193. You stop here and you can continue this discussion next time.

Prof. Madhu Dandavate will start this discussion. The time allotted is two hours.

DISCUSSION RE : URGENT NEED FOR JUDICIAL REFORMS IN THE COUNTRY

[*English*]

PROF. MADHU DANDAVATE (Rajapur) : Mr. Deputy Speaker, Sir, I rise to raise the discussion on the judicial reforms in the country. You are quite aware of the fact that, some observations of the Supreme Court Judges regarding the appointment and transfer of judges in various courts and evolution of healthy norms by the Government so that judges are appointed on the basis of merit and well defined norms, when those observations appeared in the Press, I was impelled to give a motion that would plead for the judicial reforms in the country. It is hoped that the debate will provoke the Government to give up its lethargy, rise to the occasion and try to have a comprehensive judicial reforms which are a must for improving the judicial system in the country.

There is no dearth of material regarding judicial reforms in the country. Our veteran Prof. Ranga is not here. He was a member of the Constituent Assembly and the debates of the Constituent Assembly are available in which a number of problems concerning the reforms of judiciary were discussed at the time of drafting the Constitution, certain suggestions made by eminent jurists and others in the Constituent Assembly were found not to be suited to the conditions then, but if we take the conditions of today we find that some of the amendments that were suggested in the Constituent Assembly as early as 1948, 1949 and 1950, they will be found to be relevant to the situation today. So, one source is the debates of the Constituent Assembly. Then we have got the Law Commission's Report and their recommendations; then we have got monumental work tby the famous jurist Shri H. M. Seervai, he well-known work, "Constitutional Law of India" in which he also summarises the need for judicial reforms in the country; and then there are various recommendations by various seminars held by the Bar Council of India and the Bar Councils and Bar Associations in different parts of the country. The central theme for the judicial reforms would be the very concept of judiciary itself.

For a long time, we have been hearing about the so-called committed judiciary. I would like to warn the House about this fashional concept of committed judiciary. Permit me to say, without casting aspersion on anyone, that a concept of committed judiciary would only mean bonded judiciary, which cannot mean anything else. Of course, others can argue. But, I have not the least doubt.

Taking into account the long judicial history of India and the attitude of the Government to the institution of judiciary and their attitude to the Judges and their outlook, I have come to the conclusion that this current coining 'committed judiciary' in the country is a glorified name for a bonded judiciary in the country and I totally reject this concept. Such a judiciary will ever be willing to show different favours to the establishment of the time, no matter, whether it is the Janata Government or the Congress Government or the Communist Government. The moment you talk in terms of committed judiciary' it is very likely that they shall try to extend their favours to the establishment of the time and that is a dangerous precedent for any judicial system. I can understand a case being 'committed to the sessions', but I can never understand judiciary being committed ! And, therefore, these concepts have to be completely given up if we want to start really basic reforms in the judiciary.

The central theme will be the procedure for the appointment of the Judges and the procedure that has been laid down for the transfer of Judges. Not only the Constitutional provision—the Constitutional provisions have not stood the test of time; certain interpretations have been put forward and you will find that the constitutional provisions regarding the appointment of Judges and their transfer have to be carefully gone through. Article 124(2) of the Constitution says—

"Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years :

Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted :"

"Shall always be consulted" ! The very framing of this particular Article 124(2) is such that it is left open to diverse interpretations; and over the years different critics of the Constitution, different jurists, different lawyers have interpreted this particular article in a different way. The first question that arises is—

"Are the provisions for consultation mandatory ?" Looking to the spirit of this Article of the Constitution some of the jurists have said that all the provisions of this particular article are mandatory. Consultation is mandatory. But, Sir, again in the construction of this particular Article 124(2) at different places the wording that has been used and the construction that is utilised is slightly of a different type. As far as the first part is concerned, it says," the President may deem necessary for the purpose."

So, there is an interpretation, that this consultation is not obligatory; this is not mandatory. And of course, in the second part, that is, the proviso it is clearly said :

"Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted :"

There of course the consultation is mandatory and obligatory. But all the same it is consultation alone.

The second doubt that arises is, is there a difference in the provisions regarding the appointment of Chief Justice and Chief Judges ? One contention is that "any Judge" means also the Chief Justice. And therefore, both the provisions are one and the same thing, put in a slightly different form. Then the next question is, is consultation dependant on the desire of the President ? In the earlier portion of the Article the words used are 'as the President may deem necessary'. And since that is the construction, some may argue that it is not obligatory at all. Therefore, I suggest that for the sake of not only brevity but also clarity it is better that the word 'consultation' should be replaced by 'concurrence'. Mere consultation is not sufficient. There should be concurrence.

SHRI SHYAM LAL YADAV (Varanasi) : That will change the whole meaning.

PROF. MADHU DANDAVATE : That is my point of view. Actually I am not saying something new. Some Members might feel unduly disturbed, but if you go through the proceedings of the Constituent Assembly, there was a lot of debate on this particular point and there were two very strong points of view. After that the framing of the Constitution was as it is indicated here. Therefore, I personally feel that you may not like the word 'concurrence' you may use some other word, but try to tighten the construction of this particular Article 124(2) so that it should be very clear that consultation is mandatory and obligatory and consultation does not merely depend upon the desire or the satisfaction of the President. So, all these things must be made clear. I think the construction of that particular clause is very loose. But I can understand the looseness of the construction, because it was evolved at a time when certain norms and traditions and conventions were very much respected. There it was understood and Dr. Ambedkar also felt that when we say that there is a consultation that consultation would be respected. After that consultation there would not be supersession. That was the accepted action. But what was the reality ?

Now, let me come to the most crucial point i.e. the question of supersessions and transfers There has been a convention that seniority and suitability should be respected. By and large it was respected for a long time. But then came 25th April, 1973 when Justice

[Shri Shyam Lal Yadav]

A.N. Ray was appointed as Chief Justice of the Supreme Court superseding Justice K.S. Hegde, Justice A.N. Grover and Justice J.M. Shelat, only because their earlier judgments were** to the Government. Some leaders of the Government did not hide that view. I had the privilege to be in this House in the Fifth Lok Sabha and some who are talking in terms of committed judiciary did not mince words and made it clear that on the basis...of** they did not claim to be the Chief Justice of India.

I would like to give another instance. Sixteen Judges in various High Courts were transferred during the Emergency to distant courts as because they delivered orders or judgments or interim orders or judgments**... to the Government at that time. I was a witness to that and I was also an instrument of experimentation because I was one among those who had filed the habeas-corpus petition in the Bangalore High Court when I was a detenu in Emergency in the Bangalore Central Jail. When we appeared there, I may quote a very interesting incident that every time our Counsel like Justice Chhagla or Justice Venugopal or some others tried to put forward certain points of view and pointed at the lacunae or pointed out certain aspects that were violated, within a few days there was a Constitutional Amendment in this Parliament. So sometimes I have a guilty conscience that not only this Government was responsible for anti-democratic amendments, but people like us were also responsible and instrumental for those anti-democratic amendments, because when we go to the court of law and our Defence Counsel argues, the moment he pointed out the lacuna, that lacuna was removed by the Constitutional Amendment in this House. Of course, we were not here to speak in the House because we were sitting in the Bangalore Central Jail.

Now, sixteen special Judges were removed for their historic ..** rulings and judgments. They were sent to geographically inconvenient locations. That is what happened during the Emergency. And only after the Emergency ended those sixteen Judges were given the freedom to return to their respective courts. Two of them settled themselves at a place where they were sent and fourteen came back to their respective original Courts. But that happened and let us take note of that also.

I would like to point out a third aberration that had taken place because while having the judicial reforms, we will have to keep before our minds all these aberrations that had taken place over the years. Shri R. Dayal, the Metropolitan Magistrate from Delhi who gave orders for Shrimati Indira Gandhi's release was later on appointed to Sikkim High Court superseding thirty senior Judges in Delhi Judicial Service. This is because he allowed himself to.*.....

Now, I would like to give the fourth instance. Justice Shukla was given the temporary appointment as Chief Justice of Allahabad and he confirmed sixteen appointments opposed by his predecessor. Chief Justice Agarwal, who was transferred to the Calcutta High Court. When Justice Shukla finalised those appointments which were lying pending, he was then confirmed.

Then I would like to give the fifth aberration. Till the Chief Justice of Madhya Pradesh High Court, G. P. Singh retired, ten appointments which were held up were confirmed and Justice C.K. Ojha became the Chief Justice. He is now being tipped for the Supreme Court Judgeship. And in 1977 January, Justice Beg was appointed—I am not casting any aspersions In January 1977 Justice Beg was appointed Chief Justice of India.

[*Translation*]

SHRI HARISH RAWAT (Almora) : You are mentioning his name.

(*Interruptions*)

[*English*]

PROF. MADHU DANDAVATE: Sir, there is absolutely nothing.

SHRI EDUARDO FALEIRO (Moemuga) : There are many facts, but they shall not be mentioned here.

(*Interruptions*)

*Expunged as ordered by the Chair.

PROF. MADHU DANDAVATE : Will you listen to what happened? (*Interruptions*). Sir, no aspersions. (*Interruptions*). Did you listen to what I said ?

(*Interruptions*)

SHRI EDUARDO FALEIRO : It will be newspapers tomorrow morning. Then what in will be the position of Judges ?

(*Interruptions*)

PROF. MADHU DANDAVATE : Sir, rather than discussing with the Parliamentary Affairs Minister, will you dispose of the point of order ?

SHRI EDUARDO FALEIRO : The position is very simple. I do not want to raise this point, but I am compelled to raise it now, that when Prof. Dandavate mentioned specifically particular judges, now he is infringing the rule which says that the conduct and the nature of the judiciary and judicial officers cannot be discussed in this House. Look at the result. Prof. Dandavate has no evidence, has not submitted any evidence to you. He is making some allegations. Tomorrow when these allegations appear in newspapers, what is going to be the position of those judicial officers ? This is not the forum to make this type of allegations. Nobody objects ...

(*Interruptions*)

PROF. MADHU DANDAVATE You need not give the Ruling, Sir. I accept it. You need not give the Ruling even.

SHRI EDUARDO FALEIRO : If you make your general observations, you can attack the Congress Party... ..

PROF. MADHU DANDAVATE : No, no. It is not worth it !

(*Interruptions*)

SHRI EDUARDO FALEIRO : But the Judges are not here to defend themselves. Don't make allegations against the Judges.

PROF. MADHU DANDAVATE : Sir, I will give a precedent. Fortunately I was the person who from the very Benches in the Fifth Lok Sabha initiated discussion on the supersession of Judges. I referred to Mr. A.R. Ray, I referred to Mr. Hegde, I referred to Mr. Shelat, I referred to Mr. Grover, and for your information, you can ask for all the records of Fifth Lok Sabha and you will find that the very motion was 'Supersession of Judges' and all this was discussed there.

(*Interruptions*)

AN HON. MEMBER : This is not the point.

(*Interruptions*)

SHRI P. CHIDAMBARAM : Sir, he made a statement that 16 appointments were held up during the tenure of so and so Justice and were finalised after so and so Justice took over. Is that a statement of fact ? It is an inference. It is an aspersion that he is casting upon the previous Chief Justice.

(*Intetruptions*)

PROF. MADHU DANDAVATE : Sir, I have not cast any aspersion. I have only stated the facts.

(*Interruptions*)

MR. DEPUTY SPEAKER : The Minister wants to say something. Please sit down.

(*Interruptions*)

THE MINISTER OF PARLIAMENTARY AFFAIRS (SHRI H. K. L. BHAGAT) : Sir, I would just state the fact. The Hon. Member, Prof. Madhu Dandavate is a stickler for the rules and he himself is always pointing out rules and other things. I do not want any discussion to take place on this. But one accepted principle is, no reflection can be made during the speech of the Hon. Member on any judge. (*Interruptions*) What he has said, whether it amounts to reflection or not, the Deputy Speaker can go through the record and if there is any such remark, it should be expunged. It is not that it should be expunged the remarks after appearing in the newspaper.

SHRI A. CHARLES : May I point out one single allegation made ?

MR. DEPUTY SPEAKER ; No. Please sit down.

PROF. MADHU DANDAVATE : I am not yielding. If it is a point of order, I will yield.

MR. DEPUTY SPEAKER : We have already discussed the point of order. Please sit down.

SHRI A. CHARLES : A statement was made that the Chief Justice was transferred to Sikkim overlooking 30 judges because he made a *judgement supporting the Government. That is clearly an allegation.

MR. DEPUTY SPEAKER : I will go through the record and I will see. If there is any aspersion or anything, it will not go on record.

PROF. MADHU DANDAVATE : I am attacking the action of the Government, as far as the transfers are concerned, it is the Government that is responsible. (*Interruptions.*) I do not want to be obstructed at every stage. I never get up and obstruct anybody.

MR. DEPUTY SPEAKER : I will go through the record.

PROF. MADHU DANDAVATE : If I say that 16 judges were transferred during the Emergency, it is an attack on the Government and I have condemned it any number of times.

As far as supersession of judges are concerned, there was a regular debate on Mr. A.N. Ray becoming Chief Justice of India superseding three judges. On that subject, there was actually a debate and it was a 5-hour debate in this very House. But I accept your direction.

SHRI EDUARDO FALEIRO : Impeachment can also be discussed in this House.

PROF. MADHU DANDAVATE : There was no impeachment. It was again a discussion under rule 193. It was again Madhu Dandavate. That Madhu Dandavate was the same this Madhu Dandavate who is speaking today. Let me make it very clear. Therefore, Sir, I accept your ruling.

SHRI A. CHARLES : Much water has flowed.

PROF. MADHU DANDAVATE : Why do you want to disturb at every sentence. I can do it also. I can disturb you every sentence. But I do not want to do it.

Let me tell you, I follow your instructions. I will say nothing that will cast aspersions. But if judge 'X' has superseded judge 'Y', mentioning 'X' and 'Y' is nothing wrong. If some one has superseded, I will only make a reference to that. (*Interruptions.*) Sir, every time I have been interrupted...(*Interruptions*).

MR. DEPUTY SPEAKER : You can continue now.

PROF. MADHU DANDAVATE : No aspersion. I am stating the fact. In January, 1977, Justice Beg was appointed the Chief Justice of India—no defamation—superseding his senior judge H.N. Khanna. No aspersion. This is statement of fact. I will not connect it with anything. This is the same H.N. Khanna who gave in the famous MISA *habeas corpus* case, the famous judgement defending the right of the MISA Detenus for a judicial review. The Attorney General pleaded the case and he said : Once the Emergency is pronounced and the fundamental rights are suspended, in that case, one who is detained under MISA, whatever happens to him in the jail, no doors are open for judicial review". And then, Mr. Khanna put a very inconvenient question. He asked the Attorney General

SHRI HAROOBHAI MEHTA : Point of order.

PROF. MADHU DANDAVATE : What is this point of order ? What is defematory. Let us know, whether they are going to obstruct the debate. Let us be very clear.

SHRI HAROOBHAI MEHTA : This is clear contravention of article 121 of the Constitution of India which bars any discussion on the conduct of any judge.

*Expunged as ordered by the Chair.

PROF. MADHU DANDAVATE : I am not bringing the judges into the picture. I am bringing the Government into the picture. I was saying this in the past. I have just quoted the precedents. I have suggested, you go through for the whole night the proceedings of the whole debate connected with law and you take two days to expunge. (*Interruptions.*)

MR. DEPUTY SPEAKER : Please sit down. I will go through the debate. I will see it.

PROF. MADHU DANDAVATE : Article 121 of the Constitution says that no Member of the Legislature can discuss the conduct of the High Court Judge or the Supreme Court Judge.

SHRI P. R. KUMARAMANGALAM (Salem) : I am on a point of order. With due respect to you, I say that in 1973 when the debate took place on supersession of Judges, it was a specific debate about the appointment of the Chief Justice. That was the matter which was dealt with and in that debate, I am willing to stand corrected; you can verify, the course of judgments, the arguments in courts were not discussed. What was discussed may be the philosophies or the thinkings of Judges or may be, as the Professor says in his own words, the committed or the bonded judiciary in his terminology. May be such things were discussed. But never was a judge pointed out by name and said "He is being superseded because of this judgement or that judgement." No. On the contrary, general trends were pointed out, general issues were taken up, the general behaviour of judiciary was noted and discussions took place. I request, in the interest of the three Wings, as laid down in our Constitution, and the stability and the interest of the nation that individual names are not picked up, individual judgments are not pointed out and arguments be taken up. If we do that we are bound to go down much lower in the eyes of public judgement.

MR. DEPUTY SPEAKER : Please wind up. I have told you I will go through the records and let you know.

PROF. MADHU DANDAVATE : Let me correct the information.

SHRI HAROOBHAI MEHTA : Whether this is a point of order or not is to be decided. Otherwise, you cannot ..

MR. DEPUTY SPEAKER : Please sit down. I told you I am going into the record and I will verify everything. Then I will expunge it.

(*Interruptions*)

SHRI P. R. KUMARAMANGALAM : It is in the interest of the nation. It is not a small matter.

