[Dr. V. A. Seyid Muhammad.]

fied 282 seats in all the States and Union Territories as being reserved for the Scheduled Tribes.

Fifty seats were formerly reserved for Scheduled Tribes in the area which is now the State of Meghalaya. These were de-reserved by Parliament under the Constitution (Thirtyfirst Amendment) Act, 1973 as Meghalaya is predominantly tribal and the persons elected to the Meghalaya State Legislature will be predominantly tribal people. This has removed the necessity for reservation for Scheduled Tribes in Meghalaya. Taking these 50 seats also into account in addition to the formally reserved 282 seats, the total number of seats in State Assemblies to which persons will be elected certainly from among members of the Scheduled Tribes will be 332. This is an increase of fifteen over the earlier number of 317 reserved for Scheduled Tribes.

The apparent anomaly in reservations by the new delimitation has been explained in the foot-notes at pages 44 and 46 of the Report of the Election Commission on the General Elections to Legislative Assemblies in 1974 and 1975 and the Presidential and Vice-Presidential Elections of 1974.

I hope that with this clarification the apprehension that there was reduction in the seats of Scheduled Tribes is removed.

There were other points which were raised. Some of them related to the curbing of money power in the elections and the others were regarding the reduction of age, etc. Even though they are very relevant points in the context in which they were raised, for the purposes of the Bill I do not think I should deal with them. Most of the main points clustered around the reduction of seats for Scheduled Tribes and since they have been answered, I do not propose to take any more of the time of this hon. House. Sir, I commend the Bill for consideration.

MR. DEPUTY CHAIRMAN : The question is :

"That the Bill further to amend the Representation of the People Act, 1950, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

MR. DEPUTY CHAIRMAN : We shall now take up clause-by-clause consideration of the Bill.

Clauses 2 to 7 were added to the Bill. Clause 1, the Enacting Formula and the Title were added to the Bill.

DR. V. A. SEYID MUHAMMAD : Sir, I move :

"That the Bill be passed."

The question was put and the motion was adopted.

THE CODE OF CIVIL PROCEDURE (AMENDMENT) 1976

THE MINISTER OF STATE IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DR. V. A. SEYID MUHAMMAD) : Sir, I move:

"That the Bill further to amend the Code of Civil Procedure, 1908, and the Limitation Act, 1963, as passed by the Lok Sabha, be taken into consideration."

You are aware that the Code of Civil Procedure (Amendment) Bill, 1974, was referred to a Joint Committee of both Houses of Parliament. After examination of the Bill in depth, and in the light of the memoranda and evidence received by it, the Joint Committee have suggested certain changes in the Bill.

You are aware that, at the time when the Code of 1908 was enacted, the society was feudal in character; people had ample leisure and the litigation in

the country was less complex. With the abolition of feudalism and rapid industrialisation of the country, the type of litigation in the civil courts has undergone a substantial change. The growth in the population and the growth in the economy have also added to the volume of litigation in the civil courts. Necessity has, therefore, been felt for judicial reforms so that the disposal of the cases may be expedited and costs may be reduced. With this end in view, the Law Commission had, in its Twenty-seventh Report and Fifty-fourth Report, recommended substantial modifications of the provisions of the existing Code of Civil Procedure. The Bill, which was introduced in the Lok Sabha, sought to give effect, as far as practicable, to the recommendations made by the Law Commission. The Bill also includes provisions recommended by the Law Commission in its Fortieth and Fifty-fifth Reports. In suggesting amendments to the Bill, the Joint Committee kept in view the twin objects of ensuring a fair trial and expediting the disposal of suits and proceedings. The question of costs was also considered by the Joint Committee. Some hon. Members of the Joint Committee felt that a specific provision about Court fees should be included in the Bill.

But, Sir, as you are aware, court fees being a State subject, the Bill could not provide for the same. While it is not possible to provide in the Bill for the reduction of the court fees, endeavour has been made to ensure that the costs of litigation are reduced by the elimination of delays at each stage of litigation.

Sir, the Bill as introduced in the Lok Sabha sought to omit section 80, section 115 and section 132, as recommended by the Law Commission. The considerations which had prompted the Law Commission to suggest omission of section 80 were :

(1) In a democratic country, there should be no discrimination between the citizen and the State.

(2) In many cases, the just claims of the citizen are defeated by the Government by taking up technical defence. Sir, if you kindly consider the intention behind the provisions of section 80, you will kindly notice that the section did not intend to make any discrimination in favour of the Government. On the contrary, the section intended to confer a benefit on the intending litigant by enabling him to get the matter settled out of court without any litigation. It is true that many cases were not settled out of court after the service of notice under section 80. But the statistics collected by the Joint Committee indicated that a small percentage of suits were, as a matter of fact, settled out of court after the service of notice under section 80. A beneficial provision like section 80 should not, therefore, be omitted merely because it has not yielded the desired results to the fullest extent. The Joint Committee have, therefore, tried to strike a balance between two extreme views, namely, omission of section 80 and retention of section 80 in its present form. The Joint Committee have, therefore, tried to remove the hardships which are caused by the provisions of section 80 and have endeavoured to retain the beneficial aspect of section 80.

Sir, with a view to ensuring that the just claims of the litigant are not defeated by taking up technical defence, it has been provided in the Bill that a suit will not be dismissed merely on the ground of technical defect in the notice if the notice enables the Government or a public officer to identify the person serving the notice and the cause of action and the relief claimed to be as substantially indicated in the notice. Sir, the strongest argument against the retention of section 80 was that it prevented the litigant from obtaining an urgent or immediate relief. With a view to ensuring that the litigant may not be deprived of an urgent or immediate relief, it has been provided that service of notice under this section will not be necessary in a case where urgent or immediate relief is needed. But, in such cases, no order granting an interim relief should be made by the

[Dr. V. A. Seyid Muhammad.]

court without giving the Government or the public officer a reasonable opportunity of showing the cause.

Sir, it was contended by some honourable Members that the restriction on the powers of the court to grant an interim relief takes away the effect of this provision. But, Sir, as you know, an *ex-parte* interim injunction made in some cases restrains the Government from taking steps for social improvements of for providing social services. Sir, you will kindly appreciate that if the restriction on the grant of interim relief is not there, it will be easy for the plaintiff to evade section 80 by the addition of a prayer for a temporary injunction in the plaint. Having regard to the balance of convenience and inconvenience, the Joint Committee have, therefore, recommended that section 80 should be retained subject to the modification recommended by the Committee.

Sir, the omission of section 115 was recommended by the Law Commission on the ground that an alternative remedy exists in article 227 of the Constitution. The scope of article 227 is wider than the scope of article 115. The remedy under article 227(B) is a constitutional remedy and is costlier and more dilatory. Further, the purpose of elimination of delays will not be served by the omission of section 115 because the litigants will not be slow to take advantage of article 227. It was, therefore, felt that no useful purpose will be served by omitting section 115. On the contrary, it was felt that the retention of section 115 in the Code would take away many cases from the ambit of article 227 and this is only just and fair and this is a speedier and a cheaper remedy. The Committee have, therefore, recommended the retention of section 115 in the court in the form in which it was recommended by the Law Commission in its 27th Report. The Committee felt that the omission of section 132 would offend against the social custom and may also help some unscrupulous litigants to compel the personal appearance of innocent and ignorant ladies who are not accustomed to appearing in public. Accordingly, the Committee have recommended the retention of section 132.

Sir, adequate provisions have been included in the Bill to discourage adjournments. One of the proposed amendments provides that no adjournment should be granted on the ground that the lawyer is engaged in another court or on the ground of illness of the lawyer where the litigant has sufficient opportunity to engage another lawyer.

You will kindly appreciate, Sir, that these provisions seek to abolish the concontration of work in the hands of a few top lawyers and also seek to eliminate one of the principal causes of delay in the disposal of suits and proceedings. These provisions would also help in the distribution of cases amongst the junior lawyers.

Sir, the delay in the delivery of judgments is another major cause of delay. The Bill, therefore, seeks to put a time limit for the delivery of judgments and it is provided that if the judgment is not delivered within thirty days from the date when the hearing was concluded, the Judge has to record his reasons for the delay and he has to fix a specific date for the delivery of judgment and to communicate the date so fixed to the parties concerned.

Sir, a large number of appeals provided in the Code is also one of the principal causes of delay. These provisions also enable the rich litigants to wear away their poor opponents by filing successive appeals. The Bill, trerefore, provides that there will be no first appeal except on a question of law in petty cases, the value of which does not exceed Rs. 3000 and there will be no second appeal in a case triable by a Court of Small Causes unless the value of the subject matter exceeds Rs. 3000. The Bill also seeks to restrict second appeals to the cases involving substantial questions of law and further pro-

vides that the preliminary hearing of second appeals under Order XLI, rule 11, should be completed within sixty days, so that the litigants may not have to speculate for a long time as to whether the second appeal will, or will not, be admitted. Letters Patent Appeals are also proposed to be abolished. It was contended by some hon. Members that if Letters Patent Appeals are abolished, the decision of a single Judge on a substantial question of law will become final and the litigant will not have an opportunity of testing such decision before a higher forum.

Sir, as you know, there is nothing in the rules of the High Court which would prevent a Single Judge hearing a second appeal from referring the appeal to a larger Bench if he is of opinion that the substantial question of law involved in the appeal is required to be decided by a larger Bench. A Letters Patent Appeal is, for all practical purposes, a third appeal and this is one of the dilatory methods by which the rich wear away the poor opponents. It is, therefore, absolutely necessary to put a stop to the large number of appeals provided by law.

Sir, with a view to ensuring that the judgment-debtors may not delay or defeat the execution of the decree passed against them, the definition of 'decree' has been amended so as to provide that the determination of a question under section 47 with regard to the execution, discharge or satisfaction of the decree will not amount to a decree and will not, as such, be liable to appeal and second appeal.

Sir, with a view to ensuring that the poorer sections of the community, who do not have the means to engage pleaders to prosecute their cases, may get a fair deal, a new rule, namely rule 9A, is proposed to be inserted in Order XXXIII to provide that where a person, who has been permitted to sue as an indigent person, is not represented by a pleader, the Court may, if the circumstances so require, assign a pleader to him. It has further been provided that the Central or State Government may provide free legal services to persons who have been premitted to sue as indigent persons.

Sir, with a view to ensuring that the poorer sections of the community are not harassed by arrest and detention for the recovery of petty amounts, the Committee have recommended that no person shall be detained in civil prison in execution of a decree if the amount of the decree does not exceed Rs. 500.

Sir, with a view to ensuring that the salaried employees are not harassed by continuous attachment of their salaries and that a larger portion of their salary may not become attachable in execution of a decree by reason of the merger of dearness allowances in the pay, the Committee have recommended that the first four hundred of the salary and two-thirds of the remainder shall be exempt from attachment and that the entire salary would be finally exempt from attachment after it has remained under attachment for a continuous period of two years.

Sir, I hope that the provisions of the Code, as proposed to be amended by the Bill, would go a long way in ensuring fair justice to the litigants, and in eliminating delays and thereby reducing costs of litigation. Having regard to the objects sought to be achieved by the Bill, I hope the Bill will receive the wholehearted support of all the Members of this Hon'ble House.

Sir, I commend the Bill for the consideration of this Hon'ble House.

The question was proposed.

SHRI BHUPESH GUPTA (West Bengal) : Sir, I would like to hear Mr. Daphtary, our colleague here, because he is the most competent to speak on a subject of this kind. We, as laymen, can only make some general observations on a Bill of this kind. I have got a big volume. For the life of me, I cannot understand some of the things quite clearly. But there are a

[Shri Bhupesh Gupta.]

few other things on which perhaps some observations even from a layman like me are called for.

MR. DEPUTY CHAIRMAN : You are not that layman, Mr. Bhupesh Gupta. You are a lawyer yourself.

