MESSAGE FROM THE LOK SABHA

THE ANDHRA PRADESH AND MADRAS (ALTERATION OF BOUNDARIES) BILL, 1959

SECRETARY: Sir, I have to report to the House the following message received from the Lok Sabha, signed by the Secretary of the Lok Sabha:—

"In accordance with the provisions of Rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith a copy of the Andhra Pradesh and Madras (Alteration of Boundaries) Bill, 1959, as passed by Lok Sabha at its sitting held on the 23rd November, 1959."

Sir, I lay the Bill on the Table.

LEAVE OF ABSENCE TO KAKA-SAHEB KALELKAR

MR. CHAIRMAN: I have to inform Members that the following letter dated the 21st October, 1959, has been received from Kakasaheb Kalelkar:—

"On behalf of the Indian Council for Cultural Relations, I am proceeding on a goodwill tour of Mauritious, Madagascar and East Africa. I may, if possible, visit the adjacent countries also.

I request, therefore, that I may be granted leave to absent myself from the sittings of the Rajya Sabha during the ensuing session."

Is it the pleasure of the House that permission to granted to Kakasaheb Kalelkar for remaining absent from all meetings of the House during the current session?

(*No hon. Member dissented.*)

MR. CHAIRMAN: Permission to remain absent is granted.

REFERENCE TO MINISTER'S STATEMENT ABOUT DANDA-KARANYA AFFAIRS

SHRI BHUPESH GUPTA (West Bengal): Sir, before we take up the next item, I would say that yesterday Mr. Khanna here said that he would make a statement about the Dandakaranya affairs. Now, today's newspaper reports contain certain things. You were not here . . .

MR. CHAIRMAN: Yes.

SHRI BHUPESH GUPTA: Before he has made the statement here, it has appeared in the Press. I would not like to read his affairs in the newspapers before he makes an official statement. I would request him, but you direct him, to make a statement immediately, because I understand from the Press that some cultivation is going on with the Press with a view to presenting the case before he makes that statement.

MR. CHAIRMAN: All right.

MOTION *RE* THE FOURTEENTH REPORT OF THE LAW COMMISSION (JUDICIAL REFORM) —*continued*

DR. H. N. KUNZRU (Uttar Pradesh): Mr. Chairman, not being a lawyer, I shall confine myself to the discussion of such aspects of the Law Commission's Report as are of interest to the layman.

One of the most important questions that interests the layman is the manner in which the Judges of the Supreme Court and the High Courts are appointed. It is well known that the Law Commission has said with regard to the appointment of the Judges both of the Supreme Court and of the High Courts that they should be free from communal and regional considerations. The Commission has stated very clearly that, in their opinion the appointment of Judges to these courts is not free from the effect of executive pressure. Now, I know the reply that was given by the Home Minister on this point when a debate took place in the other House. But I am not altogether satisfied with the reply that the Home Minister gave. The Law Commission has not anywhere put the

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whole blame for the present unsatisfactory state of things on the Government. Indeed, as regards the High Courts, the Commission has said:—

"Many unsatisfactory appointments have been made to the High Courts on political, regional and communal or other grounds with the result that the fittest men have not been appointed. This has resulted in a diminution in the outturn of work of the Judges.

These unsatisfactory appointments have been made notwithstanding the fact that in the vast majority of cases, appointments have been concurred in by the Chief Justice of the High Court and the Chief Justice of India."

You will thus see, Sir, that the Law Commission has not thrown the entire blame for the state of things on the Government; it holds the Chief Justices of the High Courts concerned and the Chief Justice of India also to be responsible for the appointment of inefficient or inexperienced Judges. Hon. Members would like to know how it is that the Chief Justice of India and the Chief Justices of the High Courts have agreed to the making of appointments which have been unsatisfactory from the point of view of the disposal of cases of appeals before the High Courts.

Sir, the Commission itself has stated some facts which have an important bearing on this question. It says on page 72 of the Report that—

"The explanation"—for the present state of things,—"perhaps, lies in what has been stated to us by the Chief Justice of India."

And this is what the Chief Justice of India had said to the Commission:—

"The voice of the Chief Justice is not half as effective as it was in the past. Indeed, instances are known where the recommendation of the Chief Justice has been ignored and overruled and that of the Chief Minister has prevailed. This unedifying prospect has brought about some demoralisation in the minds of the Chief Justices and therefore before making their recommendations they ascertain the views of the Chief Minister so as to be sure that the recommendation to be made by him, the Chief Justice, will eventually go through, and he will be spared the discomfiture and loss of prestige in having his nomination unceremoniously turned down. The Chief Minister now has a hand, direct or indirect, in the matter of the appointment to the High Court Bench. The inevitable result has been that the High Court appointments are not always made on merit but on extraneous considerations of community, caste, political affiliations, and likes and dislikes have a free play."

SHRI BHUPESH GUPTA (West Bengal): Election defeat.

DR. H. N. KUNZRU: Sir, not content with this, the Commission also refers to the observations of a Judge of a High Court who said:—

"If the State Ministry (Minister in the State Government) continues to have a powerful voice in the matter, in my opinion, in ten years' time, or so, when the last of the Judges appointed under the old system will have disappeared, the independence of the judiciary will have disappeared and the High Courts will be filled with Judges who owe their appointments to politicians."

It is obvious, therefore, that some more explanation of the manner in which the appointments have been made is needed. What the Home Minister has said in the other House is not enough. I should like to know whether he asked the Chairman of the Law Commission what was the volume of evidence on which the observations of the Law Commission were based. Did he ask his own Ministry to look into the relevant evidence to find out whether Judges of

the High Courts had themselves stated that the manner in which the appointments were being made was prejudicial to their efficiency and independence? I feel, notwithstanding the categorical reply given by the Home Minister in the other House, that the matter requires more serious consideration and a more adequate reply from Government. It has not been stated anywhere whether the appointment of Judges to the Supreme Court is affected in the same manner, that is, is brought about by the pressure of the executive exercised behind the scenes, so that it may not come to the notice of the public, and though this has not been explicitly stated, I fear that the Commission thinks that pressure is brought to bear on and the Chief Justice of India is made to feel, like the Chief Justices of the High Courts, that the acceptance of their recommendations by the Government concerned depends on their having previous consultation with the executive. Sir, if this state of things prevails, it is most unsatisfactory and deplorable and the administration of justice which the people have to have the fullest confidence in, will soon fall into disrepute, and educated people, at any rate, will come to think that justice is dependent on the good wishes of the executive.

Now, Sir, I shall go on to the question of the field from which the Judges of the High Courts and the Supreme Court should be recruited. The Commission has said that there is no reason why the appointments should be made only from certain classes, say, from the subordinate judiciary or from among the Judges of the High Courts and the Supreme Court, and they go on to say that the field of selection should be widened and that there should be no hesitation in the appointment of the competent members of the bar as Judges either of the Supreme Court or of the High Courts. It has been a general impression among the lawyers in this country that the Government fights shy of the appointment of lawyers to the Bench either of the Supreme Court or of the High Courts. There are many instances, Sir, in which members of the bar have been appointed Judges, but the impression in my State at least, that is, the State of Uttar Pradesh, is that the bar is at a disadvantage and that the Government gives preference, as far as possible, to the members of the lower judicial services.

The next question, Sir, is that of the tenure of Judges. Now, the Law Commission has said that the tenure of office of a Judge of the Supreme Court ought to be ten years and that of the Chief Justice from five to seven years. Well, I can say nothing about the adequacy or inadequacy of this period, but I am inclined to think that it is very undesirable that there should be frequent changes among the holders of the high office of the Chief Justice of India. The Commission has laid stress on the appointment of the fittest men as Chief Justices and not merely the senior-most Judges, partly in order to increase the efficiency of the Supreme Court and partly in order to have competent men who will continue to occupy their posts for a pretty long time. Again, Sir, in order to induce the rising members of the bar or lawyers with a good practice to accept judgeships, the Commission has recommended an increase in the pensions of the Judges, both of the Supreme Court and of the High Courts. Now, Sir, this is a view to which, although I am a layman, I have ventured to give expression in this House more than once. I think that the pensions given to the Judges are quite inadequate considering the present level of prices, and if the Government desires to persuade competent men to accept judgeships, the pensions should be substantially raised. I cannot say whether the exact scale proposed by the Commission should be adopted or not, but in the case of the High Court Judges I can say that a pension of Rs. 1,750 for a Judge and of Rs. 2,000 for the Chief Justice per month is not too high. I agree with the Commission that the

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Judges, both of the Supreme Court and of the High Courts, should be debarred from practising in any court after retirement, and from accepting any appointment either under the Union or under a State except *ad hoc* judgeships or judgeships of the Supreme Court, as the case may be. I think, Sir, this is a very sound rule. I have often regretted in this House that the independence of the judiciary was being indirectly sapped by their appointment by the executive to various posts after their retirement. I do not want, Sir, that they should be appointed either as Governors or as Ambassadors or in any other capacity except in a judicial capacity after their retirement. But you can lay down this condition only when you provide the Judges with a pension on which they can maintain their self-respect and dignity. I am, therefore, Sir, entirely in favour of the pensions proposed by the Law Commission for the Judges and Chief Justices of High Courts, and just from this point of view the pensions proposed for the Judges and Chief Justice of the Supreme Court are not too high though it may be lowered, say, by Rs. 250 or so.

SHRI BHUPESH GUPTA: Suppose they are sent to Rajya Sabha, Nominated Members!

MR. CHAIRMAN: Order, order.

DR. H. N. KUNZRU: That is not an appointment; it is not a salaried appointment. I am speaking of salaried appointments, and border-line cases can always be referred to in connection with any matter. But that does not mean that a sound rule should not be acted upon in the vast majority of cases to which it is justly applicable.

Sir, I shall not say much about the leave privileges. I think that the position in this respect too is very unsatisfactory and that it should be improved, as recommended by the Law Commission.

One word more, before I sit down, with regard to the appointment of Chief Justices of High Courts. It was said before the Commission that the Chief Justice of a High Court should be appointed from outside the State. The Commission does not approve of this suggestion, but at the same time says that the fittest man should be appointed the Chief Justice of a High Court and that there should be no hesitation, when this question is being considered, in getting a man from outside the State. In this connection I should like to refer to the recommendation of the States Reorganisation Commission that one-third of the Judges of a court should be brought in from other States. The Government of India has accepted this recommendation, but it appears from the reply given to a question put by Shri Jaspat Roy Kapoor some time ago that out of 88 appointments recently made, only 10 have been given to Judges not belonging to the States concerned. I should like to know how it is that the Government of India after accepting the recommendation of the States Reorganisation Commission has failed to give effect to it. I attach considerable importance to this matter. I think that, if it is fully given effect to, the Government will have less hesitation in accepting the recommendation of the Law Commission with regard to the appointment of the fittest person as Chief Justice of a State.

Sir, I have referred to some observations and recommendations of the Commission which are not very creditable to the Government of India or which are favourable to the Judges. I should, therefore, like to draw the attention of the House to the Commission's recommendations relating to the work that should be done by the Judges of High Courts. The Commission says that the High Court Judges should work for at least 200 days in the year and that Judges should sit in courts and do judicial work for at least 5 hours on every working day. It will thus be seen, Sir, that the

Law Commission in making its recommendations has not been one-sided. While on the one hand it has asked the Judges of the High Courts to work for a greater number of days and to sit longer in the courts than they do now, they have at the same time drawn the attention of the Government to the necessity of improving the conditions of service of the Judges so that the best men might be available for being appointed as Judges.

There is only one more point to which I should like to refer before I sit down, and that is the delay in the disposal of cases. Every layman, Sir, is concerned with this matter. The law's delays are proverbial, but delays in this country are simply scandalous and intolerable. Anyone who has read the chapters in the Commission's Report on the strength of the judiciary and on delays will have been convinced, even if he has no experience of the working of the judicial courts, how unsatisfactory the present state of things is. You will remember, Sir, that when Dr. Kailas Nath Katju, as Home Minister of the Government of India, brought in a Bill, the avowed or unavowed purpose of which was to reduce litigation, it was pointed out that it would not have the desired effect, and that even if its purpose was achieved, it would not help in the disposal of the large volumes of arrears that had accumulated during the past few years. The Commission has made a few suggestions on this point. It is said, for instance, that the procedure laid down in the Civil Procedure Code has not always been properly followed by the courts and this has, therefore, delayed the disposal of cases. It has also referred, though rather meagrely, to the possible need for amending the present procedure so that there may be no unjustifiable delay in the disposal of cases. But the impression that I have formed, after a perusal of the chapters referred to by me and the statistics given in these chapters, is that unless the strength of the judiciary, both higher and lower, is substantially increased, there is no way in which the past arrears can be dealt with expeditiously.