PROF. MADHU DANDAVATE : I will only remind Mr. Kumaramangalam that fortunately I was present during the debate and only theoretical things were not mentioned. The various judgments that Hedge, and Shelot and Grover had delivered, were read out in this House, extracts were read out and a case was made out that they are being victimised for the type of judgement that they have made. Neither the Members of the ruling party, I may tell you, Mr. Kumaramangalam's father was seated in this very august body, even he did not object to it. He said "Let us have a free and fair debate" and the matter went on. Madhu Limaye quoted some of the judgements. He initiated the debate. I want, therefore, to be corrected on the point of information.

SHRI HAROOBHAI MEHTA : You should give the ruling.

MR. DEPUTY SPEAKER : I have already assured you that if there is any aspersion, it will not go on record. I will go through the record.

PROF. MADHU DANDAVATE : The judgements were quoted. We alleged that because the judgements were** that is why they were penalised. That was the line and Madhu Limaye had tabled that motion. He initiated the discussion. Kumaramangalam participated in it. Others participated in it on both sides. There was a discussion on the type of judgements that were delivered. Nobody objected to that. There was a free and fair discussion and we contributed to the

**Expunged as ordered by the Chair.

[Prof. Madhu Dandavate]

building up of a public opinion on the question of supersession. That is the history of this Parliament. And this Parliament will continue to be a live Parliament like that and, therefore, I am saying.

SHRI HAROOBHAI MEHTA : I am entitled to take the decision of the...

SHRI P. R. KUMARAMANGALAM : He is not tlaking of the types of judgements and the philosophy of judgements.

MR. DEPUTY SPEAKER : I told you I will go through the record. I want to verify it.

(Interruptions)

MR. DEPUTY SPEAKER : Those things will not go on record.

PROF. MADHU DANDAVATE : Will you allow me to continue ? You tell me the point of order. Is there any point of order ? You tell me, I will take my seat.

MR. DEPUTY SPEAKER : No. You can speak.

SHRI RAM PYARE PANIKA (Robertsganj) : What is the use of raising a point of order ?

MR. DEPUTY SPEAKER : There can be several things. I want to verify. I told you that I will verify the record.

SHRI HAROOBHAI MEHTA : There is a clear prohibition in the Constitution...

(Interruptions)

MR. DEPUTY SPEAKER : I will tell you. The names can be mentioned but there cannot be any aspersion.

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI H. R. BHARADWAJ) : I want to point out one thing. The Hon. Member spoke about Justice Ojha; he say that his appointment in the Supreme Court is being considered. It is facually incorrect, his case is not being considered at the moment.

PROF. MADHU DANDAVATE : It is very good that the correction has come.

SHRI H R. BHARADWAJ : It is only in his imagination.

PROF. MADHU DANDAVATE : Whatever is imaginary may be left to imagination.

I am telling you the facts. In 1977 superseding Justice Khanna, Justice Beg was appointed. At that time a similar controversy look place. It is again an allegation against the Government, no allegation against the judge. It is our allegation against the Government. In the famous MISA *habeas corpus* case it was the contention of the MISA detenus that even in an Emergency the right to judicial remedy was open to the MISA detenus. But Government took a different decision. Arguments took place. And when the Attorney-General said, "Once the Emergency is proclaimed and the Fundmental Rights are suspended. the right to judicial review is not available to the MISA detenu" Justice Khanna asked a very clear question : "Mr. Attorney-General, if a detenu is shot dead by the jail authorities during Emergency inside the jail, have the relatives of the detenu no judical remedy to go to the Supreme Court ?" Then the Attorney-General said. 'Your Lordship, I am very sorry to state that, under the present conditions, judical remedy is barred'. These were the strong lines that were taken by those people. I am making an allegation not against the judge, not against Justice Beg, not against any other judge; I am making an allegation against the Government; during the Emergency, these judges held their heads high and tired to deliver Judgements and interim orders. Theywere not** to the establishment; so they, were**. Supersession of Justice Khanna was a part of victimisation to which they had been subjected. Therefore, we need a reform in which all these will be totally eliminated.

Take, for instance, the provision that one-third judges should be from outside the State. I know, even lawyers are divided on this, even members of the ruling Party are

**Expunged as ordered by the Chair.

divided on this issue. It is an academic proposition. (*Interruptions*) I know, in the Consultative Committee, various views were expressed. Do not ask me to give the names...

SHRI H. R. BHARADWAJ : What he says is incorrect. The Consultative Committee was unanimous on this. I am prepared to show the records.

PROF. MADHU DANDAVATE : In this very House during the Zero Hour, by giving notice, this issue of one-third judges was raised and we found a difference of opinion irrespective of political parties. Even among the lawyers, some said that it was a very good provision and some others felt that it was likely to be misused. I have a point of view that, if one-third judges are to be necessarily from outside the State, you give more manoeuvrability, more capacity for manoeuvrability, to the administration. That is one point of view. I know some of my colleagues who are lawyers are in favour of this. Let me make it very clear that some of my colleagues who are in Parliament and who happen to be members of my Party are of the opinion that their working as lawyers has given them the idea that, if one-third of the judges are from outside the State, from the point of view of working of the judiciary it will be a good proposition. I may tell you that it cuts across party lines. But I want to warn that even this provision, without necessary safety valves and necessary reforms, if taken in isolation, is likely to be used as a manoeuvring lever, as a lever to operate to throw away certain unwanted judges from outside the State. Even that has to be taken into consideration.

The former Union Law Minister had sent a letter to various States asking them to try to approach judges and get letters that they were willing for transfer. I had raised this question in this very House and asked the Minister for Law, Justice and Company Affairs whether it was not a fact that the Chief Justice of India had expressed his displeasure to this type of letters being taken from the judges voluntarily offering themselves, saying that they were prepared for being transferred to different States. Young judges who want prospects may say that they are prepared to give this in writing. But then there is some sort of a coercion. Such coercive practices have to be avoided.

There is one more amendment to which I would like to make a reference. Dr. Ambedkar had made a reference to this in the debates in the Constituent Assembly. Prof. K. T. Shah was a very eminent and vigilant member of the Constituent Assembly. He had moved a very significant amendment, and I am sure that on that amendment there can be unanimity even cutting across Party lines. What was the amendment ? I would like to preface it by what Mr. H.M. Seervai said on that particular amendment in retrospect :

> "To secure independence of the Comptroller and Auditor General of India and the Members of the Public Service Commission, our Constitution has provided that, on ceasing to hold these posts, the incumbent cannot hold any office under the Government of Union or States."

This provision is already there. Prof. K. T. Shah moved one amendment in the Constituent Assembly, and he suggested that, on similar lines, for the High Court judges and Supreme Court judges, a similar provision should be introduced; when the Supreme Court and High Court judges retire, they should be debarred from holding any post or any appointment given by the Government of India or by the State Government concerned. The noble objective was that, just as the Comptroller and Auditor General of India and Members of the Public Service Commission are debarred even after retirement to hold any post in the Government so that when they are in power, when they are functioning as administrators, they will not keep their eyes on the gains to be accrued afterwards, in a similar way, the Supreme Court and High Court Judges should be debarred; if the Supreme Court and High Court judges keep their eyes on some of the gains that are likely to accrue to them after retirement, then they are likely to give wrong judgements: as a result of that, this attitude was taken. At that time Dr. Ambedkar's only argument was : "The stage has not come when there are a large number of litigations in which the Government is involved; in various debates on the floor of the House it

[Prof. Madhu Dandvate]

has been brought to the notice of the Chair that no more than 50 per cent of the cases before the Supreme Court and High Courts are such that Government is a party to the dispute; and if a number of cases come before the High Courts and Supreme Court in which Government is a party and if the judges are expecting some sort of favour from the Government after retirement, in that case their objective judgement, is likely to suffer". Dr. Ambedkar did not reject that amendment outright; he said, "The stage has not come when we can accept that amendment because the Government is not involved in a large number of disputes that come before the Supreme Court and the High Courts". But today it is an accepted fact that in more than 50 per cent of the disputes, in some form or the other, the Government or the public sector is involved and, therefore, it is better that whatever is the Constitutional provision for the Comptroller and Auditor General of India and Members of the Public Service Commission should be applicable also to the members of the Bar, the members who belong to the Supreme Court and also those who belong to the High Courts.

Only on one ground, perhaps, we are not finding it practicable. The reason is that the service conditions of the judges are such. I am thankful to the learned Member who put forward a very cogent plea, who put forward before the House the fact that, in commensurate with the dignity and prestige of our judiciary, we are not offering them proper emoluments. When they retire from their service, we are not giving them adequate pension. I think, the House was almost unanimous that better emoluments should be available to the judiciary, better facilities should be available to them, even better pension facilities should be available to them. We cannot say, when we are giving them bad emoluments when they are in service and when we are giving them a pension which will be inadequate and meagre, that we will not allow them, after retirement, to take any job in the Government. It cannot be a one-way traffic. Therefore, while suggesting that the famous K.T. Shah's amendment should be accepted at this stage and a judicial reform should be introduced, at the same time I insist that the emoluments of the judiciary and the various facilities available to them, including the pension facilities should be improved. My friend has rightly pointed out that in the United States and in the U.K., a periodical reform of the salaries of all top-ranking officers, including judicial officers is undertaken. As inflation grows, hardships grow, the emoluments become meagre. Whatever was there—Rs. 3,500 as salary when India became free—and the Constitution was adopted on 26th January, 1950—the same salary of Rs. 3,500/- is very inadequate with the present inflation rate. Sir, if the same administration continues the inflation is likely to go up, Commensurate with that facilities should also improve. Therefore, I balance both these things. Ban after retirement on any job by the Government and better emoluments and better pension that should be taken up. (*Interruptions*).

Sir, I am an uncompromising fighter against the monopolists in this House. Look at my speech on 6th May, 1984 on MRTP Bill and you will find all these suggestions made by me and I fully endorse those suggestions. Not only the government service but they should not also accept the post of monopoly houses as their consultants.

Then there is another question, namely, the question of bifurcation. It is not merely South or North as Mr. Kurien prised it. I am not opposed to his suggestion. In fact, he says that the entire northern community wants that Supreme Court should come to the South. Sir, let it be taken to the South because they are so much bored with the work going on here. They would also like to be shifted from here.

Sir, I am not talking in terms of North and South. I am talking about the new seed that is sown. Unfortunately, the Law Commission has also sown that seed. They have said that the Supreme Court should be bifurcated, namely, one branch will take up only constitutional items and the other will take up all other items and cases which are not concerned with constitutional problems. If that is done, I am sure, most of the members of the existing judiciary also feel because they have said it in so many Seminars if you bifurcate the present Supreme Court into constitutional Supreme Court and non-constitutional Supreme Court in that case it will destroy the unity and integrity of Supreme

Court and probably some manipulations may take place. Here I may indicate the manipulations. There was a controversy regarding the power of the Parliament to amend the Constitution. Here again I may tell the young members that in the Fifth Lok Sabha even before the Government brought the Twenty-fourth Constitution Amendment Bill...

SHRI PRIYA RANJAN DAS MUNSI : Do you support a non-constitutional Supreme Court ?

PROF. MADAU DANDAVATE : I am not saying it in that sense. I am glad that Das Munsi does not only get angry but he has also a sense of humour. When I said non-constitutional Supreme Court that means branch of the Supreme Court which deals with the problems which are other than constitutional problems. Is that clear ?

Sir, if the bifurcation takes place I see another danger. I do not want to give any scope to this Government to manipulate the matters. I will concretise my criticism why I am not in favour of a reform but maintaining the integrity of the Supreme Court.

Sir, there was a lot of controversy regarding the power Parliament under Article 368 to amend any part of the Constitution. There was a school that believe that Article 13 (2) is a controlling clause for article 368 because 13(2) says that the State shall not enact any law that will either take away or abridge the fundemental right conceded by Part III of the Constitution. In Sajjan Singh's case, in Chandrika Prasad's case, fortunately, the judgement came in favour of the point of view that there is a distinction between constituent law and an ordinary law. Art. 13(2) deals not with constituent law but it deals with ordinary law. If Article 368 is completely outside the ambit of Article 13(2) unfortunately there is Golaknath case and there is the other controversial case. In this very House I moved a Private Member's Bill strengthening the power of the Parliament and demanding that Article 368 must be unfettered and it should not be controlled by Article 13(2) because Article 13(2) relates not to constituent law but it relates to an ordinary law. Within a few weeks the formal Bill of the Government came up. I stood by that particular Bill. In that context I want to explain my point of view. After that came the emergency. In between some developments took place and it appeared that we cannot take extreme attitude about some of the powers of Parliament. And therefore came the saving grace of the Keshavananda Bharati case judgement; that judgment upheld the power of the Parliament to amend any part of the Constitution including fundamental rights enumerated in Part III. But all that they say is, the power to amend the constitution cannot be utilised to destroy the constitution. And therefore they say that Article 368 can be utilised to amend any part of the constitution excepting the basic feature or basic structure of the constitution. It is an accepted fact. The Minister, in the last Lok Sabha, in reply to my question has candidly accepted that they are not happy with the Keshavananda Bharati judgement. In the Minerva case they demanded repeal of the Keshavananda Bharati judgement. And today we know that the present Supreme Court,— even they tried a fuller bench,— they said, there is no case it was sent back. We know that the existing Supreme Court is not likely to repeal the judgement in the Keshavananda Bharati case and give them the unfettered freedom to change even the basic structure; They have now gone in an appeal seeking repeal of the Keshavananda Bharati case judgement. And if the Supreme Court is split up into two then probably the majority can be manipulated in favour of repeal of the Keshavananda Bharati case and that will be additional reason I want that the integrity and unity of the Supreme Court should be maintained so that no bench of the Supreme Court can be utilised to manipulate the consistent position regarding their philosophy. The jurisdictions are well-defined. I am not one among those who want any confrontation between the people, Parliament and judiciary. But I think that can be done if we once again firmly adumbrate in the constitution the structure of various elements in our democratic life. I am one among those who believe that people are sovereign in helping the Government; Parliament is supreme in amending the constitution and enacting the laws; the Supreme Court is sovereign in interpreting whether the laws enacted by Parliament and legislature and the constitution amended is within the ambit of the general constitution. Now that right of interpretation is there. Supreme Court cannot be a third chamber in this country. I shall never accept that. Each of

[Prof. Madhu Dandvate]

the three elements, the people the Parliament and the judiciary have their own unique jurisdiction. If each one of the three stick to their own jurisdiction there will be no confrontation between the three at all and therefore that should be ensured.

One suggestion regarding backlog. On that I believe that there is a total unanimity in this House. So many cases are pending. Our friends are coming from different parts of the country, whether they come on behalf of labour or whether they come regarding revenue cases, or whether they come with regard to income tax cases or in connection with problems of the Government services etc. Our usual experience is that there is lot of backlog. Sir, one of the eminent jurists V.M. Tarkunde has made a very constructive suggestion, and I think it represents the consensus of this House. He has suggested, in order to remove the backlog, of all the pending cases, that the supreme court should have 4 national tribunals. And they will be like this : One National tribunal will be for income-tax cases. One national tribunal will be for revenue matters like excise customs sales-tax etc. The third national tribunal will be for labour disputes. The fourth one will be for service cases. Each one will have 3 judges with status and salary of Supreme Court; constitutional amendment should be there to prescribe that matters before the national tribunal will not be allowed to be argued and adjudicated before Supreme Court and High Court. If that is done, the backlog of cases that exists today can be completely eliminated.

I conclude with an appeal to the Government. Enough material on judicial reforms is available. Ministry for Justice for its major work is under the control of the Home Ministry. I want that our Home Minister should not be troubled much. The Ministry of Justice should be taken away from the Home Ministry and it should be completely under the Law Ministry.

THE MINISTER OF LAW AND JUSTICE (SHRI A.K. SEN) : It is already outside the Home Ministry. Only one of the Home Secretary happens to be the Justice Secretary.

PROF. MADHU DANDAVATE : Do not keep any connection with the Home Ministry at all; be the master of your own. Not that I want to drive a wedge between the two; there is already a corridor between you two. That is sufficent.

If that is done, the Ministry of Justice will function better. Therefore, I conclude by saying that democracy in the country is to be defended; no matter which party is in power. There should be certain checks, and balances, effective public opinion, a fearless press, free and independent judiciary and vigilant and dynamic Parliament. These four elements are the checks and balances of democracy. Since judiciary is one of the important checks and balances of democracy, I would like the entire House to apply their mind. I shall not hackle anyone, who makes any proposals regarding the reforms which is not acceptable to me. We have grown up in the tradition that we might completely differ with what you say, I shall fight to the death your right to say that.

SHRI EDUARDO FALEIRO (Mormugao) : Mr. Deputy Speaker, Sir, I congratulate Prof. Dandavate for having raised this important discussion on the need for judicial reforms. But I only regret that for most of his speech for more than thirty minutes, he dwelt on the question of appointment and transfer of judges. These are really not the only things; these are not even perhaps the major things in considering the question of judicial reforms.

He said that consultation with the Chief Justice was not enough; concurrence of the Chief Justice was necessary in the case of appointments. Now he suspects the Government; mainly the thrust of his debate has been an attack on the Government, on the ruling party. That has taken much away from the quality of his contribution this afternoon. He wants concurrence with the Chief Justice. He suspects the Government he suspects the Home Ministry. Why will he not suspect tomorrow the Chief Justice, if he agrees ? Once a suspicious mind, always a suspicious mind. He has quoted United States and United Kingdom. All that I can say for the infromation of the learned professer is that neither in the United States, nor in the United Kingdom any concurrence with

the Chief Justice is necessary in the question of appointment of judges. In fact, there is no question of even consultation with the Chief Justice...(*Interruptions*). But whatever you may have said, even consultation provision to have consultation with the Chief Justice does not exist in most of the western democracies. It is an unqualified right of the Government in most of the western democracies.

