question and I am merely replying to him. (*Interruption*) The hon. Member will kindly allow me to proceed.

DR. R. B. GOUR: Are you presuming what the Joint Select Committee would do?

SHRI B. N. DATAR: This is the present position. One side has been placed before the House and it is my duty to place the other side. It is for the hon. Members of the Joint Select Committee to take the whole matter into account and to advise Parliament accordingly. It is for this purpose that I place the other side before this hon. House. I would therefore submit, without going into other points, that what has been done is on the whole extremely fair. It has been done in the background of cordiality and smooth relations between the parties. It is for the Joint Select Committee to go into the whole question and to make such recommendations as they deem fit so far as the provisions of this Bill are concerned.

MR. DEPUTY CHAIRMAN: The question is:

"That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do join in the Joint Committee of the Houses on the Bill to provide for the reorganisation of the State of Bombay and for matters connected therewith and resolves that the following members of the Rajya Sabha be nominated to serve on the said Joint Committee:—

1. Shri Khandubhai K. Desai,
2. Shri T. R. Deogirikar,
3. Shri K. K. Shah,
4. Shri M. D. Tumpalliwar,
5. Shri J. H. Joshi,
6. Shri V. R. Pandurang.
7. Shri K. P. Madhavan Nair,
8. Shri Purna Chandra Sharma,
9. Shri Vijay Singh,
10. Shri G. S. Pathak,
11. Shri Dahyabhai V. Patel,
12. Shri Lalji Pendse,
13. Shri S. J. Desai,
14. Shri B. V. (Mama) Warerkar, and
15. Shri Govind Ballabh Pant."

The motion was adopted.

THE SUPREME COURT (NUMBER OF JUDGES) AMENDMENT BILL, 1960

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI B. N. DATAR): Mr. Deputy Chairman, I beg to move:

"That the Bill to amend the Supreme Court (Number of Judges) Act, 1956, be taken into consideration."

Sir, this is a very simple measure. As the House is aware, in 1956 the hon. Parliament passed an Act for the purpose of increasing the number of judges from 8 to 10, excluding the Chief Justice of the Supreme Court. Now, it is considered that there are large arrears and they have to be disposed of. And if the strength is kept only at 11, certain difficulties arise. One difficulty is that it will not be possible for the present number of judges to cope with this work. Secondly, oftentimes the Supreme Court has to form a number of Benches and one Bench known as the Constitutional Bench consists of five judges. Therefore it was at the instance or initiative of the Chief Justice of India that we took this question into consideration. He pointed out that if three more judges were appointed, then within a few years the arrears would come down and then the position would improve. Now, a question is likely to be asked: if for example, the arrears come down and if the number of judges remains so large, what is to happen? Will it not

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cause a heavy expenditure to Government? My answer to it is this that in the course of some years some hon. judges of the Supreme Court are likely to retire. That is the first point and secondly the President will not be making the appointment of all the judges immediately; he will appoint them as the Chief Justice of India requires. So as I have stated, this is a very simple Bill. All what it purports to do is that in place of the ten judges, there will be provision for 13 judges to be there.

So far as the figures for the last three years are concerned, I should like to give to this House these figures. I shall give them for four years. In 1956 the total number of cases instituted during the year was 2362 and the number disposed of during the year was 1980 and the cases that were carried over were 1714. In 1957 the number of cases pending was 2272, in the next year it rose to 2428 and up to 30th November 1959 the number of cases in arrears was 2556. So on an average you will find that about 1900 to 2200 cases were disposed of by the Supreme Court. There are a number of cases but it is not necessary to give the break-up. May I, however, point out that in addition to the 500 cases which are miscellaneous applications, the other cases work out like this. Tax cases are about 250; labour and industrial dispute cases are about 200. Regular civil appeals are 950. The hon. House will note that under the Code of Civil Procedure certain restrictions have been laid down and only in certain cases could appeals come to the Supreme Court. All the same, the number is 950. Writ petitions number about 300 and criminal appeals are about 300. Now, the general policy that we ought to follow and which the Chief Justice of India is trying to follow is to dispose of all old cases. So far as the meaning of the expression 'old' is concerned, a criminal case is old if it is not disposed of within six months. It ought to be disposed of as early as possible but a period of six months might be allowed. So far as civil matters are concerned, generally they ought to be disposed of within two years though we shall be happy if they could be disposed of even earlier than two years. These are the figures and the Chief Justice of India felt that it would be better if some more judges could be appointed. The whole question was gone into and we accepted the suggestion of the Chief Justice of India that we should give to his aid more judges. That is why we have proposed that in place of ten the number ought to be 13. The Chief Justice of India would be there and he can have in addition to a Constitution Bench other Benches consisting of three judges so that the work could be expedited and the arrears brought down as much as possible.

I may finally add that these appointments would be made as and when they are required and secondly, as far as those who are likely to be appointed are concerned, naturally they can be absorbed against the vacancies that are likely to arise by retirement. Some hon. Judges of the Supreme Court are likely to retire next year or the year after that and then this question can be considered.

In the case of High Courts additional judges for two years or so can be appointed but that is not the practice here. The Constitution says that a retired Judge of the Supreme Court can be called upon to work for some time. It might be difficult in all cases to get a retired Judge to work. Under the circumstances it would be better if we raised the figure from 10 to 13 and that is why this Bill has been brought before this hon. House.

The question was proposed.

SHRI ROHIT M. DAVE (Bombay): Mr. Deputy Chairman, the hon. Minister has pointed out that the Bill is the result of the desire expressed by the Chief Justice of India that some more judges should be added because there are arrears and those arrears have to be cleared. The hon. Minister

also made it clear that there is no desire to continue the number at 13 after the arrears have been disposed of and that the number will be brought down. He has further stated that even as far as the number of 13 is concerned, the President will take into consideration the exact work before the Supreme Court and will appoint new judges only to the extent that the work demands. Therefore this number 13 will not be automatically accepted. That is how I have understood the case as the hon. Minister has put before us.

Now, as is quite clear from this, the real crux of the problem is the number of cases that are coming to the Supreme Court and the arrears that have accumulated there. As the Law Commission has pointed out, this particular court—the Supreme Court—has got the most varied and widest jurisdiction among the various highest courts in the Commonwealth and in the Anglo-Saxion countries because of the fact that apart from being the highest court of appeal it is also the court which has to take into account the problems of defending the rights and privileges as are guaranteed under the Constitution and the Supreme Court has to act as the guardian of the citizen to see that these rights and privileges are granted. As a result of this there is a certain amount of work before the Supreme Court which normally would have been taken up by the lower courts. Under article 136 there are a large number of cases that are coming up before the Supreme Court, because the Supreme Court has jurisdiction of the widest amplitude entitling it in its discretion to grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territories of India. In case it is found that some gross injustice has been done, the Supreme Court has to intervene. The whole question boils down to this. If there are lower courts which can tackle these problems, the problem of justice to be done to both the parties, and if the Supreme Court is satisfied that all the relevant points were already considered and that justice has been done to both the sides, then under article 136, special leave may not be granted. And if special leave is not granted, to that extent the work of the Supreme Court might be lessened.

Now, as far as these various matters are concerned, there are three types of cases which come before the Supreme Court—cases on civil matters, cases on criminal matters and cases that involve industrial relations and labour problems. There was some indication in the proceedings, when the Bar Association of India was inaugurated, which gave the impression that as far as civil cases are concerned, litigation is decreasing, because it was stated there that while legislation was increasing, litigation was decreasing. And it was also stated that this litigation referred to property cases and cases in which civil issues were involved. Therefore, we have to concentrate our attention on the two other types of cases, namely, criminal cases and cases in which labour problems are involved, and to see if something could be done whereby the work of the Supreme Court is lightened. And to that extent it may be possible for the Supreme Court to carry on its work with a fewer number of Judges.

As far as criminal jurisdiction is concerned, already we have got sufficient powers vested in the High Court. Therefore it is only because, as the Law Commission says, of the liberal interpretation of article 136 that of late a larger number of cases are allowed to be admitted under article 136 by the Supreme Court. Now, it is for the Supreme Court to decide in its discretion whether it should interpret article 136 liberally or more strictly. Of late it is interpreting it very liberally and, therefore, these cases are coming up. We cannot do anything about it, because as far as the Legislature is concerned, the Legislature

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has already given the High Courts sufficient power to see that justice is done to the parties in criminal cases.