The Commission says that Government should find out the number of cases that ought to be normally disposed of by Judges of various kinds and that where the institution of cases is higher or arrears have substantially accumulated, there ought to be no hesitation in appointing additional Judges to dispose of them as quickly as possible. The Commission has given instances from which it is clear that sometimes a case from start to finish, that is, till its final disposal by the High Court, may take seven years. Is this justice? Can any person, who knows what the law's delays at the present time are, be deterred from acting illegally when he knows that he will be in possession of property that is not his for six or seven years? Sir, these are matters that have been before the Government for a long time. But, while the Government has blamed the judiciary for not working longer hours, it has never taken adequate action to appoint the number of Judges required for the disposal of these cases. A very heavy responsibility rests with the Government in this matter. It claims to be always solicitous of the interest of the common man, but what solicitude has it shown for the interest of the common man in this important and vital matter?

Sir, I do not want to refer to any other point but the points that I have referred to are such as to require categorical replies from the executive.

DR. SHRIMATI SEETA PARMANAND (Madhya Pradesh): Mr. Chairman, Sir, I would like to speak on this Report more from the point of view of a social worker and bring to the notice of the Government some of the lacunae that are there so that Government may, in various ways, take necessary action before going to the specific recommendations.

[MR. DEPUTY CHAIRMAN in the Chair]

I would like to make one or two remarks about the

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conclusions arrived at in this Report which are some sort of comments on the failure of the jury system and that is attributed to the character and education of our people at present. Nobody would deny that sometimes the jury are carried away but the principle accepted in that is ultimately in some way related to our acceptance of the administration of law at the lowest level now, in a speedy manner, by the establishment of more and more Nyaya Panchayats. What is failure in one system due to lack of character, as may be perhaps again apprehended, if more honorary magistrates are appointed or if more Nyaya Panchayats are established, can be removed only by a better educational effort at the lower level.

With these remarks, I would at once proceed to some of the suggestions I have to make. The Government has been legislating on the social level and bringing out laws for the benefit of the aggrieved people, among others for women. In that connection, I will refer to the parts of Hindu Code —the Guardianship and Minority Act, the Hindu Marriage Act, the Special Marriage Act, and measures of that type. It is necessary to think of these at three levels and that I wish had been given some consideration by this Commission, though, incidentally, it has referred to the way in which the divorce cases and the Special Marriage Act cases could be tried. It is well known that most of the women, who are aggrieved in this respect, may be on account of bigamy or any other handicap due to maintenance and other such things, are not in a position to go to courts either because they have not the financial means to engage a lawyer or they have not the wherewithal with which to find what legal aid exactly they should seek. It may be said that this should be mainly the work of social workers but at the same time with the type of social work that is possible in our country—and the Community Projects Department has realized the limitations—it is necessary for the Government to fill in the gap. As such it is very necessary for the Government to come forward with a Free Legal Aid Bill. At present some sort of help is given in paupers' cases but that is confined to criminal cases and I do not know how far it is effective in every State and to what extent people get benefit out of it. But whatever the financial implications of providing free legal aid, the Government should help where social justice is required. I would even refer to cases where the Harijans and others have to go to court in connection with their being denied the privilege of drawing water from a public well or entering any restaurant because these people will not have the means with which to seek relief under the enactments passed by the Government. Similarly I would have liked to see in the Report a definite recommendation that though the Government was good enough to pass the Hindu Marriage Act which includes divorce and such other remedies for the relief of the aggrieved persons in our society, in order that there should not be unnecessary increase in such cases, there should be establishment of what is called a Conciliation Council. We have in the labour field what are called the Conciliation Boards. We have the Regional Commissioner and that has got a legal aspect also but Conciliation Councils are the preliminary methods which are adopted for arbitration. In these respects even in cases of divorce or separation or maybe for any remedy after bigamy, I think if this type of court is established by the Government—they may be called Councils, you need not call them courts—they would be of great help.

I need not go into the aspect of the way justice is denied as a result of the paucity of Judges—and the question of expenditure is also there—but some effort could be made particularly for providing Judges in cases of social complaints, maybe even of the nature of adulteration of foodstuffs and so on in regard to which social legislation has been passed. You may provide

courts of the type of Children's Courts or with Honorary Magistrates. They may be three-person courts, as is done in many countries with two recognized social workers. I would like to see mainly women on these with one male Judge. If that is done, without any employment of a lawyer, without concocting evidence or trying to play on words, the aggrieved persons, the poor simple women and even the men, will be able to state their own cases. I have seen this being done in countries which have given more social justice, like China. I have known matrimonial cases where no lawyers are allowed and the bare statement of case by the complainant and the defendant itself helps to assess the extent of the evil by people who are not themselves trained Judges, but social worker citizens. As has been suggested in the case of Nyaya Panchayats in the Report, these people could be given a course of training. They should be people of distinction and standing, known for their social services. Similarly, there is recommendation in which it has been stated that the lawyers or advocates who have lucrative practice are reluctant as a rule to accept judgeship but they may be persuaded to accept for some time at least, looking upon it as a kind of social service or national duty. I would say that young advocates before being given Public Prosecutorship or any other benefit as a gift of the Government, should be asked to serve free on these 'Free Legal Aid Societies' and try to advise all these people. The Government might say that it might be taken objection to if young lawyers are employed to tender advice in cases where mostly young women may be concerned, it could be worked out—those are matters of detail—that these people sit in consultation or under the auspices of a senior lady social worker or President of Mahila Samaj or somebody of that kind. But if the Government is desirous to see that the enactments that are passed in order to help the society are effective—I am specially referring to the Hindu Code Bill—they should see that some such thing is done immediately because so many cases have come to our knowledge where people cannot proceed to courts because of the difficulties of getting legal aid at any reasonable expense. I would also have liked to see that some sort of restriction had been laid on legal fees. Perhaps, the new Bill that comes—I have not seen it, we have it in our hand just now—the Legal Practitioners Bill, "lays down certain fixed fees to be charged in the cases. Though there is such a limit in certain property cases.—But I know that it is not observed in practice—that you cannot charge more than a certain percentage of the assets of the civil suit, but in other cases if the person can pay sky can be the limit.

I would refer to the criticism made here that with the doing away of the appellate tribunals, the Supreme Court has become more or less the Labour Appellate Tribunal. There is no doubt that there is a great need for referring labour cases to the Supreme Court though normally, labour cases should not interrupt the time-table for the other cases. Perhaps, the Government is coming forward with a legislation—at least the demand has been made by the labour unions that there should be a separate Bench of the Supreme Court which should all the time deal with the labour appellate cases. This thing, though not exactly mentioned in the Report, should be immediately taken up. I have not gone into the details of the recommendations and I have mostly referred to the summary by the Commission.

I would not like to refer in great detail to the question of ages of retirement, pensions, salaries of Judges and so on, because to some extent, these have been adequately dealt with by Dr. Kunzru. Only when Judges are not to be allowed to carry on private practice after their retirement can, I think, such a high pension like Rs. 2,000 or Rs. 3,000 be recommended or justified. I say this because these pensions have to bear some relation to the pensions of other officers who

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have held high posts. I do agree that it should be made prohibitory for these persons to carry on practice after retirement. At present it seems that a retired High Court Judge can, after retirement, practise in the Supreme Court and a District Judge in High Court. That also should not be permissible.

On one point I would like to get the position quite clear and to my mind it was not quite clear when Dr. Kunzru was speaking. I heard him say that Judges should not accept posts as gifts from the executive, but they can accept those of a judicial nature, as he put it. But the question is that if *ad hoc* jobs, as he put it, are to be accepted, what kind of *ad hoc* "jobs" can they be? Can it be the chairmanship of this commission or that . . .

PANDIT S. S. N. TANKHA (Uttar Pradesh): May I correct the hon. Member? Dr. Kunzru referred to *ad hoc Judges* and there is provision for it in the Constitution.

DR. SHRIMATI SEETA PARMANAND: Then that is all right.

I would further like to state that there should be a list of Judges who have retired and who have experience of special subjects, for insance, labour legislation or succession law etc. And whenever such commissions or such posts have to be filled, they should be appointed in a serial manner. These persons should be chosen and it should not be open to anyone to recommend somebody else, to be promoted over the head of another, and if such a thing happens, it should be taken serious note of. Then and only then can the usual allegation that such and such high dignitaries, because of these gifts in the hands of the executive, are seen haunting the lobbies of the Secretariat, be avoided.

I would like to say a word on the question of the age of retirement. It was mentioned that 72 should be kept as the age for retirement, and that perhaps the Chief Justice of the Supreme Court could continue in office till death. Well, we cannot *in toto*, take things from the West, from the cold-climate countries. Even there the age of retirement for ordinary officials of the Secretariat and of the civil service is 65 and our is 55, though we are trying to raise it to 58. There are other considerations and we cannot make it 60 here because the claims of new people are to be considered. I would say that there should be no hard and fast rule that a Judge could go up to either death or to the age of 72. Even in the case of the Supreme Court—the question of medical fitness is there—I think a Judge would himself retire when he finds that he cannot do his work and therefore ordinarily I do not think we can raise the present age of 65 to 68.

I would like to refer to one other point and that is about the speeding up of justice. Much has been said about the suggestion made by Mr. Sapru about having assize courts as in England—mobile courts, I would call them. We may have them whenever there is accumulation of litigation at the lower levels. I am here talking about the district level. For that you can appoint *ad hoc* Judges and even now some start has been made in this direction in some States where they have done it for the last two or three years. If you appoint mobile courts for two years to clear away accumulated cases, that would help a lot. I also feel that, as has been recommended here, cases from the villages should be referred more and more to the Nyaya Panchayats. And for appeals you can have a combine of the Nyaya Panchayats of two or three villages and that will also take away a good deal of the pressure from the District Courts. I say this because today a great deal of the delay and expense in getting justice is due to the absence of witnesses, due to the difficulty of people coming from a distance. It has become almost a recognised fashion to fix a monthly

date table. That is a recommendation made by this Commission also. The example of Madhya Pradesh is being given. They adopt a time-table of cases and because one or two witnesses have not come, the case is put off again for one month. Every month perhaps a date is given and as such the evidence given is almost forgotten by some of the witnesses as the case goes on for about a year or a year and a half. So it ceases to be the evidence of eye-witnesses; it becomes almost hearsay evidence and in the hands of a clever lawyer asking questions of the man, the witness gets so confused, all because of this lapse of time resulting from this one-day-a-month practice, and so the real point of giving justice after hearing the real evidence is lost.

In this connection I would like to refer to the question of language. Today in States where litigation is carried on in the vernacular, the practice, as has been referred to in this Report, is of dictating the evidence in English and later on asking somebody to translate it to the poor witness who does not know English. This is not calculated to give full justice because of the form it takes after the translation by some clerk or somebody who does it at the end of the day or in a hurry, and a clever lawyer will take advantage of this translation.

SHRI AKBAR ALI KHAN (Andhra Pradesh): Including the hon. Member herself.

DR. SHRIMATI SEETA PARMANAND: Fortunately, I have not bothered to practise much except when absolutely obliged to do so for my labour cases for going up to the High Court. As a result of all this, the language of dictation being English and the language in which the case is conducted being Hindi—I am speaking of Madhya Pradesh, I do not know what is happening in the South—the intention of giving justice by admitting so many witnesses is completely lost.

Finally I would like to say one word about the Ministry of Justice that is proposed. Of course, nobody is going to immediately start it. But I do not see much reason for a separate Ministry of Justice when there is the Ministry of Law which could be called by both names. As was said by the Prime Minister once, it is not the extra Minister who is to be appointed that makes much difference. but the paraphernalia of the administrative expenditure along with the whole Ministry that adds so much to the burden of the tax-payer.

Lastly, Sir, one word about the fees to be charged. If we are going to have justice made available to the ordinary man so as to give relief to the ordinary man, then something has to be done for giving advances in particular cases. As I was saying in the case of social laws, women's cases in courts for succession and maintenance, etc. some funds should be made available to the persons concerned, to be recovered later on if proper security could be given.

With these few words, Sir, I would request the Government to take cognisance of the real difficulties in the country on these several points, particularly from the point of view of women and the poor. I would say the Commission has done an excellent job of the work though it has taken much more time than one would have liked it to take. Thank you.

