ALLOTMENT OF TIME FOR CONSIDERATION OF THE MOTION ON THE FOURTEENTH REPORT OF THE LAW COMMISSION

MR. CHAIRMAN: I have to inform Members that under rule 153 of the Rules of Procedure and Conduct of Business in the Rajya Sabha, I have allotted five hours for the consideration of Shri M. P. Bhargava's motion in respect of the Fourteenth Report of the Law Commission.

REPORT OF THE JOINT COMMITTEE OF THE HOUSES ON THE DOWRY PROHIBITION BILL, 1959

SHRIMATI YASHODA REDDY (Andhra Pradesh): Sir, I beg to lay on the Table a copy of the Report of the Joint Committee of the Houses on the Bill to prohibit the giving or taking of dowry.

EXTENSION OF TIME FOR PRESENTATION OF THE JOINT COMMITTEE'S REPORT ON THE PREVENTION OF CRUELTY TO ANIMALS BILL, 1959

DR. H. N. KUNZRU (Uttar Pradesh): Sir, I move:

> "That the time appointed for the presentation of the Report of the Joint Committee of the Houses on the Bill to prevent the infliction of unnecessary pain or suffering on animals and for that purpose to amend the law relating to the prevention of cruelty to animals be extended upto the last day of the first week of the next session."

The question was put and the motion was adopted.

EXTENSION OF TIME FOR PRESENTATION OF THE JOINT COMMITTEE'S REPORT ON THE ORPHANAGES AND OTHER CHARITABLE HOMES (SUPERVISION AND CONTROL) BILL, 1959

SHRI KAILASH BIHARI LALL (Bihar): Sir, I move that the time appointed for the presentation of the Report of the Joint Committee of the Houses on the Bill to provide for the supervision and control of orphanages, homes for neglected women or children and other like institutions and for matters connected therewith be extended up to Monday, the 30th November, 1959.

The question was put and the motion was adopted.

SHRI BHUPESH GUPTA (West Bengal): Sir, before you take up further motions I have a submission to make.

MR. CHAIRMAN: We have some other business.

THE MARRIED WOMEN'S PROPERTY (EXTENSION) BILL, 1959

THE MINISTER OF LAW (SHRI A. K. SEN): Sir, I beg to move for leave to introduce a Bill to provide for the extension of the Married Women's Property Act, 1874, to parts of India in which it is not now in force.

The question was put and the motion was adopted.

SHRI A. K. SEN: I introduce the Bill.

MOTION *RE.* THE FOURTEENTH REPORT OF THE LAW COMMISSION JUDICIAL REFORM

SHRI BHUPESH GUPTA (West Bengal): Only one point. Here we will be discussing the recommendations of the Law Commission and it will be helpful for us in the discussion if the Government would tell us as to whether they have taken any decision with regard to any recommendations, and in any case we would like to have a statement from the Government as to which of the recommendations they have accepted and

[Shri M. P. Bhargava.]

are proceeding to implement. That we should know; otherwise I do not know where we stand—two volumes we have got comprising 800 pages.

SHRI M. P. BHARGAVA (Uttar Pradesh): Mr. Chairman, Sir, with your permission I beg to move the following motion:

> "That the Fourteenth Report of the Law Commission on the Reform of Judicial Administration, laid on the Table of the Rajya Sabha on the 25th February, 1959, be taken into consideration."

Sir, during the last 125 years several commissions have been appointed from time to time to go into this question. This Commission, whose Report we are considering, is the first Indian Commission to be appointed to go into this question after our country achieved independence. The Commission was appointed on the 5th August, 1955, and as you might have seen, the Commission's membership consisted of eminent lawyers and judges. I take this opportunity of paying my tributes to the work done by the Commission; for the deep study they have made of the question and the pains and troubles they have taken in understanding the problem and trying to suggest ways and means to mitigate the defects which are noticeable here and there. The Committee have toured for over a year and they have examined hundreds of witnesses, to be precise, 473 witnesses. They adopted the good procedure, if I may call it, of co-opting two members from the Pradesh which they visited and that, I think, has been very helpful in understanding the local problems of the various States.

Now, if we look at the terms of reference, we find that they were charged with two things—first, to review the system of judicial administration in all its aspects and suggest ways and means for improving it and making it speedy and less expensive; and second, to examine the Central Acts of general application and importance, and recommend the lines on which they should be amended, revised, consolidated or otherwise brought to date.

I do not know how far they have succeeded in suggesting ways for making justice speedy and less expensive. That will only be seen when their recommendations are implemented and they stand the test of time. I do not know whether they have been able to do full justice to the second part of the terms of reference about the examination of the Central Acts in the last ten years. So many Central Acts and so many State Acts have been enacted and I do not know how far it is possible for any lawyer to cope with all the Acts that come into force from time to time. They have presented to us a valuable document in two volumes covering 1,300 pages in 57 chapters. Many issues have been dealt with and the present-day judicial system has been dealt with in full. Its defects have been pointed out and ways and means have been suggested to remedy them.

I would just bring to your notice one paragraph in this connection where they have summed up the present position. It is in paragraph 20 on page 31 where they say:

> "While we are aware that there are well-founded complaints against some aspects of the present judicial administration, we must emphatically state that the way to reform does not lie in the abandonment of the present system and in replacing it by another. The true remedy lies in removing the defects that exist in the present system and making it subserve in a greater degree our requirements for the present and the future."

Now I am not one of those who agree *in toto* with the recommendations made in the Law Commision's Report. There are some recommendations which on the face of it cannot be accepted, as I shall show you later, but then there are other sets of recommendations which are really useful and I hope the Government will give due consideration to the recommendations made by the Commission, and

they will try to evolve some machinery which will see to the implementation of such of the recommendations as are accepted by the Government. Now it is a very voluminous Report containing 57 chapters, and it is not possible to deal with all the aspects of the Report.

[MR. DEPUTY CHAIRMAN in the Chair.]

Therefore, I have selected a few aspects on which I will make my comments. First of all, I will take the **Supreme Court and the selection of Judges made for it.**

On page 35, paragraph 8, we find the procedure given for selection of Judges for the Supreme Court. It says:

> "A person may be appointed Judge of the Supreme Court, if he has been a Judge of a High Court for at least five years or if he has been an advocate of a High Court for at least ten years or if he is, in the opinion of the President, a distinguished jurist. One of the questions which aroused comment in the evidence given before us was the failure of the authorities to make the selection of a Supreme Court Judge from the two latter fields of selection ..."

From these comments it will appear that so far, during the last ten years of the existence of the Supreme Court, Judges of the Supreme Court have been derived only from one category and that is from the High Courts. No experiment has yet been made of appointing Judges from the other two categories, *i.e.*, from the Bar and from amongst eminent jurists. I do not know what the difficulties of the Government were in this connection, but I personally feel that the time has come when the Government should make at least a beginning for appointing Judges to the Supreme Court from the other two categories.

Sir, it has been said in the Report that too much emphasis has been laid on judicial experience of the Judges and that is one of the reasons why Judges have been appointed from only one category and not from the other two. If we look to the practice obtaining in other countries we find that the emphasis laid on judicial experience in India is not being put in other countries. In the case of the U.S.A., from the figures given in the Report itself, we find that out of 75 Judges appointed to the Supreme Court of the United States of America, 28 of them—which forms a fairly high percentage—had never any judicial experience before their appointment to the bench. Some of these 28 Judges were very eminent Judges of the United S ates and it cannot be said that they did not do proper justice to the work entrusted to them. So, I would beg of the Home Minister and the Law Minister to consider this question and request them not to debar the two branches from which the Supreme Court Judges can be drawn. Some day the experiment is to begin and the sooner it is begun the better.

Sir, certain recommendations have been made in the Report about the Chief Justice of India. I do not agree with the recommendation of the Law Commission that the senior-most Judge should not be appointed the Chief Justice of India. If that recommendation is accepted, it will mean that the senior-most Judge will lose all incentive. He has nothing ahead of him to work for and his interest in the work will almost disappear.

SHRI P. N. SAPRU (Uttar Pradesh): Mr. Justice Holmes, who is the greatest name in judicial history in America, possibly in the legal history of the modern world, never became Chief Justice.

SHRI M. P. BHARGAVA: It is an established practice in all the democratic countries that the constitutional and fundamental rights of a Judge are not denied. If by seniority he becomes eligible to be the Chief Justice of India, I see no reason why . . .

SHRI P. N. SAPRU: Lord Justice Parker was one of the junior-most Judges . . .

MR. DEPUTY CHAIRMAN: Order, order. You will have a chance.

SHRI M. P. BHARGAVA: What Mr. Sapru is saying is all right. There are two angles of the question. I am pleading for one angle. He can plead for the other. In all the democratic countries the accepted principle is that the senior-most people, if there is nothing against them, become heads of departments. Now, I consider the Supreme Court also as one of the most distinguished departments and I see no reason why . . .

SHRI P. N. SAPRU: I hope, Sir, it is not a department. I object to the use of the word "department" with reference to the Supreme Court, and I am sure the Leader of the House, who has got such a great respect for the Judiciary, will agree with me that the word "department" is not the proper word to be used with reference to the premier court of this country.

SHRI D. A. MIRZA (Madras): Can you call it an institution, Sir?

SHRI M. P. BHARGAVA: If Mr. Sapru objects to the Supreme Court being termed as a department, I need not use that word. I will say that it is the highest judicial court of the country and the head of the highest judicial court should be the senior-most Judge of that court ordinarily unless there is something which prevents his being appointed to that post.

Sir, we find that in India in a short period of ten years we have had six Chief Justices of India. While in America—again I quote from the Report—in 160 years there have been only 14 Chief Justices.

SHRI AKBAR ALI KHAN (Andhra Pradesh): But that is an act of God. Government cannot help it.

SHRI M. P. BHARGAVA: I am making a suggestion in that respect. I would suggest that the Chief Justice of India should be appointed for lifetime unless he becomes invalid or mentally unsound.

SHRI BHUPESH GUPTA: At what age should he be appointed?

SHRI M. P. BHARGAVA: I am coming to that. Have patience. If, according to the present law which we have, he is appointed at any age before 65, he will have a fairly long period before him and we will not have too many frequent changes of the Chief Justice of India.

SHRI BHUPESH GUPTA: Suppose he is appointed at 40?

SHRI M. P. BHARGAVA: If he can fulfil all the conditions prescribed, if he becomes eminent enough at the age of 40, I see no reason why he should not have a long period as the Chief Justice of India.

SHRI BHUPESH GUPTA: Can he work as Chief Justice up to 80 years of his age?

SHRI M. P. BHARGAVA: There is no harm if he is there for 40 years. I might add that in the U. K. and the U.S.A. there is no age limit. When in other fields people are capable of working beyond 65 and 70. I do not see why the Chief Justice of India should not work beyond the age of 65 I have, of course, given my conditions, *viz.* that he should be physically fit and of sound mind.

AN HON. MEMBER: After 65 he should be subjected to periodical examinations.

SHRI M. P. BHARGAVA: A person of unsound mind becomes evident. No medical examination is required for that. An invalid becomes evident. If he loses his eye sight it becomes known. In such cases medical check up is not necessary.

SHRI SANTOSH KUMAR BASU (West Bengal): Does my friend mean unsound judicial mind?

SHRI M. P. BHARGAVA: By unsound mind I mean what it normally means. I do not attach any other meaning to the "unsound" mind except the "unsound" mind as described in the medical Jurisprudence.

Having said so much about the Chief Justice of India, I will come to the

question of arrears in the Supreme Court. Again I will refer you to some tables on pages 58 to 61. If you look at Table II, you find that the number of pending cases at the close of every year is increasing rapidly. A glance at the figures will show that in 1950 the number of pending cases was only 131. It rose to 543 in 1951, then in 1952 there seems to have been a very big disposal and the figure went down to 278 and since then it has been steadily rising. In 1953 it was 364, then in 1954 it was 333, in 1955 it was 594 and at the end of 1956—on the 15th November, 1956—it was 837 as far as the civil appeals were concerned.

Then Table III gives a similar chart about criminal cases. Here again we find that the figure has been rising. While in 1950 it was only 16, in 1951 it rose to 36, in 1952 it rose to 70, in 1953 it rose to 92, in 1954 it rose to 106, in 1955 it rose to 166 and on the 15th November, 1956 it was 241.

Similarly there is the third chart which gives about the same figure. This is something which should be taken serious note of. Some method should be devised for clearing these arrears and it is for the Law Ministry and the Home Ministry to consider how best they can do it.