SHRI BHUPESH GUPTA : By accident of history, I was a lawyer. Now, first of all, I wish to say that this tinkering with the problem of the Indian Criminal Procedure Code or the Indian Civil Code will not do. We are past that stage when you could safely hug the British legal system, its concept of law and procedure. The world has changed far beyond that stage. We too are moving with the changing world and I do not think we should still remain so fascinated by the Anglo-Saxon system of law and legal system in particular. Therefore, what is really needed is a thorough change in the very structure of the system itself including the procedural and other laws. Unless we do that, we shall always be hounded by the problem of periodic changes in law or procedure because they do not measure up to the changing requirements or society or, shall I say, to the needs of a changing society through which we are passing today. Unfortunately, neither the Law Commission nor others have undertaken a task of this kind. When you refer matters to the Law Commission for its examination or review, the Law Commission generally sticks to certain assumptions, one of them being that, by and large, the Anglo-Saxon British system is a perfect one, or it is a good one to go by. Within that framework, they want to bring about certain changes and modifications which may be useful up to a point and may also be welcome quantitatively. But if you look at this problem in the larger perspective, it falls far short of what the country needs today. Therefore, the matter should not be left to the Law Commission. You should have really a bigger commission which will go into this question of legal reforms from a broad socio-economic angle uninhibited by the past and having faith in the future. That is how we should set about the task of bringing about changes in the legal system. Radical changes are called for. Now, Mr. Deputy Chairman, as I said, the entire legal system needs recasting or overhauling in our country. I do not know how our friend, Mr. Daphtary, will react to my suggestion. But if I may say so, in many of the countries such changes are being made. Even in England today, there is not that kind of fascination or attachment to the old legal system which they have inherited from the past. There is a desire for change. But as you know the British society is highly conservative in such matters, and changes are not easy to carry out. When we are thinking of making certain radical and important changes in the Constitution, what is the reason as to why we should not undertake also certain basic and radical changes in the system and structure, both of substantive law and procedural law ? Today, the State's function has changed. When the British laid down this law, the function of the State was police function. There was hardly any other function they could conceive of except the police function. Today, the State is taking on more and more social and economic functions, welfare activities and so on. In fact, this is becoming a predominant activity of the State in the modern society. Not only that. People are also changing their outlook. Sometimes even the personal laws are being changed. So, we have to take that factor into account, and we cannot just go by what was there some 15 or 20 or 50 or 100 years ago. I know our lawyer friends sometimes are allergic to these changes by temperament. They are sometimes conservative also, partly due to training and partly due to the profession to which they belong. I am not attributing any intentions or motives to them. It is the habit of life that comes in the way of their whole thinking in such matters. But there are others who also think radically in life and agree with what I am going to say. Now, Sir, the Civil Procedure Code, com-

3 P.M.

plete as it is, should be so changed as to be understandable to an average man who has got average commonsense. I do not say one need go into the intricacies of law. But generally, a citizen should know that here is my Civil Procedure Code. here is what it means. After all, when they go for litigation, they should be clear that these are the broad lines on which they will have to proceed when they go to a court either as a respondent or as a plaintiff. This should be clear to the them. Today, many people do not understand it. I do not know how many lawyers understand it. The hon. Member has made a speech. The fact that he had to read out a speech shows that be is not in a position to make a speech, as he can make on other subjects. I do not blame him. He is a very knowledgeable man. I speak good things and bad things, but that is a different matter. He is a knowledgeable man. But he cannot just make a speech as he would make on other subjects, for example, elections. Now, he made a speech on elections. You see he required no notes whatsoever. And he said whatever he liked. He brought in coal. I do not know anything of the coal although what I was saying was that there should not be a disaster in the coalmine, as some people are interested in bringing about a disaster in the coalmine. I was rather apprehensive of the coalmine being blown up. Therefore, I thought that I should bring it to the notice of the Government. Now, Sir, here he made a speech. He had read out everything. He did not depart in respect of one single word. I followed from the written text. *If it is so difficult for him to make a* speech on a subject of this kind, you can well imagine how much difficult it is for a common man with average knowledge to have some broad idea as to what the Indian Civil Procedure Code is like. Mind you, if we have to buy the ideas, it means cash depending on which lawyer charges how much. And that defeats the very purpose of justice and justice becomes weighted in favour of the privileged class and the rich. That again is not good. So, the procedure should be simple, should be broadly understandable to the people. should not admit of all kinds of hair-splitting and semantics and interpretation should be straightforward. This is a task which may be assigned to or undertaken by a proper commission appointed by he Government consisting of lawyers and others who will suggest a very drastic and radical modification of our procedural laws, such as this. We do not have such a thing. I do not know how long it will take for the Government to realise the need for it. Coming to this thing, I agree that we must know how to strike a balance between speedy justice and fair opportunity to the litigant, both should be there. Justice should be speedy but not at the cost of the litigant. Litigant must have a reasonable opportunity in order to seek justice, no matter in what capacity he appears before a court of law. Therefore, there should be synthesis between the two requirements of speediness of justice and also the opportunity that should be given to the litigant. Unfortunately, on either count the present system is bad. Well, in the name of striking a balance it does not strike a balance at all. The most outstanding feature of the present procedure is the delay. Some people say that there should not be delay in the administration of justice and much is said about it. But, unfortunately, the law is such, the procedures are such that delay has become the tilting feature of the whole scheme of things, of the whole system.

Now, Sir, I am told that the Supreme Court is a present deciding the 1968 appeal cases on the civil side. 1968 appeal cases are now being decided today in the Supreme Court, this year; and criminal cases of 1971 are being decided now. Now, 1968 to 1976, how long has it taken ? I do not know whether justice has any sense or meaning. Why so much time is taken for the judiciary to take a decision and the blame rests not only with the judiciary, adminisrative or technical delays but also with the provisions of law itself. That is what I am going to say.

Sir, I am told in some cases a case takes about—our friend can enlighten us—20

[Shri Bhupesh Gupta.]

years to be decided by the Supreme Court. That is to say, if a man starts a case in young age he will be middle-aged when the case is decided and by the time the judgment begins to operate, he would have gone to the other world. Now, is it justice ? Suppose I am convicted for life transportation and my appeal is pending. It takes ten years to be decided by the Supreme Court and then I am released or acquitted. That means I have spent, if I am not given bail, already ten years in prison. What happens to that? What happens? Who is to be punished for that? After all, a prison is a prison, whether I live there on filing an appeal or otherwise, I am imprisoned enough. Well,such things are also happening. Therefore, I say that delay is the most outrageous feature of the present system of judiciary, present legal system. I am told that a labour case on appeal takes about 8 to 10 years in a High Court. Normally, a case when it comes on first appeal in High Court takes four to five years, even more. This is a very common practice today.

SHRI C. K. DAPHTARY (Nominated) : It takes ten years in a High Court.

SHRI BHUPESH GUPTA : I am very sorry. Even he says it takes ten years. Then I should have really started by saying 15 years. Have we given any thought to this problem? No. We have not. Will the situation be remedied by this amendment? No. it will not be remedied by the amendment you have proposed. Then, what are you changing? Whatever little changes you can make here and there, they are to be welcomed, I am not denying that. Therefore, Sir, accumulation of cases is taking place. I do not know how many cases have accumulated. I do not know when they shall be finally disposed of. Many of us shall not be in the world of living and, I believe, many of our grandchildren may not be in the world of living by the time all these cases are disposed of. Such is the position. I do not have a child and the question of my grandchildren does not arise. But those who have children, must be thinking in terms of their grand-children and they may not be there. Now, who is responsible for it ? Why should we go by the old system which has patently failed to meet the requirement of our people ? Justice delayed is justice denied. Passage of time and this delay means worry, human suffering and waste of money. Of course, it may mean some cash for the lawyers and so on but that is no consolation whatsoever. And I think these matters are not dealt with here.

Now, I shall only deal with one subject, section 18. But before that, a few observations, I think, are called for because whenever I speak on the Criminal Procedure Code and the Civil Procedure Code, I cannot forget the system and my good friends, the lawyers, if you like, including myself. Justice should be available to all and all men are supposed to be equal in the eyes of law, the greatest fraudulent statement that one can imagine in our society. Are the Birlas and the workers equal in the eyes of law ? They may be equal in the eyes of God but I doubt if the Birlas and the workers are equal in he eyes of law....

MR. DEPUTY CHAIRMAN : Do you believe in God ?

SHRI BHUPESH GUPTA : I am talking about the Birlas. To me, the demon or God or whatever you call, are these people whatever it is. Now, that is not so. My friend here is sitting. He knows it very well. That is why I say that if the procedure is cumbersome, complex, incomprehensible, and tortuous, it means that the poorer sections of the people are at a great disadvantage. Richer sections of the people, in the first innings, win. They have the better of the whole situation because they have mustered all the resources, in men and money, in legal talent and otherwise. Others cannot do so. Look at the role of the Supreme Curt. The Supreme Court has a rule, I am told, that no lawyer will be allowed a cost at the rate more than Rs. 600 per day. When you calculate the cost, that is the maximum, do the lawyers charge Rs. 600 per day ? Some of them charge, I am told,

Rs. 5,000 and some of them even Rs. 10,000. I am told, recently a lawyer who came to the Supreme Court from the Bombay High Court—I will not name him—charges Rs. 10,000 per day. I do not know whether he receives the money by cheque or in cash, because income-tax problem is there. What a wonderful thing. The Supreme Court has laid down Rs. 600. Even this Rs. 600 is high for me. Anyway, that is for calculation. But, actually, what is charged by a lawyer is most material. Many of our big lawyers are charging, I am told, generally a minimum of Rs. 1,680 per day, that is to say, the moment you get to them, you must have in your pocket Rs. 1,680, that is to say, more than we earn as daily allowance during tht entire Session of one month or so. That is the position. For one appearance, they charge Rs. 1,680. What sense or nonsense the lawyer may speak, is a different matter, in the name of law or otherwise but he takes away Rs. 1,680. Who can pay ? How many people can pay ? Forty per cent of our people live below the poverty line. Obviously, 40 per cent of our people cannot even dream of having Rs. 160 for giving to the lawyer, leave alone Rs. 1680. Then, who is the beneficiary of this arrangement ? It is the upper class people, the monopolists, the big landlords, the contractors and others. These are the people who benefit. Sir, I am told when Mr. P. R. Das used to come to the Supreme Court—I know Mr. P. R. Das myself—he used to charge, somebody said, Rs. 10,000 per case. He used to come from Patna. I know Mr. Daphtary will never say this thing. I will not embarrass him by asking such questions. It is not proper for him to say. But I am free to say this thing because I have never been in the profession and so on. He used to charge Rs. 10,000. I have a case of mine. It was on account of, what is called, a caption in the 'New Age', which was slightly technically wrong. A case of contempt of court was instituted against me and Mr. Chagla, for appearing in that case, got Rs. 10,000 for three days. I told Mr. Chagla 'If you had given me this money, I would have published anything you liked and my paper would have been financed better'.

SHRI B. N. BANRJEE (Nominated) : Mr. Gupta, you should make it clear that he appeared against you.

SHRI BHUPESH GUPTA : He appeared against me. Otherwise, he would not have got so much money. I exposed some CIA agents or some such thing. That was the case. Something was published in the 'New Age'. The case was going on. I was not in the country even. I was the editor of that paper and, therefore, I had to go to the Delhi High Court. Mighty lawyers, judges, thinking themselves great guys and knowing everything on earth, sat over a little caption, which consisted of two- three words, and over that debates arguments and so on developed. This went on far days and days. Every day, Mr Chagla was getting more than Rs. 1,000. As you know, I produced in the House his bills because I collected them from the Supreme Court from some source. He got about Rs. 10,000. This is a wonderful thing. Mr Chagla felt very embarrassed. I understood that. Later on, when I was arrested in Madhya Pradesh, he wanted to appear for me. But I would not have given him that money. In fact, I would not have given him any money. This is what is happening.

Take the case of lawyers. Why should it be so ? Why don't you change your legal system so that no lawyer in the country can charge more than a definite reasonable amount ? If any one charges more than that amount, his licence or whatever you call it, should be cancelled. Why can't we do that ? If we can deal with the smugglers, if we can deal with the profiteers and if we can deal with the tax evaders, why, on earth, can't we do this ? We talk about socialism and other novel things. But why should not the lawyers in this country be made to charge a definite and fixed reasonable amount ? This can be fixed by Parliament and they should function within this framework. Why should it not be possible ? Because of this, the country is losing in income-tax also. You can see how the lawyers are

[Shri Bhupesh Gupta.]

living. Some of them are having property worth more than Rs. one crore. You can calculate the income of a person over a period of 30 years, deduct the income-tax and then find out whether such accumulation is possible as to have assets worth more than two crores of rupees. Obviously, something has gone wrong. In fact, black money has been generated in the legal profession Otherwise, when you tax 75-90 per cent of the income, in the higher slabs, it is not humanly possible for any one, unless he cuts out money from the return all the time, to have propertyworth Rs. one crore. It is physically impossible. Our lawyers and friends there do nothing in this regard. On the contrary, their Additional Solicitor-General himself charges Rs. 3,000-4,000 per day when he appears for the State Governments or public corporations. Why should it be so ? We preach one thing and practice another. The Additional Solicitor-General is a Government post. Why should the Additional Solicitor-General go to appear for a State Government or a public undertaking and charge three thousand rupees ? Can we not do something about it ? Surely we can bring down the amount. But I am not talking about only the Additional Solicitor-General and others ; I am talking about all the lawyers who do such things. Therefore, Sir, this is one very important aspect we are not paying attention to and yet it requires great attention to be paid because, otherwise the system will not be put on the right lines. (*Time-bell rings*) Let me finish.

MR. DEPUTY CHAIRMAN : You have taken 25 minutes.

SHRI BHUPESH GUPTA : What is there ? Only I am speaking. Otherwise you will adjourn the House. I will finish now. I am very glad that you have given me time.

Court fees and other things—I am cutting short—are very high and poor people certainly suffer. In our country we do not have many cases of torts, asking for damages and so on because of the high court fees involved.

Legal aid has two aspects. Legal aid should be available prior to the litigation and then, during litigation because, even before litigation starts there is need for legal aid, as you know. This question should also be gone into.

Sir, I should like to have some kind of an institution created for the Bar so that the junior people and others could collectively share the briefs that come from the Government and other parties so that nobody is down and out while others roll in wealth. That should not be the position.