PROF. MADHU DANDAVATE : Let there be no misunderstanding. At the stage of appointment, I did not utter the word United Kingdom or United States of America. I supported one of the colleagues who pleaded for better emoluments. He said that in United States of America and United Kingdom, every four years a Commission or a Committee meets, and reviews this and I support that fully. I cannot compare the Indian system with the American system. They are altogether different.

SHRI EDUARDO FALEIRO : It does not behove a professer to say that. But as I said, neither in the United Kingdom, nor in the United States, concurrence of the Chief Justice is required. In the case of United Kingdom, even consultation is not required. Therefore Sir, all that I would like to inform the Hon. Professor is that we on this side of the House are as much concerned.

PROF. MADHU DANDAVATE : There is no written constitution in UK also.

SHRI EDUARDO FALEIRO : So, you have agreed. This tergiversating does not behove of a Professor. We are net saying that there is a written constitution or there is a convention. All that we are saying is that this benefit of consulting which we have in this country, is not available even in the United Kingdom. There, the Government without consulting anybody, including the Chief Justice or the presiding Lord Chancellor or the presiding judge of the judiciary of the UK, without consulting, much less obtaining concurrence, proceeds to appoint judges.

What I was saying when the Professor interrupted me is this. All of us in this House—I am sure at least we in this section of the House are very much concerned and interested in upholding the freedom of the judiciary, the independence of the judiciary and the dignity of the judiciary. And in this context, permit me to saa this. When the Professor began his speech, he began it by saying that the need for this discussion was created by a recent utterance of a judge of the Supreme Court. All that I can say, without going into this specific case regarding the utterances made by that judge, is that the freedom and dignity of the judiciary must be maintained and upheld by all.

This House is the most authentic voice of the people of India. This House are the law makers of this country. And yet, the rules of our proeedure do not permit that any aspersions may be cast, or any speech may be made or any allegation may be made which may detract from the dignity of the judiciary. All that I can say is that nothing detracts more from the dignity of judiciary than the utterances of one judge, himself a member of the judiciary, making in public allegations against other judges, casting aspersions against other judges, calling them sycophants and so on. What else and what more can detract from the diginity of the judiciary, when a member of the judiciary, of the highest court, in the land, casts aspersions on brother judges ?

SHRI H. M. PATEL (Sabarkantha) : This is contempt of court. You are casting aspersions.

SHRI EDUARDO FALEIRO : I am leaving it to you Mr. Deputy Speaker to consider whether this position is correct or not. There is no question of any aspersions. Prof. Madhu Dandavate has strayed into this field of making allegations against the Congress Government. He said that during Emergency, several judges were appointed on partisan ground. At the beginning of this debate, I never intended to say this much. But in view of what Prof. Dandavate has said, I am constrained to say this. During the rule of his party, during the Janata Party's rule, I was a member of this House and I was a member of the Consultative Committee attached to the Law Ministry. I do know this. I followed very closely and I knew how the Allahabad High Court and many other High Courts were packed with

[Shri Eduardo Faleiro]

activists of a right wing constituent of the Janata Party. I followed it very closely and I knew how in the Guwahati High Court and in many other High Courts, Chief Justices were not appointed, though they were the senior judges of these particular High Courts, only because they were not politically palatable to the regime that was operating at that time. So, let us not make allegations on this ground. We do not advance in any way if you throw mud at us and we have a lot of ground to throw stones at you. But it definitely does not take you or me or the case for judicial reform anywhere.

Now, Prof. Dandavate waxed eloquence on the question of committed judges. Now, what does he really mean by committed judges ? He has not defined 'commitment' of the judges, to which he objects. Apparently, from what we heard from him, the net result seems to be, committed judges according to the Professor's view are those judges who decided in a particular case for the Government. And if they decide against the Government, they are rvey bold and independent judges.

PROF. MADHU DANDAVATE : I will give the definition. Committed judges are those who are committed to the Government. Otherwise, they are omitted.

SHRI EDUARDO FALEIRO : I am here standing as a member of this party.

[17.00 hrs]

I do believe, and I can say that party does believe that the Judge should never, never owe allegiance to any particular group, whether it is the Congress Party, Janata Party, BJP or any other party. But we all do believe here, that there must be a commitment, there shall be a commitment; and a commitment is necessary not merely of the Judges, but of everybody, to what is enshrined in this book, viz. the Constitution of India. This commitment has got to be not merely to the provisions of the Constitution, selectively. I would like to be specific and say that the commitment should be, *inter alia*, to what is mentioned here in the Directive Principles of State Policy in Part IV of the Constitution. What is mentioned here in Article 39 of the Constitution are words which are to be recollected and recalled every time we have an opportunity. So, I will read it for benefit and for our own re-education, because this is really what has to guide us, guide this House, guide the Judiciary and guide the Executive. Article 39 says :

> "The State shall, in particular, direct its policy towards securing—
>
> (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
>
> (b) that the ownership and control of the material resoures of the community are so distributed as best to subserve the common good;
>
> (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
>
> (d) that there is equal pay for equal work for both men and women;

Article 39 (e) and (f) speak about the opportunities for workers, and opportunities for the childern;

I hope neither Mr. Dandavate nor anybody in this House will object to the commitment of a Judge to this particular Article of the Constitution. It is an Article for the poor, for the down-trodden, and for the health and strength of this budding but strong and, I think, right-thinking nation.

SHRI H.A. DORA (Srikakulam) : That is only the Directive Principle of State Policy, not . (*Interruptions*).

SHRI EDUARDO FALEIRO : Hear the voice of the reaction; hear the voice of the Establishment; hear the voice of those who want to sabotage the Constitution. (*Interruptions*). But they also have a right to speak in the House.

SHRI H.A. DORA : You have not heard it. What about Part III of the Constitution ?

SHRI EDUARDO FALEIRO : I want you to say it for the sake of record.

I mention this because there is a difference. We on this side of the House do believe that Part IV of the Constitution is as important a part of the Constitution, if not more, as Part III. Those on that side of the House who are for the rich, for the privileged, for the vested interests will have the Fundamental Rights, whereas the Directive Principles, for them, have no meaning; they cannot be enforced. And when they voted for them, because they also voted for these, they meant that they should never be enforced. That is whatthe Hon. Member has got to say now. (*Interruptions*).

One important point raised at the end by Mr. Dandavate is about the backlog of cases, and the need for doing something to reduce that backlog. Let me mention that as far as I can recall, in the President's Address, the Government has given a commitment for a Law Reforms Commission. Government has implemented its commitment as far as electoral reforms go. It has very speedily brought in the Anti-Defection Bill, got it made into an Act, and brought in other Bills for electoral reform. I urge upon the Government to show as soon as possible the same speed here also, and constitute a Judicial Reforms Commission, and follow it up and do the necessary things, so that the judicial reforms are brought into our system.

About the backlog, the point is this : our courts today may be courts of law, but lots of people do not believe that they are courts of justice; and the reason is that justice is delayed for so long that it ends up by being denied. This point has been, in a manner, admitted by the Law Minister himself, while replying to a question in this House very recently, on the 22nd January 1985 when he gave this terrifying figure, if I may say so, that in the Supreme Court alone, there are 1,48,891 cases pending. In the Supreme Court alone, one lakh, 48 thousands and more cases are pending; and in the main High Courts, in Allahabad High Court, two lakhs, 12 thousands and 453 cases are pending. In Madras High Court and other major High Courts one lakh, 25 thousands and 993 cases are pending. This is as on 30th June, 1984. The figure, must have gone up by now. There are pending cases which run into lakhs in the High Courts alone; there are million of cases in the lower courts. And really what has not been emphasised in this debate is the importance of the subordinate judiciary where most of the cases take place are in the lower courts.

If you are going to reduce the number of cases and expedite the disposal of cases so that justice is not denied, then I have a few suggestions to make. (1) We should reduce the number of appeals, reviews and revisions that take years to be disposed of. Very often, we find that a person has no case at all, but even then due to some reason or other, he goes on filing appeals; if he loses one appeal, he files another appeal; if he loses second appeal, he files the third appeal; he goes into writ petition; this keeps on happening. It is not merely a private citizen who is guilty of this dilatory tactics, very often the Government themselves are responsible for resorting to the dilatory tactics. I myself, as Member of Parliament, know about the cases of my constituency. How many times petty officers bring in writ petitions in the High Courts or in other courts regarding their service conditions, pay or superannuation or denial of promotion; they bring cases at tremendous expenses. Once they win, if they manage to win, if they manage to pay the fee to the lawyers, Government very often, instead of stopping there, instead of accepting the verdict of the judiciary, prefer appeals with the result that these small men, petty clerks will have to incur further expenses, further trouble; and this dilatory tactic is being followed not merely by the private litigants, not merely by the big companies, but by the Government themselves. (2) If we are going to reduce the backlog, if we are going to reduce the delay in the disposal of cases, let us give one fair trial and one appeal; no more appeal, no more revision, no more review. The experience has shown that out of the writ petitions that I have filed in the High Courts, three-fourths are dismissed. We have an example in this House in the last few days. How a writ petition was accepted, admitted in the Calcutta High Court on something which has no relevance ? It is not a question of being a religious person or non-religious person; it is such a frivolous petition on the face of it and yet this frivolous petition was admitted. (*Interruptions*). Even notice should not have been issued. (*Interruptions*) I would like to tell our Law Minister that it would not have been proper for a judge even to take cognizance of this petition; to dismiss it *in limine*, as and when it comes to the notice; it would

[Shri Eduardo Faleiro]

have avoided all this turmoil in this country, apart from the trouble for the Government of India who had deputed their Attorney-General for the State Government at the tremendous expenses and trouble.

THE MINISTER OF LAW AND JUSTICE (SHRI A.K. SEN) : We cannot have a right.

SHRI EDUARDO FALEIRO : If you want subordinate judiciary to be the mainstay of the judicial system, if you want it to be more effective, you must attract bright and capable people. I am not saying that we are not bright and capable people because that would be casting some sort of aspersion, but more bright and more capable and for that conditions of judiciary being what they are in comparison to the condition of the Bar or lawyers, there is a strong case for improving the scales of pay of the subordinate judiciady. They must be given housing facilities, medical facilities, educational facilities for their children, only then you have a chance to attract some capable people who will contribute, because they are the ones who are going to contribute mainly for judicial reforms in the right direction. When I speak for the housing for the judges, let me mention question of housing the courts themeselves. In the Supreme Court, in Delhi, you find litigants come from all over the country. Very often in the court rooms themselves, there is a shortage of place; there is no place for these people who come from Kerala, Tamil-Nadu or from distant places where they can sit and look at their papers and get them typed also. They sit under the trees, in the compound. This is the position of the Supreme Court of India which is so looked after.

MR. DEPUTY SPEAKER : That is why some of them demand that it should be in the South.

SHRI EDUARDO FALEIRO : Trees in the South will give more shelter to the litigants. That is all that is going to happen. But that is not going to solve the problem. Because you must have in every court room facilities for the litigants to sit there rather than loiter in the corridor or sit under the trees. The same applies to lawyers.

Sir, the Government of which the Law Minister is such a dignified member, has been speaking about getting India ready for the twentyfirst century. As far as the courts and their operation are concerned, we are far from that, even in the twentieth century ! Still, to get a copy of the judgment it takes days, because there are no typists, there is no library, there are no facilities. In any case according to the Anglo-Saxon system of jurisprudence which is not the system of jurisprudence all over the world, between five and five hundred judgments have to be cited and law books procured accordingly . I would suggest, let us modernise the operation of our courts. Let us begin with small things like a photo-copying machine rather than having those old typists, each one of them typing judgments, and unending backlog.

Why do we not have photo-copying machines ? And, Sir, why do we not have computers in the courts ? Or, why can the computers not do this work, which is not a very sophisticated work, of compiling, maintaining and helping in collecting the cases on a particular point of law ? Now, we find that this . (*Interruptions*).

PROF. MADHU DANDAVATE : We do not mind computers during the Question Hour also !

AN HON. MEMBER : Computer lawyers !

SHRI EDUARDO FALEIRO : Now we find that this is found to be out of the way and extravagant.

Once United Kingdom starts utilising the computers, then you find that it is the 'in thing' and all of us will opt for computers. That is our approach. Our approach, I would respectfully say is not far from being servile. Whatever is right in the United Kingdom, whatever is right in the United States becomes right here only 15 years thereafter.

MR. DEPUTY SPEAKER : You are saying the same thing. Insted of starting from the U.S.A. which is right here too, implement it here, why can we not have this kind of right thing first and do it here ?

SHRI EDUARDO FALEIRO : We must do it. There is time. And we have reached the time where we must be creative, we must be innovative. We must not wait for other countries, which are smaller countries, which do not have the cultural heritage to do these things, then we follow blindly the lead. We should not do.

There are several other matters on which one would like to speak. An important thing to cut at the backlog will be to give more importance to conciliatory proceedings. It is important that before every case begins at the pre-trial stage in the criminal cases and in the civil cases as soon as the suit is filed, a judge or a presiding officer should make efforts to conciliate, to bring about conciliation, between the two parties. In this context I may mention the very good experience that has been obtained with the Lok Adalat in Gujarat and with Nyaya Panchayat in Maharashtra and other States, where the retired judges, important people, respected people in that particular area, preside over the proceedings. Very often they bring about conciliation. Conciliatory procedure as a preliminary to actual trial, actual judgment of the case or evidence in the case must be there as part of the judicial reform. There is a need to reform our Evidence Act. We have to look into the question of burden of proof. These are all technical matters.

I agree with Prof. Dandavate when he makes a case for administrative tribunals. That will definitely reduce the backlog and pressure on the High Courts and ordinary tribunals. The Government has brought in the Administrative Tribunal Bill, Family Courts Bill and other such related Bills, for being passed in this House. I am sure, these will contribute a very great deal in reducing the backlog.

Permit me to make a final submission and that is, the need for a common civil code. It is very important that we must have a common civil code to bring the country together, particularly today when the country is faced with so many divisive pressures. This common law will bring our people together. I come from a part of the country, perhaps, the only part of the country where we have a common civil code for everybody. I remember that leaders of some religious groups did go to Goa and convinced the people there that they should adopt the Personal Law. The men were in two minds but all the women were in one mind. They said that they did not want the Personal Law. They wanted the law that they had and that was very good for them. Therefore, taking into account the wishes of the leaders of the community by consulting them and trying to convince them and with their approval let us have a common civil code. With this plea which is very dear to me I thank you and conclude my speech.

SHRI SHYAM LAL YADAV (Varanasi) : I thought that Prof. Madhu Dandsuate would deal with the judiciary in the country as it obtains today. But in most part of his speech he devoted himself to political innuendoes and allegations. But actually the Anglo-Saxon system of judiciary has enshrined our minds. Whatever may be the situation of judiciary, the people's faith is still alive in the judiciary. Most of the cases are conducted in the lower courts, as just referred by my friend. But Prof. Dandavate throughout his speech discussed only a fraction of those cases that go to the High Courts and the Supreme Court. He is more concerned about the judges of the Supreme Court and High Courts as if they are doing all judiciary work in the country. Actually after the inauguration of the Constitution the whole judicial system has changed in our country. The High Courts and the Supreme Court do have that power of superintendence over the lower courts.

But there are innumerable types of courts that function throughout the country. People in their everyday life are going to one court or the other, whether dealing with landed property, civil rights, taxation laws, transport litigation. Innumerable types of cases crop up everyday in lower courts and district courts. They are the life blood of our legal system. Everyday the life of millions of people is involved. It is the criminal litigation which affects them largely. If any judicial reform is to be taken into hand, I think that part of litigation should be given top priority, not only the High Courts and the Supreme Court. The criminal litigation, I think, is conducted in a way which is not very healthy. The police investigates the case. From the time when a complainant goes to the police station to file his F.I.R., he

[Shri Shyam Lal Yadav]

starts manipulating the case. He never brings true facts to the police station. The police takes upon itself the job to investigate the case to file a charge-sheet. Earlier it used to be that policemen did not register cases because that would show that the crime curve was going up. But the State Governments ordered them and they started registering the cases. Now that part of their duty is not there. If the cases are registered, they are not responsible for them. So, they have to register cases. But I am sorry to say that investigation of crime cases by police is not up to the mark which everyone likes to be.

The Supreme Court may have laid down certain rules and regulations. What the Supreme Court is doing today, I think, is adding to the arrears. The Supreme Court has left its own responsibility. They have left the road of justice and have gone to the lanes and by-lanes of justice. Even if a post card is dropped, the Supreme Court starts hearing on that post card and orders investigation. They have taken the job of policemen also. They send the Registrar to enquire they send the District Judges to enquire. This is not the job of the Supreme Court. The Supreme Court has taken upon itself all the jobs that other persons should have done, and that is why the arrears are increasing. What I was submitting is that the investigation by the police is not very fair in almost all the cases, and people are compelled by the police to confess the offences. The difference that I find here and in the English system—the Scotland investigation system—is that in England the evidence collected by the investigating officer is such that the culprit is left with no option but to confess the crime, but here the investigation starts with a confession. The police officers mostly are very good story-writers, they are novelists, they enact the whole scene of crime in their mind and then they torture the accused persons and just put in their mouth a confession which is invariably retracted later on when the trial opens. I have come across even some cases like the murder of Dindayal Upadhyaya, the veteran Jan Sangh leader who was unfortunately murdered in my own constituency, in the district of Mughal Sarai, while travelling in the train. Certain poor people were caught up in that case. They were made to confess offences, which all of them withdrew at the time of trial. That case was conducted by the CBI and a lot of hue and cry was raised by the political parties, but nothing came out of that case... (*Interruptions*)

PROF. MADHU DANDAVATE : What had the CPI to do with it ?

