

15.48 hrs.

SUPREME COURT (NUMBER OF JUDGES) AMENDMENT BILL

]English]

THE MINISTER OF LAW AND JUSTICE (SHRI A. K. SEN) : Mr. Chairman, Sir, I move :

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

This has been necessitated because of certain facts which I may place before the House.

Last time the strength of the Supreme Court was raised. At that time the strength was 14 and in 1977 it was raised to 18. At that time the number of cases was only 14,501. As against it today, in 1984, it has gone up to 49,074—more than three times, nearly four times. In fact, in 1985 it has gone up still further and the pendency in 1977 was only 14,109. It has gone up to 86,733 and today I think it is in the region of about a hundred thousand. This is notwithstanding the fact that disposal has gone up from 10,000 per year to 35,547 per year. Therefore, the Supreme Court itself has recommended the increase in their strength and they recommended the increase to be 26 and that is why this Bill has been brought and it will be necessary for the purpose of seeing that there is no bottleneck and arrears mounting up as in the Supreme Court today because that is the apex of our judicial system and if we start from there, it is hoped that we shall be able to tackle the problem at the High Court level and the subordinate judiciary level.

With these words, I commend this Bill for consideration.

MR. CHAIRMAN : Motion moved :

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

SHRI K. RAMACHANDRA REDDY (Hindupur) : Sir, I am happy that the Government has brought forward this Bill at least at this late stage. I wish, instead of this Bill, they could have brought a comprehensive legislation including the High Courts and lower courts also so that the pendency would have been reduced. Anyhow, that is not done. I wish they will take up this suggestion and do something in the matter.

As far as the disposal is concerned, justice delayed is justice denied. Inordinate delay in dispensing justice is equivalent to dispensing with justice.

In 1950, there are 17 judges in the Supreme Court. Now that is sought to be increased to 25. If we take the pendency of judicial cases as far as institution of cases is concerned, it was only 14,000 in 1977. Now it has come to 49,000. That means, there is an increase of 300% or above as far as pendency is concerned.

There were 14,000 pending cases in 1977. Now the pendency has increased to about 74,000. That means, the increase in pendency is more than 600%.

When such heavy work is there, it is not possible to reduce pendency with the existing number of judges and so it is very necessary that the number of judges should be increased and that is why I support this Bill for increasing the number of judges.

I would like to ask what is the cause of this delay in justice. The Government has not made any effort to find out the root cause and to remove it. A doctor diagnoses a patient and will take all the aspects into consideration and gives him medicines and, if necessary, he will go to the extent of operation. It is said in the olden days :

*Dushtangambu Khandinichi
Sheshangambuku Rakshaseyu kriya.*

“If a limb is unfit, he will remove that limb to save the remaining limbs.”

In this manner, the Government also must come forward and analyse the cause.

But the Government have not done it. By merely increasing the strength of judges, they think that everything is over, the pendency will be reduced and all cases will be disposed of. I do not think it is the correct way.

For improving the disposal, quantity of judges alone is not sufficient. Quality is also to be taken into consideration.

Cooperation of the bar is also necessary to reduce the pendency.

The third requisite is the litigant public and the fourth requisite is the staff.

When all these four are taken into consideration and improved qualitatively and quantitatively, then only we will be able to improve the disposal and also reduce the pendency. Otherwise, by just increasing the number of judges, I do not think it will have the desired effect.

As far as the number of judges is concerned, the Government has come forward with a quantitative increase in the number of judges but has not given any thought to the qualitative increase. Unless you increase the quality of the judges also, the calibre of the judges also, it will not be possible for the pendency to be reduced to the desired extent because there is a spate of legislation in Parliament and legislatures. We are passing a number of Acts, some new laws are coming up and new offences are being committed. The judges must have a humanitarian touch and understand the situation prevailing in the present circumstances in the country.

He must have a humanitarian approach, he must have talent to understand and interpret the laws, he must have dedication, he must have the quality of hard working. All these things are very necessary. If these things are there, a judge will be able to dispose of many cases. So, I request the Law Minister, who is a senior most lawyer himself to interfere.

The second thing is the cooperation that is available to the judges from the Bar. Disposing of the cases depends upon the Bar also. It depends on the Bar to a very great extent. If the Bar does not cooperate with the judges, they can go on asking for adjournment on some pretext or the other and see that the justice is delayed. So, the judges must be courteous enough to get the cooperation of the Bar and the litigant public. In a very courteous manner they should get the cooperation and see that they also cooperate with them and the work is done well. So, you must come forward with a legislation to get judges of talent and dedication.

Now-a-days, I am told that persons in the Bar are not willing to come to the High Courts or the Supreme Court as judges because they are earning more and they are leading a better life. So, the talented and dedicated workers are not willing to come as judges. They must be attracted by improving their service conditions. They must get more salary, they must be given free accommodation, and education facilities for their children should be given. Unless their service conditions are improved, you won't get talented judges who would be able to cope up with the Bar.

MR. CHAIRMAN : Only one hour is given for this Bill. So, please be brief.

SHRI K. RAMACHANDRA REDDY: The next thing is, to be effective they must be able to create confidence in the minds of the litigant public. They should not make any discrimination on the ground of sex, religion, region, caste or creed. Otherwise they will resort to delaying tactics and will not be able to dispose of cases speedily. So, in order to attain this, you must get judges of good quality who are above board, at whom the people cannot point their fingers.