Coming to the High Court, there are three classes of judges. They are drawn from three branches, one from the I.C.S. and I.A.S. cadres who opt for judicial service, two by promotions from subordinate judicial service and three, from the bar. Article 217 of the Constitution lays down the procedure for appointment of High Court Judges. A lot has been said in the other House about the manner the appointments have been made and some people said that extraneous influences work in the appointment of judges. I am one of those who do not agree that political, communal or executive influences have been the main factors which have influenced the appointment of Judges during the past ten or twelve years. Firstly, I say that there have not been any cases but even if it be granted that there was one case, it does not mean that the whole thing should be generalized and put in a way that the entire judiciary has been appointed by influences. It is something which I cannot understand as to how responsible people can make such allegations. I am sorry to find that in the Law Commission's report also there are certain references to that effect. So long as the evidence is not placed before us, we do not know on what evidence that conclusion has been arrived at and what the source of information of the Law Commission is for making such a sweeping statement. But one is surprised and pained when one hears some whispers from lawyers that persons were recommended for appointments as Judges in the past on very flimsy considerations. I will give some which have been brought to my notice by my lawyer friends. I cannot vouchsafe how far they are correct but that is what was told to me and I will place them here so that the Home Ministry may find out how far they are correct. I was told by an advocate of a High Court that in a case the Chief Justice recommended a person because he had made arrangements for the marriage of the Chief Justice's daughter. A second case was that a person was appointed because he happened to be a son of an Advocate-general and son of an ex-Chief Justice. In a third case I was told that the person happened to be a golf playmate of the Chief Justice and so was recommended for appointment as a judge. In a fifth case, I was told that one person was appointed or recommended for appointment because he was backed by some eminent lawyers who had influence with the Chief Justice. As I have said earlier, I cannot vouchsafe for this information but I have placed it before the hon. Minister to find out if there is any truth. I believe that they are all stories from those lawyers who have failed to get appointments as judges or who were interested in some appointments or the other which could not be brought about.

[Shri M. P. Bhargava.]

With regard to the appointments of High Court Judges I would like to make a small suggestion and that is, a convention should be developed that names from the bar are recommended by the Chief Justice after consultation individually or collectively with his fellow judges in the High Court. Such considerations, as mentioned below, should be borne in mind before making recommendations: The amount of income-tax paid by the lawyer concerned should be considered before the name is considered for appointment as a judge. Secondly the confidence and reputation enjoyed by the lawyer concerned with the majority of the judges should also be borne in mind.

I have no hesitation in saying that so far all appointments have been made on merit and they will continue to be made on merit.

On page 71 we find how at present the names of the judges are sent forward from the bar. The Chief Justice forwards his recommendations to the Chief Minister, who in turn forwards the recommendation in consultation with the Governor, to the Minister of Home Affairs in the Central Government. If, however, the Chief Minister does not agree with the recommendation of the Chief Justice, he makes his own recommendation. It appears that in such a case the Chief Justice is given an opportunity for making his comments on the recommendation by the Chief Minister. This practice is not, however, invariably followed so that in some cases it happens that the recommendation made by the Chief Minister does not come to the knowledge of the Chief Justice.

In this connection I have only one submission to make. I have nothing to say against the procedure followed. But I have this submission to make that if for any reason the Chief Minister does not agree with the recommendation of the Chief Justice of the High Court, the Chief Minister should not have the right of suggesting any alternative name. If he does not agree, then the procedure to be followed should be that the recommendation should be sent back to the Chief Justice of the High Court for reconsideration and the Chief Justice of the High Court should be invited to make fresh recommendations, if there are any serious objections, according to the Chief Minister, about the former recommendation.

The Commission has also brought it out very clearly that the State Governments should not make counter recommendations and I fully support the recommendation of the Law Commission in that connection. I feel that the recommendation of the Chief Justice of the High Court should be final and it must have the concurrence of the Chief Justice of India and of the President's approval before the person is appointed. If this procedure is followed, I believe if anybody has any doubts, they will be removed and we will be placing our cards straight before the public.

The recommendation has been made by the Law Commission that the senior-most Judge should not automatically become the Chief Justice. I respectfully have again to disagree with the Commission on this recommendation. I do feel that the senior-most Judge should be given the chance of becoming the Chief Justice in his own High Court or in any other High Court. His claims should not be overlooked. Here again I would suggest a little variation in the age-limit. Just now the Chief Justice and all the Judges retire at the age of 60. What I would suggest is that the Chief Justice, if he is appointed before the age of 60, should be allowed to stay in his post till the age of 65. I do not know whether this suggestion can be implemented and whether we can make any distinction between the Judges and the Chief Justice. That question should be examined and, if possible, the age limit for retirement of the Chief Justice should be raised to 65. If a Supreme Court Judge is thought fit to serve in the Supreme Court till the age of 65, I do not see

any reason why the Chief Justice of a High Court should not continue in his post till that age.

SHRI AKBAR ALI KHAN: Why single out the Chief Justice?

SHRI M. P. BHARGAVA: As I said, I don't know if that can be done under the Constitution.

DR. D. H. VARIAVA (Bombay): May I ask a question? Do you say that the Chief Justice should retire at the age of 65 and the other Judges at 60? Then they will have no chance of getting the Chief Justice's post.

SHRI M. P. BHARGAVA: Why? They have the chance if they happen to be the senior-most and they have become eligible at the age of 60. If they are not eligible before the age of 60, then they should retire in the normal course.

Then, Sir, there is another suggestion I have to make in this connection. The Supreme Court should maintain a list of 30 senior-most Judges of the High Courts and the Chief Justice of India should make recommendations to the President for appointment to the High Court.....

MR. DEPUTY CHAIRMAN: You have taken half-an-hour.

SHRI M. P. BHARGAVA: Sir, I thought there was no time-limit.

MR. DEPUTY CHAIRMAN: Oh, no. We have to restrict the time. There is the time-limit of five hours, and there are eleven speakers and the Minister.

SHRI M. P. BHARGAVA: There is the total time-limit of 5 hours, but no time-limit otherwise.

MR. DEPUTY CHAIRMAN: Including the Minister there are 12 speakers.

SHRI M. P. BHARGAVA: I wish I had been told at the very beginning. When I asked the Deputy Chief Whip, I was told there was no time-limit, and I was going on. . . .

SHRI BHUPESH GUPTA: The trouble is that we were under the impression that there would be no business, and so we could carry on.

MR. DEPUTY CHAIRMAN: No, no. We have to restrict the time.

SHRI M. P. BHARGAVA: Sir, I will finish in another ten minutes.

MR. DEPUTY CHAIRMAN: Very well.

SHRI M. P. BHARGAVA: Sir, I was talking about the Chief Justices of the High Courts and I was throwing out the suggestion that the Supreme Court should maintain a list of 30 senior-most Judges and the Chief Justice of India should appoint the Chief Justice of a particular State from that list. It does not matter whether that Judge belongs to that particular State or not. I would prefer that an outsider should be appointed as Chief Justice rather than a man from the same State.

Then again, Sir, in the High Courts we find a lot of arrears. I casually wrote to a friend of mine to send me the daily cause lists of one of the High Courts, the High Court of my own State. And I have received two lists, two daily cause lists, one for the 20th February, 1959, and the other for the 1st of May, 1959. When I had a look at these cause-lists and the cases that were pending, I was simply amazed. There were criminal appeals for hearing on that particular date, from 1956, 1957 and 1958, leave aside 1959. There were first appeals, civil appeals of 1947 and 1948 There were writ petitions pending from 1956. There were civil revisions from 1952 onwards. There were second appeals from 1951. Now, that again is a position which must be taken serious note of and some remedy has to be found to clear these arrears.

Another thing that I would like to say is about the labour matters which come up to the High Courts. These take a lot of time of our Judges. This is partly because all of them are not

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expected to know all the labour laws and if such a matter is put before any Judge, it is bound to take some time. So I was thinking whether it would not be feasible and practicable to constitute a special Bench in the High Court of Judges well versed in labour laws who could deal specifically with such questions and not any Bench sitting on any day. That again is a suggestion for consideration.

Sir, sometimes there are some incidents which shake one's faith in the judiciary and I will give one such instance. A case was heard in a certain High Court. It was an appeal which was heard and then a date was fixed for hearing the judgment. When the people reached the court for hearing the judgment on that day, they found that the judgment was not to be delivered and the parties were told that they would have to begin *de novo* before another judge. I could not understand why such a thing should happen. If the judge had any hesitation in trying a case, the normal course for him was to state it at the very beginning. He could say: "I do not want to try this case". And there are cases which are transferred from one Judge to another. Why is it that all of a sudden he should make up his mind not to pronounce judgment and then tell the parties that they have to begin *de novo*?

A lot has been said in the other House about Benches. I fully agree with the recommendation of the Law Commission that there should be a unified High Court at one centre in the State. If the Supreme Court of India can cater to the needs of the whole of India, from the south, north, east and west, I see no reason why a High Court in a State cannot cater to the needs of that particular State and why so much agitation was made when a certain Bench was abolished.

MR. DEPUTY CHAIRMAN: You can continue after lunch. The House stands adjourned till 2-30 P.M.

The House then adjourned for lunch at one of the clock.

The House reassembled after lunch at half-past-two of the clock, MR. DEPUTY CHAIRMAN in the Chair.

SHRI M. P. BHARGAVA: Mr. Deputy Chairman, before we rose for lunch, I was mentioning about the Benches of the various High Courts. I would not deal with matters relating to the subordinate judiciary but would only invite the attention of the hon. Law Minister to Chapters 8 and 9 of the Report wherein some very useful suggestions have been made by the Law Commission.

The next point which I want to touch is about legal education which has been dealt with in Chapter 25, paragraph 6. It is said here that legal education has deteriorated during the last ten years and I am inclined to agree with this remark. If you ask a young man who has just passed his B.A. or B.Sc. examination, as to what he intends doing further, he would say that he intends taking up the law course. In most of the cases, this would be the nature of reply that you would get as if law is something which should be read and then only any decision taken about the career to be taken up. I will place those people who study law in three categories. In the first category will come those who want to have legal education as a part of their general culture; in the second will come those who want legal education as a part of their liberal education and the third category consists of the people who want to have legal knowledge because they want to practise law. At present, the law colleges are catering to the needs of all these three categories of people. The present system does not give a healthy grounding either in theory or in practice and, if I may say so, it is unsound legal education as far as the theory and practice is concerned. What I would suggest is that legal education should be

stricter and it should be with an aim. It should be imparted in full-time law colleges and not, as it is done at the present moment, in part-time colleges with evening classes. The teachers also do part-time job. The imparting of theoretical knowledge should be broad-based and the extra curricular activities like mock-courts, mock-trials, tutorial classes, etc., should be organised in the law colleges. The practical part of legal training should be made as useful as possible under experienced lawyers. I would emphasise more attention being paid to research in law as in other branches of science and art. I also feel that before a person is allowed to practise, he should be made to work in the chamber of some senior lawyer. He should be asked to keep a diary in which he should make note of what he does during the year and this should be open for inspection. The hon. Law Minister was good enough to make a statement in the other House in which he has said that the Law Ministry was trying to devise a model syllabus and have it circulated to the different Universities and High Courts for purposes of seeing that the standard of legal education goes up. This is a very welcome move and I think this to be a move in the right direction. This should bring in good results.

I would not touch upon the question of legal aid but will go on to the next important aspect of the judiciary, that is, the separation of the judiciary from the executive. This has been part of the Congress programme from 1886 as far as I know but very little progress has been made in this connection. Only four States, that is, Bombay, Madras, Andhra and Kerala have completed the work of the separation of the judiciary from the executive. I would like to request the Home Minister or the Law Minister to make a full statement giving us the latest progress made in this connection.

On page 42 of the Summary of Recommendations, there is a very good suggestion thrown out by the Law Commission and this also should be taken note of by the Ministry. The Commission has said that if there is any hesitation on the part of the States to take up this question of separation of the judiciary from the executive, then some legislative measures should be undertaken to have this done as early as possible. I hope the Law Ministry will take care of this part also.

There is another important suggestion made by the Commission in Chapter 57. In this Chapter, the Commission has recommended the creation of a Ministry of Justice both at the Centre and in the States. This is a very good suggestion and should be implemented if possible.

In conclusion, I would like to say that our aim, in all these things, should be simplification of law and legal administration so that speedy and inexpensive justice can be imparted. Justice also should not be delayed as in the examples shown by me where in certain cases, cases have been pending for the last nine, ten or even twelve years. That is not a very good state of affairs. I would say that even if any constitutional change is considered necessary, it should be brought forward speedily and we should try to achieve the aim in view.

The question was proposed.

SHRI BHUPESH GUPTA: Mr. Deputy Chairman, it is admitted on all hands that our judicial system requires to be drastically overhauled and re-orientated to meet the requirements of the present times. In fact, we have been talking about such a reform in the judicial system for a long time but the mountain of talk has produced a mouse of performance.