Now the point I am going to touch is section 80. I do not know why the Government has still retained it in a modified form. Sir, "Section 80 which provides for compulsory notice before the instituion of a suit against the Government or a public servant is being omitted, because it is felt that the state or public officers should not have a privilege in the matter of litigation as against a citizen, and should not have a higher status than as ordinary litigant in this respect." That was the position in the original Bill. The omitted section 80 required that notice should be given to the Government and public servant. Without giving notice you cannot start any proceedings against them but this section was dropped in accordance with the recommendation of the Law Commission; and the Bar Associations, I am told, welcomed the deletion of this section. Suddenly why the Government has revived it in a modified form, I do not know. Now what happens in the law ? They have made this provision instead of dropping it. This is rather strange. The provision is :—

> "A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a

reasonable opportunity of showing cause in respect of the relief prayed for in the suit :"

Now, it should have been simpler. The litigants come. Here is a judgment of Mr. Justice Krishna Iyer in the Supreme Court. In that judgment the subject has been dealt with and here I find that weighty opinion is in favour of dropping it. Now, when the Government is appearing as a litigant, why should the Government or the public servant be put on a higher pedestal than the average citizen ? If you have to start a case against them, a suit against them, you will have to give them two months' notice except in such cases where you can dispense with it with the leave of the Court. Why should it be so ? Because, the idea of giving notice was that, perhaps, having got the notice the Government will try or the public servant will try to settle the matter out of court.

If any wrong had been done, amends should be made the matter could be settled to their satisfaction so that there is no need for proceedings. Actually, what happened ? The Government usually did not take notice of such notices. No action was taken and the delay continued. It became only an instrument of harassment of the citizen One could have understood if having got the notices the Government acted in order to rectify itself, so that the matter could be settled without going to the court. But that kind of thing does not happen. The Government servants do not behave like that. This is only an arrangement which works to the detriment of the private citizens and puts the Government servant in an advantageous position. Therefore, I do not now mysteriously when it was dropped in the original Bill—I know the story how it has been done, due to manoeuvres and manipulations in some quarters—this had suddenly been brought in and again in the revised form they have kept really the orignal section 80 with a little concession here and there that with the leave of the Court, you need not give the notice and start proceedings. Even so, no relief would be given. This is not at all just and, therefore, the whole thing should be reconsidered by the Government.

Again, I should like to say something about section 92, *i.e.,* about trust. Now, you cannot file a case against a charitable or religious trust without the leave of the Court. Why should there be a restriction ? We know from our experience how the trusts and religious endowments are behaving, how they are manipulating funds, how they are used for accumulating wealth and so on. Why should there be need for going to the Court to have permission to file a suit ? Why can't I go to the Court straightway, as against any citizen I can go, to file a suit against a charitable trust or a religious endowment when they are indulging in all such practices ?

These are some points which I have made. And in conclusion I would only make one observation and leave it to our friend, Mr. Daphtary to enlighten us on the subject. Coming to the old thing, it is not for us to give a detailed opinion on the very many clauses but we do sincerely feel that the structure itself should be changed. We should have a different philosophy and approach in the Procedure Code, Criminal or Civil, certainly in Civil especially when we have set before us certain high ideals of social justice. The other day, Mr. Bhagat went to the Soviet Union brought the Soviet Civil Code which is just this much. The entire Soviet Civil Code is just a few pages. Mr. Bhalerao is here The Soviet Civil Code is just a quarter of our entire Code. Every citizen understand how the civil suits would be disposed of and there is no difficulty at all and justice is not delayed Justice delayed I am told, is justice denied but it seems that it is in the vested interest to deny justice. It involves money, and I will just give one example. In one case I was asked to speak. It was a trade union suit. You will be very interested to know

[Shri Bhupesh Gupta.]

this thing, very breifly. The case was against TELCO Jamshedpur, at that time owned by the Tatas. I was asked by the union to argue. At that time Gandhiji was fasting in Calcutta in September 1947 I went there. A lawyer was taken from Calcutta for Rs. 1750 per day. He was a senior man. Later on, he became a Minister also. I started arguing. My job was to expose the Tata's malpractices, corruption and all that. I started by saying that I would not like Sir J. J. Gandhi to be preceded by 'Sir'. We are a free country, and over that one full day argument went on. The question was whether J. J. Gandhi should be referred to as Shri J. J. Gandhi before the Tribunal Anyway, our Advocate argued everyday and such things went on. Then, you know what he told me : Mr. Bhupesh, you are doing a very good thing; continue argument; everday Rs. 1750 for me. Most of you know his name. But then I argued and argued and he never tried to stop me. He was enjoying and he gave me more provocation to say more things. In fact, he spoke very little. I did all the speaking and I was out of pocket. He filled his pockets with Rs. 1750 every day on my talking ! Is this Law ? Is this justice ? I did the talking, I took the time and I argued the case and I abused his clients. He kept quiet and listened—occasionally he butted in to say one or two words or to deny something or not—and his pockets were getting filled. When they asked me how much money I would have, I said : I have got something with me, some money of my own. I travel by III Class. I am living in a quarter. Then I went to Calcutta. One day, in the streets of Chowringhee, he stopped his car. It was a new model Volks car—I still remember. When he stopped the car, he said : This is the car that I bought with the money from that case. This, surely, will not help the judicial system. Therefore, for Heaven's sake, give some thought to it. We are fighting monopolists; we are fighting landlords. We are having 20-point programme. I am told the 20-point programme is getting enlarged almost every day, Why not add another one to it, applying it to the Supreme Court, the High Courts and the lower courts telling the lawyers that the time is past when one could expect to be a millionaire in a court of law with the money coming from the sinful hands of the millionaire and exploiting and making money at the hands of the toiling masses ?

Sir, everybody knows that when the Privy Purses case or the Bank Nationalisation case came up before the courts, how much money they spent. They spent lakhs and lakhs of rupees. Mr. Palkhivala is the child of that kind of corruption in the system. I am not calling him corrupt. He is the sinful product of the sinful legal system which enables some top people at the pyramid of the society to hold the society to ransom by brandishing the judicial legal sword, by mobilising the martials of law in order to suppress the legitimate and just aspirations of the people. We want to end this state of affairs. Justice must be fair, justice must be democratic, justice must be made available to law. Equality of citizens in law must be demonstrated in facts of life and that we can never ensure unless we bring about certain radical and revolutionary changes in the entire Indian legal system, including the law both in substance and procedure. That is what I would suggest at the end.

Then, lastly, I would say about the lawyers' dress in the law courts because even now in the courts of law they use that black coat with what they call a 'band' I do not know why. Has the Indian Civilisation no dress to offer ? Did we have no lawyers before these gentlemen from the western side came ? Surely, we have our dress, we have our national costume. We can even produce one, our national lawyers' dress, for the purpose. Why should they be wearing this kind of black coat, some kind of a gown, which makes no sense to anybody ? Somebody with that gown looking like a monkey appears in the court and starts : My Lord, My Lord. What is this going on ? After 29 years of Independence we have not given up the expression 'My

Lord'. In England, the King was 'My Lord'. King's Representative was in the Judiciary being addressed as 'My Lord'. Why should we have the same expression 'My Lord' ?

Am I to address Mr. Fakhruddin Ali Ahmad as 'My Lord' ? Is it that I should go and appear and address somebody else as 'My Lord' ? Even this much we are not changing. Government says, we shall do so. Why can't you pass an order or an Ordinance ? These are the days of proclamation and proclamation. Why can't you pass an order that this business of addressing as 'My Lord' will be done away with once and for all and that there should be a national dress for our lawyers to appear in dignity and honour and with national self-respect. Therefore, from every angle we need thorough radical, patriotic reforms of our system because many of the things are ingrained in it or have in-built features. And the Augean stables should be cleared, not merely by this kind of amendments. They are not far-reaching. Far-reaching and drastic changes are called for in law, procedure and structure, among those who sit on the Bench and also among those who appear before the court from the Bar. I will therefore ask my friend, Mr. Daphtary, who has very rich and learned experience, to give some very good suggestions so that we benefit by his wisdom and can bring about certain urgently needed changes in the whole system that requires to be radically altered.

SHRI B. N. BANERJEE : Sir, the Code of Civil Procedure (Amendment) Bill is a piece of legislation which deserves support from all sections of the House. It is not an amending Bill just introduced for the purpose of filling up the lacunae here and there but it is a comprehensive legislation on which a good deal of thought has been bestowed by all concerned.

If we look at the history of this Bill, it began with the Fourteenth Report of the Law Commission and that was on the "Reform of Judicial Administration", and that Report indicated the broad outlines how the Civil Procedure Code should be revised. Again, the same body some years later, though with a different composition, made another Report. That was the Twenty-seventh Report of the Law Commission. That was specifically on the subject of the revision of the Code of Civil Procedure.

Sir, we must say that the Government on its part, immediately after the recommendations were considered, introduced a Bill, I think, in this House, and that Bill was referred to a Joint Select Committee of both the Houses. The Joint Committee considered that Bill. They travelled all over India and brought out a revised Bill. This House passed the Bill and it went to the other House. But here I must say that we should not always blame the law's delays ; we should have some sort of introspection. There is also the parliamentary delay. This Parliament delayed the matter ; we legislators delayed the matter Later on, what happened ? This Bill on which a good deal of time was spent, on which a lot of money was spent, through which the Joint Committee went thoroughly, is passed by this House ; this goes to the other House and then the Bill lapses due to the dissolution of the Lok Sabha. Now, what happened after that ? Sir, then the Government did a good thing. Immediately thereafter the Government thought that the previous Bill was not all that good. So, they requested the Law Commission to examine the Code from the basic angle of minimising the cost, of avoiding delay in litigation and resolving the conflict in some judicial decisions with regard to some particular provisions of the Code. This resulted in the Fifty-seventh Report of the Law Commission which is the basis for the present Bill.

Sir, I must congratulate the draftsman in charge of the Bill who incidentally is a very good friend of mine—we worked together—who has done an excellent job and given a concrete legal shape to the various recommendations of the Law Commission.

Sir, this Bill again went to another Joint Committee, this time with 45 Members,

[Shri B. N. Banerji]

30 from the other House and 15 from this House and held, if I am not wrong, no less than 70 sittings, 55 sittings of the main Committee and several sittings of what they call the Sub-Committee, travelling if not the whole of India but a good deal of India, and they produced a Report. They travelled, if not whole of India, a good deal of India and produced a report, a very good report, I must say, except in some portions which I shall point out later. But what I am trying to say is this, that we should not always blame the courts' delay; we should also blame ourselves.

The Committee deserves congratulations for the good work done by it and some very useful and wholesome amendments have been suggested by it. They have not made many amendments. The reason is not far to seek. This was considered by three Law Commissions and by another Joint Committee of the two Houses. There were many amendments made by that Committee. So you will see that the Bill as reported by this Joint Committee does not contain many amendments.

Sir, I do not propose to refer to the various provisions of the Bill. I will only refer to some major provisions and see whether they can achieve the desired objectives. And what are the desired objectives? Providing to the litigants cheap and speedy justice, ensuring of a fair trial and simplification of the judicial procedure. Sir, the present Bill has possibly simplified the judicial procedure. I am not very sure whether this will result in the litigants getting cheap and speedy justice—not much. Possibly it ensures some fair trial—that is possible—and there is some minor simplification of the judicial procedure. However, the Bill makes some suggestions as to how the procedure may be simplified and suggests some expeditious procedure here and there, which was not there in the original Code. And to that extent, Sir, the Bill deserves the support of this House.

Sir, I will now deal with some specific provisions of the Bill. There is, first of all, section 11 of the Code, the well-known section dealing with *res judicata*. Now they have extended the principle of *res judicata* to execution proceedings. If I remember my law correctly—I have forgotten it—even previously the *res judicata* principle was applied to execution proceedings. However, it has been made very clear now so that no ambiguity is left. And they have also said that the principle of *res judicata* should apply to issues decided by courts of limited jurisdiction. This is good because I feel that this will avoid multiplicity of litigation.

It is also heartening to note that the Joint Committee has recommended that the non-attachable portion of the salary should be raised from Rs. 250 to Rs. 400 and from "one-half of the remainder" to "two-thirds of the remainder". They have also made it clear that deposits to any fund to which the Public Provident Fund Act applies shall not be attachable. This is very good. It will mitigate the hardship of the low-salaried employees and so the Joint Committee's recommendation deserves our support.

Sir, having said this, I must refer to an amendment made by the Joint Committee. I will not be able to match Shri Bhupesh Gupta's eloquence or his wit, but I support the point he has made—I will not be using the same forceful language—when he suggested that possibly the Government somehow managed to get section 80 re-inserted in the Code. But I am not going to that length. That is far from may intention. That is what Shri Bhupesh Gupta said. It is possible. Anybody familiar with the process of legislation knows how amendments to be made by the Government are handed over to a private Member and then the Minister generously accepts the amendments. This is done; this is well known.

SHRI BHUPESH GUPTA : That is an act of legislative smuggling. Such Ministers should be arrested under MISA.