Another most important thing is the improvement in the service conditions of the staff. The Government had not thought about it. The staff has to serve summons and orders. They have to do the printing of records and maintenance of records,

[Shri K. Ramachandra Reddy]

making records available for judges. If serving of summons is neglected, notices are not sent or printing of records is neglected, all these things will hamper the speedy disposal of justice. That is why the Government must come forward to improve the service conditions of the staff. Government can inculcate into the staff a sense of dedication, hard work and sincerity only when they improve their service conditions. So, the Government should conduct a study into the service conditions of the staff and improve them to get their cooperation.

If all these four aspects are fulfilled, then only we can hope for speedy disposal of cases. So, I feel that the Government should come forward with a comprehensive legislation to improve the conditions of the judges and staff and get the cooperation of the Bar, and the litigant public. They must take all these things into consideration and see that justice is done to the litigant public who are increasing into lakhs. They can do it by bringing in good judges, by improving the conditions of service of the staff. I therefore, request the Law Minister to take all these aspects into consideration and bring forward a legislation which is comprehensive and also take the pendency in High Courts into consideration and see that there also the number of judges is increased.

16.00 hrs.

[*Translation*]

SHRI SHYAM LAL YADAV (Varanasi) : Mr. Chairman, Sir, I wholeheartedly support this Bill. The proposal to increase the number of Supreme Court judges to 25 is not only appropriate but very necessary also. The hon. Law Minister had himself felt the need of increasing the total number of Supreme Court judges from 18 to 30, including the Chief Justice, but since the Chief Justice himself demanded only 25, it was readily accepted. It is an appropriate step because the number of Supreme Court judges had always been increased as and when the requirement was felt. When the Supreme Court came

into being there were seven judges and now the number is being raised to 25, which is quite appropriate. Here I would like to point out that action should be initiated beforehand for the probable vacancies so that these are filled up within shortest possible time. What happens at present is that vacancies are not filled up for quite some time. Three Supreme Court judges, including the Chief Justice, have already retired and one judge died recently. Two more judges are due to retire in January-February next year and in this way there would be six vacancies in the near future. Four vacancies are already there and two more are shortly due. Besides, two sitting judges are to head Inquiry Commissions. In this way, the Supreme Court is already short of 8 Judges.

It has been a controversial issue in this country whether sitting judges of the High Courts or the Supreme Court should be asked to head inquiry commissions. Many people in the country are in favour of appointing sitting judges and not the retired judges for this job. But in view of the large number of vacancies, one feels that there is no need to appoint sitting judges for this work ; instead, the retired judges should be entrusted with the work of inquiry commissions, etc. A High Court judge retires at 62 while the same judge can go up to 65 if he is in the Supreme Court. He can perform his duties with sincerity and his conduct is beyond suspicion. So, the Government should give it a thought and appoint retired judges for inquiry commissions, because the appointment of sitting judges hampers the smooth working of the High Courts or the Supreme Court. I have given an instance to you. There are two opinions about it. Many people say that for important issues, sitting judges should be appointed instead of retired judges. There is no need to appoint sitting judges of the High Courts and the Supreme Court on the inquiry commissions in view of the fact that strength of the judges is already inadequate and often vacancies remain unfilled. The retired judges should be appointed on these posts because they are capable and can handle this work, as they have worked as judges.

So far as the appointment of judges is concerned, there are two opinions in this

regard also. A retired judge of the Supreme Court, Justice Mathew, who has been appointed as head of a commission today, is against the increase in the number of Supreme Court judges because he feels that it will not help in quick dispensing of justice; instead, the quality will deteriorate. There would be wide difference in their rulings. Therefore, the number of judges should not be increased. The litigants will have no confidence in the judiciary. But his opinion does not appear to be expedient and these judges have got to be appointed. This is very necessary in view of the increase in the number of cases. In the Statement of Objects and Reasons of this Bill, it is stated that over 17 lakh cases are pending in the Supreme Court and High Courts. The hon. Law Minister Shri Ashok Sen said a few days back that a criminal case in the Supreme Court should be decided within one year and a civil case within two years. But the situation is not like that. Even if a case is decided within ten years, the litigants feel that they are fortunate. With the increase in industrialization and economic prosperity, several cases have been filed under the Fundamental Rights that have been granted under the Constitution and the validity of several laws being enacted is being challenged. Many controversial questions regarding the laws are pending before the Courts. The increase in the number of cases is, therefore, inevitable. The number of cases will definitely increase in a democracy. With progress and prosperity, their number will increase. I feel that the increase in their number indicates that our democracy is functioning properly and the common man has full faith in the judiciary. Therefore, the number of cases cannot decline. It is necessary that the vacancies of judges in High Courts and particularly in the Supreme Court are filled up at the earliest. There is one more thing. Additional, *ad hoc* judges can be appointed because the work load is more. But the point is that when there are so many vacancies of the judges, can the permanent judges be appointed at once. In the first instance, additional judges will be appointed and in spite of the permanent vacancies, permanent judges will be appointed later on. There would be objection to this in the High Courts, but I

feel that when there are vacancies of permanent judges, the process of filling them up should be taken up immediately or 6 months in advance so that as soon as there are vacancies, permanent judges could be appointed. The appointment of *ad hoc* and additional judges can be taken up according to the requirements.

The Chief Justice, Shri Chandrachud, had suggested that all the appellate cases in the Supreme Court should be disposed of by various tribunals like the National Taxation Tribunal, Services Tribunal, Labour Tribunal, etc. Besides, these tribunals should be headed by a sitting Supreme Court judge so that litigation may not increase in the Supreme Court. Government should pay immediate attention to this suggestion also. Many Labour Courts and Service Tribunals have already been established but they are not of the level of the Supreme Court.