MR. DEPUTY CHAIRMAN: 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 D. P. SINGH (Bihar): Mr. Deputy Chairman, Sir, I would like to congratulate the Law Commission for

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the very comprehensive Report and for having given in that Report a large number of very valuable suggestions. I do not know how long it will take for the Government to give effect to the recommendations contained in that Report. I have said on more than one occasion that reports which are submitted from time to time are in most cases very valuable ones but it is very rarely that those reports are given consideration and the recommendations contained in those reports are implemented. My apprehension is that even in the case of this Report, most of the recommendations—very valuable recommendations as I have said—will not be implemented and the Report will more or less be pigeonholed. I am glad that the Legal Practitioners Bill is going to come before us. It has been circulated and it enshrines a number of recommendations made by the Law Commission. I hope that similar Bills will be placed before us and that the recommendations of the Law Commission in respect of other matters also will be given effect to.

Sir, I would like to deal only with some of the points naturally because the Report is very voluminous and it is not possible for anyone within the course of the time at one's disposal to deal with a large number of them. Most of the points have already been dealt with by the previous speakers; nevertheless, there are two or three points which I would like to stress in addition to emphasising some of the points which have already been dealt with by others. I agree entirely with what Dr. Kunzru has said in respect of appointments to the Supreme Court and the High Courts. I believe strongly that in the appointment of High Court Judges and Supreme Court Judges the hand of the executive should not be there at all. The hon. Home Minister in the other House, and if I remember aright, during the last session here, while speaking on the High Court Judges (Conditions of Service) Bill, said that it will not be proper to think that persons who are so eminent as to be appointed as High Court Judges could deviate from the path of justice, and will not be fair and impartial, simply because it is possible to re-employ them later on. I entirely disagree with this argument and the little I know of how the executive has been influencing the appointment of High Court Judges convinces me that the executive influence must be completely eliminated. I come from Patna, Bihar and I know how a number of prospective Judges in the Patna High Court have been going to the residences of some of the Ministers. I am very sorry to make a statement of this kind; I am not making a statement of this kind in order to malign the ruling party or in order to make a point in favour of the Party which I represent. I say with a great deal of grief in my heart that this thing is happening. I think this is happening in other States also and this feeling has been given expression to in the Report of the Commission. The Law Commission, after having visited a large number of places, and after having met a large number of people, has come to the conclusion that in the appointment of these Judges merit is not the only consideration but that other considerations also come in, political considerations also come in. I entirely endorse this remark made by the Law Commission and I think it would be suicidal and very bad on the part of the Government, howsoever strong it may be at the moment, to brush aside this remark made in this Report by the Law Commission.

I do not find myself in agreement with what one hon. Member—perhaps Shri Sapru—said that the Law Commission has not done as good a job as was expected of it. I think the Law Commission has done a very fine job. It may be that there are a few things in regard to which it can be said that the Law Commission should have said something else but by and large the Report as produced now is a very valuable one and if it is on the whole implemented by the Government, I have no doubt in my mind that the independence of the judiciary will be ensured in our

country; not only that, but the tone of judicial administration will also improve considerably and democracy in a way will also be safeguarded.

I would therefore suggest that there should be an amendment of the Constitution to the effect that a Supreme Court Judge or a High Court Judge should not be given any further employment by the Government after retirement. That is absolutely essential. It may be that we shall lose the services of some of our very able men for other purposes but that cannot be helped. What is really of importance at the moment is that every one seems to have faith in our judiciary, in our Judges and it is not only from that point of view that I say that the Judges should be independent absolutely but also from the point of view of the growth of democracy in our country it is absolutely essential that the Judges are independent. After all, our democracy in India is in a state of infancy and therefore what we do now is of very great importance for the future growth and development of democratic institutions in India. I would therefore suggest that there should be this amendment.

I would also suggest that article 217 of the Constitution should be amended to provide that a High Court Judge should be appointed only on the recommendation of the Chief Justice of that State and with the concurrence of the Chief Justice of India. What is happening today is that the State executive is having a great deal of say in the matter of appointments. That is our impression and that is probably possible under the present arrangement. Therefore this suggestion of the Law Commission that the Constitution should be suitably amended so that it is not possible for the executive to influence very much the appointment of High Court Judges is a very salutary suggestion and this suggestion must be accepted by Government.

Sir, I would like to say one or two words about the condition of legal education in our country to which the Law Commission has devoted quite a considerable space. Legal education, as the Law Commission has rightly pointed out, is really in a deplorable condition. The standard of teaching in the law colleges is very poor indeed. Nobody seems to attach any importance to teaching in the law colleges. I was myself a student of a law college a few years ago and I think the standard has further gone down since then. Even at that time I remember not much importance was given to teaching in the law colleges, nor was the student very much interested in attending the college. All that he was interested in was to go there and be present at the time of the roll call . . .

SHRI MULKA GOVINDA REDDY (Mysore): Even that he does by proxy.

SHRI D. P. SINGH . . . and then go out and have a little tea. And that was the end of it. Now, with that kind of legal education we cannot think of having a really good judicial system. Therefore, it is absolutely necessary, as the Law Commission has recommended, that legal education should be considerably improved. A number of suggestions have been made by the Law Commission in regard to this and those suggestions, I think, must be taken up and must be implemented. May be, it may become necessary to have some kind of legislation in regard to this matter to improve the standard of legal education. The constitution of the All India Bar Council and the State Bar Councils, as has been envisaged in the Bill that is coming before us after some time in this session, is a move in the right direction and I think the All India Bar Council and the State Bar Councils would be able to raise the standard of legal education in our country and will place legal education on the pedestal on which it ought to be. Legal education is as important as, say, any other social science, and a lot of research is necessary to be done in this country. In England and America

[Shri D. P. Singh]

we understand a great deal of attention is paid to the study of law and their standard is very high whereas in our country the standard is not only low, but it is just abominable.

Sir, there is one more point which I would like to take up and that is the separation of the judiciary from the executive. Before independence this was our demand. On innumerable occasions our leaders and most of us have spoken on this question and demanded this separation. This separation, as has been pointed out in the Report, is fully justified. Nowhere has law and order deteriorated because of this separation of the judicial functions from the executive functions. As it is, there are quite a number of States in our country where this separation has not taken place. Assam is one; Orissa is another. In Bihar also only in some of the districts, as far as I know, this separation has been effected. In Uttar Pradesh separation has been effected but the judicial magistrate or the judicial officer is dependent upon the executive for his promotion. This is not in the real sense of the term separation. The judicial officer must be completely independent. So I submit that in the interests of efficiency, in the interests of justice, it is absolutely necessary that this separation of the judiciary from the executive is effected. It is only then that we can really lay a sound foundation for our judicial administration and it is only then that people will come to have real faith in our judiciary. At the moment I can definitely say that in the country there is a feeling that in the matter of these big jobs—High Court Judges and others—there is a lot of favouritism going on and there is a lot of influence exerted from the side of the executive. All that must disappear; not only must it disappear but it must also appear to have disappeared to the people. It is only then that our democracy can prosper. Thank you, Sir.

SHRI J. S. BISHT (Uttar Pradesh): Mr. Deputy Chairman, Sir . . .

MR. DEPUTY CHAIRMAN: Not more than 20 minutes.

SHRI J. S. BISHT: But you have been so kind and indulgent to them. In any case the Report is a very big one and I hope you will kindly be indulgent in this matter.

MR. DEPUTY CHAIRMAN: That is why I have given you 20 minutes.

SHRI J. S. BISHT: Firstly, I must refute the argument advanced by my hon. friend, Pandit Kunzru, by quoting certain passages from the Report of the Law Commission. I think he quoted a passage from page 69.

DR. H. N. KUNZRU: No, no. I quoted from page 72.

SHRI J. S. BISHT: In any case it summarises the whole thing. It says:

> "The almost universal chorus of comment is that the selections are unsatisfactory and that they have been induced by executive influence. It has been said that these selections appear to have proceeded on no recognizable principle and seem to have been made out of considerations of political expediency or regional or communal sentiments."

This in fact summarises the gist of the criticisms levelled against appointments. My hon. friend referred to the speech of the hon. the Home Minister without caring to quote him and so I will take the liberty of quoting one or two passages which will clear the air. Now, the hon. the Home Minister made a speech on the 20th March 1959 in the other place and there he said:

> "Now, let us look to the facts whether there is the least justification for these remarks. I may tell hon. Members that since 1950, 17 judges have been appointed to the Supreme Court and everyone of these Judges was nominated and recommended by the Chief Justice of India. What

could they do if we had turned down those recommendations? But, when we have accepted everyone of the recommendations of the Chief Justice of India, how does the occasion for the highest in the administration—a word like that has been used there—using some methods which are not above board arise? And, I claim that the Chief Justices of our Supreme Court have commanded the respect of all, that the Supreme Court today commands the confidence of everyone in this land."

With regard to High Courts, the hon. the Home Minister said:

"Then, Sir, let us go from the Supreme Court to the High Courts. What are the facts there? Since 1950 when the Constitution came into force, I think 176 appointments have been made. ...."

DR. R. B GOUR (Andhra Pradesh): It would be on the recommendation of the Home Ministry itself.

SHRI J. S. BISHT: Then:

"The House may be surprised to know—especially if it has in mind the remarks that had been made by the Commission—that except one, 175 appointments were made on the recommendation of the Chief Justice of India. In the course of the last nine years every appointment that was made, excepting one, had the blessings of the Chief Justice of India. Am I to assume that the Chief Justice of India has not been performing his part well? Under whose influence is he working?".

These are facts, not vague sentiments.

DR. H. N. KUNZRU: May I point out to the hon. Member that these facts were known to the Commission and it had anticipated the hon. Member's argument and met it in full?

SHRI J. S. BISHT: The Law Commission has nowhere mentioned a single fact or figure about that. It only mentions that some advocate has been . . .

DR. H. N. KUNZRU: At page 72.

SHRI J. S. BISHT: It only says that some Judges have told so and so. These are merely surmises. They can emanate from people who have been disappointed . . .

SHRI BHUPESH GUPTA: Can the Law Minister deny that the West Bengal Chief Minister nominated somebody for the Chief Justiceship of the Calcutta High Court and the Supreme Court altered it? Can he deny it?

SHRI J. S. BISHT: I again submit that the figures that have been quoted by the hon. the Home Minister include all the States of India. Out of 176 Judges, except in one case, the recommendations had the support of the Chief Justice of India, and of all the Supreme Court Judges who have been appointed, they have been appointed on the recommendation of the Chief Justice of India. Where then does the point arise that there has been executive influence or there have been considerations of a political, regional, communal or caste nature? They are unfounded. Moreover, these analogies taken from small countries like England and France, with a small population and a unitary form of Government, are totally inapplicable to a sub-continent like India which has got a federal form of Government, which has got different regions. After all, even on pure merit can you expect the whole of the Supreme Court to consist of Judges brought from Bengal?

SHRI BHUPESH GUPTA: No.

SHRI J. S. BISHT: Is it possible that however eminent they may be, however able they may be, however capable they may be, they should be from Bengal?

SHRI BHUPESH GUPTA: I do not want Bengal.

SHRI J. S. BISHT: Or they should be people from Madras in the whole

[Shri J. S. Bisht.]

of the Supreme Court? It cannot be. There has got to be a certain number of Judges from the different regions, and that is to the advantage of the federation. It brings a sense of unity. It brings so much experience from the different parts of the regions that the Supreme Court, when it sits in judgment over any particular case, brings an all-India angle to bear on the decision in that particular case. It is because justice has to be on an all-India basis, the Supreme Court should consist of Judges who have got varied experience, in the different parts and regions of India. Therefore, I am not particularly perturbed at the particular criticism levelled by the Commission.

Secondly, the Law Commission has been speaking in different languages on that. It says that the Chief Justice even of a High Court should not be appointed merely on grounds of his seniority, but merit should be the sole consideration. Now, may I ask whether they have defined anywhere what merit is? That is number one. Number two, have they decided as to who is to be the judge of that merit ultimately? It may be that the Chief Justice will be a particular person The whole point is again there will be some executive somewhere. Is it not a fact that in England, America, France and elsewhere it is the executive that appoints all the Judges to the High Courts? And is there a single instance of any case where there has been miscarriage of justice because of the appointment of a particular Judge in any suit either between man and man or between a citizen and the State? There has never been any such case. Therefore, for merely raising dust, they say that there have been certain considerations of this nature in the appointments, and it is totally wrong. My hon. friend, Shri D. P. Singh, said that there were people who were dancing attendance on Ministers in Bihar. You cannot prevent that sort of thing. You will always find some of them who are interested in dancing attendance on somebody. They may have some sons who can be appointed. They may have some other business. How can you prevent it? It depends on the man. And there is no barometer yet invented by which you can test the character of a man. Ultimately, you have to depend on this that as long as the executive appoints people on merit, to do justice, the thing will be properly looked after. But I entirely agree with you when you say that in future there should be some arrangement by which this sort of suspicion may not arise. And I say so because we have had experience of a certain State where a particular party was in a majority for some time with the help of certain independents We do not know what will happen in such a contingency. Therefore, to avoid any such accidents happening, it will be better in future if the appointments are made solely on the recommendation of the Chief Justice of the High Court. In a case where the Chief Minister or the Governor, for reasons known to them, do not approve of an appointment, they should refer it back to the Chief Justice. The Chief Justice should have the authority either to send a new name or to say that he does not agree with their criticism and that he still sticks to that man, in which case that man should go through. I further suggest that the appointment of Chief Justices should be only on the basis of seniority. Otherwise, again there will be criticism on the floor of this House and on the floor of the other House that a certain man has been appointed Chief Justice on considerations of caste, community or region.

