. Law Minister on 11th April 1977. Sir, this is a very important question, not at a political party level but a national question, as to how this matter should be disposed of with expedition.

In this connection it had been said by the Law Commission headed by Mr. Setalvad in its Fourteenth Re. port: —

> "Law's delays are proverbial and perhaps, as old as law itself. One reads of them in Herodotus. Complaints about them are at present being loudly voiced in Europe and America.
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> In an organized society, it is in the interest of the citizens as well as the State that the disputes which go to the law courts for adjudication, should be decided within a reasonable time, so as to give certainty and definiteness to right and obligations. If the course of a trial is inordinately long, the chances of miscarriage of justice and the expenses of litigation increase alike. Delays result in witnesses being unable to testify correctly to events Which may have faded in their memory, and sometimes in their being won oyer by the opponent. Relief granted to an aggrieved party after a lapse of years loses much of its value and sometimes becomes totally infructuous. Such is the basis of the ubiquity of the comment 'Justice delayed is justice denied'."

Sir, in this connection a further statement is given by the Law Minister that there are 67 vacancies. There is another statement previously made on the 26th July, 1977, about the sanctioned strength of the various High Courts and the number of vacancies therein . I find that the sanctioned strength of all the High Courts is 279 whereas the sanctioned strength of Additional Judges is only 72. I am certain that with '14 Judges in the Supreme Court which has got more that 11,000 cases pending today, according to the ratio which the Law Minister has given—that in a year only 650 cases can be disposed of—it will take years. At least according to my calculation, it will take in both these counts 20 to 25 years *to* dispose of all these cases. There are two sug-gestions given by Mr. Setalvad in the Law Commission Report. One is that the strength of Judges should be increased. I will come to that. My first suggestion in this connection is that the strength of Judges should be increased at least by 25 per cent. Sir, when we discuss the question of increasing the strength of Judges, the most important question which comes up is about their accommodation. Where are the law courts where they can sit with competent staff and a library? With the existing accommodation available in the Supreme Court and the High Courts, according to my knowledge and subject to' what the Law Minister will say, it will not be possible to accommodate more Judges and, therefore, more buildings will have to be constructed for the Supreme Court also more buildings will be needed because if they have 25 Judges it will not be possible for them to be accommodated in the present building. A new building will have to be constructed.

Now the very important matter we are talking about is the inordinate delay in the disposal of cases. Now-a-days we are also talking about decentralisation. Decentralisation must come in the Judiciary itself. The experiment of Benches of the High Courts has been most successful *in* our country. No Benches have been located at Nagpur, Lucknow and so many other places. And it has been the experience that if justice has .to go to the people, the principle has to be accepted that there must be decentralisation of Judiciary in administration of justice. Mere concentration of cases here in Delhi or elsewhere has no meaning. According to me, the time has come to implement the provisions of article 130 of the Constitution. It is provided in article 130 that "the Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint". Sir, some doubts were raised by the jurists and eminent lawyers in the Constituent Assembly that this article may be interpreted to mean that it should be only at Delhi and unless the Delhi place was changed, there would be no Benches. 1 would quote from page 383 of the Constituent Assembly Debates (Vol. VIII). Shri Jaspat Roy Kapoor had asked the question: "May I seek a small clarification from Dr. Ambedkar? Will it be open to the Supreme Court so long as it is sitting in Delhi, to have a circuit court anywhere else in this country simultaneously?" To this, Dr. B. R. Ambedkar had said: "Yes, certainly. A circuit court is only a Bench." I suggest, Sir, that the Supreme Court Benches should be constituted. It is not necessary to construct new buildings for the same. Coming from Nagpur, I know that there is a High Court building, a first class High Court building. It was a High Court building of an A Class State. There, four court rooms are utilised and four court rooms are already vacant. There are similar buildings at different places where the High Court seats were abolished, just like in Jaipur...

AN HON. MEMBER: Jaipur High Court has been restored.

SHRI S. W. DHABE: ... and so many other places. If a labourer has to come here from Kerala, it is very difficult. We know that justice has become so costly. Rs. 10,000 to Rs. 15,000 are the fees charged by the lawyers Rs. 1,600 per day. When they go to the lawyers, they charge Rs. 1,600 per day. How can you expect a poor journalist to afford it? I was surprised when Mr. Advani said on the question of interim wages that the workers getting Rs. 104 could go to a court of law. Now, how can you expect a journalist or a poor man to go to the Supreme Court and spend so much money on litigation?

SHRIMATI MARGARET ALVA (Karnataka): And the lawyers never stop arguing to get more fees.

SHRI S. W. DHABE: Therefore, my suggestion is that decentralisation must take place. Even in England, there are divisions of the courts. So my suggestion is that the Supreme Court must be decentralised and the Benches should be constituted accordingly. Nagpur is one of the ideal places for the Labour Bench. I would suggest similar Benches for Taxation and other matters in places like Bangalore or any place in North India. The experience that we have gained from the Benches is so good that it is not going to affect anything except the sophisticated thinking that the Judiciary must be at one place.

The second thing I want to say is that our experience today is that in the High Courts the labour matters have no precedence. Criminal cases under section 323 will have precedence, but the service and labour matters have no precedence. The result is that the writ petitions have been lying there for 10 years. I would like to suggest *to* the Law Minister that instructions should be given that Special Benches should be constituted and they should be asked to dispose of the matters, especially the labour mutters and the service matters.

The third thing I want to say is this. At present, under the land reform legislations, the surplus land must be given. Similarly, minimum wages must be given under the Minimum Wages Act. But the Calcutta High Court has given an injunction. So many cases have been filed by the landlords. So all such legislation have been stayed.

Then I want to say something about the welfare legislation which has come in the last five years. Thirty thousand cases against the land reform legislations are pending. If the Janata Party or the Law Minister is keen to dispose of these cases, something should be done and a way must be found how to tackle this problem. The only way is that they must get priority and there should be quick disposal of the cases.

Lastly, I want to say that there should not only be a competent Judi-ciary but there must be a competent Bar and the legal profession must be able to provide good Judges for manning the Judiciary—those who can be able to judge and those who have a liberal outlook and a social outlook to dispose of the cases. Unfortunately, the Supreme Court Bar today is composed of mainly retired Judges. The retired judges have crowded the Bar Association. There is a joke that if we throw a stone, it will only hit the retired judges. There are so many retired judges in the Supreme Court Bar Association for purpose of practice. I suggest that when the Law Minister is going to amend the Advocates Act, the retired judges should be debarred from practicing in the Supreme Court, which is a great hindrance for the development of the Bar Association.

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): There are quite a number of young lawyers now.

SHRIMATI MARGARET ALVA: Only the r\ld ones are going to the Tribunals.

SHRI S. W. DHABE: The last suggestion I want to make is this. The experience of the Union Government and the State Government Counsels is very dismal in this matter. A case was argued in a High Court. I had gone there. The Court had observed that from the beginning, from the first day—it was a case concerned with the journalists—even up to the stay order, the Union Government did not file a reply though it was the main party which had passed some interim order. I suggest that some cell must be created in the Department to find out why the Union Government specially is not filling returns. This is the reason for the delays in the courts.

Lastly, I would like to say a few words about legal aid to the poor. You may say anything about the Forty-Second Amendment. But the principles which have been included in the Forty-Second Amendment, secular democracy legal aid to poor, workers participation will go in the history, and we are in favour of it. To say today that the whole Forty-Second Amendment is wrong is absolutely illogical. It may be a political slogan of the Janata Party. I suggest that legal aid to the poor must be provided in the Supreme Court and the High Courts so that the matters can be disposed of with expedition. Thank you.