He had also suggested that leave of appeal or bail application or appeal against the decision of a judge or tribunal should come up for hearing before a single Supreme Court Judge. The practice at present is that the appeal comes up for hearing before two Supreme Court judges and they give their decision. Therefore, Government should pay attention to it also.

One more suggestion was that for quick disposal of cases the lawyers should submit their arguments in writing which would save valuable time of the Court but this move was vehemently opposed. But these issues are so important that Government should pay serious attention to them.

I would also suggest that while appointing Supreme Court and High Court judges, their background, *i.e.* the class to which they belong should also be taken into consideration. It should not be so that they should be appointed from the elite section of the society or the upper strata of the society or from the zamindar families. They should be taken from all the sections of the society, even from amongst the common people. We talk of socialism

[Shri Shyam Lal Yadav]

and we can fulfil its objectives only when we include the common people and those who believe in that ideology.

With these words, I support the Bill.

[English]

SHRI SOMNATH RATH (Aska) :
Mr. Chairman, Sir, I rise to support this Bill. As is seen from the Statement of Objects and Reasons, about 49,000 cases are instituted yearly and more than 70,000 cases are pending in the Supreme Court. As such, it is necessary to increase the strength of the judges from 17 to 25, *i.e.* by nearabout 50 per cent more.

But, I would insist that it is not the quantity but quality that counts much. So, the quality of the judges should be taken into consideration. If we want that there should be better quality and efficiency, the salary and other remunerations of the Supreme Court judges should be increased. Efficient advocates from the Bar will go to the Bench if the remuneration given to them is sufficient. So, that aspect should be taken into consideration.

Secondly, we have seen from the judgments that appear in the Reports of Law Journals, judges tend to write very lengthy judgments. The judges need not satisfy the parties because they are not their clients. The advocate has to satisfy his clients as well as impress the judge by his arguments. So, he may take much more time. But a Judge should be brief while writing judgements (of course, he can give his reasons) and thereby also much time can be saved. The judgement should be delivered as early as possible after the hearing is over ; it should not be delayed for a long time. Once a stay order is granted, it goes on for years together and in whose favour this stay is granted, the mischief is done and he gets much more than what he expects. So, the stay orders are to be disposed of quickly. To relieve the Supreme Court of the burden such of the matters which can be decided by the tribunals may be handed over to

the tribunals and the burden can be lessened. There should be great scrutiny at the time of admissions.

It is said that judges are being appointed under the Commission of Enquiry Act. So the disposal in courts suffer. But many times it has been argued or it has been pressed that the sitting judge of the Supreme Court or a High Court should be appointed. To meet this contingency, I think *ad hoc* appointments of Supreme Court as well High Court Judges can be made so that, if under the Commission of Enquiry Act, a judge has been appointed, that will not hamper the work of the Supreme Court or High Courts.

SHRI AMAL DATTA (Diamond Harbour) : Sir, as usual, the Government has come forward with a belated measure to increase the strength of the judges of the Supreme Court. This is a demand which has been voiced for the last 12 years or more, since the time the Supreme Court has been taking four to five years to dispose of the cases admitted by it. This belated measure does not fully satisfy the present day needs. According to the Statement of the Objects and Reasons, the number of cases mentioned pending as on 31st March, 1984 is 73,206. It must have gone up by several thousands in another year which has since passed. To dispose of all these backlogs and also to tackle further flow of cases which have nearly reached 50,000 per year by this time, the number of judges should have been increased by a greater number. What we are going to do now is we are going to increase the number of judges by seven. I would have welcomed it if it had been increased by 10 or 12 or even 14. The amount needed for all this would be an additional expenditure at the rate of Rs. 1,60,000 per additional judge. I think that this country can very well afford this money for another 7 or 8 judges and it would have been a very welcome measure, if that had been made. The Government which is supposed to be looking forward, is not trying to cope with the problems which have just arisen. It would have really proved that it is a Government which is looking forward towards the 21st century—and not looking back towards

the last decade, which I am afraid, it is doing when it has brought this Bill—if the number had been increased by 10 or 12 or 14.

Sir, there have been apprehensions that the quality of judges, when there is an increase in the number of Supreme Court Judges, will go down. It is based on the fact that people are far from being satisfied now with the quality of the judges in the High Courts—from where the judges of Supreme Court will be recruited—which has gone down considerably. And most people lay these reasons at the door of salary and perquisites which they say should be much more. I do not disagree. I definitely agree that High Court and Supreme Court Judges should get more salaries and perquisites in keeping with the inflation and in keeping with their social status. But the over-all position depends on what honour and dignity that a judge is given in our social and political system.

16.13 hrs.

[SHRI SOMNATH RATH *in the Chair*]

Judges are liable to be transferred ; but who does the transfer ? Nominally, the President ; but actually it is the Joint Secretary in the department concerned. So, when the Judges' position is lowered in this fashion, how can we expect people of real integrity and competence to come to higher judiciary, i.e. High Courts from where the Supreme Court Judges are finally to be recruited ?

This idea of keeping Judges under executive control should be given up, and the independence of Judges should be ensured. Only then the position, prestige and honour of the Judges will be such that we will get really competent people in the judiciary ; and there will be no further apprehension of the dilution of the quality of the judiciary, either of the Supreme Court or of the High Courts.