I endorse the suggestion of my hon. friend, Pandit Kunzru, which was contained in the States Reorganisation Commission's Report, that at least one-third of the Judges in the High Court of each State should be from outside the State, because we must strengthen the unity of this country which needs strengthening badly in view of the fissiparous tendencies that we see rising roundabout. And

here I also endorse the opinion of the Law Commission that an all-India Judicial Service should be created. I suggest that, on the lines recommended by the States Reorganisation Commission, the all-India Judicial Service should have at least 33 per cent. from outside the State to which they are posted, so that at every level—I.A.S., I.P.S., I.J.S. if you call it, and if possible, you create the all-India Service as has been recommended by the States Reorganisation Commission—even at the district level, people of every region, of every State, see in bodily form that they are being governed by their own countrymen, in the whole of India. In Madras you will see people from Bengal, in Bengal you will see people from U.P., in Punjab people from Maharashtra, and so on, so that even a common man, a villager has got a visible emblem before him of the unity of India. That will bring about better improvement in the administration, because the people from Bengal who administer justice in Madras will have no connection with the people there. They will always be in the superior service, which has been recommended by the Law Commission, in the grade of Rs. 800—1800, and they will occupy the position of District and Sessions Judges. That proved very successful when a part of the I.C.S. men were drafted to the judicial service, in order to keep the morale of the judiciary very high. I therefore strongly recommend the adoption of that particular recommendation of the Law Commission.

Then, Sir, there is the jury system and here I entirely agree with the Law Commission's recommendation that the jury system should be completely abolished. I was in the Joint Select Committee which reviewed the Criminal Procedure Code and there we suggested the abolition of the farcical assessor system. Of course, there was considerable opposition even with regard to the abolition of that, but we succeeded and that system has been completely, abolished. And this system of jury should be abolished. For this I will just quote one or two passages here. The Law Commission at page 867 says:

> "Sir Alfred Denning (now Lord Denning) observed: "In making these comparisons, we no doubt think our system is better but we ought always to remember that it is the system which suits the temperament of our people. It would not necessarily be the best system for other people."

Then, Sir, the Law Commission has also quoted these words:

> "A powerful voice against the continuance of the jury system in India was raised as far back as 1931. Writing in 'Young India', Mahatma Gandhi stated:

3 P.M.

> "I am unconvinced of the advantages of jury trials over those by judges. ***I have known juries finding prisoners guilty in the face of no evidence and even judges summing up to the contrary. We must not slavishly copy all that is English. In matters where absolute impartiality, calmness and ability to sift evidence and understand human nature are required, we may not replace trained judges by untrained men brought together by chance. What we must aim at is an uncorruptible, impartial and able judiciary right from the bottom."

Therefore, I strongly endorse the view of the Law Commission that the jury system should be completely abolished. Anyone who has got any experience of these trials, whether civil or criminal, can surely agree with this. There is a long trial, a dacoity trial, extending over a period of twenty days, the jury sit there, they take no notes, they do not know anything about evidence, they do not care very much about it, they do not know the law, and at the end of twenty days after hearing all the evidence they go in and return a certain verdict.

SHRI BHUPESH GUPTA: Based on commonsense.

SHRI J. S. BISHT: We recently saw what happened in the Nanavati Case. It is *sub-judice,* I am not referring to it. The verdict of the jury is there, I am not commenting on it, and the Judge has referred the case to the High Court on the ground that the verdict is perverse. It proves that. There it is amply before you, and I therefore submit, Sir, that it is high time that we abolished that system.

I endorse the views of my friend, Dr. Kunzru, and also of some other Members that we must take very strong measures to get rid of these arrears which are really very scandalous, and we can do it only by adopting a two-pronged process: one, we should hand over all petty cases up to the valuation of Rs. 500 to the Nyaya Panchayats. I know that there may be miscarriage of justice here and there, but in the long run I am sure that better justice will be done there. Not only the cases of a Small Cause Court but all cases of the valuation of Rs. 500 and all petty criminal cases should be handed over to them because the people there on the spot will not do something which will be unjust. In a distant place at the district headquarters a witness may go and perjure, but there on the spot it is impossible for those people to do that, and substantial justice will be done. Therefore if you get rid of the mass of litigation at the lower level, you will get rid of a lot of files from the other courts.

The second point is this that the District and Sessions Judges should be invested with the authority to hear appeals up to the valuation of Rs. 10,000. That has been recommended by the Law Commission and it is a very correct thing. In the old days they were entitled to hear appeals up to the valuation of Rs. 5,000. But actually that Rs. 5,000 is equivalent to Rs. 15,000 or Rs. 16,000 today. So, it is not much. If you give the District and Sessions Judges the right to hear appeals up to the valuation of Rs. 10,000, this mass of arrears of appeal pending before the High Courts will come down to a very great extent.

Lastly, I think the Government of India will be well-advised also to advise the State Governments to increase the number of Additional Judges in all the High Courts where the arrears are of a very considerable nature, as they are, for instance, in the State of Uttar Pradesh. It is not right that a man files an appeal today and even his first appeal is not likely to be heard for, say, five or six years. Justice delayed is justice denied. He must get prompt justice. As Dr. Kunzru rightly said, if I get hold wrongly of somebody's property or ride rough-shod over somebody's rights, I can sit tight for a number of years, and the fellow will have to knock from door to door. This thing should be got rid of at all costs. We are charging them high fees, the judicial system is paying its own way and it is not a burden on the general taxpayer at all.

There is also one recommendation of the Commission that in every State the High Court should be only in one place. I submit to the Government of India that that cannot be applied uniformly everywhere. We know we had trouble in Rajasthan, for instance, where they agreed to have the capital at Jaipur and the High Court at Jodhpur. Such arrangement exists in Travancore. They have the capital at Trivandrum and the High Court at Ernakulam. There is a Circuit Court at Lucknow. It has been there since the time of the Kings of Oudh. It is nothing new. There is a Bar Association and there is a Bar Library there. There is the whole paraphernalia that is needed for the functioning of a High Court. And now after the Chief Court was abolished, it was merged with the High Court. We have got a Bench Court there, and it is necessary that that Court should continue to function because it is a more central place and

it is easily accessible to places which are to the north of Lucknow or to the west of Lucknow and it would not be right to pass a decree and say that in every State there should be only one central place where the High Court should be located.

Lastly, there is one point with regard to the retirement age. My friends have suggested that the retirement age of Judges should be 70. Some said that it should be 80. Recently the Central Pay Commission has recommended that the retirement age of the Government servants should be raised from 55 to 58. It is now the second time that the Pay Commission has recommended that. The first Pay Commission also recommended that. According to the newspaper reports, there is great agitation in the mind of the Government as to the raising of age. All sorts of arguments are being pressed against the raising of age. In every country, England, France and America, the age of retirement is 60. We should not think over a matter so much that our action is paralysed by our thought. Retirement age should be not less than 58 for all. If you are going to raise the age of retirement of Judges, what will happen to the services of the judicial officers? We are putting them on a different pedestal unless you agree that the judicial officers will have to retire at the age of 60, but those who are recruited from the Bar, will have to be extended up to the age of 65. Such an invidious distinction cannot be made among the High Court Judges. That is the difficulty. If a judicial officer who also enters service like any other administrative officer or police officer or other officers at the same age of 25 is raised to the Bench, he can go up to 60, but you cannot now extend him beyond 60, say to 65 or 70. That would not be fair to others unless of course you raise the age of others. Even if you raise the age of others, even then all that you can do is in the case of High Courts you can raise it to 63 and in the case of the Supreme Court to 68. That would be a fair compromise.

Sir, there are a number of recommendations with regard to the amendment of the Civil Procedure Code, the Criminal Procedure Code, and all those things. I hope that in due course Bills will come up for our consideration to expedite the disposal of cases.

DR. R. B. GOUR: Mr. Deputy Chairman, I would certainly not like to tread on the grounds that my friend, Mr. Bisht, has ventured to do because he was a Public Prosecutor. He has defended the executive, but I do not think that I could dare do that job. In any case when he was so eloquent in saying that the Chief Ministers do not interfere or do not change or alter the advice or recommendation given by the Supreme Court Chief Justice, I think he is rather trying to defend too much the Home Ministry and the Government. Now, Sir, everybody knows to what extent this interference is there. It is no secret. The Home Minister can jolly well come and tell us that in all the cases the recommendation of the Chief Justice has been adhered to. But it is very evident that the Chief Justice does not want that his recommendation should go unaccepted. Therefore he has to think as to what the recommendation of the Home Ministry itself is. I know of a case. Of course, my friend, Shri Akbar Ali Khan, will bear me out. The fact is that from Hyderabad a Judge was sought to be transferred to the Allahabad High Court and Chief Justice Mahajan had recommended that case, and the present Home Minister of the Government of India who was the Chief Minister of the Government of Uttar Pradesh refused to accept that as he was a Judge from a Part B State, he would not accept him. Does it mean that the Chief Ministers of Part A States should have animus towards Part B High Courts and Judges? Here is a case. Here there is a clear discrimination. But here it is not merely a question of rejecting the recommendation of the Chief Justice of India. (*Interruptions.*) Well, let me say that it is a fact; let me say that. Let the Home

[Dr. R. B. Gour.]

Minister of the Government of India come here tomorrow if not today, and tell us that it is not a fact, because I had raised this point even in my earlier speech on the High Court Judges Bill.

DR. W. S. BARLINGAY (Bombay): Even if it were a fact, it is not derogatory to the Home Minister.

DR. R. B. GOUR: It is a question of how the executive is discriminating against certain other persons on various grounds. On this occasion also, I would like to take the opportunity to plead to this House and the Government and the Chief Justice of the Supreme Court the case of ex-Part B High Court Judges. They have been discriminated against; their seniority has gone; they have been made Puisne Judges as if they were recruited from the 1st November, 1956. Well, there is the case in Hyderabad of one who came to the Bench in 1943. Sir, in 1943, he came to the Bench. In the entire judicial service of our country, there is only one Judge who has come in 1943 and that is one Justice Qamar Hasan of the present Andhra Pradesh High Court. He is supposed to have become a Judge again on the 1st November, 1956. There are hardly four or six Judges, I am told, who came in 1946, and out of them two are ex-Hyderabad High Court Judges—the present Andhra Pradesh High Court. One of them was to be transferred to Kerala, and very soon. I do not know whether it is a fact. It is said that in March, he would become the Chief Justice of the Kerala High Court. Otherwise, he will be only a Puisne Judge. Here is a case of these Judges taken into the service in 1946, and they are sitting junior to Judges who had been recruited in 1955. Therefore, you can see that there is a clear denial of justice even to your own judiciary. Therefore, I will again take this opportunity to plead their case. There is a case for reconsideration of these cases.

Then, Sir, I come to the question of age. There is an opinion among the lawyers at least from the city I come from that the age must be raised from 55 to 58. While I cannot speak with expert knowledge on any rise or fall in the expectation of life, there is a case...

DR. W. S. BARLINGAY: You are a doctor.

DR. R. B. GOUR: Mere doctors would not be able to raise the age. Age also raises the question of senility. Therefore, it will not do. You have to judge the issue from individual to individual.

The point is this, that the High Court Judge can go up to 60 years and the Supreme Court Judge up to 65. But a district court Judge can go only up to 55. There is a case for raising the ages of the lower judicial cadre to 58. Whereas at the moment I may not support the plea—and I do not think there is a case—for raising the age, as Shri Bisht has said, in the case of the High Court and the Supreme Court Judges, this matter has to be discussed.

Then, Sir, Shri Bisht was very very eloquent on the question of one-third Judges coming from other States. Well, I do not know whether it will solve the unemployment problem in U.P. because U.P. Judges will be outsiders everywhere except in U.P. Therefore, there is the one-third quota from all other States. To that extent it may be possible, but the point is this that nobody from the bar, no eminent lawyer from the bar, is prepared to go to any outside State and function as Judge. It would only mean that you will recruit from the lower judicial service and so on for other States because they are under your service, and that would only mean increasing the quota of Judges recruited from service and a sort of adverse balance against judges recruited from the bar. That point has to be seriously considered. But there is an opinion developing in this country that the Chief Justice must come from outside. Sir, we do not believe in this absolute

independence of the judiciary. I do not think it exists, because after all, the judiciary has to be subservient to a particular social order and they do it and the evidence is there. We may complain that they are too much subservient and they do not take the social conditions into view. I will come to that point very soon. The question arises when the Chief Justice comes from the same State from which the Chief Minister comes—as he does at present—there is a case of friendship between the two; there is an understanding between the two; there are telephone calls for getting influence or not getting influence. The Chief Justice can come from any outside State. I think that can be considered, and there is an opinion among the lawyers that this thing should be considered, and seriously considered.