SHRI SHYAM LAL YADAV : I am saying CBI. If the CPI becomes CBI, you know the fate of the litigation. So, my submission in this respct would be now the judicial system, mostly the criminal litigation and procedures, is in the hands of the State Governments, and fortunately for this matter, many of the States are ruled by many other parties also—in Bengal, Karnataka, Tamil Nadu, Andhra. Those Members are sitting on that side. They have shown their concern for fair inquiry and justice. So, I would request all of them and everyone that let us take a bold step in criminal investigation and ask the police to record only true statements from the witnesses, from the accused persons and the responsibility for the police should not be fixed up if a case is returned or is not worked out. They should not be expected just to write false things to prepare a case to file a charge sheet unnecessarily without evidence because nobody is prepared to come forward to give his evidence in any case, say, murder or any serious crime. Nobody wants to give evidence. So, the policeman has to bring in professional witnesses from somewhere.

Once the policeman knows that it is not his job to prepare a case or a story, I think he will have the confidence of the people. Otherwise people know, whether they are complainant or witness or accused, that the police is not fair and correct. So, nobody has faith in the criminal investigation on the part of the police. Therefore, it involves a bold decision on the part of all parties.

The second point I would like is that the Judges should have a philosophy. I am not in agreement with Prof. Dandavate that Judges should not be committed. The philosophy of a judge is his surroundings, his ancestral system and his living. What type of man he is, from which section of society he comes. It all plays into his mind and it works in his judgment also. I can cite several examples when a landlord is a judge, his

mind works in that direction. If he is a tenant his mind works in that direction. The landlord does not realise the difficulties of the tenant—be it a tenant or a house of of a land or a sub-tenant. Therefore, it is very necessary that the Judges from that community should be appointed. People coming from a posh locality, flying in aeroplanes, having high standard of living cannot appreciate the difficulties of the poor man. I know the instances when in Uttar Pradesh Zamindari Abolition Act was passed. In that a right was given to the occupants of the agricultural land. If he was recorded as occupant in a certain year, he was conferred the right. He could not be ejected. The High Court of Allahabad from, judges to judges, delivered dozens of judgments in which they tried to interpret the word occupant. One judge who was a very rich man belonging to a very high strata of society and belonging to a Zamindar family said occupied means 'legally occupied'. Another judge came and said 'occupied' means he has cultivated the land. So, they gave so many conflicting judgments. Every time the Uttar Pradesh Legislature had to come forward to explain the word 'occupied' meaning simple occupation or cultivation of the land. Therfore, to say that judges should not be committed, I think, in the prescent Indian situations is just having a stick to beat the ruling party. He should be committed to the Directive Principles of the Constition; he should be committed to the society, the poor man, the under-privileged people, the people who are actually running in distress from pillar to post. He should be committed to those persons and those philosophies and that he should not be a landlord, a capitalist or an oppressor. He should not be a terror. I think this philosophy should be kept in mind.

PROF. MADHU DANDAVATE : He should not be a petty bourgeois also.

SHRI SHYAM LAL YADAV : Why bureaucrats. I know how bureaucrat works. An old ICS Officer himself used to go to the High Court as a Judge also. But now that trend has changed. Now, an IAS Officer cannot go. It was there earlier, but not today.

The next point that I would like to submit is that my friend has said about the common civil code. I think this is a very controversial subject. In the society in which we are living in India which consists of various castes, various religions and various sects, it is not possible to have a common code. (*Interruptions*). This is not possible, and this is very disastrous. If any one takes this step or dares to take up this matter, I think this will meet very stiff opposition. (*Interruptions*). Let us continue whatever system we have, the personal laws are there, most of them apply in property matters, in marriage matters; in some matters personal laws apply, but in other matters we have got legislations and every day the Parliament, and the State Legislatures, are enacting laws to enforce social justice.

Only one important thing I would like to say and that is, arrears are mounting no doubt. But the society has also prospered and now in the new type of litigation, every one is becoming conscious of his rights, his duties or damages that are caused to him. Therefore, people are going usually to courts, even in trifling matters one is likely to go to the court. Even in small matters like transfers,—a primary school teacher is transferred, or a village Lokpal is transferred, he goes to the High Court to get a stay order. An ordinary engineer, an Assistant Engineer in my own city of Varanasi was transferred and he got a stay order from the High Court of Allahabad, and there are two engineers sitting at the same place. It has created a lot of problem. The Constitution has given certain rights to the people, so they are going for enforcement of those rights and most of the time, I would like to say from my own experience that litigants themselves do not want speedy justice. They want the cases should be delayed. Only the delay is in their favour. Most of the writs that are filed in the High Courts— he said about two-thirds, but I say about 90 per cent, are dismissed. But the only thing they want is to get a stay order, let the stay order continue as long as possible and that will serve the purpose. That is all. It is not filed for the purpose of winning the case.

PROF. MADHU DANDAVATE : Are you suggesting that some system should be evolved to delay the proceedings ?

SHRI SHYAM LAL YADAV : No, I am not suggesting. I think perhaps I have

[Shri Shyam Lal Yadav]

not made myself clear that delay is caused not because of the Judge, delay is almost tried for by the parties themselves. At their instance there is delay, the lawyer is not present, or one lawyer takes up so many cases and he tries to accommodate it. The litigant also wants that they should not be allowed to proceed. Once I filed a revenue case. I was on the side of the defendant. That case started in the year 1963. I advised my client stating that 'you are not going to win as the law stands, you are sure to lose.' He said, 'Please continue this litigation as long as possible'. And I can tell you that the litigation case is still pending in the lower court. Even the evidence has not started in that case. The plaintiff has died, and the defendant is still alive. I met him during my election in the village. So, the people themselves sometimes want delay because that will wash off the benefit that they are required to give. Now, a lot of litigations are coming up during the elections—not only Assembly elections and Parliament elections, but also local bodies' elections, cooperative elections and all schools, colleges and institutions are having elections and all afterwards having litigations. That is consuming a lot of time in the courts.

SHRI RAM PYARE PANIKA : You tell something about advocates—what they are doing to the country.

(*Interruptions*)

SHRI SHYAM LAL YADAV : My friend, I was coming to that part also.

MR. DEPUTY SPEAKER : Please conclude.

SHRI SHYAM LAL YADAV : Now, the bar is becoming crowded. You know, because of the unemployment and no avenues, every one who is just able to complete his law comes to join the bar. Now, the situation in the bar is not good. There is no arrangement for sitting, no shed, nothing of that sort, but they are doing their job there. And so far as lawyers are concerned, their interest is to serve the clients. What ever the client says he is to do. But the lawyers, I am sorry to say, at the High Courts and the Supreme Court, are not doing justice to the people. Most of the lawyers who are very vocal for Fundamental Rights, for democracy for the rule of law, I think, are doing great injustice to the litigants. They charge very heavily. For a minute they will charge Rs. 1500. I know in the Supreme Cour the lawyer will sit for one minute admission only and he will take Rs. 1500. (*Interruptions*). They are charging exorbitantly. It is out of all proportions. The more the fee they charge...

SHRI E. AYYAPU REDDY : Sir, he is casting aspersion on the court. The Hon. Minister himself is a leading lawyer.

(*Interruptions*)

SHRI SHYAM LAL YADAV : No aspersion. I say, Mr. Deputy Speaker, there are some eminent lawyers in the country who are more concerned for democracy, for rule of law and all these things. And the more vocal they are, louder they speak, the higher the fee they charge from the people of the country. I know the names of these people and some of them have been in Parliament also. I know they are talking with double tongue. On the one hand. they are fleecing the people and on the other hand, they are talking for, democracy, rule of law or justice. Therefore, Sir, at the end, I would like to submit that whatever judicial reforms are there. this topic will ever remain important and it will always be talked about.

My submission is, whatever shape the reforms may take place, we have to see that the people at large receive justice and they have the faith in the judiciary. Still they have some faith in it. Whenever there is a dispute, they go to the court. Therefore, that faith should not be shaken. Therefore, I think judiciary in India by and large has been quite honest and up to the mark and those who are connected with judiciary are doing their job against heavy odds. Let us help them.

SHRI E. AYYAPU REDDY (Kurnol) : Mr. Deputy Speaker, Sir, the subject of judicial reforms is so vast that I think it is not possible to do justice to this topic within the short time that is available. The Demand for Grants under the Ministry of Law and Justice did not come up for discussion in this year's Budget discussion. We hope that it

will come up for discussion in the next year Debate.

Chronologically speaking, this motion has come before this House in very peculiar circumstances. The recent observations of the Supreme Court that in implementing the policy of transfer of judges and appointment of Chief Justices, there is a *prima facia* case that the Government is picking and choosing and that this picking and choosing will result in the creation of what is called sycophants judges, which were published prominently in the newspapers, made Prof. K. K. Tewary to come and state it before the House. In his characteristic vein, he came and said that it is a political judgement of a judge who was appointed during the Janata regime. We then subsequently requested the Speaker to give time for us to speak on this topic and he was kind enough to allow this debate on this date.

In the Presidential Address, there was a mention of judicial reforms and it was stated by the Prime Minister in this House that within a period of five years, he is going to bring judicial reforms which will serve the cause of the poorest of the poor and the needy and that there will be revolutionary changes in the present system. His point as we understood, was that 80 to 90% of the people are not able to reach the judiciary and that the judiciary is a far off cry for most of these people and that the reforms will be introduced during these five years so that the poorest of the poor have an effective instrument to settle disputes among themselves and also settle the disputes between the citizens and the State. If I remember right, about two or three months ago, at a function organised by the Bar Council of India, the Prime Minister as well as the Law Minister made statements about the independence of the judiciary and the institution of judiciary, will be improved and that there will be no question of any interference with this institution.

It is absolutely necessary that in order to serve the common man in India and to make judiciary meaningful to him, there must be reforms of the subordinate judiciary at the grassroot level.

A number of topics connected with it like court fees, legal aid to the poor, mobile courts, organising the trial courts, making law easily available to the common man, speedy disposal of cases, all these things are important topics which are connected with judicial reforms at the grass-root level.

I do not want to deal with these topics because it is a vast topic. I will confine myself to the observations of the Supreme Court which provoked this debate, that is the appointment of Chief Justices from outside the State and also appointment of one-third judges from outside the State. The Law Commission appears to have made this recommendation. The previous Consultative Committee on Law and Justice also appeared to have endorsed this principle, Academically speaking, this is quite attractive. But in implementing this Scheme, the Government is obviously facing a number of practical difficulties. Now though we have been speaking about having one-third judges from outside, I do not think we have been anywhere near bringing about one-third judges from outside by transfer of judges. With regard to the appointment of Chief Justices from outside, there are only 12 or 13 High Courts which have Chief Justices from outside. But if we take the opinion of the Judges and the judiciary, they do not seem to be happy with this idea of transfers. There are a number of difficulties. Therefore, it is necessary to have a second thought and a second look in implementing this Scheme.

I may here quote one of our greatest jurists Shri Hidayatulla who was our Chief Justice and also our Vice-President. He said in Andhra Pradesh that a judge must grow with the law of the State. No useful purpose would be served by bringing a judge from outside the State because he has not grown with the law of the State. It is true that most of the Central laws are uniform but State laws are different and different States somehow or the other had its own growth of local law and local enactments are there. They may be similar but they are certainly different.

So the questions of having one-third of our judges from outside is practically not possible because we cannot attract the best of the talents. If a practising advocate who is doing

[Shri E. Ayyapu Reddy]

well at the bar is asked whether he would like to go outside the State, he would completely refuse to do so. If a sitting judge is asked to go outside the State, he will consider it as a punishment. He is not willing to go outside the State because there are so many practical difficulties. If we take the opinion of the Judges and ask them whether they are willing to serve outside the State, I think not more than 5 or 10% of them will agree to it. The wholesale principle that was adopted in the beginning was that no Judge should be transferred from one State to the other unless he consents to it. His consent has to be obtained; otherwise, it would be forcing him to go to some other State much against his will...

PROF. N. G. RANGA : You give him a choice to choose either of two States.

SHRI E. AYYAPU REDDY: After a judge has been recruited and he has served for some time in his own State, he will generally be unwilling to go outside his own State. He will opt to go to the nearest State, to the State which is adjoining his home State; he will do that not because he likes to go there but because he has no other alternative. But the wholesome principle that was adopted in the beginning was that no judge shall be transferred unless he had consented to do so, and the consent of the Chief Justice for this transfer was a must. That was the basic principle that was observed in the beginning, though there was no strict inhibition that a judge should not be appointed from outside the State. There were judges who were appointed from outside the State, who served very well, who adapted themselves to the States in which they served. But that is a differnt aspect. They are saying that one-third of the judges must be from outside the State. If we take the statistics of the position as of today, we will find that not even one-tenth of the judges are from outside the State. That is the reality. The Government has stated that they are not going to transfer the judges unless the Chief Justice of India recommends such a transfer. If they stick to the principle that unless the Chief Justice recommends transfer of a judge, they will not transfer him, it may not give rise to doubting the bonafides of the Government or saying that the Government is unnecessarily exercising undue influence for the purpose of subverting the independence of the judiciary. But even the Chief Justice of India may find it difficult to recommend transfer of one-third of the judges. That quota is too big to be fulfilled. Therefore, there should not be an inflexible rule that one-third of the judges must be from outside the State. Such of those judges against whom the Chief Justice finds that there is scope for doubting their impartiality may be transferred on the recommendation of the Chief Justice—and not otherwise.

With regard to appointment of Chief Justice from outside the State, here again I may say that the Government will be facing a number of difficulties. Our experience during the period of Emergency of having judges from outside the State was not very happy. Also the memories of those judges who went and served in other High Courts and came back are also not very happy; they do not say that they were able to do their best in the Courts to which they were transferred. It is true that the recommendations made by the Chief Justice with regard to appointment have been criticised. Some Chief Justices did give room for coming to the conclusion that they were indulging in favouritism. It is true that some Chief Jnstices did something; they wanted to perpetuate their own tradition, they wanted to have their own men as Chief Justice. It is not as if there was no basis for such a criticism. But even then getting Chief Justices from outside will not solve this problem. As a matter of fact, I may submit that a Chief Justice who came to my State was easily misled by some vested interests because he was absolutely new to that place. Some people who had some vested interests came in contact with him and they misled him. It was long after he retired that he knew that he was misled by those people. If the Chief Justice is from the same State, at least he will not be misled. The only safeguard which the Constitution has provided is that the Chief Minister of the State has also to accept the recommendation made by the Chief Justice. It is not as if the Chief Justice is the be-all and end-all in making selection. The selection made by him has to be approved by the Chief Minister and also the Chief Justice of the Supreme Court. Therefore, there are enough safeguards. To say that the Chief Justice will fill up the High Court only

with his henchmen or yes men is not a correct approach. There are enough safeguards. As a matter of fact, the system of having Chief Justice from that State itself has worked very well. Here and there there may have been some mistakes or some scope for doubting their recommendations. Even then, the Chief Ministers are making their own recommendations. If the Chief Minister is able to get his own candidate as judge of the High Court, if the Chief Minister is entitled to have his own man in the High Court, why, not the Chief Justice ? Therefore, there is a human factor involved. It all depends on morality and ethical standards. We cannot cure all these things by some scheme or policy. We will not certainly hasten the Government to implement this principle that the Chief Justice must be from outside that State and that the one-third quota of judges being appointed from outside the State must be filed up. There should not be any scope for the Supreme Court or for anybody to say that the Government is indulging in picking and choosing.

With reference to that case which came up before the Supreme Court, from the facts narrated in the affidavit filed on behalf of the petitioner anybody would come to the conclusion that the Chief Justice of that particular High Court was kept as 'Acting' for a very long time; he was Acting Chief Justice for a very long time. I do not know why he was not made permanent. He was made permanent so that he was not attracted by the guidelines fixed for them, that is, if a Chief Justice is to retire within a year, he need not be transferred from that State—that is one of the guidelines fixed. Therefore, he had been kept as Acting Chief Justice for a very long time, then made permanent and then alone his recommendations were given effect to. There appears to be scope for the Supreme Court to come to the conclusion that there was some sort of nepotism in making this selection and also in confirming the appointments.

I congratulate the Law Minister and the Government on making the appointment of the Chief Justice of India very recently; they did it far in advance; and that is the right attitude. Now, keeping this particular principle of appointing a Chief Justice just at least one or two months ahead of the period of expiry of the incumbent is a very good principle. But, unfortunately, they are not keeping it. In some High Courts there have been acting Chief Justices for months and months.

PROF. MADHU DANDAVATE : Where there was a right type of person available.

SHRI E. AYYAPU REDDY : In my own State the ex-Chief Justice has been acting for several months. Afterall we know when a particular Chief Justice is going to retire. What is the work of the Law Ministry ? So, far ahead you select the Chief Justice and see that he is appointed immediately.