THE VICE-CHAIRMAN (SHRI *V.* K. LAKSHMANA GOWDA): This is a Half-an-Hour Discussion. The mover was given 10 minutes but he exceeded it. Now the Minister will reply. After that the other members will be strictly given five minutes each and then this will conclude after half an hour.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): Mr. Vice-Chairman, Sir, I am happy that this discussion is taking place on the question of the problem of arrears because there is no doubt that if there is the most serious problem that the entire system of administration of justice facing today, then it is the problem of arrears. Evidently it is on account of these arrears that delays take place in settling the disputes, and if delays take place in settling the disputes, the very purpose of settling them really becomes infructuous. If a person has a legal problem and somebody is contravening his legal right, unless he can have the redress within a reasonable time, hardly any purpose would be served by providing a procedure for redressal of grievances. I am entirely in agreement with the Hon. Member who has spoken on this Half-an-Hour Discussion, highlighting the problem of arrears pending in various courts. Now, Sir, as I submitted in this House on the last occasion when this matter was being discussed in answer to a question I had pointed out and I still maintain my view that the most important factor which is responsible for these delays in the High Courts and of these growing arrears in the High Courts is not having a sufficient judge strength in the various High Courts. Now, Sir, I would choose the Conference of the Chief Justices. The yardstick which has been uniformly accepted by every authority who has the experience of working in the High Courts, is that 650 cases per judge is a proper yardstick to be applied in determining the average. There are some big cases, there are some short cases and so on. The Judges may also sit on Benches; two Judges may sit on a Bench for hearing a case. But the over-all calculation is that the total number of cases that are decided by a High Court Judge in one year results in an average of 650.

SHRI S. W. DHABE: I am not saying that they are not working. They are working very well.

SHRI SHANTI BHUSHAN: 650 cases per Judge per year are considered as proper and reasonable rate

[Shri Shanti Bhushan] of disposal and of working. Every year we know how many cases are being instituted. Of course, it is always possible to engage in wishful thinking. All right. Why should the number of cases instituted should be so large. Of course, there are various factors responsible for the increase in the number of cases which I had listed on the last occasion—increase in the population, various legislations being enacted by which the existing rights and liabilities of the people are being altered and so on. Rights and liabilities of people must be altered if the society is to become progressive. We have to come forward with progressive legislations. We cannot allow a static policy to go on; we cannot allow the landlords, the vested interests and so on to go on. Therefore, laws have to be enacted for the purpose of changing the legal structure, changing or altering the rights and liabilities of people. And whenever such laws are enacted, obviously there will have to be a machinery to enforce those laws. And they will also raise disputes on the interpretation of the law, on the working of the law, on the finding of facts on which the law should be applied. Evidently there will have to be a machinery to decide those disputes which can naturally be the law courts. Now, the hon. Member has suggested—before I come to these figures, I would refer to the suggestion that he has made, which is included in- the 42nd amendment— "why not create some tribunals? Transfer the jurisdiction of the High Courts to these tribunals and your problem of arrears is solved." The question that I had posed before the House on the last occasion was: Would these tribunals be manner by some robot to be imported from somewhere? They would ' also have to be manned by human beings, the same human beings who ate trained in the art of understanding as to what the dispute is, in ascertaining facts, in sifting the truth from falsehood, in coming to a conclusion and thereafter applying the law to that dispute and passing a judgment. Evidently you endeavour or you are supposed to. endeavour to find the best talent for making appointments to the High Court. And evidently the exercise which you will have to make would be the same kind of exercise for making appointments to these tribunals.

SHRI S. W. DHABE: I agree that the problem may be the same

SHRI SHANTI BHUSHAN: The problem would remain the same. Only instead of High Courts, you would transfer these arrears to other courts which will be called tribunals. It is not by tinkering with the problem in this manner that you will solve it. May be then you can come to the House and say "The arrears in the High Courts have been brought down from 1,20,000 to 70,000, and 50,000 cases are pending before the tribunals". Ultimately the question is . . .

SHRI L. R. NAIK (Karnataka): Summary disposal should be adopted for them. That will be the solution.

SHRI SHANTI BHUSHAN: Quite right. That is the whole question. Now, what does "summary disposal" mean? If it means some kind of a toss, some kind of an ill-considered decision, evidently I am certain that the hon. Member himself will come forward making complaints—"what is this? The case is being decided wrongly." Of course, every judge is expected to do his best and he' is also expected to come to a conclusion as quickly as he can. But as I' said, there are judges and judges. On the last occasion some people took offence when I also referred to the hon. Members in the Opposition. I said that I found that the hon. Members in the Opposition were very quick. Some offence was taken and it was said that I had been guilty of saying something wrong. In fact, I wanted to pay a compliment. I was thinking I should'

not make the same mistake of paying a compliment lest it should be mis understood. I have not the slightest in tention to show any disrespect to any hon. Member. If anyone has properly read as to what I have said, it is quite clear that I have not meant any dis respect to anybody. What I was say ing was, there will be judges and jud ges. You cannot have all Einsteins. You cannot have all persons who would be as sharp as Shri Bhupesh Gupta. I would have liked to be as sharp as Shri Bhupesh Gupta but, after all, God has not given me the same gifts as He has bestowed on Shri Bhupesh Gupta. So it is a gift of God. Therefore I have to suffer from that handicap. So the endeavour is to And people who can do the work as quickly as possible. Of course, if lawyers voluntarily try to be more helpful, they may also shorten their arguments. It was said by the hon. lady member—I have great respect for the hon. lady member that lawyers keep on arguing for days and days in order to earn more fees. But I find that lawyers in this House, without the attraction of more fees, keep on arguing and arguing. So it is quite clear that it is not a question of the attraction of more fees. Even leaving all that attraction of fanciful fees, Rs. 3,400 per appearance and so on. Members here want to keep on arguing and arguing, as I am showing by my example.

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): Also if a lawyer becomes the Law Minister the half-an hour discussion becomes a one-hour discussion.

SHRI SHANTI BHUSHAN: I am in entire agreement with you. Therefore, that is the failing. And I find that those who are not lawyers....

SHRI BHUPESH GUPTA: Our problem is, when the lawyers and ladies both appear on the scene, whom to be attracted by.

SHRI SHANTI BHUSHAN: Exactly. Now I find that other hon. Members who do not happen to be lawyers, keep on advancing such attractive arguments that we get charmed and we keep on listening. And particularly when those honourable Members happen to be lady Members and they advance such attractive arguments and they make such beautiful speeches, then the House goes on and on and half-an-hour discussion may become half-a-month discussion. So, what I was saying was I got these figures worked out and I found that by applying this yardstick of 650 cases per judge the following is the requirement. We know that in these High Courts so many cases were instituted in 1976. Therefore, if you apply the yardstick of 650, what would be the normal strength which would be able to cope with as many cases which are being instituted everyday, as would get disposed of the same day, so that arrears would not go on increasing? In fact, there would be a decrease in the arrears. Then what would be the strength? And what would he the strength when the arrears go on decreasing? I found you need extra strength for all this—by working out at 650 cases per judge. Take, for instance, the Karnataka High Court. The sanctioned strength is 17—14 permanent and 3 additional; the total sanctioned strength is 17. And I find that by applying this yardstick of 650 cases per judge, the number of cases which were instituted in the High Court in 1976 would require 33 judges. Whether they are permanent or additional that does not make any difference, because that is only a matter of appel-lation; otherwise they dispose of the same quantity of work. So a strength of 33 judges would be required to keep pace with the institutions everyday. If you want to liquidate the arrears, first of all the strength of 17 must be raised to 33,. Moreover, you will have to have some extra strength in order to clear the backlog. It is a question of calculation, how many judges you should have for how many years to

[Shri Shanti Bhushan]

order to clear the backlog, by which time that backlog would be cleared. For clearing the backlog some extra strength would be required. This is the problem. And now, it is true that before the Constitution was enacted, most of the High Courts, except some, did not have this very useful writ jurisdiction. At that time whatever the Government did was final, because so many Acts were passed providing, 'Any order of the Government under this Act shall not be questioned in any court", with the result, right or wrong, whatever the Government did or said became final. Nobody could discuss it. But it was not a healthy state of affairs. Government should not have the arbitrary power of passing any order which cannot be questioned in any court of law. That was the problem which the Constitution-makers had in mind, and therefore they created the writ jurisdiction by Article 226 and they said, all right, normally courts may be bound; they may not be given the jurisdiction to sit in judgment over the actions of the Government; but there must be a duly constituted court of high order, High Courts and the Supreme Court, which should be capable of sitting in judgment over every action of the Government. Therefore, constitutional jurisdiction was created which should not be taken away by enactment by legislature. Therefore, Article 226 has been a very healthy provision and it had its effect; because naturally if the Government knows that its actions are going to be challenged and can be challenged and some court will pronounce judgment upon its actions, that itself would be a factor which would induce the Government to at least try and act in a reasonable manner, not in an arbitrary manner and so on. Therefore, it is a very important jurisdiction.