There is a case argued that there should be a separate Labour Bench of the Supreme Court. This matter was discussed at various levels. It has been discussed by the trade-unionists also both along with the Government and independently. Sir, we know that the Supreme Court, unfortunately to our cost, is biased in favour of property. Take all the property cases when they go in for appeal. Never has the Supreme Court taken a view against property. We have this famous U.P. case on transport nationalisation; we have the Andhra Pradesh case on transport nationalisation. We have income-tax cases. We have all these cases. It is quite evident that the law itself lags behind social changes. Here justice lags behind the laws. We pass a law taking cognizance of certain developing social realities. But these courts take a view of the dying reality and not the developing reality. The legislature has the developing reality before itself whereas the courts have the dying reality before them. Therefore, there is always a conflict between the requirements of social justice and the rigid interpretation,—conservative interpretation—that the courts take of the particular letter of the law. It is absolutely surprising. I do not know. I have always been a victim of law rather a student of law. Therefore I do not know whether I will be entering into a very difficult ground and creating problems for myself. We have, for example, a case in Hyderabad against a particular Trust. The High Court struck down their writ. The High Court struck down the leave to appeal and even in such a case, the Supreme Court has not only granted the special leave to appeal, but even granted an *ex parte* stay. The State itself is the party.

SHRI AKBAR ALI KHAN: The matter is pending before the court.

DR. R. B. GOUR: Have I said . . .

SHRI BHUPESH GUPTA: It is not a reflection on the case.

DR. R. B. GOUR: I have not taken the name; I have not said anything.

MR. DEPUTY CHAIRMAN: Whatever it is . . .

DR. W. S. BARLINGAY: It is extraordinary.

MR. DEPUTY CHAIRMAN: You are referring to a pending case.

SHRI BHUPESH GUPTA: On a point of order, you will be entitled—certainly you are right in that—to object if we go into the merits of the case. He is not referring to any particular case, number one; secondly, he is not making a reflection on any case.

MR. DEPUTY CHAIRMAN: He should not comment on pending cases.

SHRI BHUPESH GUPTA: The behaviour of the Supreme Court . .

MR. DEPUTY CHAIRMAN: Do not comment on pending cases. (*Interruption.*) Order, order.

DR. R. B. GOUR: With due respect to you, Mr. Deputy Chairman, and to

[Dr. R. B. Gour.]

Mr. Akbar Ali Khan, who is a Vice-Chairman, I submit that I have not mentioned any case. I am only telling you the trend in the Supreme Court.

MR. DEPUTY CHAIRMAN: You cannot comment on it.

DR. R. B. GOUR: When we are tanking a different view of property with a view to doing social justice they are siding with property and adding too much importance to it. .

DR. W. S. BARLINGAY: There is the Legislature.

DR. R. B. GOUR: The Legislature here is the supreme Legislature. We have taken the decision that we want socialism in this country step by step, and when we want socialism to prevail, naturally property will have to be dislodged from its present position step by step, and if law is interpreted according to the letter of it and not according to the spirit of it, there we object and we say that you are conservative in outlook.

MR. DEPUTY CHAIRMAN: You can change the law; the remedy is to change the law for it.

SHRI BHUPESH GUPTA: And we have to point it out.

DR. R. B. GOUR: How are we to change the interpretation of the law?

MR. DEPUTY CHAIRMAN: The Judges are there only to interpret the law.

THE MINISTER OF LAW (SHRI A. K. SEN): I think there is a good deal in the point of order raised, namely, that we are entitled to criticise the *raison d'etre* of decided cases but the conduct of Judges in the course of the discharge of their judicial duties, I do not think, can be discussed on the floor of the House.

DR. R. B. GOUR: I am sorry, Sir . . .

MR. DEPUTY CHAIRMAN: The Judges are there to interpret the law as it is. You cannot . .

DR. R. B. GOUR: I am talking on the judicial institution in our country. I am not talking of a particular Judge or of a particular High Court here. I am considering the whole question of the philosophy that governs our judiciary.

SHRI AKBAR ALI KHAN: You are commenting on them. You are charging the Supreme Court Judges that they are interpreting the law relating to property in an extraordinary way . . .

DR. R. B. GOUR: I am afraid you are putting unnecessary words in my mouth; I have not said that.

MR. DEPUTY CHAIRMAN: You are commenting on cases pending before the Supreme Court. That is not right.

DR. R. B. GOUR: I am not doing it.

MR. DEPUTY CHAIRMAN: That is what you have done; I am hearing it.

DR. R. B. GOUR: I am sorry if I was understood that way or misunderstood that way.

Now, in the labour cases we have got the very costly experience of years of litigation. Here in our case the problem is much more difficult. The employers can afford a lot of money in these cases but we cannot. The employers cannot afford money for us but they can afford litigation. But we do not have anything. We do not get lawyers free. We do not get the facilities either from the Government or from the employers for running all this show of litigation. Not only that. A lengthy litigation in our case means that for that long period we are denied all the benefits of the particular award that we have got. Now therefore we have been discussing this problem. We have agreed that the Labour Appellate Tribunal could be revived. But the Labour Appellate Tribunal, by itself, should be final. Let there

be no appeal over the Labour Appellate Tribunal to the High Court or to the Supreme Court. You cannot have a double system. You have a three-tier system so far as labour disputes are concerned, labour courts, the State Tribunal and the National Tribunal. Then again over the National Tribunal you go to the regular judicial organs of the State. Now that is costing us very heavily. For example, our brothers in the Indian National Trade Union Congress want that in the High Courts and the Supreme Court there should be created a separate Labour Bench. We do not agree with them in this that in addition to the revival of the Labour Appellate Tribunal these special labour benches will be there. There should be no duplicity involved. We want expeditious disposal of cases and we want it without much litigation cost, and we do not want that from the Labour Appellate Tribunal the matter must go again to the High Court or the Supreme Court even though it may be a special labour bench created there. Therefore that is our contention.

Then, Sir, one more thing, and I end, and it is this: Now what are these special tribunals trying special cases? Who decides these special tribunals and the cases that should go to these special tribunals? The Chief Minister decides it. Again I shall not refer to any particular case even though I have in my mind a particular case. For example, an hon. Member of the other House is being tried by a special tribunal. Well, whether the special tribunals are legal or not is being discussed in the Supreme Court. What I am against is the very idea of constituting these special tribunals. You have the regular judicial organs of the State; you have got the regular legal machinery. Why these special tribunals then?

Therefore, Sir, these points will have to be seriously considered, and with these words I conclude. Thank you.

SHRI SANTOSH KUMAR BASU (West Bengal): Mr. Deputy Chairman, Sir, I shall begin with a word of congratulation that the Home Ministry has succeeded . . .

DR. R. B. GOUR: I thought you were congratulating me.

SHRI SANTOSH KUMAR BASU: I shall congratulate you also on your Kerala Government. Wait and see.

SHRI BHUPESH GUPTA: And then nothing will be left to Dr. B. C. Roy!

SHRI SANTOSH KUMAR BASU: That is for you. Dr. B. C. Roy is your monopoly.

Now, Sir, I shall begin with a word of congratulation that the Home Ministry have succeeded in assembling a very capable team of lawyers, who had gone about their business with devotion and care. Even though we might not agree with all their recommendations, it cannot be denied that they have succeeded in producing a report on a study of the judicial system prevailing in this country, in a thorough-going and comprehensive manner, and has come out with recommendations and observations which are marked by fearlessness, independence and balance of judgment.

Now, Sir, much has been said on the floor or this House as regards the manner of selection of Judges and I shall very briefly refer to that controversy with such comments as I may consider necessary to put forward. The Law Commission has not had a word to say against anyone regarding the selection of Judges of the Supreme Court. The Home Minister in another place on an earlier occasion pointed out that appointments to the Supreme Court Bench have always been made as recomended by the Chief Justice for the time being. There has been no departure from that parctice and principle. As regards the appointment of Judges of the High Courts some figures were quoted here by my hon. friend, Mr. Bisht, from the speech of the Home Minister delivered on that occasion. Now, Sir, it has been

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made clear in that speech, by actual quotation of facts and figures that out of 176 appointments of High Court Judges made during the last ten years, as many as 161 appointments were made in which all the six authorities concerned in the selection of Judges had arrived at an agreement—that amounts to 90 per cent of the total number of appointments. You will remember, Sir, that our Constitution has set up a particular procedure for the purpose of making selections of Judges. That procedure has been summarised by the Law Commission at page 71 in paragraph 11:

> "We understand that the constitutional procedure prescribed by article 217 is worked administratively in the following manner:
>
> The Chief Justice forwards his recommendation to the Chief Minister who in his turn forwards this 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 made 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. The rival recommendations are then forwarded to the Minister of Home Affairs who, in consultation with the Chief Justice of India, advises the President as to the selection to be made. The person recommended by the Chief Minister may be, and occasionally is, selected in preference to the person recommended by the Chief Justice."

Sir, the Constitution has laid down a procedure which aims at arriving at a balance between different considerations and different authorities. In countries like England and the United States it is the executive which has got the sole power of making appointments of Judges. The Lord Chancellor, who is the head of the judiciary in England, is also Cabinet Minister and his word is law in the matter of selection of Judges from the British Bar, not only in England but also in the colonial possessions—and for India also when it was a dependancy. In the United States of America, the President makes the selection. He may have his advisers, but it is the selection by the President which holds good. The present Chief Justice of United States was the Governor of California when he was appointed Chief Justice. That shows that in democratice countries it is the executive which has held the power of making appointments of Judges.

In India, after we achieved independence and the Constitution was brought into force, an attempt was made to achieve a grand combination of different factors and considerations in the matter of making appointments and selections of Judges. We find that not only the Chief Justice of the High Court concerned, but also the Chief Minister and the Governor in the State on the one hand—three authorities—and three authorities in the Centre, namely, the Chief Justice of India, the Home Minister and the President—these six authorities—have a say in the matter. I submit, Sir, that so far as the system of selection is concerned, it is a significant and desirable attempt to bring about a combination, a coordination and reconciliation between these different authorities so that the ultimate issue may deserve an all-round support.

Sir, that has been the position with regard to the appointments in the Supreme Court. All the appointments have been made on the recommendations of the Chief Justice of India. So far as the States are concerned, as

many as 90 per cent. of the appointments have been made in that way. In the remaining 14 or 15 cases the Chief Justice's opinion has been accepted by the Home Ministry except in one case where, before the present Home Minister came into office, the recommendation of the State Chief Justice was accepted in preference to that of the Chief Justice of India. Therefore, Sir, it is a most dignified record on the part of the Home Ministry, namely, the opinion of the Chief Justice of India has prevailed in every case.

The Home Ministry has, after all, got to make a selection on some recommendation or the other, and which is the authority most competent to make the recommendation according to the Home Ministry? It is the Chief Justice of India. I ask, Sir, where is the room for any complaint on the facts actually on record?

In this connection I may also point out that the principle of acceptance of the opinion of the Chief Justice of India has been carried to such a length by the Home Ministry that when the Government of Kerala recently—the Communist Government set aside the recommendation of the local Chief Justice—sent their own recommendations, the Home Ministry accepted those recommendations because the Chief Justice of India had accepted them. Therefore, you will find how consistent has been the position of Home Ministry in accepting and honouring the recommendation of the Chief Justice of India. The Kerala Government had no scruple whatsoever in setting aside the recommendation of their own Chief Justice and in interfering with his recommendation by making their own recommendations. Fortunately or unfortunately they succeeded in getting the acceptance of the Chief Justice of India. And, so far as the Home Ministry is concerned, that was the final word.

Now, Sir, what happens in Soviet Russia? My friend, Dr. Gour, has not enlightened the House in that respect at all. It is the Communist Party, the Soviets concerned, who recommend the People's Court, Judges and everybody else and appoint them. About that my friend said that even the Chief Justice and the courts must take note of the social order prevailing in the country. Therefore, it is the executive upon whom the burden rests and upon whom the duty is cast for making necessary selections, and that has been consistently done by the Home Ministry by placing reliance upon the final say of the Chief Justice of India. The recommendation of the Home Ministry goes to the President. It is really the recommendation of the Chief Justice of India.