Therefore, only labour cases remain and it is here that the Law Commission has pointed out that there is scope for the Legislature to intervene It has been found that the Supreme Court has to admit a large number of appeals because of the fact that the High Courts have not got enough jurisdiction in order to dispose of the appeals that might be coming before them. The Law Commission has pointed out that under article 226, the powers that have been given to the High Courts are very limited. I am reading from the Report of the Law Commission itself, where it is stated:—

> "The aggrieved party approaches the Supreme Court . . . "

as far as labour cases are concerned,

> ". . .because the jurisdiction of the High Court under article 226 is too narrow to afford him relief in these cases. Under article 226 the High Court can only quash an order made by these tribunals, but cannot make its own decision and substitute it for that of the tribunal. The High Court would, generally speaking, quash these orders only in cases of excess of jurisdiction, or an error of law apparent on the face of the record or a contravention of the principles of natural justice or the like."

Because of this limitation on the power of the High Court the aggrieved parties have to approach the Supreme Court and the Supreme Court has to admit these appeals under article 136. Now, Sir, it has been pointed out again by the Law Commission in its Report itself that this particular type of appeals that come before the Supreme Court create certain problems for the Supreme Court. Again, I am only quoting from the Law Commission Report itself. It has been stated that the natural effect of these various appeals in labour matters that come before the Supreme Court is to clog the work of the Supreme Court. The Commission points out:—

> "The graver aspect of the matter is that labour matters are being thrust upon a court which has not the means or materials for adequately enforcing itself about the different aspects of the questions which arise in these appeals and therefore finds it difficult to do adequate justice. In many of these cases the Supreme Court has not even the assistance of a properly written judgment such as it would have in appeals from the High Courts.".

It further goes on to say:—

> "Equally grave are the delays caused by these appeals in the disposal of individual matters which essentially need speedy disposal."

In the opinion of the Law Commission, therefore, something needs to be done in order to see that fewer appeals came in regard to labour matters before the Supreme Court and this could only be done if the Legislature intervened.

This particular question was also discussed at the 17th session of the Indian Labour Conference which was held at Madras on the 28th and 29th of July, 1959. In this connection again, I am quoting from the recommendations that have been made by the Indian Labour Conference:—

> "The Conference has recommended *inter alia* that increased recourse should be had to mediation and voluntary arbitration and recourse to adjudication avoided as far as possible."

This is the first aspect of the solution. If the two parties in a labour dispute are encouraged to resort to voluntary arbitration, then it may be possible to see that recourse to adjudication does not take place. And if that happens, then perhaps the work of the Supreme Court would be lightened to that extent.

Now, Sir, if we examine as to who the parties are is this labour dispute who go to the Supreme Court, we find that normally it is the employers who go to the Supreme Court. It is quite obvious because it is not easy to go to the Supreme Court. It involves a large amount of expenditure, and the trade unions unfortunately in our country are still not so powerful financially to see that they could also go to the Supreme Court. The result is that when the aggrieved party is a trade union, it finds it difficult to get justice from the Supreme Court because it cannot approach the Supreme Court because of the expenses involved, while as far as the employers are concerned, whenever it is possible for them to go to the Supreme Court, they normally take recourse to appeals to the Supreme Court.

Sir, in the newspapers we read day after day the judgments of the Supreme Court in which the questions are whether a particular person was dismissed rightly or not, whether the Tribunal had a right to decide whether this dismissal was right or not, and so on and so forth. Individual cases and obviously cases that also involve law but in which, even if the matter was determined at a lower level, no gross injustice or no great harm to the general principles of labour relations would have taken place, even such cases are coming before the Supreme Court, and if the Supreme Court finds from records that some injustice has been done, it has to admit appeals under article 136. Therefore, it is very necessary that both the parties should be persuaded to see that they do not resort to adjudication at all, and if they do not resort to adjudication, the case of going to the Supreme Court would not arise.

Secondly, Sir, the question of the Labour Appellate Tribunal is also there. It has been stated in the Law Commission Report again:—

> "It will be noticed that the large number of applications for special leave in these matters made to the Supreme Court synchronised with the abolition of the Labour Appellate Tribunal."

One reason why the work of the Supreme Court in the words of the Law Commission is clogged on account of these appeals is that the Labour Appellate Tribunal has been abolished. As far as the two parties are concerned, they have agreed at Madras that the Labour Appellate Tribunal should be revived. That is another method by which the work of the Supreme Court can be lightened—by reviving the Labour Appellate Tribunal which can consider all cases that involve labour matters—and once the Supreme Court is satisfied that all the aspects of the cases were determined at a lower level, perhaps it may not allow an appeal under article 136 so easily as it is doing today.

The third method is to have certain Labour Benches in High Courts. For this purpose a new legislation will be required because, as I have pointed out earlier, today the High Courts have not got the power to entertain such cases, and all that they can do is to quash a particular sentence or a particular determination if they find that gross injustice has been done. If on the other hand, just as in other cases, High Courts are given powers to set aside the wrong judgment of a lower Court and if special Labour Benches are created in the High Courts to deal with this matter, the matter may not come up before the Supreme Court or may not come up in such large numbers as they are coming up today. To my mind, therefore, it is not merely a question of just compiling statistics and seeing what cases are pending before the Supreme Court and then appointing a number of Judges to see that these arrears are wiped out, but larger ques-

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tions are involved. They are: The jurisdiction of the High Court in labour cases; industrial relations; whether the two parties should resort to adjudication or not; also reviving the Labour Appellate Tribunal. Therefore, while the approach made by this Amending Bill might solve the problem for the time being, as far as the general approach is concerned perhaps some discussions between the Labour Ministry on the one hand and the Home Ministry on the other on the basis of the recommendations that have been made by the 17th Indian Labour Conference might be held, and if as a result of those discussions certain concrete steps are taken to see that the number of labour appeals going to the Supreme Court is decreased, perhaps a partial solution at least to the problem which this Bill seeks to tackle will be found.

Sir, I thank you.

SHRI J. N. KAUSHAL (Punjab): Mr. Deputy Chairman, the Bill which has been brought forward by the hon. Minister seems to be non-controversial so far as the case presented by the hon. Minister is concerned. The Minister tells us that since there are arrears, there is justification for increasing the number of Judges. Probably no Member will quarrel with that proposition.

DR. R. B. GOUR (Andhra Pradesh): That is how he has presented it. But that does not mean that it is non-controversial.

SHRI J. N. KAUSHAL: So far as the question of arrears is concerned, that is a matter of fact on which we can have no dispute. If there are arrears, as it seems there are, then we must do something to see that those arrears are cleared off.

SHRI AKBAR ALI KHAN (Andhra Pradesh): We have done so, but still why are the arrears there?

SHRI J. N. KAUSHAL: I am coming to that proposition because time and again in this House as well as in the other House voices have been raised that some steps should be taken to see that justice is not delayed in the courts of law, because the well-known saying is, "Justice delayed is justice denied." Therefore, I only say that if the arrears are accumulating, Parliament has the duty to find ways and means to clear off the arrears.

Now, Sir, the first question which I want to submit to the House is this. When the Constitution was framed, the framers of the Constitution in their wisdom thought that eight Judges would be quite enough for the Supreme Court to do the job. The strength of Judges fixed for the Supreme Court was eight. But then the working of the Supreme Court showed that in 1956 there was a need for raising the number of Judges, and that need was met by Parliament by raising the number to eleven. Now, after three years the Government have come to us and they say that three more Judges should be added. It seems one Judge each year is the demand of the situation or the demand of the Government.

DR. R. B. GOUR: Just as the Ministers' number increases.

SHRI B. N. DATAR: The number in the opposition is coming down.