SHRI B. N. BANERJEE : I am not capable of using the language which he does. The restoration of section 80 by the Joint Committee is something ununderstandable. The reason given for it by the Joint Committee in the report is hardly convincing. The Law Minister might have given some reasons here. Without reading them I can say that in view of the background Shri Bhupesh Gupta gave and my own personal knowledge of how amendments are brought to the Bill, I am not going to be convinced by any such reasoning. The Law Commission in their twenty-seventh report had recommended the omission of section 80 and they gave very convincing reasons. Let me come to the 54 report of the Law Commission. In one paragraph, in just four lines, they said : We have nothing to say; it should go. What does the Law Minister say in his Statement of Objects and Reasons ? In a very pompous language, in the Bill as introduced, the Law Minister says that in a democratic State there should be no discrimination of the kind envisaged in section 80 between two classes of litigants namely the state and its citizens. This was Law Minister's own statement printed in the Statement of Objects and Reasons of the Bill. Section 80 was originally inserted in the Code for the benefit of the Government. It was not in the original Code. It was introduced definitely for the benefit of the Government and the objective was that if notice is given to Govermnent officials they should be given some time so that unnecessary litigation is avoided. Now, I have some experience in the working of Government Departments. My colleague and friend Dr. Seyid Muhammad has been the Advocate-General in his State. Everybody knows how section 80 notices have been treated and that was the reason why it was thought that that section should go. It is rather strange how after all that it struck the Joint Committee that section 80 must remain in the Code after the Government had proposed its omission in the Bill as introduced. I am tempted to table an amendment in this connection, but having regard to my experience for the last 20 years as to how amendments tabled by private Members to Bills introduced and passed by the Lok Sabha are treated in the Rajya Sabha, I should remember the proverb that discretion is better part of valour and should not waste my energy over that. I can assure. . .

SHRI BHUPESH GUPTA : I make a constructive suggestion. Today let the discussion go on and tomorrow all of us should table amendments to restore the old position. Let us have it passed and send it to the Lok Sabha. Let us see what happens.

SHRI B. N BANERJEE : I can even give this assurance to the Law Minister that even if we table amendment to this effect, that is, on the lines of the Bill as originally introduced, without any whip, I am pretty sure that the entire House will pass the Bill. . .

SHRI BHUPESH GUPTA : I think if we pass it, I will talk to Lok Sabha people. I cannot say certainly, but I think I have reasonable expectation that the Lok Sabha will endorse it. Many of the Lok Sabha Members have the same feeling as Shri Banerjee has and they belong to all Parties. They have told me. But I will not use any underhand method that was used in order to get this amendment smuggled, as was rightly said earlier.

SHRI B. N. BANERJEE : I am basing my opinion on the views of the 27th and 54th reports of the Law Commission, Law Minister's own statement—what else is needed for this particular purpose ?—and my own personal experience as to how section 80 notices are treated in the various Government Departments. Sir, let us leave it at that.

I now come to section 100 of the Code which deals with Second Appeals. I am happy that the Committee accepted the recommendation of the Law Commission and agreed that the scope of the Second Appeals be restricted so that litigations do not drag on for a long time. I must also say that some amendments made by the Joint Committee to section 100 are necessary and they have my support.

[Shri B. N. Banerji]

Sir, I have been critical of the Joint Committee in regard to section 80. But, Sir, I must say that they have done a good work in retaining the provisions of section 115. One is much relieved to find that the Joint Committee and, later, the Lok Sabha, did not agree with the recommendation of the Law Commission made in its Fifty Fourth Report and accepted in the Bill as introduced that section 115 of the Code dealing with the revisional jurisdiction of the High Court should be omitted. What was the argument? The argument was that article 227 of the Constitution gives the same remedy. But, on this point, the two earlier Reports of the Law Commission recommended that section 115 must stay in the Statute Book subject to some minor modifications that no revision shall be against an interlocutory order unless some specified conditions are satisfied, and it is good to see that the latter view has prevailed with the Committee and they have rejected the Government proposal in the Bill that section 115 should be omitted from the Code. I have no doubt that the revision applications are less expensive than the writ procedure and it has all these years been providing cheap and efficacious remedy to litigants and there was no justification for the Law Ministry to delete this particular section from the Code.

I will refer to one more point before I resume my seat. But, Sir, before I do so, I must say that I fully support all the proposals made in the Bill to extend help to indigent suitors, to simplify rules relating to service of summons and also to make the rules relating to adjournment stringenet and things like that. I am glad to see that the Joint Committee has provided in clause 70 of the Bill that judgments should be delivered within fifteen days, ordinarily, of the conclusion of the hearing. But then Sir, they have provided further that in particular cases it may not be ready within fifteen days and this time could be extended to thirty days. Sir, to this I have not much of an objection. But it has unfortunately been provided further that if it is not practicable to deliver judgment within thirty days, the court may deliver it at a later date, but all that it has to do is to record its reasons in writing for doing so. I am afraid that this latter provision will be responsible—I am very clear on that point—for legalising the delay in delivering the judgments and posterity will blame the Joint Committee and also both Houses of Parliament for legalising the delay in the delivery of judgments.

Sir, I have myself worked, may be in a smaller capacity, for about a decade in the judiciary, and I have written definitely, all these years, hundreds of judgments and I have written in a month about fifty judgments or so and I do not remember—this is an honest and true statement—any single instance in which I had to defer my judgment for more than seven days. With that experience, Sir, I should think that fifteen days or thirty days is a very generous provision and there was no justification for the Joint Committee to suggest that it could be delivered after thirty days on the condition that the reasons should be recorded as to why the judgment could not be delivered earlier.

Sir, I may be excused for speaking a little longer than I wanted to do and it is time I resumed my seat. This has a reference to what Mr. Bhupesh Gupta said. It has been said that when this Bill is passed, there may be some improvement. But, Sir, one should not imagine that everything is improved only if this Bill is passed. Much more is needed to be done. I should mention about the appointment of more and a better calibre of judges. It is not as if the Civil Procedure Code applies only to the High Courts and

the Supreme Court, or the High Courts and the Supreme Court are the only courts of civil justice in this matter. There are thousands of courts of inferior jurisdiction like the "Munsif's" court, subordinate judges courts, etc. And do you know, Sir, what calibre of persons are these days available for appointment there? Sir, when we were recruited, we were 34 persons and all of them were first class first, M.A. and LL.B. I do not know whether these days they get even third class graduates for the subordinate judiciary. Therefore, you should provide better conditions of service and recruit better calibre of judges. You have to reduce the scale of court fees, and . . .

SHRI SHYAM LAL YADAV (Uttar Pradesh): No third-class graduate will get into this service. It is impossible. The competition is so hard

SHRI B. N. BANERJEE : I have no personal knowledge.

SHRI SHYAM LAL YADAV: You know it very well.

SHRI B. N. BANERJEE: The Joint Committee has also recommended reduction in the scale of court fees. But this can be done only by the State Governments, because that is a State subject.

There is another very important thing which has been referred to by Shri Bhupesh Gupta: a change in the attitude of lawyers who should remember that their primary duty is to help administration of justice and not to enrich themselves at the cost of the fellow citizens, particularly those who come from the poorer sections of the society.

A last word about delay in disposal of cases. As every person who has something to do with the administration of civil justice knows, there is not much delay in the inferior courts, since they have to explain to the District Judge and to the High Court the reasons for delay and in fact the High Court is very severe in this respect and very often many judicial official officers have been denied promotion because of delay in disposal of cases. Well, so far so good. But the position regarding delay in disposal is simply horrible in the High Courts since there is no authority to whom they have to explain. Sir, you have seen the answer given by my good friend, the Law Minister, today on the floor of this House this morning. In all the High Courts—I have taken the trouble of adding up the figures—there are 4,21,867 pending civil cases and 69,901 criminal cases pending The Allahabad High Court has 91,936 pending civil cases... *(Interruption)*... and 21,494 criminal cases. My State High Court is second in the list, with 70,254 pending civil and 4,990 criminal cases. Sir, it will be a good thing if the judges of the High Court remember the saying, "Physician heal thyself" before taking the subordinate judges to task and do something to expedite the disposal of their cases. But, Sir, in view of he legal position as it stands today, the High Court judges take a very peculiar attitude that neither the Chief Justice of the High Court nor the Supreme Court has any jurisdiction in this matter. They say that under the Constitution they are not subordinate even to the Chief Justice of the High Court or even to the Supreme Court. Sir, this is indeed unfortunate.

Sir, with these observations, I support the Bill.

SHRI C. K. DAPHTARY: Mr. Deputy Chairman, Sir, I would not have been saying anything but for the fact that I was persuaded or provoked by Mr. Bhupesh Gupta to speak on the subject.

Before I say anything, Sir, about what he said, may I refer to two sections of the Code, on which I would like to say

[Shri C. K. Daphtary]

a few words? The first is section 80 to which reference has been made already. I would like to add that for 25 years I have been a Law Officer of the Government, Advocate General Solicitor-General and Attorney-General.

4 P.M.

I know how that section works and is looked at. I do not doubt the statement made by the hon. Minister that in some cases a notice under section 80 has led to some kind of settlement. But those are very rare cases. My general experience has been that a notice under section 80 or even a threat of a suit is sufficient not only to stave off any possibility of a settlement but even to make an impending settlement proceedings null and void. The Government takes any notice of a suit or the filling of the suit as an affront to it and its prestige. I will tell you how it works. Sometimes, the negotiations are going on and often a litigant finds that if he does not file a suit-although negotiations are going on—his claim will become time-barred. So, he files a suit. The moment he files a suit or gives a notice under section 80 and the moment it is conveyed to the Government, the Government stops all negotiations. Its attitude is : Well, if a man has gone to court, let the court decide. A decision comes after two or three or four years. The Government often loses at the end and has to pay interest and costs which it would not have paid if it had gone in for a settlement. That is the attitude. I think section 80 is entirely useless. In fact, today I speak—again not from my experience as a Law Officer but as a citizen—on the basis of what I have heard and what I know that a notice under section 80 might lead to arrest and detention under MISA. I have known of a civil case intended to be filed where the litigant was threatened and told that if he filed a suit against the Government, he would be detained under MISA or if he filed a writ against the Government, he would be detained under MISA and in one case he was actually detained. Therefore, section 80 is not only useless but also dangerous. I support the hon. Members who have spoken before me that section 80 ought to be omitted. That is one thing.

The other section which I would like to mention and which does not feature in the report of the Select Committee is section 86. It is a section under which certain persons have immunity from being sued as for instance, Ambassadors, High Commissioners and the people named by the Government. U.N.O. is one of them. The section say that no person of this description or institution can be sued except with the consent of the Government. Then it proceeds to say that the Government shall not give sanction except in certain cases. One of them is where the proposed litigant or one who files a suit is the tenant of the immuned person. But the reverse case is not provided for where, let us say, the U.N.O. or one of the agencies of the U.N.O. such as W.H.O., is a tenant. It leases a property from an individual and enters into a contract. Under that contract, certain liabilities arise. When the person concerned goes to ask for leave to sue the institution because it has not discharged its liabilities under the contract, he is told that it is included in the exceptions and therefore the Government cannot give leave. I know one or two of these institutions. They use the property so badly as to cause damage worth a lakh or two lakhs of rupees to the building and the furniture let out to them. But the private individual has no recourse at all. They would not go to arbitration and no leave is granted to him. That is a section to which I would call the hon. Minister's attention. He should do something about it. I have not moved any amendment. I thought it is my duty to call his attention to it.

After that, Sir, I come to a few general observations made by hon. Mr. Bhupesh Gupta. When I was young, Sir, I began to get on with my practice, and never heard of people charging Rs. 3,000 a day

or Rs. 10,000 a day. I think in those days, money was money and the income-tax was law. With that money I should have retired 20 years ago instead of being working at the age of 80. But, Sir, having heard him, I do protest against the general statements about the lawyers making large sums of money. It is true there are lawyers who charge fantastic fees. But...

SHRI BHUPESH GUPTA : I am very sorry, Mr. Daphtary. When I mentioned this, I did not name them.

SHRI C. K. DAPHTARY : I entirely agree. It should be borne in mind, Mr. Gupta, that there are others who are strict about their fees. I have known a lawyer who after finishing a heavy piece of work charged his usual fee which was comparatively small. The client came to him and said, "Sir, this is not sufficient. I want to pay you more." But he said, "I am sorry. But this is what I think my work is worth." And they would not charge a penny more. And I myself know, Sir, that when Mr. Setalved was the Attorney-General, I was Solicitor-General, and we gave a joint opinion to a particular person from a State, and we debated for long as to how much we should charge. We charged a particular fee. When we sent the bill, the lawyer from that State come to us and said, "This is ridiculous. You are making my position ridiculous. I have charged three times of what you are going to charge."

SHRI BHUPESH GUPTA : I mentioned of that lawyer who came to you and not you.

SHRI C. K. DAPHTARY : I know, Mr. Bhupesh Gupta spoke in general terms, and I just want to dispel any impression that lawyers in general are persons who charge enormous fees. That is not like that. There are people who charge reasonable fee. There are persons who, in proper cases, charge a lesser fee. And in many cases, we charge no fees at all if we feel that the client has been badly treated and unjustly treated. If he cannot pay, we do not reduce our fees. We say either you pay or we will charge nothing. Therefore, I wish to dispel any wrong impression.

As to the other part of the hon. Member, Mr. Gupta's suggestion that there should be a new system of procedure and of law, well, there is a good deal to be said about it. It is a large problem which cannot be debated here. It is in the air for a long time, and various things have been suggested, this system of law, the other system of law, the third system of law, and so on. But whatever system is adopted, and assuming it to be considered and adopted, it has to be adapted to the conditions in this country. That is a very serious matter and to be thought of very carefully. But, first of all, we have to arrive at the principle that the present system of law, the British system of law is not the correct system for this country. Now, that itself is a very debatable question on which, Sir, I am unable to say anything further. I suppose you call me and Mr. Bhupesh Gupta would call me and old fossil . . .