The objective should be, both in the case of Supreme Court and of High Courts, to eliminate delay. Delay has a two-fold

effect. It not only denies justice to the litigant concerned, but it also generates cases, because once a person can come and get an injunction, whether it is in the Supreme Court or High Court, he knows that it is all right for the next 4 or 5 years which that court will take, to dispose of the case. By that time, he has gained all that he wanted to gain ; and many of the cases in the High Courts and Supreme Court are disposed of without hearing, because ultimately the applicant does not appear. They are dismissed for default, i.e. the applicant having failed to come and argue his case. This four or five-year period is what the applicant wanted to gain, and nothing else. He knows that he is ultimately going to lose. There is no check against that.

Unfortunately, there is no indication that the Government wants to bring forward a set of measures to diminish the number of frivolous cases, to penalize people who institute frivolous cases. There is no such proposal. I have not heard of, or seen any. I think Government should start thinking in these terms, i.e. the pendency of cases, and the number of years for which cases remain pending, generate cases. Therefore, the pendency should be limited to six months or one year, or something like that. Some such objective should be there ; and whatever procedural changes or legal changes are required, should be brought in, to see that there is no delay in the disposal of cases—which will automatically halve or even make the number of cases instituted less than half of what they are to-day—the frivolous cases having disappeared.

I think Government should now think in an overall manner, in a comprehensive manner, as to what measures are to be taken to see that the number of cases instituted goes down, by seeing to it that proper steps are taken to penalize—as it is done in all countries where the Anglo-Saxon jurisprudence is there—such institution of cases. People who bring forward such cases and come to court and get injunctions on frivolous grounds, or by giving wrong and false affidavits, are not even penalized in this country. That should be done. If such a measure is there, we

[Shri Somnath Rath]

will get rid of at least 50% of the cases straightway ; and that, in its turn, will take down the number of frivolous cases instituted ; and the pendency of cases will go down to a desired level- six months to one year.

So, I urge Government to think in a comprehensive fashion, and bring forward measures towards that end.

SHRI JAGANNATH RAO (Berhampur) : Mr. Chairman, Sir : I welcome this measure. Increasing the number of Judges is one way to reduce the large pendency of cases.

In recent years, disposal has increased, but institution has also increased. Therefore, disposal is not keeping pace with institution. One way to reduce the pendency of cases is to see that the institution of cases goes down.

I do not know if the Law Ministry made a study of the category of cases that come to Supreme Court and High Courts. If you look at the writ jurisdiction of the High Courts and the Supreme Court, you will find that 80 per cent of the cases are between the citizen and the State. In a welfare State, a citizen is forced to go to a court to establish his fundamental right or his legal right. Even though they are valid and even though the government feels that there is a good case, still the Government tries to fight the case and ask the court to decide it ; the government would not take a decision. This had been my experience some years ago Nobody wanted to take the responsibility. They said, let the court decide a case. Why should the court decide a case when the point is clear that the citizen has a right to do a particular thing ? They should concede to it. In a welfare State, they should not try to make everybody to go to a court.

Secondly, with regard to tax matters, labour disputes and service matters, at one time, there was a thinking in the government to constitute tribunals for the disposal of these matters so that these cases need not go to the Supreme Court. That aspect has to be considered so that

the pendency of the tax cases—many cases are pending for years and years—is reduced. With due respect to judges, every judge is not an expert in tax matter. The Income Tax Act provides machinery to the assessee to fight out their cases. An assessee first goes to the Appellate Assistant Commissioner ; from there he goes to the Income Tax Tribunal ; from there he goes to the High Court on a point of Law and then to the Supreme Court. At that stage, when the government has to decide whether a case should go to the Supreme Court or not, when there is a strong point in favour of an assessee, the government should say that it need not go to the Supreme Court. That would be the best way of reducing the large pendency.

My friend has already stated about drafting of judges who preside over the commission of enquiry. Now, out of 18 judges, I think, the effective strength of judges is only ten. How can you expect quick disposal of cases ? Why not follow the Privy method of only one leading judgment ? The majority view is given. They say, we humbly advise the Majesty accordingly. Now, three or five judges constitute a bench. If they take a majority view, then you accept it. But if one judge comes to a conclusion and the second judges also comes to the same conclusion but for different reasons—he is not agreeing with the reasons of the first judge—we are confused as to what is the legal basis for such a judgment. Therefore, if one judgment is given, that would also reduce the time and energy of the court.

Now, if you look at the All India Reporter you will find that a judgment consists of 500 pages of a decision by a bench of five judges. There is no meaning in that. The law laid down by the Supreme Court is the law of the land. Everybody is bound by it. People should know what is the legal rationale behind it, what is the reason that governs the decision. That is not clear. With due respect to the learned judges, they want to show of their knowledge of Law and English language. Some judgment sounds like 19th century English Prose. Therefore, that aspect should be considered and they should see that only one judgment should be given when there is a majority of views on a

particular decision. Dissenting judgment may be there. Therefore, the constitution of a tribunal is one way of reducing the large institution and pendency. They should also see that the citizens are not harassed by forcing them to go to the court for the enforcement of their rights.

There has been a demand that a bench of the Supreme Court should go on circuit in the South once in a quarter or once in four months. That aspect must be considered by the government in consultation with the Chief Justice of India. Let a circuit bench go to Hyderabad for a month once in three months or four months or six months so that it should also dispose of cases relating to the South.

Therefore, this aspect may also be considered. With these remarks I welcome the Bill.