(interruption) Now, Sir, the judges' strength which was there before the Constitution was not able to cope with this increased load; population was growing; laws were also growing and every law which is enacted creates new problems, and so on. It is true and I do agree an assessment was attempted. I do not say that the Governments in the past were not concious of this problem and did not take any steps to solve this problem. Of course they appointed various committees, they appointed a Law Commission. The Law Commission went into the matter. Thereafter the arrears committee was there.

The Shah Committee gave a report in 1972. There have been very useful exercises. My only point is this. I say with the utmost humility that it is true that those Law Commissions and Committees went into the matter very deeply and came forward with their Reports and all that. But this is not one thing which could be done. Various improvements can be made and other things can be done. But while we may do all these things, they can only have a marginal effect. Otherwise, it will be a wishful thinking. If you think that you can make such a drastic or such revolutionary change in the structure of law in the country and say, "All right. Litigation will come down immediately, automatically.", then I would say that it is wishful thinking and my complaint is that this was not fully realised. I may be wrong in my assessment. But this is my well-considered assessment that it was not fully realised that unless you keep the Judges' strength at a particular level, unless you have a strength of a proper order, unless you are also willing to give more Judges, etc, the problem of arrears cannot be solved. Till them this problem cannot be solved and we propose, this Government proposes, to work On those lines. Then, Sir, the problem of court rooms was pointed out. It was asked as to what all happened to this question? After all, the buildings are there. But may I say a word here? It is not the court rooms which make the courts. It is the calibre, the integrity, the honesty, the uprightness, the intellectual rati-

bre, etc., of the Judges which make the court. Such a Judge will dispose of a case even sitting under a tree, under a neem tree. It is the calibre of a Judge, it is the competence of a Judge and it is also the competence of the Bar, which are important. These are the things which determine the quality of the judgment. So, it is not that the court rooms should be air conditioned, should be big, all very-august and so on. I have got experi ence of arguing cases even in the Cham bers of the Judges sometimes, because there was no room available or because the Judge was not able to come to the court room. In such cases, the Judge sits in his Chamber and hears the counsel for both the parties and even the client is allowed to come in. At that time, Sir, the Chamber becomes the court room. Take, for instance, the Allahabad High Court. There are about forty Judges sitting in the Allahabad High Court and there are 40 Chambers. Even when all the Judges are sitting in the Court—let us take it that all are occupied—forty Chambers are vacant and the Judges can sit there and dispose of cases and the cases are disposed of in the Cham bers as well as they are disposed of in the courts. It does not make any difference. Of course, the lawyers will have to go down and up and so on. There are certain varieties of cases in which bringing the lawyers at one and the same time is not required, cases like the single Judge cases, some criminal cases and such other things, and they can be heard quickly. So, what I am saying is that the problem is going to be there so long as you have not cleared the backlog. Once that is done, then the Judges' strength will come down and then you may be required to increase the strength to the extent necessary to cope with the institution. In other words, the magnitude of the problem is going to be there only so long as the back log has not been cleared. We can find out the methods for tackling this problem if there is good-will from all sides and if there is un-derstanding on all sides. I do not think that the problem if this country are insurmountable. Of course, the problems are gigantic and they require efforts and co-operation from all sides and we require co-operation from all sides to solve the gigantic problems of this country. It is one of the gigantic problems in the country that the sys-tem of justice is facing such stresses and strains. But goodwill from all sides and cooperation from all sides can help in solving this problem and I am sure that, with these, steps can be taken in a realistic manner by which the various problems can be solved. This is what I would like to submit. Then, Sir, certain things were said about the Supreme Court Benches.

THE VICE CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): I would like to tell the honourable Minister that he may speak after some more speakers— because there are a few—have put their questions.

SHRI SHANTI BHUSHAN: I would like to submit that the time map be extended by a few more minutes because some points have been "aised about the Benches of the Supreme Court, etc.

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): Just a minute. There are six Members who want to speak. I would suggest that they be brief and they put the questions. After all of them have put their questions, the Minister may take note of those questions and then answer.

SHRI SHANTI BHUSHAN: All right, Sir.

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): Yes, Mr. Havanur.

SHRI L. G. HAVANUR (Karnataka): Sir, today is the most momentous day in my life in this august House. I say this because, although I made my efforts to speak on the 3rd of this month here on the working of the judiciary, the honourable Chairman, that is, the presiding officer,

[Shri *L.* G. Havanur] precluded me from proceeding further with my speech on the ground that my speech was some what irrelevant, in spite of the fact that, myself being a lawyer of at least 25 years' standing at the Bar, I know what statements or what facts are relevant or irrelevant, and having had the experience in this. House for at least ten days, I thought that what I spoke would be considered as relevant by this honourable House and the Chairman. 6 p.m.

The hon. Minister of Law. and Justice will appreciate me when I say —because I belong to his fraternity—that I shall not be irrelevant, so far as this topic is concerned and I beseech the indulgence of the hon. Chairman to bear with me to speak on this topic for a time more than what is actually allotted to me. Now, Sir...

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): This is half-an-hour discussion. There are five or six more speakers. I would request you to confine yourself on this particular subject, and be as brief as possible. You will probably have some other opportunity to raise the other issues which you have in mind.

SHRI KALP NATH RAI (Uttar Pradesh): He should be given a chance. He has got some relevant points.

SHRI L. G. HAVANUR: I am one of the youngest Members of this hon. House. So the Vice Chairman would, I hope, have some consideration for me. Even so, I have *no* regrets. I shall have occasion to speak much more for a much more time later on. Now, coming to the point, Sir, the hon. Minister of Law and Justice referred *to* the strength of the High Court of Karnataka, saying that the permanent strength of that High Court is 14 plus 3 additional posts, in the aggregate the strength being 17. I would like to ask the hon. Minister what is the number of vacancies presently, and what is the mode of recruitment to those posts? I have had the opportunity of practising in the High Court of Karnataka for at least 15 years. And I know that the present Chief Justice has deliberately raised Ministrial controversy with the State Government, so that his recommendation should be accepted by the Central Government bypassing the State Government. My submission is that two appointments made during his regime belong to his own caste. There have been allegations about this which appeared in the Press—in the daily Press and in weekly periodicals—accusing the present Chief Justice of Karnataka of nepotism, casteism,. favouritism...

(Interruptions) DR. RAMKRIPAL SINHA (Bihar): Sir, on a point of order. The hon. Member is discussing the acts; of ommissions and commissions of a Judge. Is it permitted in the House to discuss the acts of omissions and commissions of a sitting Chief Justice?

THE VICE-CHAIRMAN (SHRI U.K. LAKSHMANA GOWDA): The Deputy Chairman the other day here ruled and said that you need not make particular references to the Judiciary. When you are here raising some points, I would suggest that whatever you want to mention, you mention with regard to the particular half-an-hour discussion, so that we can ask the Law Minister to reply, and one or two grievances he will be in a position to take care of.

SHRI L. G. HAVANUR: I am com-to the point. What I have stated about ing to the point. What I have stated about the vacancies is not outside the point...