SHRI J. N. KAUSHAL: Then one hon. Member here has given an amendment. He says, "No, no. Even fourteen will not solve the problem. Why not raise the number to seventeen?" Probably what the hon. Member has in mind is this. He seems to be quite sure that the arrears are not going to be reduced even by the pre-

sent increase, and then he feels, "if that is so, then why waste the time of Parliament again and again? Why not increase the number to seventeen and let the Government and the Chief Justice of India decide as to how many appointments should be made?" Well, that is the problem with which we are faced. My submission to the House is that the Bill, although it may seem to be very innocent, does raise a very fundamental issue, and that fundamental issue is as to why arrears are accumulating in the Supreme Court. Only two answers can be possible—either that the judges are not doing their work properly or that the number of cases which come to the Supreme Court is in fact much too large and the present number of Judges cannot meet the requirements of the situation. So far as the first answer is concerned, I can say from experience—as everybody can say—that the hon. Judges of the Supreme Court are doing their job tremendously well. Nobody can have two opinions on this matter. The Supreme Court sits right through all the day, listening to cases, not dictating judgments there.

SHRI H. P. SAKSENA: (Uttar Pradesh): Saturdays and Sundays?

SHRI J. N. KAUSHAL: On Sundays, Parliament does not want the Supreme Court to work. My submission to the House is that those hon. Members who do not have a very intimate knowledge of the law courts should not grudge the holidays on Saturdays or Sundays to those persons who have to work in the law courts. The type of work which the Judges have to do is much too onerous, and only those who have seen things from very close quarters know the unstinted attention and the responsibility with which the cases are decided in the highest court. My submission to the House is that the hon. Judges require proper and suitable rest; otherwise, it will not be possible for us to get the best out of them. I do not agree with my friend, Shri Saksena, when he says that Saturday is an off-day for them. But it is, well, for very good reasons. They have to dictate judgments on Saturdays and Sundays. They go on listening to cases on all the five days of the week and judgments are not dictated in the Supreme Court as they are dictated sometimes in the High Courts. Therefore, the Judges have to find time to dictate judgments—judgments which are of a very momentous nature, judgments which will settle the law once for all and judgments which are for the future guidance of the country.

Therefore, the point which I was posing before the House was this: why are the arrears accumulating in spite of the fact that the strength of the Judges was raised only three years back by as many as three? Well, my friend opposite has just pointed out one reason and it is that the Labour cases go to the Supreme Court in very large numbers. That is the view of the Law Commission also and the view of the Law Commission is based on facts and figures. My submission is, on that matter something will have to be done. But again the question whether we should provide a further right of appeal to the High Court or a further right of appeal to the appellate tribunal which we abolished, whether that is the solution for decreasing the work of the Supreme Court or whether some other solution will have to be found out, has to be looked into. Well, I want to raise a very important issue before the House—and I have tried to raise it more than once—and it is this: when Parliament in its wisdom thinks that a particular decision of a tribunal shall be final, then why should there be any further remedy against that judgment? I have not been able to follow it. In one breath we say that this judgment is going to be final and in another breath we are giving some type of supervisory jurisdiction either to the High Court or to the Supreme Court to go behind that judgment, and that upsets the entire procedure. Now, in regard to labour matters, Parliament thought that these matters should be settled

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expeditiously and by one particular court, and that there should be an end of the matter. But what do we find? The matter after being decided by one tribunal is at once taken to the Supreme Court and the very purpose of making the judgment of the tribunal final is defeated, and it is defeated by whom? As my friend was pleased to say, it is defeated by the rich. It is defeated because they have the capacity to take the matter to the Supreme Court and then delay the matter there and see that the judgment of the tribunal is not given effect to. And the labourer on the other side who is much too poor to go to the Supreme Court does not get the benefit in all these matters. Therefore my submission to the House is, while we are discussing the question of raising the strength of the Supreme Court, we must face the fundamental question, and that question is whether the power of the Supreme Court under article 136 is serving a salutory purpose or whether that power under article 136 is being resorted to by those litigants who have the power to take the matter to the Supreme Court and get, in fact, justice defeated, because my experience of the law courts is that the larger the number of appeals, the greater the possibility of justice being defeated. I am one of those who believe . . .

SHRI J. S. BISHT (Uttar Pradesh): No, no. The point is, can you take away the jurisdiction of the Supreme Court? Will the country or Parliament . . .

SHRI J. N. KAUSHAL: Whether we can take it away or not is again a matter for Parliament to decide.

SHRI J. S. BISHT: It is a constitutional amendment.

SHRI J. N. KAUSHAL: If it is a constitutional amendment, it can be made by Parliament. If you are only taking a technical plea, that plea is not maintainable.

SHRI J. S. BISHT: It is not a technical plea.

SHRI P. N. SAPRU (Uttar Pradesh): Do you want a miniature Supreme Court in every taluk or district division and then create a big, glorious and good impression of justice?

SHRI J. N. KAUSHAL: I have great respect for the views of my friend, Shri Sapru. But what I was trying to say . . .

SHRI P. N. SAPRU: I have great respect for his ability but I have to state my opinion.

SHRI J. N. KAUSHAL: . . .was that under article 136, there is no doubt that the powers of the Supreme Court are absolutely unfettered and the Supreme Court exercises those powers. In cases where the Supreme Court feels that grave injustice has taken place . . .

SHRI J. S. BISHT: That is the sole guarantee of fundamental rights.

SHRI J. N. KAUSHAL: My friend is again confusing fundamental rights with article 136. They have nothing to do with article 136. Fundamental rights are safeguarded under article 32. I am not for a moment suggesting that any curtailment of the powers of the Supreme Court or the High Courts should take place. But what I am saying is, the whole difficulty has arisen by the exercise of the powers under article 136. As the Law Commission has also pointed out, such liberal special leave has been granted in labour matters that the whole work of the Supreme Court has clogged.

SHRI P. D. HIMATSINGKA (West Bengal): Because of the abolition.

SHRI J. N. KAUSHAL: Now, the question therefore is, because the Supreme Court felt that it was the judgment of one man and that judgment would not have any finality . . .

SHRI P. D. HIMATSINGKA: Different judgments from different courts.

SHRI J. N. KAUSHAL: The Supreme Court felt that if the matter came to them in the third stage after it had been examined by the High Court, they would interfere more sparingly. But the High Court thought that the judgment was given by only one judge and therefore they should examine the case more or less in all respects. Well, my submission to the House is like this. Was that our intention when we abolished the appellate tribunals? Has the intention of Parliament been achieved? What was the object of Parliament in abolishing a further right of appeal in labour matters? The intention of Parliament in fact was that these disputes should be decided most quickly. Now my hon. friend, Shri Sapru, has tried to deal with this point by saying that if you take away the power of the High Courts or of the Supreme Court, injustice will take place. On that matter my friend may agree with me or may not agree. After working in the law courts, this is what my experience says and I want everybody to share it with me.

Can anybody define what is absolute justice, and can anybody say that what is decided by the highest court is in fact that correct decision?

4 P.M.

SHRI J. S. BISHT: That is what the Communists say.

SHRI J. N. KAUSHAL: Whether the Communists say that or I say that does not carry the argument any further, does not examine the argument dispassionately. I am saying that justice is that which is decided by the highest tribunal; otherwise, there is no other absolute definition of justice.