Now the joke in the Bar which is in most of the High Courts is. Acting permanent Chief Justice; permanent Acting Chief Justice. This type of having acting Chief Justices must be avoided. In fact, it was argued before one of the High Courts that there is no scope for having an acting Chief Justice. The Constitution does not speak of an acting Chief Justice, There shall be a Chief Justice for every High Court. The Chief Justice is a permanent Chief Justice and not an acting Chief Justice. Therefore, these things have to be avoided.

Sir, the main object is to have an independent judiciary. That is the Constitutional responsibility. and in achieving that object we must see that there is no scope to say that the judges are made to run round the executive. In the Directive Principles also it is stated that judiciary must be separated from executive. The very purpose is that judiciary must not be dependant in any manner on the executive. The Constitution also evisages that the secretariat of the Supreme Court as well as the High Court, the service conditions and all those things must be within the jurisdiction of the High Court and not that of the Government. Therefore, keeping in view that basic principle and also the basic object of giving an effective and efficient instrument, namely, the judiciary for settlement of disputes between citizens and citizens and citizens and State it is absolutely necessary that we must have judicial reforms and speedy judicial reforms.

MR. DEPUTY SPEAKER : The allotted two hours for this discussion are almost over.

Now, you have to tell how long we can proceed.

SOME HON. MEMBERS : Let us extend by one hour.

MR. DEPUTY SPEAKER : Alright. We will extend by one hour and then see.

SHRI P.R. KUMARAMANGALAM (Salem) : Mr. Deputy Speaker, Sir, when Prof. Dandavate was talking; almost right at the beginning while talking for judicial reforms he started by talking of committed judiciary and bonded judiciary. I would like to humbly submit that both the terms are correct.

18.00 hrs.

Because, we are talking of a 'binding' thing and a bond to the social philosophy enshrined in our constitution. We want no commitment to the Government. We want no adherence, no partiality, to the Government. We want the judiciary to be independent we want them to be true to their task; we want them to do their duty as judges, a commitment to the consciousness of the country; we want commitment to bonded philosophy, to the social content of our constitution. In fact I was extremely unhappy and I was taken aback ..

PROF. MADHU DANDAVATE : I have changed the view : I am for committed judiciary !

PROF. SAIFUDDIN SOZ (Baramulla) : If this is the criteria ..

SHRI P. R. KUMARAMANGALAM : This is the only criteria ..

SHRI AMAL DATTA (Diamond Harbour) : Are you saying by that, that judges are giving partially unconstitutional judgments that you want commitment to the constitution ? That is your intention...

SHRI P. R. KUMARAMANGALAM : We never said it...

SHRI AMAL DATTA : That is what you are saying by implication.

SHRI P. R. KUMARAMANGALAM : Why not you please listen to me ? Hardly two words have I said so far and you started harassing ! Mr. Deputy Speaker, Sir, the situation simply is this. When we talk of Directive Principles of State Policy it is because the judiciary itself has recognised that the Directive Principles of State Policy represents the conscience of our constitution. It is not just the congress party which is speaking of it. In fact some members of the judiciary whom some members of the opposition sympathised with and extoled even including justice H.R. Khanna about whom Prof. Dandavate spoke with appreciation, have stated this. That is why when we talk of committed judiciary and bonded judiciary we are talking of commitment to a philosophy, not to any part, not to any Government, not too any particular set of persons. We are very clear when we talk of commitment; when we talk of binding, we talk of it for the social philosophy. In this context there is a reason why we are saying it. It is not without reason. One of the Members who spoke before me spoke of tenant, sub-tenant and landlord; and he mentioned about what are called certain factors and forces that work unconsciously sometimes in the minds of men. Earlier this quotation has been made and that is why I am repeating this quotation specially for the benefit of Prof. Dandavate who spoke of commitment and bonded judiciary. It is a statement made in Britain in a book by justice Benjamin Cardozo where it is said :

> 'Deep below consciousness are other forces, the likes and the dislikes, the predilections and the prejudices, the complex of instincts and emotions and habits and convictions which make the men, whether he be litigant or judge.'

It is this instinct, this emotion, these habits, which we want to be in consonance with our constitution. We can't afford to have a judge who sits in the highest court of the land and speaks after taking oath or allegiance to the constitution against the philosophy of our constitution. There is no sense in our having a Preamble; there is no meaning in our having Directive Principles if we do not make it clear that judges have to be committed to it. And unfortunately there has been a trend in the past without doubt; this commitment was only to Fundamental Rights, only to individual rights, not able to see the constitution

as a whole. It is a living document. It is not to be taken up in pieces, have adherence only to certain portions which are convenient. The whole context and the philosophy of the document as a whole has to be taken into consideration. At this stage I would like to point out and appreciate Professor Saheb's statement to the effect that the right type of person has been chosen as the Chief Justice. All that I wish to say on this point is that the person who has been chosen as the Chief Justice has made judgments—very constroversial, very powerful and very strong judgements—against the Government and against the Congress Government at times. Even then, as you can see, he has been chosen to be the Chief Justice. This is to prove that the Congress Government is not interested in having (without quoting anybody else) sycophants as judges. We are interested in having independent people, we are interested in having people who have a clear thinking, who are independent, honest and just.

I do not know whether it was a slip of the tongue, but the Professor Sahib while speaking has said that there are three institutions which need to be protected. He mentioned the legislature, the judicary and the people.

MR. DEPUTY SPEAKER : He has mentioned the press also.

SHRI P. R. KUMARAMANGALAM : Yes. The press is the fourth one.

PROF. MADHU DANDAVATE : While I am speaking, I also need protection.

THE MINISTER OF LAW AND JUSTICE (SHRI A.K. SEN) : That also comes within the scope of the legislature.

MR. DEPUTY SPEAKER : I am here to protect you, Professor.

SHRI P. R. KUMARAMANGALAM : That also falls within the scope of the legislature as the Hon. Minister says. My point, if I understand correctly, is that the people are sovereign and they come above all. The three wings of the Constitution consist of (1) the judiciary, (2) the people, and (3) the executive and undoubtedly unless all these three can co-exist, and have their independence and roles of operation, the framework of the Constitution will fall down. But, it does not mean that any one of them whether it is legislatore or whether it is executive or whether it is judiciary, can go beyond the social philosophy of the Constitution. All the three are bound by it.

PROF. MADHU DANDAVATE : Executive cannot be co-equal with legislature and judiciary.

SHRI P. R. KUMARAMANGALAM : I am not placing it on the same level. It is also another wing. It is reportable to the legislature. But the people are supreme. Let us not forget that. Let us not treat ourselves as superior to people. We are only the representatives of the people. At this stage, there is another point which may be relevant. I appreciate Prof. Dandavate's point of view that after retirement, there should be something to stop judges taking up positions, work or consultations from any authority or any person. We have seen certain judges—without naming people—who have been chairmen of commissions, who have been High Court judges, and some of them, even Supreme Court judges, becoming consultants in and for private sector. In fact, for example, Justice Shah was consultant to Bombay Dyeing. Even for a better example, I can quote that we have Chief Justice H.R. Khanna, who also gives consultancies. Not that I am saying that they are motivated, but what I am saying is that it is time to stop it, so that they do not look forward to something else after retirement. And I agree with the Professor Sahib we can appoint them where it is necessary, where we require a person in public interest, to hold an inquiry or something of that sort. That is a different picture. But jobs and consultancies are something which we should stop and which we should not allow certainly. Judges should be above reproach. Today an allegation has started against judiciary that they are looking forward to something else afterwards, and this is unfortunate.

PROF. MADHU DANDAVATE : You see. how consensus is evolving.

SHRI P. R KUMARAMANGALAM : I would like to mention another point and that is on' the question of transfer and appointment of judges. In fact, Justice H.R.

[Shri P. R. Kumaramanglam]

Khanna was the Chairman of the Law commission. Professor Sahib, it is very relevant for you. He prepared a report which was called the 80th Report on the Appointment of Judges and in that report, it has been laid down that one-third of the Chief Justices of High Courts should be from outside and one-third of the judges should be from outside, where they proved very categorically, the provisions for appointment of judges in the Constitution are sufficient. It is the same Justice H.R. Khanna who was a candidate of the Opposition for the presidential elections, it is that very same person. I am not saying that he is not a respectable person. I respect him without doubt as an individual. But without doubt, I can say that this was the same person who gave this recommendation and not just like that, but as Chairman of the Law Commission and the Law Commission's recommendations are the ones which are now being applied by the Congress Government for these points. I have another important point and I am sure the Law Minister would bear me out on this and that is, the present transfers and appointments are done not only in consultation with the Chief Justice, but I am sure with his consent itself because we have been very careful. Many cases have proved this, when cases have gone to court. Then the Chief Justice's signatures and comments on the file come out. In fact, they were cyclostyled and circulated. You would all recollect the Judges' cases. So it is not a fact any more that the Chief Justices were not consulted, unless, of course, Prof. Dandavate —as Mr. Faleiro said—suspects the Chief Justices also. If he suspects us, it is understandable because it is political rivalry. If he suspects the Chief Justices, it will be going too far, with due respect.

PROF. MADHU DANADAVATE : He is a lovable young man. I will not suspect him.

MR. DEPUTY SPEAKER : Nobody will suspect him, not only you.

SHRI P.R. KUMARAMANGALAMA : My friend says : 'Brutus is an honourable man.' I humbly submit that the appointment of a Chief Justice is being done in the various courts only in consultation with the Chief Justice of India, and following the procedures. In fact, the consultation has stretched to consent; and only after the consents are obtained, are appoinments made. Therefore, the observations made by a Judge in a cases show his philosophy and thinking.

He is unable to believe that a Congress Government can be fair and honest; and his days of original appointment are being revealed. In fact, if I understand it, that particular Judge was not the seniormost when he was elevated to the Supreme Court Bench. He definitely was not, and I think the Opposition knows this. He superseded many and came to the Bench. He was appointed at a time when the Congress was not in power; and undoubtedly he seems to think, like many in the Opposition think, that whoever appoints that person, to that person he owes allegiance; to and all that. I wish to make it clear that our party, and our Government does not want any allegiance of this sort. We want Judges to be independent, or, as I said we want only commitment to the social philosophy enshrined in our Constitution.

Another point : insofar as the Law Commission goes, they were very clear that it might may be necessary even to supersede, to appoint Chief Justice of High Courts; and of course, now the question of supersession for appointment of the Chief Justice of Supreme Court is a settled issue. But why I quote that Law Commission is because that Law Commission was headed, and the report was made, by Justice Mr. H.R. Khanna who not only has the approval and support of the Opposition and of Prof. Madhu Dandavate—and admiration also, I am sure, of all of us—but he had also the support and appreciation of the whole of the Oppositton in totality, for a Presidential candidate. That report said that it might be necessary, and it approved and insisted that there should be an one-third transfer, insisted that no Justice should be from in-house or in-State, and justified it from the point of view of saying that it would bring honesty, would improve the calibre and that there would be no internal or State politics or legal politics involved, and that the politics of Bar would not influence the Bench. And, therefore, what is done, is not being done arbitrarily. It is being done on the basis of a categorized report.

PROF. SAIFUDDIN SOZ (Baramulla) : Has it been done in every State ?

SHRI P. R. KUMARAMANGALAM : It is being done everywhere:

PROF. SAIFUDDIN SOZ : No.

SHRI P. R. KUMARAMANGALAM : Please come out with a specific case. If you want to ask about Jammu and Kashmir, the ex-Chief Minister should be the concerned person. (*Interruptions*)

PROF. SAIFUDDIN SOZ : You must update your data.

SHRI P. R. KUMARAMANGALAM : The matter of judicial reforms is not only limited to the committed judiciary or bonded judiciary or the question of who is appointed where, but we have a problem of arrears; and being a person who belongs to the legal profession, I wish to submit that it is not possible to solve this problem of arrears in any other manner except by increasing the number of judges. Just like we have not increased the remuneration of the judges which is very much necessary, I totally agree with Professor Sahib that it is out of time and out of place today to say that Rs. 3,500 is enough for a judge.

PROF. MADHU DANDAVATE : He agrees with me on money matters.

SHRI P. R. KUMARAMANGALAM : I thought Professor Sahib would agree with me on the Philosophy matter also; he has backed out. We need more judges since we have more cases and we have more cases not only because we have more people, but it is also because our people have become more conscious of their rights; and we are growing democracy with education increasing, literacy increasing, people coming forward to the courts to establish their rights. It is high time that we should give up the idea of 13 judges or 15 judges or 20 judges or 30 judges and talk in terms of real proper analysis of how many cases a High Court has or a lower court has and how many judges are to be required. This is my humble plea from my since to the Law Minister and I am sure, if he gives reasonable remuneration to the judges, he will attract good talent—not that there is no good talent now—but the ones who come, come out of national commitment and social philosophy. But we hope to attract better talent and younger talent if we can increase their remuneration and terms of conditions of services and thereby increase the number of judges for quick disposal of cases.

I have noticed that on the 21st January 1985, to an Unstarred Question, the Hon. Minister had answered saying that the matter of elimination of delay, clearance of the arreas, etc. be referred to the 10th Law Commission.

It is my request that this reference which has been made way back on 13-8-1985 be speeded up since we require the report urgently to act upon it and I thank you for this opportunity.

SHRI SHARAD DIGHE (Bombay North Central) : Mr. Deputy Speaker, Sir, Hon. Member Prof. Dandavate has raised a very interesting debate in this House today. Of course many of the points which he raised in the earlier part of his speech are part of an old debate going on from the time of the Emergency. And, therefore, when he treaded in the sensitive areas he had to meet with stiff opposition and some trouble in this House. I thought that this subject is very wide, namely, judicial reforms and it might contain several other subjects also. But from the beginning the debate has been concentrated on the main subject of committed judiciary, appointment and transfer of Judges.

Now, many things have already been said by the earlier speakers and I agree with many speakers who have said that in a sense a committed judiciary is necessary. The only difference of opinion is, what is meant by a committed judiciary ? And I have found when the debate was going on, Hon. Member Prof. Dandavate was also nodding his head when a certain definition was given by certain Hon. Members, as far as this committed judiciary is concerned. The judgments are influenced by the personality of that Judge and as mentioned by Hon. Member Shri Kumaramangalam, no Judge can say that his judgments are not influenced by his personal views. And, therefore, from that point of view a committed judiciary is also necessary, but the commitment as has been said, should be to the Constitution of this country.

PROF. MADHU DANDAVATE : Well said !

SHRI SHARAD DIGHE : And, in other words, the commitment should be to the socio-economic revolution which this country has undertaken and the elimination of poverty and the programmes for that. Again the commitment of the Judges should be towards these programmes. So, whenever the judges oppose nationalisation of banks or some such progressive steps taken by the executive then there is always resistance and there is then difference of opinion. Such judges short not be there so, if the judiciary also recognise their duty and play their role in the socio-economic revolution of this country. Then I think, this debate will not arise again and again and there will not be confrontation. As has been already stated all the three wings should recognise their sphere of activity, the executive, the legislature and the judiciary. The confrontation arises when one wing grosses the limit of the other. And, therefore, if that is avoided by all the three wings of the Constitution, then I think there will not be further friction, and the smooth sailing as far as this socio-economic revolution is concerned will go on.

Now, as far as the appointment and transfer also are concerned, this has been not a new one. As I just now read, the idea was first promulgated even by the States Reorganization Commission. And for the purpose of integration it was suggested that the Chief Justice of every State should be from outside. Therefore, it is for this laudable object that this idea was promulgated, namely, that the Chief Justice should be from the other States, and that there should be at least one-third of the Judges of the High Court from the other States. Therefore, it is not a new idea. If is for the integration of this country. Some times this one-third has not been achieved. Well, it is an objective. We should try to achieve it. Now, for this purpose also there should be some guidelines and I know that there are some guidelines as far as the transfers are concerned, that the seniormost Judge of course considering the suitability—is made the Chief Justice and he is transferred to the other States, before making him a Chief Justice. Now, there are exceptions which are also there, namely if there is one year only or less than a year for his retirement then he is not transferred. Some such guidelines are already there. If these guidelines are not sufficient, if some more guidelines are necessary to remove the suspicion of the Opposition parties, then I submit that further guidelines may be also laid down so that there may not be misgivings in the minds of the people that this is used only to get rid of certain persons who are not required, or inconvenient Judges or that this is used for the purpose of giving some punishment to a Judge for giving a certain judgment.

So, these misgivings should be taken away and for this purpose if further guidelines are necessary they may also be laid down. But we must understand that this is a laudable object for the purpose of the integration of this country and therefore it should not be opposed from that point of view.

Now, as far as the judicial view on this, point is also concerned, I think that they have supported now and all those things have been already held to be valid as far as this is concerned. The Law Commission have also supported this view. Therefore, there should not be further dispute. If necessary, further guidelines may be put as far as this is concerned.