SHRI K.R. NATARAJAN (Dindigul) : Mr. Chairman, Sir, on behalf of the AIADMK I would like to welcome the Bill for increasing the number of Judges in the Supreme Court by eight more.

I would like to speak a few words on the Bill. Here, I find that Article 124(1) of the Constitution says—

“124(1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges.”

But the Bill says that there are already seventeen Judges.

AN HON. MEMBER : There has been an amendment.

SHRI K.R. NATARAJAN : But there has been no amendment to Article 124(1). There should have been an amendment in regard to the number of Judges. Here, it is mentioned only as seven Judges. This is what was prescribed when the Constitution came into force.

MR. CHAIRMAN : Please conclude, as only one hour has been allotted for this Bill.

SHRI S. JAIPAL REDDY : You want to increase the number of Judges in the Supreme Court by one stroke, in five minutes’.

SHRI G.M. BANATWALLA : He said only five sentences.

AN HON. MEMBER : Only five lines !

SHRI K.R. NATARAJAN : The number has been increased to ten, and then to seventeen later. In 1977 it was raised to 17. But it is found that it is not there in Article 124. That should have been there.

I request the hon. Minister to bring forward a Bill amending Article 124(1) of the Constitution of India.

There are a large number of cases pending in the Supreme Court. So, the number of Judges has to be increased—A number of them have to be appointed region wise and State wise—to reduce the pendency of the cases in the Supreme Court. The number of cases has been pending for more than 15 years. It has been steadily increasing and the appointment of more Judges will reduce the pendency of the cases there.

Trivial and unimportant cases are also admitted in the Supreme Court. So, Article 136(1) relating to the Special Leave Petitions should be amended suitably so that such petitions of unimportant cases are not admitted in the Supreme Court.

Then there are a number of cases pending in the High Courts also. Mr. Justice Jaswant Singh had said that about 5,85,000 cases are pending in the High Courts. So, the number of Judges in the High Court should also be increased.

I also suggest that a separate Bench of the Supreme Court—or a Circuit Bench—

[Shri K.R. Nataranjan]

should be established in Madras for reducing the pendency of the cases coming from the South to the Supreme Court also. The cases may be dealt with by the Bench constituted at Madras. Similarly a circuit bench of the High Court at Madurai should be constituted to reduce the number of cases pending in the Madras High Court. There are seven vacancies of Judges in the High Court of Madras. Those vacancies should be filled up as quickly as possible. The Chief Justice of Madras High Court and the Government there have recommended three names. They should have been approved long back. At least the vacancies could have been filled up to the extent of three judges. So, I request the hon. Minister to look into all these matters and do the needful.

SHRI D.K. NAIKAR (Dharwad North) : While welcoming the amendment I would like to make some suggestions.

In fact, the hon. Minister has said that by increasing the number of judges in the Supreme Court they will be able to dispose of the cases. It is not practically possible according to my understanding. The number of judges has increased from 7 to 10, 10 to 14, 14 to 17 and now from 17 to 25. According to a report, the pendency in the Supreme Court in 1981 was 48653 whereas on 31.12.1984 this pendency had gone upto 86,730.

So the arrears are accumulating year by year. Though the number of judges is increasing from time to time, the disposal is not keeping pace with the increase in number. Therefore, my suggestion is that some other stringent measure should be taken in this regard.

Constitutional remedies are provided in the Supreme Court and High Courts. The constitutional litigation has been made a costly affair to the poor litigant. Therefore, he cannot approach the Supreme Court at Delhi. On the basis of the 14th Report of the Law Commission the disposal should be speedy and less expensive. That recommendation is still not implemented.

Article 39A of the Constitution provides that the legal system should promote justice on the basis of equal opportunity. That is not achieved. And the second part says that to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. That is also not achieved. I may quote one example. A suit was filed in 1949 and it was disposed of in the Supreme Court in 1982. When the suit was filed the person was unmarried. When he got the decision he was married and having six children. He was not able to give education to his children. This is the justice that we are giving to our litigant public.

Though a number of legislations have been passed both by the State Legislatures and Parliament, the interest of the poor litigant public has not been safeguarded. When the Constitution was adopted, it might be well suited to locate the Supreme Court at Delhi. But now the proportion of the litigant public has also increased on the basis of the population increase. Therefore, I suggest that a bench of the Supreme Court should be given in the south. Since the demand is coming from Bangalore particularly, it should be given to Bangalore where infrastructural facilities are available.

The Supreme Court judges are taken from the High Courts whereas the High Court judges are appointed on the recommendation of the Chief Justice. In their case the method itself is defective. One reason is that the Chief Justice's likes and dislikes are not ruled out. And then local pressures also are not ruled out. The Constitution does not provide for any merit test. This is a question which I can explain in many ways, but because of shortage of time I do not want to touch that. Therefore, I suggest that mere increase in the number is not enough to dispose of the cases, but some benches of the High Courts and the Supreme Court will have to be established wherever they are necessary. Pendency in High Courts is 11 lakhs. That is the figure given by the Law Ministry.

SHRI S JAIPAL REDDY (Mithub-naga) : Mr. Chairman, Sir, I do not want

the Minister to be disturbed. It looks as though the reply of the Minister has nothing to do with the speeches that are going to be made.

MR. CHAIRMAN : The Minister is hearing. You please carry on.

SHRI G.M. BANATWALLA : Are you sure about it, Sir ?

SHRI A.K. SEN : I hope I shall be heard adequately after the hon. Members have finished their speeches.