SHRI BHUPESH GUPTA : I never call you that.

SHRI C. K. DAPHTARY : Or a reactionary.

SHRI BHUPESH GUPTA : No, no. I can tell you, Mr. Daphatry, I call you nothing of that sort. You are our esteemed friend and colleague. We have got regard and affection for you. We have it in abundance.

SHRI C. K. DAPHTARY : I have been at the bar for 56 years now.

[**The Vice-Chairman (Shri Lokanath Misra)** in the Chair].

I am too old to charge my ideas easily and therefore though I accept in principle what Mr. Bhupesh Gupta suggests, I think that it will be a number of years before the thing comes to pass.

SHRI SHYAM LAL YADAV : Mr. Vice-Chairman, Sir, you have just now heard

[Shri Shyam Lal Yadav.]

two eminent lawyers and persons connected with the administration of law speak on this vital subject. This is a basic law, law of procedure, which deals with the life of the people every day. This procedural law was actually enacted to decide matters, disputes and other rights and privileges coming up between citizens and between citizens and the State. Therefore, the procedure has been a bit lengthy also. It is not that the procedure that is prescribed is not known to the people. Actually Sir, this is a procedure which is mostly, say, 90 per cent, followed in the trial courses in the districts. In the High Courts and the Supreme Court they have just to argue it out mostly and decide the matter after seeing whether the law has been correctly followed or not. The procedure that is actually followed is worked out in the district and *mofussil* courts. There we have to face different problems and this Code must prescribe for all the eventualities. Unless we decide that certain rights which do exist in our country should not be there, I think we cannot have a smaller Code or nuclear codes. We cannot have such type of Codes unless we decide to do away with certain rights relating to property, civil rights and rights relating to succession and marriage and so many other things. So, in the nature of things the country as we are it is not England only which is a very conservative and old country, our country is still more older and ancient with its own tradition, its own lofty ideals, I do not think that we can change to any other system. This system has worked for more than 70 years and throughout the country even the ordinary litigant knows what the Civil Procedure Code is and what he has got to do in a court of law when he goes there to file a plaint. Therefore, Sir, my submission is that this Code largely represents the commonsense that is practised in courts. This Bill is aimed at making certain amendments. My apprehension is that the aims and ideals that were enunciated earlier by the Law Minister or were mentioned at the time of introducing the Bill, may not be fully achieved as desired by them because the procedure is quite lengthy and in so many cases it has been found that difficulties, whenever they arise, are easily removed or delays, which are caused by certain procedures, may not occur. But they are bound to be continued and the courts will take their own time and the parties will make their submission and sometimes raise their objections to meet the situation. Therefore, all these things cannot easily be achieved.

Sir, I would like to say one thing regarding what was just now said by our former Secretary-General, Shri Banerjee. I do not agree with him and I hope he will excuse me. The judiciary that is working in our country is of a high calibre, is quite intelligent and is not in any way less qualified or competent to do justice.

Munsiffs and magistrates are always recruited through Public Service Commissions and they are always topmost students. It is not easy for any third class students to get into this service. They have got the competence, honesty and integrity also. Therefore, they are trying to do justice. But we are illiterate people and mostly people are there who fight for little things. Poor people are fighting even for small pieces of land and small rights in the villages. And they have to go into litigation. Therefore, from the nature of things it is not easy to expect the courts to finish the cases in as speedy a way as we desire. Cases are bound to take time. In the High Courts also, at times there are many vacancies of judges which are not filled. There, usually, the lawyers take a long time to argue their case. In the lower courts. I know that the Munsiffs the Magistrates and other judges always rush through and they ask the lawyers to conclude and do not allow the lawyers to go on arguing. But in the High Courts, the lawyers go on arguing at length and they have to say so many things and they are not in a hurry. Therefore, mostly they take so much of the time.

Certain amendments have been proposed here on which I would like to say something. About section 80, I wholly agree

that the suggestions made by the Law Commission should have been accepted as originally accepted by the Government. The amendment that has been proposed now in this Bill and other amendments that have been passed by the Lok Sabha, I may respectfully submit, are more stringent. They curb the rights of the people to litigate against the State. It is not only necessary now to give notice to the Government but they cannot get an *ad interim* order from the court when the citizen is compelled to come to the court without giving notice. There are certain urgent matters. For example, the house of a citizen is going to be demolished. In this case, he cannot wait and give a notice of two months, because before that, his house may be razed to the ground. Therefore, he has to come to the court and file a suit and it is for the court to issue an interim injunction order *ex parte* so that his house may not be razed to the ground and then the respondent. the State, may be heard and finally the court may decide. But now what has been done here ? One concession has been given that the citizen can file the suit with the permission of the court but this right is circumvented that he cannot get interim stay order and injunction order; he cannot have the interim order without the notice being served to the opposite party. In such cases, the executive that works in the districts is not straightforward and it will evade the notice and in the mean time the irreparable loss and injury will be done to the person. Thus the whole purpose will be frustrated and it will become meaningless and the person may not get any justice. Not only has the Government rejected its own contention but it has gone back and made this service of notice under section 80 more stringent and, thus, more hardship will be caused to an ordinary citizen now than ever before. Therefore, my submission to the hon. Minister is to reconsider it. He has not struck a balance but rather he has gone heavily against the private citizen and in favour of the executive. Therefore, Sir, my submission is that this part that 'interim injunction cannot be granted' be done away with; otherwise, you keep the original section itself. Do not allow the courts even to permit a citizen to file a suit without serving notice, because no useful purpose will be served. I would like to be enlightened of the useful purpose that is going to be served without service of a notice on the State Government and filing a suit if interim injunction is not allowed.

When the case is between two private citizens, order 39, Sir, still allows the court the power to issue *ex parte* ad interim injunction order. This is provided here in the Bill. This remedy is available against a citizen in case of emergency. But in the case of the Government, the public authority corporations and other local bodies and institutions, this remedy is now being debarred. So my submission is that the right which has been given to a private citizen in case he files a suit against a citizen, that is debarred here and it is not a pleasant thing. I think it may cause more hardship to the people in urgent matters. The State also will not lose anything if an injunction is given in such hard cases. Therefore, Sir, certain conditions may be allowed so that the irreparable loss may not be caused to the citizen. When the suit is finally decided, he will find that he has nothing to gain except to lose all this money on the whole litigation. Leaving aside other points, the second point I would like to mention is in regard to clause 68, which relates to amendment of Order XVII, rule 1. This is a new clause. It is said that cases are delayed because of the lawyers. My respectful submission is that cases are not delayed because of the lawyers alone. This is because every client wants to engage a good lawyer. He does not want to engage a junior or a lawyer who cannot deliver the goods and who cannot ensure the success of his case. Therefore, every person wants to engage a good lawyer. Sometimes, it may so happen that a lawyer is engaged in some other case. But there is a statutory bar that the court cannot grant adjournment if a lawyer seeks adjournment on the ground that he could not be present

[Shri Shyam Lal Yadav]

there at that particular moment and that he may be accommodated. This stipulation would cause great hardship. The Law Minister is himself an eminent lawyer. He is aware of this from his experience. These things may happen in the High Courts. In the High Courts, good lawyears have a number of cases every day. But in the lower courts, the lawyers do not engage themselves in every case. This is because if one trial begins, it will continue for the whole day. The lawyer knows that the case will continue for the whole day and that he cannot come out if he has taken up a case. The courts can see whether actually the lawyer is engaged in some other case. They will also see whether this plea is correct and whether any loss is being caused to the other party. Then only, they will accommodate the lawyer. My submission is that this clause should be modified. The courts should be given some discretion so that they could see whether the pleader is unnecessarily delaying the proceedings. There is another difficulty. In some cases, the client may not know whether his lawyer is available. He comes to the court and then he finds that the lawyer is not available and that he has gone to some other court. In such a case, the court will pass an order against the client and he will unnecessarily lose his case because of the absence of the lawyer. Therefore, my submission is that this clause should be modified and some discretion should be given to the courts to see that the lawyers do not unnecessarily delay the cases, and if they do so, adjournments should not be granted. But in genuine cases, the lawyers should be accommodated.

Now, I come to clause 73. Some improvement has been made in regard to order XXII, rule 4, dealing with substitution. My submission is that a new duty has been cast upon the lawyers. When his client is dead, he has to give the information. Actually, when the client dies, the contract between him and the lawyer comes to an end. But for the purpose of giving this information, it is provided here in this Bill that the contract will be presumed to be in operation. My submission is that the lawyer may not know the correct position. Therefore, there should be a provision here that if the defendent is more than one, he may be required to give the information or the court may require that the plaintiff should give the information. Why should the lawyer be asked to give this information? He may not be knowing the correct position.

Lastly, I would like to say something in regard to clause 81, Order XXXIII, dealing with indigent persons. Formerly, the expression was 'pauper'. Now, a different term has been used which is quite correct. But there is one difficulty. There is an enquiry made in the lower courts whether a person is a pauper or an indigent person and whether he is able to pay the court fees and other expenses concerning his case. In our parts, in UP, this enquiry goes to the revenue officers to be conducted by them. It takes time and there is a lot of corruption. I would suggest that this enquiry should be conducted by the court before which the plaint or the defence is presented. The court itself may come to some conclusion. It may admit some affidavits, certain evidences or some documents and the person concerned may produce all these things. After hearing the parties or the applicant, the court may decide whether he is an indigent person and whether he is entitled for the benefit. This should be done by the Court itself instead of making this inquiry through other persons. Regarding Order XXXIX I have already submitted that in the case of private citizens this provision has been improved no doubt, but in the case of State the provision is not there.

(Time bell rings)

Another matter which has been mentioned specifically is the language of the court and the language in which summonses may be issued so that it may be intelligible to the Court concerned. In this connection I would like to bring to the notice of the Law

Minister that recently there has been a proposal—and some action also has been taken—that Judges of one High Court be transferred to other High Courts. There the question of language is a very serious one. I know that one Judge from Karnataka has been transferred to Allahabad. I think he may be knowing only very elementary Hindi and he is not likely to be a good-Hindi-knowing person. In our parts the entire records of the Courts are in Hindi. The Judge may be there for four or five years or, at the most, six years. Therefore, how can you expect him to know Hindi, know the records and do justice ? I am not opposed to transfer of Judges but my submission is that in a multi-lingual country like ours it would be better if the Judges working in one langauge region are transferred within the same region. Hindi-knowing persons of Northern India may be transferred within Northern India and Judges in Southern India may be transferred from one High Court to another within the same region if they know the local language. Otherwise it will create great difficulties. The lawyers are feeling it, the Judges must be feeling it. Otherwise I do not think it will serve any useful purpose. Only there will be more delay; the judge will have to learn the language. But the idea that he should learn it and then do the work will not be proper.

Regarding the fees of the lawyers, I would like to submit that what Shri Bhupesh Gupta has said is quite correct—that lawyers charge exorbitant fees and there are few lawyers who keep to the rule and take only the prescribed fees. I may tell you, Sir, that in the Supreme Court they will charge the fees prescribed for appearing but they will charge separate fees for preparing the case. A lawyer is expected to work in the Court whether he prepares the case in the court or at home. I know a lawyer who has been famous in the country recently and who has gone round the country defending a certain type of people. He was very much crying for democracy, liberty and all those things. I know, in Allahabad he charges Rs. 2,300 per day—Rs. 2,000 for himself and Rs. 300 for his clerk at 15 per cent. Everyone knows him in Allahabad. I do not know what he is charging at Bombay, Madras, Delhi and other places. There are such lawyers. The top lawyers who agree for tax cases and other things are charging exorbitant fees. There should be some provision so that they are not allowed to charge such high fees. There should be some way out. The Law Minister is quite competent to find out who are such lawyers who get such briefs and who are the people who flock to such lawyers. There should be some provision so that their fees are controlled. Otherwise lawyers and doctors charge high fees, whatever the High Courts or the Supreme Court may prescribe and ultimately it is the client who suffers because the cost that will be added to his expenses will be only the one prescribed by Courts but he will have to otherwise pay exorbitant fees. This is one thing which requires consideration.

Otherwise, Sir, the Bill is quite good. It amends the Code which has been in existence for about 70 years or more and I hope these amendments will also exist for a long period. Such amendments are not easy to make. Recently we had the good fortune of amending our Criminal Procedure Code. The IPC Amendment Bill has also gone through the Joint Committee and is now before Parliament and now the Civil Procedure Code is being amended The Law officer who was dealing with this—Mr. Moitra—had been working with the Cr.P C. Joint Committee also and I know him. He has devoted much time to drafting it. Now I would like to say that the few points that have been pointed out will be considered by the Law Minister so that the citizens' rights are not curbed. In order to hurry to curb the rights of the judiciary the rights of citizen should not be curbed. They should be protected against the State, against the Corporations and other bodies. There should be an easy way to go to Court and seek justice. Therefore, if we load the legislation heavily

[Shri Shyam Lal Yadav]
against citizens in favour of executive, it will become very difficult.

With these words I support the Bill.