(Interruptions)

I again come to the point. I have brought paper cuttings. Writ petitions have been filed against the present Chief Justice of Karnataka * * * for fabricating evidence for Communalism, nepotism, etc. Writ petitions have been filed; Statements have been issued. In my own case, when I was the Chairman of the backward Classes Commission .....

(Interruptions) SHRI SHANTI BHUSHAN: On a point of order. Is it a discussion on the conduct of a Judge?

(Interruptions)

***Expunged as ordered by the Chair.

SHRI L. G. HAVANUR: The present Chief Justice is motivated to enter into a controversy ....

(Interruptions)

DR. RAMKRIPAL SINHA: Are we discussing the conduct of Judges. This is an aspersion on a sitting Judge. He is not entitled to make it.

SHRI L. G. HAVANUR: His recommendation should be straightaway rejected by the Central Government. He is making out a case. I know his mental make-up. He was a colleague of mine at the Bar.'

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): Mr. Havanur, Article 121 of the Constitution says:

> "No discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judgeas hereinafter provided."

Anyway, you have made your point with regard to the Karnataka . High Court. . Now, I would suggest that you. mention your point and close so that we can go ahead.

SHRI L. G. HAVANUR: Article 121 says "in the discharge of his duties". We are precluded from discussing Judges when they are dispensing justice. The Chief Justice made that recommendation as an administrative head and not as a Judge. The conduct of a particular person when he is making a recommendation is not the conduct of a Judge".

THE VICE-CHAIRMAN (SHRI U.K. LAKSHMANA GOWDA): Anyway, you have made your point. Your time is up. Kindly conclude.

DR. RAMKRIPAL SINHA: On a point of order, Sir. My point of order is that this is half-an-hour discussion and according to the rules of this House, a Member, with your previous permission, may put a question. Can he deliver a long speech? I will draw your attention to the relevant rules regarding the half-an-hour discussion.

(Interruptions)

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): In the half-an-hour discussion, the mover was given 10 minutes. We suggested that others should speak for five minutes. In so far as he is concerned, he has been speaking for five minutes. Any. way, I suggest that his time is up. He may kindly conclude and let us call the other Members. Otherwise, it would not be half-an-hour discussion. It would be half a-dozen-hours discussion.

SHRI KALP NATH RAI: Kindly give him five minutes more.

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA); Not five minutes. I will give him one more minute.

SHRI L. G.. HAVANUR: The conduct of. the Chief Justice*** was discussed in both the Houses of Karnataka legislature. My hon. friend should know that I am an advocate of at least 25 years' standing and I know what is provided in. article 121. My submission is that this, august House is representative, in the sense that it draws people from all sections, of the society. The High Court should also reflect the society that We have. It should be a representative institution. My suggestion is that since the Karnataka High Court is headed by a particular type of man, a man of a particular social-background, we cannot respect that particular Chief Justice. The composi-

***Expunged as ordered by the Chair.

[Shri L. G. Havanur]

tion of the High Court should be representative of all the people. There are no Muslim Judges on the Bench. There is not even one Christian Judge. There are no backward class Judges. It is composed of only one or two communities and it is hundred per cent communal, at least in its strength and in its capacity. It should not be composed of a single caste. I resent it very much. What I say is that if a particular institution is composed of one or two or three castes, that institution becomes a communal institution. To see that it does not become communal and there is no casteism in the institution, it should be representative of all segments, I expect a favourable reply from the hon. Minister, and keeping my allegations against the present Chief Justice in view, he should see that justice is done to our High Court. And the present Chief Justice has brought the Karnataka judiciary into disrespect...

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): Let us not go into that. You have made your point.

SHRI L. G. HAVANUR; We had the illustrious men like of Chief Justice Das Gupta, Chief Justice Honurable Gowda, Chief Justice Somnath Iyer, Chief Justice Narayan Pai, Chief Justice Sadasivayya. We had acquired a great reputation. After June, 1973, we have lost the reputation because I know, Sir, I belong to the Bar. .... .

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): Any reference to the Judges will have to be expunged, Mr. Havanur. So, please wind up now.

SHRI L. G. HAVANUR: As the hon. Minister knows....

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA) : I am calling Mrs. Margaret Alva. You have made your point. Now, Mrs. Margaret Alva.

SHRIMATI MARGARET ALVA: Mr. Vice-Chairman, Sir**,** the question of the functioning of the judiciary has been the subject not only of questions in the House but also of discussion, as it is now. It reflects the great concern which we feel about the various trends, which we notice creeping into the judiciary in this country. Sir, much has been said about the judiciary and its role in a changing society and its capacity to respond to the new challenges that it faces over the years. My friend has just raised something about Karnataka. I do not wish to go into any controversy. But I would certainly like to say that it does not reflect very well on the judiciary if instead of doing the work and spending more time for clearing the backlog which the hon. Minister has been saying over and over again that it is increasing, they get involved into political controversies and come out with statements. This really does not prove in any way that the judiciary is independent of political pressures one way or the other or that it is really maintaining its independence. Sir, much has been said that we, at least, the Congress Government, tried to interfere in the functioning of the judiciary because of the 42nd Amendment. Therefore, there are a few points which I would like to place before the Minister for his reply.

Sir, as the saying goes, justice delayed is justice denied. And, therefore, the backlog of cases which the Minister himself has admitted during the Question Hour over the last two sessions is something which is causing great concern to everybody in the country. I would, therefore, like to make a few suggestions and I would request the Minister to please see whether these could be considered. Sir, there is in this country a very ancient custom of justice being meted out at the gram panchayat level. Even today we do have at the local level tribunals which do dispense justice. Since the Janata Government has been talking so much about decentralising the industry, decentralising the things and taking the industry to the villages, taking every thing back to the villages, I would plead with the Law Minister to think of taking justice to the villa-

gers rather than making our poor people come to the towns and cities. Specially, Sir, I speak about the people from the South who come from thousands of miles and hang around the corridors of the Supreme Court without knowing the local language, without having anybody to help, and depending on the lawrears who, as I have said earlier, charge exorbitant fees at the Supreme Court level. Therefore, to these people justice has become nothing but a doctrine which is talked about and which is, perhaps, debated and not really given to them. Sir, the 42nd Amendment has certain very positive measures which it has introduced. One of them and about which I would like to speak is the free legal aid. I am a practising lawyer though, perhaps, not as well known as our Law Minister is, but in a small way, in my own way. But we do realise the problems of those who are not able to pay the legal fees, the have-nots, who really form 80 per cent of the population of this country. And I feel that we are committed to give them a way by which they may get justice without having to sell whatever they have. They do not get justice because they do not afford to pay the legal fees. Then, Sir, the question of tribunals is there. The Law Minister seems to be adverse to the idea of setting up of tribunals. I also raised this matter during question-time recently. We are not trying to say that just by instituting tribunals you can solve a problem. But our question is that if there is a backlog of so many thousands of cases which include different types of matters, why should there not be tribunals for, say, service matters or similar other types of cases? Therefore, instead of having this bottle-neck at a particular level if you try and have different tribunals dealing with specialised matters, there can be simultaneous disposal of many cases through these tribunals. Specialised tribunals dealing with these cases would certainly help to break this bottleneck and it can be ensured that justice is more quickly given to those who seek it. In this connection we can have labour tribunals service tribunals and even in the case of land reforms we can have similar tribunals. I would go even further and say that even in family matters the divorce and other things we could have such tribunals so that justice could be made esaily available.

In regard to the Fortysecond Amendment, there was a point regarding, curtailing of unnecessary stages of litigation. *(Time Bell rings).* I want one more minute, Sir. In order to curtail unnecessary stages in litigation, we were not asking for cutting out different jurisdictions of courts. But if you have to go to three or four courts before you reach the Supreme Court, it becomes absolutely an exercise in which lawyers make money and the result is that the poor client becomes bankrupt. If a matter can go just from one lower court to a High Court, cutting out one or two other intermediary jurisdictions, it will help a great deal in tackling with the problem of mounting arrears. I feel that very often there is no need to go to the High Court and a case can directly go to the Supreme Court and thus a matter can be settled faster; or, may be, there is no need to go to a High Court; certainly two courts can decide a matter. It is not necessary that a right decision must be thrown out by three courts before you get the final decision. I think this is something which should be considered in the interests of justice.