Mr. Deputy Chairman, we all know that no legal system is static so to say. Things begin to grow and change and in a small way changes have been taking place in India's legal system during the British and also during this period. Nobody will deny

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it but these are minor and incidental changes. What we need is a radical transformation of the judicial system, a complete reorganisation of the system in the light of new developments having regard to the fact that we have become an independent country and we aspire to be a democratic community. I would ask the Law Minister as to what we have been doing in this matter. It seems that we are hugging the old system; we are functioning within that old framework. The Law Minister is very young but . . .

SHRI AKBAR ALI KHAN: So is the Leader of the Opposition.

SHRI BHUPESH GUPTA: That is not reflected in the legal system itself. Somehow or other he has got stuck up in the old system and it seems to me that he can hardly do anything. Now, we are naturally worried about this. We have got about a thousand pages of very well documented learned recommendations and we would like to know how many in the Ministry have read that. We would like to know how many recommendations they are thinking of implementing or accepting or rejecting with the reasons therefor. Nothing of the kind is there. I do not blame the Law Minister because he knows very well what a job it will be if he were to go through the whole thing, study them carefully and sift things in order to secure implementation because implementation depends on the policies of Government, on the general behaviour of Government and on the attitude of Government.

Now, first of all, I would like to say that generally our legal system—and everybody will admit this—falls far short of the requirements and naturally when we have in view the society that we propose to build, we are somewhat staggered by the deficit on that account. We talk of nation building in the economic field and in our political system. Why don't we address ourselves to nation building in the field of law, jurisprudence and administration of justice? After all, in the society it plays an important part; it reflects not only the standard of civilisation but also it contributes to the growth and progress of society and of social standards. As far back as 1886, when the National Congress was formed, the demand came for the separation of the judiciary from the executive. Ever since during the past century of struggle this demand was voiced time and again from the forums of the Congress and by many prominent Congress leaders, notably Mahatma Gandhi, and I know this was also voiced by Prime Minister Jawaharlal Nehru who was then one of the top-most leaders of the Congress fighting for independence. When the matter came up before the Constituent Assembly, this question was debated again. And the Constitutent Assembly, as you know, at that time was a packed body. We were not there; I was underground. I do not know where my friend was; he was in the Calcutta Bar, I believe, doing very well but I was not doing very good there. Anyway, what happened? When the debate took place, the Congress members naturally showed their utmost concern for implementing the separation of judiciary from the executive. The Prime Minister then got up and gave an assurance—it is recorded here in the Report—that it would be done and it would be done sooner than many people thought. Naturally no time-limit was set. I think in article 50 under Directive Principles of the Constitution it is stated there. The Constitution enjoins upon us that we must separate the judiciary from the executive and it was during the discussion of this article then that the Prime Minister made this commitment. Like some of his forgotten promises this too has been relegated to the limbo of forgetfulness. I do not know whether the Law Minister would be in a position to recapture that promise and see that it is fulfilled.

Then what happened? In all these 12 years except in Madras and

Bombay nowhere has this separation been effected. There is some kind of a show in the Punjab and Uttar Pradesh and this show is ridiculed by the Law Commission itself in its Report. Even in Madras and Bombay what has been done is very little. Some kind of functional separation has been made and magistrates are now called judicial magistrates. To some extent it is good but it is very very meagre and inadequate from the point of view of separation of judiciary from the executive. There has been complete neglect in this matter. I see inertia, conservatism and a tendency to cling to the past somehow or other. This we cannot support. I am not talking of any particular ideology here; I am only reminding hon. Members opposite as to what they had themselves thought and wanted to do. This is their pledge the fulfilment of which is their solemn duty. I ask naturally, why has this not been done? Somebody must be accountable for the failure, for the negligence in this matter, for the dereliction of duty, if I may say so, on this score. I am not concerned with a particular Ministry or Minister The Government is accountable for this colossal failure in this matter After 12 years we get this Report full of lamentations. The Law Commission says that there has been decline in the standard of legal education although Dr. N. C. Sen Gupta in his dissenting note does not agree with that point of view. But that is the majority view, I think, almost unanimous view. Then they say there has been decline in the administration of justice; there has been decline at the Bar; there has been decline in the standard of judges, decline all round Sir, after twelve years we should have been told a story of progress, a story of advance, a story of rise in the standards under all these heads but we are given a general melancholy picture of decline and decline in this enormous Report that we have got before us. Well, we have to search our own hearts and ask ourselves as to why this has happened. What came in the way, what stood in the way and why were not effective steps taken to do much better than what has actually been done? It would be a very legitimate and natural question to put to Government and Government should give us satisfaction by way of an answer to this question. I am looking forward to listen to their reply.

Now, Mr. Deputy Chairman, we are told that the judiciary must be independent and impartial. I agree it has to be independent; it has to be impartial but it is not merely enough to say this but we must at the same time add that the judiciary must be such as would uphold the dynamic social values; it must be democratic not only in form but more so in content. That is most important. I do not see much light in regard to this matter in the Report. It seems somehow or other the authors of this Report have got stuck in the existing framework. Some of their suggestions are very good and I shall come to them later.

Now, let me take this question of independence of the judiciary. I suffer from no illusion. In a class society, in a society where one class rules over another class, there cannot be, so to say, absolute independence of judiciary. I do not go after phantasmagoria; I do not go after illusions, but some measure of independence is required. We know that the judiciary in the final analysis will be serving as one of the organs of the State, of the class that is in power. At the same time it is conceivable by a liberal approach, by a democratic approach, to enlarge the field of independence to bring it more and more close to the people. But unfortunately that is not done. Therefore I say, despite the basic limitations which I would not expect the Law Minister to overcome, steps have not been taken to improve the situation within their reach, within their possibility. That is my complaint against them.

Naturally, in order to make the judiciary independent, one must go

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into the question of substantive laws as well as procedural laws. Here these have not been dealt with. Therefore, I do not touch on this subject, because whatever may be the system, it very much depends on what kind of law is supposed to be administered. If we make bad laws or oppressive laws, undemocratic laws, no judicial system, with the best intention on earth, can function as a democratic judicial system, can conform to the standards that we have in mind. I know that thing. Naturally we are not going into this question, because that introduces a big subject. Now, here, it is the separation of the judiciary from the executive. The Law Commission in Volume II, at page 859, of its Report says:

> "The system of separation of the judiciary from the executive having been accepted as one of the directive principles of State policy, one would have thought it unnecessary to discuss the advantages of separation, and the arguments against it. We have dealt with these matters because we found, as stated above, a lurking opposition to the principle of the scheme in various States based on considerations which are not well founded. We are of the view that this is a matter on which legislation by Parliament is necessary.".

It is not the Communists speaking. The hon. Law Minister would know that Mr. Setalvad and the galaxy of lawyers would run away if Communism approaches them. Then, why are they saying this? Because in the States this thing has been scuttled deliberately with calculation and design. They have stood in the way of the separation of the judiciary from the executive, and the Law Commission is forced to make a statement of this kind, that it looks forward to Parliament for the requisite legislation. I would ask the Law Minister as to whether he is contemplating to bring forward such an overriding legislation in order to enforce what is the common pledge of all those who sit opposite and those who sit here.

Now, Mr. Deputy Chairman, the story of separation is not merely one of functional separation as we have in Madras or in Bombay, if you like. Separation must be effected at all levels and must be complete. It must not be vitiated by all kinds of subterfuges that are there. First of all we want—and I hope that the hon. Law Minister will listen—separation at the Ministerial level. We have a Law Ministry in our country at the Union level. What is its function? To prepare legislation and advise Government on legal matters. Why cannot we have a Ministry of Justice, which should be invested with authority for the administration of law as far as the Ministerial quarters go? He is an onlooker. His role is advisory. He counsels the Home Minister, he is sometimes called to give advice by other Ministers. That is his role and he has to hold the baby when the Bills come from the Legislative Department. We do not want this kind of thing. Therefore, it is very important that at the Ministerial level it is not the Home Ministry, but it is the Law Ministry—call it the Ministry of Law, if you like, I have no fancy for the name—or Ministry of Justice, which should be given full powers, for enforcing measures with a view to seeing that the judicial apparatus functions differently from what it is functioning at the present moment. This is very important. I do not know, but I sometimes feel our Law Minister to be a destitute. He is a forgotten child. That is what happens and nobody bothers about him. The Home Minister is there. As you know, High Court Judges are appointed. How are they appointed? The Chief Minister comes into the picture, not the Law Minister. The Chief Minister, in consultation with the Governor, under the Constitution, sends his recommendations here. In the case of the High Court Judge, the Chief Justice does it, but the Law Minister does not come into the picture at all. I am not pleading for a particular person, but I am pleading for a principle. This

is what I say: The Home Minister looks into the police report and does this trick. This is the position. Why should the Home Minister come in? It is none of his business. The Home Minister is an executive head. He is eminently an executive head. His function is executive. He is steeped in executive outlook. Naturally he is likely to be guided in matters like this not by judicial considerations, not by considerations of justice, but by executive expediency or executive considerations. In the States, the Chief Minister is there and here there is the Union Home Minister. You may offer all respect to the present Union Home Minister's advice. I will take it, but as an institution I cannot stand it. Why should this thing go to the Home Ministry? This is the point. Why should it go to the Chief Minister? Therefore, they should be completely put out of the picture in the whole scheme of things. Neither the Home Minister at the Union level, nor the Chief Minister at the State level, should have anything to do with judicial matters or matters connected with the administration of justice or running of the apparatus. If anybody from the Ministerial side should be assigned the responsibility, it should be the Minister of Law, the Minister of Justice, here as well as at the State level. Now, there again, why should the Governor come in and the President? The Governor acts on the advice of the Chief Minister and the President acts on the advice of the Home Minister. Why should they come in? The recommendation should be made by the Chief Justice of the High Court and by the Chief Justice of the Supreme Court and that should be binding. Should there be any occasion when the Government does not agree with the recommendation, here in Parliament and there in the concerned State Legislative Assembly, they should come and explain as to why they are not in a position to accept the recommendation of the Chief Justice of India here or the Chief Justice of the High Court. That should be the approach. Therefore, it is very important from the point of view of appointments. The subordinate judiciary personnel equally should be appointed by the High Courts or, under the authority of the High Courts, by the District Judges, as the case may be. That system should be followed. The executive should not have any place. Here at page 79 of the Report, it is stated:

> "There is an insidious and calculated attempt on the part of the executive to bring down the prestige of the High Court Judges."

It is favourably quoted here by the Law Commission.

Then, again, at page 101, another devastating reference is made to the manner in which the system is operating. Here it is said:

> "We have indeed in recent years reached what was called 'an extreme position in the other direction'. Far from avoiding the precincts of the Government House, Judges have come to treat invitations from the Government House as "commands". Newspapers tell us of Chief Justices and Judges being "granted" interviews by Ministers."

Then, it goes on to say:

> "We have been told of a High Court Judge appointed to the Supreme Court Bench being entertained at a party by a private citizen."

and so on. These quotations occur in the Report of the Law Commission. I should like to hear from the Home Minister of the Government of India as to how many Judges and would-be Judges call on him. As far as my State is concerned, Judges always go to the Chief Minister. They telephone the Chief Minister. It goes on like that—would-be judges, aspiring judges. These things go on. We hear lots of stories, because some of them are our friends. Sometimes we hear from them. We have still touch with the

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Bar. Some friends are there. It goes on. Now, that is something very bad. Is it not a fact that when the Chief Justice made a recommendation for the appointment of the Chief Justice of the Calcutta High Court, here to the Centre, the West Bengal Government made another recommendation? And the latter had to be superseded by the Chief Justice on the advice of the Government of India or the Law Minister or somebody. Such things happen. Therefore, there is a lot of patronage. These things go on. Why should the Judges be so eager for invitations? Why should they take them as commands, granting interviews to the Judges? Such things should never occur. Such things occur. Well, I do not wish to name them. I have found some Judges in the Minister's house. I will not name anybody here. But such things should not happen. And what is more, the Law Commission, a very respectable body, has put on record the occurrence of such things. Now the interference goes on. Take the Karnal Murder Case, a recent case. What is all this? Now on interference a very severe stricture has been passed by the judge against the executive. Here is the judgment, I do not wish to read it. Everybody knows it, the judgment on what is called the Karnal Triple Murder Case. It is stated there how the executive interferes with the administration of justice. How do these things happen? You may treat it as an individual case, but you must go to the root of the problem as to why such a sordid thing should occur in the judicial system of our country, why some Minister interferes with the proceedings of a case.

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Then again, in Uttar Pradesh in a case Mr. Justice Mulla remarked in his judgment:

> "The police officers in this case went absolutely wild and tortured the arrested persons in order to extract some information. The police again and again come forward with the explanation that some injuries were caused in the course of arrest but it is not difficult to reject this fictitious story. In ninety cases out of hundred these injuries were caused by the investigating agency to extort information, and they hide under the garb of questioning them in their effort to secure" etc. etc.

It is stated in another Allahabad case:

> "In assessing the statements of the police witnesses one should always keep in mind whether the investigation was done in an honest manner or not."