That being the position, let us consider the recommendation of the Law Commission that the appointment of Judges should be made solely on the basis of the recommendation of the Chief Justice of the State concerned. I do not think that will always be possible and that it should always be possible. They have perhaps ignored the difficulty that might arise in placing the responsibility upon the shoulders of one particular individual. Well, if the Chief Justice can yield to the pressure of the Chief Minister and agree with the recommendation made by the Chief Minister himself, he can as well yield to pressures of other kinds. Where is the guarantee that he will not do so? Therefore, the present system of balancing different considerations emanating from different State authorities seems to be the best, and I do not think that the recommendation of the Commission to the effect that the recommendation of the Chief Justice of the State concerned should be the final word ought to be accepted by the Government.

Then comes another aspect of the question of recruitment to the Supreme Court Bench. As has been provided in the Constitution, Supreme Court Judges may be recruited from three different categories, namely, the Judges of the High Court, members of the Bar and eminent jurists in the country. So far as jurists are con-

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cerned, it has been pointed out that India is still lacking in its progress in that direction. But as regards members of the Bar, I do not know what has so far stood in the way of the Chief Justice of India or the Home Ministry making a serious effort to find out suitable members of the Bar who would be willing to shoulder the burden. Now, Sir, I find—it has been quoted in the Commission's Report that the Home Minister had stated—that suitable members of the Bar do not come forward having regard to the earnings that they command at the Bar itself. They cannot give up that earning for the purpose of accepting a job in the Supreme Court. I agree that that may be one of the reasons. At the same time I should say that if the patriotic sense of the members of the Bar is appealed to there may be persons who may come forward to serve India in the same way as the great leaders of the Bar fought the country's battle at considerable sacrifice of their profession. When the freedom struggle was going on, members of the Bar came forward to shoulder the burden setting at naught all considerations of money, sacrificing their fabulous income at the Bar. After having achieved independence there is no reason why the members of our Bar should not come forward to serve the country in a most important sphere of our national life by serving in the Supreme Court if an appeal is made to them. Such sacrifice is not unknown in the parliamentary sphere even today and there is no reason why it should not be in the judicial sphere. The mercenary motive should not be the sole consideration. That is one aspect of the matter.

There is another aspect also. I do not know whether the emoluments of the Judge should be increased or not, but, certainly, they should not be reduced to such a figure as would result in a considerable diminution of the emoluments as they were before independence. I would conclude, Sir, without taking much time of the House. As far back as 1933, I was invited for a discussion of the political situation by one of the British Judges of the Calcutta High Court. He was a King's Counsel and was a Member of the House of Commons and was the Vice-President of the Housing Committee of the London County Council before he took his seat as a Judge in the Calcutta High Court. He asked me in the course of discussion with regard to the coming constitutional reforms just before the Round Table Conference, whether after having achieved responsible Government, India would reduce the salary of the Judges. That was the apprehension which was being entertained by Judges even at that stage. My reply was that nationalist India set such high value on an independent and efficient judiciary that I would not think of any time when such a course would be adopted.

SHRI BHUPESH GUPTA: Evidently, you fogot the Karachi Resolution of the Congress.

SHRI SANTOSH KUMAR BASU: But it has come to pass and what was Rs. 4,000 in those days—and which my friend Shri Bisht just now pointed out would amount to Rs. 15,000 or Rs. 16,000 to-day—has been reduced to Rs. 3,500, as the salary of a High Court Judge. Add to that the mounting cost of living and also the mounting rate of income-tax. What remains of the monthly salary of Rs. 3,500? Well, if all these considerations had been taken into account and a reasonable emolument had been offered to our Judges, we would not have been in such a sorry plight in trying to find out the real stuff that should go to the High Court Bench. Those members of the Bar, even at a sacrifice which should be a reasonable sacrifice, would have come forward to shoulder the burden. Now, you cannot get lawyers of that stamp, of that prestige and standing. We have to hunt about for Judges and that leads to all kinds of undesirable practices

to which reference has been made in the Law Commission's Report. Therefore, I would submit that the question of recruitment of Judges from the members of the Bar to the Supreme Court Bench has got to be faced by the Ministry including the question of reasonable emoluments, at least in the matter of tax remission or tax deduction, so that the burden might not fall so heavily upon the High Court Judges. There are only one or two matters to which I will refer.

There is the question of the cost of litigation. It has been suggested that the system of charging court fees should be abolished. It has been suggested very seriously on the floor of this House and the Law Commission has laid great stress on that aspect of the matter. I would suggest that mere reduction or abolition of the system of charging court fees will not reduce the cost of litigation so far as the average litigant is concerned. In the Calcutta High Court, on the original side, *ad valorem* court fees are not charged. A man can bring a suit for Rs. 80 lakhs or Rs. 1 crore without paying a pie or *kourie* as we call it, as *ad valorem* court fees. But is the cost of litigation any the less on the original side or is it much more than what it would be in the mofussil court where *ad valorem* fees are charged? Where does all this cost go to? It goes into the pocket of the lawyers. Large fees are charged on the original side by leading counsel, at least one of whom is adorning this House at the moment...

SHRI BHUPESH GUPTA: Very heavy fees.

SHRI SANTOSH KUMAR BASU: When I mentioned that sacrifices are not wanting from members of the Bar even in parliamentary and political circles, I had somebody in view, who is not very far from us here. Therefore, the cost of litigation is not related to *ad valorem* fees. If you abolish the system of court fees and deprive the exchequer of the revenue, it would not benefit the litigant so long as there is no check on the fees that are charged by the lawyers. I am not pleading for a reduction of fees by statute. No. At the same time the two things cannot always be reconciled, reduction in the cost of litigation and not charging *ad valorem* court fees. But unfortunately, the pity of it is this that although *ad valorem* court fees are charged and tremendous amounts by way of revenue are realised by the State Government, they do not care to appoint the necessary judicial staff to clear the arrears which are mounting and mounting from day to day. Pandit Kunzru was perfectly right when he drew pointed attention to that aspect of the matter. If you refer to pages of the Law Commission Report, it is a revealing document in that particular respect. Attempts are being made by High Courts and the Chief Justice constantly with a begging bowl at the door of the State Governments to appoint more men in order that the mounting arrears might be cleared off but only a deaf ear is turned to them. Therefore, when revenue is earned from court fees and that is diverted to the general administration to the detriment of efficient, speedy and effective justice to be meted out to the litigants, it does call for a protest and the Law Commission should be congratulated on stressing that aspect of the matter.

The last thing to which I will invite the attention of the House is this. The Law Commission has done a distinct service to the Bar in India by drawing attention to the discrimination that is practised in the Calcutta High Court between members of the English Bar and the members of the Indian Bar. It is a shame, it is a calamity, that people professing to be educated and patriotic keep on taking their stand upon their British qualification as members of the English Bar and try to lord it over members of the Indian Bar and they have got their own Bar Library which is a close preserve, which is a club in the precincts of the

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High Court, to which access to members of the Indian Bar is rigidly denied.

SHRI D. P. SINGH: Is there one even now?

SHRI SANTOSH KUMAR BASU: It is going on very merrily even now.

SHRI P. N. SAPRU (Uttar Pradesh): Even now?

SHRI SANTOSH KUMAR BASU: And it will go on for ever till somebody in authority steps in . . .

SHRI H. P. SAKSENA (Uttar Pradesh): Why don't you step in?

SHRI SANTOSH KUMAR BASU: I am not a man in authority there at all. We can only cry in the wilderness.

SHRI BHUPESH GUPTA: What about starting *satyagraha*?

SHRI SANTOSH KUMAR BASU: It is an anachronism, a blatant anachronism in the year 1959. Time was when the British barristers used to dominate the show on the original side of the High Court. They were discriminating against members of the Indian Bar by being called the advocates when members of the Indian Bar were being called the Vakils. There was a time when a generous Chief Justice made an offer to Dr. Rash Behari Ghose that he could be lifted to the position of an Advocate. He spurned the offer with contempt Those days have gone now. Everybody is an Advocate. The English Bar members were previously called advocates when Indian members were distinguished as Vakils. Today everybody is an advocate and so a device is sought to be adopted . . .

SHRI BHUPESH GUPTA: They call their clerks 'Babus'.

SHRI SANTOSH KUMAR BASU: ....to get out of this situation. The barristers are described as Counsel while Indian Bar members are called advocates. That is how an insidious attempt is made to keep up the distinction. Recently some Indian members of the Advocate Bar went to England under the revised rules of the Inns of Court and they were given the facility of being called to the Bar after attending the Inns of Court and the chambers of senior barristers for 3 or 4 months, having regard to their previous experience and status in the Indian Bar. After they were called to the English Bar, they came back and sought admission to the Bar Library Club of the English Bar in the High Court. But they were refused admission. They were told that they were not the barristers of the right type; that they were a 'kutcha' type of barristers and could not be allowed to be admitted as members into the Library. I have heard from an Advocate-General of another State who was a member of the Indian Bar, that when he had come to Calcutta in a certain case, he was sitting in the Bar Library but as soon as half-past one was sounded and the lunch hour began, the doors of the Bar Library were closed to everybody according to the usual practice—even to Indian advocates—and this gentleman, who never knew that such a blissful state of affairs existed in that Bar Library Club, continued to remain there and people started talking that he was an advocate. As soon as this came to his ears, he walked out in shame. I mentioned this before the Law Commission at Calcutta when they took my evidence in my capacity as the President of the High Court Bar Association. The Chairman of the Law Commission said that he would have done the same, if it had been uttered within his hearing. He also said that it was not a question of members of the English Bar trying to get admission although they had not studied for the usual term, but it was a question of some advocates being shut out by other advocates from their library within the precincts of the High Court. I do not say that all the leading members of the High Court Bar Library Club are of that opinion. I under-

stand that a liberal opinion is creeping into the minds of some of the leaders. If so I must give them due credit. But unfortunately the rank and file try and desire to cling to their ill-gotten privileges even in these days in independent India. I would submit that the sooner definite, decisive and strong steps are taken by Government to do away with this appalling anachronism, the better will it be not only for the Bar but for the whole country. Thank you.

SHRI K. M. PANIKKAR (Nominated): Mr. Deputy Chairman, I should also like to pay my meed of tribute to the Law Commission for their exhaustive, comprehensive and lucid report dealing with a matter which is of the highest importance to the whole of India. I do not want to offer many observations on topics which have already been discussed at some length; but on the question of the relationship between the executive and the judiciary which has come up for so much criticism here from some people, I would like to submit my views.

As has already been pointed out, there is no country in the world where the executive does not appoint the judiciary. So far as I know, in England, it is the Lord Chancellor who is a member of the Cabinet and also the head of the judiciary, that recommends to the King about the appointments of Judges. In America the President of the United States appoints the Federal Court Judges and at one time I remember no less a person than the late President Roosevelt threatening that the nine old men should be displaced or more should be appointed to override their views. So the idea that the executive has no interest in the appointment of the judiciary or that the judiciary is so independent and so separate as to be in a compartment by itself is something which does not seem to be justified from any point of view. Even the great advocate of the division of functions—Montiesque—based his arguments on a misunderstanding. In the Constitution which was established on the basis of his doctrine in the U.S.A., the authority of appointment to the Supreme Court is vested with the President. So this idea seems to be peculiar to India, that the executive should have nothing to do with the appointment of Judges. It does not seem to be justified either by precedent or by any theoretical or historical reasons. Also, it seems to me that we are extremely suspicious of the honour and the honesty of our Judges when we say that if the Chief Minister appoints or recommends the appointment of the Judges, their impartiality will be affected. Then again, the appointment should, I am told, be purely on merit. But nowhere is this merit described or defined. Surely it must be a complex of various factors to be taken into consideration when someone is recommended to be elevated to the Bench. If a person has got very good knowledge of law but is of bad character, is he to be recommended, merely because there is merit, because he is meritorious from the point of view of legal knowledge? Similarly, if a person has great qualities both as a jurist and as an administrator, but is corrupt, surely no amount of merit could recommend him to the Bench. So, there are a number of factors to be taken into account in making recommendations regarding the appointments to the High Court or to the judiciary in general.

It also seems to me that all the criticism about appointments being based on region and community is very wide off the mark, especially in a country like India. It is time that we realised that in a country like India, it is not possible to rule out considerations of areas, regions and communities. Let us take an example. After all, if purely on the ground of merit, the Supreme Court were filled by persons from one province or from one region only, would the rest of the country accept it? Are the regions so small or unimportant or lacking in brains that

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persons of the h ghest merit cannot be found in these regions? Aristotle has a very fine phrase—"distributive justice" and in poli.ics and other matters connected with the people distributive justice is as important as pure justice.