SHRI NABIN CHANDRA BURAGOHAIN (Assam) : Sir, at the very outset, I would like to draw the attention of the hon. Members to an advice received by Lord Macaulay when he was appointed Adviser to the British Government in India. While he had expressed much anxiety of the attack of flies and mosquitoes in India, he was advised that by his table where he worked should be seated a blooming, healthy Indian clerk, so that the fly or the mosquito should stick to the body of that blooming and healthy Indian clerk and not him. On the basis of this psychosis of a great lawyer like Lord Macaulay, the British laws were framed and the same functioned in India. His influence percolated to all the laws made during that time. The idea of the Imperialists then was how to give a better footing to the British rule in India, by giving a tilt in the judicial system in favour of the wealthy against the interest of the weaker sections. And they were successful in application of their methods.

This Civil Procedure Code was enacted about six decades back. During this time many things happened in India. Even the British had quitted from India. The political aspirations of the people of India had totally changed. The socio-economic aspirations of the people had developed to a great extent and to meet the aspiration of the people, a good number of enactments with regard to the development of a socio-economic order had been enacted. But this Civil Procedure Code remained unchanged. Sir, how could you appreciate that the Civil Procedure Code, whose provisions were static for a good long time, could act as a catalytic agent to the implementation of our enactments for the improvement of our socio-economic conditions ? I say the provisions will quite fail to meet the challenges of the time. But by this Bill some amendments are brought forward for consideration of this House. I welcome them.

Regarding retention of section 80, in this House Mr. Bhupesh Gupta and others, even well known lawyer like Mr. Daphtary have opposed it, but I think Mr. Daphtary and others have appreciated the difficulties in the lower percentage of cases with regard to taking the help of section 80. But in the majority of cases retention will contribute very much. Sir, if there is a single claim against the Government, how can the Government assess quickly the demand from its vastness of administration and its diversifications ? Now-a-days Government have taken over so many public undertakings for meeting the social needs. Even if this provision is abolished, a single man can put a halt to the functioning of a public sector undertaking run by the Government. On the other hand, there are benefits also for the weaker sections. If notices are served, the Government can assess the demand. The Government can think over the reasonableness of the case and may agree. So this provision can help the poor claimants without incurring expenditure and difficulties in filing a suit. So I support the retention of this section. It will do immense good to a larger section of the population.

I like another provision under the amendments put forward by this Bill. This is Order XVII. The amendments prove that the Government are anxious for expeditious disposal of cases. Sir, I have got personal experience of the functioning of the lower courts—I am not speaking of the Supreme Court and the High Courts but the lower courts, the subordinate courts. In a court there are quite a few monopolists who can even put a halt to the functioning of the court. A lawyer being very flourishing and his practice being very lucrative, is generally engaged elsewhere and at the same time a good number of cases in which he is engaged come up in the court and the court has to wait for his appearance. Under the previous provisions of Order XVII, the unreasonable absence of a lawyer might put off a genuine case. So, Sir, this amendment is welcomed. Generally, in the

lower courts adjournments are sought by the richer people with the idea of causing harassment to the weaker parties. By this harassment they expect that the weaker sections might leave the claim. With that purpose, in many cases adjournments are sought and these wealthier sections engage lawyers who are having more practice. So, those lawyers absent themselves and under the garb of that plea on many occasions they take adjournments cornering the weaker sections. There was no definition of sufficient cause in the existing provisions about adjournment. The provision previously was—

> "The Court may, if sufficient cause is shown, at any stage of the suit, grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit;"

Now, the new provision specifically mentions the absence of the lawyers. It says—

> "(b) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party,
>
> (c) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment,"

This Section will be quite helpful to the poor litigant public. So, Sir, I support this clause also.

I should like to draw your attention to another issue. A very low percentage of cases come to the High Court. Most of the cases, 80 per cent of them, are disposed of in the subordinate courts, and the parties in those 80 per cent of cases, in spite of their desire to have justice in the higher courts, cannot go to the higher courts for want of money, due to their poor pecuniary circumstances. So they are satisfied with the decision of the lower courts. So, I say that these lower courts have been dispensing justice to 80 per cent of the litigants. Only a very few percentage of people are concerned with the decisions of the higher courts, the High Courts and the Supreme Court. But these subordinate courts, due to work-load or for want of paraphernalia or for want of amenities, cannot function well. So, I suggest that the Law Minister be pleased to see that these lower courts in which most of the poor people seek justice are well equipped with staff, amenities and the necessary paraphernalia.

Sir, one issue has been raised by Mr. Banerjee—I appreciate it—that the subordinate judiciary lacks in judicial talent The Law Minister should think why the subordinate judiciary cannot get legal talent. There are hundreds of persons in our country with legal talent. Why cannot the subordinate judiciary attract such men even though these persons are having a good practice at the Bar. It is due to the bad pay scales in the subordinate judiciary. I hope that the Law Minister will see that a good pay scale is given to the subordinate judiciary for the purpose of attracting legal talent from the Bar.

Another point that has been raised—rather it might be scandal or calumny against lawyers—is that the mentality of the lawyers in India is conservative. But it is heartening to note, Sir, that an organisation in the name of Lawyers' Forum is coming up. Hundreds of young, promising lawyers are members of this Forum This Forum has been helping the implementation of the social and economic measures of the Government. It seeks to give help to the implementation of the 20-point programme very successfully.

It is also heartening to note that your lawyers are coming forward to make the legal aid scheme successful. Many young lawyers have come forward to give their services even without any remuneration Is it not heartening ? So I see that the mentality of the Bar or of the members of the Bar has been undergoing a great change. With these words, Sir, I support the provisions of the Bill.

SHRI NARASINGHA PRASAD NANDA (Orissa): Mr. Vice-Chairman, Sir, I am not only a back-bencher but I think I am the tail-ender in this debate. I have no fad to air because I know that if I harp on pathos, it might turn into bathos, and if I take to emotion, then that might cause antipathy or apathy amongst the Members of the House.

We are, after all, discussing an amendment to the Code of Civil Procedure. But we are bringing in all kinds of things under the sun while discussing this amendment. Sir, Mr. Bhupesh Gupta in the course of his lengthy argument spoke about delays in courts of law. But I would submit that in the courts of law, relevancy and questions of substantial nature are very important. And I would submit, Sir, that it is only lawyers like Mr. Bhupesh Gupta in the courts of law who cause all kinds of delay. (*Interruption*) He is not a practising lawyer, but had he been practising, he would have been doing the same thing. He gave an illustration that once he was required to argue and another lawyer pocketed the money. I think he was an intelligent lawyer. He was intelligent enough to exploit Mr. Gupta fully. He knew that Mr. Gupta would neither restrict himself to the questions which were relevant to the issue nor to the substantial matters raised in the controversy.

Now, another point that was raised by Mr. Bhupesh Gupta was regarding the Anglo-Saxon system. I always find that Mr. Bhupesh Gupta sees a ghost in the Anglo-Saxon system. Again excuse me, Sir, if I say that most of us are products of this Anglo-Saxon system. The Father of this nation, Mahatma Gandhi, was also a product of this system. Jawaharlal Nehru who laid the foundation for the economic and social upliftment of this country was also a product of this system. Many leaders were products of this system. I do not know whether Mr. Gupta had his training elsewhere or under this Anglo-Saxon system. What I beg to submit is that it is no good always blaming a system. The system itself is not bad. My submission is that it is not the system that is to blame. As I understand it, the success of a system depends on the man who works that system. The legal system depends on the Judges, the lawyers and the litigants. These are the three parties to the litigation. You cannot just blame the Judges and exonerate the lawyers; nor can you blame the lawyers and exonerate the Judges; nor can you just blame the litigants and exonerate the other two. All these three combined have to work together to make a system a success. Simply because it is an Anglo-Saxon system, it is not bad. I do not know whether Shri Gupta will come and say one day that this House where we can sit comfortably and argue should be destroyed because it is the relic of the Anglo-Saxon authority. My submission is we must not merely criticise a system, but we should try to find the merits of a particular system. And if the system has merit, you have to accept it, whether it comes from Anglo-Saxons or Greek sources or Roman sources or Russian Bolsheviks or Chinese sources. The source is not very important. After all the entire human civilisation must be taken in its totality and no particular system is bad as it is.

Another argument that was advanced is regarding speedy justice and fair trial. Effort is being made in that direction. I personally feel that this amendment which is the result of a study by the Joint Committee which had at least 51 sittings and of whom at least 40 Members agreed on these amendments should be accepted because we must bank on the collective wisdom of the Committee. They have examined all these amendments in detail. They have found that these amendments would help in achieving these objectives. They may bring about reduction in the cost of litigation as far as possible. They could not deal with court fees because that is a State subject. But they have recommended in their report that the question of court fee should be considered by the respective State Governments. The second thing for their consideration was that the litigant should get a fair trial in

accordance with the accepted principles of natural justice. The third thing before them was expeditious disposal of civil suits and proceedings so that justice may not be delayed. I think the third was the most important object and for that this law had to be substantially modified. Here it will be relevant to submit before you that there is lot of difference between substantive law and procedural law. This law does not confer any substantive right on any citizen. That type of law is different from this law. This law only lays down the procedure as to where the trial should take place and how the trials should take place. The Code of Civil Procedure, 1908, is a cumbersome Code and it lays down cumbersome procedures. In fact, the procedures laid down in that Code were delaying matters to such an extent that it was almost impossible to accept them and it is a good thing that an effort has been made to see that the delays in the procedures are avoided. Of course, no law can be made so perfect that it does not give any scope for delay at all. But the effort now is in the direction of removing delays and that is why I say that this is a major step.

Sir, I would like to say something about the important changes that have been sought to be made. But there is hardly any time now and I am a tail-ender, as I said at the very outset, and I may not be able to offer all my comments on these major changes. After all, if the Joint Committee took 51 sittings to consider the whole Code, I cannot possibly be expected to offer all my comments on these amendments within the fifteen minutes' time that has been allowed to me. By excluding determination of questions under section 47 from the definition of 'Decree', first appeals and second appeals are excluded and this measure would help us in avoiding delays. The scope of section 11 has been enlarged. The principle of *res judicata* has been enlarged and that is a welcome measure. Similarly, regarding service of summons, only personal notice used to be held valid and, nowadays, if a registered notice is served with 'acknowledgement due', that is also considered to be a valid and sufficient notice. Then, in the case of adjournment, compensatory costs have been provided for so that no party will ask for an adjournment unless it is absolutely necessary. Costs are sought to be imposed for taking adjournments and there are conditions precedent to it which will act as a deterrent. Then, Sir, I would like to submit that there is some important change in respect of arrest and detention under section 51. Some change is also there in respect of attachment of property under Order XXI. Then Sir, the scope of issuance of commissions has been expanded. So far as section 80 is concerned, a compromise has been arrived at and for urgent and immediate relief, the party can come to the court. The scope of Second Appeals has been limited and some changes have also been made regarding the rules for filing documents and so on. The time for the delivery of judgment has been prescribed and for the drawing up of decree has also been specified. Some major changes have also been effected in order 21 of the Code and for the substitution of legal representatives, to avoid delays, certain new procedures also have been laid down. A new procedure has been invented and it is with regard to the suits relating to a family. These things are all welcome measures. Instead of saying that each change is a welcome one, I would say that all these changes are very welcome. The improvement on the provision relating to help to an indigent suitor is a very welcome improvement. It is an improvement on the language also. Originally, the Code used the words "suit by a pauper". I think the description of such a person as an indigent person is a much better description. Some other improvements also have been effected and these are all very welcome improvements. There are some improvements in the provisions with regard to the question of injunction and there are important changes in matters of appeals and appeals against orders. All these things go to show tha

[Shri Narasingha Prasad Nanda.]

major changes have been effected in the Code which are all very welcome

5 P.M. changes. And these changes have been effected with the main object of avoiding delay and helping expeditious disposal of cases.

Finally, Sir, I would submit, as I have submitted earlier, the success of a system depends on the men who work them. Let us, therefore, hope that our judges, our lawyers as well as our litigant public will rise to the occasion and they will accept the social and economic changes instead of sitting within the four walls of the court rooms, and try to see that the system works as effectively as possible. With these words, Sir I support this Bill. Thank you.

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA) : The hon. Minister.

DR. V. A. SEYID MUHAMMAD : Mr. Vice-Chairman, Sir I wish to thank all the Members who spoke today in the debate. Some of them had major reservations; some of them had minor reservation, about certain provisions in the Bill. Irrespective of those reservations, I am thankful for their useful contribution to the debate.

Mr Bhupesh Gupta, as usual, made use of this Bill or the topic today before the House, to express the opinions he had on different subjects under the sun. Some of them were relevant, some of them were not relevant and some of them were absolutely irrelevant. I will, with your permission, Sir, confine myself with those which are relevant for the purposes of the Bill before the House.

Sir, the main criticism is directed against section 80 of the Code, which has been introduced now, and which was not in the original Bill when it came before the House. I think Mr. Bhupesh Gupta or somebody else suggested that it has been smuggled in. I can assure him, whoever raised that question, that it was not smuggled in. The Committee went round the country, taking evidence, and it was in the light of the evidence, the memoranda and various matters before the Committee that they thought it fit to re-introduce section 80 in the Bill. So there was no question at some stage of the Government surreptitiously coming in and smuggling in that section.

Sir, the main criticism was contained in the Law Commission Report on section 80. There were two reasons given at that time. One is that it is against democratic principles to retain a provision like section 80; secondly, that the Government escaped the liability on certain technical grounds.