The main question under the judicial reforms appears to be the arrears of cases which are pending in different High Courts and the lower courts. When we talk of judiciary, we should not put before us only the High Courts and the Supreme Court. There is the main judiciary in the lower courts also. Thetefore, when we talk of attracting more efficient and better calibre, then we should also think of the lower courts. When we talk of improving the conditions of their service, then we must also put before us the lower judiciary also. The conditions of service for the lower judiciary are very very unsatisfactory. I know a case of a judge of small causes court in Bombay, who was transferred from Nasik. For one year he could not get a quarter in Bombay. So far full one year he used to come from Nasik. Such hardships will have to be removed. Their pay scales must be made attractive so that more and more bright people and people possessing better calibre can be attracted. The question of arrears depends much on the quality also. Merely increasing the number of judges will not solve the problem. You must have better quality so that the arrears of cases can be reduced to a considerable extent. Therefore, not only pay scales but other service condi-

tions should also be improved. I see many times in Bombay that as soon as the court is over, the poor judge stands in the queue for the bus while lawyers and litigants pass by him in their cars looking at him contemptuously. If this is the position, nobody will have the respect for the judiciary. It will affect their work also. Therefore, several other maladies which are there, depend upon the conditions of their service, which are unsatisfactory. Therefore, these things will have to be urgently looked into by some Commission or some such body. Otherwise, our judiciary is about to crush under the heavy burden of these arrears. If the people lose faith in the judiciary, then the democracy will suffer. For preserving the democracy at least, we should create a situation by which people will not resort to extra-judicial means for getting their justice, but they should have full faith in the judiciary. For that judicial reforms are very much needed. I hope, the Law Minister will urgently look into it.

There are several other suggestions which have been made by the Hon. Members. I would not go into details. But as far as bifurcation of the Supreme Court is concerned, it is necessary to have a Bench in the south also so that people from a very long distance may not come to Delhi for getting their grievances redressed. Similarly, different types of tribunals will have to be formed as suggested by Mr. Madhu Dandavate, so that the problem of arrears can be solved and the cases can be disposed of urgently.

SHRI AMAL DATTA (Diamond Harbour) : Sir, I think we are fortunate to have this debate today although it has arisen because of an unfortunate remark made by a Supreme Court judge. It is more unfortunate that the Supreme Court judge had to make such a remark because the things have come to such a passe that the people are really losing faith in the judiciary. There is no use saying that we must have an independent judiciary because the Constitution provides for that, but we must work in the spirit of the Constitution and ensure that the judiciary is really independent and people have faith in it.

18.31 hrs.

[SHRI SHARAD DIGHE *in the Chair*].

The subject of this debate is very comprehensive. We have been discussing mostly about the reform in judiciary or the ills of judiciary which have to be corrected but we have not been concentrating very such on judicial administration but because of the paucity of time, I think everybody has concentrated and particularly because of the genesis of this particular discussion, we have been discussing mostly about the judiciary and not the judicial administration. I will also confine myself to that, that is to say, about the judiciary. But judicial administration also should find a place in the debate in Parliament because it is the duty of the Parliament to provide for such an administration which can take care of the cases so that people do not have to wait unduly long for the dispensation of justice, and do not have the feeling that they have been cheated of their right.

The question of selection of judiciary has come up. I think that some Hon. Member remarked that there is a guideline. If there is a guideline, that is not known to us. There should be a guideline which is known to everybody so that we know that the judicial officers of the High Courts and the Supreme Courts judges are selected by such and such body considering such and such qualifications. This is necessary, other-wise people cannot but have a feeling that those who are in the ruling party are selecting people of their own choice so that ultimately they will get their allegiance. That feeling has to be there until and unless the guidelines are framed and the guidelines are very rigidly and strictly followed and they are seen to be followed.

There is a provision for consultation but to what extent that consultation is being followed now that is the moot question. As far as we can gather, that consultation is being kept in abeyance, particularly because of the Supreme Court judgement that consultation does not mean concurrence. Therefore, it is left to the executive to decide who will be the judges, without having to disclose under what qualification or following what guidelines they have chosen those people to be on the Bench.

Similarly, transfers also are not a very bad proposition. Coming from the Bar, as I do, I know that there is a lot of grievance amongst the lawyers in the Bar against certain judges of even the High Courts, and certainly of the lower courts also. And I am

[Shri Amal Datta]

told that the Supreme Court Bar also have certain grievances against certain judges. Now the fact is that in this country it is necessary that the judges who are selected from the Bench and have been familiar with certain members of the Bar, should be kept out in such a fashion that they do not dispense undue favour. Favouritism in High Courts has become a byword. The litigants have to first ask that in such and such particular court, they have a case, and so which counsel they have to brief. It has come to that. And that is the reason why the Law Commission recommended that one-third of the judges should come from outside. It is not a bad suggestion. On the other hand, anything good can be turned to a bad use. If the Government wants to implement the Law Commission's suggestion, they can do it in a fashion which cannot give rise to any apprehension in the minds of the politicians or the people at large that this is going to be used as a handle to blackmail the judges. If the Judges can be transferred at any time of their career in the Bench, then, of course, this power can be used as a weapon to blackmail. If a Judge having served for four or five years or more is proving in convenient to the Government, in that case he can be told by the Goverentment, that if he does not behave, he will be transferred. If you want that such apprehensions and suspicions do not arise, and if it is necessary that the Judges are to come from outside, well they should come from outside at the very time of their appointment, or when the appointment is made they can be told that after one or two years in the Bench, he will have to go to such and such High Court. Or even the person practising in Bombay High Court, when he is elevated to the Bench can straightaway be appointed to the Karnataka High Court or the Gujarat High Court. That can take care of the situation that judges are coming from outside; at the same time they are not transferable at any time at the behest or at the will of the Government.

Similarly I am of the opinion that supersession should not take place. Seniority must be the rule of promotion. The rule of seniority can be deviated from only when the person is becoming the Chief Justice and is having a few months to go. In my opinion the Chief Justice, position is an administrative position apart from being a judicial one. So, a person who has got only six or seven months or even one or two years to go and if he is made Chief Justice, he does not take interest in the Administration and during his tenure the Administration of the High Court practically collapses. Therefore, the person who has got at least three years to go, only he can come to the grips with the Administration and carry it on in his own interest. Therefore, such a person should be appointed as Chief Justice. That should be made as a very rigid principle. Therefore, guidelines have to be evolved and that has to be very rigidly adhered to.

Political considerations have played part in appointment of Judges and in elevation even to the Supreme Court. This is the feeling that we have and the people have.

We have spoken about the conditions of the service of the Judges. We have also spoken about the salaries and all that particularly in the Bill which has just been over. There is a need to improve the conditions of service of the Judges. Some members spoke about the working of the Judges after their retirement. It is necessary that the Judges do not take favour when they are on the Bench in the hope that they will be rewarded after their retirement. Therefore, what is necessary is that the Government should not offer them anything after their retirement. Some Hon. Members have said that such and such Judge after retirement are doing private consultation practice and all that. Now, unless the Judge gets pension at the same level what he was getting as salary at the time of his retirement, you cannot expect him not to do even this consultation practice. Otherwise how will he make his both ends meet ? If a person is living he has to maintain the same standard of living which he was enjoying before his retirement. You cannot say that he has no right to live. Therefore, it is better that he does something for which he has not previously dispensed any favour. But if a person is appointed after his retirement as an arbitrator by the Government or as the Chairman of an inquiry commission by the Government that always gives a suspicion that this particular Judge had been dispensing favour to the Government and therefore, he is being favoured in return after his retirement. On the other hand if he is just doing consultation practice in his Chamber, I do not see any

harm in it, because after his retirement he becomes professional again.

There are a lot of things being said about judiciary. People say the judiciary does not have a clean image at the moment. And particularly when you speak of the commitment social philosophy, one should recognise that the Judges have been standing in the way of lot of reforms, particulary in the way of the economic reforms even today. They came in the way not only of the Bank nationalisation case, but in West Bengal they came in the way of the implementation of the land reforms, I think, much more than in any other State. May be because we needed more reforms.

AN HON. MEMBER : Madhya Pradesh had done it in 50s.

SHRI AMAL DATTA : Madhya Pradesh may have done it in 50s. I am not disputing that but during the Congress regime in West Bengal upto 1977 the land reform was only in books. But since 1977 it has been implemented and during the course of the implementation of the land reforms, we have found that some members of the judiciary initially created too much trouble so that the entire land reforms programme got delayed by two to three years. Ultimately it has gone through because those persons who opposed it moved away from that Bench or because some of the persons who got those matters, were in favour and they went through it very sympathetically. But what I say is that it should not have been delayed if they had not come in the way. Then you perhaps know of a famous case in West Bengal where even the election, the very basis of the democratic process of this country, was sought to be stopped by the Bench. That was foiled by the Supreme Court. These are the things which are there with the judiciary. Therefore, I say that the Judges on the judiciary should have some education in the social philosophy.

Now, who were these Judges. They were those who had good practice, some of them did not even have good practice. But even if a person has a good practice as a lawyer that does not mean that he understands the social philosophy. So, he has to be educated in that before he becomes a Judge. We should have thought about it. We have not considered it or discussed it, but it has now become necessary as we progress further that the Judges should be educated more and more so that they do not stand in the way of the reforms.

There should be a code of conduct for the Judiciary. We find that the High Court Judges are mixing very freely with the lawyers appearing before them. During the British days the Judiciary was held in high esteem. I am not praising any aspect of the British colonial rule, but then the Judges were held in high esteem. One of the behaviour pattern of the Judges was that they did not use to mix with the lawyers or the litigants openly. But today it has become a norm and the Judges very frequently accept hospitality both from the lawyers as well as from the litigants. There is no code of conduct to day for the Judges and any person can appear before them. Sometimes in the early sixtees some regulation was made that certain relations within a certain degree cannot appear before a Judge. But now we see when a person becomes a Judge, his own Senior in whose Chamber he used to work, is appearing before him and in every case he is appearing. If a statistics is kept you will find that in some cases twenty to thirty per cent of the cases before a judge are being handled by his erstwhile senior. This is very bad because obviously people know that only through this counsel you are going to get an order, otherwise you will not get even a hearing. This is happening these days and I think the Hon. Law Minister knows it very well from his experience.

Now, I come to indiscriminate injunctions. The law about injunctions is that if a person gets an injunction and because of that if a loss is caused to the other party, he must pay the penalty for that. What happens is that if a public road is to be built or a tube-well has to be sunk and somebody comes and files a suit or writ petition the matter is delayed for four to five years or even ten years. What happens is that the people suffer, the cost goes up, but ultimately all these suits or petitions are dismissed without allowing any costs at all. These people should be penalised because they have started a frivolous litigation and if the Judges are not going to do it, I suggest that the Government should make a law and whenever it is found that a person has delayed public work by means of such

[Shri Amal Datta]

frivolous litigation, he should be penalised. Only then we can get the number of frivolous writ petitions reduced or eliminated. Otherwise we are going to have to bear the burden of 2 lakhs or 3 lakhs of pending cases. Most of these cases are frivolous cases. They have been instituted only with the knowledge that once you get a rule or an injunction, the matter will go on for four years or five years and in the meantime nothing will get done. So, something has to be done in this regard. I am not going to take your time any more. But all these problems are important enough for a full day or more than a day's discussion. (*Interruptions*). I am concluding. Don't press bell.

I am saying that today we are discussing it because of an unfortunate remark made about the judiciary. But we should discuss it not because of that reason. We are probably discussing it for a wrong reason. We should discuss it for the right reason, viz, what kind of judicial reform is needed in India so that people do get justice and not delayed and denied justice like this, and for that what is the duty of us, Members of Parliament and what the Parliament and Government together should do to reform the judicial system so that we really ensure the independence of judiciary and we ensure that the people get justice and the third limb of the Constitution works properly. That should be our motto and our motive and our object, and I request the Law Minister to give us suitable opportunities in the next Session or other Sessions for a full-fledged discussion on all aspects of judicial reform, not only on the appointments, selections, transfers and supersessions.

(*Interruptions*)

[*Translation*]

DR. G. S. RAJHANS (Jhanjharpur) : Mr. Chairman, Sir, uptill now Hon. Members have been talking about the Supreme Court and the High Courts. It appeared to me as if they were talking about the whole country. I would like to talk about that part of the country where 70 per cent of the population lives. You talk about judges of the Supreme Court and the High Courts very often, but have you ever earnestly thought of the poor people living in the villages and hardly getting even two meals a day. Have you ever thought of whether they are getting justice or not. They never get proper justice.

Survival of the fittest is the universal fact. If you go to villagers .. [*Interruptions*]

Do the rural people get justice ? Go and see for yourselves the atrocities being propetrated on Harijans, Adivasis, and the poor, boatmen etc. They tremble at the very mention of the name of court. What justice can they expect from the courts ? There is a saying in Bihar, that when people there want to curse others they say that they be accurred with coming into contact with a lawyer, or a doctor and be done away with. In this way there is a fear of courts in their minds.

I would like to tell you a real experience of my life. I am one of those Members of this House who have seen the richest person as well as the poorest person of the country I have worked in a leading newspaper of the country and I live among poor people. I have got experience of both the worlds. For me, it is the discovery of India and I wonder whether our rhetorics here in the House is going to have any effect on the poor or not. The people are leading a very miserable life in the villages and justice is not being done to them. At most thousand times, we have discussed about providing legal aid, but the poor are not getting justice. You may say anything, but it remains a fact that the poor are not getting justice and it is also doubtful if they would get justice in future as well.

I would like to tell you another more serious thing. Perhaps you might not be aware that certain mafia gangs are active in Bihar and Uttar Pradesh. As a journalist, I had investigated the Bhagalpur Blinding case and I would like to say that the factual position is not known to the world. You might be aware that when the people in this country and throughtout the world were condemming the Bhagalpur Blinding case, the people at Bhagalpur were raising slogans praising the police officers. The press gave wide publicity to this case, but the papers did not allow the people to know the factual position. Bhagalpur is situated on the banks of the river Ganga. Actually what happened there was that the dacoits had kidnapped the people there and had cut them into pieces. Their mothers and sisters were insulted and

when the people went to the police station to seek justice, they were denied justice there. You might have also heard about the courts that all the criminals who are apprehended are released on bail by the courts the very next day. The police said that they were feeling helpless, as the dacoits apprehended by the police were released by the court on bail the very next day. When I asked the judges of the Court to do something in this regard and why they had released them on bail, they told me that what was the guarantee of their security. These people would kill them also. Whatever happened in Bhagalpur, has happened in Bettiah, Champaran and the same thing is happening in Dhanbad and Bokaro also, throughout the entire steel industry area and the coal belt.

I would therefore, like to say that your talk of justice and the judgement would remain merely a discussion of Parliament and the people are not going to be benefited at all. You should, therefore, take some steps which may benefit the people. Today the people, the judges and the policemen are living in an atmosphere of terror. The policemen say that they do not have sophisticated weapons with them to liquidate such elements. Very recently, the dacoits killed a man. I asked the people why they did not report the matter to the police or seek justice from the Court. They replied that the criminal would go to the prison today and the very next day, he would be released on bail and he would then kill them also.

What I mean to say is that the persons sitting in Delhi, whether they are journalists, M.Ps. or judges of the Supreme Court or High Court, are not aware of the factual position. The Common man in India is not getting the justice. Today, when you talk about judicial reforms, it is my humble request to you that some steps should be taken to ensure justice to the Common man. In addition to the Supreme Court and High Courts, there are lower courts in our country in which lakhs of cases are pending and some of the cases are pending for more than 20 years. You talk about tenant and landlord. But there is a war widow who had built a house with great hardship and a tenant is living in it. She says that her husband had died in action and she requires her house for her own use, but the tenant takes the case to the Court and it remains pending for 20 years there. This Parliament is a Supreme and sovereign body of this country and if we cannot provide them justice who else would be able to do so.

Sir, it is my submission that we should be practical in our approach. You have rung the bell, but there are certain points on which I would like to express my views. I may kindly be given one more minute. I want to say one thing about the lawyers. I have seen the real face of the lawyers. I used to go to famous advocates of Delhi on behalf of the *Hindustan Times*. I would like to refer to one example. I went to a top advocate, who was elected as an M. P. also later on. I would not mention his name. A notorious dacoit was sitting by his side, who had his face covered.. (*Interruption*)...I would not mention his name. When I asked him to take up my case, he replied that I would pay him only Rs. 5000 as fee for one day, whereas the person sitting by his side would pay Rs. 50,000 to him. He would not even enquire about the quantum of fees, because his lap is full of gold, silver, diamonds and jewellery. I have seen this with my own eyes. On the one hand that person supports the dacoits and on the other hand, he talks big things here. The honest persons are suppressed. He had also said that I would make payment through cheque so that the person would not ask for a receipt. This is not happening only there. I would like to tell you that once it had appeared in some newspapers that the lawyers of this country were looting the people. As a result, myself and the editor were harassed throughout the country. We had to go even to smaller places. The judges of those places expressed their helplessness. They said that they had to live day and night with the lawyers and in those circumstances what they could do against them. They advised me to apologise. We told them that we would not apologise. We said that they talked about freedom of the press but these lower courts suppressed the freedom of the press. It is not known to them. We went to Rajasthan, Uttar Pradesh and South India braving the cold winter and the hot summer, but we did not apologise. We said that the real face of the lawyers should be exposed to the people. When we engaged the lawyers at these places, you would be surprised to know that these lawyers changed fees not only for themselves, but for their daughters in-law, their sons and their sons-in-law

[Shri G. D. Rajhans]

and said that they all were their assistants. I had thought that when I would get an opportunity to speak in Parliament, I would expose these lawyers. I have to say this much only.