SHRI J. S. BISHT: Then why not say," "जो राजा करे वही न्याय है।"

SHRI J. N. KAUSHAL: You better listen to me and then go on when your turn comes. Otherwise I would not be able to make my point. My submission to the House is this. Certainly I am raising a fundamental question; I may be entirely mistaken; the House may not agree; it is the wisdom of the House which ultimately prevails. But I only want to put in what my feelings are on the question of administration of justice. I ask: Can anybody say that the judgments of the Supreme Court are hundred per cent. correct? Nobody can say that. Provide a court of appeal and we will show to you that there will be interference even with the judgments of the Supreme Court; naturally, it will not be in all cases; it may be in 10 per cent. of the cases, or 15 per cent. or 20 per cent. of the cases. But then the method evolved by the wisdom of the people is that whatever is decided by the highest court should be taken to be justice. That is the guarantee and if that is the idea of justice, then my submission to the House is—after looking to the litigation as it continues, the misery which follows a litigant as soon as he goes to a court of law—that that misery should be curtailed by giving him not too many courts. That is what I want to say to the House. I do not say: Stop him at the lowest level. I say: Bring him to the highest level but not through four courts, and the highest court also should not be given, as I say, crippled jurisdiction. The highest court should also be given the right of appeal. Otherwise my own experience is that these writ matters, these special jurisdiction cases, they are the result of a large number of cases coming to the highest courts, and yet these only give illusory protection to the citizens. That is the point I want to make. Whether anybody agrees with me or not, it is the experience of each member which matters. Why I say like this? My submission to the House is that applications for special leave are granted in the initial stage in a large number of cases; writs are admitted in the initial stage in a large number of cases, but ultimately relief is granted in a very few cases, and the reason is obvious. The Supreme Court as well as the High Courts have laid down time and again that they will only interfere if there is an excess of jurisdiction, or an error apparent on the record. Now

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then can anybody point out in how many cases there has in fact been an excess of jurisdiction? It is in very few cases. But the litigant has the desire in him to go to the highest court even though he knows that his success ultimately is going to come very rarely. Therefore what I am suggesting is this. Either give to the High Courts and the Supreme Court full rights of appeal so that a subject may feel that I have gone in appeal to the highest court and my appeal has been heard and decided. I am saying this again because in appeal matters the jurisdiction of the High Courts and the Supreme Court is full. Otherwise, in revisional matters and in matters under article 136—I submit to the House—the ultimate interference is very little. The result is only this that the number of cases goes on increasing in the vain hope that the litigant would get justice, but then ultimately it happens that the High Courts and the Supreme Court do not interfere. They say that the decision is wrong but it has that jurisdiction; "therefore we cannot help it". I can quote case after case where the judges say: If we were sitting as a court of appeal we would have given you relief, but then we are not a court of appeal in these matters; we have only supervisory jurisdiction. And they are limiting their supervisory jurisdiction only to cases of excess of jurisdiction. Therefore the whole point which I want to bring to the notice of the House is this and I ask: Are these special leave petitions under article 136, which take up most of the time of the Supreme Court, really doing good to the citizen? My friend, Mr. Sapru, is very vehement for the rights of the citizen. I am also for it to the same extent. But I say: If you want to give protection to the rights of the citizen, take them up to the highest court, the Supreme Court, but only by giving them regular rights of appeal. Don't give him these illusory rights of appeal. These are neither rights of appeal nor rights of revision. They are only just a matter of discretion with the courts, and every citizen in a vain hope is running after the High Court and the Supreme Court, and ultimately, after two days' full-dress arguments, the High Court or the Supreme Court say, "We are very sorry. The judgment seems to be wrong, but we cannot help you. It is a judgment with jurisdiction. The Judge has the jurisdiction to decide rightly as well as wrongly." This famous phrase has done tremendous harm, I should say, to the jurisdiction which we have given to the High Courts and the Supreme Court. Either give them full appeals or take away these powers. That is the point I want to make before the House. Now what has happened? And you see that regular civil appeals are waiting for a number of years, and the High Court or the Supreme Court is only busy to deciding the special leave matters. And what happens to these poor litigants who have the regular right of appeal, who have spent a lot of money for going to the Supreme Court? Their cases are held up, because other cases become more important.

SHRI J. S. BISHT: Increase the number of judges.

SHRI J. N. KAUSHAL: The question is whether the solution lies in increasing the number of judges. And then the same question would again come in, whether the present strength which the hon. Minister is advocating whether that will be enough, and if that is not going to be enough, then are we prepared to go on increasing the number of judges periodically, after every three years increase the number by 3 or 6. Therefore the point which I want to make to the House is this.

SHRI J. S. BISHT: But is the number, even if it is 20, high for a population of 400 millions?

SHRI J. N. KAUSHAL: I am not suggesting that. Why then should the Government bring this case in a very apologetic manner? The Minister says: We will not have all the 14 judges for ever, and as soon as the

arrears are wiped out we may even reduce the number of judges. Have the courage to say as and when the work goes on accumulating we will go on increasing the number of judges. I don't shirk it. I say: You may have the Supreme Court manned by fifty judges even; I do not mind, but I say while giving a strength of fifty judges give them full rights of appeal.

[THE VICE CHAIRMAN (PANDIT S. S. N. TANKHA) in the Chair]

Don't cripple appeals. Don't limit them to revisional matters and to matters under article 136, and these appeals under article 136 are doing no good to anybody. Either give them full appeals or do not give them any appeals. That is my whole point.

And then the other point which I want to make to the House is this. The Supreme Court interferes because the Supreme Court feels that they do not have the assistance of a properly written judgment by the labour tribunals. If they had a perfect written judgment by the High Courts, then they would interfere, rather charily. What I suggest therefore is this. Now, if the whole difficulty has arisen because of labour cases, then do not revive the Labour Appellate Tribunal; then give this right of appeal to the High Court so that again both parties may feel that our matter has been examined in appeal by the High Court. Even with the labour tribunals the people are not satisfied. The people of our country, in fact, have their faith either in the High Courts or in the Supreme Court. Now so far as the Tribunals are concerned, we have to inculcate that faith in the people by telling them that the tribunal judgments are going to be final; whether right or wrong you have to pin down your faith in these tribunals. And my submission to the House is: It raises a very large issue as to whether we should have tribunals or no, whether all matters should be dealt with by the ordinary courts of law. It is a very large issue. If we feel that there are certain matters which should be decided by the tribunals, then my submission to the House is that we have to do two things. Number one, the tribunals should be properly manned; very eminent people should be appointed even to the tribunals so that people may have the same kind of faith in them as they have in the Judges of the High Courts or the Judges of the Supreme Court. That is one way of inspiring the confidence of the people. Whether the people have confidence today or they do not have confidence today in them, their judgments must be final, and confidence will come by passage of item. As I said, the confidence they have today is in the justice which is done by the highest court. And if we feel that the tribunal should be the highest court, then there should be no further inteference with the tribunal either by way of revisional jurisdiction of the High Court or by way of revisional jurisdiction of the Supreme Court. That is the point I want to make. It frustrates our purpose. In one breath we want to make the judgment of the tribunal final, but in the other breath that judgment is not final since it is subject to the jurisdiction of the High Court under article 226 and of the Supreme Court under article 136 of the Constitution. Though the interference is very very small, the number of cases in the High Court goes on mounting and the other work is being stopped. Therefore, what I submit to the House is, as the hon. Mr. Datar has stated, this measure is a measure for the purpose of reducing the arrears. With that proposition I have no quarrel. But I suggest to my friend that the whole question of rights of appeal to various courts including the Supreme Court needs a little more thought; that needs an examination.

The Law Commission also—with all respect to the members of the Law Commission—brought great industry and ability on the problems which they examined. But I would make bold to submit that no solution has been given by them to the real problem of giving speedy and inexpensive justice for that purpose. The only solution which I suggest is this. You have to revise your system of appeal, second appeal, letters patent appeal and a further

[Shri J. N. Kaushal.]

appeal to the Supreme Court. Why should we have four appeals to the Supreme Court? I am one of those who say, let every case start in the High Court and let an appeal lie to the Supreme Court and the matter be finished. Give 200 Judges to the Supreme Court. Every litigant will be very happy that the matter has been examined by the High Court and the Supreme Court. If you do not want to take the small disputes to the High Court and the Supreme Court, you should kindly say that the judgments are final. You should specify whether you want them to be final. These judgments do not become final if there is a further power given to these courts. Though these powers are exercised in very few cases, the only purpose that is being served by these powers is the increase in the court work and the denial of proper justice to the people that they should get. My submission to the House is that some day we will have to sit down for revising our system of appeals. Unless we do that, the litigant is not going to get either quick justice or inexpensive justice.

The other matter which is, of course not very much connected with this—this is only incidentally connected—is, as was pointed out by my friend opposite, that going to the Supreme Court is not an inexpensive matter; it is a very expensive matter. There also it is the rich who can take advantage of the Supreme Court's jurisdiction. It is a great discrimination. We establish law courts for dispensation of justice as between man and man, in fact, for the purpose of justice being given to the poor man. But, is the poor man really getting justice? The poor man has not the capacity to get justice.

SHRI J. S. BISHT: Reduce the court fee.