SHRI S. JAIPAL REDDY : Mr. Chairman, Sir, we have an experienced lawyer and a distinguished jurists in our Law Minister. We hoped that he would not be a tinkerer but a structuralist. But our hopes have proved to be dupes because he has been coming forward with one piecemeal Bill after another. Only the other day he came forward with a Bill to increase the car allowance of High Court and Supreme Court judges from Rs. 300 to Rs. 500, and tomorrow he is coming forward with another Bill seeking to provide protection to the Judges, and now, of course, he has come forward with this Bill to increase the number of Judges of the Supreme Court.

The hon. Minister has referred to the increase in pendency. According to the note given to the Minister, the pendency increased from 14,000 and odd to 73,000 between 1977 and 1985. But I do not find this figure reliable. It must be much higher than what has been pointed out.

SHRI A.K. SEN : We have given you the right picture.

PROF. MADHU DANDAVATE : That is calculated on the computer.

SHRI S. JAIPAL REDDY : According to the answer given by the Law Minister on 27th January, 1985, the pending cases in Supreme Court were 1,48,000 and odd. So, I would like to know which figure is correct. In Allahabad High Court alone, pending cases as on 30th June, 1984 were

2,12,000 and odd. The Law Minister should know the strength of High Court Judges of Allahabad. It is sixty. So, I would like to know from the Law Minister whether the pendency increases in direct proportion to the increase in the number of Judges. I do not think that mere increase in the number of Judges is going to expedite the process of disposal. We have, of course, discussed the whole question of judicial reforms in detail when the discussion was initiated by our leader Shri Dandavate Ji. Such a distinguished jurist as Mr. Tarkunde suggested the formation of various tribunals. I do not want to refer to all those tribunals. I would like to refer to the quality of Judges well, we have all been talking about the delay in the disposal of cases, but I would like to draw the attention of the Law Minister to the inordinate delay in the delivery of judgement after the hearing of the case is completed. In the case of Andhra Pradesh NGOs and other government officers, the Supreme Court took one year and few months to pronounce the judgement after hearing the case. I have been a supporter of the independence of judiciary but we must see that they also are guided by some firm framework. I know, a particular Supreme Court Judge today is yet to write judgements in as many as sixty cases. So, I would like to know from the Law Minister whether he would be able to devise a method by which the Parliament comes to know of the time taken by various Judges in writing the judgements.

Well I do not have to speak about the imperative need for considerable increase in the salary of Judges. On that point there is a universal agreement. The Law Minister himself will agree with us on this point vehemently, but he has not been doing anything in that direction.

To enable the Judges to deliver their judgments more quickly, we also will have to take steps to provide them with more facilities. Even the photo-copy facility is not there in many of the High Courts. In fact, I am not a great champion of computers, but I believe that a computer is required for the Supreme Court, because otherwise so many things cannot be really

[Shri S. Jaipal Reddy]

made available to the Judges in a tabloid form.

Now, that the Government is increasing the number so precipitously, I am wondering about the intention of the Government behind it. This Party has always been known for its commitment to the theory of committed judges.

PROF. MADHU DANDAVATE : Mr. Reddy they may replace the Judges by computers.

SHRI S. JAIPAL REDDY : I do not know whether this Government will not utilise this opportunity to pack the Supreme Court with committed judges. There are many such laws which may be sought to be unsettled. For example there is the theory of basic structure. And if the number of Supreme Court Judges is increased by eight, one does not know what change will come about in the structure and outlook of the Supreme Court Judges and the Supreme Court itself. I would like the Law Minister to allay all these apprehensions.

[*Translation*]

SHRI MOOL CHAND DAGA (Pali) : Mr. Chairman Sir, from this Bill it does not appear that the increase in the number of Supreme Court judges would help in quick dispensation of justice.

The judges these days do not do home work. Earlier, the judges used to go through all the cases before coming to the Court and they did not allow the lawyers to make lengthy submissions. They themselves used to seek clarifications from the lawyers on important points.

Now the working days for the judges in a year have been reduced considerably. They attend the courts 182 days in a year and do not work for the rest of 183 days. Even in 182 days if they come well prepared and the cases are heard on day-to-day basis, the cases can be disposed of quickly. Will the hon. Minister be pleased

to state who oversees the work of the judges to find out whether the judges are performing their duties with honesty and devotion ?

Now-a-days, the judges deliver speeches at the Rotary Club and the Lions Club and sometimes they visit saints and work for them in the name of religion. The judges are also turning into politicians. The judges do not perform their duties well and sometimes they look for favour from the Government.

With regard to the appointment of the judges, it was stated that an advocate with 10 years' experience could be appointed as a judge. But there are advocates who do not gain any experience even after 10 years' practice. It was also stated that the Senior Advocates appeared very rarely during the final hearing of the cases; senior members of the Bar deliberately prolonged the cases. The only way to check it is that the judges should be competent and experienced and an officer should be appointed to evaluate their work so that they perform their duties with sincerity and devotion. It should also be seen that the cases are not prolonged.

SHRI VIJOY KUMAR YADAV (Nalanda) : Mr. Chairman, Sir, the intention of this Bill is to bring down the number of cases in the Courts. But at the same time, there is also the need to pay attention to the steep fall in the quality of judgments. The common man is losing faith in the judiciary. There is corruption in the judiciary and justice has become very costly. In principle though the Constitution guarantees impartial justice to all, yet in practice is observed that justice is confined only to a few. The common people do not get justice and, therefore, there is the need that the people, particularly the poor, should get free justice. Government should make arrangements whereby they may not have to incur any expenses in the courts. It is not only the question of paying the lawyer or the advocate, even other expenses should also not be there. So much of expenses are involved even in a single case that it has become out of the reach of a common man to redressal in a court.