[*English*]

SHRI BRAJAMOHAN MOHANTY (Puri) : Mr. Chairman, the last word on the subject has been said and I am afraid of repetition.

When I was listening to the speakers who spoke immeditely before me, I have been reflecting on the formulation of Dicey that the legislature is one generation behind the public opinion and the judiciary is another generation behind the Legislature.

When Prof. Madhu Dandavate initiated a motion, I thought that he would speak something and that he would give some sparkling enlightenment which will suggest measures to reduce this gap. But I am desperate. I am desperate because I did not find any such enlightenment. As a matter of fact, I was very careful listening to him between the lines.

If he was unhappy with the present judicial system, my idea is that when he was in the Government, he could have introduced some changes. (*Interruptions*) when they amended the Constitution, they could have introduced some radical changes, if they liked.

So far as the judges after their retirement is concerned, it is they and we together who brought one retired Chief Justice from the Supreme Court and gave him the highest position here in this Parliament.

19.00 hrs.

Our system may not be a perfect system, but my submission would be that that is the best available system in the world. In the United States of America, the most freedom-loving people of the USA have evolved a system where the President of the USA almost always nominates judges from his party-men; his party-men are nominated as judges. Nobody says that the independence of the judiciary there has been tampered with. In the United Kingdom also, the Prime Minister advises the Crown that such and such person will be the Chief Justice. There is no problem there. Never has there been a clamour there that there has been a political decision. My submission would be that nowhere do you find a clamour as you see in India that the independence of the judiciary is being tampered with. When I was listening to Mr. Amal Datta, I recalled those days when the Secretary of the CPM said that the Supreme Court was administering class justice. I recall those days when the Secretary of the CPM said that the Supreme Court is administering class justice. I recall those days. Now they are clamouring for independence of judiciary. There was contempt proceedings against Mr. Namboodiripad. My submission is : I do not say that it is a perfect system. But it is the best available system. So any positive suggestion to improve upon it we will definitely welcome and that will definitely be considered by the Government. Then, Sir, so far as the poorer strata of the society are concerned are they not deprived of justice ? Are they not ? How long litigation is pending ? I was looking at the figures. In the year 1983 the cases pending in the High Courts numbered more than 10 lakhs. You can imagine all over the country how many cases should have been pending. What is the justice we are doing ? So you can imagine how people are left to their own fate and somebody dies but the litigation is not finalised.

No doubt Prof. Dandavate mentioned about devolution of authority of the Supreme Court, creating tribunals for labour cases, tribunals for taxation cases and some others. It is an old idea which has been accepted by the Chief Justice of the Supreme Court. But that should be given effect to immediately. In the Consultative Committee I myself raised this matter a number of times to give effect to the devolution of the authority of the Supreme Court. My submission would be that that will not answer the problem. The problem of pending cases for years will not be solved. My submission is : So far as the role of the Supreme Court since the post-independence era is concerned what is its position ? Till Golaknath case the will of the people were to prevail and the people of India were sovereign. After Golak the will of the people will prevail only if it conform to the Constitution of India. So it is a liberal democracy and the voice of the people is no longer absolute. So we have come to this

position after Golak case. To-day we are in a most uncertain position.

MR. CHAIRMAN : There are still four more speakers and then there is the reply by the Law Minister so if you agree that now everybody will speak for not more than five minutes, then we can complete this by 7.30 p. m.

THE MINISTER OF LAW AND JUSTICE (SHRI A. K. SEN) : There is a Cabinet meeting. You may then take it up tomorrow. Now the reply will take some time.

PROF. MADHU DANDAVATE : I suggest that his reply maybe taken up tomorrow. But other speeches should be completed.

SHRI A. K. SEN. : This is a very important subject and the reply from the Government side you would like to hear.

MR. CHAIRMAN : Reply will be tomorrow but the list of speaker will be finished to-day.

PROF. MADHU DANDAVATE : But he should not go away. He should be condemned to sit here till the debate is over.

SHRI A. K. SEN : I shall leave the State Minister here because I have some important work. Not that this is not important. I beg to be excused.

MR. CHAIRMAN : Still 5 minutes rule will apply—I think.

SHRI BRAJAMOHAN MOHANTY : My submission would be : who does not know that a climate of uncertainty has been created by the Keshavanand Bharati's case. What is the basic feature of the Constitution which cannot be touched by Parliament by way of amendment ? Is it know to the Judges ? Is it known to the Bar Council ? It is more uncertain. Amal Babu knows it. Nobody in India can say what is the basic feature of the Constitution and what is not. In that judgment itself a different picture is given by different judges. My submission would be : Sec. 4 of the Forty-Second amendment of the Constitution which amends Art. 31C. What is the position ? In one case, the Minerva Mills case that section was declared invalid. In a subsequent case the Supreme Court again upheld it. What is the position ? Does it previal ? Does it operate here ? Nobody knows. I am quoting the Chief Justice of India. While presiding over the Silver Jubilee celebrations of the Jammu & Kashmir High Court, the Chief Justice quoting Lord Scrutton's observation said :

> "It is the habits in which a Judge is trained, the people with whom he mixes leads him to having class of ideas and when confronted with another set of ideas, he is unable to give accurate and sound judgment. Most lawyers and Judges have greater familiarity with taxation problems of the rich than retrenchment compensation of workers."

Our system is a tradition bound system and our judicial system resists any change. I expected from Prof. Dandavate something which will promote changes, which will promote dynamic changes which will be in keeping with the aspirations of the people, but nothing of that sort I heard. About the judiciary I would only quote one passage from an article written by an internationally renowned research scholar.

> "I would only cite some pertinent examples whereby the legal system has acted in a manner in which it could have better not acted. First, the Courts in its zeal to protect the footpath dwellers from being evicted, held that they should not be uprooted till they are provided with alternative sites. This gives immediate justice but at the cost of encouraging lawlessness. Such a decision will encourage the unscrupulous persons to occupy public lands with impunity. Second, the Courts in an image-building exercise has lost its night's sleep on the welfare and comforts of the convicts. This exercise in playing to gallery reached the high water-shed mark when it first banned handcuffiing of under-trail prisoners and thereby added to the problems of the law enforcing authorities; and secondly, more and more is being done to even convicts having been sentenced by the Supreme Court itself to death by being hanged till death.,"

[Shri Brajamohan Mohanthy]

My submission would be that this image building of the judges should stop. They should mind their own duty and do justice. They should not consider that they are above Parliament and they are above public opinion. They should not think that they are the third Chamber of the legislation.

[*Translation*]

SHRI VIJOY KUMAR YADAV (Nalanda) : Mr. Chairman, Sir, the motion moved by Prof. Madhu Dandavate is very important and Professor Sahib has rightly expressed the hope that Government would get an inspiration from this motion and would bring forward a comprehensive legislation regarding judicial reforms.

What is the necessity of having judicial reforms today ? It is correct that today the people have lost faith in the judiciary of our country. Some people say that our judiciary creates a sense of confidence among the people. But the situation is totally different. Not only the poor and the common men are not getting justice, but litigation has also become so expensive that the common man cannot go to the courts. Then, as many Hon. Members have said, corruption on a very large scale has crept into our judicial system. The judgements are not fair and that is why the people have lost faith in the judiciary.

Today, the Supreme Court and High Courts are meant for a few people only. The Supreme Court or the High Courts are out of reach of the common man. Even if there is a tenable case and they would get justice there, the financial condition of the common people is so bad that they are unable to go there. Their financial condition does not allow them to knock at the door of the Supreme Court or the High Courts.

The first point in judicial reforms should be that the people should get cheap justice. As a matter of fact, the meaning of justice to the people is that they should get cheap justice and get it without any pull or pressure or favouritism. Secondly, justice should be provided spee dily. When Judicial reforms are to be effected, these three principles need to be considered. Whenever any legislation is formulated, it is very essential that provisions to this effect are made therein.

Mr. Chairman, Sir, under the present judicial system, the cases, whether criminal cases or civil remain pending for a very long time. A case has to pass through many stages. In my view, this also delays the justice. One of the reasons for delay in getting justice is its procedure also. I think there is a need to make a basic amendment in it also. A time-limit should be prescribed for the pendency of any case.

Until the loopholes and the defects in the laws are removed, which keep the cases pending for quite a long time, the people will not be able to get justice. It has been mentioned that there are many loopholes in the Land Reforms Law in Bihar. People make appeals after appeals and cases keep on pending for long. To obviate this, in my view, amendments in the Cr.P.C. and C.P.C. are very necessary.

Regarding judicial reforms, mention has been made about having a committed judiciary. The members of the ruling party have interpreted its meaning in various ways. Professor Sahib has placed certain facts before the people. After all, why are such things said ? These things are said due to the methods which are adopted for transfers and postings. If the transfers, postings or promations, etc., in all the High Courts and the Supreme Court are done according to some prescribed norms under a common guideline and the policy of pick and choose is eschewed, such things would not be said.

So far as the commitment to the constitution is concerned, not only the judges, the M.Ps. and the M.L.A. are committed, but all the citizens of India must be committed to it. It is clear that the people who are not committed, have no place in India.

PROF. MADHU DANDAVATE : They take oath according to the Constitution.

SHRI VIJOY KUMAR YADAV : They of course, take oath according to the Constitution. Members have talked about social justice. We want to bring about social and economic reforms in our country. It is clear that commitment towards it is the first and the foremost thing. Therefore, so far as such a commitment is concerned, it is being viewed from a different angle. Many things happen in the courts. As Shri. Shyam Lal

Yadavji has said just now and we also have felt the Judges are committed to the classes from which they came and not so much towards the Constitution on the social reforms and, therefore that also affects their judgements. I do not say that there is dishonesty, but the commitment towards the constitution which should be there is lacking. There is wide scope for interpretation there. One may interpret it in ones own way. Mr. Chairman, Sir, I would, therefore like, to suggest that this aspect must be kept in view. I would finish my speech after mentioning one more point only. I would like to say that when we want justice, rapid disposal of cases and more work, the salaries and other facilities in the lower Courts, the High Courts and the Supreme Court should also be increased. We would have to look towards their basic problems and their facilities should be increased.

SHRI MOOL CHAND DAGA (Pali) : Mr. Chairman, Sir, declarations are no solution our Ministers, leaders and Judges all talk about providing justice at the door of the poor. You may go though any speech, leaders and judges all say one thing in their speeches that justice would be provided to the poor at his door. The speeches which have been made today in Parliament have emphasised the need for increasing the pay and other facilities of the judges. You should kindly tell us about all the emoluments and not only pay and then you can take a decision. Law is a cobweb, in which only the poor are trapped and the rich escape. All the laws are cobwebs. You can ask the Hon. Minister about it. The Hon. Minister of State is a hardworking person. He said that 1.36 lakh cases were pending in the Supreme Court and 10 lakh cases were pending in the various High Courts. You may kindly find out how many cases are pending in district Courts and Munsif Courts. You are aware of the number of cases pending in the Supreme Court. Millions of people live in villages. The soul of India lives in villages and you are talking of Supreme Court and High Court here in this House. These big people forget about the land. I have to talk about the land in the villages. The common man in the village yearns for justice. The question is where he will get that justice. Only those who have money can go to the Supreme Court and the High Courts. The poor do not get justice at the very door of justice. You will have to ponder over it. There are numerous agents in the Courts. The leaders speaking for Judicial reforms should have said that justice should be made available to the poor. I am pained to learn that they talk big but would not care for the poor, because the newspaper will carry reports to the effect that such and such discussion has taken place. We want that family Courts should be set up so that the poor could get justice. Nobody will be allowed in a lawyer's black coat in these Courts. The views of both the parties will be ascertaned and then a decision will be given. Summary trials should be made. In the U.S.A. both the parties used to be called for hearing and the case settled within 5 to 6 months. Our former Minister Shri Digvijay Sinh is present here, he has told us that a constitutional appeal is pending for the last 12 years. The hearing is yet to be completed. In spite of all this, you want to talk of justice. Justice is that which is cheap, and easily available. The poor want justice. Our democracy is based on justice. If we are to keep the democracy alive, we shall have to make justice available to the poor. Justice will have to be given the way we want it. When a decree is issued, who can enforce it ? All the judgements are delivered in English and none in the regional languages. A lawyer carries 25 books as a "beldar" carries goods on his donkey. The lawyers keep books such as, 1956 Allahabad, 53-Calcutta or 52-Madhya Pradesh and the like. The judgements are prepared by copying from these books. This is our commonsense. We have lost our commonsense. Time and again it is said that 'justice delayed is justice denied'. We have been elected to this House as people's representatives. We should see to it that justice is given expeditiously .. (*Interruptions*) I want that the people should get justice from the Courts. When you have forgotten all these things, how can justice be had in the courts. The old laws will have to be amended. You will have to make arragement for giving hearing daily. The arrangements by the lawyers go on for days together. The hearing should be completed in a day...(*Interruption*) What happens at present is that a case lingers on in the Supreme Court for 7 days for documents alone. Arguments go on and the lawyers charge at least Rs. 3,500 as fee for a day. It does not include black money; that is a separate matter. All this goes on. These are

[Shri Mool Chand Daga]

the qualities of good people to talk of socialism, deliver big sermons and speak in English. They can speak in a foreign language, but do not want to speak in the language of their land. They do not want to speak in the language in which they sought votes. They speak in different language to get votes—in Marathi, in Hindi and in Konkan but once elected to this House they say that we are to impress the big newspapers so that they could print something about us. Therefore, the foremost question before us is how to make cheap Justice available to the poor easily and expeditiously and what Judicial reforms should be made for this purpose. For this, it is necessary to have good Munsifs, and good Judges in civil courts and their emoluments should be increased. If this emoluments are raised, if good people are appointed there, the poor will get justice in those courts. For this purpose, you also need to impose a time limit, only then, they will get any benefit, otherwise, your talk of Judicial reforms, which is nothing but crammed sentences is not going to be of any avail. Our Minister speaks a lot that cheap and expeditious Justice will be made available to the poor and that radical changes will be made in education. They make many sorts of such announcements and this way they are very kind to us ! I would like to ask whether you will give cheap, easy and expeditious justice to the poor through speeches only. This is not going to help. For this, you change the law, amend the Evidence Act, amend the clauses, bring out the law in your own language. When all the laws will be in regional languages, the people will be able to understand them. Judgements should also be in the languges which are spoken by the people. Otherwise, what happens is that the lawyers go on arguing the case and the clients do not understand what they are saying or what they want to say and how much close they are to the facts. They do not know whether they are speaking the facts or not. Why should the arguments be in English only. These people deceive their clients because only one crore people know English in this country—not more than that.

Sir, this is a very intricate question. To talk of Justice to the poor is one thing, but the fact remains that the poor do not get Justice today. So far as 'legal aid to the poor' is concerned, you might be knowing that a big meeting was held in this regard in Bombay and you might have attended that meeting, it was organised by Shri Antulay. I think, a book was published in 1960 ..(*Interruption*) I have not been able to know till today how you are going to give justice to the poor. How will you make cheap, easy and expeditious justice available to the poor, and how will you implement it ?

Therefore, Sir, I want that whenever you speak in this connection, you should give full attention as to how cheap, easy and expeditious justice can be made available to the poor in the conditions prevailing in the country.

[*English*]

SHRI DIGVIJAY SINH (Surendranagar) : I will stick to my promise—half a minute—although he has taken the wind out of my sail. I know that the time of this institution is more precious than any other in the country.

The Unstarred Question which was replied today by the Hon. Minister of Law and Justice, bearing No. 6495 was put by me. The question was 'Please lay a statement showing a list of Full Bench constitutional cases pending in the Supreme Court, which have not been heard for once in twelve years'. Full Bench constitutional case not heard once in 12 years. And the reply was : "As per information furnished by the Registry of the Supreme Court, there are 110 such cases."

I have to say nothing more. I think this half-a-minute is more pungent than half an hour.

SHRI HAROOBHAI MEHTA (Ahmedabad) : The speech of Prof. Madhu Dandavate I must say with great respect to him, was punctuated by polemics. So, I do not want to take time of the House in answering polemic by polemic. I shall go straight to the question of the independence of udges. A proposal has been mooted that the appointment of judges should be made with the concurrence of the Chief Justice. I have got strong objection to this suggestion and that is on the ground that the constitutional responsibility of the Council of Ministers is to the Parliament; if the President makes an appointment according to the advice of the

Council of Ministers, the Government is answerable to the House. If the concurrence of the Chief Justice is required and he is made the sole authority of appointment, our House will not lose the right to question regarding the appointment. Therefore, the powers of Parliament will be eroded to that extent. I, therefore, submit that the present system of appointment power vesting in the President on the advice of the Council of Ministers in consulation with the Chief Justice is consistent with the constitutional responsibilities towards this august House; and any change in the system will derogate from the power of this House. Therefore, the power of appointment should and likewise the power of transfer of judges continues to be vested in the President.

Now, as has been rightly said, judges should be independent; judiciary should be independent; but that means that their judicial functioning should be beyond interference. I don't think the executive of Parliament has ever interferred with the adjucative functioning of courts. Independence of Judiciary does not mean that judges should be allowed to be independent of the aspirations of the people and social commitment and the basic philosophy of the Constitution enunciated in the Preamble and the Directive Principles of the Constitution. If it is required to be referred to any judgement on this point, please see the Judgement rendered in Kesavananda Bharti's case; if there is any article required to be referred to on this point, kindly see Art. 38 according to which all institutions of the States are required to apply Directive Principles of the constitution which are fundamental in the governence of the country.