Further on it is said:

> "These indicate that their zeal to implicate an accused person has exceeded the limits of their duty and instead of investigation they fabricate. In this case the police officer did not confine himself to his duties as an investigating officer but he procured evidence and fabricated evidence."

Sir, such remarks are there. You will come across plenty, a plethora of such observations in the judgments of the High Courts and various other courts, in which you find the most disgraceful and disgusting story of continued interference by the police in judicial proceedings to the point of torturing the accused persons.

SHRI P. N. SAPRU: I do not wish to interrupt Mr. Bhupesh Gupta, but how is that all relevant to the question before us, the Report of the Law Commission?

SHRI BHUPESH GUPTA: The Law Commission, you will find, has also spoken on this subject, methods of investigation and prosecution, and so on. I am coming to that. Naturally I cannot rise to such heights as to make things clear to my learned friend. In a humble way I shall try to do my job.

Therefore, judges must not meet the Home Minister. The police should not

indulge in such activities, and the judiciary must be kept absolutely free from all influence.

Here comes the question of separation not in mere law but in fact as well. The High Court Judges must not lobby the Chief Minister. The recommendations of the Chief Justices must not be flouted. I more or less accept the recommendation on this point of the Law Commission. Their approach is sound and healthy, and the recommendation should be accepted and implemented by the Government. Patronage, political considerations, communal considerations and other things are galore in the appointment of judges. This is what is stated by the Law Commission itself. That should be looked into properly and steps should be taken for that.

Now, Mr. Deputy Chairman, about the recommendations, I do not want to say very much in regard to the appointments. I make it very clear that the whole system of appointment must rest with the judiciary itself. Don't call it a department. Why should the judiciary not be given the power to look after itself in matters of appointment, in matters of supervision, in matters of direction, in matters of promotion? These should not be left in the hands of the Government or the Ministry or a particular Minister, because they open the floodgates of corruption, nepotism, patronage, and so on. These are going on in our country today. Here I am again fortified by the recommendation of the Law Commission. I am not a lawyer that way but I like that:

> "The entire control of the subordinate judiciary including the District Judges must in the interests of efficiency of the administration of justice be vested in the High Courts."

This is what they say. Promotion also they mention, and it should be accepted. There should not be any qualification. There should not be any attempt to shirk the responsibility in implementing this thing as speedily as possible.

Then, Sir, I come to direct appointments. The point has been raised, and I am in favour of direct appointment to the Supreme Court. I do not know whether we should appoint a judge at the age of 40 and allow him to continue till 80, because some people are fortunate enough to live long; therefore, it is no good, no use saying this thing. What is important is that we must take talent from the Bar itself to the Bench. They should not always come from the High Court. A proportion of the Supreme Court Judges should also be directly recruited from the Bar. Good. I accept and I endorse the recommendation of the Law Commission in this matter. Of course, for High Courts it is done. But then the practice should be followed for the Supreme Court as well. In the District Court also that should be done.

Now, Sir, about the salary of the judges, recommendations have been made for increasing their salary. I do not wish to go into this question, but at the moment I would be averse to giving any thought to the idea of increasing the salary of the judges. They should be happy with what they are getting. They are good people, they are eminent people, they are self sacrificing people. When the country is facing difficulties economically, many people are not having an adequate living, and I think the Rs. 4,000 or Rs. 3,500 or so should satisfy them for the present. I am opposed to an increase of their salary. I am in favour of giving them ample powers.

Now, Sir, the question of reappointments has also been dealt with. I do not like that High Court Judges after retirement should be appointed as Governors. It is not good. It is an inducement. Whether one falls a prey to the inducement or not is a different matter, but then society should not place any inducement liable to corrupt people. It should not be done.

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We can find Governors from other people. We have our ideas of Governors, we need not go into this thing, but certainly judges could be spared from this privilege. They need not be brought in. I do not like them after retirement or even while in service being appointed as Ambassadors. I think in Mr. Chagla we have lost a good Chief Justice. I do not like that Mr. Chagla should have gone to America as an Ambassador. He was a mighty figure on the Bench with his accumulated experience and learning. He should have been there. I do not know why he was suddenly shifted to America to act as an envoy. Other people could be found for that job because envoys you can easily create. It is difficult to create judges, especially judges of Mr. Chagla's calibre.

Then, Sir, about seniority. Normally seniority should be the basis of appointing the Chief Justice but in some cases merit should also be taken into account. If preponderant merit is there, well, seniority should give way to merit. But it should be so handled that it does not look as if an injustice is being committed to a person who has put in long years of service.

This is very important. Therefore, here we must take a flexible attitude. All India Cadre of judicial personnel, I agree. Then the State's autonomy should not be interfered with. The Centre should be interested in making arrangements for their education and for training them. After that decision, the State should come into the picture and the State should have the full autonomy. We would not like a system to be super-imposed on the State in the judicial field which impinges on and which curtails their State autonomy. So that is a welcome suggestion, but then it should be subject to these limitations having regard to the importance and significance of the autonomy of the State.

The abolition of the jury system has been suggested. I do not think we should hurry in this matter. It is almost made out as if the juries are very bad. Well, you have the Nanavati case; I do not go into that again. But many juries are good. If they are bad, it is because of some other reason. Let us tidy up matters elsewhere. Then we shall discuss it. It has also its good side. In England it has a positive aspect. In our country's set-up, it has a negative aspect. Let us go into this question and see that the positive aspect comes into operation and the negative element is transformed into the positive element in order to retain the system for the present.

Again, I want legal aid to be given. I entirely endorse the suggestion. They say it is the obligation of the State to provide legal aid to the poor people. Very courageously the Law Commission has put forward that suggestion. I congratulate the Law Commission for this courageous statement and I would call upon the Government to implement it. Court fees should be reduced. It is our fundamental right to go to the court. We should not be inhibited by the heavy court fees. This question has to be gone into. In any case, the Law Commission has said that the court fee should not exceed the cost of administration of justice. Anyway, in most cases, I should like it to be less.

I would like to make one or two points about discrimination and I will finish my speech. I pointed out in this House before now two defeated Congress candidates were favoured. I have nothing personal against them. They are good people. I am quite clear. Both of them were defeated by us in Calcutta constituencies in Assembly elections. One is a member of the Bengal Provincial Congress Committee. I know him; we lived in England together—he is a good man and a good judge as well—and another. Mr. Debabrata Mukherjee of Bhowanipore, is also a good man. I have nothing to say against them. But they are two defeated candidates. One P.C.C. executive member was

made judge of the High Court. Then Mr. S. P. Sen was not included, not made a judge, district judge. Why? Because the police report was adverse against him. In the charge-sheet that we submitted to the President, we pointed out these discriminations. Government in their reply have given a fantastic answer to this. Now this is an adverse police report, Against others, Sankar Mitter and others, there were not adverse police reports. It means that police reports were called for. Belonging to the Congress Party—that does not make adverse police report—and for belonging to the Students Federation before partition as Mr. S. P. Sen—an eminent lawyer of the Alipore Bar—did, well, get an adverse police report. It is discrimination. Such things are going on. Now, I would like here to know from the Law Minister as to what they are going to do. I do not know. Changes happen because executive interference comes, political considerations come. Talent, merit, courage, vision, devotion, all these things are given the go-by.

Then, Sir, about the ministerial staff of the judiciary, I would say a few words. Their position should be improved. They are very ill-paid. We always talk about their taking little bribes and so on and catch hold of these people, persecute them, harass them and make a lot of noise about them. I know that some people are liable to commit such offences, but a majority of them are good. All of them are so ill-paid that they do not know how to make their both ends meet. That must be borne in mind. Similarly about the munsiffs and others of the lower level. Their position should also be improved.

Bar Council. Yes. All India Bar Council. But make it an Indian Bar Council. The hideous distinction between an Indian-educated lawyer and the so-called barrister should disappear here and now. It exists in Calcutta. I feel ashamed. I was called in England to the so-called English Bar. But when I think that there does exist a difference between those who are called to the English Bar and those who are called to the Indian Bar, well, I feel ashamed of the state of affairs. I am making certain observations. Sir, I hope that these will be gone into by the Ministry and I only emphasise that the executive—the Home Minister and the Chief Minister above all—must lay their hands off the judiciary, let them leave the judiciary alone, and in getting all those judges—and at the ministerial level leave it to some competent minister; they should not interfere.

There are a lot of things which have got to be improved and improved through consistent, systematic and courageous efforts.

SHRI J. N. KAUSHAL (Punjab): Mr. Deputy Chairman, Sir, the tremendous labour which the members of the Law Commission have brought to bear on the report which they have submitted to the House deserves commendation. The problem which was entrusted to them is of a very complex nature and the first term of reference was that they should find out whether the present system of administration of justice should be allowed to continue, or some other system should be evolved, or if the present system is allowed to continue, whether some improvements should be brought in it. Well, when I look at the problem, I feel that the present system of administration of justice requires some very drastic changes. Well, I do not know, and I am not qualified enough to suggest an alternative system. But I do feel that the present system is not giving that satisfaction to the ordinary litigant which it ought to, and we, Members of Parliament, have to find out whether we can think of any other system. Well, with great respect, I submit that although the present system probably does not suit the genius of our country, it seems that we have now gone too far to get away from this system. But I do feel that this system can be so drastically amended that that satisfaction comes to the people which is their due.

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Well, the main grievances of the people are two. Number 1 is that the system is very expensive, and No 2 is that there is a lot of delay in the settlement of their disputes. Now, can I ask the House as to what the Law Commission has suggested to make the system less expensive? Well, I do not know as to what those recommendations are which will society was brought into existence I, for my part, feel that the organised society was brought into existence for one main purpose and that purpose was that people should not settle their disputes among themselves, the society would settle their disputes This was one of the fundamental objects with which the organised society was formed and that is why the system of law courts was introduced But for settling the disputes of the people, why should the State insist on charging them before they embark on the task of settling their disputes? A man comes to the law court and says, "I am aggrieved in the sense that some trespassers came into my house and threw me out of possession of my house. I want you to help me to get possession of the house."

Well, the judge asks him, "What is the worth of your house?" He says, "Sir, it is worth Rs. 40,000." "Then bring a court fee of Rs. 3,000", says the court. Well, the man looks askance as to why 'I' shall bring Rs. 3,000 for getting redress of 'my' grievance and 'I' also do not find any adequate reason for it except the reason which has been given by all people to whom 'I' have had occasion to talk to—as to wherefrom to find the money. Well, my submission to the House is: This is an absolutely irrelevant consideration. If once we accept that we should not charge from a person for giving his justice, then, as we are finding money now for a hundred and one other things, as we are finding money now for our Five Year Plans, we should find money from the taxpayer for this purpose also. But let not an individual litigant who comes to a court of law be at once asked to pay before the law courts embark on settling his disputes. My submission therefore to the House is that justice should be free. Whether the country can bear the burden or not is a matter which may be separately investigated. But on that matter I think nobody can dispute this proposition that we should not charge our citizen for dispensing justice to him.

SHRI AKBAR ALI KHAN: Then how will you stop frivolous litigation?

SHRI J. N. KAUSHAL: I shall meet that question. I am practising at law and I know even your charging these court fees does not prevent frivolous litigation. On the other hand, I know of people who, when once they start litigation, will go into complete ruination before they stop. Honest lawyers may go on advising them, "There is nothing to be gained on appeal; do not go in appeal." But they do not bother to listen. They say, "There are a hundred and one ways of winning our appeal. We should try our luck there." And they go to the highest court of the land. I tell you: Therefore this frivolous litigation will not stop, and the argument that it will stop does not appeal to me at all. Any person, any citizen of the Republic, who feels that he has a grievance comes to a court of law. And his grievance has got to be redressed. That is the fundamental principle for which law courts were brought into existence and if they were not based on that principle, we must see to it, and that should be our primary function, namely that we must dispense justice without charging from the litigant. That is my submission. And I gave that evidence before the Law Commission. The Law Commission also asked me the same question: Wherefrom to find the money? I said, "That is not your head-ache; that is the head-ache of the Parliament. Whether they find the finance or not it should be your recommendation that justice should be free." But I am afraid the Law Commission in their wisdom have not chosen to give that recommendation.