Who delays the cases generally these days? It is the rich who can hire the services of good lawyers and their cases take inordinately long time. Provision should be made to ensure that nobody is able to delay the case.

At present, for a simple appeal one has to pass through many stages. Attention should be paid to reduce the stages. Besides, there is the need to improve the quality of the judges and the lawyers. Arrangements should be made to impart special training to the junior advocates in the country and the Central Government should consider their demands for facilities under the welfare schemes.

SHRI KALI PRASAD PANDEY (Gopalganj) : Mr. Chairman, Sir, as an independent Member, I welcome impartially the Supreme Court (Number of Judges) Amendment Bill introduced by the Law Minister.

When the Bills are brought here and discussed in the House, we expect that people will get justice, but what are those circumstances and reasons because of which, in spite of increasing the number of judges every year in High Courts and the Supreme Court, the number of cases goes on increasing. You should create a machinery which should oversee the work of the judges and formulate a policy that may encourage competent people to join the Supreme Court. I am not taking of any particular judge or a State. But on the basis of my experience in Bihar I would like to know what are those circumstances in which when a case goes to a judge, whether he is in the High Court or the Supreme Court, he writes on that 'transferred' and when the case goes to another judge he also writes on it 'transferred'. I was myself a witness to it in Bihar. In a case under section 307, not one judge but 12 judges transferred my case. In such a situation from whom could I expect justice? Therefore, my submission is that the Government should think about this situation and make provision to the effect that when the cases are transferred from one court to another, they should be decided at the earliest.

I also submit that the Supreme Court Judges should at least once in a month visit the States so that the poor may also get justice.

We sometimes dispose of the work by sitting late for two or three hours. Similarly the judges too can dispose of some cases by sitting overtime. For this, their salaries and allowances can be enhanced.

With these words, I conclude as the time is short. Otherwise I wanted to submit many things before the House.

[English]

MR. CHAIRMAN : Now, the hon. Minister will reply.

SHRI G.M. BANATWALLA : Sir, my name is also there. I propose that the time for this Bill be extended. We are addressing ourselves to a very important question with respect to the arrears of cases in the Supreme Court. Here the administration of justice is involved and the way in which we are rushing through the Bill is most unsatisfactory. At least that must go on record.

MR. CHAIRMAN : Please reply.

SHRI A.K. SEN : That is not rushing through any Bill.

(Interruptions)

SHRI G.M. BANATWALLA : You should increase the time that is allotted for the purpose.

(Interruptions)

The Reports of Business Advisory Committee....

SHRI A.K. SEN : Any way, Sir, this has to go to the Rajya Sabha also.

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS (SHRI GULAM NABI AZAD) : Sir, the time allotted for this Bill was one hour.

(Interruptions)

SHRI G. M. BANATWALLA : If you take this attitude, you will find yourself in greater difficulties.

(Interruptions)

SHRI A K SEN : Sir, I am very obliged to the House for the ...

SHRI G. M. BANATWALLA : Sir, there is no Ruling from you about what happened to my moving for extension of the time, requesting you for it. At least throw it out. Let it be on record. We do not want to speak, does not matter, but then let it be on record on how the Bills are rushed through and important matters not being put and discussed properly.

(Interruptions)

MR. CHAIRMAN : The time allotted is going to be over. The hon. Minister wants this Bill passed

SHRI G M. BANATWALLA : This is subject to the consent of the House

(Interruptions)

SHRI GULAM NABI AZAD . The time allotted was one hour. It was decided by the Business Advisory Committee and it was accepted by all the political parties.

(Interruptions)

SHRI A. K. SEN : Sir, may I now proceed ?

I am very obliged for the support that this Bill has received as I expected it to receive from all sections of the House. This shows how this Parliament has always treated matters relating to justice on a non-controversial level and not on a party basis at all. I don't see how my Lord—how, Sir. *(Interruptions)*. Habits die hard. I do not see how we are rushing through this Bill. It is only a matter of a few Sections and only a matter of increasing the number of judges. I can tell you that this House has in the past frequently expressed itself in favour of increasing the number of judges.

SHRI G.M. BANATWALLA : What a way of argument it is that whatever is discussed in the past, need not be discussed in the future ? It has to be admitted that the Bill has been rushed through without adequate time given for the purpose.

PROF. N G. RANGA : The Business Advisory Committee has passed this business of the House. How can you say like that ? We cannot accept that observation.

Mr. CHAIRMAN : Let the Law Minister reply.

SHRI G M. BANATWALLA : This Bill is passed in a sweeping manner.

(Interruptions)

SHRI A.K. SEN : I can see that I cannot match Mr. Banatwalla in making every matter a controversial one !

(Interruptions)

MR. CHAIRMAN : No cross-talking. The hon. Minister of Law will speak.

SHRI A K. SEN : I never expected this heat on a matter which I think has the least chance of generating any heat. But Mr. Banatwalla has the wonderful capacity of generating heat everywhere.

The position is this that we are faced with hard facts. It has been accepted by the Consultative Committee and various other parties all over the country that no criminal case should be kept pending for more than a year and no civil case should be kept pending for more than two years in the Supreme Court and subordinate courts. If that be the norm, we have to cut the coat according to the cloth. We must provide enough judges. Left to myself, I would have provided for 30 judges. As I told the House in the past, the judges themselves want at the moment only 26 judges in the Supreme Court. We have accepted that. But I entirely agree with the Members who have expressed this very true proposition that by merely increasing the number of judges, we cannot achieve the purpose. But it is a fact that the disposal rate has also gone up terribly, by three times.