SHRI J. N. KAUSHAL: You have the power to do that. I am standing before Parliament. I am not standing before a body which could say that this does not lie within their power. I am standing before the sovereign Parliament of the country. Therefore, these matters should be examined in their proper perspective.

This Bill not only raises a very small issue, but larger issues like the matter of appeal, the matter of expensive appeals, the matter of inexpensive appeals, the matter of court fees and so on. These are all connected matters. The sole purpose of law courts is to give inexpensive and quick justice to the people. Are we doing that? With these words, I have done.

DR. R. B. GOUR: Mr. Vice-Chairman, our friend, the Home Minister, has brought a Bill to increase the number of Judges in the Supreme Court, as the other hon. Members who preceded me have said, the Bill is not so innocent as it raises certain very serious problems. In fact, the Bill suggests a remedy for a very serious problem which is really not the remedy but which may only further accentuate the problem, and for that matter he will have to come to seek further remedy in future. That is what my friend here said. That is what Mr. Kaushal also said.

Sir, this question of appeals to the Supreme Court has become a very serious matter. I will come to the question of trade unions to show what difficulties they are facing. I am not a lawyer; I do not know anything about law. But I only know how administration of law and justice is creating problems for people like me. To that extent only I would, therefore, be speaking. I would, in advance seek the indulgence of the House; if for not being a lawyer and not being well versed with the practice of legal quibblings or legal decorum I trespass into other realms overstepping a little the legal boundaries, I may be excused.

Sir, I think, to my mind, there are many judgments even of the Supreme Court which contradict each other. That means the Supreme Court itself is creating a very conflicting type of

case law and, therefore, increasing the possibilities of appealing against High Court judgments. So, the Supreme Court itself, in my opinion, is responsible for creating a situation and an atmosphere that enables more appeals to come to the Supreme Court. I will just give you one example. I will not be able to give you the relevant sections of the law but I can tell you this much.

There was a case in Hyderabad pertaining to a high executive officer of the old Hyderabad Government. He was charged with certain criminal acts and was, therefore, tried. Now, on a Divisional Bench of the Hyderabad High Court, on which there were two Judges, the two Judges differed. One Judge convicted the gentleman while the other thought that there was no ground for conviction. The case went to a third Judge. The simple technical problem which arose was that the Sessions Judge had not called for a particular evidence. The Division Bench should have either returned the matter to the Sessions Judge or should have taken a decision whether that evidence was necessary or not. In any case, the two Judges differed and gave differing judgments. When the case went to a third Judge, he definitely opined that this particular piece of evidence would not materially affect the case and, therefore thought that it was not necessary that the whole procedure must be gone into. He convicted the gentleman. The matter went to the Supreme Court. The Supreme Court in this particular case acquitted the gentleman.

Now, there are cases where the Supreme Court has held different views in similar circumstances. Therefore, if the highest court of our country gives differing judgments in the same case, obviously when the highest court is not giving a final verdict on the question, it is creating a further confusion and, therefore, increasing the chances of appeal.

SHRI AKBAR ALI KHAN (Andhra Pradesh): While making a serious charge of this nature, the hon Member must give the case to show the contradictions.

DR. R. B. GOUR: I have told you it is a Hyderabad High Court case. You can find out other cases. You know them.

SHRI AKBAR ALI KHAN: When you make such a serious charge you must give the full facts.

DR. R. B. GOUR: Well, if you want I will consult my lawyer friends in the other House belonging to my Party and tell you because these matters we discussed at length.

Therefore, Sir, the Supreme Court itself is creating extra chances for appeals. Take the Bharat Bank case of 1951. The Bharat Bank case was a very crucial case. Whether that case could go to the Supreme Court or not itself was challenged. Mr. Justice Fazl Ali gave a dissenting judgment. He said that the case could not come to the Supreme Court; the Supreme Court had no jurisdiction over it. But the other two Judges—the Chief Justice and the other Judge—were of the view that it could come to the Supreme Court.

SHRI T. S. PATTABIRAMAN (Madras): On a point of order, Sir. May I know whether the hon. Member has a right to criticize the judgments of the Supreme Court . . .

DR. R. B. GOUR: Surely, I have.

SHRI T. S PATTABIRAMAN: Please allow me. The judgment of the Supreme Court is final. May I know, Sir, whether it is open to the hon. Member to vivisect it and criticize it in this House?

DR. R. B. GOUR: Yes, I have a right to do that. Mr. Justice Patanjali Sastri, the then Chief Justice of India, speaking in Nagpur once said that the judgments of the Supreme Court could be criticized, and they should be criticized. In fact, it would be very difficult for the Supreme Court to

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function in a normal atmosphere unless its judgments are criticized. I remember the particular speech of Justice Patanjali Sastri, when he was the Chief Justice of India, wherein he said that these judgments must be criticized, but not in the way that Mr. Pattabiraman would like them to be criticized.

SHRI T. S. PATTABIRAMAN: May I point out to my hon. friend, who is, unfortunately, not a lawyer that he can offer a general criticism but he has no right to criticize every judgment especially when he is ignorant of law.

THE VICE-CHAIRMAN (PANDIT S. S. N. TANKHA): I do not think the hon. Member is actually criticising the judgments. According to him some judgments are against others, they are contradictory to one another according to him. That is his opinion.

SHRI AKBAR ALI KHAN: But he has not quoted particular judgments to convince us.

THE VICE-CHAIRMAN (PANDIT S. S. N. TANKHA): That is because he is not a lawyer.

SHRI B. N. DATAR: He need not say that the Supreme Court creates confusion. That is not correct. He might say that difficulties are created by differing judgments.

DR. R. B. GOUR: I am glad to be guided by the hon. Home Minister, though I really want Government to be properly guided.

Now, in the Bharat Bank case it was held even in the main judgment that only points of law would be gone into by the Supreme Court. That was said even in the main judgment in the case of the Bharat Bank case. The dissenting judgment said that the Supreme Court should not look into it at all, that the appeal should not be entertained. In the main judgment it was said that only points of law should be looked into. But what happened subsequently? Are only points of law being looked into? No. Awards are being entirely modified. Therefore, the scope of article 136 of the Constitution is being extended in practice. That is my contention. It is not merely questions of points of law that are being considered, as was said in the Bharat Bank case, by the Supreme Court. You are now going into points of facts, and there are subsequent judgments where you try to extend the scope of this article to points of facts also because it is said points of fact infringe on points of law and therefore they are all interwoven and they should all be gone into, both points of law and points of fact. And later on whole awards are being revised by the Supreme Court.

AN HON. MEMBER: No, no.

DR. R. B. GOUR: My point is, the framers of the Constitution had something in their minds, but in practice we are extending this article and also the work of the Supreme Court by expanding the scope that is made available for appeals to the Supreme Court under article 136. That is my contention.

SHRI AKBAR ALI KHAN: You have to amend the Constitution.

DR. R. B. GOUR: Well, my hon. friend barrister Shri Akbar Ali Khan would not even try to understand this particular point, that lawyers can interpret anything and take it to any extent. What is the position now? Which judgment are we to take? Is it to be the main judgment on the Bharat Bank case which says that the Supreme Court has no jurisdiction in such matters unless they are connected with points of law? Or should we take that judgment which says that points of facts infringe on points of law and so both should be gone into? Both are Supreme Court judgments. So I say under article 136 whole awards are being revised, they are re-written. After all, the Supreme Court is not a tribunal in that sense. A Tribunal in Calcutta goes into the entire question of earnings, paying capacity, wage

structure, cost of living index, costliness of life and everything and then it fixes the wage structure. The question is whether the Supreme Court can go into only cases where the rights guaranteed by the Constitution have been infringed by the Tribunal or whether the Supreme Court can go into questions of cost of living and so on and re-write the whole wage structure. That is the point to be considered.

SHRI J. S. BISHT: Bring in an amendment to amend the Constitution.

DR. R. B. GOUR: It is not for me to bring in an amendment to amend the Constitution. My point is, one interpretation is given in 1951 and a different interpretation is given in 1957. Which is the one to follow?

THE VICE-CHAIRMAN (PANDIT S. S. N. TANKHA): The point is whether you have rightly understood the two judgments.