Well, then the other submission which I have to make to the House is this. We have five appeals given to a litigant—a Sub-Judge's Court, a District Judge's Court, a Single Bench of the High Court, the Letters Patent Bench and then the Supreme Court. Well, I do not know, but my experience at the Bar shows that it is not at all necessary to give so many appeals. As I have been looking at justice, I really do not know what real justice is. I have not been able to find what justice is. The only definition which has come to me out of my experience is this: Justice is that which is administered by the highest court. That is all. Nobody knows whether the decision of the highest court is right or wrong, because I can vouchsafe today that if we had a right of appeal against the Supreme Court, I am quite sure that at least some of their judgments will be upset —it may be large; it may be small. But then the point is that if even 20 per cent of their judgments are upset, there is a margin of error even at the highest court. Now when somebody losing from the Supreme Court comes to us and says, "What shall I do now? I am not satisfied; this judgment is not right.", we tell him, "Now go and rest in peace." Thus many after losing from the highest court of the land are not satisfied. Therefore this is happening. One day, when I was arguing a revision petition, I was crying hoarse in the High Court that justice had not been done to my client. And I was told by the Hon'ble Judge that justice was on the other side whom you do not allow to rest, having won from the highest court of appeal. "Why are you bothering us on the revision side?" I at once thought that there was great justification for the remark. Therefore justice is that which is given by the highest court. Therefore, if once we accept this theory, then why not reduce the number of appeals, why not reduce the number of courts and thus save these unfortunate litigant people from their own follies? They will never keep at home unless they lose from the highest court. Therefore the highest court should stop at a particular level. It is a very serious matter for the consideration of the House as to where we should say, "Stop here; no further." Well, I give my own suggestion and it is this. We give an independent person to an ordinary litigant and tell him, "Look here. You have a grievance and here is an independent judge who will decide your grievance." Then the judge decides the case. But then the aggrieved man may still say, "I am not satisfied. This judge has not given me even-handed justice." We will say in such cases, "All right; we will give you an appeal court, but now you will pay something for the appeal." If he is not prepared to pay for this appeal, then he should be happy that his dispute was decided by an eminent independent person. But he says, "I am not happy." Then, in order to discourage an appeal, my view again is this: You should give him one right of appeal only and now begin to charge him—not charge him for giving justice, but charge him to discourage him from going further. Otherwise one should have the satisfaction of having his matter decided by an eminent independent person and there rest contented. We should charge him for going on appeal, and that too only once and no further. Now the impression gained by a litigant is, whether justice takes place or injustice takes place, that justice will only be done to him when somebody will tell him that he has lost from the highest court. Therefore my very respectful submission to the House is that we must think seriously in that direction, namely one court, one appeal and no further appeals. And I would also submit, Mr. Deputy Chairman, that there should be no revision petition, no power of superintendence to the High Courts and no special petitions to the Supreme Court. Why am I saying so? It is because there are eminent lawyers who hold the view that the supervisory jurisdiction of the High Courts is the real panacea for doing justice between people. Well, my experience at the Bar is different and I do feel that many of my lawyers

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friends will share that experience that these revisions and these writs and these other powers of superintendence of the High Courts, well, they come to the rescue of the litigants in a very very small number of cases. If we file a hundred cases in the High Court on the revision side, I do not know whether one succeeds out of that one hundred. Why then give that jurisdiction to the High Court and make that poor litigant suffer? If I advise a litigant not to go in revision, he will not listen to my sound advice. He will be tempted to go to some other lawyer in the hope that something good would happen to him. And he will at once go to the High Court. Therefore my very respectful submission to the House is that something has got to be done in this direction. Tinkering here and there will not cure the malady and it is not for that that the Law Commission was appointed. Therefore do not give the right of revision; do not give the powers of superintendence and do not give these special leave petitions to the Supreme Court because these special leave petitions have no barrier. You can go to the Supreme Court even with a case worth one rupee; the discretion is unfettered, but we all know that the Supreme Court exercises it in a very few cases. But in order to try their luck the litigants go. There is that element of luck and every litigant wants to try it. When somebody thinks of going to the Supreme Court we tell him, "It is not to any good; your house will be sold." But he says, "It does not matter. My prestige is involved." And every litigant, whether he is a liar, or is a truthful person and has a good case, thinks that his prestige is involved, and he says, "What will people think of me at my place? I have not exhausted all my remedies. Therefore it does not matter. Let my house go, but let me try my luck at the Supreme Court." This is one aspect of the matter. Unfortunately, among us also, among the lawyers also, all do not give their opinions very honestly about their clients' cases That is their profession; they also have to live by their profession. Sometimes even though they feel that probably the case is not very good, they think that there is one per cent chance of winning the case and thus satisfy their clients' wishes. And they get their fees also for that. Therefore, my submission is that, when we as Members of Parliament sit on this matter, we must go to the fundamentals of the problem and the fundamentals of the problem are: Reduce the number of courts, reduce the remedies and let the final remedy rest somewhere. Now somebody was telling me that I was suggesting some very drastic things and that people will not get justice. And my answer again is: Are we really getting justice even in the present set-up of courts? Can anybody say with a clear conscience that what the law courts are dispensing is almost always real justice? Law courts are hedged round by so many considerations. Sometimes a technicality prevails. Then sometimes it is paper justice which is administered. Therefore my submission is that justice is only that which is administered by the highest court. That is the burden of the song.

Now connected with this I want to bring to the notice of the House that the present system of administration of justice has introduced appalling perjury in the courts of law. Nobody can challenge this statement of mine, that the number of false witnesses which appear in our law courts is really appalling. And why has that come about? Law courts administer a special type of justice. Law courts administer whatever comes before them appearing on records. Well, they have got to administer justice according to that. And therefore everybody knows—if I can get hold of a few perjured witnesses, if I can show to the court independent witnesses who have no connection with me, who have no enmity with the other side also, well, then the courts will surely believe

their evidence. But then nobody knows that their palms have been greased, and the courts will believe testimony.

Normally they have no axe to grind. Are we going to stop this perjury which is prevailing? I want to share my experience with others. I do not know whether that is the experience of the other members of the Bar or not People have started saying, "Kindly tell the truth here; you are not standing in a court of law now." That is the amount of respect which we owe to truth and the oath on which the entire administration of Justice is based. People are not afraid of telling the truth out of court, but in the court they say, they need not tell the truth there. In the court we tell what suits us. So, my submission is, either the present system is not suited to our genius or something drastic has to be done. Can't we get away from this perjured type of evidence, can't we get away from all the technicalities which surround the present system? I suggest that the best way is to reduce the machinery, to reduce the number of courts and to reduce the number of appeals so that people may sit at home after being harassed at two courts or three courts.

SHRI J. S. BISHT (Uttar Pradesh): That is the question. Will they sit at home or will they take the law into their own hands?

SHRI J. N. KAUSHAL: It is being taken even now. This system is not giving that satisfaction which my hon. friend, Mr. Bisht, expects. My view is that in the present system there may be a number of ills which may be responsible for this. But probably the ills are so many that you cannot control them. So, the only other remedy is to curtail the duration of litigation. That is the way to solace for the people.

The other point on which I wish to concentrate is this. When I ask for the reduction of the number of courts and number of appeals, my suggestion is, change the method of selection of Judges. If we have a good, independent judiciary I assure you people will be satisfied with one appeal. People are not satisfied because they know that they are not getting proper justice. Therefore, on that matter my submission to the House is that the Law Commission has made very valuable recommendations with regard to the appointment to judicial offices.

Connected with this question is a very important matter which is in our hands and for which we never needed any recommendation of the Law Commission and which I wish to bring to the notice of the House, namely, the separation of the judiciary from the executive. I do not know why it has been put in the Directive Principles of the Constitution. Why should there be a constitutional provision for it, I do not know. Whenever we take this matter to the State Governments, they say they cannot run their administration with separation of judiciary from the executive. This is a complete negation of democracy. If somebody were to say that they can run the administration only if the law courts were under their thumb, it is a complete negation of democracy. Democracy pre-supposes that law courts are entirely free from the influence of the executive, and law courts can be free from that influence only if the Judges do not have to look to the executive either for appointments or for promotion. I do not know why you are leaving this question to the States. Ten years have passed and only four States have effected separation of judiciary from the executive. Other States are not prepared to do it. Why is the Central Government sitting silent over the matter? Why does not the Parliament bring forward a Bill at once that henceforward there will be complete separation of judiciary from the executive. It is our job. When we have accepted it in our Directive Principles, we should not lose a day to bring about this reform.

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Another point which I wish to bring to the notice of the House—and which has been the subject of discussion everywhere, in the press, on the floor of the other House and here also—is the question of appointment of Judges to the High Courts. I must say that the Law Commission has made a sweeping observation in saying that these appointments are made on considerations other than merit. It is unfortunate that this impression has gone round somewhere. But I can say with all confidence that in the appointment of the High Court Judges there may be a deviation here or there, but by and large the appointment of Judges is made on merit. There may be a deviation here or there but if there is even one deviation, the faith of the people is shaken. We should, therefore, try to find out a way so that there may not be even one deviation from merit in matters of appointment. But, then as everybody says, merit is a relative term; nobody can define it. After all, somebody has to make the selection. I feel X is very efficient. But another man feels that X is so so. Therefore, what really is required of us today is—and that is a very great thing and it is known to everybody—that not only justice should be done but it should seem that justice is being done. That is the only thing that we can take care of. It should seem to the people that justice is being done.

Sir, what is that something which the people feel? People feel that the executive does not work properly. It is the judiciary that works properly. That feeling is still there. We should respect such a feeling. Let the Chief Justice of the State and the Chief Justice of India make the appointment. Why should there be a hand of the executive in the appointment of High Court Judges? What is the meaning of it? If the Chief Justice of a State does not know his subordinate judiciary or the members of the Bar, then it is a misfortune. But we cannot avoid it. I assure you that, if the Chief Justice makes an appointment, people are always happy. They are sure that no other consideration has weighed with the High Court—at least no political consideration, no extraneous consideration weighs with Judges. Therefore, if Judges make mistakes, people do not impute motives to them. But when the executive makes mistakes people at once impute motives. They say, "Here is the man who has some political relation. Here is the man who belongs to a particular community. Here is the man whom the Chief Minister could not afford to annoy." Therefore, my submission to the House is, let the Chief Minister have no hand in the appointment of Judges. This is what the recommendation of the Law Commission is. I feel it is a very healthy recommendation. Therefore, if we are very sure that the High Court Judges are men of sterling worth and their appointments are properly made, people will have more confidence. It will instil confidence in the subordinate judiciary and make the subordinate judiciary entirely independent of the executive. We will have a hierarchy of officers about whom everybody feels that they have not to look to the executive.

Connected with this is another allied matter which I, with very great respect, want to place before the House. Sir, reference has been made on this floor on more than one occasion that Judges after their appointment should be clearly told that this is the end of their career. This is very important. Once a person is made a Judge of the High Court, it should be made absolutely clear to him by the Constitution that he will not get any other favour from the Executive. Why I say so is this. I do not say that we do not have eminent Judges of the High Court. To instil confidence in the public mind that Judges of the High Court are not under the influence of the Executive, we have to bring about this convention, rather a statutory sanction that once a Judge is appointed, he will not bother to go to the door of the executive because he knows that the

executive has no further favour to give him. Everybody knows that unfortunately some appointments have been made—some Ambassadors, Governors, some Commissions or some Tribunals. If that is there, people will always feel that these High Court Judges still look to the Chief Minister of the State. They still look to the Home Minister in the Centre. Even after their retirement, they look to something which the executive can give them. Sir, my submission is that all these things are very essential to give that unshaken faith in the independence of the judiciary which is the only sheet-anchor of judicial administration. That is my respectful submission to the House.

Now, I will touch on only one subject. For considering the full Report of the Law Commission, we should have full one month. We cannot consider the Report of the Law Commission in five or ten hours. Sir, the Report of the Law Commission is an important matter which vitally concerns the nation and only the Government knows best why this Report is being discussed in about five hours' time. This should have been first discussed item by item, thread by thread, and then decisions taken. The last point which I wanted to submit is this.

It is connected with my previous submission. I say: Reduce the number of courts, reduce the number of appeals. In the same connection I again say one thing. The majority of the disputes which are taken to the courts of law are petty in their nature. They are petty in the sense that they are cases where 10 bigas of land are involved or a small house is involved or a passage is involved or a wall is involved or somebody's sprout is involved. These are petty matters. Why cannot these petty matters be decided by our own people? Why should they come to the courts of law? By our own people, I mean our panchayats. Somebody will say that these panchayats are doing havoc. I do not subscribe to that view. Havoc is done by everybody but the only question is that you are saving those poor litigants from that misery which is in store for them once they embark on litigation and I assure you that if panchayats are not doing proper justice to-day, they will begin to do it from tomorrow and that seems to be still our ideal today Whenever two persons fight, what do we say? We say: 'Appoint an arbitrator'.