Then, Sir, I come to the question of filling up of vacancies. The Minister' has himself admitted that when he took over office there were 63 vacancies but last week he told me that there are 67 vacancies. So, in spite of his best efforts there are many Benches which are packed with old men with the result that they are retiring all the time. Therefore, I feel that the Law Minister should do something to see that these vacancies are filled. Please think of younger people so that you do not have the problem of filling up-of vacancies[1] every year.

AN HON. MEMBER: Like you.

SHRIMATI MARGARET ALVA: Secondly, Sir, you know in advance when a judge is to retire, you know his date of birth in advance. Why don't you take steps to fill up these vacancies one year in advance instead of *allowing* them to remain vacant? My Government too should have done it. Plan one year ahead. You know such and such people are going to retire. Prepare a panel and decide two months in advance who is going to fill up that vacancy. Why do you wait for him to retire first and then say a vacancy has occurred?

SHRI L. G. HAVANUR: In the case of Karnataka let that be done after the retirement of the present Chief Justice.

SHRIMATI MARGARET ALVA: This is my another suggestion. A panel should be prepared before a Judge retires. I would request our dynamic Law Minister to see that the gap between the retirement of a Judge and a new appointment in his place should not take more than one month. That would be a test of efficiency of the Law Ministry as well as of the Government.

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): I hope you have finished all your points.

'{Time bell *rings)*

SHRIMATI MARGARET ALVA: I am about to finish everything because I am afraid of you. In Delhi there are three vacancies and a backlog of 25,000 cases. Even in Delhi it takes you so long to fill up these vacancies; others are far off places. Here, right under your nose, these vacancies are there and 25,000 cases are pending.

Then, Sir, I would say that when you fill up these vacancies, let them not be politioal appointments. Find out people who are efficient, who are good, who are not camp followers, who really will be able to do a good job and really do justice to their work on the Benches. Then, perhaps, it would be easier to find people to fill up these vacancies.

DR. RAMKRIPAL SINHA: Now, you are not a member of the committee which selects judges.

SHRIMATI MARGARET ALVA: The Jana Sangh will get its representation on the Benches, do not worry.

AN HON. MEMBER; Do not have trust in any judges; they are all turncoats. *(Interruptions)*

SHRIMATI MARGARET ALVA: Now, you are setting up so many commissions. Why are these commissions being set up? Are they sources for rehabilitating retired judges, rehabilitating people? Many of them you are taking from High Court Benchesh and apointing them. I do not know why. You said Benches should be expanded. Now you have decided to have a commission *raj* I suggest that you set up a whole new service for commissions alone, have a recruitment policy where in it will be provided who will head your commissions and let these commissions not interfere with the normal functioning of justice in our courts and do not take other High Court judges to do these jobs. And then there is one last point which again, I know, you are very much opposed to. I am talking about the All-India Judicial Service. You have it in the Administration; you have it in every other field. I do not see why we think that the judges in this country cannot feel that they also are Indians and should be able to move around to different parts of the country. I do not see why a lawyer from Karnataka is not good enough to be a judge in another court at some other place, or a lawyer from Delhi cannot go to Allahabad. An officer of the Administrative Service can go from here to Cape Comorin or somewhere else. Why should the Judges be not appointed to different courts? I feel, a common recruitment policy—I raised it the other day—and a common Judicial Service, without class distinction of Class I or Class II

etc. with a certain all-India pay-scale which could be worked out according to local conditions, should be set up.

And then I want to make this request—you cannot stop me on this point—on the question of representation of women. I am very glad that..

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): In the first instance, it is very difficult to stop women from talking; particularly when they are talking about women, this becomes much more difficult.

SHRIMATI MARGARET ALVA: I just want to say that you said the other day that two women had been appointed to the Calcutta High Court. I would certainly like to say that the panel was prepared before you took over...

SHRI SHANTI BHUSHAN: No.

SHRIMATI MARGARET ALVO: ... but I do hope that you will continue this practice. I feel that the backlog will be reduced very much if you put more women because they are more serious when they are on the Bench or they are arguing. But as you said, partly there are not more judges on the Bench and the male lawyers want to argue a little longer and thus create a backlog of cases. I would suggest that you set a time limit for disposal of matters in the courts. A time limit between the first hearing and its final disposal should be set so that indefinite adjournments leading to all sorts of delays can be avoided and justice can be dispensed a little more efficiently. These are some of the suggestions. I would have liked to say something more but I do not want to take more time and I would like the hon. Minister to please consider these points and not make all the suggestions of the 42nd Amendment just a political issue and say that because they were brought in that light, they are no good. Discussions have taken place; Bar Associations have approved. As far as the question about transfer of judges is concerned, whatever you may say, I think there is a need for it because we lawyers see very often that you take a person from the Bar and put him on the Bench and if he has his own likes and dislikes, then the rest of us are finished for the rest of our life. I do not see why they should not be able to move around and get a chance to go to other courts as well.

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): Dr. M. R. Vyas—Not here. Mr. Nanda now. I will request him to be brief.

SHRI NARASINGHA PRASAD NANDA (Orissa): Mr. Vice-Chairman, Sir, in the course of his reply, the hon. Minister referred to some of the remarks made on the 18th while replying to Starred Question No. 4 and he said that his remarks were misunderstood by some of the Members. Sir, I really admire Mr. Shanti Bhushan for making 2 reference to it but if I say that some Ministers in the Council of Ministers at the Centre are wise and some are knave, how will you take it? Of course, in his buoyancy he made that statement, I do not know whether he really intended it but it only meant that some Members in the opposition are wise and some are foolish, of course, taken in a lighter vein it means nothing but I think such a statement as a whole could have been avoided. New. Sir, I welcome some of the statements made by him and I submit that in April the vacancies were 64 and in July, the vacancies were 67. According to his own analysis and diagnosis of the disease of arrears and pendency of cases in the Supreme Court and in the High Court, the judge-strength was less and, therefore, this backlog is there. Now, the pendency as on 31st December, 1976. was 5,57,413. It has now exceeded 6 lakhs. On that day in the Delhi High Court, the pendency was 22,000 odd. Now, the pendency is over 25.000. The sanctioned strength of the Delhi High Court is 18 permanent judges and three additional judges. The Delhi High Court has five service judges, out of whom two are from outside.

[Shri Narasingha Prasad Nanda]