DR. R. B. GOUR: Then you tell me whether the Supreme Court can under article 136 re-write whole awards. If it can, then it means there is something wrong with the practice or the Constitution. Tell us what it is.

AN HON. MEMBER: You can have an amendment.

DR. R. B. GOUR: I do not think the Constitution is so sacrosant that we cannot amend it. Amend it if you like. My contention is facts connected with industrial disputes should not be looked into by the highest court of the land but only points of law need be gone into. Amend the Constitution if you want. The thing is, unless you take some such steps, appeals in industrial relations cases are not going to be curtailed in number. I am told in 1951 that they will look into points of law. But today you are re-writing entire awards. Tell us whether this should be done. If this can be done under article 136, then amend it.

SHRI AKBAR ALI KHAN: Yes.

DR. R. B. GOUR: Then amend it because industrial relations cases cannot be equated with ordinary civil cases. Ordinary civil cases are based on property laws. Industrial relations are not covered by the ordinary laws of civil contract. I am an employee and the employer cannot say that I am bound by the ordinary civil contract law and therefore he can hire me or fire me at any moment. The moment I enter his employment, that sort of thing just does not apply to me, for industrial law is something more than the ordinary civil law, as you will see if you go through that small book published by the Labour Ministry where the whole question has been, in a way, analysed. A labour industrial tribunal is not just a civil tribunal which will say whether this particular property should go this way or that. Take for instance arbitration. Arbitration under the ordinary law cannot be equated with arbitration in the case of trade unions and industrial relations. Here the arbitration is different. The arbitration here is of a different type. Here the arbitrator is called upon to look to different things. Here it is not so much a question of the wording of the law. Here it is a question of social justice and that is predominant. Therefore, here quite a different set of standing rules and obligations govern the functions of the arbitration in the industrial dispute. I am talking of industrial relations law. Therefore, as I said, you cannot equate civil law or arbitration under the civil law or company law with arbitration under industrial relations law, though both are arbitration. They have to be dealt with separately. When Nandaji was making a statement on the question of Tribunals, we raised this question and he stated that the two could not be equated. Why? That is the question. We say that appeals must be curtailed and voluntarily. That is something different and that is not happening. Since the abolition of the Labour Appellate Tribunal, many more appeals have gone up on ordinary grounds and ordinary issues have been referred to the Supreme Court. I do not understand and I do

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not know and so I am open to correction, but in other matters also even ordinary appeals are going up to the Supreme Court and that is not correct. If a punishment of 7 years' jail is reduced to 5 years, should such a case go to the Supreme Court?

AN. HON. MEMBER: Why not?

DR. R. B. GOUR: The thing is, this is, after all, the highest court of law in the land. What is happening actually is that in our judicial system, the Supreme Court is becoming more and more merely an appellate court and the High Courts are losing whatever weight or place they had in the judicial administration of the country. That is happening more and more. In fact, there is a tendency to give to the Supreme Court a certain administrative control over the High Courts. The moment you take that type of a course, even 35 Supreme Court Judges would not be enough. You have to see that not only in industrial labour relations but also in other cases these references to the Supreme Court are minimised and only very serious points of law or interpretation of law governing the entire judicial administration in the country are referred to it. Otherwise the Supreme Court becomes—excuse me for saying so—a cheap court of appeal, with anything and everything going there. Not only from the point of view of the costliness of litigation but also from the point of view of the dignity of the Supreme Court such appeals should not go there. It has to give the final word in the interpretation of law. That is the point I want to emphasise. The whole question of appeals has to be gone into and more so in regard to industrial matters. This was discussed and the hon. Minister has now suggested the creation of a separate labour Bench in the Supreme Court but whether that Bench of three Judges will solve this problem and whether it will curtail litigation is a point to be considered. We have got the code of discipline and the screening committee. Have these bodies done anything to curtail the appeals? No. We do not see much improvement in regard to voluntary curtailment and the provision of a separate Bench for labour matters is not going to cut down the number of appeals. The trade unions are unable to bear the cost. The employers for an increase of two rupees in the salary would spend freely two thousand rupees in this appeal business. They are used to speculation; they are used to this gambling and, therefore, they gamble in this also but the trade unions cannot afford it. Some time back we amended the Industrial Disputes Act and brought in this three tier system, the labour courts, the State tribunal and the National Tribunal. Parallel to this, the High Court is there and the Supreme Court is also there. With regard to the State tribunal, the matter goes to the High Court and from the High Court it goes to the Supreme Court. In the case of the national tribunal, like the coal award or the banking award, the matter goes to the Supreme Court. The trade unions are facing the biggest difficulty in the States. From the State tribunal the matter goes to the High Court and then to the Supreme Court. Then, this three tier system has become a four tier or a five tier system in actual practice. So far as the All-India Trade Union Congress is concerned, our stand has been that you must have a separate Bench in the High Courts because cases go from the State tribunal to the High Court. Either you can amend the Constitution and remove the Supreme Court from the picture so far as labour matters are concerned and have the Labour Appellate Tribunal as the final body or have a separate Bench of the Supreme Court for labour matters but in any case a restatement of the position under article 136 of the Constitution with regard to the sort of cases that can come up to the Supreme Court has got to be done. I can understand cases relating to points of law coming up but I do not think points of fact can be or should be discussed in the Supreme Court. In the latter case it would be impossible to cut down the number of appeals coming up to the Supreme Court.

Recently there was a judgement of the Supreme Court in regard to a pottery factory in Saurashtra. The Tribunal had given an award which was to be implemented from June 1956. The Supreme Court gave its judgment, I think it was given in March this year, upholding the Tribunal's award. The workers have to get the increased wages from June, 1956. Three years have already gone by. I have not got the judgment with me but if the Supreme Court has said that the workers must get the benefit from June 1956, then I am sure the employers will find it very difficult. It is a small pottery factory, not the State Bank of India. If it is not to be made applicable from June 1956 then the workers would have suffered because the Tribunal had given the award long ago. In industrial matters, the delay of three years means a lot. The workers' claim for wage increase was justified and they get the wage increase from the Tribunal with effect from June 1956. All these years they have been suffering from high prices and low wages. In Saurashtra, Sir, prices are higher than in any other part of the country. That is why the latest cement award has given higher dearness allowance scales to the Gujarat worker than to the others. In the Digvijay settlement also this point was discussed. The union and the employers have come to a settlement that the cost of living being higher the employees should get more dearness allowance. That being the case, if the judgment of the Supreme Court comes after three years, don't you think that this delay is costing the workers very much? The employer is safe. Is the Supreme Court helping in building case law and industrial law? I have earlier stated the difficulty. Take, for example, the question of bonus. You know the history of this question. A fine book has been written on this issue by an ex-Sessions Judge of Madhya Pradesh who had also worked in Labour courts. The name of the book is "Theory, Practice and Law of Bonus in India". I think that is the name. That is a very good book and you will find how the case law in regard to bonus has deteriorated from year to year. There was the famous LAT award which said that bonus was deferred wage. There as a very famous award that the LAT had given in which it was said that where living wage standards are not reached, bonus is a deferred wage and in cases where living wage standards had been reached, bonus becomes extra payment for extra incentive. There are later judgments characterising bonus as *ex gratia* payment, whether the worker gets the minimum wage or not, whether he gets a living wage or not, whether the wage structure falls short of the cost structure or not. Then if it is a puja bonus in Calcutta, it is customary and it must be paid whether the factory is making a profit or is running at a loss. In regard to other cases it cannot become customary. It is quite possible that a factory may have paid bonus for four or five years consecutively in spite of loss but it cannot become customary. A particular factory in Bombay paid bonus for four years even though it was running at a loss and the High Court held that it must pay. I do not know whether it was the High Court or the LAT. Anyway, that judgment is there but now that cannot become customary. Customary bonus is only puja bonus. Therefore, Sir, I say that a very complicated case law is being developed for a very simple problem of social justice. There is that famous Miss Scott's case. She was victimised for union activities and union membership. The Tribunal held that she was victimised and ordered her reinstatement. The Supreme Court agreed with the Tribunal that the dismissal was unjust but then said that in all cases, reinstatement cannot be the remedy. Now, Sir, this creates loopholes. If there is doubt in the procedure adopted, if the employer is at fault, and the case is there, an attempt has been made to show that the dismissal is due to his or her membership of a union, then it is a case of victimisation and the simple remedy is reinstatement. Else, you can come to

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an understanding with the Union. If on the other hand, such case laws are prepared in industrial matters that reinstatement is not the remedy in all cases, then it raises a question of controversy. You say that reinstatement is not the remedy in all cases.