Now, unfortunately, we find some judgement coming in the way of the implementation of the Directive Principles. I do not want to dwell at length on this point. But look at the Excelwear Case wherein the Judgement of the Supreme Court upholding the right of the businessmen or industrialists to close down their undertakings came directly in the way of Directive Principles of right to work. Similarly, when the Government decided to take over Manek Chowk Mills of Ahmadabad in order to restart it, but Delhi High Court gave a stay with the request that the workers are starving for the last several years. Many progressive measures are suffering on account of injunctions given by the courts often even temporary vaidening of laws is effected by courts by giving injunctions on stay against the operation of the laws with the result that progressive measures cannot be brought into effect for years even if ultimately they would qualify for being upheld.

A survey or a study is required to be made on the question of what would have been the development tempo of this country had there been no power of the courts to give injunctions against the implementation of laws. It would reveal a great deal.

Now, the judiciary itself is according to cardozo an undemocratic institution. It is neither elected nor is it answerable to people or to Parliament. Therefore, let there not be any plea for enlargement of the powers of the judiciary. The question of arrears has become acute in the last few years. One reason is that the judiciary has expanded the horizon of its powers more than what the Constitution envisaged. They should know parameters of their powers. In the name of public interest litigation which is good so far as it concerns bonded labour or working conditions of sweating labour or slum dwellers and others who cannot defend themselves. But it is from the weaker sections who often resorted to indiscriminately as if Judiciary is a super executive.

In Ahmedabad, some, officers were posted to look after law and order situation in a polluted area. Now in the midst of riot situation, the court said that the official should not work in that particular area. This way the control of law and order situation was taken out from the hands of the executive on account of court saying that this Commissioner should not work or that Commandant of the Special Reserve Police should not work in this particular area. Why should the courts start acting as super executive ? Courts have been enlarging their jurisdiction in areas not meant for them and that is one reason why there is a problem of arrears.

But this can be solved. First of all, the higher courts should work for more days. I was not surprised—but many friends will be surprised—when I saw the calendar of the Supreme Court two or three years ago, and

[Shri Haroobhai Mehta]

the situation has not much improved since. One hundred and eightythree non-working days and 182 working days for the Supreme Court. Half of the year the Supreme Court did not work ! What is this ? Can they not work more ? We are asking workers to work for eight hours on machines. But the Judges cannot work for more than five hours. I do not think Prof. Dandavate will place mental work at a higher pedestal compared to the physical work. Long vacations and short working days are luxurious kind of things. There should not be long and repetitive arguments. As a member of the Bar, I am myself abashed. The Judges should not encourage long and pedantic arguments. The public are not interested in pedantic judgements. They are interested in quick and simple orders.

Some procedural reforms are necessary. Legal aid should be provided. In Gujarat we have successfully evolved Lok Adalates. It has proved to be a very good example. Some matters are taken out of regular boards of the courts and placed before conciliation boards comprising advocates, retired judges, social workers and others. They try to persuade the parties to settle the cases. More than one hundred Lok Adalats camps have been held and 15,000 cases have been settled out of courts. That is one way. That may help us in the early disposal of cases.

Therefore, I would submit that if the judiciary remains within its sphere earmarked by the Constitution, instead of making pronouncements or observations in the other spheres not belonging to them, it would be all right. Somebody spoke about the observations of Mr. Justice Tulzapurkar. I am not surprised. He is a Judge who is known to have made some disparaging remarks about his brother Judges while pronouncing a judgement. It is a reported judgement. Because, after all,

"Yada-yada unchati vakyavanam,
tada-tada jaati kul pramanam."

I may point out that it is not necessary or ect to say that high emoluments, arenece- to ensure honesty. Even a Talati Kha- be honest; a Police Constable can be f you give more pay to the Judges, ire honesty, I may say that that quite correct. After all,

"Kriya sidhi satve bhavati,
mehtam na upkarane."

It is not that honesty can be ensured only by paying high emoluments. A High Court Judge gets about Rs. 6,000 per month all told. If one says that there should not be disparity between his income and that of lawyers appearing before them. Then on the same reasoning a trade controller should have pay equal to the income of a pleader, industrial licensing adjutants should get an income equal to the industrialist appearing before them. If there is any need, there is need for a ceiling on the fees of the advocates, if there should not be a large disparity between the income of the Judges and the income of the lawyers.

MR. CHAIRMAN : Please conclude.

SHRI HAROOBHAI MEHTA : I am concluding.

I suggest that a commission may be appointed to find out what are the reforms that are necessary in the present judicial system.

PROF. SAIFUDDIN SOZ (Baramulla) : Mr. Chairman, Sir, I heard very good speeches from my colleagues on the need for judicial reforms. As usual, Prof. Madhu Dandavate made a very good speech, raised some points which were answered partly by my friend Mr. Faleiro and Mr. Kumaramangalam. But after hearing all these speeches I heard one speech from a Telugu Desam Member; I was very much enlightened by the speech of Shri Ayyapu Reddy. And, many points were made by other friends. Mr. Daga also mentioned that he wants a Panchayti Nizam in place of this rotten judicial system. All these speeches put together, I collated the facts from speeches of the friends and I have come to the conclusion that there is something radically wrong with the judicial system. Mr. Kumaramangalam was referring to the Directive Principles of the Constitution and the philosophy of the Constitution. But where is the disagree ment ? I want to remind him and others, who believe that nothing is wrong in the system, that the situation is brewing to a stage where all of us will be forced to recite with Faiz Ahmed Faiz the following couplet :

"Bane hein ahle hawas, muddai bhi munsif bhi
Kise vakil karen, kis se munsifi chahen,"

We have created a mess. Now, Mr. Kumaramangalam was posing a question to Prof. Dandavate and he brought in Mr. Khanna's name. Mr. Falerio referred to Tulzapurkar, indirectly. Something is going wrong before our very eyes not because of the judges but because of our policies. I have the limitation of time. I want to ask a question. About the policy of appointment and the policy of transfer, are there definite guidelines adopted by the Government ? You have the guidelines according to which one-third of the judges must be from outside the state and the Chief justice cannot be from the same State. But in Janmu & Kashmir Justice Bahauddin Farooqi remained acting Chief Justice for 3.1/2 years. I want to tell you that there is no provision for an acting Chief Justice in the constitution as such. Yet in Jammu & Kashmir State Mr. Justice Farooqi remained as acting Chief Justice for 3.1/2 years. All these years he must have remained in despondency. Once he was confirmed, he was asked to go to Sikkim. When he explained his case through a letter, that letter was treated as his resignation. Now, fortunately, the present Chief Justice remained as acting Chief Justice only for six months. But I want to tell you that when you come to implementation of policies, you play havoc with the whole system. Do not think that I am having any brief for Justice Bahauddin Farooqi or asking for the transfer of the present Chief Justice. That is not the point. I do not cast aspersions in general terms on the executive. But I was telling you something is radically wrong with the system, and if you are discussing judicial reforms, I have only two points to make. One is on the appointment of judges. What is the criterion for the appointment of judges ? Somebody said seniority. No, if your system is pucca and your man on the top is not fit for that office, then there will be the selection. After all, if you have a criterion, if you have a definite criterion, then seniority is one element in that criterion, it is not everything. May be, there may be a brilliant judge, a judge committed to the Constitution of India and a judge committed to the understanding of problems of teeming millions of India, but there are judges who do not care for your Constitution, there are judges who hate the very word of socialism, there are judges who do not care for any poverty line or the starvation line. Those judges are not fit to become judges of the Supreme Court. So, a definite criterion has to be there and seniority will be one element of the criterion. Where is the criterion? *Sifarish* (recommendation) has been the rod. Recommendation by politicians must have been the rod during Janata regime, I do not know because it is for Mr. Faleiro to sort out with Professor Dandavate. What Professor Dandavate was telling you about committed judiciary and bonded judges, that raises a very important question and Mr. Ashok Sen, and his able colleague are there. They are luminaries in the profession, they must answer these points. So, when you come to the appointment of the judges—I do not say recruitment of the judges because that will not be a dignified word—you have to be very cautious. When somebody becomes judge of a High Court because he has to rise to an upper level, he has to go to the Supreme Court, at that time you apply a criterion rigorously and you must rise above party level at that time.

Now I come to emoluments. I feel one with Mr. Daga—by telepathy he has snatched away my idea, I do not know how-that not that they (Judges) should not get more money, certainly there must be some rise, there should be some perks, but if you double the emoluments, if you give them three times more emoluments, that can never make them honest, that can never give them dignity. At the time of making the appointment of a judge, you must ensure that he has some principle in life. After all, somebody should have reputation for honesty. He cannot be only senior and ask for the promotion. So, at the time of giving reply tomorrow, I wish the law Minister makes a commitment in this House that they shall be very cautious in making the appointments. After all, we have to work for the unity and integrity of this country. Why politics ? And then, we shall watch these judges. Some of them are not behaving as they should in a democratic country. This Parliament is supreme, and I raise a question here that we have to discuss judges when it comes to discussion, when it pinches our hearts. K. K. Tewary rises and brings in the name of Justice Tulzapurkar. Somebody said he is a good judge. Mr. Tewary said, Tulzapurkar's remarks are objectionable. Here is a man who mentioned his name, there is a man who mentioned

[Prof. Saifuddin Soz]

Justice Khanna's name. I want to know who will ask the judges to prove their integrity. You say people. Where are people ? We are the people of India, those who are sitting here. Kumaramangalam is wrong. He says 'commitment to the people'. Where are people ? Can you meet 70 crores of people ? We are the people of India. Parliament is supreme. They have to see what the judges are doing. They have to be restrained through law which is our province. Here is a house belonging to the Lok Sabha pool and there is a man in the street. He is nobody in Delhi that is to say, he has no official position. His son or he goes to the Delhi High Court and gets the stay. Why does a Judge grants stay on filmsy grounds. Mr. Faleiro is not in a position to allot that house. That fellow has no position in Delhi yet he obtained stay. What is this stay ? And this stay is extended from time to time. To whom is that judge answerable, I want to ask Mr. Bharadwaj. I raised a point in the zero hour today, which the Hon. Speaker did not allow. I do not question the Speaker's wisdom because after all he is in charge of affairs. He knows what suits the occasion. But my point was different. When I referred to the Calcutta situation, I was not reducing the problem into a communal situation. I never said that it has touched the feelings of Muslims only. But I want to tell you that two petitioners went to the High Court and that petition was admitted. It was not a good thing on the part of that judge. If I do not say it here, where do I say it ? I raised this problem not only here in the Zero Hour, there was an occasion for me to take up this problem with the Prime Minister, we had gone in a delegation in some other connection. I said : 'Mr. Prime Minister, I say that the Government of India's action is laudable and if the West Bengal Government's action is also laudable, you got the write disposed of early. But tell me: Did those two people not create a situation for the country ? Maybe they are in league with some agency and they wanted to destabilise the country.' So it was the Judge's ineptitude to accept that. In the Supreme Court and High Courts, as Faleiro rightly said, hundreds of writs are just, on first sight, rejected. Why were these writs admitted in the High Court as a result of which a disturbance was created in the country ? The Muslim leaders behaved properly, they asked for restraint. But tell me, these judges have to be answerable before somebody, and what is that power ? That power and authority is Parliament. So, Parliament must uphold its dignity and its authority and those Judges are answerable before us. So, recruitment is very important. (*Interruptions*).

The second thing is backlog which in a very brief speech, perhaps the briefest Mr. Digvijaya Sinh has covered this. I must say that I never thought that in one minute he could make a speech, and Mr. Bharadwaj has answered that only 110 cases are pending in the Supreme Court which have not been heard for 12 years and you want us to sanction a big kitty and a long list of perks to the Judges which is a reflection on their working and some solution will have to be found. How do you solve the problem of backlog ? In my State, more than 40,000 cases are pending and there are so many connected problems which Mr. Bharadwaj must be knowing. There are vacancies which you do not fill up. Why not ? And Tarkunde who has been very able and honest—at least among the Judges whom I know personally, he is one of the most honest Judges we have produced in this country. A legal luminary as Tarkunde is, he gives a solution stating, 'Have tribunals for justice'. And you have already touched the feeling of Mr. Daga who wants panchayati Nizam. Why not ? Some delegation of authority and power is required. For smaller things one has to go to the Supreme Court. Why ? Where from shall people get money ? They have no money. Only businessmen can go to the Supreme Court, perhaps not the poor people.

So, backlog is there, and that backlog has to be cleared and the Law Ministry must be knowing better as to how they can do it.

Lastly, Sir when you go to the court, the atmosphere is terribly filthy there. Firstly the people are led to the court. Those who do not want to go like me feel is if we are going to a place which is not sacred at all, not because of surroundings, but one knows that when one enters into the precincts of the court, one thing is definite that he will never get justice and if justice comes, it will be very delayed.

[*Translation*]

The process of litigation is wearisome. But the other aspect is—

[*English*]

—I do not know how it happens. The petition writers and the lawyers sit on broken benches and jhuggis all around. There are a lot of people in the compound—these lawyers, advocates and petition writers. When one is inside the court, it is less than a sacred place. I am telling you what a common man feels about the High Court and the Supreme Court, but the Law Ministry can get the external filthy atmosphere cleared. Many foreigners come and they visit our courts, but the surroundings are very filthy. You must rise to the occasion and get the surroundings cleaned.

PROF. MADHU DANDAVATE : Foreign hand in the court also ;

PROF. SAIFUDDIN SOZ : May be.

Thank you very much. I have made one or two points which I feel that the Law Minister or Mr. Bharadwaj, I do not know who will answer this debate—some one of us has requested you and I support that request that we must have one full-day's discussion on the judicial reforms. We have to say many things. So. till we have that, the points we have raised must be answered by the Hon. Law Minister. Thank you, Sir.

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI H. R. BHARADWAJ) : Sir, before we adjourn for the day, I just wanted to intervene and put the record straight because after all such senior Members have participated in the discussion. We would like to be corrected if there is something wrong. I am putting two suggestions.

Has any Chief Justice been transferred in contravention of the policies laid down ? Has any Chief Justice complained, "I was transferred without the consent of the existing Chief Justice of India"? Not a single Chief Justice has been transferred during the last 5 years without the express consent of the Chief Justice of India. That is the Constitutional obligation. But some judge of the Supreme Court has said that a Chief Justice has been transferred without the consent of the Chief Justice of India. It is highly incorrect. We cannot restrain these judges in that court But they must correct themselves when they say something. When their brother Chief Justice of India recommends something, we do it. And then, we are being accused of it.

Secondly, I would like to know whether any single appointment—I repeat appointment—has been made without the express consent of the Chief Justice of India. I welcome suggestions on these two points. I would like the Hon. Members to point out if there is any contravention.

PROF. MADHU DANDAVATE : I accept the challenge. 16 judges were transferred during the Emergency.

SHRI H. R. BHARADWAJ : I am not talking of the Emergency. I am talking of the last five years. Perhaps you did not talk about the Emergency. I talk about the recent past.

[*Translation*]

SHRI HARISH RAWAT (Almora) : Mr. Chairman, Sir, I thank you very much for the opportunity which you have given me as a bonus for my presence in the House in this late hour. I shall not take much time.

The first thing is that I want to draw the attention of the Hon. Minister to the fee which an ordinary litigant has to pay as stamp duty. This should be solved in consultation with the state Governments, because, perhaps, the income from this duty goes to them. The poor have to pay this high rate of stamp duty whereby justice becomes costly for them.

The second point to which I want to draw your attention is legal education. We have many media through which we can provide to the common man the knowledge of ordinary laws which we practically come across in our daily life but, I think, very little work has been done in this direction. Once in a while, we see such a programme on television. Such programmes should be regularly given on radio and television. In addition to this other media at the disposal of the Ministry of Information and Broadcasting should also be utilized to give more and more knowledge of ordinary laws to the people.

One thing more I want to say. In our courts, especially in the lower courts; Shri

Rajhans has referred to a 'mafia'—I would not say 'mafia' but—a sort of gang is formed. Some lawyers, some sort of agents exploit the people attending the courts in connivance with the judges. The dates are postponed time and again and an impression is created that a favourable judgement in the case can be given or a bail can be granted if one engages a particular lawyer. Many difficulties of this sort are experienced which need to be removed, because most of the people come in contact with our lower courts from where they expect justice, as very few people go to appellate courts. Therefore, the functioning of lower courts needs to be improved. We are not only to improve their functioning, but should also give more emoluments to the judges working at this level. When we talk of judges, we talk of only the Supreme Court and High Court judges and after listening to the debate in this House, I got an impression that our Hon. Members who speak here and express their views seem to be influenced by the Supreme Court and High Court judges and the quality of justice at that level only. But the foremost thing which needs to be considered today is how people can get effective, easy, expeditious and cheap justice from the lower courts.

In this connection our resolve to provide legal aid needs to be strengthend further. It helps the people a lot. This should be encouraged by involving a larger number of people and good persons in it.

[*English*]

MR. CHAIRMAN : The House stands adjourned to re-assemble at 11.00 A.M. tomorrow.

20.01 hrs.

The Lok Sabha then adjourned till eleven of the clock on Wednesday, May 15, 1985 Vaisakha 25, 1907 (Soka),