I have no objection, in principle, to judges being brought from other States. But of the five service judges at least two are from outside. That means, three are from Delhi. The judges from the subordinate judiciary do not get any chance of promotion. I have worked it out and I find that promotion is given to only about 40 per cent of the judges from the service cadre. Therefore, they do not have the necessary incentive. I think something has to be done in this regard also to give proper incentives to the judges from the subordinate judiciary. If, among the subordinate judiciary, there are efficient and competent people, they should be promoted as High Court judges. In fact, we have seen that many Supreme Court judges who are doing very well have been promoted from the subordinate judiciary. I would like to give some examples. Justice H. R. Khanna was at one time Sessions Judge in Punjab. Justice Sar-Karia started his career as a subordinate judge. Similarly, Justice Singhal started his career as a civil judge. There are many such instances. I could even cite the example of Justice Jagmohanlal Sinha who delivered that udgement. He was also a district judge and he was a promotee judge in the High Court. Therefore, my point is, sufficient efforts should be made to give incentive to subordinate judiciary. The hon. Law Minister has diagnosed the disease and he has found that all these backlogs or arrears are primarily due to the vacancies in the High Courts. He has also said that the judge strength is not as much as it should be, and by way of an example, he said about the Karnataka High Court where the sanctioned strength is 14 plus three additional judges. This comes to 17. But their requirement is 33. Similarly, if you work out the requirement of judges in each High Court taking into considera— tion the quota of disposal fixed by the Chief Justices' Conference, namely, 650 per year, we find that the judge strength in each High Court has to be increased every year. This is because the arrears go on mounting up. This is a constant problem. Every year, we cannot go on speaking about this. It should not remain a mere plantitude. It is necessary that efforts should be made to tackle this problem of arrears and this can only be done by appointing suitable number of judges. In this connection—I am concluding; I would not take much time—I would like to point out one thing. I could not understand one thing which the hon. Law Minister said in the course of his answers the other day. He said that proper judges were not appointed. I could not really understand what he meant by the words 'proper judges'. For the appointment of judges, there is a specific provision in the Constitution. Certain minimum qualifications must be there. Firstly, a recommendation is made by the State Government in consultation with the Chief Justice of the concerned High Court. Then, the appointment is made. All this is known to the hon. Law Minister. The same procedure had been followed. Therefore, when he made this observation that proper judges were not appointed, I felt that he was having a dig. There was some political overtone in the reply given by the hon. Law Minister. I would expect, a gentleman like Mr. Shanti Bhushan who now occupies the office of the Law Minister not to make such statements. Being a lawyer himself, he knows how many interpretations can be made of a particular statement, of a particular word. One would at least expect Mr. Shanti Bhushan not to say such things which will directly or indirectly minimise the importance of the judiciary and which would mean that the judges who were appointed were incompetent or incapable. Such meanings should not be derived. There should not be scope for such interpretations. Therefore, the hon. Law Minister should try to increase the judge strength in every high court and at the same time give sufficient representation to the members of the subordinate judiciary, amongst whom we find a number of competent and good officers who will be able to man the Benches.

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): Shri L. R. Naik. You are the last speaker. You will take about two or three minutes.

SHRI L. R. NAIK: I will speak only for two minutes or three minutes. I can promise you about that.

I want to ask some questions with regard to the agrarian reforms in this country. As you are aware, the Indian National Congress is committed to bringing about agrarian reforms in this country as these reforms fill benefit nearly 70 to 80 per cent of the people of this country. You, can therefore imagine the magnitude of the work involved if you are to implement them. With regard to this subject, I want to draw the attention of the hon. Law Minister to the working of the Land Reforms Act in Karnataka.

The Land (Reforms Act in Karnataka, which is called the Land Reforms Act of 1965, as amended by Act 1 of 1974, has three or four important provisions. One is that all agricultural tenancies stand abloished. There will be no more tenants. The second Is that all the existing tenants becomes owners of the land. The third is that the ceiling on the land which a family could own is defined and if there is more land than the ceiling, it becomes a surplus land and that surplus land vests in Government. When it vests in Government, 50 per cent of it should go to the members of the Scheduled Castes and Scheduled Tribes and the remaining 50 per cent to the 'have-nots' of the Karnataka State. So you can imagine the magnitude of the work involved in this.

For this purpose, Sir, the Government of Karnataka have appointed, as many as 175 Land Tribunals at the rate of at least one for each taluks. If we go into the powers given to those Tribunals, we find that their decision has been made final and it cannot be Questioned in any court of law. With this objective in view, this Act has also been placed under the Ninth Schedule of the Constitution of India. That is the law. Now, Sir, what is happening? There are about 5 lakh poor tenants involved in this. They are to be made the owners of land. These 175 Tribunals have now decided narly 50 to 60 per cent of the cases. Despite this fact there are large numbers of tenants on whom occupancy rights have been conferred have ceased to be beneficiaries as writ petitions are being preferred in the High Court and the High Court is accepting them. I am told that there are more than 20,000 to 25,000 writ petition pending in the High Court of Karnataka for the last two years. My party is committed to bringing this legislation and to implement it expeditiously for the advancement of the poorest section of our society. But they are facing a serious problem because most of these writ petitions have not been disposed of by the High Court.

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): What is your suggestion?

SHRI L.*R*. NAIK: My suggestion therefore is that the 42nd Constitution (Amendment) Act which has provided that Article 226 should be deleted should not be repealed so that these writ petitions should be taken away from the High Courts and entrusted to District Land Tribunals to be constituted for the purpose and where decisions on revision petitions preferred against Taluka Land Tribunals should be considered as Anal not questionable in any court of law. Now, Sir, I am sure the hon. Minister is committed to bring about agrarian reforms in this country. I do not know what policy the Janata Party has formulated in this matter but I know personally the Law Minister is interested in bringing about agrarian reforms. But, Sir, If he were to repeal the 42nd Constitution Amendment Act as for as provisions relating to doing with writ petitions

[Shri L. R. Naik] will he not be harming the cause of the downtrodden people of our coun-try? I would like therefore to ask the Law Minister, through you, Sir, to give a reply to this question.

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): Mr. Law Minister. Perhaps you could also be brief.

SHRI SHANTI BHUSHAN: Mr. Vice-Chairman, Sir, I wish I had the capacity of Shrimati Margaret Alva to put things so beautifully, so briefly and yet so effectively. I wish the entire Bar in the country could be like her when the problem of arrears could have got solved automatically by itself.

SHRIMATI MARGARET ALVA: I think the Law Minister should put more women on the Government panel, Sir.

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): Anyway, she has suggested that there should be more women lawyers in the country.

SHRI SHANTI BHUSHAN: Sir, 1 will try to be very brief. Now, she has first, unfortunately, referred to that controversy about the Karna taka Chief Justice's statement. May I just very briefly say that it ap pears from the facts that the Chief Justice had no intention to malign any specific Judges? There was an occasion because a Judge a very emi nent Judge, happened to die and when a Judge dies there is a reference to (that Judge in many High Courts,—that is traditional—speeches are made, and that Judge, while deciding a case, had said in his judgement that politics and influence had *no* place within the precincts of a court hall.

SHARIMATI MARGARET ALVA: Sir, let me tell you that Mr. Noronha was the Judge who died. Nowhere on the records had he left the names of any political people who tried to influence him. Two or three months after he is dead the Chief Justice gives the names of two Ministers who tried to influence him.

SHRI SHANTI BHUSHAN: You are quite right that he did not leave the names of the Minister anywhere on the record. You are quite right. I am accepting that you are quite right there. But he did leave a sentence in his judg ment, which was a tell-tale sentence. Evidently a Judge does not say in his judgement about" politics and influence not being permitted inside the court hall. If he did this unusual thing in his judgement, it clearly shows that in that case.. .. *(Interruption)*.... It he wanted to malign any specific Mini sters, he would have named them in that very judgement. Otherwise no body got maligned because, if he did not name them obviously nobody got maligned. Therefore, only because unfortunately there was a controversy raised in the Council and a demand was made of him that he should name those Ministers, then he said that he would disclose the names to the Law Minister all right. There was a de-mand here and I would remind honourable Shri Bhupesh Gupta that he said. 'Yes, ask him and take this House into confidence." So I had to write to him asking for the names' because before Justice Noronha died he told the names to the Chief Justice and he had to send those names to me and I disclosed them in the other House and this House so that the circumstances make it clear that he did not have the intention. He only wanted to pay a tribute to the memory of late Jusitce Noronha for his independence and for his not succumbing to any kind of pressure.

SHRI. L. G. HAVANUR: He did not make any reference at the time of Justice Noronha's retirement when a farewell party was arranged. But he comes out with this when the Central

Government comes into the hands of the Janata Party. It is politically motivated.

SHRI SHANTI BHUSHAN; All that I can say is, it has been traditional in this country to reserve the biggest tributes after a man has departed for the other world. Now, Sir, I will first take up the points raised by honourable Shrimati Margaret Alva. First she said that the 42nd Amendment of the Constitution should not be made a political issue. I entirely agree with her that the 42nd Constitution Amendment should not be made a political issue and at least I and my Party—I feel—have no intention of making it a political issue now. Of course, it became a political issue during the period of emergency. But we do not want to make it a political issue. We only want to study it and have a look at it only from the point of view of the future of the Constitution of the country, the future of democracy in this country.