"पंचों के पास बैठ जाओ भाई, जो पंच फैसला कर दें मान लो।"

I tell you that the panches deliver better justice in the sense that before them perjured evidence does not come, because they sit there where the thing has happened. They know everything. Nobody would come there and will give all types of evidence. Again my old theme comes. Over and above the head of these panches, let there be no court of appeal or court of revision, because these are petty disputes and you have entrusted them to your fellow countrymen. As people say 'The jury administering justice', this is another type of jury. You say that these petty disputes will be decided by the panches and there would be no further appeal to the Deputy Commissioner or the District Magistrate. Once this is known, they will think twice before giving a wrong decision. Now they know their position and so they think 'Why not please the man because the dispute will go to a court of law and they will acquit the fellow?' So they do not feel the responsibility of administering justice. Once you tell them that the decision of the panches is going to be final, they will improve. I will again say this. I have great faith sometimes in these illiterate people. They have still the fear of God. Sometimes the present education has eliminated that fear and we feel, 'It does not matter and we may do anything' but these people whom we are still having, have that faith in God and they will feel 'We

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will not do anything wrong. We have been asked to sit on the seat of justice and so we must deliver proper justice.' So I say that very serious consideration will be needed as to how much percentage of litigation should be taken away from the purview of the courts of law and entrusted to the panchayats. Again will come the question of from where the panchayats should come in or whether they should be by selection or by nomination or by election. But those are matters of detail, but are we agreeable to this principle that the majority of the disputes which I say are petty in nature, should not be allowed to come to the courts of law and that they should be finally settled there?

Then with your permission only one more topic I will touch. A very serious question has been debated so many times as to whether the retiring age of the Judges should be raised or whether there should be no retiring age at all. Again I say that it is a matter on which opinions will always differ. But those countries which ensure the independence of the judiciary do lay down such conditions of service for their judges where the Judges always feel 'Once I am appointed a Judge, I will die as a Judge'. I am told—I do not know and some other friends more acquainted with it will say—that there is no retiring age for judges in the United Kingdom.

SHRI J. S. BISHT: It is 80 now.

SHRI J. N. KAUSHAL: We can imagine it but then I was told that it was like this that there was no retiring age for judges. The judges only imposed an age limit by themselves.

SHRI P. N. SAPRU: You are right.

SHRI J. N. KAUSHAL: Therefore my submission is that this is a matter which would need very serious consideration of the Government. The Judges should know this: 'Once I am a judge, I am always a judge and I will not retire so long as I am fit to work.' Of course if they are not fit, they would themselves put a limit on themselves. Therefore if you want your administration of justice to be absolutely independent and fearless, you have to think in that direction also. I may be one of those who feel that we should select good men. Let there be no hitch on that. Bring in the best talents from the country but once you bring them, tell them this: 'So long as you are fit to work, you will work as judges. Do not go to the Chief Minister or bother about what the Government feels. The Constitution is at your back. You are irremovable. The Parliament is at your back. Therefore do not be afraid of anybody.' My submission is that these are the only things which actually ensure the independence of judiciary.

SHRI P. N. SAPRU: Mr. Deputy Chairman, I would like first of all to say that it is a very difficult thing to discuss a report of this magnitude in a 15, 20 or 25 minute speech. Let me first of all say that in my opinion the report has the negative merit of having supported the present system of judicial administration. Nothing, as I read the report, seems, in their opinion, to be radically wrong with the system. The machinery requires oiling here and there but intrinsically it is sound. I share that view. I said 'negative' because though I agree with the main conclusions of the report, I find that there is nothing, from a juristic point of view, of considerable merit in it. It is a very long document. It tells the judges what to do and what not to do, whether to accept an invitation or not to accept an invitation. It goes into all these minute details. It prescribes a code of behaviouf for them but from a juristic point of view, I do not think that the report can be regarded as a monumental document, notwithstanding its length. I will give one concrete case. It has

not applied its mind, for instance, to the question whether in a Welfare State or in a society moving towards democratic socialism, it is proper for the jurisdiction of courts in civil and revenue matters, to be decided by their pecuniary value. The emphasis so far as jurisdiction is concerned, is on the valuation of the suit. The emphasis is not on any other condition and I think it was expected of these eminent jurists that they would apply their mind to this problem also. I do not know whether there is any pecuniary limit for appeals to the Court of Appeal, or to the House of Lords. The way those countries look at the question is: 'Is there a substantial question of law which is being raised in this appeal?' This is a point of view which seems to have escaped the attention of the Commission altogether.

I may point out another aspect from which I think our system of appeals is unjust to the poor man. So far as second appeals are concerned, they may be of the value of Rs. 10,000, in some places. So far as second appeals are concerned, the High Court cannot interfere with findings of facts. The findings of facts are recorded by a single District Court or Civil and Sessions Court Judge. These District Court Judges or Civil and Sessions Court Judges are not in every case superior in calibre to the men on whom they are sitting in judgment. I used to note in the old days howlers made by inexperienced officers of the civil service, a civil service which this Report seeks to revive in a new form. I know of howlers that these inexperienced District Judges of the U.S. used to make and the High Court could do nothing, even though I knew that the findings were absolutely incorrect, because in law those findings were binding upon me. So far as the richer litigant is concerned, he is at an advantage. He has the right of appeal automatically, if the suit is valued over Rs. 10,000. In that case he gets a right of appeal to the High Court. And if the valuation of the suit or appeal is above Rs. 20,000 he gets a right of appeal automatically to the Supreme Court, if the High Court reverses the decree of the lower court. Nothing could be more unfair than this arrangement which is part of our judicial system, and it is amazing that men who have spent their whole time in the study and practice of law have not cared to even notice this discrimination which is inconsistent with democratic theory and with the socialist professions of our country.

The Rankin Committee *i.e.* the Civil Justice Committee had suggested that appeals should be disposed of up to the valuation of Rs. 5,000 or so, by a Bench of two District Judges or Civil and Sessions Judges. Now, even that safeguard the Commission have completely ignored. They did not even take notice of what is good in that Report. Give me the Rankin Committee Reports or recommendations and I venture to say that in a week's time, I shall be able to produce a report like the one which the Law Commission has produced, because they have made no suggestions which would simplify procedure. They have made no suggestions which would improve or speed up justice. They have dealt in vague generalisations and they take without acknowledgment parts of the Rankin Committee's recommendations and put them forth before the world as words of wisdom from men of very great eminence in the world of law.

Then, Mr. Deputy Chairman, I would like to say something about what they have said about the Supreme Court. They have spoken of the Supreme Court in a manner so as to suggest that the standard of the Supreme Court has gone down. Probably they are right. I will not dispute that proposition, though I rather regret that it was put in that blunt form by these Commissioners. It is quite obvious that the standard of the Supreme Court is not the standard of the Judicial Committee of

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the Privy Council, that it is not the standard of the Court of Appeal, not the standard of the House of Lords, not the standard of the Supreme Court of America. But they say that the standard has gone down because some Judges had been appointed under executive pressure, on communal and regional grounds. I know from hearsay the history of almost every appointment. But let me just analyse this matter a little. It is not suggested I think—he will be a bold man who suggests that—that the non-communal Judges are giants and the so-called communal Judges are pigmies. The fact of the matter is that we have no Lord Mansfields, no Lord Wrights, no Mr. Justice Holmes, among the Judges of the Supreme Court. The difference between the so-called communal Judges, or Judges appointed on communal and regional basis and the Judges not appointed on that basis, is the difference between tweedledum and tweedledee. They say that the Supreme Court Judge must be superior to the High Court Judge. Well, so he should. But I venture to think that you will find today judgments of High Court Full Benches—and I think that is a fair comparison—compare very favourably with Full Bench judgments of the Supreme Court. Now, assuming that there has been a lowering in the standards of the Supreme Court, who is responsible for that? They say and this is what they have been led to believe from the evidence produced before them, that the responsibility rests exclusively with the executive Government. May I ask in all humility what these highly paid and much advertised Chief Justices were doing? Could they not stand out? Had they not the courage or the conviction to say, "Well, this is an impossible appointment. I do not agree. You can do anything you like. Here is my dissent or here is my resignation." Why was there this weakness on their part and why then do they take shelter behind the plea that the executive is responsible for this? They cannot escape discredit for the weakness that they displayed—if this is the correct state of things—in dealing with the executive.

I think, Sir, that Supreme Court Judges should be appointed on merit and merit alone and I think there is enough talent in the legal profession, in our Benches, if you will look carefully all over the country, to provide good material for our Supreme Court Judges. I see no reason why the posts of Supreme Court Judges should be the monopoly of about-to-retire High Court Judges or Judges who are in high favour with the Chief Justices of our various Courts. I think, Sir, that we should have a wider field of recruitment. We should look to the Bars for our recruitment and I venture to suggest in all humility that there are men today in our courts of about fifty or so, who, if given fifteen years in the Supreme Court Bench, will do very well and they will make good Judges and they will be able to give, in suitable cases, a new direction to legal thought.

4 P.M.

So far as competence is concerned even our District Judges are competent but you want something more than mere competence in a Supreme Court Judge and I think the Bar is the proper place for securing Supreme Court Judges.

Then, Sir, there is the question of age, pension, leave and all that. So far as age is concerned, they say that the age should remain at 65. In Britain, America and in other democratic countries, there is no retiring age limit. A commission which was appointed some time back had suggested that there should be a retiring age and that it should be 72 but Bill has been introduced recently in the House of Commons fixing the retiring age of Judges at 75. When Lord Goddard retired at the age of 81 or 82, he was asked as to why he did not retire earlier and he said, "Well, I did the work of three Judges". That is quite true. I am for raising the age limit

and I would not mind the age being raised to even 70 in the case of Supreme Court and High Court Judges but if you do not want to raise it up to 70, let it at least be 65 for High Court Judges. I am, however, definitely of the view that the Supreme Court Judges after retirement should not look for any executive favours. You may ask a Judge to preside over a Commission; that is a different matter but he must not be given a job and he must not be equated with Secretariat officials. I think that Governorship and things like that are not really things which should attract a Supreme Court Judge. You can preserve the independence of the judiciary only by creating psychological conditions for that independence. Independence cannot flourish in a vacuum.

Passing on from the Supreme Court to the High Courts, I would like to say that there is a conflict of testimony on this point between the Home Minister and the Law Commission. The Home Minister, if I am right, said in the other place that there had been interference only in one case with the recommendations of the Chief Justice while the Law Commission thinks that there has been interference on many more occasions than one and that, in any case, the Chief Ministers had been free so far as interference was concerned. The Commission has said that the Chief Ministers often had their own list. The Commission has suggested that the Constitution should be amended so as to provide for the concurrence of the Chief Justice of India. I am rather amazed at the suggestion that the Constitution should be amended to provide for the concurrence of the Chief Justice of India. Appointment, constitutionally speaking, is an executive matter and for appointments the executive is in the ultimate sense responsible to Parliament. The Home Minister or the Prime Minister, whoever is responsible for the appointment, cannot, therefore, say that the Chief Justice had done it and that he cannot be made amenable to our control. The correct position in this matter should be that the highest importance and the highest weight should be attached to the recommendation of the Chief Justice of the Court concerned particularly if it is backed by the opinion of the Court and normally, except for some reason known to the Ministry and communicated to the Chief Justice, there should be no interference with the recommendation of the Chief Justice. I think, Sir, that the system which allows separate lists to be sent by the Chief Ministers and the Chief Justice should go and I agree with the Law Commission in regard to this matter.

I want to say one or two words about the position of the Chief Justice of the Supreme Court and the Chief Justice of a High Court. The view was put forward that the senior-most Judge should automatically become the Chief Justice. Well, Sir, I read the other day a fascinating article on appointments in England to the higher judiciary, in the "American Judicature Review". The British and the American view is that the Chief Justice need not be the senior-most Judge. In fact, Lord Chief Justice Parker who was appointed recently was a comparatively junior Judge. You want a Chief Justice to be something more than a mere lawyer. You want in a Chief Justice the ability not of an administrator as they say but of a constructive statesman, as Mr. Justice Douglas would put it. I would, therefore, say that you should recruit your Chief Justice, if necessary, from outside the cadre of your Benches. In England, the tradition which has just been broken is that the Attorney-General is given the first option or the first refusal. I do not see why we should not follow some such practice here in our country. I do not see any reason why we should not invite some eminent Chief Justice, men like Mr. Justice Chagla or Mr. Justice Rajamannar or some eminent lawyer with experience of public life to preside over the Supreme Court.

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I think you want from time to time fresh blood in the Supreme Court and I would say the same thing about the High Courts also. I do not think that seniority should be the sole determining factor so far as appointments to Chief Justiceships are concerned.

Then I would like to refer to the problem of arrears in our superior courts. It is a baffling problem. To emphasise that, they give us some figures about the arrears in various courts, and their solution is to add to the strength of the Benches. Of course, they display their superior wisdom by saying that some Judges are slow, others are fast and all that sort of thing but the fact is that without adequate personnel work in our courts cannot be done. New types of litigation have sprung up and it would be a misfortune for this country if as was suggested in an otherwise admirable speech by Mr. Kaushal, the writ jurisdiction of the courts was done away with. I have found that writ jurisdiction most helpful; it keeps the executive under control and that jurisdiction is vital for the preservation of the democratic process in a young democracy like India and I hope that that jurisdiction will be preserved.