SHRI P. D. HIMATSINGKA: How can that be?

DR. R. B. GOUR: All right. It is victimisation. You are not prepared to reinstate her but offer Rs. 25 and ask her to quit. Your argument is that she was a steno-typist and was working in the confidential section and that, therefore, she could not be re-employed. You say that you might have victimised her—that is a different matter—but that you cannot now have her reinstated. Dou you think this is a proper approach in industrial relations?

SHRI P. D. HIMATSINGKA: This is the proper approach.

DR. R. B. GOUR: Proper approach? My friend here is arguing for the employers. Ordinarily in a court of law you will give the benefit of doubt to the accused. Whom are you giving the benefit of doubt here? To the employer? Not to the girl who has been victimised because of her union membership.

SHRI P. D. HIMATSINGKA: She is the confidential clerk and if she cannot be trusted, how can she be reinstated?

DR. R. B. GOUR: Then you change your trade union law and say that a confidential clerk cannot join a trade union. You say that clerks doing confidential work like Personal Assistants to the management and Steno typist to the Managers cannot join a trade union.

SHRI B. N. DATAR: Mr. Vice-Chairman, is all this discussion relevant?

DR. R. B. GOUR: Of course it is.

SHRI B. N. DATAR: It might be interesting but is it relevant? There is a limit also to the criticism of Supreme Court judgements.

DR. R. B. Gour: Sir, I am not....

SHRI K. K. SHAH (Bombay): On a point of order, Sir. The question before us now is this whether the number of judges of the Supreme Court should be increased. It is not a question of arguing the powers of the Judges of the Supreme Court. What my learned friend is arguing is whether particular powers should be enjoyed by the Supreme Court or not. Now, those powers are defined by the Constitution and unless the Consituation is changed my friend has no right to argue on that point. On the question of increasing the number of judges of the Supreme Court, it is entirely irrelevant.

DR. R. B. GOUR: My hon. friend is very much worried about the case of the employer.

Sir, my point is that such powers are bound to increase the work of the Supreme Court. Even with a 100 Supreme Court judges you will not be able to cope with the work. More trade unions are coming up; more industries are developing and any number of judges would not be able to satisfy the requirements. Therefore these powers will have to be curtailed, the Constitution will have to that extent be amended. That is my case and I will definitely put across that case. I am perfectly within my rights to plead that these are the problems which are arising for the trade union movement and therefore the powers of the Supreme Court in respect of appeal matters must be curtailed and the Constitution will have to be suitably amended. That is my case and I am preaching it on the platform. It is my job; in fact, I am here to plead that.

SHRI P. D. HAMATSINGKA: But. this is not the time.

(*Interruption*).

DR. R. B. GOUR: I am not yielding, Sir, to his interruptions; I am sorry.

THE VICE-CHAIRMAN (PANDIT S. S. N. TANKHA): He has raised a point of order.

DR. R. B. GOUR: What is the point of order, Sir?

SHRI K. K. SHAH: The point of order is this. I would request the hon. Member to understand the point of order. He is arguing about a particular provision of the Constitution which gives certain rights to the Supreme Court Judges and unless that provision is before the House, it cannot be discussed and it cannot be questioned. That is my point of order.

DR. R. B. GOUR: But I can raise the point . . .

THE VICE-CHAIRMAN (PANDIT S. S. N. TANKHA): The point of view of the hon. speaker is that this increase in the number of judges should not be permitted because they are taking consideration of matters over which they should not exercise their jurisdiction. Therefore in a way he is opposing the motion Mr. Datar has put forward.

DR. R. B. GOUR: Now that you have given your ruling . . .

SHRI K. K. SHAH: No; not a ruling. I have been questioned by the Chair that this is the hon. Member's point of view and I may now reply to that question.

DR. R. B. GOUR: I do not think a ruling is replied to. I think the hon. Member should understand our procedure a little. Thank you, Mr. Vice-Chairman.

THE VICE--CHAIRMAN (PANDIT S. S. N. TANKHA): Please proceed but try to confine yourself to the Bill before the House.

DR. R. B. GOUR: I have understood your anxiety that I should not provoke the capitalists in the country.

Now, Sir, this is what I have to plead so far as this question of multiplication of appeals to the Supreme Court under industrial cases is concerned. I thought I could give some instances of certain judgments because our lawyer members would like to hear them but I have given enough. That is enough material for the hon. House and the Government to think on this question.

Then, Sir, they are going on increasing the number of judges from 8 to 10 and then from 10 to 13 and I am sure before the end of the Third Five Year Plan with the increasing activity in the country and therefore expansion of fundamental rights it will become necessary to increase it from 13 to 16. Mr. Bhargava's amendment may not be accepted today but it will have to be brought forward through an official Bill during the course of the Third Five Year Plan because it is usual for our Government to do it. Therefore these fundamental things have to be gone into and we have to see how to check this tendency. We must see whether this expansion of work is absolutely necessary or whether it could be avoided, or checked and controlled. That is the point.

Now, there is one more point which the Home Ministry will have to bear in mind in this particular case, and this is the umpteenth time that I am raising this question. Under the Constitution we were given to understand that the High Courts of Part A and Part B States were absolutely equal so far as their judicial authority was concerned. Of course the salaries of the Judges may be different. But the Judges of the Part B High Courts had the same status as the Judges of Part A High Courts. The Part A High Court was never intended to be an appellate court over Part B High Courts. That was not the position at all. Before the Supreme Court, both the High Courts were same. Now, can you tell me except the Chief Justice of Rajasthan High Court, is there any other gentleman who has been taken to the Supreme Court from any Part B High Courts?

SHRI P. N. SAPRU: On a point of order, Sir. I did not want to intervene so far because I thought the hon. Member was in order but certainly the question of the status of Part B or Part A High Court Judges or whether Part B High Court Judges should have been assigned some position is not under the consideration of the House.

DR. R. B. GOUR: I am sorry I have offended Mr. Sapru. I do not want to go into it because he comes from a Part A State and he was a High Court Judge. My point is, after the reorganisation of the States in 1956, the Part B High Courts have been abolished and a lot of injustice has been done to the Judges of Part B High Courts.

SHRI P. N. SAPRU: But that is not the matter which we are considering now.

DR. R. B. GOUR: That is an important matter and I am going to raise it and I will tell you how we can consider it. Now, there are certain Judges who have suddenly become Junior High Court Judges of the new States. There are Judges particularly in the old Hyderabad High Court who have become Judges of the continuing Andhra Pradesh High Court, Judges who were appointed in 1943 or 1946. In those days when the Hyderabad High Court was not a Part A High Court, some of them were suggested to be transferred to Uttar Pradesh High Court or even suggested to become Chief Justice of the Hyderabad High Court. They are still sitting as Judges junior to those who have been appointed in 1954 or even later.

THE VICE-CHAIRMAN (PANDIT S. S. N. TANKHA): But, Dr. Gour, that is a matter outside the scope of this Bill.

DR. R. B. GOUR: What I am saying is, you must see . . .

SHRI AKBAR ALI KHAN: What he is saying is that injustice has been done and it should be remedied at any stage.

SHRI B. N. DATAR: During any discussion it can be raised?

DR. R. B. GOUR: I will satisfy the hon. Minister. The point is, the seniority of the Judges has suffered and they have suffered for your sake, for the nation's sake and for the sake of the Act. Now, here is a chance of looking into their cases.

THE VICE-CHAIRMAN (PANDIT S. S. N. TANKHA): But we are not considering the question of High Court Judges now.

DR. R. B. GOUR: After all, if this Bill is passed, three more Judges will be appointed to the Supreme Court and I would like him to consider this question. I would like the Supreme Court Judges to consider this question whether the cases of such seniormost Judges of the old Hyderabad High Court should not be considered on the basis of individual merits. I do not want the Supreme Court to be a Federal Court in the sense that every High Court must be represented, every community must be represented, every calamity must be represented. I want them to consider this question on the basis of individual merits.