Sir, regarding the first criticism that it is anti-democratic, I wish to make it clear, which I made in my statement when I introduced the Bill for consideration, that this is not a favourable treatment given to the Government. Section 80 was intended to help the litigant. By sending this notice the matter may be settled. That was the original intention with which it was introduced. It was not intended to be a favourable treatment extended to the Government. There may be disputes or arguments about the object of that section, namely, the settlement which will be reached by serving this notice would not have succeeded to the full extent. This is no reason to call it undemocratic. Another reason which I say is that it has nothing to do with any democratic principle. There is always a distinction, by the very nature of things, between the Government and the individual. Innumerable statutes are there treating the Government in a different way, like the Rent Control Acts, Land legislations, Motor Vehicles Act, and so on. They have been challenged on certain occasions before the High Courts as well as the Supreme Court and they have held them to be invalid because there was a distinct reason for treating the Government on a different basis than the ordinary citizen. Therefore, there is nothing undemocratic. However, I again say that it was never intended to give the

Government a favourable treatment. It was intended to help the litigant as against rushing to the court without taking advantage of informing the Government and then coming to a settlement. I agree that the object has not been fully achieved and the results were not satisfactory. But that is a different matter.

The second thing is that on technical grounds such as certain details or certain technical use of words in the notice, the suit will not be dismissed. It is true that in the beginning technical grounds were raised that the notice was not properly served and the courts held that on that ground of notice not being properly served the suit was not maintainable. In recent times, the Supreme Court itself has, in various decisions, clarified and removed some of these technical pleas and put it on a more reasonable and sound basis. Sometimes, difficulties arose in the case of section 80 because of the interpretations which the High Courts gave from time to time. The Supreme Court itself has rectified some of these difficulties of unreasonable technical pleas which had cropped up and which were not intended in the section itself. We have rectified that thing in section 80. The second part of the section clearly states that no technical pleas can be accepted except those mentioned. Proper address and description is necessary so that the Government can understand who the person is and who has sent the notice. That is very necessary. The second ground is the cause of action and the relief should be clearly stated. You can raise technical difficulties on these two grounds. The main criticisms of the Law Commission, viz., its being of anti-democratic nature and raising of the technical pleas, are not with much substance. As I said, it may be that the hope entertained at the time when it was originally introduced viz., that most of the litigations will be settled before going to the court by serving this notice, may not have been fulfilled. It may not have achieved the results which it was hoped to achieve. But that is no reason that it should be altogether abolished in the sense that section 80 should be deleted. Apart from the things which I mentioned, there is also a new provision regarding serving notice to the Government before an injunction is obtained. There is a solid ground for introduction of that provision. We have found from experience—Mr. Bhupesh Gupta and other Members who spoke will agree with me—that this has been going on in the country. Injunctions are obtained against very essential services such as road transport, water supply and even electricity undertakings. I know of instances in which injunctions were got and valuable timber worth crores of rupees was cut away from forests. By the time the injunctions were vacated, the forests were completely denuded of valuable wood. It may appear to be harsh. But you look at the point of view of the State also. If injunction can really stop some of the essential supplies, the harm can never be rectified. Theoretically, yes, you can say that the man should get injunction, otherwise, the resort to court will be infructuous. That is all right. But imagine the other countervailing difficulties which the State and consequently the entire population of a city or a State will have to face. When you make legislation you have to weigh the pros and cons and take a balanced attitude. That is why, we have put in the provision. And there is another important matter also Unless there is such a provision under section 80 they can just say, make a prayer in every suit for injunctions against the Government, and immediately interim relief is given, and thus defeating the whole purpose of section 80. So, the provision is based on sound reasons and it is not because the Government wanted that section 80 should be put in somehow or the other in spite of the fact that it was not in the original Act. It is not because some brain wave which occurred later on and we thought that it should be put somehow or the other. That is not the position. The matter was seriously weighed, the pros and cons taken, and a balance was struck. Ultimately, we found that there

[Dr. V. A. Seyid Muhammad.]

provisions are absolutely necessary. In certain cases, there may be hardships. But under which law, there will not be any hardships? In exceptional cases, there will be hardships in any law. But when you make the law, it is for the generalities, not for the exceptional hardships. Sir, I do not propose to deal further with section 80.

There was another point which Mr. Daphtary raised. It is about section 86—the diplomatic immunity in the case of being sued and remedies available against foreign dignitaries and representatives of some of the international organisations like the UNO which have got diplomatic immunities. I wish to make the position clear. If you take the immunity granted to these individuals, representatives and institutions as something of a deviation from the ordinary Civil Procedure Code, I agree it is so. It has to be so by the very reason and by the very nature of the institutions and the individuals. Diplomatic immunity is extended for mainly three reasons. One is, the reasons of State. Secondly, the ordinary courtesies which sovereigns and their representatives extended on a reciprocal basis in all the civilized nations. Thirdly, it has been found that even though the UNO has not got the other two reasons, the one reason, which is universally accepted by the decision of the International Court of Justice and the authorities on the subject is that diplomatic immunity in this field is necessary for the efficient working of the accredited representatives or the institutions as the case may be. So, when we take these three reasons of the State, the general courtesies extended between sovereigns and their representatives on a reciprocal basis, and the necessity of enabling the representatives and the institutions to discharge their functions efficiently —they have to be, by the very nature of things, treated in a different way. And that is accepted throughout the world. It is not only here in the Indian Civil Procedure Code, but in most other countries it is there. I don't think there is any country which does not extend such diplomatic immunities to the representatives of other sovereign States who are accredited in the country concerned or now to what may be called the immunities of international instrumentalities and organisations. Therefore, it is easy to point out certain anomalies in the provisions relating to these representatives and organisations. But they are bound to be there as I was saying by the very nature of things. They are bound to be there because they are considered on entirely different grounds, the three grounds which I have just stated. Sir, these are the major criticisms. One criticism which has been levelled is about adjournments. It has been found, Sir, that for seeking adjournments and for arrears of cases there are about 15 to 18 reasons, out of which four relate to what may be called the ambit of the Civil Procedure Code. It is not a precise enumeration, it is a rough enumeration, there may be overlapping situations. One is frequent resort to section 115 of the Civil Procedure Code, adjournments, lengthy arguments and procedural delays. In the proposed amendment we have tried to cover all these loopholes which result in delays and accumulation of arrears. One of the reasons is frequent adjournments given on various grounds and one of the grounds is that the lawyer is engaged in a different court and the junior comes and tells that he is engaged in a different court. Generally it does not happen in the Supreme Court and in the High Courts rarely but it happens mostly in subordinate courts and lower courts. Now, there cannot be any difficulty about that. For example, in the Supreme Court no case will be adjourned on the ground that the lawyer is engaged in another court. For 25 years that has been working and the system has not broken down. Then there are High Courts. Even though there is no rule to that effect but there are certain Chief Justices and other Judges who insist that no adjournment will be granted on the ground that the lawyer is engaged in another court. Even without the amendment the High Courts have been working and the moment the advocates realise that this sort of a thing cannot go on, they will make other adjustments. They have to. That is

what they are doing in the Supreme Court. No case in the Supreme Court is adjourned on the ground that the lawyer is working in a different court. So, when they realise that it cannot be done, they will have to adjust themselves and after all, how many lawyers are there who monopolise work ? Not many. For their benefit and convenience the entire proceedings should not be held up. Just like it was said that forests should be denuded so that Gladstone may perspire, it was his hobby to cut the woods and denud the forests. Similarly, the proceedings cannot be held up simply for the convenience of the seniors. They may make four times or five times the fee. But one fee is enough. Let them get on with that. One advantage is that this will break the monopoly. Secondly, it will give juniors a better chance. This amendment is not brought forward for that reason but it is mainly for eliminating delays. But this process and this provision, if you may use the commercial expression, will result in producing by-products namely, improve the chance of juniors and break the monopoly of some of the leading lawyers in the *mofussil* courts.

Sir, another point which Mr. Bhupesh Gupta dealt with is about the exorbitant fees which some of the leading lawyers are charging. Even though it is not very relevant to the discussion, I fully agree that it has gone to such an extent that it has become scandalous, charging Rs. 10,000, Rs. 7,000 or Rs. 3,000, daily and so on for no apparent reason, except that there are people who are enamoured of some names and think that by engaging these lawyers—they can afford also—they can succeed. It is not justified at all

I fully agree with him. But Mr. Daphtary has very ably and very elaborately replied to that point. I myself being a member of this noble profession, must also make it clear that—I do not have the correct figure—there are about more than a lakh and twenty thousand lawyers. Out of this number, how many are doing this? At the most, it would be 50. While definitely appreciating his point and while definitely disapproving this practice, this shall not be posed as a general malady of the profession. I want to say that much but I definitely agree with Mr. Bhupesh Gupta in this criticism that it is exorbitant and unjustifiable and I can also support him when he suggested—he did not clearly say so—that some of them are getting a portion in cash and some by cheque. That also is correct. The legal profession itself took notice of that. I remember some years ago when I was working with Mr. Setalwad he and Mr. K. M. Munshi, wanted to draw up a professional code of ethics for lawyers. Mr. Setalwad insisted that evasion of payment of taxes in this and other ways should be treated in as professional misconduct. But, unfortunately, it did not get through. So, I was fully in support of that and I am in support of it fully with what Mr. Bhupesh Gupta has said. My only complaint is that a generalisation has been made. As I said, it is only 50 out of a lakh and twenty thousand. And partly, it is the fault of the rich moneyed litigants also. They are prepared to pay . . .

SHRI BHUPESH GUPTA : You said fifty, about what ?

DR. V. A. SEYID MUHAMMAD : I said it may be only fifty people who indulge in this practice of charging Rs. 3,000, Rs. 5,000 or Rs. 10,000 daily.

SHRI BHUPESH GUPTA : Only fifty, according to you ?

DR. V. A. SEYID MUHAMMAD : I do not think there will be more than that. I do not think.

SHRI BHUPESH GUPTA : I can understand the hon. Minister himself being a lawyer would like to broaden the exclusion category. I can understand that. Only fifty you say ?

DR. V. A. SEYID MUHAMMAD : I think so.

SHRI BHUPESH GUPTA : I do not know; you are the lawyer; you are in the

[Shri Bhupesh Gupta.]

Supreme Court and the High Courts. And you say only fifty ? Not even one per thousand on an average ?

DR. V. A. SEYID MUHAMMAD : They may be about fifty who can charge at that rate which Mr. Bhupesh Gupta referred to as Rs. 3,000, Rs. 5,000 of Rs. 10,000 daily or whatever it is. There may not be more than fifty of that calibre, calibre in the sense that for some reason or the other they have managed to establish that reputation so that people are prepared to pay.

SHRI BHUPESH GUPTA : Shall I....

DR. V. A. SEYID MUHAMMAD : Make it hundred.

SHRI BHUPESH GUPTA : If you give me the time, I shall just start naming from some High Courts and from the Supreme Court. Don't say fifty. It is all right and I do not say that it is everybody who is doing it. Obviously not

DR. V. A. SEYID MUHAMMAD : Assuming it is one thousand but even that does not make much difference out of the figures of a lakh and twenty thousand. But I certainly agree with you that it is a bad practice. In no way I am supporting it. I am as strong in condemnation of this practice as Mr. Bhupesh Gupta is.

Now, Sir, there are not very many points which have been raised for which I should take the precious time of this House. One thing I wanted to say. It was rather a reflection coming from a person with Mr. Banerjee's standing and maturity and sobriety to say that the subordinate judiciary in this country has gone down very low, much down and low down from the days when he was recruited. I do not agree. I have the assurance, so to say, from some of the Supreme Court judges themselves and they have said that a large number of them by and large—I am referring to subordinate judiciary—is very good and some of them are even better than some of the High Court judges.

At least three judges of the Supreme Court have told me on previous occasions about this when I was practising in the Supremt Court. Therefore, I cannot agree with the suggestion that the standard has gone down. Sir, I do not propose to take any more of the time of the House.

SHRI BHUPESH GUPTA : What about addresses made in the courts ?

DR. V. A. SEYID MUHAMMAD : As I said, this is a very important point. About three-four years ago, the Chief Justice sent a directive or whatever you may call it. But it has been made known that there is no necessity to address the courts as 'Your Lordship' and so on. But you know, Sir, this is because of the habit formed. When I came here as a Member for the first time, there were two occasions when, instead of saying 'Mr. Vice-Chairman', I said 'My Lord'.

SHRI BHUPESH GUPTA : This is like Mr. Goenka's habit of shop-lifting. When he cannot lift anything, he goes on shop-lifting. Do you mean this kind of habit ?

DR. V. A. SEYID MUHAMMAD : What I am saying is that the court itself directed that it is not necesary to address the courts as 'My Lord', 'Your Lordship' and so on. But by habit, this is still continuing.

SHRI BHUPESH GUPTA : Why ?

DR. V. A. SEYID MUHAMMAD : I do not understand. This is because of the habit formed. But it has been made clear that there is no necessity to address the courts as 'Your Lordship' and so on. But as I said, by sheer habit, I addressed the Chair as 'My Lord' twice.

SHRI BHUPESH GUPTA : That can be corrected at once.

DR. V. A. SEYID MUHAMMAD : I entirely agree that there is no justification for this court of appellation as 'My Lord', 'Your Lordship' and so on.