I do not think that you can do away with revisions and all that because you do not want to have miniature courts by hundreds and thousands in this vast country. You want some uniformity in the application and in the interpretation of law.

Sir, I would like to say that I am not particularly attracted by the theory that for the emotional integration of the country, one-third of the judges should be recruited from outside their home States. I do not think you are going to get emotional integration in that way; all that you are going to get is a lowering of the quality of men who are to serve as judges in your courts, because a person who has his home and who has some practice is not likely to go to distant Kerala or to near Bihar for just showing that he is emotionally with the people of Bihar or with the people of Kerala.

Sir, I am also opposed to the list system which they have suggested. They say that there should be an *ad hoc* body to draw up a panel of persons suitable for appointment as judges. I think it is very difficult in this country to preserve the secrecy of these lists. I think that a system like that is likely to lower professional standards.

Then I would like to say that it is very important that there should be separation of the judiciary from the executive. Well, I do not know whether it is necessary to argue the case for it or against it but I would like to make a brief mention of the jury system. I find that the Law Commission has given its verdict against the jury system. I do not think that their remarks are of a very profound character on that point. I know that judicial opinion is, generally speaking against the jury system, but I think it is possible to have an improved type of jury system and I would have liked them to study the French system of Jurors. The French jury decides questions of fact and also questions of sentence and the judge and jury sit and work together. I should have liked them to think somewhat along those lines.

I am glad that they have condemned the system of written arguments. I know how expensive that system is but I am not convinced that they have given adequate reasons for condemning the system of statement of facts.

Then, as regards fiscal matters, they have suggested that there should be an Income-tax Bench attached to every High Court. I agree with that. But as far as labour matters are concerned, the Commission suggests—and I was told by an eminent lawyer —that the Supreme Court has become veritably a labour appellate tribunal. The reason for that was that we were in too great a hurry to pass Bills which did away with labour appellate tribunals. (*Time bell rings.*) I had

suggested that there should be at least a Bench of three judges to work as labour tribunals but even that was not accepted.

Then there are many other matters which this Report raises. But your bell has rung and I am unable to develop further points. I would only like to say that the Report requires very careful consideration.

Sir, there is one important suggestion which I would like to make with regard to the question of arrears. We can have something like the British system of Commissioners of Assizes to clear arrears. The Commissioner of Assizes is a sort of an additional judge appointed to help in the clearance of arrears of work. Here we should have some Commissioners of Appeal and we should tell them, 'you clear the arrears up to, say, 1958 or 1957 and you are given two years to do that.' And we can appoint these men from District Court Bars.

Another thing I would like to say is that I am very strongly opposed to the suggestion that there should be an all India Judicial Service. It would be unfair to the members of the State Service. It will be a new type of I.C.S. and we do not want a further multiplication of this class structure. I think the Munsiffs and civil judges who will be doing about the same type of work as the members of this Service will resent it and the Bar will not like it. And it is amazing that a suggestion like that should have been put forward seriously by serious-minded Law Commissioners evolving the basis of legal organisations for a country aspiring to be a socialist State. Thank you very much.

MR. DEPUTY CHAIRMAN: Mr. Jaspat Roy Kapoor.

SHRI JASPAT ROY KAPOOR (Uttar Pradesh): Mr. Deputy Chairman, Sir, I am obliged to you for giving me this opportunity for which I once pined but I was not prepared on this occasion. Anyway, I am very happy for this windfall today. There are only two or three points on which I would like to express my views.

Firstly is the point which I have raised on more than one occasion and that is about the recommendation of the States Reorganisation Commission to the effect that for the unity of the country, for the proper administration of justice, we should adopt a policy, if not an absolute rule, that about one-third of the judges of every High Court should be recruited from outside the States concerned. Only a moment ago, my hon. friend, Shri Sapru, said that he was absolutely opposed to this suggestion. He did not give any reason for that, maybe, because he had not adequate time at his disposal to deal with this subject. But I think that it is a healthy suggestion which had been made by the States Reorganisation Commission and which was accepted practically *in toto* by the Government in the circular which later on they sent round to all the States and High Courts directing them, if I could use that word, that they should see to it that this suggestion is implemented. I strongly feel that for the sake of the unity of the country, it is necessary that that decision of the Union Government should be implemented to the largest extent possible. I see no reason why anyone should be opposed to that idea or to that suggestion. It is also in the interests of the judges themselves, because let us not forget that we have now provided by amending the constitutional provisions that Judges of the High Court after retirement can practice in a High Court other than the one in which they have held office. Now, it is said that the age of retirement should be raised from 60 to 65 in the case of High Court Judges and it is also said that their emoluments, at least the leave allowances, should be increased, their pension should be increased, because of the fact that after retirement they cannot find it easy to live with the meagre pension that they get. It is also suggested and rightly—a suggestion to which I will refer hereafter also—that after retirement Judges

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should not be called upon by the Government to serve on this tribunal or that tribunal and they should not have before them the temptation of various offices after retirement. That being so, I think the Judges would themselves welcome the idea of being appointed to High Courts in places other than their home State, because after retirement they can then come back to their own Home State and practise there. What do you find these days? Judges of the High Court after retirement, all or most of them generally speaking, come over to practise in the Supreme Court. Now, a time will come, after a couple of years or more, when we will have in Delhi, in the Supreme Court Bar, a much larger number of retired High Court Judges practising as advocates than are really needed by the litigant public, and there will be a good deal of competition, as it were, here in the Supreme Court. I think, therefore, that it is in the interests of the Judges themselves that they should be appointed to High Courts in places other than their home State. Once when I was raising this point, my hon. friend, Shri Sapru, when he happened to be occupying the Chair, remarked that there might arise difficulty because of language. I do not think that any such difficulty would really arise. In the past, in pre-independence days, when the British were here, we used to have judges coming from distant places as the U.K. If those European Judges could function very satisfactorily, without experiencing difficulty of language, in the different parts of the country, I see no reason why Indian Judges, who certainly are much more familiar with the different languages prevailing in the country than the European Judges or English Judges were, should find any difficulty. If there is any substance in that contention, then, at least I would suggest that we may have three or four regions for this purpose, because in the States of Assam, Bengal and Orissa practically one language is spoken. Then, we have the Hindi region comprising of Bihar, Uttar Pradesh, Madhya Pradesh, Rajasthan and practically speaking Punjab. Another region is Bombay and yet another in the south—Madras, Mysore and Andhra Pradesh. I do not see why there should be any difficulty in an advocate practising in Assam being appointed as a High Court Judge in West Bengal or Orissa and *vice versa*. Similarly, in the four States, Hindi-speaking States, a practising lawyer from Bihar can be easily appointed as a Judge in the High Court of U.P. or in the High Court of Rajasthan. And the same could be said with regard to the two or three other regions that I have just mentioned.

In the last session, I had tabled a question on this subject. Since the date of the circular issued by the Central Government to the various States and High Courts about one-third of the Judges being appointed from outside the States since that date up to about August or September of this year, about ninety Judges had been appointed in the various High Courts. Out of them only ten were appointed from outside the States. I have seen in that list names of Judges who could have been easily appointed to the High Court of a neighbouring State. Yet that has not been done. I cannot appreciate this fun of the Central Government itself issuing a circular, giving a directive or giving advice to the States and the High Courts and yet not making any effort itself to implement its own decision. I feel very strongly on the subject and I hope and trust that this decision of the Central Government itself would be implemented to the largest extent possible hereafter and that this decision of theirs would not be allowed to remain as a dead letter.

The second point that I want to emphasise is the recommendation of the Law Commission to the effect that no temptation should be allowed to be kept before the retiring High Court Judges. That is, we should make it a policy, if not an absolute rule, a general policy that a High Court Judge and even a Supreme Court Judge should

not be called upon to occupy any other office. Well, maybe there has never been any case and probably there may be none hereafter where a Judge while sitting on a High Court or the Supreme Court acted in a manner other than most judicially, merely for the sake of getting an appointment after retirement. But we have to see to it that absolute confidence is created in the mind of the general public that these High Court Judges are absolutely independent and impartial and they deliver judgment irrespective of the consideration whether it will please the Government or not. What is necessary is not only that the judiciary should be independent, but what is still more necessary is that the people at large should feel that the judiciary is absolutely independent.

I think, Sir, that even though there may not have been many cases in the past, certainly I have a sort of feeling that there have been one or two cases in the past where I know—and I am sorry to say so because I speak with some personal knowledge—that one or two judges in certain parts of the country rose to High Court Judgeship—of course, it was in the pre-independence days—because they always took jolly good care to see that their judgments in political or quasi-political cases were of a nature which pleased the Government. Even during the post-independence days there have been one or two cases where a High Court Judge after retirement went on getting one job after another until virtually the last day of his life, because he always took jolly good care to see that his judgments were such as would not offend the Government. Now the Government may never have brought to bear upon him any influence whatsoever, but the hard fact remains that he was always trying to see that his judgment was not of a type which might offend the Government. In view of these considerations, Sir, I submit that we should make it an absolute rule that after retirement neither a Judge of a High Court nor a Judge of the Supreme Court should be called upon to perform any other function under the gift of the Government.

Sir, only the other day there was the case of a certain Supreme Court Judge whose verdict as a presiding officer of a certain Commission was questioned, and questioned in a language which was not very happy. Now that created a very unhappy situation. Happily, Sir, that situation was remedied later on by proper amends being made. But then that leads us to think that we must adopt it as a rule that retired High Court Judges and Supreme Court Judges should not be called upon to perform any function which is within the gift of either the Central or the State Government.

Sir, the last point that I want to touch upon is the age of retirement of the High Court and the Supreme Court Judges. I feel, Sir, that the age of retirement of the Supreme Court Judges might go up to 70, and in the case of High Court Judges also it might go up to 65 or it may be the the same as that of the Supreme Court Judges, whether it is 65 or 70. I have never been able to appreciate why there should be a difference between the ages of retirement of the High Court Judges and the Supreme Court Judges. Certainly the Supreme Court Judges are expected to have a more vigorous mind than the Judges of other Courts, and if one attaining the age 65 is good enough to perform the more responsible duties of a Supreme Court Judge, why cannot the functions of a High Court Judge which are comparatively speaking of a somewhat lower, I would not say standard but, degree be expected to be performed by one who is of the same age of 65? This distinction, Sir, seems to me to be based not on any solid arguments, not on any judicious considerations, but somehow it so happened during the days of Constitution-making that the retiring age

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of the High Court Judges was fixed at 60 and that of the Supreme Court Judges at 65.

These are the three more important aspects which I wanted to refer to. There are many other aspects to be carefully considered and they need a much longer time than what we have at our disposal on this occasion, but I hope and trust that the various recommendations that have been made by the Commission would be carefully gone into by the Government, and that they will tell us at the close of the debate if they have been able to finalise their decisions, and, if not, at a later date tell us as to which of them they have found it possible to accept and which of them they find it difficult to accept, of course, with cogent reasons for their decisions.

Thank you, Sir, once again.

SHRI AMOLAKH CHAND (Uttar Pradesh): Mr. Deputy Chairman, I rise to assess the recommendations of the Law Commission on the form of judicial administration not from the point of view of the Supreme Court Judges or the High Court Judges but from the point of view of a poor litigant.

Sir, we have heard various opinions about the recruitment of Judges to the Supreme Court and to the various High Courts. We have heard about their age restrictions. I thought that probably some would like also to say something regarding their pensions about which there is a reference in the Report. Now, Sir, what we find there mentioned about the Judges is a pitiable condition. The pension in some cases is to the tune of Rs. 844 if the Judge is of seven years' standing, it would be Rs. 1,278 if he is of ten years' standing, it would be Rs. 1,567 if he is of twelve years' standing, and Rs. 2,000 if he is a Judge of twenty years' standing. What I personally feel is that you choose your Judges either of the High Courts or of the Supreme Court with due care—that the independence of the Judges should be there, that all the Judges should be independent of the executive. Now, suggestions have been made that there should be restrictions that he is not to take any other employment after retirement. Then, as recommended even in the Report, he should not be allowed to have chamber practice. Objections have been raised that Judges should not go as Ambassadors, and that they should not become Governors, and the like. All this trouble can be obviated if a decision can be taken as to what the age of retirement of a Judge should be. It has been suggested that as in the U.K. and the U.S.A. it may be life Judgeship. I feel, Sir, that with better health, scientific development and so on, the expectation of life is increasing, and it is now the proper time when Government should consider whether it is not desirable in the case of a Supreme Court Judge to retire him only when he is either incompetent or when he himself feels that he cannot carry the onerous burden of that office.

Sir, I referred to the question of pensions only in this connection. Suppose a Judge who is drawing a salary of Rs. 3500 or a Chief Justice who is drawing a salary of Rs. 5000 gets Rs. 844 as pension; how would he be able to maintain himself? So, the very idea as to what one has to do after retirement does come to his mind.