Then a point was made regarding Justice at Gram Panchayat level. Certainly, it is a very admirable idea. There can be no quarrel about it. Certainly, it is something which should be examind and which should be implemented. Of course, it has to be a good scheme, a proper scheme, a work-able scheme. I would welcome help from any direction in that regard. Then she said something regarding legal aid. Certainly, that is an absolute must if there has to be a system of Justice.

SHRI S. W. DHABE: I said that the Central Government is not giving legal aid to the poor.

SHRI SHANTI BHUSHAN: I will dealt with that also. So far as the legal aid is concerned, as I said, it is a must. We have to evolve a system. Of course, it is not an easy task. Currently there is a committee consisting of two Supreme Court judges which is going to submit a report very soon. In fact, the term of that committee was extended in order to enable them to complete their report and send it to us. I am sure it would contain very valuable suggestions. Of course, it is a gigantic problem, for, if merely for the purpose of decoration, a legal aid scheme is brought, it does not serve any purpose. Unless the legal aid scheme is such that it covers the entire country and all the poor people, whenever they have any legal problem, without spending any money, can have recourse to it, it would not be a pro. per scheme. So the financial implications have to be examined. Perhaps, the lawyers can play an important role to keep the financial implications within bounds, and so on. After the financial implications are examined certainly it must be tackled—and it will be tackled; the Janata Party is committed to it.

Then, so far as tribunals are concerned, *I* want to reassure the hon. Lady Member that I have no kind of allergy to tribunals. Tribunals are there; tribunals will be there. The only question is whether tribunals should substitute High Courts. It is there that a difference of opinion arises. My own feeling is that the people have faith in the independence of the High Courts. Of course, the Supreme Court, as the hon. Members put it, is quite inaccessible in most of the cases. It can be approached only in very important cases in which the parties can afford the luxury.

AN HON. MEMBER: By the rich people.

SHRI SHANTI BHUSHAN: That is right. That is certainly so at the present moment. It is quite inaccessible to most of the people. Therefore, the High Courts have to be the hub of the dispensation of justice. At least in the High Courts the people have the faith that even if the lower courts do something in a wrong way, the High Courts would do things in the right way. Therefore, the High Court juris-

[Shri Shanti Bhushan]

diction has to be there. That is my feeling; and that is the feeling of mv party. But, at the same time, the role of tribunals cannot be ruled out. Tribunals are there for the labour disputes. There is no intention to abolish these tribunals. The only controversy is about the High Court, the independence of which is guaranteed—traditionally they have been independent— and in which the people have confidence. Tribunals can be created here and there. Some time you may be able to create a very good tribunal, which may enjoy the same confidence as the High Court; but there is no guarantee because it will depend upon Government and Government and people and people. Therefore, the whole question is that if the administration of justice has to enjoy the full confidence of the people, then the role of the High Courts cannot be decreased.

Then so far as the family courts are concerned, again, it is a very welcome suggestion and something has got to be done on these lines. More thought can be devoted to all these things.

Again, the avoidance of the unnecessary stages in litigation is a very admirable idea. Of course, to a great extent, things have been done in that direction. Perhaps, a little more can be done. But there is one thing. The suggestion that was made, that in every case an appeal may be provided to the High Court, is perhaps not a practical one. As far as the civilised world is concerned, there is broadly a three-tier system. First is the trial court in which evidence can be taken and things can be investigated, etc. Of course, the witnesses have to come there and give evidence. Then there Is a court of appeal in which the evidence based on facts should be reexamined. If some mistake has been there, then there must be recourse to another court. The third is the Stage only to show that the courts are functioning in accordance with the laws broadly under the Continental system. Once I had happened to visit a large number of countries in the Middle East and Europe and I found that most of them have these three stages and the three stages are exhausted within one year, from the date of commencement of a case in a trial court up to the decision in the highest court, i.*e.* the third court. That is the ideal which is required to be achieved in this country. So unnecessary changes, I agree, should be avoided. Then, on the need of filling up of vacancies quickly and in advance, I am entirely in agreement. In fact, in 1969 when I was the Advocate General of Uttar Pradesh, action was initiated one year before before a vacancy fell vacant. That was the case. Of course, the announcement cannot be made much in advance-Otherwise, the lawyer would be embarrassed and would not be able to appear in the court and so on and even the District Judge would be embarrassed. But the procedure laid down is that initiation must be done before 6 months by the Chief Justice. Of course, this has not been kept up in practice. We would try to take more initiative. So far the position was that this initiative was being left to the Chief Justice and the State Governments. The Central Government's responsibility was that when the proposals were received, then the Central Government would proceed in the matter. We want to go a step further. Even if the Chief Justice and the State Governments are not doing what is expected of them under the procedure, we intend to keep reminding them that they have not sent, asking them to send and so on. We are trying an hope to achieve that, and after some We should be able to announce about the appointments even before the vacancies arise.

Then, on the question of filling up of vacancies by younger people. I am entirely in agreement again. In fact, I have a weakness for younger people. Not that I am young; I am very old. Still the whole question is: How much young? If people are appointed very

young, say at the age of 35 or so, they would become stale, they would be. *come* bored continuing sitting in the High Courts on the same chair etc. for 27 years and so on. This august House and the other august House are places which are more attractive to talented people than perhaps that position in the bar and so on.

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): Even in this House of Elders, we have a large percentage of younger Members.

SHRI SHANTI BHUSHAN: Yes, younger people. Then it was said that there were three vacancies in Delhi.

AN HON. MEMBER; There is not a single old man in the House to listen to you.

SHRI BHUPESH GUPTA (West Bengal): You should ask Shrimati Alva whether she would like to be here or in the High Court.

SHRI SHANTI BHUSHAN; Well, that you have already asked and I am waiting for an answer.

Now, that appointments should be non-political, I entirely agree. I hope that the people will take me at my words when l say that there is not the slightest intention of making appointments on a political basis, because, evidently one Government may be in power today and another tomorrow. But, so far as these institutions are concerned, these institutions which are there to safeguard democracy, to have a sort of continued confidence of the people, appointments must be made on a non-political basis, not on a political basis at all.

Now, so far as committed judges are concerned, of course, if the commitment is to the Constitution and to the principles and the aspirations of the people which are enshrined in the Constitution, there cannot be any quarrel about that commitment. It is only if the commitment is to be to a party or a personality, that the objection arises. There has been a confusion in the past about it and I want to clear that confusion.

Then it was asked why our retired judges were being appointed to commissions. Obviously, the reason is clear. We do not want *to tax* the High Courts and the Supreme Court. They have already been taxed to this extent that there are those arrears. Therefore, the intention is not to draw upon the sitting judges, as that will create difficulties for the Supreme Court and the High Courts.

AN HON. MEMBER: What about the District Judges?

SHRI SHANTI BHUSHAN; Even the District Judges will not help. If they are drafted, after all in this country we have a tradition...

SHRIMATI MARGARET ALVA: Mr. Shanti Bhushan, you are committed to increasing the employment opportunities in the country. They are getting their pension. Why do you not appoint others to give them employment? Why do you bring the people who are drawing pension?

SHRI SHANTI BHUSHAN: Because they are already drawing pension, they wilt have to be paid only the difference between the pension and salary, and, therefore, the Government will spend less.

SHRI JAHARLAL BANERJEE (West Bengal): Moreover you can see the unnecessary controversy about Mr. Justice Mathur and Mr. Justice Sinha.

SHRI SHANTI BHUSHAN: It is on account of that controversy that we had to draft a sitting judge of the Supreme Court so that there may be no further controversy.

Then coming to an All India Judicial Service, well there I felt that perhaps Shrimati Margaret Alva knows more about me than I know myself because she said that I would be definitely

[Shri Shanti Bhushan] against it. But I do not know that I am against the concept of an All India Judicial Service. I have an open mind. Of course, it is a ticklish question, but I do not see that I have any reason to be against the suggestion as such.