SHRI N. M. LINGAM (Madras): Retributive justice.

SHRI K. M. PANIKKAR: So, the idea that people from different areas, on the basis of a standard of merit should not be recruited or that our communities cannot provide men of the required stature and ability to man the Benches of the highest courts, seems to me, rather far fetched. This criticism of the appointments based on regional considerations and on the representation of communities is, I think, a survival of our feelings of the British days when we thought that merit was being kept back from the point of view of finding government supporter on the basis of communities and of regions. I think it is time we forgot our prejudices of the past and thought of this question purely from the point of view of what would be suitable for India. I do not think that any person who gives consideration to this question will deny that without a balance of regions and communities all-India institutions cannot function properly. Therefore, this is as much a valid consideration as any other which goes into the composition of merit, because merit is not the single factor and many things have to be taken into consideration in making the decision.

There is another point which has been brought up by distinguished Members in this House, namely, that Judges who retire, should not take up other appointments and should not be employed by Government in other capacities, because it is said these Judges would look forward to such appointments and so their views would be coloured by possibilities of government patronage. I do no think such a prohibition exists in any other country. It certainly does not exist in England. To mention only one case do we not all know how one famous Viceroy of Ind.a—Lord Reading—was at one time the Lord Chief Justice of England? From that capacity, having held the very high post of Lord Chief Justice, he came to be the Viceroy of India and later became even Foreign Secretary. There is also the instance of Lord Macmillan and there are many other cases which could be quoted. I mentioned these two because they are recent and outstanding instances. That the Lord Chief Justice of England accepted a government appointment should show the hollowness of the doctrine that Judges who retire should not be re-employed in any capacity. I do not think that merely because there is a chance of high appointment afterwards a person who has accepted the position of Judge of a High Court or Judge of the Supreme Court is going to change his opinion or give a judgment in favour of the Government. To think in those terms is, I think, to deny elementary honesty and integrity to persons placed in the highest positions. It is a very bad outlook for our people if we say that the possibility of future employment is going to influence a Judge of the Supreme Court in deciding cases.

4 P.M. If such were the case, then we might as well give up all hopes of justice in this country. People who are chosen for high posts are selected, I assume, on the basis of their integrity, their knowledge, their ability and sence of fairplay and also the consideration they enjoy with the people as a whole. If such people are to be accused or even suspected of changing their views or being partial merely because there is a chance of their appointment at a later time as Governors or Ambassadors, then I say it is a bad thing for us. I am, therefore, of the view that there should be no limitation whatever on the employment of Judges after their retirement though to hold that up as a kind of favour would not be proper or perhaps right. This

kind of thing is not something peculiar to our conditions. I remember that the same position existed under the British in India. After all, the principles of our judicial administration are derived from the British and in the days of British rule. I remember Justice Sir Sankaran Nair from Madras being elevated to the Executive Council in Delhi. There were also other instances of people who had been Judges and even Chief Justices being promoted to posts of Executive Councillors or were given other appointments. I do not see anything wrong in this. We are very anxious to copy the British tradition. If as I said earlier, the Lord Chief Justice of England could be appointed as a Viceroy of India on retirement and could also become the Foreign Secretary, there is no reason why a person who has been a Judge and has retired could not be appointed to places which are suited for his ability.

There is only one other aspect of this question that I should like to say and that is the idea that the Judges should be made to live in compartments, that they should have no relationship with developing ideas and social conditions in the country. To say that they should be some kind of museum pieces living under old traditions is something which comes from the British ideas of Judges. Oliver Wendell Holmes once said that law is the morality of yesterday and the Judges who interpret that law represent the morality of day-before-yesterday because they were educated at a time when legal ideas were even more different. That kind of conservatism is unavoidable in Judges if it is held that they should live a life separate from the social forces that exist in a community. The idea that Judges or the judiciary as a whole should be separated in that sense is something which grew up in the past in India and is not prevalent, so far as I can see, either in England or in America or in any one of the great countries where the judicial tradition is old and steady. We are, I am inclined to think, being rather meticulous about points which we have learnt from books. We are told that the distinction between the executive and the judiciary is a very good principle but I should like to know where this distinction has been carried out. It has certainly not been done in England where one of the members of the Cabinet sits as the head of the judiciary. It certainly is not in America where the President has the right of appointing the Federal Court Judges, and the other Judges for the State Courts are elected. In such circumstances, this idea of separation of the executive from the judiciary and the legislature from both seems to be an impractical and a theoretical step. We still argue about it because of the survival of our political tradition from the British period. During the British period, a number of I.C.S. Judges also used to sit in District Courts and in the High Courts and it is this that we took objection to. The idea of separation of the executive from the judiciary was not really in regard to the control of the courts or of the Judges by the executive but about the appointment of I.C.S. executive officers who had chosen the judicial line as District Judges and later were promoted to the High Courts. The Indian judiciary being thus partially controlled from the inside by the advocate members and partially by the I.C.S. members gave rise to this desire that the executive should be separated from the judiciary. That would no doubt be justified, but that is not the line we are taking today. We are saying that the Government of India and the State Governments should have no authority in appointing a Judge and that the appointment should be made on the recommendation of the Chief Justice of the State or the Chief Justice of India as if these gentlemen are above all kinds of influences. The issue really is this: Can the Government be separated from the judiciary to that extent as to consider them in separate compartments? I believe that that is not

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possible. All that we can ensure is that the best class of people should be selected as Judges and that in their functioning as Judges there should be no interference. That is a very different thing from the attempted exclusion of executive authority from appointment and even selection of Judges. That must inevitably, and to my mind, without the least hesitation, belong to the Government itself because in making a selection, it is not merely the judicial qualifications, it is not merely the impartiality of a man that is considered but also the mind of the person, whether he is responsive to the social forces that are in existence, whether he is fit to guide in a constructive way—or have wise statesmanship in regard to law —in the highest problems of judicial decisions. Therefore, I think we should consider these questions after shaking off the prejudices which have been inherited in the many years of struggle which India went through against the foreign Government. We must think of these measures in terms of what is necessary and important for us in the integration of our country and in the administration of justice. If we look at it from that point of view, I think this attempted complete separation between the executive and the judiciary will not be found to be possible.

I was particularly struck by the recommendations made in the Commission's Report about inspection of courts in the States. It is strange that this control and inspection by the High Courts and by the district courts on the lower courts has been found to be slack in many places. Unless the administrative aspects of judiciary, apart from the pure judicial aspects, are emphasised and in the High Courts as well as in the gradation of courts, proper inspection and control is exercised, the kind of weakness that people have been finding of slackness of accumulation of arrears, etc., will go on increasing.

Only one thing more, Sir, I heard it said here that our judicial standards are going down, that the Indian judiciary is not what it was many years ago. This is a human weakness. It is a human weakness that thinks of the past and says that things of the past were much better. "Oh, in our younger days, things were really much better than today, better than we can ever expect it to be". There is a story, Sir of an old lady in England who complained to her daughter that the policemen in the London streets had become younger and younger. In her younger days, she said, they were up-standing, well-made and handsome but now they look like boys. To this, the daughter said, Mother, it is because you think as an old woman that the policemen seem not to have grown up: but I do not see any change." This idea that things were very much better in the past, that the judiciary was manned by great people and that the Judges were of a much higher standing or ability than they are today is something which is in the nature of criticism of elderly minds of things which they do not quite see growing up. I should not attach too much importance to this idea even if a large number of people voice that feeling. Now, if there is a lowering of standards, it is our business to correct it but any idea that the standards of Indian courts have fallen can only be a reflection of a wider phenomenon of standards generally in India having fallen, because after all they are the same people as we are and when the best lawyers are recruited and the same laws are administered as before, if there is a fall in the standards of Judges, it can only reflect the general fall in the standards of our country. Therefore, I do not attach much importance to that criticism, though naturally every step has to be taken to see that the standards we have are maintained.

THE MINISTER OF HOME AFFAIRS (SHRI GOVIND BALLABH PANT): Mr. Deputy Chairman, I am glad to have this opportunity of making a few observations on the important

subject which is under discussion. The Law Commission was appointed, I think, in August 1955 and its original term was to expire on 31st December 1956. Extensions were, however, granted from time to time and this Report which is as weighty as it is voluminous was presented by the Commission just about that time in 1958. The terms of reference were very comprehensive and the Report has covered a wide ground. So, in the course of the discussion here many points have been raised. It is difficult for me to deal with even the principal ones; my colleague, the Law Minister, will be winding up the debate. I will refer only to a few aspects of this vital problem of judicial administration.

I should like, first of all, to express my appreciation of the pains taken by Shri Bhargava in studying this Report. The matters which have been prominently mentioned again in the course of this discussion are not altogether new. Since I came here, I had the pleasure of listening to the speech of Shri Panikkar. It was a complete vindication of our system of judiciary and of the Government. He has also made some very useful suggestions. All that has been said here is always entitled to weight and is worthy of consideration. I am, however, somewhat sorry that certain myths which had crept into the Report, though exploded, are yet sometimes repeated. The question of appointment to the Supreme Court and the High Courts is certainly an important one but anything that directly or indirectly reflects on the prestige, efficiency or integrity of the Judges is not likely to be conducive to the maintenance of the standards which we all desire to maintain in our courts. The Supreme Court is the highest tribunal in the country and in fact it holds a position which cannot be compared with any other institution. It has to see that the fundamental rights are fully enjoyed by the people and that the rule of law is scrupulously maintained in the country. So the responsibility that rests on the Court and its Judges should be appreciated by all of us and if we do that, we should not, whether unguardedly or otherwise, make any remarks which, instead of raising the prestige of this highest judicial tribunal in the land, are likely to be used otherwise by unthinking people.

Sir, so far as appointments to the Supreme Court go, since 1950 when the Constitution was brought into force, nineteen Judges have been appointed and everyone of them was so appointed on the recommendation of the Chief Justice of the Supreme Court. I do not know if any other alternative can be devised for this purpose. The Chief Justice of the Supreme Court is, I think, rightly deemed and believed to be familiar with the merits of his own colleagues and also of the Judges and advocates who hold leading positions in different States. So we have followed the advice of the most competent, dependable and eminent person who could guide us in this matter.

Similarly, Sir, so far as High Courts are concerned, since 1950, 211 appointments have been made and out of these except one, *i.e.*, 210 out of 211 were made on the advice, with the consent and concurrence of the Chief Justice of India. And out of the 211, 196 proposals which were accepted by Government had the support of all persons who were connected with this matter. As hon. Members are aware, under, I think, article 217, the Chief Justice of the High Court, the Chief Minister of the State concerned and the Governor first deal with these matters. Then they come to the Home Ministry and are referred by the Ministry to the Chief Justice of India and whatever suggestions or comments he makes are taken into consideration and if necessary, a reference is again made to the Chief Minister and the High Court. But as I said, these 196 appointments were made in accordance with the unanimous advice of the Chief Justice of the High Court, the Chief Minister of the State,

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the Governor and the Chief Justice of India. There were fifteen cases in which there was a difference of opinion between the Chief Justice and the Chief Minister or the Governor. So, these cases also were referred to the Chief Justice of India. In some of these he accepted the proposal made by the Chief Minister and in others he accepted the advice or the suggestion received from the Chief Justice of the High Court. But we on our part had his advice along with that of the Chief Justice of the High Court concerned and of the Chief Minister concerned. So, these cases do not come to even five per cent. But even there, so far as we are concerned, out of these 211 cases, as I said, except in one case where there was a difference of opinion between the Chief Minister and the Chief Justice, we had accepted in 210 cases the advice of the Chief Justice of India.

I have listened to some of the speeches that were made and also gone through the record of the speeches, which unfortunately I could not myself personally listen to. It was suggested that the Chief Justice of India might make these appointments. Well, I do not know if that would improve matters because virtually they have been made by the Chief Justice of India. Only the orders were issued by us, and in any case the orders would have to be issued by the executive authority.

Then, some Members suggested that the appointments should be made by a Joint Board or with the concurrence of the Chief Justice of India and the Chief Justice of the High Court. We have done that and no better results would have been achieved if we had even adopted that rule. So, I do not see any reason for any feeling in any quarter about these appointments having been influenced by any extraneous considerations. At least so far as the Government of India is concerned, our position is unassailable and the facts that I have given should convince any rational mind about our anxiety to deal with these matters in as judicial a manner as we possibly can.

The hon. Mover referred to certain reports, which he had heard, about certain recommendations having been made by some of the Chief Justices on grounds which are certainly not worth being taken into consideration in such cases and which would be altogether irrelevant. I am not aware of any such case myself, but I will ascertain from him privately and confidentially if he can let me know the particulars. If there is anything wrong anywhere, we should certainly take notice of that and see that the procedure that is adopted is clean and no room is left anywhere for the least suspicion or misgiving regarding these matters of supreme importance.