It has been suggested that the executive is always anxious to employ the Judges of the High Courts for the various tribunals or for some administrative purposes or the like. My friend, Mr. Bhupesh Gupta, has a particular objection that Judges should not be made Governors. Probably he has forgotten that there is a provision in the Constitution that in case there is death of a Governor it is the Chief Justice of the High Court who acts for the Governor till another Governor is appointed by the President.

Sir, this very idea or principle which has been dealt with in the Constitution does say that judges would be competent to become Governors. If they can officiate after their retirement, there should be no bar on them to act as Governors and if a judge can act as a Governor, certainly he would be a competent person to represent the State as an ambassador elsewhere. But if we first settle the question of what should be the tenure of office of judge —whether it should be a life tenure or a restricted tenure—then all these questions would not crop up. Now, Sir, I would not like to deal with this aspect of the question. I would like to deal with that aspect of the question as to what is the function of the judiciary, how people in the lower ladder—at the level of the district—feel about justice. My friend, Shri Kaushal, suggests that there should be no court fees. It is a very good suggestion. But is it a practicable one? Even in criminal cases which are cognizable cases and in which the police has the right to interfere, arrest, proceed with the investigation and prosecute, when you go to a court of law, if the police does not prosecute, you have to pay court fees for your application, etc., etc. Now, the question whether the State should take up the responsibility of administering free justice is a big problem. Have they considered the question of how much is being spent on the administration of justice in India? Leave aside the Supreme Court; leave aside the High Courts. What about the district courts? I know that in my own State, there are fifty-one districts, and if you count all the districts in India and just tabulate the cost of administration of justice in India, it would be a great figure. We know what is the earning capacity of an individual. We know that the very idea that there should be cheap justice, there should be speedy justice, cannot be met with the structure with which we are concerned. You will find people saying that once you go to a court of law, you are going to ruin yourself. That was the point suggested by my friend, Shri Kaushal. I know that there is a proverb in Hindi:

"जो जीता वह हारा, जो हारा वह मरा"

Now, Sir, what does this mean? Any man who wants to get justice has to pay through the nose for the very simple reason that there are various other people belonging to this profession. There are the lawyers. To engage a good and competent lawyer is rather difficult. If you want to engage a lawyer who would be able to put your case very well, you have to pay for his maintenance and for the maintenance of his family. Therefore I think the proverb is a right proverb that even if you won in one court or two courts or in three courts or even in five, the result is that you have lost something substantial from your own resources. Therefore, if you won a case, even then you have lost a part of your good money. But if you are defeated, if the case is decided against you at the fifth court, then what is the position? The position is that you have lost your case, you have lost your money and you just feel as if you are dead, even though living in this world.

We have to look at the problem from this aspect, as to how far the recommendations that have been made by this Commission would help us to find out whether it would be possible to realise that justice is simple, speedy, cheap, effective and substantial. Now, Sir, as far as substantial justice is concerned, my friend Shri Kaushal has said that substantial justice is that administered by the highest court of the land. It is justice according to the document that has been produced in a particular case, or say in a criminal case, according to the evidence that has been produced either by the prosecution or by the defence. These are questions which are very vital to the society. After attaining independence, people have got a different notion of justice. It is not sufficient that justice is administered. As was

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rightly said, it should be that a person who goes to a court of law should feel that justice has been done to him; it should satisfy his own personal cause. He should have the confidence that justice has been done to him. The question arises as to how this confidence is to be created, and how a case can be disposed of at the initial stages to the satisfaction of the parties concerned. But there may be people who may not be satisfied with the judgment in that particular case. But then there should be a limit. That is what I am going to suggest, that extraordinary rights of appeal, second appeal, revision, this, that and the other, should be curtailed, provided you are able to appoint even at the lower cadre persons who are independent, who know at least the law, and are able to administer justice.

Now, Sir, I would like just to illustrate what I mean to say. Suppose in the city of Delhi a person files a suit for the eviction of a tenant in the year 1957, and there is a rent law passed by Parliament in the year 1958—the Slum Clearance Act, this, that and the other. If two years after the institution of the suit, the suit is decreed in spite of these legislations and the court does not even give one minute to look into the provisions of these Acts which are passed by Parliament, I fail to understand what would be the condition of the litigants in those places which are far away from the city of Delhi where Parliament itself sits. This raises a particular question whether all these legislations are being considered to be in force or not. One of the subjects which was before the Commission to enquire into was to consolidate the law. It has been said —and rightly said—that from the year 1947 onwards till to-day, we have passed so many legislations—Central legislations, State legislations and special legislations. It is very difficult for the common people to know how the rights which they have got under a particular statute are being administered. I have only mentioned this particular case for the very simple reason that when such a case was brought to my notice, I was simply surprised to know how the courts were functioning. And when I speak of a district court, I do say that even the lawyers do not know all the laws, even the recent laws passed by Parliament. Therefore, what I feel is that there should be some remedy, some provision, some method, to keep these people informed of the laws which Parliament in its wisdom passes.

Another question arises, Sir, and it is about police investigations. As I submitted, Sir, I would not like to speak much about the High Courts and the Supreme Court, but it is a matter of daily concern to so many persons, of police investigations. Now, Sir, we know that much time is taken in police investigations. All sorts of things, all sorts of considerations, all kinds of tactics are used. How are we going to protect people from all this tyranny? That is another problem which has got to be considered. Now I would not like to deal with cases like the Karnal Murder case, as was referred to by Mr. Bhupesh Gupta. He referred to it because of some political reasons or other. But let us leave aside all these simple cases which, once a while, appear in law courts. The matter is *sub judice* as I find from the papers that the Government of Punjab is going to file an appeal against that judgment. That also raises another question with which I shall deal later on, and that is about the investigations by the Special Police Establishment, the cases that are being taken by the Special Police Establishment to the special judges and courts, and I know, Sir, that years and years pass once the case is taken up and probably the man whose life has been taken out of him, dies out of misery, and if there are other younger members of the family also involved in it well, the story is quite a different one.

Now what I want to suggest is that you employ more persons to dispense

justice. Wherever you find that in a district there are too many cases, well, you appoint more persons—and there is no dearth of persons. We know the question of unemployment. We know how the lawyers, whose practice is not even sufficient to maintain themselves, are anxious to get judicial appointments. If you want that justice should be dispensed, not in a hurry but after due consideration, I feel, Sir, that there is an occasion for the Government to consider. In order that there may be speedy justice, there should be persons who can dispense justice, and it should be such that there is no difficulty or no such atmosphere in which every individual has to go in appeal.

Now, Sir, I would not like to touch another aspect of the administration of justice but then, Sir, how are we going to deal with so many other questions which have come as a result of the passing of the Constitution of India Act? Is it not a fact Sir, as mentioned in the Report, that the High Courts are feeling as if they are not the final authority on the subject? The Supreme Court itself is entertaining so many revisions, writs, this, that and the other? I feel, Sir, that the number of cases which are running into arrears do indicate that there is need for expansion of the number of judges that are at present dispensing justice, either in the Supreme Court or in the High Courts and—I shall go further—even at the level of District Courts. If there are arrears, and arrears in the Court of a District Judge, is it not the duty of the High Court to see that more judges are appointed there? And as I said, I am more interested in seeing that in the level of work that is being done in the districts there should be more satisfaction to the litigant, who does want that his matter should be decided at the district level. Now, Sir, if you look into the number of cases that are filed in the criminal courts at the district level or in a civil court, and the number of cases that are filed in the High Court and the Supreme Court, you will find that the number of cases are increasing much in the district courts, and there are no officers to look into these cases promptly? Can we allow this condition to continue, Sir? I very respectfully submit that this is a matter which should be looked into as early as possible. Now, Sir, if once you create confidence in the people that when there are more cases more judicial officers will be transferred to that particular district, I feel, Sir, that the occasion which people get now to create evidence for their cases in courts would also be lessened. Now what is the procedure? You know very well, Sir, the procedure in a district court. Now a civil suit is filed. And after two months notice is issued to the defendant to file his written statement. What does he do? He goes to a lawyer who makes out some plea as to how the case can be adjourned for another day. And you know, Sir, that in a civil court there is no limitation of time as in criminal courts. In the criminal courts they say that the case should be decided within five weeks, six weeks or as early as possible. But here at every adjournment you get a date of two months hence or a month and a half hence. Now once he takes an adjournment, what happens? Now he tries to understand how he can make his case to fit in according to the law or the latest ruling on the subject and how he can avoid hurdles. Then he gets an adjournment on payment of a sum of Rs. 2 or Rs. 5, and then he files his written statement. By that time he just prepares his case, not according to himself, but according to the legal advice, and then the issues are framed. Then the question arises where to find the evidence. Then he goes to find evidence, and after six months or after a year or two, well, he gets a judgment from the first court. Then he goes in appeal, where necessary, and all that. I only want to illustrate that if cases can be disposed of early, all these things which he is in a position to do now, will not be done. And now what is the effect of all

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this? I am not at all perturbed whether a judge sits at the age of 80 and presides over the Supreme Court, or he is sitting in the High Court dispensing justice. That is all right. But what I beg to submit is: How can you make people understand that 'you' are going to get justice and speedy justice from the courts and that at less expense to the litigant? Now, Sir, what happens? Now the cost of litigation is so prohibitive that you will not find people ready to go and appear before a court of law. At the moment the feeling is that people are unwilling to go to a court of law, because that will mean more expenditure to the person seeking law, because he will have to go and attend the court at great inconvenience to himself and to the detriment of his business, also to procure evidence and all that? What is the result? The result is that those persons who seriously thought that it was their moral duty to pay the debts are not paying the debts, and it has become difficult for those persons who have obliged their friends, to get back their money. I would like to ask, Sir: Is this justice? We should find out, the courts should find out, the administration should find out how we are going to raise the morale of our country, the morale of our people. As Mr. Kaushal pointed out, and rightly pointed out—I also know that—our lawyer friends tutor the litigants. They say to the defendant, "You are not speaking in a court of law after taking the oath. Tell us the true facts as they are." And then he is briefed as to how he can improve upon his own case in a court of law. I think, Sir, there should be some education on this subject. Well, it is easy to say that, but it is not as easy of solution as a sum of pounds, shillings, pence or a sum of rupees, annas, pies. And what will the lawyers do? Well, they have also to just help him to find out if something can be done by which the claim which the defendant has to pay is postponed to a future date.

Now, Sir, these are the actual problems which are before every litigant, and a litigant must get satisfaction that if 'I' go to a court of law, I shall get speedy justice at the least cost.

5 P.M.

The other point which comes is, how we are going to do away with all these big problems? The system of justice which was introduced in India by the British was certainly based on good considerations. Sir, as has been pointed out, the question of dispensing justice between man and man, between a State and a man and between one State and the other should be alike and should be as honourable as it was with the British Government and beneficial to the Indian people.

Sir, I have tried to explain the miseries of a litigant, the misery which a person who wants to help a friend in his ordinary necessities has to undergo. Is it right that these things should continue and continued for long? The only question which I want to raise at this moment is that all that is said about the executive . . .

MR. DEPUTY CHAIRMAN: Take another two or three minutes and finish.

SHRI AMOLAKH CHAND: I think I will take another seven or eight minutes. May I continue tomorrow?

MR. DEPUTY CHAIRMAN: No, no. There are about eight speakers more. I would like you to take two or three minutes more and finish.

SHRI AMOLAKH CHAND: I was just trying to point . . .

AN HON. MEMBER: What about the executive?

SHRI AMOLAKH CHAND: I have nothing to say about the executive. All that I want to submit before the House is that while considering about the Judges we should also think about the litigant.

Sir, there is a reference in the Report about the poor people getting aid. I want to say a few words about this. This is not a new provision. In a criminal case, say, a murder case, a person who is not financially sound to defend himself gets legal assistance at the cost of the Government. Now the question arises that in a civil suit there is a provision —if I recollect aright—that in a case of property worth Rs. 250|- or more a person can file a case for *forma pauperis*, though we find that in such cases the tangible worth of the property may not be Rs. 250|- but they engage the seniormost lawyers in the District or the High Court. The provision here suggesting legal aid is a good provision and I would like to know if there are any States which have taken it seriously. It is a very serious matter. We know of cases where people cannot go to a court of law because they have neither the money to pay for the court fees nor the money to engage a lawyer and the like. Therefore, if it could be speeded up, it would be a real boon to the people.

In the end I would like to refer to only one point and that is about the jury system. Personally, I feel that the jury system is a good system provided you have the right type of persons who can act as jury. I personally feel that more and more bringing together of the layman and the law is beneficial and much better in India than in other countries. We know about the French system. We know about the English system. We know about the jury system and I do not agree with the view that juries should be avoided altogether. Thank you.

MR. DEPUTY CHAIRMAN: The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at five minutes past five of the clock till eleven of the clock on Tuesday, the 24th ovemebr, 1959.

GMGIPND—RS—86 RSD—24-12-59—550