SHRI J. S. BISHT: Even if they have a chance, you are spoiling it now.

DR. R. B. GOUR: I know I am not capable of spoiling anybody's chance. I am a small person belonging to a small group in this Rajya Sabha and I cannot spoil anybody's chance.

Then there is a certain suggestion made in certain quarters towards a solution for this problem of the Supreme Court. I will just moot the idea and let the hon. Minister consider it. Now, you are raising the number from 10 to 13 and you may raise it again from 13 to 15 and so on. The suggestion is this. You have a small permanent Supreme Court here. In the old Hyderabad we used to have a Judicial Committee which was a sort of an appellate court. There were some permanent members of that Judicial Committee

but for different purposes the sitting Judges of the High Court were invited to function on the Judicial Committee. They used to dispose of the appeal cases and then return. Of course, if a particular High Court Judge happens to be on the Judicial Committee when his own judgment comes up in appeal, he will not sit on the Committee, but somebody else will sit. Why can't you think of some such solution for the country? You could have Judges from the various High Courts, form Benches of the Supreme Court, dispose of appeals and then send them back. Having a full thirteen-member Supreme Court Bench, instead of having all that big paraphernalia, you could have a small Bench of five with the Chief Justice. Then, as and when required you can draw Judges from the High Courts, form a Bench and dispose of the case. This is a suggestion.

SHRI P. D. HIMATSINGKA: It may not be to their advantage.

DR. R. B. GOUR: There will be no unnecessary competition to become Judges of the Supreme Court and extend the retirement age by five years. That sort of competition will not be there and then problems, such as 'my State is not represented', 'my community is not represented' shall not arise. There may be fifteen States and how can thirteen Judges represent each State? Therefore, they will say this State is not represented and this particular community is not represented. All sorts of problems can be avoided if you have a small Bench and then draw High Court Judges to form Benches, dispose of cases and ask those Judges to go back to their respective High Courts. This is an idea. You can think about it. I think that competition among the Judges to become Supreme Court Judges will be lessened to a certain extent. After all they are human beings. They are also likely to fall a prey to certain likes and dislikes and ambitions and frustrations. Therefore, please consider this suggestion. These are the remarks that I wanted to offer.

SHRI BIBUDHENDRA MISRA (Orissa): Mr. Vice Chairman, the question that has been posed in the Bill is very simple. The facts on which the question is posed are simpler. The fact is that there has been a slight increase in the pending cases. Please mark the word slight. The question is that three Judges are necessary for this. That is what we are going to consider today. The Constitution-makers in the year 1949 thought it wise to provide that the Supreme Court should have seven Judges in all, excluding the Chief Justice of India. It was in 1956, seven years later, that the number was raised from seven to ten. It was argued then that article 145 of the Constitution required that the Constitution Bench should consist of five Judges and therefore it was not possible to run the Supreme Court with eight Judges in all I would only submit, without going into further arguments, that the Constitution-makers, while incorporating article 124, must have looked into the provisions of article 145 and while incorporating article 145 they must have also looked into the provisions of article 124. The number was increased to ten. Now, we are being asked to increase it to thirteen. I have no objection if for a proper disposal of the cases, for a speedy disposal of cases—because I am well aware of the principle that justice delayed is justice denied—instead of three, even if ten or fifteen Judges are necessary for the Supreme Court, they should be given. But the question is: In view of the facts that are there, is it actually necessary? The Law Commission, which consisted of many experts in the country, experts in the profession, many retired Judges, opined, after taking all facts into consideration, that for the present the number of Judges should not be increased. And in order to deal more effectively with the pending cases, they suggested certain remedies. May I ask the Home Minister why the remedies that were suggested by the Law Commission have not been tried so far? For example, they have said—it has been argued in detail and therefore I will not go into it at length—that the

[Shri Bibudhendra Misra.]

Supreme Court is at present being clogged with labour appeals and that some machinery should be provided, some provision should be made in the different laws, so that appeals flow to the High Courts. Or a specially constituted tribunal can be provided, so that the cases in the Supreme Court will be lessened. It is not because we have argued at length about article 136 of the Constitution. The Law Commission have not gone into it at length. They want article 136 to be there as it is. All that they mean is that if a provision for appeal is provided in the Labour Act, many of the cases that are now coming to the Supreme Court from the tribunals or otherwise would not come to the Supreme Court. So, the number of cases would be lessened. That is the first suggestion they have made. We have also seen from experience that the Representation of the People Act, 1951 also did not provide for an appeal, as a result of which under article 136 of the Constitution of India many cases came to the Supreme Court. Again by an amending Act of 1956, an appeal has been provided for to the High Court and that naturally lessened the number of cases in the Supreme Court so far as the Representation of the People Act is concerned. Similarly, the Government should consider if it would be possible—and there is no reason why it should not be possible—to provide for a machinery so far as labour laws are concerned. And, Sir, it will not create any difficulty, since most of the fundamental principles of the labour laws have already been decided by the Supreme Court. That would be my first suggestion.

Then, it has been stated in the Statement of Objects and Reasons that another Bench consisting of three Judges has become necessary to dispose of the remaining cases. In this connection, I would point out that already there is a constitutional provision that there should be five Judges so far as the Constitution Bench is concerned. But there is no constitutional provision that there should be three Judges in the case of other Benches. According to the rules of the High Court, according to the provisions of article 145 of the Constitution, there is no bar in framing a Bench with one Judge or two Judges . . .

AN HON. MEMBER: How can that be done?

SHRI BIBUDHENDRA MISRA: I am saying that the system of preliminary hearing be introduced, which will lessen the burden on the Supreme Court. That has also been one of the suggestions of the Law Commission. I would only suggest that an attempt should be made to experiment with the suggestions that have been made by the Law Commission before a proposal comes before the House for additional appointment of Judges in the High Court.

Then, Sir, there is another difficulty and the difficulty is a fundamental one. Now, the increase in the number of Supreme Court Judges is sought to be made on the ground of pending cases. That will be a dangerous proposition because naturally every year the number of cases will fluctuate. They may go down or go up and it will be a dangerous precedent to increase the number of Judges of the Supreme Court on the basis of the pending cases. For example, some figures have been given by the Home Minister. I would request hon. Members to look into the figures given in the Law Commission Report itself, the figures given from 1950 to 1956. It will show that no calculation can be made on the basis of these cases. It will be seen that so far as disposal is concerned, in some year it was 100, and in some other years it was 900 and 500. Therefore, we need go into the nature of the cases that are now there pending disposal, the principles that are involved and the time that will be taken for the disposal of these cases. Supposing it does not take quite a long time for

the disposal of the cases what are you going to do with the Judges who are appointed. The suggestion that has been made by the Home Minister does not appear to be as simple as it seems. He says others would retire and they would be absorbed and in course of time they would be employed. That is not a happy suggestion. On the contrary I would suggest this. If it is found that the suggestions made by the Law Commission are not workable after the experiment has been made, I would suggest that article 128 of the Constitution should be resorted to. It empowers the Chief Justice of the Supreme Court of India, in consultation with the President of India, to request any retired Judge of the Supreme Court or the Federal Court to act as a Judge of the Supreme Court for any length of time that is necessary. That why the problem can be solved. I do not know if it has been tried. The hon. Home Minister only said that it may be difficult to get the services of such persons. I would request him that the provisions of article 128 should be resorted to befo any such steps are taken to increa the number of Judges.

DR. W. S. BARLINGAY (Bombay) That is only as a temporary measur

SHRI BIBUDHENDRA MISRA: W want only a temporary measure. Th is what has been stated in the Stat ment of Objects and Reasons. We c not want a permanent measure. Plea read the Statement of Objects an Reasons. I would suggest therefo that article 128 of the Constitutio should be resorted to before we a asked to go into the question of a pointment of more Judges to th Supreme Court.

THE VICE-CHAIRMAN (PANDIT S. N. TANKHA): The House stand adjourned till 11 A.M. tomorrow, th 8th April 1960.

The House then adjourne at five of the clock till eleve of the clock on Friday, the 8t April, 1960.

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