The suggestion was made also about the Chief Justices not being appointed from among the senior-most Judges whether of the Supreme Court or of the High Court. Well, so far as the Supreme Court is concerned, the appointment of the Chief Justice is again made on the recommendation of the retiring Chief Justice and ordinarily the senior-most man is appointed. In the High Courts too, ordinarily the senior-most man is appointed, but in consultation with the Chief Justice of India. In some cases the senior-most man has not been appointed and also in some cases the Chief Justices have been appointed to some High Courts from outside their own States. So, the position is fully examined in each case and attempts are made to fill these posts with the best men that might be available.

I think an observation was also made here about the desirability of appointing advocates as Judges of the Supreme Court. I share that feeling myself. I made certain suggestions to the Chief Justice who has just retired and to my knowledge he consulted an eminent leading lawyer. But he expressed his inability to join the Supreme Court. The difficulty arises not because of the reluctance of the authorities to appoint advocates, but the unwillingness of the advocates who

command huge practice, to join the Bench. They have also other interests and they do not prefer a change from the Bar to the Bench. So, it was not because of any lack of desire or willingness on the part of the Chief Justice or of the Government that such appointments have not been made, but only distinguished advocates can be considered worthy of such choice.

Sir, it is a matter for regret that the question of pensions has not been examined in a thorough manner. We had maintained the old rates of pension for the Supreme Court Judges as well as the High Court Judges. The salaries of the Supreme Court Judges as well as of the Judges of the High Courts were reduced under our Constitution when the relevant articles relating to these matters were adopted, but so far as pensions go, though the salaries were reduced, the old rates were maintained. I do not know if in the circumstances, when there is a general demand for economy and reduction in pensions and in salaries, it would be possible to make a larger provision. Not that I do not like to do so, but our resources are limited, and we in the circumstances count upon the patriotism of every person and expect that, regardless of the emoluments or allowances that one may get, specially among those who hold very high positions of responsibility, each one and all of them will be prepared to give their best for the service of the country, and we have no doubt that our Judges belong to that class.

There was also a suggestion, though on that point opinions seemed to differ, that Judges from outside should be appointed. Well, we are trying to make appointments from outside the States concerned too, and ten such appointments have been made. But there are certain difficulties. The advocates do not ordinarily like to go to other Courts, and the Judges of the Courts not being acquainted with the competence and merits of the advocates in other States also find some difficulty in selecting them, but still we try to persuade them so far as we can do. Then, we have requested the Chief Justice—and we have also been in touch with the various High Courts—to prepare an all-India list of advocates who might be eligible and of judicial officers too who might be eligible in his opinion for occupying these eminent offices, and such a list is being prepared. That perhaps might be helpful in making appointments from States other than those in which the High Court to which the appointment has to be made happens to be situated.

One other comment also seems to have been made about the desirability of having more members in the High Court from amongst the advocates. Well, that question is constantly borne in mind. As I stated at the outset, the initiative in all these matters rests with the Chief Justice of the High Court concerned. He makes the proposals and they are passed on by the Chief Minister ordinarily to the Government of India. But out of, I think, 176 Judges in position today, nearly 109 belong to the Bar. That is not a bad proportion; 109 belong to the Bar and 67 only have been recruited from among the members of the Judicial Service. So, the interests of the Bar are kept constantly in view.

Sir, so far as the question of appointments or of the desirability of raising he standards is concerned, there can be no two opinions, but we have to understand that when everything possible is being done to secure the best men, no reflections should be cast on the Judges of the High Courts, much less of the Supreme Court, even indirectly by saying that persons who were not the best were selected for the job, for that also in a way undermines the prestige to some extent. I think that if there is anything that we can do to improve upon the present method, we shall do that; but if the best that can be done is being done, then we have to reconcile ourselves to the limitations of this imperfect world. And we have also to remember that for every appointment there are a number of aspirants

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but only one of them can be selected. Those who are left out are perfectly entitled to believe that they and each one of them are more capable than the one who has been selected, but the man who has to make the selection cannot be guided by their opinions about their respective merits. He has to make the choice according to his own lights, but who has not heard complaints of this character about the "best of men", whenever appointments have been made, from the disappointed candidates? If we depend on their criticisms and comments, then no one in the world can possibly come out of the ordeal successfully.

Sir, there were some other proposals made about matters relating to arrears in the High Courts. I am trying to confine myself strictly to facts and not to make any comments or to enter into any controversy because these matters do not admit of any controversy. We are dealing with something which deserves only a solemn attitude and a solemn treatment. So far as arrears in the High Courts go, in the Supreme Court also, the arrears have been going up. As hon Members may be remembering, the number of the Judges of the Supreme Court was raised from eight to eleven in 1956. But still there has been some further rise in the pile of arrears. The Commission has made a number of suggestions in order to ensure the speedy disposal of cases. The Supreme Court, I have no doubt, will be giving thought to them, if it has not already done so. But if it becomes necessary, we will have perhaps to increase even the existing number of Judges. Of course, a great deal depends, I think on the way the proceedings are regulated in courts and the procedure that is adopted. I would not venture to make any suggestions in this regard so far as the Supreme Court is concerned. They would be able to devise the best means, and I hope they will succeed in bringing down the pile of arrears in the Supreme Court and the High Courts. Some time in 1957, we held a conference of Law Ministers and after that also, the Chief Justice of India held a conference of the Chief Justices of the High Courts. There were several problems to be considered. But one of the most important ones was as to how to clear off the arrears. Some cases had been pending for more than ten years and we were extremely worried over it. Everyone knows that justice delayed is justice denied Then we thought that some effective steps should be taken for that purpose. So we placed before ourselves a rough target that cases of a civil nature should not remain pending for more than two years and those of a criminal nature for more than six months. So we applied ourselves to this task, and we made a series of proposals in order to ensure this objective.

Well, it has been suggested, I think here also, that the number of working hours might be raised and that of vacations reduced. We made that proposal too. Except one or two High Courts, others did not agree to work longer than they had been doing, that is. for five hours. Then the proposal of vacation came up. They curtailed their vacations to some extent. But we requested them to have at least 210 working days in a year. We had a lot of correspondence, and I am glad that, but for four High Courts, all others have agreed to work for at least 210 days in a year. I expect that the remaining four too will be good enough to fall in line with the rest. As hon. Members are aware. the President. under the authority of the Statute passed by Parliament, is empowered to determine the length of vacations or the number of working days. But our own desire is that no such notification need be issued by the President and the High Courts should be good enough to do the needful themselves. That has been our effort. and I hope that the few remaining ones will also accede to our suggestions.

There has been, however, a marked improvement so far as the old arrears are concerned. I think that at the end of 1956 or on the 1st of January, 1957, the total number of old cases which were two years old or older than two years was about 1,66,000. On 31st December, 1958, this number of 1,66,000 had come down to something like 66,000 or 64,000. So, many of the old cases had been disposed of. But while this is true of the entire country, I am not sure if the improvement in some of the High Courts has been equally good. Some High Courts still think that if they study the papers at home, then by the time they go to the court their minds will have been built up, and they will not be able to follow the arguments of the advocates in an unbiassed and unprejudiced way. Well, I do not know how far that is a correct approach. But many other High Courts do not agree with this view. Various other proposals were also made in this regard, some of which have been accepted by the High Courts and some have not been accepted. But our anxiety to dispose of the cases that have been pending for more than two years is almost acute. We feel that no civil case should remain pending for more than two years and no criminal case for more than six months. We will continue our efforts, and I trust that the High Courts will also give further thought to the matter. We have also, during the last two years, I think, appointed about 36 Additional Judges in order to enable the High Courts to dispose of these pending cases. So, this has been the result.

Some reference was also made to the question of the separation of the executive and the judicial functions or the executive from the judiciary. Well, this is one of the Directive Principles embodied in our Constitution. I am not sure if it is understood and interpreted by all in the same way. But so far as separation of the judiciary from the executive is concerned, we have also been impressing on the States the desirability of doing so. In five States, namely, Bombay, Madras, Andhra Pradesh, Mysore and Kerala there is complete separation. In West Bengal they have, I think, introduced a scheme and legislation is to follow. In other States, such as Bihar and a few others also, steps have been taken. In some States committees were appointed and their reports are under consideration. So progress is being made in this matter too. One of the Members here, perhaps my friend, Mr. Bhupesh Gupta, in this connection referred to a certain judgment which had been pronounced in the Punjab by a certain Judge. Well, if anything, that judgment establishes the independence of the judiciary, and it is a determination to do justice to the poorest and the weakest unmindful of any reaction that it might produce on what Mr. Bhupesh Gupta regards as the mighty and the powerful.

SHRI BHUPESH GUPTA: What about the interference of the executive?

SHRI GOVIND BALLABH PANT: Interference? Well, interference is not a matter of law. When we say that Mr. Bhupesh Gupta interferes with the speakers here, it is just not in accordance with the rules of business, or something which is not allowed So the question of interference is a different one. Nobody should interfere with the maintenance of public peace or with the administration of law and justice. I quite agree.

Sir, of the main points which had been raised in the course of the discussion here, I think there was one more suggestion about raising the age of retirement of Judges. I do not know if we would be doing an act of kindness towards the Judges by raising their age of retirement. They feel today that they cannot work for more than five hours. They get tired even though we desire that they work for more time, and they need long vacations. If you cut them short, then they feel that they will not have

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enough of intellectual vitality to dispose of their work. So, when they suffer from such limitations even in their youth, if you keep them in office for a long period, I think we will be imposing very onerous burdens on them and which, so long as I am dealing with matters concerning the Judges, I would not like to be a party to.

SHRI BHUPESH GUPTA: An act of kindness.

SHRI GOVIND BALLABH PANT: Then there is one other question, which is one of those questions trotted out very often, that Judges should not be given any employment after they have retired, that their talents should be wasted Well, those who do not choose to work or do not find themselves fit to work, of course they have to take rest. But if Judges want to do some work, then there are so many really deserving causes for which their assistance is necessary. Now, there is generally a demand for judicial enquiry into anything; it may be a petty affair, or it may be something very complicated and serious. Well, a judicial enquiry can best be made by a Judge, and as there are arrears in High Courts and the High Court Judges have to work hard even to dispose of their current work, we have to find Judges outside the High Courts. So the bill can be filled only by requisitioning the aid of the retired Judges. Whereas the Constitution imposed a ban on Members of the Public Service Commission and laid it down that they should not be employed after their retirement by the Government, no such restriction was considered necessary in the case of Judges. Then, the Judges have also proved worthy of serving in other spheres.

Some reference has been made, I understand, to the appointment of Justice Chagla as an Ambassador. I do not know if anyone referred to the appointment of Mr. Fazl Ali as the Governor.

DR. H. N. KUNZRU: Well, that too, Mr. Fazl Ali's appointment, was criticised when it was made.

SHRI GOVIND BALLABH PANT: I am even now admitting that there has been some criticism. Only my submission is that the criticism is not justified. So far as Mr. Chagla is concerned, he was one of the most independent Judges that our High Courts in India have ever had. He had a unique reputation for independence. When a man like that is selected for any office by the Government, that shows that the Government appreciates independence in its Judges, and if anything, it should encourage other Judges to adopt an independent role in their work and not be subservient to anyone. So, the lesson that one would draw from this is that suitable Judges, who are worthy of being selected for high offices, should not be debarred from rendering such service. Again a word about Mr. Fazl Ali. No one ever said that he in his life ever digressed from the path that was right and straight. He was a righteous man who never did anything that was wrong, one of the finest of gentlemen that one could have come across. When a man like that was selected, that again proved that the Government was not influenced by any extraneous considerations but only by the merits, the independence and the wisdom of the man who was selected for such a distinguished office. So, we should not generalise in these matters. Then, I would also venture to submit that it is no compliment to the Judges to insinuate that, if they have an opportunity of being employed by Government after their retirement, they would not function impartially, judiciously, fairly and justly. Our Judges are made of sterner stuff and we trust them fully and implicitly. They have been, I think, pronouncing judgements almost every alternate day declaring some Act or the other passed by Parliament or by some local legislature as *ultra vires*, and thus over-ruling the decisions of

5 P.M.

Parliament and of the legislatures too. Well, that in a way indicates how very independent is their attitude towards all problems which they have to handle and to deal with. So, I submit that we should maintain the highest standards of dignity among our judiciary and we should take care that even in our unguarded moments we do not say anything that will have a contrary effect.

MR. DEPUTY CHAIRMAN: The Law Minister will speak tomorrow.

The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at one minute past five of the clock till eleven of the clock on Wednesday, the 25th November, 1959.

GMGIPND—RS—88 RSD—2-1-60—550