Coming to the question of a common recruitment policy and a judicial service without classes, of course, a classless society and a classless hierarchy even in the services is an utopia; it is a dream. We might have that dream. Perhaps some day the dream may also be realised. Unless you dream, the dream would not be realised. So it is good to dream. But the whole question is, it is a problem full of great difficulties. At an younger age, the needs are also less. As a person grows in years, he looks forward to promotions and better emoluments and so on. Therefore, even in the judicial service, classes will have to be there till we are able to achieve a completely classless society. Of course, it may be a distant dream, but perhaps some day it would be realised.

Then she mentioned representation to women. Now, *I* would not say, as I said I have a weakness for young people, I have a weakness for women.

DR. RAMKRIPAL SINHA: May be women are your strength.

SHRI SHANTI BHUSHAN; Sometimes people accuse me and say that I am most unchivalrous because I accepted a **case** against the then Prime Minister **who** happened to be a lady. And **when** I filed my nomination papers for election to this House, there was **only** another lady who filed her nomination papers against me. I was thinking of showing chivalry by withdrawing on the last day. But the lady showed' chivalry first by withdrawing her candidature one day earlier. I wanted to ask the Prime Minister that if he was prepared to have the lady as Law Minister, I would withdraw in her favour. But before I could do so, she withdrew. But I would like to assure the hon. lady Member that we quite realise the qualities of ladies, the qualities of justice and so on. Therefore, we are on the look-out....

SHRIMATI MARGARET ALVA: Mr. Charan Singh is known to be opposed to women coming out to do anything outside their homes. That is why they are worried.

SHRI SHANTI BHUSHAN: Perhaps the hon. lady Member is not aware that the Home Minister home itself does not subscribe to that view because Mrs. Charan Singh happened to be a very vocal member of the U.P. Legislature.

Then, transfer of judges is an important question. I fully respect the sentiments which have been expressed in regard to transfer of judges. It is not a one-sided thing. I fully appreciate that there is some merit also in the matter of transfer of judges, namely, one judge being transferred to another High Court. There is something to be said for it. But the whole question is, whenever there is a problem you have to balance considerations for and against. Now, on balancing of considerations, the more important thing is the people's confidence in the independence of judiciary. And this power of transfer without the consent of the judges is liable to be mis-used. And this possibility of its misuse and shaking the confidence of the people in the independence of the judiciary is a more important factor. That is why the policy which has been adopted is, well, even though there is some merit in judges being transferred sometimes, the effort should be to transfer them with their consent; they might be persuaded and so on and so forth.

May I then turn to what has been said by the hon. Member, Mr. Nanda? I am very sorry that on the last occasion, he misunderstood me. I did not have the slightest intention to mean

any disrespect. If he would kindly look at the proceedings of the House, I did not refer to the hon. Mem bers at all. What I intended to say was—and that also related to "pro per judges"—that in the matter of appointment of judges, it is not merely the ability or the knowledge of law which is the factor to be seen. Along with that there is another factor, namely, the quickness of mind of a person. Both judges may be eminent; both may be competent. It is a God-gifted thing. A person is very quick in reaction; another person is not so quick in reaction. And the expression I had used was "person". "While some persons are very quick in their reaction" —after this I wanted to say— "others are not so quick". But after I had said the first part—"well, some persons are very quick in their reaction,"—I had looked at Shri Bhupesh Gupta and it occurred to me that I should pay a compliment to him, and I said, "Some Members opposite are so quick," but I continued with my earlier statement and said, "... others are not so quick". When I completed my sentence with this later part, I did not mean to say "other Members". That was again related to the first part of my first sentence, namely "other persons". If the full sentence is read again it will be clear that the reference was to "other persons"—"others are not so quick". I did not make reference to "other Members"...

SHRI S. W. DHABE: The other interpretation was also possible.

SHRI SHANTI BHUSHAN: I am sorry, sometimes it is possible that certain things are said and certain people may misunderstand the thing and interpret the thing in a wrong way. Then I wish to tender an apology if I have hurt anybody's sentiments. But I assure you with the utmost honesty on my part that there was not the slightest intention of that kind in my mind, I never thought of it. I only wished to pay a compliment to some Members of the Opposition...

SHRI NARASINGHA PRASAD NANDA: Now that the Law Minister has explained his position—he said he had never intended an offence to Members of Parliament—let there be an end of the matter.

SHRI SHANTI BHUSHAN: Again when I referred to proper judges, I did not mean any disrespect to any judge. In fact, the two judges may be very competent, but at the same time one judge very quickly understands the problem and disposes it of; another judge takes a little time. It is not his fault. After all, it is a gift of God. It is for this reason I said proper judges. I only wanted that this aspect should also be paid attention to by the Chief Justices when they recommend names and by the State Governments when they make their endorsements and by the Government of India when they finally make the appointment. That Was the only thing that I wanted to highlight in this period of extreme arrears. This is also an aspect of the matter which should be borne in mind at the time of making appointments to the High Courts.

Then, the honourable Mr. Naik referred to the agrarian reforms. I am happy to assure him that the Janata Government is committed to agrarian reforms, is committed to land reforms. There is no intention of going against land reforms. We **are** committed to looking after the Interests of the weaker sections of the society, the downtrodden persons in the society. There is another matter; there is no quarrel with creation of these land tribunals at all. As regards disposal of cases by the tribunals, the High Courts do not sit in judgment over the decisions of these tribunals in the sense they only see whether, wittingly or unwittingly, any error of law has been made by the tribunals. It is their duty to keep these tribunals on the correct legal practice. That is

[Shri Shanti Bhushan]

only a legal function they perform. Then it is said If a writ petition is filed, it remains pending for a long time. Writ petitions could be disposed of very quickly. It would not pose any problem at all. I may assure the honourable Member that if the tribunals function well, there is no problem at all. In fact, very few writ petitions are admitted. Most of them are rejected straightway. I am speaking from personal experience. It is very difficult to get a writ petition admitted if the tribunals are really functioning well.

Then a reference was made about the caste composition in the High Courts and it was said that care should be taken to look after the various castes. First of all, the main criterion for appointment to the judiciary at the level of the High Court or at the level of the Supreme Court is suitability and merit. A person should be suitable, namely, his merit should be considered; other caste considerations should not appeal in making the appointment. The only thing that should be considered is the interests of law and justice. Those considerations alone should appeal. Our endeavour should be to take those judgss—meritorious, without any defects and so on. Therefore, caste cannot really have a weighty consideration.

At the same time all sections of the society have to be looked after. Even after that only suitable persons should be selected. Therefore, only to that extent, namely, as wide a spectrum as possible being a desirable thing, merit and suitability is the main criterion which must be applied.. :

SHRI NARASINGHA PRASAD NANDA: I wanted you to say about the Delhi High Court.

SHRI SHANTI BHUSHAN: Delhi High Court has been having too many people from outside. But isn't that a special characteristic of Delhi itself? Delhi is the hub of the 7 P.M. country, Delhi is the centre of the country. Delhi is not Delhi, but it is the whole of India and it represents the whole of India and it cannot have any parachial claim. Delhi is proud of the fact that it draws people from all sections of the society and from all areas and from distant parts of the land and it draws people from Kerala, Karnataka and Kashmir and so on and, therefore, Sir, I hope and pray that Delhi will continue to have that character.

With these words, Sir, I conclude.

SHRI NARASINGHA PRASAD NANDA: I know the cosmopolitan character of Delhi and all that. But I raised a question relating to filling the vacancies.

SHRI SHANTI BHUSHAN: Quite right. I have already said that in this our policy is this: We want to see that not only the vacancies are filled, but also the question of strength is looked into if the strength is found inadequate.

THE VICE-CHAIRMAN (SHRI U. K. LAKSHMANA GOWDA): The House stands adjourned till 11-00 A.M. on Monday.

The House then adjourned at one minute past seven of the clock till eleven of the clock on Monday, the 8th August, 1977.

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