It was 10,395 in the year 1977. It has gone up to 35,000.

But unfortunately, the disposal rate has also to be matched with the increasing rate in the institution and the institution has grown up so enormously both in the Supreme Court and in the High Court that I will only give a few figures.

When the Supreme Court started, it had only seven judges. With seven judges in 1960, the pending cases at the beginning of 1960 were only 2,598 and the institution was 3,241. Even then it was less. We increased the number of judges. But what has happened ?

In the year, 1983 it went up to 63,000 of pendency and the institution went up from 3,241 in the year, 1983 to 55,989. There is enormous increase. This enormous increase has to be accepted. Why ? Because you have got so many Acts, so many statutes which create rights and obligations between not merely citizens and citizens but also between the State and the citizen. No democratic country can refuse to adjudicate the cases. In fact, under Article 39A of the Constitution, it is our duty to provide cheap, expeditious and free justice to all. Therefore, we cannot bar the door of the court to litigants who come to the courts to seek justice.

Somebody has said, I think Shri Amal Datta, that we must provide for penalising frivolous litigation. That is true. But the Courts have to do it. The law says that if there is a frivolous case filed, the court should visit the litigant who has filed the frivolous and penal case. It is for the courts to take care of it so that no frivolous litigation comes up to the court. But at the inception of the litigation, one cannot judge whether it is frivolous or not. It is only at the end of the litigation that the matter is heard and determined and it is only the judge who can find whether there is frivolousness in the institution of the suit or not.

I entirely agree with the hon. Member Shri K. Ramachandra Reddy that this is

not a measure which has to deal with the problem of this enormous delay in the disposal of cases by judges. It is only one of the methods which has to be adopted. So many other methods have to be taken recourse to and I told the House in the past that, for that purpose, we are putting various proposals, some of them may be radical in nature, before the Conference of judges, Chief Ministers and Law Ministers.

17.00 hrs.

Either our democracy succeeds in tackling this problem of justice effectively and properly, or it does not. I have no doubt that we shall succeed as we have succeeded in tackling so many difficult problems faced by us in the past. I am glad that the Finance Minister is also here. I shall be inviting him to be present also in the conference of Chief Justice and Chief Ministers because much of the proposals entail some expenditure from the centre. But I think, his Ministry will benefit most by speedy disposal of cases because tax retention and tax disputes take a good deal of our time in the courts. Therefore, Sir, I recommend this motion for acceptance.

SHRI S. JAIPAL REDDY : What does the Law Minister propose to do in respect of inordinate delay in the delivery of judgements after hearing of the case ?

SHRI A.K. SEN : We shall come to the House with all our proposals.

MR. CHAIRMAN : The question is :

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

The motion was adopted

MR. CHAIRMAN : The House will now take up Clause-by-Clause consideration.

Clause 2

MR. CHAIRMAN : There is an amendment given notice of by Shri R.P. Das.. He is not present in the House. So, I shall now put Clause-2 to the vote of the House.

The question is :

"That Clause-2 stand part of the Bill"

The motion was adopted

Clause-2 was added to the Bill

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

THE MINISTER OF LAW AND JUSTICE (SHRI A.K. SEN) : Sir, I beg to move :

"That the Bill be passed"

MR. CHAIRMAN : The question is :

"That the Bill be passed"

The motion was adopted

17.03 hrs.

DISCUSSION RE : REPORT OF NATIONAL INSTITUTE OF PUBLIC FINANCE AND POLICY ON "ASPECTS OF BLACK ECONOMY IN INDIA".

[English]

MR. CHAIRMAN : Now we shall take up discussion under Rule 193. Smt. Geeta Mukherjee.

SHRIMATI GEETA MUKHERJEE (Panskura) : Sir, the report of the National Institute of Public Finance and Policy on aspects of black money in India, which was presented by our hon. Finance Mini-

ster the other day can truly be called in colloquial Bengali :

Parbater Museek Prasab

That means "mountain producing mice". But there is a trouble here. The mice produced by the NIPEP in the shape of some of its recommendations seem to be carrying plague germs and if accepted, many of these may contaminate the national economy with plague. So beware.

Sir, I am sure, the report has gladdened the hearts of the big businessmen and the rich in general—urban and rural.

17.04 hrs.

[SHRIMATI BASAVA RAJESWARI
in the Chair]

As far as the estimate of black money given in the report is concerned, it says that the tax evaded income in 1975-76 was between Rs. 9,950 crores to Rs. 11,870 crores. It comes to 15 to 18 per cent of the GDP. In 1983-84 it is Rs. 31,584 to Rs. 36,876 crores which is 18 to 21 per cent of the GDP. This relates only to a part of the black income, that is, only the tax evaded in legal income but the black wealth is yet outside this calculation.

As far as this estimation of the black money is concerned the Report itself says :

"As the enterprise of estimating the size of unaccounted money is still in its infancy, the authors admit that their results are based on numerous assumptions and approximations each of which could be challenged."

If this is the situation then I do not understand why this big exercise for all these three years. Even then many of the celebrated economists have expressed this view that even though this one part of the thing has been taken up, that is also seriously under-estimated. Corporate sector incomes are not included in it giving an explanation that they will enter into the household incomes. I feel strongly that it