Regarding gowns, there are differences of opinion. Mr. Bhupesh Gupta has expressed some opinion on this. Some earnestly believe that the too much informality which is prevailing in the American courts...

SHRI BHUPESH GUPTA : If the judge is a woman, what will you say by habit ? By habit, will you say 'My Fair Lady' ? I hope not.

DR. V. A. SEYID MUHAMMAD : Even if the judge is a lady, I understand she must be addressed as 'My Lord'.

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA) : Mr. Bhupesh Gupta, the court does not have a sex.

DR. V. A. SEYID MUHAMMAD : In England, when Miss Rose became the judge of the High Court, this question was raised and I am told it was ruled that she must be addressed as 'My Lord'.

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA) : The court has no sex.

SHRI BHUPESH GUPTA : The court has no sex. But if somebody says 'My Unuch', will it be permitted ?

THE VICE-CHAIRMAN SHRI LOKANATH MISRA) : Perhaps, you might say that when you go to the court.

DR. V. A. SEYID MUHAMMAD : I do not wish to deal with hypothetical questions. I was stating that there are some people who earnestly believe in the informality of the American courts where the judges and others can come even in bush shirts or whatever it is. But it is not really in keeping with the dignity. This is a matter on which there can be difference of opinion. I will not deal with this any more. This does not pertain to the Bill. I once again thank the Members who have taken part in the debate. I commend the Bill to the House.

THE VICE CHAIRMAN (SHRI LOKANATH MISRA) : The question is :

"That the Bill further to amend the Code of Civil Procedure, 1908, and the Limitation Act, 1963, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA) : We shall now take up the clause-by-clause consideration of the Bill.

Clauses 2 to 26 were added to the Bill

Clause 27—Amendment of section 80

SHRI BHUPESH GUPTA : Sir, I beg to move :

"That, at page 10, *for* the existing clause 27, the following be substituted, namely :—

'Section 80 of the principal Act shall be omitted.' "

Sir, this a very simple amendment. I want the restoration of the old position. When the Bill was originally drafted, it was done on the basis of the recommendations, I believe, of my important bodies, lawyers and others. The Government itself thought that this particular section should be deleted from the Civil Procedured Code.

Then, Sir, we were informed that there were manoeuvres in certain official circless Government circles to get this clause re-introduced, that is to say, the omission to be ignored. How it came is a long story and I need not go into it. It is one of the most scandalous stories of how sometimes the Select Committees are functioned by the Government. This was revealed in the Lok Sabha by our Member and others who know of it and who have informed me on what was happening at that time. That is why we are concentrating on it. I suppose the Government will accept it. The Lok Sabha will be in session

[Shri Bhupesh Gupta.]

and they will agree to this. There is division of opinion both in Lok Sabha and, I think in this House also. Some hon. Members have not quite agreed with it but most others have. There was a retired Law Officer of the Government of India who held many important posts and he is also of the view—being a Member of the Law Commission also—that this particular section eminently deserved to be struck down from the Statute Book. I do not see what is the objection on the part of the Government. Now, Sir, if the intention was to help settlement out of court, this has been exactly the opposite. This has been responsible—as many lawyers tell me—for the delay, for the prolongation of litigation and for a kind of callous attitude on the part of those Government officers and Government when they are in the role of litigants. Therefore, in no way would they benefit from it.

Now, Sir, I am not going into bigger questions of democracy. Today the State has a lot of functions which more or less, are in line with the functions of the individual citizen. With the State in trade, with the State in commerce, with the State in industry, many contracts are entered into and naturally they have to appear in many civil suits. Now why should the State be in a better position—I cannot understand—whereas an ordinary citizen will have to go in for all kinds of procedures—of serving notice or getting leave of the Court before filing a suit against a Government servant or the Government or any such official body ? Why should it be so ? What do you gain by it ?

Now Mr. Daphtary made a very revealing statement. He said that sometimes when a notice is sought to be served, it is taken advantage of by the officials in order to see that this is not done and the methods of blackmail and intimidation are used. I am shocked at the statement he has made. There should be an investigation. He said that one person who wanted to serve a notice on the Government was threatened with MISA, not only threatened but was actually detained under MISA. This is a statement made not by a common place politician like me. Here is a statement made by the former Attorney-General of the Republic of India and I think his statement should be taken seriously by the Government and gone into, and whoever is responsible should be given appropriate punishment because you cannot allow such things. I know that it will not be published in the papers because some people like to see to it that such statements are not reported in the press. I would ask the press to report it and see what happens. Nothing will happen ! This is not in any way contrary to any of the guidelines or any of the things. If a responsible man in public life has made a statement that a particular procedure has been misused by certain officials, it should be known to the public. (*Time-bell rings*). The Government should come forward and take remedial measures and punish such people.

Sir, now one can cite many instances. I have talked to some lawyers about it, I have talked to some Judges about it. They are all opposed to it. I do not know as to why the Government has such a fascination for this section 80 that it must be retained. What is the mystery about it ? I would like to know.

Now, Sir, I do not think that it really deserves any support. The Government is standing on prestige. Having done this thing, having managed to smuggle this thing into the Act, now they would not like to go back on that act of smuggling. Well, that does not bring credit to the Government. I say 'smuggled' because I know how it was manipulated. It was literally smuggled. We were altered that this thing was being done. Even my advice was sought as to how this should be resisted. I was not a member of the Joint Select Committee but my advice was sought as to how it should be done. As you know, the Member of our group from this House had appended a note of dissent, in which this particular thing has been mentioned. In fact, he wanted the restoration of the original provision which has been tampered with by the Government. Therefore, I say

you do not gain anything by it. Why can't you listen to us ? Here, we all of us have been speaking. May be, one hon. Member is not sharing our views. I will still suggest, if you like I am prepared to request you to hold over this particular amendment. Pass everything else.

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA) : Let us hear the Minister whether he accepts it or not.

SHRI BHUPESH GUPTA : Hold it over. Let the Government discuss it. Tomorrow you can dispose it of. I know very many people of your party, of the ruling party, who do not want it. May be, some people want it but then if the Government uses the steam-roller, it is very difficult to test opinion over such a matter. The demand that we are making is universally shared by lawyers, jurists, judges, Members of Parliament and others, even the members of the Law Commission. I do not see why this should not be done.

As far as other things are concerned, I need not say much. There has been some improvement. That is why we are supporting this Bill. But the trouble is, while supporting the Bill when we point out a something, even little accommodation will not be made by the Government. It is because some people have taken into their head that section 80 must be retained and retained in the form in which it has been suggested by the Joint Select Committee. You see the notes of the Joint Select Committee. Is there any agreement ? I could have understood if the original Bill had been modified on the basis of conscience, on the basis of a unanimous agreement. The Joint Select Committee has been divided over this matter. There is no need for a division. Now, you may say that my opinion is not well informed. But what about Mr. Daphtary's opinion I should like to know. He has no political axe to grind. I have no political axe to grind. I do not see the Government has any political axe to grind. None of us. Then, why it should not be included in its original form and why my amendment should not be accepted, I cannot understand. Sir, the other things he has said. The hon. Minister under-estimates the things. As you know, he was telling that only 50 lawyers out of one lakh make fabulous charges. I hope it will be published so that the country will know how ignorant sometimes our eminent Ministers are. If this news is published in the newspapers, people will read it that there is a Law Minister in this country who thinks that only fifty lawyers among a lakh, or even if he says among two lakhs, make high charges or take big fees. Sir, I do not know he arrives at these statistics and there is no basis for him. Right now I can say, I can name one after another extempore. The number will be almost fifty out of memory and from one Calcutta High Court and Supreme Court. I can do that. I am not going to Bombay High Court, Madras High Court, Allahabad High Court or other High Courts of the country. Why do you say such things ?

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA) : Now let us see, after your persuasive speech what the Minister has to say.

SHRI BHUPESH GUPTA : It is not a persuasive speech. Therefore, I am not saying 'all lawyers'. I never said so. Some of the lawyers do not even have a bicycle for going to the court. Others have Mercedez and other car. Some of them are very down and out I do not know how my friend was placed at the Bar when he was a lawyer. Was he good or bad, I do not know. He looks prosperous. Therefore, I presume he was prosperous at the Bar also. Leave that out. I see other people who are very badly off because they do not have advantages of social and other connections. So they continue to suffer. I know that the members of the minority communities—as you know I am not in favour of a communal approach—have been kept down in the legal profession, if I may say so, and for the new honourable Members I may tell them that once the Calcutta High Court did not have a Judge belonging to the minority community, although before Independence one member of the minority

[Shri Bhupesh Gupta.]

community was the Chief Justice of the Calcutta High Court. I had to take up this matter with Shri Jawaharlal Nehru, Shri Govind Ballabh Pant and others and I had to pursue if for quite some time and then only a member of the minority community was appointed as a Judge of the High Court. I give these instances just to show how the mechanism works.

About the amendment I have already said whatever I wanted to. He has been misinformed or misguided in the matter as he has been misguided in other matters. This is why I still request him to accept this amendment, to restore the old proposition. Most of us feel that the Rajya Sabha has been let down and I think that has been because of the Lok Sabha. What business they had to change the original provision when we retained it. We referred the Bill to the Joint Select Committee. It went to the other House and got lapsed, for no fault of ours The normal course for them would have been to report back to the House, which they did not do. Therefore, Sir, there is a moral question also involved in this. But, apart from that, really on merit, you should accept this amendment because I think the way the whole matter has been tackled leaves a very bad taste in the mouth. Many people have complained about it and I would appeal to the Minister to accept the amendment.

DR. V. A. SEYID MUHAMMAD : Sir, in my reply, I had as elaborately as possible, and in as much detail as I could, supported with sufficient reasons possibly why section 80 should be retained. It appears my reasoning has not appealed to Mr. Bhupesh Gupta. By repeating again what I have said, I do not think that it will appeal to him. So I will not attempt to do the impossible by encroaching on the precious time of this House. Howeever, I want to clarify two points which he mentioned. Sir, I did not say that there are only 50 lawyers who take very high fees. What I said was of the type Mr. Bhupesh Gupta was telling us, *i.e.* those charging Rs. 3,000, Rs. 5000 or Rs. 10,000 a day. What I had said that the number of such lawyers will be about 50. So far as the question of charging high fees is concerned, almost all the senior lawyers of standing do charge heavily, Rs. 1,680. That is definitely there.

Now, Sir, secondly Mr. Bhupesh Gupta referred to the statement of Mr. Daphtary and I quite agree with him that considerable weight has to be given to what has been stated by him. But I cannot really accept the position which Mr. Daphtary stated that it is dangerous even to have section 80, the reason being that in one case somebody served a notice on the Government under section 80. This unfortunate man was threatened that he would be arrested under MISA unless he withdrew that section 80 notice and it appears that he did not withdraw the notice and so he was arrested under MISA.

I do not know how far this is true. Whoever told Mr. Daphtary, he has believed it, and since Mr. Daphtary said it, I believe that he has some reason to state it in this House. I do not think he will make a statement with utter irresponsibility. Assuming—without admitting—that such a thing happened, what does it show? It shows that there is a particular officer who has abused it. Any provision of law comes handy and is sometimes abused. That does not mean that the provision should be discarded on the ground that by that one case of abuse it has become dangerous. If that is so, I do not think under the sun there is any provision of law which has not been abused by one officer or one individual or the other. Because in one case it has been abused—he cited one example—so it is dangerous and so it must be discarded—I do not agree with that logic Secondly, Sir, it is quite possible that that particular gentleman was indulging in anti-maintenance of internal security activities. Simply serving a notice under section 80 will not give him immunity from detention. I need not elaborate on that point.

These are the two points which I wanted to clarify and I will not take any more of your time.

SHRI BHUPESH GUPTA : What about my suggestion? I suggested that you better think over it.

DR. V. A. SEYID MUHAMMAD : It has been thought over by the entire Committee of 45 or so people.

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA) : The quesetion is :

"That at page 10, for the existing clause 27, the following be *substituted*, namely :

'Section 80 of the principal Act shall be omitted.' "

The motion was negatived.

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA) : The question is :

"That clause 27 stand part of the Bill."

The motion was adopted.

Clause 27 *was added to the Bill.*

Clauses 28 *to* 98 *were added to the Bill.*

Clause 1, *the Enacting Formula and the Title were added to the Bill.*

DR. V. A. SEYID MUHAMMAD : Sir, I move :

"That the Bill be passed."

The question was put and the motion was adopted.

REFERENCE TO SCHEME FOR COMPENSATION TO DISPLACED PERSONS FROM EAST PAKISTAN

SHRI BHUPESH GUPTA (West Bengal) : Sir, I remind you because the session is coming to an end. I made a suggestion—and the Government agreed—that the so-called scheme drawn up for paying compensation to the displaced persons against their properties in East Pakistan—which property has been declared as 'enemy property'—should be circulated to us and that the House should have an opportunity of discussing this and make suggestions. Up to now we have not received any communication and therefore I am raising it.

THE VICE-CHAIRMAN (SHRI LOKANATH MISRA) : I am told that Mr. Om Mehta has brought it to the notice of the Civil Supplies Minister already.

The House stands adjourned till 11.00 A.M. tomorrow.

The House then stood adjourned at fifty minutes past five of the clock till eleven of the clock on Tuesday, the 24th August, 1976.

MGIPRRND—Sec. IV-N/S—17 RSS/76—30-9-76—